CHAPTER–7

FINDINGS AND SUGGESTIONS
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7.1 CONCLUSION HAUL OUTS SUBSEQUENT TO THE RESEARCH

In today’s time word adoption or child adoption is inter changeable with words like child abuse, abduction, selling, stealing of child or simply cheating on account of money and faith. This has come to this juncture because of the practice we have observed all over the world, from petty frauds to big scams. Child has been treated like a property that is our national wealth and cannot be treated like saleable commodity. The whole practice of adoption has been tarnished by unscrupulous middlemen and unauthorized agencies. They procure babies from unsuspecting, ill-informed and poverty-stricken parents for paltry sums of money and place them for adoption, especially inter-country adoption, which pays rather well. This has rather become a business – a profit making one than helping society at large by doing any good. Instead of all the measures and guidelines provided by the top most Court in the country, still many loop holes are following the noble cause of child adoption. Having an infallible international system to adopt children still seems farfetched.

Although it is believed that Indian government is fully susceptible for the welfare of children by giving children imperative place in the constitution of India and also referred as back bone of our country. The government of
India considers adoption to be the best non-institutional support for the rehabilitation of children.

**Article 24**- Chapter on "**Fundamental Rights of the Citizens**" provides the right against exploitation of the children below 14 years. **Article 45** of the **Directive Principles of the State Policy** in the Indian Constitution envisages for free and compulsory education of children. The Constitution of India has laid down directives for the care, protection and rights of the child to a family. International standards such as United Nations Convention on Rights of Child (UNCRC)-1989 and Hague Convention on Inter-country Adoption-1993 have also stipulated measures for children who are without family care and/or institutionalized for long. Central Adoption Resource Authority (CARA), an autonomous body under Ministry of Woman and Child Development, Govt. of India endeavours to fulfil the rights of every child to a family through a network of NGOs and Government run Adoption homes. At the International level, India has ratified the convention on the Rights of Child and the Hague Convention on inter- country adoption of children. At national level, India has prepared a National Policy for children in 1974 under which Ministry of Social Justice and Empowerment (now known as Ministry of Women and Child Development) has got the mandate to enact laws regarding welfare of children.

Behind the Andhra Pradesh fiasco one can see a few problems such as flaws in licensing, lack of close monitoring at the State level, and
circumvention of the guidelines of the Central Adoption Resource Agency (CARA) by agencies. The institutional inadequacy is quite telling, especially because Andhra Pradesh had faced a similar storm only few years back. The fundamental issue of poverty and underdevelopment of the tribal people and the failure of the Central and State governments to do anything meaningful about it also should not be lost sight of. Although the Andhra Pradesh cases were born largely out of the deformed development paradigm of the Indian state and the failure of its bureaucracy, the responsibility is quickly and silently shifted to the non-governmental sector and the adoptive parents from abroad. Uninformed about and uncritical of this complex situation, people go about spreading stories that are spiced with nationalistic fervour, religious undertones and even moralistic messages. There is no dearth of such unsubstantiated reports in the media also. The Andhra Pradesh fiasco is a classic example for the maxim, "sin in one place, censure in another". Viewing the adoption process from the adoptive parents' perspective would reveal some of the missing human dimensions of the current debate.

Effects of international adoption include the outbreak of malpractices such as child trafficking and sale of children. Apart from these there is lack of intimacy in the new relationship. There is a feeling of loss of control. Identity crisis can trouble the adoptee. Many of the issues intrinsic to the adoption experience come together when the adoptee reaches adolescence. Researcher finds at this time there is an acute awareness of
being adopted. There is a drive toward liberation accompanied by the determination to develop one’s own identity. Adoption is a life stressor affecting the overall personality of an individual and has a major impact on the rest of his or her life.

During the research investigation and psychological view it can be concluded that loss triggered by adoption is the loss of one’s identity, one’s separation from his or her birth family. For the biological parents, it’s the loss of their child. A feeling of rejection worsens the feeling of loss. Adoptive parents feel rejected to be parents. Both adoptive parents and birthparents experience role confusion. The sense of rejection leads to a feeling of shame. The grief over not having children suffocates the adoptive parents, as they are encouraged to adopt. Grief is obvious in the parents who lose their child to adoption. Feelings of confused identity lead to identity crisis. Relationship is deficient of intimacy. Neither the natural parents of the child nor the child feels in control of the situation or the process of adoption.

