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Children in Conflict with the Law

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Children in conflict with the law are people who are under the age of 18 and have legal issues with the state. This phrase has a defined legal meaning that has been established by several legislation. The discussion in this article will centre on how laws affecting kids are now applied in society and how they have an impact on kids' lives when they deal with the juvenile court system. This research paper will go through the different legal components of this word. The article will go into depth on how various laws have evolved through time and how the current body of laws deals with the many circumstances related to this. It will look at children's constitutional rights as well as rights granted to them by international treaties. As one of its main topics, this article will look at and highlight the discrepancies and uneven treatment of children's rights that exist in several pieces of law, from the JJ Act to the POCSO, education act. In contrast to the concept of rehabilitation, assessing a child's criminal culpability is still a challenging process in Doli Incapax since it determines whether or not the child should be punished.

Keywords: *minor, children, conflict of law, juvenile, POCSO.*

INTRODUCTION

"India's juvenile justice system is governed by the Juvenile Justice (Care and Protection of Children) Act, 2015¹. Section 2(13)² of the Juvenile Justice (Care and Protection of Children) Act, 2015" provides a legal definition of "children in dispute with the law" in our country.³ It clearly states that a minor "who has committed an offence and was under the age of 18 on the day the offence was committed is included in the period stated in the applicable section of the act." As a consequence of several discussions, arguments, and modifications, this statute has been altered. Many laws govern India, but there has never been a law that specifically targets adolescent misbehaviour. More and more, legislation was required to handle the problems of abandoned children and youth crime. India was a British territory at the time, therefore English law, which at the time had its juvenile legislation in place, had an impact on the laws.

"In 1850, the British government in India passed the Apprentices Act⁴, which was the country's first juvenile statute. If a child between the ages of ten and eighteen was determined to be engaging in illegal behaviour, the law's requirements applied to them, and they were placed in a trade apprenticeship. Five more years passed before the Indian Penal Code⁵ was finalized. This was a significant step because it set rules for handling juvenile offenders at a period when there was no clear legislation addressing juvenile justice." The IPC is where the **Doli Incapax**⁶ concept was first made famous in India and is still used today. The Latin phrase means "unable to do the crime." A kid under the age of seven is deemed to be Doli Incapax under section 82 of the IPC⁷ and is granted universal immunity.⁸

¹ Juvenile Justice (Child Care & Protection) Act 2015

² Juvenile Justice (Child Care & Protection) Act 2015, s 2(13)

³ *Ibid*

⁴ Apprentice Act 1850

⁵ Indian Penal Code 1860

⁶ Naina Jacob, 'Legal Maxim-Doli Incapax' (*Law Times Journal*, 27 July 2019) <<https://lawtimesjournal.in/doli-incapax/>> accessed 10 August 2022

⁷ Indian Penal Code 1860, s 82

⁸ *Ibid*

According to the IPC, a youngster under the age of seven lacks the mental development necessary to formulate a deliberate criminal intent. Section 83⁹ of the IPC is an addendum to Section 82. Children aged seven to twelve have a weakened immune system¹⁰. After we acquired our independence in 1960, a new law focusing on children was enacted. "The Children Act of 1960 was created to "care, protect, maintain, welfare, education, training, and rehabilitation of neglected or delinquent children in the Union Territories, as well as for the prosecution of delinquent children in the Union Territories."¹¹ Even after that, the juvenile justice system continued to have issues, the worst of which was that various states had distinct rules controlling juvenile delinquency, which resulted in children in similar situations being punished differently based on the particular aspects of the laws.¹²

As a result, in *Sheela Barse v Union of India*¹³ in 1986, the Supreme Court recognized, among other things, that various states had different legislation dealing with children's rights. To ensure that laws are consistent, it would be crucial for the federal government to establish central legislation while taking Article 39 into account (f)¹⁴. The Juvenile Justice Act of 1986¹⁵ was designed to provide for the care, protection, and rehabilitation of young offenders and neglected children. This was revised in 2000 by the Juvenile Justice (Care and Protection of Children) Act.¹⁶ In 2006 and 2011, this statute underwent two more modifications. Since one of the accused was a kid, aged 17 at the time the incident was done, the horrifying Nirbhaya gang rape case, which happened in 2012, prompted a significant public outcry and demanded more harsh punishment for the culprits. As a result, the administration revised the law once again."

