

# NATIONAL CONSULTATION ON

## ‘Countering Challenges in Adoption:

### Combating Child Trafficking’

10-11 January 2009, Jamia Hamdard, New Delhi



European Commission



PRATIDHI  
For Crime Victims



## Adoption and Child Trafficking- Is there a connection?

Every child has a right to family, care and protection. While India has failed to enumerate data on the number of children without a family, the fact is that the number of orphaned, surrendered and destitute children is only increasing at a fast pace in today's India. In a rapidly changing socio-cultural and economic milieu that pushes people to the margins and forces elimination and exclusion of the most vulnerable, many children fall out of the safety and security net. These are children in difficult circumstances. Often their rights are the first to get compromised in difficult situations.

*Adoption is not about finding children for families, it's about finding families for children"*

*- Dr. Joyce Maguire Pavao,  
CEO, Centre For Family  
Connections, Inc.*

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides specifically for the care and protection of abandoned, surrendered and destitute children. The spirit and guiding principles of this law clearly suggest that institutional care should be the last resort, and adoption, foster care and sponsorship need to be promoted as alternative care measures. Surely 'Adoption' has been the most recognised form of alternative care in India that has gained acceptance over the years. Adoption of children must be promoted to ensure that abandoned and orphaned children find a home that loves and nurtures them.

Documents such as the Hague Convention (Hague Conference 1993), the earlier UN Declaration on Adoption and Foster Care (1986), and the Child's Right to Grow Up in a Family: Guidelines for Practice in National and Inter-country Adoption and Foster Care (Adoption Centre 1997), as well as the Supreme Court of India's judgement in *Lakshmi Kant Pandey v. Union of India* (1985), establish terms for giving a child in adoption vis-a-vis the state, the rights of the child as a state resource and the state's obligation to protect this resource. In particular, these documents focus on "identity rights" to a name, a nationality, and to be cared for by one's parents - that are essential in defining the resource status of the child: his or her ownership or belonging in or to a specific family or nation (Stephens 1995).

Source: Yngvesson, Barbara "[Placing the "gift child" in transnational adoption](http://findarticles.com/p/articles/mi_qa3757/is_200201/ai_n9063239)". Law & Society Review. . FindArticles.com. 16 Nov. 2008.  
[http://findarticles.com/p/articles/mi\\_qa3757/is\\_200201/ai\\_n9063239](http://findarticles.com/p/articles/mi_qa3757/is_200201/ai_n9063239)

However, over the years, there have been increasing numbers of reports of children being bought and sold into adoption or cases that do not follow the legal process of law.

While some argue that this is because the legal process is very cumbersome, both for the child and the adoptive parents, others feel that unless streamlined with checks and balances, there is greater likelihood of children being exploited in the name of adoption.

Since there is a demand for adoption and the supply is through both formal and informal sources, the primary question before us has been how to curb child trafficking in the name of adoption, while promoting legal and ethical adoption as a form of alternative care.

Clearly, just as adoption of children needs to be promoted, reports on illegal adoptions and/or child trafficking for and through adoption, requires revisiting the adoption system in the country - the challenges encompassing it, the current checks and balances in the system to curb baby sale and such other untoward incidents, and look for ways to address these.

### **Purpose of the Consultation**

For the first time in India, a National Level Consultation was held to discuss the issue of adoption and child trafficking in the backdrop of every child's right to survival, development, protection and participation. While one concern was that it might bring negative publicity to adoption, the other concern was regarding unchecked violation of children's rights that happens through trafficking in the name of adoption.

Every time an adoption racket is busted in some part of India, the issue comes to light for a brief period and soon gets buried till another such news bursts out. Fact-finding by civil society organisations and media have time and again questioned the unethical practices being adopted by various reputed agencies in the adoption process, particularly on sourcing of children for adoption and promotion of international adoption for the huge amounts of money involved in it. Despite all this, there was no doubt in the mind of the organisers that there is need to promote ethical and child-centric adoption, though debates surrounding international and domestic adoption needed to be opened up for more discussion.

A resource kit comprising of various related materials and papers written by experts was circulated to all participants. The kit is available with HAQ: Centre for Child Rights for reference and use by those interested. Some papers shared by the participants were also distributed during the consultation. (For details see annexure 1).

The Consultation was co-organised by HAQ: Centre for Child Rights and CACT-Delhi, which is the state level Campaign against Child Trafficking hosted by Pratidhi (Association for Development). The organisers are grateful for the support received from the European Commission and Christian Aid. The consultation was part of the project titled, 'Developing a Human Rights Approach to Anti-Human Trafficking (DDH/2004/089-105)', commissioned by the European Commission to HAQ: Centre for Child Rights through the tdh international federation, and grant received by Pratidhi from Christian Aid for the 'Campaign against Child Trafficking'.

The National Consultation aimed to bring various experiences, research and findings to the floor and act as a platform to discuss the developments in the

field of adoption as well as thoughts on how to foster the best interest of the child in such circumstances, while promoting adoption as a measure of alternative care for children in need of care and protection.