The law provides several rights for the adopted children. But, in practice the law in India has yet to develop an efficient, humane, and transparent system of domestic adoption. The current statutory bases for domestic adoption, the Hindu Adoption and Maintenance Act of 1956, and Guardians and Wards Act of 1890, severely limit the capacities of Indians to adopt Indian children, due to limitations based on the existence of other children in the adoptive family, or the religion of the adoptive
parents. JJ Act provides relaxation on adoption of child. It is in no way on the basis of religion, caste or creed. Those laws reflect longstanding cultural obstacles to the broad acceptance of formal adoption as a way of building a family. It is not only archaic but also a ghastly situation. In addition, it is questionable whether the formal system of adoption has any connection or relevance to the majority of Indians, who may have limited access, financially or culturally, to initiating formal legal processes, and who may handle “adoption” instead through informal, community-based processes.

In addition, adoption does seem to be gaining social acceptance. Nonetheless, the bureaucratic implementation of reform often comes very slowly in India. At best, it will likely be a decade before domestic adoption within India achieves significant reform affecting most of the nation. There are ongoing efforts in India to address the inadequacies of the formal system of domestic adoption, in part through the enactment and implementation of new laws.

While on one of the field visits in Gandhinagar (Gujarat), it was observed that not only parents, who want to adopt the child, are harassed but also those who prepare home study report. One such incident happened where adoption was refused on the ground of some inadequacy found while preparing the home study report, the social worker was troubled by the parents who wanted to adopt a child by putting undue pressure on her. Higher ups were informed and complaint was placed against the social
worker for refusing or creating hurdles in the process of child adoption on the basis on home study report. So, harassment in different forms is prevalent in all stages only sufferers are different.

The lack of a functional system of official in-country adoption within India is starkly evident from a statistical comparison with the United States. In the United States, a country with a population of approximately 295 million people, there are approximately 50,000 adoptions per year out of the foster system alone, which does not include children placed directly from birth parents to adoptive parents or through private agencies. By contrast, India, with over one billion people, officially reports less than 2,000 in-country adoptions per year. Thus, on a per capita basis, official in-country adoption appears at least one hundred times more common within the United States than in India. This disparity seems likely to remain significant even if one takes into account the significant gaps in India’s adoption statistics, which apparently only include adoptions by CARA-approved agencies. CARA has failed to smoothly run adoption system in India. From Andhra child scam to Preet Mandir adoption irregularities can be seen in India inspite the establishment of CARA which is a regulatory body. Many issues of child abuse and irregularities are still prevalent and not taken to task by the authorities. This shows deep rooted problems in the system which needs to be cured and curbed with new amendments in the Act and most importantly by changing mentality of people.
India lack an effective system of domestic adoption within India means, in itself, that India cannot at present create a truly lawful system of inter-country adoption. The law, after all, both nationally and internationally, requires that inter-country adoption be a last resort after domestic adoption. This principle requires that efforts be made to adopt a child domestically prior to attempting inter-country adoption. Those efforts to adopt a child domestically, however, are hampered by a domestic adoption system that artificially suppresses and limits domestic adoption. Thus, even where it is factually accurate, on an individual basis, that sincere efforts were made to place a particular child domestically, on system-wide basis adequate efforts to place a child domestically cannot occur until domestic adoption is at least as accessible as inter-country adoption. Indeed, how can India satisfy legal requirements to favour in-country adoption, when under present law there are many situations where a family that would be ineligible to complete an adoption domestically, could legally complete the adoption if they were foreign and adopted through the inter-country adoption system.

Another area of concern during research was cultural obstacle; to reform of India’s inter-country adoption system is the prevalence and acceptance of corruption within Indian society. It is not as though corruption and bribery were uniquely associated with adoption. To the contrary, corruption is a pervasive part of Indian life. Corruption is so pervasive as to be normative in many spheres; thus, it takes an extraordinary effort
for India to construct systems that are less subject to the taint, distortion, and inefficiencies of corruption. This effort to create situations where corruption is less pervasive can occur within India when there are very strong incentives, as in the development of major industries, such as the IT sector. But it is not worth it for India to make these heroic efforts in regard to inter-country adoption, which lacks both humanitarian and economic benefit for the nation as a whole. What CARA is doing is a matter of serious concern to all.

