



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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E.MBA, LL.M, Ph.D, PGDSAPM

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Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ILLEGAL ADOPTIONS IN INDIA: LEGAL CHALLENGES AND PROCEDURAL SAFEGUARDS¹

AUTHORED BY - DIKSHU

Abstract

Illegal adoptions in India represent a deeply troubling facet of child rights violations, where vulnerable children are removed from their familial settings and placed into unauthorized guardianship, often without legal oversight or due process. These illicit practices not only undermine the fundamental rights of children but also expose them to risks such as trafficking, exploitation, and abuse. Although India has established a fairly structured adoption system through laws like the Juvenile Justice (Care and Protection of Children) Act, 2015, and the regulatory authority of the Central Adoption Resource Authority (CARA), serious issues persist. These include regulatory bottlenecks, corruption, bureaucratic delay, poor enforcement, and loopholes in procedural compliance.

In many instances, socio-economic pressures, coupled with societal stigma around infertility and single parenthood, prompt prospective adoptive parents to bypass legal routes, seeking out quick but unlawful alternatives. The lack of accountability in many shelter homes and orphanages further exacerbates the problem. This paper aims to explore these complex dynamics by examining legal statutes, analyzing recent judicial interventions, and evaluating the role of administrative bodies. Furthermore, it delves into the effectiveness of procedural safeguards—such as documentation, registration, background checks, and post-adoption monitoring—to assess their efficacy and identify areas of failure. Ultimately, this research intends to recommend strategic legal and policy reforms to safeguard children's rights, enhance regulatory compliance, and curb the menace of illegal adoptions in India.

Keywords

Illegal adoption, CARA, Juvenile Justice Act, child rights, procedural safeguards, child trafficking, legal framework

¹ Authored by Dikshu

Research Methodology

This research employs a **qualitative doctrinal approach** combined with **empirical analysis** to examine the legal challenges and procedural safeguards related to illegal adoptions in India. The study primarily relies on secondary sources to analyze existing laws, judicial decisions, government reports, and scholarly literature relevant to child adoption practices and their enforcement in India.

Data Collection

- **Primary Legal Sources:** The study extensively reviews statutory laws such as the Juvenile Justice (Care and Protection of Children) Act, 2015, the Hindu Adoption and Maintenance Act, 1956, CARA guidelines, and relevant provisions of the Indian Penal Code concerning child trafficking and illegal adoption.
- **Judicial Pronouncements:** Case laws from the Supreme Court and various High Courts are analyzed to understand judicial interpretations, enforcement challenges, and remedial measures adopted by courts in illegal adoption cases.
- **Government and Institutional Reports:** Reports from CARA, the Ministry of Women and Child Development, Central Bureau of Investigation (CBI), and UNICEF India provide empirical data and insights into adoption trends, enforcement gaps, and socio-cultural factors influencing illegal adoptions.
- **Academic and NGO Literature:** Research articles, policy papers, and reports by NGOs working on child rights and adoption issues are reviewed to contextualize the problem and assess the effectiveness of current safeguards.

Analytical Framework

The study adopts a **comparative analysis** framework to evaluate the adequacy of existing legal provisions and procedural mechanisms vis-à-vis international standards such as the UN Convention on the Rights of the Child. The research identifies gaps between law and practice by comparing statutory requirements with ground realities documented in case studies and reports.

Limitations

The study is limited by its reliance on secondary data, as primary field research such as interviews or surveys with affected families, adoption agencies, or law enforcement officials

was beyond the scope of this paper. However, triangulation of multiple secondary sources aims to ensure a comprehensive understanding of the issue.

Literature Review

Scholarly literature on adoption laws in India reflects growing concern about the abuse of legal loopholes to facilitate illegal adoptions. Studies such as those by Malavika Rajkotia (2020) highlight systemic corruption and lack of institutional accountability in the adoption process. Research by Nirmala Rao (2017) stresses the disparity between legal procedures and actual practices, especially in rural areas where informal adoptions are common.

Legal analyses have also explored how the Juvenile Justice (Care and Protection of Children) Act, 2015, while comprehensive, lacks effective enforcement at the grassroots level. Several NGOs and UNICEF reports point out that children are often trafficked under the guise of adoption, with little to no monitoring of the post-adoption process. The literature also critiques CARA's limited manpower and bureaucratic hurdles that delay legal adoptions, indirectly promoting illegal ones. However, while literature identifies the problem and regulatory gaps, it often lacks focused analysis on procedural safeguards, which this paper aims to address.