### Objectives of the Consultation

- Ensuring Legalised Adoption as Alternative to Institutional Care for Children in Need of Care and Protection
- Arresting Child Trafficking

### Indian Scenario on Adoption and Child Trafficking:

Adoption is an old phenomenon in India. Traditionally it was almost always within the family wherein a childless couple would adopt a relative's child, most often a boy to carry on the lineage. Unfortunately, orphans, illegitimate children, handicapped or girl children were never adopted. Where the child belonged to an unknown parentage, he/she was taken by a local elite as an indentured servant, like *poskem* in Goa, or simply cast away.<sup>1</sup>

- Large number of informal adoptions of abandoned and surrendered children
- Sources of illegal adoption are on the rise
- Commercialization of adoption process

on

In recognition of its practice in India, adoption received its first formal nod on 21 January 1890 with the Guardians and Wards Act (GAWA). However, as its very name suggests, this law was aimed more at providing foster care within the ambit of personal laws rather than legalising adoption. As a result, children continued to be transferred informally and confidentially to adoptive parents within the family or the community. It was easy as there were no formal birth registration procedures. Adoption got its first legal sanction with the enactment of the Hindu Adoption and Maintenance Act (HAMA). Unfortunately, the only codified law of adoption in India is restricted to Hindus, which includes Sikhs, Jains and Buddhists, thus leaving GAWA as the only option for non-Hindus to adopt.

In the late '80s and all through the '90s, reports of illegal baby sale and commercialization of inter-country adoptions led to several debates pointing to the need for stricter regulations.

Over the years there has been an increase in adoption of children from Third World countries. This has become a fashionable form of 'aid' to the "poor children". It is also increasing in the wake of scarcity of children caused by infertility, family planning measures, the actual and inherent costs of giving

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<sup>1</sup> HAQ: Centre for Child Rights. Children in Globalising India: Challenging Our Conscience . page. 307.2002

birth locally etc. As a result, the development of the international market for adoption of children from Third World/Developing Nations has led to the phenomenon of buying a child as also buying adoption services that lead to a child.

Establishment of Central Adoption Resource Agency (CARA) in 1990 and its designation as the Central Authority in 2003 for implementation of the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption, 1993, led to the creation of a set of guidelines for both inter-country and intra-country adoptions. Of late, CARA has been working on developing a new set of Guidelines on inter-country and in-country adoptions. It is therefore also a time to look at these new guidelines in the light of challenges faced in ensuring legal adoptions.

Even CARA has admitted that there are reports of delays, excessive adoption charges and huge donations given to Indian agencies and of course illegal practices including buying and selling of infants for adoption<sup>2</sup>.

Clearly, stricter regulations too do not seem to have addressed the problem.

What is more, many argue against children being given into foreign adoptions. They believe that India must encourage and ensure adoptions into Indian families. It is well known that there are several hundred Indian parents waiting to adopt. Besides, should it not be the responsibility of the State to look after its own citizens instead of sending them off to another country?, they argue.

Those who favour inter-country adoptions ask whether it is fair to keep a child away from family environment simply because inter-country adoption is to be sought as the last resort. Many of them suggest that it is not easy to find Indian parents willing to take all kinds of children, while foreigners often do not have inhibitions with regards to the looks of the child or the colour or even a physical disability that can be addressed.

Clearly, the Supreme Court of India too has been in favour of in-country adoptions, as was suggested by Justice P.N. Bhagwati in his judgement in Lakshmi Kant Pandey vs. Union of India. This judgement for the first time recognised that children were being 'abandoned and surrendered' and thus looked at regulated adoption as a measure to find them a family. It also looked at the issue of child trafficking and ways to regulate adoptions in a manner that would check such illegalities and exploitation of children.

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<sup>2</sup> Indian adoptions run into problems (<http://www.familyhelper.net/newscy.html#india>)

It was only in 1985 that directions of the Supreme Court of India in **Lakshmi Kant Pandey v. Union of India: [(1984) 2 SCC 244; AIR 1984 SC 469]** for the first time created a scheme for regulating both inter-country and intra-country adoptions.

Justice Bhagwati, who presided over this landmark case, declared the Indian child to be a "supremely important national asset" on which the "physical and mental health of the nation is dependent" and which should be kept, whenever possible, in its nation of origin. His judgment established a quota system for international adoptions, requiring that at least 50% of Indian children placed in adoption be placed domestically.

Over the years, the Ministry of Women and Child Development too came into action on realising that the girl child was particularly unwanted and that there were several adverse circumstances where women would rather surrender or abandon their new born if possible as in the case of children born to 'unwed' mothers or 'out of wedlock'. The Ministry addressed this problem by initiating the Cradle Baby scheme, where a recognised adoption agency can act as a reception centre for such women to surrender their babies. These reception centres too have been in the limelight for misusing the privilege bestowed on them as a recognised adoption agency cum reception centre to exploit women and children and make profits out of it.

