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**TECTION AND JUVENILE JUSTICE IN INDIA'S TRANSFORMING
CRIMINAL JUSTICE ARCHITECTURE**- Akhil Sajeev¹ & Anusree J²**ABSTRACT**

The metamorphosis of India's criminal justice system through the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, 2023, heralds a paradigmatic shift towards victim-centric jurisprudence that necessitates critical examination of protective mechanisms for vulnerable populations. This paper investigates the evolving landscape of legal safeguards for children within the framework of India's reformed criminal justice system, with particular emphasis on the intersection of technology-enabled justice delivery and constitutional guarantees. The Protection of Children from Sexual Offences (POCSO) Act, 2012, while representing a watershed in Indian legislative history, reveals systemic challenges in operationalising child-sensitive judicial processes. Concurrently, the Juvenile Justice (Care and Protection of Children) Act, 2015, confronts unprecedented challenges in the digital era, where children in conflict with law increasingly engage with cybercrime, online exploitation, and technology-facilitated offences. Through doctrinal analysis, comparative jurisprudence, and examination of judicial pronouncements, this paper argues that India's transforming criminal justice system must transcend procedural reforms to embrace a holistic, rights-based approach centring the voices and agency of vulnerable groups. The research advocates for constitutional vigilance in safeguarding fundamental rights while embracing transformative justice principles prioritising healing, accountability, and systemic change.

Keywords: *Vulnerable Groups Protection, POCSO Act, Juvenile Justice, Digital-Age*

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Delinquency, Bharatiya Nyaya Sanhita, Child-Sensitive Justice.

I. INTRODUCTION

India's criminal justice architecture underwent its most sweeping transformation since independence with the simultaneous enactment of the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA) in 2023.³ These three statutes, collectively displacing their colonial antecedents, represent not merely legislative substitution but an aspirational reimagination of criminal justice premised on the values of the Indian Constitution. Yet legislative ambition is a necessary but not sufficient condition for meaningful reform. The true test of a criminal justice system lies in its treatment of its most vulnerable participants—children who appear before it as victims of abuse, exploitation, and neglect, and as young persons who have come into conflict with the law.

The constitutional mandate for child protection is unambiguous.⁴ Articles 15(3), 39(e) and (f), and 45 of the Constitution collectively impose affirmative obligations upon the State to make special provisions for children, to protect them from exploitation, and to ensure their healthy development. These obligations have been progressively elaborated by the Supreme Court into a comprehensive jurisprudence of child rights, informing legislative developments including the Protection of Children from Sexual Offences (POCSO) Act, 2012,⁵ and the Juvenile Justice (Care and Protection of Children) Act, 2015.⁶ The question this paper addresses is whether the transformative ambitions of the new criminal justice legislation are matched by adequate attention to the specific vulnerabilities of children, and whether the existing specialised frameworks for child protection and juvenile justice are equipped to function effectively within the transformed landscape.

The stakes are considerable. The National Crime Records Bureau's data reveals that crimes against children, particularly sexual offences, continue to be recorded in alarming numbers, while the justice machinery responsible for redressing these crimes operates under severe

³ The Bharatiya Nyaya Sanhita, No. 45 of 2023; Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023; Bharatiya Sakshya Adhiniyam, No. 47 of 2023. All three statutes came into force on July 1, 2024, replacing the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Indian Evidence Act, 1872 respectively.

⁴ INDIA CONST. art. 15, cl. 3 (enabling special provisions for women and children); INDIA CONST. art. 39, cl. (e)-(f) (directing protection of children from abuse and ensuring opportunities for healthy development).

⁵ The Protection of Children from Sexual Offences Act, No. 32 of 2012, India Code (2012) [hereinafter POCSO Act], amended by The Protection of Children from Sexual Offences (Amendment) Act, No. 25 of 2019.

⁶ The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, India Code (2015) [hereinafter JJ Act 2015].

