

# Reconceptualizing Child Rights in India: A Critical Analysis of the Legal Framework for Child Protection and Welfare

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## Abstract:

This article argues that “child rights” in India require reconceptualization along two axes: first, as a rights-bearing constitutional subject whose dignity, development, and participatory agency are legally cognizable; and second, as a governance-and-institutions problem in which formally robust statutes routinely underperform due to structural implementation failures. The analysis uses doctrinal methods (text, structure, adjudicatory interpretation, and institutional design) to evaluate the interaction among constitutional norms, statutory frameworks, judicial remedies, and India’s international commitments.

The constitutional architecture contains both enforceable protections (notably equality, life and personal liberty, and protections against exploitation) and directive principles that explicitly position children as subjects of state responsibility. Article 15(3) authorizes “special provision” for women and children; Article 23 prohibits trafficking and forced labour; Article 24 prohibits child employment in factories, mines, and other hazardous work; Article 39(e)-(f) casts the child as a vulnerable bearer of developmental dignity requiring protection against abuse and exploitation.

**Keywords:** Child Rights in India; Child Protection Law; Juvenile Justice; POCSO Act, 2012; Right to Education; Child Labour Regulation.

## INTRODUCTION

India’s post-2000 statutory framework creates a dense protective lattice. The Government of India enacted (inter alia) the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) and the 2007 Rules, building a specialized child-protection adjudicatory system (Child Welfare Committees; Juvenile Justice Boards) anchored in “best interest,” restoration, and reintegration.<sup>1</sup> The Protection of Children from Sexual Offences Act, 2012 (POCSO) constitutes a specialized penal-procedural regime emphasizing child-friendly processes, confidentiality, mandatory reporting channels, special courts, and statutory presumptions within criminal adjudication. Child labour regulation remains anchored in the Child Labour (Prohibition and Regulation) Act, 1986, which prohibits employment of children in specified occupations/processes and regulates working conditions elsewhere, while leaving significant definitional and enforcement gaps (especially when set against broader constitutional goals and international standards).<sup>2</sup> Education is constitutionalized and operationalized through the Right of Children to Free and Compulsory Education Act, 2009 (RTE), which constructs rights-and-duties relations among the state, local authorities, schools, parents/guardians, and oversight bodies.<sup>3</sup>

<sup>1</sup> The Juvenile Justice (Care and Protection of Children) Act, 2000 (India).

<sup>2</sup> The Constitution of India 1950 (India).

<sup>3</sup> The Right of Children to Free and Compulsory Education Act, 2009 (India).

Judicially, the Supreme Court's child-rights trajectory has moved from (i) recognition of education as a constitutional right implicated by equality and life, to (ii) institutional and continuing-mandamus techniques to operationalize juvenile justice and child protection, and (iii) a rights-sensitive criminal process for child victims and children in conflict with law. The "capitation fee" and education cases, *Miss Mohini Jain* and *Unni Krishnan*, represent doctrinal inflection points in construing education as constitutionally protected; later interventions focus on proliferating institutions (juvenile justice boards; child welfare committees; special juvenile police units) and policing norms for missing children and trafficking.<sup>4</sup>

Internationally, India ratified the Convention on the Rights of the Child (CRC) in 1992 and explicitly incorporated CRC and other international juvenile justice instruments into domestic juvenile justice legislation and subordinate rules. Yet the CRC Committee's scrutiny highlighted that policy instruments (notably the National Charter for Children) did not fully adopt a rights-based approach.<sup>5</sup> Meanwhile, parliamentary materials record that India had not yet ratified ILO Conventions 138 and 182, reflecting a gap between international labour norms and domestic legal commitments at the critical child-labour interface.<sup>6</sup>