The Juvenile Justice Act of 2015¹⁷ makes major revisions to the existing laws to improve them and make the juvenile justice system more flexible to changing societal situations. Instead of

⁹ Indian Penal Code 1860, s 83

¹⁰ *Ibid*

¹¹ Children Act 1960

¹² *Ibid*

¹³ *Sheela Barse v Union of India* 1986 AIR 1773

¹⁴ Constitution of India, art 39(f)

¹⁵ Juvenile Justice Act 1986

¹⁶ Juvenile Justice (Care and Protection of Children) Act 2000

¹⁷ Juvenile Justice (Care and Protection of Children) Act 2015

using punishment, the Act aims to hold young people accountable for their behaviour via counselling. As part of this move, the definition of "juvenile" was changed to "child" which largely translated into "children in conflict with the law."¹⁸ This act also removed the ambiguity around the word "orphaned children," which it had previously sought to express plainly.¹⁹ The Act also made distinctions among the many types of crimes committed by children by classifying them into three groups:

Heinous: "An offence with a maximum punishment of seven years under any relevant statute."

Serious: "An offence that carries a potential punishment of 3 to 7 years in prison."

Petty: "A crime that has a maximum punishment of three years in prison."

The Juvenile Justice Board and Child Welfare Commission's responsibilities and scope of jurisdiction were also described in the Act. A juvenile is someone younger than the age of 18 according to the law. In India, regardless of the law, "a child under the age of seven cannot be held guilty of a crime. It was difficult to discern between juveniles and children in need of care and protection under previous guidelines since both groups were referred to as juveniles." The amended act (Juvenile Justice, Act 2015) defines "children in conflict with the law" and "children in need of care and protection" in such a way that the distinction is clear.²⁰ As a consequence, the Act also cleared up any confusion that could have resulted from different interpretations of past amendments to the laws.

CHILDREN'S RIGHTS

One of the most crucial elements of the juvenile justice system in India and other major nations around the globe is respect for children's rights and their capacity for criminal guilt. The Indian Constitution specifies and upholds the rights of children. In line with the state's discretion as established by law, all children between the ages of six and fourteen are required to receive free,

¹⁸ Sheela Barse (n 13)

¹⁹ *Ibid*

²⁰ *Ibid*

compulsory education under Article 21(a) of the Indian Constitution²¹. As a result, the Indian Constitution declares that all children between the ages of 6 and 14 have a fundamental right to free and required education.²² Similar to that, Article 45 ensures equal access to early care and education for all children in the same age range²³. The 86th Constitutional Amendment Act, which did not originally contain it, was passed in 2002 and introduced this alteration to the Indian Constitution. As a result, Section 21 and other pertinent provisions of Article 21(A) of the Indian Constitution were amended.

The right against exploitation is protected by the basic rights clause of the Indian Constitution. Under Article 23, forced labour and human trafficking are likewise forbidden²⁴. This Constitutional article talks about individuals in general, but it also gives women and children a lot of attention. Article 24 of the Indian Constitution states, "Prohibition of employment of children in industries, etc.- No child below the age of fourteen years shall be engaged to work in any factory or mine or be involved in any hazardous activity."²⁵ This protection is provided by the Indian Constitution, which forbids children under the age of 14 from working in hazardous vocations. However, child labour and exploitation still take place despite these rights guaranteed by the constitution. The definition of child labour under Articles 23 and 24 of the Indian Constitution is seen to be damaging, as was also stated in the case of *MC Mehta v State of TN*²⁶.

The court concluded that Sivakasi did not need to deal with the issue of child labour on its own.²⁷ It must thus be addressed as a national issue. Thus, it was determined that the Indian Constitution's Articles 24, 39(e)²⁸ and 39(f)²⁹, 41³⁰, and 47³¹ protected children's rights. The Child

²¹ Constitution of India, art 21(a)

²² *Ibid*

²³ Constitution of India, art 45

²⁴ Constitution of India, art 23

²⁵ Constitution of India, art 24

²⁶ *MC Mehta v State of Tamil Nadu & Ors* AIR 1997 SC 699

²⁷ *Ibid*

²⁸ Constitution of India, art 39(e)

²⁹ Constitution of India, art 39(f)

³⁰ Constitution of India, art 41

³¹ Constitution of India, art 47

Labor (Prohibition and Regulation) Act of 1986, which established guidelines for the abuse of children at work, was among the many laws that were mentioned as being applicable, and it was emphasized that it was the most important of these laws.³² The government's significant amendments to the Act's regulations in 2016 made it illegal to employ anybody under the age of 14.³³ The Act covers many provisions governing employment for minors above the age of 14.

