



HABEAS CORPUS AND THE CRISIS OF ILLEGAL ADOPTION IN INDIA: PROTECTING LIBERTY, IDENTITY, AND THE CHILD'S BEST INTERESTS

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ABSTRACT

Within India's constitutional framework, the writ of Habeas Corpus has long been considered the cornerstone of personal liberty. Traditionally invoked to challenge unlawful detention, its scope has expanded to include protecting vulnerable people, especially minors, from illegal custody, trafficking, and adoption. Concerning cases of children being adopted or kept outside of the statutory safeguards provided by the Juvenile Justice Act and the Central Adoption Resource Authority (CARA) regulations, have been reported in India in recent years. This article examines how Habeas Corpus has been judicially employed to rescue such children, explores the gaps in India's adoption law, and considers whether the evolving jurisprudence adequately balances parental rights, state responsibility, and the child's best interests. It also examines how Habeas Corpus has been utilised by the courts to protect these children's liberty and identity.

Keywords: Habeas Corpus, Illegal Adoption, Personal Liberty, Fundamental Rights.

INTRODUCTION

In 2024, authorities in Tamil Nadu uncovered a trafficking network that disguised itself as a private adoption agency. Infants from impoverished families were sold to unsuspecting parties under fabricated documentation. For many biological parents, the judicial remedy that offered hope was a *Habeas Corpus* petition, a plea to produce the child and restore them to lawful custody from such criminal syndicates.

The writ of *Habeas Corpus*, derived from Latin meaning “you may have the body,” is enshrined under Articles 32 and 226 of the Indian Constitution. It acts as a safeguard against arbitrary

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deprivation of personal liberty. While traditionally it was used in criminal or preventive detention cases, the Indian courts have creatively expanded its ambit to protect children who are wrongfully confined, trafficked, or placed in unlawful custody, harming their personal liberty.

Illegal adoption is where a child is transferred or retained without compliance with the statutory procedure, which represents a contemporary form of unlawful detention of such children. Such acts not only breach the adoption law but also strike at the core of Article 21, which guarantees the right to life and personal liberty. Through the writ of *Habeas Corpus*, the judiciary reaffirms that the freedom to belong, to be cared for, and to retain one's lawful identity are integral aspects of liberty in a constitutional democracy.

THE LEGAL ESSENCE OF HABEAS CORPUS

Under Article 32, the Supreme Court may issue writs for the enforcement of fundamental rights, while Article 226 empowers High Courts to issue such writs for broader "any other purpose." Among these, *Habeas Corpus* remains the most potent safeguard for personal liberty and the rights of individuals.

In *Kanu Sanyal v District Magistrate, Darjeeling*, the Supreme Court observed that the writ ensures that "no person is deprived of personal liberty except according to procedure established by law." The principle is not merely about the physical freedom but the protection of dignity, autonomy, and lawful custody of such individuals. Similarly, in *Sunil Batra v Delhi Administration*, the Court held that the writ could be invoked to preserve humane conditions even within lawful detention.

The flexibility in the legal scope of *Habeas Corpus* has allowed courts to address diverse issues such as prisoners' rights, illegal detentions, and, more recently, the wrongful confinement of minors. Because minors cannot file a petition on their own, the writ can be filed by any person acting bona fide on their behalf.

In *Tejaswini Gaud v Shekhar Jagdish Prasad Tewari*, the Supreme Court explicitly recognised that a *Habeas Corpus* petition is maintainable in matters involving child custody where detention by one parent or third party is illegal. The Court reiterated that the decisive consideration is not legal ownership but the best interests of the child, marking a vital shift from parental authority to child-centric justice.

ADOPTION LAW IN INDIA: THE LEGAL PATHWAY VS. THE ILLICIT REALITY

Adoption in India is not merely an act of charity or sentiment; it is a *juridical institution* that transforms a social relationship into a legally recognised one between the child and the family, and also the state. The act of adopting a child carries lifelong implications for the biological parents, adoptive parents, and the child whose identity and inheritance are reshaped by it. Because of this profound impact, Indian law has long sought to regulate adoption through statutory safeguards to ensure that it is conducted in a manner consistent with the child's best interests and constitutional guarantees of equality and dignity under Articles 14 and 21.

Evolution of Adoption Law in India: Historically, the adoption system in India was deeply rooted in religious custom.¹ Under classical Hindu law, adoption served primarily as a means to secure a male heir who could perform the adopter's funeral rites and continue the family lineage. However, this patriarchal purpose excluded women, non-Hindus, and orphaned children from formal adoption processes.

