

CAN MINOR ENTER INTO A CONTRACT IN INDIA?

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ABSTRACT

This research paper examines Section 11 of the Indian Contract Act, 1872, and, in particular, the validity of a contract signed with minors. Some factions are prohibited from entering into contracts under the Indian Contract Act, 1872. One of them is Minor. Minors have never been allowed to enter into a contract since it is believed that they will not be able to comprehend the contract's terms and conditions, will not be able to think, will be influenced by others, and so on. This paper briefly addresses the nature of minor contracts, their effects, the doctrine of restitution, when a minor can enter into a contract, when a guardian can enter into a contract on behalf of a minor, and contracts in favor of minors, among other topics

WHAT'S THERE IN SECTION 11 OF THE INDIAN CONTRACT ACT, 1872?

Section 11 of the Indian Contract Act¹ talks about the competency of the contract. Who can enter into a contract and who not has been discussed in this section? Every person who is competent to contract who is the age of majority according to law to which he is subject, who is of sound mind and not is disqualified from contracting by law to which he is subject.

AGE OF MAJORITY of Legal Research and Juridical Sciences

The age of majority has been stated in section 3 of the Indian Majority Act, 1875 which tells 18 years is the age of majority.²

There are two exceptions to this:

- The Guardian and Wards Act,1890³ tells that when a guardian has been appointed under this Act, then the age of majority will be 21 years

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¹ The Indian Contract Act, 1872, &10, Act No 9 of 1872, Act of parliament, 1872 (India).

² Indian Majority Act, 1875; Section 3.

³ The Guardian and Wards Act, 1890.

- If under the supervision of the court of wards, the property of a minor has been passed then also the age of majority is 21 years

NATURE OF MINOR CONTRACT

If an agreement is made with a minor, then that agreement is void ab initio. In the case of *Mohori Bibee v. Dharmodas Ghose*⁴, the Privy Council held that any agreement made with a minor is void ab initio. This judgment of Mohori bibee has been followed for a very long time and judgments were given either in advantage or disadvantage of the minor.

In the case of *Mir Sarwarjan v Fakhruddin Mahomed Chowdhuri*⁵, the Court gave a decision that was not in favor of the minor. In this case, some property has been purchased on behalf of a minor by his parents, and to recover possession of the property, the minor filed a complaint about the specific performance. His action was rejected by the court.

If any benefit has been given to minors under the void contract the doctrine of restitution will not be applied (the same cannot be told to the minor to return). In modern times it is not possible to adhere to the age-long categorical declaration that minor contracts are always "absolutely void"⁶. The public presence of minors is more frequent than before. Hence, in the case of *Srikakulam Subrahmanyam v. Kurra Subba Rao*,⁷ the Privy Council modified its earlier decision and held that the transfer of inherent property, which has debt upon it, of a minor by his guardian then the debt of the transferred property will be binding on the minor also even if the property is for his benefit.

EFFECTS OF MINOR'S AGREEMENT

Being void, the minor agreement ordinarily has no effects. It is quite obvious that when there is no contract then no contractual obligations can be imposed on any of the parties. Hence, minor agreements are only worked out independently. There is no estoppel against a minor. If a minor misrepresents his age, then at any moment he can disclose that he had misrepresented his age. He also seeks a declaration of his void contract.⁸ From the earlier times, it has been

⁴ Mohori Bibee vs Dharmodas Ghose ILR (1903) 30 Cal. 539 (PC).

⁵ 1911 SCC Online PC 36: (1912) 39 Cal 232: (1911-12)39 IA 1.

⁶ Avtar Singh, Capacity to Contract, LAW OF CONTRACT AND SPECIFIC RELIEF, sixth edition, Eastern Book Company, Lucknow, 2016.

⁷ 1948 SCC OnLine PC 15(1947-48)75 IA 115: AIR 1948 PC 95: ILR 1949 Mad 141.

⁸ Supra Note 6.

assumed that a minor cannot give his consent as he is incapable of understanding the terms and conditions of the contracts into which he is entering. So there is no character as there is no consent.⁹ In the same situation, it was laid down in the case of *Johnson v Pye*¹⁰ that if any loan is being taken by a minor after misrepresenting his age, then the forfeited amount or damages of deceit cannot be made to repay. For anything, a minor cannot be held liable even if it was caused by an indirect way of enforcing his agreement (commonly followed principle in India)

In the case of *Hari Mohan v Dulu Miya*¹¹, the High Court of Calcutta held that it will not hold liable (in tort) a minor for the money which he lent on a bond. The tort may be independent of Contracts but this will not absolve the infant from any liability. Suppose, an infant named Venkata takes for himself a horse for riding and he lent Jagan that horse for riding. Jagan jumped on that horse in a very reckless manner resulting in the killing of the horse. Now, Venkata cannot absolve himself by saying because of Jagan's action the horse died.

