

## Legal Protection of Children in India

Dr. Ajai Singh

Assistant Professor, Department of Law, University of Allahabad, Prayagraj

Banke Bihari Gupta

Research Scholar, Department of Law, University of Allahabad, Prayagraj

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### **Abstract**

The legal system in India provides a solid framework for the protection of its residents<sup>1</sup>, with particular measures for the safeguarding of the country's young people. The Right to Equality, the Right to Freedom, the Right against Exploitation, the Right to Freedom of Religion, Cultural and Educational Rights, and the Right to Constitutional Remedies are the six Fundamental Rights that are outlined in the Constitution. Other Fundamental Rights include the Right to Constitutional Remedies. Citizens of India are afforded significant protection by Indian judicial system, which, among other things, ensures that they have access to their fundamental rights. The age at which one is considered a child under Indian law can range anywhere from 14 to 18 years, which is a reflection of the legislative aim to provide increased protection for younger people. The rights of children in India are protected by law in a number of different ways, including constitutional provisions 15(3), 21A, 24, and 39; the Right of Children to Free and Compulsory Education Act; the Juvenile Justice (Care and Protection of Children) Act; the Protection of Children from Sexual Offenses (POCSO) Act; and the Child Labour (Prohibition and Regulation) Act. The protection of children is a high priority in the legal system of India. This priority may be seen in constitutional mandates, sector-specific legislation, and protective measures for children who are in confrontation with the law.

**Keywords:** Indian Majority Act of 1875, Child Labour (Prohibition and Regulation) Act of 1986, Juvenile Justice (Care and Protection of Children) Act, 2015.

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### **I. Introduction**

The legal system of India provides a robust framework for the protection of its residents. The legal system of India is deeply anchored in the ideals of justice, equality, and human dignity. Citizens of India are granted a variety of Fundamental Rights by the Constitution of India, which is the highest legislation in the land. Additionally, the Constitution of India outlines specific measures for the protection of children. The legal safeguards that are afforded to all citizens of India are investigated in this study, with a specific emphasis on the position of children. This article looks into the complexities of determining who in India is legally deemed to be a child, as well as the expansive laws that have been enacted to protect the rights of children, secure their safety, and promote their well-being. In addition, the article elucidates the vast protective shield placed over children by the legal system in India, which demonstrates the nation's persistent dedication to the wellbeing of its youngest citizens. This paper offers a comprehensive understanding of the topic in the context of Indian jurisprudence by dissecting the complex tapestry of legal norms, constitutional mandates, and legislative instruments in the context of citizen and child protection. The goal of the paper is to provide readers with a full comprehension of the topic.

### **Citizens and its Legal Protection in India**

#### **Definition of Citizen**

Black's Law Dictionary<sup>2</sup>, a highly regarded legal dictionary, defines "citizen" as follows:

"Citizen- A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges."

The Constitution of India provides the laws defining the citizenship status of individuals in India. Article 5 of the Indian Constitution initially specified who would be a citizen of India at the time the Constitution came into effect on January 26, 1950. It stated that a person would be considered a citizen of India if they were born in India, or either of their parents were born in India, or they had been ordinarily resident in India for at least five years immediately preceding the commencement of the Constitution.

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<sup>1</sup> Resident includes citizen and non-citizen.

<sup>2</sup> 4<sup>th</sup> Edition (revised) p. 310

Afterwards, the Citizenship Act of 1955, along with its several amendments over the years, currently lays out the laws regarding citizenship. It prescribes five ways of acquiring citizenship:

1. Birth: Any person born in India on or after 26th January 1950, but before the commencement of the 1986 Act on 1st July 1987, is a citizen of India by birth. For those born in India on or after 1st July 1987, they're considered citizens if either of their parents was a citizen of India at the time of their birth. After the 2003 amendment, for those born on or after 3rd December 2004, they're considered citizens if at least one parent is a citizen and the other is not an illegal immigrant at the time of their birth.
2. Descent: A person born outside India on or after January 26, 1950, but before December 10, 1992, is a citizen of India by descent, if their father was a citizen of India at the time of their birth. From December 10, 1992, onwards, a person born outside India can become a citizen by descent if either parent was a citizen at the time of birth.
3. Registration: The Central Government may, on an application, register as a citizen of India any person (not being an illegal migrant) who is not already such citizen by virtue of the Constitution or other provisions of this Act if they meet the qualifications prescribed in the Third Schedule to the Act.
4. Naturalization: The Central Government may, upon application, grant a certificate of naturalization to any person (not being an illegal migrant) if they meet the qualifications specified in the Third Schedule to the Act.
5. Incorporation of territory: If any territory becomes a part of India, the Central Government may specify the persons who among the people of the territory shall be citizens of India.

