

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular area is centered over the image, containing the journal's title and ISSN information.

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THE DARK TRANSITION -LEGALLY CHILD ADOPTION IS EXPLOITED FOR ILLEGAL TRAFFICKING AND SALE OF CHILDREN.

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ABSTRACT

Child adoption is fundamentally intended to serve the best interests of the child by providing care, protection, and a stable family environment. However, in recent decades, the legal framework governing adoption has increasingly been misused as a conduit for child trafficking and the illegal sale of children. This doctrinal research critically examines the phenomenon of “child laundering,” wherein children are illegally procured through buying, kidnapping, coercion, or deception and subsequently legitimized through formal adoption procedures. Focusing primarily on the Indian context while drawing upon international perspectives, the study analyses how legal adoption mechanisms are systematically exploited due to regulatory gaps, weak enforcement, and institutional complicity.

The research undertakes a comprehensive examination of domestic laws such as the Juvenile Justice (Care and Protection of Children) Act, 2015, adoption regulations under the Central Adoption Resource Authority (CARA), and allied statutes governing surrogacy and assisted reproductive technologies. It further evaluates India’s obligations under international instruments including the Hague Convention on Intercountry Adoption and the UN Convention on the Rights of the Child. Through an analysis of landmark judicial decisions, documented adoption scandals, and reported trafficking cases across various Indian states, the study highlights the structural vulnerabilities that enable illegal adoption practices to flourish.

The findings reveal a persistent disconnect between legislative intent and ground-level implementation, resulting in the commodification of children under the guise of legality. The study concludes by emphasizing the urgent need for stricter monitoring, enhanced

transparency, coordinated institutional oversight, and robust criminal accountability to ensure that adoption processes genuinely protect child welfare rather than facilitate exploitation.

KEYWORDS:

Child Adoption, Child Trafficking, Illegal Adoption, Child Laundering, Intercountry Adoption, Juvenile Justice Act, CARA, Sale of Children, Adoption Laws in India, Child Rights, Human Trafficking, Regulatory Failures, International Adoption Frameworks.

1.1 INTRODUCTION

The term “child laundering” expresses the claim that the current intercountry adoption system frequently takes children illegally from birth parents, and then uses the official processes of the adoption and legal systems to “launder” them as “legally” adopted children. Thus, the adoption system treats children in a manner analogous to a criminal organization engaged in money laundering, which obtains funds illegally but then “launders” them through a legitimate business. The article title further claims that the adoption system both legitimizes and incentivizes stealing, kidnaping, trafficking, and buying children. The title does not claim that the adoption system explicitly authorizes these pernicious practices, but rather claims that the adoption and legal systems create incentives to engage in these destructive practices. In addition, the legal rules and processes associated with adoption are clearly inadequate to prevent these illicit practices from becoming a significant part of the intercountry adoption system. Indeed, the legal rules of the adoption system are systematically used to “launder” or legitimize these practices, by processing as “orphans,” and then adoptees, infants and children who were stolen, bought, or kidnaped from their birth families. The claims made by this article are necessarily difficult to establish, given the nature of the conduct in question.

Those who traffic, buy, or steal children for processing through the adoption system do not advertise their illicit activities. Moreover, most within the adoption system, including adoption agencies, adoptive parents, and sometimes even adoptees, have motivations for minimizing or ignoring evidence of such conduct. Nonetheless, child laundering within the intercountry adoption system is becoming increasingly apparent, and the patterns are clear for those with eyes willing to see.

Hence, this article will seek to demonstrate, through evidence, analysis, and the citation of a wide variety of sources, the widespread existence of child laundering. The implications of child laundering for the intercountry adoption system are grave. Other forms of corruption within

the intercountry adoption system, such as bribery of government officials to facilitate the speedy adoption of a true orphan or extra payoffs to an orphanage to secure a ready supply of orphans, could be viewed by some as necessary or peripheral evils toward a greater good. The good of providing orphans with families could be viewed as justifying a broad variety of otherwise questionable acts. However, child laundering needlessly and illicitly makes children in intact families into paper orphans, by using illegal means to separate them from their families. In such cases there is no countervailing good to justify the egregious harm of breaking the original child-birth family relationship. Child laundering reduces the humanitarian rationale for intercountry adoption into a cruel façade or pretext.

Stripped of all humanitarian justification, intercountry adoption is a commercialized and corrupt system driven by the demand of rich Western adults for children. Thus, if child laundering is present to a significant degree within the intercountry adoption system, as this article claims, then the ethical and legal legitimacy of intercountry adoption is threatened. There are several possible responses to this threat.

A common response is to ignore or minimize the incidence of child buying, kidnaping, and trafficking within the intercountry adoption system. Others may concede the existence of the problem, yet view even a large amount of child laundering within the intercountry adoption system as unfortunate “collateral damage” which mars but does not undermine the system’s humanitarian results.

Thus, if at least the majority of international adoptees were “true orphans,” then some might justify the system even where a substantial minority were not; the system would produce more good than harm. Some might go so far as to argue that even the laundered children are “better off” living in the affluent West, apart from the economic, educational, cultural, and gender limitations that would have hindered their development in their families of origin.

