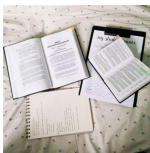


## Law College Notes & Stuffs

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**Law College Notes & Stuffs**

**Unit -I**

**Concept of Child & Juvenile**

**Introduction:-**

The subject-“*Offences Against Child & Juvenile Offences*” is comprised of five units providing details of causes of offence against child, various international conventions to protect the child, offences against the child under various Laws such as- labour, criminal, matters involving child in social relations (like child marriage, custody of child during matrimonial suits and obligations of the parents towards their children’s), protection of child and juvenile under the provisions of various Laws (such as constitution, I.P.C., Cr.p.c., contract), Juvenile Delinquency, rehabilitation, Juvenile court system etc.

**Child:-**

In common saying or in ordinary sense “Child” means a person who is unable to maintain itself. According to the provisions of various Acts dealing child exclusively one can come to know that it is the age of the child which determines as to who is child. In another words child may be determined according to his/her age subject to a particular Act to which he is subjected.

***In India various Acts describe various age of the child and they are as follows:-***

- According to section 2(b) of the Beedi & Cigar workers (condition of Employment) Act, 1966- Child means a person who has not completed his fourteenth year of age.
- According to section 2(ii) of the Child Labour (prohibition and Regulation) Act, 1986- Child means a person who has not completed his fourteenth year of age.
- According to section 3(a) of the Dangerous Machines (Regulation) Act, 1983- Child means a person who has not completed his fourteenth year of age
- According to section 2(bb) of the Minimum Wages Act, 1948- Child means a person who has not completed his fourteenth year of age
- According to section 2(2) of the M.P. shops and Establishment Act, 1958- Child means a person who is below fourteen year of age
- According to section 2(c) of the Factories Act, 1948- Child means a person who has not completed his fifteen year of age
- According to section 2 of the Children (pledging of Labour) Act, 1933- Child means person who is under the age of fifteen years.
- According to section 2 (aa) of the Immoral Traffic (pledging of Labour) Act, 1933- Child means a person who is under the age of fifteen years.
- According to section 2(b) of the protection of woman from Domestic Violence Act, 2005-Child means any person below the age of eighteen years and includes any adopted, step or foster child.
- According to section 2 (k) of the Juvenile Justice (care and protection of children) Act, 2000- Juvenile or Child means a person, who has not completed eighteenth year of age .
- According to section 2(a) of the prohibition of child marriage Act, 2006- Child means a person who, if a male, has not completed twenty-one years of age, and if a female. has not completed eighteen years of age.

“(Also at international level it is acceptable that any person below the age of eighteen years is called Child).”

►In Juvenile Justice (care and protection of children) Act, 2000 there is no distinction provided between Juvenile and child.

►The term Juvenile is derived from a Latin word “Juvenis” meaning young. ►The term Juvenile is defined by each member state of the United Nations in a manner which is compatible with its legal system and social welfare objectives.

### **Causes of offence against Child**

#### **Introduction:-**

Justice V.R. Krishna Iyer said: “The hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature- physical, mental and spiritual. It is the birth right of every child to demand justice from the whole world.

In a civilized society, the importance of child welfare cannot be underestimated because the welfare of the entire community, its growth and development, depends on the health and well-being of its children. Children are a “supremely important national asset” and the future well-being of the nation depends on how its children grow and develop. Jawaharlal Nehru has said about children that: “Today’s child is tomorrow’s future’. Some factors which are known to affect the volume and type of crime occurring from place to place are as follows:-

- Population density and degree of urbanization (particularly the concentration of youth)
- Stability of population with resident’s mobility, community patterns and transient factors.
- Economic condition (medium, below poverty line and job availability)
- Cultural factors and educational, recreational and religious characteristics.
- Family conditions with respect to divorce and family cohesiveness.
- Effective strength of law enforcement agencies.
- Chronic hunger, lack of education, over work and forced labour.

### **International-Protection to Child and Convention**

Children's are exploited to a large extent in work, humiliated in society and faces several discriminations. Looking to this there was a need globally for making declaration for the benefit and the rights of the children to provide them security to fight against all these evils of child abuse. So various declarations have been given internationally which are as follows:-

- ❖ Declaration of the Rights of the Child, 1959 ( The General assembly of the United Nations adopted this declaration on 20<sup>th</sup> November, 1959)
- ❖ The world summit for Children, 1990.
- ❖ Declaration of Geneva 1924.
- ❖ General Conference of the International Labour Organization (ILO), Geneva, 29<sup>th</sup> October, 1919.
- ❖ Worst Forms of Child Labour convention, 1999.
- ❖ UN CRC (United Nations convention on the rights of the Child) in 1992.
- ❖ The International Convention on the Rights of the Child, 1989.

Law

**UNIT II**

**OFFENCES AGAINST CHILD**

**Definition of Child Abuse: -**

Child abuse refers to the intended, unintended and perceived maltreatment, whether habitual or not, of the child, including any of the following.

