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“EMANCIPATION LAWS IN INDIA: ASSESSING THE CURRENT LANDSCAPE AND GLOBAL PERSPECTIVES”

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Introduction

The contested principle of emancipation revolves around the complex concept of paternalism, often serving as the rationale for protective policies that restrict individual freedoms. The state commonly employs the idea of beneficence to justify the adoption of such protectionist measures, within which the concept of emancipation is embedded. Two primary arguments are frequently put forth by the state in favour of these protectionist policies. First and foremost, it is essential to recognize the limited capacity of children to make logical decisions. Additionally, it is crucial to consider the potential harm that a minor may inflict upon both themselves and others. This article critically evaluates both perspectives from a standpoint that advocates for emancipation.

Examining the implementation of policies in India is a pivotal aspect of this discussion. Various legal and societal barriers may create a perception that protectionism is more advantageous than embracing liberalism. The constitutional measures in the country play a significant role in bolstering the execution of such protectionist approaches, particularly in employment sectors where legal competence is lacking. Moreover, it is imperative to take into account the socio-economic context of India and the intricate dynamics of family systems. One could argue that the historical concept of the Indian family poses a constitutional challenge, questioning the absence of policies supporting liberation. In essence, this article seeks to explore and understand diverse viewpoints regarding the policy of emancipation of children in India.

The process of emancipation and its effect

Emancipation as a concept results in the breaking of ties between a parent and a child, there is absolute termination of any rights that a parent has over a child. The crucial criterion to consider in each instance revolves around assessing whether the circumstances have undergone significant alterations, rendering the initial justification for imposing constraints on the minor no longer

applicable. Emancipation can be categorized broadly into two types: total and partial.¹

Judicial emancipation denotes the legal process through which a minor is granted independence and freedom from parental control by a court of law, particularly within the framework of Common law jurisdiction. In such jurisdictions, parents carry specific obligations toward their children, encompassing financial support, ensuring physical well-being, overseeing education, and guiding moral development.²

Under specific conditions, these mutual rights and responsibilities are terminated, marking the transition of the juvenile to adult status. Partial emancipation, in such cases, is limited to specific obligations rather than a complete release. On the other hand, complete emancipation involves a formal agreement where parents willingly relinquish their legal rights over their child, reciprocated by the child being released from all corresponding obligations.

The conduct of the parties is pivotal in establishing a decree of emancipation through implicit behaviour. Actions such as marriage or joining the military are often considered sufficient indicators of emancipation.³ The rationale behind this consideration lies in these actions signifying a significant and transformative shift in the minor's role within the family, making it illogical to perceive them as not emancipated.

Statutory emancipation, a distinct process from judicial emancipation, pertains to the elimination of legal limitations associated with being a minor. The first type involves an equitable proceeding where a minor requests the court to be freed from the constraints of being underage. This differs from the second type, which entails special statutory laws specifically removing certain limitations associated with being a minor.⁴

Whether or not minors are to be granted this right?

The principle of beneficence asserts the ethical obligation for individuals to actively prevent harm and promote well-being. This principle is often wielded by the state to establish specific parameters that either safeguard or restrict individual freedoms. When extending these

¹ M. C. Studer, Parent and Child-Emancipation: The Emancipation of Minor Children: Freedom of North Dakota Youth, 96 NDL Rev. 263 (2021).

² V. V. Palmer, Absolute Emancipation, 85 S. African L.J. 24 (1968)..

³ C. A. Cooper, Emancipation of Minors, 8 J. Juv. L. 428 (1984).

⁴ Supra Note1.

considerations to the rights of minors, the state's stance against the emancipation of minors can be analysed through the lens of this principle. The state argues on two main grounds: the assumed incapacity of youngsters to make reasonable decisions and the perceived correlation between a child's autonomy and potential societal and personal harm.⁵

These arguments converge into a broader principle, examining whether granting a legal right to minors would advance the greater good or impede the prevention of harm. The state contends that emancipating children is prohibited due to potential harm to both society and the child, forming the basis for denying this legal authority to minors.⁶ This assertion involves a predictive aspect concerning outcomes for children in specific circumstances, relying on empirical claims substantiated by factual evidence.

Contrary to this paternalistic perspective, the author posits that the criterion for emancipation should hinge on a minor's capacity for independent decision-making rather than strict logical choices.⁷ Self-determining capability, as argued, involves assessing the outcomes of actions, distinct from reason, which follows the thinking process evaluating subsequent actions⁸. The contention is that minors, particularly those aged 14 or older, are capable of making decisions and carrying out their plans.⁹

However, the state's paternalistic perspective persists in maintaining that individuals, even at a certain age, lack the capability for sensible execution of their goals. This argument hinges on the assumption that a certain threshold of rationality is established, yet lacks empirical evidence supporting this claim.