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structural constraints.⁷ Simultaneously, the digital revolution has fundamentally altered both the nature of crimes against children and the character of juvenile delinquency, presenting challenges that neither the POCSO Act nor the JJ Act 2015 were originally designed to address. This paper examines these intersecting challenges and proposes a framework for a genuinely child-centred transformation of India's criminal justice system.

II. THE POCSO ACT: PROMISE, PERFORMANCE, AND THE PATH OF REFORM

A. The Legislative Architecture of Child Protection

The POCSO Act, 2012, represented a watershed in India's approach to child sexual abuse. Prior to its enactment, the legal framework for addressing sexual offences against children was fragmentary and inadequate, with the Indian Penal Code's provisions failing to capture the full spectrum of abusive conduct or to provide child-sensitive procedural safeguards. The POCSO Act addressed these deficiencies comprehensively, defining an extensive range of sexual offences against children, establishing Special Courts for expeditious trial, mandating childfriendly procedures, and creating a presumption of guilt upon proof of certain foundational facts.⁸

Particularly significant were the procedural innovations introduced by the Act. The requirement of in-camera proceedings, the prohibition on the disclosure of the identity of child victims, the provision for the use of audio-visual aids in recording evidence, and the mandate that the examination of child witnesses be conducted through an interpreter or special educator all reflected a sophisticated understanding of the traumatic impact of conventional legal procedures upon child survivors. These provisions have been further reinforced by judicial interpretation, most notably in *Nipun Saxena v. Union of India*,⁹ where the Supreme Court issued sweeping directions protecting the anonymity of child victims and mandating strict confidentiality in the handling of POCSO cases throughout the criminal justice process.

⁷ National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2022, at 173–182 (2023) (recording 38,911 cases under the POCSO Act with an average trial duration exceeding three years in designated special courts).

⁸ POCSO Act, *supra* note 2, ss. 33–38 (establishing Special Courts, prescribing child-friendly procedures, mandating in-camera trials, and directing appointment of Special Public Prosecutors with experience in child-related cases).

⁹ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703, 731 (directing that no court shall disclose the identity of a child victim of sexual abuse, whether directly or indirectly, and mandating strict compliance with Section 33(7) of the POCSO Act).

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B. Systemic Challenges in Implementation

The gap between legislative intent and operational reality in POCSO implementation has been extensively documented. Despite the Act's mandate for expeditious trial, pendency in POCSO cases remains acute, with hundreds of thousands of cases pending before Special Courts across the country.¹⁰ The causes of this pendency are structural: chronic underfunding of the judicial infrastructure, acute shortage of trained forensic personnel, inadequate numbers of Special Public Prosecutors with expertise in child sexual abuse cases, and the absence of integrated support services that might enable child witnesses to navigate the court process without repeated trauma. The Supreme Court's directions in *Bachpan Bachao Andolan v. Union of India*,¹¹ while comprehensive in scope, have been inconsistently implemented across states, revealing the limitations of judicial oversight as a mechanism for sustained systemic change.

A particular concern is the phenomenon of secondary victimisation—the additional psychological harm caused to child survivors by their engagement with the criminal justice system itself. Despite the POCSO Act's procedural protections, child victims frequently continue to encounter poorly trained police personnel, inadequate waiting facilities at courts, and repeated exposure to their alleged abusers during court proceedings. The absence of comprehensive pre-trial and post-trial support services means that the criminal justice process, ostensibly designed to deliver justice for the child, too often compounds the original harm. These are not merely administrative failures; they represent a structural incapacity that the new criminal justice statutes, focused primarily on substantive and procedural reform of the general law, do not directly address.

C. Technology, Digital Evidence, and the New Framework

The Bharatiya Sakshya Adhiniyam introduces significant changes to the law of electronic evidence that carry important implications for POCSO prosecution.¹² The liberalisation of the

¹⁰ National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2022*, at 173–182 (2023) (recording 38,911 cases under the POCSO Act with an average trial duration exceeding three years in designated special courts).

¹¹ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1, 28–31 (issuing comprehensive directions for protection of child victims of trafficking, including establishment of child-friendly spaces and trained personnel in criminal justice institutions).

