

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16232 OF 2025**

1. Mangesh Bhaskarrao Manwatkar,
43 Y age Adult, Occupation : Service
At present residing at 57, Lancaster Dr,
Point Cook, Victoria, Australia – 3030
Indian Residential Address – Rainbow
Association, F2, B wing, room no 6,
Sector 10, Vashi, Navi Mumbai 400703.
Through his Power of Attorney Holder
Mrs. Pushpa Bhivasan Vanere
Aged 44 years, Occupation : Housewife
Indian Residential Address : Rainbow
Association, F2, B wing, room no 6, Sector
10, Vashi, Navi Mumbai 400703
2. Mrs. Pushpa Bhivsan Vanere, 44 Y age
Wife of Petitioner No.1,
Residing at 57, Lancaster Dr,
Point Cook, Victoria, Australia – 3030
Indian Residential Address - Rainbow
Association, F2, B wing, room no 6, Sector
10, Vashi, Navi Mumbai 400703
3. Moheeka Mangesh Manwatkar, 2 Y age
Minor, through her Natural Guardian,
Adopted child of Petitioners Nos.1 and 2.
Address - Rainbow Association, F2, B wing,
room no 6, Sector 10, Vashi,
Navi Mumbai 400703.Petitioners

Versus

1. Union of India
Summons to be served upon the
learned Government Pleader representing
the Union of India under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908.

2. Central Adoption Regulatory Authority
(CARA), Ministry of Women and Child
Development, Having its Office at West
Block 8, Wing 2, 1st Floor, Rama Krishna
Puram, New Delhi, Delhi 110066,
Summons to be served upon the
learned Government Pleader representing
the Union of India under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908.

....Respondents

Mr. Anil V. Anturkar, Senior Advocate i/b. Mr. Yatin Mahesh Malvankar,
Advocate for the Petitioners.

Mr. Y. R. Mishra a/w Mr. D.A. Dube, Mr. Upendra Lokegaonkar and
Mr. Sachidanand T. Singh, Advocate for the Respondent/UOI.

CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.

RESERVED ON : 12 MARCH, 2026

PRONOUNCED ON : 30 MARCH, 2026

JUDGMENT (PER : RAVINDRA V. GHUGE, J.)

“ADOPTING ONE CHILD WILL NOT CHANGE THE WORLD:

BUT FOR THAT CHILD, THE WORLD WILL CHANGE”

[Opening sentence from PKH v. Central Adoption Resource authority,
2016 SCC OnLine Del 3918]

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. Petitioner Nos. 1 and 2 are a married couple. Both are about 44 years of age. Petitioner No. 2, the wife, has sworn the verification in support of the Petition. Petitioner No. 3 is a minor girl child who was adopted by the couple when she was 45 days old under the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'HAMA').

3. For the sake of brevity, Petitioner No. 1, Petitioner No. 2, and Petitioner No. 3 are hereinafter referred to as the adoptive father, the adoptive mother, and the adopted daughter, respectively.

4. The couple got married on 01.03.2017 at Navi Mumbai Sports Association, Vashi, Navi Mumbai. Both were Indians at the time of their marriage. Their marriage certificate is dated 03.03.2017, registered under the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998.

5. The adoptive father became an Australian citizen with effect from 27.02.2023. The couple was childless. Both professed the Hindu

religion and were governed by HAMA. Being childless, the adoptive couple decided to adopt the 3rd child of a close relative, namely, Sudhir Yashvant Shekokar and Yashoda Sudhir Shekokar. Both have a son, Prathmesh, who was 16 years of age in April 2023, and a daughter, Nirvika, who was 11 years of age at the said time. The said couple gave birth to their 3rd child on 28.02.2023, who is Petitioner No. 3 before us. We are informed that third pregnancy of this couple was ‘unplanned’.

6. On 21.04.2023, a Joint Adoption Deed was entered into by the adoptive couple and the biological parents of the adopted daughter. The Adoption Deed was registered with the Joint Sub-Registrar, Thane, District Thane, on the same day. The adoption ceremony was conducted in accordance with Hindu religious rites in the presence of close relatives, families, and friends of the biological parents and the adoptive parents. The Hindu priest has also signed the English as well as the Marathi adoption ceremony documents before the Joint Sub-Registrar, Thane. The change of name of the adopted daughter was also carried out. All these documents are placed on record from page Nos. 41 to 58. The passport of the adopted daughter, carries the name and surname of the adoptive father, as her middle name and surname. The details about the adoptive mother, are also found in the said passport.

7. The adoptive mother subsequently became an Australian citizen. Due to the adoption, the child is supposed to accompany the parents to Australia. The adoptive father entered into correspondence with the Australian Authorities at 'Adoption Victoria', in order to obtain an Australian adoption Visa. The adoptive father was informed that for such a Visa, the Indian Central Authority must send them a request directly via email. However, much time was consumed in such correspondence, which did not lead to any result for the Petitioners. The 'Duty Worker, Adoption Victoria, Adoption Services, Department of Justice and Community Safety', advised the adoptive father that because the said office could not initiate contact with the Overseas Central Authority regarding Inter-Country adoption, the Indian Central Authority would have to send a request via email to adoptionsvic@justice.vic.gov.au. These details were made available to the adoptive father upon his request to share them with India's Central Adoption Regulatory Authority (CARA) for Adoption Processing.

8. The learned Senior Advocate Mr. Anturkar submits that the adoptive mother became desperate due to the passage of time. She was residing in India only because the adopted daughter was living with her.

Under wrong advice, she preferred Miscellaneous Petition (Adoption) No. 354 of 2024, before the Additional Sessions Judge-3, Thane, seeking a declaration under Sections 7, 8, and 10 of HAMA. By an order dated 20.02.2025, the application presented on 29.11.2024, was disposed off with the order as '**the Petition is filed**'. Again, on improper advice, the adoptive parents approached the learned Single Judge of this Court in Civil Revision Application No. 351 of 2025. Vide order dated 06.08.2025, the adoptive parents were granted leave to withdraw with liberty to file a substantive Suit for declaration of the Adoption Deed already executed.

9. After the Petitioners approached the CARA, the District Child Protection Officer, Thane (DCPO) submitted a report that '*this is a relative adoption case and as per interaction with family members it was observed that everyone was supportive to each other and it is cumulative decision. I have verified all necessary documents of parents and they have shown genuine interest in this procedure. Family is well prepared for adoption and also they are socially, economically and medically fit for further support. We are recommending this family for relative adoption*'.

10. The District Child Protection Officer (DCPO) of the District Child Protection Unit, Thane (DCPU) sent a mail dated 28.03.2025 to the

adoptive mother requesting her to provide the habitual status of the prospective adoptive parents and NOC from the Australian Embassy or High Commission for further processing of the case.

