

Emancipation: A Minor's Right

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Abstract: Minors have always been considered as amateur in making decisions concerning medical treatments because of their age, lack of sophistication and sense of understanding. Parents and guardians have been given authority to take decisions on minor's behalf. As per the Constitutional right to privacy¹ with respect to common law and family matters, parental authority was derived and assumptions were made that parents and guardians will act in the best interest of their amateur children. However, over the centuries, the court of law have progressively acknowledged that children below the age of majority with some sense of understanding, capabilities and maturity should be given power of speech in determining their decisions regarding some medical treatment. To protect minor's rights in making decision for medical treatment, many exceptions were made like practice of emancipation. This paper aims to discuss the concept of emancipation as minor's right for medical treatment under sensitive situations.

Keywords: Emancipation, Minors, Parental Consent, Rights to Privacy, Medical Treatment, Contraceptive Care, Abortion Right.

I. INTRODUCTION

Emancipation² is the legal process, according to which a minor is free from the authority, care and custody of his/her parents. The process of emancipation can be expressed either by a voluntary agreement among the parent and child or implied from evidences of certain actions and behaviours as import consent; it could be conditional or absolute, complete or partial, temporary or partial. Emancipation allows minors to make decision on their own behalf without any parental approval. Emancipation can be regulated by states in two ways:

1. *Jurisdictional emancipation*³: According to Common law jurisdiction, parents or guardians have certain responsibility towards their children. Such as supporting child's health, education, financial need and morality. In certain conditions these shared rights and responsibilities can be suspended and minor would be treated as an adult. In this case, Partial emancipation would only be limited to certain obligations. However complete emancipation is an agreement by which a minor is released from his parent's authority.

¹ The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets and identity. The right to privacy gives us the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose. Retrieved from https://en.wikipedia.org/wiki/Right_to_privacy

² The concept of Emancipation revolves around the notion of Paternalism which in itself is a debatable topic. Paternalism is the reason behind protectionist plans which limits individual's liberty. States have always relied on Principle of Beneficences² whenever there is a need for protectionist plans, concept of emancipation falls in this realm.

³ Cited from https://www.law.cornell.edu/wex/emancipation_of_minors

Thus, pronouncement of emancipation is made by the implied conduct of the parties. Acts such as marriage and recruitment in the military services by a minor are usually considered as satisfactory in themselves to emancipate a minor. The rationale for considering these acts to be as speculative evidence of emancipation is that they reflect such a radical change of minor's status in the family unit that it would be totally inconsistent to continue to view the minor as un-liberated.

2. *Constitutional emancipation*⁴: According to the state regulating law, removal of the minority's disabilities are important. The way in which those disabilities are removed differentiates the first type of constitutional emancipation, an unprejudiced proceeding where a minor files a petition in the court to be released of the disabilities of non-age, from the second type, a special constitutional enactment removing particular disabilities of minority. According to second type, on minor's behalf a petition can be filed by a friend, relative or any third party where different conditions which are present varies from utmost interest, economic independence etc.

This paper attempts to discuss the needs of minors for improved self-determining capability in receiving medical treatment. We will analyse the state laws that allows minors right to obtain medical treatment under emergency and non-emergency circumstances. Here, the focus will be on the dilemma of requirement of consent from parents and the states in which most court cases has occurred with reference to the emancipation policy and mature minor doctrine.

II. Parents' Withhold Consent⁵ for MINOR'S MEDICAL TREATMENT

Parents play an important role in their children's life whether it is concerning their education, health or financial needs. In the case of health matters they will provide medicinal care for the child, consent to essential treatment and fulfil financial responsibility for the same. Occasionally, under certain circumstances where parental consent is required for a treatment with consequences and the parents will withhold the consent because of their religious beliefs, consequences of treatment, empathy for the children and risk for life. This situation might put attending doctors with a serious quandary.

Although, Doctors have legal and ethical responsibility towards their minor patients to provide medical care but if they do so without proper consent⁶, they might violets the law of battery⁷. On the other hand if the minor patient's condition deteriorates with the delay in treatment, attending doctors will face the malpractice liability⁸. Similarly, there are chances of accountability if the patient is a mature minor as per the law⁹ who personally consented to treatment without parental approval. In order to avoid such quandary, doctors and hospital authority should seek permission from the Court to authorize minor's medical treatment when parents withhold consent but treatment is necessary according to the doctors. By doing this they are avoiding themselves from any liability and benefiting the minor in need for treatment.