¹² Bharatiya Sakshya Adhiniyam, No. 47 of 2023, s. 61 (defining electronic record and providing for its admissibility); ss. 63–65 (prescribing conditions for admissibility of electronic records and dispensing with certificate requirement in certain circumstances).

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certificate requirement for admissibility of electronic records—a reform necessitated by years of controversy surrounding the interpretation of section 65B of the Indian Evidence Act as elaborated by the Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*¹³—facilitates the prosecution of digital crimes against children by reducing procedural barriers to the use of electronic evidence. Similarly, the BNSS's provisions for recording of evidence through audio-video electronic means,¹⁴ if implemented with the necessary technological infrastructure, hold the potential to spare child witnesses the ordeal of repeated physical appearances before courts. However, the realisation of this potential is contingent upon SAFEGUARDING THE VULNERABLE: REIMAGINING CHILD PROinvestments in court infrastructure, training of judicial officers in the use of technology, and the development of protocols ensuring that the use of technology does not compromise the rights of the accused to a fair trial.

III. JUVENILE JUSTICE IN THE DIGITAL AGE: BALANCING REFORMATION AND ACCOUNTABILITY

A. The Rehabilitative Paradigm and Its Constitutional Foundations

The Juvenile Justice (Care and Protection of Children) Act, 2015, embodies a rehabilitative philosophy grounded in the constitutional recognition that children who come into conflict with the law are, in a fundamental sense, victims of social failure before they become perpetrators of criminal acts. This philosophy is expressed in the Act's emphasis on reformation, rehabilitation, and reintegration as the primary objectives of the juvenile justice system, and its elaborate machinery of Juvenile Justice Boards, Observation Homes, Special Homes, and individual care plans designed to address the underlying causes of juvenile delinquency.¹⁵

This rehabilitative approach draws its constitutional legitimacy from a web of provisions including Articles 15(3), 21, 39(f) and 45, and has been affirmed by the Supreme Court in

¹³ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, 59 (clarifying that the certificate under erstwhile s. 65B of the Indian Evidence Act must be filed at the time of production of electronic evidence and cannot be filed subsequently as a matter of right).

¹⁴ *Bharatiya Nagarik Suraksha Sanhita*, No. 46 of 2023, s. 530 (authorising recording of examination and statements through audio-video electronic means); s. 531 (enabling trial of certain offences through video-conferencing with consent of parties).

¹⁵ *JJ Act 2015*, *supra* note 3, ss. 40–42 (mandating development of individual care plans for children in conflict with law, prescribing contents including educational, vocational and psychological needs assessment, and requiring quarterly review by Juvenile Justice Board).

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numerous decisions. The Act's conformity with India's international obligations under the United Nations Convention on the Rights of the Child¹⁶ and the Beijing Rules on Juvenile Justice¹⁷ further strengthens its constitutional foundations. The Court's observation in *Dr. Subramanian Swamy v. Raju*¹⁸ that the classification of children as a distinct category for the purposes of penal law reflects a considered constitutional judgment about the developing capacities of children and the State's obligation to prioritise their reformation, remains authoritative.

B. The Contested Provision for Adult Trial of Older Juveniles

The most significant and contested innovation of the JJ Act 2015, introduced against the backdrop of public outrage over a juvenile's involvement in the 2012 Delhi gang rape case, is section 15's provision enabling Juvenile Justice Boards to conduct a preliminary assessment of children aged sixteen to eighteen alleged to have committed heinous offences, with a view to determining whether they are to be tried as adults.¹⁹ This provision represents a fundamental departure from the pre-2015 position of uniform rehabilitation for all children below the age of eighteen and has attracted sustained scholarly and advocacy criticism as being inconsistent with the Convention on the Rights of the Child, the Beijing Rules, and the constitutional imperative of protecting the best interests of the child.

