



THE PARADOX OF PROTECTION: HOW LEGAL SAFEGUARDS IN INDIAN ADOPTION LAW OBSTRUCT TIMELY CARE FOR ABANDONED CHILDREN

U. Saranya, Research Scholar, NIMS School of Law, NIMS University, Rajasthan, Jaipur

Dr. Ramakant Agarwal, Assistant Professor, Department of Law, NIMS University, Rajasthan, Jaipur

ABSTRACT

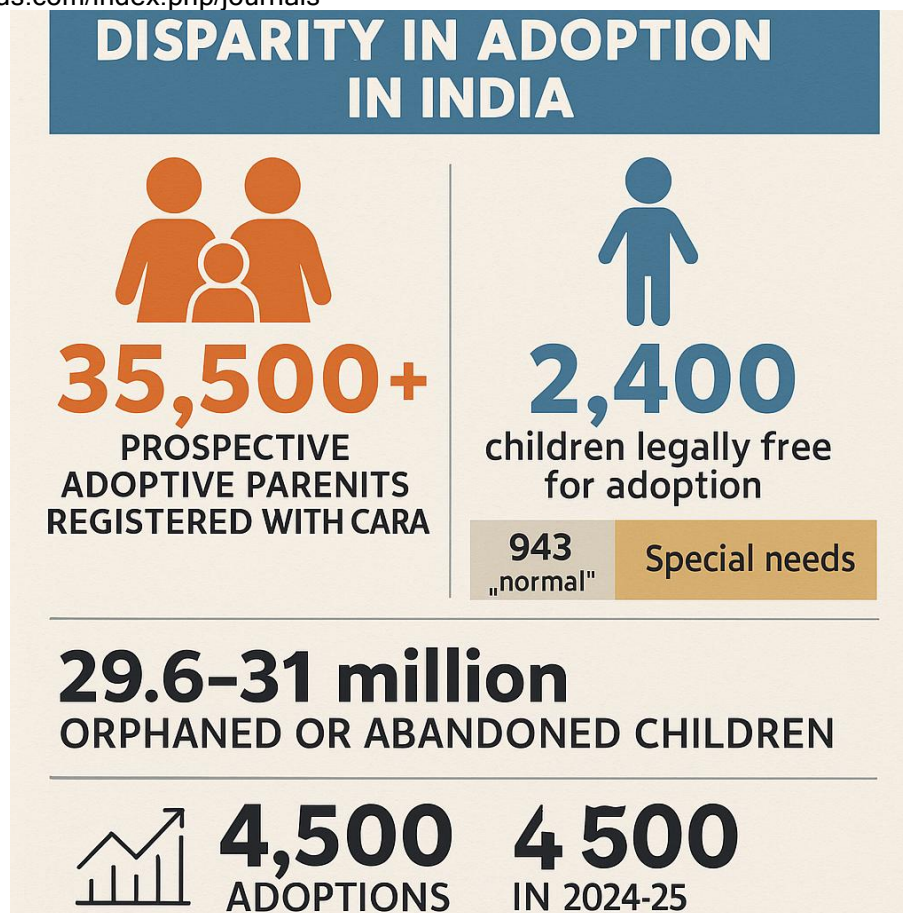
This research examines the unintended consequences of India's legal safeguards governing adoption, particularly under the Juvenile Justice (Care and Protection of Children) (JJ) Act, 2015, Hindu Adoption and Maintenance (HMA) Act, 1956, & associated regulatory frameworks enforced by the Central Adoption Resource Authority (CARA). While these legal mechanisms are designed to ensure the safety, rights, and long-term welfare of orphaned and abandoned children, they paradoxically create procedural bottlenecks that delay, and in many cases, obstruct, timely adoption and family reintegration. The rigid and time-consuming statutory requirements for declaring a child legally free for adoption, the inconsistent functioning of Child Welfare Committees (CWCs), judicial inefficiencies, and bureaucratic opacity result in children languishing in institutional care far beyond necessary timelines. This research interrogates the underlying legal philosophy that privileges procedural sanctity over a pragmatic, child-centric approach to care and protection. Drawing on policy analysis and comparative international frameworks, the study underscores how an overregulation paradigm undermines the very objective of child welfare. It argues for a recalibration of the legal framework to harmonize protective intent with functional efficiency. Legal safeguards must evolve from merely preventing harm to actively facilitating well-being. The research proposes reforms aimed at ensuring that legal protection does not morph into systemic neglect, thereby aligning the Indian adoption regime more closely with the best interests of the child, as mandated under both domestic law and international obligations.

