

WHITE PAPER ON ADOPTIONS

A Research Paper Covering adoption agencies in Mumbai and Pune

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Introduction

The objective of this research paper is to list and analyse the reasons for the low rates of adoptions within India, and then provide suggestions for intervention at various levels (community, institutional, medical as well as policy-making) in order to

- 1) increase rates of adoption,
- 2) provide for those children while they are still living in institutions and
- 3) provide for those who are neither adopted nor placed in foster homes.

Essentially, the problem of destitute children in India, in or out of institutional care, is very acute and a lot needs to be done to bring them into the stream of adoption or, at the very least, under more humane institutional care.

Studies reveal that in spite of large numbers of destitute children in the country (approx. 44 million), only about 5000 are adopted every year. Enquiries at adoption agencies bring up

another dismal fact. The waiting lists of persons wanting to adopt are long, and agencies report a lack of 'suitable' children but this doesn't mean that the agencies have already placed all those under their care; rather that the children still at the agency do not match the potential Adoptive Parents' expectations. Children that are not placed in foster homes or adopted are committed to long term institutional care and at the age of 18 are shunted out of the institution and expected to fend for themselves in the 'real' world, with practically no capital - financial, human or social. It is no surprise that many of them are forced to take up a life of crime and/or live in poverty because they do not have any other means to care for themselves.

Thus, while one must actively engage in promoting adoptions, it is equally important to set up a 'safety net' for those who live out their childhood in various institutions and are then 'abandoned' for the second time in their life.

The information stated below has largely been gathered from studies done previously, reports and other published work, as well as conversations with 'experts' in the field, Agency representatives, Social Workers and adoptive families in Mumbai and Pune.



REVIEW OF LITERATURE (STUDIES DONE PREVIOUSLY)

This section provides a summary of studies done on adoption. Due to their relevance and/or because they are recent, the studies done by Bharat, Mathani and Siva Raju have been mentioned in much greater detail.

- [A] Chatterjee, Singh & Yadav (1971)
- [B] Ahmad (1975)
- [C] Billimoria (1984)
- [D] Bharat (1993)
- [E] Mahtani (Commissioned by IAPA) (1994)
- [F] S. Siva Raju (Commissioned by NAAF) (1999)

[A] Chatterjee, B.B., Singh, S.S., & Yadav, D.R. 'Impact of Social Legislation on Social Change' (1971)

The study on adoption comprised only a part of this larger study, (there were only 6 odd questions on adoption in the entire study), and aimed to study how social legislation and communication within a limited geographical region affected awareness about and acceptance of adoption. The study was conducted in four villages in UttarPradesh, none of which had any reported case of adoption in the recent past. Judging from their sample and results, the authors concluded that while the villagers had heard about the custom of child adoption, and were favourably inclined towards it, it was very unlikely that people brought up in that social set up would actually adopt. Not many were aware of the GOI's Adoption Act and most were also against the adoption of a girl child.

[B] Ahmad, I. 'Adoption in India: A Study of Attitudes' (1975)

This attitudinal survey was carried out in New and Old Delhi at a time when demands were being made in Parliament for the passage of a comprehensive bill on adoption. In general, the

respondents (regardless of their demographic and socio-economic status) expressed a negative view towards adoption mainly because they either had a biological child or they felt that they would be unable to love a foster child as much as they would their 'own'. Most considered adoption a 'welfare' practice (taking a relative's child in times of family crises etc.) and most had severe apprehensions about taking in a child of unknown parentage. The author concludes that only childless couples would even consider adoption in India, but having doubts about the child's background, would be reluctant to adopt a child from an adoption centre.

[C] Billimoria, H.M. 'Child Adoption: A Study of Indian Experience' (1984)

This is a more comprehensive study as it deals with social attitudes towards adoption, as well as post-adoptive experiences and the development of the adopted child. The study was conducted in Mumbai on 42 parents who adopted and 20 who considered the option but finally chose not to adopt. The major difference between these two categories is that parents who did not adopt has a less stable family life and were more single member families. Overall, the adoptive experience was a positive one. However, this study is restricted to only one adoption agency in Mumbai and relies on the subjective description of their child's growth and development (instead of collecting some information directly from the child).

[D] Bharat, Shalini 'Child Adoption in India: Trends and Emerging Issues (A Study of Adoption Agencies)'(1993)

Bharat's study covered 16 adoption agencies located in 5 cities/ towns of Maharashtra. Statistical data for a 10-year period, 1977-1986 was collected and analysed. According to Bharat, low rates of Indian adoptions can be explained by the following:

Firstly, there is an overall lack of community support and endorsement of adoption. Potential adoptive parents worry about the child's acceptance by their immediate and extended family, friends, and society at large. There is tremendous anxiety about the child's background, i.e parentage, inherited personality traits etc. which could cause problems in later life . Also there is a pervasive social stigma attached to illegitimate children. Adoption also involves the acceptance and exposure of one's personal inadequacy to bear biological children, which several individuals are reluctant to do.

Secondly, there is a shortage of 'suitable' babies available for adoption. Babies with specific characteristics (in terms of their age, gender, and physical features) that match the needs of the potential parents are not available. In fact, Bajpai (1996, p.6-7) reports that children received in institutions are in excess of 75% of the waiting list of applicants for adoption. The list is also heavily in favour of male babies (especially those who are 'fair and good-looking'). Families desiring female babies never appear on the waiting list, as there are always suitable girl children ready for placement! Having finally chosen to adopt, parents seem to feel that they should get the 'best of what is on offer', and thus ask for a child that is fair and good looking. Also most parents also want a child similar in looks to themselves so that it is not obvious that the child is not 'their own'. It has been noted, also, that Hindu parents prefer boys to girls and all parents (regardless of community/religion) wish to adopt as young a child as possible. While there is a justifiable reason for this (younger babies and parents that adopt them have less adjustment problems), it also means that babies that do not fit within these specifications are literally set aside, and doomed to spend the rest of their juvenile lives in institutions.

Thirdly, Indian law with regard to adoption is flawed in two significant aspects. One, it only allows Hindus to adopt legally; members of other communities have to be content

with mere guardianship of the child. India doesn't have a general law of adoption; adoption is still part of the personal laws of communities and hence, religion based. Two, it is more parent-centred than child-centred. HAMA is aimed at providing relief to a childless person, and is geared so as to provide an appropriate child for persons who wish to adopt. However, the UN Declaration on Rights of the Child states that every child has two inalienable rights, namely the right to a family and a secure future and adoption laws need to be amended keeping this in mind. Fourthly, and finally, there is a distinct and unfortunate lack of inter-agency co-ordination, which hampers the procedures involved in the process of adoption.

