

Minors' Consent to Medical Treatment (Abortion) Minor's Right Vs Parental Consent

(A Medico-Legal Analysis of Malaysian Law with English Law)

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ABSTRACT

"My Body, My Rights" is a campaign from Amnesty International that seeks to draw a spotlight on the idea that everyone has the right over their body including women's and girls' autonomy over their own reproductive systems. Abortion is controversial and more complex when it involves a minor. Owing to the outdated and unclear abortion law in Malaysia as well as the underdeveloped legislation governing minor permission for medical treatment, the issue of minor assent to abortion is rather unusual. Similarly, a minor in the United Kingdom could consent to medical treatment including abortion without parental consent, this article's goal is to ascertain minors in Malaysia could have the same right. This article, employing a doctrinal comparative method compares the law on consent to medical treatment including consent to abortion in Malaysia and the United Kingdom. This article will first give a brief idea about abortion followed by literature on the for and against parental involvement in minors' decisions on abortion. Further is the analysis and comparative study with the English Law on consent to medical treatment including abortion to which this article reached a conclusion that abortion law including the legislative framework involving minors consent to medical treatment as a whole, should be reformed. This article is significant because it reflects a lacking of the legislative framework on minors' consent to medical treatment, therefore paving the way for additional research on the area of minors' consent to medical treatment involving the issue of abortion from a Malaysian perspective.

Keywords – consent, abortion, minor, parental responsibility, comparative study

INTRODUCTION

Abortion is a human rights issue. Similar to receiving any medical treatment, a woman must give her consent before getting an abortion. This is due to the possibility that, depending on one's viewpoint and beliefs, abortion would serve as a part of medical treatment. Therefore, consent is required. For the purpose of this paper, a minor in Malaysia is a minor aged below 18 years old. And medical treatment consists of an abortion procedure.

Abortion is often debatable in terms of its morality. Whether a person can exercise their right to an abortion in its entirety is often a controversial subject amongst pro-life and pro-choice. An argument in favor of abortion says that all women, including female minors, should have the right to choose when and how many children they want. This means that both adults and female minors have the right to abortion. Pro-life arguments however often focus on a fetus' right to life and religion. The right to abortion is controversial in Malaysia, and it gets more complicated when it involves a minor. Even the word "abortion" is regarded as sensitive, and Malaysian legislation is interested

in using the term "termination of pregnancy" instead. Apart from the conflicting viewpoints between a pro-life and a pro-choice on the morality of abortion, the main controversy surrounding abortion centered on its legality.

The paper will discuss the issue of a minor's consent to an abortion and whether parental involvement is required in making a decision on minor abortion. In Malaysia, the concern over minors' consent for medical treatment is rather unsettled and the legislative framework on abortion which is provided under the Penal Code is ambiguous. It is riddled with legal ambiguities and does not provide women and female minors with a clear interpretation. This has restricted them from accessing safe abortion in Malaysia. They thus choose risky options, and in the worst cases, young mothers have been known to abandon their newborns in dumpsters, sewers, and trash cans before scorching them to recognition out of despair. For a Malaysian, the prevalence of this issue is not strange. According to Malaysian Police figures, during the past four years, from 2018 to 2021, at least ten babies have been dumped within a month. (Sinar daily, 2022) A newborn infant with her umbilical cord remaining bound was uncovered in a mineral water carton in Ampang in 2020. (Bernama, 2020) A deceased baby's body with serious head injuries was found in Kuching in 2021. (Dayak Daily, 2021) And in 2022, a newborn child with stab wounds whose mother was allegedly a rape victim was discovered dead in Terengganu. (Ilham, 2022)

The freedom of minors to consent to their own medical treatment including abortion has been hampered by a paternalistic attitude and limited by the existing law governing children's consent to medical treatment and the convoluted framework of Malaysia's abortion laws. Many minors have lost their autonomy rights to consent to medical treatment, including abortion, as a result of the unclear law on abortion and the paternalism law relating to children's consent to medical treatment.

METHODOLOGY

A doctrinal comparative research methodology is employed in this conceptual paper. The purpose of the study is to ascertain if Malaysian minors are permitted to give informed consent to medical treatment without the involvement of their parents. For the purpose of this paper, medical treatment consists of an abortion procedure. The sources are based entirely on evaluations, evaluations, and comparisons of data from earlier literary works, as well as from legal precedent. The data from the literature was collected and analyzed using a variety of methodologies. Online databases were used to gather secondary data on this topic. Several examples of literary sources include journal articles, court decisions, legislation, and Google Books. Further, the obtained facts are examined through critical reading and thorough comparison. This paper is deemed to be important. This is due to the fact that the data from the sources are combined with a thorough comparative analysis to produce an outcome of the study that may help in subsequent research and policymakers' attempts to establish a more hospitable legal environment for abortion in Malaysia, especially for minors giving consent to undergo the procedure.