An additional cultural obstacle to the development of a lawful system of inter-country adoption in India is the complex relationships among different groups within India. Generally speaking, Western agencies will network with Indians who are literate, speak English, have access to telephones, computers, and the internet, and thus come from India’s middle or wealthy classes. Many of the children being placed for adoption, however, come from tribal groups or scheduled castes, or at least from the hundreds of millions of poor farmers and labourers who comprise India’s poorer classes. The mothers of these children will generally speak only Indian languages, be illiterate, and have little access to modern means of communication. Even with the best of intentions, it would be very difficult to create non-exploitative relationships across the class, caste, and other social boundaries that divide Indian adoption workers from birth families.
Another problem which is commonly faced is the dilemma of racism. The scarcity of “white American-born babies” has led to an increase in international adoptions, fracturing family ties and heritage in what some are calling cultural genocide. Madonna was widely criticized for adoption of 1-year-old African boy from Malawi. It was said that the Malawian government ignored its own laws against foreign adoption. In another case of famous Hollywood actress Angelina Jolie where, later she came to know that her adopted son was not actually an orphan and could have been sold by his birth mother in a desperate attempt to escape a poverty-stricken life. This leaves her and the whole world amazed. Westerners, however, continue to believe that adoption “rescues” orphans, though saving children from poverty, one at a time, does nothing to ameliorate the conditions that continue to produce them. And, many so-called orphans are in fact stolen, kidnapped, or their parents were coerced to relinquish them under false pretences to be sold on the black and gray adoption markets with prices set by age, alleged health, skin colour, gender and nationality.

Finally, an additional obstacle to creating a system of lawful inter-country adoption in India lies in the difficulties of protecting the rights of poor, Indian women. The severe gender imbalance within India, under which there are approximately thirty-five million missing females (933 females for every 1000 males), is the most obvious sign of the many difficulties.

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137 www.moono.com/Angelina Jolie faces adoption scandal
138 Mirah Riben: Big Business In Babies: Adoption, The Child Commodities
suffered by India’s women. The combination of being female, and a member of a caste, tribe, or social group traditionally disadvantaged in Indian society, places hundreds of millions of India’s girls and women in a starkly vulnerable position. The fundamental requirements of a lawful relinquishment, under which each parent makes an individual and free choice, arguably do not fit the realities of the lives of these women. There are, then, multiple daunting difficulties that must be overcome to establish an inter-country adoption system in India that meets the standards of national and international law. The point is not that establishment of such a system is impossible, but rather that it would require sustained and heroic efforts. It is not at all clear, however, that such heroism would be best spent on adoption.

It would arguably be irrational for India, or Indians, to make the herculean efforts required to overcome these obstacles for the sake of constructing a better inter-country adoption system. If one had the capacity to overcome legal gaps, cultural prejudices, corruption, misunderstandings across class lines, and the powerlessness of poor Indian women, one could perform far greater miracles in India than sending a thousand children out of the country.

As observed, abuse-prone areas, agencies that deal with corrupt orphanages and facilitators who illegally obtain children will often have a competitive advantage because they will have access to larger numbers of on paper-adoptable children. It is surprising to see that most abuse-
prone areas are giving or receiving maximum number of children for adoption. The classic example of this phenomenon is Guatemala which, despite its relatively small population of less than fourteen million, has become one of the most significant sending nations, while also developing a reputation as a most lucrative business lawyers or middlemen who buy or kidnap babies. While the broad middle range of reputable adoption agencies within the United States officially decries corrupt practices, these agencies also consistently choose to involve themselves in adoption systems where such corruption is rampant, without taking significant remedial steps to avoid becoming complicit in child trafficking. The better agencies, those who are in it for the cause rather than for the money, ultimately believe that playing the game is a necessary evil toward the good of saving children. In the words of Andhra Pradesh High Court in one of the judgments related to Andhra scam, it is said that sending countries are referred as, “Business Centers” for child adoption.

The history of the Andhra Pradesh scandals indicates that Westerners networking within a sending country such as India may overestimate their capacity to identify honest, non-corrupt partners. A part of this difficulty is cultural, as definitions of what counts as “honest” and “non-corrupt” may differ significantly across cultures. A further difficulty is that the very presence of the Western agency may create opportunities and temptations to profiteer those affirmatively corrupt previously honest entities. The financial opportunities of inter-country adoption may have
induced some within India to go into the “adoption business” as a highly profitable racket requiring little more than the capacity to charm Westerners, bribe Indians, and create a network for obtaining children from desperately impoverished and vulnerable families also abandoned from receiving country.

China is the number one country that places children for international adoption in the U.S. it has been seen that virtually all children adopted from China are girls. The reasons for this discrepancy are the government's one-child policy and the cultural preference for male born children. These selective properties have caused abandonment, infanticide, and failure to register countless numbers of female infants yearly. In China abandonment or endangering the welfare of a minor is not considered a criminal offence as in the U.S. Fines and penalties for abandonment of a infant are similar to those imposed for an “over-quota” child. The lack of criminal prosecution and additional fines make abandonment of an infant a tolerable risk.