There are various circumstances when parents withhold their consent for their minor's medical treatment and doctors are required to seek orders from the Court. In this section we will discuss two typical situations analysing parent-doctor dilemma:

1. *Refusals on religious grounds*: Does parents have right to refuse treatment on the basis of their religious grounds? Is it legally acceptable? These questions might raise many eyebrows in the society where religion comes first than people. People belonging to Jehovah's witnesses¹⁰, Christ church, orthodox Jewish system and many other religious groups believe in faith healing and withhold their consent for medical treatments like blood transfusion, organ transplant, etc. When judicial system have tried to balance the parents' right to religious liberty contrary to minor's right for medical treatment, they in general consider the necessity for treatment to save minor's life. If the treatment is only way to protect child's life, parents' consent is overridden. On contrary, in the cases of medical treatment like cosmetic surgery¹¹, parents' decisions on religious grounds would be defered by the Court. According to the **Parens Patriae**¹² jurisdiction, a court may emancipate the child from his/her

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⁵ Refusing medical treatment with the understanding of facts and consequences. https://en.wikipedia.org/wiki/Mature_minor_doctrine#Withholding_of_consent

⁶ Proper consent from the parents or the patient himself is necessary before any kind of treatment.

⁷ Treatment without informed consent constitutes a battery. [https://en.wikipedia.org/wiki/Battery_\(tort\)](https://en.wikipedia.org/wiki/Battery_(tort))

⁸ CHAYET, LEGAL IMPLICATION OF EMERGENCY CARE 102 (1st ed. 1969). Obviously, the physician also will be liable if she performs the emergency procedure in a negligent manner resulting in damage to the minor. Retrieved from Rowine H. Brown & Richard B. Truitt, *The Right of Minors to Medical Treatment*, 28DEPAUL L. REV. 289 (1979)

⁹ According to the American law, any un-emancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for himself. https://en.wikipedia.org/wiki/Mature_minor_doctrine#Withholding_of_consent

¹⁰ As per the Jehovah witnesses, blood transfusion were prohibited in their religion. https://en.wikipedia.org/wiki/Jehovah%27s_Witnesses#Legal_challenges

¹¹ Cosmetic surgery is not considered as medically necessary because it is am elective surgery. There might be post-surgery consequences like allergies, psychological impact, etc.

¹² The doctrine of Parens Patriae (father of the country) first originated in British law in the beginning of 13th century. As per this doctrine, the King is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. Sometimes the State is best qualified to take on this role. In the judgement by the Supreme Court of India in Charan Lal Sahu v. Union of India (1990) 1 SCC 613 (vide paras 35 and 36), the doctrine has been explained in some details as follows: "In the "Words and Phrases" Permanent Edition, Vol. 33 at page 99, it is stated that parens patriae is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons,

parents for the purpose of providing the necessary medical treatment. Thus, after taking the custody of the child, the state's interest to protect a minor would be greater than a parents' religious belief.

For instance, in the case¹³ of Elisha McCauley an eight year old girl who was suffering from Leukemia. As per the reports of her test her hematocrit reading of red blood cell's percentage in body was 14.5% way lesser than normal range of 40%. The attending doctors suggested for a bone marrow aspiration which was not possible without raising the hematocrit reading to avoid congestive heart failure of Elisha. The only way to raise the red blood cell's percentage was blood transfusion. Elisha's parents were Jehovah's Witnesses because of their religious beliefs denied to consent for the transfusion. Thus, the hospital authority sought permission from the Court of Massachusetts on emergency grounds. The court issued a temporary authority to the hospital for treatment.

In this case, the Court realized that relationship of a child and parents is constitutionally protected but parent's religious beliefs cannot outweigh any children's need for emergency medical treatment.