Keywords: Indian Adoption Law, Juvenile Justice Act, Child Welfare Committee, Abandoned Children, Child-Centric Jurisprudence, Bureaucratic Inefficiency, Parens Patriae



In the labyrinth of Indian child welfare law, a troubling contradiction persists: thousands of children, legally classified as abandoned or orphaned, remain in institutional care long after they could have been placed in nurturing families. Behind this stagnation lies a system weighed down by its own design, one that prioritizes legal sanctity over the urgent, lived needs of vulnerable children. The architecture of adoption in India is heavily constructed around the principle of protection, yet in seeking to insulate children from potential harm, the legal framework often traps them in prolonged statelessness. While prospective adoptive parents queue in anticipation, children languish in shelters, caught between the intention of the law and its operational consequences (Hollinger, 1993).

India faces a stark disparity in its adoption system, with over 35,500 prospective adoptive parents (PAPs) registered with CARA, while only approximately 2,400 children are legally free for adoption, including 943 “normal” & rest classified as “special needs” children. Despite an estimated 29.6 to 31 million orphaned or abandoned children in India, only a fraction, around 370,000 to 500,000, reside in childcare institutions, and even fewer are deemed adoptable due to a rigorous legal process involving the Juvenile Justice Act, which requires children to be declared legally free after attempts to reunite them with families fail (Revised Adoption Guidelines, 2016). This bottleneck results in a significant number of children languishing in shelters, with adoptions reaching 4,500 in 2024-25, the highest in 11 years, yet still only addressing about 10% of the orphan population annually, as shown in Picture 1 hereinbelow. The lengthy adoption process, averaging three and a half years for infants, coupled with societal preferences for younger, healthy children and stigmas around caste, class, and genetics, exacerbates the gap, leaving many older children and those with special needs in institutions despite the high demand from PAPs.



Picture 1

The legislative scaffold, particularly the JJ Act, 2015, was enacted to serve as a bulwark against child trafficking and exploitation. It introduced mechanisms such as statutory declarations of abandonment, child welfare committee oversight, and judicial vetting of each adoption. These procedural steps are, in theory, aligned with international human rights norms & doctrine of the best interests of the child. However, the implementation of these safeguards often becomes an end in itself rather than a means to a prompt and rehabilitative outcome. The system, rather than facilitating the child's right to family life, becomes preoccupied with administrative formalities (Sudharshan, 2018).

The disconnect arises from the law's disproportionate emphasis on preventing wrongful adoptions at the expense of enabling timely, rightful ones. The procedural architecture tends to assume a defensive posture, deliberate, rigid, and risk-averse, often ignoring the psychological and developmental harm caused by institutional delay. Judicial scrutiny, though intended to be a guarantor of legality and child



welfare, frequently devolves into a mechanical exercise, delayed by docket congestion and a lack of specialized understanding of child rights jurisprudence. Meanwhile, child welfare committees, under-resourced and overburdened, operate within a fragmented ecosystem that struggles to respond to time-sensitive needs (Bagley, 1979).

This tension between legal protection and timely care exposes a critical fault line in Indian adoption law. The protective impulse of the state, though constitutionally and ethically grounded, requires recalibration when it begins to obstruct a child's right to grow within a family. The legal paradox here is not merely procedural, it is philosophical. It compels a re-examination of whether current legal mechanisms truly serve the child's welfare or merely insulate institutions from liability. The need, therefore, is to move beyond a protectionist lens toward a responsive, child-centric legal framework, one that understands that excessive delay, even when legally sanctioned, can constitute a form of harm.

THE LEGAL FRAMEWORK OF ADOPTION IN INDIA

The legal framework governing adoption in India is marked by a complex interplay between secular and religious personal laws, further mediated by state institutions. The JJ Act, 2015 is the only secular statute in India that provides for full adoption, cutting across religious boundaries. It allows any Indian citizen, regardless of religion, to adopt an orphaned, abandoned, or surrendered child, and confers upon the adoptive parents the same legal status as biological parents. In contrast, the HMA Act, 1956, applicable exclusively to Hindus, Buddhists, Jains, and Sikhs, enables adoption within the bounds of personal law but imposes limitations such as the requirement that only a male can adopt if his wife consents, & prohibition of adopting a child of the same gender if one already has a child of that gender. The Guardians and Wards Act, 1890 governs adoption-like guardianship for non-Hindus, but it does not equate guardianship with parenthood and does not terminate the rights of the biological parents, thus limiting legal certainty and permanency for the child (Rebati, 2024).