11. The Petitioners received a communication dated 28.04.2025 via email from Inter-Country Adoption Australia. The contents of the email can be summarized as under:

(a) In Australia, overseas adoptions are only facilitated if the principles and standards of the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption (Hague Convention), are met. The Hague Convention is an International treaty that guards against illegal, irregular, premature or ill-prepared adoptions abroad and aims to ensure Inter-Country adoptions occur in the best interests of the child.

(b) The Hague Convention process does not apply to people who adopt a child from the same Country in which they habitually reside.

(c) If your wife undertakes an adoption while living in India and then intends to return to Australia with the child, this type

of adoption is called an expatriate adoption. Children adopted overseas in circumstances outside of a Hague Convention process, do not automatically have their adoptions recognized in Australia.

(d) Expatriate adoptions fall outside Australia's regulated Inter-Country adoption process and are therefore not considered as Inter-Country adoptions. The Australian Government cannot assist with or facilitate an adoption arrangement that occurs outside Australia's approved Inter-Country adoption program. This includes advising a foreign government that Australia would not object to or oppose a particular adoption.

(e) Further, the Australian Government does not provide any type of document that in any way supports or endorses applications by Australian expatriates undertaking domestic or private adoptions in overseas countries.

(f) Australian Embassies or officials are unable to witness any documents including statutory declarations and affidavits that are used outside Australia and /or for the purpose of a domestic or private adoption in another Country.

(g) There are specific Australian migration requirements concerning Visas and Citizenship pathways for adopted children. I encourage you to carefully review the Subclass 102 adoption Visa pathway information available on the Home Affairs website. When you open this page, click on the Eligibility tab, go to the heading 'Be Adopted' or in the process of being adopted.

12. The Petitioner points out that she sent a mail to ad1.hama-cara@gov.in on 04.08.2025 addressed to Mr. G. Ravi, informing him that as per the information gathered from the Australian Home Affairs website, the adoption falls under Expatriate Adoption and hence the Hague Convention rule is not applicable in the case. She informed that the adopted child can live in Australia permanently by getting the Australian 102 Adoption Visa. The adopted child will be able to study and work in Australia and also receive benefits of the Government's Public Health Care Scheme, Medicare. The visa can be issued while the adopted child is outside Australia. If she gets the 102 visa, she can arrive in Australia as a permanent resident.

13. On 21.08.2025, Mr. G. Ravi Kumar of CARA informed the adoptive parents that Section 68, Chapter VIII of the Adoption Regulations, 2022, prescribes the procedure for Inter-Country adoption in cases initiated after 17.09.2021. Since the adoptive father is an Australian citizen with Overseas Citizen of India (OCI) status, the case falls under the Inter-Country HAMA adoption category. According to CARA, Section 68 is applicable.

14. Both parties have referred to various provisions of law. For ready reference, it would be appropriate to reproduce the said provisions, as under:

A] The Juvenile Justice (Care and Protection of Children) Act, 2015

“(2)(2) "adoption" means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child;

(2) (3) "adoption regulations" means the regulations framed by the Authority and notified by the Central Government in respect of adoption;”

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.....

(2) (34) "inter-country adoption" means adoption of a child from India by non-resident Indian or by a person of Indian origin or by a foreigner;

.....

.....

(2) (52) "relative", in relation to a child for the purpose of adoption under this Act, means a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent;'

'Section 56. Adoption.

(1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.

(2)

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

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'Section 59. Procedure for inter-country adoption of an orphan or abandoned or surrendered child.

(1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the

joint effort of the Specialised Adoption Agency and State Agency within sixty days from the date the child has been declared legally free for adoption, such child shall be free for inter-country adoption:

Provided that children with physical and mental disability, siblings and children above five years of age may be given preference over other children for such inter-country adoption, in accordance with the adoption regulations, as may be framed by the Authority.

(2) An eligible non-resident Indian or overseas citizen of India or persons of Indian origin shall be given priority in inter-country adoption of Indian children.

(3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority.

(4) The authorised foreign adoption agency, or Central Authority, or a concerned Government department, as the case may be, shall prepare the home study report of such prospective adoptive parents and upon finding them eligible, will sponsor their application to Authority for adoption

of a child from India, in the manner as provided in the adoption regulations framed by the Authority.

(5) On the receipt of the application of such prospective adoptive parents, the Authority shall examine and if it finds the applicants suitable, then, it will refer the application to one of the Specialised Adoption Agencies, where children legally free for adoption are available.

(6) The Specialised Adoption Agency will match a child with such prospective adoptive parents and send the child study report and medical report of the child to such parents, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency.

(7) On receipt of the acceptance of the child from the prospective adoptive parents, the Specialised Adoption Agency shall file an application [before the District Magistrate] for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(8) On the receipt of a certified copy of the [order passed by the District Magistrate], the specialised adoption agency shall send immediately the same to Authority, State Agency and to the prospective adoptive parents, and obtain a passport for the child.

(9) The Authority shall intimate about the adoption to the immigration authorities of India and the receiving country of the child.

(10) The prospective adoptive parents shall receive the child in person from the specialised adoption agency as soon as the passport and visa are issued to the child.

(11) The authorised foreign adoption agency, or Central Authority, or the concerned Government department, as the case may be, shall ensure the submission of progress reports about the child in the adoptive family and will be responsible for making alternative arrangement in the case of any disruption, in consultation with Authority and concerned Indian diplomatic mission, in the manner as provided in the adoption regulations framed by the Authority.

(12) A foreigner or a person of Indian origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to Authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further necessary actions as provided in the adoption regulations framed by the Authority.’

‘Section 60. Procedure for inter-country relative adoption.

(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the [District Magistrate] and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order

under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.'

'Section 68. Central Adoption Resource Authority.- *The Central Adoption Resource Agency existing before the commencement of this Act, shall be deemed to have been constituted as the Central Adoption Resource Authority under this Act to perform the following functions, namely:—*

(a).....

(b) to regulate inter-country adoptions;

(c).....

(d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption;

....'

B] THE ADOPTION REGULATIONS 2022

'41. Central Adoption Resource Authority. -The Authority shall:-

.....

.....

.....

7) establish uniform standards and indicators, relating to:-

.....

.....

(e) procedures for adoption where adoption is done under the act other than the Juvenile Justice Act, 2015 (2 of 2016).

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.....

14) issue a system-generated No Objection Certificate in the case of inter-country adoptions;

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.....

18) issue No Objection Certificate in cases of adoptions done under Chapter VIII (Inter-country adoptions under Hindu Adoptions and Maintenance Act, 1956) of these regulations in cases of Hague Adoption Convention ratified countries on completion of required procedure and issue support letter in cases of countries outside the Hague Convention, on receiving letter of acceptance of the said adoption from the concerned Government department of the receiving country;

.....’