Even in Japan they have a deep aversion to adoption, even though the practice has become a cherished way of creating families in much of the world. Japanese culture places a great emphasis on blood relations, so for many Japanese someone else's child would never feel like true family.
Another Asian Country majorly involved in inter-country practice is Nepal. Here in Nepal orphanages are involved in the illegal "sale" of children to foreign couples. If not curbed timely the malaise will increase enormously.

Without any doubt it can be said that in Nepal there is a "a big nexus of people involved in the sale of children" and that children who have parents are frequently "sold for adoption as orphans". On the pitiable situation United Nations children’s organization is very much concerned and stress on having international principles being followed during the adoption process.

According to statistical data it is found that American citizens represent the majority of international adoptive parents, followed by Europeans and those from other more developed nations. The laws of different countries vary in their willingness to allow international adoptions. Some countries, such as China, Korea and Vietnam, have very well established rules and procedures for foreign adopters to follow, while others, the United Arab Emirates (UAE) for example, expressly forbid it. International adoptions by American's became much more common after the Korean War when American servicemen fathered interracial children with Korean women. China is the leading country for international adoptions by Americans. These sorts of problems are common in EU, USA and other parts of the world. What is to be seen is that how world at large can stop treating a child like a commodity and a way of earning quick bucks.
7.2 EVALUATION OF HYPOTHESIS WITH RESEARCH WORK

Child adoption is very noble gesture of giving a child to someone who can look after them and provide good future. Keeping this in mind Indian government has formed departments to look into child adoption process where the need is to help create a blood relation where there is no relation at all. Every state has Social Justice and Empowerment Department, under which State Adoption Cell/SARA, Adoption Coordinating Agency, and Recognized Indian Placement Agencies (In-country and Inter-Country Adoption) works. Researcher visited Social Justice and Empowerment Department, Government of Gujarat, Gandhinagar, which looks upon all the parameters of child adoption process in Gujarat whether in country or inter country. Researcher also got an opportunity to meet in person the Deputy Director of Social Security and Development, co-workers and also some social workers those who work in the field of child adoption. Along with visiting to important offices, to enrich the understanding of over all working researcher also visited office of UNICEF situated in Gandhinagar.

The researcher here evaluated hypothesis with research work:

7.2.1 Is the regulatory domain of Hague convention incapable of containing the malice of child trafficking in the name of Child adoption?

The Hague Convention protects the interests and rights of children through the illicit practices of abducting, selling, and trafficking in children. Central Authority oversees inter-country adoption, which has
declared that buying children for adoption is not child trafficking, since children are not exploited by such practices. But looking at all the discrepancies in the system, the Hague Convention legal rules and processes associated with adoption are clearly inadequate to prevent illicit practices from becoming a significant part of the inter-country adoption system. Indeed, the legal rules of the adoption system are systematically used to “launder” or legitimize these practices, by processing as “orphans,” and then adoptees, infants and children who were stolen, bought, or kidnapped from their birth families. Thus, the Hague Convention, remain sceptical of the central premises and purposes of the Hague Convention. No doubt it is one of the most lethal weapon in terms of child adoption but need arises to have a system which is far more transparent and more and more countries should ratify it and become part of Hague Convention.

The Hague Convention is an excellent ideal, in implementation it could actuality hamper many adoptions. A country like Guatemala, which has had a plethora of child trafficking, prostitution and many orphans, are now temporarily closed to adoptions after the country's ratification of the Hague Convention. As Guatemala takes steps to comply with The Hague Convention on Inter-country Adoption, adoption process remained in flux. Early in 2008, Guatemala established a central adoption authority, the

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139 Child Laundering: How the Inter-country Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children, David M. Smolin, Cumberland Law School, Samford University
National Adoption Council. As of early June 2008, however, regulations that would fully implement the Hague Convention remained in an early draft stage. While some pending cases have been released, having gone through Guatemala's current review process, lot of cases remains in limbo, and many agencies had placed a temporary hold on their adoption programs. The private adoption system in Guatemala is currently under large criticism from organizations such as UNICEF. These organizations lobby for a so called 'adoption reform' in Guatemala and in the United States. UNICEF wants adoptions to be handled completely by government institutions unfortunately these so called reforms have caused a complete shutdown of international adoptions in other counties that have implemented these reforms. The governments of these, often third world countries, are usually not capable of implementing efficient adoption processes with the result that foreign adoptions completely cease.

It is to be noted that Adoptions between Hague and non-Hague countries are not prohibited by the Hague Convention\textsuperscript{140}.