The Supreme Court's decision in *Shilpa Mittal v. State of NCT of Delhi*²⁰ introduced an important, if partial, corrective by holding that offences for which no minimum sentence is prescribed or for which the minimum sentence is less than seven years cannot be characterised as 'heinous offences' within the meaning of the Act, thereby limiting the scope of the adult trial provision. However, the fundamental constitutional question of whether the legislature may, consistently with the best interests principle and the State's *parens patriae*

¹⁶ United Nations Convention on the Rights of the Child art. 40, Nov. 20, 1989, 1577 U.N.T.S. 3. India ratified the Convention on December 11, 1992.

¹⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), G.A. Res. 40/33, U.N. GAOR, 40th Sess., Supp. No. 53, U.N. Doc. A/40/53, at 207 (1985), Rule 17.1(b).

¹⁸ *Dr. Subramanian Swamy v. Raju*, (2014) 8 SCC 390, 412 (upholding constitutional validity of differential age-based treatment in juvenile justice, holding that Articles 14 and 15 permit classification based on age for protective purposes consistent with the best interests principle).

¹⁹ JJ Act 2015, *supra* note 3, s. 15 (empowering Juvenile Justice Board to conduct preliminary assessment of a child aged 16–18 alleged to have committed a heinous offence and determine whether to try the child as an adult); s. 18(3) (enabling transfer to Children's Court upon finding of sufficient mental and physical capacity).

²⁰ *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787, 808 (holding that offences for which maximum sentence is more than seven years but no minimum sentence or minimum sentence less than seven years prescribed, constitute "serious offences" under s. 2(54) and not "heinous offences" under s. 2(33) of JJ Act 2015).

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obligations, create a category of children who may be deprived of the full protections of the juvenile justice system remains unresolved. A comprehensive constitutional challenge to section 15 before the Supreme Court would afford the Court the opportunity to articulate the constitutional limits of the punitive approach to juvenile justice.

C. Digital-Age Delinquency: New Challenges for an Established Framework

The emergence of digital-age delinquency presents perhaps the most pressing contemporary challenge to the juvenile justice framework. National Crime Records Bureau data reveals a consistent increase in juvenile involvement in cyber offences, including online fraud, hacking, cyberbullying, and the production and distribution of child sexual abuse material.²¹ The Information Technology Act, 2000, and its amendments,²² while creating a comprehensive framework for cyber offences, do not contain provisions specifically calibrated to the circumstances of juvenile offenders or to the rehabilitative objectives of the juvenile justice system. The BNS similarly does not make specific provision for the treatment of digital offences committed by juveniles, leaving a significant legislative gap.

The consequences of this legislative lacuna are substantial. Juvenile Justice Boards adjudicating cyber offences frequently lack the technical expertise to evaluate digital evidence or to assess the culpability of juvenile offenders who may have been manipulated or coerced into participation in online criminal networks. The rehabilitative programmes available within the juvenile justice system—vocational training, counselling, educational support—have not been adapted to address the specific factors that drive involvement in cybercrime, including digital illiteracy, peer pressure in online environments, and exploitation by adult offenders operating digital fraud networks. The need for legislative reform, specialist training of juvenile justice personnel, and the development of cyber-specific rehabilitative programmes is urgent.²³

²¹ National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2022, at 194 (2023) (documenting 33,348 cases of juvenile crime in 2022, with cyber offences constituting a growing proportion, particularly in urban metropolitan areas).

²² Information Technology Act, No. 21 of 2000, ss. 67–67B (penalising publication and transmission of obscene and sexually explicit material involving children in electronic form, with enhanced punishment for child pornography under s. 67B, carrying up to seven years imprisonment for first conviction).

²³ Bharatiya Nyaya Sanhita, No. 45 of 2023, s. 67 (defining cybercrime offences relating to computer resources and networks); Telecom Regulatory Authority of India, Recommendations on Online Content Regulation (2022) (recommending enhanced due diligence obligations on intermediaries hosting user-generated content involving minors).