The argument challenges the state's denial of liberty to minors, citing the principle of beneficence. The example of mountain climbing is presented to demonstrate that despite potential risks, adults face no restrictions on their rights. This challenges the coherence and comprehensibility of the principle of beneficence and calls for a reconsideration of its application.¹⁰

In conclusion, the author contends that assigning certain rights based solely on a conceptual

⁵ S. Bajpai, Emancipation of Minors, *International Journal of Law and Legal Jurisprudence Studies*, 1(6) (2014).

⁶G. Kaimowitz, *Legal Emancipation of Minors in Michigan*, 19 *Wayne L. Rev.* 23 (1972).

⁷ *Id.*

⁸P. Q. R. Boberg, *Emancipation and the Attainment of Majority*, 92 *S. African L.J.* 183 (1975)..

⁹ *Supra* Note 5.

¹⁰S. Stoicescu, *Emancipation of a Minor in the Civil Code System*, 2021 *Romanian Rev. Priv. L.* 298..

framework is overly expansive. The argument asserts that minors can achieve emancipation given their capacity for sound decision-making, which involves both rationality and reasonableness. Reasonableness, in this context, necessitates a comprehensive understanding of a minor's cognitive and emotional capacities, challenging the state's claim of a lack of logical decision-making among juveniles.¹¹

Emancipation in India with reference to the socio-cultural environment.

The trajectory of the emancipation movement in India is firmly embedded within the fabric of Indian culture and history.¹² Throughout history, it has been recognized that it is the responsibility of the king and the State to provide for individuals who are unable to care for themselves because to their lack of intellectual maturity, faulty judgment, or other factors related to their age.¹³ According to the statutory legislation, the responsibility for providing protection is with the Courts, who now act as representatives of the sovereign. It was extended to encompass the entire territory of India.¹⁴

Liberationists argue that the state has the authority to emancipate minors through the *parens patriae* jurisdiction it possesses. One could argue that the existence of fundamental rights allows for a legitimate constitutional claim under article 21. Given that minors possess the fundamental entitlement to existence and should not be treated only as property or lifeless entities, they possess a legitimate demand for their liberation.¹⁵

The case of *L Chandran v. Venkatlakshmi*¹⁶, The ruling stated that a child must be recognized as an individual who is entitled to the right to life as outlined in Article 21. Considering this, the court concluded that the belief in a father's absolute rights to child possession and custody goes against this fundamental protection. Adhering to such a belief would diminish the kid's status to that of a mere object.¹⁷

¹¹ Supra Note 5.

¹²N. Mulcahy, *Emancipation of Minors*, 23 Ga. St. U.L. Rev. 79 (2006)..

¹³ Id.

¹⁴P. Pauw, *Historical Notes on Emancipation*, 96 S. African L.J. 319 (1979)..

¹⁵ Id.

¹⁶ *L Chandran v. Venkatlakshmi*, AIR 1981 AP 1.

¹⁷ Supra Note 7.

Several high court rulings uphold the aforementioned premise, but the Supreme Court has not issued any. When there is no legal precedent, it is assumed that parents have right and authority over their children. This is addressed further. Firstly, it is contended that the only way to achieve the liberation of a minor in India is by judicial activism.¹⁸

The concept of *parens patriae* jurisdiction has always been limited to custody matters under family law involving minors. The perennial issue revolves around the placement of the minor, necessitating a delicate balance between the interests of both parents. The exercise of *parens patriae* jurisdiction by the court can be observed in Section 13 of the Hindu Minority and Guardianship Act, as well as in Section 7 of the Guardians and Wards Act.

As seen before, the emancipation of a minor under a foreign jurisdiction has been effective in situations where the parents have essentially lost control over the minor. According to the legislation, it is required that one parent be selected first. However, if both parents are deemed undesirable, it is quite probable that emancipation will take place in India.¹⁹ The crux of the debate rests in the legal position that prohibits the emancipation of minors.

Liberals have overlooked the essential aspect of the *parens patriae* jurisdiction due to an unnecessary approach. In countries that follow western or common law, the rights of minors have been officially acknowledged by the existing legal system. Rights of minors have been recognized under the ample scope that Article 21 provides.²⁰ Furthermore, Its jurisdiction of *parens patriae* is inherently subject to certain implicit limitations. The essence of this independence lies in the relinquishment of parental authority.

In our country, the state exerts *parens patriae* not to relinquish control, but rather to transfer it in another manner. The essence of *parens patriae* is primarily oriented towards the implementation of protectionist policies. Hence, our contention stands that the court can only grant emancipation to a juvenile if it examines the constitutional claim beneath the age of 21, specifically in cases of judicial activism, and not in any other circumstances. Firstly, the rigorous regulations in the field of commercial law.²¹

¹⁸ Supra Note 11.

¹⁹ Supra Note 5.

²⁰ Supra Note 5.

