

**THE CONFISCATION OF THE BHATTACHARYA
CHILDREN BY NORWEGIAN AUTHORITIES
– A CASE STUDY –**

PART I

INTRODUCTION

BACKGROUND

In May 2011, the Norwegian Child Welfare Services (“CWS”), a public authority, took into care the children of an Indian couple, Sagarika Chakraborty and Anurup Bhattacharya, living in the town of Stavanger in Norway. All members of the family were Indian citizens. The parents were from West Bengal. The mother was from Kolkata. The father was from Kulti in the district of Burdwan.

The father was working in an oil company in Stavanger and the mother was a housewife. Their children: Abhigyan, a boy, was aged 2 ½ years; and Aishwarya, a girl, was aged 5 months, when they were taken away by the CWS.

Between May 2011 and November 2011, the couple contested the confiscation of the children before the Norwegian authorities. Though they won in the first appeal, they lost in a subsequent challenge by the CWS and in November 2011, the Norwegian authorities passed orders for the children to be placed in long term foster care. Under these orders the placement of the children could extend till they attained majority and the parents were allowed visitation only thrice a year.

The couple then approached the Indian government for intervention. The Indian government took up the case and after several months of negotiations, the CWS agreed to release the children provided the parents agreed that they would be placed in the care of their paternal uncle, Arunabhas Bhattacharya. This gentleman was a 26-year-old bachelor who lived in Kulti with the children’s paternal grandparents.

The parents signed an agreement with the uncle as demanded by the CWS and in April 2012, the Norwegian courts passed orders for the children to be released in terms of this agreement.

PURPOSE OF THIS STUDY

This report surveys the care proceedings faced by the Bhattacharyas in Norway as a case study in the thinking and practices of child welfare regimes in the developed West.

The Bhattacharya case was no exception. Social service agencies with the power to separate children from their families and place them in permanent care as a measure of protecting children from parents considered to be unfit exist in many first world countries. These include the countries of Western Europe, the United States and Britain. If the confiscation of children by these agencies is not justified, then we have in the nations that support such action a situation of grave inhumanity.

The permanent separation of children from their families has severe consequences for both parents and children. Parents are deprived of their children; their state of being as mothers or fathers permanently imprisoned by the State's confiscation of their children. As for the children, their extraction from their families and re-location as subjects of public care in institutions or foster homes; or being put up for adoption constitutes a radical and complete re-writing of their childhood and of their identity into adulthood by the State.

The care proceedings in this study are revealing of how, despite the drastic and far reaching nature of this form of State intervention, the issuance and review of care orders is almost entirely free of the usual checks and balances against the misuse of coercive State powers. The actions of social services bureaucrats and the decisions of courts operating in these child welfare regimes are largely hidden from public view by confidentiality laws. Moreover, neither the collection nor the assessment of the evidence on which parents are found to be unfit is subjected to the level of scrutiny of even a regular civil suit, let alone a criminal trial.

In the Bhattacharya case, even if the evidence on the record is taken at face value, it does not substantiate the determinations of unfit parenting and breakdown of the relationship between parent and child. Much of the so-called evidence describes normal interactions between the mother and the elder child, such as might be witnessed between any mother and her toddler.

The result is a denial of procedural and substantive justice for parents and children.

Another aspect of the care proceedings that gives rise to concern is the low threshold for the confiscation of children from families. There was no allegation of sexual abuse, child battery or abandonment in the Bhattacharya case. There was no allegation of any criminal act having been carried out against the children. The facts as alleged in the case did not justify the grave and life altering step of permanent confiscation of the children from their parents.

The case record also reveals that there was little attempt to help the family stay together by enabling the parents to overcome their perceived deficiencies. Parenting flaws and mistakes, such as they were, appear to have been identified only to provide the excuse to remove the children. So for all that the system claims to exist for the welfare of children, the children of families caught in care proceedings are given no real chance of staying with their families.

The decisions about the Bhattacharya parents and children in the care proceedings are also revealing of the distorted understanding of the child and family that underlies intervention by permanent separation of children from families perceived to be dysfunctional. In the Bhattacharya case, the home environment and parenting practices were found to be faulty on a number of fronts. The parents were assessed to be incapable of improving. And based on these determinations the conclusion in the logic of the Norwegian child welfare system was that the children should be placed in permanent care.

The response of the care system at each stage in the proceedings to the Bhattacharyas' pleas to be given a chance to be re-united with their children, of being allowed visitation with their children, of their offers for improving the perceived deficiencies in their care of the children,

of the prospects of the siblings in the case being placed in separate homes and being brought up in a Norwegian rather than in an Indian family, reveal the extent to which the Norwegian approach to child welfare devalues heritage and family ties. There is a pervasive disavowal of filial love in the assessment of parental performance and the well-being of children. The question of what constitutes a good childhood is reduced to a laundry list of care criteria. Not only does filial love find no place in this approach, many of the care criteria are deeply rooted in Western culture. As a result, these child welfare regimes are inherently biased against families from foreign cultures.

MATERIAL SURVEYED

This report analyses the Norwegian care proceedings in the Bhattacharya case that were brought by the CWS and contested by the parents.

In the period of close to one year (May 2011 to April 2012) that the Bhattacharya children were in the hands of the Norwegian authorities, the care proceedings went through several levels of scrutiny within the hierarchy of Norwegian child welfare system. So the case record gives a wide ranging view of the inner workings of this system: starting from the initiation of an investigation into a family through to the issuance of care orders and reviews in appeal of such orders.

Copies of the orders passed by various authorities in Norway at different stages in the care proceedings were obtained from the mother of the children.

Except for the English translation of the order of 23 May 2011, which was prepared privately at the mother's request by a native speaker of Norwegian, the English translations of the other orders and reports referred to in this study were prepared by the Norwegian authorities themselves. The translations were sent to the mother in India in June 2012 in response to a demand sent through her lawyers. Copies of the documents referred to in the study have been attached at the end of this report.

PART II

PROCEDURAL INJUSTICE

CONFISCATION WITHOUT WARNING OR NOTICE

The children were taken away by care workers on 11 May 2011 without any prior notice or warning to the parents.

EX PARTE AND POST FACTO ORDERS WITHOUT INDEPENDENT REVIEW

No orders existed for the confiscation of the children at the actual time of their removal by the CWS. Emergency interim orders were passed for the children to be placed in a stand-by home one day after the children were taken away in ex parte proceedings.

Moreover, these emergency interim orders were passed by the CWS itself. So there was no independent review of the CWS's decision to confiscate the children before they were taken away. The decision itself was passed post facto, i.e., after the children were taken away. And was passed ex parte by the CWS, i.e., without the parents being represented.

The CWS is neither a court nor a judicial authority, so the first emergency interim care order was in the nature of an administrative and not a judicial order.

INTERIM APPROVAL OF CWS ACTION WITHOUT JUDICIAL ADJUDICATION OR REASONED ORDERS

The emergency interim orders of the CWS are stated to have been given interim approval the same day by a body that is termed in the English translation of the proceedings as the "Family Law Court". However, this body is not a court or judicial authority but a committee whose name in Norwegian directly translated into English is the "County Committee for Child Welfare and Social Affairs" ("County Committee"). The County Committee is comprised of non-legal and non-judicial persons, and can include officers of the CWS.

So the authority to review orders of the CWS is vested in a lay tribunal whose members include officials of the very body, i.e., the CWS, whose orders it reviews.

The interim approval of the CWS's emergency interim orders was issued by a single member of the County Committee, described in the documents as the "Leader" of the County Committee. He was not a judge (as stated above, the CWS is neither a court nor a judicial authority) and gave his interim approval ex parte and without recording any reasons.

NO RECOURSE IN APPEAL TO A JUDICIAL AUTHORITY

The appeal against the CWS's emergency interim orders lay not before a judicial authority, but before the County Committee described above.