In the case of *Jennings v Rundall*¹², an infant borrowed a horse to be ridden on a short journey but the infant took that horse for a longer one resulting in the injury of the horse. The court held that the minor is not liable.

DOCTRINE OF RESTITUTION

If the possession is traceable, then the minor/infant can be compelled to restore the possession (property or goods) that he has obtained after misrepresenting his age (also known as equitable doctrine restitution). The minor cannot be compelled to repay the value of the goods if he has sold them or even converted them to any other medium because it would like to be enforcing a void agreement. But when the minor has obtained cash instead of goods then the doctrine of restitution is not to be applied as stated in the case of *Leslie(R) Ltd v Sheil*¹³.

In this case, an infant successfully deceived money lenders by misrepresenting his age. The infant took 400 pounds from them. The money lenders filed a complaint against the infant for the recovery of the principal amount including interests for fraud but it failed. Then they again claimed their money under quasi-contracts which also failed. Finally, they relied upon the

⁹ Ibid.

¹⁰ (1665) 1 Sid 258: 82 ER 1091.

¹¹ Hari Mohan v Dulu Miya, ILR (1934) 61 Cal 1075.

¹² (1799) 8 Term Rep 335: 101 ER 1419.

¹³ (1914) 3 KB 607 (CA).

doctrine of restitution which also failed. There is also a possibility that if a minor invokes aid in the court of law for the cancellation of his contract, the court may direct that the minor shall restore all the benefits which he/she got from the contract. Even he/she can pay suitable compensation to the other party for the same.

In the landmark case of *Mohori Bibee v Dhurmodas Ghose*¹⁴,

A minor who is a plaintiff in this case entered into a contract with a moneylender where he mortgaged his house for 20,000 rupees and some part of this amount was also given to the minor. The attorney of the minor who was working on behalf of the moneylender (defendant) got to know from somewhere that the plaintiff is still a minor. Consequently, the minor begins this action by stating he was underage when he entered the contract mortgage hence the contract should be canceled.

The defendant relied upon Section 64 of the Contract Act¹⁵ which tells:

A person who, having the right to do so, rescinds a voidable contract, shall have to restore to the other party any benefit received by him under the contract. The Privy Council held that section 64 of the Contract Act can only be applied to voidable contracts. It cannot be applied in the matters where the agreement is done by minors which is void. Finally, it was held that any agreement made with a minor is void ab initio.

The Lahore High Court in the case of *Khan Gul v Lakha Singh*¹⁶ directed the minor to repay Rs 17,500. He had taken that money as an advance for the sale of land and refused to complete the contract. In the case of *Ajudhia Prasad v Chandan Lal*¹⁷, the Allahabad High Court refused to follow this sort of extended doctrine of restitution (as done in *Khan Gul v Lakha Singh*). The court held minor is not obliged to restore the money if he has taken that money by mortgaging his house.

WHEN A MINOR CAN ENTER INTO A CONTRACT

¹⁴ *Mohori Bibee vs Dharmodas Ghose* ILR (1903) 30 Cal. 539 (PC).

¹⁵ The Indian Contract Act, 1872, & 64, Act No 9 of 1872, Act of parliament, 1872 (India).

¹⁶ ILR (1928) 9 Lah 701: AIR 1928 Lah 609.

¹⁷ 1937 SCC OnLine All 80: AIR 1937 All 610 (FB).

In the case of *J. Srinivasan v. Kanan Motor Transport*¹⁸, the Court held that even if the contract is based on a trading agreement that is not very much beneficial to the minor, it cannot be said that he cannot be a permit holder. Holder of Stage Carrier permit can be a minor under motor vehicle act so it cannot be deduced that minor cannot enter into the contract.

MINOR MAY OWN CONTRACT ON ATTAINING MAJORITY

In the case of *M.C. Naga Lakshmi v. M.A. Farook*¹⁹, the defendant was a minor when the contract of minor's estate was entered. When the defendant attained the majority, a lawsuit was filed against him. After gaining the age of majority, the minor despite rejecting the contract accepted it. It was held that the contract is enforceable. Enforceability is up to the minor's share only.