The article concludes that India's child-rights regime suffers from recurring implementation pathologies: fragmented governance across departments; uneven state capacity; weak data systems; inconsistent policing and prosecution; institutionalization without sufficient safeguards; and an accountability deficit in local-level delivery. Reform must therefore be dual: (i) normative consolidation around "child dignity + capabilities + participation," and (ii) enforceable institutional design fixes, registration and independent audit of all child-care institutions, time-bound staffing of boards/committees/police units, integrated child-tracking, child-sensitive criminal procedure, and budget-linked performance benchmarks.<sup>7</sup>

## SCOPE, METHOD, AND ASSUMPTIONS

This paper is written in English (en-US), targets a law-review length, and uses for sources, legal developments, and recommendations. The focus is doctrinal and socio-legal: it treats statutes and constitutional provisions as operative legal texts, but evaluates them through institutional design, enforcement realities, and the jurisprudence of courts.

**Method.** The doctrinal analysis proceeds through (a) constitutional text and structure; (b) statute-and-rules architecture; (c) judicial interpretation through landmark Supreme Court and High Court decisions; and (d) the reception of international standards through incorporation clauses, interpretive use, and policy alignment. This is complemented by a governance critique rooted in official assessments (parliamentary committee work), executive policy frameworks, and court-identified implementation failures.<sup>8</sup>

## RECONCEPTUALIZING CHILD RIGHTS

The dominant public-law vocabulary in India often treats children as (i) dependents to be protected, (ii) future citizens to be developed, or (iii) victims to be rescued. These frames are not wrong; indeed, they are anchored in constitutional text and statutory design. However, they risk flattening "child rights" into a welfare/beneficence register, obscuring that rights entail **justiciable claims, correlative duties, and**

<sup>4</sup> *Miss Mohini Jain v State of Karnataka and Ors* (1992) 3 SCC 666 (Supreme Court of India).

<sup>5</sup> Committee on the Rights of the Child, Concluding Observations: India, CRC/C/15/Add.228, 26 February 2004.

<sup>6</sup> Rajya Sabha, Department-related Parliamentary Standing Committee on Labour, Forty-sixth Report on the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, December 2013.

<sup>7</sup> The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (India).

<sup>8</sup> *Sampurna Behura v Union of India and Ors*, Order dated 12 October 2011, Writ Petition (Civil) No 473 of 2005 (Supreme Court of India).

**procedural voice**, especially where the child is the direct subject of state action (custody, institutions, policing, trial processes, and schooling).

A more analytically productive reconceptualization positions child rights as a **triadic bundle**:

**(Dignity and bodily integrity).** Child rights must foreground bodily and psychological integrity because state failures frequently manifest through violence, exploitation, institutional neglect, and punitive or stigmatizing responses. Constitutional prohibitions against trafficking and forced labour, and protections against hazardous employment, signal that integrity is not simply moral aspiration but legally protected status.

**(Capabilities and development).** The constitutional directive that children be enabled to develop “in conditions of freedom and dignity” frames development as both material (nutrition, health, education) and moral-social (freedom from abandonment and exploitation). The RTE Act’s rights-and-duties architecture concretizes development through entitlements (free education, neighborhood access, non-discrimination, and protection from harassment) and operational norms (school standards, management committees, and monitoring).

**(Participation and voice).** The CRC’s emphasis on respect for the child’s views (Article 12) and best interests (Article 3) is echoed in domestic juvenile justice principles, where “child friendly” processes and hearing rights appear within the Rules’ articulated fundamental principles.<sup>9</sup>

This reconceptualization matters doctrinally because it reorders interpretive priority: where statutes confer discretion (e.g., institutional placement; restoration; special procedures), discretion should be read through dignity-capabilities-participation, not through administrative convenience or securitarian reflexes. The architecture of the JJ Rules explicitly frames “best interest,” “child friendly” approaches, dignity and worth, and a right to be heard as guiding principles for interpretation and implementation, effectively internalizing CRC-like principles into domestic legal administration.

