



**POST GRADUATE DIPLOMA  
IN  
CHILD RIGHTS AND GOVERNANCE**



**BLOCK I**

**DCG 101: Understanding Childhood**

**OFFERED BY**

**CENTRE FOR OPEN AND DISTANCE  
LEARNING  
TEZPUR UNIVERSITY  
(A CENTRAL UNIVERSITY)  
IN COLLABORATION WITH UNICEF- ASSAM**

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- **To undertake various research and academic activities for furtherance of distance education in the region.**
- **To contribute to conserve and promote cultural heritage, literature, traditional knowledge and environment conducting short programmes, workshops, seminars and research in interdisciplinary field.**

## **DCG-101 Understanding Childhood**

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## **BLOCK I: INTRODUCTION**

**This block for DCG 101, consists of two units: Unit 1 and Unit 2.** The first unit encompasses themes such as understanding the concept of childhood, social construction of child, history of childhood, various cultural and social contexts which defines and views childhood in different lights. It explores the theoretical constructs of cultural ethnocentrism, cultural relativism and cultural universalism to understand the cultural construct around childhood. There is a discussion on the risks and vulnerabilities of children and its connectedness to social position and age. The issue of neglect for children is reflected upon; abuse a children face in our society owing to their vulnerabilities and social perception is also discussed. In the chapter it is concluded that social construct of childhood is culturally diverse. Although there have been efforts of creating universal definitions to ensure children enjoy equal rights across the globe, it is very difficult to have a common consensus on the definition owing to varying nature of laws, cultural practices across countries.

**In Unit 2** need of shifting from social to a legal construct of child and what it implies is discussed. The concept of legal defining a child is further explored via various definitions in universal laws as well legislatures in the context of India. The section is followed by a discussion on need of universal definition vs age appropriate intervention for children. This emphasizes on how issue related to children may require differential interventions at different age. This leads to another section of the chapter, which is importance of inclusion of child issues in social policy. The National Policy for Children from 1974 to 2013 is discussed here. The salient features of the policies are highlighted indicating implication of each aspect. A summary is provided at the end which presents a cumulative account of the chapter also highlighting the dilemma of having a universal definition vs age specific legal intervention.

# **UNIT 1**

## **THE SOCIAL CONSTRUCT OF CHILDHOOD**

### **Structure**

- 1.1 Introduction
- 1.2 Learning Objectives
- 1.3 Understanding the Child and Childhood
  - 1.3.1 The Social Construct of Childhood
- 1.4 History of childhood
- 1.5 Childhood in Socio-Cultural context
  - 1.5.1 Childhood Development in Different Cultural Context
- 1.6 At Risk Children
  - 1.6.1 Age Centric Neglect
- 1.7 Abuse and Discrimination
- 1.8 Summary

### **1.1 INTRODUCTION**

Who is a child? This is a question that has particularly bothered the nation after the famous Nirbhaya gang rape case of 2012 that involved a juvenile. Although efforts have been made from time to time to define a child legally, the social construct of childhood and child vary in different societies, depending on the roles assigned to different people as per their age and capacity.

Clearly, perceptions play an important role in deciding on who can be defined as a child and what childhood is. The declaration as child will be by an adult, more specifically a family member, and the community of the child, a political leader, a bureaucrat, civil society or someone else?



Children and young people also express their views strongly on when they wish to be considered as adult and when they prefer to be treated as a child. The moot question then is what are the parameters to be followed in defining a child and declaring the age of childhood? Is it the biological age that gets decided on the basis of a person's year of birth along with attainment of puberty and other physical growth such as height and weight? Or is it psychological growth and brain development that help decide a person's capacity to act responsibly? It could also be social and cultural growth and development or norms, or a combination of all of these.

The age at which a person can be considered to be a child or an adult is a complex debate that rests on evolving theories of childhood. Biologically childhood means the phase between infancy to adulthood. Yet, historically, the concept of childhood has varied from time to time.

Therefore, what seems to be a simple question as to when does childhood end or start, has many complex and difficult answers that draw upon the domains of sociology, history, culture and literature, psychology and brain science, and law. For example, the concept of childhood was not considered as an independent social category until the beginning of the 18th century.

Yet, with world war and industrial revolution, the situation of children received attention it had never received before and the foundations were laid for the countries of the world to come together to think about children and their rights, including the definition of a child that could be legally acceptable in the international framework. According to Article 1 of the United Nations Convention on the Rights of the Child (CRC), adopted

by the UN Member States in 1989 and ratified by India in 1992, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. In India, even though the age of majority stands settled in law at 18 years, other laws related to children define a child in varying age limits, which is explained in detail in Unit II.

Almost all cultures accept and follow the perception that the younger the child the more vulnerable she or he is physically and psychologically. Age has come to be the universal parameter for defining a child and much emphasis is laid on determining the children's capacities and responsibilities as per their age. All the formal institutions are controlled by the age limits, such as school, marriage, participation in electoral process, criminal justice system and so on and so forth. But this age parameter is relative in nature, varying from society to society and depends on the social and economic roles assigned to different age groups.

It must be recognised that the need for a legal construct of childhood comes in only when the social construct of childhood varies from one society to another, leading to better protection of rights of children belonging to some societies and denial or violation of rights of children in some other societies or communities. Perception

## **1.2 LEARNING OBJECTIVES**

- To develop conceptual clarity about the definition of child and childhood
- To learn how historically childhood has seen
- To understand childhood as a social construct.
- Perception of cultural influence on children.

### 1.3 UNDERSTANDING THE CHILD AND CHILDHOOD

Childhood is perceived via social construction theories, which argue how the society entrusts roles and attributes to childhood. There are views that children are vulnerable and the adults are responsible for their nurturing and socialization.

#### ***What is Childhood?***

The dictionary definition continues by elaborating that a child is ‘a son or daughter: one standing in a relationship of adoption or origin (to a person, place, etc.)’. It suggests that childhood is relational, and all about relationships, and how people, both adults and children, are connected to each other through family ties. Childhood is the ‘state of being a child: the time of being a child’. ‘Childish’ is of, or like a child: ‘silly; trifling’. Being childlike is defined as ‘docile’ and ‘innocent’.

Emile Durkheim, the French thinker, suggested that childhood is a period in which the individual, in both the physical and moral sense, does not yet exist, the period in which he/ she is made, developed and is formed.

It was this powerful idea, that a child was not really a person, but a ‘blank slate’ upon which culture could be ‘written’, that dominated sociological and social thought in the 17<sup>th</sup> century.

“From a sociological standpoint, according to Diana Gittins‘ childhood focuses more on the general state of being a child and suggests the existence of a distinct, separate and fundamentally different social group or category’. Whereas ‘a child concerns an embodied individual defined as

non-adult’ described by ‘immaturity, dependency, powerlessness and inferiority.’(Brno, 2014)

It is important to understand that defining childhood is not an easy task as there can be no one universal perception or interpretation of this term. Our perspectives are formed and affected by the historical and cultural background of each nation/society. Scholars themselves do not conclusively agree on one and only explanation, considering there are many fields and its branches dealing with this topic differently.

One of the non-academic definitions that public can relate to, can be found in the definition of childhood provided by agencies like the UNICEF. It defines childhood as the time for children to be in school and at play, to grow up as adults and confident with the love and encouragement of their family and an extended community of caring adults. It is a precious time in which children should live free from fear, safe from violence and protected from abuse and exploitation. As such, childhood means much more than just the space between birth and the attainment of adulthood. It refers to the state and condition of a child’s life, to the quality of those years.

Despite intellectual debates about the definition of childhood and cultural differences about what to expect of children, there has always been a substantial degree of shared understanding that childhood implies a separated and safe space. The length of childhood and being a child would vary according to the traditions and customs of the state and their laws.

Historical, sociological, developmental and human rights approaches to understanding childhood and defining the child have established that although “one cannot have a childhood without being a child, it is possible to be a child without having childhood”(Brno, 2014)

In 1989, the United Nations General Assembly thus adopted the Convention on the Rights of the Child. The Convention is the first international human rights treaty to bring together the universal set of standards concerning children in a unique instrument, and the first to present child rights as a legally binding imperative.

***The UNCRC (1989):***

- Defines childhood as a separate space from adulthood and recognizes that what is appropriate for an adult may not be suitable for a child.
- Calls on governments to provide material assistance and support to families and to prevent children from being separated from their parents.
- Recognizes that children are the holders of their own rights and are therefore not passive recipients of charity but empowered actors in their own development.

The following sections of the chapter discuss on the conceptualisation of childhood throughout history and looks at socio-cultural dynamics that is closely connected with a how a child is viewed or defined. There is also an analysis presented regarding vulnerabilities of children and what sort of abuses they undergo owing to their age.

**1.3.1 The Social Construct of Childhood**

Social construction is a paradigm which is perceived, created, influenced, and defined by the attitudes, actions and interpretations of members of the society. According to James & James, (2008) social construction is ‘a theoretical perspective that explores the ways in which “reality” is

negotiated in everyday life through people's interactions and through sets of discourses'. Social construction is relative in nature and it varies from society to society along with time.