Central to the implementation of adoption laws under the JJ Act is the CARA, a statutory body established under the Ministry of Women and Child Development. CARA regulates and monitors in-country and inter-country adoptions and frames guidelines to ensure transparency and uniformity. However, CARA's regulatory role often translates into bureaucratic bottlenecks due to rigid compliance structures and under-resourced administrative apparatus. While it has facilitated the formalization and standardization of adoption, its performance has been hindered by opaque



functioning and technological inefficiencies in systems like the Child Adoption Resource Information and Guidance System (CARINGS). Moreover, the lack of capacity and training in State Adoption Resource Agencies (SARAs) and Authorised Adoption Agencies (AAAs) exacerbates the institutional sluggishness, undermining the core objective of swift and safe placements (Bhargava, 2025).

The rationale behind the statutory safeguards enshrined in these laws is fundamentally rooted in child protection jurisprudence. These measures aim to shield children from trafficking, abuse, and other forms of exploitation. For instance, the mandatory declaration of a child as legally free for adoption under the JJ Act requires a due diligence process involving police verification, CWC orders, and attempts at tracing biological parents, meant to preclude wrongful displacement. Simultaneously, stringent criteria for PAPs, including psychosocial assessments and age-income norms, are intended to ensure suitability and stability. Courts have largely upheld these protective standards. In *Shabnam Hashmi v. Union of India* [(2014) 4 SCC 1], the Supreme Court recognized the right of all citizens, irrespective of religion, to adopt under the JJ Act, reinforcing the statute's secular intent and child-centric focus. However, while affirming these safeguards, the judiciary has also occasionally warned against procedural rigidity that obstructs welfare objectives.

Critically, the legal safeguards also reflect the state's preference for a family-based rehabilitation model, where adoption is treated as last resort after exploring the child's reintegration into biological or extended families. While this aligns with the *UN Guidelines for the Alternative Care of Children* & *Hague Convention on Intercountry Adoption* (to which India is a signatory), it often delays the adoption process when familial rehabilitation is improbable. Indian courts have struggled to strike a balance between procedural propriety & best interests of the child. In *Laxmi Kant Pandey v. Union of India* [(1984) 2 SCC 244], the court laid down stringent guidelines for inter-country adoption, emphasizing child welfare, but also highlighted the need for timely action. However, despite judicial pronouncements underscoring expedition, implementation of these safeguards tends toward proceduralism rather than pragmatic welfare. Thus, the Indian adoption framework, while normatively robust, suffers from a systemic inertia that transforms safeguards into inadvertent obstructions.



THE SAFEGUARDS: NOBLE INTENTIONS, COMPLEX IMPLEMENTATION

The legal safeguards embedded in the Indian adoption framework, while anchored in laudable child protection principles, suffer from an implementation structure that often frustrates their intended purpose. A primary example is the rigid eligibility and matching framework applied to PAPs. CARA's guidelines, supplemented by the JJ Model Rules, 2016, stipulate stringent age, marital status, health, and income requirements. While designed to ensure the stability and suitability of adoptive homes, these stipulations often result in the arbitrary disqualification of competent caregivers due to technical non-compliance. The mandatory Home Study Report (HSR), a comprehensive psychosocial evaluation, though essential in theory, becomes a site of subjectivity and delay due to inconsistent implementation across agencies. Combined with lengthy waiting periods, especially for those seeking to adopt children below the age of two or without disabilities, the process creates a procedural bottleneck that disincentivizes adoption and contributes to prolonged institutionalization of children (Darshan, 2018).

The legal requirement that a child must be declared "legally free for adoption" under Section 38 of the JJ Act is another safeguard whose procedural rigor often becomes counterproductive. This provision mandates a minimum 60-day period to verify the status of abandoned or orphaned children, during which every effort must be made to locate the biological family. While this reflects a commitment to ensuring due process and preventing wrongful severance of familial ties, it often translates into prolonged institutional care due to the lack of coordination among CWCs, police authorities, and child care institutions. Several High Courts, including the Delhi High Court in *Court on its Own Motion v. Union of India* (W.P.(C) 8548/2017 & CM APPL. 985/2024), have noted the systemic inertia and delay in timely declaration of adoptability, urging the state to standardize timelines and strengthen monitoring mechanisms. Yet, in practice, the declaration process remains fragmented and opaque, undermining the child's right to early familial care.