## CONSTITUTIONAL ARCHITECTURE OF CHILD PROTECTION AND WELFARE

India’s Constitution does not contain a single “children’s rights” chapter; instead, it disperses protections across Fundamental Rights and Directive Principles, producing a hybrid of negative restraints (state cannot do X) and positive obligations (state should do Y). For child protection, this dispersion is arguably a strength, children appear as a constitutional subject across equality, liberty, exploitation, and policy directives, but it also creates a doctrinal challenge: the enforceability of directive principles depends on judicial creativity and legislative implementation.

**Equality and special protection.** Article 15(3) constitutionally authorizes special provisions for women and children, functioning as an enabling clause for affirmative and protective legislation. This is crucial to understanding why child-specific penal statutes (e.g., POCSO) and child-specific welfare-justice institutions (e.g., CWC/JJB architecture) are constitutionally legitimate even where they differentiate procedures and substantive standards.<sup>10</sup>

**Liberty, dignity, and education.** Article 21’s protection of life and personal liberty is the constitutional “engine room” for rights expansion. The insertion of Article 21A (free and compulsory education for age 6-14) formalizes a child-specific, justiciable education entitlement, and it structurally links child welfare to state duty rather than charity. The RTE Act then builds the institutional scaffolding: it declares the

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<sup>9</sup> Ministry of Women and Child Development, Juvenile Justice (Care and Protection of Children) Rules, 2007 (India), notified 26 October 2007.

<sup>10</sup> The Protection of Children from Sexual Offences Act, 2012 (India).

right, prescribes the neighborhood-school model, prohibits financial and procedural barriers (e.g., capitation and screening), and bans physical punishment and mental harassment.

**Anti-exploitation commitments.** Article 23’s prohibition on trafficking and forced labour and Article 24’s prohibition on hazardous employment for children together form a constitutional anti-exploitation block. These provisions are directly relevant not only to child labour but to trafficking and missing-children jurisprudence, where courts have treated missing children as presumptively at risk of trafficking/abduction absent contrary proof.<sup>11</sup>

**Directive principles as child-protection blueprint.** Article 39(e)-(f) provides unusually explicit constitutional language about “tender age,” abuse, dignity, and protection against exploitation and abandonment. This language supplies an interpretive vocabulary that can be (and has been) deployed to evaluate statutory schemes, policing practices, and institutional conditions.

**COMPARATIVE TABLE OF CONSTITUTIONAL NORMS AND THEIR STATUTORY/JUDICIAL EXPRESSION**

Constitutional norm	Doctrinal content	statutory operationalization	Illustrative judicial move
Article 15(3)	Enables special provisions for children	POCSO creates child-specific offences/procedures; JJ Act creates child-specific adjudicatory bodies	Courts read “child-friendly” approaches and best interest as interpretive commitments in juvenile justice
Article 21 / 21A	Liberty and the child’s education entitlement	RTE Act declares right to free and compulsory education and bans harassment/punishment	Education recognized as constitutionally protected in <i>Mohini Jain</i> and structured/limited in <i>Unni Krishnan</i>
Article 23	Trafficking and forced labour prohibited	JJ Act “care and protection” mechanisms; missing-children SOP directives	Courts presume trafficking/abduction risk in missing children complaints and require FIR registration
Article 24	Prohibits child employment in factory/mine/hazardous work	Child Labour Act prohibits listed occupations/processes and regulates conditions elsewhere	Child labour treated as constitutional-legal wrong requiring remedial schemes (e.g., <i>M.C. Mehta</i> )
Article 39(e)-(f)	“Tender age” not abused; children develop with dignity; protection from exploitation/abandonment	JJ Rules’ dignity/best interest/right to be heard; RTE bans harassment; POCSO confidentiality	Institutional reform through continuing mandamus (JJ implementation monitoring)

<sup>11</sup> *Bachpan Bachao Andolan v Union of India and Ors*, Orders dated 17 January 2013 and 26 April 2013 in Writ Petition (Civil) No 75 of 2012 (Supreme Court of India).

