

# Regulatory Rigor Or Rights Denied? - A Critical Examination Of Adoption Protocols For Abandoned Children In India

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## ABSTRACT

India's adoption landscape is marked by a complex interplay between regulatory frameworks and child welfare imperatives. Despite a substantial population of abandoned and orphaned children, the number of successful adoptions remains disproportionately low. This research critically examines whether the rigorous adoption protocols established under Indian law, primarily governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 and overseen by the Central Adoption Resource Authority (CARA), safeguard the rights of abandoned children or inadvertently hinder their access to a nurturing family environment. The research explores the procedural requirements for declaring a child legally free for adoption, the bureaucratic challenges faced by Child Welfare Committees (CWCs), and systemic inefficiencies in institutional mechanisms such as the CARINGS portal. Drawing on instances and views, this research argues that while regulatory oversight is essential to prevent trafficking and ensure ethical adoption practices, the current system often results in prolonged institutionalization, violating a child's right to family and development. The research further situates India's adoption protocols within an international human rights framework, including obligations under the United Nations Convention on the Rights of the Child (UNCRC). It proposes a set of reforms aimed at balancing protection with expediency, streamlining processes, standardizing protocols across states, and ensuring timely judicial and administrative action. This research delineates that true child welfare lies not in procedural perfection but in responsive, rights-based governance that places the best interest of the child at the heart of adoption policy.

**Keywords:** Adoption, Abandoned Children, Juvenile Justice, Central Adoption Resource Authority, Guardianship, Bureaucratic Delays, Hague Convention, Social Justice

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## INTRODUCTION

Child abandonment in India presents a persistent and deeply entrenched socio-legal crisis, manifesting at the intersection of poverty, patriarchy, social stigma, and institutional apathy. The National Commission for Protection of Child Rights (NCPCR) and UNICEF have periodically highlighted the alarming gap between the number of children classified as "abandoned" or "orphaned" and those legally cleared for adoption. Despite conservative estimates suggesting lakhs of children live without parental care, only a fraction enter the adoption pipeline under the JJ Act, 2015. These figures are indicative not merely of demographic distress but of systemic failure in operationalizing the rights of vulnerable children. Social attitudes toward adoption, especially of girls, children with disabilities, or from marginalized castes, further compound the issue, relegating thousands of children to indefinite institutionalization without access to a permanent family environment, a scenario antithetical to the best interests of the child doctrine, which underpins both national and international child protection law (Saha, 2017).

Adoption, therefore, emerges not as a mere custodial or administrative mechanism but as an essential component of a child's right to family, dignity, and holistic development. Through the JJ Act, 2015 and reinforced by India's international obligations under UNCRC, adoption is intended to serve as a rehabilitative and restorative measure. However, in its current operational paradigm, the adoption process, particularly for abandoned children, has become mired in procedural convolution. While the imperative for regulatory rigor is undisputed, especially to prevent trafficking and unlawful custody transitions, the mechanisms designed to ensure child safety often result in prolonged delays, inconsistent determinations of "legal free" status, and administrative lethargy.

This tension between safeguarding protocols and rights realization creates a legal paradox, a regime designed to protect vulnerable children ends up, in many cases, denying them timely and meaningful protection. Thus, this article interrogates whether India's adoption protocols, as they stand today, uphold the spirit of child welfare jurisprudence or inadvertently perpetuate rights deprivation under the guise of due process (Alston, 2019).

## RESEARCH METHODOLOGY

This study adopts a doctrinal methodology, relying primarily on the critical analysis of statutory provisions, judicial decisions, policy documents, and international conventions relevant to the adoption of abandoned children in India. The research examines the legal framework under the JJ Act, 2015, and other related laws, while drawing upon secondary sources such as academic commentary, government reports, and publications by child rights organizations. Comparative perspectives from international legal instruments like the UNCRC & Hague Convention on Intercountry Adoption are also employed to assess normative compliance and gaps. The methodology is normative and analytical in nature, aimed at evaluating whether current legal procedures align with the constitutional and international mandate for protecting the rights of abandoned children (Hague Conference on Private International Law, 2011).