²¹ R.M. Lyon, Speaking for a Child: Role of Independent Counsel for Minors, 75 C. L. REV, 681, 684 (1987).

Secondly, neither in the United States nor in common law there is no decided age at which a minor can obtain emancipation status. The legislation contain different age limits, with some setting it at 16 while others establish a minimum age of 12.²² There are provisions that are put in place for the benefit of the minors. Hence, determining the age threshold for emancipation is a major issue in India. In the aforementioned instances of emancipation, there is a significant likelihood that these adolescents may be drawn to engage in industrial labour at a young age. Any form of arduous job, whether in a high-risk business or inside a bustling economic environment. The state is unable to argue against child labour in this case, as a juvenile who has been granted emancipation will possess the legal ability to freely enter into employment agreements. It would potentially result in widespread exploitation in India. Given that about 49% of the population in India falls below the poverty line, it is common for adolescents in these homes to be compelled into labour employment. Minors in this location are more likely to achieve financial autonomy at an earlier age than to minors in 51% of other locations. This suggests that while implementing such legislation, the state must create a compromise between child labour restrictions and its advantageous laws for kids.²³

It is widely acknowledged that the sole remedy for the issue of child labour is to offer alternative options, such as education. The constitution has clearly and explicitly granted the right to education, both in its directive principles and fundamental rights. Emancipation has an impact on both parties involved, as it involves the transfer of control over a juvenile once they have obtained legal capacity. Even though policies do exist for the benefit of these minors, money being of utmost importance in the country, it is put ahead of education instead. However, constitutionalism has the potential to restrict the state from implementing such policies. In the case of *Baseshar Nath*, the Supreme Court ruled that fundamental rights cannot be voluntarily relinquished by a person. Thus, neither can a minor opt to renounce their right to education, nor can the state revoke it, as it is an integral component of the fundamental framework. The argument's fundamental fault lies in its limited prohibition of child labour, which only applies to children under the age of 14.²⁴ The same restriction applies to the right to education. Thus, proponents of liberationism argue that the petition for emancipation of minors should only be considered once the minor reaches the age of 15 or 16. Implementing this would necessitate a minor modification in the Indian Contract Act, without any simultaneous revocation of existing legislation. Furthermore, the age

²²C. Sanger & E. Willemsen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. Mich. J.L. Reform 239 (1991)..

²³ *Supra* Note 5.

²⁴L. K. Wexler, *In Re: The Emancipation of P, A Minor (Emancipation)*, 32 Quinnipiac Prob. J. 354 (2018)..

limit can be established through legislative action, which greatly clarifies any confusion. Although the reasoning may appear academically valid, there are major flaws.

Fuller asserts that every legislation possesses inherent moralities, which can be categorized as the morality of obligation and the morality of aspiration. An exemplary piece of law is one that satisfies both characteristics. Our contention is that while the state may succeed in one aspect of this case, it will intentionally fail in the other. The aspirational goal of the child labour or the right to education act is to increase literacy rates and prevent the exploitation that children are susceptible to in emerging nations like India during this era of industrialization. Despite a youngster surpassing the age of 15, it is quite probable that they will pursue employment in the industrial sector rather than acquiring advanced education.²⁵ A significant number of underage individuals are likely to be attracted to it due to the fact that the necessary conditions for their liberation are easily met in the case of kids below the poverty line. Abdication, financial reliance, and marriage are three significant elements that are empirically observed in cases of individuals living below the poverty line. Over time, the individuals under the age of 18 within that 49% of the population will contribute to the rise in unemployment and various other obstacles to progress. Consequently, it goes against India's policy interests. Given India's socio-economic conditions, it can be argued that protectionism is acceptable. Enacting legislation to emancipate kids will be detrimental to India's welfare.²⁶

Another legal argument that strongly opposes emancipation has been escalated. The actions pertaining to children that have been implemented can be interpreted as secondary laws under the international agreement. The case of *Pratap v. State of Jharkhand*²⁷ established that any legislation concerning children must comply with the convention on the rights of the child.

The final and most crucial argument We have against the emancipation of minors paradoxically stems from Article 21. To recapitulate, our compelling argument posited that the child should not be seen as mere property and possesses an independent existence. Hence, by considering the optimal outcome, he could perhaps be granted emancipation. This argument is too narrow-minded as it disregards the concerns of the parent, particularly in the context of India. Parents may potentially assert a significant argument invoking their rights under Article 21. In the context of

²⁵I. Richardson, Emancipation of Minors, in *The Emancipation of Minors in Current Trends in State Legislation*, 1956.)

²⁶ Id.