Inter-state and inter-country adoptions pose a further challenge due to a maze of bureaucratic and jurisdictional entanglements. Although the JJ Act envisages a national framework through CARA for adoption governance, state-level variations in documentation, police verification norms, and institutional attitudes lead to procedural redundancies, particularly in inter-state adoptions. This complexity is exacerbated by a rigid preference hierarchy codified under JJ Act, which prioritizes in-



country adoptions over inter-country placements regardless of the child's best interests. While this protectionist approach aims to prevent commodification of children, in practice, it prolongs institutionalization for special needs or older children who are less likely to find domestic families. International jurisprudence, such as the Hague Convention on Intercountry Adoption (to which India is a signatory), emphasizes the principle of subsidiarity but not at the cost of indefinite care without family placement, a balance Indian law struggles to achieve in its execution (Thanikachalam, 2004).

Finally, the mandatory judicial involvement in the adoption process, despite being intended as a safeguard against procedural lapses, often serves as the most formidable obstacle in timely adoption. JJ Act requires the finalization of adoption orders by the District Magistrate (since the 2021's amendment, earlier by courts), yet significant backlogs, inconsistent judicial interpretations, and lack of sensitization impede swift adjudication. Courts have occasionally intervened to highlight these concerns, such as in *Rekha v. Union of India* (FAO 237/2021), where the court underscored the inordinate delay in adoption proceedings and called for administrative streamlining. Yet, despite these rulings, judicial inconsistency persists, with some jurisdictions processing adoption orders in a few weeks, while others delay them for months. The transition of adoption authority from the judiciary to the executive (District Magistrates) under the 2021's amendment was intended to speed up the process, but its success remains uneven due to administrative unpreparedness and lack of procedural clarity.

BOTTLENECKS AND BUREAUCRATIC DELAY: SYSTEMIC INEFFICIENCIES

The process from a child's abandonment to formal adoption in India is beset with delays that often span several months to years. The JJ Act, 2015 prescribes that a child found abandoned must be produced before CWC and kept under observation for a mandatory 60-day period to rule out familial claims. While intended as a safeguard, this period is often extended due to procedural inertia or lack of verification infrastructure, further delaying the declaration of the child as "legally free for adoption." Following this, CARA system initiates the matching process with PAPs, which itself involves multiple levels of scrutiny, including home study reports, medical evaluations, and multiple rounds of approval. Comparatively, jurisdictions, such as US & Netherlands, while equally committed to child protection, streamline their processes through administrative finalization, time-bound judicial oversight, and proactive matching systems. These international models embed child-



centric prioritization within legal certainty, reducing the average timeline for adoption to less than a year in most cases, an outcome the Indian framework has struggled to replicate (Bajpai, 2006).

Institutional inadequacies further exacerbate these delays. CWCs, which are the linchpin for determining the child's status under the JJ Act, are frequently overburdened, under-resourced, and lack specialized training in child psychology, family tracing, or adoption law. As quasi-judicial bodies, their decisions require a nuanced understanding of both legal rights and social realities, yet in practice, appointments to CWCs are often politically influenced or administrative in nature, resulting in inconsistent decision-making and poor procedural adherence. The CARA portal, envisioned as a technological enabler for transparency and efficiency, has become another site of systemic friction. Technical glitches, non-updated databases, and poor interoperability with state-level authorities render it incapable of reflecting real-time case progress. This inefficiency leads to prospective parents being waitlisted indefinitely despite availability of eligible children and vice versa, revealing the disjunction between regulatory design and operational capacity (Paul, 2022).

Equally troubling is the pervasive lack of inter-agency coordination that undermines the holistic functioning of the adoption ecosystem. The fragmented relationship between police departments (tasked with filing FIRs in abandonment cases), CWCs (tasked with declaring legal status), shelter homes (providing interim care), courts (issuing adoption orders), and recognized adoption agencies (RAAs) results in critical lapses and redundancy. Each entity operates in a silo, without shared protocols or interoperable databases, leading to duplicative procedures, loss of crucial case documents, and miscommunication. The judiciary, while a vital safeguard, contributes to the delay due to overloaded family courts and inconsistent interpretations of adoption jurisprudence. This lack of vertical and horizontal integration between authorities not only prolongs institutional care for children but also erodes public trust in the formal adoption framework. A systemic reform geared towards coordination, capacity building, and accountability is imperative to rescue the adoption process from its current bureaucratic morass (India Adoption, n.d.).