The International Conventions are essential for ensuring that states keep their commitments to protecting children's rights and punishing lawbreakers among minors. The International Convention for the Rights of the Child³⁴ was ratified by the General Assembly in 1989, and India followed suit in 1992. The United Nations Convention on the Rights of the Child states that all children have fundamental rights from the moment they are born. "Right to Protection – against exploitation, abuse, and neglect; Right to Participation – to expression, information, thought, and religion; Right to Development – to education, care, leisure, and recreational activities; Right to Development – to cultural activities;³⁵"

Nondiscrimination (Article 2), the best interests of the child (Article 3), the right to life, survival, and development (Article 6), and the right to be heard are the four tenets upon which these rights are founded (Article 12)³⁶. "The Commission for the Protection of Child Rights (CPCR) Act, 2005³⁷ was formed by the National Commission for the Protection of Child Rights (NCPCR) in March 2007. The Commissions for Protection of Child Rights (CPCR) Act, 2005 created the National Commission for the Protection of Child Rights (NCPCR), a legislative body under the Ministry of Women and Child Development of India.³⁸ The Commission's objective is to ensure that all laws, regulations, directives, plans, initiatives, and administrative procedures maintain

³² Child Labour (Prohibition and Regulation) Act 1986

³³ *Ibid*

³⁴ International Convention of Child Rights 1989

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ Commissions for the Protection of Child Rights (CPCR) Act 2005

³⁸ *Ibid*

the basic rights of children as outlined in the Indian Constitution and the UN Convention on the Rights of the Child.³⁹

In contrast to India, several other nations and organizations likewise uphold the legal rights of children. For instance, the European Union has special regulations that control children's rights. Among other human rights, the EU and its member states are required to defend, uphold, and enforce children's rights. "As stated in Article 3(3) of the Treaty on European Union, the objective of the EU is to strengthen the protection of children's rights.⁴⁰ The EU Charter of Fundamental Rights makes sure that when EU institutions and member states implement EU law, children's rights are upheld. Both Article 24⁴¹ on the rights of the child and Article 31⁴² on the prohibition of child work specifically mention children's rights⁴³. According to the United Nations Convention on the Rights of the Child, a child is anybody under the age of 18. (UNCRC)⁴⁴."

CHILDREN'S CRIMINAL RESPONSIBILITY & CHILDREN'S VIOLATION OF CHILDREN'S RIGHTS

Children's rights violations are among the most dangerous aspects of these rights, and they have greatly concerned society and several organizations. "To address this violation of children's rights, India developed the Protection of Children from Sexual Offenses (POCSO) Act.⁴⁵ The Protection of Children from Sexual Offenses (POCSO) Act⁴⁶ and the rules created in compliance with it went into effect in 2012. The POCSO Act of 2012 is an extensive system that strives to protect children's rights at every step of the judicial process by developing child-friendly

³⁹ Government of India, 'National Commission for Protection of Child Rights' (NCPCR) <<https://ncpcr.gov.in/>> accessed 10 August 2022

⁴⁰ European Union Treaty, art 3(3)

⁴¹ European Union Treaty, art 24

⁴² European Union Treaty, art 31

⁴³ European Commission, 'EU action on the rights of the child' (*European Commission*) <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-action-rights-child_en> accessed 10 August 2022

⁴⁴ United Nations Convention on the Rights of the Child 1989

⁴⁵ Protection of Children from Sexual Offenses (POCSO) Act 2012

⁴⁶ *Ibid*

protocols for reporting,⁴⁷ recording, documenting evidence, investigation, and speedy trial of offences/violations via specialized courts. Additionally, it shields them from pornographic content, sexual harassment, and abuse (child pornography).

The Act⁴⁸ defines a child as anybody under the age of 18, and it forbids all forms of sexual violence, including penetrative and non-penetrative assault, inappropriate touching, sexual harassment, and pornography. Anyone who trades children for sex is likewise subject to the law's sanctions. POCSO imposes very harsh and severe sanctions based on the gravity of the offence, with life in prison serving as the maximum penalty."⁴⁹ The POCSO Act was altered to handle incidents of child sexual abuse more efficiently throughout the country. To combat the threat of relatively new types of crimes as well as the country's increased frequency of child sexual abuse, amendments were adopted in 2019.

The new law includes, among other things, guidelines for reporting pornographic content that comprises sexual abuse and the provision of adult child rights education. It also includes criteria for police verification of workers in childcare and educational institutions. The changes mandate stiffer punishments for child sex abuse. To speed up the trial and resolution of "rape and POCSO Act cases", the administration is also constructing 1,023 Fast Track Special Courts (FTSCs), including 389 specialised POCSO tribunals. Through various compensation schemes, the administration also assists the victims⁵⁰.