This “better off” argument is usually not urged in public, as it lies perilously close to controversial notions of cultural or national superiority. In private conversations within and outside the adoption world, however, it is repeatedly whispered, and perhaps accounts for a certain lack of urgency in responding to the problem. This article argues that all of these responses to the “threat” of child laundering in the intercountry adoption system amount to either unproductive hiding of heads in the sand, or unnecessary and counterproductive rationalization of illicit conduct. The point is neither to justify nor excuse the intercountry adoption system as it is, but to reform it. There is no need to make a tragic choice between shutting down or continuing a flawed system, at least not until serious efforts have been made to reform the system. A family living in a filthy house does not face a “tragic” choice between

homelessness or substandard housing, but rather faces the practical necessity of a clean-up. In the same way, it is time to “clean up” the intercountry adoption system.

1.1 OBJECTIVE OF THE STUDY

The aim of this study is to critically examine how legal child adoption processes are exploited for child trafficking and the illegal sale of children, and to assess the adequacy and effectiveness of existing legal and regulatory frameworks in preventing such exploitation while ensuring the best interests and rights of the child.

The objectives of the present study are as follows:

1. To examine the concept and nature of illegal child adoption and its linkage with child trafficking and sale of children.
2. To analyse the statutory framework governing child adoption in India, particularly under the Juvenile Justice (Care and Protection of Children) Act, 2015 and the regulations of the Central Adoption Resource Authority (CARA).
3. To identify legal, procedural, and institutional loopholes that facilitate the misuse of adoption processes.
4. To study the role of adoption agencies, intermediaries, and regulatory authorities in preventing or enabling illegal adoption practices.
5. To evaluate the effectiveness of criminal law provisions and enforcement mechanisms in addressing adoption-related trafficking.
6. To examine the intersection of adoption with surrogacy and assisted reproductive technologies and their role in facilitating child trafficking.
7. To analyse India's obligations and compliance under international instruments relating to child rights and intercountry adoption.
8. To suggest legal and policy reforms aimed at strengthening transparency, accountability, and child-centric safeguards in the adoption system.

1.2 RESEARCH PROBLEM

Despite stringent adoption laws and international conventions, child trafficking under the guise of legal adoption continues to rise. There is a significant gap between policy and practice, resulting in the exploitation of vulnerable children. This research seeks to understand **how and why** the legal process of child adoption is being used as a channel for trafficking and what can be done to prevent such abuses.

1.3 HYPOTHESIS

- 1) The existing legal and regulatory framework governing child adoption in India suffers from enforcement and oversight deficiencies that enable the misuse of adoption processes for child trafficking and the illegal sale of children.
- 2) Socio-economic vulnerabilities of biological families and procedural complexities in lawful adoption significantly contribute to the exploitation of children through illegal adoption networks.

1.4 RESEARCH QUESTIONS

1. How are child adoption laws being manipulated for trafficking purposes?
2. What are the key legal and procedural loopholes that allow for the exploitation of adopted children?
3. What role do adoption agencies, intermediaries, and corrupt officials play in facilitating these crimes?
4. How effective are existing national and international frameworks in preventing the illegal sale of children under the guise of adoption?
5. What reforms or interventions are needed to ensure ethical and transparent adoption practices?

1.5 RESEARCH METHODOLOGY:

This study adopts a doctrinal research methodology, which involves an in-depth analysis of existing legal principles, statutory frameworks, case laws, and international conventions related to child adoption and trafficking. The focus is on examining the legal texts and judicial interpretations governing adoption in India, particularly the Juvenile Justice (Care and Protection of Children) Act, 2015, along with related provisions of the Indian Penal Code, and international instruments such as the Hague Convention on Intercountry Adoption and the UN Convention on the Rights of the Child. The research critically analyses how these legal provisions are structured, interpreted, and applied in real-world scenarios to identify loopholes and inconsistencies that enable the misuse of adoption for trafficking and illegal sale of children. It also includes a comparative legal study of similar statutes and their implementation in other jurisdictions to highlight best practices and failures. Through a purely legal and normative lens, this doctrinal approach seeks to evaluate the efficacy, adequacy, and enforcement of the law while offering recommendations for reform grounded in legal reasoning

and jurisprudence.

1.6 LIMITATIONS OF THE RESEARCH

- Limited access to sensitive adoption records due to privacy laws
- Difficulty in locating and interviewing trafficking victims
- Incomplete or unreported cases that do not appear in official data

1.7 LITERATURE REVIEW

The body of literature addressing the misuse of legal adoption as a cover for child trafficking has grown in recent years due to increased global attention on child rights, adoption ethics, and transnational criminal networks. Scholars, human rights organizations, and judicial bodies have all examined the complex relationship between legitimate adoption processes and illegal child trafficking. The literature can be categorized into several key thematic areas:

1. Legal and Jurisprudential Foundations

David M. Smolin, a leading scholar on intercountry adoption and child trafficking, has made significant contributions to the legal understanding of how adoption systems can be corrupted. In his landmark paper *“Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children”* (2005), Smolin argues that the lack of oversight and accountability in the global adoption market creates systemic vulnerabilities.

