

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 86th 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 86th 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 offense 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(l) 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.