

## **1. Conception of child in India in Indian Constitution and Penal Code.**

In common saying or in ordinary sense "Child" means a person who is unable to maintain itself. According to the provisions of various Acts dealing with child exclusively one can come to know that it is the age of the child which determines as to who is child. In other words, child may be determined according to his/her age subject to a particular Act to which he is subjected.

According to United Nations Convention on Rights of the Child (UNCRC), "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." This gives the various countries freedom to fix the age limit in determining that who is a child.

In India, before passing of the Children Act, 1960 there was no consistency regarding age limit of juvenile or child. Different state laws set different age limits in the definition of child under the respective Acts. In 1986 a uniform Central Act passed by the Parliament namely Juvenile Justice Act 1986 defined Child as "a juvenile or child, who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age". Government of India while discharging its international obligations revoked the JJA Act, 1986 by 2000 Act and the distinction regarding the age between male and female juveniles was done away. After passing The Juvenile Justice (Care and Protection of Children) Act 2000, any person below the age of 18 is considered as a child as the mental state of adults and children are different; therefore there is a need to treat them separately under the different purview of law. The JJ Act 2000 was replaced by Juvenile Justice (Care and Protection) Act 2015 which defined Juvenile under section 2(35) as juvenile means a child below the age of eighteen years.

Recently, juvenile delinquency and offences related to juveniles have become an important aspect of criminology. And so there are different provisions in our legal system to ensure that children do not suffer any ailment due to prevalence of similar legal system.

### → CHILD UNDER INDIAN CONSTITUTION:

The Indian constitution which came into effect from 26th January, 1950, after independence of India from British regime on 15th of August, 1947 accorded a special status to children through various provisions made especially in Chapter - III under the Fundamental Right Chapter and Chapter - IV relating to Directive Principles of State Policy.

A review of Indian constitution reveals that it provides ample scope for the state to undertake special schemes for children both as a fundamental right and as a Directive Principle. While doing so it cannot be construed as discriminatory as Article 15(3) empowers the state to make special schemes for children, which are to be considered as positive discrimination in an affirmative action. The various rights accorded to children under the Indian Constitution are as follows:

(i) Right to education: (Article 21-A)

Article 21A was inserted by the 86<sup>th</sup> Amendment Act of 2002 which provided that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law determine.

The Supreme Court in its liberal interpretation of life and liberty as under Article 21 held that the term liberty not only includes liberty but also includes livelihood but also the right of human beings to live with dignity and that also includes the right to education, and therefore, right to education is a fundamental right under the constitution. The case of **Mohini Jain case** came to be fortified by the supreme courts subsequent constitution bench of **Unnikrishnan's case**, which held that right to education can be restricted to primary educational level and not to higher secondary level.

(ii) Early childhood care and education: (**Article 45**)

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. This article has been substituted by the Constitution (eighty-sixth amendment) act, 2002 which received assent of the President on Dec. 12 2002. By this amendment a new Article 21-A providing for right to education has also been inserted. This is in keeping with the hope expressed in the Supreme Court in **Unnikrishnan vs. State of AP (1993)** and **Mohini Jain vs. State of Karnataka (1993)** that conversion of the State's obligation under Article 45 into a fundamental right would help achieve the goal at a faster speed.

(iii) Fundamental duty to provide education: (**Article 51-A**)

Article 51-A of the Constitution provides fundamental duties in which clause(k) was inserted by the 86<sup>th</sup> Amendment Act of 2002 which provided that it is the fundamental duty of the parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

(iv) Right against exploitation: (**Article 23**)

Article 23 provides that traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

In pursuance of Article 23 the bonded labour system has been abolished and declared illegal by the bonded labour system (abolition) act, 1976. To ask a person to work against his will and not provide him remuneration can be a breach under Article 23 of the Constitution. Moreover, the immoral traffic (prevention) Act, 1956 is a law made by parliament under Article 35 of the constitution for the purpose of punishing acts which result in traffic in human beings.

(v) Prohibition of employment of children in hazardous employment: (**Article 24**)

Article 24 provided that no child below the age of fourteen years shall be employed to work in any factory or mine or be engaged in any hazardous employment.

The court in **M.C.Mehta v. State of T.N (1996)** noted that menace of child labour was widespread. Therefore, it issued wide ranging directions in the context of employment and exploitation of children in Sivakasi prohibiting employment of children below the age of 14 and making arrangements for their education by creating a fund and providing employment to the parents or abled bodied adults in the family.

