

The Baby Bureaucracy: Child Trafficking And Adoption Laws In India

Abstract: "*Children are the world's most valuable resource and its best hope for the future.*"

- John F. Kennedy.

Children are the tomorrow of the world, and it is our collective responsibility to provide them with a safe haven where they get the opportunity to nurture and flourish and be the best version of themselves. This contrasts starkly with the rampant baby trafficking racket in Telangana and other states of India as well. Babies are 'bought' and 'sold' like commodities, and the price depends on how 'desperate' the couple is for a child. Such practices are growing in numbers, and they undoubtedly infringe on the fundamental rights of innocent children, who are smuggled and sometimes taken away from their families by force at a very young age. The tardiness of adoption laws in India plays a major role in this. The couples who are unable to conceive and find themselves waiting for years to adopt a baby, get sucked into these rackets in the hope of rearing a child as their own. The adoption procedure in India is hindered by bureaucratic delays, intricate processes, and a sheer lack of accountability. This research paper delves into the current adoption laws in India and its framework, talks about the loopholes involved, and attempts to give suggestions as to how the current situation can be improved.

Keywords- Baby trafficking, adoption laws, bureaucratic challenges, adoption process.

Introduction

The world, it is often said, does not exempt anyone from its cruel grasp. It is the destiny of man to undergo suffering as well as joy. While a person struggles to find their way in this changing labyrinth of complexities, the one thing that one expects to remain constant is family. Family is an extremely important facet of human life, and every relation has a different, but equally important part to play.

Though the concept of family must be routine for a lot of people, the same is not true for Rishika, who was not even a year old when she was sold to a couple residing in Hyderabad for

₹ 6 lakhs. ¹ Rishika was taken away by the Telangana police afterward. This is one of the few instances where distressed couples have fallen victim to the extensive interstate baby trafficking racket that is functioning in the state. The police are working at a rapid pace to peel the layers of this despicable practice, though it is evident that much is to uncover.

Such baby trafficking rackets are not just limited to Telangana. Similar instances have been found in Delhi, Maharashtra, Andhra Pradesh among many more states. Arrests have been made for smuggling of 50 babies in the past year in Hyderabad and 13 babies were rescued, including four baby boys and nine baby girls, the youngest just about two months old. These numbers seem to be increasing day by day, even after the many ardent efforts of the police.

Adoption in India is a tiresome and long procedure that could sometimes take up to three to five years. Couples who are unable to conceive despite fertility treatments are subsequently let down by the extremely long delays and hopelessness of the Indian adoption process, which at times leads them to take desperate measures and resort to the deplorable path of “buying” babies.” The parents are then drawn into a soul-sucking cycle of despair, deception, and loss.

Research Methodology

A mixed-method approach where combined qualitative and quantitative data is analyzed is used in this paper. Secondary data is gathered from government reports, legal documents, and previous studies on adoption laws. Data analysis is used to identify issues and suggestions have been given.

Review of Literature

Adoption is a legal process that permits an individual or a couple to become the legal parents of a child who is not their biological offspring. India has various laws in place governing the adoption process. Despite these laws, there is a serious backlog in the adoption process. Couples wait from two to four years for a child. This gives impetus to baby trafficking practices where babies are bought and sold like commodities in several parts of India.

- The Hindu editorial “Nipped in the bud²” published on June 3 2024 emphasizes the rampant baby trafficking network in Telangana, Delhi, and Pune and lays stress on how the availability of babies in the trafficking system is giving impetus to the practice of baby trafficking in India. The process of adoption in India is unnecessarily lengthy and bureaucratic and the cure of the same is simplifying the adoption process and removing unnecessary bureaucracy.

² Editorial *Nipped in the bud*, THE HINDU (June 3, 2024), <https://www.thehindu.com/opinion/editorial/nipped-in-the-bud-the-hindu-editorial-on-baby-trafficking/article68242796.ece>

