

On Their Own is a socio-legal investigation of inter-country adoption (ICA) in India from a child rights perspective. It covers legal and social ICA practices in Karnataka, Delhi, Maharashtra, Tamil Nadu and West Bengal.

The three-part study contains

- the legal framework of ICA within India;
- the findings of a comprehensive study of court documents of children adopted abroad; a revealing social investigation of the predilection towards ICA and bias against Indian parents; and the emerging findings of the social and psychological adjustment of Indian adoptees; and
- an analysis of the findings of the study.

The authors cannot be simply categorised as “pro-ICA” or “anti-ICA.” Instead, their effort is an exploration of the manifold dimensions of the issue from the standpoint of “the best interests of the child” and pinpoints the need for urgent attention to this issue.

Amita Dhanda researches and writes on mental health and disability law. She is Professor of Law at NALSAR University of Law, Hyderabad.

Gita Ramaswamy works in Telugu publishing with the Hyderabad Book Trust. She has worked extensively with agricultural labourers, particularly on issues of land entitlement.

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Amita Dhanda
Gita Ramaswamy

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A socio-legal investigation
of inter-country adoption in India

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Amita Dhanda
Gita Ramaswamy



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ABBREVIATIONS AND ACRONYMS

CARA	Central Adoption Resource Agency
CRC	Convention on the Rights of the Child
DSW	Department of Social Welfare
DWCW	Department of Women and Child Welfare
HAMA	Hindu Adoption and Maintenance Act 1956
ICA	Inter-Country Adoption
ICCW	Indian Council for Child Welfare
ICSW	Indian Council for Social Welfare
JJA	Juvenile Justice (Protection of Children) Act 2000
MOC	Missionaries of Charity
SCF	Save the Children Fund
TDH	Terre Des Hommes
VCA or VACA	Voluntary Coordinating Agency

PREFACE

All researchers, whether of the activist or the armchair variety, are anxious that their investigations be free of their biases and predilections. Before this study, one of us (Gita Ramaswamy) had already carried out a study on inter-country adoptions in Andhra Pradesh and had also been actively involved in challenging the legality of these adoptions in the courts of Andhra Pradesh. By the time we completed this across-states study, we found that Andhra was not alone in breaching legal safeguards – this was a countrywide malaise. These findings caused us to wonder whether we found a breakdown of both the legal mechanism as well as supervision by Government and its agencies because we had set out to look for it. Or did we find departures, derelictions and deviances because we knew how to look for them? And as we were familiar with the usual techniques of dissimulation they did not take us in?

Several incidents have come to light, since the finalisation of this report in November 2004, which both allay our apprehensions and deepen the substantiations contained in this report. The Delhi Govt. through its Director, Dept. of Social Welfare, who oversees adoption, conducted an investigation into 800 cases of ICA and came to the conclusion that these adoptions were in violation of Supreme Court guidelines. Broadly, the children were not produced before the Child Welfare Committee, adequate efforts to restore them to their parents were not made, foreigners were preferred to Indian adopters, and quarterly reports post-adoption were not submitted to the Government. To obtain further information in the matter the Director had ordered a magisterial enquiryⁱ. We are not privy to the findings of this inquiry but the original findings itself give cause for alarm and merit that the matter be thoroughly investigated. Unfortunately the Joint Director of CARA, oblivious to the enormity of the wrongs, only bemoaned that such an enquiry would ruin its ICA programmeⁱⁱ.

If Delhi was bad, then Tamil Nadu was worse. In May 2005, police in Tamil Nadu discovered a kidnapping ring which had supplied over 350 children to an adoption agency, the Malaysian Social Service Society over seven years. The group had targeted street

ⁱ *Indian Express*, November 14, 2004, accessible at <http://cities.expressindia.com/fullstory.php?newsid=106540>.

ⁱⁱ Menon, Sreelatha, <http://www.expressindia.com/about/feedback.html?mailto=subhendumukherjee@expressindia.com>.

children, children from poor families and those in the maternity wards of government hospitals and sold them to the adoption centre at prices ranging from Rs. 25,000 – Rs. 60,000ⁱⁱⁱ. Following reports in the newspapers, anxious parents whose children had been kidnapped rushed to the Police City Commissioner's office at Chennai from all over Tamil Nadu. Seven of these children were then traced to countries as far as Australia, Netherlands and Norway. Investigations revealed that employees of the adoption agency had signed as witnesses, siblings had been manufactured and records showed that the names of parents had been faked—one woman was registered as the mother of three children who were almost all the same age!^{iv}

Despite these revelations CARA did not see any need to pursue the matter further. In response to a question about the MSS issue, CARA officials at New Delhi^v declared that the MSS license had been cancelled in 2001. And having made that cancellation CARA did not feel any further responsibility in the matter. Consequently whilst the heart-wrenching realities of foreign adoptions continue to be whispered about in the corridors of CARA, celebrities keep garnering goodwill by adopting children from the deprived countries of Asia and Africa^{vi}. Celebrity identification puts such sheen on adoption from poor countries that the misery that such adoptions may cause in the lives of the adoptees is all but glossed over^{vii}.

We obtained further evidence of the psychological torment caused by these adoptions when one of us (Gita Ramaswamy) completed birth searches of five Indian foreign adoptees. These were random searches, done at the instance of adoptees and adoptive parents.

The searches have shown that none of the parents had relinquished their child for adoption. Instead they had placed their child in what they thought was temporary safe care in the orphanage. No search involved an unwed mother. In all five cases, the papers were forged and fabricated, and signed by one parent only; in one of them, the mother who had died in 1996 was shown to have signed a notarised relinquishment deed in 1998.

ⁱⁱⁱ *Indian Express* of May 4, 2005, at <http://www.newindpress.com/NewsItems.asp?ID=IET20050503235710>.

^{iv} *Deccan Herald*, May 15, 2205, at <http://www.deccanherald.com/deccanherald/may152005/spotlight924592005514>.

^v Interview with Gita Ramaswamy and Arun Dohle on 3rd May 2005 at CARA office New Delhi.

^{vi} See for example the photograph of Lord and Lady Putman with their adopted daughter Rina who was adopted by the Putnams after Lady Putman met her while working at an Indian village stricken by leprosy in the early 1990's. 12.7.2005 *The Deccan Chronicle*, July 12, 2005, p. 11.

^{vii} See for example the manner in which the media is reporting Angelina Jolie's adoption of a child from Africa. And how this adoption is inspiring her co-star to make similar plans.

In four out of the five, the other parent was termed dead, in order to bypass the rule that both parents, if living, needed to relinquish the child. In all five cases, the parents of the children were traumatised by the loss of the children, depression, daily bouts of weeping, and an inability to get on with life being common.

It is perhaps an unhappy coincidence that all the five cases that we searched were deviant ones – perhaps the stories of unwed mothers set free of their encumbering infants by the adoption process were true in other cases. It would therefore be true to say that in the face of our scarce data no conclusion of widespread abuse can be reached. However, the issue is not of whether there is or is not widespread abuse: rather, the issue is that the moment human relations start running on the principles of the market, then the human being, here the child, always runs the danger of being turned into a commodity. And the processes of commodification unevenly impact the poor. A consequence that we as nationals of a poor country need to worry about, because if we do not, it is not just the poor whose lives will be cheapened.

These searches and the other case histories in this study will, we hope, prod state and society to acknowledge a wrong where a wrong has been done. For only such an acknowledgement can provide any hope of healing to the victims of inter-country adoptions and prevent the creation of further victims.

Amita Dhanda
Gita Ramaswamy

July 2005

Executive Summary

When viewed from the perspective of child rights, inter-country adoptions (ICA) raise issues around parenting, home-based upbringing, name and identity for a child. The practice also raises fears of trafficking, economic exploitation of poor parents and socially vulnerable mothers. Thus, the practice of ICA is of concern to both child rights and human rights activists. Insofar as the practice has been legally regulated, the issue cannot be understood without examining the national and international laws on the subject. Moreover, the effectiveness and appropriateness of these laws can only be assessed within their psycho-social context. Further, this contextual understanding depends upon whether ICA is being investigated in a supplying or a receiving country. This study is a socio-legal investigation of ICA in India from a child rights perspective.

The foregoing contextualisation gives us the three-part structure of the report. The first part is divided into three sections. The first section describes the regulatory system and guidelines evolved by the Supreme Court of India for ICA in India. Even though these guidelines have not been replaced by a legislation, the national compact to regulate this practice has been strengthened by India signing and ratifying the Convention on the Rights of the Child (CRC). This section then highlights the manner in which the CRC improves the normative regime regulating ICA. The second section contains a survey of literature on ICA and an outline of the areas to which this study contributes. The third section contains a detailed description of the methodology adopted in this study.

The second part of the report describes the findings emerging from the legal and social investigation. Two psycho-social studies conducted on Indian adoptees in USA and Sweden detail the psychological impact of ICA. In keeping with the child rights perspective informing this report, a separate section presents the adoptees' versions through first-person narratives.

The third and last part of the report carries an analysis of the findings of the study. In the light of these findings, recommendations have been suggested for concerned players in the last section of this part.

The major recommendations of the study include :

- Support to Biological Parents
- Preference to In-Country Adoptions
- Oversight of Child Sourcing
- Separation of Childcare and Adoption
- Administration of Adoption
- Court Regulation of ICA
- Multiple Social Ties Model of Adoption
- Birth Searches
- Need for International Debate and Deliberation

A section on References cited and four Annexures complete the report – the first on the ICA scandal in Andhra Pradesh that brought to public awareness the scale of the problem; the second and third consisting of data on adoptions in India, and of the court investigations that we did; and the fourth annexure on the advertised and hidden costs for the foreign adopters.

In our analyses of the problem and in formulating our recommendations, we have tried not to fall into the trap of a simplistic dichotomy between ‘pro-ICA’ or ‘anti-ICA’. The problem is a very real one, as we have tried to show, and in need of urgent attention, not least because of the legal and moral imperatives to always keep in mind the ‘best interests of the child’.

Part I

I

Legal Regime on Inter-Country Adoptions (ICA)

Supreme Court Intervention in ICA

The legal story of ICA was inaugurated in 1982 with a letter written by Laxmikant Pandey, an advocate practicing in the Supreme Court. This letter complained of malpractices indulged in by social organisations and voluntary agencies offering Indian children in adoption to foreign parents. Ordinarily a complaint of infringement of rights must be made by the person whose rights are infringed on. However, in order to ensure that persons who are socially, economically or educationally backward are not denied access to justice, the Indian Supreme Court has liberalised the rules of standing and permits any bonafide public-spirited individual or organisation to bring the matter to the notice of the court.

The court treated the letter as a writ petition¹ and the Union of India, Indian Council of Child Welfare and Indian Council of Social Welfare were asked to appear in answer to the petition and to assist the court in laying down procedures and guidelines for inter-country adoption.

In formulating the guidelines, the Supreme Court drew upon a number of normative sources such as clauses 23 and 24 of the Adoption of Children Bill 1980; Draft Guidelines of Procedures concerning Inter-Country Adoption; and the Draft Declaration of Social and Legal Principles Relating to Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally. The court was thus at pains to obtain legitimacy for its legislative efforts² from national and international legislative resources.

¹ As narrated by the court in Lakshmikant Pandey vs Union of India AIR 1984 SC 469

² According to the essentialist roles accorded to the judiciary, the courts are only meant to interpret laws enacted by legislatures. Hence a court formulating guidelines is viewed as intruding into a legislative arena and weakening the democratic impulse of lawmaking by the legislature.

The L. K. Pandey Guidelines

In formulating the L. K. Pandey guidelines, the court, by its own admission, was concerned with the adoption of only destitute and abandoned children living in social welfare centres or child welfare centres. The guidelines were chiefly a series of obligations of the various players in inter-country adoptions — the foreign adoptive parent(s), the biological parent(s), the foreign adoptive agency, the local adoption agencies and the various governmental agencies.

The court excluded from its consideration the adoption of children living with their biological parents. In those cases, it opined, “the biological parents would be the best persons to decide whether to give the child in adoption to foreign parents”. Insofar as the pulls and pressures on biological parents were not in issue, this opinion should necessarily be viewed as a non-binding observation of the court.³

To regulate the commerce of inter-country adoptions the guidelines required that

- Every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognised or licensed by the government of the country in which the foreigner is resident.
- The social or child welfare agency which sponsors the application for taking a child in adoption must get a home study report prepared by a professional worker indicating the basis on which the application of a foreigner for adopting a child has been sponsored by it.
- Along with the home study report, the application was required to have documents certifying the medical fitness and financial status of the foreigner. Both the foreign parents and the sponsoring agency were required to give an undertaking that the child would be duly adopted according to the law of their country within a period of two years from the time of arrival of the child in the country. These documents were to be duly attested by specified authorities. The Government of India was required to prepare a list of government-recognised organisations and agencies dealing with inter-country adoption in foreign countries.

In order to both protect biological parents and to prevent exploitation by them, the court required that

- biological parents should be assisted in making an informed decision of surrender. To that end, the biological parents should be made aware of the consequences of adoption,

³ It is necessary to make this qualification, since as recently as 2003 the Supreme Court was required to consider whether the L. K. Pandey guidelines would apply when a parent gives her child in adoption. The apex court decided the issue on the basis of this aside in the Pandey guidelines. See *Anokha vs State of Rajasthan* 2003 (10) Scale 539.

and the possibilities of adoption by a foreigner. To ensure that the parent is not subjected to any duress, the guidelines allowed the parents a period of three months to reconsider the decision. In order to ensure that the biological parents were not approached in an emotionally vulnerable state of mind, the judgment ruled that biological parents should not be induced or encouraged, or even be permitted, to take a decision about giving a child in adoption before the birth of the child, or within a period of three months from the date of birth. However, once this period expired, relinquishing the child was categorised as irrevocable. As according to the court, “it would be most unfair if after a child is approved by a foreigner and expenses are incurred by him... the biological parents were once again to be consulted for giving them a locus penitential to reconsider their decision.”

- on the same reasoning biological parents were to be given no information of either the process of adoption or particulars of the prospective adoptive parents. This embargo was placed since the court feared that “if the biological parents know who are the adoptive parents they may try to extort money from the adoptive parents.”

To safeguard the interest of adoptees the guidelines required that

- an application from a foreigner for taking a child in adoption should be processed only through a social or child welfare agency licensed or recognised by the Government of India.
- the government should only recognise those agencies which enjoy good reputation and are known for their work in child welfare and have proper staff with professional social work experience.
- agencies which have been established only for the purpose of placing children in adoption should not be recognised.
- every recognised social or child welfare agency must prepare a child study report through a professional social worker giving all relevant information about the child to help the foreigner to come to a decision whether or not to adopt a child, and to understand the child if he decides to adopt. This study report was also to help the court decide whether the child’s welfare will be served by being adopted by the foreigner.
- children should not be given in adoption on the basis of a general approval of the foreigner. A recognised social or child welfare agency must approve a specific known child.
- an inter-country adoption should as far as possible be completed before the child attains the age of three years. The court however did not rule out the adoption of

older children but required that the wishes of such children be ascertained if they were in a position to indicate any preference.

It was in this connection that the Government of India was required to prepare a list of recognised agencies. The guidelines then suggested that

- a Central Adoption Resource Agency (CARA) be set up by the Government of India with regional branches at a few centres which are active in inter-country adoptions. CARA could act as a clearing house of information about children available for ICA. All applications by foreigners who wished to adopt children could be forwarded by a social (or child) welfare agency in the foreign country to CARA, which could then forward the application to recognised social or child welfare agencies in the country.
- Every social or child welfare agency had to therefore send to CARA the names and particulars of children under its care who were available for adoption. CARA would keep a record of these children.

However, since children were to be sent for ICA only if Indian parents were not available, hence

- every effort had to be made by the social or child welfare agency to find placements for the child by adoption in an Indian family.
- only if no Indian family came forward within two months could the child be regarded as available for ICA.
- this two-month requirement would not apply if the child was handicapped or needed urgent medical attention, which the social or child welfare agency could not provide. Thus adoptees who were ill or had a disability could be straight away offered for inter-country adoption.

Since the petition was filed primarily to prevent commerce in children, the court was at several points required to address the issue of recoverable costs, expenses and donations. On this question the guidelines provided the following:

- A social or child welfare agency should not charge from the foreigner wishing to adopt a child any amount in excess of that actually incurred by way of legal or other expenses in connection with the application for appointment of a guardian including such reasonable remuneration or honorarium for the work done and trouble taken in processing filing and pursuing the application as may be fixed by the court.
- As unlimited recovery of maintenance charges and medical expenses was nothing short of trafficking in children, the court ruled that the social or child welfare agency looking after the child selected by prospective adoptive parents, may legitimately receive from such parents maintenance expenses at the rate not exceeding Rs 60 per

day (this outer limit being subject to revision from time to time by the Ministry of Social Welfare, Government of India) and actual medical expenses including hospitalisation charges.

- The guidelines did not prohibit a foreigner from making a voluntary donation to any social or child welfare agency, but required that no such donation for prospective adoptive parents be received until after the child had reached the country of the prospective adoptive parents.

Recognising the sensitivity of the matter, the guidelines required that

- the proceedings on the application for guardianship be held by the court *in camera* and be regarded as confidential. That is, as soon as an order was made on the application for guardianship, the entire proceedings including the papers and documents were to be sealed.
- the Government of India send to the Indian Embassy or High Commission in the country of the prospective adoptive parents, the names, addresses and other particulars of both the parents and the children taken by them, requesting that the Embassy or High Commission maintain an unobtrusive watch over the welfare and progress of such children.
- the biological parents be given no information on the identity of the adoptive parents of the child.
- the adoptive parents be given the child study report and all other particulars on the adopted child, including if available, particulars of the biological parents.
- informing the adoptee about its biological parents be at the discretion of the adoptive parent. While anxieties were expressed on the appropriate time for providing the information, the guidelines in no way prohibited the supply of such information to the adoptee.