2. *Refusal on personal and life-sustaining grounds*: For a parent it is very difficult to see his/her child suffer be it because of psychological, emotional and physical issues. In the cases of medical treatments, doctors find it difficult to get parent's consent because of parents' personal reasons, treatment's effectiveness and post treatment health issues. As specified in the Constitution, Courts cannot uphold parents' consent when there is a risk for child's life because of the treatment. But when parents' withhold their consent for non-essential treatment which might improve their children's quality of life, courts can intervene on doctor's advice.

For instance, a case in *Re Hudson*¹⁴ involved Patricia an eleven year old girl who was born with congenital malformation of the left arm because of which her left arm can grow in size ten times to her right arm. Due to her deformity she was used to get bullied by other kids. She never attended school and left her home. Eventually, her elder sister reported the case to the Juvenile court for King County that her sister needed medical treatment. Attending physicians informed the court that she needed an imperative surgical treatment and her arm to be amputated but the parents have refused to consent for the surgery because of risk for life. As per the testimony child hated her appearance and wanted her arm to be removed. Therefore, the juvenile court granted permission for the surgery. Though the child is a minor and dependent on her parents but any kind of negligence in medical treatment from parents' side is unacceptable as per the Washington's law¹⁵.

This case reflects judicial reluctance to order non-emergency medical treatment for minors in the face of strong parental influence. Though it is true that parents' concern shouldn't be outweighed where the treatment involved risk for life, post treatment consequences and even death. But under extreme cases of deformities where only surgical treatment can improve minor's quality of life, parental objection should be scrutinize carefully along with doctor's help.

Now the question arises, what is the stand of the Court when the parents' withhold their consent for treatment of their brain-damaged newborn or a child who has become permanently incapacitated due to an accident or disease? In such cases where child's life might not be meaningful and cognitive as compared to other children. Health care providers might agree with the parents' decision to withdrawal from the treatment. But there are chances that any employee of family member might seek Court's intervention if they do not agree with decision taken. The decision of passive euthanasia¹⁶ or mercy killing might put the hospital authorities and the parents under legal problems. Though the decision of parent and doctors might be supported by public sympathy under extreme cases. Therefore, under such controversial and complicated ramification of allowing euthanasia, Court are likely to consider all the facts before passing any judgement.

III. MINOR'S RIGHT CONCERNING CONTROVERSIAL ISSUES

In the above section focus was on judicial representation of minor's rights to make decision for medical treatment. The rights were shown as of restricted possibility, arising only when there would be an exemption of basic rule necessitating parental approval for medical treatment. Now the question is what about the rights of a minor to get medical treatment under controversial and sensitive circumstances such as contraception, abortion, drug abuse, sexually transmitted disease and mental health treatment. In this section we will discuss minor girl's rights for contraception and abortion.

but the words *parens patriae* meaning thereby 'the father of the country', were applied originally to the King Andare used to designate the State referring to its sovereign power of guardianship over persons under disability. Retrieved from <http://medind.nic.in/jal/t11/i2/jalt11i2p98.pdf>

¹³ Jehovah's witnesses case of an eight year old girl. Retrieved from <https://www.courtlistener.com/opinion/2091097/in-the-matter-of-mccauley/>

¹⁴ 126 P.2d 765 (Wash. 1942). Cited from <https://www.courtlistener.com/opinion/4217300/in-re-hudson/>

¹⁵ Under section of Rem. Rev. Stat., § 1987-1, the definitions of "dependency" in Rem. Rev. Stat., § 1987-1 [P.C. § 593] are broad enough to include therein a child who is not receiving proper medical or surgical attention; that the word "destitute," as used in the statute, embraces a situation where a child is in fact destitute of proper medical or surgical care; and that the word is not restricted in its connotation to lack of finances, food, clothing, or shelter, inasmuch as proper medical care is as necessary to the life of a child as food, clothing, and housing.

¹⁶ Decision of withdrawal from treatment with the deliberate intention to hasten the death of a terminally ill patient. Retrieved from <https://www.aljazeera.com/news/2018/03/india-supreme-court-passive-euthanasia-180309064508560.html>

1. *Contraception Care*: According to a research¹⁷, each year around 16 million mature minors and 2.5 million minor girls become pregnant in developing regions. The lack of timely diagnosis, knowledge and access to contraception have resulted in teen pregnancy, because of which pregnant minors either end up with seeking abortion or spontaneous miscarriages. But those whose pregnancies were not terminated faces many problems such as immature baby, teen motherhood and societal humiliation. Here the question is, whether contraceptives should be accessible to the minor girls to avoid such circumstances or not, and if yes then whether parent's consent is essential?