Bharat's study places the figure of International adoptions at 67%. She attributes the increasing rates of international adoptions to the following factors:

- there is a dearth of Indian parents willing to adopt because of social constraints attached to adoption (mentioned in detail earlier on) and also because of the lack of a common law that disallows certain communities from adopting.
- there is also a shortage of babies in the West , and thus potential adoptive parents turn to Developing Countries. Also, with several placement agencies receiving foreign funds, they are obliged to place a certain number of children within the donor country.

The 1984 Supreme Court judgement ruled that at least 50% of all placements should be within India.

[E] Mahtani, Rajshree 'A Study of the 3 year old Publicity Campaign implemented by The Indian Association for the Promotion of Adoption and Child Welfare (IAPA)-1994(Commissioned by IAPA).

The IAPA initiated a Publicity Campaign from June 1989 to May 1992, and conducted a range of activities to promote adoption. These are: (1) Promotional talks, (2) Public meetings, (3) Family meets, (4) Orientation group meetings, (5) Mass awareness campaigns, (6) Workshops and seminars, and (7) Preparation of publicity materials. They had target groups in urban and rural areas, comprising of pre-adoptive parents, social workers, child-care functionaries, medical practitioners (mainly gynaecologists and paediatricians), lawyers and judges, politicians, and religious leaders and opinion makers. The survey was done primarily through questionnaires.

The campaign concluded with a range of suggestions on the specific areas that target groups need to be made aware about.

Pre-adoptive parents should be:

- Told about the background of the biological parents, specifically, their medical history.
- Told about the health of their adopted child.
- Told about the nature of the legal process.
- Provided counselling for infertility.
- Provided counselling for future issues in parenting.
- Referred to a registered and professional adoption agency.

Social workers should be:

- Fully aware of the legal procedures.
- Skilled in counselling.

- Encouraged to share information with others in the field.
- Promote Indian adoptions and build awareness on adoption.

Child-care functionaries should be:

- Trained and directed to provide holistic care in institutions.
- Told to keep the interests of the child foremost in all procedures.
- Told to co-ordinate with other agencies.

Gynaecologists and paediatricians should be:

- Told to inform social workers about the availability of children for adoption and provide information on their family and medical history.
- Told to counsel infertile couples to adopt, and also discourage secret adoptions.
- Evaluate a child brought up for placement for early detection of abnormalities. However, they must also keep in mind that they cannot judge these children by the same standards that they apply to middle-class children as the former have not been raised in the same conditions as their better-off counterparts.
- Encouraged to not have a commercial attitude and to decrease their fees.

Lawyers and Judges should be:

- Told to ensure that adoption related cases are not stalled.
- Ensure that the child's interests are protected.
- Told to promote Indian adoptions.
- Told to campaign for a uniform bill on adoptions.
- Encouraged to understand the social and emotional aspects of adoption, and not just the legal.

Politicians should be:

- Encouraged to recognise the importance of Indian adoptions and to promote the same, regardless of religious identities of child and adoptive parents.
- Encouraged to support a child-oriented uniform bill on adoption.
- Made to leave adoption work to professionals and not interfere.

Religious leaders and Opinion makers should be:

- Made aware of legal procedures regarding adoption, and support a uniform bill on adoption.
- Encouraged to promote Indian adoptions regardless of community of the child and adoptive parents.
- Encouraged to not hinder adoptions by misguiding people.
- Encouraged to leave adoption work to professionals and not interfere.



[F] S.Siva Raju 'Study on Social Attitudes Towards Child Adoption in Mumbai' (1999) (Commissioned by National Association of Adoptive Families-NAAF)

The NAAF Report looked at public opinion regarding adoption in the context of:

- Promotion of child adoption as a solution to the growing numbers of destitute children, especially in major cities.
- Low achievement in terms of providing a more humane institutional care for them
- Efforts to understand the attitudes of the people towards adoption and the factors that contribute to variations, if any, in their perception and attitudinal variations.

The city of Mumbai was chosen as the study area. Stratified random sampling method was

used in selecting the households. As the childless and to a certain extent, one-child families are the priority families for intervention in the area of adoption, a rapid enumeration of the households to know the number of children in each household was carried out in the first stage. From this enumeration, childless and one-child couples were identified and their listing in each of the selected areas was separately prepared. In the selected households, couples constituted the respondents for the survey and were interviewed by the trained research investigators with the help of an interview schedule. 2700 households constituted the total sample size of the study.

The findings:

[A] Socio-Economic and Demographic status:

- 1) In the study area, over three-fourths of the couples (78.2%) belong to the Hindu religion, followed by Muslims and Jains (6% each). Other religious groups like Christians, Parsis and Buddhists constitute around 2% each. A large majority among the total respondents (66.7%) was below 35 years of age, with mean age of 32.2 years.
- 2) The educational status of the total number of respondents revealed that except for a few (7.4%) all the respondents were literate. Nearly one-fifth (19.2%) among the poor were illiterate. College-level education was significantly higher (72.5%) among the well-to-do strata, followed by the middle class (43.2%). The duration of marriage, calculated as the period between age at marriage and date of survey, was worked out to be 10.2 years, on an average.
- 3) The expectations from children to support them in old age was largely among the poor. Further it was observed that the poor people were in greater proportions (26.6%) in preferring both the sexes than those among the upper class stratum.
- 4) The data revealed that the adoptive child as a substitute for a biological child was gaining importance significantly, among the well-to-do stratum, followed by the two other class strata of society. The single-child respondents were more vocal in suggesting child adoption to others. But in the case of the childless, they would not recommend adoption as a way of completing the family as they themselves were not in favour of adoption. The findings thus revealed that childlessness was itself not a sufficient factor to develop a favourable attitude towards child adoption.