RESULTS

LITERATURE REVIEW : MINOR CONSENT VS PARENTAL CONSENT FOR ABORTION

Around 12 million female minors, each year, in a developing countries between 15 and 19-year-olds become pregnant and giving birth to an approximate of 21 million children. (Sully et al., 2020) Adolescent pregnancy is a widespread societal issue that has an effect on youth, families, and society as a whole in a number of negative ways. Data indicate that in Malaysia, 18,000 girls, or 14 percent out of 1,000 teenage females, become pregnant each year. (Nagandla & Kumar, 2020) Adolescent pregnancies are frequently linked to sexual risk behaviour, having multiple partners, drug dependency, incest (Silverman et al., 2001) and a social abuse. There has been extensive research and debate on the subject of minor pregnancy, abortion and the consequences of it. Similar to receiving any other medical treatment, obtaining an abortion requires consent, even for minors. However, the issue of minor's consent to an abortion often conflicts with a parental consent. Many countries have different laws governing whether a minor requires parental consent or notification before getting an abortion. The law in Malaysia on abortion is relatively ambiguous, and despite the Ministry of Health in the TOP Guideline claims that parental consent is required, the law is silent on whether consent of parents or a legal guardian is required before

an abortion may be procured to a minor. However, a rule without a solid legal basis to support it may be challenged.

Arguments for and against parental consent to minor abortion

The requirement of consent to abortion on minors is debated just as much as the morality of abortion itself, with pro-lifers, and pro-choice advocates arguing both for and against it.

The main argument against parental consent for minors' abortion is women's reproductive autonomy. According to O'Connor, women must be allowed to regulate their reproductive processes in addition to being able to engage in the economic and social processes of the nation in order for them to be treated equally in both of these spheres. (U.S. Court of Appeals, Third Circuit, 1991) All women, including minors, should be allowed to participate in "women's liberation". Kovar further said that early learning about capabilities from others, including a mother at first, a teacher later, and peers later, is when a child first starts to develop autonomy. The minor then consistently receives information regarding her performance, which fundamentally develops a feeling of power and self-direction. (Rodman & Griffith, 1982) Further to this, according to Bain's research, a minor is capable of making a fully autonomous decision similar to an adult if they are given the appropriate knowledge at the appropriate time, in the appropriate location, by the appropriate people, and in the appropriate manner. Following that, the value of autonomy for minors has been reflected in literature, and minors should have the same basic rights as adults to make choices regarding their own bodies, including reproductive decisions. The right to autonomy should be exercisable by both adults and minors.

However, despite the right to reproductive choice parental consent and involvement in the decision-making before a minor is procured an abortion is important. According to medical professionals, girls who surgically terminated their pregnancies during adolescence are at a greater likelihood of acquiring specific disorders, for instance a vaginal irritation or irregular menstruation. (Vaigorova et al., 2021) Collett discusses a number of scenarios in which parents could have averted the negative impacts of abortion if their daughter had informed them of the decision. One such incident included a sixteen-year-old minor who experienced serious bleeding and a high temperature as a result of getting an abortion secretly without her parent's knowledge. The situation is rather complicated when she continued to suffer as a result of her inability to pay for medical bills and her inability to use her parents' insurance plan because she failed to inform them of her desire to have an abortion. (Collett, 2006) This indicates that parental involvement and consent are important since parents provide a minor's financial assistance and may have avoided harm if they had known beforehand.

Further, Michael's findings concur that involving parents in the decision-making and consent to abortion among minors may be an effective approach to reducing the incidence of abortion among minors. The results show that when a government passes a parental involvement law requiring parental consent before a minor can obtain an abortion, the abortion rate drops by an average of about 13.6 percent. (New, 1996) In a different study, Jacob contends that limiting funding for abortion, raising the cost of abortion, increasing access to contraception, increasing the availability of women's health care, and requiring parental consent for abortion are all effective ways to lower the rate of abortion among minors. (Settle, 2018) However, in a disagreement different research reveals that the parental involvement law that required consent from parents before procuring an abortion for a minor passed before the mid-1990s does connect to a 15%-20% fall in abortions on minors, however, the law that passed after this period does not help with the declines in abortion rate of minors. Therefore, suggested that parental consent does not directly help in reducing the number of abortions among minors. (Joyce et al., 2020)