\textbf{7.2.2  Is the prominent issues facing the inter-country adoption globally still unresolved?}

Blaring issues like child trafficking, child abuse, racial discrimination and not taking undue care of a child still finds place in Modern times where adoption has become easy and faster with the use of technology but global issues still remain prevalent in spite of taking many preventive steps. But what is to be seen is that frequency and occurrence of such

\textsuperscript{140} www.about.com/adoption
events have gone down as agencies even private people are now scared of any wrong doing. Awareness at large has defiantly increased because primarily of media-print, internet, 24 hours news channels and also concerned citizens. Courts and judiciary are also becoming vigilant in interpreting international laws, conventions in stricter sense. Voluntary adoption agencies are mainly responsible of flouting The Juvenile Justice (Care and Protection of Children) Act 2007 rules. Cardinal rules like producing any missing child before the Child Welfare Committee by either Police or Child help line or voluntary agency and appropriate efforts should be made to restore the child to his or her biological parents are not followed. The Juvenile Justice (Care and Protection of Children) Act 2000 also states that before putting up a child for adoption, the adoption agency must publish his or her particulars in at least four leading newspapers, of which two must be in regional languages. But private adoption agencies have resorted to just a ridiculous eyewash, by publishing their self proclaimed names and self estimated dates of birth without any photograph, that too only of a few children, in some less popular newspapers, off and on only. Child Welfare Committee report published in 2005 states that the agencies do this to avoid finding their natural parents.\textsuperscript{141}

Adoption moves children from lower to higher socio-economic status, yet even when a child is adopted into a loving, caring family who may provide a more prosperous lifestyle—the end result does not justify the means if

\textsuperscript{141} Sanjay Dubey, Missing Children July 07, 2007, convention text
the child was kidnapped, stolen or their mothers coerced, deceived or exploited. According to UNICEF, child adoptions that obliterate a person’s original identity and leave him no legal access to his family are a risk and a violation of human rights. Adoption needs to be far more transparent, open, honest and regulated to ensure it serves the best interest of those it is intended to serve.

7.2.3 Are laws inadequate and ineffective in tackling the menace of child trafficking via child adoption route?

Adoption activities need strong supervision and legal framework not only in India but globally this will ensure that the co-operating organizations actually act in accordance with the starting points and principles of The Hague Convention on Inter-country Adoption, 1993 and the United Nations Convention on the Rights of the Child. This applies for adoptions from Convention countries, but also for adoptions from non-Convention countries. An ethically responsible inter-country adoption process demands strict regulation and meticulous checks by the concerned government and justifies far-reaching government intervention in this area. We urgently need strict law to prevent child sexual abuse. *The Indian Penal Code does not spell out the definition* of child abuse as a specific offence. Even the Juvenile Justice Act, 2000 does not specifically address the issue of child sexual abuse. It is difficult to apply the provisions of existing laws to any case of child abuse as it is easy for a defence lawyer to make use of the legal loopholes to facilitate their client’s escape from punishment. Even if someone does get convicted
under the Indian Penal Code for rape, the maximum imprisonment is a mere two years. We urgently need legislation that specifically addresses child abuse. The legislation must address all forms of sexual abuse including child prostitution and child pornography. But it should also deal with physical abuse, including corporal punishment and bullying and, trafficking of children. There is urgent need as well to have a functioning administrative system to record and register child abuse cases. In *Legal Aid committee V. UOI*, the Supreme Court observed, “children require the protective umbrella of society for better growth and development as they are not in a position to claim their entitlements.”

The Juvenile Justice (Care and Protection) Act 2000 and the Juvenile Justice Rules, 2007 are the laws to deal with juvenile delinquents and juveniles in need of the care and protection. The Fundamental Principles for Administration of Juvenile Justice, as elaborated in Justice Rules, 2007 include presumption of innocence, right to be heard, positive measures, principles of no harm, no maltreatment and principle of best interest. Unfortunately, the apathy of the law enforcement agencies and the law adjudication authorities has rendered these laws as non-existent.

To provide a child-friendly environment, the cases of ‘juveniles in conflict with law’ are to be adjudicated upon by the Juvenile Justice Board, to be constituted by the state government concerned in every district. Almost all Boards are functioning from the regular court premises, contrary to law. The state is required to put the apparatus in place to ensure
proper adoption, foster care, sponsorship and rehabilitation of juveniles. The objective is to ensure social reintegration of every juvenile as a normal citizen. The chapter IV of the Act deals with rehabilitation and social re-integration of children. The primary aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family where possible, or otherwise, through alternative care programmes and long term institutional care shall be of last resort.