## STATUTORY AND INSTITUTIONAL ECOSYSTEM

India's child-protection legal ecosystem is best understood as a **multi-node system**: (i) welfare-justice institutions (CWC/JJB; child care institutions); (ii) penal-procedural regimes for violence and sexual offences (POCSO); (iii) labour regulation and prohibition (child labour law); and (iv) education entitlements (RTE). These regimes often refer to each other: POCSO borrows meanings from the IPC/CrPC and references the JJ Act and IT Act; JJ Rules internalize constitutional and international principles; RTE ties monitoring to child-rights commissions.<sup>12</sup>

## JUVENILE JUSTICE AND “CARE AND PROTECTION” INSTITUTIONS

**The JJ Act's normative model.** The JJ Act's preambular language explicitly grounds the legislation in constitutional responsibility for children, references the CRC, and also cites international juvenile justice instruments (Beijing Rules; Rules for Protection of Juveniles Deprived of Liberty). This is a rare example of **formal internationalization** within domestic statutory framing, signaling that juvenile justice is not merely penal administration but rights-and-standards governance.

**Institutional design.** The JJ Act creates two key adjudicatory institutions: (a) Child Welfare Committees for children “in need of care and protection,” and (b) Juvenile Justice Boards for juveniles in conflict with law. The Act describes the Committee as the “final authority” for disposal and protection in care-and-protection cases, emphasizing human rights protection and basic needs.<sup>13</sup>

**Rules as operational constitution.** The 2007 Rules do unusually heavy normative lifting. They define core interpretive concepts (best interest; child-friendly processes) and then set out “fundamental principles,” including presumption of innocence, dignity and worth, right to be heard, and best interests, effectively functioning as an administrative constitution for child protection procedures.<sup>14</sup>

## POCSO AND CHILD-CENTERED CRIMINAL JUSTICE

**POCSO's constitutional self-understanding.** POCSO's preamble ties the statute to Article 15(3), CRC accession, and explicitly cites privacy and confidentiality during judicial processes involving children. This framing matters: it positions child sexual offences not only as crimes but as rights violations requiring special process guarantees.

**Reporting, special courts, and presumptions.** POCSO creates a reporting mechanism that channels information to Special Juvenile Police Units or local police and requires child-sensitive recording and prompt reporting to child protection authorities and courts. It also provides for designation of Special Courts to enable speedy trials and contains statutory presumptions regarding certain offences and culpable mental state, shifting the evidentiary terrain in ways intended to counteract underreporting and proof barriers typical in child sexual abuse cases.

## CHILD LABOUR REGULATION

**Prohibition through schedules; regulation elsewhere.** The Child Labour (Prohibition and Regulation) Act, 1986 defines a “child” as a person who has not completed fourteen years and prohibits employment in listed occupations/processes while regulating conditions of work in other employments. The statutory structure, prohibit some, regulate the rest, creates an inherent compliance challenge where hazard classification, inspection, and informal-family work exceptions can become loopholes.<sup>15</sup>

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<sup>12</sup> Gazette of India, Notification appointing 1 April 2010 as the commencement date under the Right of Children to Free and Compulsory Education Act, 2009 (India), 16 February 2010.

<sup>13</sup> Press Information Bureau, Government of India, Press release on Integrated Child Protection Scheme (ICPS), 2010.

<sup>14</sup> Government of India, National Policy for Children, 1974.

<sup>15</sup> Government of India, National Charter for Children, 2003 (adopted/notified 2004).

## EDUCATION ENTITLEMENTS UNDER RTE

**Rights-and-duties architecture.** RTE declares every child aged 6-14 has a right to free and compulsory education in a neighborhood school, prohibits denial of admission on procedural grounds, and bars physical punishment and mental harassment in schools. It also regulates admissions by prohibiting capitation fees and screening procedures, thus treating exclusion as a rights violation rather than a private management choice.