These guidelines, issued by the apex court in this case, were the primary basis for legal regulation of ICA. To understand the subsequent modifications ordered by the court⁴ a reference to these original guidelines is necessary. The court had required the establishment of a Central Adoption Resource Agency under the aegis of the Ministry of Welfare. The notification of the adoption guidelines was amongst the first regulatory tasks undertaken by the ministry. These procedures were first notified in 1989, and then on the basis of the suggestions made by a high-powered expert body headed by Justice P. N. Bhagwati, a

⁴ These subsequent orders were made by the court in *Lakshmi Kant Pandey vs Union of India* AIR 1986 SC 272; (1991) 4 SCC 32 and (2001) 9 SCC 379.

modified version was notified in 1995. It is believed that the ministry is once again revising these guidelines. However, no such notification has been as yet issued.⁵

The CRC Mandate

The L. K. Pandey rulings and the subsequent CARA guidelines contain the rules formulated by national law to regulate ICA. After India signed and ratified, in 1993, the Convention on the Rights of the Child (CRC), several international commitments were added to these domestic requirements. An analysis of the articles shows that the CRC recognises “that the child for a full and harmonious development of his or her personality should grow up in a family environment...”.⁶ While the preamble lays stress on growth in a family environment, Article 7 declares that a child “shall have the right from birth to a name... and as far as possible the right to know and be cared for by his or her parents.” Article 9 requires the parties to the convention to ensure that a child shall not be separated from his or her parents “unless such separation is necessary for the best interests of the child”.

While the convention accords primacy to the family environment, it does recognise that there could be situations where a child may temporarily or permanently be deprived of his or her family environment. In such situations the state has been obliged by article 20 to devise “alternative care” for such a child. Amongst the suggestions, adoption has been included. However, in the context of ICA, it is pertinent to note that the article further provides that “[w]hen considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”.

Article 21, which explicitly deals with adoption, provides that states which recognise and/or permit the system of adoption must be aware that the best interests of the child shall be the paramount consideration. Clause (b) to Article 21 allows ICA to be considered as an alternative means of childcare if “the child cannot be placed in a foster or an adoptive family, or cannot be in any suitable manner be cared for in the child’s country of origin”.

The commerce in babies, which was of concern to the Indian Supreme Court, also finds mention in the CRC and clause (d) requires states to “take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.” The article further recognises the need

⁵ In June 2004 the Ministry of Welfare attempted to standardise the practice of in-country adoptions by notifying a set of revised guidelines. The changes introduced by the court and CARA will be described and analysed later in the study.

⁶ Para 6 of the Preamble to the CRC.

for international cooperation in protecting the child, and therefore suggests that states “promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.” And Article 35 further requires states to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

The CRC contemplates adoption only if the child, in his or her best interest, cannot be retained with his or her parent. Further, it clearly privileges in-country adoption and in-country foster care over ICA. It is significant that in the CRC, in contrast to the Hague Convention, ICA is to be explored only after in-country institutionalisation also fails. The CRC mandate for domestic care for the child is even stronger than the L. K. Pandey guidelines. It posits as a general rule, that in-country care and rehabilitation be in the best interest of the child. Thus the CRC, even more than the Pandey guidelines, requires mechanisms in place which encourage finding children a home within the country. This socio-legal investigation thus aims to find out the extent and manner in which these domestic and international obligations to children are being fulfilled in India.

II

Socio-legal Investigation of ICA

Survey of literature

The study surveyed the available literature – on ICA generally and particularly on ICA in India – in order to devise its methodology, and to ensure that it does not ‘reinvent the wheel.’ Several areas of adoption research were surveyed. Among these were documents, essays, websites⁷, books largely dealing with statistical overviews of adoption, and surveys conducted on adoptees⁸, and specific research pertaining to India.⁹ The literature survey showed that ICA was dealt with in the following kind of studies.

Sourcing of Children

These studies focused attention on the manner in which children are sourced for ICA. Amongst the major studies carried out under this head is the Save the Children UK study on ICA in Bulgaria¹⁰ which found that the commerce in foreign adoptions was

⁷ Documents, essays, websites : Abolish Adoption: A Petition & ‘Adoption Alternatives’ Public Service Mega-site, available at www.abolishadoption.com.

‘Adoption History Project’, Department of History, University of Oregon, Eugene, Oregon, available at: <http://darkwing.uoregon.edu/~adoption/siteindex.html>.

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Raible, John (1990) ‘The Significance of Racial Identity in Transracially Adopted Young Adults’, New York State Citizens’ Coalition for Children, Inc., available at www.nysccc.org/T-Rarts/raible.html.

⁸ Survey on adoptees : Ambert, Anne-Marie (2003) *The Negative Social Construction of Adoption: Its Effects on Children and Parents*, April, available at <http://www.arts.yorku.ca/soci/ambert/writings/adoption.html>.

⁹ Specific research on India : Bjorkqvist, Kaj (n.d.) ‘Orphanages in West Bengal: Factors Determining Orphaned and Abandoned Children’s Development and Well-Being’ Ser. Pro Faculate (no. 3), Finland.

¹⁰ Save the Children UK (October 2003) *Position Paper on International Adoption of Children from Bulgaria*, London.

breaking traditional ties and families were being denied the right to take care of their kith and kin. In India, Gita Ramaswamy and Bhangya Bhukya's study on the children of the Lambadas¹¹ found how economically vulnerable parents can be induced to part with their children. The study also unearthed evidence on questionable practices of adoption agencies whereby they duped uneducated, poor tribal parents to part with their children. Both the studies signalled alerts on the trafficking dangers lurking in ICA.

Statistical Surveys

Broadly speaking, statistical overviews indicate that ICA is a rising trend, the USA emerging as by far the country bringing in the largest number of babies and children for adoption (see Annexure 2).

Country Studies

In the India-specific adoption studies we found one relating to the adoption of children in West Bengal and the other relating to adoption of older children.

Adoption Impact Studies

There have been a number of studies evaluating the impact of adoption on adoptees. These surveys showed mixed trends. Adoptees are shown to be doing well subjectively, but not normatively. A majority of the studies are qualitative works based on small groups of children or adolescents and focus on issues of attachment, adjustment and self-esteem. Adoptees criticise adoption researchers for explaining the "negative" impact of adoption by exclusively relying on pre-adoption factors and/or genetic factors, while the post-adoption factors, i.e., environmental/family factors are neglected. Studies also tend to compare adoptees with either native white peer population or peer immigrant population. Again, adoptees ask whether these studies have compared the adoptees with their siblings in their home countries. Such a comparison would show whether economic security can be a substitute for emotional security.

E-Forums Adoption-Websites

Peculiar to adoption is the virtual internet world of adoptive parents who maintain lively e-forums¹² where heated debates on adoption are conducted, as well as forums run

¹¹ Ramaswamy, Gita and Bhukya, Bhangya (2001) *A Community Besieged: A Study on the relinquishment of Lambada girl babies in South Telangana, Hyderabad, India: UNICEF and Government of Andhra Pradesh.*

¹² E - forums: intadoptresearch@yahoo.groups.com,
ameetingplace@yahoogroups.com,
APChild@yahoogroups.com,
Ichild@yahoogroups.com,
<http://groups.yahoo.com/group/International-Adopt-Talk/>

by both adoption agencies and adoption interest groups.¹³ There are also sites maintained by adoptees themselves.¹⁴ Several studies deal with adoptees in specific countries.¹⁵ Several adoptees are in the midst of very interesting adoption research.¹⁶ This is a new and welcome trend, given that the field of adoption research over the last three decades has been dominated by adoptive parents and related people. One adoptive parent has written about her experiences of picking up a child in the midst of the Andhra scandal in 1999.¹⁷

The e-forums and adoption sites have primarily polarised into two groups – one which portrays the child as unfortunate and uncared for in the poor home country, and ICA as an act of goodwill that benefits both child and adoptive family, and the other

¹³ Adoption interest groups: www.adoption.com, www.ethicanet.org, www.adoptionresearch.nl, www.umassmed.edu/adoption, www.intladopt.org/results, www.education.umn.edu/ICD/IAP, www.adoption-research.org, www.fsos.che.umn.edu/mtarp, www.jcics.org, www.theadoptionguide.com.

¹⁴ Sites maintained by adoptees: www.alsoknownas.org/forums/
www.transracialabductees.org
www.icasn.org
www.i-a-a.org
<http://groups.yahoo.com/group/SAIA-T/>
Global Overseas Adoptees' Link Newsletter www.bastards.org.

¹⁵ Studies on adoptees in specific countries: Altman, Vivien (1996) 'Baby Trafficking or Inter-Country Adoption,' Signposts (Australia), July, available at www.signposts.uts.edu.au/articles/Australia/Children/333.html.
Björklund, Anders, Richardson, Katarina (2000) 'How Adopted Children Born Abroad Fare as Young Adults in the Swedish Labor Market', Sweden, 9 November, unpublished monograph, Stockholms universitet: Sociala forskningsinstitutet.

Bojorge, Cecilia (n.d.) 'Intercountry Adoptions: In the best interests of the Child?' Queensland University of Technology Law Journal 2(2): 266-91.

Dalen, Monica (2003) 'The State of Knowledge of Foreign Adoptions: A summary of the results of key international adoption research projects based in Scandinavia', Department of Special Needs Education, Faculty of Education, University of Oslo, Norway, available at www.comeunity.com.

Hjern, Anders and Allebeck, Peter (2002) Suicide in first- and second-generation immigrants in Sweden: A comparative study, Soc Psychiatry Psychiatr Epidemiol 37: 423-29.

Hjern, Anders, Lindblad, Frank and Vinnerljung, Bo (2002) Suicide, psychiatric illness, and social maladjustment in intercountry adoptees in Sweden: a cohort study, The Lancet 10 August: 443-48.

Swedish Ministry of Social Affairs (2003) Adoption at what price?

Law, Felicia (1993) 'Transracial Adoptions: A Case of Colorblind Love or Cultural Genocide', The Berkeley McNair Journal, Summer, Vol 1 (discusses a survey of Korean adoptees adopted by white parents).

Post Adoption Resource Centre, Australia, brings out a newsletter and several publications. Available at www.bensoc.asn.au/parc.

¹⁶ Wei, Albert S (1998) 'States and Babes: A personal and political perspective on International Adoption', Bastard Quarterly 3(1). Spring/Summer Williams, Indigo (2003) 'Cultural background – Who Needs It?' Presented at the SA and UGS Student Conference, 22 August, University of Technology, Sydney, Australia.

Ti.nh "Yellow Skinned Babies by Nobody We Knew", accessed June 2003 at www.eastwindrecords.com.

¹⁷ Abbott, Frances (2003) My Gifts from India. Bloomington, USA and Milton Keynes, UK: 1stBooks Library.

which portrays adoption agencies as corrupt with links with intermediaries in Third World countries who buy, steal or kidnap children for sale. It is even possible to see two broad categories of adoptive parents – one, a dwindling minority with biological children, who welcome an adopted child into their family because they want to provide an orphaned child with a loving home. The other group, and by far the larger one, is adopting only to satisfy their own shortcomings, either because they want to have a child after having failed to do so, after undergoing all kinds of medical tests, or because they feel inadequate and unfulfilled in their own social environment.

The compelling need to have a child is so strong, that they willingly accepted a child (like so many others from the majority group) with documents falsifying the origin and history of their adoptive children. This type of parent is willingly entering into a conspiracy with perpetrators, in order to be rewarded with a much-wanted gift unobtainable through natural means.¹⁸

Despite the complicity of some parents, the anecdotal accounts of illegal and unethical practices of agencies (revealed by adoptive parents on the different forums on the internet) are of a very large order.

Gita Ramaswamy, who, incidentally, participated in a number of these forums (between April 2003 and July 2004), found them rich in experiential information. However, as these forums operate on strict norms of confidentiality, the information which is exchanged on them (which can be a basis for personal resolution and sensitisation) cannot be publicly disseminated. The literature survey did highlight the paucity of material on ICA in India. Also, most studies tended to focus on one or another dimension of ICA. These perspective studies convinced us of the need to undertake a comprehensive evaluation of ICA especially as both the Supreme Court directives and the CRC mandate required that the law and practice of ICA be critically evaluated from a child rights perspective.

¹⁸ As written in a personal communication from an adoptive parent, explaining the differing attitudes among adoptive parents.

III

Methodology

Sites of Investigation

On the basis of the volume of ICA in the country¹⁹ we decided to study ICA in Karnataka, Delhi, Maharashtra, Tamil Nadu and West Bengal. In view of the socio-legal nature of the issue, we decided to study it at both the social and the legal planes. For the legal segment of the study we decided to scrutinise the ICA court records in Bangalore, Chennai, Delhi, Kolkata and Mumbai. Delhi had to be subsequently dropped from the study as the necessary permissions were not granted.²⁰

Objective of Data Collection

In the other four cities, information from court records was reduced to a standard format.²¹ The format was devised to collate information to, first, give us a sociological profile of the various actors of ICA – parents, adopters, adoptees and the agencies – and, second, show the degree to which the L. K. Pandey guidelines were observed.

Random Sampling

We decided to get this information randomly from court records of 1990-2003. We selected a larger number of court records for more recent years, since contemporary practice had greater relevance to the objectives of our study. The varied levels of supervision, monitoring and control exercised by each court registry became a useful addition to our quest for randomness. However, these local variations prevented us from obtaining uniformity on cut-off dates and sample sizes.²²

¹⁹ For state-wise break-up of ICA, see Annexure 2.

²⁰ Subsequent efforts at inclusion too did not meet with success.

²¹ The heads of data collection are in Annexure 3.

²² For example in Kolkata the study was initiated with the more recent records and there too, there was a strict 'ration' in relation to numbers. In contrast, all other courts started with the older records and, in the main, the researchers were allowed to determine the sample size.

Socio-Legal Investigation

The study of court records was expected to yield insights on how the law in books operated in action. But the law also operates in the context of the needs and aspirations of the larger society. Hence, for a holistic understanding of the law, it was necessary to construct the social context. To this end, after the legal research, we conducted social investigations in the four cities mentioned above. These aimed to draw up the adoption scenario in each city by exploring the questions of demand and supply: who were the persons seeking children in adoption? How was this demand being met? What was the dominant procedure for supply of children? Was it abandonment or relinquishment? How many adoption agencies undertook ICA? What were their methods of operation? What other child welfare work did the agencies undertake? Answering these questions, we believed, would also yield insights on the range of expectations impinging on the functioning of the law.

Impediments in Accessing Information for Social Investigation

We conducted the social investigation because it was difficult, if not impossible, to research these questions ‘scientifically’. The reasons were not far to seek. We obtained access to the ICA court records with due permission from the concerned High Courts. The records of the adoption agencies were not open to public scrutiny. The people with the most knowledge of the patterns in adoption (agencies) have no reason to report it, because it is in their best financial interests to maintain the highly profitable *status quo*. We could obtain access to these records only with the consent of the agencies. We feared it would be difficult to obtain this consent from the agencies and especially if the agencies were functioning in breach of the law.

Ground Difficulties in Social Investigation

This difficulty in access to information was borne out by each of the social investigations in different ways. Thus the investigator from Bangalore reports that

The idea of the study was not taken very favourably by most organisations in the field of adoption. Several of the agencies were not even willing to share the statistics, which in a democratic country like ours amounts to ‘public information’. At least three agencies [Ashraya, St. Michael’s Home and Missionaries of Charity] refused to provide the figures which would aid in tracing the trends in inter-country adoption for the last five years.

The researcher records that, “the findings or trends in this report have been gathered in an atmosphere of suspicion, wariness and general indifference on the part of the adoption agencies.” The researcher has therefore obtained most of the information either from

those agencies that only undertook Indian adoptions or from personnel of agencies which once undertook ICA but had now closed down. The Karnataka study has also relied on a study in adoption undertaken by the Bangalore Media Forum in 1991.

The investigator from Chennai reports how difficult it was to obtain information from either the agencies or the authorities and found that “a lack of openness and transparency” plagued the system. The report was written after collecting and verifying data from several sources. The investigator in Mumbai was assisted by the fact that a High-powered Committee of the Bombay High Court on Observation Homes²³ decided to investigate one of the adoption agencies in Nagpur. The authoritative data obtained by this committee provided a useful starting point for the investigator who again had to draw the social scenario on adoption by pooling information from several sources.

It is pertinent to note that the above three investigators were able to undertake their brief because they tried to obtain information by both direct and not-so-direct methods. The investigator in Kolkata, however, adopted only the direct method and was effectively stonewalled. The following incident graphically describes the travails faced by the investigator in Kolkata.

During the visit to a placement agency in North Kolkata, the concerned person did not give any time for discussion on the grounds of being very busy and asked to make an appointment with him after almost three months. As per the suggestion of the person, another organisation was visited immediately which was about 9 km away and it was a surprise to find that the same person was present there within 45 minutes. The person happened to occupy an influential position in the second organisation as well. Being apprehensive about the possibility of collection of relevant information from there, we understood that the chances of obtaining the same were also sealed. It was clear that all the agencies are inter-linked and they have good professional understanding within themselves, which was later corroborated by one of the staff members of the organisation.

Given these travails, investigation was undertaken in a somewhat journalistic fashion with the data from the court records providing the basis for interrogating concerned players, be they adoption agencies, nursing homes, Voluntary Coordinating Agencies (VCAs) or CARA.

²³ The committee had Justice Hosbet Suresh, Ms Asha Bajpai and Ms Kalindi Muzumdar as members.

The Journalistic Method

We adopted the journalistic mode knowing that investigations into the grey areas of social intercourse need such techniques. We are aware that calling them “grey areas” could be interpreted as bias. It is this bias, it may be alleged, which makes us deduce fire behind every billow of smoke, and widespread illegality behind every minor infringement. However, it is generally believed that a researcher’s awareness of her predilections is ultimately the most potent safeguard against bias. Hence even though the social investigations were conducted without access to official records of adoption agencies, the information was corroborated by multiple sources to offset the researcher’s bias.

Perspective of Foreign Adopter

The study aimed at getting an in-depth understanding of ICAs. This would be incomplete without placing on board the perspective of the foreign adopter. To this end an ongoing dialogue was maintained with a number of foreign adopters by one of us (Gita Ramaswamy) by subscribing to a number of adoption e-forums.

Standpoint of Adoptees

Lastly, and most significantly, the issue had to be viewed from the standpoint of the adoptees. To include the perspective of the adoptees, we studied closely a number of web sites voicing their views. We even corresponded with individual adoptees. For a more objective study on questions of identity of adoptees and secrecy of the adoption process, a number of psycho-social studies dealing with these questions were perused.

Part II

I

The Court Study

Number of Records

As already mentioned in the section on methodology, the research design required all investigators to start from the same point in time and pick a similar number of cases for each year. However, the dissimilar ground realities dictated the year and sample choice. Consequently, 843 records were perused in all: Bangalore (286 records), Chennai (130), Kolkata (57) and Mumbai (370).²⁴

Absence of Data

It was further found that many records were incomplete. For example, out of the 843 cases there were 340 cases of relinquishment and 124 of abandonment, but in as many as 379 cases, there was no information on why the child became available for ICA.