A fact-finding mission initiated by the Campaign Against Child Trafficking (CACT) in the year 2005 in Tamil Nadu clearly brought out the competition among adoption agencies for getting babies from the Government's Cradle Baby Scheme and the mal-treatment of children in the cradle baby reception centres. Several agencies have been in the news for misuse of the adoption guidelines, charging huge amounts of money as adoption fees and donations from adoptive parents, and using the law allowing adoption of surrendered children for procuring children through fraudulent surrendered deeds. In 2001, it was the Tender Love and Care Home and the Bethany Home in Andhra Pradesh that made news on adoption scandals. In 2005, it was the Malaysian Social Service Society in Tamil Nadu and then Preet Mandir in Maharashtra that made the headlines in leading press<sup>3</sup>.

The other situations that become prime opportunities for trafficking of children for adoption are situations of natural and man-made disasters. Our Natural Disaster Management Policy has failed to draw attention to problems of children in a situation of disaster or emergency despite reports of children being trafficked in such situations for various purposes, the recent one being the Bihar floods. Recently, the newspapers reported about the case of a riot affected Muslim family from Gujarat, who had lost their child only to be found after eight years of search in a Hindu family that claimed to have adopted him. The question here was not just of whether the adoption was legal

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<sup>3</sup>David M. Smolin, Cumberland Law School, Samford University, 'Child Laundering: How the Intercountry Adoption System Legitimises and Incentives the Practices of Buying, Trafficking, Kidnapping, and Stealing Children'. 2005.  
<http://law.bepress.com/expresso/eps/749> or <http://www.languageofblood.com/smolin.pdf>

or illegal. It was also about the fact that there are no systems in place in a situation of disaster to minimise pain and sufferings of children and their families and adopt measures to check unscrupulous incidents. At the end of the day, the situation was neither happy for the child, who had forgotten his childhood completely and treated his adoptive parents as his real parents, nor for the adoptive family that had to finally part with the child as per the court's order. It was also not the best thing the biological parents of the child looked forward to as they could see the discomfort and pain caused to their own child for parting with someone he had become so attached to and had bonded with so closely.

In the meantime, another debate surrounding the adoption issue is that of 'surrendered' children. The amendment to the Juvenile Justice Act in 2000 and subsequently in 2006 too has ensured that orphaned, abandoned and surrendered children can be given up for adoption

In its 2008 report on India's children, "Still Out of Focus: Status of India's Children", HAQ: Centre for Child Rights highlights the issue of illegal adoptions in its chapter on Trafficking and at the same time makes an attempt to look at connected issues that pose threat to 'adoptions' in India. One such issue is that of commercial surrogacy, which has been able to provide a cheaper alternative to NRIs unable to have children of their own. The report asks – "If commercial surrogacy becomes the order of the day, will the already bleak chances of such children finding a family by way of legal adoption or foster care become grimmer"?

In these circumstances, violation or denial of children's human rights needs to be addressed with utmost attention and seriousness.

**What are the numbers?**

In the scenario described above it is not just difficult, it is impossible to estimate the exact number of children who await adoption. The data on the CARA website does not include inter-country adoption figures of other licensed adoption agencies recognised by State Governments. Hence, information relating to regional variations in adoptions is not available.

**Number of children placed in adoption through Recognised Indian Placement Agencies and Shishu Grehs during the last 06 years**

Year (Jan. to Dec.)	In-country Adoption			Inter-country adoption by NRIs / PIOs / Foreigners NOCs issued by CARA	Total(4+5)	
	1	2	3			4
		RIPAs	Shishu Grehs	Total(2+3)		
2001		1960	573	2533	1298	3831

2002	2014	690	2704	1066	3770
2003	1949	636	2585	1024	3609
2004	1707	587	2294	1021	3315
2005	1541	743	2284	867	3151
2006	1536	873	2409	852	3261
2007	1510	984	2494	770	3264
2008	1419	750	2169	821	2990

Source: CARA Website

At the national level, though this data does not show any specific trends, the average number of such cases registered during 2000 and 2007 comes to about 32. These figures however, do not tell much as many cases go unregistered. Also there is no law as such to book a case of illegal adoption or trafficking for adoption. On the other hand, data on crime against children produced by the National Crime Records Bureau (NCRB) does not provide state-wise information of kidnapping of children for the purpose of adoption..

Year →	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Kidnapping of children for adoption</b>	100	37	45	36	21	15	41	23	36

Source: NCRB, Crime in India 1999-2007

### **The Programme**

The two-day consultation began with an introductory session addressed by Mr. Amod Kanth, Chairperson, Delhi Commission for Protection of Child Rights, Ms. Debashree Mukherjee, Secretary Department of Women and Child Development, Government of NCT Delhi and Ms. Suman Nalwa, ACP-CAW, Delhi. Amongst other guest speakers for the two days were:

- Ms. Nina Nayak (Ex-Chairperson, CWC, Bangalore and Member Karnataka Council for Child Welfare),
- Dr. Bharti Sharma (Chairperson, CWC, Nirmal Chhaya, New Delhi),
- Ms. Leena Mehta (Associate Professor, Social Work Department, MS University, Baroda, Gujarat, and Former Chairperson, CWC),
- Ms. Leila Baig (Honorary Secretary, CVARA, Delhi),
- Mr. Joseph Aguetant (Delegate, terre des homes foundation-Laussane, Kathmandu Office),
- Mr. Arun Dohle (Adopted Child associated with ACT, Germany),
- Ms. Anjali Kate (Sakhee, Pune, Maharashtra),
- Ms. Pauline Hillen (Manager, Wereldkinderen, Den Haag, Netherlands),

