

## INSIDE STORY OF AN ADOPTION SCANDAL

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### I. INTRODUCTION

In historical terms, intercountry adoptions from India have had a short run. Within thirty years of its inception, murky scandals of child kidnapping, falsifying paperwork, outright trading, and other tragic stories have ridden these intercountry adoptions.<sup>2</sup>

Worldwide, adoption experts widely believed that ratifying the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (1993) would help reduce malpractice in such adoptions.<sup>3</sup> The Convention aims to minimize malpractice in adoption and “prevent the abduction, the sale of, or trafficking in children.”<sup>4</sup> But does regulating help in weeding out cases of malpractice? Or does the regulation of intercountry adoptions, because of the strong demand for children, lead to a legalized market for children without effective control?

Dutch anthropologist Pien Bos studied the relinquishment process of unmarried mothers in India and came to the startling conclusion that the formal controls in intercountry adoptions are counter-productive:<sup>5</sup>

I am convinced that these Conventions, Regulations and Guidelines are not appropriate instruments because they do not address the main concerns. . . . Instead of taking away threats, it takes away transparency and causes a mystification of reality. The more adoption is regulated and monitored, the more po-

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<sup>1</sup> I have researched Indian adoptions for the last eight years. As an Indian adoptee, raised in Germany, my interest in the matter arose when I searched for my own roots, which rapidly expanded to the larger picture of Indian intercountry adoptions. I am grateful to CNN-IBN and the child rights organizations, Advait Foundation and Sakhee, for sharing information with me. Furthermore, I wish to thank Roelie Post and Gita Ramaswamy for their help in editing this article.

<sup>2</sup> See, e.g., David M. Smolin, *The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals*, 35 SETON HALL L. REV. 403, 450-75 (detailing a description of the adoption scandals in Andhra Pradesh).

<sup>3</sup> See Ethan B. Kapstein, *The Baby Trade*, FOREIGN AFFAIRS, Nov./Dec. 2003, at 115, available at <http://www.foreignaffairs.org/20031101faessay82611/ethan-b-kapstein/the-baby-trade.html>.

<sup>4</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Preamble, May 29, 1993, S. Treaty Doc. No. 105-51, available at [http://www.cfo.org.nz/Information\\_Pack\\_Docs/Hague%20Convention.pdf](http://www.cfo.org.nz/Information_Pack_Docs/Hague%20Convention.pdf) [hereinafter Hague Convention].

<sup>5</sup> PIEN BOS, ONCE A MOTHER: RELINQUISHMENT AND ADOPTION FROM THE PERSPECTIVE OF UNMARRIED MOTHERS IN SOUTH INDIA 241 (2007).

litically correct objectives get distanced from daily practices. . . . The transparency of surrender and adoption procedures is obscured by the taboo on the financial component of adoption.<sup>6</sup>

Generally, receiving countries do not know the details of the scandals taking place in sending countries. The aim of this article is to give the reader an inside view of an adoption scandal and to explain how the system deals with the scandal. Therefore, I will often quote directly from documents gathered from journalists, as well as from High Court proceedings. In order to enable the reader to understand the violations, I will give a short overview of the Indian adoption system and regulations.

This article illustrates the scandal surrounding the Indian agency Preet Mandir, as it is the agency that has weathered the most corruption and baby-trade scandals and is reputed to have immense clout with the Indian Government.<sup>7</sup> Consequently, the organization's operations have continued nearly unhampered. Preet Mandir placed 518 children up for adoption during the period from 2004 to 2006, accounting for five percent of all the adoptions carried out by agencies registered with the Central Adoption Resource Authority (CARA).<sup>8</sup> Of these 518 adoptions, Preet Mandir placed 358 children abroad, representing 13 percent of all Indian intercountry adoptions within this period.<sup>9</sup> Preet Mandir works with all major receiving countries, many of whom also ratified the Hague Convention.<sup>10</sup>

## II. ADOPTION IN INDIA

### A. *In General*

Adoptions from India started late in the 1960s, and mainly Europeans adopted the children.<sup>11</sup> In the 1980s, increasing numbers of children were sent to the United States.<sup>12</sup> From 2002 to

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<sup>6</sup> *Id.*

<sup>7</sup> See Joginder Singh Bhasin Aff. ¶ 1(ii).

<sup>8</sup> *Id.* ¶ 1(iv); Central Adoption Resource Agency (CARA), Data on Adoption, <http://www.adoptionindia.nic.in/database.htm> (last visited Nov. 13, 2008).

<sup>9</sup> See Bhasin Aff., *supra* note 7, ¶ 1(iv) (13% calculated on the assumption that special needs children, siblings, and children above six years-old have all been placed in foreign families).

<sup>10</sup> Children from Preet Mandir were placed in Australia, Germany, Spain, and Italy. Adoption India, Facts and Figures of Adoption, <http://www.adoptionindia.nic.in/actualcases.asp> (last visited Nov. 13, 2008).

<sup>11</sup> See SHALINI BHARAT, CHILD ADOPTION: TRENDS AND EMERGING ISSUES (A STUDY OF ADOPTION AGENCIES) vii (Bombay: Tata Institute of Social Science 1993).

<sup>12</sup> See *id.* at 138.

2007, India sent approximately 5,600 children abroad for adoption.<sup>13</sup> U.S. families adopted approximately 2,400 of these children,<sup>14</sup> with India consistently ranking within the top ten countries of origin for Americans adopting children from abroad.<sup>15</sup>

There is still no specific adoption law in India, but in 1984, the Supreme Court of India laid down detailed procedures for adoption after allegations of malpractice arose.<sup>16</sup> These procedures form the basis for the Government's Guidelines on Adoption, promulgated in 1989, 1995, and 2006.<sup>17</sup> In 1993, India ratified the 1989 UN Convention on the Rights of the Child,<sup>18</sup> which stipulates that intercountry adoptions are allowed only as last resort if no other suitable manner of care is possible within the country and if no improper financial gain was made.<sup>19</sup> On June 6, 2003, India ratified the Hague Convention on Adoption.<sup>20</sup> Thus, in a sense, intercountry adoptions in India developed over a long period of time and can be considered well regulated, with multiple checks and balances in place.<sup>21</sup>

No matter how well regulated one considers the Indian adoption system, allegations of corruption, kidnapping, and trafficking of children continue on a regular basis.<sup>22</sup> For example, intercountry adoptions almost completely ceased in the state of Andhra Pradesh after it came to light that licensed adoption agencies indulged in the buying and selling of tribal babies.<sup>23</sup> In 2005, it was

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<sup>13</sup> Central Adoption Resource Agency, *supra* note 8.

<sup>14</sup> See, e.g., The Adoption Guide, India Fast Facts, <http://www.theadoptionguide.com/options/adoption-from-india> (last accessed Nov. 13, 2008); Adoptive Families, India Adoption, [http://www.adoptivefamilies.com/india\\_adoption.php](http://www.adoptivefamilies.com/india_adoption.php) (last visited Nov. 13, 2008).

<sup>15</sup> U.S. Dep't of State, Immigrant Visas Issued to Orphans Coming to U.S., [http://www.travel.state.gov/family/adoption/stats/stats\\_451.html](http://www.travel.state.gov/family/adoption/stats/stats_451.html) (last visited Nov. 13, 2008).

<sup>16</sup> See *Lakshmi Kant Pandey v. Union of India*, 1984 A.I.R. (S.C.) 469; Hague Convention, *supra* note 4.

<sup>17</sup> See CARA, Guidelines for Adoption from India - 2006, [http://www.adoptionindia.nic.in/guide\\_inter\\_country\\_chap1.htm](http://www.adoptionindia.nic.in/guide_inter_country_chap1.htm) (last visited Nov. 13, 2008).

<sup>18</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES (2004), available at <http://www.unhchr.ch/pdf/report.pdf>.

<sup>19</sup> Convention on the Rights of the Child, art. 21, Nov. 20, 1989, 1577 U.N.T.S. 3, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm> [hereinafter UN Convention].

<sup>20</sup> See Joint Council on International Children's Services, India, <http://www.jcics.org/India.htm> (last visited Nov. 13, 2008).

<sup>21</sup> BOS, *supra* note 5, at 220.

<sup>22</sup> See Smolin, *supra* note 2.

<sup>23</sup> *Id.* at 403.

discovered that in Tamil Nadu, children were kidnapped and sold to a licensed agency (Malaysian Social Service Society) and adopted by foreign adoptive parents.<sup>24</sup> Additionally, adoptions in Delhi came to a temporary standstill in 2005<sup>25</sup> after the Department of Women and Child Development conducted an inquiry into the practices of licensed agencies and alleged that the agencies flouted the law by not producing abandoned children before the Child Welfare Committee, preferred foreigners to domestics, and failed to make adequate efforts to restore the children to their parents.<sup>26</sup>

*B. The Legal Framework in India*

India has never enacted a uniform adoption law. Attempts were made to get a uniform adoption law passed in Parliament but failed twice due to the opposition of the Muslim community.<sup>27</sup> In 1982, a writ petition was initiated by an Indian lawyer, Lakshmi Kant Pandey, complaining about malpractice in the offering of children for intercountry adoption.<sup>28</sup> The Supreme Court, due to the lack of relevant legislation, consulted several social organizations and voluntary agencies for their input<sup>29</sup> and delivered a judgment in 1984 discussing the various aspects of the problems relating to intercountry adoption and formulating guiding principles on the normative and procedural safeguards to be followed in giving an Indian child in adoption to foreign parents.<sup>30</sup>

Subsequent judgments were delivered in 1985, 1987, 1990, and 1991.<sup>31</sup> Based on these judgments, the government of India issued

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<sup>24</sup> Asha Krishnakumar, *Behind the Facade*, 22 FRONTLINE, May 21-Jun. 3, 2005, <http://www.hinduonnet.com/fline/fl2211/stories/20050603006101300.htm> (last visited Nov. 13, 2008).

<sup>25</sup> See Kavita Chowdhury, *Much More Orphan Kids May Find US Homes*, DELHI NEWSLINE, Mar. 25, 2005, <http://cities.expressindia.com/fullstory.php?newsid=122533>.

<sup>26</sup> Sreelatha Menon, *Govt to probe 800 adoptions abroad*, DELHI NEWSLINE, Nov. 12, 2004, <http://cities.expressindia.com/fullstory.php?newsid=106540>.

<sup>27</sup> *Pandey*, 1984 A.I.R. (S.C.) 469. The Supreme Court presumed "that the opposition of the Muslims stemm[ed] from the fact that it was intended to provide for a uniform law of adoption applicable to all communities including the Muslims," and this was contrary to Muslim religious tenets. *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Indian Council of Social Welfare, Enfants Du Monde, Missionaries of Charity, Enfants De L's Espoir, Indian Association for Promotion of Adoption, Kuan-yin Charitable Trust, Terre Do Homes (India) Society, Maharashtra State Women's Council, Legal Aid Services West Bengal, SOS Children's Villages of India, Bhavishya International Union for Child Welfare and the Union of India, Barnen Framfoer Allt adoptioner.

<sup>30</sup> *Pandey*, 1984 A.I.R. (S.C.) 469.

<sup>31</sup> Smolin, *supra* note 2, at 426 n.99.

the first guidelines in 1989. Revised guidelines were released on May 29, 1995, to be replaced by new ones on February 4, 2006.<sup>32</sup>

India signed the Hague Convention in January 2003 and ratified it five months later.<sup>33</sup> The system put in place in 1995 did not need any major modifications when India ratified the Hague Convention in 2003. It is to be noted that many aspects of the 1993 Hague Convention were already dealt with by Supreme Court judgments and were included in the government's 1995 guidelines.<sup>34</sup> Therefore, one may conclude that India has had a Hague compliant adoption system since 1995.

### C. *Legal Adoption Procedure*

In India, matters relating to the family follow the practice of personal laws which are dependent on religion. Adoption is included only in the Hindu Adoption and Maintenance Act, which is applicable only to Hindus, Buddhists, Jains, and Sikh.<sup>35</sup> Therefore, the Supreme Court's 1984 judgment held that in the absence of a law providing for adoption of an Indian child by a foreign parent, the only way in which intercountry adoption can be effected is by having the child adopted in accordance with the law of the country where the adoptive parents reside.<sup>36</sup> To effect the adoption of a child under the laws of the adoptive parents' residence, the adoptive parents would need to be allowed to take the child out of India to their country.<sup>37</sup> This could only be allowed if the prospective adoptive parents became legal guardians of the child, which could be achieved through a court ruling under the Guardians and Wards Act, 1890.<sup>38</sup> Adoption for people of all religions is now possible under the Juvenile Justice Act 2000.<sup>39</sup> In practice, it is not known whether this Act has ever been used. The Juvenile Justice Act was amended in 2006 and, pursuant to forthcoming 2008

<sup>32</sup> MINISTRY OF WOMEN AND CHILD DEVELOPMENT, DRAFT GUIDELINE ON ADOPTION OF INDIAN CHILDREN WITHOUT PARENTAL CARE (2008), *available at* <http://wcd.nic.in/cara.pdf>.

<sup>33</sup> Hague Convention, *supra* note 4, Status Table, *available at*, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

<sup>34</sup> DRAFT GUIDELINE, *supra* note 32 at 10.

<sup>35</sup> *See* Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956, *available at* [http://punjabrevenue.nic.in/hadoptact\(1\).htm#applicationofact](http://punjabrevenue.nic.in/hadoptact(1).htm#applicationofact).

<sup>36</sup> *Pandey*, 1984 A.I.R. (S.C.) 469.

<sup>37</sup> *Id.*

<sup>38</sup> *See id.* ¶ 10. Non-resident Indians often adopt under the Hindu Adoption and Maintenance Act.

<sup>39</sup> Juvenile Justice Act, No. 56 of 2000; India Code (2000), *available at* <http://www.jjindia.net/Model%20Rules%20under%20the%20JJA%202006.pdf>.

guidelines issued by CARA, adoptions can also take place under the Juvenile Justice Act.<sup>40</sup>

### III. ROLE OF STAKEHOLDERS

#### A. *CARA (Central Adoption Resource Agency)*

In 1990, CARA was established in Delhi as part of the Ministry for Welfare.<sup>41</sup> It became an autonomous body under the Ministry of Social Justice as of March 1999.<sup>42</sup> It was designated by this Ministry on July 17, 2003, as the Central Authority for the implementation of the Hague Convention.<sup>43</sup> On February 16, 2006, CARA was shifted to the Ministry for Women and Child Development.<sup>44</sup> CARA's mission is to function as a national registry of adoptable children and prospective adoptive parents.<sup>45</sup> CARA is also responsible for recognizing Indian and foreign adoption agencies for Inter-country Adoption.<sup>46</sup> Furthermore, CARA's roles are to scrutinize all paperwork and provide the needed No Objection Certificate (NOC) before a guardianship application can be filed in the Indian court.<sup>47</sup> As noted above, CARA also defines the rules and procedures for intercountry adoption in the form of guidelines based on the Supreme Court judgments.

#### B. *Department of Social Welfare, Women and Child Development, and Adoption Cell*

The local Department of Women and Child Welfare in each Indian state is responsible for licensing and monitoring orphan-

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<sup>40</sup> Juvenile Justice (Care and Protection of Children) Act (2000), available at <http://socialwelfare.delhigovt.nic.in/juvenilejustice1.htm>.