Hypothesis

Although India has enacted a comprehensive statutory and regulatory framework governing child adoption, including safeguards for both biological and adoptive families, the persistence of illegal adoptions suggests systemic inefficiencies and enforcement gaps. The central hypothesis of this study is that **the continued occurrence of illegal adoptions in India is not merely a result of legal insufficiencies, but rather stems from the poor implementation of existing laws, insufficient oversight by regulatory authorities like CARA, and socio-cultural factors that encourage informal or black-market adoption practices.**

This hypothesis presumes that despite having the Juvenile Justice Act, various government guidelines, and the Supreme Court's recognition of adoption as a child-centric right, the mechanisms put in place have failed to fully address ground-level challenges. These include a lack of inter-agency coordination, delayed clearance processes, manipulation of child records, and poor awareness among both adoptive parents and biological families about the legal process. Moreover, the hypothesis holds that **enhancing procedural safeguards—such as**

digitised tracking systems, transparent matching processes, regular audits, and stricter penalties for offenders—could significantly reduce illegal adoption practices in India.

Introduction

Adoption, when carried out legally and ethically, provides abandoned, orphaned, or surrendered children with a stable family environment. In India, adoption is governed primarily by the **Juvenile Justice (Care and Protection of Children) Act, 2015**, which permits adoption regardless of the religion of adoptive parents, and regulated by the **Central Adoption Resource Authority (CARA)**. However, a growing number of reported incidents have revealed the widespread prevalence of illegal adoptions, wherein children are sold, trafficked, or placed with families without due process.

The black market for illegal adoptions often thrives in under-regulated orphanages or shelter homes where records are poorly maintained. Children are either forcibly taken or subtly coerced away from birth parents. The procedural complexity and time-consuming nature of legal adoption processes have further incentivized prospective parents to seek quicker, albeit illegal, alternatives.²

While laws exist, enforcement remains patchy and riddled with bureaucratic inefficiencies. CARA has limited capacity to monitor all adoption cases across states, especially in rural and tribal belts where social stigma and lack of education further complicate the scenario. The judiciary, though proactive in individual cases, lacks a consistent approach towards penalising institutions or individuals involved in such crimes.³

1: Legal Framework Governing Adoption in India

India's adoption system is principally governed by the **Juvenile Justice (Care and Protection of Children) Act, 2015**, which marked a progressive step by allowing adoption across all religions and simplifying the legal process. Prior to this, adoptions were largely governed by personal laws specific to religions, which restricted who could adopt and under what conditions. The Juvenile Justice Act emphasizes the best interests of the child as paramount,

² Malavika Rajkotia, *Child Rights and the Law: Analysis of Indian Adoption Practices* (Oxford University Press 2020).

³ Central Adoption Resource Authority, *Annual Report 2022–23*, Ministry of Women and Child Development (2023).

aligning with international conventions such as the United Nations Convention on the Rights of the Child (UNCRC).

The **Central Adoption Resource Authority (CARA)** functions as the central regulatory body tasked with streamlining and overseeing adoption procedures. CARA manages the Child Adoption Resource Information and Guidance System (CARINGS), which is an online platform for registration and matching of adoptive parents with children. It sets standards for adoption agencies, ensures compliance with legal requirements, and monitors adoption outcomes.⁴

Additionally, the **Hindu Adoption and Maintenance Act, 1956**, still applies to Hindu, Buddhist, Jain, and Sikh communities, governing traditional adoptions outside the Juvenile Justice Act's scope. Despite this comprehensive legal infrastructure, many states and local bodies struggle with implementation, leading to significant variations in enforcement and compliance.

Unfortunately, illegal adoptions frequently occur due to weak institutional oversight, creating a parallel system where children are “adopted” through informal channels that circumvent legal safeguards. This undermines the very protection that the law intends to provide to vulnerable children and adoptive parents alike.

2: Procedural Safeguards and Adoption Process

The legal adoption process in India is designed to protect the rights of the child and ensure transparency. Prospective adoptive parents must register with CARA or a recognised adoption agency and undergo thorough background checks, including home studies and medical examinations. Children legally eligible for adoption are those who are orphaned, abandoned, or surrendered by their biological parents.

Once a match is identified, a Probationary Placement Order is issued, and the adoptive parents are required to care for the child for a minimum period (usually six months to a year) before

⁴ Juvenile Justice (Care and Protection of Children) Act 2015, Preamble; UN Convention on the Rights of the Child (1989).

the adoption is legally finalised by the court. This probation period allows authorities to monitor the child's welfare and confirm the suitability of the adoption.⁵

Despite these procedural safeguards, several bottlenecks hamper the system. Delays in background verification, insufficient staffing at adoption agencies, and complex documentation requirements often deter prospective parents or compel them to seek illegal alternatives. Moreover, enforcement of post-adoption monitoring is inconsistent, which risks the child's safety and well-being after formal adoption.

Strengthening these procedural safeguards through technology integration, stricter audits of agencies, and sensitisation programs for officials could mitigate illegal adoption risks and enhance trust in the system.