[B] Knowledge about child adoption:

- 1) The major reasons for child adoption by a couple include: hope of completing a family (21.2%), to look after parents in old age (18.7%) and perpetuation of family name (11.3%). Child related reasons such as succession to property and to provide a home and family to a destitute child were only cited by 12.8% of them. The respondents of the upper stratum expressed such views more. Those who viewed child adoption from old-age security point of view were in high proportion among the poor.
- 2) The upper income stratum respondents were more knowledgeable in expressing the merits of child adoption to the society at the macro level. In contrast the poor had limited views on the effect of adoption at the societal level as they viewed the issue of adoption mainly on a micro-level based on local situations.
- 3) Reasons such as benefit to a destitute child, reduction in child prostitution, help in population control, to bring a destitute child up as a good citizen were cited as the effects of child adoption on society.
- 4) With regard to the characteristics of adoptive couples, nearly one-fourth (22.7%) had stated that those with long duration of married life and without children are likely to adopt a child, followed by another quarter (22.2%) who viewed that sterile couples were likely to fall in this category.

5) A majority of the respondents generally felt that it was mostly the male child, newly born, health, good-looking and from an unknown religious background who were mostly adopted. While a majority among the poor stated the male child as most frequently adopted, the upper class group in contrast felt that child adoption prevails without any specific preference to the sex of the adopted child. Over half of the respondents (58.3%) held the view that there exists anxiety on the part of the adoptive parents towards the unknown background of the destitute child.

6) Information on various issues of child adoption was obtained largely through mass media, especially television by a greater number of respondents among the poor (38%) as compared to the upper strata (middle class: 29%); well-to-do: 25.8%). Other sources of information about adoption, as cited by a few of the respondents include adoptive parents, magazines, newspapers, relatives, the doctor, members of the Mahila Mandal, and the social worker.

7) Except for a few (8.4%) almost all the respondents (87.4%) among different class strata under focus have no knowledge about the agencies working for the promotion of child adoption. No major difference in knowledge about these agencies was reported among the childless and single-child respondents.

8) Except for a negligible proportion (1.6%) of the respondents almost all of them across all the class groups had stated that they had not heard any legislative measures in the area of child adoption.

[C] Attitudes towards child adoption

1) Nearly two-thirds of the respondents (62.4%), with no major class variations had stated that adoption is a good custom as it helps a child to get parents and parents to get a child. Another one-fifth of them (20.3%) held the view that child adoption was a good custom and they stated reasons like the child gets love, parents, a home and family. Over one-tenth (11.9%) stated both negative and positive aspects of adoption.

2) Almost all the respondents except for a few (5.9%) had stated that they approved of the families who adopted children and such respondents were consistently at higher levels among the single-child groups as compared to their childless counterparts.

3) A majority of them (66.2%) were of the view that childless couples should adopt a child and a greater proportion of the upper strata thought this way, as compared to lower income strata. Over a half of the respondents (54.6%) among all the class groups had agreed to the statement that a child adoption programme appeals only to the childless.

4) Nearly half of the respondents (47.7%) had stated that natural parenthood was superior to adoptive parenthood. It is also significant that another 46.7% of them were also of the view that there is no difference between natural and adoptive parenthood.

[D] Views on adoption of a child

1) 5.3% of the total respondents had shown their readiness for future adoption. As expected, those who showed their intention to adopt a child were relatively in higher proportion (10.6%) among the childless as against only 3.8% among those with a child.

2) A quarter of the childless respondents (23.2%) had stated that they do not believe in adoption, as it was not a substitute for natural parenthood. Other reasons to this effect include waiting to have one's own child, spouse's objections, lack of time, poor economic status etc.

3) Those who gave a positive response to the idea of child adoption first preferred to adopt a child from their own family. Other reasons for considering adoption were to maintain the happiness of the family, no further hopes from medical treatment, death of only biological child, perceiving an old-age security, to make their life more meaningful, wanting to provide a home to a destitute child, and problems of infertility.

4) Among those who intended to adopt in the future, over two-thirds (68.5%) stated that they had no knowledge about the source through which they could secure a child.

5) It was observed that while majority of the well-to-do strata preferred a somewhat healthy female child and were not concerned with her religious background or physical features, the

people from the lower strata were more particular with characteristics like male, newly born, healthy and good-looking.

6) Nearly half the total respondents (48.2%) stated that they would adopt a child only when their spouse approved of their intention. Other reasons specified by those who intend to adopt include 'After improvements made in financial position', 'If cannot have own child, then adopt' and 'Await for approval of close relatives'.

7) Approval of the spouse was important most to the well-to-do (76.9%) as against 43.8% among the middle class, and 39.6% among the poor. Approval of the spouse was consistently at higher levels among the single-child respondents than among the childless, which may be due to the reason that since a biological child was already there, the joint declaration of both husband and wife to adopt a child becomes very important.

8) Factors like religion, type of family, respondent's age, education and occupation, duration of married life, perceived reason for a couple to be childless, perceived background of adoptive child, sources of information about child adoption programme and knowledge about adoption agencies working for the promotion of adoption were found to be very important in influencing attitudes towards child adoptions. Further, the influence of these factors on people's attitudes was found to be on a differential basis with respect to their socio-economic and demographic background and therefore, any promotional strategy will have to take this into account.



- Some of the important conclusions that have emerged from this study are:

- 1) The wide gap that exists in the knowledge of and attitude towards child adoption and intention to adopt a child between people from different socio-economic backgrounds reveals the need for initiating appropriate and realistic interventions on promotion of child adoption, based on proper stratification of the couples in the community.
- 2) The study has clearly brought out the fact that future adoption by the respondents was mostly to be carried out with the approval of the spouse and other elder members in the family. Thus there is a need to carry out the promotion of child adoption campaigns on a holistic basis by educating all members of the family.
- 3) The study has also revealed that childlessness is not a sole factor for intervention. For promoting child adoption, it is necessary to impart correct information not only on various issues of child adoption but also on issues related to infertility, population control programme etc.
- 4) The impact of television in creating awareness about child adoption was significantly noticed, especially among the poor, and thereby this channel of communication has to be further channelled in not only creating information about various issues, but also to help in developing a more favourable attitude towards child adoption.
- 5) Except for a few, almost all the respondents have no knowledge about the adoption agencies working for the promotion of child adoption and also, they are not exposed to various legislative measures that exist in the field of child adoption. Further, it was noticed that those who had knowledge about these agencies and legal issues are mostly those who have favourable attitudes towards child adoption. These findings clearly reveal that the presence of adoption agencies through their nature of work has to gain more visibility in the community, thereby gaining more acceptance in the community.