## LITERATURE REVIEW

Rotabi and Gibbons (2012) examine the intersection of international law and intercountry adoption policies, cautioning against overly bureaucratic systems that hinder children's access to families. They critique Hague Convention implementation for failing to address local inefficiencies. The book supports rights-based reforms similar to those advocated in your paper. Their work aligns with criticisms of CARA's delays in India.

Mehta (2015) analyzes the inconsistencies in the application of the Juvenile Justice Act across Indian states, highlighting how vague timelines for declaring children legally free create structural delays. Her research supports the need for procedural harmonization. She argues that legal formalism obstructs rehabilitation and rights realization.

Bunkers (2011) explores how institutional care adversely impacts child development, with long-term consequences on cognition and emotional security. She urges policymakers to prioritize family-based alternatives. Her empirical findings are consistent with arguments about institutional harm in the Indian context.

Saxena and Narain (2020) discuss the disconnect between adoption laws and their implementation in India, focusing on systemic apathy in CWCs and State Adoption Agencies. They advocate for a uniform adoption code that aligns with international human rights standards. Their critique is directly relevant to judicial inertia addressed in your work.

Cantwell et al. (2012) analyze the UNCRC's practical application in national adoption systems, arguing that lack of child-centric implementation transforms protection mechanisms into obstacles. Their insights offer an international validation of your thesis on procedural delays harming children's rights.

## LEGAL AND INSTITUTIONAL FRAMEWORK OF ADOPTION IN INDIA – A CRITICAL EXAMINATION

The legislative landscape governing adoption in India reflects a fragmented and at times exclusionary framework, built around personal law regimes and public welfare statutes. The JJ Act, 2015 stands as the only secular and uniform legislation facilitating full and irrevocable adoption across all religions, thereby aiming to prioritize the best interests of the child over religious identity. It supersedes the restrictive Guardians and Wards Act, 1890, which merely creates a guardianship, not adoption per se, and terminates upon majority, by permitting adoptive parents, irrespective of religion, to secure a legal relationship that mirrors natural parentage. The Hindu Adoption and Maintenance Act, 1956 remains applicable to Hindus, Buddhists, Jains, and Sikhs, but is mired in formalistic requirements such as capacity, gender bias in adoptive rights, and the presence of an existing child of the same gender, thus often undermining the child-centricity that modern adoption law demands. The coexistence of these regimes has led to a jurisprudential conundrum where adoption rights and procedures differ based on religion and personal law, a situation critiqued in *Shabnam Hashmi v. Union of India* (AIR 2014 SUPREME COURT 1281), where the Court upheld the right to adopt under the JJ Act regardless of personal law, but stopped short of invalidating the religious barriers imposed under HAMA or GWA.

The CARA, functioning under the aegis of the Ministry of Women and Child Development, is the apex statutory body mandated to regulate, monitor, and facilitate in-country and inter-country adoptions. It operates through the CARINGS portal, aimed at digitizing and standardizing the adoption process. However, its operational efficacy is constrained by ground-level implementation failures, inadequate coordination with state authorities, and delays in matching children with prospective adoptive parents. State Adoption Resource Agencies act as nodal arms at the state level to implement CARA's directives and supervise Specialized Adoption Agencies, which are entrusted with the actual care and rehabilitation of orphaned, abandoned, and surrendered children. While this tiered institutional model appears robust in design, it is often undermined by logistical inconsistencies, lack of trained personnel, and poor inter-agency communication, leading to bottlenecks at various stages of the adoption process. The system's rigid compliance architecture, though designed to prevent malpractices, ends up delaying legitimate adoptions (Kaushik, 2016).

A particularly vexed area within the framework is the procedure for declaring a child "legally free for adoption," which is a prerequisite under the JJ Act before any adoption process can begin. CWCs are the designated quasi-judicial bodies empowered to make this declaration after conducting due diligence, including efforts to trace biological parents in cases of abandonment. However, in practice, these verifications often suffer from procedural lethargy, bureaucratic formalism, and subjective interpretation of "due inquiry." The absence of clearly enforceable time-bound mandates under the law allows CWCs significant discretionary leeway, often leading to prolonged institutionalization of children without legal resolution. The judiciary has acknowledged these systemic delays; for instance, in *Laxmi Kant Pandey v. Union of India* ([1984] 2 SCR 795), the Court emphasized that while regulatory scrutiny is vital to prevent child trafficking, procedural rigidity must not stand in the way of the child's right to a permanent family environment.

