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The Law prioritises the protection of children and thus it provides them with little to no real autonomy. Discuss

Laws are designed in order to protect individuals and their rights. It is recognised that Laws have been established in the best interest to those whom they protect. However, they may not be perceived in that way, by those to whom they apply. In relation to child related law, such as education, child protection and safeguarding they serve to ensure the welfare of the child however, they can be perceived to remove the ability of the child to make decisions. This is primarily based on the assumption of the child's inability to make substantive or informed decisions, removing control in full or in part. This document aims to discuss the rationale for the Law as it applies to children, the understanding of autonomy and determining the impact of the child's voice to be heard.

A child, as defined by The United Nations Convention on the Rights of the Child (UNCRC), is stated as "everyone under 18 unless, under the law applicable to the child, majority is attained earlier" (UNCRC, 1989). Autonomy is defined according to The Cambridge Dictionary as "the ability to make your own decisions without being controlled by anyone else". In researching the Laws related to children, I have focussed on assessing examples of laws as they apply in the U.K. and Isle of Man. The UNCRC has proclaimed that childhood is entitled to special care and assistance and recognises that the child, for the full and harmonious development of his or her personality should grow up in a family environment, in an atmosphere of happiness, love and understanding. Therefore, member states, which includes the United Kingdom and the Isle of Man, maintain the laws in accordance with these principles, building a legal framework that supports the family unit and how a child should be treated.

The laws in the Isle of Man which support the protection of children and their ultimate safeguarding are designed to make provision for ensuring that where the family unit breaks down, where children are at risk and/or where harm may be caused, that the government agencies are given appropriate guidance on how to administer the extraction of the child. Safeguarding provisions under the Safeguarding Act 2018 now also bring into context the safety of children in external environments such as, clubs, groups, churches, or any organisation providing services to them. Additionally, The Isle of Man Education Act 2001 enforces children to attend school (or equivalent) between the ages of 5 and 16, making this compulsory and without choice (Education Act 2001). Law of any nature takes away autonomy from an individual whether this be driving restrictions, transacting business or buying a property, all are governed to protect or restrict the activities of an individual taking away full choice in order to mitigate criminal activity or harm. So one could ask, why is the voice of a child any different to that of any person regardless of age?

That said, by their very nature, children are less likely to be able to voice their opinion when it comes to the Law. Not only in their safeguarding and protection, but there are restrictions placed on things such as purchasing alcohol or tobacco until age 18, and the recent changes to the UK Marriage and Civil Partnership (Minimum Age) Act 2022 now prohibits marriage until the age of 18. In the case of Gillick vs West Norfolk and Wisbech Area Health Authority

1986, the voice of the child was heard when a child's capacity to consent came under the ruling Mr Justice Woolf, and later the House of Lords and the Law Lords, on whether doctors should be able to give contraceptive advice or treatment to under 16 year old girls without parental consent. From this The Gillick Competency and Fraser Guidelines were implemented thus giving a voice to children, in this case girls, under the age of 18 to make a choice. Mr Justice Woolf stated that this should 'depend on the child's maturity and understanding and the nature of the consent required'.(NSPCC 2022) Gillick competence assesses the child's capacity to consent. Based on such things as the child's age, maturity and mental capacity, understanding of the issues, risks, implications, and how well they have understood the information they have been given, alternative options and their ability to explain rationale. The Fraser Guidelines, (outlined by Lord Fraser) provided guidance to encourage the child to discuss with their parents or carers, in support of their decision. Some Laws allow for children under the age of 18 to participate in certain activities, such as driving at 16 (in the Isle of Man).

Here is demonstrable evidence that the law allows for the child's voice to be heard, in that rulings have taken into consideration the ability of a child to make appropriate and informed decisions. As a vulnerable person, which a child could be considered, it is important for the Law to protect those who are unable to provide consent, or to have full autonomy, when they are unable to fully understand the implications and risks associated with decisions that may affect their wellbeing, growth and development, health and education. It may be considered that the usual nature of the child may sometimes override their common sense, let alone decisions of importance. However, it depends on the circumstances of the decision. It is evident that from the perspective of the law makers, their intention is to protect, to preserve life and provide boundaries. The changes as noted above in relation to marriage in the UK, have been implemented to prevent forced marriage and the manipulation of children entering into marriage. Therefore, one could say that their voice is being heard through the application of law.

In conclusion, it could be argued that there is always a two sided view to a decision or choice. One that is for and one that is against. As such the Law applies itself to the majority and where the minority is unheard, proves it is willing to listen.

Bibliography

Education Act (2001), Part 3, Section 23 (1) Available at http://www.legislation.gov.uk/cms/images/LEGISLATION/PRINCIPAL/2001/2001-0033/EducationAct2001_3.pdf accessed at 27 April 2023.

General Assembly Resolution 44/25 (1989) Convention on the rights of the child, OHCHR. United Nations. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (Accessed: April 27, 2023).

Gillick competence and Fraser Guidelines (2022) NSPCC Learning. NSPCC. Available at: <https://learning.nspcc.org.uk/child-protection-system/gillick-competence-fraser-guidelines#> (Accessed: April 27, 2023).

“Legal age of marriage in England and Wales rises to 18” (2023) *Gov.uk* [Preprint]. The Rt Hon Dominic Raab MP. Available at: <https://www.gov.uk/government/news/legal-age-of-marriage-in-england-and-wales-rises-to-18#:~:text=The%20Marriage%20and%20Civil%20Partnership,if%20they%20have%20parental%20consent.> (Accessed: April 27, 2023).

Tullybelton, L.F.of (1985) *Gillick v West Norfolk and Wisbech Area Health Authority and another*. HOUSE OF LORDS LORD FRASER OF TULLYBELTON, LORD SCARMAN, LORD BRIDGE OF HARWICH, LORD BRANDON OF OAKBROOK AND LORD TEMPLEMAN. Available at: <https://www.globalhealthrights.org/wp-content/uploads/2013/01/HL-1985-Gillick-v.-West-Norfolk-and-Wisbech-Area-Health-Authority-and-Anr..pdf> (Accessed: April 26, 2023).