A fervent proponent of family permission to abortion may improve relations between family members. Nevertheless, a study reveals that needing parental approval for abortion does not have the desired impact of fostering family dialogue and actually increases the risk of injury to minors by delaying their access to essential care. (Braverman et al., 2017) And at the same time increase the numbers of an unsafe abortion. A meta-analysis of 29 research indicated a connection between parental involvement and minors traveling outside of their native states to get abortions to which this had leads to minor opting for an unsafe abortion, increase the risk of harm thus delaying the access to appropriate abortion care. (Dennis et al., 2009) In the same time, According to a study,

many minors choose to conceal their decision to have an abortion from their parents and male partners, despite wanting material and emotional support. This is because they fear the stigma, shame, and emotional abuse that will result from doing so..(Minahan et al., 2020)

LEGAL FRAMEWORKS: MINOR CONSENT TO ABORTION IN MALAYSIA WITH A COMPARISON TO THE ENGLISH LAW

In Malaysia, the law that governing abortion is provided under Section 312 to 318 of the Penal Code. Abortion is mostly illegal and criminal except under 2 circumstances where the primary goal is to save the life of a woman, and the second goal is to protect the woman's both mental and physical recovery. Abortion procured other than on these grounds is deemed to be criminal. Consent is required before an abortion could be procured for a minor. Providing medical treatment without valid informed consent, as of the general rule is a battery, therefore it is gross negligence trespassing one's body. It is the same situation that applies to an abortion without consent, as stated in Section 313 of the Penal Code, which states that it is unlawful to cause a miscarriage without a woman's consent. Offenders who commit this offence face up to 20 years in jail and a fine.

In Malaysia, the issue of consent to medical treatment is complex practically if it involves obtaining consent to abortion for minors. This is because there are many regulations governing child abortion. Therefore the following legislations are considered and discussed in this paper : the Penal Code, the Termination of Pregnancy Guideline (TOP) 2012, the Law Reform (Marriage and Divorce) Act 1976, the Age of Majority Act 1971, Child Act 2001, and the Evidence of Child Witness Act 2007.

The research questions that will be further discussed are as below –

- 1) Does Malaysia have specific legislation that mentions the minors right to consent to medical treatment, and for this purpose of this paper is the right to consent to abortion
- 2) How much parental participation is required for children to provide their consent to an abortion?
- 3) To what extent parental rights to consent supersedes the minors right on the issue of abortion in Malaysia?

Pursuant to the above questions, this paper will argue that a minor's ability to consent to medical treatment, including abortion, is a losing game for them in Malaysia despite being treated as competent to marry and testifying in Court and competent in consenting to sexual activities at the age of 16 years old. In comparing to the English Law, which respects a minor's right as stated in Section 8(1) of the Family Law Reform Act of 1969, which grants a right to minors between the aged of 16 and 17, and in accordance with the Gillick competency test, which allows a minor between the ages of 16 and above 13 to make a decision regarding medical treatment, including abortion. If the medical team determines that the minor is competent, they have the right to make a decision and give consent to an abortion without parental involvement. It works differently in Malaysia. In Malaysia, the law on abortion is very obsolete and ambiguous that provides no further clarification on abortion consent including a minor. The Penal Code is silent on the issue of consent to abortion including a minor, therefore as abortion is a form of medical treatment the same rules that govern consent to medical treatment will apply. In the same time, there is no specific provision that grants a minor's right to consent to and refuse to medical treatment. Therefore, minors do not have the right to consent to medical treatment including abortion and the right to it is superseded by the right of someone with parental responsibility or a legal guardian.

MINOR CONSENT TO MEDICAL TREATMENT IN MALAYSIA

The Age of Majority Act 1971 & Child Act 2001 and the Authorization of medical Treatment

The Age of Majority Act of 1971 and the Child Act of 2001, respectively, do not contain any particular legislative provisions, according to the authors, that give children the ability to authorise receiving medical treatment. It is arguably as per below -

Under Section 2 of the Child Act of 2001, which is similar to Section 2 of the Age of Majority Act of 1971, a minor in Malaysia is regarded as a person who is under the age of 18 old. There are provisions in the Child Act that deal with authorising medical treatment, however they are only applicable to minors who fit with the requirements in Section 17 of the Child Act. As provided under Section 24 of the said Child Act 2001 stated that :

Authorization of medical treatment

(1) If, in the opinion of a medical officer, the child referred to in section 21 requires treatment for a minor illness, injury or condition, a Protector or police officer may authorise such treatment

(2) If, in the opinion of a medical officer, the child referred to in section 21 is suffering from a serious illness, injury or condition or requires surgery or psychiatric treatment, a Protector or police officer—

(a) shall immediately notify or take reasonable steps to notify and consult the parent or guardian of the child or any person having authority to consent to such treatment; and

(b) may, with the written consent of the parent or guardian or such person, authorize such medical or surgical or psychiatric treatment as may be considered necessary by a medical officer.