<sup>41</sup> CARA, About Us, [http://www.adoptionindia.nic.in/about\\_us.htm](http://www.adoptionindia.nic.in/about_us.htm) (last visited Nov. 13, 2008).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See *Pandey*, 1984 A.I.R. (S.C.) 469, ¶ 16. It is to be noted that to date, CARA does not have a central Database as envisioned by the Supreme Court in 1984. As it appears from the 2008 Draft Guidelines, page 23, it will only be set up with the Issuing of the New Guidelines.

<sup>46</sup> Union Territory Administration, Role of Recognised Indian Agencies for Adoption, <http://web.archive.org/web/20040606194908/http://www.cara.nic.in/chap4.htm> (last visited Nov. 13, 2008).

<sup>47</sup> Union Territory Administration, Procedures/Functions of Adoption Agencies and CARA, <http://web.archive.org/web/20040606193540/http://www.cara.nic.in/chap2.htm> (last visited Nov. 13, 2008).

ages.<sup>48</sup> These departments also issue in-country adoption licenses and recommend to CARA the licensing of Indian intercountry adoption agencies. In some states a special adoption cell has been initiated.<sup>49</sup>

*C. Enlisted Foreign Adoption Agency (EFAA)*

Intercountry adoptions are achieved through cooperation between Indian and foreign adoption agencies. Applications from foreign adoptive parents can be accepted only if routed through an adoption agency licensed by the receiving country as well as by CARA.<sup>50</sup> Indian agencies are not allowed to process applications from foreign prospective adoptive parents directly.<sup>51</sup> The foreign agency is responsible for the selection and preparation of adoptive parents (including a home study) and for the preparation of post-adoption reports.<sup>52</sup> In addition, the foreign adoption agency must ensure that in case of a disruption, the child will be placed with another family or will otherwise receive suitable care, and it must also inform the Indian embassy of the disruption.<sup>53</sup>

*D. Recognized Indian Placement Agency (RIPA)*

Because the Supreme Court guidelines envision adoption as a rehabilitation measure, and not the sole program of the institution,<sup>54</sup> these institutions are to carry out other child welfare projects as well.<sup>55</sup> These other projects include child sponsorship, care of severely handicapped children, and providing shelter homes for

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<sup>48</sup> Union Territory Administration, Role of the State Governments, <http://web.archive.org/web/20040606194355/www.cara.nic.in/chap3.htm> (last visited Nov. 13, 2008).

<sup>49</sup> *Id.*

<sup>50</sup> CARA, Revised 1995 Guidelines, Chapter V, <http://web.archive.org/web/20040606195654/www.cara.nic.in/chap5.htm> (last visited Nov. 13, 2008).

<sup>51</sup> *Id.*

<sup>52</sup> CARA, Revised 1995 Guidelines, Chapter VI, <http://web.archive.org/web/20040606200449/www.cara.nic.in/chap6.htm> (last visited Nov. 13, 2008).

<sup>53</sup> *Id.*; see also *Pandey*, 1984 A.I.R. (S.C.) 469, ¶ 12.

<sup>54</sup> See *Pandey*, 1984 A.I.R. (S.C.) 469.

<sup>55</sup> CARA, Revised 1995 Guidelines, Chapter IV, <http://web.archive.org/web/20040606194908/www.cara.nic.in/chap4.htm> (last visited Nov. 13, 2008) (“Only such voluntary agencies as are primarily engaged in child welfare programmes for the growth and development of children and which undertake adoption as a part of their total activities may apply for recognition for intercountry adoption to the Central Adoption Resource Agency.”).

destitute women, including unmarried mothers.<sup>56</sup> Children can be freed for adoption in the following two ways:

### 1. Relinquishment

If the biological parents are known, they should be properly assisted in making an informed and free decision<sup>57</sup> about relinquishing the child for irrevocable adoption by the institution or agency to which the child is being surrendered. There should be a document of surrender; the biological parents should be allowed two months<sup>58</sup> to reconsider their relinquishment; and only after this would they lose all rights over the child. No relinquishment can be made before birth or within three months after birth.<sup>59</sup> The relinquishment deed also has to be co-signed by two witnesses.<sup>60</sup> The responsibility for the legality of the relinquishment procedure lies with the orphanage.<sup>61</sup>

### 2. Abandonment

Abandonment is declared when it has not been possible for an agency or the juvenile court to trace the parents of a child.<sup>62</sup> A first information report (FIR) should be filed by the concerned agency in the local police station within 24 hours of arrival of the child at the agency's home.<sup>63</sup> The nearest Juvenile Welfare Board, Juvenile Court, or District Collector should also be notified within 24 hours.<sup>64</sup> A maximum of three months is allowed for tracing the parents, and it is after this period that the child may be declared adoptable.<sup>65</sup>

Concerning placement, the following hierarchy has to be followed: biological family, Indian family, non-resident Indian family, foreign family where at least one partner is of Indian origin, and,

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<sup>56</sup> *See id.*

<sup>57</sup> *Id.* (requiring that the biological parents be counselled and informed as to the effect of their consent to adoption and alternatives to relinquishing their child, and that relinquishment should not be induced by compulsion or compensation).

<sup>58</sup> *Id.*

<sup>59</sup> *See id.* (containing no age requirement for relinquished Indian children). It is to be noted that in the case of unmarried mothers, the relinquishment document is mostly prepared very soon after the birth of the child. Certainly often within three months after the birth.

<sup>60</sup> *Pandey*, 1984 A.I.R. (S.C.) 469.

<sup>61</sup> *See C.A.R.A.*, *supra* note 55.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

lastly, a foreign family.<sup>66</sup> Furthermore, the CARA guidelines state that a minimum of 50% of the placements have to be done within the country.<sup>67</sup>

The Indian placement agency coordinates the adoption process on the Indian side and represents the adoptive parents in court for the guardianship application.<sup>68</sup> It typically also applies for the child's passport and visa.<sup>69</sup> As for financial compensation, the Indian placement agency is entitled to recover from foreign adoptive parents the cost incurred in preparing and filing the application and processing it in court, including legal expenses, administrative expenses, preparation of the child study report, preparation of medical reports, passport and visa expenses, and conveyance expenses at a figure not exceeding Rs. 10,000.<sup>70</sup> Any increase in maximum recoverable expenses may be done only with the approval of the Supreme Court of India.<sup>71</sup> For maintenance expenses, placement agencies are allowed to receive reimbursement from the foreign PAPs a figure of not more than Rs. 100 per day per child from the date of selection of the child by the PAPs until the PAPs become legal guardians.<sup>72</sup> Consequently, until the issuance of the 2006 CARA guidelines, the total amount allowed to be recovered (i.e., paid by the PAPs) would have had to be between \$600 and \$1,500. Supplementary voluntary donations were allowed, but these could not be made until after the child has reached the country of his or her adoption.<sup>73</sup>

Since the 2006 guidelines came into force, the above rules have been modified, and placement agencies can charge \$3,500.<sup>74</sup>

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<sup>66</sup> CARA, 2006 Guidelines, Chapter V, <http://www.adoptionindia.nic.in/adoptionfromindia.htm#CHAPTER-V> (last visited Nov. 13, 2008); see also S.K. Misra, Joint Director of CARA, Office Order Regarding Priority for Adoption, available at <http://web.archive.org/web/20040608091408/cara.nic.in/vcaandageevents.htm>.

<sup>67</sup> CARA, *supra* note 66. Siblings, special needs and older children are excluded from calculating this percentage. See CARA, Revised 1995 Guidelines, Chapter VII, <http://web.archive.org/web/20030711195641/adoptionindia.nic.in/chap7.htm> (last visited Nov. 13, 2008).

<sup>68</sup> CARA, *supra* note 55.

<sup>69</sup> See *id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Pandey*, 1984 A.I.R. (S.C.) 469; CARA, Revised 1995 Guidelines, Chapter IV, <http://web.archive.org/web/20030711195124/adoptionindia.nic.in/chap4.htm> (last visited Oct. 24, 2008).

<sup>73</sup> *Pandey*, 1984 A.I.R. (S.C.) 469.

<sup>74</sup> CARA, *supra* note 66.

Donations are explicitly prohibited.<sup>75</sup> Placement agencies can charge a maximum of 15,000 Rupees (\$400) for the maintenance of the child from Indian adoptive parents.<sup>76</sup>

*E. Child Welfare Committee (CWC)*<sup>77</sup>

The CWCs were constituted under the Juvenile Justice Act (Care and Protection of Children) 2000 (JJACT 2000).<sup>78</sup> In the case of abandoned children, the orphanage has to report the abandonment to the CWC within 24 hours.<sup>79</sup> The JJACT 2000 rules state that necessary steps have to be taken before declaring a child abandoned and legally free for adoption.<sup>80</sup> These steps include a thorough inquiry by officials within the month and notification in newspapers, television, and radio. For children under the age of two, these procedures must be completed within six weeks and for children above that age, within three months.<sup>81</sup>

*F. Adoption Coordinating Agency (ACA)*<sup>82</sup>

The ACAs, which are set up in the states or in several large metropolitan areas, act as registries in which information about Indian prospective adoptive parents as well as adoptable children is

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<sup>75</sup> *Id.*

<sup>76</sup> CARA, 2004 In-country Adoption Guidelines, Chapter I, [http://www.adoptionindia.nic.in/guide\\_incountry\\_chap1.htm](http://www.adoptionindia.nic.in/guide_incountry_chap1.htm) (last visited Nov. 13, 2008).

<sup>77</sup> The Child Welfare Committees “function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.” Earlier this role was undertaken by the District Collector or the Juvenile Court/Juvenile Welfare Board. The Juvenile Justice (Care & Protection of Children) Act, No. 56 of 2000; India Code (2000), § 29.5, *available at* <http://socialwelfare.delhigovt.nic.in/juvenilejustice1.htm> (last visited Nov. 13, 2008).

<sup>78</sup> The predecessors of the JJACT were the JJACT 1986 and the Children’s Acts in some states. The Juvenile Justice (Care & Protection of Children) Act, No. 56 of 2000; India Code (2000), *available at* <http://socialwelfare.delhigovt.nic.in/juvenilejustice1.htm> (last visited Nov. 13, 2008).

<sup>79</sup> CARA, GUIDELINES FOR ADOPTION FROM INDIA 5.5 (2006), *available at* [www.karmayog.org/adoption/upload/17333/adoption%20guidelines%202006.pdf](http://www.karmayog.org/adoption/upload/17333/adoption%20guidelines%202006.pdf).

<sup>80</sup> *Id.*

<sup>81</sup> *State Rules for Juvenile Justice Act*, MAHARASHTRA GOVERNMENT GAZETTE, Sept. 5, 2002, § 78.9.

<sup>82</sup> Under the 1995 Revised CARA Guidelines, ACAs were called Voluntary Coordinating Agencies (VCA’s). CARA, *supra* note 72.

collected.<sup>83</sup> They were established to promote in-country adoptions.<sup>84</sup> Before an agency can place a child for intercountry adoption, it must check with the ACA to ascertain whether there is any Indian parent willing to take the child in adoption.<sup>85</sup> A child is free for intercountry adoption only if the ACA has issued a clearance certificate stating that the child could not be placed in India.<sup>86</sup> The time frame is 30 days. For special needs children, the time frame is only ten days.<sup>87</sup> Non-resident Indians have been exempted from the ACA Clearance since the 2006 CARA guidelines were promulgated.<sup>88</sup>

G. *Adoption Scrutiny Agency (ASA)*

During the guardianship process in court, a scrutiny agency is involved.<sup>89</sup> This role is usually performed by the ICSW (Indian Council of Social Welfare) or by the ICCW (Indian Council of Child Welfare), and in Karnataka, by the KCCW (Karnataka Council of Child Welfare).<sup>90</sup> The scrutiny agency confirms whether the adoption is in the best interests of the child, whether the guidelines have been correctly followed, whether the child is legally free for adoption, and whether the PAPs are suitable.<sup>91</sup> It makes a representation to the court and assists the court in coming to a decision.<sup>92</sup> The scrutiny agency makes a representation to the court about these issues and assists the court in coming to a decision about whether to grant guardianship.<sup>93</sup> According to the Supreme Court, the scrutiny agency may not be engaged in placements itself.<sup>94</sup> The scrutiny agency cannot go beyond the paperwork in as-

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> CARA, Guidelines for "Special Needs Children," [http://www.cara.nic.in/definition\\_sp\\_needs\\_broadclassification.htm](http://www.cara.nic.in/definition_sp_needs_broadclassification.htm) (last visited Nov. 13, 2008).

<sup>88</sup> CARA, Guidelines for Inter-Country Adoption, Chapter 4, [http://www.cara.nic.in/guide\\_inter\\_country\\_chap4.htm](http://www.cara.nic.in/guide_inter_country_chap4.htm) (last visited Nov. 13, 2008). From 1995 till 2003, NRIs did not require ACA/VCA Clearance. Misra, Office Order, *supra* note 66.

<sup>89</sup> CARA, Revised 1995 Guidelines, Chapter VIII, § 8.1, <http://web.archive.org/web/20040606211614/www.cara.nic.in/chap8.htm> (last visited Nov. 13, 2008).

<sup>90</sup> *Id.* § 8.2.

<sup>91</sup> *Id.* § 8.5.

<sup>92</sup> *Id.* § 8.5.

<sup>93</sup> *Id.*

<sup>94</sup> Lakshmi Kant Pandey v. Union of India, 1986 A.I.R. (S.C.) 272.

certaining who the biological parents of the child are and whether they are willing to take back the child.<sup>95</sup>

#### H. *Indian Court*

Based on the recommendation of the scrutiny agency, the Indian court transfers guardianship to the PAPs and allows the child to be removed from the country for the purpose of adoption abroad, upon the condition that the child be adopted in the receiving country within two years.<sup>96</sup> During that time, post-placement reports will be furnished.<sup>97</sup> Presently, this procedure takes place under the Guardian and Wards Act because under the Hindu Adoption and Maintenance Act, Christians cannot adopt.<sup>98</sup> Upon implementation of the forthcoming CARA 2008 guidelines, however, this procedure will be changed and full adoption will be allowed by non-Hindus (i.e. foreigners) under the Juvenile Justice Act.<sup>99</sup>

#### I. *Regional Passport Office (RPO)*

The passport authority issues an Indian passport for the child on the basis of the guardianship order, passport copies from the adoptive parents, an affidavit about guardianship, certificate of residence of the adoptive parents, and the birth certificate.<sup>100</sup>

#### J. *Embassy*

The Embassy of the receiving country issues a visa for the child.

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<sup>95</sup> *Id.*

<sup>96</sup> CARA, Revised 1995 Guidelines, *supra* note 89, § 8.5(11).

