

LEGAL POSITION OF MINOR IN CONTRACT

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INTRODUCTION:

For a person to make valid contract, he must have the capacity to contract. Therefore, minor, person in a state of unsound mind and person who are disqualified from contracting by any law to which they are subject.² This article is only concerned with minor in contract. Minors are the assets of our country and are appearing in public life today more frequently than even before. The term minor/minors are not defined anywhere in the Contract Act. But taking into consideration the wordings of section 11 of Indian contract act, a person who has not attained the age of majority is a minor. A person is deemed to have attained the age of majority when he or she completes the age of 18 years, except in case of person of whose person or property a guardian has been appointed by the Court, in which case the age of majority is 21 years.³

All agreements are not contracting but all contracts are agreements. Only those agreements are contract which fulfill the conditions of section 10 of Indian Contract Act, 1872. Section 10 spells for a contract parties must be competent; the consent must be free. Therefore, the capacities of the parties to a contract is most essentials ingredients of a contract. With some exceptions, an agreement made by a minor is voidable. A person who is mentally incompetent may ordinarily avoid a contract in the same manner as a minor. If the person later becomes competent after attaining the majority, at that juncture he can ratify or avoid the contract depending upon the nature of contract with a minor. A minor can legally enter into a contract in general. However, whether such contract is enforceable in the court of law will depend on a number of factors why the contract is made with a minor. In this article an attempt is made to enlighten when minor could be liable under contract, when a minor could not be liable. When minors can be sued in torts, why not in contract? What is minor's position in Indian contract law?

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² Row, T. V., Kumar, P. N., & Sharma, G. K. (2011). *Sanjiva row's commentary on the Indian contract act, 1872 and tenders (Act no. IX of 1872)*. New Delhi, IN.

³ Section 3 of Indian Majority Act, 1875.

Minor can generate assets not liabilities is the principle behind. The Indian Contract Act of 1872 provides important legislation in the field of commercial law in India. It plays a vital role in regulating contractual relationships and obligations. A common legal problem often arises when an agreement with minor parties takes place. This is problematic because the Act does not permit such agreements out rightly. A minor is a person who is incompetent to contract and hence the contract is void, therefore he cannot be sued for the contract which is void.

REVIEW OF LITERATURE

The Act makes it important that all contracting events have to be competent to agreement, and if someone is incompetent to agreement through cause of infancy, he cannot make a agreement within the meaning of the Act (Shuy 2005). Therefore, an agreement with a minor is an absolute nullity i.e. an absolutely void agreement, possessing no features of legal existence. (Mohiri Bibi v. Dharmodas Ghose, 1903). A, a minor, superior money to B towards a loan. It changed into held that the loan became enforceable by way of him or by means of the opposite character on his behalf, (Satyadev V. Tribeni ,1936).In this case, goods were insured on behalf of the minor, and the minor was allowed to recover the insurance money after the loss.(General American Insurance Co V/S Madanlal Sonulal,1935). Mental incapacitation is described as folks who can't enter a settlement because of psychological disabilities (Walter 2006).

METHODOLOGY

The researcher collected information from secondary sources from journal articles, books and reports of presidency and nongovernmental organization.

OBJECTIVES:

- ❖ To clarify the status of minor's agreement-whether void and voidable.
- ❖ To enlighten the landmark judgments of court regarding minor's agreements.
- ❖ To understand the liability of minor in contract.
- ❖ To clarify that restitution rules are applicable on minor based on the principle of one who seeks equity must do equity himself too.

NATURE OF MINOR'S CONTRACT.

There were two views regarding the nature of a minor's agreement, that the agreement was absolutely void or that it was only a voidable contract.⁴ The primary concern or objective of the judiciary was to give protection to minors by both these legal positions. If the agreement was held as absolutely void then it would not give rise to an obligation for any of the parties, and if it was viewed as a voidable contract, then, minor would have an option to have a second thought on it to decide whether to cancel it or continue it.

In English Law, a Minor's contract is subject to certain exceptions and is only voidable at the option of the minor. The Privy council in 1903, in the famous case of *Mohiri Bibi v. Dharmodas Ghose*⁵, held that in India minors contracts are absolutely void or void-ab-initio and not merely voidable. the facts of this case are that on person Dharmodas Ghose, a minor, entered into a contract for borrowing a loan of Rs. 20,000 out of which the lender paid the minor a sum of Rs. 8,000. The minor executed mortgage of property in favours of the lender. Subsequently, the minor sued for setting aside the mortgage. The Privy Council had to ascertain the validity of the mortgage. Under Section 7 of the Transfer of Property Act, every person competent to contract is competent to mortgage also. The Privy Council held that Sections 10 and 11 of the Indian Contract Act make the minors contract void. The mortgagee prayed for refund of Rs. 8,000 by the minor. The Privy Council further held that as a minor's contract is void, any money which is advanced to a minor is null and cannot be recovered.