- Mr. Ossie Fernandes (Director, Human Rights Advocacy and Research Foundation, Chennai, Tamil Nadu),
- Advocate D. Geetha (Human Rights Lawyer and Activist),
- Mr. Asif and Ms. Ranu (Adoptive Parents)

## **Key Issues**

### ***1. Adoption for Whom and Why?***

Sanctioned by customary law and religion, previously adoption was never about protecting the destitute children or giving them a safe, loving home. Fortunately, adoption is no longer about families trying to find a legal heir for continuation of family lineage. In today's context, it has moved beyond that to become a measure of alternative care for children in need of care and protection who are orphans, abandoned or surrendered.

The official position is that it is not just adoption, but a question of custody of the child and how a decision in this regard affects his/her well-being, that is a matter of concern for the government. Unfortunately however, a child rights' perspective is still lacking in the implementation of alternative care models that India seeks to promote. 'Permanency Planning' for the child is lacking. Placement of children in adoption is being carried out to meet the needs of adoptive parents and to suit the commercial interests of adoption agencies rather than those of a child.

We have seen a great attitudinal change in the Indian families wanting to adopt and in the adoption situation in Delhi and perhaps in other states too...across board, across the social strata families have opened their hearts and their homes without any prejudice, without any question of wanting to do a secret adoption or a hidden adoption or ulterior motives such as need for someone who would look after them in old age or carry on family business or light the funeral pyre. Today we are living in an evolved society where the parents feel there is vacuum in their lives and they come forward to adopt.

- Ms. Leila Baig, Honorary Secretary,  
CVARA, New Delhi

"It's not just about adoption, but a question of custody of the child and how a decision in this regard affects his/her well-being".

- Ms. Debashree Mukherjee, Secretary, Department of Women and Child Development, Government of NCT Delhi

### ***2. . Lack of a comprehensive law***

India does not have a comprehensive law on adoption in India, especially one focusing on the rights of the child and the responsibility of the State to ensure the protection of children from exploitation. There is also confusion regarding

adoption across religions. This is because only the personal law of Hindus allows adoption under what is known as the Hindu Adoptions and Maintenance Act, 1956 (HAMA). Indian citizens belonging to other religions use the Guardians and Wards Act, 1890 (GAWA), which allows a child to be placed under the guardianship of a parent instead of being adopted with the same rights as those of a biological child.

Further confusion was created when in the year 2000, the Juvenile Justice Act was amended to allow adoption of children in need of care and protection as an alternative to institutional care. It also opened adoption across religions, which in itself becomes an area of contention. The JJ Act does not lay down the procedure as such and nor does it clarify if it supersedes the personal laws.

The participants pointed out that this is one of the main factors that leads to either ethical or unethical adoptions.

“When Lakshmi Kant Pandey case was taken up in the Court, the Court instead of looking at the specific violations, who are the perpetrators and how to penalise them or how to bring them within the framework of law and the legal system, stepped outside the jurisdiction of the judiciary and usurped the jurisdiction of legislature and started looking at the framework to be fixed with regard to the procedures to be followed in adoption. ...Out of this deviation was born something called CARA in our country, which was given some kind of a legal framework and is still in existence. But the whole process of having a comprehensive law on adoption got aborted and till date, we do not have a law, neither a discussion towards the direction of having a law on adoption.

The judgement revolved entirely around dealing with agencies involved in adoption, agencies within the country and agencies abroad, and evolved a certain procedure. Therefore, this case was a process by which children’s right to get into a comprehensive legal framework was missed and we have still not caught up with that process as such”.

- Advocate D. Geetha, Human Rights Lawyer and Activist

Various examples were shared and questions raised during the consultation on this issue.

The Delhi Courts insist that the child cannot be taken outside the jurisdiction of the Court even in pre-adoptive foster care. That means if a family comes all the way from lets say Chennai and they like a child, they will have to wait till the Court decides to pass the case. We have seen delays by the Courts in processing cases of both in-country and inter-country adoptions, subjecting a child to longer stay in the institution.

- Ms. Leila Baig, Honorary Secretary, CVARA, New Delhi

Also, what about the children who have already been adopted through an a-legal/illegal process? What are the guidelines in place to protect the rights of the child in such instances?

That a follow-up process after the child is given in adoption is lacking in our system is acknowledged by all concerned authorities. Yet nothing is done to check such anomalies.

“There are about 3000 crore children who are in need for care and protection and as per the Juvenile Justice Act 2000 (as amended in 2006), many such children could get a family through adoption. However, in Bihar for example, the estimated ratio of legal versus illegal adoption would be 1:50. There are serious inadequacies in our adoption system. Laws with regard to adoption need to be simplified in order to address the loopholes that pave the way for child trafficking”.