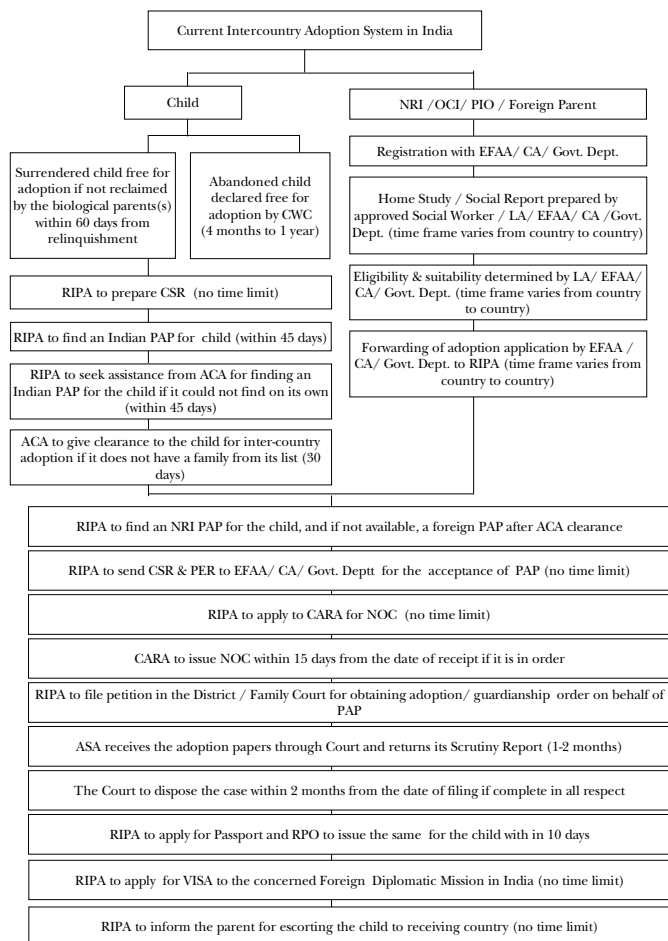
<sup>97</sup> *Id.* § 8.6.

<sup>98</sup> *See Pandey*, 1984 A.I.R. (S.C.) 469, ¶10.

<sup>99</sup> CARA, DRAFT GUIDELINES ON ADOPTION OF INDIAN CHILDREN WITHOUT PARENTAL CARE (2008), available at <http://wcd.nic.in/cara.pdf>.

<sup>100</sup> Regional Passport Office, Bangalore, *What are the documents required for applying for a passport for a minor?*, [http://nitpu2.kar.nic.in/passport/minors\\_adopted.htm](http://nitpu2.kar.nic.in/passport/minors_adopted.htm) (last visited Nov. 13, 2008).

### K. Adoption procedure<sup>101</sup>



## IV. PREET MANDIR

Preet Mandir, a voluntary childcare and adoption organization, was founded in 1979 by the late Sardar Kartar Singh Anand.<sup>102</sup> It is managed by the Balwant Kartar Anand Foundation, which is registered in Kanpur in Uttar Pradesh.<sup>103</sup> In 1997, one of the

<sup>101</sup> LOVELEEN KACKER, JOINT SECRETARY (CW), MINISTRY OF WOMEN & CHILD DEVELOPMENT, SHASTRI BHAWAN, NEW DELHI, REVIEW AND RE-ORGANISATION OF ADOPTION SYSTEM IN INDIA (2006).

<sup>102</sup> Preet Mandir, About Preet Mandir, [http://preetmandir.org/index.php?module=pagemaster&PAGE\\_user\\_op=view\\_page&PAGE\\_id=2&MMN\\_position=2:2](http://preetmandir.org/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=2&MMN_position=2:2) (last visited Nov. 13, 2008).

<sup>103</sup> *Id.*

founding trustees, Sardar Joginder Singh Bhasin (J.S. Bhasin), took over management and started expanding Preet Mandir.<sup>104</sup> The foundation now runs several units and has planned projects in other states.<sup>105</sup> To date, there are four units of the organization in different places.<sup>106</sup>

Unit I was started in 1979 and is located in the heart of Pune camp.<sup>107</sup> Preet Mandir provides a child care center with a capacity for 100 children.<sup>108</sup> Close to it is also a kindergarten, and adjacent are the annexes where children in the age group of two to six years are housed.<sup>109</sup> On the same premises are the main administrative offices of the foundation, which coordinate the various activities for the agency, including liaison work with the state.<sup>110</sup>

Unit II, situated in Pune Kalyani Nagar, is located in a modern three-story building in Kalyani Nagar – a prime residential area near the Aga Khan Palace.<sup>111</sup> It is licensed to house up to 300 children in the age group of newborns up to twelve years.<sup>112</sup>

In 1987, public interest litigation was filed against the state of Maharashtra alleging that the conditions at a government-run home, Shishu Sadan, were appalling. As a result of this litigation, the Maharashtra government, on July 15, 2002, entrusted the overall management of this unit to Preet Mandir.<sup>113</sup> Thereafter, new qualified staff, consisting of a superintendent, three social workers, and 30 caretakers, was engaged.<sup>114</sup> Initially the agreement was for only one year, but it has subsequently been extended. Shishu Sadan now has an in-country adoption license, and children are transferred from there to the Pune units for intercountry adoption.<sup>115</sup>

Preet Mandir has started a unit in Goa.<sup>116</sup> The details of when and how it was started are unknown to the author.

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Preet Mandir, Our Locations, [http://preetmandir.org/index.php?module=pagemaster&PAGE\\_user\\_op=view\\_page&PAGE\\_id=5&MMN\\_position=5:2](http://preetmandir.org/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=5&MMN_position=5:2) (last visited Nov. 13, 2008).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Preet Mandir, Our Locations, *supra* note 107.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Preetu Nair, *Craddle Snatchers*, GOMANTAK TIMES, Oct. 23, 2005, available at <http://www.nowpublic.com/life/cradle-snatchers>.

Additionally, Preet Mandir had a license to operate a short stay home for women called “Kanhe Phata Home” or “Sai Seva Dham,” situated on the Bombay Road in Pune. The home was intended for destitute women and unwed mothers with the aim of rehabilitating them through vocational training.<sup>117</sup>

A number of international adoption agencies and government departments worked with Preet Mandir.<sup>118</sup> All have been licensed in their respective countries as well as by CARA.<sup>119</sup> The following is a list of these agencies and departments, but it is by no means exhaustive: Family for You (Austria); Australian Aiding Children Adoption Agency (Australia); L’Espoir Children of Hope (Belgium); Adoption Center (Denmark); International Child’s Care Organisation e.V (ICCO e.V) (Germany); Office of Social & Youth Welfare (Germany); Government Department (Germany); International Social Service (Germany); Government Department (Hong Kong); Icelandic Adoption Society (Iceland); Government Department (Ireland); I Bambini Dell Arcobaleno Adozioni (Italy); Missionaries of Charity Rome (Italy); Children without Frontiers (Spain); Association Humanitaria Para La Adopcion Internacional de Manores (Ashram) (Spain); Enfants de DFES (Central Authority for England) (UK); Adoption from the Hearts (USA); ACCEPT (USA); Bal Jagat Inc. (USA); Cascade International Children’s Services (USA); Children House International (USA); Children’s Home Society & Family Services (USA); Hope Cottage Inc. (USA); Journeys of the Heart (USA); MAPS International (USA); and Special Addition Inc (USA).<sup>120</sup>

## V. CHRONOLOGY OF THE PREET MANDIR SCANDAL

### A. *Phase I (1999-2005)*

In the first phase, Preet Mandir was able to absolve itself of most of the allegations, which consisted of overcharging permissible adoption fees, requiring “mandatory” donations, insufficient care for children, and possibly unethical sourcing and payments for children. While the scandal was largely behind the curtain with little public outcry, it became clear that the adoption community

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<sup>117</sup> Preet Mandir, Final Report (2007), [http://www.ibnlive.com/CBIReport\\_full1.pdf](http://www.ibnlive.com/CBIReport_full1.pdf).

<sup>118</sup> CARA, Actual Cases of Children Given NOC Period 1st August to 31st August 2005, <http://www.cara.nic.in/actualcases.asp> (last visited Nov. 13, 2008).

<sup>119</sup> *See id.*

<sup>120</sup> *Id.*

and agencies already knew that there were issues with Preet Mandir.

The first public sign that several things were wrong at Preet Mandir was a newspaper article in the Indian Express in early 1999.<sup>121</sup> The article surfaced following a press conference at Preet Mandir concerning a controversy surrounding the child named Sahil.<sup>122</sup> Apparently, Preet Mandir had been under attack for allegedly offering money to the mother and for not making serious efforts to search for her.<sup>123</sup> Eventually, the child was reunited with his mother.<sup>124</sup> Preet Mandir, while describing the incidents as unfortunate, maintained that whatever it had done was within the confines of the law.<sup>125</sup>

*B. Complaint by Adoptions Centrum Sweden, April 28, 2000*

In a complaint to CARA, Adoptions Centrum Sweden claimed that Preet Mandir was demanding \$6,000 per child, in contravention of the CARA guidelines, which prescribed a maximum of \$600 to \$1,500.<sup>126</sup> After a personal visit to Preet Mandir, Monica Lind, the head of the India Program for Adoptions Centrum Sweden, concluded that “the fee is too high, the care of the children bad and that the children are allocated too early for intercountry adoptions.” Adoptions Centrum informed other Nordic adoption agencies as well as Euradopt about this case.<sup>127</sup>

*C. Show Cause Notice Dated July 10, 2000*

CARA sent a show cause notice to Preet Mandir stating, “The organization has not denied that a sum of \$6,000 was suggested as expected payment for adoption of an Indian child, from an Irish couple, . . . in contravention of the para 4.38 of the revised guidelines.” Consequently, the license of Preet Mandir was suspended until further orders on August 25, 2000.<sup>128</sup> It is unclear how and why the license was reinstated on August 11, 2000.<sup>129</sup>

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<sup>121</sup> *Preet Mandir Says Its Hands Are Clean*, INDIAN EXPRESS, Jan. 9, 1999, <http://www.indianexpress.com/res/web/pIe/ie/daily/19990109/00951625.html>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> CARA, *supra* note 79; *see* discussion *supra* Part III.E.

<sup>127</sup> Emails and Complaint on file with author.

<sup>128</sup> Letter from Lt. Col. K.L. Khetarpal, Hon. Secretary, to Mrs. Vandana Khode/Chandrama, Social Worker, VCA Pune (Aug. 11, 2000) (on file with author).

<sup>129</sup> *Id.*

*D. Series of Complaint Letters Dated October 2000 to April 2004*

Various complaints from the Adoption Coordinating Agency, Pune, individual adoptive parents, and foreign agencies were sent to CARA. From these complaints, the following can be gathered:

- Preet Mandir demanded \$6,000 per child.<sup>130</sup>
- Preet Mandir turned away Indian parents.<sup>131</sup>
- Care of the children was insufficient.<sup>132</sup>
- Fifty-nine children died between April 2003 and March 2004.<sup>133</sup>
- Medical problems were not disclosed to the prospective adoptive parents in the Child Study Report.<sup>134</sup>
- Children were switched after being proposed to adoptive parents.<sup>135</sup>
- Signatures were obtained from Indian parents refusing a particular child, while in fact, they had never seen the particular child.<sup>136</sup>
- Preet Mandir had been sending more than 50% of its children for intercountry adoption.<sup>137</sup>
- Children were being proposed to adoptive parents before being legally free for adoption.<sup>138</sup>
- A sudden rise in sibling groups was noted and the ACA expressed concerns that no support had been provided to families in distress to keep their children.<sup>139</sup>

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<sup>130</sup> See, e.g., E-mail from Bob Sprenkels, Team Leader Intercountry Adoption for the Government of Australia, to Ms. Damodaran (Dec. 29, 2003) (on file with author).

<sup>131</sup> See Letter from VCA Pune to CARA Secretary (Nov. 10, 2002) (on file with author).

<sup>132</sup> See Letter from Paramjit Singh to Andal Damodaran, CARA Chairperson (Apr. 1, 2004) (on file with author).

<sup>133</sup> Letter from Nishita Shah (on file with author)

<sup>134</sup> See E-mail from John Clark to Ms. Damodaran, Chairperson of CARA (Feb. 10, 2004) (on file with author).

<sup>135</sup> See Letter from Sharad Khona, Customs Clearing Agent, to SOFOSH (Apr. 10, 2002) (on file with author).

<sup>136</sup> See Letter from Nishita Shah, Chairperson of VCA Pune, to L.K. Khetarpal, Secretary of Preet Mandir (Sept. 13, 2002) (on file with author). In order to document the efforts that have been undertaken to place children with Indian families, the ACA requires three “rejections” by Indian parents before the ACA issues its Clearance. See discussion *supra* Part III.F.

<sup>137</sup> See Letter from Nishita Shah, Chairperson of VCA Pune, to Col. K. L. Khetarpal, Secretary of Preet Mandir (Jan. 24, 2002) (on file with author).

<sup>138</sup> See *id.*

- There were contradictions about the background of children in the paperwork.<sup>140</sup>
- Preet Mandir was taking “rejections” from non-resident Indians in order to show the VCA that efforts were made to place children with Indian (resident) families.<sup>141</sup>
- Foreign agencies had to pay a monthly retainer.<sup>142</sup>
- There had been a separation of sibling groups.<sup>143</sup>
- Preet Mandir is closely linked with the Commissioner of Women and Child Development.<sup>144</sup>
- Preet Mandir is rumored to have paid money to Juvenile Welfare Board Members.<sup>145</sup>
- Preet Mandir has placed children with abusive families.<sup>146</sup>
- Preet Mandir does not allow ACA social workers to accompany adoptive parents when meeting with Preet Mandir employees.<sup>147</sup>

*E. Turkar Investigation Report, January 10, 2002*

Following a complaint by Colonel Sukhdeo Singh, CARA requested the state government to conduct a detailed inquiry of the orphanage. At CARA’s request, a team led by Shri. C. B. Turkar, Dy. Secretary, WCD investigated the matter on September 30 and October 1.<sup>148</sup> The investigation concluded the following:

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<sup>139</sup> Sibling groups are easily cleared for Intercountry Adoptions as they don’t need the VCA clearance. See discussion *supra* Part III.F.

<sup>140</sup> See Letter from Madhavi Hasabnis, Case Worker at VCA Pune, to Lt. Col. K.L. Khetarpal, Secretary of Preet Mandir (Feb. 28, 2003) (on file with author).

<sup>141</sup> See Letter from Nashita Shah, Chairperson of VCA Pune, to Lt. Col. K.L. Khetarpal, Secretary of Preet Mandir (Mar. 12, 2003) (on file with author).

<sup>142</sup> See E-mail from Monica Lind to Ms. Damodaran (Jan. 12, 2004) (on file with author).

<sup>143</sup> See Letter from Pradnya B. Bokil, Scrutiny Officer of ICSW, Pune, to Hon. Secretary of VCA Pune (Dec. 26, 2003) (on file with author); *In re* Maruti and Laxman, petition no. 179/2002 (Mar. 24, 2003) (on file with author).

<sup>144</sup> Letter from Nishita Shah to Ms. Damodaran (Jan. 12, 2004) (on file with author).

<sup>145</sup> *Id.*

<sup>146</sup> Letter from Dr. Anuradha Sahasrabudhe, Executive Director, Pune Collaborative Organisation, to Nishita Shah, V.C.A., Pune (May 25, 2004) (on file with author).

<sup>147</sup> Letter from Ms. Nishita Shah, Chairperson, V.C.A. Pune, to Dr. J. Pati, Deputy Director, CARA (Mar. 11, 2003) (on file with author).

<sup>148</sup> Letter and Inspection Report from C.B. Turkar, Deputy Secretary, to Shri S.K. Mishra, Joint Director, CARA, Ministry of Social Justice and Empowerment (July 4, 2003) (on file with author).