The law protects minor's rights because they are not mature and may not have the capacity to judge what is good and what is bad for them i.e., they lack reasoning. The position of the agreement made by a minor is void ab initio, i.e. absolutely null and void from the very beginning. It does not give rise to any liabilities.⁶ The Act also does not expressly mention the position of minor's agreement or liability. Section 10 of the Indian Contract Act of 1872, states that the agreement to be valid it must be made by competent person i.e, the person who has the capacity to contract. The Act simply says that only a person who is a major is competent to contract.

⁴ Aggarwal, & K, S. (n.d.). *Business & corporate laws*. Galgotia Publications.

⁵ (1903) ILR 30 CAL 539(PC)

⁶ P.C., T. (2011). *Business and corporate laws*. S. Chand Publishing.

MINOR AS A BENEFICIARY TO THE CONTRACT

At common law contracts for the benefit of minors are valid and the Infants Relief Act does not change this legal position. Instances of such contracts are where an infant enters into a contract of service so as to provide himself with the means of self-support, or one for the purpose of obtaining instruction or education to fit himself to earn his living at a suitable trade or profession's Other contracts falling within this category will include such contracts.

While a minor cannot enter into a contract, he can always be the beneficiary of one. The general rule is that a minor can only generate assets and not a liability. The fundamental rule which is given above aims to protect the minor. Indian Partnership Act, 1932, also specifies that while a minor cannot become a partner in the partnership firm, the benefits of the firm can be extended to him.⁷

Example, Clay lends some money to his neighbor, Archie and asks him to mortgage his house as security. Archie agrees and the mortgage deed is made favoring Clay's 10-year-old son – Ceaser. Archie fails to repay the loan and Clay, as the natural guardian of Ceaser, files a suit against Archie to recover his money. The Court holds the case because a minor can be a beneficiary of a contract.

Although the Indian Contract Act does not expressly speak about the right of minor for enforcing the contract, the judicial pronouncements have given the benefit to the minor. In most of the cases, where the minor is the beneficiary, the agreements are held to be valid and enforceable.

*General American Insurance Co V/S Madanlal Sonulal*⁸

In this case, goods were insured on behalf of the minor, and the minor was allowed to recover the insurance money after the loss.

*Raghava Chariar V/S Srinivasa*⁹

P, a minor, advanced certain sum of money to Q. Q executed a mortgage of his immovable property in favor of P, as a security of money advanced by him. In this case, the mortgage can be enforced by P as the transaction is for his benefit.

⁷ Section 30 of Indian Partnership Act, 1932.

⁸ (1935) 37 BOMLR 461, 158 Ind Cas 554

⁹ 36 Ind Cas 921, (1916) 31 MLJ 575

RULE OF ESTOPPLE:

The rule of estoppel is a general principle of law which lays down that if a person has, by words or conduct, led another to believe in a state of facts as true and induced him to act on that faith, such a person will be stopped by law from denying those facts later even if the facts presented earlier were untrue; thus, he will be required to face the consequences of his false statements as if it was true.¹⁰

In a number of cases already decided, the court is of the opinion that where an infant represents fraudulently or otherwise that he is of age, and thereby induces another to enter into a contract with him, then the infant,(in a case against him), is not estopped from setting up infancy (as a defense), as held in *Gadigeppa Bhimappa V/S Balangowda Bhimangowda Case*.¹¹

If the rule of estoppel is applied against a minor in an agreement, it would amount to an indirect way of enforcing a void agreement. Therefore, the rule of estoppel should not be applied against a minor.

RATIFICATION OF CONTRACT

Ratification means the subsequent approval or adoption of something.

If a minor, on attaining the age of majority grants approval to his earlier void agreement, the approval will not make it a valid contract.

In *Suraj Narain V/S Sukhu Ahir*,¹² K, a minor takes a loan of Rs 11,000 and executes a promissory note in favor of the lender. He is not liable under this p/note, neither during minority nor after attaining majority age. If, on attaining majority age, he executes a second p/note in favor of the same person to replace the first one, the second note will also not be binding on him.

¹⁰ Aggarwal, S. K. (2006). *Indian business laws* (2nd ed.). Galgotia Publications.