(vi) Principles of policy to be followed by State: (**Article 39 (e) and (f)**)

Article 39(e) provides that the state shall direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Also Article 39(f) provides that the state shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

→ CHILD UNDER INDIAN PENAL CODE:

The India Penal Code does not define the term “child” but it provides certain safeguards for offences done by child as well as also provides penal provisions for offences done in relation to child. The provisions relating to child under the Code are as follows:

(i) **Section 82:**

According to the section 82 of Indian Penal Code (IPC), nothing is an offence which is done by a child under seven years of age. The reason for such a provision is that a child under seven years of age cannot be expected to understand the consequences of his actions.

(ii) **Section 83:**

According to section 83 nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

(iii) **Section 89:**

To ensure that people come forward to help children in danger, section 89 of IPC asserts that nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person.

(iv) **Section 317:**

To ensure that children are not left at the peril of their parents i.e. they are not abandoned section 317 of IPC, whoever being the father or mother of a child under the age of twelve years, having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years; or with fine, or with both.

**(v) Section 361:**

According to section 361 of IPC, whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

**(vi) Section 363 and 363A:**

Section 363 of IPC provides the punishment of this offense i.e. whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Section 363A provides that whoever kidnaps or maims a minor in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. This ensures the safety of children.

**(vii) Section 366A:**

To protect the girl child from sexual offenses section 366 A of IPC asserts that whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

**(viii) Section 369:**

Section 369 provides that whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**(ix) Section 372:**

Section 372 of IPC asserts that whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

**(x) Section 373:**

Section 373 of IPC states that whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Thus various rights and safeguards are provided to children under the Indian Constitution as well as under the Indian Penal Code.

## 2. Write an essay on neglected juvenile.

Children form an important and integral part of every -society in the world. In their tiny shoulders rests the future of mankind. It is, therefore, the duty of every society to provide proper care and attention to every child. Also their very dependent nature makes them entitled to special care and attention in the family and society at large. The fact that they are innocent and immature makes them vulnerable to all forms of exploitation. Therefore, a better state and peaceful society can be created only if the childhood of every child is properly nurtured, nourished and protected. Since it is the duty of every person to take care of his/her children the state enforces this duty through law, because the ultimate responsibility lies on the state to take care of child in need of care and protection. Apart from nutrition and education, natural love and affection is very important for a child's physical and mental development. A child who is "abandoned, avoided and neglected by the parent becomes unmanageable and makes the child frustrated and corrupted as a result of which the child has to face disrespect and humiliation in the society and this may result in the child committing delinquent acts. Therefore, to avoid this the law provides for the care of child in need of care of protection with treatment because they need protection rather than punishment.

It is pertinent to note that the Parliament in the year 1986 took a bold step towards the welfare of neglected juveniles by passing the Juvenile Justice Act, the main purpose of which was to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. **Section 2(i) of the 1986 Act defined neglected juvenile** as a juvenile who is found begging, without having any home or settle place of abode and without any ostensible means of subsistence and is destitute, or has a parent or guardian who is unfit or incapacitated to exercise control over juvenile, or lives in a brothel or with a prostitute or who is likely to be abused or exploited for immoral or illegal purpose.

However, the Juvenile Justice Act, 1986 has now been repealed by the passing of Juvenile Justice (Care and Protection of Children Act), 2000. The term 'neglected juvenile' as used in the Act of 1986 has now been changed to 'child in need of care and protection' in the Juvenile Justice (Care and Protection of Children Act), 2000. The definition of '**child in need of care and protection**' is so wide as to include a large number of children.

**Section 2(14) of the JJ Act 2015** provides the various categories of children who can be termed as 'child in need of care and protection'. The various categories are as follows:

(i) Child who is found begging without having any home or settled place or abode and without any ostensible means of subsistence: These destitute children live and grow in a society where they are neglected and deprived of not only food, clothing and shelter but also education. They also lack affection, care and guidance from adults. These street children not only live but also work and struggle in situations and circumstances that are not conducive for their growth and development. Generally, children who are abused, neglected, abandoned and maltreated end up living in the streets. Mostly these children resort to varied odd jobs like rag pickers, shoe shine boys, washing utensils or serving tea in dhabas or working as fitters etc on workshops or small mechanic shops. These children generally live in groups at construction sites without any habitation facilities. Such condition of children drives them into child labour and children are required to work beyond their physical capacity and the number of hours they have to work interferes with their education, recreation and rest. So the Parliament enacted the Child labour (Prohibition and Regulation) Act, 1986 as a step towards concretizing the labour conditions of the child workforce.