- Preet Mandir charged excessive fees in violation of Cara guidelines.
- The case files were not properly maintained. Some files did not even contain the Homes Study Report, or the report was unsatisfactory. Many closed files did not have statements which proved or verified that the child had been handed over to the adoptive or biological parents.
- The register maintained for in-country adoption was incomplete. The addresses were incomplete, containing just the name of the state.
- The register maintained on NRI parents was incomplete. Most addresses of NRI parents were Indian addresses, and their parents' addresses were missing.
- The agency had a license to house children up to six years of age. However, there were 22 children who were six years or older. These children were also neither allowed outside nor sent to school for any sort of education.
- The children housed in Unit 1 were found to be underweight, and the medical files of the children hardly showed any increase in the weight of the children over time.<sup>149</sup>

#### 1. CARA Meeting, August 12, 2003

After the international CARA conference on December 8, 2003, Mrs. Andal Damodaran, CARA Chairperson at that time, called for a meeting concerning Preet Mandir.<sup>150</sup> Notes about the meeting were obtained from a CARA official and relate clearly that the members believed the following:

- Mr. Bhasin of Preet Mandir was involved in a great deal of malpractice, and children were bought for 10,000 to 15,000 Rupees.
- Children are placed in adoption for costs far above those authorized, ranging from an estimated \$5,000 to \$15,000. In some instances, Mr. Bhasin demanded more money than

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<sup>149</sup> *Id.*

<sup>150</sup> The following were present: Ms. Andal Damodaran (Chairperson CARA); Ms. Dipika Maharaj Singh (Sofosh); Ms. Nilima Mehta (Chairperson CWC Mumba); Ms. Nishita Shah (VCA Pune); Ms. Monica Lind (Adoption Center Sweden-Euraadopt Member); Ms. Debra Murphy Scheuman (SAI and Director Joint Council International Children Services); Ms. Beth Nelson (Dept. Children Youth and Family Services New Zealand); Ms. Susette Guttmann (ICAS Australia); Ms. Nomita Chandy (Secretary, Ashraya); Ms. Terri Bell (AIAA); Ms. Vinita Bhargava; Ms. Sudha Kini (IAPA); Mr. Dean Hale (Holt International); Ms. Roxana Kalyanvala (BSSK Pune); Ms. Maina Shetty (BSSK Pune); and Ms. Mary Paul (Vatsalya Charitable Trust Bangalore).

agreed upon after the case was over and held the family and agency for ransom. The money was paid, as otherwise the family would have been put to the risk of not getting the child and the agency could have been sued by them.

- The children's home he runs, which houses special needs children, was run extremely poorly. Children have scabies and sores and are malnourished and fed with spoons rather than bottles. The mortality rate of children from this home was very high.
- D.N. Mandlekar, Commissioner, Women and Child Development, was very close to Bhasin. The former's son was Bhasin's lawyer for two to three years until recently. The son, Yogesh, and his wife are trustees of an adoption home recently set up and licensed by his father, the Commissioner.
- Some foreign agencies said that Mr. Bhasin had threatened to shoot them and was extremely abusive on phone.
- Mr. Lakshmikant Pandey, who is on the CARA Board, is Preet Mandir's legal advisor and visits Preet Mandir regularly.<sup>151</sup>

The meeting attendees were understandably nervous about Preet Mandir. It was also discussed that anything said about Preet Mandir in front of CARA officials was conveyed to Bhasin within 24 hours.<sup>152</sup> Preet Mandir had lost its recognition twice but had it restored again quite quickly.<sup>153</sup> Bhasin had a high level of influence and contacts with government officials, including the Juvenile Board Chairperson, CARA, and possibly Ministers.<sup>154</sup>

## 2. Confidential Memo, July 6, 2004<sup>155</sup>

This memo refers again to the CARA meeting and detailed complaints. It outlined the following:

- The role of some of CARA's staff and ministry officials needs to be investigated to see how far they have been subverted into supporting the illegal activities of this organization.
- The chairperson of CARA forwarded the data collected to Mr. Dev Verman, Secretary, CARA, and asked him to investigate the organization thoroughly.

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<sup>151</sup> Laxmikant Pandey is the Supreme Court lawyer who filed the Petition in 1982. See discussion *supra* Part II.B.

<sup>152</sup> Confidential memorandum from meeting held on December 8, 2003, at the Ashoka Hotel, New Delhi (Dec. 8, 2003) (on file with author).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> It is not known by the author who prepared this Memo.

- Mr. Dev Verman forwarded the file to Mrs. Sandhu, Joint Secretary, Ministry of Social Justice and Empowerment. She created a three member committee made up of Mr. Jagannath Pati (CARA), Mr. Kochar from the ministry, and one other individual. The chairperson of CARA was not happy with this investigative team as some of them could be involved in the matter. The VCA Pune and the scrutiny body should have been part of the team. To date, the report has not been furnished to the chairperson despite repeated reminders.

This is likely to become a diplomatic issue, as some of the foreign agencies have made strong complaints to their diplomatic missions.<sup>156</sup>

### 3. CARA Inspection Report, May 20, 2004

The CARA inspection team was critical about the practices of Preet Mandir, especially about Units I and II. Rooms were congested with children, with two to three lying in one cradle. Some eighteen percent of the children had died, and most had died within two months of birth and admission. Many children were reported to have died of septicaemia, a widespread destruction of tissues due to absorption of disease, caused by bacteria or other toxins in the bloodstream.

The team made the following overall observations regarding child care. Preet Mandir housed more than 300 children in all three of its units. These children were either committed or on remand. It also had a large strength of caretakers, nurses, professional social workers, and an adequate infrastructure to take care of children in need, but it required drastic improvements in functioning. Counselling to biological parents, adoptive parents, and promotional work seemed to be inadequate. Social workers should have been more oriented towards providing assistance to parents, both biological and adoptive, and not dealing with them with a commercial objective. Efforts for placement of children in Indian adoption was limited. The data on adoption also indicated that the focus on in-country adoption was very low in comparison to inter-country and NRI adoption.

The committee suggested that as an immediate measure, for the next three months, the agency should not propose intercountry adoption for any child less than two years of age except special needs or handicapped children. During this period, the agency should strengthen its in-country adoption program to utilize the

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<sup>156</sup> Confidential memorandum of matters with regard to Preet Mandir (June 7, 2004) (on file with author).

vast infrastructure and professional staff available to it; set up an advisory committee on child care, adoption matters, finance, and accounts; and also broad base the management of the organization.<sup>157</sup>

4. President Abdul Kalam Visits Preet Mandir, January 2, 2005

The then-President of India, Abdul Kalam, visited and lauded Preet Mandir for its noble work. After the visit, he donated 20,000 Rupees to Preet Mandir to be utilized for child care.<sup>158</sup>

F. Phase II

In the second phase of the scandal, the details became known to the general public, and the media started to investigate and report about the allegations surrounding Preet Mandir.

1. 2005 Adoption Market, Frontline, May 21, 2005

Asha Krishna Kumar, working for the reputable Indian weekly, Frontline, conducted an investigation into the adoption market.<sup>159</sup> She, along with her team, conducted research in Maharashtra, Tamil Nadu, and Andhra Pradesh.<sup>160</sup> It appears that a whistleblower within CARA gave the journalist copies of various complaints received by it, some of which were published in Frontline.<sup>161</sup> The articles revealed publicly that the authorities had received several complaints regarding Preet Mandir but had not taken appropriate action.<sup>162</sup>

What was already known within the adoption community was now confirmed. Preet Mandir made high monetary demands, violated CARA rules, and took inadequate care of the children.<sup>163</sup> The

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<sup>157</sup> Inspection Report conducted on the projects run implemented by Preet Mandir, Pune between 20-23 May, 2004 (Sept. 20, 2006) (on file with author).

<sup>158</sup> Document collection including Letter from Adbul Kalam to Preet Mandir (Feb. 1, 2005), Check from Central Secretariate, New Dehli to Preet Mandir, Pune, (Feb. 7, 2005), Letter to Shri JS Bhasim, Managing Trustee, Preet Mandir (Feb. 10, 2005), Copies from "President's Website" (date unknown) (document collection on file with author).

<sup>159</sup> Asha Krishnakumar, *The Adoption Market*, FRONTLINE, May 21-June 3, 2005, <http://www.hinduonnet.com/fline/fl2211/stories/20050603006700400.htm>.

<sup>160</sup> *Id.* The author refers only to those parts in her research regarding Preet Mandir.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

typical amount Preet Mandir charged seems to have been \$6,000 per child.<sup>164</sup>

2. Cradle Snatchers, October 23, 2005, Gomantak Times, Goa

In October 2005, an article entitled “Cradle Snatchers” appeared in the Goan English newspaper, Gomantak Times, and revealed for the first time in detail how Preet Mandir sourced children.<sup>165</sup> In the center of this scandal was a young woman, Nagamma, whose child was taken by Preet Mandir.<sup>166</sup> Nagamma was an unmarried mother who came to Goa after she was chased out of her father’s house.<sup>167</sup> She delivered her child in Goa and was approached by an NGO.<sup>168</sup> The NGO suggested that she give up her child for adoption, which she initially declined to do.<sup>169</sup> Since she was not in a good situation, Preet Mandir was later able to convince her to give her child into the care of the NGO.<sup>170</sup> The child was then brought to Preet Mandir.<sup>171</sup> When the mother wanted her child back, her request was refused.<sup>172</sup> The intervention of ARZ, an NGO working on the issue of trafficking minor girls, helped her to regain her child from Preet Mandir.<sup>173</sup>

It turned out that Nagamma’s age was given as eighteen, despite her being seventeen years of age, a *de facto* minor.<sup>174</sup> The relinquishment document was written in Marathi, although Nagamma’s native language is Kannada.<sup>175</sup> She was never informed about the fact that she was freeing her baby for adoption.<sup>176</sup> Preet Mandir, Goa, had no license for adoption at that time.<sup>177</sup>

The incident was brought to the notice of the Goa Women and Child Development Department by a complaint filed by AZR.<sup>178</sup> Consequently, a committee was set up to investigate the matter.<sup>179</sup>

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<sup>164</sup> *Id.*; see also Sprenkels, *supra* note 130.

<sup>165</sup> Nair, *supra* note 116.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Nair, *supra* note 116.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Nair, *supra* note 116.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

Despite the ongoing investigation, Preet Mandir, Goa, was able to obtain an adoption license<sup>180</sup>

### 3. CNN-IBN Babysnatchers

In June 2006, CNN-IBN released a series of short articles about the Indian adoption racket. The series covered the scandals in Tamil Nadu, Goa, and Preet Mandir. Another orphanage, Mata Vaishno Devi Trust, funded by the U.S. adoption agency Children's House International (CHI), was also covered. Regarding Preet Mandir, the documentary stated the following: in a sting operation, CNN-IBN had proved that Preet Mandir demanded \$12,000 per child; Preet Mandir violated CARA guidelines by placing more than 50% of its children for intercountry adoption; Preet Mandir sourced children from unwed mothers without proper counselling services; and a network that supported the practices of Preet Mandir included a senior government officer, K. P. Sethy, who previously was CARA Secretary and ran an unregistered adoption agency (Global Village) himself.<sup>181</sup>

### 4. Child Rights Organizations Act

After the CNN-IBN documentary series aired, local child rights activists called meetings and organized a demonstration in front of the Department to put pressure on the authorities to take action against Preet Mandir. Consequently, the Department agreed to two demands and ordered that no more children be admitted to Preet Mandir.<sup>182</sup> The Department also ordered that children from outside the Pune district be transferred back to agencies located in their respective districts. In addition, a squad was deployed to investigate the alleged malpractice.<sup>183</sup>

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<sup>180</sup> Document Collection Containing Letter from Arunendra Pandey, Director, to the Chief Secretary, Goa (Aug. 30, 2005), Letter from Nagamma Bedgeru to the President, Desterro Eves Mahila Mandal (July 30, 2008), Letter from Celsa Antoa to Mr. Samant, Trustee, Preet Mandir, Aldona, Goa (July 30, 2008), and Letter in foreign language (date unknown) (document collection on file with author).

<sup>181</sup> Transcripts of Numerous Reports for CNN-IBN (June, 2006) (on file with author).

<sup>182</sup> *Adoption license of children's home in Goa suspended*, THE HINDU, July 12, 2006, <http://pune360.com/News/2006/07/12/for-now-no-children-can-be-admitted-to-preet-mandir/>.

<sup>183</sup> *For now, no children can be admitted to Preet Mandir*, INDIAN EXPRESS, July 12, 2006, available at <http://pune360.com/News/2006/07/12/for-now-no-children-can-be-admitted-to-preet-mandir/>.

In Goa, the press picked up the scandal, and child rights organizations were vocal.<sup>184</sup> Consequently, the adoption license of Preet Mandir Goa was suspended.<sup>185</sup> However, today, Preet Mandir, Goa, still has a license to run an orphanage.<sup>186</sup>

#### 5. Suspension of License, July 7, 2006

CARA finally suspended Preet Mandir's license again. Following the CNN-IBN documentary series, CARA issued a show cause notice, and the Department of Women and Child Development recommended the suspension of recognition for dealing with inter-country adoption by Preet Mandir at the earliest opportunity. Regarding the children who had already been matched with prospective adoptive parents, CARA stated that, in the best interests of the children, such cases would be processed pursuant to CARA guidelines, irrespective of suspension of Preet Mandir's recognition.<sup>187</sup>

#### 6. Family Court

The Pune Family Court refused to process several Preet Mandir adoption cases. However, foreign agencies as well as individual prospective parents appealed the cases to the Mumbai High Court.<sup>188</sup> The High Court directed the family court to process the pending cases on April 4, 2007. The High Court held that any adverse report against Preet Mandir required steps, both preventive and punitive, to be taken against its staff, but in the interests of the children, the latter could be removed to other recognized agencies to process their adoptions.<sup>189</sup>

With this High Court order, pipeline cases could be processed by the family court, and no additional investigations into the background of the children were ordered.<sup>190</sup>

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<sup>184</sup> *Adoption license, supra* note 182.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*; Telephone interview with Arun Pandey, ARZ (May 2008).

<sup>187</sup> Email from Nakul Kate, CARA Order For Cancellation of Preet Mandir's Inter-Country Adoption License (July 20, 2006) (on file with author).

<sup>188</sup> *Railkar v. Indian Council for Social Welfare*, Appeal No. 34, Bombay H.C. (Apr. 4, 2007). Adoptions from the Heart filed one of the cases. It is interesting to note that the Lawyer of Sakhee, Abhay Nevgi (*see* discussion *supra* Part V.G.8) was involved in filing the pipeline cases.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

### G. Phase III

In this phase, the High Court got involved, an investigation was carried out by the Central Bureau of Investigation, and the scandal was exposed by the European media. The Danish government also started an investigation.