¹¹ (1931) 33 BOMLR 1313

¹² AIR 1928 All 440

In the above case, the second promissory note is void as it is without consideration. However, on attaining the age of majority the person can enter a fresh agreement, with fresh consideration and terms of contract, but cannot carry on with the old agreement with some changes here and there.¹³

If at the desire of a minor, services are rendered to him during minority and continued after he attains majority age, such services will form a good consideration for any promise that the major-turned minor may make later to the person rendering the services.¹⁴

LIABILITY OF MINORS :

MINOR'S LIABILITY IN TORTS

The law of torts, unlike the law of contracts, does not draw a sharp line of demarcation between minors and adults. Again, unlike criminal law or any other law, there are no similar rules of exemption from liability for torts committed by children. However, the age of a child does not play a role in those cases where the mental element in tort or reasonable care (e.g., negligence cases) is material. As to the capacity of a person to sue for damages in tort, the age is also irrelevant. The law recognizes the right of every individual to the safety of his person and property, but as a matter of procedural requirement, a person below the age of majority has to sue by his next friend. As to tortious liability of children. they are liable as adult persons except where liability depends on some special mental element like malice or fraud, or where reasonable conduct is involved. In *Gordy v. Codd*¹⁵, a boy of 16 years old was held liable for negligence, when he accidentally shot the plaintiff with an air-rifle in the course of larking about.

In *Burnard v Haggis*¹⁶, where a minor hired a mare for riding on the express stipulation that she was not to be used for jumping or larking. He lent the mare to a friend, who injured it by making it to jump over a fence. The minor was held liable for trespass because using the mare for a purpose expressly forbidden by the contract, amounted to using it without any lionization. It would depend upon the facts of each case whether it was a case of merely wrongful performance of the contract or wrong outside the contract.

¹³ *Indran Ramaswami V/S Anthiappa Chettiar* (1906) Mlj 422.

¹⁴ *Sindha Shri V/S Abraham*

¹⁵ (1967) 1 W.L.R.19.

¹⁶ 1863

- LIABILITY FOR RESTITUTION TO MAJOR PERSONS IN SOME CASES

The rules mentioned so far favour and protect minors. They indicate that if a minor has obtained a benefit from another party in cash or kind, he would not have to provide restitution to that party, because the agreement is absolutely void.

Even in the case where a person dealing with a minor has been genuinely misled by a misrepresentation of age by the minor, the non-application of the rule of estoppel against minor will offer him protection.

But, the courts have also looked into the question of placing limits on the privileged position of minor and providing restitution to the other party in case of a fraud of minor.¹⁷

Indian contract act, which deals with the question of restitution, is not applicable in the case of a minor's agreement. ¹⁸So, the relief provided to the other party can be provided under what is called the “doctrine of equitable restitution”. The courts have the power to order restitution from minors on equitable principles i.e., on just and fairground.

- Rules For Restitution:

The following can be described as the prevailing position of law regarding restitution in favour of a person dealing with a minor ¹⁹

A) Where the person dealing with a minor is aware of or has reason to be aware of the minority age of the opposite party, no restitution, whatsoever, shall be granted to that person.

B) Where minor mislead the other person into believing him to be of majority age, restitution shall be available to the deceived party under section 33 of the specific relief act, 1963 which brings out as follows

1) where minor is the plaintiff and has requested the courts to cancel his agreement under an instrument to get his money or property restored from the other party, the court will first demand from the minor either the restoration back of what he himself obtained from the other party, or if

¹⁷ Aggarwal, & K, S. (2006). *Business & corporate laws* (1st ed.).

¹⁸ Section 64 and 65 of Indian Contract act, 1872.

¹⁹ Aggarwal, S. K. (2006). *Indian business laws* (2nd ed.).

this was not possible, to compensate him suitably. This rule is based on the principle „one who seeks equity must do equity himself too“ (harder attitude towards minor).

2) where the minor is a defendant because the other party has filed a case against him for the enforcement of the agreement, the court will order the minor only to restore back that part of the property or money received from the other party which has benefitted him or his estate or which is still traceable with him in whatever form (Softer attitude towards minor)

3) Where the court has no reason to believe that restitution is necessary in the interest of justice or where the other party himself is unscrupulous towards the minor, or is not influenced by the false representation by minor, the minor may not be asked to restore back anything.

In *Jager Nath Singh V/S Lalta Prasad*,²⁰ it was held that if a minor has sold property to a person by misrepresenting his age, he can recover back the property only after making restitution of the benefit received by him.