Childhood is the ideal example of social construction. It is a concept created by the society. The notion of childhood does not exist naturally; it is constructed by society like any other ideas such as *deviance*, *health and illness*, etc. Hence, childhood is not a fixed state of existence; it is a relative concept. For example, the idea of what is normal, abnormal and deviant (abnormal and deviant behaviour is against society's norms and values) changes over *time* and from society to society. We can argue that it's not natural but *socially constructed*, e.g. men wearing saree (Dhoti) is often seen as normal behaviour in some Indian societies, but not all. Similarly, the concept of childhood and the status children occupy in society is dynamic, and may vary with place and time.

There are social scientists, who are keen on changing the notion of childhood and the position of childhood in our society. Usually we consider children as noticeably different from adults and the period of childhood is seen as a special time of life needing and deserving of love, care and protection. Whenever we raise the issue of care and protection, the concept of vulnerability emerges automatically. It is believed that children are vulnerable and not capable of looking after themselves, and so, this special period of life (childhood) needs specific attention by the adult members, such as nurturing and socialising them. According to the famous sociologist Jane Pilcher (1995), the main feature of the modern idea of childhood is separateness. She suggested that the concept of childhood and adulthood are discrete stages of life. Our society has created several laws of do's and don'ts for children and adults. The differences

between them are shown through various means and ways which are specifically designed for children, such as special food, clothes, entertainment etc. The notions of modern childhood are however, a comparatively new phenomenon. The concept of childhood was discovered in the sixteenth and seventeenth centuries as an outcome of social change, such as the growth of the bourgeoisie in Europe (Ariès 1962)( Kjørholt, & polit, 2004).

Scholar Diana Gittins (1998) points out that the development of childhood as a concept was class-specific, reflecting the values and practices of a rising European middle class that increasingly differentiated adults and children, girls and boys. She uses the term 'Age Patriarchy' to describe inequalities between adults and children - adult domination and child dependency and argues that childhood is an adult construction that changes over time and place. Moreover, she suggests that the concept of childhood serves to disguise differences between children, especially in relation to social categories such as gender, ethnicity and social class (Kehily M. J., 2016).

To reiterate, childhood is neither biologically determined, nor static; rather it is relative in nature. James, Jenks, and Prout (1998) suggested childhood is a social status, which has to be recognized and understood through routine and emergent collective perceptions that are grounded in changing politics, philosophy, economics, and social policy. Thus, the idea of childhood is socially constructed and rooted through political, social, historical and cultural contexts.

There are several ways to study the notion of childhood as a social construct. James, Jenks and Prout (1998) proposed four models through

which childhood as a social construct can be studied. These models provide a useful framework for understanding and conceptualising the idea of childhood.

These four models are ‘the socially constructed child’, ‘the social structural child’, ‘the minority group child’ and ‘the tribal child’.

### ***The Socially Constructed Child***

This model perceives the child as a social construct. It is not an important, universal child with a static position in the social structure. That the concept of childhood is socially constructed refers to an emphasis on the diversity and particularities of childhoods as constituted and practiced in different social and cultural settings, and also on its varying or changing nature with time. To understand and gather knowledge about the day to day lives of children, as per this model, it is significant to contextualise the analyses and look back to the phenomenon under study to get an insight into how it is organised and established in various ways in daily life. To describe childhood, social constructionists reject any kind of fixed and essential reality or truth.(James, Jenks, and Prout1998)

### ***The Social Structural Child***

This model recognizes children as an integral structural component of society. The notion of childhood is a permanent form that never fades away from the structure of any society. Children are considered as an important feature of all human society. This model claims the universality of childhood. Nevertheless, this model suggests that, though there are differences in the forms of childhood in different societies, they exist in all society. The idea of childhood is interconnected with other structural aspect in society, which changes according to the social system and social



development. Though all children in the same society share similar characteristic features, this model also recognises the presence of inequalities.(James, Jenks, and Prout1998)

### ***The Minority Group Child***

This model emphasises on the empirical and politicized version of the social construct of childhood. The model recognises children's citizenship rights and gives them the status of a minority group. It doesn't refer to children being numerically a minority in the society, but as a group with the *status* of a minority group. Here the term minority is used as a moral one rather than a demographic description. Hence some social scientists have perceived this phenomenon as the unequal power relationships between adults and children. The children are stereotyped as rights-claimers, with the same rights as the adults have. In this model, children are also considered as an active subject in the society.(James, Jenks, and Prout1998)

### ***The Tribal Child***

This model perceives children's worlds as autonomous communities and childhoods that they themselves have constructed. It emphasises on and recognises children's competence and potentiality. This model believes that children's worlds are real spaces containing meaning, rather than being spaces of fantasy, games and poor imitation of adults. Here the children's worlds are viewed as autonomous and, partially affected by adults. To study children's social worlds in their own rights, ethnographic methods of research will be most appropriate. The researcher should not imply their own view, rather should try to understand the worlds of children as usual, real and rational worlds.(James, Jenks, and Prout1998)

### CHECK YOUR PROGRESS

1. How the following theoretical construct view child?

A) The Social Structural Child-----

B)The Minority Group Child-----

C)The Tribal Child-----

2. Does the concept of childhood exist naturally or is it socially constructed? What is your view based on the section above?

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3.”The idea of childhood is interconnected with other structural aspect in society, which changes according to the social system and social development” which model of social construction of childhood, is it referring to?

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4. The Tribal Child Model perceives children’s world as “autonomous communities”- what does it imply?

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### 1.4 HISTORY OF CHILDHOOD

Different historical periods have varied a lot in the way children and childhood came to be are regarded and treated. The factors which seem to have influenced changes in the notions and understanding of childhood are the way humankind came to be viewed over time, the development of industry, urbanization, parents themselves, and the women's movement.

The idea of childhood is said to be a very recent invention; the notion of childhood as a distinct phase of life didn't develop in Western culture until the 16th and 17th centuries. Historians and sociologists have suggested that in the middle ages the concept of childhood did not even exist. They

were expected to work and participate in the family and the community from a very early age and the law did not treat them any different from other people. Children could be punished, and frequently were, for social transgressions with the same severity that adults were.

French social historian, Phillipe Ariès(1979) analysed paintings to argue that childhood is a modern invention that emerged from the beginning of the sixteenth century. According to him, the Paintings of the 15th and 16th centuries depicting children in family portraits show them as shrunken replicas of their parents. Their clothes and their bodily proportions are the same as those of adults. He argues that in medieval society infants were seen as vulnerable, but after the age of about seven or eight children were seen and treated as “miniature adults”, and this notion of childhood prevailed until the end of the Middle Ages. Fatal disease in the Middle Ages was quite prevalent, and young children were not expected to live for very long. Hence there was little emotional attachment to something that was seen as a probable loss. The changes that began thereafter have been mapped as follows:

“(i) Schools began to be just for young people (previously they were for everybody).

(ii) The Church saw children as particularly fragile and in need of protection from the evils of the world for the first time.

(iii) Children’s clothing began to be different – by the 1600s children of wealthy people were dressed in quite different clothes.

(iv) By the 1700s books on how to rear children were being written (but only for the wealthy).

(v) Children became segregated/separated from adults when laws abolished child labour (after 1850) and education became compulsory (after 1880). Children now became an economic liability rather than an economic asset because they were financially dependent on their parents. This led to our own times and what Aries calls ‘the cult of childhood’ – a modern way of treating children as special and totally vulnerable”.(Childhood, 2015)

Many philosophers contributed to the change of the attitude held towards children as little adults. Jean-Jacque Rousseau (1712–1778) and John Locke (1632–1704) developed the idea the children come into the world as blank slates [Tabula Rasa], and with guidance and training, they could develop into rational human beings. Child is always in the process of becoming an adult in the making with specific educational needs that adults should take care of seriously. It is the responsibility of adults to provide the appropriate education and control to enable children to develop into mature and responsible citizens.(Kehily M. J., 2016)

However, by the 18th century, children came to be seen as innocent and in need of protection, not unlike the way we see them today. This is also known as the phase of the romantic discourse on childhood. Drawing upon the work of French philosopher Jean-Jacques Rousseau (1712–78), the Romantic discourse claimed that children embody a state of innocence, purity and natural goodness that is only contaminated on contact with the corrupt outside world (Kehily M. J., 2016,p 5).

Many people at the time believed that a bad childhood would lead to a bad adulthood. So along with the notion of protection came the notion of discipline, as parents taught their children to avoid the enticements of their

social world. It has been observed that till the late 18<sup>th</sup> century, children were severely beaten in the name of discipline.

In the 18th and 19th Century, the advent of industrialization brought major economic transformations in society - a shift from a predominantly agricultural economy to an industrialized one. As a result, it was the economic necessity rather than emotions that bound families together. Until the late 1800s, and the early part of the 19th century, children worked as long and as hard as adults. For the working classes, poverty meant that a child had to contribute to the family economy as soon as it was able to and the law allowed.

“Historical approaches suggest that childhood was re-conceptualized in the UK between the late nineteenth century and the beginning of World War I. Concerns with child poverty and ill health produced a significant shift in the economic and sentimental value of children. Over time, the position of working-class children changed from one of supplementing the family income to that of a relatively inactive member of the household in economic terms, to be protected from the adult world of work and hardship(Brno, 2014 ,p 2).