The Constitution of India, which serves as the foundation for democracy in that country, ensures that its people will have access to a comprehensive set of legal safeguards. These safeguards are principally articulated in the form of Fundamental Rights, which are grounded in Part Third of the Indian Constitution.<sup>3</sup>

Article 14 of the Constitution guarantees everyone's right to equality, making it one of the six Fundamental Rights recognised by the Constitution.<sup>4</sup> This right makes it illegal to discriminate against someone based on their religion, race, caste, sex, or place of birth.<sup>5</sup> It is a crucial clause that ensures all citizens have equal protection under the law, and it is strengthened by the elimination of the practice of untouchability as well as the prohibition of titles.

The legal safeguards that are in place for citizens are bolstered even further by the inclusion of Articles 19 to 22, which guaranteed them the right to freedom. It ensures a wide variety of liberties, such as the freedoms of speech and expression, of assembly in a manner that does not include the use of force or violence, and of movement without restriction. In addition to this, it protects citizens from being held in arbitrary custody by granting them the right to legal protection in the event that they are convicted of a crime.<sup>6</sup>

However, these rights are not absolute and may be subject to reasonable restrictions in the interests of maintaining India's sovereignty, the integrity of India, the security of the state, amicable relations with other states, public order, decency or morality, and contempt of court.<sup>7</sup>

In addition, the Constitution recognises the rights of individuals not to be exploited, the right to freedom of religion, cultural and educational rights, and the right to constitutional remedies. These rules, when taken together, constitute a comprehensive framework that ensures Indian citizens are protected across a wide range of fronts.

In particular, citizens have a considerable legal protection in the form of the Right to Constitutional Remedies, which gives them the ability to petition the Supreme Court in order to have their Fundamental Rights upheld. This is a significant legal safeguard for citizens.<sup>8</sup>

A number of laws and Acts, such as the Protection of Human Rights Act, 1993 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been passed in order to further protect the rights of citizens and serve as a supplement to the constitutional protections that are already in place.<sup>9</sup>

In conclusion, the legal system of India offers a high level of protection to its people by way of granting Fundamental Rights and various laws. Despite the fact that these laws and rights are occasionally contested, they

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<sup>3</sup> PM Bakshi. (2013). *The Constitution of India*. Universal Law Publishing.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Granville Austin, (1999). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.

<sup>7</sup> Supra Note 1.

<sup>8</sup> Durga Das Basu, (2008). *Introduction to the Constitution of India*. Prentice Hall India page no. 167.

<sup>9</sup> The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. No. 33 of 1989. Gazette of India, Part II, Section 1.

continue to serve as the primary means by which the rights of citizens are protected and safeguarded in our country.

### **The Definition of a Child in Indian Law**

It is of the utmost importance for the enforcement of children's rights and the protection of children within the legal system that a proper understanding of who is regarded as 'child' under Indian law. The term "child" is defined in a variety of statutes and regulations, but in general, it refers to a person who has not yet attained the age of majority in the jurisdiction in which it is used.<sup>10</sup>

18 years of age is considered the legal age of majority according to the Indian Majority Act of 1875.<sup>11</sup> This is the age at which a person is considered to be competent of managing their own affairs, and as a result, at which age they are considered to be an adult in the eye of the law.

However, different age restrictions are set forth by various laws. A person is considered to be a child for the purposes of the Child Labour (Prohibition and Regulation) Act of 1986 if they have not yet reached the age of fourteen years. This piece of legislation intends to put an end to the practice of exploiting youngsters by giving them job.

According to the Juvenile Justice (Care and Protection of Children) Act, 2015, the definition of a child in the field of criminal justice refers to anyone who has not yet reached the age of 18 years.<sup>12</sup> Despite this, the Act permits juveniles between the age of 16 and 18 to be tried as adults for some serious offences.<sup>13</sup>

In addition, the Protection of Children from Sexual Offences (POCSO) Act, which was passed in 2012, affords protection against sexual assault, sexual harassment, and pornography to all individuals up to the age of 18 in the United Kingdom.<sup>14</sup>

These varying conceptions of age illustrate the need for contextual specificity in child-related laws. Each piece of legislation has its own distinct function, and different age limitations apply to children depending on the objectives it aims to accomplish in its own right.

