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Children and Autonomy: Need for Emancipation Laws in India

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ABSTRACT

The current situation in India with the pandemic taking a toll on lives of people, it has brought into light various harsh realities where many have lost their lives and certainly left behind a lot to think and ponder upon. Surely the country has witnessed a lot of cultural, social, ethnical and political diversity however, despite socio-cultural changes, laws relating to emancipation seem unlikely in near future. Though changes and enactment of new laws are highly desirable to ensure smooth transitional process and popular acceptance among its people, since most of the Indian laws are primarily based upon the old customary practices, culture, and traditions, reluctance in the Indian society regarding the enactment of laws relating to Emancipation of Minors is expected. This is due to the long drawn and deep-rooted patriarchy, orthodoxy and family sentiments which the Indian society still cherish. This article is an attempt to analyse, comprehend, articulate and arrive at possible conclusions regarding the changes that are taking place and subsequent need for enactment of laws relating to emancipation of minors in India.

Keywords: Emancipation Laws, Liberation, Socio-Cultural Changes.

I. NEED FOR SOCIAL TRANSFORMATION

According to the Majority Act of 1875, a child is considered to be a minor until he/she attains the age of 18 years. Moreover, certain other limitations are also there which includes, - minors cannot enter into a contract, cannot legally separate from the parents. It is only after attaining the age of majority that they are allowed to live their life as per their wishes. Over the years there has been a lot of debates, deliberations, and discussions regarding the enactment of laws relating to emancipation of minors. Contrary to this, the rationale behind categorising children below the age of 18 as minors is based upon the opinion that they have not reached a certain level of maturity until the age of 18 and hence incapable of decision-making. India, as discussed above is a country with deep rooted socio-cultural traditions and family sentiments. Once parenthood kicks in, it is really hard for them to deviate from the recognised practices given the social stigma attached to it. Furthermore, there are legal and social impediments that make

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protectionism look better than liberalism. Another reason for no legislation regarding emancipation of minors is the argument put forth by various scholars with regard to the prevalence of constitutional provisions like Article 19 & 21 of the Indian Constitution which gives sufficient autonomy to live a life of dignity. However, given the pendency of suits which the Indian judicial system has, and the orthodoxy, dominance in which the minors live, it is highly unlikely to see any disputes being taken to the courts for availing the protection as guaranteed by Article 19 or 21 of the Indian Constitutions. The general recourse these minors follow is either acceptance or then subsequent separation from their parents once they attain the age of 18 or we may even witness some dare moves of eloping in certain cases. Given their mental situation, there is always an anticipation that they indulge into delinquency. Although, this situation might differ in individual cases, what we really need to understand is the situation of these minors live in, their wishes, their mindset, the maturity level along with reasoning ability, and competence which they might attain before the age of 18 years to live a life own their own terms. We need to understand that this differs from individual to individual and not necessarily maturity should be associated with the attainment of a particular age. There are cases in family law where parents go through a rough separation, in such cases emancipation of minors is undertaken by a court process where they are recognised as independent adults capable of decision making provided they prove themselves worthy and competent to live and support themselves before given such permission to emancipate.

This scenario is totally different in foreign countries where the children can divorce their parents and legally separate from them once they think they are ready to be on their own. They have validated the minor emancipation laws. According to the Cambridge dictionary, emancipation means giving people social, political freedom and their rights. This definition can be closely associated with the doctrine of 'Mature Minor' as prevalent in the United States where unemancipated minors can choose to accept or reject a particular health treatment without the knowledge or agreement with the parents. In Indian context, we cannot have laws relating to emancipation of minors without any exceptions. Emancipation is a formal process in some countries by which a child can legally separate from their parents before attaining the age of majority. An emancipated child lies somewhere in the middle of the spectrum between a child and an adult. Depending on the legal system, an emancipated child may have the right to vote, enter into contracts, take medical decisions, etc., without parental consent. These acts symbolise the autonomy that we usually associate with adults. Not to mention that the above mentioned acts can have serious consequences of its own. Thus, it becomes really important that the emancipated child is well aware, have decision making ability, reasonableness, and

capability to understand the consequences of his action. The Indian Council of Medical Research's (ICMR) in its ethical guidelines for medical research continue to give primacy to the parents' consent. However, they have also carved out a provisions to take into account the child's perspective. Depending on the age and cognitive development of the child, assent must be obtained before conducting any medical research. Another probability relating to emancipation of minors in India is that these practices will most certainly be frowned upon by the family members. Thus, we need adequate protection with this regard as well. The laws relating to emancipation cannot take place without considering the need for safeguarding these children.

II. CONCLUSION AND SUGGESTIONS

Considering the anticipation and reluctance of the process of emancipation laws in India, there is always a need partial emancipation laws where unlike many foreign countries. This concept would allow the minors who are victims of abuse at their own home due to various possible reasons to separate themselves and apply to State's Department of child services to find a foster home for them with the liberty to return back to their guardian as and when required. There might be situations where the courts may even allow partial or complete separation if the minors are found competent enough-mentally, financially to support themselves. The Hon'ble Supreme Court of India at various instances had upheld the individual liberty. However, it is unfortunate that various laws are enacted regarding children, but in reality they remain on paper and never seen implemented and put in due course for compliance. We cannot ignore the fact that many children lose their parents especially now due to the ongoing pandemic situation across the globe. Upon which they are sometimes forced to live under guardianship where they aren't receiving good parental care. Laws of emancipation will ensure their freedom and right to choose life as per their wish. We may conclude that emancipation laws are required in certain cases and should be provided only be testing the reasonableness of the child. In India where we always promote individual liberty, we should also come up with the provisions of minor emancipation laws with certain exceptions. This will help as children will be sensitised from an early age about the seriousness with which they should adopt in decision-making. On the other hand, parents, and other adults, could rightfully guide them and learn to respect the autonomy of others.
