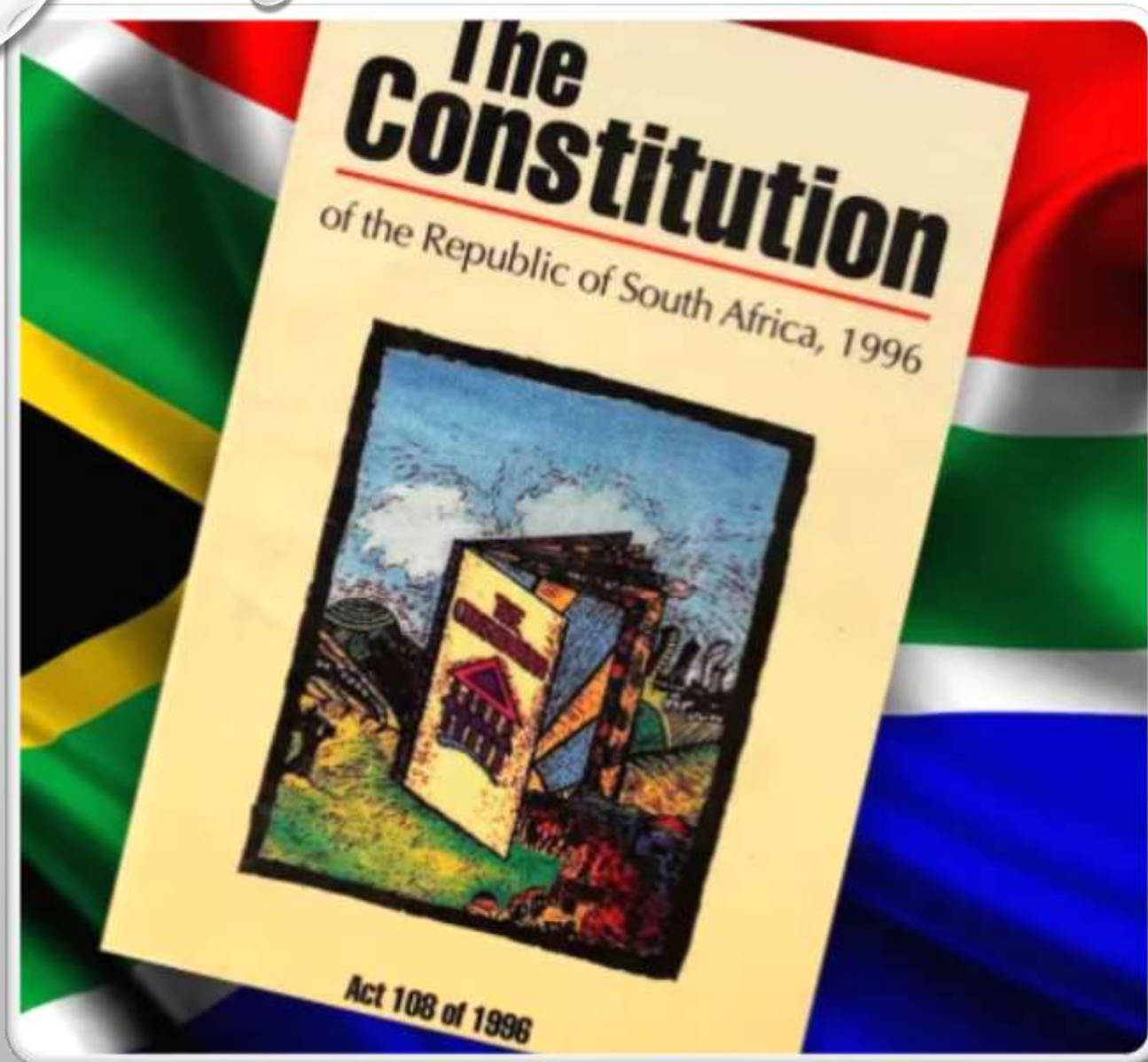


APPLICATION OF CRIMINAL LAW IN THE MASJID AND MADRESSA

PRESENTATION BY ADV. M.M. SANDAN



TOPICS FOR DISCUSSION:



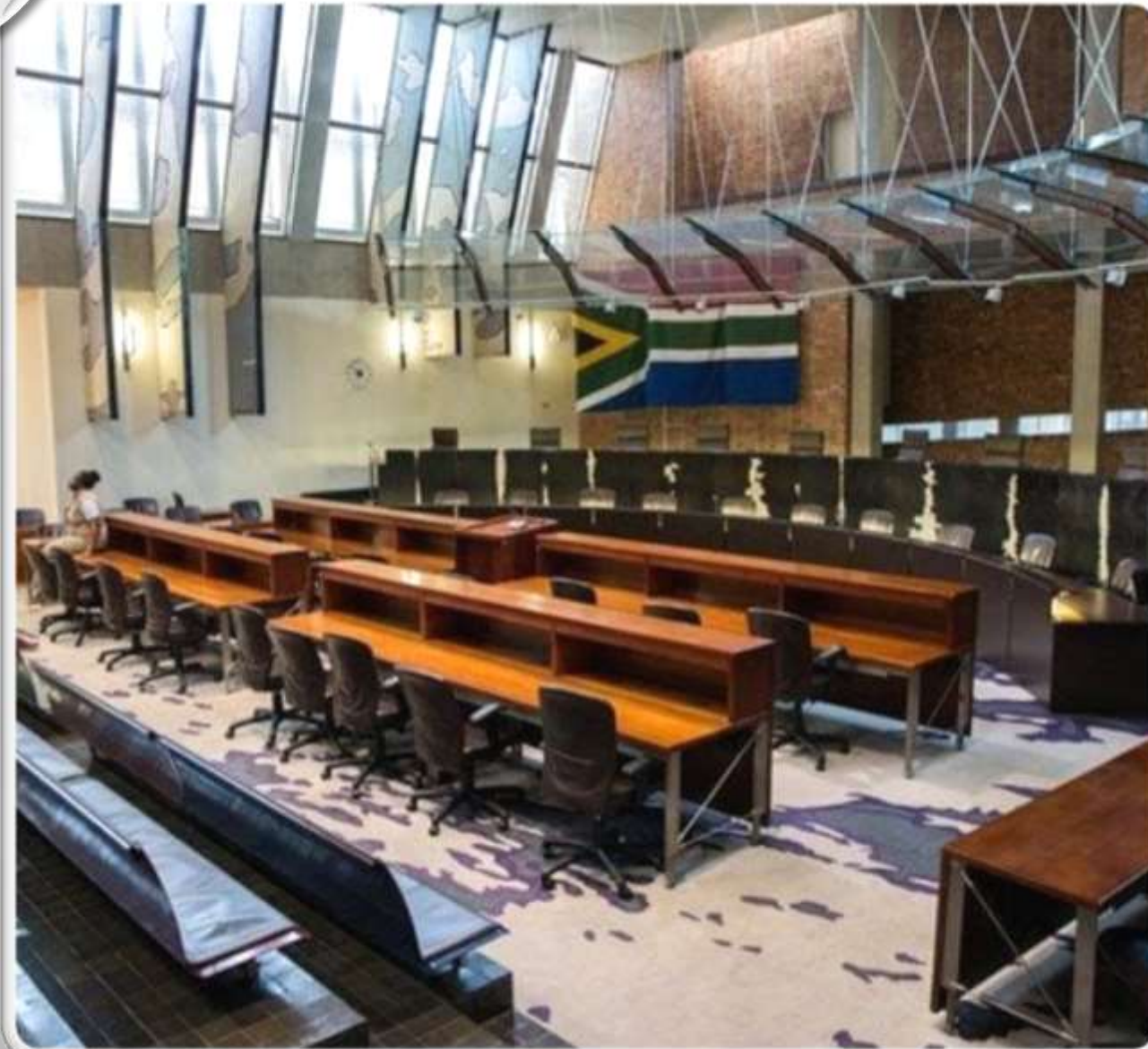
THE CONSTITUTION



**LEGAL AGE FOR
CULPABILITY**



CHILD JUSTICE ACT



TOPICS FOR DISCUSSION:



**SECTION 54 OF THE
CRIMINAL JUSTICE ACT**



**DEFINITIONS OF
OFFENCES**



**SPECIFIC OFFENCES AGAINST
MINORS PROSECUTED IN THE
REGIONAL COURT**

THE CONSTITUTION

- SECTION 28 OF THE CONSTITUTION IS THE STARTING POINT WHEN DEALING WITH ANY MATTER THAT INVOLVES CHILDREN
- SECTION 28 (2) UNEQUIVOCALLY MAKES IT CLEAR THAT – A CHILD’S BEST INTERESTS ARE OF PARAMOUNT IMPORTANCE IN EVERY MATTER CONCERNING THE CHILD
- THE ABOVE-MENTIONED PROVISION IS ENTRENCHED IN THE BILL OF RIGHTS AND ANYTHING THAT ENFRINGES THE RIGHTS SET OUT THE BILL OF RIGHTS IS UNCONSTITUTIONAL, UNLESS JUSTIFIED BY SECTION 36 (THE LIMITATION CLAUSE).
- IT’S AGAINST THIS BACKGROUND THAT ALL LAW CONCERNING CHILDREN SHOULD BE INTERPRETED



THE CONSTITUTION

- SECTION 28 OF OUR CONSTITUTION HAS A FAR REACH EFFECT ON THE LAW, THAT OUR COURTS HELD THAT WHEN SENTENCING A PRIMARY CAREGIVER, THE RIGHTS OF THE HIS/HER MINOR CHILDREN HAVE TO BE CONSIDERED (SEE - M V S (CENTRE OF CHILDREN LAW AS AMICUS CURIAE [2007\] JOL 20693 \(CC\)](#))



WE, THE PEOPLE
OF SOUTH AFRICA,



CONHILL

LEGAL AGE FOR CULPABILITY

CULPABILITY

- THE LEARNED WRITE SNYMAN DESCRIBES CULPABILITY AS WHETHER OR NOT IN THE EYES OF THE LAW, THERE ARE GROUNDS FOR BLAMING X PERSONALLY FOR HIS UNLAWFUL CONDUCT
- THE TEST IS WHETHER OR NOT IS IT APPROPRIATE TO HOLD X BLAMEWORTHY FOR HIS CONDUCT
- VARIOUS CONSIDERATION COME INTO PLAY WHEN DECIDING ON THE BLAMEWORTHINESS OF A PERSON, SUCH AS CRIMINAL CAPACITY
- OUR LAW HAS ADOPTED A 2 LEG APPROACH IN DETERMINING WHETHER ONE HAD THE CRIMINAL CAPACITY AT THE TIME OF COMMITTING THE OFFENCE NAMELY:
 - COULD X APPRECIATE THE WRONGFULNESS OF HIS ACTIONS
 - COULD X ACT IN ACCORDANCE WITH SUCH APPRECIATION
- ONE OF THE CONSIDERATION IN OUR LAW THAT INFLUENCE ONE'S CRIMINAL CAPACITY IS MATURITY
- OUR LAW RECOGNIZE THAT IN ORDER FOR A PERSON TO HAVE CRIMINAL CAPACITY TO HAVE THE REQUISITE CULPABILITY, X MUST HAVE INSIGHT, UNDERSTANDING AND ABILITY TO DISTINGUISH BETWEEN RIGHT AND WRONG (COGNITIVE ABILITY); AND THE ABILITY TO ACT IN ACCORDANCE WITH SUCH APPRECIATION (CONATIVE ABILITY)