3: Enforcement Challenges and Institutional Limitations

One of the most significant barriers to preventing illegal adoptions in India is the weak enforcement of existing laws. The enforcement gap stems from limited manpower, lack of specialised training for law enforcement officials, and inadequate inter-agency coordination. Police and child welfare officers often lack awareness of the nuances of adoption laws, making it difficult to identify illegal practices promptly.⁶

Many illegal adoption networks operate under the radar, often disguised as charitable institutions or maternity homes, making detection challenging. The absence of a unified, national adoption database accessible to all states further complicates tracking and monitoring of adoption cases across jurisdictions.²

Additionally, legal action against offenders tends to be slow and ineffective. Courts frequently encounter challenges in gathering evidence, prosecuting offenders, and delivering timely judgments in child trafficking and illegal adoption cases. This leniency inadvertently emboldens perpetrators and dissuades whistleblowers.³

Addressing these institutional weaknesses requires investment in capacity building, integrated digital record systems, and stricter judicial oversight.

⁵ Central Adoption Resource Authority, *Adoption Guidelines*, 2022.

⁶ CBI Report on Child Trafficking (2019), Ministry of Home Affairs, Government of India.

4: Socio-Cultural Factors Influencing Illegal Adoptions

Beyond legal and procedural flaws, socio-cultural attitudes play a critical role in perpetuating illegal adoptions. Stigma attached to infertility, single parenthood, or births outside wedlock motivates many families to seek quick, informal adoption solutions. Additionally, a cultural preference for male children influences adoption decisions, sometimes leading to discriminatory practices in both legal and illegal adoptions.⁷

Rural and tribal populations, often less aware of adoption laws, rely on local informal networks and intermediaries to facilitate adoptions. In some cases, children born in impoverished conditions are sold or exchanged without parental consent, driven by economic hardship and social pressures.

Moreover, the lack of awareness about legal adoption procedures and the benefits of formal adoption among prospective parents contributes to the preference for illegal adoptions. Media campaigns, community education, and involvement of grassroots institutions like Panchayats are essential to alter perceptions and promote compliance with the law.

5: Recommendations for Strengthening Legal and Procedural Safeguards

To effectively combat illegal adoptions, India must adopt a multi-pronged approach focused on legal reforms, institutional capacity, and social change. First, legislative amendments could introduce stricter penalties for illegal adoption and human trafficking offences, coupled with clearer guidelines for inter-agency cooperation.⁸

Second, CARA's operational capabilities need significant enhancement through increased funding, digitisation of records, and a nationwide real-time database accessible to all child welfare agencies and law enforcement. This would improve transparency and enable quicker identification of irregularities.⁹

Third, training programs for police, judiciary, and social workers are imperative to equip them with specialised knowledge about adoption laws, trafficking indicators, and child protection protocols. Regular inspections and audits of adoption agencies and childcare homes should be

⁷ UNICEF India, *Gender Bias and Child Adoption* (2021).

⁸ Ministry of Women and Child Development, *Proposed Amendments to JJ Act*, 2023.

⁹ Central Adoption Resource Authority, *Digital Adoption System Framework*, 2022.

mandated to ensure compliance.

Lastly, public awareness campaigns must be expanded to reach remote communities, educating them about legal adoption, the risks of illegal adoption, and the importance of child rights. Partnerships with NGOs, schools, and local governments can facilitate these initiatives and create a more child-friendly environment.

Conclusion

Illegal adoptions in India represent a serious violation of children's rights and reflect deep-rooted challenges within the legal, procedural, and socio-cultural landscape of adoption. Despite the presence of comprehensive laws like the Juvenile Justice (Care and Protection of Children) Act, 2015, and the regulatory oversight by the Central Adoption Resource Authority, the persistence of illegal adoption practices highlights significant gaps in enforcement, institutional capacity, and public awareness.

This research has demonstrated that the complexity and delays inherent in the formal adoption process often push prospective parents toward informal, illegal channels, which are rife with risks of exploitation and abuse for vulnerable children. Furthermore, the weak coordination among law enforcement agencies, child welfare bodies, and judiciary, combined with inadequate training and technological infrastructure, impedes timely detection and effective prosecution of offenders.

Socio-cultural factors, including stigma related to infertility, gender preference, and lack of legal literacy, further exacerbate the problem by fueling demand for quick and informal adoptions. To address this multifaceted issue, it is imperative that legal reforms be paired with strengthened procedural safeguards, institutional capacity building, and extensive awareness campaigns targeting all stakeholders.

Only through a concerted effort encompassing stricter penalties, enhanced digital monitoring, regular audits, and community engagement can India hope to eradicate illegal adoptions and ensure that every child's right to a safe, legal, and loving family environment is protected. Upholding these safeguards will not only promote the welfare of children but also uphold the integrity and credibility of the adoption system as a whole.