‘67. Procedure in the case of registered adoption deed. -

(1) In the cases where the adoption deed has already been executed in pursuance of adoption under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), before the commencement of the Adoption (Amendment) Regulations, 2021, the requisite

*documents supporting the facts of the adoption deed shall be duly verified and recommended by the District Magistrate in the format as provided in **Schedule XXXV**.*

*(2) On receipt of the verification of documents as per **Schedule XXXV**, the Central Adoption Resource Authority shall comply with the provisions of Articles 5 or 17 from the receiving country as provided in the Hague Adoption Convention.*

(3) Upon receiving such certificate, the Central Adoption Resource Authority shall issue no objection certificate for Hague ratified countries and in cases of countries outside the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, the Central Adoption Resource Authority shall issue a support letter upon receiving a letter accepting the said adoption from the Government department.'

'68. Procedure for inter-country Adoption.-

*(1) In the cases initiated after 17th September, 2021, the following standard common procedure shall be applicable for all inter-country adoptions concluded under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), **by eligible non-resident Indians or Overseas Citizen of India Cardholders**, who are to take a child in adoption from India.*

(2) Any Hindu prospective adoptive parents habitually residing abroad and who wish to adopt an Indian Hindu child born to Indian Hindu Parents, residing in India, may contact an Authorised Foreign Adoption Agency or the Central Authority in case of

Hague ratified countries and the Government department concerned in case of Non-Hague countries in their country of habitual residence, as the case may be.

(3) The Authorised Foreign Adoption Agency or the Central Authority or the Government department concerned in their country of habitual residence shall sponsor the application of eligible and suitable prospective adoptive parents to the Central Adoption Resource Authority.

(4) The Central Adoption Resource Authority shall share the sponsoring letter and other requisite information about the parents received from the Authorised Foreign Adoption Agency or the Central Authority or the Government department of the receiving country, as the case may be, with the District Child Protection Unit and the District Magistrate of the district where the child is habitually residing.

*(5) The District Magistrate shall get a family background report prepared which shall include all required documents related to the biological parents and the child proposed to be adopted and the report shall be conducted through the District Child Protection Officer as provided in **Schedule XXI** and **Schedule XXXVI**.*

(6) Upon receipt of the family background report, the Central Adoption Resource Authority shall forward it to the concerned Authorised Foreign Adoption Agency, or Central Authority, in their country of habitual residence for issuing necessary permission

under Article 5 or 17 (Hague Adoption Convention ratified countries).’

‘69. Adoption process. -

(1) The parties to an adoption concluded under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) shall jointly present the deed of adoption to the Sub-Registrar's office in the district with copy to District Magistrate.

(2) Based on such copy of the deed, the District Magistrate shall conduct such inquiry, as he may deem fit, to satisfy that all the provisions of Hindu Adoptions and Maintenance Act, 1956 (78 of 1956). and the stipulations under the regulations have been followed and such inquiry shall be completed within a period of thirty days.

(3) In case the District Magistrate fails to complete the inquiry within thirty days, he shall be bound to give reasons along with verification certificate for failing to provide the inquiry report within thirty days and the parties may register the adoption deed with the Sub-Registrar concerned under the Registration Act, 1908 (16 of 1908), indicating the details of application made and that inquiry from District Magistrate has not been received within the stipulated time referred to in sub-regulation (2).

*.....
.....’*

‘70. Issue of No Objection Certificate and Conformity Certificate.-

(1) On receipt of verification certificate from the

District Magistrate, on the registered adoption deed and necessary permission under Articles 5 or 17 from the receiving country as provided in the Hague Adoption Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, the Central Adoption Resource Authority shall issue No Objection Certificate for Hague ratified countries under Article 17(c) and Conformity Certificate under Article 23 of the Convention.

.....’

15. Respondent No. 2 CARA filed an affidavit in reply dated 15.12.2025. The relevant paragraphs are 20 and 21, which read as under:

‘20. That it is relevant to note that the Petitioners have not adhered to the requisite statutory provisions and procedural safeguards under the Adoption Regulations, 2022. The adoption in question appears to have been concluded under the Hindu Adoptions and Maintenance Act, 1956 (HAMA). In this regard, attention is invited to Section 56(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which provides as follows:

‘Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956).’

21. In view of the above, it is submitted that CARA has no role or jurisdiction in respect of adoptions concluded under HAMA, as the implementation and monitoring of HAMA falls within the domain of the Ministry of Law and Justice. Consequently, CARA

cannot process or regularise any aspect of the present adoption unless the Petitioners comply with the requirements prescribed under the Adoption Regulations, 2022 for relocation of a child adopted under HAMA to a foreign country’.

16. In view of the oral and written submissions, we summarize the contentions of the Petitioners, as under:

- (a) What is overlooked is the significance of the word ‘necessary’ in Regulation 70(1). The expression ‘necessary permission under Article 5 or Article 17’ cannot be read as if such permission is required in every case without an exception.
- (b) The significance of ‘necessary’ becomes clear upon a reading of Article 5 of the Convention. Article 5 is reproduced below for ready reference:

Article 5:

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State - (a) have determined that the prospective adoptive parents are eligible and suited to adopt;

(b) have ensured that the prospective adoptive parents have been counselled as may be

necessary; and

(c) have determined that the child is or will be authorized to enter and reside permanently in that State.

(c) It is submitted that the present case does not fall within the category of an Inter-Country adoption as contemplated by the Convention.

(d) The language used in Regulations 67, 68, 69, and 70, makes the distinction clear.

(e) Even the communication of the Australian authority, viz. the email dated 28/04/2025 at page 113, Exhibit M, indicates that the case is not being treated as an Inter-Country adoption under the Convention, but as an expatriate adoption.

(f) A further reading of Article 5 also supports this position. Article 5(a) and Article 5(b) of the Hague Convention repeatedly refer to "prospective adoptive parents." The language is important. It shows that Article 5 is concerned with a proposed adoption which is yet to be effected, where the receiving State has to determine the eligibility and suitability

of the prospective adoptive parents, ensure that they have been properly counselled, and determine that the child will be authorized to enter and reside permanently in that State.

(g) Regulation 68 deals with a prospective Inter-Country adoption routed through the statutory mechanism involving the foreign agency or Central Authority.

(h) Regulation 69 deals with an adoption that has already been concluded under the Hindu Adoptions and Maintenance Act, 1956. For the same reason, it also does not govern adoptions falling under Regulation 67.

(i) Adopting a rigid construction that, in every case, prior permission from the receiving Country is an absolute precondition would render the word "necessary" otiose.

(j) Article 17 does not support the objection raised by CARA. Properly construed, Article 17 does not justify the insistence on a separate prior permission from the Australian authorities as an inflexible precondition.