**Co-evolution through amendment.** The RTE Amendment Act, 2012 modifies the statute (including with respect to the scope of application and definitional/institutional issues), illustrating how child rights in India frequently move through incremental legal engineering rather than comprehensive codification.<sup>16</sup>

## POLICY FRAMEWORKS AS QUASI-LEGAL ARCHITECTURE

**Policy as governance glue.** India's child-rights governance has relied on policy charters and plans as coordination instruments: National Policy for Children (1974), the National Charter for Children (adopted 2003; notified thereafter), and the National Policy for Children. These instruments articulate rights language, but their legal force is typically softer; the CRC Committee, for example, noted the existence of such frameworks while expressing concern that the Charter did not fully adopt a rights-based approach.

**Integrated Child Protection Scheme.** Executive coordination is also pursued through centrally sponsored schemes. The Press Information Bureau explains that an evaluation revealed a "haphazard" approach and gaps in infrastructure/quality of services, leading to the Integrated Child Protection Scheme (ICPS) introduced in 2009-10 to provide a "safe and secure environment" and to consolidate child protection under a single scheme.

## JUDICIAL CONSTRUCTION OF CHILD RIGHTS AND CHILD PROTECTION

Indian child-rights jurisprudence can be read as moving through three overlapping judicial strategies: (i) **rights recognition** (education and dignity as constitutional entitlements), (ii) **institutionalization through continuing mandamus** (juvenile justice boards, CWCs, police units), and (iii) **procedural child-sensitivity** (missing-children FIR registration; anti-trafficking presumption; child-friendly investigation/trial).<sup>17</sup>

## EDUCATION AS A CONSTITUTIONAL AND QUASI-MARKET PROBLEM

**Capitation fees and the "right to education."** In *Miss Mohini Jain v Karnataka*, the Supreme Court confronted capitation fees and private professional education, treating education as constitutionally significant and linking market exclusion to constitutional injury. The subsequent decision in *Unni Krishnan, J.P. v Andhra Pradesh* restructured this field, recognizing education's constitutional status while crafting a scheme-based approach toward professional education regulation. These cases are foundational not only for education law but for child-rights reasoning because they demonstrate how courts mediate between private power (educational markets) and constitutional entitlements.

## CHILD LABOUR, EXPLOITATION, AND REMEDIATION

**Bonded labour and constitutional enforcement.** In *Bandhua Mukti Morcha v Union of India*, the Court's attention to bonded labour emphasized Article 23's enforceability and adopted a monitoring posture, an early template for rights enforcement in structurally complex contexts. This jurisprudence

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<sup>16</sup> Government of India, National Plan of Action for Children, 2005.

<sup>17</sup> Government of India, National Policy for Children, 2013.

matters for child rights because child labour and trafficking often exist within coercive labour systems and because remediation requires coordination across state agencies.<sup>18</sup>

**Hazardous child labour and welfare remedies.** In *M.C. Mehta v Tamil Nadu*, the Supreme Court addressed child labour (notably in hazardous industrial settings) and articulated a remedial approach that links prohibition to rehabilitation and education-oriented measures, demonstrating how Article 24's constitutional prohibition can be operationalized through scheme-like remedies.<sup>19</sup>

## JUVENILE JUSTICE: AGE, PROCEDURE, AND REHABILITATIVE ORIENTATION

**Age determination and statutory interpretation.** *Pratap Singh v Jharkhand* addressed questions of juvenility determination and the temporal reference point for age assessment, reflecting how procedural choices in juvenile justice can determine whether the child receives rehabilitative treatment or adult penal consequences. Scholarly critique contemporaneous to the decision underscored the stakes of doctrinal choices in juvenile justice adjudication and the risks of interpretive drift away from rehabilitative objectives.<sup>20</sup>

**Expanding and stabilizing juvenility.** In *Hari Ram v Rajasthan*, the Court addressed juvenility under the JJ Act framework, elaborating interpretive principles relevant to age and the protective scope of juvenile justice.

**Constitutionality of the juvenile justice model.** In *Salil Bali v Union of India*, decided in 2013, the Court considered challenges to the age threshold and the juvenile justice framework and reiterated rehabilitative and child-friendly premises as central to juvenile law.