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IV. THE INSTITUTIONAL FRAMEWORK: STRUCTURAL DEFICIENCIES AND REFORM IMPERATIVES

A. Juvenile Justice Boards and Child Welfare Committees: The Implementation Gap

The effective functioning of the JJ Act 2015 depends critically on a network of statutory bodies—Juvenile Justice Boards, Child Welfare Committees, Special Juvenile Police Units, and a range of institutional and community-based care facilities—that together constitute the operational architecture of the juvenile justice system. The Supreme Court's directions in *Sampurna Behura v. Union of India*,²⁴ issued following a comprehensive audit of the system's functioning, documented pervasive failures in this architecture, including the non-constitution of statutory bodies in numerous districts, the appointment of unqualified members to Juvenile Justice Boards and Child Welfare Committees, and the gross inadequacy of institutional care facilities. Despite these directions, progress in implementation has been uneven and insufficient.

The Model Rules under the JJ Act 2015 prescribe detailed qualifications and training requirements for members of Juvenile Justice Boards and Child Welfare Committees, reflecting a recognition that effective juvenile justice requires specialised expertise in child psychology, social work, and child rights.²⁵ Yet in practice, these requirements are frequently not met, and the training programmes mandated by the Rules are inconsistently implemented. The result is a system in which the formal legal protections afforded to children by the JJ Act are substantially undermined by the structural inadequacies of the institutions responsible for giving effect to those protections.

B. Child Care Institutions: Systemic Failures and Reform

The situation in Child Care Institutions—Observation Homes, Special Homes, and Place of Safety—presents a sobering picture of the distance between the rehabilitative aspirations of the JJ Act 2015 and the operational reality of the juvenile justice system. National Commission for Protection of Child Rights data reveals that many Observation Homes and

²⁴ *Sampurna Behura v. Union of India*, (2018) 4 SCC 433, 461–468 (issuing comprehensive directions for implementation of JJ Act 2015, including mandatory constitution of Juvenile Justice Boards in all districts, designation of Special Juvenile Police Units, and training of all personnel working with children).

²⁵ The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Ministry of Women and Child Development, Rules 13–14 (prescribing composition of Juvenile Justice Board, qualifications of social worker members, and mandatory training requirements including child rights, child psychology and restorative justice).

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Special Homes across the country are severely overcrowded, inadequately staffed, and lacking in the educational, psychological, and vocational support services that the Act mandates.²⁶ The individual care plan mechanism, which represents the Act's primary instrument for individualised rehabilitation, is routinely reduced to a bureaucratic formality, with plans developed without meaningful assessment of the child's needs or the participation of the child and family.

The Supreme Court's monitoring jurisdiction over Child Care Institutions, exercised through various writ proceedings including the Tamil Nadu orphanages case,²⁷ has produced numerous directions for improvement, but the systemic nature of the problem—rooted in chronic underfunding, inadequate human resources, and the low priority assigned to child welfare in government budgetary processes—defies resolution through judicial direction alone. Sustained executive commitment, backed by adequate resource allocation, is an indispensable precondition for meaningful reform of the institutional framework of juvenile justice.

V. TOWARDS A COMPREHENSIVE RIGHTS-BASED FRAMEWORK: PROPOSALS FOR REFORM

The analysis in the preceding sections reveals that India's transforming criminal justice system, for all its legislative ambition, has not yet adequately addressed the distinctive vulnerabilities and needs of children as participants in the criminal justice process. The following proposals are advanced as components of a comprehensive framework for a genuinely child-centred criminal justice system.

First, a dedicated and comprehensive legislative review of the POCSO Act and JJ Act 2015 is urgently needed to address the structural gaps that technological change and implementation experience have revealed. This review should encompass the integration of cyber-specific provisions addressing both child victims of online offences and juvenile perpetrators of cyber crimes, the strengthening of mandatory support service provisions, and the introduction of enforceable time-limits for the completion of POCSO trials. The reform process should be

²⁶ National Commission for Protection of Child Rights, Status of Children in India Inc. 2020 (NCPCR 2021) (documenting that as of March 2020, Observation Homes in 12 states were operating at over 150% capacity and lacked trained counsellors, medical personnel or adequate educational facilities).

