

Ministry of Women & Child Development
Mr. Vivek Joshi
Joint Secretary to the Government of India

Sent per email

Brussels/Mumbai, 2 July 2014

Re: Consultation on the repeal and re-enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act)

Dear Mr. Joshi,

Hereby we let you know that ACT and Sakhee greatly welcome your Department's intention to improve the care and protection for children in India. However, we are concerned about your Department's initiative to fully replace the 2000 JJACT. We are also concerned about the too short consultation process (15 days). This short time has not allowed us to prepare a full analysis on the entire draft JJ ACT, reason for which we limit ourselves now to our main point of concern.

Against Child Trafficking (ACT) is a child rights NGO based in Brussels that advocates for the full implementation of the UN Convention on the Rights of the Child. We also assist victims of child trafficking for intercountry adoption, both children/adult adoptees and parents in re-connecting and finding justice.

Sakhee is Pune based child rights organisation that advocates for the implementation of the UN Convention on the Rights of the Child and also assists victims of child trafficking. Many of Sakhee's adoption trafficking cases concern Indian citizens. Unfortunately none of these victims has yet ever received any kind of assistance from the Indian authorities.

In light of this, Sakhee along with Advait Foundation, Mumbai filed in 2012 a Petition in the Supreme Court of India in which they asked for a moratorium on inter-country adoptions as well as an investigation into the trafficking of children for inter-country adoption. This Petition listed in detail a number of such adoption trafficking cases.

We hereby express our concern with the current JJ ACT, CARA Guidelines and the Integrated Child Protection System (ICPS). These appear not to provide sufficient

protection to prevent similar cases from happening again. The involvement of foreign adoption agencies and the price tag of 5.000 \$ for an intercountry adoption create a market in children.

We would like to underline that intercountry adoption is not a child protection measure. It **may** be considered by State Parties who ratified the UN Convention on the Rights of the Child, only if there is absolutely no suitable manner to provide care and protection in-country (article 21b).

It is ACT's true belief that India with the Integrated Child Protection Scheme can provide a sufficient strong framework to care for all children in India. Hence, intercountry adoption should no longer need to be an option.

Intercountry adoption is not an obligation for a country. Not under the UN Convention on the Rights of the Child, and not under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. To make children available for intercountry adoption, and let these children become commodities in a market run by private foreign adoption agencies, is a deliberate choice of a government.

Over the last ten years, the intercountry adoption market has seen its turnover decrease with 70%. ACT monitors the lobby and advocacy efforts of the receiving countries since many years. The tactics used, and the backdoor politics, may be sort off understandable when it concerns issues like pharmaceuticals and tobacco, but should be forcibly declined where it concerns children. For you information we attach the article 'India, For Export Only', which spells out the issue in more detail. With the above in mind, we hereby kindly request your Department to reconsider if India should remain a 'sending country' and, if not, to modify the draft JJ ACT accordingly.

As said, we greatly welcome India's efforts to improve the care and protection of its children. If you would require further information or clarification, we fully remain at your disposal.

Yours sincerely,

[SIGNED] [SIGNED]

Arun Dohle Anjali Tara Babanrao Pawar

Annex: India's Orphans: FOR EXPORT ONLY

India's Orphans: FOR EXPORT ONLY

A PERSONAL INQUIRY

by [Anant Asthana](#) on Thursday, November 1, 2012

Me: I don't understand you guys' opposition to inter-country adoption. You are extremists.

Arun: Anjali! Give that book to Anant.

Anjali: But I have brought that book for registrar.

Arun: No, give it to him. It makes more sense to give it to him than registrar.

Anjali: Ok

So that's how I got hold of this book called "The Untold story of the Romanian 'orphans' " which carries a tag in bold "FOR EXPORT ONLY". Anjali is a friend of mine, based in Pune, Maharashtra and works exposing the dark side of foreign adoptions (inter-country adoptions). Arun is from Germany where he was given into adoption from India when he was a child. Exposing the cruel side of inter-country adoptions is something very personal to him, having been a survivor of it. Their tireless campaigning on this issue is inspirational and their anger is provocative.