The parents filed an appeal on 16 May 2011 which was listed before the same member of the County Committee who gave interim approval of the CWS's emergency interim order of 12 May 2011. The matter was heard only a week later on 23 May 2011.

So from 11 May 2011 to 23 May 2011, 2 year old Abhigyan and 5 month old Aishwarya (who was being breastfed when she was taken away) were kept away from their parents in a stand-by home with strangers on the basis of ex parte, post facto and non-judicial interim orders passed in the first instance by the same authority that petitioned for their confiscation and affirmed in non-judicial proceedings before a single-member tribunal.

WITHHOLDING OF THE CHILDREN DESPITE OVERTURNING OF CWS'S EMERGENCY INTERIM ORDERS

By the order dated 23 May 2011, the Leader of the County Committee overturned the CWS's emergency interim orders. However, the children were still not returned to the parents.

Two days later, on 25 May 2011, the CWS filed an appeal against this order before a District Court. On 30 May 2011, the District Court passed interim orders staying the County Committee's orders of 23 May 2011.

There appears to have been no legal basis for the continued confiscation of the children between 23 May 2011 when the County Committee set aside the interim emergency orders and 30 May 2011 when the District Court stayed that decision.

FOSTER CARE APPLICATION FILED MONTHS AFTER REMOVAL OF CHILDREN

The CWS was required under its emergency interim orders of 12 May 2011 to forward a follow-up proposal to the County Committee in six weeks, failing which the interim decision would become null and void.

The CWS filed an application for foster care dated 16 June 2011, containing a report of its officers of the same date, on 20 June 2011.

Thus the application for foster care and the report on which it is based were prepared 5 weeks *after* the removal of the children from the parents.

DELAY IN FOSTER CARE HEARING

Though the CWS filed the foster care application on 20 June 2011, it was not listed for hearing till the end of November 2011, i.e., 6 months after the children were placed in the stand –by home.

The children remained in emergency stand-by homes for this entire period of 6 months on the strength of interim orders.

HEARING BY LAY JUDGES; ALLEGATIONS & EVIDENCE FOR EMERGENCY REMOVAL SUBMITTED BY CWS MONTHS AFTER REMOVAL OF CHILDREN

In the meantime, the CWS's appeal against the County Committee's order dismissing the CWS's emergency interim order was decided by the District Court on 7 July 2011.

The bench hearing the matter comprised of three persons of whom only one was a judge, the other two are so-called "lay" judges, one of whom is simply described as an "Early Retiree" (presumably this means a person with no job).

It was in these proceedings, nearly two months *after* the children were taken away, that evidence was submitted for the first time by the CWS regarding the interactions between the mother and children based on which the negative assessment of the relationship between them was made. It was also in these proceedings that the CWS made detailed allegations for the first time against the parents regarding their handling of the children.

The District Court restored the CWS's first emergency interim order.

The children, therefore, continued to be held in emergency homes on the basis of the interim orders of the CWS until the foster care hearing of November 2011.

LAY TRIBUNAL DECIDES FOSTER CARE APPLICATION

On 28 November 2011, the County Committee granted the CWS's foster care application giving the latter the authority to locate foster parents for the children. The member of the County Committee that set aside the CWS's interim orders on 23 May 2011 did not sit on this hearing.

Again it is noteworthy that the drastic measure of placing children in permanent foster care is decided upon in the Norwegian system not in a court or through a judicial process, but by a lay tribunal.

CONFLICT OF INTEREST IN TRIBUNAL DECIDING FOSTER CARE APPLICATION

The foster care application was heard by 5 members of the County Committee of whom one, termed an "expert member", is described as a "Child Welfare Officer". Thus the tribunal

deciding the CWS's foster care application included members that were officers of the CWS itself. Further, two of the other members are stated to be "ordinary members".

EVIDENCE PRESENTED FOR FIRST TIME 7 MONTHS AFTER CONFISCATION OF CHILDREN

The foster care order relied on adverse findings in the report of the CWS of 20 June 2011 referred to above. Thus reliance was placed in the foster care order on reports compiled several weeks *after* the children were taken away. This order also refers to certain evidence for the first time.

CONFLICT OF INTEREST IN DECIDING PARENTAL VISITATION

In the hearing on the foster care application, the CWS petitioned for visitation by parents of only twice a year for two hours at a time. The County Committee passed orders for the parents to have three visitations of one hour each per year under supervision of the CWS. It further granted the CWS the power to decide whether or not to increase the visitation times in future. Thus the power to decide increase in visitations in the Norwegian system lies with the same body that has petitioned for minimal visitation in the first place.

After the order of 28 November 2011 was issued, the Government of India intervened in the matter at the request of the family and commenced negotiations for the children to be returned.

The children were not placed in foster homes but remained in the emergency stand by home till 23 April 2012 on which date they were handed over to their paternal uncle under orders of the District Court. So the popular representation of the case as the "foster care" case was incorrect. In fact, the children were never placed in foster care and were in an emergency stand by home for the entire period of their confiscation by Norwegian authorities.

COMPOSITION OF DISTRICT COURT THAT GRANTED CUSTODY OF THE CHILDREN TO THE PATERNAL UNCLE

The District Court bench that passed the orders of 23 April 2012 under which the serious and far reaching decision was made of placing two toddlers, one of whom was a girl, in the permanent foster care of their 26 year old bachelor uncle, comprised of three members of whom only one was a judge. The other two were "lay" judges, of whom one is described as an "office manager".

CONFLICT OF INTEREST & DISCONTINUITY IN LEGAL REPRESENTATION OF THE PARENTS

Throughout the proceedings the parents were given joint representation by lawyers, even though it became apparent before the last hearing that there was a conflict of interest between them and the mother was not even present in Norway at the time of the last hearing.

The lawyers were appointed and funded by the Norwegian authorities, even though the Norwegian authorities, through the CWS, were parties to the matter.

The parents' lawyers were changed three times by the authorities in the course of the proceedings. So the parents had a different lawyer for the District Court hearing on the emergency interim orders of the CWS than the lawyer who won them their case against these orders before the County Committee. The parents' lawyer was again changed for the County Committee hearing on the CWS's foster care application in November 2011.

FAILURE TO PROVIDE ENGLISH TRANSLATIONS TO MOTHER

English translations of the orders (apart from the judgment of 23 April 2012) were provided to the mother for the first time only in June 2012.

LANGUAGE BARRIER BETWEEN THE MOTHER & CWS WITNESSES

There is no material on record to establish that the mother or the care workers, health officials or kindergarten personnel (collectively, "CWS Witnesses") properly understood each other in any of the interactions reported by the CWS Witnesses that went on to form the backbone of the findings against the mother in the care proceedings. It is stated on the record that the mother did not speak Norwegian and addressed the children in Bengali. There is no evidence on the record of whether the CWS Witnesses knew or obtained translations of the Bengali language in which the mother addressed the children. There is no evidence on the record of the language in which the CWS Witnesses communicated with the mother, when they visited her home or met her in the kindergarten; or if they were communicating by words at all or simply by gestures. Assuming they communicated with the mother in English, there is also no record of the degree of proficiency of the mother in speaking and understanding English, particularly in the idiom used in Norway.

FAULTY EVIDENCE

All the evidence presented in the case has been led by the CWS, the confiscating authority. All the evidence consists of reports either of persons working in the Stavanger Municipality, of which the CWS is a part, or in State-run kindergartens and medical facilities. Some of the reports are of personnel employed by the CWS itself. So all the evidence is of CWS-employees or employees of its affiliates.

No attempt has been made at any stage in the proceedings to obtain evidence from the parents' side, even though the CWS effectively acts as the adversary of the parents (indeed of the entire family, including the children) in the proceedings.

