

INTER COUNTRY ADOPTION: SAVING ORPHANS OR CHILD TRAFFICKING?

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Introduction

Adoption is the act of taking something on as your own. Adoption usually refers to the legal process of becoming non-biological parents.

A legal proceeding that creates a parent-child relation between persons not related by blood; the adopted child is entitled to all privileges belonging to a natural child of the adoptive parents (including the right to inherit)¹

When this adoption is done by foreigners with all legal formalities as described in the Inter-Country Adoption Bill, 1980, it is referred to as Inter-Country Adoption.

The increase in the numbers of children being adopted by families from other countries has also been the cause of an enormous increase in Public Policy Controversy, leading to The Hague Convention and Treaty on International Adoption, and numerous countries changing their internal laws and policies, to regulate inter-country adoption practices.²

India is party to the *Hague Convention on Protection of Children and Co-operation in Respect of Inter country Adoption* (Hague Adoption Convention). The Hague convention of 1993 operating through a system of national Central Authorities reinforced the UN Convention on the Rights of the Child. This convention was fruitful for creating international laws in protection of children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. India signed this Hague convention on inter-country adoption in 2003 and ratified the same with a view to strengthen International Cooperation and Protection of Indian Children placed in inter-country adoption.

¹ Adoption, Vocabulary.com, <https://www.vocabulary.com/dictionary/adoption>

² Mohit Agarwal, The Paradox of Inter Country Adoption, <http://www.legalserviceindia.com/articles/pard.htm>

Literature Review

*Law Commission Report (153rd report on Inter Country Adoption, 1994)*³: The law commission suo moto took up this topic in 1994 as we had no laws to regulate inter country adoption and so it gave its recommendations. Inter Country Adoption was regulated through precedents and the commission felt the need for a legislation. The report basically discusses the bills that have not been approved by the parliament and places statistics of agencies involved in Inter country Adoption. This report helps in giving an insight into the topic.

- *Child Laundering, David Smolin*⁴: The article talks about how children are laundered, i.e., kidnapped or illegally taken custody of the child, declared them orphans and offered as adoptees. The article in detail describes the methods of operation of child buying and trafficking them as orphans. This article has identified reforms that should be effective to sharply reduce the incidence of child laundering. The article mentions that the adoption community generally resists reform. Thus, although these reforms may be rational, it is not clear that there is a rational reason to hope for their adoption.
- *Inter country Adoption as Child Trafficking, David Smolin*⁵: The article talks about how it is difficult to distinguish International Adoption and Child Trafficking due to the problem of ethics. It also mentions how the birth parents agree to sell their child for money. Inter country adoption is a form of child trafficking not because adoptive families in rich countries obtain poor children from developing and transition economy nations. Rather, inter country adoption is a form of child trafficking because the law and current systems of inter country adoption permit it to operate as such. Of course, it could be argued that the very nature of inter country adoption, involving a transaction between rich and poor nations, lends itself to abuse, and therefore the choice is ultimately between shutting down inter country adoption, and allowing it to continue, in the interests of saving children, despite these abuses.

³ Report No. 153 on Inter Country Adoption, August 1994, K.N. Singh (Former Chief Justice of India) and Shastri Bhawan (Chairman, Law Commission, Government of India), <http://lawcommissionofindia.nic.in/101-169/report153.pdf>

⁴ David Smolin, Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children, ExpressO Preprint Series, 2005, http://www.humantrafficking.org/uploads/publications/child_laundering_270407.pdf

⁵ David Smolin, Intercountry Adoption as Child Trafficking, Valparaiso University Law Review, 2004, <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1252&context=vulr>

- *The Two faces of Inter country Adoption, David Smolin⁶*: This article compares the CRC and Hague Convention features and sections involved. It discusses parameters set by Hague Convention so as to be able to adopt a child. It also describes how India has agencies and how there are Adoption Scandals (Andhra Pradesh Adoption Scandal). The article suggests to have Accountability as without accountability, the pretty face of adoption as a loving act that fills a real need in a child's life will, all too often, turn out to be no more than a mask covering over ugly realities of trafficking, profiteering, and needless tragedy.
- *The Paradox of Inter country Adoption, Mohit Agarwal⁷*: The article discusses on how there is increasing international adoptions and there is a rise in Indians going out of the country. Openness in adoption may provide additional support for families of children who have found homes through inter-country adoption and for adopted adults. The article mentions that policies of other countries may inhibit information exchanges that allow for various levels of contact between birth parents and their children who are adopted. The article suggests that Inter country Adoption should be the last resort while searching for a foster home. It is better for the child to be in the domestic country.