LEGAL PROVISIONS FOR ADOPTION

- [A] Guardians and Wards Act, (GWA) 1890
- [B] Hindu Adoptions and Maintenance Act, (HAMA) 1956
- [C] Supreme Court Judgement, 1984
- [D] Juvenile Justice Act, (JJA) 1986 & 2000

[E] The Concept of the Rights of Children

[A] Guardians and Wards Act, (GWA) 1890

The HAMA does not cover Non-Hindus (i.e. Muslims, Christians, Jews and Parsis) because the personal laws of these religions do not sanction adoption. Members of these religions can take a child as their ward under the Guardians and Wards Act which confers guardianship status to the person taking the child and this status ceases to exist once the child reaches maturity. Thus, unlike an adopted child, the 'ward' doesn't receive the full status of a biological child, and is not automatically entitled to the family name or property.

Inter-country adoptions are also carried out under this Act. However, a Hindu, even if he/she is a foreign national, may adopt a Hindu child in India under the HAMA.

[B] Hindu Adoptions and Maintenance Act, (HAMA) 1956

The HAMA (amended 1960 & 1962) came into force in December 1956 and is applicable to Hindus all over India, except the State of Jammu and Kashmir. It covers all Hindus, including Buddhists, Jains and Sikhs and those raised as Hindus. The main features of this codified Act is that any Hindu (who has attained majority, male or female, and is of sound mind) can adopt a child provided that the following conditioned are met.

- If the person already has a biological or adopted child, the second (adopted) child cannot be of the same sex.
- The age difference between parent and adopted child (specifically, between adoptive father and adopted daughter, and adoptive mother and adoptive son) must be minimum 21 years. This is to prevent sexual abuse of the child by the adoptive parent(s).
- For a married male intending to adopt, the consent of the spouse is necessary unless she is of unsound mind, has ceased to be a Hindu or has renounced the world.
- A married female cannot adopt a child during the lifetime of her husband unless he is of unsound mind and incapable of making decisions or giving consent.
- An unmarried or widowed or divorced Hindu female can adopt a child.
- A single female can make an adoption to herself in her own right.
- The principle right to give a child in adoption lies only with the natural father, but the mother's consent is necessary if she is living. The biological mother can give the child in adoption if the father is dead or of unsound mind. A guardian duly appointed by the court can place an orphan child for adoption.
- In-country adoption is a private act between the natural and adoptive parents, not requiring the scrutiny or permission of the court, except when a person other than the natural guardian is giving the child in adoption.
- All adoptions under HAMA are secular, so that religious ceremonies such as 'Dattak Homa' are not necessary.
- The HAMA abrogates all pre-Act customs and usages pertaining to adoption except in two areas, where custom is preserved: (i) A married child can be adopted, if custom permits such an adoption, and (ii) A child of fifteen years or above can be adopted if custom permits such an adoption.
- If in the natural family some property was vested in the child before adoption, that will remain in him and he cannot be divested of it just because he has gone out to another family of adoption. Further, the child retains 'sapinda' relationship and degrees of prohibited relationship in his natural family for the purpose of marriage.

However, this Act is flawed in the following respect:

- HAMA is not child-oriented, but parent-oriented. It aims to find a 'suitable child' for

prospective adoptive parents, and not a 'suitable home' for a child without one.

- It is a religion-specific Act.
- It does not allow for adoption of a child of the same sex as the biological child, if any.
- The adoptive mother is only a consenting party and not a joint petitioner. It is thus gender-biased.
- If the father and mother have abandoned a child, it is necessary that irrespective of whether the child is legitimate or illegitimate, both parents will have to abandon. This provision leads to a lot of problems in cases of illegitimate children where the father is missing and cannot be traced or does not give his consent and the mother wants to relinquish the child. The provision is an obstacle to the adoption of abandoned children. The consent of such a father should be done away with.
- The Court gets jurisdiction only in cases when a guardian other than the parent(s) gives the child in adoption. When the parent(s) give(s) the child in adoption, under HAMA, they need not go through the Court. However, this may lead to abuse, and exploitation by parents due to poverty or other causes, and thus, all cases of adoption, whether by parents or guardians, should be through courts, so that all in-country adoptions can be regulated and monitored.
- The child, if he is capable of understanding, should be involved in the adoption process but there is no provision in this Act for this. The child should also be counseled so that he/she is prepared to enter a new home.
- The requirement that the adoptee must not have completed the age of fifteen years does not appear to be reasonable. A minor child, who is more than 15 years of age, may be in as much need of being adopted as one below that age.
- The adoptive parents are the natural guardians of their adopted minor child, first the father and then the mother. If the adopted child is less than five years, then the adoptive mother will have preferential claim to the custody of the child. This section should be amended: the mother should have the same and equal rights vis-à-vis the father, and the custody of a minor who has not completed 12 years of age shall ordinarily be with the mother. This will be in the interest of the child.
- There is no provision to punish discrimination against the adopted child.

[C] Supreme Court Judgement, 1984

This judgement directs that unlike previously, no destitute child shall be presumed to be abandoned and free for placement unless certified so. The placement agencies are now required to make an application to the Juvenile Welfare Board for declaring a destitute child as abandoned and legally free for adoption. The JWB is responsible for investigating into each child's case and for issuing certificates to placement agencies declaring the child free for adoption within a month's time. This procedure is not required if the child has been relinquished by the biological parent(s) in which the surrendering party signs a Deed of Surrender.

As per the Revised Guidelines, the order of preference for adoption of Indian children is: -

- 1) Indian Family in India.
- 2) Indian Family abroad.
- 3) One parent of Indian origin abroad.
- 4) Totally foreign

The SC also rules against the indiscriminate transfer of children from one state to another unless absolutely essential.

To safeguard the interests of the child, municipal offices have to issue birth certificates under the Registration of Births and Deaths Act (1969) upon certification received by the Court and

placement agencies, and the certificate should not mention the word 'adoption'.

Government intervention is provided for through the following means:

- Establishing an Adoption Cell in the Ministry of Welfare to handle all related matters.
- Awarding recognition certificates to agencies in India and abroad for handling inter-country adoptions.
- Formulating and circulating guidelines to regulate procedures for adoption.
- Directing the Indian embassies abroad to keep track of Indian children adopted in different countries.
- Setting a Central Adoption Resource Agency (CARA) to monitor and regulate the working of recognised agencies.
- Recognising the role of Voluntary Co-ordination Agencies (VCAs) in facilitating co-ordination among Indian placement agencies to promote domestic adoptions, and recommending their setting-up in each state.
- Organising periodic meetings with the VCAs, adoption agencies and scrutinising agencies for discussing relevant matters.
- Giving support to some VCAs through their grant-in-aid scheme to promote in-country adoptions.
- Offering incentives to voluntary agencies doing in-country adoptions over the stipulated percentages prescribed in the guidelines.