In conclusion, the legal definition of a child in India varies depending on the statute that is being referred to. There is no universal definition. The goal of the legislation was to give increased protection to individuals during the years in which they are developing, hence the age restriction ranges from 14 to 18 years.

### **Child and its Legal Protection in India**

Multiple constitutional and legislative measures are used in India to ensure that children are afforded the legal protections to which they are entitled. The Fundamental Rights and the Directive Principles of State Policy of the Indian Constitution both include provisions that implicitly protect the rights of children.<sup>15</sup>

Article 15(3), Article 21A, Article 24, and Article 39 of the Constitution each contain measures that are intended to protect minors. For instance, Article 24 prohibits the employment of minors in hazardous environments like as factories, mines, or any other setting, which effectively outlaws the practice of child labour.<sup>16</sup>

In addition, Article 21A of the Constitution is given life by the Right of Children to Free and Compulsory Education Act of 2009, which ensures that all children between the ages of 6 to 14 are entitled to free and obligatory education.<sup>17</sup>

Another important piece of legislation that ensures the protection, rehabilitation, and social reintegration of children who have been in conflict with law is the Juvenile Justice (Care and Protection of Children) Act, which was passed in 2015. This act was passed in 2015. This law is especially significant since it prioritises the welfare of children by using a child-centered approach and concentrating on what is in the child's best interests.

The Protection of Children from Sexual Offences (POCSO) Act, which was passed into law in 2012, is an important piece of legislation that protects children from sexual offences in particular. It develops a child-friendly

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<sup>10</sup> V.K.Khanna, (2007). *Child rights in India - Law, policy, and practice*. Oxford University Press, pageno. 67.

<sup>11</sup> The Indian Majority Act, 1875. No. 9 of 1875. Government of India.

<sup>12</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015. No. 2 of 2016. Gazette of India, Part II, Section 1.

<sup>13</sup> The Child Labour (Prohibition and Regulation) Act, 1986. No. 61 of 1986. Gazette of India, Part II, Section 1.

<sup>14</sup> The Protection of Children from Sexual Offences Act, 2012. No. 32 of 2012. Gazette of India, Part II, Section 1.

<sup>15</sup> PM Bakshi. (2013). *The Constitution of India*. Universal Law Publishing.

<sup>16</sup> *Ibid*.

<sup>17</sup> The Right of Children to Free and Compulsory Education Act, 2009. No. 35 of 2009. Gazette of India, Part II, Section 1.

system for the reporting, investigation, and trial of cases involving child sexual abuse and prescribes severe sanctions for the offences that have been committed.<sup>18</sup>

The Child Labour (Prohibition and Regulation) Act of 1986 and its subsequent revision in 2016 make it illegal to employ children in any capacity and control the working circumstances of teenagers. This act also designed to eliminate child exploitation through employment and prevent the involvement of children under the age of 14 in any hazardous occupations.

Adoption procedures are protected by law thanks to the Hindu Adoption and Maintenance Act of 1956 and the Guardians and Wards Act of 1890. Both of these pieces of legislation were enacted in India in the 1950s.

### **Judicial Approach**

Children's rights have been the subject of judicial interpretation and legislation. Here are some key points:

1. **Right to Education** - In the *Unnikrishnan v. State of Andhra Pradesh* case<sup>19</sup>, the Supreme Court declared that the right to education is a fundamental right under Article 21 (Right to Life) of the Indian Constitution. This decision was a precursor to the 86th Constitutional Amendment Act, 2002<sup>20</sup> which inserted Article 21A into the Constitution to make education a fundamental right for children aged 6-14.
2. **Protection from Exploitation** - Article 24 of the Indian Constitution<sup>21</sup> prohibits the employment of children below the age of 14 in factories, mines, or any hazardous employment. In *M.C. Mehta v. State of Tamil Nadu*<sup>22</sup>, the Supreme Court issued detailed guidelines and instructions for eradicating child labour.
3. **Right to Care and Protection** - In the case of *Laxmikant Pandey v. Union of India*<sup>23</sup>, the Supreme Court issued guidelines for adoption of Indian children to ensure their welfare. The court held that the child's welfare should be of paramount consideration.
4. **Juvenile Justice** - In *Sheela Barse v. Union of India*<sup>24</sup>, the Supreme Court laid down guidelines for the protection and treatment of arrested juveniles. The Juvenile Justice (Care and Protection of Children) Act, 2015<sup>25</sup> further outlines the legal framework for the protection, treatment, and rehabilitation of children in conflict with the law and children in need of care and protection.