⁶ David Smolin, *The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals*, Seton Hall Law Review, 2005, <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1202&context=shlr>

⁷ Mohit Agarwal, *The Paradox of Inter Country Adoption*, <http://www.legalserviceindia.com/articles/pard.htm>

Research Question / Issue

International Adoption started off as to provide innumerable orphans a home in foreign countries, a home for their better future. There are cases of Indian orphans being given a secure and loving home in another country but children have been used as domestic servants, beggars and even for prostitution. The legal rules and processes associated with adoption are inadequate to prevent these illicit practices from becoming a significant part of the inter country adoption system. The legal rules of the adoption system are systematically used to traffick children by processing them first as orphans and then adoptees.

Are the legal rules of the adoption system giving a child a better home or destroying their future in another country?

Research Findings

It is difficult to distinguish between Child Trafficking and Inter Country Adoption because to some, International Adoption itself is Child Trafficking as children are transferred from the poor countries to the rich nations. This transfer of children maybe just because the people in the rich nation want children not to beg or any sort of abuse but to actually care for them and love them. But, the transfer from poor to rich and the money involved makes it Child Trafficking.

Those most supportive of inter country adoption perceive literally millions of children in need of inter country adoption in developing and transition economy nations. Children abandoned, killed, left in dismal orphanages, or living on the streets bear horrific testimony to the pressing need for adoption. From this perspective, ethical or political objections to inter country adoption lack legitimacy, since they sacrifice the concrete good of children to ideological idols.⁸

The document that directly addresses Inter Country Adoption as Child Trafficking is the OP-CRC. The OP-CRC defines the “sale of children” as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.” The Hague Convention also explicitly includes as one of its ‘objects’ the prevention of ‘the abduction, the sale of, or traffick in children’.

⁸ See Supra 5 Pg. 283

The UN CRC in its Articles 12 and 19 talk about securing and protecting the child from any physical or mental violence or any such kind of abuse.⁹ It also safeguards all rights of the children when they are adopted by parents of different countries with all legal formalities. The adoption agencies created for easy work process of all these formalities get children either legally from orphanages or illegally by either stealing or kidnapping children. The children brought legally have all documents whereas for the others, illegal documents are created and these children are trafficked to other countries. Prospective parents may not consider this to be a type of child exploitation since they have intentions of taking care of the child. However, whether or not the child is treated well does not negate the fact that child is still a trafficking victim. Adopting a child illegally is called black market baby buying. It is important to remember that some parents are unaware that they are buying black market babies. This is why a couple or individual who are adopting should follow the laws set forth by the Hague Convention.¹⁰

As a matter of international law, inter country adoption constitutes illicit child selling and child trafficking where an intermediary induces consent to adoption in violation of the standards of the Hague Convention and when the child is transferred for remuneration or any consideration. As a technical matter, both elements—inducement of consent by an intermediary in a manner violating Hague standards and the transfer of children for remuneration or consideration—must be established to constitute the kind of “sale of children” that literally violates the standards of the OP-CRC.¹¹

The children when kidnapped are bought by orphanages at a very low price and then their documents are forged which helps to offer these children as adoptees to the foreigners. These children are not adopted or offered for adoption in the domestic country because of various reasons. One being that they would not get enough money while giving this child for adoption and also because they do not want to take risk by offering the child as an adoptee in the same country as anything can happen any day. It is better to traffick these children to another country

⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, <http://www.refworld.org/docid/3ae6b38f0.htm>

¹⁰ Inter Country Adoption, India, Hague Convention <http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/india.html>

¹¹ See Supra 8 Pg. 300

where the child gets a visa and all other rights as the adopted or foster parents. Once they are adopted by a family in another country, their job is done and they get the money and so International Adoption is Not Saving Orphans anymore but Trafficking Children.