LEGAL AGE FOR CULPABILITY

CULPABILITY REGARDING MINOR CHILDREN

- CAN A MINOR CHILD BE HELD CRIMINALLY LIABLE?
- OUR LAW MAKES A CLEAR DISTINGUISH ON WHAT TYPE OF CRIMINAL CAPACITY EXIST IN REGARD TO THE VARIOUS CATEGORIES OF MINOR CHILDREN AND WHEN MAY A CHILD BE DEEMED TO HAVE CRIMINAL CAPACITY, BASED ON THEIR AGE.
 - MINOR WHO IS 10 YEARS OLD AND YOUNG HAS NO CRIMINAL CAPACITY
 - MINOR 10 YEARS OLD AND ABOVE BUT LESS THEN 14 YEARS HAS
 - MINOR WHO IS 14 YEARS OLD HAS
- THERE IS A IRREBUTTABLE PRESUMPTION THAT A MINOR WHO HAS NOT YET REACHED HIS 10TH BIRTHDAY LACKS CRIMINAL CAPACITY
- THERE IS A REBUTTABLE PRESUMPTION THAT A MINOR THAT IS 10 YEARS AND OLD BUT WHO HAS NOT REACHED HIS 14TH BIRTHDAY LACKS CRIMINAL CAPACITY – IN ORDER FOR THE STATE TO REBUT THE PRESUMPTION IT HAS TO COMPLY WITH THE PROVISIONS OF SECTION 11 OF THE CHILD JUSTICE ACT, 75 OF 2008
- ONCE A CHILD REACHES 14 YEARS, THE NORMAL PRINCIPLES APPLY; IN THAT HE IS PRESUMED THAT AT THE TIME OF THE ACT OR OMISSION HE/SHE HAD CRIMINAL CAPACITY AND HAD CULPABILITY, UNLESS PRESUMPTION IN LAW CAN BE REBUTTED BY OTHER GROUNDS THAT EXCLUDE A PERSON CULPABILITY

SECTION 54 OF THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF 2007

- **SECTION 54 - OBLIGATION TO REPORT COMMISSION OF SEXUAL OFFENCES AGAINST CHILDREN OR PERSONS WHO ARE MENTALLY DISABLED**
 - (1) (A) A PERSON WHO HAS KNOWLEDGE THAT A SEXUAL OFFENCE HAS BEEN COMMITTED AGAINST A CHILD MUST REPORT SUCH KNOWLEDGE IMMEDIATELY TO A POLICE OFFICIAL. (B) A PERSON WHO FAILS TO REPORT SUCH KNOWLEDGE AS CONTEMPLATED IN PARAGRAPH**
 - (2) (A), IS GUILTY OF AN OFFENCE AND IS LIABLE ON CONVICTION TO A FINE OR TO IMPRISONMENT FOR A PERIOD NOT EXCEEDING FIVE YEARS OR TO BOTH A FINE AND SUCH IMPRISONMENT. (2) (A) A PERSON WHO HAS KNOWLEDGE, REASONABLE BELIEF OR SUSPICION THAT A SEXUAL OFFENCE HAS BEEN COMMITTED AGAINST A PERSON WHO IS MENTALLY DISABLED MUST REPORT SUCH KNOWLEDGE, REASONABLE BELIEF OR SUSPICION IMMEDIATELY TO A POLICE OFFICIAL.**

(B) A PERSON WHO FAILS TO REPORT SUCH KNOWLEDGE, REASONABLE BELIEF OR SUSPICION AS CONTEMPLATED IN PARAGRAPH (A), IS GUILTY OF AN OFFENCE AND IS LIABLE ON CONVICTION TO A FINE OR TO IMPRISONMENT FOR A PERIOD NOT EXCEEDING FIVE YEARS OR TO BOTH A FINE AND SUCH IMPRISONMENT. (C) A PERSON WHO IN GOOD FAITH REPORTS SUCH REASONABLE BELIEF OR SUSPICION SHALL NOT BE LIABLE TO ANY CIVIL OR CRIMINAL PROCEEDINGS BY REASON OF MAKING SUCH REPORT