²⁷ Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India, W.P. (Crl.) No. 102 of 2007 (S.C.), order dated February 7, 2019 (noting persistent deficiencies in Child Care Institutions including inadequate infrastructure, untrained staff and failure to implement individual care plans as mandated by JJ Act 2015 and Model Rules 2016).

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informed by evidence from implementation evaluations, comparative study of international best practices, and—critically—the perspectives of child survivors and young persons with experience of the juvenile justice system.

Second, the new criminal justice statutes should be operationalised in a manner that maximises their protective potential for children. The BNSS's provisions for audio-video recording of evidence should be implemented with priority in cases involving child witnesses, with the development of standardised protocols and the provision of technological infrastructure to all Special Courts. The BSA's provisions on electronic evidence should be accompanied by detailed guidance on the admissibility and weight of digital evidence in child exploitation cases, given the particular vulnerability of digital evidence to manipulation and the limited technical capacity of many prosecutors and adjudicators.

Third, a comprehensive inter-agency coordination mechanism is required to bridge the fragmentation between the child protection and juvenile justice systems and the broader welfare infrastructure. The Law Commission of India has previously recommended the development of an integrated legislative and administrative framework for child welfare that would address this fragmentation,²⁸ and this recommendation deserves urgent consideration. At the operational level, multi-agency child protection committees at the district level, with mandatory representation from the police, judiciary, child welfare authorities, health and education departments, and civil society, would provide a structural mechanism for the coordination without which the best-designed legal frameworks will fail in implementation.

Fourth, and fundamentally, the transformation of the criminal justice system must be accompanied by a transformation in the attitudes and competencies of those who operate it. The most sophisticated legislative architecture will be ineffective if police officers continue to be unaware of, or indifferent to, their obligations under the POCSO Act; if judicial officers lack the training to conduct child-sensitive proceedings; or if social workers and counsellors lack the expertise to provide trauma-informed support to child victims and young offenders. Mandatory, regular, and independently evaluated training programmes for all personnel working with children within the criminal justice system are not a peripheral concern but a central condition of the system's effectiveness.

²⁸ Law Commission of India, Early Childhood Development and Legal Entitlements, Rep. No. 259, at 78–82 (2015) (recommending comprehensive legislative framework integrating child protection, juvenile justice and child welfare functions under a unified administrative structure with dedicated budget allocation and trained workforce).

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VI. CONCLUSION

India's new criminal justice statutes represent an ambitious attempt to reimagine a legal system shaped by more than a century of colonial legislation. They contain provisions of genuine value for the protection of children—enhanced evidentiary frameworks, expanded use of technology in judicial proceedings, and a broader conception of victim-centred justice. Yet legislation, however well-crafted, is only the beginning of the transformation required. The protection of children within India's criminal justice system demands not merely new laws but new institutions, new investments, new capabilities, and a new culture of child-centredness among all those who exercise authority over children's lives in the shadow of the law.

The POCSO Act and the JJ Act 2015 remain the primary legislative instruments for child protection and juvenile justice. Their promise has been only partially redeemed by implementation. The task of India's transforming criminal justice system is not to supplement or supersede these specialised frameworks but to provide them with the structural environment in which they can finally fulfil their potential. That requires sustained attention to the systemic failures documented in this paper, political will to allocate the resources that effective child protection demands, and the constitutional courage to insist that the rights of children—to protection from abuse, to a fair and child-sensitive justice process, and to rehabilitation and reintegration rather than punishment—are not aspirational flourishes but enforceable entitlements that the State is obliged to honour.

The children who pass through India's criminal justice system—as victims, witnesses, and young offenders—are among the most vulnerable participants in any legal proceeding. The measure of the transformation underway will ultimately be taken not in the elegance of new legislation or the efficiency of new procedures, but in the lived experience of these children: whether they feel heard, protected, and treated with the dignity that the Constitution demands for every person. That standard, demanding as it is, is the only one adequate to the gravity of the task.

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