India is a prime candidate in sending children for inter country adoption given its large population half of which lives below the poverty line. The adoption scandals between the years 1995-2001 are proof that it is Child Trafficking that is going on in the name of Inter Country Adoption.

Andhra Pradesh:

- United States and Indians have documented a cyclic series of adoption scandals from the South Indian state of Andhra Pradesh, particularly during the period from 1995 to 2001. Several orphanages in that state systematically sent out scouts to purchase female infants from vulnerable poor families. The identities of the children were systematically altered, and falsified documents created. The Andhra Pradesh scandals are a significant instance of child-buying scandal, where the intentional criminal conspiracy is headed by citizens of the sending countries. The Andhra Pradesh High Court convicted the TLCH (Tender Loving Care Home) and found the coordinator with other staff members guilty.
- The Andhra Pradesh agencies impacted far more children than the estimated one-thousand they placed for international adoption. The agencies apparently also sometimes shipped excess children out of the state to other parts of India. The TLCH judgment attributed almost eighty forged relinquishment documents to that single institution. Further, the prosecution claimed that the TLCH defendants had purchased 436 babies for international placement.¹²

Maharashtra:

- The State of Maharashtra in India contains approximately 9% of India's population, and yet commonly accounts for 40% of India's inter country adoptions. The relatively small city of Pune, within Maharashtra, represents between 2.5% and 3.75% of India's population, but accounts for approximately 25% of all inter country adoptions as the NGO Preet Mandir accounts for the highest inter country adoption in the country in 2004-2005. There has been no arrests in Maharashtra as in Andhra Pradesh, but there

¹² See Supra 4 Pg. 152

are accusations against Preet Mandir as it accounts to a significant amount of inter country adoptions of a country.

- CARA (Central Adoption Resource Agency) received two complaints that bear the question of the source of Maharashtra's many international adoptees. First, the complaint mentioned that children were "referred to the adopters before they were legally free for adoption". This may suggest that the agency was confident that it could get any child free for adoption at will. Second, the Maharashtra agency allegedly stated in a March 2001 letter that "the Gujarat government has sanctioned 200 children and will be transferring 100 children to our new facility within 4 to 6 weeks." This indicates that this Maharashtra agency was sourcing children from another Indian state. But, it is unclear whether Maharashtra, which borders Andhra Pradesh, has become subject to the kind of illicit sourcing of children which occurred in Andhra Pradesh.¹³

From 2002- 2010, India sent approximately 5,600 children abroad for adoption. U.S. families adopted approximately 2,400 of these children, with India consistently ranking within the top ten countries of origin for Americans adopting children from abroad.¹⁴

The Preet Mandir case repeats as the CBI in 2010 also alleges them for inter country adoption racket i.e., Child Trafficking. It starts when children are kidnapped or stolen from the poor families in Maharashtra and then documentation is illegally done so as to send them to other countries as adoptees. The trustee of this NGO mentions that allegations have been put against them twice earlier too but nothing could be proved. It is just that they do good work and the officials have a problem with that. But, the truth is that they do not do good work by sending out children for adoption, they do good work in faking the documents. Advait Foundation from Mumbai & Sakhee from Pune filed a Criminal Writ Petitions against Preet Mandir in Mumbai High Court and High Court recently ordered CBI to reinvestigate, as a previous investigation had proven to be faulty and incomplete. The order of reinvestigation was challenged by Preet Mandir in the Supreme Court of India and the same was dismissed. In 2013, when allegations could have been proved, the adoption agency decided to shut down and send the children in their agency to other NGOs. One such case of Child Trafficking by Preet Mandir was:

¹³ See Id 10 Pg. 155

¹⁴ Arun Dohle, Inside Story of an Adoption Scandal, Cumberland Law Review, 2008
https://www.brandeis.edu/investigate/adoption/docs/adoption_Dohle_cumb_final.pdf

Grandmother Kisabai Lokhande placed her two grandchildren in for temporary care, education and protection in the Observation Home Satara (boarding school). From there the girls were transferred to the children home [Preet Mandir](#) in Pune. From there the two grandchildren were, without their grandmother's consent or knowledge, given to adoptive parents in Spain the mediation of a Spanish adoption agency. ACT (Against Child Trafficking) supported the grandmother in filing a Criminal Writ Petition against the State parties and Adoption Agency in the Indian Court. The Court dismissed it. Following this, ACT supported the grandmother to file her case in the Indian Supreme Court. She is waiting to go see her grandchildren which is possible only after the SC's decision.