(k) So far as Article 23 of the Convention is concerned, the same deals with recognition of an adoption certified by the competent authority of the State of adoption.

(l) In the present case, the State of adoption is India. Therefore, for the purposes of Article 23, what is relevant is the certification by the competent Indian authority. A separate certification by the Australian authority is not contemplated as a precondition to the operation of Article 23.

(m) The email of the Australian authority dated 28.04.2025 indicates that the matter is not being treated by the Australian side as an Inter-Country adoption under the Convention, but as an expatriate adoption.

17. The Petitioners have relied upon the judgment delivered by the learned Single Bench of the Delhi High Court on 30.05.2025 in Writ Petition (C) No. 3880 of 2025 (*Jasleen Iqbal Sidhu & Ors. versus Union of India through Principal Secretary & Ors.*). In this case, the adoptive mother is an Indian, and the adopted child is the biological child of Petitioner Nos. 3 and 4, who are also Indians. They belong to a Sikh family. The adoptive father is the elder brother of the biological father of the child. The adoptive

parents became citizens of Australia. The adopted child was born on 20.01.2020, and the adoption certificate was issued by a Gurudwara. The Adoption Deed was registered with the Joint Sub-Registrar, Nathana, Bhatinda.

18. The adoptive parents *Jasleen Iqbal Sidhu (supra)* approached Respondent No. 2, CARA for the issuance of an NOC in order to obtain a visa for the adopted child. CARA took the stand that it has no jurisdiction in matters pertaining to adoption under HAMA. It was argued that Chapter VIII was incorporated in the Adoption Regulations on 23.09.2022, laying down the procedural framework applicable to children adopted under HAMA by parents desiring to relocate the adoptive child outside India. CARA contended that the required documentation/certification has to be procured from the concerned authority of the receiving Country as contemplated under the Hague Convention. In the absence of such documents, CARA cannot issue an NOC.

19. Article 37 of the Hague Convention, 1993 provides as under :

“Article 37 - In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State”.

20. In *R.K. & Anr. Vs. Central Adoption Resource Authority, 2021:DHC:2671*, it is recorded in paragraph 81 as under :

"81.The Hague Convention recognizes HAMA adoptions under Article 37 but also stipulates acquiring of an NOC from the Central Authority in case of inter-country adoptions...."

21. In *Jasleen Iqbal Sidhu (supra)*, the learned Single Judge analyzed the pleadings in paragraph Nos. 26 to 39 and concluded in paragraphs 40 and 41, as under:

"26. It can also be seen that the concerned Australian Authorities (Department of Home Affairs, Australian Government) has issued a communication dated 19.03.2024 addressed to the petitioner no. 2 (appended as Annexure P-18 to the present petition) stating as follows:-

"....

Provided with your application was an adoption deed from India indicating that Jasleeniqbal SIDHU and Iqbaljeet Singh Khalsa SIDHU adopted you under the Hindu Adoptions and Maintenance Act 1956 (Ind) (HAMA) on 15 September 2020.

Any existing HAMA adoptions dated prior to 17 September 2021 can be registered with the Central Adoption Resource Authority (CARA) retrospectively. The process involves the adoptive parents engaging with the District Magistrate (DM) office for validation of their HAMA adoption deed, which, if validated, will be registered with CARA, who will then provide

a letter of support validating the inter-country adoption to the adoptive parents.

Departmental procedures confirmed the below regarding your adoption deed:

- The adoption deed is genuine.*
- The adoption was done under HAMA.*
- As per the Adoption Regulation 2022 dated 23 September 2022, a support letter from the Central Adoption Resource Authority (CARA) is required for all HAMA adoption deeds registered prior to September 2021.*
- The CARA support letter is required to validate the adoption for intercountry movement/settlement of the adopted child and to complete the adoption process.*
- Ties with your biological parents being severed and your adoptive parents having full and permanent parental rights are subject to the CARA support letter.....”*

27. Thus, even the Australian Authorities, as per the applicable law, have confined to seek certification as regards compliance with HAMA, and only a support letter is required from CARA on account of the fact that the present case is a HAMA adoption duly registered prior to September, 2021.

28. Admittedly, requisite certificate/s have also already been issued by the District Magistrate (Bathinda, Punjab). There is no ground for withholding the grant of a support letter / NOC by CARA.

*29. It is rightly pointed out by the petitioners that in a similar factual conspectus, the Supreme Court, in a recent case of **Prema Gopal v. Central Adoption Resource Authority & Ors.** in SLP (C) No. 14886/2024 (where the act of giving and taking of the children was performed on 09.01.2020) has observed*

in the judgment/order dated 29.01.2025 that there can be no hurdle in the consideration of the case of the petitioner therein, having regard to the provisions of the Adoption Regulations 2022 and considering that the adoption took place prior to the coming into force of the said regulations.

*30. Vide order dated 24.03.2025 passed in the aforementioned case of **Prema Gopal** (supra), the Supreme Court issued specific directions to CARA to issue No Objection Certificate to the petitioner. It was observed as under:-*

“In the circumstances, we direct respondent no. 1 to comply with sub-section 2 of Section 60 of the Act and issue ‘No Objection Certificate’ to the petitioner herein within a period of four weeks from today.

For immediate reference, Section 60 of the aforesaid Act is extracted as under -

*“60. Procedure for inter-country relative adoption-
(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the [District Magistrate] and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.*

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.

On a perusal of sub-section 2 of Section 60, it is noted that when respondent no.1/Authority receives an order under sub-section 1 from the District Magistrate or the Collector as in the instant case and the application from either the biological parents or from the adoptive parents, as the case may be, shall issue no objection certificate only under intimation to the immigration authority of India and of the receiving country of the child. The said sub-section does not envisage any 'no objection certificate' to be issued by the country where the child is to proceed. Therefore, the Authority shall now consider the certificate issued by the District Collector and process the matter under sub-Section 2 of Section 60 of the Act by issuance of 'no objection certificate' with intimation to the immigration authority of India and of the receiving country of the child, i.e, United Kingdom"

31. As such, the respondent no. 2 is bound to follow the same procedure in the present case as well; after considering the certificate issued by the District Magistrate, the matter is required to be processed for issuance of a No Objection Certificate / support letter, as sought by communication dated 19.03.2024 issued by the Department of Home Affairs, Australian Government.

32. The second objection on behalf of CARA, regarding the invalidity of the Power of Attorney on the basis of which the Adoption Deed was registered, is also insubstantial.