- Psychological and physical abuse, neglect, cruelty, sexual and emotional maltreatment.
- Any act, deed or word which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being.
- Unreasonable deprivation of his/her basic needs for survival such as food and shelter; or failure to give timely medical treatment to an injured child resulting in serious impairment of his/her growth and development or in his/her permanent incapacity or death.

Child abuse includes child battering, extreme punishment, hard labour emotional abuse, sexual abuse, including incest and exploitation, and abandonment.

According to WHO:-

- **Physical Abuse**
- **Sexual Abuse**
- **Emotional Abuse**
- **Neglect**

**Various Types of child abuse:-** Child abuse refers to the intended, unintended and perceived maltreatment of the child, whether habitual or not and includes the following reasons or the acts:-

- Psychological and physical abuse, neglect, cruelty, sexual and emotional maltreatment.
- Any act, deed or word which degrades or demeans the dignity of a child as a human being.
- Unreasonable deprivation of his/her basic needs for survival (food and shelter) or failure to provide medical treatment to an injured child resulting in serious impairment of their growth and development or their permanent incapacity or death.
- Physical abuse is inflicting physical injury upon a child. It includes- beating, hitting, kicking etc.
- Emotional abuse that includes acts done by parents, caretakers. Peers and others that have caused or could cause serious behavioral, emotional or mental distress in the child.(Also known as verbal, mental or psychological maltreatment)
- Sexual assault or sexual abuse of a child (inappropriate sexual behavior with a child).
- Child neglect- it pertains to an act of omission or commission leading to the denial of a child's basic needs. Neglect can be physical, educational, emotional or psychological.

- Every fifth child in the world lives in India.
- Every third malnourished child in the world lives in India.
- Every second Indian child is underweight.
- Three out of four children in India are anaemic.
- Every second new born has reduced learning capacity due to iodine deficiency.

### Child Labour and Forced Labour

Despite there being several legislations dealing with the issue of child labour. But there is no universally acceptable definition of child labour. All enactments dealing with the child labour provide for different age limit for entering into an employment.

**The following legislative enactments are in force prohibiting employment of child labour in different occupation:-**

- **Section 67 of Factories Act, 1948** provide for the prohibition of the employment of young children. “As per this section no child who has completed his 14<sup>th</sup> year shall be allowed to work in any factory.”
- **Section 24 of Plantation Act, 1951** provides that –“No child who has completed his 12<sup>th</sup> year shall be allowed to work in any plantation.
- **Section 109 of Merchant Shipping Act, 1951** provides that-“No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except-
  1. In a school/ training ship,
  2. In a ship in which all the persons employed are members of one family,
  3. In a home –trade ship of less than 200 hundred tons gross,
  4. Where such person is to be employed on nominal wages and will be supervised by his father or other adult near male relative.
- **Section 45 of Mines Act, 1952** :- prohibit employment of child in any mine and in any part of it.
- **Section 21 of Motor Transport Act, 1961**- provides that No child shall be required to work in any capacity in any motor transport undertaking.

### Causes of child Labour

Main causes of child Labour are as follows:-

- Poverty
- Unemployment



- Low wages of the adult.
- Migration to urban areas
- Large families
- For want of compulsory education
- Illiteracy and ignorance of parents, and
- Traditional attitudes.

In all causes of child labour, it seems that the poverty is the basic reason which compels parents of a child, despite their unwillingness, to get them employed. The Survey report of the Ministry of Labour had also stated the same reason for the employment of child.

**“Section 14 of the Child labour (prohibition and Regulation) Act, 1986, provides for the penal provisions-**

- **Imprisonment for 01 year (minimum 03 months) ,or**
- **With fine up to Rs. 20000/(minimum being Rs. 10000/)**

**Demerits of the Child Labour (prohibition and Regulation) Act, 1986:-** There are a number of loopholes in the act which has made it “completely ineffective instrument for the removal of children working in industry”.

- Children can continue to work if they are a part of family of labour.
- The Act does not restrict the employment of children on work which is of hazardous nature.
- The act provides for punishment of the employer, but does not provide for any relief or compensation to the child so removed from employment.
- The Act is silent about the family of the child so removed from the employment.

**Case law -- “M.C. Mehta V/S State of Tamilnadu. AIR 1977 SC 699.**

**Important point:**

The children below the age of 14 years cannot be employed in any hazardous industry, mine or other work.

In this case the Supreme Court laid down exhaustive guidelines to protect economic, social and humanitarian rights of millions of children. M.C. Mehta, a social worker and public spirited lawyer told the court about the plight of the children engaged in sive kasi cracker factories by a PIL under Article 32 of the constitution of India.

**In this case, the court gave the following directions-**

- Offending employer should pay for each child a compensation of Rs. 20,000 to be deposited in the Child Labour Rehabilitation welfare Fund to be set up as per directions of the court.
- The liability of employer would not cease even if he would desire to disengage the child presently employed but Government should ensure that an adult member of the child’s family gets a job in a factory in lieu of the child.
- In those cases where it would not be possible to provide job, the appropriate Government should deposit Rs. 5000 in the Fund for each child employed.
- The authority concerned should ensure alternative employment for the adult whose names would be suggested by the child concerned or it should deposit the amount of 25000 in the fund.