Moreover, the evidence is contradictory and many of the reports though strongly negative in tone are weak on facts. Key findings are based on reports that are dated several months *after* the children were taken into care. Moreover, most of the findings consist of a blind re-iteration of the CWS's evidence without any independent application of mind or weighing of the evidence by the adjudicating authority.

The evidence has also not been systematically organised. Several pieces of evidence are reported for the first time late in the proceedings. New evidence is produced for findings that were not produced when the same findings are made earlier in the proceedings. There is no record of how many visits in total were made to the home by reporting care workers and over what period. The evidence as discussed in the orders indicate that there were not more than 3-4 visits to the home, including the day on which the children were confiscated.

SYSTEMIC DELAYS

A period of 7 months and 17 days passed from the date of confiscation of the children on 11 May 2011 to 28 November 2011, the date foster care orders were issued. This delay, otherwise not a characteristic of judicial systems in the developed world, itself constituted an immense injustice to the parents and the children. Even the time of six weeks that was given to the CWS after confiscating children on an interim basis before submitting a long-term plan for them, was inordinately long. The system effectively permits extended confiscation of children against both their will and that of their parents in order to give time to the CWS to justify the confiscation post facto.

PART III

SUBSTANTIVE INJUSTICE

ABHIGYAN REJECTED HIS MOTHER

The ordinary interaction between Abhigyan and his mother such as may be seen between any child of that age with their mother has been bizarrely misread to evidence fear, hostility and rejection between them.

For instance, the finding that Abhigyan had strong reactions against his mother and the inference of something being amiss in his home-life is based on the following incidents reproduced here verbatim from the orders:¹

“01.03.2011: ‘...When the mother comes out of the door, [Abhigyan] starts banging his head in the buggy. The mother speaks to [Abhigyan] in Bengali. Her voice is clear and she looks at him with angry eyes. [Abhigyan] looks at her, and stops the banging a little before he starts again. The personnel say to the mother that we assume that he is challenging her. (The mother has previously said that she gets angry with [Abhigyan] when he does this, and says that if he does not stop banging his head she shuts him in a room...’

02.03.2011: ‘...When the personnel are going to give [Abhigyan] to his mother, he clings on to the personnel and would not let her go. He makes no sounds. The mother takes him, [Abhigyan] wriggles, becomes ‘eel-like’, and the mother lets him slide down to the floor. There he starts banging his head on the floor while he peeps at his mother. The mother speaks to him in Bengali, and her voice becomes raised, so that the personnel tell her that she must remember to use a calm and clear voice. [Abhigyan] bangs his head a little more, before he turns away from his mother and stops banging his head.’”

02.03.2011: ‘The personnel hold [Abhigyan], the mother comes to take him out to the cloakroom to dress him. [Abhigyan] turns away (away from his mother) and starts banging his head hard against the personnel’s shoulder...The personnel experiences that [Abhigyan] is frustrated when they are to go home. He cries and bangs his head in the buggy.’”

03.03.2011: ‘[Abhigyan] and the mother sit at the table. [Abhigyan] eats a slice of bread and looks at his mother. He puts his hands to his head and hits both sides of his head (just above the ears) while he peeps at his mother.’”

The assessments based on the above incidents are that Abhigyan reacts “violently” when he is to be taken home by his mother.² The personnel state that they “wonder what it is that makes

¹ Page 4 of Stavanger District Court order dated 7 July 2011.

[Abhigyan] react so strongly when he sees his mother”³ and “they feel discomfort when they think about what the children’s lives are like at home”.⁴

At the time of these incidents, Abhigyan was about 2 years and 4 months old. His mother would fetch and drop him from the kindergarten. He had just been switched from the play group that he had been attending with his mother to the regular kindergarten that he attended without her. There are no adverse reports from the time spent with his mother, of over 6 months, at the play group. Instead, very definitive assessments are made based on these fleeting interactions between Abhigyan and his mother that are claimed to have been witnessed by the kindergarten personnel on two occasions when the mother came to collect him from kindergarten.

Bleached of the personnel’s inferences and speculations, Abhigyan’s reported behaviour appears to be the normal fussiness and playfulness of a toddler of his age. There is nothing remarkable in the behaviour as described in a child of his age such as getting agitated when his mother appears after he has spent time without her at the kindergarten; stalling to get ready to leave kindergarten by wriggling away from his mother or clinging to the personnel handing him over; and being cranky in his buggy.

The descriptions of Abhigyan peeping at his mother through his hands while eating bread at the table or putting his head on the floor and peeping at her also appear to be the normal games of a toddler.

There is also no particular harshness in the mother’s reported response to the child. She does not respond physically, rather she speaks to him. On one occasion she indulges the boy by letting him wriggle away for a bit. She does not force or drag him.

The mother is reported to speak to Abhigyan sharply in Bengali. Even assuming the personnel correctly read her tone and expression in a foreign tongue (a treacherous exercise at the best of times), it is perfectly acceptable for a mother to convey her annoyance in words to her child in such a situation.

It is also noteworthy that this report of the kindergarten is cited for the first time in the order of 7 July 2011, i.e., nearly two months after the children were confiscated by the CWS and after the CWS’s emergency confiscation had been overturned by the County Court in earlier proceedings.

ABHIGYAN BANGED HIS HEAD IN AN ADVERSE REACTION AGAINST HIS MOTHER

² Ibid.

³ Page 5 of Stavanger District Court order dated 7 July 2011.

⁴ Ibid.

One of the main justifications for taking Abhigyan into care was that he engaged in head-banging in front of his mother. This is interpreted as an exhibition of negative emotions towards the mother even though in a report describing Abhigyan's behaviour several months *after* he was taken into care, his kindergarten teacher says that he would engage in head banging in *her* presence when he was frustrated or things did not go his way (this report is discussed in greater detail below).

The main evidence of head banging by Abhigyan as a reaction against his mother are the reports reproduced above of the three days in March. Abhigyan's behaviour on these three days is interpreted as abnormal banging of his head, even though it would appear from the description that he was showing the normal playfulness or fussiness of a small child. For instance, the so-called head-banging claimed on the basis of the report of 3 March 2011 which describes Abhigyan as putting his hands to his head and peeping at his mother while eating bread with her at the table appears to be a game rather than agitated head banging. The same can be said of the report of 2 March 2011 where Abhigyan is said to slide to the floor, put his head down and peep at the mother. It is significant that he is not reported to be crying or showing other signs of distress in these episodes of so-called head-banging. In fact, in the episode of 2 March 2011, the personnel report that Abhigyan was making "no sounds".

The mother is also blamed when Abhigyan bangs his head in resistance to getting ready in the cloakroom or sitting in his buggy. All these instances are interpreted as head-banging as a response against the mother herself rather than against what she or the kindergarten personnel were trying to get Abhigyan to do, such as get dressed to leave the kindergarten or sit in his buggy.

The mother is blamed for the head banging even though the evidence submitted by the CWS itself includes a report that describes Abhigyan's head banging as autistic and also reports autistic swaying of his upper body by Abhigyan.⁵

THE MOTHER WAS VIOLENT TOWARDS ABHIGYAN

Another incident which is relied on heavily as proof that the boy feared his mother is said to have been observed by a care worker on a home visit. The care worker reports that the mother was feeding the boy who kept spitting his food out on the floor. At one point the mother raised her hand and the boy responded by raising his own hands.⁶ This episode is interpreted as the mother raising her hand as though to hit the boy, even though the case worker records that she did not hit the boy. The boy's response is interpreted as him raising his hands to protect himself from an anticipated blow. It is not reported that Abhigyan cried when his

⁵ Third paragraph of page 9 of County Committee order dated 28 November 2011.