- Vidyadhar Prabhudesai ³ in the article published on 7 November 2022 in “The Print”, talks about the abysmal scenario of the adoption process in India and highlights the contrast between the number of children that are orphaned in India against the number of children adopted to paint an accurate picture of the adoption statistics in the country.
- The UNICEF's State of the World's Children Report in 2014 revealed that approximately 29.6 million children in India were orphaned. However, according to CARA, less than 500,000 children enter institutional care each year, while only 3,000 to 4,000 of these children are adopted annually. Insamer,⁴ an Istanbul-based humanitarian organization reported that despite India having an estimated 31 million orphans, only around 50,000 are considered eligible for adoption.
- The 118th Parliamentary Standing Committee on the Review of Guardianship and Adoption laws published on 8th August 2022 deeply analyzed the existing framework of Adoption laws in the country and gave their recommendations regarding the same. The committee concluded that while both the laws, i.e The Hindu Adoption and Maintenance Act and the Juvenile Justice Act, have their distinct strengths and weaknesses, there is an urgent need to harmonize the laws. A uniform and codified law on adoption that is comprehensive as well as transparent is the need of the hour. The process needs to be streamlined and laced with less bureaucratic delays. Additionally, it also pointed out the poor conditions of current childcare institutions and specialized adoption agencies and offered several suggestions to simplify the adoption process.

Adoption Laws In India: An Overview

Adoption is defined under section 2(aa) of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. In India, there is not one single adoption legislation that covers all religions. The law which governs adoption for Hindus is the **Hindu Adoption and Maintenance Act, of 1956**. Christians, Parsis, and Muslims must recourse to the **Guardians and Wards Act, of 1890**. This process makes a child, a ward and not an adopted child, who gains individual identity after 21.

³ Vidyadhar Prabhudesai, *Why India struggles with low adoption rates- caste, class to genetics*, THE PRINT (Nov. 22, 2022), <https://theprint.in/india/why-india-struggles-with-low-adoption-rates-caste-class-to-genetics/1238004/> ⁴
 INSAMER, https://en.insamer.com/uploads/pdf/dosya_2928-1.pdf (last visited June 16, 2024)

Nevertheless, these aforementioned enactments say nothing about orphaned, abandoned, or turned-in children. A commendable endeavour was made to take into account each of these categories by the **Juvenile Justice (Care and Protection of Children) Act, 2000**, which grants the right to adopt for all citizens and adoptees. **The Central Adoption Resource Authority (CARA)** under the Ministry of Women and Child Development (MoWCD), is the apex body for adopting orphans and surrendered children. The authority has framed a set of guidelines based on the judgment *Lakshmi Kant Pandey v. Union of India* ⁵ under Section 41(3) of the JJ Act 2000.

The Hindu Adoption And Maintenance Act, 1956.

HAMA (Hindu Adoption and Maintenance Act) adoption is a process that allows Hindus, Buddhists, Jains, and Sikhs in India to legally adopt children. The act requires specific legal steps to be followed, like creating an adoption deed. Once the adoption is completed, the child has the same rights as a biological child, and the adoption cannot be undone. A child who is orphaned, surrendered, or abandoned cannot be adopted under the Act. Inter-country adoptions are also not covered by this Act..

The Juvenile Justice (Care And Protection of Children) Act 2000

This act handles adoption for all Indian citizens, no matter their religion. It's there to help kids who need it, like orphans or abandoned children, find safe and loving homes. The process is overseen by the Central Adoption Resource Authority (CARA) and involves steps like registration, home studies, and matching kids with adoptive parents. The JJ Act aims to make adoptions clear and fair, focusing on the best interests of the child. includes "abandoned" and "surrendered children," as well as working children. It supports both local and international adoptions, ensuring that every child can have a stable and caring family.

CARA (Central Adoption Resource Authority)

The Central Adoption Resource Authority (CARA) of India is vested with supervising all adoptions within the nation and making regulations to standardize the adoption process nationwide and spare Prospective Adoptive Parents (PAPs) from the tiring steps at various adoptive agencies. It supervises all adoptions in India and provides guidelines to ensure a consistent adoption process across the country. In the case of *Lakshmi Kant Pandey v. Union*

⁵ *Laxmi Kant Pandey vs Union Of India*, AIR 1987 SC 232.

of India ⁶ (before the enactment of the JJ Act 2000), the intricate adoption system within India was examined by the court and it was recommended that a new agency should be created to oversee the same. This suggestion, clubbed with the guidelines of the Hague Convention, led to the formation of CARA. A centralized database is maintained by CARA and guidelines are issued U/s 41(3) of the JJ Act which are applied to all matters relating to adoption.

The Constitution Of India

The Government of India strives to give rights to children and India and safeguard their safety. In Fundamental Rights under Chapter III, Article 21 states: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Thus, it gives every child the right to live with dignity.

Article 24- “Fundamental Rights of the Citizens” talks about the right against exploitation of children below 14 years. Article 44 of the Constitution declares that: “The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.” Article 39 requires that the State direct its policy: To provide a healthy environment to the children and to make sure that the facilities are provided.