(3) If a medical officer has certified in writing that there is immediate risk to the health of a child, a Protector may authorize, without obtaining the consent referred to in subsection (2), such medical or surgical or psychiatric treatment as may be considered necessary by the medical officer but only under any of the following circumstances:

a) that the parent or guardian of the child or any person having authority to consent to such treatment has unreasonably refused to give, or abstained from giving, consent to such treatment;

(b) that the parent or guardian or the person referred to in paragraph (a) is not available or cannot be found within a reasonable time; or

(c) the Protector believes on reasonable grounds that the parent or guardian or the person referred to in paragraph (a) has ill-treated, neglected, abandoned or exposed, or sexually abused

According to this provision, a Protector or police officer's permission is required before beginning any treatment for a disease, injury, or ailment. It allows the Protector extensive discretion when deciding how to proceed and approving medical care for children who are covered by this Act.

The children covered under this Act is provided under Section 17 of the Child Act -

(1) A child is in need of care and protection if—

(a) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused by his parent or guardian or a relative;

(b) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and his parent or guardian, knowing of such injury or abuse or risk, has not protected or is likely to protect the child from such injury or abuse;

(c) the parent or guardian of a child— (i) is unfit, or has neglected, or is unable, to exercise; or (ii) has acted negligently in exercising, proper supervision and control over the child;

(d) that parent or guardian of the child has neglected or is unwilling to provide for him adequate care, food, clothing or shelter;

(e) the child— (i) the child has no parent or guardian; or (ii) has been abandoned by his parent or guardian and

In light of the aforementioned provision, the author maintains that laws exist regarding minors' consent to medical treatment. However, arguably the Child Act of 2003's provisions were designed to offer additional protection against child offenders and were primarily applied to cases of child abuse and neglect, so the general rule does not apply to children who do not fall under Section 17 (1)'s definition of children in need of care and protection. In other words, this is not a language that specifically safeguards a child's ability to decide whether to have an abortion or not. It's crucial to remember, nevertheless, that the Child Act of 2001 might be viewed as paternalist in terms of how children placed under its care are treated medically.

Further to the discussion, as mention above Section 2 of the Age of Majority Act of 1971, a minor in Malaysia is defined as a person who is less than 18 years old. However, section 4(a) of the said Act further provide an exception that the capacity of a minor to make a decision should not affect issues of marriage, divorce, dower, religious rites, and adoption. It is apparent from this is that the law is silent on minors right to consent and refuse to medical treatment. Applying the above provisions, it is argued that minors under the age of 18 are considered incapable of giving their consent to and refusing medical treatment, including abortion unless a decision involves the following exception under Section 4 of the act that relates to the issue of marriage, divorce, dower, religious rites and adoption.

In conclusion, both statues of Child Act 2001 and the Age of Majority Act 1971 do not give any right to children under the age of 18 to make their own decisions about medical treatment although they are deemed to be in capacity to make a decision regarding marriage – relation decision as provided under Section 4 of the Age of Majority Act 1971. Due to the fact that neither statute covers the choice of receiving medical treatment, parents, who are the child's legal guardians, and also the protector or police officer for children who is covered by Section 17(a) of the Child Act 2001 will then have the power to consent to or refuse to provide a child with medical treatment including abortion procedure.

The Law Reform (Marriage and Divorce) Act 1976

According to the provisions of this law, a minor does not explicitly have the right to consent to medical treatment, including abortion, but they do have the right to choose a spouse and decision related to marriage, despite it being a prerequisite requirement.

Section 10 and Section 21(2) of The Law Reform (Marriage and Divorce) Act 1976 will support the argument. According to Section 10, any marriage purportedly solemnised in Malaysia is void if one of the parties is under the age of 18 at the time of the marriage, unless it was permitted by a licence issued by the Chief Minister under Subsection 21(2) in the case of a female who has reached the age of sixteen.

Section 21(2) explains in further detail that

“(2) The Chief Minister may in his discretion grant a license under this section authorizing the solemnization of a marriage although the female party to the marriage is under the age of eighteen years, but not in any case before her completion of sixteen years.”

When applying this to the question of consent to medical treatment, including abortion, it is abundantly evident from the act that a minor, even simply a 16-year-old female "child," is being granted the right to get married but not the right to make medical decisions. The Malaysian legal system reflected the fact that while minors are legally able to marry and capable to make a decision about marriage, they are incapable of making decisions regarding their own medical care, particularly those regarding their own reproductive systems.