“Victorian reformers, such as Lord Ashley or Dr.Thomas John Barnardo, set themselves the task of restoring childhood to these children who were missing out on it”( Cunningham, 1991).

Thus, by the 20th century, children were no longer considered as economic necessities. Fathers, working outside the home, came to be the main source of income and the providers for the family( Newman).

The society started believing in the emotional needs of children. Parents were no longer expecting tangible gains from their children; rather they became emotionally attached and affectionate towards them as providers of love, care, safety and security. “A state of happiness came to be particularly associated with childhood” (Cunningham, 1991).

Historians and sociologists have come up with many reasons why this idea of a special period of life called ‘childhood’ emerged – mostly in the 1800s and 1900s (Childhood, 2015). Amongst the several historical developments mentioned so far, the advent of schooling in the UK 1870s onwards is significant. As industrial technology advanced, productivity went up and labour requirements went down. Children were needed less in the work force and they thus became a social problem in the new urban areas, which generated an effort to contain them through schooling. Compulsory schooling had to be imposed in the UK by force of law in the 1870s (Jane, 2008). For most of the 19th and first half of the 20<sup>th</sup> century, being a child in Australia and the UK was defined in relation to the age at which children left school. This meant that the notion of ‘child’ was flexible as the school leaving age gradually increased over time.

Most changes were brought about by the increasing wealth and prosperity of society and the need for an educated population with skills needed in a modern industrial society. This also meant that childhood came to be seen as a separate ‘preparatory’ stage in life – and one which was uniquely precious and vulnerable.

“From the 1970s onwards, children began to acquire new rights in relation to the state and to their families: the right not to be beaten in school, the right to be consulted in the event of parental divorce, and so on. Childhood itself had in many ways become prolonged and children had gained a

higher status both within the family and in society at large”( Cunningham, 1991).

Children’s rights are now articulated in numerous ways in the international policy framework. The UN Convention on the Rights of the Child (CRC), 1989 is the first binding international instrument to define the child as an individual and incorporating the full range of human rights for children, implying that children, like adults, are citizens and entitled to participate in social, cultural and political life.

However, while there is an internationally accepted definition of the child, the concept of childhood varies from country to country and culture to culture. And it is keeping this in mind that even the CRC, while recommending an age definition of the child, leaves it to the Member States to follow the age of majority as defined in their laws.

### **CHECK YOUR PROGRESS**

1. French social historian, Phillipe Ariès used paintings of 16<sup>th</sup> century to argue that childhood is a modern invention. What do those pictures depict on the view of 16<sup>th</sup> century society for children?

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2. How was childhood reconstructed in UK post World War I? What were the new ways of looking at child in 20<sup>th</sup> Century?

-----

3. What is the first binding international instrument to define child as an individual?

-----

4. Does UN Convention on Child Rights recognizes the existence of various cultural definitions of childhood.

## **1.5 CHILDHOOD IN SOCIO-CULTURAL CONTEXTS**

While the concept of childhood varies across cultures, time and place, part of the social construction of childhood is that we choose to have a high degree of separation between the spheres of childhood and adulthood. One may argue that all cultures and societies treat 'childhood' as a state of being very different from 'adulthood' and Jane Pilcher (1995) suggests that this separateness or distinction between two different stages of life is the most important feature of the modern idea of childhood.

Adults often decide what things are desirable for children and what are not, or what children might need, even though those special requirements may never have been expressed by children. There are products specifically for children which adults are not supposed to play with. In modern times, differences are also visible in the clothes and products that are specifically designed for children (entertainment, books, food etc).

So while there is special care and attention paid to children to these days, we often use the deficit model to define childhood. According to the deficit model we tend to think children as intellectually inferior to adults. We ignore their questions because we think adults are cognitively superior to children. There are child specific places where only children and 'trusted adults' are supposed to go, and thus children are relatively sheltered from adult life. There are several laws preventing children from doing certain things which adults are allowed to do. For example, buying and selling liquor or smoking. There are child specific places where only children and 'trusted adults' are supposed to go, and thus children are relatively sheltered from adult life. In the United States if you are dealing



with human subjects and your target population is minors, you need to complete an IRB (Institutional Review Board) application because children are considered as a vulnerable population. If children are involved in something that requires legal protection, laws in most countries require consent from their parents.

Cross-cultural studies have in fact challenged this “seemingly universal” separateness of ‘childhood’ and ‘adulthood’ and suggest that this view of childhood as a separate stage is not found in all societies.

A good way to illustrate the social construction of childhood is to take a comparative approach that is, to look at how children are seen and treated in other times and places other than their own culture. The anthropologist Ruth Benedict (1934) argues that children in traditional, non-industrial societies are generally treated differently from children in modern western societies. They take responsibility at an earlier age. Less value is placed on children showing obedience to adults. In some cultures, children are seen as an economic benefit and expected to engage in paid work. In the less developed countries or economies facing economic distress, children are seen as a source of cheap free labour on the farm, in the home or in sweat shops where the wage can help boost the family income. We need not travel far to understand these differences. In India, children belonging to certain nomadic tribes start performing acrobats, folk music, dance and drama at a very early age, as early as 4 or 5 years. While it begins as training children at an early age to prepare them for earning their livelihood as they grow up, initiation into adult like behaviour and adulthood happens much earlier for these children than for children in urban middle class societies.

Mary Jane Kehily and Heather Montgomery consider childhood in relation to sexuality,(Kehily M. J., 2009) ideas of innocence and sexual knowledge which are contingent upon time and place. While on one hand in Western developed countries (and increasingly globally) teenage parents are dominantly viewed as a ‘social problem’ whose sexuality needs to be controlled, on the other hand there is a strong emerging voice against the practice of female genital mutilation that continues in some African communities and also among the Bohra Muslims in India, primarily to control sexuality of girls so that they remain ‘virtuous’. Such an example illustrates the powerful norms (i.e. shared ideas and values) that society exerts on childhood, and how these change over time and place.

Stephen Wagg (1992) argues that although all humans go through the same stages of physical development, different cultures construct or define them differently. So different societies see these stages in different ways (childhood is not the same in all societies).So other cultures don’t necessarily see a huge difference between children and adults. An example is ‘child soldiers’ (children who from an early age are expected to fight in wars, behaving like adults)

Lowell Holmes (1974) studied a Samoan village and found that children were often involved in dangerous tasks, irrespective of their age

Raymond Firth (1970) studied the Tikopia, in the western Pacific and discovered that there wasn’t much value placed on children obeying adult authority.

Bronislaw Malinowski (1957) studied the Trobriand islanders of the South-West pacific. He discovered that children’s sexual behaviour was viewed very differently to western industrial societies.

All this cross-cultural evidence suggests that childhood is not a fixed thing found universally, but is socially constructed and so differs from culture to culture.

Social customs act as key determinants in the social construct of childhood. For example, practices like child marriage in Indian states and African countries are based on the concept of end of childhood and beginning of adulthood in these societies. In some communities the birth of a girl child is celebrated while in some others girls are killed off even before they are born.

Gender plays a huge role in how a child is placed in a particular culture. Another example from modern day western societies can be seen in how the pink is used to represent the colour for girls, whereas blue is for boys. Girls have different toys than boys. In different cultures gender role is defined in diverse ways. For example, in some cultures (the Indian Culture) girls are taught to be introverts and less gregarious whereas for boys it is considered as a promising sign of personality development. Thus social practices and customs perpetuating gender inequalities play a significant role in defining different childhood for boys and girls.

There are lots of researches that focus on how cultural difference may shape us differently or how culture plays an important role in cognitive development. In the past few decades, cross-cultural psychological research has revealed that North Americans and East Asians have different cognitive styles. North Americans are more likely than East Asians to use rules and formal logic to categorize objects and understand events (Chiu, 1972; Ji, Zhang, & Nisbett, 2004), to make dispositional causal inferences (Morris & Peng, 1994), to predict the future as maintaining current states

or trends (Ji, Nisbett & Su, 2001), and to exhibit less tolerance for contradiction (Choi & Nisbett, 2000; Peng & Nisbett, 1999). Imada, Carlson and Itakura (2013) suggested that culturally specific cognitive tendencies would develop through early socialization. A study conducted among children aged 4 to 9 years, found that children in eastern culture tend to be more context sensitive. Japanese children showed significantly greater context-sensitivity than American children. The study also found that context-sensitivity increased with age across cultures.(Imada, Carlson and Itakura, 2013)

In another study, Lee & Johnson (2007) argued that exploration of contemporary developmental perspectives is critical to the field and illustrate cultural views of child development based on cultural psychology. Nature versus nature issue always exists in narrating human development and it is inevitable that culture shapes individuals. Drawing on Bruner's (1986) work, developmental theories are stated as "relative to the cultural contexts in which they are applied" (p. 135). Bruner argued that any theory of development that aims to be "culture free" is "not a wrong claim, but an absurd one" because "the plasticity of the human genome is such that there is no unique way in which it is realized, no way that is independent of opportunities provided by the culture into which an individual is born" (p. 135). Therefore, it is clear that culture is not something simply out there; rather it shapes us as human beings and the process starts from the moment children learn to interact with their environment.