Reasons for ICA

The L. K. Pandey guidelines permit inter-country adoption if in-country adoption is not possible. Reasons for opting for foreign adoption were given in 528 of the 843 cases. Indian adopters being unavailable was listed as the reason for foreign adoption in as many as 341 of these cases. But the remaining records do not substantiate this claim, since only in 9 of the 341 cases were there letters of rejection from Indian adopters. In only 5 cases was there evidence of the Voluntary Coordinating Agency (VCA) writing to other parents—in 632 cases there was no such evidence. In 206 cases, no information was available on the reason for opting for ICA. The lack of documentary proof on seeking out Indian parents assumes even greater importance when it is noted that only a small proportion of these cases were from categories where the Supreme Court had permitted direct resort to foreign adoptions. Thus only 87 of the cases related to persons with disability, while 5 were of siblings and 2 of twins.

²⁴ Details in Annexure 3.

Children with Disability

The reason for allowing the foreign adoption of children with disability was based on the belief that there would be many more takers for such children abroad. It is therefore significant that out of the 843 cases only 87 recorded the acceptance of children with disability. In 269 cases the foreign adopters wanted a healthy child whilst in 491 cases no response to this query was recorded. From December 2000 to 2003, out of the 1484 cases in which no objection certificates were given, only 19 were accorded to children with disability.

Search for Indian Parents

One way to deduce that there was a search for Indian parents is to see if the statutory waiting period was observed. The recorded data showed that the waiting period was duly observed in 445 cases. In 267 cases information under this head was not available; an omission that assumes importance in wake of the fact that in as many as 131 cases, the waiting period was not observed.

This mixed data does not lead to the inescapable conclusion that the allocated time is being used to search for Indian parents. Instead, the data seems to suggest the waiting period is seen as a time that has to be waited out before the ICA process can begin. Interestingly, many of the social investigation reports have shown that the waiting/searching period is very short and have sought to have it lengthened.

ICA and Best Interests of the Child

The L. K. Pandey guidelines allow ICA when in-country adoptive parents are not available. ICA is permitted because such adoption is not considered to be against the best interests of the child. This permission could be interpreted in two ways. First, one could say that if in-country adoptive parents are not available, ICA should be explored. Here, ICA is presumed to be in the best interest of the child unless evidence to the contrary is produced. The other interpretation is that despite the ICA permission, every individual case of adoption will be subjected to scrutiny on the touchstone of the best interests of the child.

Examining the data indicates that the legal regime for ICA operates on the basis of the first assumption. A number of factors lead to this conclusion. First, the courts have in nearly all the 843 cases accorded permission. This near-unanimous approval invites comment because, even if we ignore the breach of procedural requirements, there are a number of cases which would invite more scrutiny in the best interest of the child. And yet these cases have not been subjected to such scrutiny. For example, in as many as 50 cases the combined age of the adoptive parents is over 90 years. In 193 cases it is between 80-90 years. The best interest of the child would require that the adoption of a

child to a foreign country by parents of such seniority should invite decisional anxiety. However, no evidence of such anxiety could be perceived in the orders of the court. A similar without-comment approval has been given to adoptive parents who have two children (70 cases), three (41) and three or more children (17).

This unquestioning approach towards foreign adoptions is most dramatically brought out by a Chennai case where permission was granted to a couple without any special undertakings, investigation or comment, even when the man had a history of alcoholism and had been prosecuted for criminal assault.²⁵

An Inquiry by Terre des Hommes

It may be worthwhile here to summarise the findings of a 1999 report by Terre des Hommes (TDH), Germany, 1999.* TDH investigated five cases of Indian children adopted from the Missionaries of Charity (MOC), Delhi, and the Stella Maris Convent, Bangalore, through a German adoption organisation, Pro Infante. Subsequently, Initiative Adoptions Opfer** investigated these cases, and another three, in greater depth. The investigations show that no questions were raised even when there was reason to raise them.

Thus, the affidavits of the sisters of MOC and Stella Maris Convent uniformly stated that the mother was unknown but wished to place the child in adoption with a Christian family. Since no Indian Christian family was found willing to adopt, the child was being sent abroad. How the wishes of an unknown mother were found out was neither asked nor revealed.

While the affidavit by the sisters in the Indian court declared that the mother had relinquished the child, the affidavit in the German courts said that the child was “an orphan.”

* Terre des Hommes, September 1999. “Crime and other small things: The case Pro Infante action — child in danger regarding association and its consequences”, unpublished paper, Osnabrueck, Germany.

** Copy of the letter and annexures were sent by the organisation to CARA on 28 March 2004.

²⁵ An American professor researching law informed us in a personal communication in May 2003 that no American court would have granted permission to adopt in a case like this.

Need for Special Scrutiny

The two cases below show both how adoption agencies prey on single/unwed/widowed women, and why courts need to exercise greater caution in according sanctions.

In 1987, Seema was left by her mother for temporary care at the MOC, Jalandhar; Seema's father had died, and her mother had to support the family by finding work. In 1990, Seema was transferred to Delhi (without the permission of the Government or any other authority, or her mother's knowledge) and given in adoption to the Knuths of Germany. Meanwhile, the mother was searching for the daughter. When Seema began speaking German, she told her adoptive parents that her mother was very much alive and would be searching for her. The adoptive parents, on their own initiative, and without any assistance from the MOC, searched out Seema's mother, and returned her to her mother in 1994. On 24 November 1997, the Knuth family communicated the entire matter to CARA — with no response. Whilst Seema's adoption was repealed in Germany, the court in India that had initially granted guardianship was not even informed.

* * *

When Sarojamma's husband deserted her and she had to work, she left Bharati, her nine-year-old daughter, in 1984 in the temporary care of Snehalaya, a home run by the Stella Maris sisters in Bangalore. In 1984 itself, guardianship of Bharati was awarded to the Koppers from Germany. A traumatised Bharati in Germany rejected her adoptive parents outright, and asserted that her own mother would never renounce her. Meanwhile, when despite several visits to the sisters, Sarojamma was unable to see her daughter, she filed a criminal complaint at the Munsiff Court in Magadi. This, coupled with Bharati's own assertions, persuaded the Koppers to reunite Bharati with her own family in 1995. Bharati is now married in Malur, and has two children of her own. The Koppers family communicated all the details to CARA on 11 November 1998. However, the queries of the traumatised family and child have not been answered. The Family Court in Bangalore that awarded guardianship to the Koppers has also not been informed.

Information to Courts

That such matters should come to the knowledge of the courts is especially shown by the following case where the adoptive parents failed to rectify matters.

In 1988, the mother of five-year-old Sangeeta brought her to the MOC sisters in Ambala. The sisters transferred Sangeeta to Delhi in 1990. In the same year she was given in guardianship to the Brosingers of Germany. When Sangeeta

communicated to her adoptive parents that her mother was alive, the Brosingers wanted to attempt a birth search. When they persisted in their uncomfortable questions (discrepancies in documents, etc.) the German adoption agency took away the child from the Brosingers in 1994, and gave her to a second family. The court in India was not informed of this substitution.

Courts and Indian agencies do not have much control once the child leaves India. Whether the child has gained rights as a citizen is also not clear in all cases. If the child is not adopted in the new country, she or he could well remain stateless. Switzerland, for example, refused to grant Swiss citizenship to 57 children of international adoptions.* Ireland does not recognise Indian adoptions, yet children from Andhra Pradesh live there. Members of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, have reported cases in which problem-children of gypsy origin were adopted, then rejected by their American adopters, deprived of American citizenship, and then sent back to institutions in Hungary and Romania. In USA, a 19-year-old young man, whose parents had overlooked formally adopting him after taking him from Brazil, was deported to Brazil.** He was, of course, completely American-raised. Another adoptee from Korea into USA also faces such deportation.*** Such cases – which raise the question of continuity in the child's enjoyment of his or her fundamental rights — are not rare, particularly where trafficking is a factor.****

* According to a UNICEF ICDS report, quoted in the Report of the Social, Health and Family Affairs Committee, Parliamentary Assembly, Council of Europe, 2.12.1999.

** See <http://www.cleveland.com/news/plaindealer/index.ssf?/base/medina/108574382644180.xml>. He was later shot dead in Brazil, barely three years later.

*** See http://news.ncmonline.com/news/view_article.html?article_id=e24f232a39a1.

**** European Committee, op.cit.

Myth of Economic Affluence

The higher economic status of the foreign adoptor is an obvious reason to believe that ICA is beneficial for children from deprived backgrounds in a poor country. It may be pertinent to note that this benefit is again presumed and not proven. All the judgements convert the income of the adoptive parents into Indian rupees and view this high figure as an indicator of financial solvency. But the purchasing power of the salary has to be viewed in relation to the country in which this salary will be spent—no questions are raised to this effect. And while courts could be presumed to have some assessment of the purchasing power in relation to the American dollar, matters become a lot more complicated when assessments have to be made in relation to Danish (33 cases) or Italian (62) or French (31) currency.

An Assessment of the Role of the Courts

An ICA is complete when the Indian courts pronounce the order awarding guardianship. But the orders are not passed uniformly across the country. In Mumbai and Chennai, the orders are passed by the High Court in its original jurisdiction. In Kolkata, the jurisdiction is shared between the family court and the district court. In Bangalore and Hyderabad, the power resides with the family court.

Reliance on CARA Licence

Chapter 6 of the CARA Guidelines specifies the procedure by which foreign agencies can enlist themselves with CARA. The idea is that once an agency has been adjudged satisfactory by CARA, then adoptions proposed by it can be considered more protective of the interests of the child than an adoption arising from an unrecognised agency. The Tamil Nadu legal study refers to O.P. No 26/1997 where CARA clearance was withdrawn when it was found that the Government of India did not recognise the sponsoring agency. This refusal was however not taken to its logical conclusion. Thus, once the Government of India obtained an undertaking from the Government of Luxembourg the adoption of the child was cleared. The procedure followed seems to show an inclination to approve rather than disapprove an adoption.

That a license should be no reason for the court to relax oversight was borne out by the following facts which were unearthed during the Karnataka investigation. The Karnataka social investigation informs us that in March 1989 the Government of India had come down heavily on several agencies that were suspected of adoption malpractices. Of the 13 agencies operating in Karnataka, the licenses of 10 were cancelled and they were prohibited from undertaking ICA. They were de-recognised for flouting the law, aggressively promoting ICA and lack of trained social workers. In December 1989, licenses of three of the de-recognised agencies were restored with a directive from the ministry of welfare to encourage in-country adoption. Our investigation finds that the warning has had no impact on the functioning of these agencies.

Lack of Support from Superior Court

The task becomes that much more difficult when the scrutiny efforts of the subordinate court are not supported by the superior court. In 2000, when the Bangalore Family Court refused adoption, the Karnataka High Court overturned as many as 12 cases upon appeal, reasoning that once CARA requirements had been fulfilled, no further questions need be asked.

That the original court was according strict scrutiny to the process is demonstrated by the reasons provided for dismissal. Some of these were :

- Petitioners had adopted an Indian child earlier but no progress reports submitted.
- Prospective parents have a biological daughter and have shown no oral or documentary evidence of their infertility.
- Not enough effort has been made to obtain an in-country adoption.
- According to the L. K. Pandey guidelines, foreign adoption should be made before the child is three years old. There is no evidence to show how a six-year-old child will adjust to a foreign culture.
- Petitioners were adopting a second female child.
- The relinquishment by the biological parents might not be valid.
- The possibility of profiteering/trafficking in children cannot be ruled out.

Once the lower courts enter and find that guidelines have been observed in fact, then even the Supreme Court is not inclined to intervene. Thus, in the *Sumanlal Kamdar versus Asha Shah* case²⁶ when it became doubtful whether the biological parents had been properly counselled on the consequences of adoption, the Supreme Court ruled that failure to properly explain the consequences of adoption to biological parents would nullify an adoption but did not reopen the case since both the District and the High Court had found due observance of guidelines. The Supreme Court in *Karnataka State Council for Child Welfare vs Society of Sisters of Charity*²⁷ again reinforced the norm of ‘primacy to in-country adoptions’ when it reiterated its preference for Indian adoptive parents over foreign ones. However, on being told that the child whose case was being contested had already left the country, it did not feel impelled to do anything further in the matter. Thus, the situation is one where special efforts are made to facilitate ICAs but no urgency is felt to stop them.

Nepotism in Registry

The need for scrutiny and vigilance again emerges in another set of cases documented in the Karnataka legal report. In these cases, there were no appeals filed on dismissal of petitions by the family court. Instead, the documents were clandestinely removed – that is, without a memo being filed – and another application was filed before the family court for the same adopters to adopt the same child. The petitions were allowed in the second round without mentioning the earlier dismissal. The scrutinising agency, the Karnataka State Council for Child Welfare, recommended the adoption of the same child twice to the same parents with hardly a few months separating the two clearances. The first of such cases reportedly occurred in 1996, and the same strategy was employed in as many as five cases in 2000.

²⁶ 1995 (3) SCC 700

²⁷ 1995 Supp (4) SCC 529

Filtering of Information to Court

Two cases from Andhra Pradesh further illustrate the manner in which information to the court is filtered. In 2001, one Angelique Hatch applied for and obtained the guardianship of Zuleika (who was in Anita Sen's home Precious Moments) from the family court. After discovering new facts about the case the Department of Women and Child Welfare appealed to the High Court. Angelique Hatch did not reveal, at any stage of the investigation, or in her response in the High Court, that she was to give birth to a child, and had adopted another one. In India, parents who already have a child have a lower priority than childless couples. Revealing this fact could have substantially altered the manner in which the court viewed the case of the foreign adoptive parent. Yet the adoptive parent did not feel obliged to reveal these facts.²⁸

In yet another case, Gail Hunt filed a guardianship petition for Priyamvada (living presently at the Tender Loving Care). The family court in 2003 dismissed her petition, both because of the irregularities, and also the discrepancies in the statements by Hunt and her live-in partner, whom she later married. Challenging this refusal, Hunt appealed to the High Court. While the appeal was pending, in April 2004, her husband, Steven Showcatally, murdered a six-month-old infant in its own home.²⁹ This infant, Gustavo Hunt, was adopted from Guatemala (a fact which was also not revealed to the court). Till date, these facts have not been brought to the notice of the Indian court where the appeal is pending, and the court has no other way of knowing.

Mechanical Functioning

These cases showed us that though the courts were supposed to be the ultimate watchdogs, they exercised their authority quite mechanically. There had been little or no application of mind. In fact, it was reported from every jurisdiction that the court simply used a standard form judgment, changing merely the name and other particulars in each case! This explains the absence of comment in the judgments, even when one was needed. In the following paragraph, we discuss several shortcomings in the functioning of the courts.

Scrutinising and evaluating the relevant data emerges as the core job of the courts in ICA. Since the proceedings were non-adversarial, no one brings to the notice of the court shortcomings in the applicant's petition. The courts are thus required to discover the shortcomings and to act upon them. The court is expected to undertake this after

²⁸ Information given by Angelique Hatch herself in Adoption Week emagazine, 5 August 2003, available at <http://e-magazine.adoption.com/articles/303/the-building-of-the-hatch-family.php>

²⁹ Star Tribune, Minneapolis-St. Paul , March 19, 2004. Also see www.duluthsuperior.com/mld/duluthsuperior/8391728.htm

scrutiny, and after specialist child welfare authorities such as the VCA and CARA have already approved the adoption. This expectation is misplaced, as will be seen from the composition and functioning of these administrative agencies.

Monitoring, Review and Scrutiny Bodies

The VCAs

The Voluntary Coordinating Agencies (VCAs, sometimes called VACAs) were established not only to monitor ICAs but also to assist in finding Indian adoptive parents for the child, and according to the CARA guidelines, “to actively promote Indian adoption” (7.1[a]). Also, “where Indian adoption is difficult within its area of operation it shall coordinate with other VCAs in the State and in the country” (7.1[e]). To assess whether VCAs are suited to perform this function, we need to examine their composition.

The CARA guidelines accord membership to all CARA-recognised placement agencies whether undertaking in-country or inter-country adoption. However if an agency is doing only child welfare work, then its membership of VCA is at the discretion of the executive committee of VCA (7.5). Further, even if admitted, these child welfare agencies do not have the right to vote at the election of the VCA executive committee (7.6). This means that organisations that are concerned for children, but are not members of the adoption ‘club’, have no right to comment on the manner in which the club runs its affairs. This independent voice has thus been explicitly silenced. The guideline gives membership to only those placement agencies recognised by CARA. An agency which only undertakes in-country adoption, has no reason to obtain a CARA license since such a license is not necessary for its work, and gives the agency no special benefits. Consequently, the VCAs primarily become bodies of agencies that are substantially if not exclusively engaged in ICA.

A look at the power dynamics within VCAs makes this charge more explicit. The Tamil Nadu social investigation finds the VCA burdened with the responsibility of implementing the Supreme Court guidelines and a code of ethics in a hopeless situation. A person connected with the VCA there bemoaned the fact that they have no choice but to work within the limits set by the agencies. The staff has a mandate not to “tread on agency toes”. Thus, the VCA there is often reduced to a shouting match between the honorary officials (who are not agency representatives) on the one side, and the adoption agencies on the other. In this situation, there does not appear to be much the VCA in Tamil Nadu can do to restrict ICA of normal healthy children. Furthermore, from time to time, adoption agencies form a caucus and threaten to boycott the VCA or set up a parallel VCA. Therefore, VCA flounders under pressure from the agencies rather than tightening up its monitoring and regulatory mechanism. The Maharashtra report records the Secretary of the VCA stating that parents sent by the VCA to agencies are given short

shrift, not counselled and frequently sent away, being told that they should come after a few months, as the 'Indian quota' of the agency was over.

The primacy accorded to inter-country adoption agencies in the VCAs is also retained in the composition of the Executive Committees: ICA agencies have been given three seats in contrast to one member to be elected from agencies only undertaking Indian adoptions (7.8 [d]). Further, the representative of the in-country adoption agencies holds office for only two years and is not eligible for re-election for the next two years (7.8 [e]). This 'embargo' does not apply to the ICA agencies. And it is this body that has been given the task of promoting Indian adoptions. How realistic is this expectation?

Scrutinising Agencies

If the composition of VCAs seems weighted towards ICA agencies, the functioning of the scrutinising agencies seems similarly coloured. Guideline 8.1 of the CARA guidelines requires any independent reputed social or child welfare agency to be a scrutinising agency. Such an agency should not have been involved in any manner in the placement of children in adoption. The Indian Council for Child Welfare (ICCW) and Indian Council for Social Welfare (ICSW) have been so recognised. However, the state chapters, which are not independent of the parent body, have been placing children in adoption. For example ICSW Andhra Pradesh, which is clearly involved in ICA, is a member of ICSW India.