## PROTECTION INSTITUTIONS AND CONTINUING MANDAMUS

**Monitoring the JJ system.** In *Sampurna Behura v Union of India*, the Supreme Court explicitly stated that it was monitoring implementation of the JJ Act and issued directions regarding constitution and functionality of Juvenile Justice Boards and Child Welfare Committees, as well as the establishment of Special Juvenile Police Units and trained/designated officers at police stations. This is significant because it treats child protection as a continuing constitutional obligation requiring structural compliance, not merely case-by-case adjudication.

## MISSING CHILDREN, TRAFFICKING PRESUMPTIONS, AND ENFORCEMENT DESIGN

**FIR registration and trafficking/abduction presumption.** In 2013 proceedings in *Bachpan Bachao Andolan v Union of India*, the Supreme Court directed that missing-child complaints be reduced to FIRs and clarified an initial presumption of abduction or trafficking unless investigation proves otherwise; it also endorsed the need for trained juvenile welfare officers and systemic networks connecting protection units, police, boards, and committees.

**High Court structural interventions.** The High Court of Delhi in *Bachpan Bachao Andolan & Ors v Union of India & Others* (2010) highlighted child trafficking through placement agencies and the “disconnect” among multiple statutes and authorities; it directed governmental authorities to treat regulatory measures and coordination frameworks as binding directions. The same court's engagement with school discipline norms and corporal punishment controversies reflects how child dignity disputes

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<sup>18</sup> *Bandhua Mukti Morcha v Union of India and Ors* (1984) 3 SCC 161 (Supreme Court of India).

<sup>19</sup> *M.C. Mehta v State of Tamil Nadu and Ors* (1996) 6 SCC 756 (Supreme Court of India).

<sup>20</sup> B B Pande, ‘Setting the Juvenile Justice Course Right: A Critique of *Pratap Singh v State of Jharkhand*’ (2005) Supreme Court Cases (Journal).

can arise within subordinate education regulations, requiring constitutional scrutiny through liberty/dignity lenses.<sup>21</sup>

**Table of key judgments and doctrinal contributions**

Case	Court/year	Child-rights domain	Core doctrinal contribution (analytic summary)
<i>Miss Mohini Jain v State of Karnataka</i>	SC, 1992	Education	Recognized education's constitutional significance in the context of capitation fees and exclusionary private education practices
<i>Unni Krishnan v State of Andhra Pradesh</i>	SC, 1993	Education	Reworked the education-right framework and scheme-based regulatory approach toward educational access and fees
<i>Bandhua Mukti Morcha v Union of India</i>	SC, 1984	Exploitation/forced labour	Institutionalized a monitoring posture for Article 23 enforcement in bonded labour contexts
<i>M.C. Mehta v State of Tamil Nadu</i>	SC, 1996	Child labour	Treated hazardous child labour as requiring prohibition plus rehabilitative/education-linked remedial measures
<i>Pratap Singh v State of Jharkhand</i>	SC, 2005	Juvenile justice	Addressed age/juvenility determination; interpretive stakes for child vs adult criminal process
<i>Hari Ram v State of Rajasthan</i>	SC, 2009	Juvenile justice	Clarified interpretive treatment of juvenility within the JJ Act regime
<i>Avinash Mehrotra v Union of India</i>	SC, 2009	Education/safety	Connected Articles 21/21A to safe school conditions and state obligations
<i>Sampurna Behura v Union of India</i>	SC, 2011	JJ implementation	Continuing mandamus to operationalize JJBs/CWCs and juvenile police units
<i>Salil Bali v Union of India</i>	SC, 2013	Juvenile justice	Reaffirmed rehabilitative orientation and "child-friendly approach" as central to juvenile law
<i>Bachpan Bachao Andolan v Union of India</i>	SC, 2013	Missing children/trafficking	Mandatory FIR, presumption of trafficking/abduction, coordination architecture with NALSA/police/protection units
<i>Bachpan Bachao Andolan &amp; Ors v Union of India &amp; Others</i>	Delhi HC, 2010	Trafficking/domestic work	Diagnosed statutory fragmentation; demanded regulatory coordination for placement agencies and child labour concerns

<sup>21</sup> *Parents Forum for Meaningful Education v Union of India*, (Delhi High Court) (corporal punishment challenge).