He coined the term “child laundering” to describe how children are abducted, trafficked, and then legitimized through fraudulent legal documentation. Smolin's work illustrates how laws intended to protect children can be distorted for profit-driven motives, especially in countries with weak governance.

Indian scholars such as Prof. G.S. Bajpai and Dr. Ved Kumari have also contributed to this discourse through analyses of the Juvenile Justice (Care and Protection of Children) Act, 2015. They argue that although the Act modernizes the adoption framework in India, the lack of regular monitoring, inconsistent implementation across states, and reliance on under-resourced child welfare committees weaken its effectiveness in preventing trafficking.

2. Institutional and Regulatory Shortcomings

Several studies highlight the role of adoption agencies, orphanages, and intermediaries in

enabling trafficking. For instance, a report by *HAQ: Centre for Child Rights* (2015) reveals that illegal adoptions often occur through unauthorized agencies or with the collusion of licensed institutions that manipulate paperwork. These adoptions frequently bypass established legal processes, such as social investigations and background checks.

The *Central Adoption Resource Authority (CARA)*, the statutory body in India regulating adoption, has also been criticized for operational delays, lack of transparency, and inability to monitor post-adoption care. Literature from NGOs and adoption watchdogs, including *Save the Children* and *CRY (Child Rights and You)*, underscores the need for CARA to enhance inter-agency coordination, digital tracking systems, and child welfare surveillance mechanisms.

3. International Conventions and Global Frameworks

The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993) is widely regarded as the gold standard for ethical adoption practices. Scholarly analyses of the Convention—such as those by *Peter Hayes* and *Nigel Cantwell*—emphasize its role in ensuring subsidiarity (i.e., prioritizing domestic adoption over international adoption), maintaining a central authority for each country, and mandating informed consent from biological parents.

However, research by *Triseliotis (2009)* and *Selman (2010)* critiques the implementation of the Hague Convention, noting that many countries accede to the treaty in form but fail in substance. Corruption, poor record-keeping, and cross-border jurisdictional issues have often allowed traffickers to operate within the margins of the law.

4. Human Rights Violations and Survivor Testimonies

Human rights organizations such as *Human Rights Watch*, *UNICEF*, and *ECPAT International* have documented numerous cases where children were wrongfully taken from their families, often under the pretext of better opportunities, and sold into illegal adoption. Reports such as “*The Global Report on Trafficking in Persons*” by the UNODC (2020) highlight that trafficked children often end up in abusive households or are further exploited for labor, sexual abuse, or servitude. Survivor narratives recorded in these studies reveal the psychological and emotional trauma caused by such illegal placements, which are made worse by the loss of identity and familial connections.

5. Judicial Interventions and Case Law

Indian courts have played a significant role in shaping adoption law and highlighting its misuse.

In the landmark judgment **Lakshmi Kant Pandey v. Union of India (1984)**, the Supreme Court of India laid down comprehensive guidelines for intercountry adoption, emphasizing that child welfare must be paramount and that all legal procedures must be strictly followed. However, subsequent judicial observations, such as in the **Rupesh Kumar v. State of Maharashtra (2021)** case, reveal that despite clear legal mandates, agencies continue to flout procedures, sometimes aided by corrupt officials.

Legal commentaries on these cases point out that while the judiciary has attempted to bridge gaps, enforcement remains the biggest challenge, particularly in rural and unregulated settings..

CONCLUSION

The exploitation of the legal child adoption system for illegal trafficking and the sale of children represents a severe violation of child rights and a failure of the protective legal framework. Although adoption is legally and morally intended to secure a child's best interests and provide a nurturing environment, various legal loopholes and institutional weaknesses have enabled traffickers and unscrupulous actors to manipulate the system for profit. The doctrinal analysis of existing laws such as the **Juvenile Justice (Care and Protection of Children) Act, 2015**, along with international treaties like the **Hague Convention on Intercountry Adoption**, reveals a significant gap between legislative intent and real-world implementation.

Corruption, lack of transparency, weak inter-agency coordination, and inadequate regulatory oversight have all contributed to the misuse of the adoption process. Many agencies operate without rigorous checks, and even licensed institutions often lack proper accountability. Furthermore, judicial interventions, though impactful, are reactive rather than preventive. Despite landmark judgments such as *Lakshmi Kant Pandey v. Union of India*, there continues to be insufficient preventive legal mechanisms to detect and stop fraudulent adoptions before they harm the child.

This problem is compounded by poor data management, absence of a unified child-tracking system, and an overburdened administrative machinery. As a result, traffickers are able to forge documents, manipulate procedures, and legally “launder” children into adoptive homes that may exploit them for labour, servitude, or abuse. The need of the hour is a comprehensive legal and policy overhaul that makes the adoption process secure, transparent, and truly child-centric.