My first encounter with Arun was over Skype when he told me that I should not be feeling very proud of having been part of a Committee which drafted Bill for Indian Secular Adoption Law. Of course he was concerned that it also permitted inter-country adoptions without even understanding what it was. He hoped that this Bill could never see the day of light. At that point of time I felt miserable on being told so on my face but then onwards I kept on meeting Anjali, Arun's India counterpart and listening to scary stories of children given into foreign adoptions from her made me have a rethink.

And now I have this book which gives me opportunity to look at "Foreign adoptions" in Romania. Same story there. Thankfully Romania got rid of it, closed down foreign adoptions completely but in India, it remains a debatable issue.

The very basic question which Anjali-Arun duo pose is "How Adoption is a Child Welfare Instrument?". They ask me to think about it. I think and think a lot. I meet people and ask them about their opinion. Bharti, one of my teachers in my child rights work, says, "I am yet to see a family who went for adoption because they

wanted to help a child. Each one of them tried to have their own child, went to doctors, took all medical measures and when failed, ended up in adoption'. So then what Anjali-Arun say makes a lot of sense. Adoption is not a measure to help a child who needs better care. It is about adults' need to have a child. This book also says the same. Before I go ahead, let me just say something about this book and its author. Author is Roelie Post and this book is result of her diary which she kept during her work for the European Commission that aimed to help Romania reform its child protection. Romania needed to reform its child rights policy as one of the conditions for its future membership in EU. Book says that Roelie, during her work, found out that the inter-country adoption system in place was nothing short of a market for children, riddled with corruption.

Book tells us that after Romania redrafted its laws putting in modern child protection alternatives, a ferocious lobby that wants to maintain inter-country adoptions stepped out.

In India, this lobby is at best. No wonder when India's Juvenile Justice Law was being amended, a clause which restricted adoption to Indian parents, got deleted just before it was notified in August 2006. The December -2005 report of Parliamentary Committee which examined the draft did not contain any comment in favour or against this clause. How it got deleted? I am trying to find out with no success so far. Then Bharti tells me that this happens all the time when anything is done on adoption. Things change without even one noticing or knowing about it at the very last moment. She tells me that when guidelines for regulating adoptions were being drafted, a consultation was called and inputs were taken. When the final guidelines came out, it contained provisions which were not suggested by anyone in the consultation. From where did those provisions come in? Lobby? I don't know.

What I have come to know so far is that there are parents, extremely poor, living in villages and small towns of India, hoping that their children are getting educated somewhere in a foreign country, oblivious of the fact that they were made to sign adoption deeds in the name of education papers. They don't know that their children are never going to return and that they will die in hope only. Anjali helps such people in finding their "Lost" children, conducts private investigations to expose culprits and approaches Courts to punish the culprits. Anjali tells that the fight is not easy and no one supports this kind of work. No charity or funding organisation comes ahead to financially support this work. She depends on individual help to sustain her work. Same is the story of Arun. He works as an insurance agent, earns money from that work, feeds his family and saves money to be able to come to India occasionally to do advocacy and meet people. When I met him just few days back at my house, he was in India for a short while on a similar visit. This time he met me and he wants me to do cases in Courts on this issue.

I am growing in understanding that everything done in the name of “Child Rights” is not always so. There is a market and money behind it. Charity is not always charity. There is a politics involved in it. “Compassion” is not always “Compassion”, there is “Need” and “Greed” involved in it. I hate knowing all this as it takes a toll on my zeal. I don’t want to be part of dirt. It disillusiones me. But then I also know that it is better to know rather than not knowing as the later is dangerous. One may end up doing exactly the opposite of what one wanted to do.

Knowing all this gives me one more reason to be opposed to Foreign Funding. One may never know who is giving “donations” for what? What I see happening here in India is that by the time one knows, it is too late. One gets so complicit that it becomes impossible to just stand up and walk out. This is the evil involved in foreign funding. Or maybe it is just part of Globalisation where “good” or “bad” / “Right” or “Wrong” has to be seen and understood, not in domestic contexts but then “Is Internationalism not imposing domestic of powerful nations?”

Writer is a lawyer specializing in children related laws and public interest litigation. He practices in Delhi High Court and can be contacted as anant.asthana@gmail.com.

<http://thetehekafoundation.org/indias-orphans-for-export-only.html>