In a recent decision of the Delhi High Court in Debarati Nandee V. Ms. Tripti Gurha & Anr⁷ right to adopt was not considered a fundamental right under Article 21 of the Indian Constitution.. It was emphasized that the adoption process fundamentally focuses on the welfare of the children, meaning the rights within the adoption framework prioritize the children's well-being over the rights of the prospective adoptive parents

Lost in the System: Adoption Laws and Family Less Children

“There are no unwanted children, only unfound families.”

Procreation and rearing a child as your own is one of the most fundamental biological human needs of mankind. Adoption presents itself as a rather beautiful solution for homeless children as well as childless couples and single individuals. Adoption provides hope of experiencing parenthood to couples who are not able to conceive.

The primary goal of adoption is to provide a loving and caring home for children in need. This objective though is often derailed due to the rampant problems and delays in the adoption

⁶ *supra* note 5.

⁷ Debarati Nandee V. Ms. Tripti Gurha & An, Cont. Cas(C) 563/2023.

process in India. The process is extremely complicated and parents have to usually wait for three to four years to get a “healthy and young child”. This often leads to hopelessness, frustration, mental agony, and resorting to unethical practices such as baby trafficking.

The yearly adoption numbers (according to CARA statistics) in India between 2013 and 2023, of in-country and inter-country, ranged from a low of 3,158 (2022-2023) to a high of 4,362 (2014-2015). According to a 2020 report by the Istanbul-based humanitarian organization. Insamer, India had 31 million (3.1 crore) orphans but just 50,000 were eligible for adoption.⁸

A total of 33,967 Prospective Adoptive Parents (PAP) were registered as of 1st August 2023 with CARA. To draw a contrast, only 7,107 children out of 2,118 were “legally free for adoption”

As of April 1, 2024, there were 33,809 prospective adoptive parents ready to adopt children. However, only 2,141 children were legally available for adoption, with 731 in the 'normal category' and 1,410 classified as having 'special needs.

Recent data suggests that the number of adoptions in India has crossed the 4,000 mark. The last time Adoptions exceeded 4,000 was in 2018–19, when the number was 4,027. But adoption still remains a difficult procedure, with just roughly 10% of orphaned children (estimated at 30,000 to 30 million) finding loving homes each year. On the other hand, there are approximately 30,000 potential parents in India who wait for an average of three years to adopt a kid. While 2131 children, or less than 7% of the total, are available for adoption legally.

CARA Adoption Statistics [2014 to 2024]⁹

YEAR	In Country Adoption	Inter-Country Adoption	TOTAL
2014-15	3988	374	4362
2015-16	3011	666	3677
2016-17	3210	578	3788
2017-18	3276	651	3927
2018-19	3374	653	4027
2019-20	3351	394	3745
2020-21	3142	417	3559
2021-22	2991	414	3405
2022-23	3010	431	3441
2023-24	3580	449	4029

⁸ *Supra* note 4.

⁹ THE CENTRAL ADOPTION RESOURCE AUTHORITY,
https://cara.wcd.gov.in/resource/adoption_Statistics.html (last visited June 17, 2024).

UNICEF's State of the World's Children Report found that 29.6 million (2.96 crore) children were orphaned in India in 2014. According to CARA, less than 500,000 children are placed in institutional care annually, and only about 3,000 to 4,000 are adopted each year.¹⁰

There is a clear preference for adopting young children up to two years old. According to CARA statistics, 69.4% of registered prospective adoptive parents (PAPs) choose children in the 0 to 2-year age group, 10.3% prefer children aged 2 to 4 years, and 14.8% opt for those aged 4 to 6 years. Consequently, PAPs often have to wait many years to adopt a 'young and healthy' child

The case of *The Temple of Healing v. Union of India*¹¹ the court said that child adoption process is "very tedious" and that "there is an urgent need for the process to be streamlined". In the PIL, Justice DY Chandrachud stated "*.....The process of adoption has virtually come to a standstill. No adoptions are being allowed. Couples are being made to wait three years, four years. What happens with the delay of the government, CARA particularly— suppose a couple decides to adopt at 26, by the time they get the adoption through, they are 30, 31. People's core position in life changes.*"

In response to the PIL, efforts were made by the Supreme Court where directions were given to the Secretary in charge of the nodal departments to conduct bi-monthly identification drives for children who were orphaned, abandoned, or surrendered to be able to enter the adoption process. Additionally, it mandated that Specialized Adoption Agencies (SAAs) be established in all States and Union Territories (UTs). To increase efficiency, the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 enables the District Magistrates to give adoption orders instead of courts.