CARA

CARA too is not exempt from these contradictory pulls (2.8 A). Except for the Secretary and the two representatives from the Ministry of External Affairs and Department of Women and Child, the allegiances of the others are not clear. The Chairperson of CARA is also the head of the ICCW (at the time of this study). Both the ICCW and ICSW are closely linked with placement agencies, in some states even functioning as placement agencies themselves. The four representatives of recognised placement agencies seem to have a conflict of interests which renders suspect their capacity to monitor the murkier aspects of ICA. The last is the representative from the VCAs, who is perceived as being under the control or at least within the sphere of influence of the ICA lobby. With these subtle and not-so-subtle conflicts of interest plaguing CARA, just how able is it to perform the role of an independent regulator?

Are Courts Needed?

The above seems to show that the courts have been no more than 'stamping authorities'. Except for increasing transaction costs and legitimising a questionable process, little else was being achieved with their involvement. We wondered whether, under the circumstances, it might be more appropriate to make the approval an administrative

activity, to be performed by administrative authorities. The answer, unfortunately, is no, because administrative authorities function in a less open and transparent manner than judicial authorities. Besides, this administrative authority would be just more of the same – one more tier in the VCA-CARA ladder.

How to Make Courts Effective

If the courts then continue to have a role to play, their scrutiny should be real and meaningful, and not sham and notional. Perhaps what we need are capacity building measures such as judicial training. The court's role could be made more effective by a lawyer representing the child's interest, or a research assistant to scrutinise documents for the judge. In any case, these suggestions to improve implementation assume that the normative regime on ICA is unproblematic. Our social investigations, e-forum analyses and psychosocial research indicated otherwise, as the data in the following section demonstrates. We were therefore forced to re-examine the legal regime.

II

The Social Investigation

The Supreme Court in the L. K. Pandey guidelines and the subsequent CARA guidelines asserted that ICAs were to be considered if in-country adoptions were not possible. That is, the various agencies should facilitate Indian adoptions, and all things being equal, Indian adopters should be preferred. However, our study has found that the bar was raised, and the rules of the game changed for Indian parents.

Bias against Indian Parents

The following table brings home the point by comparing the rules formulated by the Government of Andhra Pradesh³⁰ for Indian parents and those in force for foreign adopters.

AP rules for Indian adopters³¹	CARA rules for foreign adopters
Combined age should not exceed 90 ³²	No age bar till 2003
Single parents not preferred, positively discouraged ³³	No requirement on marital status
Should be free from hypertension, diabetes and contagious diseases like AIDS, TB, etc.	No such disqualification
Should necessarily produce infertility certificate ³⁴	No such requirement
Unwritten rule that income should not be less than Rs. 10,000 per month, thus ruling out everybody below the middle-class ³⁵	Foreign dollars are mentally converted to Indian rupees, forgetting that foreign adopters have to buy foreign potatoes, not Indian ones

Since adoption agencies did not reveal how they processed applications by Indian parents, the following word-of-mouth reports are being recorded on the rationale that there is no smoke without a fire. Such a collation, it is hoped, will be the basis of a more intensive investigation by the concerned authorities.

The following incident recorded in the Maharashtra report gives an idea of the suspicion with which Indian couples are viewed. A farmer couple who had come to adopt a child in Mumbai were forced to go through the rigmarole of a second civil marriage, even though they had been married many years. This meant that they had to wait for more than a month before they were allowed to take the child home. Similarly, home studies carried out by Shishu Mandir (Bangalore) have found a number of parents unsuitable either due to the income criteria or unsuitable living conditions or because they were uneducated. Further, children were rarely given in adoption to Muslim or Christian families.

Bias Against Working Class Parents

The bias against the working classes and relatively poorer parents has also been reported in the Tamil Nadu study. Agencies prefer middle- and upper-class families, arguing that with the present cost of education and the dowry system, only members of these classes could bring up girl children. One agency head openly said, “it is the privilege of the elite to adopt”. Prospective adoptive parents from ordinary families were not even registered. Now, while working-class people were not considered suitable parents, most babies and children come from ordinary, working-class families. This difference in social background between suitable parents and available babies often resulted in a mismatch in skin colour. Thus, while the available babies were dark complexioned, the suitable parents were fair skinned. This situation has often resulted in children at first waiting for long periods in adoption homes and then being diverted into the ICA network.

³⁰ These are in force and can be found in Guidelines for Adoption, Hyderabad: Department of Women and Child Welfare, Government of Andhra Pradesh.

³¹ During the processing of the data of this study, CARA notified a new set of guidelines for in-country adoptions. See SO 711 (E) Gazette of India Part Section II Extraordinary, dated 1 June 2004. These guidelines are only a few months old; their impact on practice remains to be seen.

³² The 2004 guidelines retain this, but allow it to be relaxed in exceptional cases when the age of one of the prospective parents exceed 55 years.

³³ The new guidelines state that single parents “can also adopt”. But, along with some age-related qualifications, the guidelines also require that they have additional family support.

³⁴ The new guidelines make no mention of an infertility certificate, but whether or not this will be demanded in practice remains to be seen.

³⁵ The new guidelines require a minimum average income of Rs. 3000, and allow for a lower income holder to be considered if other economic assets are available. Sishu Vihar has been comparatively flexible with income guidelines.

Thus, on the one hand, working class families are not being registered, and on the other, the typical childless working-class family cannot afford to adopt through the existing system. Prospective parents from the working class and the lower middle class cannot pay for the babies from the adoption homes. Some agencies blatantly say they need money to run the home, so they need to charge. And the agencies that charge only legal fees and a small registration charge do not consider skilled manual workers, without permanent jobs, as worthy of being registered as prospective adoptive parents.

Contrast this situation of turning away Indian working classes with little or no significance given to the profession of a foreign adoptive parent. Thus, the legal reports find that the foreign adoptive parents cut across a class spectrum – if there were doctors, engineers and management experts, there were an equally large number of carpenters, taxi drivers, plumbers and farmers.³⁶

Fair Baby Myth

Adoption agencies also persist in perpetuating a myth that all prospective adoptive parents are looking for a ‘fair’ baby ‘matching’ the parents’ skin colour. Adoptive parents do not have the power to decide which child they will finally take home; nor is it always the case that Indian parents are looking for an exact ‘colour match’. Most of the time, prospective adoptive parents accept the baby they are shown. And other minor misgivings are dealt with through counselling.

Private adoption agencies claim that Indian adopters only want healthy, high birth-weight, male babies. Others are not wanted in India. This may have been true twenty years ago, when there were few formal adopters. It is no longer true. Instead, Indian parents seeking girl babies of normal health from private adoption agencies report harassment. Many agencies refuse to register them. If registered, they are not shown babies. Those parents directed by the VCA to visit agencies are warded off by being shown babies with medical conditions or suspect HIV positive reports. In very many cases, depending on the resources of the parents, demands for money are directly made.

Indian Adopters are Available...

Talking to agencies that undertake adoptions confirmed that Indian parents are available. A Board member of Anatha Shishu Vihar, for example, asserted³⁷ that there was no dearth of India parents from all classes – rural, middle and urban. Contrary to the oft-quoted ‘boy preference’, many parents, he contended, preferred girl babies. A similar claim was also made by Dr Lina Kashyap, head of the department of family and child

³⁶ There were 19 house helps, 10 drivers, 80 workers, 23 farmers and one fisherman.

³⁷ In a meeting on 31 July 2003.

welfare³⁸, Tata Institute of Social Sciences, and presently the chairperson of VCA, Mumbai. She holds that, over the years, both the social trend and the hard numbers show that adoptions by Indian parents are on the rise: older couples are keen on adoption, and more families are welcoming girl children into their houses. Also, within cities, awareness about adoption and its level of acceptance has risen. Unlike earlier times, adopting a child whose background was not known is no more looked down upon: caste-class distinctions are quite diffuse.

Similar claims were made by the managers of Surabala Nilaya Sangha, an agency based in Bangalore.³⁹ They believe that there is no dearth of Indian parents coming forward to adopt. Within months of being born, babies are being adopted, mostly by middle-class parents, and with very few stipulations on the kind of child they want to adopt.

That Indians are more than willing to adopt children, if allowed to by the agencies, is also supported by the various reports in the press. Thus the Times News Network reports the case of a widow who agitated right up to the High Court to adopt a girl child found in a garbage vat in Bowbazar, Kolkata.⁴⁰

... Even for Children with Disability

The following case, reported from Sofosh, Pune, shows dramatically that it is more a matter of education and counselling than any 'non-negotiable' expectations on the kind of child adoptive parents want. One parent wrote a letter listing 22 'requirements', and finally after counselling, a child with 40% ear discharge and deafness could be placed with this Indian family in adoption.

Another telling example is that of Asha, a 'high profile' two-year-old orphan at Freedom Foundation, Hyderabad. In September 2003, NDTV (a national news channel) ran three stories on Asha, reportedly HIV positive⁴¹. A total of 8 queries for possible adoption came to the channel, with two from Hyderabad⁴². The channel also ran an interview with one couple who declared that they wanted the child in adoption, irrespective of her HIV status.

That a child with disability would certainly not find an Indian home is also belied by the following incident reported from Mumbai by Dr Lina Kashyap. She recalls a 12-year-old girl, a Bharat Natyam dancer who was an adopted child. The couple who had

³⁸ In a meeting at Tata Institute of Social Sciences on 12 September 2003.

³⁹ Interestingly this agency was undertaking foreign adoptions until 2000, even after being derecognised by the department in 1989.

⁴⁰ <http://www1.timesofindia.indiatimes.com/cms.dll/articleshow?msid=603980>.

⁴¹ HIV and AIDS are disabling conditions and therefore clubbed, at least informally, under disability.

⁴² Personal communication from Sudheer, NDTV, 28 September 2003.

adopted her already had a biological son but had adopted a girl to complete the family. Within 6 months of adoption, examinations revealed that she would not be able to hear. The agency had thought that the couple would probably return the child, but they chose to keep the child and encouraged her talent, and today she regularly gives Bharat Natyam performances. Indeed, Dr Kashyap goes so far as to say that she has not come across cases of failure in Indian adoptions in several years.

Dissuading Indian Adopters

Despite these altered perceptions, a first-person narrative in the *Deccan Chronicle*, Hyderabad, reports⁴³ how an Indian adoptor was systematically discouraged by the doctors, the adoption agencies and the bureaucracy. The article narrates the humiliation of having to obtain an infertility certificate before the application for adoption is processed, the delays in home study reports, and the subsequent delays in obtaining custody of the child. This report is in striking contrast to the stories by foreign adopters who prefer Indian children because of the swiftness with which their applications are processed.⁴⁴

Instead of seeking out Indian adopters, agencies function on the basis of what is called the 'Indian quota'. This means that agencies do only as many Indian adoptions as CARA has made mandatory. CARA requires agencies to have 50 percent Indian adoptions. This number is calculated after excluding siblings, older children and special needs children, for whom the 'quota' does not apply. Once agencies reach this figure of 50 percent they feel free to send all the other children for ICA. This practice is made easy by the fact that the agencies do not maintain a register of aspiring Indian parents. Such a register would show that Indian adopters are available, and it would be difficult to claim that foreign adoptions are happening because Indian adopters are no longer available. Thus the quota operates as a cut-off maximum for Indian adoptions, instead of securing a minimum number.

However, the case of Andhra Pradesh shows that the courts do take notice when Indian adopters appear on the scene. Andhra Pradesh courts, on finding that there were enough Indian adopters – over 2,016 registered with the Sishu Vihar in Hyderabad itself (the official children's home of the Department) – started to scrutinise ICAs more rigorously. Thus, for more rigorous scrutiny of ICAs, the existence of Indian adopters needs to be more widely publicised.

Sourcing of Children

Narratives of harassment of Indian parents are bad enough, but even more troubling are reports of kidnap and theft of infants. These reports come from every state.

⁴³ Deccan Chronicle, 1 July 2003.

⁴⁴ See Annexure 1.

The West Bengal report collected clippings from several Bengali and English newspapers, reporting loss, theft and abduction of babies.⁴⁵ The following item is probably the proverbial tip of the iceberg.

Moujhuri Ghosh was admitted in a hospital in Kolkata to deliver her child. When admitted, she was in the throes of childbirth, though the doctors attending her told her that she would not deliver her child immediately. Surprisingly enough, immediately after her husband left, a cesarian delivery was conducted, and she was told that the child was still-born. When the husband demanded the dead child, the hospital could not produce it.⁴⁶

Andhra Pradesh reported seven children kidnapped or taken away from their parents in 2001 who were later restored to their parents by the government. The Tamil Nadu investigation reports that five babies were kidnapped from the Salem General Hospital, and sold to an agency, MASOS, in 1999. The babies were recovered after a week, and the police filed a charge sheet against the employees of the agency. The judgment carried adverse comments against the police for leaving out from its charge sheet the director of the agency. The CARA license of the agency was cancelled in the wake of the scandal. However, in June 2002, the Tamil Nadu State Government recommended that the license be restored.

Three year old Sahvi was kidnapped from her aunt's house in Hyderabad and taken to Bethany Home in Tandur, 90 km away. She was reunited with her parents after six months, after the government raided Bethany Home. In another case, Bhanupriya and her brother Ravi Prasad, who were studying at the MVF Residential School, were 'sold' by their grandmother to Bethany Home. The children escaped from the home, and returned to their school on their own.

Another agency called Precious Moments picked up three children, Suresh, Vigneswar and Kavita, from their families on the understanding that the children would only be educated. Instead they were offered for foreign adoption, and the papers were processed. A kidnapped boy, Hari Babu, was also found at Precious Moments.*

* Information from Ramaswamy, Gita and Bhukya, Bhangya (2001), *A Community Besieged: A study on the relinquishment of Lambada girl babies in South Telangana, Hyderabad, India: UNICEF and Government of Andhra Pradesh.*

⁴⁵ Sarkar, Parnesh 2003. "Suri Doc 'sold' kids under NGO cover". *The Statesman*, Kolkata, 26 November 2003, p 4; "Baby smuggling to foreign countries, Seuri-based NGO behind the scene", *Bartaman*, Kolkata, 15 November 2003, p 1.

⁴⁶ *The Statesman*, Kolkata, 26 November 2003, p 4.

A former employee of one of the adoption agencies, Vatsalya Charitable Trust, narrated the following to our Karnataka investigator. He got involved when he overheard a conversation while driving the agency van, and blew the whistle on instances of malpractice in the organisation. This, he says, was brought to the notice of the Board, and his services were terminated. (The following has been translated from Kannada.)

Three sisters were being tutored in the van by social workers from the agency, while taking them from a village near Kollegal, near Mysore. The girls were 9, 7 and 6 years old. Their parents were told that they were being taken to a hostel in the city where they would go to a big school. They were also assured that they could come and see the children periodically. The children and parents parted with much crying. In the van, however, the children were given new names by the social workers and made to repeat those names. They stayed at the agency's home for over 6 months, until they had almost forgotten the names of their parents and their village. The children were then taken to the local police station, and a report was filed that they had been abandoned and found near the gates of the agency. The children were then 'committed' to the agency.

After the stipulated three months, the mandatory body cleared the children to be sent for adoption to Denmark. After some time, when the parents came to see their children, they were shocked to know that they were not in the country. The agency social workers convinced the father, but could not convince the mother that their children now had 'everything for their development', and this was the opportunity of a life time. They were shown pictures of the children abroad, and were, of course, given some money too.

The driver has not seen the parents since then at the agency. When he enquired at the village on his next trip for the agency to procure babies and children, he heard that the parents had separated, and the mother's whereabouts were not known. The legal formalities of the adoption had been completed with some staff members forging the signatures of the parents on the relinquishment papers.

Another instance was of a boy of about 4 years, whose mother refused to give him up for adoption. After much persuasion, the mother was convinced to leave the child in the agency for schooling, so that she could go and work elsewhere. She found a job as a live-in maidservant in the city; after several months, when she came back for her child, she was refused permission to even see the child. Instead, the agency staff denied that she had ever left her child at the agency. When she raised a hue and cry, she was asked to come after some months since the child was 'out of station'. After a couple of months, the child was brought back, and the mother took the child and went away.

She came the next day and informed the staff that the child was unable to speak and just looked at her blankly. She sought the help of the drivers, but out of fear for their own jobs, no one helped her. She is said to still be working somewhere in Bangalore but has had no luck with her son's speech. The driver feels that the child may have been threatened so badly that the poor child was suffering from the psychological after-effects of the agency's work.

The provisions relating to adoption in the Juvenile Justice (Care and Protection of Children) Act 2000 have further complicated the adoption scenario. Section 41 of this Act allows adoption of orphaned, abandoned, neglected and abused children. As a rule, every child admitted to a Fit Institution⁴⁷ should be photographed, and information of his or her being lost widely circulated in newspapers, radio and TV. It was found that often agencies posted details of the child in just one newspaper, and waited the stipulated period of three months before giving the child into adoption. Some agencies even changed the appearance of the child, giving her or him a distinctly different haircut, etc. Very often it is the children of pavement-slum dwellers, migrant labourers, etc., who go missing. These are not people likely to look at newspapers to search for their child. And after a three-month period, many of these children are sent into adoption despite having parents, only because the parents are poor and resourceless. The severity of the situation is demonstrated by the fact that at least in Andhra Pradesh, distraught parents inquire the whereabouts of their lost children with adoption agencies.

A vulnerable parent is pressured to give up custody of her child when she has been driven out of her home with the children. A number of adoption agencies run shelter homes for women and children in crisis. Makkala Sahaya Vani, Bangalore, has directed a number of women to these homes. Brinda Adige, currently its coordinator, reports⁴⁸ how mothers often return to complain of the pressure they faced to relinquish their babies. Similar examples emerge from other cities. The Tamil Nadu investigation highlights the instrumental dimension of welfare: many agencies run short stay homes for destitute and pregnant women. These agencies admitted that unwed mothers were encouraged to give away their babies in adoption. It is important to note that most of the agencies that run short stay homes do not reveal how many of the babies come up for adoption from their short stay homes.

⁴⁷ Under the Juvenile Justice Act, 2000, the concerned Government department (the Department of Women and Child Welfare or the Department of Social Welfare, or the Department of Juvenile Welfare – this varies from state to state) certifies the institution on the basis of their capability to care for children certified abandoned. These institutions can be recognised as adoption agencies for the scrutiny and placement of children.

⁴⁸ In an interview on 16 September 2003.