GUARDIAN COMPETENT TO CONTRACT ON BEHALF OF MINOR

In the case of *Jwala Prasad v Raghbir Prasad*²⁰, when the executing party is a minor who is represented by his guardian and the contract has been done for the benefit of the minor interests and convenience, then it is binding to the minor. The legal guardian of the minor has the legal competency to sell the property of the minor after entering into a contract. The purpose will be binding on the estate. And if any default was made, the representative of the minor (in this case guardian) can file a suit of specific performance also.²¹

A Lease contract was entered on behalf of the minor by his guardian. When the minor gained the age of majority, he carried out the transaction which was made when he was minor. For enforcing the lease and to get the rest of the arrears, he brought a suit for the same. The court held that he is competent for doing the same (for enforcing the suit)²². A minor cannot be answerable for the fraud done by his guardian and at the same time he cannot get benefit out of it.²³

CONTRACT IN FAVOR OF MINOR

¹⁸ *J. Srinivasan v. Kanan Motor Transport*, AIR 1983 NOC 202(Mad): (1983) 1 MLJ 235.

¹⁹ *M.C. Naga Lakshmi v. M.A. Farook*, AIR 2007 Kant 105: 2007(4) Kar LJ 293(DB).

²⁰ *Jwala Prasad v Raghbir Prasad*, AIR 1923 All. 17: 70 IC 833.

²¹ *Durga Thakurani Bije Nijigarh v. Chintamoni Swain*, AIR 1982 Ori 158 (DB).

²² *Nehalchand Mewaram v Mir Jan Mohammad Khan*, AIR 1937 Sind 310: 172 IC 688(DB).

²³ *Maung Tin v. Ma Mai Myint*, AIR 1921 LB 63:65 IC 459 (DB).

No disability can be attached to the minor when there is the transfer of property or executed gift deed for the benefit or favor of the minor. Even if a minor is incompetent to enter into a contract, the contract is valid and enforceable.²⁴ A contract can be enforced by a minor if the contract was made in his favor after valuable consideration. Minor is not debarred from obtaining any title which is to his benefit.²⁵ If any defendant got or received the goods from the minor plaintiff then there is no need or reason to pay the amount for that.²⁶ In cases where a Hindu woman purchased or bought some immovable property for her major and two minor sons then this contract cannot be said to be void as it was made for the benefit of the two sons.²⁷ In the same circumstances, if the property for the benefit of the minor is being purchased by his maternal uncle and at any moment if the property gets transferred to the ownership of another person or group from his father then in such cases minor is entitled to recover.²⁸ If any lease puts any obligations on the minor then such leases are null and void and cannot grant any rights to him.²⁹

SOME OTHER IMPORTANT POINTS IN BRIEF

- A minor can be admitted to the advantages of an established partnership with the approval of all partners.
- Although a minor can serve as an agent, he or she is not personally accountable. He can't, however, be the principal.
- A minor cannot become a shareholder in a corporation unless the stock is fully paid up and transferred per share.
- Insolvency cannot be declared against a minor.
- A minor can enter into an apprenticeship, training, or teaching contract in a specific art, education, or another field. These are permissible since they help the minor.
- Minor is also eligible to join a labor union. Anyone above the age of 15 may join a registered trade union if the trade union's by-laws allow it. He/she can also enjoy the rights of a member.
- For and by minors, there is a guarantee.

²⁴ Collector of Meerut v. Haridan Singh, AIR 1945 All 156:1945 ALJ 94 (DB).

²⁵ Bhola Ram Harbans Lal v Bhagat Ram, AIR 1927 Lah 24:99 IC 318 (DB).

²⁶ Abdul Ghaffar v Piare Lal Salig Ram, AIR 1934 Lah 480:16 Lah 1.

²⁷ Andalammai v Narsimharaghavachariar, AIR 1914 Mad 666: 1 MLW 379 (DB).

²⁸ Munia Konan v Perumal Konan, AIR 1915 Mad 412:37 Mad 390(DB).

²⁹ Pramila Balidas v Jogeshar Mandal, AIR 1918 Pat 626: 3 PLJ518 (DB).

A guarantee contract in favor of a minor is valid. A minor, on the other hand, cannot be a guarantor in a guaranteed contract. Because under a guaranteed contract, the surety is ultimately liable, whereas a juvenile cannot be held personally liable.³⁰

CONCLUSION

To summarise, contracts established with minors are void from the start. The theory of restitution may not apply if a minor fraudulently presents himself as the major and enters into a contract. Many frauds have been committed by juveniles under the guise of this, and proper punishment has not been served. Courts have also been known to rule in favor of minors when they are in a better position. However, the pattern is changing, and courts are gradually adopting more stringent measures based on the facts and circumstances of the cases.



³⁰ Supra Note 6.