Evidence of Child Witness Act 2007 & Section 375 of the Penal Code

Apart from the law recognise minors right to get married before attaining the age majority of 18, the law in Malaysia too recognised a minor's capacity to testify in court and sexual activities.

Provided under Section 13 of the Evidence of Child Witness Act 2007 states that when a child witness testifies in court and turns 16 while testifying, the court must continue hearing the testimony of the child witness and using

all of the Act's authorities. Applying this act, it is wise to argue that in order to offer admissible evidence in court, the laws of Malaysia already recognise that a youngster who has reached the age of 16 has the mental capacity of someone who is at least 18 years old.

In addition to that, the law too indicate that, a 16-year-old 'female' minor is deemed to have the capacity and intelligence to engage in sexual activities – despite debatable.

This can be reflected under Section 375 of the Penal Code states that

“A man is said to commit rape who, except in the case hereinafter excepted, has sexual intercourse with a woman under the circumstances falling under any of the following descriptions: Seventh exception - With or without her consent, when she is under sixteen years of age..”

Although this section addresses on statutory rape, it can also be used to argue against minor consent issue. Further to this, this section indicates that an act of sexual intercourse whether it is with or without consent of a minor below 16 years old is regarded to be rape. However, it is arguable that if the female minor has attained the age of 16 years at which point her consent to sexual intercourse may or may not be considered rape. Following that, it is wise to argue that the law appears to regard a 16-year-old female minor as a person with the mental capacity and competence to consent to sexual activity. Therefore, if a female minor is granted the right to consent to sexual activity, she is too should be granted the same right to consent to medical treatment without having the parents to involve in the decision-making.

After the discussion on the specific legislation as above pertaining minors right in Malaysia, it is wise to make a point that minors right to consent to medical treatment including abortion is not recognised by the law in Malaysia.

Section 312 – 316 of the Penal Code on abortion

The legal Penal Code on abortion is silent about consent to abortion as to whom and how it should be consented to due to the abortion clause being restricted with a lack of clarification under the Penal Code. Although Section 313 does criminalise people causing miscarriage without a 'woman's' consent, the act does not specify further the requirement of consent to abortion including minors. The Penal Code is silent about whether a minor may provide their consent to the legal abortion in Malaysia. The Penal Code is silent about the prerequisite for abortion but only goes into greater detail regarding the circumstances that render abortion unlawful and criminal. Further to this, the Termination of Pregnancy Guideline 2012 by the Ministry of Health suggest that consent from parents or legal guardians is required if the minor is under the age of 18. However, a guideline without a strong law govern to it will be merely a guideline and can be challenged.

It is clear from this that not only does Malaysian law not recognise a minor's right to consent to medical treatment, but the law that expressly addresses abortion under the Penal Code also makes no mention of the need for a minor's consent to an abortion. The law however does acknowledge a minors ability to testify in court, enter into marriage and engage in sexual activities before attaining the age majority. Contrary to the law for instance, in the United Kingdom, India, Canada, Australia which have specified a clause on abortion legislation and consent law whether or not a minor required parental consent before any medical treatment including abortion can be procured to them.

MINOR CONSENT TO MEDICAL TREATMENT UNDER ENGLISH LAW

A minor's ability to consent to medical treatment including abortion is mostly secure and well-established under English law. This is due to the fact that under English law, a specific statute governs it. Despite the Abortion Act 1967 is silence about the consent to abortion requirement. Since that abortion is considered to be a form of medical treatment under English Law, the same legal principle that governs consent for medical treatment applies to abortion procedure.

As of the general rule, if a minor is deemed competent, they have the right to consent to any medical treatment including abortion procedure. And they are however lack the authority to consent to and refuse medical treatment, including abortion procedures should they are not competent.

Under English law, minors are divided into two groups, each of which is governed by a different set of laws. The first group is a minor aged below 16 years old and the second group is a minor aged 16 – 17. Under Section 8 of the Family Law Reform Act (FLRA) 1969, a minor aged 16 – 17 has the right to consent to medical treatment. In order to testify about their capacity whether the minor aged 16 - 17 is capable or not to make a decision related to the medical treatment is covered under the Mental Capacity Act. For a minor below aged 16, the Gillick test is used to determine a minor's capacity to give informed consent for medical treatment including abortion. The decision in Gillick set guidelines known as the "Gillick test" for assessing if a child under the age of 16 could give consent for treatment. It has been demonstrated that kids under the age of 16 have the cognitive capacity and intelligence to fully understand what is involved in a recommended course of treatment, including its objective, anticipated drawbacks and dangers, possibility of success, and existence of prospective substitutes. "Gillick competent" refers to a child who passes the Gillick test which means they are able to give their assent for the intervention or treatment. However, concurrent consent is still valid in their best interest of a minor though subjective.