- Mr. Amod Kanth, Chairperson,  
Delhi Commission for Protection of Child Rights

## ***2. Failure to Adhere to Current Laws and Guidelines***

Lengthy procedures have become an impediment and also a cause for concern for institutionalised children. They only further infringe upon the rights of the child bureaucratic apathy or court apathy subjects them to prolonged and totally unnecessary institutionalisation. Currently, we have no rules and laws to take children out of institutions and offer them a permanent family. So the children continue to languish in these institutions, exposing them to elements of kidnapping for beggary and further trafficking. A lot of the existing legal procedures are not followed for various reasons, including lack of required infrastructure and implementation mechanisms. These include:

### **1. Dilution of the principles laid down by the Supreme Court of India in the Lakshmikant Pandey judgement.**

Two important principles were decided upon in the Lakshmikant Pandey case. These were:

- a). Only after exhausting the possibilities of adoption of a child within the country by Indian parents should any child be placed outside the country. The Court fixed a maximum period of two months for this. The only exception to this principle was the case of disabled children and children in very bad state of health.
- b). There cannot be any payment involved in adoption except maintenance expenses and medical expenses incurred on the child if any.

Dilution of both these principles are visible:

- The CARA guideline, state only one month as the period for looking for parents within the country and even in that one month no one knows if there are efforts being made to look for parents in other states.

For example if parents in Tamil Nadu want to adopt a child, whether the Delhi government or any other state is being looked at is not known. What procedures are being followed in this respect is also not known. There is no centralised list of adoptive parents available.

- Struggle for systematised and formalised inter-state Adoption Coordination Agency (ACA) coordination is yet another

“Within the country means from Kashmir to Kanyakumari and from North-East to North West and so on. But we do not have a procedure today by which we can have a list of parents waiting for adoption within the country and it is just some agencies which decide whether they are able to find a family within the country or not and then they place the child outside the country”.

- Advocate D. Geetha, Human Rights Lawyer and Activist

big hurdle in domestic adoptions. The Lakshmikant Pandey case resulted in setting up of ACAs to further enhance the efforts of the placement agencies to find domestic placements rather than inter-country placements. The ACAs seem to have an informal system where e-mail exchanges take place regarding children for whom an agency is unable to find a family locally. However, this system is not formalised and remains out of public domain. Parents in waiting should be able to access it too. Moreover a formal exchange system would also help maintain updated information, track domestic adoptions and monitor the situation.

- A monthly income slab of Rs. 10,000 keeps away many potential parents.
- Dilution of this principle is evident in commercialisation of inter-country adoption and mal-practices surrounding it.

### ***Failure of CARA to uphold its mandate***

CARA provides the framework within which adoption has to be carried out within and outside the country. It is also the authority for recognising and

If we look at CARA guidelines, it has totally diluted even the protection that was given in the Lakshmi Kant Pandey judgement.

- Advocate D. Geetha,  
Human Rights Lawyer and Activist

licensing agencies working on adoption. CARA has failed in both regards. Unfortunately there is no uniformity in any of the States on procedures, on what is allowed and what isn't; No clear guidelines have been set in place across States. Also CARA has been faced with serious allegations of wrongful acts of licensing questionable agencies and directly or indirectly being involved in illegal adoptions and illegal procurement of babies.

“Even though we have a national body (CARA) which has a huge budget, which is supposed to promote adoption in all the States, sadly today, in only about 20 States we really have a fairly active adoption programme and in less than 20 percent of districts across the country we have an adoption programme, leaving large scope for trafficking”.

- Ms. Nina Nayak, Ex-Chairperson, Child Welfare Committee Bangalore and Member, Karnataka State Council for Child Welfare

Adoptions are allowed only after a Child Welfare Committee (CWC) declares a child legally free for adoption. Such

“The DMs have so much other work, they are very busy and don’t understand adoption issues and they are not into protecting child rights”.

- Ms. Nina Nayak, Ex-Chairperson, Child Welfare Committee Bangalore and Member, Karnataka State Council for Child Welfare

bodies need to be in place in all State districts and Union Territories, and this is not the case. Also, if a CWC is not in place, the District Magistrate (DM) shall have such powers. The unfortunate situation at the moment is that CWCs do not exist in each district as required by law. So, in the absence of these CWCs, as well as limited understanding of adoption issues, the DMs are failing to keep the best interest of the child at heart.

In the wake of such apparent failure of CARA to set effective guidelines, law needs to be written, guarantees need to be put in place; choice of parents, transparency and legality of the procedures are other important aspects that need to be worked out.

### ***3. Adoption and Child Trafficking***

The biggest challenge is that most agencies across the world fail to make the connection between adoption and trafficking. Even agencies like UNICEF, at the global level, hesitate to link adoption with child trafficking; they are rather reluctant to use the word trafficking in the case of adoption, though they do accept that children are bought and sold for the purpose of adoption.

Absence of a comprehensive, well-monitored adoption programme enables hundreds of children to be given away in adoption in informal and perhaps illegal ways.