### **1.5.1 Culture, Ethnocentrism, Relativism, Universalism**

#### ***What is Ethnocentrism?***

Ethnocentrism is the belief that one's own race or ethnic group is the most significant and either part or as whole of its culture are superior compare to other groups. With this self-centric philosophy, individuals will judge other groups in respect to their own particular ethnic group or culture. According to Schultz and Lavenda (1990: 32) ethnocentrism is 'the opinion that one's own way of life is natural or correct, indeed the only true way of being fully human'. Seymour-Smith (1986: 97) defines ethnocentrism is 'the habit or tendency to judge or interpret other cultures according to the criteria of one's own culture', and considers it to be a universal tendency.

Applebaum (1996) suggested that multiculturalism has helped to understand the 'indignity' of ethnocentrism in a better way and also argued that accepting diversity and finding value in other cultures will not degrade one's own culture.

In regards to childrearing practices, Barnes (1995: 102) mention the concept of 'ethnocentric fallacy', which refers to 'what any one culture considers to be optimal childrearing practices (for example, firm control with clearly explained reasons embedded in a climate of warmth: the authoritarian style...) will also be optimal for every other culture.'

#### ***What is Cultural Relativism?***

Cultural relativism refers to the ideas and values of any culture, which cannot be fully understood by the other culture. To understand a specific cultural ritual, has to be understood by the larger symbolic system of which it is a part. Cultural relativism is to understand another culture

significantly and sensitively enough so that the culture is comprehensible as a plan for how to live. In other words it is the philosophy of an individual's own beliefs and actions which should be understood by others in terms of his/her own values.

James and James (2012,p35) has define cultural relativism is “the recognition that societies differ in their cultural attitudes towards social phenomena and therefore no universal criteria can be applied to compare one cultural view with another. Culture can therefore only be judged through reference to their own standard (Kottak ,1994,p48) has simplified the concept of cultural relativism as,‘the position that the values and standards of cultures differ and deserve respect”. The cultural relativism theorist believes that any cultures should be judged solely by their own standards.

### ***Cultural Universalism***

Cultural Universalism refers to the existence of over-arching principles like human rights, which are applicable across the geographical and cultural boundaries. Hence it may be use to judge the right or wrong beliefs and practices of a specific culture.

The anthropologist emphasizes on the two major component of, universalism ,i.e. all humans and cultural groups are inherently equal. They also believe that there are specific component of culture which can be observed universally.

From the above discussion it is obvious that our own views of childhood have been formed within a particular cultural context and will therefore often be seen as how things ‘are’ and ‘should be’. Nonetheless, as

practitioners we should broaden our understanding of child and childhood in different cultural context.

Here the question comes that, are there any universal standards which a practitioners can apply? The answer is probably the UN Convention on the Rights of the Child (UNCRC) which is universally accepted and can be applied across the culture for benefitting the children. But, if violations of the rights of children are rationalized by the specific cultural practice it will be difficult to implement UN CRC.

### **CHECK YOUR PROGRESS**

**1. Pink is considered to be a color for girls... does gender play a role in how childhood is constructed?**

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**2. Write what you have understood on following**

- a) Ethnocentric Fallacy
- b) Cultural Relativism

**3. True or False**

- a) One of the major components of universalism is all humans and cultural groups are inherently equal
- b) “Ethnocentrism is the belief that one’s own race or ethnic group is the most significant and either part or as whole of its culture are superior compare to other groups”.
- c) “cultural relativism is “the recognition that societies differ in their cultural attitudes towards social phenomena and therefore no universal criteria can be applied to compare one cultural view with another”
- d) Ethnocentrism believes that all cultural groups are equal.

## 1.6 AT RISK CHILDREN

*'Vulnerability'* is generally a highly contested term, and in regard to childhood in particular there are a range of possible positions about the extent to which children are conceptualised as vulnerable, merely by virtue of being children. Children may be viewed as vulnerable because of their size, their fragility when little and because they are still being 'formed'. Vulnerability may lead to adverse circumstances leading them to risks.

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While all children may be said to vulnerable on account of their age, some are more vulnerable than others as the circumstances in which they live or their developmental pathways are more adverse, thus adding to their vulnerability. For children, 'adversity' has been defined as 'the experience of life events and circumstances which may combine to threaten or challenge healthy development' (Danielet al., 1999). The definition of these adverse factors or circumstances can range from the narrow to the very broad including:

- incidents of physical or sexual abuse,
- traumatic incidents such as loss and bereavement,
- chronic situations – such as environments of neglect,
- experiences of bullying or racism,
- family stressors,
- structural inequalities and socio-economic disadvantages,
- political situation/environment,
- geographical location
- physical or mental illness



Vulnerable children facing adverse circumstances or adverse developmental pathways are also children “at risk”. The term ‘risk’ denotes -

- the chances of a child experiencing a particular adverse circumstance;
- the chances of a child being sexually or physically abused, or re-abused;
- the chances of the parents or carers being unable (or unwilling) to ameliorate the impact of adversity;
- the chances of the adverse experience having a significant negative impact upon wellbeing during childhood; and
- the chances of longer-term negative outcomes as a result of experiencing adversity.

The concept of risk brings a future focus and entails making predictions based upon weighing up probabilities.

While countries may plan several initiatives directed specifically at the ‘at risk’ category of children, there are several criticisms against identifying ‘children’ per se as a vulnerable category. It may be argued that if childhood is not ‘natural’ but a social construct, how can the assumption of children being vulnerable in all contexts be natural and automatic? The biggest challenge to the idea of all children being naturally vulnerable thus comes from the sociology of childhood than understands ‘childhood’ as a social construct.

A further concern about the assumption of children as inherently vulnerable is that, in effect, it ‘problematises’ childhood (James, 2008). It is further suggested that our current pre-occupation with protecting children as a group is actively damaging to children. Newman and

Blackburn (2002) suggest that we are pre-occupied with risk and its avoidance, to the extent that children in general now have reduced opportunities to take risks and learn importance competencies. Therefore, by trying to eliminate risk we increase the risk of other poor outcomes, including poor psychological and physical health and poor coping skills (Newman and Blackburn, 2002). The ‘concern’ about children as a group in need of specific attention because of their unique vulnerability can simultaneously signal a recognition that children should be accorded state protection but potentially de-humanise them and deny their role as active citizens in their own right.

### **1.6.1 Age Centric Neglect**

As already has been argued that children are vulnerable on account of their age, they often may face neglect based on their age, gender, and other social and economic determinants. However, neglect can be very difficult to identify due to lack of common, universalized attributes. The following segment explores into the concept of neglect of children and how various social determinants influence neglect for children.

#### ***What is Neglect?***

Neglect is considered as the most easiest and common form of child maltreatment. Though, it is one of the most complicated phenomena to corroborate and respond. Child neglect is a relative concept, constructed by the society. The way phenomena of child neglect are perceived, varies across cultures, social groups, and communities. Perception is considered as the only tool to understand this complex phenomenon of child neglect to respond.( Scott, 2014)

The identification of neglect is a difficult task due to lack of common consensus and universalized definition, resulting failure in measurement of community incidence and prevalence (Shook-Slack, Holl, Altenbernd, McDaniel, & Bush-Stevens, 2003). If we think from the practitioners perspective, the lack of a standardised definition may result in some children who are not being neglected become the subject of unwanted legal hassles. On the other hand, the children who are actually neglected, and in need of intervention, are being misclassified and not receiving the desired services (Gaudin, Polansky, Kilpatrick, & Shilton, 1996).

According to WHO, 2006 Neglect includes both isolated incidents, as well as a pattern of failure over time on the part of a parent or other family member to provide for the development and wellbeing of the child – where the parent is in a position to do so – in one or more of the following areas: *health, education, emotional development, nutrition, shelter and safe living conditions*.

### ***Types of Neglect***

Though there are several sub-types of child neglect but here we have discussed the most common form of child neglect which noted in the literature.( Scott, 2014)

- ***Supervisory neglect:*** refers to absence or carelessness which may lead to physical harm or injury, sexual abuse or, in an older child, allowing antisocial behaviour.
- ***Physical neglect:*** is failure to meet age appropriate basic physical need such as food, shelter and cloth etc.
- ***Medical neglect:*** is failure to provide appropriate medical care including failure to understand and accept the seriousness of an

illness or condition when parental response require to seek care, or the purposeful withholding of an appropriate care. The perception of medical neglect will become more complex with the religious beliefs and practices where certain modern medical treatments are oppose by the beliefs of that specific religious group

- **Educational neglect:** is unable to provide an education and the required means to participate in a suitable education system. It is also include not allowing a child to attend appropriate school or allowing child to stay at home from school.
- **Abandonment:** refers to the caregivers who leave their child alone for more than a desirable period without the presence of an age appropriate alternative care. Here it is important mention that alternative care can only be accepted if the substitute caregiver is capable of caring the child.
- **Emotional neglect:** is failure to provide necessary support, satisfactory nurturing, love, care, affection, adequate encouragement and emotional maltreatment to the child.

To conceptualise the child neglect it is important to understand the factors, such as poverty, family structure, parent's gender and ethnicity. These issues are interconnected and played very crucial role in conceptualising child neglect. Because of varied and complex nature the scholars could not arrive to any common consensus, so there is no universally accepted definition of child neglect (Rosenman & Rodgers, 2004).