### **5. Guidelines for Better Functioning of Child Care Institutions**

The Delhi High Court in case<sup>26</sup> issued a slew of guidelines for better functioning of child care institutions in the national capital and said it is unfortunate that the "apathy of authorities" is seeping through the cracks and hampering the development of those at a vulnerable age. Stressing on the need for improving existing institutions to ensure that a quality standard of care is provided to children, Justice Subramonium Prasad said there is a complete lack of direction and initiative among persons manning these institutions to guide the children towards a better future.

Justice Prasad made the observations and passed guidelines as well as directions in order in a plea seeking a magisterial enquiry into an incident concerning the escape of five minor girls in March last year from a children's home in the city and other similar incidents reported in the past. The Court said that there is a "clear schism between the promulgation of provisions and their implementation on the ground."

"It is unfortunate to observe that the apathy of the authorities is seeping through the cracks and hampering the development of those who are at the age wherein they require consistent nourishment, mental, physical and nutritional," said the court. The Court also observed that it is the constitutional obligation of the State Government that adequate funds are available for the childcare institutions to ensure safeguarding and fostering children's rights. The State cannot conflate non-availability of funds to shirk their obligations with inefficient utilisation of grants, the court added.

This is a broad overview, and children's rights encompass many other areas like health, nutrition, and freedom from discrimination, each with their own set of related laws, rulings, and judicial interpretations.

In a nutshell, the legal safeguards that are in place for children in India are extensive, reaching all the way up to the constitutional level and including specific legislative actions. The fact that the protection of children

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<sup>18</sup> The Protection of Children from Sexual Offences Act, 2012. No. 32

<sup>19</sup> *Unnikrishnan v. State of Andhra Pradesh* (1993) 1 SCC 645.

<sup>20</sup> The Constitution (Eighty-sixth Amendment) Act, 2002.

<sup>21</sup> Constitution of India, Article 24.

<sup>22</sup> *M.C. Mehta v. State of Tamil Nadu* (1996) 6 SCC 756.

<sup>23</sup> *Laxmikant Pandey v. Union of India* (1984) 2 SCC 244.

<sup>24</sup> *Sheela Barse v. Union of India* (1986) 3 SCC 632.

<sup>25</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>26</sup> *RAJESH KUMAR v. STATE (GOVT. OF NCT OF DELHI) & ORS.* 2022 LiveLaw (Del) 917

is given top priority in the law is evidence that the nation is dedicated to preserving the rights and ensuring the well-being of its youngest human-being.

## **II. Conclusion**

The legal system in India plays a key role in safeguarding its residents, with a particularly strong emphasis on the protection of children. The fundamental rights of the people are enshrined in the constitution of the nation, which provides a rock-solid framework of legal protections that serve as the basis for every facet of the life of its citizens. Despite the fact that there are occasionally problems, India is committed to defending and protecting the rights of its inhabitants and the protections that are offered by these rights, along with the various supplemental legislation, underline this dedication.

At the same time, Indian judicial system places a significant amount of importance on the safeguarding of children. According to Indian law, the age at which a person is considered to be a child varies depending on the particular goals and requirements of the various pieces of legislation. However, the intention to provide increased protections to persons while they are still developing throughout their formative years is the unifying thread that binds these various definitions together. The legal environment in India that addresses the protection of children is expansive and multifaceted. This landscape includes constitutional mandates, sector-specific legislation, and protective measures for children who are in confrontation with the law. The collection of legal instruments that are currently in effect illustrates India's unwavering commitment to prioritising the protection of children, preserving the rights of children, and advancing the welfare of children.

In essence, the democratic ideals of fairness, equality, and human dignity are embodied in the legal protections that are granted to individuals, and more notably children, in a country like India. This comprehensive and rigorous framework underscores the government's devotion to protect the rights and well-being of all of its residents, particularly the nation's youngest citizens, thereby laying the groundwork for a bright future for the country.

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