#### 1. High Court Petition

CNN-IBN handed over all of its research material to the Advait Foundation, an NGO working on the issue of trafficking for prostitution. Sangeeta Punekar had previously done a study about adoption practices in Maharashtra. Advait took the opportunity and filed a Criminal Writ Petition in the High Court. Summarizing and reiterating the allegations against Preet Mandir, the Advait Foundation requested that the High Court issue directions to appoint a fact finding committee to undertake a comprehensive investigation into the practices of adoption agencies (not limited to Preet Mandir) and to provide suitable recommendations on how to prevent instances of child trafficking in the future. Advait asked that the committee be vested with powers to look into all the relevant documents maintained over the past six years by CARA, ICCW, ICSW, institutions supplying or transferring babies, the Department of Women and Child Development, the passport office, and adoption agencies and institutions connected with adoption. Such documents included admission registers, lists of prospective adoptive parents, court records, missing children's lists, financial accounts of the agencies, police reports, inspection reports, and complaints. The foundation also asked for agencies indulging in irregularities to be closed down with penal action taken against them.<sup>191</sup>

#### 2. Report DWCD

Along with the proceedings in the High Court, administrative proceedings took place, as the Department of Women and Child Development of the State of Maharashtra carried out its own investigations and submitted a report on August 10, 2006. The Department inspected the records of receipts by Preet Mandir from 2003 to 2006 and found amounts ranging from \$20 to \$6,500 entered as donations. The state department could not find proof that Preet Mandir had taken \$12,000, as reported by CNN-IBN. CARA noted

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<sup>191</sup> Criminal Writ Petition No. 1945, Advait Found. v. Adoption Cell, Bombay H.C. (2006) (on file with author).

that according to the 1995 guidelines, no limit for taking donations was prescribed, and the limit of \$3,500 was only prescribed in May 2006. However, proof that Preet Mandir had accepted \$5,000 and 11,500 Euros on December 6, 2006, was provided by two sets of adoptive parents. Preet Mandir told the department officials that it would return the excess amounts to the adoptive families. The team also visited the women's shelter home at Malwal, where eight women were present, all originating from far off places in rural Maharashtra. Apparently the girls had been admitted there by their parents and were all unmarried.

According to the team, it appeared that Preet Mandir's social workers directly contacted these pregnant girls and had them admitted into Preet Mandir Home. The agency also had direct contact with various CWCs, JJBs, gynaecologists, and possibly doctors and maternity clinics. But the team determined that, although such practices may be considered unethical, they were not illegal because no clear law was violated.

Regarding the lack of counselling services offered to the mothers so that they could possibly raise their children themselves, the DWCD was of the opinion that it would be highly impractical in the Indian social context, where unwed mothers were looked down upon and faced social ostracism, to expect unwed mothers to make the bold decision to keep their illegitimate children.

Down the line, the DWCD concluded that there was "no direct trafficking of children taking place in Preet Mandir as all necessary legal procedures had been followed."<sup>192</sup> According to the DWCD, there were some gray areas, such as Preet Mandir directly approaching unwed mothers in order to procure their babies (with legal consent), giving priority to foreigners to adopt children, and taking excess amounts in two cases.

### 3. Letter from Vandana Krishna, December 22, 2006

When Vandana Krishna, Secretary of Women and Child Development, was asked by CARA to give her opinion about Preet Mandir, she wrote the following to CARA:

The Government is less concerned with the motives of running an adoption agency and more concerned whether the primary objective of the welfare of the child to be given in adoption is being achieved. Even if an adoption agency is run with a selfish or business motive to make money, that itself does not become

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<sup>192</sup> Letter from Vandana Krishna, Secretary, Women and Child Development, to Yeshpal Dabas, Secretary Central Adoption Resource Agency (Oct. 5, 2006) (on file with author).

a crime or illegal . . . . It is the welfare of the children which is the primary concern . . . . CNN seems to be obsessed with the business motives of Mr. Bhasin, the greedy language which has used and how he communicates with clients . . . . No doubt he speaks in a down-to-earth direct or even crude manner while dealing with clients. (Sardarjies are known for their rough earthy language). Perhaps some other more sophisticated agencies would have used other words to deal with clients which would have not been found so objectionable. For example instead of directly asking what is the income of clients or saying things like 'double price for 2 children', he should have used words in such a manner as 'we are expected to inquire about the clients financial position' or 'Yes, it is allowed to legally adopt two children, but of course the fees and expenses will have to be paid accordingly.' . . . . Perhaps such words would have been more acceptable to CNN or other clients, but the sum and substance would have been the same. The report repeatedly, uses words such as 'sale', 'trafficking' etc. What is the definition of trafficking? These terms have been used very irresponsibly, since all case have gone through the court's legal process. We have not received any complaints of forcible procurement of children from parents through extortion or blackmail. Nor do we have any cases where Preet Mandir purchased babies from unwed mothers voluntarily. Even if poor parents are relinquishing their children to Preet Mandir voluntarily, our main concern should be – what is the best interest of the child? . . . Market rates of [\\$]10,000 to [\\$]15,000 etc. have been quoted in the petition. The issue is that if there is a demand supply gap, or bottlenecks which slow down the adoption process or lengthy paperwork and court cases, this automatically increases the market price. Only about 4000 children get successfully adopted per year on average, leaving a large unmet demand gap. Unfortunately the market has a logic of its own, based on demand and supply, and does not consider moral or ethical considerations. If the government imposes a ceiling on official rates, or closes down adoption agencies, this only creates a larger demand supply gap which leads to further malpractices. The government should seriously consider increasing the fees or charges allowed for adoption . . . . It can be no one's case that the medical and child care facilities provided by Preet Mandir are poor or unsatisfactory. In fact, among all adoption agencies Preet Mandir probably provides the best facilities which have been recorded through various inspections over the years . . . . In fact the government would welcome CNN or any other NGOs to come forward and set up ideal adoption agencies which do not charge high fees etc. But unfortunately there do not seem to be any such agencies. All of them seek to receive babies from CWCs, because all of them have to deal with adoption as a competitive business. This may offend the

sensibilities of many people, but these are the hard facts of our society . . . . Another allegation is that Preet Mandir runs a home for unwed mothers as a commercial enterprise to procure babies cheaply. Once again, the government should only be concerned about the welfare activity and not about the motives of the NGO. Should these unwed mothers be ignored by society or left to their own devices, or is it better that they are provided with a secure place for delivery? . . . Mr. Bhasin's main fault seems to lie in that he quantifies the hidden truth and places a price on adoption which society would much rather not know about. The legal adoption process allows adoption fees. Mr Bhasin just puts it in crude words . . . . In conclusion we would like to say that doing a good deed out of selfish motives is still better than not the good deed at all.

Yours sincerely,

Vandana Krishna<sup>193</sup>

The letter is remarkable for its recognition of several facts, which the Indian government otherwise covers up in the face of international criticism. First, a senior officer of the government admits that adoption is a competitive business activity. Second, the government washes itself of the responsibility of caring for its unwed mothers and abandoned or relinquished children and even encourages businessmen to profit from the miseries of the poor and helpless.

#### 4. Affidavit in Reply by Preet Mandir, February 1, 2007

Preet Mandir, in its affidavit, basically denied all allegations and stated that the allegations were initiated by rival agencies and stemmed from misunderstandings:

[E]ach and every adoption effected by the applicant – Trust is well documented and in compliance with the Guidelines of CARA and after obtaining requisite sanction from the competent judicial authority including District and Family Court. It will be unfair for this Hon'ble court itself that CBI should reopen the cases decided by the Hon'ble Court in the case of foreign adoptions given through subordinate Courts.<sup>194</sup>

#### 5. CBI Inquiry Ordered, February 14, 2007

By written order, the court ordered the CBI to conduct a preliminary inquiry into Preet Mandir on the basis of the material

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<sup>193</sup> Letter from Vandana Krishna to CARA (Dec. 22, 2006) (on file with author).

<sup>194</sup> Affidavit in Reply of Respondent No. 7, Advait Found. v. Adoption Centre (Feb. 2007) (on file with author).

handed over to them. An earlier order by the court had been an oral order, and no action had been taken by the CBI.<sup>195</sup>

#### 6. CARA Affidavit

CARA, in an affidavit, basically reiterated the legal framework and CARA guidelines before specifically replying to the Advait petition. It also included its 2004 inspection report. Further, CARA stated that “while there had been some complaints about poor quality child care and demand of donations, it was also a fact that Preet Mandir had placed a large number of children in successful adoptions, particularly older and special needs children.”<sup>196</sup> CARA reiterated that the government of Maharashtra (WCD), in its letter dated December 21, 2006, had cleared Preet Mandir of charges of excessive fees and the illegal sale of babies.<sup>197</sup>

#### 7. Joint Investigation Report, March 1, 2007

On March 1, 2007, a joint investigation by CARA and DWCD was carried out, and the result was placed before the court. CARA was of the opinion that the intercountry adoption procedure governed by the 2006 guidelines had several built-in safeguards for Indian children placed in international adoptions. According to CARA, there was hardly any possibility of the selling or purchasing of children because there were checks and balances in place at every level.

In respecting the principle of subsidiarity (that every effort should be made to place a child in domestic adoption before intercountry adoption) and the functioning of the ACA Pune, CARA found that

[I]t is a matter of concern that ACA Pune has not been able to put maximum efforts to place children in domestic adoption and has helped children to remain in the institution without strong reason. . . . No Placement Agency can deny any proposal of prospective adoptive parent recommended by the concerned ACA. Each Placement Agency has freedom to find a family for its child within its stipulated period i.e. 30 days and after its expiry, it's job of ACA to put additional efforts and not to hold children as it is happening now.

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<sup>195</sup> Court Order, Advait Found. v. Adoption Cells, Bombay H.C., Criminal Writ (Feb. 14, 2007) (on file with author).

<sup>196</sup> Counter Aff. on Behalf of Respondent No. 3, Advait Found. v. Adoption Cells, (Jan. 22, 2007) (on file with author).

<sup>197</sup> *Id.*

With respect to the functioning of the CWCs, the CARA report criticized the CWCs of Satara, Wardha, and Pune for transferring children from far off places for the sole purpose of adoption, despite clear instructions from state government and CARA against doing so. The report created the general inference that Preet Mandir has linkages with hospitals, children's homes, probation officers, observation homes, and CWCs in far off places that enable the transfer of these children, but it is difficult to prove if there have been any monetary transactions in exchange.

With respect to Preet Mandir and the CNN-IBN reports, CARA stated:

The placement agency does not have recognition for placing children in inter country adoption since July 2006 and the agency has already transferred 62 children to their places of origin on ah direction from the State Govt. A number of pipeline cases are still pending in the court and recently the Family Court had an issued order not to consider pipeline cases and the restoration of recognition to the agency may help cases to be cleared by the Honourable Court, ending the long wait of children already in the institution. Any more transfer[s] of such children from Preet Mandir to any other place shall add to the agony of the children already traumatized, most of which are having medical and special needs. It is worth mentioning here to quote the apex court's direction that all decisions must be taken in the best interest of children and thus children should get families at the earliest without further transfer if the reports from CBI and order from the court are fine. The best institutionalized care can not replace the warmth of a family life, and children should go to loving and caring families at the earliest.

The report critiqued the CNN-IBN telecast on a number of points: that the telecast gave a negative picture of adoption, whereas the need of the hour was to create a positive image of adoption and get children into homes in any fashion; that the telecast wrongly raised the issue of a number of deaths at Preet Mandir, whereas this agency was one of the few agencies that took children in any health condition; that it denied allegations that Preet Mandir illegally sourced babies from biological parents; and that it denied having received allegations from prospective Indian adoptive parents about not being considered by Preet Mandir.

On the whole, the report cleared Preet Mandir, though it did raise concerns of running childcare institutions from funds garnered by intercountry adoption, instead of strengthening other funding programs. The report mentioned that Preet Mandir had received amounts in excess of the \$3,500 fee ceiling in two cases

but stated that Preet Mandir will return those amounts to the adoptive parents.<sup>198</sup>

The report linked the future of the children with the decision to be taken on Preet Mandir, thus sentimentalizing the issue and clouding it with concerns of the best interests of children.

8. Sakhee Petition, March 13, 2007

In March 2007, the child rights organization, Sakhee, filed a petition in the Mumbai High Court. Referring to the abovementioned evidence and investigative journalistic reports, Sakhee made the same prayers for relief as the Advait Foundation but also emphasized the pipeline cases. They sought directions that the children, who were not matched for adoption, be transferred to other institutions and that the adoption of children who were already matched should be completed under the supervision of the court.<sup>199</sup>

9. Temporary License, May 23, 2007

CARA issued an order in which it referred to the inspection report of the state government and to the joint inspection report, both of which essentially cleared Preet Mandir of all charges. Despite the fact that the CBI inquiry was still pending as well as the case in the High Court, CARA issued a temporary license for six months, citing that it was best for the children to be in the custody of Preet Mandir.<sup>200</sup> Even though Preet Mandir had its license restored, adoptions from the orphanage were stalled due to the High Court, which did not allow it to continue with adoptions.<sup>201</sup>

10. DR Documentary, June 10, 2007

On June 10, 2007, the Danish television channel DR1, in its magazine TV 21 Sondag, exposed the problems with Indian adoptions. Apart from Preet Mandir, the documentary covered an orphanage in Andhra Pradesh, the John Abraham Memorial Home, which had been closed after being accused of child trafficking. In addition, Mr. Kumar, the Director of the Pune adoption agency,

<sup>198</sup> Report of the Joint Inspection Team on Matters Related to Preet Mandir in the State Maharashtra, March 1, 2007 (on file with author).

<sup>199</sup> Brief of Sakhee, *Sakhee v. Union of India*, Mumbai H.C. (Mar. 13, 2007) (on file with author).

<sup>200</sup> See CARA, Six Month Recognition Order of Preet Mandir (July 12, 2007) (on file with author).

<sup>201</sup> Order of Court, Consolidated Cases of Advait Found. v. Adoption Cell & Sakhee v. Union of India, Bombay H.C., April 26, 2007 (on file with author).

Priyadarshani, which coordinated with the Danish Agency, AC Denmark, was caught red-handed by the Danish journalist in a sting operation. The entire transcript of the sting operation is set forth below to illustrate the atmosphere and the nuances of baby trade:

We ask the director of the institution how many children he can provide. We also tell him that it's important that we can trust him.

Mr. Kumar, Director of Priya-Darshani: We'll try to take ten to 15 children the first year.

Reporter: Is that possible?

Mr. Kumar: Yes.

We ask Mr. Kumar if we can sign a contract with him.

Mr. Kumar: Nobody can do on paper any contract. It depends on the trust of each other.

So Mr. Kumar is saying that he can provide ten to 15 children in the first year. A number he soon amends to four or five if we want to be sure of obtaining them.

Mr. Kumar: So the first year you'll get up to five children. Very easily.

Mr. Kumar wants to make an agreement with us for five children the first year even though the Indian adoption authorities clearly do not allow agreements specifying a number of children.

He also tells us that he can help us get the necessary Indian adoption license through his good contacts in CARA.

Mr. Kumar: For CARA license I will support you.

Reporter: And how can you do that?

Mr. Kumar: I have some contacts in Delhi.

Reporter: At CARA?

Reporter: It could help us a lot.

Mr. Kumar: Yes, of course. Once CARA gives clearance there is no problem. It will go very smoothly and the adoption process will complete. At that time you will have to pay . . .

At our meeting with Mr. Kumar the talk is quickly turned to money. We asked him how much he normally charges for a child.

Mr. Kumar: In India the foreign agency . . . they pay six to 7,000 dollars. For a child.

Reporter: How much?

Mr. Kumar: Six to 7,000 dollars . . . Yes, they're willing to pay . . .

Mr. Kumar: The U.S. agencies pay more than 7,000 dollars. They pay 8,000 or 9,000 . . .