A child may undergo various forms of neglect right from birth. An infant may be abandoned by parents or not given proper nutrition. Data

suggests that India has miles to go as almost half of our children are still deprived of exclusive breastfeeding (54.9%) and are not given complete immunization coverage (62.0%) after birth (NFHS4). Whereas neglect for children in terms of refusal of food, shelter and other basic needs happens across all ages, children undergo specific deprivation at different ages. There are many children still out of school in our country; here gender plays an important role as well (United Nations 2015). There is also involvement of children in labour by families as they believe more earners is better to sustain basic needs of the family( Mint Live,)2016. Apart from that the other forms of violence such sexual abuse. One of the study indicated that most sexual abuse occurred in the age group of 12-15 (Kurtz, 2010).Our constitution have recognised it to certain extent and have integrated Early Childhood Care as a right .The crux of the argument is that a child may face multiple kinds of neglect and abuse from womb to adulthood and there is a need of also creating age specific interventions juxtaposing it with other social determinants.

## CHECK YOUR PROGRESS

1. What does the term Neglect denotes?

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2. What does the term “at risk “ denotes in context of children?

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3. Which factors may lead to neglect of child?

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4. Children from womb to adulthood often face neglect of the society. Do you agree?

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### 1.7 ABUSE AND DISCRIMINATION

It is important for all individuals working with children, to understand as well as to recognise child abuse and neglect whenever they encounter. If any practitioner comes across with suspicious child in risk situation the first question the practitioner should ask to himself/herself that it's not child abuse , neglect or discrimination.

The concept of child abuse, neglect and discrimination are discussed below for better understanding and recognise for the practitioners in the field.

#### ***Abuse***

The World Health Organization, 2006 defines child abuse and neglect as: All forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation,

resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.

In another word child abuse and neglect is the behaviours and treatment that result in *actual* or *likelihood* to harm the child or a young person. These behaviours may be intentional or unintentional and also include acts of omission (i.e. neglect) and commission (i.e. abuse) (Bromfield, 2005; Child Family Community Australia, 2016).

### ***Classification of child abuse and neglect***

However literature has suggested various forms of child abuse and neglect but here we have discussed only four major subtypes of child abuse and neglect as follows

#### ***Physical Abuse***

The WHO, 2006, defines child physical abuse as intentional use of physical force against a child that results in – or has a high likelihood of resulting in – harm for the child's health, survival, development or dignity. This includes hitting, beating, kicking, shaking, biting, strangling, scalding, burning, poisoning and suffocating. Much physical violence against children in the home is inflicted with the object of punishing.

#### ***Emotional Abuse***

Emotional abuse refers to a parent or caregiver's inappropriate verbal or symbolic acts towards a child and/or a pattern of failure over time to provide a child with adequate non-physical nurturing and emotional availability. Such acts of commission or omission are likely to damage a

child's self-esteem or social competence (Bromfield, 2005; Garbarino, Guttman, & Seeley, 1986; WHO, 2006).

The emotional abuse has five different behavioural forms discussed below (Garbarino et al. 1986).

- ***Rejecting:*** the adult refuses to acknowledge the child's worth and the legitimacy of the child's needs
- ***Isolating:*** the adult cuts the child off from normal social experiences, prevents the child from forming friendships and makes the child believe that he or she is alone in the world
- ***Terrorising:*** the adult verbally assaults the child, creates a climate of fear, bullies and frightens the child, and makes the child believe that the world is capricious and hostile
- ***Ignoring:*** the adult deprives the child of essential stimulation and responsiveness, stifling emotional growth and intellectual development
- ***Corrupting:*** the adult 'mis-socialises' the child, stimulates the child to engage in destructive antisocial behaviour, reinforces that deviance, and makes the child unfit for normal social experience.

### ***Sexual Abuse***

The WHO 2006, defines child sexual abuse as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society. Children can be sexually abused by both adults and other children who are – by virtue of their age or stage of development – in a position of responsibility, trust or power over the victim.



The perpetrator characteristics, relationships and contexts within which the child sexually abuses are diverse in nature (Quadara, Nagy, Higgins, & Siegel, 2015). There are various types of child sexual abuses are mentioned below

- Adult abusers with no familial relationship to the child
- Adult abusers who are family members of the child
- Adult abusers who are in a position of power or authority over the child
- Sexual abuse that is perpetrated by children and young people
- Sibling sexual abuse
- Online child sexual abuse
- Commercial child sexual exploitation.

### ***Exposure to Family Violence***

The family violence literature suggested that the children and young people are often considered as a disguised population. According Richards 2011, children are a 'silent, forgotten, unintended, invisible and/or secondary victims'. Goddard & Bedi, 2010, suggested that forcing a child or young person to live in an environment where a primary caregiver experiences sustained violence is in and of itself emotional and psychological abuse. When children and young people are forced to live with violence, are vulnerable to experience physical and sexual abuse (Dwyer & Miller, 2014; Goddard & Bedi, 2010; Mitchell, 2011). It has been observed that the children and young people who are likely to experience significant disturbances or threat to their psychosocial wellbeing, usually exhibit a similar pattern of symptoms to other abused or

neglected children (Kitzmann, Gaylord, Holt, & Kenny, 2003; Mitchell, 2011).

The literature has found that family violence often occurs due to interpersonal and inter-related problems such as substances abuse and sometimes mental or any other chronic illness. These interpersonal and inter-related problems increase the risks of the children and exacerbate situation (Bromfield, Lamont, Parker, & Horsfall, 2010; Mitchell, 2011).

### ***Other Forms of Child Abuse***

In addition, there are other forms of child abuse, such as:

- Fetal Abuse (e.g. pregnant mothers' substance abuse/ use behavior can put the baby at risk)
- Exposure to Community Violence (riot, communal violence etc )
- Institutional Abuse (i.e. abuse that occurs in institutions such as foster homes, group homes, and religious and sporting groups)
- State-Sanctioned Abuse (e.g. female genital mutilation in parts of Africa) (Corby, 2006; Miller-Perrin & Perrin, 2007).

### **CHECK YOUR PROGRESS**

1. What did you understand about emotional, physical, sexual violence on children?

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2. Can family be an instrument of violence to children? If yes how?

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3. Who else can incur violence on children except family?

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4. Child sexual abuse can happen within families. Do you agree?  
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### **1.8 SUMMARY**

The concept of childhood varies from countries to country and from culture to culture. There is no such fix parameter to describe a child or the concept of childhood. Biologically childhood means the stage between infancy to adulthood. Hence age is to be considering as central parameter to understand the concept of childhood. It is also ambiguous to express when childhood starts and when it ends. In this unit the sociological construct of childhood is explored through the lenses of philosophical notions of John Locke. Childhood is believed to be a blank slate where culture can be imprint. Due to the cultural variation and socialization process, the expectation from childhood varies in different culture as well as society. There is nothing fixed or universal in this regard, hence the phenomena can be considered as relative in nature. Secondly the historical transition in understanding childhood by society is also examined. In the beginning phase children were not to be considered as a special human being. There was no difference between an adult and a child. Historically childhood is a recent concept. The issues associated with children and how their vulnerabilities increase owing to dependence on adults is discussed in the sections that followed.

#### ***Suggested Questions***

1. How is childhood socially constructed? Discuss based on various theoretical perspectives on social construct of childhood?

2. How has the perspective of childhood has evolved historically? Discuss.
3. What are the different theories associated with childhood in cultural context?
4. What are the forms of abuse and violence a child may undergo? Discuss.

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## **UNIT: II**

### **THE LEGAL CONSTRUCT OF CHILDHOOD**

#### **Structure:**

- 2.1 Introduction
- 2.2 Learning Objectives

2.3 Social Construct and Legal Construct of Childhood

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2.5 Importance and significance of a uniform age definition

2.5.1 Uniform age definition versus age appropriate interventions

2.6 Social Policy and Children:

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2.7 Summary

## **2.1 INTRODUCTION**

In the previous unit, we have discussed in detail about the social construction of childhood. Now imagine a society with diverse cultures, social mores, and norms defining children and childhood differently in different settings. This would lead to utter chaos and add to the woes of governance. Some communities may follow the practice of ending their child to school at the age of 10 years, some at the age of 4 years and some never, depending upon their social mores, values, and norms. In addition, some communities may allow child marriage, while some others may not. Some children will be allowed to consume drugs and other harmful substances, while some others will face harsh punishment if they did so, depending again on their society's norms and values. In the human rights perspective, while diversity and plurality of ideas is celebrated, some uniformity is demanded to ensure all human beings are treated equally and none are deprived of their basic rights. This is where law and the legal construct of the society plays an important role.

Moreover, good governance and governance for children cannot be governance without law and a legal or a policy definition of the child. The definition of the child cannot be left to the arbitrariness or subjectivity of

varying cultural beliefs and practices. Further, the risks associated with negative or abusive childhood experiences need to be addressed.

The human species representing that particular group of people known as children, whose growth and development is incomplete in all aspects of life such as physical, psychological and social etc.requires some special measures to ensure that this particular stage of life is not susceptible to all kind of hazards and exploitations.