Another key issue that compares and contrasts different laws dealing with children who have breached the law is the criminal liability of children, using India as an example. "The JJ Act of 2015 attempts to solve this problem since the number of crimes committed by juveniles between the ages of 16 and 18 has recently increased. Children older than sixteen who commit serious

⁴⁷ *Ibid*

⁴⁸ *Ibid*

⁴⁹ *Ibid*

⁵⁰ Anand Sharma, 'The POCSO Act – Analysis' (*Firstpost*, 12 August 2021)

<<https://www.firstpost.com/india/no-lowering-of-age-limit-to-16-from-18-for-serious-pocso-cases-what-it-means-challenges-of-preventing-child-sexual-abuse-9881001.html>> accessed 10 August 2022

crimes face specific penalties. - Techniques for handling hazardous offenders between the ages of 16 and 18 have been established under Section 15⁵¹.

The Juvenile Justice Board may refer cases of serious juvenile crimes after conducting an initial examination, to a Children's Court (Court of Session). The Children's Court will then examine the case after the child reaches the age of majority. Until then, children must be maintained in a "safe environment" both during and after court hearings. After the examination, the child is either released or put on probation, with the possibility of spending the remainder of their sentence in prison if they don't improve. It is considered that it is acceptable to consider punishment for juveniles falling between the defined age ranges of 16–18 since it is thought that the legislation serves as a deterrence for future offences.

The legislation will protect victim rights and act as a deterrent to juvenile offenders who commit heinous crimes like rape and murder⁵². However, this criminal responsibility of children, or the penalization of them, contrasts with the other laws that are considered in analysing the phrase "children in confrontation with the law," which draws attention to the difference between child laws and labour laws, where, as was already mentioned, the intention "is to protect and rehabilitate children" rather than punish them.⁵³

STRATEGIES OF PREVENTION: CONCLUDING REMARKS

Child laws primarily aim to protect children from harm and work for their rehabilitation from legal problems. However, while talking about the concerns or problems that young people in our society face, it is common to neglect the group of children known as "Children in Conflict with the Law." Because they believe that "these kids got what they deserve," many individuals are hesitant to assist with the care of these children. It's crucial to keep in mind that a child is more susceptible to their environment owing to their immaturity and lack of understanding of the consequences of their actions. We cannot allow a lack of respect and hope to damage the childhoods of these children. Therefore, these kids desperately require rehabilitation. Every kid

⁵¹ Juvenile Justice (Care and Protection of Children) Act 2015, s 15

⁵² Anand Sharma (n 49)

⁵³ *Ibid*

who interacts with the juvenile justice system was once a youngster who had access to the safety net but lost it at some point, robbing them of the chance to develop in a secure setting.

The policy for the juvenile justice system should aim to deal with children's issues and guarantee their rehabilitation. Children who are dealing with difficult legal problems need to be addressed as such. Due to the detrimental effects of being connected with adult criminals and the increased opportunity for reformation for youngsters. Juvenile justice has moved away from using the criminal justice system as a means of punishment for those who are still maturing and developing their capacities. Juvenile justice pursues the objective "of rehabilitating juveniles who had committed an offence" using a variety of society-based corrective and rehabilitative approaches as a last resort and for the shortest duration of time practical until adequate society-based alternatives could be formed.

As a result, it's crucial to approach a youngster as a child rather than as a murderous criminal. Parents, families, relatives, teachers, schools, the community, and law enforcement officials must acknowledge, address, reduce, and minimise a child's risk of engaging in risky or illegal behaviours that are harmful to them and others. Therefore, in this case, the value of the family and the value of society are both equal. There is a tonne of research that suggests most kids can alter, adapt, and swiftly mature into adults given the correct prevention and rehabilitation. Identification of risk factors, or components, is essential since their existence and history of exposure increase the likelihood of criminal activity and other behavioural problems.⁵⁴

The best kind of prevention is reducing the negative effects of risk factors. The importance of these characteristics (primary prevention) on young people's capacity to overcome these difficulties and realign their life in a much more constructive way has recently received increased attention from the criminal justice system. This is due to the wealth of information on delinquent behaviour that has recently become available. Preventive factors, such as a high rate of school attendance, a positive outlook on life, or a readiness to discuss issues with parents,

⁵⁴ 'SOP on Rehabilitation of Children in conflict with law' (Women & Child Welfare Ministry, 24 October 2021) <https://wcd.nic.in/sites/default/files/SOP%20ON%20REHABILITATION%20OF%20CHILDREN%20IN%20CONFLICT%20WITH%20THE%20LAW_0.pdf> accessed 10 August 2022

function as a barrier, lessening the influence of risk factors and their capacity to encourage delinquent conduct. As a result, it is believed that it is acceptable for child legislation to handle this problem in a way that is as comprehensive as possible and incorporates prevention and rehabilitative methods.