33. A perusal of the Power of Attorney issued in the present case reveals that it has been issued in favour of the petitioner no. 5, and inter alia authorizes as under:-

"4. The attorney/s power is subject to the following terms:

to act on my behalf in my adoption of ALAMBIR SINGH SIDHU (DOB: 22/01/2020), baby boy of my younger brother JASPAL SINGH SIDHU and his wife SHARANJEET KAUR SIDHU, who is currently residing in India including but is not limited to the following:

- 1. entering into, signing and executing adoption deed or any necessary documents for the purpose of adopting the afore-mentioned baby and having the adoption deed or documents registered or presented to relevant authorities for registration;*
- 2. attending interview, lodging applications, liaising with the relevant parties or officers from the Department of Home Affairs;*
- 3. after visa is granted, travel with the baby and bring the baby to Australia;*

and to do all such acts and things as my said attorney shall deem fit for the purpose of registration of the above mentioned adoption deed, lodging and obtaining visa, and bring my adopted child to Australia.”

*34. Learned counsel for the petitioners relies upon the judgment of the Punjab and Haryana High Court in **Narinderjit Kaur v. Union of India and Another** [AIR 1997 P&H 280], in which, it has been clearly held that a child can be adopted “under the authority” of the parents. It has been observed in that case as under:-*

“5. Validity of adoption has to be examined in the light of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as ‘the Act’). Section 6 of the Act provides that no adoption shall be valid unless the person adopting has the capacity and also the right, to take in adoption, the person giving in adoption has the capacity to do so; the person adopted is capable of being taken in adoption and the adoption is made in

compliance with the other conditions mentioned in Section 11.

6. Capacity of the natural parents to give and the capacity of the adoptive mother to take the petitioner in adoption is not in dispute. It is also not disputed that the petitioner was capable of being taken in adoption. Other conditions for a valid adoption are prescribed in Section 11 of the Act. Relevant provision of this section with which we are concerned is (vi), which reads as under: -

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption.”

7. It clearly envisages that the child can be adopted “under the authority” of the parents. In this case, the adoptive mother had executed a valid power of Attorney authorising Surjit Singh Jaswal to take the petitioner in adoption on her behalf. Actual adoption took place according to the Sikh rites in the presence of Sri Guru Granth Sahib. Child was given in adoption willingly by the natural parents and was taken in adoption by the adoptive mother through her Attorney with the intention of transferring the child from the family of its birth. Adoption made was valid adoption and the finding recorded to the contrary in order Annexure P-1, cannot be sustained. Respondents have themselves admitted that on a subsequent advice given by the Law Ministry, it has been clarified that adoption could be made ‘under the authority’ given by the adoptive parents. The ground taken by the respondents now that the passport cannot be issued to the petitioner because of the

remarriage of the adoptive mother on 16.11.1994 is also not sustainable. Adoption took place on 2.3.1990 and for all intents and purposes, adoption would be deemed to have been completed on that date. On that date, adoptive mother had the capacity to take the child in adoption. Adoption cannot be invalidated because of the subsequent marriage of the adoptive mother. Petitioner became the daughter of the adoptive mother on the date she was taken in adoption and is, thus, entitled to a new passport with the name of her adoptive mother inserted in it.”

[emphasis supplied]

35. The above observations clearly apply to the facts of the present case.

36. It is also fallacious to contend that the concerned General Power of Attorney is not valid as per the Queensland Power of Attorney Act. No such objection has been raised by the Australian Authorities; and therefore, it is untenable for the respondent no. 2 to take this stand.

37. It is noted that the concerned Adoption Deed has already been registered on the basis of the Power of Attorney in question. The religious rituals and ceremony for the purpose adoption was executed as far back as 27.02.2020 (much prior to registration of the Adoption Deed) in the presence of the adopted parents and biological parents, and the handing over and taking over of the child also happened on that day itself.

38. There is no controversy that the Adoption Deed that was executed thereafter was based upon authorization given by the adoptive parents in favour of their mother, who is also the mother of the biological parents.

39. Had there been any legal lacuna in the Power of Attorney in terms of the applicable provisions of the Australian Law, the objection to this effect would have been raised by the Australian Authorities themselves.

40. In the aforesaid circumstances, there appears no impediment to CARA issuing the requisite NOC for the purpose of taking the petitioner no. 2 to Australia.

41. Thus, in line with the orders passed by the Supreme Court in Prema Gopal (supra), the respondent no. 2 (CARA) is directed to issue the requisite NOC to the petitioners within a period of four weeks from today.”

22. *In Prema Gopal Versus Central Adoption Resource Authority & Ors.*, Special Leave to Appeal (Civil) No. 14886 of 2024, the Hon’ble Supreme Court dealing with the case of adoption under HAMA, prior to the introduction of the Adoption Regulations, 2021 has recorded as under :

‘.....Since the petitioner herein is a citizen of UK, the procedure for adoption of children under the HAMA, 1956 by parents who desire to relocate the child abroad, as envisaged under Chapter VIII of the Adoption Regulations, 2022 (“Regulations, 2022”) has to be followed.

In this regard, our attention was drawn to Regulations 64 and 67 of the Regulations, 2022, which read as under -

“64. This Chapter shall apply to — (a) all adoption cases under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) by

prospective adoptive parents or adoptive parents residing outside the country and

(b) all adoption cases pertaining to countries outside the Hague Adoption Convention.

67. Procedure in the case of registered adoption deed.— (1) In the cases where the adoption deed has already been executed in pursuance of adoption under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), before the commencement of the Adoption (Amendment) Regulations, 2021, the requisite documents supporting the facts of the adoption deed shall be duly verified and recommended by the District Magistrate in the format as provided in Schedule XXXV.

(2) On receipt of the verification of documents as per Schedule XXXV, the Central Adoption Resource Authority shall comply with the provisions of Articles 5 or 17 from the receiving country as provided in the Hague Adoption Convention.

(3) Upon receiving such certificate, the Central Adoption Resource Authority shall issue no objection certificate for Hague ratified countries and in cases of countries outside the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, the Central Adoption Resource Authority shall issue a support letter upon receiving a letter accepting the said adoption from the Government department.'

Learned counsel submitted that although the adoption of the twin children in the instant case took place on 09.01.2020, the Deed of Adoption was subsequently registered on 19.09.2022. He submitted that the said Deed of Adoption would relate back to 09.01.2020, on which date the religious ceremonies were performed in the presence of relatives and friends for the formal adoption of the children under the provisions of the HAMA, 1956. In the circumstances, Regulation 67 has to be read in a manner relatable to the date of adoption. The submission of learned counsel was that although the Deed of Adoption was registered on 19.09.2022 which is subsequent to the commencement of the Adoption (Amendment) Regulations, 2021, the said Deed of Adoption relates back to the date of adoption being 09.01.2020. In the circumstances, there can be no hurdle in the consideration of the case of the petitioner herein under Regulation 67 of the Regulations, 2022. Therefore, he urged that initially a direction may be issued to respondent no.3/Collector, and respondent no.2 as well, for the purpose of consideration of the case under Regulation 67 of the Regulations, 2022.