These provisions however not covered for pre-teenagers aged 13 and below as parents, police, and the court can involve to make the decision for the minor. For instance, in the case of *R v Secretary of State for Health & Anor* (2006),¹ attempt to contest the Department of Health's ability to give advise and treatment to people under the age of 16 on contraception and sexual reproductive health. In this case, the high court rejected the request for parental consent for abortions on a minor under the age of 16, therefore Su Axon lost her right to know and consent to the abortion procedure of her daughter. This case reflects that if a minor is regarded as being capable of making choices over their medical treatment and in this case is that the minor is deemed to have the capacity in consenting to the abortion procedure, therefore the termination should not involve parental approval and consent and the doctor should preserve the confidentiality of the minor regarding the procedure.

In pursuant to the argument above, it is wise to conclude that the English law does safeguard and respect minors' right to make a decision about their body, provided the minor is competent to do so following the Gillick test and Section 8 of the (FLRA) 1969.

DISCUSSION

In answering the 3 relevant questions that makes this article are as per below -

First, does Malaysia have specific legislation that mentions the minors right to consent to medical treatment, and for this purpose of this paper is the right to consent to abortion?

Malaysia does not have the specific legislation that mention directly on the minor's right to consent to medical treatment. The Penal Code too is silent on the requirement of consent to abortion procedure including minors. In contrast to the United Kingdom, English law protects minors right while also recognising them as having the same level of intelligence as adults when making decisions about their bodies, Malaysia does not grant minors the same level or right and autonomy over their medical treatment. The law in Malaysia on minors is rather unjust because it gives minors the ability and right to make decision about things like getting married as per the Law Reform (Marriage and Divorce) Act 1967 and the Age of Majority Act 1971, consenting to sexual activities as per Section 315 of the Penal Code and appearing in court even before they reach the age of majority of 18 years age as per the Evidence of Child Witness Act 2007– but not about their own medical treatment and reproductive health.

Secondly, how much parental participation is required for children to provide their consent to an abortion?

Following the literature discussed above, literature has reflected a clashing opinion and perspectives about the need for parental consent and involvement in the decision making about medical treatment including abortion. There are benefits to involve parents in medical treatment decision, such as whether to allow and consent to minor to get an abortion, but they are too a drawbacks to doing so. Despite the for and against opinion, the author is in the opinion that minor should be given a right to decide what should be happening to their body and be treated as

¹ EWHC 37 QB 539

an adult subject to the competency. Minor is however encouraged to first consult with their parents regardless although the consultation with parents can cause them difficulty especially if the minor is an illegitimate child or in a broken family. While administering a treatment or procuring an abortion on a competent minor, the medical practitioner is required to provide all the relevant information in a manner that is understandable to someone of that age and maturity. Medical practitioner ought to suggest the minor to consult with their parents first before making a decision. However, the choice of consulting their parents about the decision or deliberating with them first is then left up to the minor. It's their right whether or not to consult their parents while making a decision. Any decision by a minor must be respected and its confidentiality should be maintained.

Thirdly, does the parental right to consent supersede the minor's right to consent to abortion in Malaysia?

In Malaysia, the law on abortion is very old and ambiguous. The Penal Code provided under Section 312 – 316 on abortion is silent on the women consent requirement on abortion including a minor. In the same time, law that govern minors right specifically on their right to consent to medical treatment in Malaysia is left undeveloped. Minors in Malaysia now have no control and no voice over what should be done to their bodies, including their reproductive health due to the lack of further development of the law on informed consent and the overall murkiness of the legislation around abortion. The Penal Code that govern on abortion does not elaborate further on the characteristics of legal abortion but only to criminalised women and the abortion provider. Decision over reproductive including abortion for a minor is very important because carrying unwanted pregnancy will give impact to the mental health of a person. Due to the uncertainty of Malaysian law related to minor consent to medical treatment and abortion as a whole, parents in Malaysia therefore subject to their competency have the autonomous right to consent and decide what should happen to their children's body including their reproductive system.