## INTERNATIONAL NORMS AND DOMESTIC INCORPORATION

International child-rights law performs three roles in the Indian legal system: (i) normative benchmark (CRC principles); (ii) legislative inspiration (explicit incorporation into JJ Act and Rules); and (iii) interpretive resource (courts draw on international standards to strengthen rights-consistent readings).

## CRC COMMITMENTS AND INCORPORATION

**Ratification and standards.** India's CRC ratification is a central legal-political fact for domestic child rights because the JJ Act and Rules explicitly reference the CRC and international juvenile justice instruments. The JJ Act preamble states that the UN General Assembly adopted the CRC (1989) and that India ratified it (1992), then states that it is expedient to re-enact juvenile law bearing in mind CRC standards and other UN instruments.<sup>22</sup>

**Rights-based critique by the CRC Committee.** The CRC Committee's Concluding Observations on India (2004) recognized domestic policy frameworks but expressed concern that the National Charter for Children did not adopt a child-rights-based approach and did not explicitly include all rights and principles of the Convention. This critique is doctrinally relevant because it highlights a recurring pattern: policy documents can proliferate while rights-based operationalization remains thin, especially for participation, non-discrimination, and accountability.<sup>23</sup>

## ILO STANDARDS AND THE CHILD-LABOUR INTERFACE

**The non-ratification gap.** Parliamentary materials associated with the Child Labour legislative reform agenda record that India had not ratified ILO Conventions 138 and 182 as of the Standing Committee's 2013 report. This matters: domestic child-labour law's "prohibit some / regulate others" structure sits uneasily with international labour norms oriented toward minimum age and worst forms elimination as integrated obligations.<sup>24</sup>

## COMPARATIVE PERSPECTIVES AS ANALYTIC MIRRORS

**Comparative lens without country fixation.** Comparative child-rights frameworks frequently emphasize (a) best interests as a primary consideration, (b) child participation rights, and (c) specialized child-friendly justice systems. India legally internalizes many of these through the JJ Rules (best interests; right to be heard; dignity and worth; presumption of innocence) and through POCSO's procedural safeguards and confidentiality orientation. The comparative problem is less one of missing norms and more one of **institutional fidelity**: whether the legal system's front-line actors (police, prosecutors, CWCs, institutions, schools) are structurally enabled and supervised to comply.

## IMPLEMENTATION GAPS AND REFORM AGENDA

The core diagnosis of India's child-rights regime is paradoxical: **high norm density, low delivery reliability**. Courts recognize rights and issue structural directions; Parliament enacts specialized statutes; executive policy frameworks articulate intent; yet systemic failures persist because legal architecture is not matched by administrative capacity, coordination, and accountability.

## IMPLEMENTATION GAPS AS STRUCTURAL PATHOLOGIES

**Fragmentation and "disconnect."** The Delhi High Court's trafficking/placement-agency judgment explicitly identified the lack of comprehensive legislation and the disconnect among multiple statutes and authorities as a barrier to effective protection. This legal fragmentation is reproduced administratively:

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<sup>22</sup> United Nations Treaty Collection, Status of ratification/accession: Convention on the Rights of the Child (India).

<sup>23</sup> International Labour Organization, Minimum Age Convention (No 138), 1973.

<sup>24</sup> International Labour Organization, Worst Forms of Child Labour Convention (No 182), 1999.

child protection spans education, labour, policing, health, social welfare, and judiciary, producing diffusion of responsibility unless a single accountable coordination mechanism is legally empowered, staffed, and measured.

