

MINOR'S CONTRACTING RIGHTS IN THE 21ST CENTURY

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ABSTRACT

According to the Indian Contract Act of 1872, individuals under the age of 18, are declared incapable to enter into contracts. The law assumes minors need to be protected and safeguarded, however, through time, this thought must also evolve along with the generation. This paper analyzes who minors are, the effects of minors' agreements with case laws and critiques the backdated legislation which needs to be amended to incorporate the advancements and changes of today.

KEYWORDS: Indian Contract Act 1872, Minors, 21st Century

INTRODUCTION

In the era of globalization and technological developments, people, especially children are exposed to a plethora of information with just a touch of their fingertips on the world wide web. With just a few minutes of exposure, little kids can now log in to YouTube and play videos to their liking or use the internet for any matter, leaving them unprotected and vulnerable. In today's society, minors are increasingly participating in social activities on an equal footing with adults their age. They are becoming more responsible, and they are working hard to meet their own needs as well as the requirements of the family. A part-time job in any firm, selling or purchasing products, and taking part in a play allows minors financial freedom, and it has thus become the new normal. A minor, however, cannot legally take part in a contract for any job. Minors are considered incompetent to enter into contracts under the Indian Contract Act. It believes that minors lack the capacity and rationality to consider the implications. Courts take it upon themselves to protect these minors from being taken advantage of by others but at what cost? If the internet we rely on can educate and nurture them, the same internet can help them understand right, wrong and the consequences of their actions. Due to the widespread availability of communication and technology, today's minors are well-informed. They are no longer naive, immature, or trusting. However, over time, people's attitudes have shifted, and now kids can determine their good or bad without consulting others, demanding legislative

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changes. New laws and restrictions must be made in the legislation to protect minors from any fraudulent conduct, but they must not impose any limitations.

WHO IS A MINOR?

According to Section 11 of the Indian Contract Act, a minor is someone below 18 years old, basically, an individual who is not a major. Every country has their legislation determining the age of the majority. In India, as per section 3 of the Indian Majority Act¹:

(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

LEGISLATIONS AND MINORITY

The Indian Majority Act declared 18 as the age of majority in all circumstances in the 1999 amendment. However, the question of whether minors under the age of 18 can be bound by contracts still arises today. A minor's agreement is not valid from the start (void ab-intio)², no suit can be brought against them, and the minor cannot ratify it after they reach the majority. The parties must be competent to contract, which is a criterion to make a contract legally valid under section 10 of the Indian Contract Act, 1872. In contrast, section 11 of the act clearly states that the following individuals are unable or not competent to contract: minors, those of unsound mind, and anybody barred by law. Section 11 of the Indian Contract Act, 1872 is silent about the nature of the minor's agreement and it is not clear whether it is void or simply avoidable.

EFFECTS OF MINOR'S AGREEMENTS³

1. Void Ab Initio

¹ The Indian Majority Act, 1875, Available at: <<https://indiankanoon.org/doc/80664820/>> [Accessed 17 July 2022].

² Mohori Bibi v. Dharmodas Ghose, ILR(1903) 30 Cal. 539 (PC)

³ Avtar Singh, Contract and Specific Relief. 10th Ed. Allahabad, Eastern Book Company, 2010.

*Mohori Bibi v. Dharmodas Ghose*⁴ was a case where the minor borrowed some money from a money lender. He paid only 50% and didn't pay the rest. The minority was argued here, claiming the agreement to be void from the start and hence there is no liability to pay the other 50% money borrowed. It was held, that contracts made by the minors are not voidable but void ab-initio (void from the beginning).

The judgement made in the Mohori Bibee case is not followed by courts today as it acts against the minors themselves. Imagine if the opposite happened, the other party could claim the defence of the minor's contract being void and not repay the money when the minor held up his obligation.

2. Ratification

An agreement entered by a minor cannot be ratified after he/she becomes 18. When a minor reaches the age of majority, he cannot ratify the contracts he has engaged in.⁵ The plaintiff loaned some money via a promissory note to a minor. After a few years, the minor had turned 18 and signed another note for the sum borrowed and the accrued interest. Held, the first agreement is not valid hence the minor is not liable to pay.

3. No Estoppel

Estoppel is a legal principle of evidence that forbids a person from making an allegation that is inconsistent with what he has already declared.⁶ Estoppel doesn't apply to a minor, meaning the minor can get away with lying about his age and then use his minority as a defence to make the contract void.

4. Restitution

A minor may be asked to restore any property or things which is traceable and, in his possession, obtained through fraudulent means such as lying they are a major. This generally only applies to goods.

5. Liability for Necessaries

⁴ Supra Note 2.

⁵ Suraj Narain Dube vs. Sukhu Aheer, AIR 1928 All 440

⁶ Section 115 of the Indian Evidence Act, 1872

A contract for the supply of necessities such as food, shelter or clothing to a minor and those dependent on him is enforceable, but only if he can pay for the same through his property. He is not personally liable for it.⁷ In *Nash v. Inman*⁸, the appellant sold 11 coats to a student who was still a minor. The minor had enough clothing before the purchase and hence it was held, that the coats were not necessary.

6. Minor as a Partner

If every partner of a business agrees to include the minor, they can be included, but only for the benefits of the partnership.⁹ It means the minor will not be liable if there are losses but will gain a part of the profit only.

7. Contract by Minor and Adult Jointly

If a minor and an adult enter into a contract with another party together, the minor has no obligation but the contract as a whole can be enforced against the adult.¹⁰

MINORS' CAPACITY TO CONTRACT IN TODAY'S WORLD

The minors of today are not the same as those a few decades ago. They have evolved along with all the changes in the world making them very advanced and knowledgeable at a young age. Their lifestyles, behaviour and tasks are entirely different from when the legislation came into effect. Minors of today are self-sufficient and this should be factored into the legislation. There is always a risk of minors being taken advantage of but the same legislation also provides them with the power to manipulate other people. A few minors take advantage of these provisions by indulging in the act of cheating the other party and then using their minority as a defence due to the principle of estoppel not applying to their age group. "Whether a mortgage performed for the benefit of a minor who has advanced the entire mortgage money is enforceable by him or any other person on his behalf?" was posed in the case of *Raghava Charier vs. Srinivasa*.¹¹ The presiding judge stated that stringent adherence to the *Mohori Bibi* case's ratio decidendi is problematic as the purpose of safeguarding is used against the minors themselves.

⁷ Section 68 of the Indian Contract Act, 1872

⁸ *Nash v. Inman*, [1908] 2 KB 1

⁹ Section 30 of the Partnership Act, 1932

¹⁰ *Jamna Bai v. Vasanta Rao*, (1916) L.R. 43 I.A. 99

¹¹ *Raghava Charier vs. Srinivasa*, 1916 31 MLJ 575

CONCLUSION

We live in an age where minors have accomplished great things. The larger role played by them in today's times, as well as the difficulties they face, has prompted the law to be changed. The current regulations governing minors' contracts are confusing and conflicting in several ways. The legislation must be flexible enough to make minors accountable for their contractual obligations. Courts should make contracts voidable rather than void ab initio, but it should be made sure that minors are not given the upper hand while engaging in contracts. Varied legislations explain varying ages of minors and different age limits, hence the age of the majority in India should be uniform. The age of the majority should not be determined solely by the minor's age, but rather by the minor's ability to understand what he or she is doing at the time of the agreement. To conclude, the contractual rights of minors must be redefined in the 21st century. How will the law be useful if it is stuck in time while society progresses? It won't be catering to the needs of individuals today - law and society must progress and advance together.