Per contra, learned ASG appearing for respondent No.1/Central Adoption Resource Authority contended that this is a case of inter-country adoption and therefore, the procedure as envisaged under the Regulations for inter country adoption must be strictly complied with. In this regard, our attention was drawn to Regulations 67 and 68 of the Regulations, 2022 as well.

Learned counsel appearing for respondent nos. 2 and 3 submitted that if any direction is to be issued to respondent nos.2 and 3, the same would be complied with in accordance with law.

We are prima facie of the view that the learned counsel for the petitioner is right in his submissions.

In the circumstances, we direct respondent no.3/Collector and respondent no.2 to entertain the application to be filed by the petitioner herein with all supporting documents, within a period of one week of from today.

On receipt of the said application, respondent nos.3 and 2 shall consider the case of the petitioner herein having regard to the relevant provisions of the Regulations, 2022 and in accordance with law bearing in mind the fact that the adoption took place on 09.01.2020.

Liberty is reserved to the petitioner herein to seek right of hearing before respondent no.3 either in person or through her representative or counsel.

It is needless to observe that if such a request is made by the petitioner for an opportunity of hearing to her or her representative or counsel, the same shall be accorded by respondent no.3/Collector.

*The entire exercise shall be completed by respondent nos.3 and 2 within a period of two weeks from the date of hearing of the petitioner.
.....'*

23. Subsequently, by a further order dated 24.03.2025 in *Prema Gopal (supra)*, the Hon'ble Supreme Court, in the backdrop of a certificate having been issued by the Collector's Office, Chennai, issued the following directions:

‘We have heard learned A.S.G. appearing for respondent no.1.

In the circumstances, we direct respondent no. 1 to comply with sub-section 2 of Section 60 of the Act and issue ‘No Objection Certificate’ to the petitioner herein within a period of four weeks from today.

For immediate reference, Section 60 of the aforesaid Act is extracted as under -

‘60. Procedure for inter-country relative adoption-

(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the [District Magistrate] and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.’

On a perusal of sub-section 2 of Section 60, it is noted that when respondent no.1/Authority receives an order

under sub-section 1 from the District Magistrate or the Collector as in the instant case and the application from either the biological parents or from the adoptive parents, as the case may be, shall issue no objection certificate only under intimation to the immigration authority of India and of the receiving country of the child. The said sub-section does not envisage any 'no objection certificate' to be issued by the country where the child is to proceed. Therefore, the Authority shall now consider the certificate issued by the District Collector and process the matter under sub-Section 2 of Section 60 of the Act by issuance of 'no objection certificate' with intimation to the immigration authority of India and of the receiving country of the child, i.e, United Kingdom.

The said exercise shall be completed within a period of four weeks from today.

List on 22.04.2025'.

24. *In Prema Gopal (supra), the Hon'ble Supreme Court directed on 22.04.2025 that the CEO (Joint Secretary) of CARA would remain present in Court on 30.04.2025. On 30.04.2025, the Hon'ble Supreme Court issued the directions as follows:*

' A copy of the provisional certificate was also placed before us. On perusal of the same, we find that the certificate refers to the pendency of the present petition and the directions issued hereunder which is wholly unwarranted.

In response to the same, learned counsel for the petitioner has stated that earlier, the CEO has issued

Support Letters in a particular format and therefore the Support Letter in a similar format may be issued, having regard to the facts of the present case.

Hence, learned counsel for the petitioner to submit a format having regard to the earlier Support Letter which has been issued by CARA in a similar case. The same would be considered and adopted for the purpose of issuing the Support Letter in the present case also.

On receipt of the said format, the CEO, CARA shall issue the Support Letter accordingly.

List the matter on 13.05.2025 at 2.00 P.M. By then the CEO, CARA to issue the Support Letter as per the format submitted by the petitioner's counsel.

On such Support Letter being issued, the petitioner to take steps for the purpose of immigration, recognition and registration of the children who have been adopted by placing the necessary order in that regard before this Court.

The petitioner to appear before this Court through video conference facility on the next date of hearing.

The biological father of the adopted children to also appear in-person or through video conferencing facility on that date'.

25. *In Prema Gopal (supra), the Hon'ble Supreme Court then directed on 13.05.2025, as under:*

' Learned counsel for the petitioner raised objections on the contents of the affidavit dated

09.05.2025. The affidavit has been sworn to by Ms. Richa Ojha, Deputy Director, Central Adoption Resource Authority under the Ministry of Women & Child Development, Government of India, New Delhi.

When this was pointed out to learned A.S.G. appearing for the respondents, she very fairly submitted that the affidavit may be discarded and the same would also not be pressed.

We place on record the submission of learned A.S.G.

Consequently, the aforesaid affidavit dated 09.05.2025 is not taken on record as it is withdrawn and the contents of the said affidavit are discarded.

Learned counsel for the petitioner categorically submitted that the letter which has been issued on 09.05.2025 may be styled as “No Objection Certificate”.

Further, the fourth paragraph of the same shall read as under:

“This is to mention that adoption under Hindu Adoption and Maintenance Act, 1956 is evidenced by the Registration of the Adoption Deeds, Verification Certification Reports and Family Background Report issued by District Magistrate, Chennai on 25.02.2025 (Annexure-1).”

The said certificate shall be issued within a period of one week from today.’

26. Mr. Anturkar, the learned Senior Advocate for the Petitioners, vide his brief written notes, has canvassed as under:

(a) Regulation 67 will not apply in cases where the Deed of Adoption is registered after the 2021 Regulations were introduced;

(b) Regulation 68 applies the procedure to Inter-Country adoptions concluded under HAMA by eligible NRIs or OCI holders who intend to adopt a child;

(c) In the present case, the adoptive mother was an Indian, and the adoptive father was an OCI cardholder when the adoption was solemnized under HAMA;

(d) Under Regulation 69, the parties to an adoption concluded under HAMA have to present the Deed of Adoption to the Sub-Registrar's Office for registration;

(e) Regulation 69 does not use the words NRI or OCI cardholders;

f) The words "parties to an adoption" in Regulation 69 are wide enough to include both resident and non-resident adoptive parents. Hence, when one parent is an Indian and the other is an OCI cardholder, Regulation 69 would apply.

27. The learned Advocate representing the CARA has relied upon a judgment delivered by Karnataka High Court in *U. Ajay Kumar and Another Versus Union of India, Represented by its Member Secretary and Chief Executive Officer, AIR 2024 Kar 93*. We are considering the facts of this case and the conclusion drawn by the Karnataka High Court in the sub-paragraphs to follow.