In 2014, an organization representing Indian parents of trafficked children alleged that there were three new cases identified where children were trafficked to Australia. An existing case, involving a child who had been kidnapped off the street and sold before being adopted to an Australian family, remains unresolved. Arun Dohle in his articles also mentions that dozens of Indian children have been trafficked to Australia without the consent of the birth parents. Mar Dohle mentioned that one case involved a girl who was old enough at the time of adoption to know her parents were against her being given up. 'She is now an adult and is seeking her biological parents, who we believe did not give consent. The Indian company, which provided dozens of children for adoption in Australia, has denied any impropriety.'¹⁵

In June 2015, Police in Delhi broke an illegal racket who stole new born babies from hospitals and sold them in adoption agencies. These adoption agencies sold these new born kids internationally so as to earn more profits.

In February 2016, police had busted an international child trafficking racket operating in the southern city of Bengaluru. They arrested 16 members of a gang suspected of sending at least 25 children from the states of Bihar, Uttar Pradesh and Gujarat illegally to the United States using fake documents in order to acquire visas. According to a report by the New Delhi Television (NDTV), the children were matched with adult couples and made to pose as a family, presenting false documents at the U.S. consulate to get the required visas for their

¹⁵ Rory Callinan, Evidence of Trafficking of Indian children for illegal adoption emerges, The Sydney Morning Herald, 2014 <http://www.smh.com.au/national/evidence-of-trafficking-of-indian-children-for-illegal-adoption-emerges-20140124-31e84.html>

journey. The adult couples then flew to the United States with the children, left them there and returned to India. The suspected traffickers told police they were reuniting the children with their parents in the United States, all illegal immigrants. The police believed the children were being sold.¹⁶

All these children after trafficked to various states abroad either get love and care which is in rarest of rare cases or are abused. Abuse can either be physical, emotional, mental or sexual. The children can either be forced to beg or do the household chores and are mistreated. All this spoils their psychological order and are in the abused state for a long time. There are foster parents who really want kids so as to care for them and love them but are also involved in the trafficking racket knowingly or unknowingly when they adopt a child whose documents are illegal and might not be an orphan.

Conclusion

Inter country adoption is a conditional good; inter country adoption as child trafficking is an evil. Only when the law, society, and inter country adoption system are reformed will the conditions under which inter country adoption can flourish as a good be established. Unfortunately, the prospects for such reform are poor because there are few within the current inter country adoption system with the motivation to demand it. It could be argued that the very nature of inter country adoption, involving a transaction between rich and poor nations, lends itself to abuse, and therefore the choice is ultimately between shutting down inter country adoption, or allowing it to continue, in the interests of saving children, despite these abuses. This kind of argument implicitly justifies child trafficking in the name of the best interest of the child. Child trafficking is a profound violation of human rights that law and society must energetically seek to abolish, wherever it may be found and whatever disguises it may adopt. Only when the law has energetically implemented the obvious and rational regulatory steps to prevent adoption as trafficking can the argument be made till then the only choices are banning inter country adoption or permitting trafficking. The best way to stop or reduce Child

¹⁶ Nita Bhalla, Indian children trafficked to United States is a reality, Thomas Reuters foundation, 2016
<http://adoptionland.org/p/indian-children-trafficked-to-united-states-is-a-reality-says-u-s-diplomat/>

trafficking is to Stop Inter country Adoptions in the first place. This will increase the risk of adoption agencies getting caught and the orphans who really need a family will get a family in the same country. Instead of encouraging International Adoption, we should encourage Domestic Adoption.