According to the Common law, minors are not allowed to seek medical treatment without parental consent. Because of which doctors may fear legal accountability for providing contraceptive care to minors without proper consent from parents. The major dilemma here is the conflict in the interests of the minor, parents and the state. Thus, to avoid this states have to strike a subtle balance of parent's beliefs and basic authority with minor's right to privacy.

For instance, in 1977, The United States Supreme Court's Justice Brennan et al passed a judgement in *Carey v. Population Services International* after acknowledging that "the right to privacy in connection with decisions affecting procreation extends to minors as well as to adults, and since a State may not impose a blanket prohibition, or even a blanket requirement of parental consent, on the choice of a minor to terminate her pregnancy, *Planned Parenthood of Missouri v Danforth*, [428 U.S. 52](#), *the constitutionality of a blanket prohibition of the distribution of contraceptives to minors is a fortiori foreclosed*"¹⁸ (*Carey v. Population Services International*, 1977).

As per the ruling if anyone was found selling or providing contraceptive care to minors under the age of sixteen may face criminal punishments. The court also stated that "the prohibition against distribution of contraceptives to persons under 16 cannot be justified primarily because the State has not demonstrated that such prohibition measurably contributes to the deterrent purposes that the State advances as justification"¹⁹ (*Carey v. Population Services International*, 1977). Thus, declared that the statute might be continued till it did not enforce any considerable burden on a minor's right to privacy.

The above case specifies that some restrictions have been enforced by the court on the possibility of state-imposed restrictions on supply of contraceptives to minors. Now the question is whether parents can get involved in minor's decision of seeking contraceptive care and to what extent? It was made clear by *Carey* that privacy rights of minors in this area doesn't depend on parental consent solely. The outer limits of privacy rights would be defined according to the requirements of the cases.

In another case *Doe v. Irwin*²⁰, parents of an un-emancipated minor girl sued Ingham Family planning Centre for providing contraceptive to their daughter without their notification and consent. The defendant of the case, Irwin argued that they have not violated any law because they have constitutional right to distribute contraceptive to minors with the capability of giving informed consent for contraceptive without parental notification. But in this case, court ruled in parents' favour stating that "the parental and familial rights asserted by the plaintiffs herein are sufficient to justify a requirement that minors not be afforded a birth control device or medication unless notice to their parents is provided in some manner"²¹ (*Doe v. Irwin*, 1977). Now the question is, does necessity of parent's consent put any kind of burden on minor's constitutional right of obtaining contraceptive care? Thus, the court concluded that its judgement does not prevent emancipated minors from accessing contraceptive care.

Therefore, in the acknowledgement of the issue of teen pregnancy, to avoid instances of teen motherhood and societal negligence laws and amendments were made by keeping minors constitutional right to privacy into consideration. With the time several judgements were passed according to which minors were allowed to obtain medical treatment in family planning matters which includes contraceptive care as well. These steps may encourage minors to seek medical treatment in other sensitive medical cases without any reluctance.

2. *Abortion Rights*: Abortion on women of any age has always been a controversial matter around the world. As we know that the woman's right to obtain an abortion is constitutionally protected²² but now the question is whether this right is applicable on pregnant minors as well and if yes whether parental consent is necessary?

The very first case that acknowledged a pregnant minor's right to obtain an abortion was argued in 1976 in the *Planned Parenthood of Central Missouri v. Danforth*²³ case. In this case, Missouri State law requiring written consent from parents for an abortion on minor during the first trimester of pregnancy was challenged. While concluding that as it was established in *Roe v. Wade* case the individual's right of privacy concerning abortion decisions encompasses minors also, the court declared that "the State may not constitutionally impose a blanket parental consent requirement, such as condition for an unmarried minor's abortion during the first 12 weeks of her pregnancy for substantially the same reasons as in the case of the spousal consent

¹⁷ <https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>

¹⁸ <https://www.law.cornell.edu/supremecourt/text/431/678>

¹⁹ Supra 18

²⁰ <https://law.justia.com/cases/federal/district-courts/FSupp/428/1198/1792596/>

²¹ <https://law.justia.com/cases/federal/district-courts/FSupp/428/1198/1792596/>

²² In 1973, The United States Supreme Court passed a judgement in *Roe v. Wade*²² case that forbidding abortion services was unconstitutional violation of women's right to privacy.