The Gujarat high court is concerned about the juvenile justice boards which are supposed to oversee the condition and functioning of the remand homes and observation homes for juvenile delinquents in the state. In respect to this former Chief Justice of the Gujarat High Court, Justice Radha krishnan has appointed Justice Jayant Patel to monitor the functioning of the juvenile justice boards and the condition of the remand homes142.

Therefore, more promising course would be to reinforce the multilateral legal regime that regulates global adoption. The Hague Convention on Protection of Children and Cooperation in Respect of Inter country Adoption, now in force in 83 countries, requires states to facilitate international adoptions while stamping out exploitation143.

143 The Baby Trade Author(s): Ethan B. Kapstein Source: Foreign Affairs, Vol. 82, No. 6 (Nov. - Dec., 2003), pp. 115-125 Published by: Council on Foreign Relations
As of January 2011, this Convention has been ratified by 83 countries. Nepal, The Russian Federation and Vietnam are signatories, but have not ratified. Other countries like Japan did not join this convention\textsuperscript{144}.

Strengthening this regime is essential to the well-being of orphans and to the parents who would receive them. But doing so will require more diplomatic pressure, more foreign aid, and more political courage in confronting traffickers than the international community has yet mustered.

7.2.4 Has child adoption process turned into a heaven for lucrative money making business?

The most widespread and alarming problem worldwide has been the illicit purchase and sale of babies. Big sum of money or small, money is the key factor for get going of this most lucrative business. From Albania to India, families and orphanages have swapped children for money, television sets, cameras, or watches. A recent article in The New York Times revealed that a family in India sold their month-old daughter for $20 to a "woman from a nearby village," who then sold the baby to an orphanage, which in turn arranged for its adoption abroad\textsuperscript{145}.

What happened in Andhra Pradesh is the blaring example of win of money power over humanity. Andhra Pradesh scandal is a shocker to the Nation at large as big names and large sum of money was involved. CARA has

\textsuperscript{144} Wikipedia: Hague Adoption Convention

\textsuperscript{145} The Baby Trade Author(s): Ethan B. Kapstein Source: Foreign Affairs, Vol. 82, No. 6 (Nov. - Dec., 2003), pp. 115-125 Published by: Council on Foreign Relations Stable URL: http://www.jstor.org/stable/20033761
failed to smoothly run adoption system in India. Many issues of child abuse and irregularities are still prevalent and not curbed by the authorities.

Several adoption agencies were shut-down, the children were seized and a whole bunch of high-profile persons who ran NGOs were arrested on the charge of child trafficking under the pretext of inter-country adoption. The adoption agencies dangled monetary incentives before biological/natural parents, which violated the most fundamental norms governing adoptions. The accused were guilty of criminal conspiracy as they worked hand-in-glove with each other on the matter of the relinquishments deed that biological parents desirous of giving up their children for adoption must sign. In one of the reports in a leading magazine in India, adoption agencies close the eyes to the poor in the list of potential parents since they can’t shell out enough money for child adoption. In their urge to mint money, these agencies have separated many kids from their natural homes.

It is to be noted that Clause 4.35 of CARA guidelines unambiguously states that an adoption agency must be run on a non-profit basis and it shouldn’t look to make money from adoption. Still recognized adoption agencies, Welfare Homes for Children charge about Rs.20,000 on an average from Indians, instead of just the amount to take care of

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147 Sanjay Dubey, Tehelka, July 7, 2007
148 The Department of Social Welfare (DSW), Report, 2005
expenses. The guidelines specify that foreigners can be charged a maximum of Rs. 10,000 but they routinely have to pay lakhs of rupees\textsuperscript{149}.

This aspect has been discussed in detail under chapter of malpractices. Less is said when it comes to corruption prevalent in this area of human rights. Legal framework ought to be tightened up fast as to stop this unscrupulous practice of child selling and making money as if child is a commodity.

\textbf{7.2.5 Have various conventions failed to resolve various issues confronting child adoption process?}

Child adoption deals with lot of intricate non-intricate issues. Since, ancient times it is a practice followed by the people who are in need of either legal heir or some other emotional or social reasons. Even in India, till date there is no unambiguous law for child adoption but there are some legislation related to adoptions which are present like Hindu Adoption and Maintenance Act 1956 and The Guardians and Wards Act 1890. India has also ratifies in JJ Act to the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, which came into force on 1 May 1995. Inspite of all these laws corruption is still present in the adoption process, especially inter-country adoption.

The Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993 has been an exemplary step in the right direction by most governments, it could sometimes actually hinder many

\textsuperscript{149}http://www.tehelka.com/story_main31.asp?filename=Ne070707the_business.asp, visited on 29 Jul 2010
adoptions to families that would normally qualify and causing children to miss opportunities that could have saved and changed their lives. From the Convention there is a very famous quotation which emerged as the crux of the convention, it states that,

“Inter-country adoptions shall be made in the best interests of the child and with respect for his or her fundamental rights. To prevent the abduction, the sale of, or traffic in children each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin.”

Certain important countries from the adoption point of view like Guatemala which has had a plethora of child trafficking, prostitution and many orphans, are now temporarily closed to adoptions after the country’s ratification of the Hague Convention. As per convention even Indian regime runs incredibly slow, creates a rigorous process that few pass, and instead of helping the children get out of orphanages, it keeps them inside, getting older and older until they pass the age of adoption and simply wait until they are legal adults. So, there are pros and cons of conventions. But on the whole it is for the safety, security and future of the children.

Still, The UN declaration relating to the Welfare of Children emphasizes the preference for children being raised by family members, rather than by adoptive families. The child shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case,
in an atmosphere of affection and of moral and material security. The Declaration makes clear that international adoption should only be considered as a last resort. This is explained in Article 15,

“If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, inter-country adoption may be considered as an alternative means of providing the child with a family.”

In such a situation, the Declaration also advocates time and patience in the adoptive process, i.e. not rushing into adoptions in the wake of disasters. Article 15 states “Sufficient time and adequate counseling should be given to the child's own parents, the prospective adoptive parents and, as appropriate, the child in order to reach a decision on the child's future.” Clearly, the UN Declaration is against the idea of international adoption as a whole, and is most certainly against rushed international adoption.

7.2.6 Are Indian government policies globally ineffective in containing the trafficking problems of child adoption?

Now Indian government has been vigilant in keeping check on child trafficking problem after lot of scandals. Other than present laws (GAWA, HAMA) Guidelines are also prescribed for 'Adoption of Indian Children' by the Ministry of Welfare, Government of India.

Most infamous scandals in India are Andhra Pradesh in 1999 and Preet Mandir in 2009. These two scandals are a decade apart from each other
but nature and *Modus operandi* seems similar. It is time to check how inspite of all existing laws and rigorous process laid down by Hague Convention so many malpractices emerge and are breeding like mushrooms everywhere. Problem lies not with the law but with the people executing it. Corruption everywhere it’s taking its toll on innocent children also who are been treated like a commodity in the market. More painstaking laws are required to be put to keep trafficking problem under control. After scandal of Andhra Pradesh, some countries even stopped adoption from India for sometime but again resumed. Since the 2001 scam, the sale of babies in Andhra Pradesh has certainly been substantially contained. The adoption process has become a shade more transparent.

Internationally, Indian Law and judiciary still stand tall because of the proactive attitude of Judiciary towards child adoption. *Laxmikant Pandey’s*\(^{150}\) case might be the high point but there are many other important judgments *which* have given shape to the international scenario. Judiciary has dealt with sensitive issues like foreigner adopting child directly from the biological parent, like in the case of *Smt. Anokha v. The State of Rajasthan and Ors*\(^{151}\), *under* Guardians and Wards Act Sections 7, 10 and 17 and Civil Procedure Code (CPC) Section 13, No parent with whom the child is living would agree to give a child in adoption unless he or she was satisfied that it would be in the best

\(^{150}\) MANU/SC/0054/1984

\(^{151}\) 2004 (1) ALD 45 (SC)
interest of the child. Guidelines have been formulated by way of various directives as given by Supreme Court in the several decisions and do not relate to regulation of the adoption procedure to be followed in respect of children who are living with their biological parents and are sought to be given in adoption to a known couple. It is only where there is the impersonalized attention of a placement authority that there is a need to closely monitor the process including obtaining of a no objection certificate from the Central Adoption Resource Agency (CARA), Ministry of Welfare, the sponsorship of the adoption by a recognized national agency and the scrutiny of the inter-country adoption by a recognized Voluntary Coordinating Agency (VGA). The judiciary has recognized bunch of rules and regulations which ensures a child’s life more safe and sound. However, foreigner couples still feel confused understanding the ins and outs of the law and the protracted procedure but buried in inside even they appreciate the requisite of all this.