THE POSITION PRIOR TO THE EFFECT OF SECTION 54 OF THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF 2007

- **PRIOR TO THE EFFECT OF THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF 2007; THE DUTY TO REPORT WAS GOVERNED BY DIFFERENT PIECE OF LEGISLATION, WHICH IMPOSED A DUTY ON SPECIFIC CATEGORY OF PERSONS SUCH AS DOCTORS, TEACHERS, SOCIAL WORKERS, RELIGIOUS LEADERS.**
- **THERE WAS NO DUTY ON A REGULAR MAN ON THE STREET TO REPORT**
- **THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF 2007 NOW PLACES A DUTY ON EVERYONE**

COMMON OFFENCES THAT THAT AFFECT OUR SOCIETY

- **ASSAULT COMMON**
- **ASSAULT GBH**
- **ATTEMPTED MURDER**
- **MALICIOUS INJURY TO PROPERTY**
- **HOUSEBREAKING WITH THE INTENT TO STEAL AND THEFT**

ASSAULT COMMON

- **ASSAULT IS THE UNLAWFUL AND INTENTIONAL USE OF FORCE THROUGH AN ACT OR AN OMISSION TO SOMEONE ELSE, OR INSPIRING AN IMMINENT BELIEF THAT THE USE OF USE WILL BE USED AGAINST SOMEONE CAUSING THAT PERSON IMPAIRMENT OF HIS/HER BODILY INTEGRITY, THE BELIEF MUST BE BASED ON THE FEAR THAT THE ACT OR OMISSION WILL TAKE PLACE IMMEDIATELY**

ASSAULT WITH INTENT TO CAUSE GRIEVOUS BODILY HARM

- **ASSAULT GBH AS IT IS COMMONLY DESCRIBED, IS THE UNLAWFUL AND INTENTIONAL USE OF FORCE THROUGH AN ACT OR AN OMISSION WHICH CAUSES GRIEVOUS BODILY HARM AGAINST ANOTHER PERSON**

ATTEMPTED MURDER

- **ATTEMPTED MURDER IS DEFINED AS AN ACT WHICH X INTENDED TO KILL ANOTHER LIVING HUMAN BUT WAS UNSUCCESSFUL IN CARRYING OUT HIS INTENTION**
- **THE TEST WHICH HAS TO BE APPLIED IS WHAT WAS X'S STATE OF MIND AT THE TIME OF THE COMMISSION OF THE OFFENCE**

MALICIOUS INJURY TO PROPERTY

- **MALICIOUS INJURY TO PROPERTY OR MALICIOUS DAMAGE TO PROPERTY AS THE EXPRESSIONS ARE SO OFTEN INTERCHANGEABLY USED, IS THE OFFENCE WHEN A PERSON COMMITS MALICIOUS INJURY TO PROPERTY UNLAWFUL AND INTENTIONALLY DAMAGING THE PROPERTY BELONGING TO ANOTHER PERSON**

HOUSEBREAKING WITH THE INTENT TO STEAL AND THEFT

- HOUSEBREAKING WITH THE INTENT TO STEAL AND THEFT IS THE DEFINED AS OFFENCE WHEN X UNLAWFULLY BREAKS AND ENTERS INTO A BUILDING WITH THE INTENT TO COMMIT AN OFFENCE (NAMELY THE OFFENCE OF THEFT)

SPECIFIC OFFENCE COMMITTED AGAINST MINORS ARE PROSECUTED IN THE REGIONAL COURT

- **WHEN THE VICTIMS/COMPLAINANTS ARE CHILDREN IN RELATION TO ANY COMMON LAW OFFENCE, DEPENDING ON THE LEVEL/SERIOUS/SEVERITY OF THE OFFENCE AND THE HARM/INJURIES SUSTAINED/TRAUMA ENDURED IS CONSIDERED BY THE SENIOR PUBLIC PROSECUTOR AND SUCH FACTS THAT MOTIVATES/SUPPORT A SENTENCE**
- **EXAMPLE: IF A ADULT (35 YEARS OLD) ASSAULTS A CHILD OF 3 YEARS**

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