Even agencies that do not run short stay homes permit unwed mothers to live there until the babies are born. Concorde House of Jesus, also admitted to keeping ‘women in difficult circumstances’ in their home, till their delivery. Christ Faith Home, a leading adoption agency in Tamil Nadu, has a policy which encourages unwed women to give away their babies for adoption. It has a rehabilitation scheme for unwed mothers, and during the waiting period employs the pregnant woman as an *ayab* to take care of other babies. These initiatives seem understandable in face of the fact that unwed mothers are the single largest source of relinquished babies. Our legal study finds that of the 340 mothers about whom we had information, as many as 252 were unwed mothers.

In an interview on 16 September 2003, Brinda Adige, coordinator of Makkala Sahaya Vani, Bangalore, reported that just that month, 35-year-old Akkamma came with her one-and-a-half year-old child and was 7 months pregnant. She came in search of a job and a place to stay, as her husband of three years had married another woman and driven her out of the house. After nearly two days of going round the city, Akkamma said that she was willing to do any job till the day of her delivery. She also gave a requisition in writing that she would be in rest only for two days after the delivery and would resume work. As Adige reports:

We sought the assistance of nearly 16 organisations for shelter for this lady and her baby. Each one of them categorically said that if she is willing to relinquish her unborn baby, she would be provided with shelter, food and delivery costs would be borne by the agency. We scouted for nearly a week for some agency that would take in this lady without any conditions, but found none.

At last the lady agreed to a suggestion that she stay at a religious Ashram, where she would be cared for, but must agree to allow her children to be taught the tenets of that organisation. She was assured that she would continue to be the legal guardian of her children and help in their development along with several other children.

* * *

Lack of adequate social support for vulnerable persons can be a source of victimisation of both women and children, as this poignant story from our investigator in Mumbai reveals.

Sarita* runs a beauty parlour, which she has named after her daughter. Married for seven years, Sarita is a graduate and was married by her family to Ashish. The marriage was a difficult one—

I gathered that her husband was irresponsible, and she was under a lot of pressure from her in-laws as well. Her first child was born two years after her marriage by caesarian section due to complications. Making two ends meet, and looking after the house and her child had all taken their toll on the health of the young woman.

She confided that when her first child was born, her mother bore all the expenses, but when the second child was expected she started to get anxious. She went to the nearby maternity home run by Dr Pamlekar, but was told that since her pregnancy was advanced, abortion was not advisable. She also considered other options like government hospitals. The anxiety was more about the imminent caesarian section than for food and clothing for the child.

Dr Pamlekar then gave her the address of a Dr Bijlani saying that he could help. She visited Dr Bijlani, received good treatment and delivered her baby at Asha Kiran nursing home. She was then told that to get her child back, she would have to pay Rs 16,000. "Meanwhile the child would be kept safe." She was also counselled into giving the child up for adoption. Meanwhile Sarita's mother came to her rescue. Both went to the nursing home, only to find it closed. It was then that she came to know that the doctor had been arrested for trying to steal a baby from the J J Hospital in Central Mumbai.

Sarita registered a case against the doctors at Gamdevi Police station, the J J municipal police station and the Kumbharwada police station at Bhiwandi. But to no avail. Sarita's baby girl was born on 25 December 2002. It is close to a year now**, but the child is still in an institution. The DNA test is yet to be done to match the child with her parents before she can get her back. The child is now under the care of the Child Welfare Committee.

Sarita's has a grievance against the media too, which said that she had sold her baby girl. She was very disturbed and angry and felt that she had no place in society anymore. Everyone today looks at her with suspicion and doubt.

* Names in this account are changed.

** at the time of the investigation.

Thus, while questions are being raised about the alleged lack of Indian adoptive parents, not enough is being asked about the regional routes from where children reach the adoption agencies. Our social investigations have found that agencies are able to source children from distant places. Thus, Preet Mandir in Pune gets babies from Aurangabad, Kanpur, Goa and Bhopal. Peter Subbiah in Hyderabad used to get babies from Jaipur, Rajasthan. The Tamil Nadu investigation reports that a Coimbatore-based agency has children relinquished from over 10 districts including Trichi, Thiruvarur, Perumbalur, Salem and Chingleput. The geographical spread is a greater cause of anxiety, because often, abandoned children are declared ‘surrendered’ by fabricating documents. This is done so that a child may be free for adoption.

In Tamil Nadu, with the setting up of the cradle baby scheme in every district (see next section), it has become relatively simple for birth parents to give their children into safe hands. Birth parents can abandon or surrender their children in these cradles. Yet a number of agencies continue to directly receive surrendered babies in their homes, very often from far-flung areas, which raises critical issues of how these children reach the agencies, especially when well-educated adoptive parents struggle for years without being able to identify an appropriate adoption agency. In the case of one defaulting agency, the witness signatures on surrendered documents were of the same two persons in most surrendered deeds, even when the babies were sourced from such far flung areas as Salem Dharmपुरi, and Chingleput.

The practice continues because monitoring authorities overlook the “sourcing” of relinquished babies. Biological parents, unwed mothers in particular, suffer social stigma and do not want to be publicly seen giving away their babies. However, in the name of protecting the identities of biological parents it was found that even simple data to monitor sourcing is not maintained. The Department of Social Welfare or the VCA has no disaggregated data on surrendered and abandoned children. It was when babies had to be returned to biological parents, this lack was noticed. In Tamil Nadu, in 2002-03, out of 615 babies that came to adoption agencies, 48 babies (including 32 girls) were returned to biological parents. Strangely, the entire activity had been carried out without anybody asking how the children came into the hands of the adoption agencies. How were the biological parents identified? And how was the process of returning the children to their biological parents organised?

Cradle Baby Scheme

In Tamil Nadu the availability of babies for adoption has been further complicated by the Cradle Baby scheme. This scheme was initiated by the Government of Tamil Nadu to deal with the problem of female infanticide. Under the scheme, parents who do not wish to keep their girl babies can drop them in government cradles kept at a reception

centre of the local Primary Health Centre. The scheme was started in 1991 with one reception centre each in Salem, Madurai, Theni and Dindigul. In April 2001, the scheme was extended to the whole of Tamil Nadu by setting up 188 reception centres in all Primary Health Centres and major government hospitals. From April 2001 to October 2003, the government's cradle scheme received a total of 1071 babies, of whom less than 10 percent were male babies and the remaining female.

Perhaps finding it too expensive and burdensome to handle unwanted infant girls, the government decided to rehabilitate them through adoption. Consequently, in Tamil Nadu, apart from the usual sources of babies (abandoned or surrendered) substantial numbers come through the cradle baby scheme. For instance, 27 of 45 babies (in November 2003) housed in the Concorde House of Jesus and 19 out of 46 at the Guild of Service are cradle babies. Institute of Franciscan Sisters have had a total of 55 cradle babies since 2001. In 2003, out of the 29 babies that the institute gave for adoption, 18 came through the cradle scheme. Other agencies have a similar experience. For instance, Christ Faith Home (CFH) states in its brochure

In some parts of Tamil Nadu, female infanticide and foeticide are very high. The Government of Tamil Nadu has provided various schemes, like the "cradle baby scheme" which help these children to live life to the fullest. CFH plays an active role in incorporating this scheme in its Project.

As a result of this scheme most now have a girl-baby glut. The process of allocating babies to adoption agencies has become so routine that agencies receive the babies over a telephone from the District Social Welfare Officer.

All licensed agencies are offered cradle babies by turn and so far no institution has turned down the offer, one reason being that the institution does not have to do any paper work as these babies are abandoned or surrendered in the government cradle programme. One child welfare agency, Kalaiselvi Karunalayam which did not have a 'fit institution' certificate felt the need to apply for one and set up a full-fledged adoption unit in view of the ease with which babies are coming through the government's cradle scheme. Likewise, in the last two years the number of licensed adoption agencies has increased from 16 to 23 with many of them having no previous history of doing adoption work.

In the last 3–4 years the number of girl babies available for adoption has increased disproportionately. Due to the overwhelming need to rehabilitate government cradle babies⁴⁹, adoption agencies have been given certification without "excessive monitoring

⁴⁹ The number of babies coming into government cradles has suddenly increased. In ten years, 1992-2001, only 150 babies were received in government cradles. But 2001-2003, in a 27-month period, the number of babies received in the same cradles at Dharmapuri, Salem, Madurai, Theni and Dindigul has jumped to 831. Of these a significant number are male babies.

and interference”. Thus the Department of Social Welfare, which is required to monitor and regulate agencies, is now cooperating even with ‘tainted’ agencies. Thus Malaysian Social Services Society, which was found to be following unethical and illegal methods, received 23 babies from the cradle scheme. Madras Social Services Guild, whose licence was under suspension from 1999 till 2001, received 62 babies in less than two years from the cradle scheme. The pressure on the Department of Social Welfare to rehabilitate the babies under the cradle scheme has made them more ‘flexible’ towards the agencies. The new-found authority of rehabilitating babies from the government’s cradle scheme has given these agencies a semi-official status. These reciprocity agreements between the government and the adoption agencies leave much to be desired in the area of public accountability.

Siblings, Twins and Children with Disability

Under the present CARA guidelines, siblings and twins can be directly placed for foreign adoption without trying to look for an Indian home. The reason for this exemption could partially stem from the legal position prevailing under the Hindu Adoptions and Maintenance Act and partly from the belief that no Indian parent will want to take more than one child. Since siblings and twins should not be separated, this is one category of children who can be directly placed for ICA. To circumvent the process of showing the children to Indian adopters, adoption agencies have been found to ‘manufacture’ siblings by pairing very young unrelated children. The following figures from the CARA website show the sibling ratio of Preet Mandir in Pune to be disproportionately higher than the all-India ratio.⁵⁰

Month (2003)	Preet Mandir	Rest of India
August	12 cases, 2 siblings: 16.6% of its total	70 cases, 2 siblings: 02.8% of its total
September	15 cases; 4 siblings: 26.6% of its total	71 cases; 4 siblings: 05.6% of its total
October	23 cases; 9 siblings; 39.0% of its total	71 cases; 4 siblings; 14.0% of its total

The investigator from Chennai reports that the Guild of Services, one of the big placement agencies, has been able to place several children in the siblings and over-six-

⁵⁰ Preet Mandir had had a very adverse report written by the Government of Maharashtra. An NRI parent made a written complaint about extortion of money, which was shared with us. However, CARA was not willing to revoke its license. On our enquiry, CARA said that since the NRI parent had not asked for a receipt for the money, they could not take her word.

years category for ICA, and thus successfully sidestep the local VCA. ‘Manufacturing’ siblings allows the agency to get past the VCA and directly send the children abroad and, of course, to earn twice as much for placing two children.

To examine the assumption that mostly older children, or those with special needs are sent abroad, we examined the no-objection certificates given by CARA between December 2000-03. This is not a comprehensive list, because data from all months was not made available to us.⁵¹ Remarkably, only 1.28% of children fall into the special needs category. A full 89.02% children sent in those months were healthy infants below 4 years.

Month and year	No objection certificates	Siblings	Older children (over 4 yrs.)	Special needs
Dec 00	46	2	3	2
Jan 01	109	7	16	
Mar 01	136	12	10	
Feb 02	77	13	8	
Sep 02	136	20	16	
Jan 03	130	12	10	
Feb 03	50	12	7	
Mar 04	97	8	15	
Apr 04	67	6	15	0
May 03	98	15	12	
Jun 03	64	6	8	
Aug 03	82	4	7	1
Sep 03	95	8	6	3
Oct 03	129	24	12	12
Nov-Dec 03	168	14	18	1
Total	1484	163	163	19
Results		%		
Children < 4yr	1321	89.02%		
Children > 4yr	163	10.98%		
		100.00%		
<i>Special Needs</i>	<i>19</i>	<i>1.28%</i>		
<i>Siblings</i>	<i>163</i>	<i>10.98%</i>		

⁵¹ We took this from CARA’s website. CARA said that it could not make this data available over the table to us.

Older Children

The investigations also show how the commerce of ICA makes short shrift of the best-interests principle. The investigators report how older children are kept for years in the halfway home of the adoption agency in the hope of international adoption. Thus the Tamil Nadu report narrates the case of two boys who have been kept in Concorde House since 1997 and 1999 respectively without any objection being raised by the Department of Social Welfare. As a result of this perennial wait these children are not sent to a regular orphanage and thus denied the company of children their age, schooling and peer activities.

The Tamil Nadu investigation also raises questions on the unqualified exemption given to children above six years by the Supreme Court guidelines. The empirical basis for this interrogation is provided by the experience of Bala Mandir that has been working as a juvenile home and orphanage from the 1950s. The organisation has found that an overwhelming majority of children are not free for adoption – they either have one parent alive, or a grandparent, aunt or some relative with whom the child has a bond. Only in rare cases of abandonment, and even rarer cases of surrender do children become available for adoption. In that situation it becomes necessary to ask how easy will it be for a child who has an identity and cultural roots to adjust in a strange country especially after he or she has reached the age of discernment and can distinguish between the strange and the familiar (see the narratives below). Given the child's emotional trauma, other options such as child support and sponsorship should have been exhausted before a child is identified for ICA.

The Karnataka investigation demolishes the assumption that Indian parents do not want older children. In an interview with the social investigator from Bangalore, the Deputy Director for Children's Homes said that the Department of Women and Child Welfare had received enquiries from six couples wanting to adopt older children. This has in no way altered the adoption policy of agencies and the Director of Vatsalya Charitable Trust declared that in their agency older children were only sent abroad.

Economics of Adoption

Our investigations in every state have revealed that those adoption agencies that undertake ICA prefer foreign adopters to Indian ones. The preference of some agencies for foreign adoptions is dictated by economic compulsions. The adoption agencies take advance grants from foreign placement agencies promising that babies, when available, will be first offered to the foreign placement agency. These promises then drive the operation of the Indian adoption agencies. To illustrate, between April 1999 and March 2000, Vatsalya Charitable Trust, Bangalore, received 5 million rupees from Holt International. All the 12 babies placed for ICA from the trust in that period were sent to Holt.

The money that individual foreign adopters pay to Indian agencies is about ten times what CARA specifies. Foreign adopters pay heavy fees to the agency in their country – a substantial portion of this is transferred directly to the Indian agency as fees for services rendered. Adoption agencies prefer foreign adoptions because of the large amounts of money, gifts and visits abroad that accompany such adoptions. There are agencies like the Missionaries of Charity who do not take payment from Indian adopters, but insist that a fixed deposit be made in the child's name. The donation accepted from foreign adopters is also reported to be much less than the norm. However, all ICAs of the agency have been made to Catholic parents living in Christian countries.

The investigator from Chennai reports how ICAs are bread and butter for Concorde House and other agencies, which operate as family businesses. It is well known and accepted within agency circles that many agencies licensed by CARA would close down for lack of support if the scale of ICAs were to come down. But neither adoption agencies, nor VCA and CARA are prepared to confront this issue. And without this question being addressed it may be difficult to devise a workable regulatory mechanism to deal with the hazards of ICAs.

CARA guidelines (4.38) lay down the cost that may be recovered by adoption agencies from foreign adoptive parents. The agency can recover any surgical or medical bills against duly certified vouchers. It can recover the cost incurred in preparing and filing the application and its legal and administrative expenses up to a maximum of Rs.10,000. Any sum higher than this amount can be claimed only with the permission of the Supreme Court.

The ground level reports emerging from Tamil Nadu, Karnataka and Maharashtra however tell a different story. The Tamil Nadu investigation reports that adoption agencies have no clear policy on costs to be charged for the babies they place in adoption. Their charges are arbitrary. Though the adoption charges have been fixed by CARA, each agency has its own standards. The Guild of Service charges Rs 15,000 to Rs 20,000 per child towards maintenance depending on how long the child has stayed with them. Apart from this there are the service charges, home study fee, scrutiny fees, lawyers fees, registration, etc., which add upto another Rs 8000. Karuna Prayag charges Rs 3000 for every month the child stays with them, apart from legal and registration expenses. The Institute of Franciscan Sisters states that it charges a fixed rate of Rs 5000 and they prefer middle class families, with a regular income of not less than Rs 5000 per month.

However, there is an absolute lack of transparency in the adoption fees and prospective parents are given only a very vague idea of what the final bill will be. A social worker at Christ Faith Home (CFH), Chennai, revealed that they could not actually give an exact figure to an adoptive parent, since each child had a different cost depending on

how the child was sourced, and depending on whether the woman had a normal or a caesarian delivery.

The Department of Social Welfare (DSW) is aware of oral complaints by some parents. In fact, it received an oral complaint against CFH in which prospective parents were asked to cough up Rs 40,000 for a particular child. The adoptive parent then approached a Trichi-based agency and managed to get a child after paying Rs 20,000. When this issue was discussed with a social worker at CFH, we were told that the institution had to not only support unwed mothers at the prenatal stage, but also take care of their delivery and postnatal expenses, and so the institution charges a high price. Although most institutions have tie-ups with government hospitals for medical treatment of the infants, they run up huge medical bills, and in some cases these costs are transferred to the adoptive parent. In the past, the high cost of medical bills has been used as a reason, accepted even by VCA, for some babies to be pushed into ICA. In some instances, agencies have said that the high costs are due to the inability of a child being “free for adoption” because of a delay by the Juvenile Welfare Board, necessitating the child being sent abroad.

Concorde House of Jesus has two healthy male children “surrendered” in 1997 who have not been “free for adoption”. As time goes by, the cost of those children becomes so high that they become unaffordable to an Indian parent. This is confirmed by the West Bengal report in which the Indian adoptive parents interviewed said that they were asked pay Rs 12,000 to Rs 32,000 per child. Interestingly, none of them agreed to pay, and found agencies which either quoted lower rates or allowed them to adopt a baby without charge.

As for the adoption charges for ICA, no agency is prepared to reveal its rates. All they are prepared to state is that they “charge more”. There is a great deal of justification to high charges taken from foreign adoptive parents, stating that this subsidises Indian adoption. Further, agencies receive donations in cash or kind, as payment towards capital costs such as building and land, etc. The VCA and DSW are aware of the economic benefit of sending babies abroad but feel helpless, since CARA is the sole licensing authority, and does not follow the recommendations of state governments. The authorities disregard evidence of huge foreign grants received by agencies engaging in ICA as one of the prime motives for perpetuating ICA.

Files that we saw in Chennai at the Department of Social Welfare, Government of Tamil Nadu, show that Malaysian Social Services Society (MSSS) received grants from eight foreign countries with receipts in 2001 totaling Rs 91,36,064/-. Family for Children, Coimbatore, which is primarily an adoption agency (three of its seven-member Managing Committee are foreign nationals) has received the following sums from Canada.