“Of the over 600 districts in India, less than 20 per cent may be said to have an adoption programme, which provides huge scope for trafficking”.

- Ms. Nina Nayak, Ex-Chairperson, Child Welfare Committee Bangalore and Member, Karnataka State Council for Child Welfare

In India, while the discussions in the Lakshmi Kant Pandey case went into the issue of trafficking and how, in the name of adoption, there are possibilities of children being trafficked and how children are suffering, the Court revolved more around the procedural aspects of adoption and did not look at the question of establishing the rights of the children in the context of trafficking for adoption.

In the wake of this lack of awareness, there are cases where children have been stolen, grabbed by the adoption mafias or just removed from the custody

of their biological parents. Families register an FIR with the local police as a case of a missing child. These FIRs get documented and become some statistic somewhere. In some such cases, it has been later found that the children were placed in adoption to foreign parents through a legal process and they were living and growing abroad in a foreign country. This has created a situation where on the one hand, the biological parents who had lost their children want their children back, the rights of the children who lost their biological parents and are now with adoptive parents remain undetermined, and there is the question of the right of adoptive parents who adopted through a legal process to continue to have their children.

The common mind-set with which inter-country adoptions are promoted needs to be questioned.

### ***Arguments in support of Inter-country adoption***

There are several arguments made in favour of promotion of inter-country adoption:

- Inter-country adoption can help provide a better life to children. It is seen as taking children out of hell and into heaven. Those who contend this are seen as people against children and child rights.

“Adoption is not about taking people out of poverty and into wealthy situations (from rags to riches). It is providing a child a permanent and loving family”

- Mr. Joseph Aguetant, Delegate, terre des homes foundation-Laussane, Kathmandu

- In India, there are no takers for certain children, even if they are for example, children with minor correctable disability. Therefore some children will never find an Indian parent and will have to be given to foreign parents, who do come forward to adopt them.

I would just like to emphasise and perhaps clarify who are the children who are not accepted by Indian parents. They are children with physical handicaps, children with minor to major medical problems, hair lip, hole in the heart, correctable conditions, they are older children, they are sibling groups, they are (sad to say) very dark children. In the '80s the demand for the male child was overwhelming, but today that no longer exists.

- Ms. Leila Baig, Honorary Secretary, CVARA, New Delhi

- There are hardly any numbers being placed in inter-country adoptions. In 2007, only 770 children were given in inter-country adoption as opposed to 2,494 placed in domestic adoption. The children who are going into inter-country adoptions are children who have repeatedly not been accepted by Indian families.

### ***Arguments against Inter-country adoption***

Those that oppose inter-country adoption and favour in-country adoptions argue that the first choice for homes must be within the country, in a social milieu that they can identify with as they grow up; several other factors also come into play.

“This has been quite successful for the last five years and our friends from Andhra Pradesh share their experiences. Today if a person wants to adopt a child from Andhra Pradesh, the waiting period is two years as there are no children available. This is because the sourcing itself is cut off, where children cannot be placed as they please to anybody they want to. The illegal sourcing or trafficking has been brought to an end. When it is so successful in one State, why can it not be followed in other states? This has to be examined”.

- Advocate D. Geetha, Human Rights Lawyer and Activist

- The state of Andhra Pradesh successfully disproves the myth that Indian parents are not willing to adopt or not willing to specifically adopt a girl child or a dark child. Andhra Pradesh has banned inter-country adoptions from the State...All adoptions are totally state adoptions i.e. anybody who wants to adopt has to apply through the state and there is no private agency operating. Today the agencies/institutions in Andhra Pradesh have only the right to provide care and protection and not adoption. Placement for adoption is a responsibility lying only with the state. As a result, currently, there are no children available in the state for adoption but there are parents waiting to adopt. So the Andhra Pradesh experience stands example to the fact that the whole myth of Indian parents not willing to adopt or not willing to adopt a girl child or a dark child is not true.
- The ethics behind inter-country adoption comes to question when commercial interests take precedence over principles, making trafficking inevitable. With inter-country adoptions bringing in much higher revenue under the pretext of processing fees, the child is being regarded as a mere commodity.

“If you want to break the backbone of trafficking, you have to keep a check on inter-country adoption”

Mr. Ossie Fernandes, Director, Human Rights and Avocacy Research,  
Tamil Nadu

### **The participants came to the following conclusions:**

#### ***Dishonest and Illegal Practices Continue***

There can be no denial of the fact that illegal practices are going on in the name of adoption across the States. Prosecution of offenders in cases involving adoption and child trafficking is far more difficult in the absence of a comprehensive law. The existing legal framework and various dichotomies within that framework has only led to further vulnerability of the child to multiple exploitations. Ensuring ethical and legal adoptions in the best interest of the child is the way to check trafficking.

Even the Supreme Court of India acted on the petition in Lakshmikant Pandey case, which drew attention to how children given in adoption to foreigners were found ending up as beggars or in shelters in those countries. It would be dishonest and unreal to assume that post Lakshmikant Pandey judgement, illegal adoptions or adoptions that have led to exploitation of children have stopped, as there is enough evidence to this effect.