## **2.2 LEARNING OBJECTIVES**

- Understand the importance of moving from social construct to legal construct.
- Learn about Legal age of the children in Indian law
- Examine the need for uniform age definition
- Understand how social policy helped to protect, develop and welfare of the children

## **2.3 SOCIAL CONSTRUCT AND LEGAL CONSTRUCT OF CHILDHOOD**

As we are all well aware that childhood is socially constructed and varies with place and time. As long as this concept is there on our tea table, books and other discussions, its sounds good but when it comes to the legal domain, it is truly a matter of concern. We have several policies and programmes for the children. Problem arises while implementing all those policies and programmes. Issues like who will be the real beneficiary as a child, what is the age bar to be a child, who can be consider as child based on their height, weight, bone density, psychological maturity, and cognitive development, how is a child to be medically examined, at what

age can person be allowed to work in hazardous sectors of employment, and so on so forth come up in many legal matters involving children.

Again, who will determine all these aspects or what will be the criteria has to be determined through law. For your better understanding, let's discuss an example. Imagine we are considering age as the main criteria to determine who is a child. In this example now, the question is that what age should be kept as an upper limit for considering a person to be a child? After many discussions and debates, countries of the world came to agree upon 18 years as this upper limit.

Do all the human beings develop in all aspects like physically, psychologically and socially by the age of 18 years? If any individual develops physically but is cognitively underdeveloped, what shall be our response in such cases? While legally defining a child do we consider all aspects of development such as physical maturity, psychological maturity, cognitive maturity, social and cultural maturity, brain development etc.? The issue is vast and needs all our attention to reduce subjectivity and evolve a common understanding.

A few reasons for moving from the social construct to a legal construct of childhood may include:

- 1) The concept of childhood is relative in nature, varies with time and place.
- 2) Notion of childhood is not universal
- 3) As of now we have failed to reach a consensus on socially determining who is a child.
- 4) Various customary and personal laws have given different versions of childhood, safeguarding the rights of children belonging to some

communities, while putting children of other communities at risk of exploitation and abuse.

- 5) Different Indian law have defined children differently
- 6) Challenges in finding actual beneficiary
- 7) Difficulty in implementing policies and programmse
- 8) Children are vulnerable irrespective of society
- 9) Uniform definition is required to protect all children across the society
- 10) Universal concept of childhood can stop denial or violation of the rights of children.

### **CHECK YOUR PROGRESS**

1. Cite few reasons for moving from social construct to legal construct of childhood.

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2. Do you think legal construct of child is related to social

construct and cultural aspects of community? If yes how?

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3. Notion of Childhood is universal, do you agree?

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## **2.4 VARYING LEGAL DEFINITION OF CHILD IN INDIA AND RECOGNITION OF CHILD'S AGENCY**

The legal age of a child varies under different laws in India. According to Child Labour Prohibition and Regulation Act, 1986, a child is a person who has not completed 14 years of age. The Indian Constitution protects children below the age of 14 from working in factories and hazardous occupations, though they can work in non-hazardous processes and occupations under regulated conditions.

The Child Labour (Prohibition and Regulation) Act, 1986 accordingly defines a child as a person who has not completed fourteen years of age.

The Factories Act, 1948 (Factory Act, 1948) states that a child is one that has not completed fourteen years of age and an adolescent is one who has completed fifteen years of age but has not completed eighteen years of age. According to the Factories Act, a child below 14 years of age is not allowed to work in any factory. Children who have attained the age of 14 years and adolescents between 15 and 18 years can be employed only if they obtain a certificate of fitness from an authorized medical doctor. A child between 14 to 18 years cannot be employed for more than 4 ½ hours on any given day, or during night. No adolescent, male or female, below

the age of 17 years, who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m. Further, no female adolescent can be employed in a factory between 10 p.m. and 5 a.m.

The Plantations Labour Act, 1951 (Plantation Labour Act, 1951), defines a child as a person who has not completed his fifteenth year i.e. a person below the age of 15 years, while an adolescent means a person between the age of 15 and 18 years and an adult is defined as a person who has completed his eighteenth year.

On the other hand, according to the Motor Transport Workers Act, 1961 and the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (The Beedi and Cigar Workers (Conditions of Employment), 1966) child means a person who has not completed his fourteenth year. A person between the age of 14 and 18 years is defined as an adolescent under the Motor Transport Workers Act, 1961 and as a young person under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, whereas an adult under both these laws means a person who has completed his eighteenth year.

The Merchant Shipping Act, 1958 (Merchant Shipping Act, 1958) does not give any definition of a child, but there is a provision in these laws which states that boys who have attained the age of 15 years and above are allowed to be given as apprentices to sea service, through a written contract signed by their parent/guardian.

The Apprentices Act, 1961 as amended in 2014 (The Apprentices Act, & Amendment, 1961 and 2014) also does not define a child but states that

“A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he - (a) is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and (b) satisfies such standards of education and physical fitness as may be prescribed”.

According to the Mines Act, 1952 ( The Mines Act, 1952),any person who has completed eighteen years of age is an adult. This means a child is considered to be a person who has not completed eighteen years of age. This law does not allow employment of any person below the age of 18 years in any mine or part thereof. However, it does allow apprenticeship of training of persons who have attained the age of 16 years under supervision

### ***Age of Majority***

With the objective of bringing uniformity in the applicability of laws to persons of different religions the Indian Majority Act was enacted 1875. According to the Indian Majority Act 1875, every person domiciled in India shall attain the age of majority on completion of 18 years and not before. The Hindu Minority and Guardianship Act (HMGA), 1956, in Section 4 (a), defines a ‘minor’ as a person who has not completed the age of 18 years. According to the Dissolution of Muslim Marriages Act, 1939, the age of maturity is also completion of 18 years.

### ***Who is Juvenile?***

According to the Juvenile Justice Act, 1986, a boy child as below sixteen years of age and a girl child as below eighteen years of age were considered as minors. But the Juvenile Justice (Care and Protection of Children) Act, 2000 changed the definition of child to any person who has



not completed eighteen years of age, and this definition continues to apply even under the more recent Juvenile Justice (Care and Protection of Children) Act, 2015.

### ***Minimum Age of Criminal Responsibility***

The legal definition of a child will influence the decision of courts, while dealing with the offenders. Hence, age plays a very substantial role here. Any child or a minor cannot be treated the way an adult is convicted. If a child is in conflict with law he/she will have to be dealt with under the juvenile justice system and not the adult criminal justice system. This however, does not mean that children do not have the capacity to commit crime. The juvenile justice law only determines how children who commit crimes are to be treated. It does not determine the age of criminal responsibility. The age of criminal responsibility, or the age at which a child can be stated to have the capacity to commit crime is set at 7 years under the Indian Penal Code. This implies nothing committed by a child below the age of 7 years can be treated as an offence and no criminal action shall lie against the child. For children in the age group of 7 to 12 years, the capacity to commit a crime has to be determined in each individual case with respect to the alleged action of crime. Once the capacity is determined, the child will be sent to the juvenile justice system for further process. For all children aged 12 years and above, the law assumes they have a capacity to commit crime unless a child is mentally retarded or challenged. All such children aged 12 years and above can be held criminally liable for their actions, though they will be subjected to the processes and treatment under the juvenile justice system.

### ***Age of sexual consent***

In India the age of sexual consent has been a matter of debate in the recent years. In 2012, the Protection of Children from Sexual Offences Act recognised sexual activity with any person below the age of 18 years as a statutory sexual offence, thus rising the age of sexual consent to 18 years. The Indian Penal Code, 1860, as amended after the Criminal Law Amendment Act of 2013, states that sexual intercourse with a girl-child under 18 years of age, even with her consent, constitutes an offence of rape under Section 375 of the IPC. Under Section 366 (A), procurement of a minor girl below 18 years of age is an offence. Under Section 366 (B), importation of girls less than 21 years of age from the state of Jammu and Kashmir to any other Indian state, or from a foreign country to anywhere in India, is an offence. Under Section 372 and 373 of the IPC, selling/buying of minor girls below 18 years of age for purposes of prostitution, etc, is an offence. In the IPC, for the purposes of sections relating to kidnapping, procuring, buying and selling of minor girls, the term 'minor' refers to girls below the age of 18 years. In case of kidnapping of boys, the term 'minor' refers to boys below the age of 16 years.

### ***Age of Marriage***

The Prohibition of Child Marriage Act (PCMA), 2006, states that the legal age for marriage for a male is 21 years, while for a female it is 18 years. For men this may pose a challenge as they cannot marry even after attaining the age of majority i.e. 18 years. But there are other more serious challenges posed by the law, when read with other laws that criminalise certain sexual behaviour such as the POCSO Act and the Indian Penal Code (IPC).

It is important to know that a child marriage is not automatically null and void; it is only voidable at the option of either of the parties to the marriage. It thus remains a legally valid marriage, unless the girl or the boy or both want to have the marriage annulled. Therefore, while the PCMA recognises a child marriage as a valid marriage, men can be booked for rape or penetrative sexual assault if the marriage is consummated, as the age of sexual consent now stands raised at 18 years. Yet, when read in conjunction with Section 375, Exception 2 of the IPC, a case of rape can only be registered against the husband if the wife is below the age of 15 years. Such confusions allow the courts to use their discretion and interpretation of different laws while trying a case.