The Malaysian current legal system does not protect and honour minors enough to allow them to make decision about their bodies. In a study on children's consent to and refusal to Coronavirus vaccine (Mohamad Shariff et al., 2022) agree that children lose the ability to consent to and refuse medical treatment, including the right to Coronavirus vaccination in Malaysia, because the current rule on minor agreement to medical treatment is legally flawed. This literature then further suggests that the government reform the legislation relating to child's right to medical treatment including Section 11(4) of the Prevention and Control of Infectious Diseases Act 1988 to add Coronavirus as a contagious disease to ensure the validity or not of minor consent to and refusing vaccination., Given that the focus of this paper is a minor's right to consent to an abortion, I contend that both the overall legal framework concerning abortion as a whole and minors' right to consent to medical treatment needs to be amended. The Penal Code should be amended to elaborate further on the requirements for abortion including the legality clause on women and minor consent to abortion just like the legal framework on abortion in India, for instance, provided under Section 4(a) of The Medical Termination of Pregnancy Act 1971 which this section elaborating further that the consent in writing of the guardian is required should the minor has not attained the age of eighteen years.

Under English law, although there isn't a specific clause provided in the Abortion Act 1967 on minor consent to abortion like in India jurisdiction on abortion, the United Kingdom has its own consent and competency laws that reflect one's right to choose and consent to medical treatment including in abortion setting – subject to the competency. Along with reforming the abortion law as a whole, Malaysia also seeks to amend its law governing minors right. By doing so, it will ensure that the right being given under the aforementioned legal provision above (the Law Reform (Marriage and Divorce) Act 1976, the Age of Majority Act 1971, the Evidence of Child Witness Act 2007 and the Section 315 of the Penal Code) will too be extended to the minors right to consent to medical treatment should they have reached the age of 16 years old. Unless proven otherwise, minor who are 16 years old and older should be considered to be legally capable of giving consent to medical treatment just as much as they have the right and competence to sexual engagement, enter into marriage and testifying in a Malaysian court. This is because age is not competency. Age should not be a factor in decision-making as long as the person is competent and aware of the risk involved. In the end, it is their body, their decision, and their rights thus the campaign 'My Body, My Right' by Amnesty National can be valid in its applicability to a minors in Malaysia.

CONCLUSION

In conclusion, the authors maintain that Malaysian law does not grant minors the fullest authority to make decisions regarding their medical treatment, including an abortion. In Malaysia, parental involvement in decisions about a minor's medical treatment—including an abortion—supersedes the child's choice, in contrast to the United Kingdom, where minors have that right. On the basis of the aforementioned, it is plausible to infer that there is legal uncertainty and confusion regarding a child's consent to medical treatment in Malaysia. The lack of clarity surrounding the consent age is also unfair because Malaysian law recognises children between the ages of 16 and 17 (but under the age of 18) as competent to perform or participate in certain activities, such as getting married and giving testimony in court, but not to make decisions regarding their medical care, including abortion. It is acceptable to suggest that reforms to Malaysia's laws on medical treatment consent and abortion were necessary in order to protect a minor's right to make decision over medical treatment including decision over their reproductive system.

The authors suggests that Malaysia start reforming the laws governing minors' rights to medical care, including their right to end a pregnancy, as this will give those involved in administering medical care the clarity and assurance they need. This is especially true of the issue of consent to an abortion. To provide a more conducive environment for a minor to have a safe abortion, the law governing abortion has to be revised. As it stands, Malaysia's abortion law is ambiguous and does not explicitly address a minor's right to terminate a pregnancy, instead criminalising both women and those who perform abortions in accordance with Sections 312 to 318 of the Penal Code. The United Kingdom legislative framework on consent to medical treatment and abortion could serve as a model for Malaysia to reform the law with a twist to accommodate Malaysia as a country of multireligious and multiracial.

Reforming the law is necessary because all children, regardless of age, are precious and unique human beings with the right to respect for human dignity. Similar to an adult, children who is competent should also be recognised as someone who has the capacity to make decisions, including decisions regarding their reproductive system, because in the end, regardless age it is their body and their right and they should have the right to define their body and to help them make the best choices possible regarding their bodies, doctors and parents should be their staunch supporters.

APPENDICES

CASES

Gillick v West Norfolk and Wisbech Area Health Authority and another [1985] 3 All ER 402