“In Tamil Nadu there are many cases where the biological parents have gone to the Court with the plea that they want their children back and now the Court has ordered an inquiry by the CBI, which is pending with them. In an international situation, the CBI also has to go through various procedures wherein they have to get the Interpol coming in, get the permission from the Government to go outside the country, interact with another agency in another country. With all these procedural delays nothing has been determined so far. ...

What the agencies are doing is that they get some XYZ to execute a surrender deed saying that I am the mother of so and so and with that surrender deed the agency goes to the Court saying that this is a surrendered child. The Court does not look at the surrender deed because it does not call the people who executed the surrender deed and ask whether this is the child born by those claiming to be the biological parents; there is no DNA test which is being conducted and probably we should demand for that”.

- Advocate D. Geetha, Human Rights Lawyer and Activist

### ***The root of the problem lies in illegal sourcing of children***

All agencies are deeply involved in accepting surrendered babies or procuring babies through brokers.

- The most common form of illegal sourcing thrives on exploiting the most vulnerable population of India – the poor.

“Percentage of families living below poverty line (BPL) in India is 26 per cent, but in UP it must be around 30-40 per cent. So there is bound to be lot of abandonment and unwanted children. 60 adoption agencies in 6 districts. Where do these children go?”

- Ms. Nina Nayak, Ex-Chairperson, Child Welfare Committee Bangalore and Member, Karnataka State Council for Child Welfare

- Recent fact-finding has brought to light the big competition among agencies to get babies from the government under the cradle baby scheme.  
Investigations

“In Tamil Nadu the scrutiny officer was able to show that the signatures of parents obtained in at least 30 surrender deeds were identical and those of the notary public who has to countersign all such documents was also identical. So they had a common notary public and in one agency the same people were signing for the surrender signatures. And this is not just in Tamil Nadu”

have shown evidence of mothers either being coerced, tricked or surrender documents simply forged in order for brokers to acquire the babies through what appears to be a willing surrender. Currently, there are no DNA testing requirements in place.

- In Orissa, a study has been done on informal trafficking i.e. trafficking from hospitals/nursing homes. This study established that the hospitals have a whole list of parents or contact persons to whom they hand over abandoned children. Out of the children abandoned in the hospitals, only 10 per cent are coming to the recognised childcare institutions whereas 90 per cent of them go to the non-recognised agencies. Hospitals definitely need to be monitored
- Also, all hospitals need to ensure 100 per cent birth registration

“Often these private hospitals or nurseries get in touch with single mothers or unmarried mothers and then they get babies. In many cases, the birth of the child is not registered. First of all, this child has no identity, no name and of course there is a violation from hospitals and doctors who fail to register the child. I think proper registration is one of the ways to combat child trafficking in general”

- Mr. Arun Dohle (Adopted child associated with ACT German)

- Only 20 per cent of our districts have a CWC. Lack of CWCs in many of the districts also leads to child trafficking through not only the non-licensed agencies but licensed agencies and many of the hospitals and/or childcare centres as well.
- Also, members of Coordinating Voluntary Adoption Resource Agency (CVARA) or Adoption Coordinating Agencies are adoption agencies themselves. The membership is therefore biased. Such a conflict of interest further highlights the vulnerability of the child to exploitation. Several case studies have brought to light the possibility of numbers of children being brought into the adoption process being fudged.

## **Resolution passed at the Consultation**

The money involved in inter-country adoptions has led to several malpractices. Since inter-country adoption allows agencies to charge a fee and seek donations (money) from prospective adoptive parents for the upkeep of the child till the adoption takes place, the greed for dollars has led to a flourishing adoption racket. Also, as a result, very little efforts are made for domestic adoptions and after sometime agencies tend to suggest that the child is unable to find a family within the country. States do not link up to ensure that if a child does not find a family in one state, efforts are made for the same in other states. Over the years, with a couple of media stories on the adoption rackets and active involvement of NGOs and campaigns in monitoring the situation, the official number of inter-country adoptions has indeed gone down from 1298 in 2001 to 821 in 2008. Clearly, India is capable of taking care of

its children! Why should it then place any of its children in inter-country adoption?

Moreover, the argument given by CARA and adoption agencies that children with disability seldom find an Indian family stands no ground unless. There is no data to suggest so. In fact many children with correctible disability have been placed in inter-country adoption so that the need to invest in treatment of such children can be evaded.

**Majority of the participants resolved to demand for a moratorium on inter-country adoptions for a period of 10 years. This resolution was discussed at length and it was decided through a majority vote that both in principle and as a strategy India needs to stop inter-country adoptions for some time.**

Illegal adoptions and large-scale trafficking of children for the same, failure of existing rules and regulations to check such commoditisation of children, large number of India parents and children awaiting adoption, and most importantly, the business interests of the adoption lobby turning it into a racket demands immediate moratorium on inter-country adoption.