⁶ Last paragraph of page 5 of Stavanger District Court order dated 7 July 2011. Repeated in County Committee order of 28 November 2011 at third paragraph, page 9 and in Stavanger District Court order in second paragraph, page 3.

mother raised her hand – which is the usual response of a two-year old who feels threatened. The boy’s response in raising his hand when he sees his mother raise her hand, in what could well be a playful imitation of his mother’s gesture, is taken as conclusive proof that the mother has been violent with the boy in the past.

Even assuming the care worker’s reading of the episode to be correct: that the mother raised her hand to admonish the boy for spitting out the food and he flinched when she did so, this hardly warrants the extremely serious conclusion the mother is violent and the boy fears her. The episode as described could well occur at mealtimes in any home. Toddlers are notoriously difficult to feed and a mother may well admonish the toddler by raising her hand.

On the claim of violence by the mother, it is also alleged that the mother had stated that she had slapped the boy⁷ and that during a home visit by a care worker she had slapped and scolded the boy when she thought he did something wrong.⁸ Even assuming these reports to be true (though they were consistently denied by the parents) describing as “violent” a mother who slaps her son when she thinks he has done something wrong is a gross exaggeration and does not merit confiscation of the child.

There is no claim of wanton hitting of the boy. There is no claim that Abhigyan was a battered child and no finding of injury marks on his body: the CWS itself admits in one hearing that “there is no mapping of the use of physical violence” on Abhigyan.⁹ In any event, the alleged slapping, which the mother is also stated to have said that she stopped when kindergarten personnel informed her this was illegal in Norway,¹⁰ does not justify separating a little boy from his mother for good.

Before we leave the allegation of violence by the mother against Abhigyan, it should also be noted that the claims about her stating she had slapped him are made for the first time in the order of 7 July 2011, viz., *after* the CWS had lost to the parents in their appeal of May 2011 and nearly *two months* after the children were taken into care.

THE MOTHER PLAYED ON ABHIGYAN’S FEAR OF ABANDONMENT TO SET BOUNDARIES

Another instance of outlandish readings of the mother’s handling of Abhigyan is the interpretation of her stepping away from him when he did not listen to her. On a home visit one evening, the care worker reports that the mother left the boy in his bathtub as a

⁷ Third paragraph, page 9 of County Committee order of 28 November 2011.

⁸ Fifth paragraph, page 3 of Stavanger District Court order of 7 July 2011.

⁹ Third paragraph, page 9 of Stavanger District Court order of 7 July 2011.

¹⁰ Third paragraph, page 9 of County Committee order of 28 November 2011.

“conscious strategy” to get him to stop splashing.¹¹ Another instance is described of the mother stepping away when he starts banging his head on the floor, at which the boy stopped, screamed and ran after her.¹² In each case the observing/reporting care worker is in the presence of the boy, so their report that the mother leaves the boy “alone” is a misrepresentation of the facts.

Not only is the fact that the boy is not alone in these instances overlooked, but this method of handling the toddler by stepping away if he did not behave is described in extreme language as “playing on his fear of being abandoned”¹³ and as using “Abhigyan’s fear of being left as a means of setting boundaries/limits”.¹⁴

THE MOTHER IGNORED THE CHILDREN

The purpose of the home-visits by the care workers was to work on the mother’s morning and evening routines. The care orders themselves record that it is this guidance as to how to carry out her housework that comprised the “massive guidance”¹⁵ the care workers claim to have given the mother before confiscating the children.¹⁶ The mother was required to carry out her household chores while the care workers observed her. Abhigyan’s fretfulness at the presence of strangers and his mother’s attention being away from him is again represented negatively in these terms:

- the mother “ignores” and “rejects” the children¹⁷
- the mother “lets the son ...be alone in the room even though he strongly expresses fear of being left”¹⁸
- “the few times [Abhigyan] tries to get into contact with her, he is not received by the mother. He then walks around and wanders over the apartment without his mother taking any notice of him.”¹⁹

¹¹ Fifth paragraph, page 5 of Stavanger District Court order of 7 July 2011.

¹² Second paragraph, page 10 of County Committee order of 28 November 2011.

¹³ Second paragraph, page 10 of County Committee order of 28 November 2011.

¹⁴ Fourth paragraph, page 3 of Stavanger District Court order of 23 April 2012 and second paragraph, page 6 of Stavanger District Court order of 7 July 2011.

¹⁵ Last paragraph, page 1 of Interim Order of CWS dated 12 May 2011.

¹⁶ Last paragraph, page 5 of Stavanger District Court order of 7 July 2011 and second paragraph, page 3 of Stavanger District Court order of 23 April 2012.

¹⁷ First paragraph, page 2 of Interim Order of CWS dated 12 May 2011.

¹⁸ Ibid.

It is relevant that the entire time that the mother is accused of ignoring the child, the care worker is watching him in the knowledge of the mother. This itself undermines the finding of neglect based on these facts. There was no finding that the apartment was unsafe for the boy to wander about in. It is not surprising that the mother was not able to respond to Abhigyan each time he called for her attention as she was being required by the visiting care workers to perform her household routine under their observation.

The contradiction in the evaluation of the interaction between mother and child is apparent in the determination on the one hand, when accusing the mother of ignoring the boy, that he seeks her out and is fearful of being left by her, while on the other hand declaring that he is fearful of her and rejects her.

The care orders are also peppered with reports describing interactions between the mother and Abhigyan that appear to be completely normal and natural and yet are recorded with disapproval. For instance, one report describes the following scenes that may be witnessed in any home between a mother and her young children: “On good days with a few challenges, the mother could display more patience and kindness towards Abhigyan and she could also demonstrate love by touching him and stroking him. As soon as Abhigyan became more challenging, the mother demonstrated irritation and anger by means of rejection, either by rejecting his initiative for contact or by walking away from him by playing on his fear of being abandoned.”²⁰

THE MOTHER LOCKED UP ABHIGYAN

Another patently unfair allegation against the mother is that she locked up Abhigyan. This allegation is made based on the observation of a care worker on a home visit that the mother shut the boy outside the kitchen and he stood crying at the door until she finished her work.²¹ The mother explains, and this is recorded in the care orders, that she shut Abhigyan out of the kitchen as she was cooking and that Abhigyan would do things he was not allowed to in the kitchen while she was occupied with cooking.²² Moreover, Abhigyan was not alone outside the kitchen but in the presence of the reporting care worker who observed him as he stood crying at the door.

So not only was it incorrect to claim that the mother locked up the boy, but the mother’s perfectly reasonable explanation that she was keeping the boy out while she cooked, an activity fraught with danger for a little child, is ignored. The entire episode is misreported

¹⁹ Fifth paragraph, page 3 of Stavanger District Court order of 7 July 2011.

²⁰ First paragraph, page 10 of County Committee order dated 28 November 2011.

²¹ Third paragraph, page 3 of Stavanger District Court order of 7 July 2011.

²² Ibid.

thus: “she locks the door on him and therefore makes herself totally inaccessible” and she “locks the boy out of the kitchen”.²³

ABHIGYAN HAD DEVELOPMENTAL DISORDERS

Another allegation about Abhigyan which is interpreted against the mother is that he has “special needs” and suffers from some developmental problem. This is taken at various points in the proceedings as proof, without more, of the parents failing the child in some way.

There are no concrete details as to the form in which the developmental problem manifested. The parents are said to admit that the boy has special needs, but there is no specialist evidence adduced regarding any development disorder. The record only contains speculations and descriptions of his behaviour. There is no allegation of delay in reaching the usual development milestones for a boy of around 2 years of age. There is also blatant inaccuracy in such facts as are reported about the boy. For instance, in the first order, the boy is described as being 3 years old when in fact he was 2 years and 6 months at the time.²⁴ At this age, children manifest significant progress in general development over six-monthly (and even three monthly) periods. So if the boy was being assessed for development at an age 6 months ahead of his actual age, it is not at all surprising that he was, albeit wrongly, stated in the orders to have “extensive development delays”.²⁵

Specialist evidence as to Abhigyan’s alleged problems is produced only in the November 2011 order. It is noteworthy that this evidence though said to be dated 12 April 2011 is cited for the first time in this order and finds no mention in the earlier orders of 12 May 2011, 23 May 2011 or the detailed court order of 7 July 2011.