CONSEQUENCES OF DELAY

Delays in the adoption process have a disproportionately detrimental effect on the child, whose welfare is ostensibly the cornerstone of Indian adoption law. The extended confinement of children in institutional care, often under-resourced and overstretched, undermines their physical, emotional,



and cognitive development. Numerous studies, including those cited by UNICEF and Indian psychiatric journals, have established that the first three years of a child's life are crucial for attachment formation, language acquisition, and emotional regulation. The prolonged institutionalization resulting from legal and bureaucratic inertia compromises these developmental milestones. Moreover, the law's insistence on procedural rigor, such as exhaustive inquiries into abandonment, legal declarations by the CWC, and repeated scrutiny of prospective adoptive parents, often eclipses the constitutional mandate under Article 39(e) and 39(f) to ensure children grow in a safe, loving, and nurturing environment. The procedural excesses meant to protect children paradoxically deny them timely access to familial care (Adoption in India | Eligibility Criteria For Prospective Adoptive Parents, n.d.).

For PAPs, the prolonged legal uncertainty and administrative opacity frequently lead to disillusionment, emotional exhaustion, and eventual disengagement from the formal adoption process. Despite their willingness and readiness to adopt, many PAPs encounter repeated delays due to procedural backlogs, slow-moving judicial machinery, and inconsistent application of CARA guidelines across states. The failure to enforce timelines under the Adoption Regulations leads to a systemic breach of legitimate expectations and raises serious concerns under the principle of legal certainty, a foundational aspect of the rule of law. As frustration mounts, many PAPs resort to informal or even illegal adoptions through unregistered sources, circumventing safeguards and potentially exposing both the child and adoptive family to legal and social vulnerabilities. This subversion of the formal system illustrates the perverse consequence of overregulation: it drives well-meaning individuals outside the legal framework it seeks to preserve (Central Adoption Resource Authority, n.d.).

At a societal level, the structural delays in the adoption system contribute to the perpetuation of child destitution and systemic dysfunction. When the state fails to facilitate timely family placements for orphaned and abandoned children, it effectively abdicates its constitutional responsibility under Article 15(3) and Directive Principles such as Article 45. The outcome is a growing cohort of children who age out of institutional care without ever experiencing familial integration, a phenomenon that creates long-term socioeconomic challenges, including homelessness, lack of educational attainment, and criminal vulnerability. Furthermore, the public's perception of adoption as a legitimate and accessible means of family formation is eroded when the legal apparatus appears hostile, opaque, or



indifferent. This erosion of trust not only undermines the credibility of CARA & judiciary but also delegitimizes state-regulated adoption as a mechanism of child welfare. In effect, the law, while aiming to protect, ends up perpetuating structural injustice and violating the very rights it is designed to uphold.

COMPARATIVE ANALYSIS

In jurisdictions such as US, South Korea, & Netherlands, adoption frameworks exemplify a calibrated balance between procedural safeguards and expedited care for abandoned or relinquished children. In the US, the Adoption and Safe Families Act, 1997 sets statutory timelines for terminating parental rights and mandates that permanency planning hearings occur within 12 months of a child entering state care. Judicial oversight remains robust, but administrative streamlining, such as the use of digital case management systems and foster-to-adopt pathways, ensures that eligible children do not languish in institutional settings (Ross, 2006). South Korea, although historically criticized for its high rate of international adoptions, has in recent years moved toward a more regulated domestic system, mandating registration of all births to ensure traceability and accountability while establishing “*Baby Box*” programs as legally recognized, non-punitive surrender options. The Netherlands, meanwhile, employs a centralized adoption authority and strictly adheres to Hague Convention standards, but it notably reduces friction by permitting cross-jurisdictional social worker assessments and utilizing pre-approved adoptive parent pools. These models share a common feature: the recognition that legal safeguards must be proportionate and subordinate to the overarching objective of securing the child’s timely integration into a stable family environment.

India’s legal regime, while ostensibly aligned with international child rights norms, being a signatory to the Hague Convention on Intercountry Adoption and having incorporated the JJ Act, 2015, remains mired in proceduralism (“Best Practices in Implementing the Hague Convention”, 2016). Unlike in the aforementioned jurisdictions, where legal mandates establish outer limits for each stage of the adoption process, India’s statutory and operational landscape lacks enforceable timelines beyond basic minimums, leading to frequent breaches without consequence. CARA’s Child Adoption Resource Information and Guidance System (CARINGS) has improved central visibility but suffers from bureaucratic bottlenecks and inconsistent inter-agency coordination. Further, judicial delays in finalizing adoptions, especially in states with overburdened family courts, contrast sharply with the



administrative or hybrid judicial models in other countries. The over-centralization of authority, combined with under-resourced child welfare committees, results in children remaining in limbo far beyond the optimal age for bonding and development, undermining the core objective of permanency planning.