**It was thus resolved by a majority vote that India should put a moratorium in inter-country adoptions for 10 years.**

**This resolution demanding for a moratorium of 10 years on inter-country adoptions was argued and discussed at length. It was agreed upon by all participants that such a resolution was required both as a principle and as a strategy to put a check on malpractices involved in the adoption sector and to ensure that all adoptions are in keeping with the principle of best interest of the child, as contained in the UNCRC.**

#### ***4. Additional Gaps and Challenges***

##### ***Lack of State Responsibility***

Legal activists are of the view that a close reading of the Lakshmi Kant Pandey judgement (AIR 1984 SC 469) in entirety reveals how it has failed or even neglected to look at the responsibility of the State vis-à-vis the rights of children because it does not fix a responsibility on the State agency. It has evolved a different procedure outside the State agency and formed an independent institution called CARA, where there is no major responsibility of the State. In fact, CARA is a very loose formation of independent agencies.

States have a responsibility to take care of their children, to be the primary duty bearer, and to be accountable to these children. The number of surrendered children is four times higher than abandoned children. Instead of following a policy of marginalising the already marginalised, the State should create alternative ways to alleviate the socio-economic distress amongst the most vulnerable population. Support systems and services for such children

must be in place so that families can keep their children instead of abandoning them.

This is very important in cases of children with special needs as well. These children have just become a new market, a new brand – children who can be treated in their own country and not treated there, but merely exported through inter-country adoptions.

”Don’t think that we in the Western countries don’t have children with special needs...but we don’t export these children...”

- Mr. Arun Dohle (adopted child associated with ACT Germany)

### ***Lack of Data and Data-Management Systems***

It is virtually impossible to obtain statistics on the issue of adoption and child trafficking. What is available is largely in the form of experiences, case-studies, fact-finding reports, news clips, papers written by some people.

Despite demand for state-wise information on adoptions, CARA has failed to provide such information for public consumption. It has also failed to provide information about the number of Indian and Foreign parents in waiting and number of children in waiting per adoption agency in different states. Information about adoption cases pending in the courts and the duration of pendency too is lacking.

The number of children going into illegal adoptions remains untracked every which way. Time and again officials have pointed to the need for an integrated data-base and MIS, which could be used for tracking adoptions as well as child trafficking. Customised

“There is a need to establish linkages between missing children’s data-base maintained by Delhi Police and records maintained by the Department of Women and Child Development about children received by the Child Welfare Committees set up by them”.

- Ms. Suman Malwa, ACP-Crimes Against Women, Delhi

data-base and data-management systems are therefore the need of the hour to assess the situation of children falling out of the safety and security net and to trace them out. This also calls for convergence between various Departments and Government bodies such as the Child Welfare Committees, various state adoption agencies, CARA and the Police. There is the missing child record in the police station but the same child goes through the Social Welfare Department, the CWC, gets a destitute certificate and then gets placed before the Court.

### **Conclusion**

Adoption is still at a very nascent stage in our country. Of the over 600 districts in India, less than 20 per cent may be said to have an adoption programme. Several reasons are currently contributing to a general failure of adoption as a measure of alternative care for children in need of care and protection in India today. There is currently no comprehensive law on adoption, a topic still subject to personal laws. Also, a lot of the existing legal procedures are not followed for various reasons, including lack of required infrastructure and implementation mechanism. While the Juvenile Justice (Care and Protection of Children) Act, 2000 followed by its amendment in 2006 do provide for adoption of orphaned, abandoned and surrendered children, it is only paper legislation. This law fails to lay down the procedures to be followed and leaves that to CARA guidelines. CARA, unfortunately, has not only failed in its mandate to ensure regulation of adoption and bring uniformity in procedures, but fact remains that its guidelines cannot be the law. Therefore, there is a need for comprehensive law on adoption.

We also need a law on trafficking that covers all forms and purposes of child trafficking. When procurement of children (often leading to illegal adoptions) has its basis in exploitation of any kind, especially the outright sale of children, it implies child trafficking. Even if the adoption that results from such sale is legal, the fact of sale clearly makes it a case of child trafficking.

There is also a need to address concerns regarding sourcing, inter-country adoptions, recognition and licensing of placement agencies, and blatant gaps in the system today that are used to enable taking away of babies from parents, agencies and even hospitals. For starters, India needs to ensure 100 per cent birth registration. Linkages and convergence between Departments and Ministries dealing with children is crucial, especially between police and the social welfare officers or women and child development departments. There needs to be more inter-face between the Executive and the Judiciary as well. Instead of creating adoption agencies, it is important to create support systems for poor families than following the state policy of marginalising the already marginalised. The State must take responsibility for its children, who are arguably the most vulnerable of its citizens.

It is worth noting that there is a slow shift in the adoption scenario today, where we are looking for a family for a child and not a child for a family. A rights-based approach - an acceptance of the legal and moral obligations of the state and its institutions to fulfill its duties and responsibilities towards children in the best interest of the child - must govern all actions concerning children, including efforts to make adoption a form of non-institutionalised care for children who deserve and can have a family.

### Annexure 3

#### National Consultation on Countering Challenges in Adoption: Combating Child Trafficking

10-11 January 2009  
Jamia Hamdard, New Delhi

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