Judicial intervention has often attempted to fill legislative gaps and ensure the adoption process is guided by constitutional and human rights principles. Courts have repeatedly affirmed that the right to be adopted or placed in a family environment flows from Article 21 of the Constitution, which guarantees the right to life with dignity. Yet, in the absence of a single, unified adoption code applicable to all, children, especially those from minority or marginalized communities, remain at the mercy of conflicting legal standards. Moreover, the judicial direction to expedite processes and protect the interests of the child has often failed to translate into measurable administrative reform. The framework, as it stands, reflects an unresolved tension between state paternalism, protective oversight, and the child's right to timely family rehabilitation, a tension that demands urgent legislative harmonization and procedural streamlining (NCPCR, 2018).

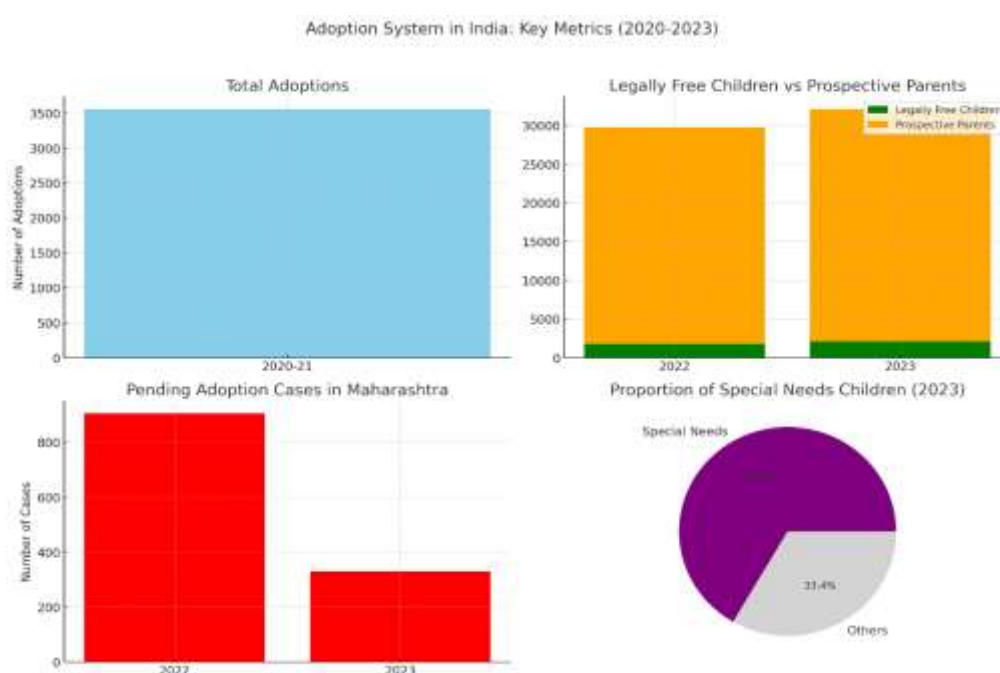
## THE GROUND REALITY: ABANDONED CHILDREN IN INSTITUTIONAL CARE

### Statistical Overview

The statistical evidence presented by CARA from 2020 to 2023 reveals a deeply entrenched structural dysfunction in India's adoption ecosystem, with the glaring mismatch between children legally free for adoption and registered prospective parents symbolizing systemic inertia rather than a mere procedural lag. The recorded figure of 3,559 adoptions in 2020–21, the lowest since 2013, reflects the compounded impact of the COVID-19 pandemic, but more critically, it exposes regulatory bottlenecks and institutional incapacity in streamlining the adoption process (Central Adoption Resource Authority CARA, 2021). Despite approximately 30,000 prospective parents on the waitlist in 2023, only 2,131 children were declared legally free, two-thirds of whom had special needs, indicating not only the chronic delay in issuing legally free status by CWC but also a lack of sufficient policy infrastructure to support the adoption of children with disabilities. The 2021's amendments to the JJ Act aimed at expediting adoptions by vesting District Magistrates with the authority to issue adoption orders in lieu of the judiciary have instead resulted in jurisdictional ambiguity and procedural deadlock, exemplified by the Bombay High Court's directive against transferring existing court cases to DMs. This legal dichotomy has created a duality of authority that continues to retard the pace of adoptions. Although the pendency reduced marginally, evident in Maharashtra's drop from 905 to 644 pending cases by December, 2022, the presence of 329 unresolved cases as of January, 2023, the highest in India, illustrates that mere legislative change without administrative readiness leads to confusion rather than reform (UNICEF, 2020).

