

## Can a Child Above 12 years Give Consent for Routine, Elective Surgery? Yes, Says the Indian Penal Code

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*To the Editor:* The role of consent in legal matters, specially with respect to consent in medical practice, has been described in sections 87 to 90 of the Indian Penal Code (IPC) [1].

**Section 87:** *Act not intended and not known to be likely to cause death or grievous hurt, done by consent.*—Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, .....to take the risk of that harm.

**Section 88:** *Act not intended to cause death, done by consent in good faith for person's benefit.*—Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied to suffer that harm, or to take the risk of that harm.

**Section 89:** *Act done in good faith for benefit of child or insane person, by or by consent of guardian.*—Nothing which is done in good faith for the benefit of a person under twelve years of age, or ....., is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person.

**Section 90:** *Consent known to be given under fear or misconception.*—A consent is not such a consent as is

intended by any section of this Code..... **Consent of child**...unless the contrary appears from the context, if the consent is given by a person who is *under twelve years of age*.

The age of consent as per Section 87 of IPC is eighteen years, but it is applicable in only those cases where the act is not known to cause death. Any operative procedure has the potential to cause grievous hurt and death to the individual. Therefore, by corollary, any act, that can cause death, will not fall under the purview of this section. This shows that medical profession is out of the gambit of section 87 of IPC.

In section 88 of IPC the words “*not known to be likely to cause death or grievous hurt*” are missing, as compared to section 87 of IPC. This shows that in section 87 IPC, the condition is “not known to cause grievous hurt or death”, while in section 88, “*there is no intention to cause death or grievous hurt, but it can happen*”. Another major difference is that in section 88, there is mention of the term “*done by consent in good faith for person's benefit*”, which is missing in section 87. Any medical procedure, that is done on a human being, is intended to be done for the benefit of that person. This shows that section 87 IPC, where age of consent is 18 y, is not applicable on medical professionals.

In both sections 89 and 90, the child has been described as a person who is less than 12 y of age, and that *consent is not valid only if the child is less than 12 y of age*, and not 18 y of age. Since these sections succeed section 88, the age of consent as given in these two sections is valid and not in section 87, which precedes section 88, this is the general rule of law.

Therefore we can say that the age of consent for any procedure, in India, is 12 y and not 18 y.

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### Reference

1. India Penal Code, 1860.

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