#### ***Age for obtaining driving licence***

According to the motor vehicles act, 1988, applying for a licence one must be 18 years of age and for driving a commercial transport vehicle one must be 21 years of age. But a person attaining the age of 16 (sixteen) years can drive a motor cycle with engine capacity not exceeding 50cc in a public place.

#### ***Age of the child in other laws***

The Immoral Trafficking (Prevention) Act, 1956, makes a distinction between a child and a minor defining a child as a person below the age of 16 years and a minor as a person between the age of 16 and 18 years.

The Right to Free and Compulsory Education Act, 2009 makes education compulsory only for children in the age group of 6 to 14 years.

No person has a right to vote and exercise adult franchise before attaining the age of 18 years.

In India you cannot buy alcohol or cigarettes if you are below the age of 18 years. You also cannot donate blood below the age of 18 years.

The Indian Contract Act only allows a person above the age of 18 years to enter into a valid legal contract. So children cannot hire their own lawyers to defend them in the court. They have to rely upon the state to provide them free legal aid.

### **CHECK YOUR PROGRESS**

1. Do you know the age of children for following legal conditions in India
- a) Age of Marriage -----
  - b) Age of sexual consent-----

c) Minimum Age of criminal responsibility.-----

2. How do following acts defines children.

- a) Immoral Trafficking Prevention Act, 1956
- b) RTE Act 2009
- c) Definition of Juvenile under Juvenile Justice Act 2000
- d) The Indian Contract Act
- e) The Prohibition of Child Marriage Act 2006

4. What is the objective of Indian Majority Act 1875?

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## **2.5 IMPORTANCE AND SIGNIFICANCE OF A UNIFORM AGE DEFINITION**

The Indian Constitution and the legislation passed over the years have some unique provisions to safeguard children. There are laws in India where the age of the child is not in conformity with the CRC, which the Government of India ratified in 1992. Moreover, the age of the child has been defined contrarily in many existing laws. These different age specifications in different laws have created a huge dilemma and also result in discrimination and injustice for some children in some situations. For example, when matters such as custody, adoption, maintenance, marriage, succession and inheritance are governed by personal laws that define and treat children differently, rights of some children are bound to get affected while their counterparts covered by a more progressive legislation or personal law may enjoy better protections.

Apart from this when the laws are in conflict with each other because of varied definitions, it is the most challenging task to decide the best interest of the child. In the case of child marriage for instance, even though the marriage is a valid marriage and the age of sexual consent stands raised at 18 years, no case of marital rape can be booked against the husband unless the girl he is married to is below the age of 15 years. This is because the Indian Penal Code only recognises marital rape in a situation where the wife is below the age of 15 years. In other words, a 17-year-old girl cannot charge her 18 or 20-year-old husband for marital rape even if she has been subjected to violence during sexual intercourse, though under the POCSO Act, it would still amount to statutory sexual assault.

On the other hand, there are cases of inter-caste or inter-religious marriages or where girls and boys elope and get married against the wishes of their parents. In such cases often enough the girls' parents book a case against the boy for kidnapping and rape of their minor daughter. The boy would be tried in a court of law, while the girl would be either handed back to her parents or kept in an institution/shelter home. Meanwhile, if her parents succeed in pressurising her to give up on the idea of continuing in the marriage, she would turn hostile in the court and the boy could be subjected to serious punishment. More than concerns about safeguarding childhood, prejudices and biases against self-choice marriage or an inter-caste and inter-religious marriage guide the actions and decisions of both the law enforcement officials and judicial officers. This is because of the ambiguities and confusion in the law and lack of understanding of child rights principles.

Such confusions in law must therefore be dealt with immediately. The National Policy for Children, 2013 provides a uniform definition of the child as a person below the age of 18 years. However, this definition is yet to become uniform in law.

### **2.5.1 Uniform Age Definition versus Age Appropriate Interventions**

We have just seen the number and kind of ambiguities in the Indian laws relating to the definition of the child and the notion of childhood. Each and every law has its own distinct way of defining children, which creates a lot of confusion and sensation in the court of law before giving a verdict. There is ample scope for mistakes and injustice with children in the absence of a uniform definition of the child and a clear understanding of childhood and child rights principles. There are movements from the different sections of society seeking a uniform definition of the child. This universal definition can be used to safeguard children from various adverse situations.

If we have a universal definition of the child then there must be an age range, which will describe the child. This age range will have a lower limit as well as an upper limit, for example 0 to 18 years. Here 0 is the lower limit and 18 is the upper limit to describe persons in this age group as children. The problem however, will arise if the government develops any programmes for children as any one developmental programme will not be able to address such a vast age range. Policies and programmes will have to cater to the specific needs of different age groups of children and different situations of children. Here the policy maker should keep in mind that the developmental programmes should be age appropriate and should be designed to reach the most vulnerable. The civil society and the

stakeholders should also advocate for age appropriate programmes. The effort should not stop with the age appropriate programmes only. In case of children with special need for example, their needs must be taken into consideration. In the case of persons with mental illness like autism and other developmental disorders, mental retardation etc., though their physical age may cross the upper age limit fixed to be a child, their mental age may be much lower than that. Hence, while developing welfare programmes and interventions, all these must be taken into account.

The Guiding Principle for legislation and judicial and administrative proceedings and decisions must be protection of all rights of all children and the principle of best interest of the child and non-discrimination

While a uniform legal definition of the child will help resolve many issues and ensure better protection of children and their rights, it may not be able to resolve all issues if our laws are not based on the principle of best interest of the child, non-discrimination and child protection.

For example, in the case of child labour, one may argue that the age definition of child labour must be the same as the age definition of the child, if all children below the age of 18 years are to be ensured their right to protection from exploitation, violence and abuse. Yet, the Government of India, while defining the child as a person below the age of 18 years in its National Policy for Children, 2013, has chosen to continue with a different definition of child labour under the Child Labour (Prohibition and Regulation) Act (CLPRA) as well as the proposed amendment to this law, restricting it to the age of 14 years. According to the Ministry of Labour and Employment, this is in keeping with the realities of children and India is committed to progressively eliminating the practice of child labour rather than setting unachievable standards. The logic is that



children may be forced by their circumstances to work and earn for themselves and their family, and if this reality is not recognised and a blanket ban is put on employment of all children below the age of 18 years, they may end up working in more harmful situations, that will be invisible to the naked eye. The government has thus followed a policy of both prohibition and regulation. Under the current law, employment of children below the age of 14 years in hazardous sectors is banned totally, while it is allowed in non-hazardous sectors under regulatory conditions. In the proposed amendment to the current law, the Ministry has sought complete ban on employment of all children under the age of 14 years in all sectors, except where children are engaged in family enterprise or agriculture after school hours or during vacations. For those aged 14 years and above up to 18 years, employment is allowed but under regulatory conditions in both the current law and the proposed amendment. On the other hand, exploitation of children working in any sector in the form of bonded labour or trafficking for labour or withholding the earnings of a child is a cognizable and non-bailable criminal offence under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). The proposed amendment to the CLPRA is thus seen as being in line with the principle of best interest of the child and the protection offered under the JJ Act is seen as being in line with India's commitment to child protection. Child rights activists have gone a step further to suggest that since education is a fundamental right for all children in the 6 to 14-year age category and is also compulsory, the proposed amendment should not allow any scope for children to be engaged in gainful economic employment below the age of 14 years, even if it is after school hours or during vacations (Gupta, 2016). The argument is that children will have to suffer dual burden of both school and work. Secondly, most manufacturing work in which

children are engaged, be it carpet making, bangle making, making fire crackers, bidis or locks or jewellery and accessories for the export market, is hazardous and is outsourced to family enterprises. The child right activists of the country have protested this amendment widely (Mint, 2016). Even a few hours of engagement of children in such processes would be hazardous to their health and well-being. The third argument is that it will promote the occupation based caste system, as children will continue to work in the same occupations as their family in the name of acquiring skills. A strong voice has emerged to make education compulsory up to the age of 16 years and make skill development part of the education curriculum, so that children remain attracted to the education system even after completing elementary education and can be equipped with skills that can fetch them useful and gainful employment when they turn 16. This is suggested as one way of dealing with children's realities, while addressing their right to growth, development and protection. It is also seen as a way to check the cycle of poverty that gets perpetuated by employment of children in the unorganised sector. The underlying concern in all these arguments and debates, whether from the government or the civil society is promotion of safe childhood, children's well-being, growth and development, and their right to be protected against exploitation and abuse. Clearly therefore, while the age definition of the child can be fixed at 0 to 18 years, the definition of child labour may vary if certain guiding principles of child rights are kept in mind.

Similarly, treating age of consent as the age of the child would be a mistake. When a child is defined as a person below the age of 18 years, the state has to ensure his/her protection, including protection from being criminalized for actions that result from immature behaviour. The demand

for lowering the age of sexual consent to 16 years would therefore be a demand for protecting young people engaged in consensual or exploratory sexual activity, or eloping to get married, from being criminalized and not a demand to give effect to any change in the definition of the child. As we have seen in the above example on child labour, here too the two definitions can co-exist. This will ensure that while there is a uniform definition of the child, the special situations that children find themselves in are also addressed and children in all situations remain protected.

### **CHECK YOUR PROGRESS**

1. Why is there a requirement of having uniform definition of child?

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2. What are the key factors the policymakers of the country need to focus on as far as children are concerned?