In parallel, the broader child protection framework remains compromised by underreported and unregulated practices, which erode the legitimacy of the adoption system and raise serious concerns about the safety of

orphaned and abandoned children. The stark disjunction between UNICEF's estimate of 2.96 crore orphaned or abandoned children and the mere 2,131 children declared adoptable by CARA underscores the gross underrepresentation of children in official systems, likely attributable to inefficiencies in registration, oversight failures in CCIs, and the looming specter of trafficking. The 2022's Parliamentary panel's caution that the drop in institutional adoptions could mask illegal transfers lends credence to fears of a parallel, extralegal adoption market, as exemplified by the 2018's Ranchi case involving Missionaries of Charity. Despite CARA's regulatory framework, illegal adoptions through unregistered agencies or private hospitals persist, emboldened by inadequate enforcement and public unawareness, despite being punishable with fines or imprisonment. Equally troubling are the disruptions, over 1,100 children were returned to CCIs between 2015 and 2020, indicative of insufficient psychosocial screening of adoptive families and a near-absent post-adoption support mechanism (Batra, 2021).



Graph 1

### Challenges in Identifying and Rehabilitating Abandoned Children

A critical barrier to adoption stems from the deficient mechanisms employed in identifying and registering abandoned children into the formal child protection system. Reporting obligations, particularly under the JJ Act, 2015, are often inconsistently followed, with police, hospitals, and citizens failing to notify CWCs of abandonment cases in a timely and procedural manner. Moreover, the reliance on antiquated and manual recordkeeping in many parts of the country results in a fragmented and non-synchronous database, impeding efforts to track, verify, and present children for adoption. The lack of uniformity in the issuance of birth certificates and the frequent absence of identifying documentation further delay the process by which a child can be legally declared “free for adoption”. These lacunae represent a violation of Section 38 of the JJ Act, which mandates the declaration of orphaned, abandoned, or surrendered children within stipulated timeframes, a provision more honored in breach than observance (Gupta, 2022).

### REGULATORY RIGOR: SAFEGUARD OR SYSTEMIC INERTIA?

The architecture of India's adoption regime is founded upon an ostensibly well-intentioned edifice of rigorous procedural safeguards, with the stated objective of preventing child trafficking, unlawful custody, and other forms of exploitation. The legal imperative behind these stringent protocols finds articulation in the JJ Act, 2015, and is operationalized through regulatory bodies such as CARA and CWCs. The insistence on detailed verification before declaring a child “legally free” for adoption, through FIRs, public notices, police reports, and repeated

attempts to trace biological parents, purports to uphold the child's best interest. Similarly, the screening of prospective adoptive parents through home studies, psychometric assessments, and financial evaluations seeks to ensure that only morally, emotionally, and economically competent families are entrusted with vulnerable children. These safeguards, while rooted in protectionist logic, reflect the state's *parens patriae* responsibility and its reluctance to delegate child custody without meticulous scrutiny (Bhattacharya, 2015).