²³ The case was filed by the attending physicians of Planned Parenthood Corporation on the behalf of their pregnant minor patient. <https://www.law.cornell.edu/supremecourt/text/428/52>

provision, there being no significant state interests, whether to safeguard the family unit and parental authority or other wise, in conditioning an abortion on the consent of a parent with respect to the under-18-year-old pregnant minor."²⁴ (Planned Parenthood of Central Missouri v, Danforth, 1976). Therefore, in concluding statement court asserted that however the state statute is unconstitutional but the state may enforce some restrictions on minor's decision for abortion²⁵ as argued by Danforth.

For instance, in Belloti v. Baird case, the court allowed an unmarried pregnant minor to obtain abortion by stating that if a pregnant minor is required to seek consent from one or both parents by the state, then another alternative procedures should be provided to her whereby she can obtain orders authorization for the abortion. The court also maintained that "*pregnant minor is entitled in such a proceeding to show either that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes, or that, even if she is not able to make this decision independently, the desired abortion would be in her best interests. Such a procedure must ensure that the provision requiring parental consent does not, in fact, amount to an impermissible "absolute, and possibly arbitrary, veto"*"²⁶. (Belloti v Baird, 1979) This case indicates that though minor can obtain abortion without parental consent but the abortion decision may be restricted by the constitutional requirement. Thus, to strike a balance between the state and minor's right, the application of **mature minor doctrine** could be taken into consideration.

While considering the risks involved in an abortion procedure such as serious psychological and physical damages, the Supreme Court stated that proper procedure should be followed with respect to the minor's right to consent to an abortion. As we know an abortion can leave a lifelong scar on a young woman. Any kind of negligence in medical procedure may cause severe damages to the body or even death. These are the factors which provide reasons for requirement of some form of adult supervision over a minor's decision to abort. The application of the mature minor statute as noted in Baird would provide the necessary input. Through this doctrine, a court will ensure that proper medical facilities are provided to the minor. Furthermore, in order to help prevent any emotional problems, the court may require that the child undergo counseling regarding the impact of an abortion. Moreover, if the court encourages but does not mandate parental involvement in the abortion decision, there will be a promoting of the family unit without forcing the child to seek parental consent, a process which may cause friction in the home. Thus, the decree of Baird case provides the proper degree of freedom with respect to the minor's right to consent to an abortion.

IV. CONCLUSION

In this paper we have analyzed that though parents and guardians have authority to take decision on their children's behalf before the age of majority concerning their health, education and financial needs. But if in some cases they fail to fulfil their responsibilities towards their child, then the Court have authority to emancipate that child to protect and provide them. Emancipation allows minors to use their constitutional rights in order to accord or refuse certain medical treatments without parental consent. For instance,

*"Children who are legally too young to give consent to treatment must still be treated as individuals whose rights as members of society are not solely dependent on the legal definition of the day."*²⁷ (Wood, 2000)

Even though some states have provided certain rights to minors to obtain medical care such as contraceptive care, abortion and other venereal diseases, but some are reluctant to expand minor's right to consent to treatment which are less invasive. In the case of teen pregnancy out of inaccessibility of contraceptives, rape or incest, minors are entitled to use their constitutional rights but with their physicians consultation because abortion is a very big step which may leave lasting damage on a minor's soul, body and life. Therefore, it is concluded that however emancipation provide minors right to privacy but in sensitive situations minors should obtain consent from court for treatment as capability or incapability of a minor should not be decided by their number of age.

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²⁵ The court pointed out that Missouri Law's restrictions lacks sufficient justification.

²⁶ <https://supreme.justia.com/cases/federal/us/443/622/>

²⁷ Lawrence Schlam & Joseph P. Wood, MD, Informed Consent to the Medical Treatment of Minors: Law & Practice, 10 Health Matrix 141 (2000)

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