R v Secretary of State for Health & Anor (2006) EWHC 37 QB 539

STATUTES

Abortion Act 1967

Age of Majority Act 1971

Child Act 2001

Evidence of Child Witness Act 2007

Law Reform (Marriage and Divorce) Act 1976

Penal Code

The Medical Termination of Pregnancy Act 1971

The Termination of Pregnancy Guideline 2012

Prevention and Control of Infectious Diseases Act 1988

Family Law Reform Act 1969

REFERENCES

1. Bernama. (2020, July 20). Newborn found abandoned in carton at Ampang roadside. NST Online. <https://www.nst.com.my/news/crime-courts/2020/07/609989/newborn-found-abandoned-carton-ampang-roadside>. Accessed 10 April 2023
2. Braverman, P. K., Adelman, W. P., Alderman, E. M., Breuner, C. C., Levine, D. A., Marcell, A. V., & O'Brien, R. (2017). The Adolescent's Right to Confidential Care When Considering Abortion. *American Academy Of Pediatrics*, 139(2), e20163861. <https://doi.org/10.1542/peds.2016-3861>
3. Collett, T. S. (2006). Transporting Minors for Immoral Purposes: The Case for the Child Custody Protection Act & the Child Interstate Abortion Notification Act (SSRN Scholarly Paper No. 893687). <https://papers.ssrn.com/abstract=893687>. Accessed 15 April 2023
4. Dayak Daily. (2021, January 14). Fatimah: Baby dumping case under investigation. DayakDaily. <https://dayakdaily.com/fatimah-baby-dumping-case-under-investigation/>. Accessed 15 April 2023
5. Dennis, A., Henshaw, S. K., Joyce, T. J., Finer, L. B., & Blanchard, K. (2009). The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review. Guttmacher Institute. <https://www.guttmacher.org/report/impact-laws-requiring-parental-involvement-abortion-literature-review>. Accessed 20 April 2023
6. Ilham, R. (2022, February 8). Baby boy, just born, allegedly stabbed to death by teen mother. NST Online. <https://www.nst.com.my/news/crime-courts/2022/02/769754/baby-boy-just-born-allegedly-stabbed-death-teen-mother>. Accessed 22 April 2023
7. Joyce, T. J., Kaestner, R., & Ward, J. (2020). The Impact of Parental Involvement Laws on the Abortion Rate of Minors. *Demography*, 57(1), 323–346. <https://doi.org/10.1007/s13524-019-00853-8>
8. Minahan, K. C., Stevenson, A. J., Obront, E., & Hays, S. (2020). Adolescents Obtaining Abortion Without Parental Consent: Their Reasons and Experiences of Social Support—Coleman-Minahan—2020—*Perspectives on Sexual and Reproductive Health*—Wiley Online Library. *Perspectives on Sexual and Reproductive Health*, 52 (1), 15–22.
9. Mohamad Shariff, A. N. B. D. H. M., Mohd Ali, A., Abu Samah, M. S., & Mohamad Shariff, A. M. (2022). Children Consent and Refusal to Coronavirus Vaccination in Malaysia—Do they have the right? Medico Legal Persepective. *CLJ Legal Network Series*, 1 LNC (A).
10. Nagandla, K., & Kumar, K. (2020). Prevalence of teenage pregnancy in 2015-2016 and its obstetric outcomes compared to non-teenage pregnancy at Hospital Tuanku Ja'afar Seremban (HTJS), Negeri Sembilan, Malaysia: A retrospective case-control study based on the national obstetric registry. *Malaysian Family Physician : The Official Journal of the Academy of Family Physicians of Malaysia*, 15(2), 2–9.
11. New, M. J. (1996). The effect of parental involvement laws on the incident of abortion among minors. *Family Research Council*. <https://downloads.frc.org/EF/EF10D59.pdf>
12. Rodman, H., & Griffith, S. B. (1982). Adolescent autonomy and minors' legal rights: Contraception and abortion. *Journal of Applied Developmental Psychology*, 3(4), 307–318. [https://doi.org/10.1016/0193-3973\(82\)90003-X](https://doi.org/10.1016/0193-3973(82)90003-X)
13. Settle, J. (2018). Reducing the abortion rate: A search for effective solutions. *George Wythe Review*, 100–112.
14. Silverman, J. G., Raj, A., & Mucci, L. A. (2001). Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality, *JAMA Network*, 286(5), 572–579.
15. Sinar daily. (2022, February 17). Baby dumping still rampant. <https://www.sinardaily.my/article/171553/malaysia/national/baby-dumping-still-rampant>. Accessed 25 April 2023
16. Sully, E. A., Biddlecom, A., Darroch, J. E., Riley, T., Ashford, L. S., Lince-Deroche, N., Firestein, L., & Murro, R. (2020). Adding It Up: Investing in Sexual and Reproductive Health 2019.

- <https://www.guttmacher.org/report/adding-it-up-investing-in-sexual-reproductive-health-2019>. Accessed 25 April 2023
17. U.S. Court of Appeals, Third Circuit. (1991). *Planned Parenthood of Southeastern Pennsylvania v. Casey*. The Federal Reporter, 947, 682–727.
 18. Vaigorova, L. R., Kumar, Y. A., & Baktybayev, B. S. (2021). Abortion for minors: Do they need parental consent? The case of Kazakhstan. *The Journal of Psychology & Sociology*, 77(2). <https://doi.org/10.26577/JPS.2021.v77.i2.13>