

SECTION II

Definition of the Child

(Article 1)



Article 1

For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

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Definition of the Child

Article 1

1. Article 1 defines the holder of rights under the CRC as ‘every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.’ The Convention clearly specifies the upper age limit for childhood as 18 years, but recognises that majority may be obtained at an earlier age under laws applicable to the child. The article, thus, accommodates the concept of an advancement of majority at an earlier age, either according to the federal or State laws of a country, or personal laws within that country. However, the upper limit on childhood is specified as an age of ‘childhood’ rather than ‘majority’, recognising that in most legal systems, a child can acquire full legal capacity with regard to various matters at different ages.¹

2. Thus, while the Convention defines a “child” as every human being below the age of 18 years, it allows for minimum ages to be set, under different circumstances, balancing the evolving capacities of the child with the State’s obligation to provide special protection. Accordingly, Indian legislation has minimum ages defined under various laws related to the protection of child rights.²

3. Though legislation has been enacted to make 18 years the general age of majority in India, 21 years continues to be the upper limit for childhood for some purposes, partly due to the influence of nineteenth-century English Law and partly due to current exigencies.³ For example, India recognises 21 years as the age of majority in circumstances where a guardian has been appointed by the Court for a child below the age of 18 years.⁴

4. With respect to the rights of the child in the womb, the legislation in India is in harmony with the interpretation of the Convention. The articulation of the ‘right to life’ in the Indian Constitution reflects the English Common Law approach, in that it states that this right is conferred on a “person”. Although India has permitted medical termination of pregnancy through legislation enacted in 1971, this recourse can be taken only in the following cases: (i) the continuance of pregnancy would involve a risk to the life of the pregnant woman or a grave injury to her physical and mental health or (ii) there is substantial risk that if the child is born, it would suffer from such physical or mental abnormalities that it would be seriously handicapped. Significantly, Section 20 of the Indian Succession Act gives the right to property to a child in the womb whose parent dies intestate and who is subsequently born alive—he/she will have the same right to inherit as if he or she had been born before the death of the parent.⁵

5. Varying ages of legal capacity is a phenomenon that can be seen in many countries. However, while the CRC’s definition of childhood can be perceived as setting a basic minimum standard

in view of Article 41, which declares that 'nothing in the Convention or any of its provisions shall effect realisation of the rights of the child' under the law of a State Party, it is essential that there is some synchronisation of the upper age limit for childhood. India has achieved this to a large extent, for instance, the minimum compulsory age of education is 14 years. The various laws relating to labour prohibit a person under the age of 14 years to work. Thus, the minimum age at which compulsory education ends synchronises with the minimum age of employment.⁶ The age of capacity to contract a marriage is 18 years for a girl and 21 years for a boy, for all communities. The Child Marriage Restraint Act, 1929, defines a child as a person who, if a male, has not completed 21 years of age, and if a female, has not completed 18 years of age. Under Section 5 of this Act whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment upto three months and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.⁷ This uniform legislation is an effort to discourage child marriages under personal laws.⁸

6. However, regarding certain aspects that are deeply rooted in the community, and compounded by historical poverty and vulnerable socio-economic conditions, there is a gap between laws and their enforcement. For example, child labour is a fact that exists in our country, and in spite of our consistent efforts, child marriages are still prevalent. The Government has already initiated action to review and amend the laws pertaining to rape and sexual consent, so as to remove any discrepancy between girls and boys.