The colonial period brought limited codification through the Hindu Adoption and Maintenance Act, 1956 (HAMA), which, for the first time, formed a secularised statutory framework for Hindus, Buddhists, Jains, and Sikhs.² HAMA defines adoption as the act by which a person takes a child lawfully into his or her custody and gives the child the same rights as a natural-born child would have. It prescribes detailed conditions for a valid adoption: the adopter must have the capacity and right to adopt, the child must be eligible, and the procedure must comply with consent requirements (Sections 6–11).

However, HAMA remains *personal law*-based and does not extend to Muslims, Christians, Parsis, or Jews, who can only take children in “guardianship” under the Guardians and Wards Act, 1890.³ Such guardianship does not sever the child's legal relationship with biological parents and thus fails to confer the full rights of adoption. This limitation prompted calls for a uniform secular framework, a call that culminated in the Juvenile Justice (Care and Protection of Children) Act, 2000, later re-enacted as the JJ Act, 2015, which further bridged the gap between the scope of this.

¹ M P Jain, *Outlines of Indian Legal History* (7th edn, LexisNexis 2017) 212.

² Hindu Adoption and Maintenance Act 1956, ss 6–11.

³ Guardians and Wards Act 1890, s 7.

The Juvenile Justice Act and the Role of CARA: The JJ Act, 2015, marks a paradigm shift by creating a secular, gender-neutral, and child-centric mechanism for adoption applicable to all citizens of India.⁴ Chapter VIII (Sections 56–73) of the Act governs adoption, stipulating that every adoption must be authorised by the competent court and processed through the Central Adoption Resource Authority (CARA), the statutory body functioning under the Ministry of Women and Child Development.

CARA acts as the *nodal agency* to regulate, monitor, and facilitate both in-country and inter-country adoptions.⁵ It maintains a digital portal of the Child Adoption Resource Information and Guidance System (CARINGS), which ensures transparency, matching, and accountability at each stage of the process.

Under the CARA Guidelines, 2017,⁶ adoption must follow specific procedural steps:

- The prospective adoptive parents must register with a Specialised Adoption Agency (SAA);
- The child must be declared legally free for adoption by the Child Welfare Committee (CWC);
- A home study report must be conducted by social workers;
- The adoption must be legally finalised through a court order; and
- Post-adoption follow-ups are mandatory to ensure the welfare of the child.

This structure theoretically ensures that every adoption passes through a transparent and lawful process which respects the child's identity, safety, and long-term welfare in the best interest.

The Reality: Illegal and Informal Adoptions: Despite the comprehensive statutory architecture, illegal and informal adoptions continue to flourish in India.⁷ These take several forms:

- Private or direct adoptions between biological and adoptive parents without the involvement of CARA or the courts;
- Sale or trafficking of infants through unregistered nursing homes and orphanages;

⁴ Juvenile Justice (Care and Protection of Children) Act 2015, ss 56–73

⁵ Central Adoption Resource Authority, 'About CARA'

⁶ Adoption Regulations 2017 (CARA), regs 6–13

⁷ National Commission for Protection of Child Rights (NCPCR), *Report on Illegal Adoption and Trafficking in India* (2022).

- Misuse of guardianship provisions, where children are placed in long-term care under the guise of guardianship but without lawful adoption; and
- Unregistered inter-country adoptions, which often amount to cross-border trafficking.

According to the National Commission for Protection of Child Rights (NCPCR), over the past decade, thousands of children have gone missing from childcare institutions,⁸ many said to be the victims of illegal adoptions and trafficking network rings. During the COVID-19 pandemic, such practices saw a disturbing surge as orphaned children were “offered” for adoption through social media posts whose acts that blatantly violated Section 80 of the JJ Act,⁹ which criminalises unauthorised adoption.¹⁰

The persistence of these illegal practices exposes deep systemic flaws:

- Bureaucratic delays and lack of awareness drive parents toward informal channels;
- Weak enforcement of CARA guidelines allows unregistered institutions to operate unchecked, and
- Poor inter-agency coordination between police, CWCs, and adoption authorities hampers investigation and rescue.

The Child’s Right to Identity and Liberty: The legality of adoption is not merely procedural, but it directly implicates a child’s *fundamental rights* and also his mental state. Every illegal adoption potentially violates Article 21¹¹ by depriving the child of his lawful identity, familial security, and a sense of belonging in oneself. The Supreme Court has repeatedly emphasised that “the welfare of the child is paramount” is a principle enshrined in Section 2(9) of the JJ Act and reinforced in *Tejaswini Gaud v Shekhar Jagdish Prasad Tewari* (2019).¹²

Moreover, under international law, Article 8 of the *UN Convention on the Rights of the Child* (1989)¹³ mandates that States must respect the child’s right to preserve their identity, nationality, and family relations. Unlawful adoptions, therefore, amount to a denial of liberty that may justify judicial intervention through *Habeas Corpus*.