1999 - Rs 61,85,300/-

2000 - Rs 55,80,695/-

2001 - Rs 84,30,638/-

2002 - Rs 85,87,490/-

Madras Social Services Guild (MASOS) received foreign contributions of Rs61,63,733/- in 1998-99 and Rs 31,11,197/- in 2001, the year their license was revoked.

It is clear that foreigners make payments to their local agencies that in turn send it as a grant-in-aid to their Indian counterparts. It is difficult to find out how much each parent in the foreign country has paid. However, the MASOS and MSSS experiences points to a linkage between inter-country adoption and foreign contributions. MASOS said its funding was stopped because of the 'controversy'. MSSS does not even want to renew its in-country license after CARA revoked the inter-country license and the family business of adoption seems to have folded up for the present. CHJ has a tie up with a particular US-based adoption agency Love Basket and it is common knowledge that contributions from its US partner are crucial to its activities, and for the spacious bungalow in the posh Chennai locality in which the adoption home is housed.

The high tariffs are not unique to Tamil Nadu; the Karnataka report narrates how a man who had adopted two siblings from Dr Sita Bhatija's Hospital in 1981 wrote to say that "the way the expenses... were handled by Dr Sita Bhatija, he was only free of debt in the year 2000".

The Bombay High Court Committee on Observation Homes reporting on the conditions at Shradhanand Anathalaya in Nagpur, reports the case of a French adoptive parent who was twice made to pay US\$ 1500 for a child. The Department of Women and Child Welfare team inspecting Preet Mandir, Pune, reports that the administrative charges, advocate fees and expenses, fees of ICSW, visa and passport charges with other miscellaneous expenses amount to a figure which exceeds Rs 10,000 in most of the cases.⁵²

That ICA operates on commercial considerations is clearly demonstrated by the fact that with greater scrutiny in India, the trade is moving now from India to 'easier' countries like Nepal and Marshall Islands. Foreign agencies that now find it difficult to operate in India, because of both public outrage and increased government monitoring, are recommending the latter places to foreign adopters.

⁵² In order to provide more evidence of the sums involved, and its global implications, see Annexure IV – Some Notes on the Global Adoption Scene.

It is not the agencies alone that depend on ICA. The Maharashtra report narrates how ICSW gets no financial support and relies heavily on the scrutiny fees paid by placement agencies. Consequently, if an agency's license for ICA is revoked, ICSW is also affected.⁵³

Track Record in Child Welfare

The CARA guidelines state that only agencies with a track record in child welfare should be granted licenses to function as adoption agencies. That is, every agency engaged in adoption should be known in social development circles as a child welfare organisation. Our social researchers are individuals who have been long time activists among women and children. Yet none of them had encountered these adoption agencies in the course of their child welfare work.

Upon enquiring about the child welfare activities of several agencies, we found that the most often cited work of child welfare was the managing of homes of assistance for unwed mothers. Most of the 'successful' agencies examined had these homes as adjuncts to their programme of adoption. Very often, an agency began a welfare activity to justify its license; however, on further inquiry, few or no details could be obtained about such programme. For example, the owner of an adoption agency in Hyderabad began a programme of health in Khammam in the tribal settlements to fulfil CARA's requirements, since she had applied for an ICA license. However, on inquiry, she could give few details about the programme, since she had evidently never even visited it.

⁵³ The scrutiny agency gets Rs 2,500 per case from the agency.

III

Adoption Impact Studies

In our survey of the scientific literature on the effect of adoption on children, we found the following two studies specifically on adopted children from India. The first study is by Joan Goodman and Stacy Kim on the “Outcomes of Adoption of Children from India: Subjective versus Normative view of Success”.⁵⁴ The study was carried out on 340 American families between 1973-1987. These children were adopted from the Missionaries of Charity under the auspices of Kathy Sreedhar, now with the Holdeen Foundation. Amongst the 110 families who responded, 76 families returned parent questionnaires, and 57 returned adoptee questionnaires. Since very few of the children had entered professions or attained the status of their parents, the study finds that normatively the children were not doing well. However, as most of them were satisfied with every aspect of their lives and optimistic about their futures, the study concludes that they were doing extremely well subjectively. This finding of subjective well-being is however belied by the enclosed narratives where parents report problems of high promiscuity, racial abuse and confused racial identity. It must also be noted that at the time of the study, over 58% of the adoptees were still living with their parents.⁵⁵

The other study is from Sweden by Anders Lange on 217 adoptees born in India. It has a dismal tale to tell: 24% had been refused employment, 25% had been harassed at the work place, 7% had been refused the lease of an apartment, 17% had been badly treated in school, 14% had been harassed by neighbours, 33% had been threatened on the streets, 7% had been beaten physically, 13% had been refused entry at a restaurant, 15% had been badly treated in a shop, 12% had been badly treated by the police, 11% had been badly treated at a hospital and 12% had been badly treated by social workers.⁵⁶ The

⁵⁴ Adoption Quarterly, 4(2), 2000: 2-27.

⁵⁵ As interviews with adoptees, and posts in e-forums confirm, it is only after adoptees leave their adoptive homes in the West that major problems arise.

⁵⁶ Lange, Anders (2000) Diskriminering, integration och etniska relationer (“Discrimination, integration and ethnic relations”). Norrköping: Integrationsverket

rates of suicides for adoptees are five times that of ethnic Swedes – a rate comparable only to forced migration and cultural genocide.⁵⁷

Between 1945-2001, of a total of 43,882 children adopted into Sweden, 6503 are from India. Sweden is considered more liberal among the Western countries. Yet recent studies have revealed that adoptees fare worse than the Swedish-born control group and the general population in levels of education, earn less at work and have less full-time work, and are less likely to be married or cohabiting. They earn less than their adoptive parents and Swedish-born biological siblings, and have higher unemployment rates than them.

Adoptees are over-represented in psychiatry centres – 170% over-representation in child psychiatry centers, 400% over-representation at mental health institutions, 200% over-representation for abuse of alcohol (boys) and narcotics (girls), 200% over-representation for anoxeric behaviour (girls), 200% over-representation as perpetrators of violent crime (boys), and victims of violent crime (girls), and 300% over-representation for suicide attempts (boys) and 200 % for girls. They are also 240% over-representation for placement in foster homes, and 260% over-represented for placing in youth homes. The studies also show higher unpleasant sexual experiences for adopted girls, higher frequency of early sex, several sexual partners, as well as early pregnancy and abortion.⁵⁸

We need to acknowledge the problem: numbers do not matter; there could be an equal number of success stories elsewhere, and they would not detract from the issues detailed here; it could even be argued that those adoptees who suffer abroad might have suffered in their country of origin. But when the issue is so problematic, it seems strange that those who really suffered had no say in the matter at all. The next section thus includes some representative⁵⁹ first person narratives of adoptees as our effort at breaking the silence.

⁵⁷ Hubinette, Tobias (Lee Sam-dol) “A Critique of Inter-Country Adoption”, available at www.transracialabductees.org/politics/samdolcritique.html.

⁵⁸ Hubinette Tobias, “A presentation of research on inter-country adoptees in Sweden”, Association of Korean American Psychiatrists Newsletter April/2003, pp. 5-7.

⁵⁹ We have on file the testimonies of many more adoptees.

IV

The Voices of the Adoptees

Bittu

Bittu, born 23 October 1972, son of white Americans, engineer, staying and working in America, was sent away for ICA in 1978 when he was five years old. The Missionaries of Charity (MOC), who sent him, say that they have no record of his birth parents. They say he was left outside the orphanage in Kanpur with a note that had his name on it. He was probably also taken to the MOC in Kolkata, and finally left India from MOC Delhi.

My understanding (from my parents) is that I wanted to change my name to my adopted father's name and thus became Tom while growing up in a small town, with a population of roughly 5,000 people and little or no diversity. I was one of the few people of colour, the others being mulatto (a person of mixed white and Black ancestry.) They were light skinned whereas I was very dark in contrast.

My earliest recollection of racism is in early school; this continued the entire time I was there. I was teased by other kids, bullied and generally not accepted by people. Adults in the town were similar to the kids, only they weren't as overt. A lot of adults would give me dirty looks or sneer at me.

Once I moved to college I found that fitting in required less work and people were generally more accepting. One thing that has not changed even to this day, however, is the fact that most white people won't even consider dating a dark skinned person, no matter what their origin. I still struggle with that at times, but they are at least better about it than the Indians I have had the misfortune to meet here in the U.S. That is the way I grew up, in a hostile environment with little or no support even at home. White parents can't identify with racism or the struggles associated with it. From the time I arrived in the U.S. at age 5 until I left that little town at age 18, I was alone and frightened constantly. I had almost no friends,

none who would associate with me or defend me if amongst a group. Going home meant I was away from all of that, yet there was no understanding, no soothing balm for my emotional wounds, it was only a temporary reprieve.

My earliest experience with the Indian crowd here began in my college years. This was the first time I had the chance to see Indians and have a chance to talk to them. Things went well for a while and I felt like one of the gang, like I belonged. However, that was challenged as soon as I became interested in dating an Indian woman. I would go to Indian functions and celebrate Indian holidays and see dances put on by the Indian groups. Each time I would go to these I would be surrounded by the whispering of parents to each other and to the kids that I knew. I was never welcomed and was pretty much shunned by these people. It was common knowledge that I was adopted as well to these people. In regard to the Indian women I was interested in, I was told that I would never stand a chance in dating an Indian woman living in America. That if I wanted to marry an Indian woman, only someone in India who was trying to get to the United States would even consider me. Other parents would tell me to my face that it was too bad I was so dark, I would be handsome otherwise.

My mother told me recently about some Indians who were in our small town while I was growing up. My parents invited them to come over, but they refused and said that they could not come or eat at a table where I was.

I was treated poorly in general; no matter how much I tried, I was still an outsider to these people and was not welcome into their inner circles to have meals at their houses, date the women or be welcomed as an Indian. I was called ‘nigger’ even by some of these people and it hurt more than when white people did these type of things. I decided that it was important to me to stand on my own two feet and be independent. Growing up, I was expected to know of all things Indian and caste is one of the most prevalent things about India in the West. So it’s one of the first things I had heard about (even though I was trying to be as white as possible growing up).

Even though you may consider me casteless, over here I would be in the untouchable category for immigrant Indians. They view me as below them and not fit to associate with in any manner other than to remind me

of my place. So there is no such thing as casteless if others will put you into a caste and treat you accordingly. Perhaps it's due to being discriminated against by my own people that I believe strongly that Indians are the most racist group of people I have ever met in this country.

I have met other adoptees from India. The problem is pretty common in all of the adoptees I have met. The majority of them are underachievers and social drop-outs. The younger generation of ICA (inter-country adoption) adoptees seem to be doing better. They have a larger pool of other adoptees to draw strength and a sense of familiarity from, although I can still see the pain in the eyes of most of them, no matter how well-adjusted they may seem. After all, how would you feel being kicked out of your family, your home and your country through no fault of your own and told it was for your own good? I would like anyone who is a proponent of ICA adoptions to consider that for themselves.

My feelings about India are good in general. When I came to India, I felt like I belonged. That it is my country and my people. As an adoptee in the US I have always felt out of place, like an outsider who isn't welcome. In India I felt like I could melt in, disappear and be happy. I do realise that the poverty is staggering in India, I saw it all around me the entire time I was there. I saw the shacks, the hovels, the small villages in the countryside where families were collecting cow dung in the fields or breaking rocks for a new road.

I still believe I would have been better off in India, in a place that I belong regardless of the poverty. After the initial adjustment of the country and situations I felt more at peace and less out of place during my visit in December 2000.

There is so much that ICA adoptees hold inside that others don't see. To this day I am still searching for a place where I really belong. It is so frustrating and at times the walls come down and I find a private place to be sad without embarrassment. The tears flow for a short bit, then I collect myself and move on with my struggles.

Even professionally in this country I don't belong and I don't have a support infrastructure like NRIs do as I am not welcome among them. I am not really "Indian" to them. I have had probably one or two good bosses at work who were decent human beings. I have had even more bosses that were bigots and treated me very poorly regardless of my education. Is it because I am different? Probably, you see, even though

America is a “melting pot” different layers form, those who are similar band together the entire time and are suspicious of others. ICA adoptees have a more difficult time banding together, we are spread out, a lot are in denial of who and what they are. Many are just struggling to survive emotionally and working to fit into “white America” any way they can. After all, what options do they have, what options were they given?

Very few ICA adoptees manage to get good educations—sure, a decent amount go to college, but very very few actually work toward a degree worth having. I am continually surprised at the numbers that drop out or just don’t go. So you ask if I think it would have been better, I can’t answer that, as I have not lived in poverty since the age of 5. Yet, I don’t recall having bad memories even though we had very little in those orphanages.

My views on intercountry adoption? Inter-country adoption should be a last resort. When these adoptions take place, the children (who have already been stripped of their family) are then stripped of their culture, their country and their place in the world. Adoption is difficult enough with just losing your family, why would sending the child to another country be a good thing?

Life is better abroad? I think it depends on what one considers life in this question. Does life just mean money? If that is the determining question, then yes, life is better abroad in a monetary sense. However, there is more to life than money, all money does is make the world go round and give people power. It does not solve the problems I have spoken of. What I am living does not feel like life to me, it feels like a punishment most of the time. So where do I fit? That is a question I’ve often wondered myself. I don’t fit in the US since I am neither white nor black. I don’t fit with the Indians since I do not meet their standards. Honestly I feel pretty alone in the world and disconnected from humanity at times. My life has been pretty painful and lonely and it doesn’t seem to be getting any better even at my age.

I have seen therapists and went through an intensive two-week therapy on attachment disorders. Afterward I came out feeling better about myself and made a change to my outlook. I was no longer someone who allowed others to ridicule him or walk all over him. I now stand up for myself and question the why of things. Life has been pretty unfair to me in my opinion, but the only other option is death. To me, that is the easy way out and I won’t accept that.

I was reading an article that my mother sent me and I ran across this statement which I think accurately reflects most adoptees. “In some ways, adoption makes us the ultimate survivors. We have to cope with many losses: of birth parents, of identity, of our home country, of our ethnicity. We carry it in our hearts, every day.”

Bittu’s mother says,

I do know that my own son, when standing inside of an SOS Children’s Home in Delhi, said to me on his cell phone that, “This would have been a very nice alternative for a child like myself...” For that moment in time he was doing “India think”he said that he wouldn’t have lost his country, he would be living with those who were ‘like him’, he would have retained his native language, he could have gotten an education, he could have married and had full blooded Indian children, he wouldn’t have to forever be on the outside looking in... no matter where he was in life...

For what it is worth, our son is a loving and productive person who also happens to have some pretty big holes in his heart and psyche as the result of being plucked out of his own birth country and raised by white parents. He lives a rather “multi-cultural” type of life these days as it is difficult for him (and many other adult ICAs) to find exactly where they fit and feel comfortable. He is no loser by anyone’s standards and you would be very fortunate to have a son like ours.

I, for one, pray for India (and any other country) to find the loving homes for their children in same race/ethnicity families because I have watched our own son’s struggles over the years... and that of many other adult ICAs.

She also says,

In the light of the recent foreign adoption scandal in India these are my feelings: if I had thought at any time during the process of adopting our son so many years ago, that we were somehow keeping an approved and loving Indian family from adopting our son we would have immediately withdrawn all efforts to adopt him. In fact, we would have given all of our resources in order to help that Indian family to adopt him. I firmly believe that what is in the very best interest of any child available in any country

in this world is for that child to be adopted or cared for in some loving and competent manner INSIDE the child's own birth country by same race/ethnic loving parents. I also abhor the buying and selling of children in any manner and the illegal means used by many to take babies and children from their birth-mothers and families by agencies and orphanages in-country AND abroad for the purposes of receiving large sums of monies from foreigners attempting to adopt. The corruption on both the receiving and sending sides have got to stop!

Sara

Sara, a student from France, had come to Mumbai as a student interested in pursuing social work as a profession, in Lyon, France. Our Maharashtra investigator met her (on 10 September 2003) in the course of Sara's exposure trip to Mumbai. A beautiful, dusky young girl, Sara also had another agenda: she wanted to know why her mother had rejected her.

This was the second time she had come to India. Almost six years ago, she had come to India with her French parents and had visited the Missionaries of Charities Home at Vile Parle (a suburb in Mumbai) from where she had been adopted by her French parents.

Adopted children have many problems, people think adoption is a dream; it is a dream come true, but that's not true. There are just too many issues. Why did my parents leave me? What was it that made them so desperate? And then, if you go to a foreign land, it's so different. I went when I was two/three years of age. I did not know my exact age; but the 'bone test' (ossification test) said I was 2-3 years of age when I left for France. I was taken by a Belgian social worker along with another child. I was not being cleared for adoption, as I was a very sick child. I know that my adoption was not totally legal.

I can't call my adoptive parents my parents; they are not mine – they are so different. They have no biological children; but when couples have biological children and yet adopt its more complicated. The biological children keep reminding the adopted children that they are different, look different, talk different and that the parents are "their" parents.

Parents expect the child to reciprocate the love, but very often I have seen children who don't like their mother. I remember I had scratched my mother's face the first time I met her. I never wanted to wear shoes

when I went to France, I could speak only Marathi, I did not like French food and wanted to eat only rice. I wanted to sleep on the floor as opposed to the bed. It was so different. Slowly I forgot Marathi.

In the nursery that I went to, there was a time for sleeping; the dormitory reminded me of my life in the ashram in Mumbai. I cried every day; my parents were advised to send me to an activity school. Neighbours would ask why my parents did not adopt a French child. I had a tough time through school up to the tenth standard. Children and everybody else asked me why I was black. Where were my parents? Were they dead? These questions kept haunting me!

I do not talk about adoption to everybody. It is very private. I have a group of friends who are also adopted children. We get together and wonder what makes people abandon their child. Some of them who are from India hate India; do not want to know anything about it – don't ever want to come back now. Their questions remain unanswered.

Arun

Arun Dohle, an Indian boy adopted to Germany says⁶⁰,

“I would love to actually meet at least one Indian adoptee who is happy with the adoption and his/her life. I have never met one. Agencies and adoptive parents constantly tell everyone that they are all very happy, but I have never heard adoptees themselves say it.” Arun talks of different adoptees whom he knows intimately, “XXX, for example, also an Indian adoptee, has a painful life. She had various problems – she finds it difficult to have relations with men, she is addicted to drugs, etc. She has been in psychotherapy for many years now. And she refuses to come to India. She says it is too painful. YYY has been diagnosed with borderline syndrome and has been institutionalised twice. It is only when she began looking at India as a source of strength and visited India that she improved. She is now married and active in social issues in Germany.”