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3. The amendments introduced in Prohibition of Child Labour Act in 2016 in India may have adverse effect on children. Do you agree based on your learning from the chapter?

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4. The age of consent for sexual activity may be addressed differently from case to case. Do you agree based on your learning from the chapter?

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## **2.6 SOCIAL POLICY AND CHILDREN**

Children are the central part of any social policy, and investing in them is essential for their present well-being as well as for the future. But before going to discuss on children and social policy, more specifically in Indian context, it is important to understand the concept of social policy.

Social policy refers to the ways a society meet human needs for security, health, education, work and wellbeing of its inhabitants. It is concerned with the holistic actions and services to ensure the well-being of its citizens. Social policy guides the state to meet its anticipating challenges and new changes such as poverty, migration, globalization and economic changes etc. It examines the diverse roles of governments, family, civil

society, market, and the international organisations in providing services and support across the life span. These services and support refers here child and family support, education, housing, poverty alleviations, employment generation and training, pensions, health and social care and other social security measures. Social policy also addresses the issues of inequalities in accessing various services and support between diverse social groups, race, ethnicity, gender, sexual orientation, disability and age, etc. The governments and social institutions used Social policy is an instrument to shape up or manipulate behaviors of their inhabitants', through which it try to achieve specific goal (Titmuss, 1974) (Titmuss, 1974).

However, Social policy is applicable to all citizens, but it plays vital role for children. It frame a healthy environment in which the child and their families live, work, and play, resulting a positive impacts on their well-being (Jolly, 2012). The policy makers of all times, irrespective of countries have well understood that the foundation of a healthy individual's well-being is laid in childhood. There is an increased demand for investing on children, which considered as one of the best and most valuable long-term investments (Rees, Chai & Antony, 2012). Children have given optimal care and priority when they are in their mother's womb and after birth. They are entitled to get good life during childhood, regardless of the issue of preparing them for a good adulthood (Andresen, Diehm, Sander & Ziegler, 2011). Therefore, all the children should be allowed to enjoy the benefits of social policies during their childhood.

Though, there is a paradigm shift in the phenomena of child well-being. The literature has suggested this change as moving from child welfare to child well-being (Kamerman, Phipps & Ben-Arieh, 2009). This shifting

milieu is multidimensional and still is in developing phase. Because of multidirectional nature it is complicating the process to develop appropriate outcome measure and parameters for children's quality of life. As a result analysis of social policy and its contribution becomes more complex due to lack of appropriate outcome measure and parameters (Ben-Arieh, 2009).

### **2.6.1 Social policy and Children in India**

India is the home for largest child population in the world. The Indian Constitution guarantees fundamental rights to all citizens, including children. It empowers the state to make special provisions for children to build future nation with a healthy citizens. The constitution of India ensures a healthy childhood and also responsible to protect the children from all form of exploitations. The Directive Principles of State Policy in the Constitution specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity.

The government of India declared children as the nation's "supremely important asset" in the National Policy for Children, 1974. To secure the rights of children India has ratified with various international conventions and treaties. These include the Declaration of the Rights of the Child, Universal Declaration of Human Rights and its Covenants, the Convention on the Rights of the Child and its two Optional Protocols, the United Nations Convention on the Rights of Persons with Disabilities, the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, the Hague Convention on Protection of Children and Cooperation in respect

of Inter-Country Adoption and the Convention on the Elimination of All Forms of Discrimination against Women.

The National Policy for Children, 1974 accepted that there should be programmes for children in national plans for the development of human resources. It may help the children to grow up to become healthy citizens, physically fit, mentally sound and morally strong, endowed with the skills and motivations. Equal opportunities also emphasised in the Policy for the development of all children at growing age.

The National Charter for Children, 2003 was adopted on 9<sup>th</sup> February 2004 which emphasised on the goal to secure every child and their inherent right to be a child. It was intent to protect happy and healthy childhood by addressing the root causes that hinder the healthy growth and development of children. The charter also focused on sensitization of the community in the broader societal context to secure children from all forms of abuse, by strengthening the family, society and the Nation as whole.

The Government of India fulfilled its commitment for the rights based approach in addressing the continuous emerging challenges in the situation of children, had adopted the National Policy for Children, 2013.

The National Policy for Children, 2013 Recognized that:

- a child is any person below the age of eighteen years;
- childhood is an integral part of life with a value of its own;
- every child has universal, inalienable and indivisible human rights including the right to life, survival, development, protection and participation;

- the rights of children are interrelated and interdependent, and each one of them is equally important and fundamental to the well-being and dignity of the child;
- a multi-dimensional, integrated and inclusive approach is necessary for the overall and harmonious development and protection of children, which acknowledges their heterogeneity and different needs;
- right to life, survival and development goes beyond the physical existence of the child and also encompasses the right to identity and nationality, and mental, emotional, cognitive, social and cultural development of the child;
- family or family environment is most conducive for the all-round development of children and they are not to be separated from their parents, except where such separation is necessary in their best interest;
- the best interest of the child is of paramount concern in all decisions and actions affecting the child, whether taken by legislative bodies, courts of law, administrative authorities, public, private, social, religious or cultural institutions;
- children, especially girls, are free to express their views and their voices are heard and their opinions are respected in all matters affecting them in any way they are able to communicate, in particular judicial and administrative proceedings and interactions, in accordance with their age, maturity and evolving capacities;



This Policy is to guide and inform all laws, policies, plans and programmes affecting children with the key priorities of Survival, health, nutrition, development, education, protection and participation.

Ministry of women and child welfare has prepared a National Plan of Action for Children 2005. It has eight time bound parameters for quarterly monitoring of the National Plan of Action for Children 2005 as follows

1. Reduce IMR to below 30 per 1000 live births by 2010.
2. Reduce Child Mortality Rate to below 31 per 1000 live births by 2010.
3. To reduce Maternal Mortality Rate to below 100 per 100,000 live births by 2010.
4. Universal equitable access and use of safe drinking water and improved access to sanitary means of excreta disposal by 2010.
5. 100% rural population to have access to basic sanitation by 2012.
6. To eliminate child marriages by 2010
7. To eliminate disability due to poliomyelitis by 2007
8. To reduce the proportion of infants infected with HIV by 20 percent by 2007 and by 50 percent by 2010, by ensuring that 80 per cent of pregnant women have access to ante natal care, and 95 per cent of men and women aged 15-24 have access to care, counselling and other HIV and prevention services.

From the above discussion it is obvious that children were, still are, and perhaps will be at the forefront of social policy. Promoting the well-being of children and their families are one of the major goal of any social policy.

### **CHECK YOUR PROGRESS**

|                          |
|--------------------------|
| <b>1. Is it correct?</b> |
|--------------------------|

a) Social policy also addresses the issues of inequalities in accessing various services and support between diverse social groups, race, ethnicity, gender, sexual orientation, disability and age, etc.

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b)The government of India declared children as the nation's "supremely important asset" in the National Policy for Children, 1974

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c) The National Charter for Children, 2003 was adopted on 9th February 2004 which emphasized on the goal to secure every child and their inherent right to be a child

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d)The Government of India fulfilled its commitment for the rights based approach in addressing the continuous emerging challenges in the situation of children, had adopted the National Policy for Children, 2013

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**2 What are the parameters for quarterly monitoring of the National Plan of Action for Children 2005?**

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## **2.7 SUMMARY**

The concept of childhood is not universal, it varies in intra society as well inter society. Different Indian law has defined children differently. In addition to that several personal law and customary has given their own definition of child, which creates lot of confusion. As of now we are failed to reach a common consensus to determine the legal age of children. Different age specification in different law has created huge dilemma as

result leads to discrimination for some children in some specific situation. This non-uniform age definition is creating great difficulty to implement several programme. Therefore, it is an urgent need to come to a common consensus to determine the universal age definition of children. Though there are issues of uniform age definition versus age appropriate interventions still it is desired to have a universal age bar for children in our society.

***Box 2.1 Take home message***

- The concept of childhood is relative in nature, varies with time and place.
- Notion of childhood is not universal
- Failed to reach a consensus on socially determining who is a child.
- Various customary and personal laws have given different versions of childhood
- Different Indian law have defined children differently
- Difficulty in implementing policies and programmes due to universal age confusion
- Different age specifications in different laws have created dilemma leads to discrimination and injustice for some children
- Uniform definition is required to protect all children across the society
- Universal concept of childhood can stop denial or violation of the rights of children.
- Applying for a diving licence one must be 18 years of age and for driving a commercial transport vehicle one must be 21 years of age
- Legal age for marriage for a male is 21 years, while for a female it is 18 years.

- Criminal Law Amendment Act of 2013, states that sexual intercourse with a girl-child under 18 years of age, even with her consent, constitutes an offence of rape under Section 375 of the IPC.
- According to the Indian Majority Act 1875, every person domiciled in India shall attain the age of majority on completion of 18 years and not before.

### ***Suggested Questions***

1. What are the varying legal definition of Children in India?
2. Discuss on Uniform Age Definition vs Age Appropriate for Intervention.
3. What is the relevance of social policy for children? Discuss.
4. Discuss the significance of National Policy for Children 2013.

### ***Further Readings***

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