⁸ *Supreme Court of India v State of West Bengal* (Missing Children Case), *Re: Exploitation of Children in Orphanages in Tamil Nadu* (2017) 7 SCC 578

⁹ Juvenile Justice (Care and Protection of Children) Act 2015, s 80

¹⁰ United Nations Children's Fund (UNICEF), *Children and COVID-19 in India: Vulnerabilities, Impacts and Responses* (2021)

¹¹ *Laxmi Kant Pandey v Union of India* (1984) 2 SCC 244

¹² *Tejaswini Gaud v Shekhar Jagdish Prasad Tewari* (2019) 7 SCC 42

¹³ UN Convention on the Rights of the Child 1989, art 8

When a child is retained by individuals or institutions without legal sanction, the situation mirrors *unlawful confinement*. The courts, in several cases, have thus treated such detentions as violations of personal liberty and ordered immediate production of the child through *Habeas Corpus* proceedings.

Towards a More Inclusive and Effective Adoption Framework: To align with constitutional morality and social realities, India's adoption system must undergo holistic reform. The scholars and child rights activists advocate for:

- Integration of all adoption laws into a single comprehensive code, ensuring uniformity and secular access;
- Establishment of a National Child Identity Database, linked to Aadhaar, for tracking every adoption or guardianship transfer;
- Introduction of fast-track family courts dedicated to child welfare and adoption cases to ensure the protection of the vulnerable; and
- Enhanced public education to eradicate the misconception that adoption can be “arranged” privately.

A transparent, digital, and rights-based adoption framework is not only an administrative necessity but a constitutional obligation. When children are treated as wards of the law, the State bears an affirmative duty to protect them from commodification and exploitation. In a country like India, which is extremely vast in terms of population and land mass, implementing such a statutory provision would be a hefty task, but it will pay off in the end, as it will ensure the rights of the vulnerable.

HABEAS CORPUS IN ACTION: JUDICIAL RESPONSE TO ILLEGAL ADOPTIONS

The expanding scope of the writ of *Habeas Corpus* in child custody and illegal adoption matters reflects the judiciary's proactive stance on liberty and welfare.

In *Tejaswini Gaud*, the Court acknowledged that when a child is illegally removed from lawful custody, *Habeas Corpus* is an appropriate remedy. The judgment held that “the paramount consideration should be the welfare of the child rather than the legal right of either parent.” This welfare-centric approach aligns with India's obligations under the *UN Convention on the Rights of the Child* (1989), which mandates that all actions concerning children must prioritise their best interests.

In *Ruchika Singh Chhabra v State (NCT of Delhi)*,¹⁴ a petition was filed to trace and recover a child trafficked from an NGO's care home. The Delhi High Court invoked *Habeas Corpus* to direct police action and ensure rehabilitative support, holding that liberty under Article 21 encompasses the right of a child to live in a safe and lawful environment.

Similarly, in *Sampurna Behura v Union of India*,¹⁵ the Supreme Court emphasised the need for effective monitoring of child care institutions, warning that failure to regulate adoption agencies could amount to systemic violation of fundamental rights.

The humanitarian dimension of these cases underscores that children cannot be treated as property transferable at will. Illegal adoptions, even when clothed in good intentions, constitute wrongful deprivation of liberty. Through *Habeas Corpus*, courts pierce such façades and reassert the principle that every child's custody must stem from lawful authority.

CURRENT CHALLENGES AND LOOPHOLES

Despite judicial vigilance, India's response to illegal adoptions remains fragmented. Several systemic issues persist:

Bureaucratic Inertia and Weak Enforcement: CARA lacks adequate investigative power, and its coordination with State Adoption Resource Agencies is often ineffective. Many districts lack trained personnel to monitor adoptions or verify reports of illegal custody. This leads to a weak groundwork for solving a constitutional issue and tracking down the syndicates carrying out the adoptions and collecting real-time data.

Digital and Cross-Border Vulnerabilities: Social media platforms have become informal marketplaces for "adoption appeals." During the COVID-19 pandemic, hundreds of such cases were reported, with children offered online by individuals claiming to "rehome" or "care" for orphans. Without digital oversight, detecting such transactions remains nearly impossible because of their vast nature and also one-to-one encryptions.