[D] (i)The Juvenile Justice Act (JJA, 1986)

This is a legislation that provides for the establishment of children's homes, for the care, treatment and protection of neglected and abandoned children. Institutional care still appears to be the largest service for the care of the destitute and orphan children. The Act provides for setting up of Observation homes, fit persons/institutions, Juvenile homes, Special homes and aftercare homes for the temporary reception of neglected and delinquent juveniles during the period of enquiry regarding them, and long term care of juveniles respectively. There is also a provision for the constitution of Juvenile Welfare Boards and Juvenile Courts. The Act provides for separate machinery to process the destitute or neglected children and separate machinery to process and look after delinquents and offenders.

There is a classification and separation of delinquents on the basis of their age and the nature of offences committed by them. The five types of institutions provided under the Act are as follows:

Juvenile homes	Special homes	Observation homes	After-care homes	Fit persons/Institutions
A neglected juvenile is sent for accommodation, maintenance and facilities for education, vocational training and rehabilitation	A delinquent juvenile is sent for accommodation, maintenance and facilities for education, vocational training and rehabilitation.	For temporary reception of juveniles during the pendency of any inquiry regarding them under this Act.	For taking care of juveniles before discharge from a juvenile home or a special home.	For taking care of infants and younger children (0-5) years.Children "declared neglected" after completion of the required processes can be placed in adoption under the HAMA / GWA.

The JJA is not being implemented in several states. Bajpai criticises it on the following grounds: On paper the Act doesn't want the mixing of juvenile and non-delinquents, however, in reality, they do come into contact in the Observation homes and this could be adversely affect the juvenile. Also, there needs to be a special provision for Repatriation, which would allow missing children or children coming to cities under misguidance to be sent back to their homes, without any institutionalisation or custodial care. Finally, there is no provision for establishing classification centres .

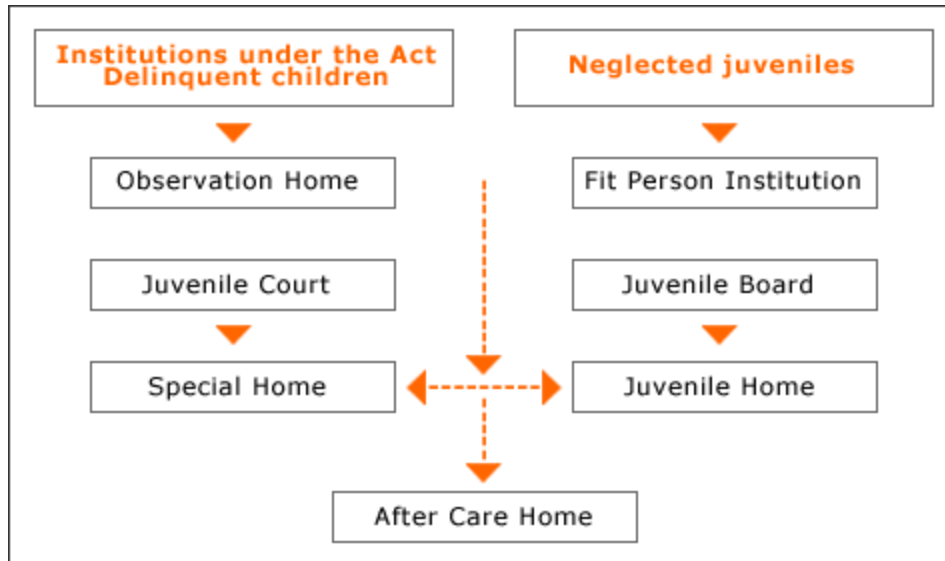
(ii) The Juvenile Justice (Care and Protection of Children) Act 2000. The amended JJ Act seeks to consolidate and modify the law relating to juveniles in conflict with the law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation. This could be through various institutions (Government or NGO) established/recognised under this enactment or through non- institutional services such as adoption, foster care, and sponsorship. An attempt has been made through this enactment to make up for the lacunae in the existing adoption laws by permitting persons belonging to all religions to adopt. Critics contend that - while this is a commendable attempt, it cannot be a solution due to the fact that this is a generic act as opposed to the HAMA and GWA, which are special acts and have not been repealed. This act too extends to the whole of India except the state of Jammu and Kashmir. With regard to Inter-country adoption, the Act states the following:

- All applications for adoption of a child by foreigners shall be sponsored by a social or child welfare agency so recognised or licensed by the Government of the country to which the foreigner belongs.
- No application by a foreigner for taking a child in adoption shall be entertained or filed directly by any social or welfare agency in India, which the foreigner belongs.
- Every such application from such social or child welfare agency shall be accompanied and supported by a Home Study Report in detail with recent photographs of the family and other particulars showing the social and economic status of the foreigner and declaration that he will maintain the child as his own and provide for his education and upbringing.
- All private adoptions directly or indirectly in any manner are banned and any such adoptions shall be null and void.

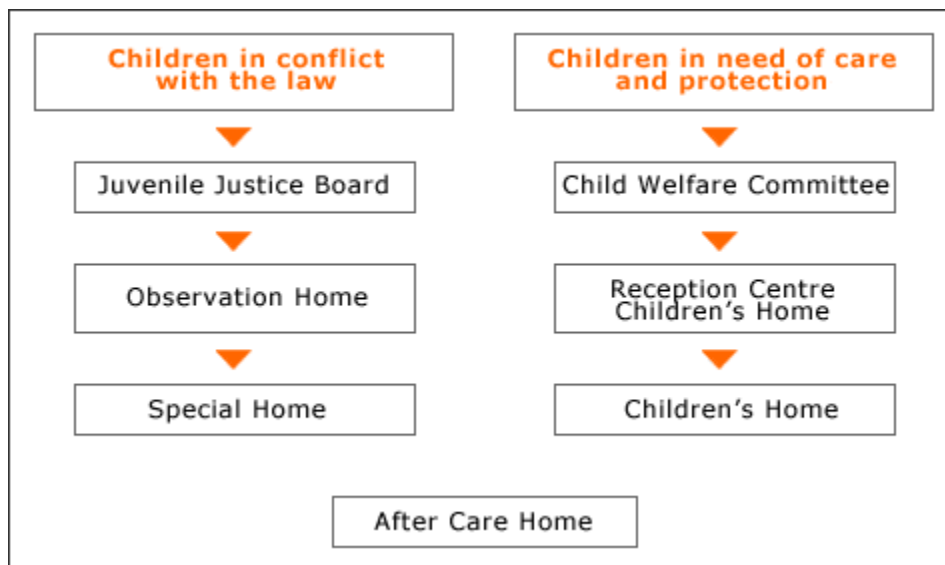
A comparison of the institutions under both the acts can be shown as follows:

Juvenile Justice Act, 1986

To provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent children



Juvenile Justice (Care and Protection of Children) Act, 2000
 Institutions under the Act



General Critique of all existing legislation regarding adoption

A general critique with the laws is that the definition of a 'child' varies under the different legislation. While HAMA defines the child as not older than 15 years of age, GWA defines the child as not older than 18 years unless he/she is a ward of the State (in which case, the age limit extends to 21 years). There should be uniformity across all legislation regarding this matter.



[E] The concept of the Rights of Children

The concept of Rights of Children, also, has been gaining ground. The Constitution of India too provides for care of children such that they are not abused and are given opportunities and facilities to develop in a healthy manner, protected from exploitation and against moral and material abandonment. In 1989 the UN adopted the Convention on the Rights of the Child. The Government of India acceded to this convention on 11th December 1992. It provides for protection of children in every aspect, helping them for their full and harmonious personality development, by ensuring that they grow in a family environment, in an atmosphere of happiness, love and understanding. Articles 20 and 21 of the convention specifically state the State's responsibility of providing alternative care for children deprived of family environment; states should recognize and/or permit adoption by competent authorities, authorized by the state to do so.

GOVERNMENT AND VOLUNTARY ORGANIZATIONS IN THE FIELD OF ADOPTION.

GOVERNMENT OF INDIA
In the Government of India all matters relating to adoption are dealt within the Ministry of Welfare. From time to time, the Ministry frames rules and guidelines and issues instructions to State Governments, voluntary agencies and voluntary coordinating agencies as well as to scrutinizing agencies to facilitate and promote in-country adoption and to regulate inter-country of Indian children.

THE CENTRAL ADOPTION RESOURCE AGENCY (CARA)
CARA is a statutory body set up on the basis of the Supreme Court Guidelines of 1984. It is an Autonomous Body under the Ministry of Social Justice & Empowerment, Government of India and was set up on 20th June, 1990 to deal with all the matters concerning adoptions in India. Its objective is to help both Indian and foreign agencies involved in inter country adoption of Indian children to function within a prescribed framework so that such children are adopted legally through recognised agencies and no exploitation takes place. (Inter country adoption of Indian children is governed by a set of guidelines issued on 29th May 1995 by the Government of India, Ministry of Welfare).
Functions of CARA
CARA maintains a list of all recognized foreign agencies for adoption and circulates the same once every year, to the various High Courts in India, all the State Governments, all recognized Indian agencies, all voluntary coordinating agencies, all scrutinizing agencies and all Indian missions abroad as well as all passport offices.

CARA likewise maintains a list of all recognized Indian Adoption Agencies for adoption. Once a year the list is published in three leading newspapers (in English, Hindi and the regional language of that State). The list is also sent to all the High Courts in the country for circulation to the District Courts in each State, all the State Governments, all recognized Indian placement agencies, all foreign enlisted agencies, all Indian Missions abroad, all voluntary coordinating agencies and all scrutinizing agencies.

CARA liaison with Indian diplomatic missions abroad in order to safeguard the interests of children of Indian origin adopted by foreign parents against neglect, maltreatment, exploitation or abuse and to maintain an unobtrusive watch over the welfare and progress of such children. This is done by informing every Indian diplomatic mission concerned whenever an Indian child is taken in adoption or for the purpose of adoption, by foreign parents.

CARA arranges every year a meeting of all recognized placement agencies, voluntary coordinating agencies and scrutinizing bodies for discussing matters of mutual interest and

such other matters as are considered necessary and expedient.

VOLUNTARY COORDINATING AGENCIES (VCA)

The VCA has been constituted as per the CARA guidelines. It is centralised agency in the State or even in a large city where there are several recognized placement and child welfare agencies.

The VCAs are registered under the Societies Registration Act and recognized by CARA and the State Governments. The day to day affairs of the VCA are managed by an executive committee comprising of individuals and representatives of the member agencies. All recognized agencies are entitled to be members of the VCA.

The principal functions of the VCA is to promote Indian adoption and for the purpose, to formulate, develop and execute programs and activities for generating awareness in this regard.

The VCA

- Ensuring that the priority laid down by the Supreme Court on placement/adoption within the country or with Indian abroad is adhered to. The VCA maintains lists of children legally free for adoption from all the placement agencies and allied bodies desiring to place children in adoption.
- Maintains registers of all prospective adoptive parents and all available children who are legally free for adoption
- Coordinates the work of all its member agencies and other child welfare institutions in the field of Indian adoption. Where Indian adoption is difficult within its area of operation it coordinates with other VCAs in the State and in the country
- Issue of 'no objection certificate' for children who have not been placed in country adoption so as to enable the child to be placed in inter-country adoption;
- Organizing meetings of member agencies at least once every quarter and monitors the agencies to ensure adherence to the guidelines and is responsible for deviations to the notice of CARA with substantive evidence.



ROLE OF THE STATE GOVERNMENTS/UNION TERRITORY ADMINISTRATION

The State Governments (including Union Territory Administration wherever applicable) encourages and promotes placement of eligible children on adoption or guardianship with families within the country. It enforces the orphanages and other charitable Homes (Supervision and Control) Act, 1960 and/or formulates suitable alternate rules in order to maintain certain minimum standards for child care and child welfare institutions. It also inspects and recommends for approval, organizations which have applied for recognition for inter-country adoption to CARA.

The State Government forms an Advisory Committee on adoption, which has the following as members:

Secretary, Women & Child Development/Social Welfare/Panchayat Raj
Director, Welfare/Social Welfare/Member Women & Child Development
Two representatives of placement Member agencies, VCAs and scrutinising agencies operating under the State
Three experts in the field of Member Social and Child welfare.

The State Government may also set up an Adoption Cell in the Directorate of Social Welfare to coordinate, regulate and develop the work of adoption and render all assistance to the

adoption agencies.

The State Government monitors the performance and periodically, inspect or causes to be inspected, all agencies and institutions handling in-country and inter-country adoption.