Breaking the Cycle: Understanding India's Adoption Process

The question that arises is "If we know the issues, why is India still stuck in this never-ending loop of flawed process?". First, let's understand the adoption process in India in brief. The Prospective Adoptive Parent (PAP) registers on the online portal of CARA and uploads all relevant documents. After a registration number is granted, a Home Study Report (HSR) is conducted and uploads on CARINGS. Then a waiting number is allotted to get a match as per

¹⁰ *Supra* note 3.

¹¹ *The Temple of Healing v. Union of India*, WP(C) 1003/2021.

the parent's preference. After a prospective parent chooses a child from the profiles of children shared by adoption agencies, the matter is then considered by a district magistrate (DM). Prospective adoptive parents (PAPs) visit the adoption agency within 15 days of making a reservation to finalize the process. Once the PAPs accept the child, the referral and adoption process is done through CARINGS and finally adoption order by the court is issued¹²

While the process has been to keep the welfare of children as paramount, the same is riddled with bureaucratic delays, complex legal requirements, and limited support infrastructure. If we take a look at the adoption laws in the US, we can see that the wait time is marginally reduced (an average of 12 months) while in India it may take usually up to 2 years which more often than not extends to 3-4 years. While the US does not have a unified federal law on adoption, instead, each state has its own adoption laws which are by and large modeled on the Uniform Adoption Act. India, on the other hand, has various laws in place and not one uniform law. CARA oversees the adoption process, adding another layer of regulatory oversight. The need for the hour is a unified legal framework for adoption laws in India which is comprehensive and has standardised procedures across different states and regulatory bodies. Also, while the US allows direct adoption from biological parents, in India, the same is an exception and not the norm. The rule to necessarily resort to laid down regulations increases the time.

Another aspect that can be introduced to improve the efficiency of the adoption process is a decentralized matching process. Currently, CARA oversees the matching of children with PAPs through a centralized database. This leads to bottlenecks and delays due to the sheer volume of applications and the capacity regulations of the apex body. This process can be simplified by introducing Regional Adoption Centres that handle region-wise adoption processes through a shared database to decrease the load on the apex body. Further actions should be taken to expedite court processes, improving transparency and accountability of the officials and social workers involved, reducing paperwork as much as possible, and streamlining processes.

Conclusion

It is said that in the grip of desperation, the unthinkable becomes the doable. Most of the people that have been sucked into the racket of baby trafficking have no criminal records in the past whatsoever and are well-to-do law-abiding citizens. Couples, who are unable to conceive and then find themselves at a dead end during the adoption process, may turn towards these baby

¹²THE CENTRAL ADOPTION RESOURCE AUTHORITY, https://cara.wcd.gov.in/parents/Guideline_RI.html
(last visited June 16, 2024)

smuggling rackets. There is an urgent need to revamp the system to make it smoother and shorten the waiting time for prospective parents.

The recommendations of the 118th Parliamentary Standing Committee on the review of Guardianship and Adoption laws should be implemented. The committee recommended various measures such as single laws on adoption and guardianship, adequate training to DM and other dignitaries involved in the adoption process, to bring adoption matters under a single ministry for monitoring and implementation (currently it falls under two ministries i.e. Law and Justice and Women and Child Development) among other measures.

Further, Foster Care is non-existent in India. Section 44 of the JJ Act provides for foster care, but the scheme is not implemented fully. Further, there is a lack of a single authority for monitoring foster care. This matter needs to be addressed as soon as possible. The sponsorship scheme in Section 45 of the JJ Act is also not implemented effectively. If the same is done so, it will go a long way in improving the quality of life of orphaned children.

In the case of *The Temple of Healing v. Union of India*¹³, certain suggestions were given for increasing the efficiency of the adoption. These suggestions were (i) Quickly identify children in the OAS category (ii) Upgrade administrative infrastructure in States, especially SAAs and DCPUs. (iii) Ensure accountability for maintaining process timelines. (iv) Compile data to channel foster care children into adoption. (v) Clarify that HAMA adoptions are separate from those under the Juvenile Justice Act, 2015. These suggestions should also be kept in mind and steps should be taken accordingly.

Adoption is, a powerful weapon of society. It wields the power to transform the lives of many. Ensuring a transparent and efficient adoption process is crucial for protecting vulnerable children and securing their futures in loving homes. Every child deserves a home, and every home deserves a child, and simplifying the journey from one to the other is our collective responsibility.

Submitted by-

Anusha Singh.

Dr. Ram Manohar Lohiya National Law university.

¹³ *supra* note 11.