27.1 In this case, both the Petitioners were citizens of India. Since they did not have any child from the marriage for a long time, the couple adopted a girl child in the presence of relatives and friends. The biological mother gave her child in adoption by executing an Adoption Deed on 29.03.2023, before the office of the Sub Registrar, Chikkaballapura, as a child was born in the said town and the biological mother was a resident of the said town. Upon registration of the Adoption Deed, verification was done by the Deputy Commissioner as required by law and the certificate of verification was also issued along with the recommendation that adoption of the child is valid and necessary action be taken. The Petitioner couple sought issuance of an NOC and a Conformity Certificate in favour of the adoption by producing it before the DCPU. The DCPU has not considered the request and has declined to issue an NOC as also the Conformity Certificate of Adoption (CCA).

27.2 The request was opposed by the Respondent contending that the adoption under HAMA is not internationally recognized. The Inter-Country adoption is a product of Hague Convention on protection of children and cooperation in respect of Inter-Country adoption and under Articles of Convention, as rectified into regulations, they would have to require the Petitioners to go before the Country in which the father resides, communicate a mail to the Indian counterpart under adoption regulations and within 10 days a certificate and NOC would be issued. If Hague Convention had recognized HAMA, no objection would have been granted to the Petitioner. As Hague Convention does not recognize HAMA, that the prayer of the Petitioners was refused.

27.3 The Single Judge Bench of the Karnataka High Court framed the following issues :

Whether the Petitioners are entitled to a NOC and Conformity Certificate of the kind of adoption under the Act?

27.4 The Karnataka High Court relied upon the relevant provisions applicable and observed that pursuant to the Hague Convention, certain regulations are promulgated by the Government of India by notification issued on 23.09.2022 in exercise of powers conferred under Section 68 (c)

read with Section 2 (3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as '**the Juvenile Justice Act**').

27.5 In paragraph 17, the Karnataka High Court recorded that issuance of NOC under Regulation 70 mandates that on receipt of verification certificate from the District Magistrate, necessary permission under Article 5 or 17 from the receiving Country as provided under the Hague Adoption Convention in respect of Inter-Country adoption, that the CARA shall issue NOC in conformity with Article 23 of the Convention.

27.6 As such, the Karnataka High Court concluded that what unmistakably emerges on the conjoint reading of the Regulations, is the District Magistrate has to issue a verification certificate on the Adoption Deed and necessary permission from the receiving Country. Issuance of NOC and Conformity Certificate is to be from India. This process is under Regulations 68 and 69.

27.7 The Karnataka High Court considered the law laid down by the Hon'ble Supreme Court in *Temple of Healing Versus Union of India (Writ Petition (Civil) No. 1003 of 2021 delivered on 20.11.2023)* and noted that all States and Union Territories have to submit to the Competent

Authority, data of Hindu Adoptions within a time frame, to streamline and expedite the rights of adopted children in Signatory Nations to the Hague Convention.

27.8 The Karnataka High Court thereafter noted the observations of the Hon'ble Supreme Court in *Special Leave to Appeal (C) No. 13627 of 2019 decided on 10.06.2019 (Karina Jane Creed Versus Union of India and Others)* and considered the observations in paragraph Nos. 4 to 11 wherein it was held that the statutory requirement of Section 59 (12) of the Juvenile Justice Act, could not have been waived.

27.9 The Karnataka High Court then concluded that a foreigner or a person of India Origin or an OCI can apply for adoption of a child from India to the authority with NOC from the Diplomatic Mission of his Country in India.

27.10 Considering that the Petitioners/ couple were Indian citizens and the adoptive father was residing in Frankfurt, Germany and the wife was a resident of Bengaluru, the Karnataka High Court directed the Petitioners to approach the receiving Country i.e., Germany for a communication to the CARA for necessary action. If the Petitioners received a communication from the receiving country, the CARA shall

issue a NOC and Conformity Certificate within 10 days from the date of such communication from Germany.

28. We have noted that, in *Prema Gopal (supra)*, the adoption under HAMA had taken place on 09.01.2020 which was prior to the introduction of the new Regulations in 2022. Chapter VIII to the Adoption Regulations, 2022 was added on 23.09.2022, laying down the procedural frame work applicable to children adopted under HAMA by parents desiring to locate the adoptive child outside India.

29. We have also noted that, in *Temple of Healing (supra)*, the Hon'ble Supreme Court (Three Judges Bench) recorded in paragraph 20 that, '*as regards HAMA, during the course of hearing, both Ms Aishwarya Bhati, Additional Solicitor General and Dr.Jagannath Pati, Director CARA have categorically stated before the Court that the process of adoption under HAMA is independent of the Regulations of 2022 which have been framed under the Juvenile Justice Act, 2015.*' It has been stated that CARA intervenes only when an adoption certificate is required by the adoptive parents in order to facilitate the travel of the adopted child to a Country outside India. CARA has stated in its note submitted to the Hon'ble Supreme Court that, based on the fact that HAMA is a statute governing

the personal laws for Hindus, the Ministry of Women and Child Development has issued a notification on 17.09.2021, entrusting CARA with the duty of issuing documents for Inter-Country adoption concluded under HAMA wherein NRI/ OCI Card Holder parents desire to relocate the adopted child, abroad. The note submitted also indicates that a central challenge is to ensure that HAMA adoptions align with international adoption conventions, such as the 1993 Hague Inter-Country Adoption Convention. It has been stated that although CARA has been processing adoption cases of NRI/ OCI – Prospective Adoptive Parents (PAPs), the receiving authorities do not necessarily consider HAMA to be in conformity with the Hague Convention procedure. CARA has thus far issued adoption support letters to NRI/ OCI-PAPs in 66 cases since May 2022.

30. It is noteworthy that Adoption Regulations, 2022 have been introduced specifically for regulating the adoption of children. The adoption by the adoptive couple has occurred on 21.04.2023 and was registered with the Joint Sub Registrar on the same day. When the child was adopted, the adoptive father was an Australian citizen and the adoptive mother was an Indian citizen. Therefore, the Respondent Authorities have termed such adoption as an Expatriate Adoption. There is no provision

either in the Juvenile Justice Act or the Adoption Regulations 2022, which defines Expatriate Adoption. Nevertheless, this adoption is legal under the provisions of HAMA.

31. In *Prema Gopal (supra)* since the adoption had already taken place under HAMA prior to the introduction of the Adoption Regulations, 2022, Section 60 of the Juvenile Justice Act was taken into account and the Hon'ble Supreme Court concluded that '*the parties have to obtain an order from the District Magistrate for adopting a child and then the PAP had to apply for certificate in the manner provided in the Adoption Regulations framed by the authority. After an order from the District Magistrate is received, the application made either by the biological parents or from the adoptive parents, would issue a No Objection Certificate under intimation to the Immigration Authority of India and of the receiving country of the child. Under Sub Section 3, the adoptive parents, after receiving the No Objection Certificate under Sub Section (2), shall receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time*'.