(ii) Child who resides with a person who injured or abused him: It includes child who resides with a person, whether that person is a guardian or not, and such person has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person.

(iii) Child who is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts: Since children have no political power and their opinions are not given due weight they are dependent upon the adults and state to protect their rights but when this does not happen there is every possibility of these children being victims of sexual abuse and exploitation. As a result the sexual abuse of children is increasing by the day in every society. Internet has also contributed towards the increase in instances of sexual abuse of children because child sex has turned into global business through internet. sexual abuse of children is not only limited at the hands of the strangers. Nowadays, children are not safe in the hands of their own family members. Many a times children suffer sexual abuse at the hands of family members.

Therefore, in the international front the U.N Convention on the Rights of the child, 1989 is the most promising instrument which was adopted by the General Assembly. This Convention casts important responsibilities on state parties to protect the child from all forms of sexual abuse. In India the Constitutional provisions contained in Articles 21, 23, 24, 39 (e) promote and protect the interest of children. Apart from the Constitutional Provisions the Immoral Traffic Prevention Act, 1956 lays down provisions for the purpose of dealing with the problem of prostitution. The Indian Penal Code, 1860 has also made certain acts committed against children as offences punishable in accordance with law.

(iii) Child who is mentally, physically challenged or ill children or children suffering from terminal diseases or incurable diseases: The children who suffer from such impairment require care and special attention. However, since such children are generally educated in separate schools their interaction with other children is reduced to the minimum. As a result such children remain isolated and it becomes difficult to integrate them in society. Consequently these differently-abled children are also most likely to be neglected, abused and abandoned. Therefore, such children need all types of care specially residential care, foster care, medical care, medical follow up and other forms of protection.

(iv) Children who are likely to be inducted into drug abuse or trafficking: though the problem of substance abuse or drug abuse affects children belonging to the different strata of society living in the tribal, rural and urban India but children living in the streets are more likely to be affected by drug abuse. While many of these children resort to drugs to overcome the stressful lives that they live everyday, others are coerced into substance abuse. The Narcotic Drugs and Psychotropic substances Act, 1985 was enacted which declares illegal the production, possession, transportation, purchase and sale of any narcotic drugs or psychotropic substances and makes the person, addict/trafficker liable for punishment. Apart from this, The prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act was enacted in the year 1988. Under this Act people who use children for drug trafficking can be booked as abettors or conspirators to the Act. The Juvenile Justice (Care and Protection of Children) Act, 2000 also provides for penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.

(v) Child who has an unfit parent: This category includes child who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child.

(vi) Child who does not have parents: It includes child who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him.

(vii) Missing or run-away child: It includes child who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed.

(viii) Child who is abused for unconscionable gains: It includes child who is being or is likely to be abused for unconscionable gains.

(ix) Child who is victim of armed conflict: This category includes child who is victim of or affected by any armed conflict, civil unrest or natural calamity. Children are said to be affected by armed conflict in different ways but the most dangerous of all is their participation as soldiers. Availability of small arms and light weapons has made participation of children in armed conflict a lot more easier. The aftermath of armed conflicts has irreparable damage both physical and emotional on the child. The child loses everything - family members, schools, neighbourhoods and communities. The child has to cope with such loss at such young age and many a times is not able to. This can prove to be detrimental to the growth and development of the child. Therefore, for the protection and care of children as

victims of armed conflicts two treaties i.e. The Geneva Convention 1949 and the Convention of the Rights of the Child, 1989 exist.

(x) Child who is at risk of child marriage: It includes child who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

The Juvenile Justice (Care and Protection of Children) Act 2015 has made various provisions in respect of separate handling of child in need of care and protection and juvenile in conflict with law. Child welfare committees and Juvenile Justice Boards have been constituted for the purpose of dealing with child in need of care and protection and juvenile in conflict with law separately.