With respect to Preet Mandir, the Danish documentary focused on the fate of Ramesh Kulkarni. In March 2002, Ramesh Kulkarni's wife died of jaundice only a few months after the birth of the youngest of their four children. Ramesh Kulkarni managed to look after the children for the first two weeks. Then, going to work and looking after them became too much for him. He quit his job and took the children to stay with close relatives. But the family was poor and could not provide for him and his children. A friend suggested to the despairing father that he put his children into a children's home for the time being. Soon after, two representatives from Preet Mandir came to pick up the children. They assured Ramesh Kulkarni that he could visit his children as often as he liked and that he could have them back at any time. Ramesh Kulkarni decided to send the children away until his finances improved. The representatives said that they would take good care of the children and make sure they went to school. Before they drove off with the children, they asked Ramesh Kulkarni to sign a document. According to Ramesh Kulkarni, the document was in English. The representatives told him that it was the admission papers for the home and the school. Ramesh Kulkarni does not understand English but signed the document anyway.

Not until a month after the children were sent away did the grandparents find out that their grandchildren were staying at the home. The grandparents and Ramesh Kulkarni went to Preet Mandir, Pune, to get the children back. The grandparents stated that they wanted to take the children home. But Preet Mandir told them that they would have to pay 50,000 Rupees for each child, plus their board and accommodation, in addition to procuring a court order. Neither Ramesh Kulkarni nor the grandparents had enough money to buy the children back.

In spring 2003, Ramesh Kulkarni still believed that his children were at Preet Mandir. But in fact the children were getting used to their new parents, a new language and a whole new life in Denmark. Preet Mandir started to push him to give up the children for adoption, but he refused to give up his children. The people at Preet Mandir were furious and banned him from the premises.

Ramesh Kulkarni contacted the local police and a lawyer. But the police took no action, and the lawyer was much too expensive. Ramesh Kulkarni began to feel completely helpless, and he began to lose any hope of ever getting his children back. He regularly called the institution, which told him that his children were fine. In October 2006, Ramesh Kulkarni and his brother tried to visit the

children at Preet Mandir. To their surprise they were now allowed to see them.

The home showed him some other children, claiming that they were his. When the father and his brother protested, they were ejected. In April 2007, the whole family decided to drive to Preet Mandir together. "Ramesh Kulkarni, his brother, and in-laws were determined to confront Preet Mandir once and for all. But now they were told the shocking news: his children were since three years adopted in Denmark."<sup>202</sup> The family made a complaint to Childline.<sup>203</sup>

#### 11. Denmark Suspends Adoptions from India, June 10, 2007

The Danish consumer and family minister Carina Christensen announced that adoptions from India were temporarily suspended until the concerns raised in the Danish documentary were satisfied. She ordered the Danish authorities to investigate the practices of AC International Child Support.<sup>204</sup>

#### 12. Cara Press Release, June 15, 2007

CARA issued a press release in reaction to the Danish documentary, where it exonerated Preet Mandir entirely. It stated that it was clear from the available documents that the biological father Kulkarni had "himself approached the concerned adoption agency in Pune through a social worker to make his four children available for adoption/rehabilitation (not two as reported in the press)." On a stamped paper, he gave his consent on April 9, 2002, to the concerned agency to do so. "This consent forms part of the relinquishment deed, which was signed by his sister and brother-in-law as witnesses and the same was countersigned by the Chairman, Juvenile Welfare Board. The deed was written in Marathi, the Mother Tongue of the biological father who is stated to be a matriculate."<sup>205</sup>

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<sup>202</sup> A Baby Business (DR1 Denmark broadcast June 10, 2007) (transcript on file with author).

<sup>203</sup> Ramesh Kulkarni Complaint to Childline (on file with author).

<sup>204</sup> *Denmark Suspends all Adoptions from India Following Reports Children Could Have Been Abducted*, PR-INSIDE, June 11, 2007, <http://www.pr-inside.com/denmark-suspends-all-adoptions-from-india-r150234.htm>.

<sup>205</sup> Press Release, Ministry of Women and Child Development, Adoption of Indian Children in Denmark – Preliminary Inquiry by CARA Rules out any Irregularities (June 15, 2007), available at <http://pib.nic.in/release/release.asp?relid=28630>.

## 13. First CBI Report, October 4, 2007

The CBI report, as ordered by the Mumbai High Court, cleared Preet Mandir entirely. None of the allegations were confirmed by the CBI. However, according to the CBI report, the shelter for unwed mothers in Maval, called Sai Seva Dham, had been shut down. The CBI interviewed a few unwed mothers and their relatives, all of whom admitted that they had willingly relinquished their children and were not forced by anyone to do so. The full addresses of the unwed mothers were not disclosed to protect their identity.<sup>206</sup>

## 14. Sakhee Affidavit in Reply, October 11, 2007

Sakhee countered the CBI report with a comprehensive affidavit in reply, pointing out the various violations committed by Preet Mandir and the insufficient CBI investigation. Sakhee had obtained affidavits from adoptive parents showing payments to Preet Mandir. According to the affidavit, all amounts paid were in excess of the fee stipulated by the CARA guidelines and were taken even before the guardianship petition was filed in court.<sup>207</sup>

No.	Donation Date	Payment Mode	Date of Filing Application	Paid (INR) / \$ <sup>208</sup>	Family Name <sup>209</sup>
1	12/21/2005	Credit Card	4/24/2006	249,000/ \$ 5,659	Mrs. S.P
2	3/25/2006	Cash	7/29/2006	225,000/ \$ 5,113	Mrs. S.R.
3	5/10/2006	Credit Card	6/19/2006	356,000/ \$ 8,090	Mr. R.W.
4	6/20/2006	Direct Transfer & Cash	6/17/2006	286,000/ \$ 6,500	Mrs. C.G

<sup>206</sup> Central Bureau of Investigations, Report on Trafficking of Children for the Purpose of Adoption (Oct. 4, 2007) (on file with author).

<sup>207</sup> Affidavit in Reply to CBI Report, Sakhee v. Union of India, Bombay H.C. (Oct. 11, 2007) (on file with author).

<sup>208</sup> *Id.* (converted with \$1 = 44 INR).

<sup>209</sup> *Id.* Only the first letters of the families' names are kept in order to protect their identity. Full names are on file with the author.

15. High Court Orders Further Investigation, October 15, 2007

The matter was argued in court, and the High Court judges stated that they were not satisfied with the CBI report and asked for the submission of a further report with regard to queries raised.<sup>210</sup>

16. CNN-IBN: Children for Sale, October 21, 2007

The Indian news channel CNN-IBN broadcasted a “30 Minutes” follow-up documentary on the Preet Mandir issue.

a. Renuka

The story of Renuka came to light because Preet Mandir attached to their affidavits the complete adoption file<sup>211</sup> of Ashwini, Komal, and Geetha to show the court the noble work they were doing. An activist from Sakhee along with another social worker investigated deeper, revealing that Renuka’s parents were tricked into signing the relinquishment deeds. The parents were suffering from HIV and were told that Preet Mandir would take care of the education of the children. The father, who was illiterate, was asked to sign papers. Renuka said, “People from Preet Mandir came and took away my sisters. They said they would educate them. My uncle visited them twice, but then people at Preet Mandir they said ‘Don’t come here again because the children are getting disturbed.’”<sup>212</sup> The siblings were separated in contravention of the CARA guidelines. The paperwork conveniently forgot to mention Renuka. Today the grandfather of the four children, Bhagwan Chougali, takes care of Renuka. “I have everything in my house. I cook for them and I can provide for them but I can’t do without them,” says Chougali.<sup>213</sup> The three children have been adopted by an Italian couple.

b. Lakshmi

Lakshmi was burned by her husband due to a marital problem and was admitted for treatment at Agashe hospital. Since neither

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<sup>210</sup> Order of the Court, Consolidated Cases of Advait Found. v. Adoption Cell & Sakhi v. Union of India, Bombay H.C. (Jan. 16, 2008) (on file with author).

<sup>211</sup> CARA, Ministry of Social Justice & Empowerment (Jan. 19, 2006) (on file with author).

<sup>212</sup> Parul Malik, *Children Snatched & Stolen, Racket is Called Adoption*, CNN-IBN, Oct. 21, 2007, [http://www.ibnlive.com/news/children\\_snatched\\_stolen\\_racket\\_is\\_called\\_adoption/50883-3.html](http://www.ibnlive.com/news/children_snatched_stolen_racket_is_called_adoption/50883-3.html).

<sup>213</sup> *Id.*

she nor her relatives could care for her daughter, Priyanka, she gave the child into the care of the Love Trust, a childcare center of Dr. Agashe. Lakshmi said, “I am not in good health and so gave my child to the childcare centre but they put her up for adoption.”<sup>214</sup> Love Trust took her signature on a relinquishment paper and put her child up for adoption. When she was back on her feet it was too late to get Priyanka back. “In a period of two months that they can come and claim the baby. Our basic aim is the baby’s adoption. We cannot keep the baby with us forever,’ says Dr Seema Agashe, gynaecologist and trustee, the Love Trust.”<sup>215</sup>

c. Ashwini and Komal

CNN-IBN interviewed Kisabai Lokhande, who had placed her grandchildren, Ashwini and Komal, at an observation home in Satara for care and protection because her daughter had left the village due to marriage problems. She discovered days later that her granddaughters had been moved to Preet Mandir. “When I met them in Pune, my elder granddaughter Komal said not to worry for her because Preet Mandir was taking good care of them. Preet Mandir people said don’t worry about your granddaughters and don’t visit them because you are poor and will waste money on travel,’ says Kisabai.”<sup>216</sup> Preet Mandir put up a newspaper advertisement, which stated that relatives would have 30 days to reclaim the children. After the 30 days expired, the Child Welfare Committee declared the children destitute and free for adoption. “I miss them a lot. I have lost my appetite and I keep falling ill. I will do anything to get them back. I had sent them to the observation home so that they go to school, not abroad,’ said Kisabai.”<sup>217</sup>

d. Govind

Govind’s parents died of AIDS and his uncle was unable to take care of him. The village, along with a local social worker, Suprabha Manikrao Wankhde, decided to place Govind for care and protection at the local observation home. Govind had inherited part of the house and some agricultural land, so the village expected him to return after he completed his education. When the anganwadi teacher wanted to visit Govind she was told, “do not

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

come here for at least four months. If you do the child will cry and insist on leaving the welfare home.”<sup>218</sup>

Within months Govind was transferred to Preet Mandir and adopted by an Italian couple. When the village tried to make a police complaint, the police said Govind’s adoption papers were in order and that his uncle had not responded to Preet Mandir’s 30-day notice period. Govind’s uncle, Dhondiram Solanki, alleges his thumb impression was taken on blank papers. “I am illiterate and didn’t know what I agreed to. There is no question of me reading newspapers,’ stated Solanki.”<sup>219</sup>

e. Unwed Mothers and CBI

CNN-IBN checked whether the CBI had really interviewed the unwed mothers mentioned in its report. One mother says that she was never questioned by the CBI. “No one from CBI approached me. I didn’t give up my child. I was just told to sign,” she stated.<sup>220</sup>

f. J.K. Mittal’s Hotel Bill Paid by Preet Mandir

CNN-IBN proved in its investigation that CARA had a vested interest in absolving Preet Mandir and returning its foreign adoption license. CARA chairperson J.K. Mittal stayed in Pune’s Aurora Towers Hotel (a five star hotel) for two days in June 2007

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<sup>218</sup> Malik, *supra* note 212.

<sup>219</sup> *Id.* It is noteworthy to mention, that Govind has inherited, his parents house as well, as some agricultural land. Govind was admitted to the local orphanage only for “care and protection.” That is also written on the Admission document. The case was much earlier partly investigated by Anjali Kate during a study. After the CNN-IBN Baby Snatchers documentary people from Preet Mandir went to the village and posed as CNN-IBN reporters. They wanted the original admission document. The uncle refused to give it. The next day they came back and offered 200,000 INR. (\$5000) to the uncle for the document, but the uncle still refused. The villagers expected him back in the community, after he would have completed education. The local social worker saw the newspaper ad, which said that if no one comes forward within 30 days to claim Govind, he will be freed for Adoption. Despite her education, she didn’t understand the context at all. She thought they were asking that someone come and visit Govind. So she sent someone to the orphanage with cake, but they were not allowed to meet Govind. When the author along with Anjali Kate met the villagers and Govind’s uncle, she filed a police complaint, accusing Preet Mandir of kidnapping and cheating. This complaint was signed by 120 people. Instead of registering the complaint as a FIR (First Information Report), the police took up the investigation before registering a case. After the police met with Preet Mandir, they refused to register a case. Interview with villagers of Maharashtra, in Maharashtra, India (May 19-20, 2007) (documents on file with author).

<sup>220</sup> Malik, *supra* note 212.

and received a bill of Rs 16,000. The bill shows that it was paid via credit card by Preet Mandir.<sup>221</sup>

#### 17. Danish Government Report

The Danish government came out with their investigation report on October 9, 2007, and reopened adoptions from India.<sup>222</sup> Regarding the Ramesh Kulkarni case, the Department of Family Affairs obtained the case documents held by AC International Child Support. The documents showed that according to the court order dated February 21, 2003, the family court in Pune had granted the adoptive parents' guardianship over the four children with explicit permission to take them to Denmark. Subsequently in June 2003, a Danish adoption order was issued by the "Statsamt."

The Indian information regarding the adoption case was as follows. The Department of Family Affairs informed CARA of the temporary freeze on adoptions on June 13, 2007. On June 15, 2007, CARA reported that according to its information the children's father had consented to adoption, but that CARA would initiate a detailed investigation into the entire matter. The Department of Family Affairs received the results of this investigation on August 1, 2007.

CARA's conclusions regarding the investigation were as follows. The admission of the children to the orphanage (Preet Mandir) took place in accordance with CARA's 1995 and 2004 guidelines. The adoption procedure took place in accordance with the court's and CARA's instructions. In connection with the investigation, the local social welfare office in Solapur, India visited the father at his home in Sangola, where he acknowledged having relinquished his children and that his sister and brother-in-law had been witnesses to this. The father admitted that the Director of Sakhi and Childline's<sup>223</sup> Director in Pune, who was also a member of the Juvenile Justice Board in Pune, had pressed him to lodge a complaint. In connection with the investigation, the father's sister and brother-in-law likewise acknowledged having been witnesses to the father relinquishing his children. The father's sister and brother-in-law furthermore stated that the father had never been in a position to take care of the children. They also stated that the

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<sup>221</sup> *Id.*; see Copy of Hotel Bill, Aurora Towers (Sept. 6, 2008) (on file with author).

<sup>222</sup> DEP'T OF FAMILY AFFAIRS, MINISTRY OF FAMILY & CONSUMER AFFAIRS, THE INDIA INQUIRY: INQUIRY REPORT ON CHILD ADOPTION PLACEMENT FROM INDIA DURING THE PERIOD 200-2007 (2007).

<sup>223</sup> Childline is an international child rights organization that is highly respected worldwide.

father now worked as a waiter in a Sangola hotel and earned INR 50 a day (equivalent to DKK 7). Their opinion was that the father had been misled by certain mysterious individuals<sup>224</sup> whose advice he had followed.