As a result of the close communication this study initiated with adoptees and adoptive parents we (all the investigators) were asked to assist in birth searches. These help adoptees in coping with their problems of identity and rejection. These have also brought home the need for us to accord emotional and legal acknowledgement to these

⁶⁰ Interviewed by Gita Ramaswamy, 10 October 2003.

children of the country. This involvement has also helped us gain insight into the problems that trouble both adoptees and adopters, and the procedures required in India to assist them in their quest. Agencies, by and large, refuse to help adoptees locate their birth parents. The stock reply is that this is inconvenient to the mother who would be open to social stigma in case it was known that she had had an unacknowledged child. The L K Pandey guidelines had required norms of confidentiality to be observed only to prevent the biological parent to obtain information with regard to the adoptive parent. The matter of disclosure to the adoptee and of providing information on the biological parent to the adoptee had been left to the discretion of the adoptive parent. However, countries have increasingly come to realise that a child's innate need to obtain birth-linked information and birth searches have to be both recognised and facilitated.⁶¹

Other Unasked Questions

Having broken the silence on adoptees, we do not wish to stop with these experiences. We think it may be appropriate to also ask questions on what abandonment or relinquishment does to the parent. Laws in the West on adoption and support systems for vulnerable parents started to change once studies recording the emotional trauma and anguish of the biological parents started to surface. These same studies have questioned the secrecy surrounding the process of adoption, and have emphasised that regardless of the adjustment in the adoption, a child needs to know. The present law in India sees secrecy as non-negotiable. Also the fact of abandonment and relinquishment is seen as unproblematic. In view of the psycho-social vulnerability of Indian parents these presumptions need to be reopened.

Similarly, inspiration could be drawn from Western initiatives with single mothers. These initiatives have immense possibilities of empowerment for women and need to be accordingly explored. If a woman so desires she should be able to retain her child. It is necessary to start creating a social climate where this can be done. Some isolated initiatives such as Bal Sangopan Yojana⁶² have been started in India. The investigations also show that if support is available women keep their children. Reports to this effect come from an agency in Pune, and Family Service Centre at Colaba, Mumbai.

⁶¹ For example South Australia enacted the Adoption Act 1988 which gave people who had been previously adopted the right to apply for information about their birth families and also gave birth parents the right to apply for information about the children they have placed for adoption once the child has turned 18 years. The Adoption Information Act 1990 of New South Wales has similar provisions.

⁶² Under this scheme (in Maharashtra) Rs 250 per child per month is provided towards maintenance of the child. The beneficiary could be the child of a single parent or one who has both parents, but they are in a crisis. A family can have not more than two children under this scheme, and not more than two siblings in a family can avail of this scheme at any given time.

Part III

I

Findings and Conclusions

Before formulating recommendations, we wish to encapsulate our learning from this research. Insofar as the research was conducted on several planes, our learning from it too has happened at several levels. As we began to appreciate the complexity of the issue we were examining, we found ourselves unwilling to stay within a forced dichotomy in which ICA is presented as either an unmitigated evil or an unqualified good. Further, the best interests of the child have been both the explicit and the implicit major premise of this work.

Commerce-Driven Transactions

The Convention on the Rights of the Child (CRC) requires states to ensure that, in ICA, placement does not result in improper financial gain for those involved in it. Article 35 stresses that sale or traffic in children should not happen for any purpose or in any form. The study, however, shows that due to commercial gains foreign adoptions are preferred even though Indian adopters are available.

Identity and Family Relations

The CRC recognises the child's right to identity, nationality and family relations. It requires that, as far as possible, the child should be cared for by his or her parents. This research finds that the relationship of the child with his or her family has been easily severed. And the legal regulation of the severance has been undertaken without protecting the rights of the child. For example, adoption has been introduced as a method of rehabilitation in the new Juvenile Justice (Protection of Children) Act 2000 (JJA), but without addressing the personal law tangles that exist in the field of adoption. It is not clear whether a child adopted under this Act would have the same identity and inheritance rights as those of a child adopted under the Hindu Adoption and Maintenance Act 1956 (HAMA). JJA, in contrast to HAMA, allows a couple to adopt a child even if they already have a biological child of the same sex. The statute, however, does not clarify what the status of a child would be when the adoptive parents are Hindus with a child of the same sex. HAMA makes the adoption of the second child invalid and JJA has not expressly overridden HAMA. The best interest of the child requires these questions to be addressed.

Further, JJA allows a child to be given in adoption if found abandoned. Law enforcement authorities are encouraged to complete the process of tracing the biological parents within a period of two months. The dangers of a lost or stolen child being termed 'abandoned' have not been adequately appreciated in the legislation. A grave omission, considering the problems on sourcing of babies raised by our study.

No Significance to Cultural and Psychological Needs

Both the law and practice of ICA, thus, leave a lot to be desired. ICA is ostensibly prompted by the desire to find a home for a child. But this search is happening without taking the child into account. Questions of colour and culture, which have a vital impact on the adjustment of a child in an alien milieu, are noticeable by their absence. Even though the CRC and L. K. Pandey guidelines prioritise in-country over foreign adoption, the study finds that children are routinely sent abroad even when Indian adopters are available. This is because, in the opinion of various decision-makers, ICA meets the economic needs of the child better, and hence is in the best interests of the child. The legal study shows that this assumption is treated in a most unimaginative manner in that the various decision-makers do not bother to ascertain the value of the income of the adoptive parents in the foreign country. Instead, they arrive at conclusions on the economic status of the foreign adopters by determining the value of their earnings in India.

No Post-Adoption Follow-up

Clauses (c) and (e) of article 21 of the CRC require states to ensure that the child involved in ICA enjoys safeguards and standards equivalent to those existing in the case of national adoption; and to ensure that the placement of the child in another country is carried out by competent authorities or organs. Where appropriate the state is required to fulfil the objectives of this article by concluding bilateral and multilateral arrangements.

Although India has ratified the Hague Convention on ICA in 2003, this study finds glaring omissions in the fulfillment of its obligations under the convention. Governmental authorities must seek information on the status of the child in the foreign country. What is the system of adoption in the foreign country? Will the foreign country give adoptive status to the child who is being taken in guardianship? These questions are of no concern to any authority here, whether administrative or judicial. Instead, the system has primarily functioned on the premise that foreign adoptions are good for Indian children, hence whosoever facilitates such adoptions does well by the child.

The Child has No Voice

The adoption laws and policies seem to have been formulated oblivious of the best interests of the child. Or rather oblivious of what children consider their best interests. In fact a child's perception of his or her situation is the least important input in the decision-making affecting him or her.

II

Recommendations

Approach Guiding the Recommendations

Our conclusions demonstrate that we are making a case for a foundational re-examination of the law of adoption generally, and inter-country adoptions in particular. In making our recommendations we are primarily guided by what we think is required to further the rights of children and their best interests. To that end, our suggestions range from the immediate to the long term. Our immediate suggestions are guided by pragmatic considerations, while our long-term suggestions are more aspirational in import because we believe that the action of tomorrow arises from the thought of today. We would also like to state that in making our suggestions we are not taking a pro-ICA or an anti-ICA line. Our focus, instead, is on how an adoption system should function so that the rights of the concerned child are in no way compromised.

The Supreme Court in setting up the ICA guidelines was prompted by the desire to prevent commodification of children. This study has demonstrated that the guidelines have not been able to serve this purpose. The question still remains: what manner of regulatory framework will achieve this purpose? For the law to be relevant, it is necessary that the rights and obligations be allocated so that it is more advantageous for people to follow the law than not to follow it.⁶³

Our description of how the law functions in the matter of ICA indicates that it is not the legal framework but the demand for babies that is dictating the activities around adoption. The laws seem to be viewed not as guidelines which should advise choices, but as obstacles which are to be surmounted or avoided. If this is the standpoint, then all that rigorous implementation will do is to introduce more circumspection and greater observance of the letter of the law without altering the end result.

⁶³ This is following the line of thinking proposed by Ronald Coase (1960) that outcomes are determined not by law, but by the price that the market placed on people's aspirations. Thus, if the demands of the market so dictate, people will circumvent legal regulations provided that the economic logic shows that the legal allocations of rights and duties are disadvantageous, inefficient and sub-optimal.

We believe that human relationships created or prompted by commerce smack of trafficking, and are nothing but the commodification of children. This commodification is a problem whether the child is sold within the country or outside it. It is therefore necessary to design a legal framework that discourages and impedes the profiteering option. Since profits in ICA are far higher than those in domestic adoptions, greater supervision is needed in inter-country adoptions.

Support to Biological Parents

- Before any kind of adoption is attempted, efforts should be made to support and encourage natural parents to retain their children.
- This support should be especially extended to the unwed mother. Schemes such as Bal Sangopan Yojana,⁶⁴ whereby parents are assisted in retaining their children should be designed and promoted.
- Policies such as “cradle baby” which encourage parents to eschew their responsibilities, and create an artificial ‘baby glut’ need to be seriously reconsidered.

Preference to In-Country Adoptions

- If adoption is necessary, then, considering the child’s problems of trauma and identity, in-country adoption should be preferred over ICA.
- This preference should also be extended to siblings, children with disability and older children.
- To achieve that objective, a central register of all Indian adoptive parents should be maintained.
- The economic solvency criterion should be realistic and should not discriminate against working class parents. Any Indian family with a reasonably stable income should be entitled to adopt a child.
- A web-enabled solution should be devised to keep contact with persons desirous of adopting a child.
- Inter-state adoptions within India should be encouraged.

Supervision of Child Sourcing

- The use of adoption as a mechanism to rehabilitate abandoned (or so-called abandoned) children needs to be reconsidered.
- Section 41 in the Juvenile Justice (Care and Protection of Children) Act 2000 (which allows adoption of orphaned, abandoned, neglected and abused children) needs to be reconsidered.
- Movement of children should be monitored more effectively.
- Local NGOs and activist groups should be supported to track movements of babies and children, and prevent their sale or abandonment.

⁶⁴ The scheme has been outlined in a footnote in the section “Other Unasked Questions“ in Part II above.

Separation of Childcare and Adoption

- To prevent child welfare from becoming a commercial activity a distinction between childcare and adoption should be introduced.
- The task of matching children for both domestic and foreign adoptions should be undertaken by an independent agency.
- Private agencies should be encouraged to undertake childcare responsibilities.

Administration of Adoption

- There should be due demarcation of the role of each of the adoption implementing authorities.
- The authorities should be reconstituted with independent-minded people.

Court Regulation of ICA

- Judicial supervision of ICA should remain.
- ICA sensitisation and training of judges in child rights required.
- Appropriate research assistance for this training should be provided.

Multiple Social Ties Model of Adoption

- The Lakshmikant Pandey Model of severing all ties with the biological parent needs to be reconsidered.
- Instead of the current ‘monopoly model’, a multiple social ties model be created.
- If considered necessary, statutes should be amended so that the child can have ties with more than one set of parents.

Birth Searches

- To enable a child to obtain an identity, and find his or her roots, it is necessary that complete records of a child’s birth-parents and the process of adoption be maintained.
- Birth searches of adoptees need to be supported.
- There is a need to launch an India-Friends schemes for adoptees to underscore that adoptions are not a rejection, but a well-intentioned effort to seek economic and emotional support for them.

Need for International Debate and Deliberation

Lastly, since adoption in general, and inter-country adoption in particular, are emotive issues, organisations hesitate to address them. We feel the need for greater debate and dialogue at the UN and other international forums to combat violations of international conventions. Further, we need to consider whether the present approach of seeing ICA as a good option needs to be changed so that ICA comes to be seen as the last option.

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Annexures

I

The Andhra Pradesh Imbrolio

Since the hope expressed by the court was first given the lie by developments in Andhra Pradesh (AP), we wish to describe the AP imbrolio. Along with Maharashtra, Karnataka and Tamil Nadu, AP has been one of the important source states for ICA.⁶⁵ The volume the state provides can be deduced from the fact that even in 2000, when foreign adoption in the state was riven with controversy, 200 of the 1000 children sent for ICA were from AP. In what follows, we present a short narrative of how the ICA question was deliberated in AP and brought to public scrutiny.

Since 1997, the process of adoption has been a matter of debate in AP. These debates did not address adoption as a ‘development’ or ‘child rights’ issue. Instead, the focus was the ethics of relinquishment and purchase of babies from vulnerable communities like the Lambadas. Both the media and activists assailed adoption agencies for breaking the bonds between parents and their babies instead of strengthening them. This outcry did not prevent agencies from continuing their activities, primarily because the government enforced the ICA guidelines sporadically and selectively. Wherever agencies were caught taking babies from vulnerable communities, their premises were raided by the government and their work was stopped. But agencies that were not caught continued to operate, perhaps because they were resourceful in escaping both the attention of the media and the government. This uneven implementation explains why some agencies were exposed in 1997, others were hauled up in 2001, and still others continue trying to send babies abroad even today.

The Exposures and the Surrounding Controversy

Following the public exposure, the state government set up its own adoption channels to offset the activities of the adoption agencies. The government’s intervention made the adoption process far more transparent. For the first time, Indian adopters were being welcomed by an adoption agency, that is, Sishu Vihar, the official children’s home

⁶⁵ On the volume of inter-country adoptions, see Annexure 2, Table 1.

of the Department of Women and Child Welfare. Over 500 prospective adopters wait today⁶⁶ for children, with all formalities and paperwork completed. Between July 2001 and July 2004, 392 children⁶⁷ were given in adoption to Indians by Sishu Vihar, an in-country record unmatched by all the agencies in Andhra Pradesh put together for a decade.

Apart from this, in December 2001, activists were able to access the first set of petitions filed by agencies in the family court. These petitions provided some details about the profile of the foreign parents to whom the children were being assigned. A random examination of 80 cases revealed flagrant violations. It was found that in 12 cases adopters suffered from acute mental and physical ailments; 8 cases provided evidence of unstable marriages or relationships; in 6 cases adoption was allowed for parents whose combined age was over 90 years; there were 6 cases of large families with two or more children; and 14 cases where the family study report was outdated. Indian adopters suffering from any of the above 'disabilities' would not be able to adopt a child.

Initially there was not much clarity on the issue of priority being given to foreign adopters rather than Indian parents. Many people sincerely believed that the babies were better off abroad than in India, given the conditions of deprivation they encountered in the country. The data emerging from the investigations showed that the adoption process was not informed by selecting the best parents for the children. Instead, it was the demand of the adoptive parents that the agencies fulfilled. Thus the interest of the child was not the focus of the activities of the adoption agencies.

Adoption Practices

Activists also examined actual adoption practices. What were the various steps followed for processing the adoption cases? The CARA guidelines required counselling the relinquishing parents to retain their child; waiting for the required period to allow for change of mind; searching for suitable Indian parents; applying to the local VCA for inter-country clearance; appropriately matching a foreign adopter and applying to CARA.

When papers were accessed and examined, it was found that these procedures were totally violated. Obviously, agencies had viewed these procedural requirements as just so much paperwork either to be forged or to be completed with unholy haste in prompt fulfillment of the foreign adopters' demand. Activists noted the complicity and indifference of government officials and the official apparatus at every stage. The VCA performed its duties in a routine manner despite the presence of a senior official of the Department for Women and Child Welfare (DWCW) at the VCA meetings. In spite of having access to all documents, CARA gave its clearance in a mechanical manner. The

⁶⁶ September 2004.

⁶⁷ Information from Sishu Vihar.

court-appointed scrutiniser overlooked the breach of regulations, and the family courts too passed orders without really looking into the documents. In the entire system, there was no one to actually speak for the child. Instead, everyone seemed to be in complicity against the interests of the child, and in a hurry to get the child out of the country in the quickest possible time. Many foreign adopters mentioned the rapidity of the process as their reason for choosing India for adopting a child.

In March 2003, activists⁶⁸ impleaded themselves in the family court, and also appealed in the High Court against the decision of the family court in seven earlier cases, where foreign adopters had been granted guardianship. The activists pointed out that there were flagrant violations of the regulations in all cases; that the agencies themselves had been chargesheeted by the government of AP, and that 2016 Indian adopters⁶⁹ had registered themselves at Sishu Vihar, DWCW, as willing to adopt children.

Activists had to consistently research papers submitted to both the court and to various other agencies to establish findings. It was discovered that looking at the court papers alone did not reveal the entire picture of fraud and deceit. The court papers showed that an agency that had no ICA license was processing adoptions through another licensed agency, but the social investigation revealed that the children were rescued from the first agency in April 2001 by the DWCW, while the second agency that had 'processed' the children for ICA, and had even succeeded in the guardianship petition, had not even *seen* the children.

Court investigations could not fully indicate if the statutory time limit for looking out for Indian parents had been maintained. The submission for ICA by agencies was made to the VCA; these papers were not submitted to the court. Similarly, a perusal of the court records did not show that rejection letters were largely forged; instead, it showed that often, these letters were not submitted in the court at all. The researchers had to access VCA records⁷⁰, records of in-country adoptions by the agencies in the civil court where Hindu adoptions are done, and meet the adopters personally to finally understand that these babies slated for ICA had never been shown to any Indian adoptor.

The chargesheet filed by the Crime Branch (CID) in the criminal courts were not produced in the guardianship courts until the activists formally intervened. The chargesheets resulted in far-reaching investigation into each of the cases of the children whose guardianship was being contested. The chargesheets had forensically checked thumbprints of relinquishing parents, investigating officials had visited addresses given,

⁶⁸ Jamuna of Gramya, Bhangya Bhukya and Isidore Philips of Divya Disha.

⁶⁹ Figure quoted by the Director, DWCW, in a reply to Jamuna; this was cited in Jamuna's affidavit in the High Court.

⁷⁰ Seized by the government and in the custody of the DWCW.

and plainly stated that the thumbprints were forged in cases where parents had been found, and in others, the village named had no persons of that name ever living there. The chargesheets also discussed other anomalies⁷¹ regarding the relinquishment documents which should have been of great interest to the presiding judicial officer.

The Case of Baby H is Illustrative

Baby H was born on 10 June 2000 and relinquished to Tender Loving Care on 11 June 2000⁷². The relinquishment deed, dated 11 June 2000 was on stamp paper dated 28 June 2000, that is, it was predated, and clearly forged to suit the mandatory waiting period during ICA. This also goes to show that the baby was ‘booked’ for ICA, the moment she came into the hands of the agency.