Emotional and Ethical Complexity: When a child has lived with adoptive caregivers for years, courts face moral dilemmas. Restoring biological custody may satisfy legality, but it can

¹⁴ *Ruchika Singh Chhabra v State (NCT of Delhi)* 2021 SCC OnLine Del 4980

¹⁵ *Sampurna Behura v Union of India* (2018) 4 SCC 433.

cause emotional trauma to the child. Balancing the law simultaneously with empathy becomes a delicate judicial art.

Intersectional Legal Gaps: Illegal adoption cases cut across criminal, family, and constitutional law. Investigations are delayed due to jurisdictional confusion over whether the matter lies before family courts, juvenile boards, or constitutional benches.

Rehabilitation Deficit: Rescued children often face stigmatisation, lack of psychological support, and bureaucratic re-traumatisation during reintegration. The absence of post-recovery protocols reduces the transformative potential of *Habeas Corpus* orders in such cases.

THE WAY FORWARD

To strengthen protection against illegal adoption and ensure that *Habeas Corpus* serves its rehabilitative purpose, several reforms are necessary:

Institutional Strengthening: CARA should be granted statutory investigative authority, with mandatory coordination with state police and the NCPCR. Regular audits of orphanages and child care homes must be conducted.

National Adoption Registry: A centralised, blockchain-based registry can record every stage of adoption from surrender to placement, ensuring traceability and transparency.

Training and Sensitisation: Judicial and police officers require specialised training on the intersection of child rights and constitutional remedies. The writ of *Habeas Corpus* should be recognised as a viable tool for immediate rescue, not only post-trial relief.

Public Awareness: Citizens must be educated on lawful adoption procedures through national campaigns, discouraging the informal arrangements or online transfers.

Comparative Learning: France's *Law No. 2020-1266* on the exploitation of minors' images online¹⁶ and the UK's *Re X (A Child)*¹⁷ judgment illustrate how foreign jurisdictions combine child protection with accountability. India could emulate similar models by criminalising unregistered adoptions and mandating digital transparency.

¹⁶ French Law No 2020-1266 on the Regulation of Child Influencers (2020)

¹⁷ *Re X (A Child)* [2022] EWCA Civ 160

These reforms can transform *Habeas Corpus* from a reactive tool into a proactive instrument of social justice.

CONCLUSION

The journey of *Habeas Corpus* from a centuries-old writ born in English common law to a living constitutional promise in India illustrates the law's extraordinary capacity to evolve alongside human need. While its classic function was to guard individuals against the tyranny of the State, its modern Indian exceeds its scope and has become a voice for the voiceless, especially for children trapped in the shadows of illegal adoption, trafficking, and institutional neglect.

In the context of illegal adoptions, *Habeas Corpus* bridges two moral imperatives: the protection of liberty and the preservation of humanity. Each case that comes before the courts is not merely a legal dispute but a moral reckoning, setting a reminder that the Constitution's promise of liberty extends even to those too young to speak for themselves. When a child is deprived of the right to lawful identity or family under due process, that deprivation is as much a violation of Article 21 as any form of illegal detention.

Yet, the remedy's effectiveness depends on how sensitively it is invoked and how robustly it is supported by institutional reform. Courts alone cannot stem the tide of illegal adoptions; their writs must be reinforced by administrative vigilance, better adoption infrastructure, and empathetic rehabilitation frameworks. *Habeas Corpus* should not be seen as the end of justice, but as its beginning, a constitutional alarm that signals the need for systemic correction.

The larger question that this issue forces society to confront is one of values: what does freedom mean to a child who has been denied the right to know their origins, or to belong to a lawful family? Legal custody and emotional bonds are not mutually exclusive, but both must be grounded in legitimacy and care. The law must therefore reconcile compassion with compliance, ensuring that in saving children, we do not inadvertently sanction lawlessness.

Comparative insights from other jurisdictions show that robust enforcement, technological traceability, and social awareness can significantly curb the exploitation of children in the name of adoption. India, with its constitutional ethos of dignity and equality, is well-positioned to lead by example. To do so, it must treat every *Habeas Corpus* petition involving a child not as

a procedural matter, but as a constitutional moment — a reaffirmation that the Republic's moral worth is measured by how it protects its most defenceless citizens.

Ultimately, the role of *Habeas Corpus* in combating illegal adoption is not only to free bodies but to restore identities, not only to return children to rightful guardians but to return to them a future that is their own. It is a reminder that liberty, in its truest form, begins at birth — and that every child, regardless of circumstance, deserves the protection of law, the compassion of society, and the dignity of belonging.