During a visit to CARA in September 2007, representatives of the Department of Family Affairs were shown CARA's complete dossier on the concrete case. This dossier contained, among other things, a copy of consent to in-country and intercountry adoption signed by the children's father on April 9, 2002. The consent was signed in Marathi, and the dossier contained an English translation. The dossier also contained a social report on the father and children compiled on April 11, 2002, by a social worker from the Preet Mandir orphanage, a VCA declaration dated August 13, 2002, and a NOC (No Objection Certificate) issued by CARA on January 15, 2003.<sup>225</sup> The Department of Family Affairs now regarded the Indian adoption procedure as having been complied with and the necessary consent from the children's father for intercountry adoption as given. It found the Indian adoption procedure in the concrete case conformed to international standards for adoption prescribed by the Hague Convention.<sup>226</sup>

The Ministry commissioned Ernst & Young to explore financial transactions of AC International Child Support with Indian agencies. This was not limited only to AC International Child Support, but the amounts paid were compared with other Scandinavian adoption agencies. The study reported that both the Danish adoption placement agencies in India charged similar amounts between 2000 and 2006.<sup>227</sup>

ACIS had an average Indian adoption outlay of DKK 36,287 (\$5,443),<sup>228</sup> while it received adoption fees of between DKK 61,920 (\$9,288) and DKK 81,200 (\$12,180) from adoptive parents. In the case of DanAdopt, total Indian adoption outlays per child ranged from DKK 25,954 (\$3,893) to DKK 64,264 (\$9,639), the combined average being DKK 35,874 (\$5,381), while it received adoption fees of between DKK 84,750 (\$12,712) and DKK 95,000 (\$14,250) from the adoptive parents. DanAdopt's current fee is DKK 95,000.<sup>229</sup>

At the request of the Department of Family Affairs, the National Board of Adoption investigated the composition and amount

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<sup>224</sup> The author assumes that it was referring to Childline and Sakhee.

<sup>225</sup> DEP'T OF FAMILY AFFAIRS, *supra* note 222.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> Conversion rate: \$1 = 0,15 DKK

<sup>229</sup> DEP'T OF FAMILY AFFAIRS, *supra* note 222.

of Swedish and Norwegian fees for child adoption from India in the period 2000-2006. The Norwegian Central Authority in adoption matters, the Directorate for Children, Youth and Family Affairs, made the following reply:

Verdens Barn arranges contact between adoptive parents and children from Children of the World in Bombay (CWB) and BSSK in Pune (Poona). The agency transfers NOK 20,000<sup>230</sup> (\$2,600) per adoption to its placement partners in India. This amount is intended to cover outlays by the orphanages in the period (often quite lengthy) until the adoption. The payment is not mandatory, but this arrangement has grown into an effective way of ensuring that the child receives the care it needs until it passes to the adoptive parents. Verdens Barn would prefer an arrangement where CARA regulates what is a reasonable grant to the orphanages, in the same way that CCAA has done this in China. Verdens Barn now has a total fee per adoption of NOK 89,000 (\$11,570). This amount is the same for all applicants, irrespective of country and irrespective of what the adoption actually costs. Verdens Barn's outlays in respect of adoptions from India are among the lowest, i.e. well below average. Verdens Barn also arranges contact between adoptive parents and children from South Korea, China, South Africa and Thailand. Adoptions from India and Thailand are far cheaper than those from South Korea and South Africa. Adoptions from China are more expensive in terms of outlays than those from India and Thailand. Adopsjonsforum has in recent years experienced a marked decrease in the number of adoptions from India. The Norwegian Directorate for Children, Youth and Family Affairs believes that Adopsjonsforum's outlays in India are roughly similar to those of Verdens Barn.

In response to the National Board of Adoption's further questions as to the period covered by this information, the Directorate replied that "the amount of NOK 20,000 has been constant for several years."<sup>231</sup> The fee charged by the adoption placement agencies has increased in the last year. This is because all three adoption placement agencies recorded losses in 2005 and 2006 due to lower than expected adoption figures. They had budgeted for many more. The reason for the decrease was the fall in adoptions from China. We have now ordered the agencies to increase their fees so that they avoid running into deficits, and competing each other to death. Just a few years ago, the organizations charged a fee of less than NOK 70,000 (\$9,100). The price level now is around NOK

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<sup>230</sup> Conversion rate: \$1 = 0,13 NOK

<sup>231</sup> That fact shows that the CARA Guidelines 1995 regulating the fees was systematically violated, even by other Indian agencies. See discussion *supra* Part III.D.1.

90,000 (\$11,700).” The Swedish central authority in adoption matters, the Swedish Intercountry Adoptions Authority, sent a list of the fees charged for adoptions from India in the period 2000-2006. The list shows that the agencies charged adoption fees from the adoptive parents ranging from around SEK 58,223<sup>232</sup>(\$ 6,986) in 2000 to SEK 116,605 (\$13992) in 2006. The three Swedish adoption placement agencies charge different fees. However, the size of the fees charged by the three agencies has shown a steady rise during the period. The list further shows considerable variation in the costs of the Swedish agencies for adoptions from India, from SEK 23,848 (\$2,861) to SEK 48,000 (\$5,760). The Department of Family Affairs concluded that the Indian system of adoption ensured a thorough processing of adoption cases, in part because Indian adoptions are subjected to a judicial process and scrutiny by a central authority, which instills a general confidence in the system. Following the study’s findings, the department concluded that adoptions were not carried out with an intent for financial gain and that the Danish adoption placement agencies had worked within the applicable guidelines.<sup>233</sup>

#### 18. CBI Supplementary Report<sup>234</sup>

A supplementary CBI report was taken on record on December 4, 2007, by the High Court.<sup>235</sup> Regarding the Kanhe Phata (Sai Seva Dham) home,<sup>236</sup> the report said that “[the] unit has however been shut down in 2006 due the financial crunches as it was becoming difficult to maintain the said unit.”<sup>237</sup> The Kanhe Phata home was giving shelter to unwed mothers who faced social stigma.

The name of the woman was taken in the admission register with an address, though proof of address was not taken from the woman. The CBI Report stated: “We were not charging any money for the stay of these poor needy women. The admitted women were given the medical facilities and were taken to Talegaon Hospital for routine medical check up and also the delivery.”<sup>238</sup>

The women were also given vocational training like basic education, sewing, and embroidery, so they could become self reliant

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<sup>232</sup> Conversion rate: \$1= 0,12

<sup>233</sup> DEP’T OF FAMILY AFFAIRS, *supra* note 222.

<sup>234</sup> Central Bureau of Investigation of India, Final Report CWP No. 1945 of 2006.

<sup>235</sup> CBI Supp. Report Pleading, Advait Found. v. Adoption Cell, Writ Petition No. 1945 of 2006, Bombay H.C. (on file with author).

<sup>236</sup> See discussion *supra* Part IV.

<sup>237</sup> CBI Supp. Report, *supra* note 235.

<sup>238</sup> *Id.*

after leaving the institute and could take care of their babies on their own. The identities of the women admitted in the institute were kept confidential so that they would not later fear being recognized as unwed mothers. The report records the management insisting that they never interfered or influenced the women and families in their decisions to keep or give away their children.<sup>239</sup>

The CBI, in its report, offered almost the same details about Ramesh Kulkarni as CARA did in their press release. It stated:

During inquiry. Shri Ramesh Kulkarni, was also examined on 19.4.07 by CBI in Mumbai Shri Ramesh Kulkarni have relinquished his children viz Rani, Ruchi, Radhika and Rohit. He is a Matriculate and was previously working as ward boy in a hospital at Mongolwed District Solapur. His wife died in March 2003. Thereafter he left his job in the hospital and came to stay with his parents. As he was without work, it was difficult for him to take care of his children. His sister suggested to keep his children in some place where the children are taken care. He brought his children to Navrange Balak Ashram, Pandharpur but as there was no vacancy and small child could not be kept there as infrastructure was not available. He was suggested the name of Preet Mandir by Sh. Darshane, Administrator, Navrange Balak Ashram. As he was not in a position to travel to Pune he spoke to social worker of Preet Mandir and requested them to come to Pandahrpur. Accordingly, Sh Admane, social worker of Preet Mandir went to Pandharpur and prepared the relinquishment affidavit. Shri Ramesh Kulkarni have earlier stated that relinquishment affidavit was prepared in English. However on 26.11.07 when he was again examined and shown Xerox copy of Marathi written relinquishment affidavit he admitted that this was the affidavit which was prepared at Pandharpur. He also identified his own signatures along with the signatures of his sister Jayshree and Brother in law Tukaram as witness to the relinquishment affidavit. As also stated that 'as he can read and write Marathi, he knew the contents of the relinquishment affidavit and he was aware that his children can be sent abroad in adoption. He was also shown the gate register of Preet Mandir unit II wherein he has put this name and purpose of visit with date. He was allowed to met his children every time he come to met them at Preet Mandir unit II. On his visit on 14.2.03 he was informed about the final orders of the family court for sending his children on adoption. He stopped visiting Preet Mandir when he learnt about the final orders, he stopped visiting Preet Mandir. However on insistence of his mother in Law and father in law he again visited Preet Mandir with them.

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<sup>239</sup> *Id.*

At that time on request of his mother in law, he was shown the photos of his children.<sup>240</sup>

The CBI Report also gave a detailed account of how an NRI adoptive parent was forced to pay a mandatory donation far in excess of the 2006 CARA guidelines.<sup>241</sup>

#### 19. Advait Counter Affidavit

In the affidavit filed by Advait in February 2008, the CBI report is countered. Advait averred that the CBI report was drafted by Preet Mandir itself.<sup>242</sup> Countering the investigation in relation to the Kanhe Phata Home, Advait stated that the CBI contention that the home was shut down due to a financial crunch was wrong. In fact, the OCH Board had sent a show cause notice to Preet Mandir on August 23, 2006, charging it with not concerning itself only with pregnant women, and not with the rehabilitation of minor girls trapped in trafficking. The pregnant women were brought by private vehicles to the short stay home and were not taken to the government hospital nearby but admitted to private nursing homes. The institution itself was running without a license and raised the suspicions of the OCH Board.<sup>243</sup> Following this rather serious notice, the home closed down.<sup>244</sup> Additionally, Advait stated:

The Preet Mandir home is deliberately & knowingly declaring children free for adoption with help of Govt. agencies like Child welfare committee, Dept of women & child development, Indian council for social welfare (ICSW), ACA & CARA. Knowing fully well that the children have a biological parents & details of which are deliberately not disclosed. I seek to bring it to the notice of this Hon'ble Court letter issued by Priya-Darshani Shishu Grih (Children's home & An adoption Agency) to Dis-

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<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> The affidavit stated:

the CBI has submitted a dossier drafted by Preet Mandir, this can be verified by minutely reading the dossier at page 13, where the Supplementary Report makes a mention of "WE." Affidavit in Reply to CBI Report, Advait Found. v. Adoption Cell, Bombay H.C., at 3. Advait held that IO (investigating officer), Mr. R. Doodraj, can with no sense of imagination be calling himself as WE and when a human being addresses himself, it is as "I" and not "WE."

*Id.*

<sup>243</sup> The OCH Board is responsible for monitoring of Orphanages and other Charitable Homes. It is constituted under the Orphanages and Charitable Homes (Supervision & Home) Act, 10 of 1960.

<sup>244</sup> See discussion *supra* Part V.G.18.

trict officer Of Dept. of women & child development, Pune dated 15/12/07, which reads as under . . . .

To Dist. Officer,

Dept. of women & child development, Pune.

The 12 children of Preet Mandir were transferred from Swan-and Children's Home, Pune as per order of the CWC Pune. Some of them were free from adoption and some of them in the process of free for adoption. Before we searched the families for the children who are free for adoption, we try to trace out the biological parents of these children and we succeed to find out the biological parents of 9 children and other 3, we found they are total orphan. One girl out of 3, aged 5 have a hearing disability so the institution is trying to fulfil all the paper work to rehabilitate these 3 children . . . .

Signed by Social worker.<sup>245</sup>

Regarding the case of Kisabhai Lokhande, Advait stated:

One of our activist [sic] Anjali Kate vide RTI<sup>246</sup> asked for information on 31.12.07, and received in response:

Kum. Komal & Kum. Ashwini had been admitted to the observation home, Satara for further rehabilitation after the death of their father & mother went missing.<sup>247</sup> In spite of their residential address being available to them, the child welfare committee Satara, declared them as destitute without even paying a home visit. 'Dainik Aikya' published the details about the child in spite of having all details. The Adoption Coordinating Agency (ACA) & Central Adoption Resource agency (CARA) had been given the NOC & details regarding the parents (case sheet & part B). The agency should have contacted the family & informed them about their desire of a permanent rehabilitation of the girls. The right procedures should have been followed by the agency. Although prima facie, it appears that documents & procedure were followed by the agency, the grandmother of the children should have been contacted & a letter of consent sought from her. The children cannot be termed as orphans when they have guardians & hence we hold that the adoption procedure is not legal, we wish to clearly state this.

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<sup>245</sup> Affidavit in Reply to CBI Report, Advait Found. v. Adoption Cell, Bombay H.C., at 31.

<sup>246</sup> RTI refers to the Right to Information Act, No. 22 of 2005.

<sup>247</sup> This was translated from Marathi to English. Therefore this statement is confusing due to the translation. The author assumes that the children "went missing" from the observation home after being admitted, by the grandmother. The CWC had the address of the grandmother and could have paid a home visit to her.

Signed by, Dist. Officer, DWCD, Pune.<sup>248</sup>

Adding to this, Advait stated:

It appears that there are clear directions to Preet Mandir, all CWCs in Maharashtra and the district offices of the D.W.C.D from the Commissioner of Dept. Women and Child Development . . . that they should not be admitting new children and transferring children from and to other homes. Despite this, it appears that there have been 11 new admissions in the Preet Mandir homes (private relinquishments).<sup>249</sup>

## 20. Latest Advait Affidavit

CARA had tabled the Danish government report on February 13, 2008,<sup>250</sup> and Advait countered it by terming the report a mere administrative inquiry. It pointed out that the fees, as admitted by the agencies in the report, were far in excess of those specified in the Indian guidelines.<sup>251</sup>

## VI. CONCLUSION

### A. *Who is "Right"?*

Is it the NGOs and the media with their claims of child trafficking, or the Indian and Danish authorities and Preet Mandir with their claims that all was legal? The answer is simple: it is all of them.

At the time of this writing, the Preet Mandir case is still pending in the High Court. The question whether Preet Mandir will be allowed to continue to carry out the adoption work can therefore not yet be answered. However, it has become evident that even with all the media exposure of child trafficking and subsequent litigation, it is almost impossible to stop adoption agencies like Preet Mandir when operating within a regulated intercountry adoption system.

The legal framework contains strict procedures, yet violating them does not constitute a criminal act. "Trafficking" in the con-

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<sup>248</sup> Affidavit in Reply to CBI Report, *supra* note 245, at 31-33.

<sup>249</sup> *Id.* at 33.

<sup>250</sup> Pleading from Advait Found. v. Adoption Cell, Writ Petition No. 1945 of 2006, Bombay H.C. (on file with author).

<sup>251</sup> Affidavit in Reply to CBI Report, *supra* note 245, at 8. For the allowed fees, see discussion *supra* Part III.C. For the fees paid by the Nordic European agencies, see discussion *supra* Part V.G.17.

text of adoption is not defined in Indian law.<sup>252</sup> This makes it difficult, if not impossible, for the investigation agency and monitoring agencies to penalize Preet Mandir. Or, on the other hand, the law makes it fairly easy to absolve Preet Mandir from the charges and advance the justification that the greater good of helping children in difficulty attain a stable family situation is achieved. David Smolin describes the process of child laundering as follows:

The term “child laundering” expresses my claim that the current intercountry adoption system frequently takes children illegally from birth parents, and then uses the official processes of the adoption and legal system to “launder” them as “legally” adopted children. Thus, the adoption system treats children in a manner analogous to a criminal organization engaged in money laundering, which obtains funds illegally but then “launders” them through a legitimate business.<sup>253</sup>

Is Preet Mandir involved in child laundering? In a strict legal sense, the answer must be negative, as the following summary of cases will show that Preet Mandir obtained children “legally.” The children were not stolen or kidnapped but legally relinquished by their parents or freed for adoption by the Child Welfare Committees. From then onwards, Preet Mandir just followed the legal steps, steps that all are leading straight to the same destination: intercountry adoption.