Table 2.1: Minimum legal age defined by national legislation

| | Age (years) | |
|---|---|--|
| | Boys | Girls |
| <i>End of compulsory education*</i> | 14 | 14 |
| <i>Marriage*</i> | 21 | 18 |
| <i>Sexual consent**</i> | Not defined | 16 (Section 375 of the Indian Penal Code) |
| <i>Voluntary enlistment in the armed forces*</i> | 16 (A person is allowed to take part in active combat only at the age of 18) | |
| <i>Conscription into the armed forces</i> | <i>There is no conscription in India.</i> | <i>There is no conscription in India.</i> |
| <i>Participation in hostilities</i> | Not applicable | Not applicable |
| <i>Admission to employment or work, including hazardous work, part-time and full-time work*</i> | | |
| <ul style="list-style-type: none"> ● Child Labour (Prohibition and Regulation) Act, 1986 ● Mines Act, 1952 ● Merchant Shipping Act, 1958 ● Motor Transport Workers Act, 1961 ● Apprentices Act, 1961 ● Bidi and Cigar Workers Act, 1966 ● Plantation Labour Act, 1951 ● Factories Act, 1948 | 14 18 14 14 14 14 14 14 | 14 18 14 14 14 14 14 14 |
| <i>Criminal responsibility*</i> | 12 (Section 83 of the Indian Penal Code, according to which, nothing is an offence which is done by a child above seven years of age and under 12 years, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. It may be noted that children below the age of seven years are deemed to be incapable of criminal offence as per section 82 of the Indian Penal Code) | |
| <i>Juvenile crime</i> | 18 The Juvenile Justice and Protection of Children) Act, 2000. | |
| Deprivation of liberty, including by arrest, detention and imprisonment, interalia in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions* | There is no age limit for deprivation of liberty because as per Article 21 of the Constitution of India, all citizens have protection to life and personal liberty. | |

| | Boys | Girls |
|---|--|---------------------|
| Capital punishment and life imprisonment* Giving testimony in court, in civil and criminal cases* | 18 | |
| | Section 118 of the Indian Evidence Act states that all persons shall be competent to testify unless the court considers that they are prevented from understanding the question put to them or from giving rational answers to those questions by virtue of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind. Therefore all persons irrespective of their age are competent to testify in court provided the adult or child understands the question. | |
| Lodging complaints and seeking redress before a court or other relevant authority without parental consent* | There is no minimum age prescribed for lodging complaints and seeking grievance before a court or other relevant authority without parental responsibility. | |
| Participating in administrative and judicial proceedings affecting the child* | As mentioned above. | As mentioned above. |
| Giving consent to change identity, including change of name, modification adoption, guardianship* | 18 | |
| | For modification of family relations, adoption, and guardianship, there is no minimum age prescribed. | |
| Having access to information concerning the biological family | Not defined. | Not defined. |
| Legal capacity to inherit | According to Section 20 of the Hindu Succession Act, even a child in the womb has the right to inherit property and it shall be deemed to from the date of death of one who died intestate. However, as per Section 4 of the Hindu Minority and Guardianship act, 1956, the guardian will have the powers to take care of the property of such a minor. | |
| To conduct property transactions | 21 | |
| | Section 11 of the Indian Contract Act, 1972, states that a person is competent to contract only if he/she is a major and is of sound mind. | |
| To create or join association | Not defined. | Not defined. |
| Choosing a religion or attending religious school teachings | Not defined. | Not defined. |
| Consumption of alcohol and other controlled substances** | 21 | 21 |

Source: * NI/PC/SAP/132/2000/908 dated July 31, 2000, National Institute for Public Cooperation and Child Development, Government of India (GOI)

** Responses to the List of Issues raised by the UN Committee on the Convention on the Rights of the Child, Department of Women and Child Development, GOI

*** Child and Law, Indian Council for Child Welfare, Chennai, Tamil Nadu, page 507

Endnotes

- 1 *Children, Law and Justice: A South Asian Perspective*, Savitri Goonesekere, SAGE, 1998, page 141.
- 2 *Implementation Hand Book for the Convention on the Rights of the Child*, UNICEF, page 1.
- 3 *Child and Law*, Indian Council for Child Welfare, Chennai, Tamil Nadu, India, 1998, page 210.
- 4 *Ibid.*
- 5 *Ibid.*
- 6 No. NI/PC/SAP/132/2000/908, dated July 31, 2000, National Institute for Public Cooperation and Child Development, GOI, page 4.
- 7 *Child and Law*, Indian Council for Child Welfare, Chennai, Tamil Nadu, India, 1998, page 218.
- 8 *Ibid.*