However, this meticulousness often descends into bureaucratic entanglement, manifesting as systemic inertia rather than protective diligence. The judicial and administrative delays in processing adoption cases, especially those involving abandoned or orphaned children, frequently result in prolonged institutionalization. Numerous reports point to inconsistencies in the functioning of CWCs across jurisdictions, where identical cases may face drastically different procedural timelines depending on regional interpretations of the law. Moreover, the much-lauded CARINGS digital platform, designed to centralize and expedite the matching process, suffers from data gaps, user inaccessibility, and poor integration with on-ground realities at child care institutions. The consequence is a disjuncture between the regulatory vision and administrative execution, which ultimately impairs the child's right to a timely and nurturing family environment. The state's obsession with procedural orthodoxy risks creating a Kafkaesque ecosystem, wherein compliance often trumps compassion (Gupta, 2022). Real-life narratives of delay and disillusionment further illuminate the chasm between regulatory intent and lived experience. Consider the case of a couple who, after being deemed eligible by CARA, waited over 18 months due to a CWC's repeated failure to convene a quorum to finalize the child's legal status. In another instance, a five-year-old abandoned child, found at a railway station, languished in an institution for three years before being declared legally free, by which time adoptive interest had waned due to the child's age and psychological trauma. Social workers report burnout and frustration over the opaque and inconsistent implementation of guidelines, while many prospective adoptive parents express despair at the lack of responsiveness and clarity. These testimonies not only critique the institutional delays but also challenge the fundamental presumption that excessive proceduralism is inherently protective. Instead, they urge a reconceptualization of regulatory rigor, one that is rights-based, time-sensitive, and child-centric rather than system-centric (Singh, 2018).

## RIGHTS OF THE CHILD: LEGAL AND ETHICAL ANALYSIS

The right to a family is enshrined in Article 20 of UNCRC, which mandates that a child deprived of their family environment is entitled to special protection and assistance from the State, including placement in alternative care such as adoption. India, being a signatory to the UNCRC, is under an international legal obligation to ensure that its domestic legal and procedural frameworks facilitate timely and effective mechanisms for realizing this right. However, the existing adoption protocols, particularly the prolonged timelines for declaring a child "legally free" for adoption, inconsistent application by CWCs, and bureaucratic inefficiencies, result in *de facto* denials of this right. Institutional care, which is intended as a last resort, often becomes a long-term default, undermining the principle of permanency central to the UNCRC. Such delays directly contravene the best interests of the child standard and violate India's treaty obligations under Article 4 of the UNCRC, which requires states to undertake all appropriate legislative, administrative, and other measures for the implementation of recognized rights.

From a constitutional standpoint, the right to a family life is inherently linked to the broader interpretation of the right to life and personal liberty under Article 21 of the Indian Constitution. The Court has consistently held that Article 21 encompasses not merely animal existence but the right to live with dignity, care, and emotional security. Denying abandoned and orphaned children access to a familial environment through prolonged institutionalization offends this dignity. Further, the DPSP, particularly Article 39(e) and (f), compel the State to ensure that children are not abused and are given facilities to develop in a healthy manner and in conditions of freedom and dignity. Although not enforceable *per se*, these principles serve as interpretative tools for understanding the scope of Article 21. A state machinery that perpetuates delays and systemically obstructs family rehabilitation is arguably failing in its constitutional duty to safeguard these foundational principles of child welfare (Kumar, 2019).

The Indian judiciary has on several occasions intervened to protect the rights of children in need of care and protection. In *Lakshmi Kant Pandey v. Union of India* ([1984] 2 SCR 795), the Supreme Court laid down strict guidelines for inter-country adoption, emphasizing both the protection of children and the need for their early

integration into families. More recently, in *Shabnam Hashmi v. Union of India* (AIR 2014 SUPREME COURT 1281), the Court affirmed that adoption is a legal right available to all citizens irrespective of religious background, thereby reinforcing the principle that the welfare of the child supersedes personal law limitations. In various PILs related to orphanages and CWCs, courts have criticized the State for systemic lapses, lack of monitoring, and institutional apathy. These pronouncements underscore a consistent judicial stance: the child's right to family and dignified care cannot be subordinated to administrative lethargy or procedural delays.

Judicial commentary has also increasingly scrutinized the role of CWCs and adoption authorities for their inconsistent and often opaque functioning. In *Re: Exploitation of Children in Orphanages in Tamil Nadu* (WRIT PETITION (CRIMINAL) NO. 102 OF 2007), the Court rebuked the State for its failure to streamline adoption mechanisms and demanded accountability from CWCs for delays in certifying children as legally free. Such interventions reveal a judicial acknowledgment of the gap between legislative intent and administrative execution. Despite a framework intended to protect, the real-world experience of abandoned children continues to be one of prolonged institutional confinement, in direct conflict with both national and international legal standards. There exists, therefore, a pressing need for judicial vigilance to be supplemented by administrative reform and legislative urgency, to ensure that the rights of the child are not rendered illusory by procedural inaction.