Even in the evidence produced in the order of 28 November 2011, the diagnosis is not of developmental disorder but of various behavioural disorders labelled as “Indiscriminate Attachment Disorder”, “withdrawal behaviour” and autistic banging of the head and swaying of the body.²⁶ Again, the mere existence of these behavioural disorders is taken as proof that the parental care of the child was somehow deficient, related to the mother’s alleged depression and to loud quarrelling between the parents. The link between the behavioural disorder and the home environment or deficient parental care is asserted without any explanation.²⁷

²³ First paragraph, page 2 of Interim Order of CWS of 12 May 2011 and fifth paragraph, page 2, Stavanger District Court order of 23 April 2012.

²⁴ Fourth paragraph, page 2 of Interim Order of CWS of 12 May 2011.

²⁵ Ibid.

²⁶ Third paragraph, page 9 of County Committee order of 28 November 2011.

²⁷ Ibid. and last paragraph of page 5 and first paragraph of page 6 of Stavanger District Court order of 23 April 2012.

Abhigyan is stated to have “special needs”,²⁸ autism,²⁹ “Indiscriminate Attachment Disorder”,³⁰ “signs of depression”,³¹ “withdrawal behaviour”³² and “bonding behaviour”.³³ However, the evidence describing his behaviour does not indicate anything out of the ordinary, viz.:

- “he is difficult to gain contact with, he is anxious, does not tolerate change well, and has a strong need for predictability and secure limits.”³⁴
- “Abhigyan took little initiative to play”³⁵
- “Abhigyan is in need of close adult support, a high degree of structure and guidance throughout the day in the nursery”³⁶
- “he cries and is restless when his mother has delivered him to the kindergarten”³⁷
- He “shows behaviour on a level with far younger children when he meets his parents”³⁸

All these characteristics are normal for a boy of Abhigyan’s age at the time. These findings constitute further examples in the case record of the natural behaviour of a toddler of his age being misrepresented as being somehow dysfunctional - shyness, clinginess to adults, unease when the mother leaves him at the kindergarten (which, incidentally, reveals his attachment to her) and childish behaviour with parents. Moreover, Abhigyan is labelled with having “withdrawal behaviour” and “bonding behaviour” without any explanation of what these seemingly contradictory expressions mean. There is also no explanation of what “Indiscriminate Attachment Disorder” is about; how this or the withdrawal or bonding

²⁸ Sixth paragraph, page 7 of Stavanger District Court order of 23 April 2012.

²⁹ Third paragraph, page 9 of County Committee order of 28 November 2011.

³⁰ Ibid.

³¹ Second paragraph, page 1 of Interim Order of CWS dated 12 May 2011.

³² Ibid.

³³ First paragraph, page 6 of Stavanger District Court order of 23 April 2012.

³⁴ Second paragraph, page 1 of Interim Order of CWS dated 12 May 2011.

³⁵ Last paragraph, page 2 of Stavanger District Court order dated 7 July 2011.

³⁶ Last paragraph, page 1 of County Committee order of 28 November 2011.

³⁷ First paragraph, page 6 of Stavanger District Court order of 23 April 2012.

³⁸ Last paragraph, page 7 of Stavanger District Court order dated 23 April 2012.

behaviour manifests in Abhigyan and how such behaviour, if any, is caused by deficient parenting.

So, even if there was cause for concern about Abhigyan, there does not appear to have been any attempt by the CWS at obtaining a systematic evaluation of the boy or getting a clear and reliable diagnosis of his problems prior to confiscation.

CONTRAST WITH KINDERGARTEN REPORT OF DECEMBER 2011

The bias against the mother in the interpretation of her interactions with Abhigyan is thrown into sharp relief when we compare the reports of his interactions with his mother with reports of his interactions with his kindergarten teacher regarding his performance since Autumn of 2011. This report covers Abhigyan's behaviour in the period several months *after* he was taken into care. The report is dated December 12, 2011 by which time he had not even had a visitation from his mother for well over a quarter of a year. It is reported that:

- “Abhigyan **bangs his head** on the floor and the walls....When he bangs his head on the floor, I see that he is observing the adult and looks to see if she is looking at him. I also observe that he often holds his head up a little before he puts it down on the floor, probably because he does not want to get hurt.”³⁹
- “Abhigyan **spits a good deal**, particularly on the floor...Since there was a little ‘sport’ in first spitting then wiping it up, the **adult** now **stops him** at this game/ritual.”⁴⁰
- “Abhigyan also **uses crying as a mastering strategy**, but the personnel hear a clear difference between the complaining crying and the desperate and hurt crying. When Abhigyan uses crying to complain, and the **personnel do not pay much attention** to the crying, it stops quickly”⁴¹
- “When something deviates from a fixed routine or what Abhigyan had expected, he **shows frustration through crying, spitting or banging his head**”⁴²
- “He becomes **insecure and impatient** if the routine is not followed, i.e., **in a cloakroom situation** or when the gathering **changes** to new songs or talking”⁴³
- “Abhigyan shows interest for pictures and animal noises on iPad games. Here he laughs, presses and sorts through but **becomes frustrated** as soon as I try to help him

³⁹ Fifth paragraph, page 3 of Special Education Report dated 12 December 2011.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Last paragraph, page 3 of Special Education Report dated 12 December 2011.

⁴³ Fourth paragraph, page 4 of Special Education Report dated 12 December 2011.

with finding the right game. **Then he sinks to the floor and complains and bangs his head etc...**⁴⁴

- He protests when his regular teacher leaves the room, or “if he has to wait because she is helping another child...”⁴⁵
- “Abhigyan also moves more freely in the section now. He uses the area by the duplo, sofa and CD player a lot, but can also move out to the common room or in the cloakroom without becoming desperate because **an adult does not accompany him**”⁴⁶.

For the entire period of this evaluation, Abhigyan was in the sole custody of his so-called “stand-by parents”. Belying the assertion of the CWS that Abhigyan stopped banging his head when he was placed in the emergency home,⁴⁷ this report clearly records that he continued to exhibit head banging throughout the period he was kept away from his mother.

The reported head-banging in the presence of his kindergarten teachers also belies a central tenet of the case for taking Abhigyan into care which was that he used to bang his head in an adverse reaction to the presence of his mother.

In the kindergarten report all his behaviour that was interpreted in the care proceedings as evidence of Abhigyan’s doing badly with the mother is described in normal terms as Abhigyan’s frustration at things not going as he expects; or as complaining; or as attention-seeking behaviour. While in this report the kindergarten personnel are described uncritically as leaving Abhigyan even though he protests when they have to attend to something else, the mother’s not responding to him was taken in the care proceedings as proof of her neglecting and “ignoring” the boy. The mother is censored in the care proceedings for leaving the boy to wander about in the apartment as she goes about her work, but in the kindergarten report, Abhigyan’s wandering about alone without an adult is reported approvingly as a sign of his progress.

⁴⁴ First paragraph, page 5 of Special Education Report dated 12 December 2011.

⁴⁵ Third paragraph, page 3 of Special Education Report dated 12 December 2011.

⁴⁶ Fourth paragraph, page 3 of Special Education Report dated 12 December 2011.