**Institutional capacity deficits.** The Supreme Court's continuing mandamus in *Sampurna Behura* demonstrates that even after specialized legislation, basic statutory obligations (functioning JJBs/CWCs; trained juvenile/child welfare officers; special juvenile police units) were not uniformly operational, necessitating court-driven compliance architecture.

**Data and detection failures.** In missing-children jurisprudence, the Supreme Court identified systemic failure to register FIRs and adopted a presumption of trafficking/abduction, effectively using evidentiary/legal presumptions to correct administrative inertia. This points to a structural truth: child rights are not only about adjudication after harm, but about **detection systems** (reporting, recordkeeping, tracing, networked databases) that prevent children from “disappearing” into administrative invisibility.

**Over-institutionalization risks.** JJ Act and Rules provide for multiple forms of non-institutional rehabilitation (restoration, foster care, adoption, sponsorship, aftercare). Yet, legal design can still drift toward institutionalization if family/community-based alternatives are under-resourced or procedurally cumbersome. The JJ Act's statement that restoration should be the “prime objective” reflects an explicit attempt to resist institutional default, but practical realization depends on trained staff, verified fit persons/institutions, and ongoing monitoring.

## A REFORM AGENDA GROUNDED IN DOCTRINAL AND INSTITUTIONAL COHERENCE

**Consolidation: a child-rights “minimum core.”** India's dispersed constitutional and statutory materials can be aligned through a minimum core of enforceable commitments:

- **Non-negotiable dignity in all processes** involving children (policing, medical exam, institutional care, school discipline).
- **Restoration and reintegration as default outcomes** for children in need of care and protection, with institutional placement treated as exceptional and strictly supervised.
- **Participation and hearing rights** in all significant decisions affecting the child (consistent with child-friendly and right-to-be-heard principles).

**Enforcement engineering: making statutes executable.** Doctrinal commitments must be translated into enforceable design:

1. **Universal operationalization of special juvenile/child welfare officers at police stations.** Court orders have already insisted on trained/designated juvenile welfare officers and district/city special juvenile police units. This should be treated as a statutory compliance floor with audit trails and sanctions for non-compliance.
2. **Mandatory registration and independent oversight of all child care institutions.** The JJ Act and Rules contemplate registration/recognition and periodic visits; operationalizing this requires an enforceable registry, periodic inspections, and transparent compliance reporting to competent authorities and child-rights commissions.
3. **Integrated child-tracking and missing-children workflow.** The Supreme Court's missing-children directions contemplate networked systems connecting protection units, police stations, JJBs, and CWCs; implementation requires a single interoperable data architecture with privacy safeguards, plus explicit statutory timelines.
4. **Child-sensitive criminal procedure as enforceable protocol.** POCSO's child-friendly procedures (reporting, recording, medical examination standards, special courts) should be implemented through



binding SOPs, specialized training, and monitoring indicators (time-to-FIR, time-to-CWC intimation, time-to-medical exam, etc.).

5. **Education-labour convergence.** Article 24 and child labour law cannot be treated separately from education rights. Where children are working, enforcement must be coupled with school reintegration and special training, aligning with RTE's age-appropriate admission logic.

**International alignment strategy.** Two international-facing reforms follow: (a) systematically align child-labour law with minimum-age and worst-forms standards reflected in ILO conventions; and (b) treat CRC Committee critiques as governance prompts, especially to shift policy instruments from "intent" language to enforceable accountability matrices.

## CONCLUSION

Reconceptualizing child rights in India is not primarily an exercise in adding new entitlements; the legal system already contains a sophisticated web of constitutional principles, specialized statutes, and judicially articulated procedural norms. The decisive deficit lies in institutional fidelity: ensuring that the legal system's local interfaces (police station, school, child-care institution, CWC/JJB, trial court) consistently perform child-rights obligations in real time. The most credible reform strategy is therefore to (i) constitutionalize statutory implementation through auditable compliance floors; (ii) hard-wire cross-departmental coordination; and (iii) treat child voice, dignity, and developmental capability as interpretive and administrative defaults rather than aspirational rhetoric.