## CONCLUSION & THE WAY FORWARD

The adoption protocols governing abandoned children in India, while ostensibly designed to safeguard against abuse and exploitation, often manifest as a labyrinthine regulatory apparatus that paradoxically impedes the very objective of ensuring a child's right to a family and holistic development. The convergence of procedural opacity, institutional inertia, and fragmented implementation across jurisdictions results in protracted timelines for declaring children legally free for adoption, thereby institutionalizing vulnerability under the guise of legal due diligence. As India reaffirms its commitments under UNCRC and its constitutional mandate under Article 21, it becomes imperative to recalibrate the adoption framework through a rights-based, child-centric paradigm. This necessitates not only legislative and procedural rationalization, such as introducing statutory timelines, harmonizing practices across CWC, and leveraging technology for real-time transparency, but also a normative shift from a custodial to a rehabilitative model of child care. The way forward lies in ensuring that regulatory rigor does not become a surrogate for inaction, and that the law, in its application, is an instrument of empowerment rather than inadvertent neglect.

## REFERENCES

1. Alston, P. (2019). *Children, rights and the law*. Oxford University Press.
2. Batra, S. (2021). Delays in adoption process in India: Legal and human rights implications. *Indian Bar Review*, 48(4), 421-439.
3. Bhattacharya, M. (2015). Abandonment of children and adoption laws in India: A socio-legal study. *Indian Journal of Gender Studies*, 22(1), 75-96.
4. Bunkers, K. M. (2011). Institutional care: The last resort. Better Care Network Working Paper, 1-30.
5. Cantwell, N., Davidson, J., Elsley, S., Milligan, I., & Quinn, N. (2012). Moving forward: Implementing the "Guidelines for the Alternative Care of Children". Centre for Excellence for Looked After Children in Scotland (CELCIS).
6. Central Adoption Resource Authority (CARA). (2021). Annual Report 2020-2021. Ministry of Women and Child Development.
7. Datar, A. (2020). The right to family in international law: Implications for India's adoption regime. *International Journal of Child Law and Policy*, 8(1), 25-40.
8. Department of Women and Child Development. (2022). Model Guidelines for Foster Care and Pre-Adoption Foster Placement.
9. Gupta, S. (2022). Reimagining adoption laws in India: A human rights perspective. *National Law School Journal*, 14(1), 92-109.
10. Hague Conference on Private International Law. (2011). The implementation and operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice No. 1.
11. Kaushik, A. (2016). Inter-country adoption and the role of the Hague Convention in India. *International Journal of Law and Policy Review*, 5(2), 88-102.
12. Kumar, R. (2019). Child welfare and the Constitution: An analysis of State Responsibility. *Constitutional and Human Rights Law Quarterly*, 10(3), 234-252.

11. Mehta, B. (2015). Adoption in India: Analysis under Juvenile Justice Act. *Indian Journal of Social Work*, 76(2), 201 – 220.
12. NCPCR. (2018). Assessment of Child Care Institutions under the JJ Act, 2015. Government of India.
13. Rotabi, K. S., & Gibbons, J. L. (2012). *Intercountry adoption: Policies, practices, and outcomes*. Ashgate Publishing.
14. Saha, R. (2017). Legal and procedural challenges in the adoption of abandoned children in India. *Journal of the Indian Law Institute*, 59(3), 312–330.
15. Saxena, R., & Narain, D. (2020). Adoption law in India: Need for a unified approach. *NUJS Law Review*, 13(1), 45 – 67.
16. Singh, T. (2018). Procedural delays in legal adoption: Comparative insights from South Asia. *Asian Journal of Legal Studies*, 11(2), 147–163.
17. UNICEF. (2020). *The state of the world's children 2020: Children, food and nutrition*. <https://www.unicef.org>.
18. United Nations. (1989). *Convention on the Rights of the Child*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.