⁴⁷ The order of 7 July 2011 records the claim of the CWS that: “Abhigyan has not banged his head since he was emergency placed, and this confirms that such placing was correct, and that the cause of the banging lies in circumstances at home.” The order of 28 November 2011 records the claim of the CWS that: “...he has stopped banging his head. He now only bangs his head during the contact arrangements with his parents.” All the claims of the CWS regarding Abhigyan after he was placed in emergency care are either patent falsehoods, such as the claim that he stopped banging his head after he was emergency placed, or appear totally incredible. For instance, in the order of 23 May 2011, the claim of the CWS is that: “The elder child has made progress in the temporary foster home.” This was a mere 11 days after Abhigyan was taken away. It is highly unbelievable that a small child who was traumatized (as claimed by the CWS) could recover practically instantaneously in 11 days.

In this report the kindergarten personnel are described uncritically as ignoring Abhigyan's crying because they believe this is a "mastery strategy" and can "hear" a clear difference between complaining crying and hurt crying – a similar discretion was not permitted to the mother when evaluating her responses to his crying and seeking contact.

The kindergarten personnel's assessment in this report of the boy's distress signals is taken for granted to be correct, whereas the mother and father are accused in the care proceedings of not being able to "see" the child or "interpret the child's signals" or "think about the boy's inherent thoughts, feelings and needs" or to be "unable to observe adequately what Abhigyan needs" and to "ascribe unspoken opinions to the boy".⁴⁸

The kindergarten personnel are not questioned for saying the boy uses crying as a "mastery strategy", another way of saying he uses crying to be disobedient and avoid doing what he is being required to do. But in contrast, in the care proceedings, the mother's similar interpretation of his behaviour was reported censoriously as her interpreting the boy's actions as "evil" actions directed at herself and as her describing him as disobedient, stubborn or arrogant.⁴⁹

DEFICIENCY IN DAILY CARE OF THE CHILDREN

What does emerge from the case record is that the mother is actively present in the lives of the children and is seen to carry out all aspects of their care – she does the housekeeping and cooking, she takes the children to play group and, in the case of Abhigyan, drops and fetches him when he moves to the regular kindergarten. She bathes and changes the children and she takes them for their medical check-ups. The care workers also report that the mother shows willingness to accept their guidance and even tries to implement their instructions.⁵⁰ There is no report that the children are ill-fed, unclean or abandoned. There is no claim that their vaccinations were not carried out in time. There is no claim of the children missing their scheduled medical check-ups. This indicates that, based on the facts alleged against the mother, for all the perceived deficiencies in her handling of the children, this was not a case of deficiency in daily care or neglect of the children or "failure in the basic aspect of the care-providing role"⁵¹ or failure to meet the day-to-day care of the children.

In fact, the case on neglect was never made out. If the evidence of the CWS made out any case at all, it was of mishandling or mismanaging the children and not the far more serious case of neglect of the children. So even though one of the key findings in this case was of

⁴⁸ Fourth paragraph, page 3, third paragraph, page 4 and third paragraph, page 10 of County Committee order of 28 November 2011; and first paragraph, page 6 of Stavanger District Court order of 23 April 2012.

⁴⁹ Fourth paragraph, page 3 and last paragraph, page 9 of County Committee order of 28 November 2011.

⁵⁰ Third paragraph, page 10 of County Committee order of 28 November 2011.

⁵¹ Second paragraph, page 13 of Stavanger District Court order of 7 July 2011.

neglect or failure to provide the children's daily care;⁵² the case for neglect was never made out. Mishandling or mismanaging children is a question of the type of parenting practices. The assessment of parenting practices is highly subjective, as may be seen in the contrast demonstrated above between the manner in which assessment was made of the methods of Abhigyan's kindergarten teachers and his mother in handling him. Ordering permanent confiscation of children from their parents is, to say the least, hardly a proportionate response to perceived failings in parenting practices.

THE FATHER PRIORITISED WORK OVER FAMILY

The assessment of the Norwegian authorities against the father was also unjustified on the facts. The father was stated to have been deficient in parental care as he prioritised work over his family and demonstrated a lack of involvement in caring for the children. Worthy as the ideal of paternal participation in child care and housework may be, this again hardly justifies taking a child away from its father. Also evident in this assessment is the cultural bias about how a father ought to comport himself in relation to the home and child care.⁵³

THE MOTHER LEFT AISHWARYA ON THE NAPPY CHANGING TABLE

If the case regarding Abhigyan is open to serious doubt, there is hardly any attempt in the care proceedings at even making a case regarding Aishwarya. Aishwarya had just crossed five months in age and was being breastfed when she was confiscated by the CWS. She is consistently stated to have demonstrated normal development for her age.

When the children were first confiscated, the sole allegation regarding Aishwarya was that the mother, while changing her nappy, left her on a changing table when she went to collect nappies and other things.⁵⁴ Even if this were true, it is no justification for permanently removing a breastfed baby of five months from her mother.

But it turned out that the allegation of leaving the baby on the changing table was in fact untrue. In the first appeal by the parents against the emergency interim removal of the children by the CWS, it was revealed that there was in fact no changing table in Aishwarya's home and her mother would change her in a cot-bed that was much lower than an ordinary

⁵² See, for instance Stavanger District Court order of 7 July 2011, fifth paragraph, page 12: "In the view of the Court, the situation is such that both children over time have been subjected to such great neglect at [sic.] in daily life they have been exposed to being substantially damaged – particularly seen in relation to bonding/development." Also, the County Committee order of 28 November 2011 which states in the last paragraph of page 8 that: "The County Committee believes there are serious deficiencies in the day-to-day care given the two children at home with their parents."

⁵³ Third paragraph, page 4 and last paragraph, page 10 of County Committee order dated 28 November 2011; and second paragraph, page 13 of Stavanger District Court order dated 7 July 2011.

⁵⁴ Third and fifth paragraphs, page 2 of Interim Order of CWS dated 12 May 2011.

changing table.⁵⁵ In this appellate order it was also stated that if there were concerns about the use of the changing table in the kindergarten, it was up to the kindergarten to make arrangements for the baby's security.

Though the allegation about lack of safety in nappy changing was comprehensively dismissed in the first appeal, the charge that the mother left the baby on the changing table is resurrected in later proceedings⁵⁶ and new claims are made that the mother leaves the baby on a bed/sofa when changing her.⁵⁷ The claim is recast in later orders in a negative light by alleging the baby was left "alone" in "washing and changing situations"⁵⁸ overlooking the fact that she was in fact in the presence of the reporting kindergarten personnel or care workers who were observing the mother as she went about changing Aishwarya's nappy.

The lack of seriousness in the situation is evident in that the response of the care workers was not to pick up the baby from the allegedly unsafe situation but merely to give "guidance" "that washing and changing situations must be planned beforehand so that [the mother] had everything she needed at hand when she started washing and changing".⁵⁹

AISHWARYA SEEKS EYE CONTACT WITH OTHERS

After losing the first appeal, the CWS came up with a new and outlandish justification for removing Aishwarya. The claim, which was accepted by the adjudicating authority, was that personnel at the play group attended by Aishwarya with her mother had reported that Aishwarya "prefers others' faces than her mother's" and that she "seeks eye contact and turns her head towards others when both the mother and others are close."⁶⁰ Not only does this constitute a shockingly unconvincing and inadequate basis for ordering removal of a suckling baby from its mother, the kindergarten personnel make this assessment in March 2011 when Aishwarya was 2 1/2 to 3 months old— an age when most babies are barely capable of turning their heads or making eye contact in any precise way. Moreover, the play group met only twice a week and the mother had started taking Aishwarya there sometime in February. So at the time of the assessment, Aishwarya had only been seen a few times by the play group personnel.

⁵⁵ Order dated 23 May 2011 of the County Committee.

⁵⁶ First paragraph, page 6 of Stavanger District Court order of 7 July 2011 and first paragraph, page 2 of County Committee order of 28 November 2011.

⁵⁷ Third paragraph, page 3 of Stavanger District Court order of 23 April 2012.

⁵⁸ Ibid.