(emphasis is supplied)

32. The adoptive parents, Prema Gopal, had received the order from the District Magistrate. The Hon'ble Supreme Court recorded in the

order dated 24.03.2025 that Sub Section 2 of Section 60 does not envisage any 'No Objection Certificate' to be issued by the Country where the child is to proceed. Therefore, the authority was directed to consider the certificate issued by the District Collector and process the matter under Sub Section 2 of Section 60 of the Juvenile Justice Act for issuance of the NOC with intimation to the Immigration Authority of India and of the receiving Country of the child.

33. In the present case, since the adoption has taken place after the introduction of the Adoption Regulations 2022, which are specifically introduced for the purpose of regulating adoption of children, such Regulations would apply. On considering the language used in Regulation 67, it is quite obvious that this Regulation would not apply to this case since it deals with cases where the adoption has already been executed under HAMA, prior to the commencement of Adoption (Amendment) Regulations 2021.

34. Actually, Regulation 68 would apply to this case because it applies to cases initiated after 17.09.2021, which have to follow the Standard Common Procedure for all Inter-Country adoptions concluded (to be read also as 'to be concluded', considering the future tense) under the

HAMA, by eligible NRI or OCI, who are to take a child in adoption from India. Sub Clause 2 clears all doubts about the applicability of Regulation 68 with the opening words ‘*Any Hindu prospective adoptive parents habitually residing abroad and who wish to adopt...*’. In the case before us, the adoption has already taken place under the HAMA. Ideally, the Petitioners should have followed Regulation 68, as the adoption has taken place after 17.09.2021. However, in the peculiar facts and circumstances of this case, the procedure under sub-clauses (2) to (6) cannot be enforced upon this case as the adopted child is from the family of a close relative and the adoption has legally taken place under the HAMA. These events now cannot be reversed only because the procedure under Regulation 68 was not followed. We have to consider the future of the adopted baby as well.

35. Regulation 69 prescribes the adoption process and considers the case of parties to an adoption already concluded under the HAMA. This Regulation will have to be read as being applicable to the case of the Petitioners because the language used in Regulation 67 applies to Adoption Deeds already executed under HAMA prior to the 2021 Regulations, which has subsequently been replaced by the 2022 Regulations. Hence, considering the language used in Regulation 69, the said Regulation is

being made applicable to this case, only due to the peculiar facts before us. Strictly speaking, Regulation 68 would have applied to this case, but for the peculiar facts as recorded above. Regulation 68, therefore, will apply independently to cases not covered by Regulation 67.

36. We find that the facts of this case are quite peculiar. The adoption has legally taken place under the HAMA. The Australian authority clearly mentions in its email dated 28.04.2025, that this is not an Inter-Country adoption. It has formed an opinion that this is an expatriate adoption. It has also stated that this expatriate adoption falls outside Australia's regulated Inter-Country adoption process. An Indian Passport has also been issued by the Government of India to the adopted daughter indicating the names of her adoptive parents in the Passport. Regulation 41(18) enables CARA to issue an NoC in cases of adoptions under chapter VIII (Inter-Country adoptions under HAMA) in cases of the Hague Adoption Convention ratified Countries.

37. In *Jasleen Iqbal Sidhu* (supra), it has been held that even the Australian authorities (Department of Home Affairs, Australian Government) had interacted with the Petitioner and the learned Single Judge Bench, therefore, concluded that the District Magistrate should

undertake a verification exercise. A support letter from CARA is required for all HAMA adoption deeds, under the 2022 Regulations. Such support letter is needed for validating the adoption for Inter-Country movement/settlement of the adopted child. The facts in *Jasleen Iqbal Sidhu* (supra) and in *Prema Gopal* (supra), are also quite peculiar and similar to the case in hands, as is evident from the narration of the facts in those cases.

38. In the case before us, we see a child who is born as a result of an unplanned pregnancy of the biological parents, who already have two children, a son and a daughter. The girl child was 45 days old when she was adopted by the adoptive mother, who then was an Indian citizen. If the child is not permitted to be taken to Australia because of technicalities, the adoption would fail. Be that as it may, we do not find any illegality in the adoption under HAMA. It is only that this case has to be navigated through complex laws, to bless the adopted child with the love and care of the adoptive parents. The adoptive mother is living in India for the last about 3 years, only to care for the adopted child, though she is now a citizen of Australia. No body needs to be convinced of the sincerity and purity of the feelings of the adoptive parents, in view of the above facts.

39. We have kept in mind the stand taken by 'Inter-Country Adoption Australia' vide its communication dated 28.04.2025 via email, that expatriate adoptions fall outside Australia's regulated Inter-Country adoption process and are, therefore, not considered as Inter-Country adoptions. The Australian authorities have categorically stated that this is not an Inter-Country adoption because the adoptive mother was an Indian citizen and the adopted child is an Indian. It is apparent that the said authorities need the appropriate authority in India to do the scrutiny and indicate its clearance. This authority is CARA. Having considered the above peculiar circumstances, inasmuch as the stand of 'Inter-Country Adoption Australia' authority that the present adoption is not Inter-Country adoption, Articles 5 and 17 of the Hague Convention would not apply in this case.

40. Though the adoptive mother had approached the Civil Court, it is apparent from the order adverted to herein above that the Civil Court concluded that the application could not be entertained and simply filed the application. The learned Single Judge of this Court allowed the Petitioners to withdraw the application and file an appropriate proceeding.

41. Considering the above, we are of the view that the Petitioners, adoptive couple, will have to follow Regulations 69 and 70 of the Adoption

Regulations, 2022. Since Regulation 69(1) has already been complied with, the adoptive couple will have to approach the District Magistrate who would conduct an inquiry to satisfy itself that all the provisions of HAMA, have been followed. Such inquiry shall be completed within 30 days. Keeping in view the passage of time, we would not appreciate if the District Magistrate seeks extension of time under clause (3) of Regulation 69.

42. On receipt of the verification certificate on the registered Adoption Deed from the District Magistrate, we deem it appropriate to follow the recourse adopted by the Hon'ble Supreme Court in *Prema Gopal* (supra) and by the High Courts in *Jasleen Iqbal Sidhu* (supra) and *R. K. and another* (supra). CARA would issue a NOC under intimation to the Immigration Authority of India and the Immigration Authority of Australia, within 15 days of the submission of the District Magistrate's verification certificate.

43. With the above directions, **the Writ Petition is disposed off.**

44. **Rule is discharged.**

[ABHAY J. MANTRI, J.]

[RAVINDRA V. GHUGE, J.]