CONCLUSION & WAY FORWARD

The Indian adoption framework, though conceived with a laudable protective intent, often succumbs to a legal formalism that inadvertently prioritizes procedural integrity over the immediate and evolving needs of the child. This paradox, where safeguards morph into obstructions, reflects a systemic imbalance between risk aversion & imperative of timely rehabilitation. The jurisprudential emphasis on “best interests of the child”, as enshrined in both domestic law and international obligations under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, is rendered nominal when delays in judicial declarations, rigid matching protocols, and inter-agency inertia result in protracted institutionalization. The way forward necessitates a recalibration of the legal-administrative architecture: statutory amendments should institutionalize time-bound stages for each phase of the adoption process, allow quasi-judicial authorities to finalize uncontested adoptions, and mandate concurrent rather than sequential clearances. Moreover, capacity enhancement of CWC, technological modernization of CARA’s digital infrastructure, and a child-centric adjudicatory framework that shifts from procedural orthodoxy to substantive responsiveness are critical. Without such reforms, the law, intended as a shield for the vulnerable, will continue to function as a barrier to care, contravening both the spirit of the Constitution and India’s obligations under international child rights law.

REFERENCES

- *Adoption in India | Eligibility Criteria For Prospective Adoptive Parents*. (n.d.). G.S. Bagga and Associates. <https://gsbagga.com/blog/eligibility-criteria-for-prospective-adoptive-parents/>.
- Bagley, C. (1979). India: Adoption and Child Welfare. *Adoption & Fostering*, 97(3), 42–48. <https://doi.org/10.1177/030857597909700315>.



- Bajpai, A. (2006). Right to Family Environment: Adoption and Other Non-Institutional Services. In *Child Rights in India* (pp. 33–91). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780195670820.003.0002>.
- Best Practices in Implementing the Hague Convention. (2016). In *Intercountry Adoption* (pp. 281–290). Routledge. <https://doi.org/10.4324/9781315252117-34>.
- Bhargava, V. (2025). Construction of the Self in an Adopted Child. In *Adoption in India* (pp. 130–152). Routledge. <https://doi.org/10.4324/9781032624938-8>.
- Central Adoption Resource Authority. (n.d.). CARA. <https://cara.wcd.gov.in/>.
- Hollinger, J. H. (1993). Adoption Law. *The Future of Children*, 3(1), 43. <https://doi.org/10.2307/1602401>.
- India Adoption. (n.d.). Children's House International. <https://childrenshouseinternational.com/india/>.
- Paul, S. (2022). Child Adoption In India: From A Human Rights Perspective. *Journal of Multidisciplinary Cases*, 28–35. <https://doi.org/10.55529/jmc.21.28.35>.
- Rebatl, R. P. (2024). Child Adoption in India-An Emerging Issue. *THE THIRD VOICE REALITY AND VISION*, Vol No-6(Issue No-1), 116–118. <https://doi.org/10.5281/zenodo.13341399>.
- Revised Adoption Guidelines - India. (2016). *Institutionalised Children Explorations and Beyond*, 3(1), 117–119. <https://doi.org/10.1177/2349301120160122>.
- Ross, C. J. (2006). Foster Children Awaiting Adoption Under the Adoption and Safe Families Act of 1997. *Adoption Quarterly*, 9(2-3), 121–131. https://doi.org/10.1300/j145v09n02_07.
- Sudharshan, V., & V, D. (2018). Juvenile Justice Act - An Overview. *International Journal of Trend in Scientific Research and Development*, Volume-2(Issue-5), 1914–1918. <https://doi.org/10.31142/ijtsrd18199>.



- Thanikachalam, C. (2004). Child Adoption in India. In *Selected Topics in Pediatrics for Practitioners* (p. 263). Jaypee Brothers Medical Publishers (P) Ltd. https://doi.org/10.5005/jp/books/10752_25.
- Vijay, S., & Darshan, V. (2018). Juvenile Justice Act An Overview. *International Journal of Trend in Scientific Research and Development*, 2(5), 1914–1918. <https://doi.org/10.31142/ijtsrd18199>.