The Act provides for the establishment of child welfare committees by the state government for exercising the powers and discharging the duties in relation to child in need of care and protection. The Juvenile Justice (Care and Protection of Children) Rules, 2007 also lays down the functions and powers of the Committee. Some of the important functions among others are:

- (a) to take cognizance of and receive children produced before the committee
- (b) to decide on the matters brought before the committee
- (c) to reach out to such children in need of care and protection who are not in a position to be produced before the committee
- (d) conduct necessary inquiry on all issues relating to and affecting the safety and well being of the child,
- (e) direct the child welfare officers or probation officers or non - governmental organizations to conduct social inquiry and submit a report to the committee
- (f) ensure necessary care and protection, including immediate shelter,
- (g) ensure appropriate rehabilitation and restoration, including passing necessary directions to parents or guardians or fit persons or fit institutions in this regard, in addition to follow - up and co - ordination with District Child Protection Unit or State Adoption Resource Agency and other agencies,
- (h) direct the Officer - in - Charge of children's Homes to receive children requiring shelter and care,
- (i) to provide a child friendly environment for children
- (j) recommend 'fit institutions' to the state Government for the care and protection of children,
- (k) declare 'fit persons',



(l) declare a child legally free for adoption,

(m) co - ordinate with the Police, Labour Department and other agencies involved in the care and protection of children with the support of District Child Protection Unit or state Child Protection Unit or State Government.

Thus the Act of 2015 has provided for dealing with children in need of care and protection or neglected juveniles.

### 3. Juvenile in conflict with law.

The subject of differential treatment in the criminal justice system to children in conflict with law assumed significance in all modern democratic States considering the fact that children cannot be treated in the same scale like adults due to their less development of mind, absence of mens rea and also culpability. This liberal approach to deal with children in the criminal justice system when they come in conflict with law was also largely influenced by the understanding that criminality among children is the result of the circumstances in which they grow and develop. This understanding about criminality among children demanded that they should have special measures with authority of law, which can protect them in the criminal justice system. The growth of laws in several modern democratic states to address the problem of youthful offenders in the criminal justice system consequentially evolved into juvenile jurisprudence. So there was a need for a different mechanism to deal with children in conflict with law which led to the enactment of the Juvenile Justice Act. It is primarily concerned about reformation and social reintegration to void criminality among children who come in conflict with law, on one hand and on the other it makes an attempt to avoid penalisation.

The term "Juvenile Delinquents" or "Children in Conflict with the Law" refers to any children below the age of 18 years who has come in contact with the juvenile justice system as a result of committing a crime or being suspected of committing a crime.

Child in conflict with law is defined in section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 as a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

The 1986 Act defined delinquent juvenile as a juvenile who has been found to have committed an offence. There was ambiguity regarding the relevant date at which juvenility was to be determined. The question whether the relevant date at which juvenility was to be determined was the date on which the juvenile was produced before the competent authority viz. JJB.

In the case of **Arnit Das vs. State of Bihar (2000)** the SC observed that the legislature had been vague whilst defining the term "delinquent juvenile" in the 1986 Act. In order to remove the uncertainty the 2015 Act redefined "child in conflict with law" to mean a child who is

alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

Child Welfare Committee (CWC) has been established under the Act to deal with child in need of care and protection and Juvenile Justice Board (JJB) has been established to deal with child in conflict with law.

The essential features of the JJ Act 2015 with respect to child in conflict with law are as follows:

1. It treats all the children below 18 years equally, except that those in the age group of 16-18 can be tried as adults if they commit a heinous crime.
2. A child of 16-18 years age, who commits a serious offence, may be tried as an adult if he is apprehended after the age of 21 years.
3. A heinous offence attracts a minimum seven years of imprisonment. A serious offence attracts three to seven years of imprisonment and a petty offence is treated with a three year imprisonment.
4. No child can be awarded the death penalty or life imprisonment.
5. It mandates setting up of Juvenile Justice Boards (JJBs) in each district with a metropolitan magistrate and two social workers, including a woman. The JJBs will conduct a preliminary inquiry of a crime committed by a child within a specified time period and decides whether he should be sent to rehabilitation centre or sent to a children's court to be tried as an adult. The board can take the help of psychologists and psycho-social workers and other experts to take the decision.
6. A Children's court is a special court set up under the Commissions for Protection of Child Rights Act, 2005, or a special court under the Protection of Children from Sexual Offences Act, 2012. In absence of such courts, a juvenile can be tried in a sessions court that has jurisdiction to try offences under the Act.

Thus the Indian law focuses on reforming the child in conflict with law rather than punishing him.

REFERENCE:

[Concept of child under Indian Constitution and Indian Penal Code \(slideshare.net\)](#)