²⁷ *Pratap v. State of Jharkhand*, AIR 2005 SC 2731

family dynamics in India, the parental right to life encompasses the authority to govern and make decisions for their kid until the youngster reaches the legal age of adulthood. Therefore, it is advisable to explicitly consider legislation pertaining to the empowerment of a minor rather than focusing solely on emancipation.²⁸

Regarding the history, it is widely accepted that the prevailing form of family structure in India has consistently been a joint family. Hindu households adhere to a patriarchal structure, in which the male elders hold authority and make decisions concerning the well-being of the family. However, following the 19th century, as Indian civilizations underwent industrialization, it was contended that the traditional joint family system had been dismantled. In the 21st century, the concept of a joint family has become obsolete.²⁹ However, it is important to note that this argument has a significant empirical problem. Some scholars propose that even if children may have grown up and moved away, it does not necessarily mean that the joint family no longer exists. Empirical evidence has demonstrated that, unlike in Western societies, the essential emotional relationships are not dissolved. From a materialistic perspective, the wages are nevertheless burdened by the presence of the joint family. Merely 1.8% of families have independently made decisions without seeking input from the entire combined family. Indian families adhere to a pattern of transitioning between joint and nuclear family structures, regardless of urbanization and industrialization. Consensus among Indian family authors affirms the coexistence of both joint and nuclear families in India, both in the past and in the future. The Indian family is regarded as a cohesive entity that engages in both consuming and production activities.³⁰

A conjugal family is considered the best model of a western family. In conjugal families, mates are chosen independently, marriage is seen as a contractual agreement, and a self-sustaining social and economic unit is formed by the couple. Additionally, the rights of children are acknowledged. In contrast, the family structure in India is characterized by parental dominance and a lack of respect of individual rights. Several scholars have derived their findings from the premise that the degree of individualism is contingent upon the size of one's family. Due to urbanization, the size of families has decreased in metropolitan regions.³¹ The logical inference

²⁸ M. Davis & A. Fang, *Emancipated Minor* (2020).

²⁹ *Supra* Note 5.

³⁰ *Supra* Note 5.

³¹ M. A. Cataldo, *Safe Haven: Granting Support to Victims of Child Abuse Who Have Been Judicially Emancipated*, 52 *Fam. Ct. Rev.* 592 (2014.)

is that westernization has led to a prevailing spirit of individualism. We have already demonstrated the fallacy of this argument, but to effectively rebut it, these families have been categorized as extended families. The extended family of India remains connected and maintains equal bonds, while being physically separated from the core unit. Consequently, the opposing party exercises the privileges of being a mature individual, acting as guardians, in order to nurture their offspring according to their own judgment.³² This also implies the absence of any potential interference by the government, as well as the prevention of any form of harassment by dissatisfied adult claimants, with the assistance or encouragement of the law. Although there is empathy for people dealing with tragedy, the decision that the courts or legislature must make is not fundamentally different, although it may appear challenging, from what is typically encountered in cases involving common law adoption in foster care. Regardless of the court's decision, there will inevitably be adversity. Perhaps the parents have already been subjected to the hardships of poverty. Individuals who suffer from inadequate education, poor health, prejudice, personal ambivalence, or other unfavourable conditions may be unjustly deprived of custody of their children, despite having provided extended and devoted care.³³ This can occur both in families facing financial difficulties and in affluent families. Furthermore, it should be noted that the authority to control the kid will be explicitly listed as a right in Article 21 of the Indian Constitution. In conclusion, We have offered two perspectives on the jurisprudential aspect and the socio-legal considerations in India. In this situation, We find ourselves somewhat perplexed about taking a stance. However, if forced to do so, We would assert that emancipation is highly improbable under the Indian legal system.³⁴

Conclusion

Conclusively, it is asserted that the emancipation of children is not viable in India, considering the considerations discussed in this article. In both common law and the United States legal system, the court has established many criteria for emancipating kids when determining their best interests. The grounds for such cases might range from desertion and intra torts to financial independence, among others.

However, the legal reasoning behind the decision to not grant emancipation did not present any compelling arguments in support of the state's position. The state depends on the principle of

³²R. Agarwal, Possibility of Minor Emancipation in India, 2 Law Essentials J. 182 (2021)..

³³ Supra Note 5.

³⁴ Id.

beneficence, which serves as the foundation for this policy framework. Furthermore, it was contended that the state has violated the same principle by failing to implement a policy for emancipation. Upon philosophical examination, it was determined that the state's argument for emancipation is not viable.

However, it is also argued that the principle of beneficence is applicable when considering such a scenario in India due to the country's socio-economic conditions. The jurisdiction of India over children, as outlined in the appropriate acts, demonstrates the state's commitment to protecting them. Constitutional actions are accountable for creating a protectionist framework. Finally, the reasoning relied on the excessively broad Article 21. Given the familial framework in India, removing a child from their parents is likely to have a severe impact that violates their right to life. The author wishes to assert that addressing these issues would involve significant intricacies, which, within the Indian context, may require several years to settle. Therefore, it would be unwise to propose this strategy in India.

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