In *Leslie(R) Ltd V/S Sheill*²¹, it was held in this case that if a minor has been guilty of misrepresenting his age, he may be ordered to restore back the goods that he may have received if they are still traceable with him; but money received by the minor may not be traceable in specie (i.e. in the same form) with the minor, so, its restoration cannot be ordered.

- SPECIFIC PERFORMANCE OF CONTRACT

Specific Performance means the performance of the contract in the manner as intended by the parties.²² Where the guardian of a minor makes an agreement on behalf of the minor, the agreement may be enforced and its specific performance will be ordered under certain circumstances.

The courts may, in the interest of justice, order specific performance of a minor's agreement, if the following conditions are satisfied

- 1) It is made by the guardian on behalf of minor
- 2) The guardian is competent to make that agreement

²⁰ 1 Ind Cas 562

²¹ (1914) 3 K.B.607

²² Aggarwal, & K, S. (2006). *Business & corporate la ws* (1st ed.). New Delhi, IN: Galgotia Publications.

3) The agreement is for the benefit of the minor; However, Guardians are not competent to make certain types of agreement, e.g. an agreement of service by minor or an agreement which creates personal liability for the minor.

In *Mir Sarwarjan V/S Fakhruddin M. Chaudhury*²³, an agreement was made to purchase immovable property by a guardian on behalf of a minor. The minor filed a case to seek a decree of specific performance against the other party to recover possession of the property. The court rejected the case on the ground that it was not within the competence of the guardian of a minor to bind his ward in a contract to purchase immovable property; so, the agreement was void.

With the passage of time, it was felt that minors were becoming active players in their family businesses or in their personal pursuits. As a result, The *Mir Sarwarjan Case* could not continue to apply on minors in their worldly dealings. Therefore, the courts have adopted a slightly more flexible approach on minors agreement and they order specific performance when demanded by one or the other party, if the conditions mentioned above were fulfilled.

- APPRENTICESHIP AGREEMENT ARE ENFORCEABLE:

Apprenticeship agreements are made for the benefit of minor to enable him to acquire skills under a trained person at an early age. Such agreements have been held to be enforceable. But, the requirement for this is that the apprenticeship agreement should have been made in accordance with the provisions of the Apprentice's Act, 1961.

The Act lays down the following requirement for the contract to be valid.

- a) The apprentice should not be below the age of 14 years.
- b) He should satisfy some standard of education and physical fitness as may be prescribed.
- c) In case the apprentice is a minor, the contract should have been made by the minor's guardian on his minor.

²³ (1912) 39 Cal 232.

- MINOR'S PROPERTY LIABLE FOR NECESSARIES:

If a minor or any other incompetent person or anyone whom he is legally bound to support, is supplied by another person with necessaries, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. It may be emphasized that this rule makes only the property of minor liable and not the minor personally.

Necessaries would include items such as food, clothing, accommodation, expenses on education, professional training, training in a sport, medical treatment, marriage of a dependent of the minor or pursuing a court case etc. and not items of comfort or luxury.

However, this is not a rigid term and it includes many things depending upon the socio-cultural status of the minor and the immediate circumstances faced by him. Expensive clothing may not be necessaries for a middle-class minor as a routine but may become necessaries on the occasion of marriage in the family or for the minor of a princely family.

Necessaries would also include essential services needed to the minor or his dependent such as legal services or medical treatment. This rule also aims at benefiting the persons who have no capacity to contract, in a certain crisis situation, a person may, without any agreement, supply some necessaries to a minor or he might incur an expenditure on such necessaries for him or his dependent to render help. Section 68 of the Act states that such a person would be entitled to a reimbursement of a suitable amount from the property of the minor.

It is this guarantee which will encourage people to help minors in their times of difficulties.

In the case, *Nash V/S Inman*²⁴ X, a minor, was amply supplied with proper clothes according to his position. He bought a number of new jackets; including eleven fancy waist-coats from Y. Y could not recover the price as it was held that these were not necessaries.

²⁴ [1908] 2 KB 1

CONCLUSION :

Generally, it is presumed that the mental capacity of a minor is in a developing state. He is not mature enough to understand what is good and what its implications on his interest are. In the light of it, the law protects a minor, so that any person by making an agreement with him cannot exploit him.

The Indian Contract Act 1872, provides a privileged position to a minor with regard to agreements made by him. In any agreement, he must not incur personal liability. He is only allowed to get benefit in an agreement entered or on his behalf. Not only this, but the entire judicial mechanism helps him, judges are their counsellors, the jury are their servants and law is their guardian. But at the same time, it is ensured that while protecting the interest of the minor, unnecessary hardships should not be created for the persons who deal with a minor.