1. The VCA clearance⁷³ dated 10 November 2000 was obtained on the basis that the child had broncho-pneumonia, but adopters Keith and May had explicitly wanted a healthy child.
2. The statutory period for VCA clearance was not followed.
3. The papers of the foreign adopters were not countersigned by the Indian consulate.⁷⁴
4. There was clear overwriting of the dates of rejection by Indian adopters. H was supposedly rejected by Vijay and Saraswathi on 9 September 2000, when they had already adopted⁷⁵ S from TLC on 26 August 2000. Similarly, she was supposedly rejected by Sastry and Prasanna on 19 September 2000, when they had adopted A on 7 August 2000. That is, the rejection letters were clearly forged. Subsequently, in the investigations made by the Central Bureau of Investigation, the people who were supposed to have rejected the child clearly testified that they were not shown any other child, they took home the only child they were shown. But they had signed many blank papers.

In May 2003, the Andhra Pradesh court upheld the family court’s denial of guardianship to the foreign adopters. The court’s far-ranging opinion indicated that the

⁷¹ Such anomalies include but are not limited to

- date of relinquishment prior to the purchase of stamp paper.
- signatures of one parent relinquishing the child; the other not being mentioned at all.
- address of the birth parent absent or obviously faked.
- attestation as witness of employees of the agency.

⁷² Relinquishment document submitted to the family court.

⁷³ As mentioned earlier, in the custody of the DWCW.

⁷⁴ Indicated in the court records itself.

⁷⁵ Dates of adoption of other children by Indian adopters from the same agencies are available from the records at the civil court where Hindu adoptions are done.

state's highest court generally agreed with the accusations against adoption agencies in AP. The Court refused to accept the argument that the principles of equity supported the granting of the guardianship. If this happened, it would be "giving seal of approval to the fraud played by the placement agencies and the casual approach of approval... by the officials of VACA⁷⁶ and CARA".⁷⁷ The Court noted that, "on previous occasions also, large scale violations committed by the placement agencies in case of inter-country adoptions came to light. But the Government instead of taking remedial measures allowed the malpractices to go on unabated".⁷⁸ The Court then noted: "Society welcomes such agencies which come forward to render help to the society, though not at their cost, but they can never be allowed to become business centres for extracting as much money as possible, which amounts to granting license to those agencies for trafficking in Indian children".

Subsequent to this High Court order which was also upheld by the Supreme Court, lower courts too are now examining all intercountry adoption cases with great care. Given the degree of breach of regulations, it is not surprising to note that every single case of ICA has subsequently been rejected by the family courts.

The investigations into ICA in AP showed that while biological parents in vulnerable circumstances were encouraged to give up their children, Indian adoptive parents were thwarted in their attempts to adopt. When the requirements of a law are infringed, it becomes essential to ask how widespread is the infringement? Is it a recent phenomenon or does it go back in time? Is the breach an aberration or the norm, i.e., is it a practice peculiar to one state alone or does it represent the situation prevailing in the country? The findings in AP raised such questions. This inquiry was specially needed because popular perception presented Andhra Pradesh as the exception to or the aberration in a well-functioning system. We undertook this multi-state study to seek answers to these queries.

⁷⁶ Also known as VCA.

⁷⁷ John Clements and others vs all concerned and others, 2003(4) Andhra Law Times, pg 644, para 44.

⁷⁸ High Court judgement, op cit.

II

Tables

Table 1. Inter-Country and In-Country Adoptions in India, 2002.

State	Inter-Country												Total	In-Country
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
Andhra Pradesh	1	0	0	0	0	0	0	0	0	0	0	0	1	0
Delhi	19	10	14	26	28	22	6	15	16	24	10	13	203	307
Goa	0	0	0	0	0	0	0	0	0	0	0	0	0	26
Gujarat	2	2	0	5	0	3	1	9	3	4	1	0	30	51
Haryana	1	0	0	1	0	0	1	0	0	0	0	0	3	16
Karnataka	3	4	2	9	3	4	2	11	3	3	1	3	48	169
Kerala	3	2	1	3	6	2	1	3	1	1	2	3	28	115
Maharashtra	28	40	20	65	41	40	16	64	39	85	39	40	517	875
Orissa	3	3	3	6	5	5	2	4	5	2	0	3	41	38
Pondicherry	1	0	0	0	0	0	0	0	0	0	0	0	1	26
Tamil Nadu	1	3	2	0	2	3	2	7	1	4	3	0	28	189
Uttar Pradesh	1	0	0	0	0	0	0	2	0	0	0	0	3	0
West Bengal	0	5	3	15	27	23	6	18	15	11	26	14	163	176
Total	63	69	45	130	112	102	37	133	83	134	82	76	1066	1988

Source : Central Adoption Resource Agency (CARA).

Table 2. Number of Indian children going to the US as adoptees, and India's rank as country of origin for that year, 1989-2002.

Year	No. of Indian adoptees	Total no. of adoptees	India's rank as country of origin
1989	648	8,102	3
1990	348	7,903	4
1991	445	9050	4
1992	352	6472	5
1993	331	7377	7
1994	412	8333	6
1995	371	8987	5
1996	380	10641	6
1997	352	12,743	7
1998	478	15,774	6
1999	500	16,363	7
2000	503	17,718	8
2001	543	19,237	9
2002	466	20,099	8

Source: US Government statistics, available at http://travel.state.gov/family/adoption_resources_02.html.

Table 3. Indian adoptees to US, 1976-81.

1976	22
1977	85
1978	149
1979	231
1980	319
1981	314
Total	1134

Source: US Immigration and Naturalization Service, cited in Weil, Richard H. (1984) "International Adoptions: The Quiet Migration", *International Migration Review*, 18(2), Summer: 276-9.

Table 4. Adoptions from India, 1980-98.

1980-89	1532
1995	970
1998	1048

Source: See Table 5.

Table 5. Adoptions from India, 1993-98.

1993	1134
1994	1128
1995	1236
1996	990
1997	1026
1998	1406

Source: Tables 4 and 5, Selman, Peter (2001) "Intercountry Adoption in the new Millenium; the 'quiet migration' revisited". Paper presented at the European Population Conference, Helsinki, Finland, 7-9 June, available at www.vaestoliitto.fi/toimintayksikot/vaestontutkimuslaitos/eapskonferenssi/Papers/Theme%20N/selman.pdf. Selman attributes the first set of statistics to Kane, S. (1993) "The Movement of Children for International Adoption: an epidemiological perspective", *The Social Science Journal* 30(4): 323-39, and the second set of statistics to CARA official information.

Table 6. No. of Indian adoptees by country of destination, 1999.

Country of destination	No. of Indian adoptees
USA	500
UK	19
Switzerland	2
Sweden	105
Netherlands	59
Italy	167
Iceland	10
France	58
Finland	3
Denmark	132
Total	1055

Source: IAVAAN newsletter (www.iavaan.org)

The same source also gives the number of babies adopted *out* from the US in 1999: Of 24, 1 went to France, 9 to the Netherlands, 2 to New Zealand, 1 to Sweden, 6 to Switzerland and 5 to the UK. One presumes these are black babies.

III

Report of Findings of Court Investigations

Total cases studied	843
Agency-wise	
Asha Sadan	29
Ashraya Childrens Home	69
Bal Anand	24
Bal Asha	3
Bal Asha Dham	2
Bal Asha Trust	36
Bal Ashraya	3
Bal Ashraya, Nagpur	3
Bal Vikas	87
Bal Vikas Mahila Mandal	1
Canara Bank Relief & Welfare Society	10
Child Care Center	1
Child Faith Home for Children	1
Child Foundation	14
Child Foundation Karnataka	6
Children of the World India Trust	22
Concord Home of Jesus	5
Concord House of Jesus	20
Families for Children	4
Family Service Center	3
Foster Care Unit Guild of Service	1
Given to Family Friends	1
Govt Kasturba Gandhi Hospital	1
Guild of Service	22
Guild of Social Service	1

Holy Angels Convent (Preeti Nilaya)	1
Holy Apostles St. Thomas Mt. Babies Home	1
Holy Cross Home for Babies	13
Immaculate Heart of Mary's Convent	4
Immaculate Joy Home	4
Indian Assn for Promotion of Adoption & Child Welfare	4
Indian Society for Rehabilitation of Children	7
Indian Society for Sponsorship & Adoption	3
Indias Children Welfare	1
Intl Child Welfare Village	1
Karna Prayag Trust	13
Madras Social Service Guild	2
Malaysian Social Services	24
Masos Guild	1
Mathruchhaya	1
Matru Seva Sangh	1
Missionaries of Charity	72
Malcom Joseph	1
NA	2
Nirmal Hruday	4
Nirmala Shishu Bhavan	27
Pushpa Vadi Home, Nagpur	1
Reach Out	3
Shejar Chhaya	48
Shishu Mandir	8
Shradhanand Anathalaya	10
Shradhanand Anathalaya, Nagpur	2
Shradhanand Mahilashram	11
Shree Manav Seva Sangh	4
Sisuvula Nilaya Sangha	1
Society of Friends of Sassoon Hospital	1
Society of Sisters of Charity	41
Society of Sisters of Charity Holy Angels Convent	34
Society of Sisters of St. Josephs of Tarbes	33
Sree Manav Seva Sangh	1
St. Catherine Home	1
St. Catherine Home	2
St. Josephs of Tarbes	2

St. Michaels Home	18
St. Thomas Babies Home	2
St. Thomas Mount Babies Home	17
Sumabala Nilaya Sangha	1
The Society for Indian Childrens Welfare	1
Vathsalya Charitable Trust	43
Vivekanand Balsadan	2
NA	2
	843
City-wise	
Bangalore	286
Chennai	130
Kolkata	57
Mumbai	370
	843
Relinquishment deed and xerox	
Whether presented	286
Xerox copy whether presented	54
	340
Category of mother	
Not Available	14
Unwed Mother	252
Poor Parents	23
Others	46
Unwanted Girl Child	5
	340
Occupation	
Housewife	160
Managerial	272
Academics	183
Self employed	92
Employee in any sector	236
Accountant	32
Doctor	89
Nurse	80
Unemployed	9
Social worker	25
Engineer / technicians / architects	154

Skilled worker	67
Consultant	35
Househelp	19
Part-time (unspecified)	16
Driver	10
Worker	80
Farmer	13
Police / military	17
Fisherman	1
Pastor	6
Researcher	2
Not mentioned	48

Number of witnesses who are employees of agencies 32

Cases of abandonment 124

If abandoned, was the baby released to same agency? 98

Proposing of child for ICA in 528 cases

Whether it was within statutory period ? not noted

Reasons for sending into ICA

Older child	37
Dark complexion	6
Ill health	87
Not available	50
No Indian adopters	341
Siblings	5
Twins	2
	528

Whether rejection letter by Indian adopters available at all ? 9

Ashraya Childrens Home	4
Society of Sisters of Charity	3
St. Michaels Home	1
Vatsalya Charitable Trust	1

Combined ages of foreign adopters

Age of single person	42
Combined age 53 - 60	16

A socio-legal investigation of inter-country adoption in India

Combined age 60 - 70	192
Combined age 70 - 80	268
Combined age 80 - 90	193
Combined age over 90 years	50
Not available	82
	843

Belonging to nation

Australia	6
Bahamas	1
Belgium	27
Canada	11
Denmark	137
Finland	5
France	82
Germany	47
India	11
Ireland	3
Italy	101
Luxembourg	3
Mauritius	4
Netherland	38
Netherlands	2
New Zealand	4
Norway	37
Singapore	7
Spain	57
Sweden	25
Switzerland	28
United Kingdom	3
United States	185
Not available	18
	843

Income ranges in Indian rupees per month **368**

Below Rs. 20000	1
Rs. 20000 – 30000	4
Rs. 30000 – 50000	9

Rs. 50000 – 70000	13
Rs. 70000 – 100000	43
Rs. 1 lakh – 2 lakh	138
Rs. 2 lakh – 3 lakh	87
Above Rs. 3 lakh	73

Income ranges in US \$ per month **177**

Below US\$ 2000	2
US\$ 2000 – 4000	43
US\$ 4000 – 6000	48
US\$ 6000 – 8000	26
US\$ 8000 – 10000	24
Above US\$ 10000	34

* If per hour specified, we took 8 hours per day and 20 days per month

Income specified in other currencies **277**

Australian dollars	8
Belgian francs	9
British pounds	7
Canadian dollars	7
Dutch guilders	6
Danish krone	33
Euro	1
Finn markkas	3
French drancs	32
German deutschmark	42
Italian liras	62
Irish	1
Luxembourg francs	1
Norwegian krone	4
New Zealand dollars	2
Spanish Pesetas	26
Singapore dollars	4
Swedish krona	23
Swiss franc	4
UAE Dirhams	1
Japanese yen	1

Income not available **21**

843

Other relations before marriage	
Not available	762
Second marriage	29
Third marriage	1
Living together	8
Divorced	26
Single	11
Spinster	3
Widow	1
Adoptive mother has two ongoing relations	1
Other relations before marriage	1
	843
Other Children	
None	417
One	298
Two	70
Three	41
More than three	17
	843
Countersigned by Indian Embassy	
Not available	39
No	205
Yes	599
	843
Did they want a healthy child ?	
Not available	491
Yes	269
Not necessary	83
	843
Any evidence of VCA writing to other parents ?	
Not available	206
No	632
Yes	5
	843

VCA Clearance after statutory period

Not available	267
No	131
Yes	445
	843

Quarterly/Annual Reports enclosed ?

Not available	293
No	430
Yes	120
	843

IV

Some Notes on the Global Adoption Scene

I

Most advertisements by adoption agencies in the West place their foreign (read Indian here) fees squarely in the public eye. Some examples:

Holt International, which does plenty of business of India, lists its adoption programme fee as \$7690 (www.holtintl.org/india/indiacost.shtml).

Bay Area Adoption Services lists its foreign fee as \$16,400 (www.baas.org).

Children's Home Society gives its programme fees at \$12,000 (www.chsm.com/CHSM.jsp?CG=AdoptInt&CS=IndiaCosts).

Children's Hope International

(Source: Information Packet Brenda Barker, 7007 Chadwick Drive, Suite 350 Brentwood, TN 37027)

Lists its international fees (county facilitation, court costs, orphanage/foster care donation, attorney fees, social workers' salaries, Indian application fee, local transportation, medical, food, clothing expenses) at \$8,800.

Children's House International

(Source: www.adopting.com/chi/nri.html)

India fees	\$ 6500
Humanitarian aid	\$ 1000

Dillon International India Adoption

(Source: www.dillonadopt.com/India%20Program%20Fees.htm)

International adoption fees	\$ 4125
Adoption fee	\$ 500
Orphanage donation	\$ 250

Families Through International Adoption

(Source: www.ftia.org/India/costs.html)

International fees	\$10,000
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(legal/attorney fees, registration, medical care, exams, and translation of dossier)

Illie

Source: www.illienadoptions.org/FAQ2.htm

Foreign adoption process fee	\$ 3000
India fees	\$ 9000

Plan Loving Adoptions Now

Source: www.planlovingadoptions.org/programs/asia_indiafee.html

Orphanage/placement fees	\$10,000
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Special Additions International

Source: www.specialad.org/aabout/fees.asp

India fees	\$9750
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As can be seen, these are all \$ 6000 upwards. This translates into roughly Rs. 3 lakh, all of which go to the Indian agency, while CARA stipulates that a maximum of Rs. 100 a day, for a maximum period of 6 months (Rs. 18,000) can be paid. As the money paid is conveniently oblique — that is, it does not directly come from adoptor to agency, CARA overlooks this very important component of the transaction as part of the trafficking fee. This fee is apart from the other costs that foreign adopters have to pay – agency fees, home study preparation, INS fees, overseas programme consultation, INS and BAAS paperwork assistance, two post-placement visits, etc.

We have also found in the various discussions on the forum that we have participated in, that most foreign adopters are very resentful of the commercial transactions involved. In fact, when the Evan B. Donaldson Adoption Institute, a not-for-profit US national policy and research organisation, did a survey of over 1600 American families who adopted internationally through U.S. agencies, they found that three out of four families were required by their agencies to carry cash to their adoptive child’s country of origin to pay adoption service fees, with most directed to bring \$3,000 or more. And 11% of all respondents stated that when they were overseas, agency facilitators asked them to pay additional fees that were not disclosed by the agencies.

Of the 1600 families who responded to the Adoption Institute’s survey, 15% reported that their agency withheld information or gave them inaccurate information about the child, another 15% said their agency withheld information or gave them inaccurate information about the adoption process, and 14% said their adoption cost more than the agency told them it would cost.

(Testimony of Cindy Freidmutter, Esq. Executive Director, Evan B. Donaldson Adoption Institute on “International Adoptions: Problems and Solutions” before the House Committee on International Relations, 22 May 2002, available at www.adoptioninstitute.org/policy/hagueregs.html).

II

Several studies have described the situation as buying and selling of babies under the guise of adoption. Among these are the Parliamentary of the Council of Europe (<http://assembly.coe.int/Documents/WorkingDocs/doc99/EDOC8592.htm>), and The Law Reform Commission, 1994 of New South Wales, Australia. UNICEF in its Innocenti Digest No. 4 on ICA (<http://www.unicef-icdc.org/cgi-bin/unicef/Lunga.sql?ProductID=102>) documents the various non-exhaustive ways of abuse of the established norms and laws for ICA:

- Seeking changes in policy and practice by applying highly questionable political and economic pressures.
- Illegally obtaining children for adoption.
- Identifying potentially vulnerable mothers and inciting them to give up their future or newborn baby.
- Falsely informing the mother that her baby was stillborn or died shortly after birth.
- Exchange of a child for financial or material rewards.
- Offering women financial incentives to conceive a child specifically for adoption abroad.
- Illegally securing permission to adopt by using fraudulent documents.
- Corruption of officials and judges to obtain favourable decisions.
- Taking a child through a third country.

The office of Visa Services, Bureau of Consular Affairs, Department of State, USA, has conducted its own study (http://travel.state.gov/family/adoption_cambodia.html).

UNICEF in Guatemala has also condemned the large-scale trafficking there (www.unicef.org).

Another study on Romania was commissioned by USAID in 2001, and authored by Michael W. Ambrose, Anna Mary Coburn (www.acf.hhs.gov/programs/cb/publications/romanadopt.pdf)

A Marshall Islands study was commissioned by the Republic of Marshall Islands, by Jini Roby and Matsumura “If I Give You My Child, Aren’t We Family? A Study of Birthmothers Participating in Marshall Islands – U.S. Adoptions.”

A study commissioned by Save the Children UK looks into adoptions from Romania “Position Paper on International Adoption of Children from Bulgaria” (October, 2003).

Romania has recently completely banned intercountry adoption after a moratorium.

Moldova, Latvia, Rwanda, Laos, Romania, Belarus and Cambodia have also suspended ICA, following large-scale trafficking.