It also takes all measures as are deemed necessary to actively encourage in-country adoption of children in preference to inter-country adoption. Special care/efforts shall be made for rehabilitation of children in orphanages through placement by adoption.

RECOGNIZED INDIAN AGENCIES FOR ADOPTION

Only Child Welfare Agencies recognized by CARA and the concerned State Government, can undertake Adoptions. An agency, which are not doing placement work but is involved in promotional work of Indian adoption, must also be recognized by CARA.

When a recognized Indian agency receives a child its first responsibility is to trace the biological parents and restore the child to them failing which as far as possible to place the child in adoption with Indian families. It is desirable that an Indian recognized placement agency should place annually more than 50 per cent of the total number of children given in adoption with Indian families. However, the handicapped children, children above 6 years of age and siblings will be excluded from this calculation. The placement agencies are required to adhere the following order of priority while considering the adoption of Indian children:

1. Indian families in India.
2. Indian families abroad.
3. One parent of Indian origin abroad.
4. Totally foreign.

The agency must conduct appropriate home study of the prospective adoptive parents to ensure compatibility and excellent care for the child.

The agency must co-ordinate the legal process and arrange for getting a birth certificate for the adopted child.

Post adoption, the agency must conduct follow up to ensure the child's ongoing welfare.

The agency must maintain appropriate records and reports such as specified by CARA/the State Government.

ENLISTED FOREIGN AGENCIES FOR ADOPTION

Foreign Agencies must Apply to India's Diplomatic Missions and be enlisted with CARA as per the criteria laid out. The agency must - Ensure that the procedure of adoption is completed as per the law of his/her country so that the child would acquire the same status, rights and nationality as the adoptive parents.

Make alternative arrangements for a child in case the adoptive parents in the receiving State do not legally adopt the child within two years from the date of order of the Court in India appointing the adoptive parents as guardians.

Ensure follow up on children placed by it and forward reports through India's Diplomatic Mission abroad with photographs of the child to CARA, to the court, and to the Indian placement agency concerned. The reports must be sent on a quarterly basis for the first two

years and on a half yearly basis for the next three years.

Forward a copy of the legal adoption order of the appropriate authority in that country as soon as it is made, to CARA, the Court that awarded the guardianship and to the Indian agency concerned.

Maintain contact with the adoptive family in keeping with the need of privacy of the adoptive family and provide post adoptive support and counseling services.

Help the Indian Diplomatic Mission in its country to arrange get-togethers of adopted children of Indian original and their adoptive families for exposing them to the culture of India.

Report to CARA every year (annual report)

SCRUTINY

AGENCY

The Scrutinizing Agency is appointed by the court for scrutinizing an application from prospective adoptive parents for adoption of a child. An existing reputed Social or Child Welfare Agency is generally appointed as a Scrutiny Agency. The agency must be a body of experts in the field of ChildCare and Welfare and must not itself involved in the placement of children in adoption.

At present there are two scrutinizing agencies, namely, Indian Council for Social Welfare and Indian Council of Child Welfare appointed by the Court. The Scrutinizing Agency must scrutinize the required documents to ensure completion of paper work and adherence to prescribed rules. It must satisfy itself that the prospective adoptive parents/guardians are fit persons for adopting the child in question and that the adoption would be in the best interest of the child.

The scrutinizing agency submits a half-yearly report to CARA of all the cases it has scrutinized.

STUDY ON ADOPTIONS IN MUMBAI AND PUNE -CATALYSTS FOR SOCIAL ACTION (CSA), PUNE.

CSA is a Charitable Society sponsored by Kale Consultants Ltd., Pune and is perhaps, the first corporate body addressing the issue of adoptions in India.

With a view to identifying areas for intervention, CSA sought to validate some of the findings/ hypothesis of the studies described above and the Legal position regarding adoptions. 3 sets of 30 respondents each, -Adoption agencies, Adoptive parent and, Social workers were addressed. The respondents were from Mumbai and Pune. In addition, CSA spoke to individuals and agencies actively concerned with adoptions. While an accurate statistical analysis could not emerge (not all respondents were able to give complete information), the responses leading to the conclusions listed below, were common across all respondents.

· Many of the conclusions/ recommendations (to promote adoptions) made in earlier studies still remain un-addressed or, only partially addressed. While efforts are being made both by adoption agencies and by other NGOs working in the field of adoptions, progress is slow and a lot more needs to be done.

- There is a distinct attitudinal change to the concept of adoption particularly amongst metropolitan and urban families. More families including those with biological children or those who chose to adopt rather than to have a biological child are opting to adopt. Acceptance of the adopted child by both society and by the extended family is higher than ever before. Overall the number of adoptions though still very low, have increased. Preference for the male child has reduced. Religion and the background (birth) of the child are less important than before. Adoption by a single parent is also becoming popular.

Health of the baby and age remains a predominant factor for the 'selection' of a child for adoption; most families particularly Indian families want as young a child as possible. Likewise, many of them would want a child to be 'certified' as medically fit.

- Children with special needs (physically/ mentally-challenged children) do not easily find homes particularly, Indian homes. Consequently, though legally free for adoption, they comprise the majority of those not placed. Each agency has its share of such children who continue to remain in the agency upto the permissible age and then, are moved out to another institution. The experience that these children go through can at the least, be described as "traumatic"

- Foreign adoptions continue to be higher in many agencies. This trend is attributable largely, to the inability to find homes in India for children above a certain age group, dark- skinned and special care children. Obligations to the funding agencies/countries also contribute.

- Adoption is still very much family-centered; a child is adopted to meet the needs of the parents / family. A child-centered approach where a family is found for the child, calls for a paradigm 'mind-set' shift and, is yet to emerge.

- Individual adoption agencies and other NGOs work on publicity as a means of promoting adoptions. However, each of them work in isolation. A great deal of work is necessary to raise the general level of awareness regarding adoption and its legal, practical, emotional and social aspects. Focused opinion makers, such as Medical practitioners (General Physicians, Gynaecologists, Paediatricians and Fertility Clinics), Lawyers, etc. remain largely unaddressed.

- Periodic changes in the legal position facilitating adoptions have happened. However, the legal provisions are still largely religion-based and inadequate.

- The Government of India has set up a complete monitoring and promotion set-up for promoting and processing adoptions. This includes CARA, Voluntary Co-ordinating Agencies (VCAs), Scrutiny Agencies and the Placement agencies. Much more co-ordination and effort however, is required; experts in the field complain of a lack of inter-agency interaction.