⁵⁹ First paragraph, page 6 of Stavanger District Court order of 7 July 2011.

⁶⁰ Second paragraph, page 5 of Stavanger District Court order of 7 July 2011.

THE MOTHER IS EITHER VERY INTENSE OR PASSIVE WITH AISHWARYA

In the foster care hearing held in November 2011, yet another new and equally outlandish allegation is made in justification of Aishwarya's confiscation. The finding in this proceeding is that care workers had observed that "the mother was extremely changeable in her contact with her daughter, either very intense or passive."⁶¹ A nonsensical basis for ordering separation of mother and baby.

CONTRADICTORY FINDINGS REGARDING AISHWARYA'S GENERAL Demeanour

Even the descriptions of Aishwarya in the orders are contradictory, with the authorities noting in one place that Aishwarya is a "smiling baby" and later stating that she is "silent and rigid".⁶²

VIOLENCE BETWEEN THE PARENTS

Another justification for removing the children was the allegation of violence between the parents. Even assuming this to be true, surely violence between the parents does not justify depriving children of such parents of family. For all the ill-effects on children in situations of violent conflict between their parents, cutting them off forever from both their parents and other family members, and in the case of foreign children, from their country, culture and history, is no remedy.

In dealing with family matters it has to be recognised that parents who are less than ideal in their treatment of one another, or parents who are caught in a dysfunctional relationship with each other, may yet be loving and caring parents, and that children may love such parents and be traumatised by separation from them.

The evidence of so-called "violence" consists mainly of statements alleged to have been made by the parents (who denied this in the hearings) of the mother hitting the father on one occasion and of loud arguing before the children. Again the conclusion that this is violence of a nature that was so traumatic for the children to witness (one being a newborn) that they had to be permanently removed from their parents is hardly warranted. Given the need of young children, particularly breastfed babies, for their mother, surely the interest of the children would have been better met by offering marriage counselling and anger management therapies to the parents. All the guidance that is stated to have been offered consists of instructions about morning and evening routines and how to carry out nappy changing. There is no mention of any effort to enable the parents to live together more harmoniously. The

⁶¹ First paragraph, page 2 of County Committee order of 28 November 2011.

⁶² First paragraph, page 2 and fifth paragraph, page 4 of County Committee order of 28 November 2011.

focus of guidance on routines and handling of everyday tasks itself strongly indicates that there was nothing occurring in the home, whether violence between the parents or any other matter, that warranted permanent removal of the children.

CULTURAL PREJUDICE

The care orders are also peppered with observations that do not seem to be relevant to the finding of deficient parenting but betray a notable awkwardness about India and Indian ways. For instance, it is repeated time and again that the parents had an arranged marriage⁶³ and that the mother had not lived anywhere outside of Kolkata before coming to Norway.⁶⁴ In one order, counsel for the parents is recorded as explaining that: “it is common in India for children to remove their shoes and socks when they are indoors.”⁶⁵

There is also no evidence that the kindergarten personnel and care workers with whom the parents came into contact either understood or communicated in a language known to the parents. Assuming any interactions were in English, there is no evidence of the level of proficiency in idiomatic English of the mother. Given the language barriers, between the mother on the one hand and the kindergarten personnel, care workers and health officials with whom she came into contact, it can reasonably be imagined that the scope for cultural misunderstanding was considerable. However, though the issue of cultural bias was raised in the hearings as a defence by the parents’ counsel,⁶⁶ it was not dealt with in the orders.

Some of the findings also betray what appears to be a point of view in assessing conditions in the family that is completely misplaced in the Indian context. For instance, in the final order, one of the reasons for favouring hand over of custody to the uncle is stated to be that he has a girlfriend of five years who wishes to contribute in relation to the children.⁶⁷

PARENTS RETURNING TO INDIA FROWNED UPON

The authorities seemed determined to keep the children in care at all costs. In one order it is recorded that “the fact that the father mentions the possibility of moving back to India with the children is considered very unfortunate by the Child Welfare Service.”⁶⁸

⁶³ First paragraph, page 2 of Stavanger District Court order of 7 July 2011; fourth paragraph, page 1 of County Committee order of 28 November 2011 .

⁶⁴ Third paragraph, page 2 of Stavanger District Court order of 7 July 2011 and fourth paragraph, page 2 of Stavanger District Court order of 23 April 2012.

⁶⁵ Seventh paragraph, page 6 of County Committee of 28 November 2011.

⁶⁶ Seventh paragraph, page 6 of County Committee of 28 November 2011.

⁶⁷ Third paragraph, page 9 of Stavanger District Court order of 23 April 2012.

⁶⁸ Sixth paragraph, page 4 of County Committee of 28 November 2011.

MOTHER IS MENTALLY UNFIT

There are also vague and contradictory aspersions against the mother's mental fitness. Initially, she is described as being depressed, unstable and anxious, without claims of clinical depression or mental dysfunction.⁶⁹ In none of the orders has any specialist evidence been cited in support of the claims about her mental state. In fact, in one order it is recorded by the court that there is "no information regarding the mother's mental health, abilities or other aspects of her personality".⁷⁰ Even so, depression in the mother is found to be a direct cause of the alleged dysfunctional behaviour in Abhigyan.⁷¹

It is noteworthy that in the order of 7 July 2011, the finding that the mother is "unstable" is not an observation of her general state of mind, but a reference to her reaction on being told by the CWs that her children had been confiscated.⁷²

Clinical depression in the mother is mentioned for the first time in the foster care order of November 2011. However, even at this stage there is no diagnosis of clinical depression, only speculation in a report of a body called the Child and Adolescent Psychiatric Unit, a department of the Stavanger Municipality and hence an affiliate of the CWS, (note that this is a body that does not deal with adult psychiatric disorders), that: "[the mother] has stated..... that she is depressed and that she has been depressed for an extensive period of time" and the Child and Adolescent Psychiatric Unit "**assumes**" she has "symptoms consistent with a clinical depression diagnosis."⁷³

As stated above, this report of the Child and Adolescent Psychiatric Unit is mentioned for the first time in the order of November 2011. Even at this stage in the proceedings, no medical assessment was made of the mother and the order records the submission of the parents' counsel that: "Despite a request being made, no assessment has been made of the mother's ability to provide care. This is incomprehensible, as such an assessment would clearly have been significant."⁷⁴

Again, even assuming that the mother had depression of a nature that interfered with her care of the children, there is no attempt at helping her overcome her depression so that the children may continue to have the benefit of being with their parents. Instead, as with the

⁶⁹ Last paragraph, page 1 of Interim Order of CWS dated 12 May 2011.

⁷⁰ Second paragraph, page 13 of Stavanger District Court order of 7 July 2011.

⁷¹ First paragraph, page 6 of Stavanger District Court order of 23 April 2012.

⁷² Third paragraph, page 12 of Stavanger District Court order of 7 July 2011.

⁷³ Third paragraph, page 1 of County Committee order of 28 November 2011.

⁷⁴ Fourth paragraph, page 6 of County Committee order of 28 November 2011.

allegation of violence in the family, the approach seems to be of identifying flaws in the parents with the sole purpose of justifying the removal of their children.