7.3 SUGGESTIONS FOR BETTERMENT OF CHILD WELFARE

After thoroughly studying and understanding the procedure, working and intricacies of inter-country child adoption, the researcher finds some suggestions for the betterment of the child adoption in and outside India. Few suggestive points are as follows:

1. STRONG LEGAL REGIME FOR ADOPTION
Adoption activities needs strong supervision and legal frame work not only in India but globally. This will ensure that the co-operating
organizations actually act in accordance with the starting points and principles of The Hague Convention on Child Adoption and the United Nations Convention on the Rights of the Child. This applies for adoptions from Convention countries, but also for adoptions from non-Convention countries. An ethically responsible inter-country adoption process demands strict regulation and meticulous checks by the concerned government and justifies far-reaching government intervention in this area.

2. **SOCIO-FINANCIAL SUPPORT BY THE GOVERNMENT**

The Ministry looking after adoption affairs must encourage to offer assistance to countries of origin, geared towards the social-financial situation of the biological parents and their environment, as well as the structural improvement of youth assistance services, so that inter-country adoption can actually become a last resort. This assistance may not be at the expense of the integrity of the adoption process or create a financial dependence on inter-country adoption. As per best interest and last resort inter-country Adoption is available.

3. **RULES FOR NON-CONVENTION AND CONVENTION COUNTRIES**

Different procedural rules apply for inter-country adoptions from non-Convention countries than those applicable for inter-country adoptions from Convention countries. Although the starting points and safeguards of the Hague Convention on child Adoption do apply to non-Convention countries as well, substantive differences with Convention adoptions can
be observed in a number of essential parts of the procedure. Hence, these differences are inadvisable. Therefore, in order to take into consideration the best interests of the child, the adoption procedure from non-Convention countries must be improved and made more stringent, and indicates the possibilities applicable to this end (including a certificate of approval from the Central Authority for each non-Convention adoption, an authorization per country, the power of the Central Authority to issue a designation order).

4. **ENCOURAGEMENT OF MEDIATION**

In Netherland and many other parts of the world there is a practice of Mediation through private or independent adoption contacts.\(^{152}\) It perhaps shows the placement of the foreign children with a view to adoption good to some extent. Globally the current practice in relation to mediation through private or independent adoption contacts involves prospective adoptive parents establishing contacts with authorities, individuals or institutions in the chosen country of origin themselves, through which contacts they wish to take in a child. The verifiability of mediation through such private or independent adoption contacts, despite the fact that the procedure should be tight. The prospective adoptive parents who request permission for mediation through a private or independent contact often have a preference for a country of origin that has an ‘adoption system’

\(^{152}\) Report on Inter-country Adoption, “All things of value are defenceless”, Committee on Lesbian Parenthood and Inter-country Adoption, 29 May 2008
that is a complete unknown, in a situation where the authority has limited time and resources to investigate the adoption in question.

In the event of mediation through a private or independent adoption contact, the Central Authority will only make prior checks on the amounts to be paid in the country of origin on the basis of estimates. This increases the risk of an improper flow of funds. This institution or individual also decides on the individuals to whom the child will be allocated for adoption. This is contrary to Article 29 of The Hague Adoption Convention. Although researcher has been compelled to recognize that there are reasons to opt for mediation through a private or independent adoption contact but giving consideration to the best interests of the child must lead to the abolition of mediation through such private or independent adoption contacts, given the risk of the inadequate verifiability of mediation through a private or independent adoption contact, the greater vulnerability to irregularities and given the fact that mediation through a private or independent adoption contact undermines the safeguards anchored in the Hague Adoption Convention.

5. **UNREGULATED FOSTER CARE**

Foster care is the hub for all irregularities; close check requires to be kept. Earlier it is discussed in details about the abuse and malpractices followed in these so called foster homes. Government should come out with vigilant bodies to keep watchful eye on these foster homes.
6. **RULES FOR CENTRAL AUTHORITIES**

It is highly recommended to introduce a guidelines for the Central Authority vis-à-vis the accredited bodies. This will make it possible for the Central Authority to manage adoption situations in a more targeted manner, without needing to use more serious sanction possibilities, such as the withdrawal or suspension of a license or country-specific authorization.

Thus, researcher feels need for change in legislature, executive and judiciary all at different levels of child adoption but above all humane approach is required to tackle the sensitive issue like this. What is needed is a paradigm shift in attitudes as a result of which the children themselves are brought from the fringes of the process to become arbiters of their own destiny. As rightly said by Irina O’Rear about adoption is that Adoption comes from the heart, but the adoption process comes from the Law. One should follow his or her heart, but be sure one should also follow the law.

*For as many as are led by the Spirit of God, these are sons of God.*

*For you did not receive the spirit of bondage again to fear,*

*but you received the Spirit of adoption*  
*by whom we cry out,*  
*"Abba, Father."*  

*Romans 8:14-16*  
*The Holy Bible*