**The court also identified the following industries where the guidelines be implemented first:-**

- Match Industry in Siva kasi, T.N.
- Diamond Polishing industry in Surat, Gujarat.

- The precious stone polishing industry in Jaipur, Rajasthan.
- Glass industry in Firozabad.
- Brass-ware industry in Moradabad.
- Handmade carpet industry, Mirzapur.
- Lock making industry, Aligarh.

*“By providing various provisions relating to safety, welfare and working hours etc. It has protected children working in the factories and make sure that their welfare is to be kept at priority.”*

**Provisions for child- worker under the Factories Act, 1948 are as follows:-**

- **Employment of young person on dangerous machines (section 23)-** No young person shall be allowed to work at any machine unless he has been fully instructed as to the dangers arising in connection with machine and what precautions has to be observed by him.
- He must be employed under the guidance or supervision of a person who has through knowledge and experience of the machine, and
- He has received sufficient training in work at the machine.

**Prohibition of employment of women and children near cotton openers:-** No women or child shall be employed in any part of a factory for pressing cotton in which a cotton- opener is at work. (Section 27)

**Excessive weights:-** No child shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

**Crèches** - In every factory where in more than 30 women workers are ordinarily employed there shall be provided and maintained a suitable room for the use of children below the age of 6 years of such women.

Such room shall be maintained as instructed by the Government U/S 50 of the Act. All such rooms shall be maintained in clean and sanitary conditions and shall be under the charge of women trained in the care of children and infants. (Section 48.)

**Prohibition of employment of young children-** No child (below 14 years of age) shall be required or allowed to work in any factory.

**Non- adult workers to carry tokens-** A young person or adolescent (who has completed his 14 years of age but below 18 years) shall not be required or allowed to work in a factory unless he has a certificate of fitness granted with reference to him U/S 69 is in the custody of the manager of the factory and a token to that reference has been issued to him, which he must carry while at work. (section 68)

**Working hours for children-** No child shall be required or allowed to work in any factory—

- For more than four and a half hours in any day.
- During the night (B/W 7 p.m. to 6 a.m.)
- Here night shall mean a period of at least 12 consecutive hours.



- The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than 5 hours each.
- The provisions of section 52 relating to weekly holiday shall also apply to child workers.
- He is exempted from double employment.
- No female child shall be allowed or required to work in any factory except between 8 a.m. and 7p.m.

**Notice of period of work for children** – In accordance with the provisions of sub-section (2) of section 108 a notice of period of work for children, shall be displayed and maintained in every factory. The period shown in the notice of work shall be prepared before hand as laid down in section 61 for the adult workmen.

**Register of child worker**—The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the inspector at all times showing all required particulars related to child worker.

No worker shall be allowed to work in a factory unless his name and other particulars are born on the register of the child worker.

**Penalty for permitting double employment of child**—Section 99 – one thousand rupees except if child works without the consent of the parents.

**Various Articles of the constitution which protect the interest of child are as follows**

- **Article 23-** prohibition of traffic in human beings and forced labour- Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- All the states under the provisions of this Article while imposing compulsory services for public purposes shall not discriminate on grounds only of religion, race, caste or class or any of them.
- **Article 24-** Prohibition of employment of children in factories- According to it no child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous employment.
- **Article 39 (e)**—According to this men , women and the tender age children's health and strength are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- **Article 39 (f)**—According to this all the children's must be provided with opportunities and facilities to develop in a healthy and in conditions of freedom and dignity and that childhood and youth are protected agained explosion and agained moral and material abandonment.
- **Article 41—Right to work, to educate and to public assistance in certain case**—By this article state is directed to provide to its citizens (within its limit of economic capacity and development effective provisions for securing) the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement etc.

- **By all these Articles** – central as well as state Governments are duty bound to protect their citizens, specially the children and the needy one, by protecting them from social and economic evils by providing them free education, medical and other assistance and make them good citizens of this country.

**Main provisions of Child Labour (prohibition and Regulation) Act, 1986**

Despite there being number of Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there was no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. Thus the child labour (prohibition and regulation) Act, 1986 was enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

**PROVISIONS RELATING TO KIDNAPPING  
AND ABDUCTION UNDER INDIAN PENAL CODE**

**Sections 359 to 369 of the IPC deals with the offences of Kidnapping and Abduction.**

**Kidnapping is of two kinds:** - Kidnapping from India (section 360) and Kidnapping from lawful guardianship (section 361).

**Kidnapping from India (section 360): ▼**

- Whoever conveys any person beyond the limits of India without the consent of that person, or
- Of some person legally authorized to consent on behalf of that person, **is said to kidnap that person from India.**
- Lawful guardian (in section 360) includes any person lawfully entrusted with the care or custody of such minor or other person.
- Exception:- This section does not extend to the act of any person who in good faith – believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.
- The whole object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards.
- Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section. (section 361)

**“Prakash vs. State of Haryana, AIR 2004 SC 227”**

**Abduction (section 362): ▼**

- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.