The mother's being from Kolkata seems to have played a role in her assessment of being somehow lacking in mental fitness. For instance, in one order she is described as "immature" for having "grown up in Calcutta" and having had "no other life experience than that she obtained through growing up there".⁷⁵

SITUATIONS CREATED BY CWS AND DELAYS IN SCHEDULING CARE PROCEEDINGS USED TO JUSTIFY CONTINUING CONFISCATION OF THE CHILDREN

Another disturbing aspect of the case is how situations created by the CWS itself are used to justify continuing confiscation of the children. For instance, the initial removal of the children from the parents is justified on the basis that the mother broke down when she realised that the children would be taken into care. Her perfectly natural response to the threat of never seeing her children again is used to justify taking them away thus: "that the behaviour came as a reaction to her understanding that the Child Welfare Services could place the children outside the home is fully understandable, but the decisive [*sic.*] is nevertheless that her state of mind was incompatible with the care of small children...".⁷⁶ Was it not conceivable that the mother's composure would have instantly been restored had the children been given back to her at that moment?⁷⁷

The device of the CWS in using a situation created by itself to justify keeping the children away occurs time and again in the proceedings. In the hearing of July 2011, the CWS argues that the children should not be returned home because "it is also significant that the situation at home will continue to be stressful, since the [CWS] have decided to bring a legal action for takeover of care, and where the parents must conduct themselves in relation to being both

⁷⁵ Second paragraph, page 13 of Stavanger District Court order of 7 July 2011.

⁷⁶ Paragraph 3, page 12 of Stavanger District Court order of 7 July 2011.

⁷⁷ The mother claims that contrary to what is stated in the record the children were taken away by the care workers *before* she was informed that they were being taken into care. She claims that the boy was at kindergarten and the girl had been taken from her arms by a care worker on the pretext of taking her for a walk, when care workers informed her that they had take both children into care. The mother claims that she was told that the kindergarten would not return Abhigyan but hand him over to the CWS and that the care worker would not return with Aishwarya from the walk and had taken her to the CWS. Representatives of the CWS come to the home that evening and it was then that they witnessed the mother's breakdown. If the mother's claims are true, then the entire basis of the removal of the children – an emergency situation in the home caused by her breakdown – falls to the ground.

criticised and evaluated. The mother has herself expressed how difficult it was in the Spring of 2011 with the observation in the home.”⁷⁸

In the same hearing it is recorded that the maternal grandparents have arrived in Norway and the maternal grandmother has given a statement saying that she will take care of the grandchildren. One of the reasons that the court refused to return the children despite the offer of the grandmother is that the grandparents were scheduled to leave at the end of the next month “and it is unrealistic to believe that the case before the [County Committee] will be considered by that time. The case has not yet been scheduled.”⁷⁹

DENIAL OF NATURAL RIGHTS OF THE CHILDREN

This case also reveals a chilling disregard of filial love in the thinking of the Norwegian foster care system. For instance, in the foster care order of November 2011, perfunctory approval is given to the CWS’s request that it be permitted to place the brother and sister in separate homes as in view of Abhigyan having special needs “that will be very demanding on those who will be caring for him”.⁸⁰ The order says that while it would have been best for the children to live together: “This may however have led to a situation in which the foster home, which in that event was to take in both children, might perhaps have been unable to cope with the task in the long run.”⁸¹

The order also casually records that the CWS have not been able to find a foster home for the children that is capable of preserving their “language, culture, religion and food culture”.⁸²

VISITATION

Although the Norwegian system took over 7 months to decide the fate of the Bhattacharya children, holding them under emergency interim orders from 11 May 2011 to 28 November 2011, there appears to have been hardly any visitation permitted to the parents. Even though the younger child was a breast-fed infant of just 5 months at the time of confiscation, there appears to have been no provision permitting the mother to continue feeding the baby, not even in the emergency stand-by home.

The mother states that she was only permitted to send to the CWS offices her expressed breast milk that was pumped using a machine into bottles for delivery to the stand by home where her baby was being held.

⁷⁸ Fifth paragraph, page 9 of Stavanger District Court order of 7 July 2011.

⁷⁹ First paragraph, page 15 of Stavanger District Court order of 7 July 2011.

⁸⁰ Third paragraph, page 11 of County Committee order of 28 November 2011.

⁸¹ Ibid.

⁸² Ibid.

So immediately upon confiscated on 11 May 2011, with no preparation or transition time, both babies were cut off from the person who had thus far been feeding, grooming and putting them to sleep. They were also transplanted to a completely new environment – new home, new bed, new food, new language and new people. There was no provision for the mother to come into the emergency home to carry out the feeding, grooming and putting to sleep while the babies were given a chance to get acquainted with their stand-by home and interim carers.

Anyone familiar with babies will testify to the brutality of this manner of conducting the separation of babies from their mothers and fathers. It is not just a question of emotions and ethics, but of the very basic functional abilities of an infant or toddler to get nutrition, get cleaned and to sleep when it is snatched away from the one with whom it was accustomed in these activities. For a 5-month-old and a two-year-old, familiarity with the person trying to feed and with the type of food offered are the first indispensable condition for the baby to take the feed. The same holds for sleeping and, unless considerable force is used, for washing. This practice of totally cutting off access to their parents from the first moment of confiscation thus metes out a deprivation upon confiscated babies even at the very basic level of being able to meet their daily needs and gain their daily sustenance.

The shock to the parents of this sudden and complete deprivation of their children is of an enormous magnitude. It is particularly brutal on mothers who are in the first few months of having given birth, as was the mother in this case.

There is no order as to visitation from the record, except in the foster care order of 28 November 2011 which granted three visitations of one hour each per year. The justification for this was that visitation “must not be so extensive that it could have a disturbing effect on the two children’s attachment process in their foster homes.”⁸³

⁸³ Fourth paragraph, page 11 of County Committee order of 28 November 2011.

Disclaimer

The mother denies all findings and allegations based on which her children were taken away by authorities in Norway and reserves the right to pursue legal recourse in India and elsewhere on that basis. The foregoing analysis was presented not as a defence on the part of the mother, but as a critique of the case from the face of the record, i.e., assuming, **without admitting**, the key allegations and findings to be true.

AFTERWORD

The Bhattacharya care proceedings make for sickening reading. One searches in vain for a reasonable explanation of why two little babies were snatched away from their mother and father. But all the record has is page upon page testifying to the unfairness of the proceedings, the want of any rational basis for the confiscation of the children and the grim determination of the authorities to keep hold of the children.

The kind of treatment meted out to the Bhattacharyas appears to be commonplace in child care systems in the developed world. The accounts of families caught in care proceedings and information from activists, journalists and lawyers who have been scrutinising these child welfare systems, if true, are extremely worrying. There are accounts of assessments of parental unfitness being based on reasons such as too little apparatus in the home (such as feeding chairs or changing tables), treating ailments or injuries with home remedies instead of going to the doctor, parents home-schooling their children, the presence of cavities in a child's teeth; force-feeding, "overstimulation" by the parent of an infant, breast-feeding as a means of comforting a baby, how close a parent holds the child on her lap, the position in which a baby is breastfed, too few or too many toys in the home; toys being inappropriate to a child's age; the ill-health of a parent, the home being too messy or too tidy; borderline personality disorder in a parent; a parent being seen to be slow in responding to a child's cries; and either too little or too much emotional attachment between parent and child. It is reported that claims of incest have been made based on the speed at which a child eats food or its sleeping in the same bed as the parent.

It is common for troubles in the parents' relationship to be taken as making the family unfit for children and for care workers to demand that parents separate if they want to save their children from being taken away.

It is reported that the confusion of children during visitations with parents after they are taken into care is used to justify the cancellation of visits altogether.

Symptoms of autism or other disorders in children are taken as evidence of abuse or neglect in the home. There no scientific basis for drawing a straight line between such disorders and parental handling of a child.

There is also serious doubt as to whether these child welfare systems are in fact helping children at all. It is reported in the United Kingdom that 50% of prostitutes on the streets have been through the care system; 50% of persons in young offenders' institutions have been in care; 50% of girls that come out of care are single mothers within two years; and only 9% of children who come out of care go on to university, compared with 47% of all youngsters.

So not only are these child welfare systems inhumane and unjust. It seems they are not even achieving their stated purpose. The true state of affairs about these child welfare systems

must to be exposed and condemned. Awareness must be raised about the legal, sociological, medical and ethical problems with these systems.