#### *B. Freeing Children for Adoption*

The babies obtained from unwed mothers temporarily residing in the Kanhe Phata Home, Sai Seva Dham, came with official relinquishment papers signed by their mothers. Questions about the validity of some of the relinquishment documents could certainly have been raised, as addresses of the mothers were lacking.<sup>254</sup> However, the court scrutinized these papers and finally accepted them, therefore legally validating the documents.

Then there is the case of Ramesh Kulkarni, about whom the CBI report stated that he originally did not have the intention to give up his children for adoption. Finding himself in a desperate situation, he was made to sign relinquishment papers the very same

<sup>252</sup> See The Immoral Trafficking and Prevention Act, 104 of 1956; India Code (1993) (deals only with matters related to prostitution/sexual exploitation, not trafficking); see also INDIA PEN. CODE §§ 370, 371, 372, 373 (1860) (Indian Penal Code addresses only slavery and matters of prostitution, not trafficking).

<sup>253</sup> David M. Smolin, *Childlaundering: How the Intercountry Adoption System Legitimizes and Incentives the Practice of Buying, Trafficking, Kidnapping, and Stealing Children*, 52 WAYNE L. REV 113, 115 (2006).

<sup>254</sup> See discussion *supra* Part V.G.18.

day he admitted his children to Preet Mandir. Whether he signed these papers with full knowledge and understanding remains disputed.<sup>255</sup> This issue needs to be addressed if such relinquishment papers are presented the very day of admission. Is it fair to have relinquishment documents signed in a situation of great distress, where parents are looking for urgent care for their children due to a personal drama? The issue of relinquishment was initially regulated so that children would not be adopted without their parents' consent. But was it the intention to ask all parents who need temporary placement to sign a relinquishment act even before placement? Would such a relinquishment document stand legally valid if contested in court? The only way Preet Mandir could be charged with the crime of "kidnapping" is if a court holds a relinquishment document invalid.

The case of Ramesh Kulkarni is exemplary for the tactics Preet Mandir often used to free children for adoption. In other cases, such as the cases of Govind<sup>256</sup> and Komal and Ashwini,<sup>257</sup> the CWC declared children abandoned and legally free for adoption. Despite the fact that the CWC did not often follow the law's required procedure (i.e. proper search for relatives), its decisions to free children for adoption were legally binding. Therefore, Preet Mandir was legally allowed to adopt out the child.<sup>258</sup>

### C. *Freeing Children for Intercountry Adoption*

In order to free children for intercountry adoptions, the guidelines prescribe the need to provide evidence that Indian placement failed.<sup>259</sup> The Preet Mandir case shows how such documentation can be fabricated to get clearance from the ACA.<sup>260</sup> Rejection letters were signed by Indian persons who had never seen the particular child, or signatures on rejection letters were taken from NRIs.<sup>261</sup> Faced with this "proof," the ACA had no other option than to issue the clearance certificate. That this clearance was based on false information supplied by Preet Mandir remained unseen.

It is crucial to realize that adoption papers, created in the very beginning of the process, form the basis for every later step in the

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<sup>255</sup> See discussion *supra* Parts V.G.10 & V.G.18.

<sup>256</sup> See discussion *supra* Part V.G.16.d.

<sup>257</sup> See discussion *supra* Part V.G.16.c (explanation of Ashwini and Komal).

<sup>258</sup> See discussion *supra* Part III.E (explanation of the role of CWC).

<sup>259</sup> CARA, *supra* note 88.

<sup>260</sup> See discussion *supra* Part III.F (discussion of role of ACA).

<sup>261</sup> See discussion *supra* Part V.D.

process.<sup>262</sup> At no point does any authority crosscheck whether the papers and their content reflect the truth.<sup>263</sup> At no stage does anyone question if sufficient efforts were made to rehabilitate these children with their parents or with the extended family or others in the community. The Indian rule was to have at least 50% national adoptions.<sup>264</sup> This rule was set in an arbitrary way and intends to ensure that national adoptions get sufficient priority.<sup>265</sup> However, in this mechanism, special needs children hold a special position. Considered *de facto* difficult to place in India, special needs children (including older children and siblings) get faster ACA clearance before being placed on the intercountry adoption register. Also, special needs children are not incorporated in the statistics, which limit intercountry adoptions to 50%. While one can consider having special needs children adopted by foreigners a noble act, the exemption of special needs children from the normal rules makes them easier targets for adoption, and thus valuable in economic terms. This can also be viewed as an incentive to document children as “special needs” on paper, when in fact, the special needs are minor, correctible, or fabricated altogether. This 50% threshold also has the effect, without doubt, of a minimum ceiling. Therefore, efforts are limited to find local placement for the other 50% of children.

#### D. *The Money*

Until the 2006 CARA Guidelines became effective, taking donations from adoptive parents was allowed. Thus, since Preet Mandir labelled amounts between six and 12 dollars charged from adoptive parents as “donations,” they operated as *prima facie* “donations” within the legal framework. Only a closer look reveals that money was charged even before the guardianship order was final. This certainly constitutes a violation of the Supreme Court judgment stipulating that voluntary donation can be paid only after the adoptive families along with the child have reached their home country. However, “donations” continue to remain a violation of the rules, and not a criminal act of selling children. Only if adoptive parents filed a criminal complaint for “extortion” would this

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<sup>262</sup>CARA, Procedure for Intercountry Adoption, [http://www.adoptionindia.nic.in/ad\\_procedure\\_inter\\_country.htm](http://www.adoptionindia.nic.in/ad_procedure_inter_country.htm) (last visited Nov. 13, 2008).

<sup>263</sup>See discussion *supra* Part III.G. (the Scrutiny Agency relies only on this paperwork).

<sup>264</sup>See discussion *supra* Part III.C.

<sup>265</sup>See discussion *supra* Part III.D.

practice be changed into a criminal act. The 2006 CARA Guidelines stipulate that an agency may charge a flat fee of \$3,500, and no donations are allowed.<sup>266</sup> Preet Mandir violated this rule.<sup>267</sup> However, because violations were proven in only two cases, it did not seem to worry authorities.<sup>268</sup> As the Danish documentary shows, foreign agencies also find ways to circumvent the CARA Rules.<sup>269</sup> To date, many U.S. agencies charge far more for Indian programs than allowed by CARA, while labelling the excessive fee as “humanitarian aid,” “orphanage donation,” or “CARA Approved International Child Welfare Projects.”<sup>270</sup>

### E. Corruption

CNN-IBN gathered evidence that CARA itself is open to corruption and conflicts of interest. The hotel bill for CARA’s Secretary’s stay in Pune for the inspection visit was paid by Preet Mandir himself.<sup>271</sup> A former CARA Secretary, now a formal advisor to Preet Mandir, operates an unlicensed adoption agency himself, and U.S. agencies have collected money for the Global Village organization.<sup>272</sup>

L.K. Pandey, who initiated the 1984 Supreme Court case that regulates intercountry adoption, is also a formal advisor of Preet Mandir.<sup>273</sup> Rumors abound that Preet Mandir pays police officers and CWC members, but evidence is lacking.<sup>274</sup> It is clear that with such links, it is difficult to put agencies like Preet Mandir out of business. However, one may conclude that the trust receiving countries put in India to provide correct information and a proper process which would deliver “orphans” seems misplaced. De facto, the information received by these countries is at the very least unreliable.

### F. Weeding out Malpractice?

The formal regulations clearly fail to prevent malpractice. The formal procedures, which were designed to protect the children

<sup>266</sup> See discussion *supra* Part III.D.

<sup>267</sup> See discussion *supra* Parts V.B, V.E.1, V.F.3, V.G.18.

<sup>268</sup> See discussion *supra* Part V.G.7.

<sup>269</sup> See discussion *supra* Part V.G.10.

<sup>270</sup> Posting of Usha Smerdon to Blogspot.com, <http://fleasbiting.blogspot.com/search?updated-max=2007-11-13T17%3A31%3A00-08%3A00&max-results=7> (Nov. 11, 2007, 19:50 EST).

<sup>271</sup> See discussion *supra* Part V.G.16.f.

<sup>272</sup> See discussion *supra* Part V.F.3.

<sup>273</sup> See discussion *supra* Part V.E.1.

<sup>274</sup> See discussion *supra* Part V.D.

and their original families, became a goal in itself and left parents behind who, when trying to fight the injustice done to them, found themselves totally powerless. In 1984, during a press conference held after the 1984 Supreme Court judgment, Adi Patel from Terre des Hommes India stated, “[l]aws can be made and broken, but the implementation of laws by the government requires public pressure to make them effective.”<sup>275</sup>

Let’s turn to the example of Andhra Pradesh. In Andhra Pradesh, evidence was found that payments were directly made to birth families. Here, civil society took up the issue. After years of fighting by several women and child rights organizations, all involved in grassroots work for decades, intercountry adoptions from Andhra Pradesh were stopped.

In contrast, in Maharashtra, only two minor child rights organizations courageously took up the Preet Mandir issue, even though a large number of civil groups are active in Maharashtra. Thus Preet Mandir faces hardly any opposition.

How can this lack of opposition be explained? First of all, in the case of Preet Mandir there is no evidence of direct payment to birth mothers, or other clearly illegal activities. But above all, my contention is that down the line most people agree with what Maharashtra Secretary of Women and Child Development Vandana Krishna said in her letter to CARA at the end of 2006:

[W]hether the primary objective of the welfare of the child to be given in adoption is being achieved. Even if an adoption agency is run with a selfish or business motive to make money, that itself does not become a crime or illegal.<sup>276</sup>

Indeed, ultimately the children end up in much better circumstances than they were in before. Should that be the final conclusion? It is not that simple. If one goes out in to the field and looks into the eyes of mothers, fathers, and siblings who forever lost a family member through adoption, and listens to their side of the story, only then does one get to feel that something majorly wrong happened to these families.

In most cases, a small intervention would have allowed the children to remain with their original families. The measure to cut the family ties forever and place the child with an adoptive family abroad can in many cases be considered disproportionate. Awareness about the issues from grassroots levels is needed in the send-

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<sup>275</sup> See TERRE DES HOMMES & INDIAN ASSOC. FOR PROMOTION OF ADOPTION, CHILD’S BASIC RIGHT TO FAMILY; A SEARCH FOR ALTERNATIVE STRATEGIES WITHIN THE COUNTRY (1984).

<sup>276</sup> Letter from Vandana Krishna, *supra* note 193.

ing country right within the agencies and the authorities in the receiving countries. Certainly India, as a fast-developing nation, has to consider the question of whether a “business” in children is really wanted and in accordance with the Constitution.

In receiving countries, regulation leads to the mystification of the reality in the field in India. The impression is that since adoptions are so well regulated and so many checks and balances are in place, children are “orphans” and that the best solution for them would be to be adopted abroad. However, as has been seen, the daily practice in the field is different.

*G. Legalized Market for Children*

CARA continues to fine tune the adoption system and will soon come with new guidelines. The new guidelines acknowledge many of the issues and seem to have, at first blush, the spirit to weed out the malpractice. However, a closer look reveals that agencies can still indulge in malpractice while formally remaining inside the framework. The crucial question is whether we, in receiving countries, really want to support a business in children. Vandana Krishna’s letter makes it crystal clear that adoption of foreign children is indeed a business. Thus, one can easily draw the conclusion that it is de facto legalized trafficking.

In 1984, during a conference organized by Terre des Hommes Germany, Adi Patel pointed out that one of the flaws of adoption agencies is that they do not consider the full spectrum of the child in need and instead tend to focus on individual aspects. While adoption agencies formally adhere to the principle that in-country placement prevails over intercountry adoption, in practice they do little to promote it. Adoption agencies’ survival depends on the income out of intercountry adoptions. The same goes for Indian agencies, as well as adoption agencies from receiving countries. The agencies need a steady flow of children in order to survive financially.<sup>277</sup>

Regulating intercountry adoption, defining exact procedures on how to relinquish children and how to declare children as abandoned, and putting deadlines on decision making means that these procedures are validated blindly by the courts, and thus accepted by the central authority. This acceptance creates a watertight system where parents are left powerless and without support. Regulating intercountry adoption also implies that organizations

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<sup>277</sup> See TERRE DES HOMMES, *supra* note 275.

are set up, organizations such as adoption agencies and “orphan-ages” that have intercountry adoption as their core business.

Even without profiteers, the existing procedures easily drag children into intercountry adoption without the need or the time to find local care solutions. However, the huge amounts of money involved in adoption, combined with the gifts, the offered foreign travels, and the humanitarian project aid, attract all kinds of persons into this business who otherwise have no interest in the well-being of children.

The rules developed under the guise of the Hague Convention do not prevent abuses but instead prevent them from being seen. They mystify and hide the inherent injustice behind a legalized smokescreen. The results are demand-driven “legal orphans” who, according to paperwork, could not be cared for in their own country. The reality is that India could easily care for the 700 to 1,000 children sent abroad yearly. This is a matter of political choice.

The facts that the Preet Mandir scandal is known in receiving countries, and there was no pressure on the Indian authorities to deal appropriately with the issue and take harsh action against Preet Mandir, show that as long as “orphans” are being sent abroad legally, no one seems to have much of an issue with the fact that a business is made and children are unnecessarily separated from their families.

What is needed is awareness about the issues from the grass-roots level in sending countries, right up to the agencies and the authorities in receiving countries. As a fast-developing nation, India will have to think about the question of whether a “business” in children is acceptable and in accordance with its Constitution as well as its obligations under the UN Convention on the Rights of the Child.

In receiving countries, Indian regulation leads to a mystification of what really happens in India. Their impression is that since adoptions are well regulated with checks and balances in place, children are indeed “orphans,” and that the best solution for them is to be adopted by foreigners. Media exposure may shake this confidence short term, but after expert reports confirm the legality of procedures, the confidence will quickly return. But let’s hope that this article lifts a bit of the smokescreen.

## VII. POST SCRIPTUM

The Mumbai High Court allowed Preet Mandir, on July 22, 2008, to continue its adoption work,<sup>278</sup> setting aside the earlier order which had stalled the adoptions.<sup>279</sup> CARA issued an intercountry adoption license to Preet Mandir on July 25, 2008.<sup>280</sup> However, the case is still ongoing in court, and the CBI has requested more time to continue its investigation.<sup>281</sup>

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<sup>278</sup> Advait Foundation v. Adoption Cell, No. 93, Criminal Application ¶ 9 (Mumbai H.C. 2008) (on file with author).

<sup>279</sup> See discussion *supra* Part V.G.9.

<sup>280</sup> CARA, List of Recognized Indian Placement Agencies, [http://www.adoptionindia.nic.in/ipas\\_list\\_maharashtra.htm](http://www.adoptionindia.nic.in/ipas_list_maharashtra.htm) (last visited Nov. 13, 2008).

<sup>281</sup> Interview with Pradeep Havnur, Advocate, Advait Foundation.