

A search for law relating to maintenance obligations in respect of needy orphaned youth – A rights-based approach based on the theory of necessity

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Presuming that children are not capable of taking care of themselves, law imposes a legal duty on parents or any other legal guardian to maintain their children. Where parents fail, the state under its authority of *parents patriae* take over the duty to support the child. Thus ‘support’ has become a legal right of a person below the age of eighteen. The purpose of child support is to provide for the welfare of a child who is incapable of supporting himself or herself. The common law relating to duty of care has historically been categorical in nature: it draws a clear line between a child and an adult, based on age. Cases like *Wisconsin v. Yoder*<sup>1</sup> are unique exceptions where the court’s attention was drawn to non-legal factors in determining a child’s actual capacity. After UNCRC was accepted globally, this line has settled on the age of eighteen years, and falling in line with international standards, the Maintenance Act of Sri Lanka recognizes eighteen years as the exit point from childhood.

Extending the parental obligation of supporting children, the Act enables an adult offspring, who is below twenty five years of age and is in need of support for reasons to be considered by court on a case-by-case basis, to apply for an order of support from his or her parents until he or she reaches twenty five years of age or until the need persists. The Act demarcates the age of emancipation as twenty five, though the basis for adopting twenty five years as the age of ‘emancipation’ is not clear. The Act refers to the applicant’s inability to maintain himself or herself, and presumably the legislature may have adopted the doctrine of ‘necessity’ in the extension of parental obligation of support. However, the law is silent with regard to support obligations in respect of youth in institutional care. Institutions, which provide shelter and care for children deprived of parental care, are not allowed to keep children after they complete eighteen years of age, when they are forced out of support and care despite their necessity. The forced transition from institutional care to unsupported and unstructured lifestyle can be extremely challenging for youth, especially for those with disabilities, and can be worse for female adolescents. Yet, the state vacates their duty of care the moment they reach their nineteenth birthday. This violates the right to equality and non-discrimination of hundreds of youth who leave alternative care annually, adding to their disadvantaged status and vulnerability.

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<sup>1</sup> 406 U.S. 205 (1972)

This paper raises this legal lacune and analyses whether the doctrine of capacity should be extended to them, recognizing them as equal citizens who are not discriminated against on the basis of their socio-legal status. It proposes extension of the state's *parents patriae* in respect of support obligations for needy youth in institutional care, through statutory reform. It also calls for extra-legal state interventions to be introduced, ensuring them a smooth transition from institutional care to the world outside.

Key Words: maintenance, orphans, youth, necessity