- Adoption agencies lack organisational capabilities. Though professionally qualified, social workers do not have skills- development opportunities, are poorly paid and in addition to their professional responsibilities, are required to take up administrative responsibilities. Also, automation is conspicuously absent in most agencies.

- One-point information on adoptions is not available. There are very few web-sites and those that are there are not regularly updated.

- An area that has not yet been fully exploited is that of voluntary caregivers. These could be individuals, NGOs and Corporates who wish to undertake 'social service' and can devote time

and energy on a regular basis.



SUGGESTIONS FOR INTERVENTION

Clearly there is a change for the better both, in perception and in the number of adoptions taking place. However, as statistics indicate the actual numbers are abysmally low and a lot of work is yet to be done. Government intervention has apparently brought in considerable improvement and it would seem that the NGOs in the field of adoptions who have already initiated work now, need to take this forward. The recommendations given below highlight some of the initiatives that NGOs and Adoption Agencies can initiate if meaningful changes are to be brought about.

1. Promotion of adoption must be pursued aggressively and must be focused. It is recommended that NGOs working actively in the field of adoptions e.g. IAPA or NAAF should take the lead and work with Adoption Agencies to plan a campaign. In fact, they could even bring in specialised media expertise. Any independent promotion done by an agency / NGO, should be evolved within the wider plan.

2. Nilima Mehta and several others strongly advocate a mindset shift (from the parent-centred) to child-centered adoptions i.e. a shift from the parenting motive to the Altruistic one. Surely an altruistic motive would help particularly those children who do not find Indian homes simply because they are not good-looking, do not have the right complexion/ background or, have a slight and very correctable handicap. However, one really needs to validate whether the altruistic motive can succeed in the Indian environment where adoptive parents wish to identify the child entirely as their own and unless necessary would prefer not to reveal the 'adopted' status of the child. More research is recommended. If the conclusion of such research is in favour of altruism, then promotion should be tailored accordingly. Also, social workers would need to align their counselling efforts accordingly.

3. Statistics indicate that post government intervention the number of Indian adoptions has increased; the increase in absolute numbers is however not commensurate. It would appear that Indian adoptions have perhaps, happened at the cost of foreign adoptions. While this is certainly a step in the right direction, one would want to look at the overall numbers too. Bharat had referred to the 'controversy' of domestic vs. foreign adoptions and suggested that national pride could perhaps come in the way of foreign adoptions. Accentuating the need for more research she had stated that it would be 'unfortunate if children who could find homes abroad were deprived of the opportunity while no efforts are made at finding Indian homes for such children'. There are no indications of research on the success of foreign adoptions. Research should be initiated and, if the indications are positive, the restrictions on foreign adoptions should be re-looked at.

4. Some children who do not find homes continue to remain in the adoption agency. Each agency is licensed to retain a child upto a specified age. On attaining the specified age, the child has to move into another institution. This is extremely traumatic for the child. There is a sense of loss amongst the agency staff too, since a kind of bonding has already taken place. It is recommended that long-term foster care programmes be worked out with corporates so that the child is looked after under individualised corporate care.

5. Destitute children from remand homes often cannot move into the adoption channel simply because they have not been relinquished by the biological parents (many such parents have in

fact, little to do with the child) or, because some (technical) paper-work is found wanting. It is recommended that some means be found for such children to be brought within the adoption umbrella so that they are not confined to institutions until they reach maturity and are then, left to fend for themselves.

6. The VCA must play a more active role in the promotion of adoptions. The VCAs it would seem is largely handicapped due to the following reasons:

- They depend largely on CARA funding which offers little flexibility in tailoring their initiatives to suit local needs.
- Their governing body consists of representatives from the Agencies. In itself this is a paradox, because they are also the monitoring wing of CARA.

CARA should examine and further empower the VCAs.

7. There is just too much of administrative work in the Adoption Agencies. CARA, VCA, Department of Social Welfare, Scrutiny agencies, Courts- each, has its own set of reports / requirements. These are addressed by the social worker in addition to work related to adoptions and child-care and are generally considered as drudgery. Adoption agencies must recognise the importance of the administrative function. At the same time the processes and procedures must be streamlined and automation must be introduced.

8. The development of the social worker, the quality of counselling and home study, her job satisfaction etc., are aspects that need to be looked at. The social worker in an adoption agency is professionally qualified and as competent as her counterparts who go into jobs that are not 'social-work'. While competitive remuneration may not be possible, in the larger interest of getting the best people, her remuneration and skills- development need to be looked into.

9. The legal position on adoptions has still a long way to go before a common law covering all religions is passed. Today, the adoption laws are still religion based and inadequate. The definitions (e.g. the definition of a 'child' under each of the applicable laws is different). Common law on adoptions already being pursued by some Agencies/ organisations/ individuals must continue to be aggressively pursued.

10. The number of non- Hindu adoptions is still very low. The reason cannot be entirely attributed to the inadequacies of the Guardianship Act and it is necessary to look at non- Hindu adoptions separately.

11. Bharat referred to 'an undercurrent of mistrust and hostility among the adoption agencies'. The position is not very different now and agencies are in fact wary of each other. Infact, some agencies are so protective of what they term as their 'own' children that a child likely to remain in the agency for a longer period than if a home was found for her through another agency. The VCAs do play a role in bringing in more participation amongst agencies but do not seem to have achieved much.

12. Adoption agencies must co-ordinate in working towards better institutional care for the special care children. Each agency has its share and mix of such children who continue to remain in the agency upto the specified age/ death. Specialised treatment and care is not possible. It is recommended that agencies should specialise in a single area of 'special care' such that all children (within the jurisdiction of a VCA) with the specific handicap can move to the specialised agency. The agency should work on treatment and care of the specific

handicap.

13. It is believed that despite increased awareness Illegal adoptions are still widespread. Also, many of these happen because the parents are not aware of the legal implications of illegal adoptions. It is recommended that promotion campaigns should target this group separately.

CONCLUSION

Approximately 5000 odd adoptions in a population of 44 million destitute is indeed an appalling figure. Efforts it would seem are not lacking. The Government Departments on the one hand, and agencies on the other are putting in their best efforts; however, there is no questioning the fact that the effort is not adequate and that, there is a need for the effort being better coordinated and directed. Agencies working towards a common cause must rise above personal performance/ prejudices and work together.

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