

## VALIDITY OF A MINOR'S CONTRACT IN INDIA

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### ABSTRACT

*Contracts in India are governed by the Indian Contract Act, 1872. Section 3 of the Indian Majority Act defines the age of majority, it says that a person who has attained age of 18 years of age is deemed to be a major. The act is silent on the minor's agreement whether it is void or voidable at the option of the minor. The minor is prohibited by the act to enter into the contract by virtue of section 11. The position of a minor has been decided by various judicial precedents like Mohiri Bibee V Dharmodas Ghose (1903), Khan Gul V Lakha Singh (1928) and Ajudhia Prasad V Chandan Lal 1937. It has been settled that the contract of a minor is void ab initio. The minor cannot ratify the contracts entered during his minority after attaining majority. Also, The Law Commission has laid down the rules regarding restitution under section 33 of the Specific Relief Act, 1963. There are certain agreements that are beneficial to minors are valid such as apprenticeship, agency, etc.*

### INTRODUCTION

Contracts in India are governed by the Indian Contract Act, 1872 enacted on 25<sup>th</sup> April 1872, and implemented on 1<sup>st</sup> September of the same year. It was drafted by the Third Law Commission under the chairmanship of Sir John Romilly. According to section 2(h) of the Act, "An agreement enforceable by law is a contract." From where we can conclude that all agreements that are not enforceable by law are not contracts. Also, it can be said that every contract is an agreement whereas all agreements are not contracts. A contract to be enforceable by law should fulfill all the essentials of a valid contract as defined in the act.

Section 10 of the Indian Contract Act, of 1872 defines the essentials of a valid contract, it states that "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object and are not hereby expressly declared to be void."<sup>1</sup> We need to understand the key ingredients of a valid contract specifically. An agreement is one which includes a promise or set of promises forming

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<sup>1</sup> Indian Contract Act 1872, s 10

consideration for each other as defined under section 2(e).<sup>2</sup> An agreement involves a proposal by one party and acceptance by the other. Section 14 of the act defines consent when said to be free it states that when consent is not sought by coercion, undue influence, fraud, misrepresentation, or mistake amounts to a free consent.<sup>3</sup> Section 11 of the act mentions the three persons who are disqualified by the act to contract that are namely, a minor, a person of unsound mind, and a person disqualified by law.<sup>4</sup> Section 23 defines when consideration is said to be lawful unless, when it is forbidden by law, is of such nature if permitted would hinder any provision of law, fraudulent, anything that involves injury to the person or property of another or something which is opposed to public policy.<sup>5</sup> Void agreements are those agreements that are not enforceable by law as per section 2 (g).<sup>6</sup> After fulfilling all these indigent a valid contract is said to have been formed.

## **MINOR**

One who has not attained the age of majority is known as minor. Indian Contract Act 1872 does not define minors. As per section 10 of the act, parties should be competent to contract and section 11 thereby declares a minor to be incompetent to enter into contract. Section 3 of the Indian Majority Act defines the age of majority, it says that a person who has attained age of 18 years of age is deemed to be a major.<sup>7</sup> The act is silent on the minor's agreement whether it is void or voidable at the option of the minor, due to a lack of clarity in the act there was a lot of controversy regarding the minor's agreement. Opacity was removed through various judicial precedents as discussed below.

## **MOHIRI BIBEE V DHARMODAS GHOSE (1903) PRIVY COUNCIL**

The facts of the case were

Dharmodas Ghose, a minor and the sole owner of his immovable property. He went to money lender Bhramo Dutta to obtain a loan of Rs. 20,000 in lieu of his immovable property. He got the loan amount at a 12% rate of interest by mortgaging his property with Kedar Nath, who

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<sup>2</sup> Indian Contract Act 1872, s 2(e)

<sup>3</sup> Indian Contract Act 1872, s 14

<sup>4</sup> Indian Contract Act 1872, s 11

<sup>5</sup> Indian Contract Act 1872, s 23

<sup>6</sup> Indian Contract Act 1872, s 2(g)

<sup>7</sup> Indian Majority Act 1875, s 3(1)

acted as the attorney on behalf of Bhramo Dutta.<sup>8</sup> When the debt came to the knowledge of Dharmodas' mother she sent the notice to Bhramo Dutta informing him that Dharmodas is a minor and such a contract is not valid. It was also known that Kedar Nath knew that Dharmodas was a minor at the time of entering into such an agreement. Later Dharmodas and his mother (as next friend), brought a legal suit against the money lender stating that the agreement was entered during minority of plaintiff and such an agreement is void therefore same should be rescinded. Whereas Bhramo Dutt contended that Dharmodas misrepresented his age at the time of the agreement so the law of estoppels should be applied against him.

Questions that arose in this case were

- Whether the contract with the minor be void or voidable at the discretion of the minor?
- Should section 64 and 65 of the Indian Contract Act 1872, will be applicable?
- Will the law of estoppel be applied as per section 115 of the Indian Evidence Act?
- Will any relief be provided under section 41 of the Specific Relief Act?

Judgment of the court-

The trial court held that the contract entered by the minor was void. Defendant dissatisfied by the decision filed an appeal with Calcutta High Court, which uplifted the decision of the Trial Court. Bhramo Dutt again appealed at the Privy Council, which held that the contract with the minor was void ab initio. It held that section 64 of the act states that "When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is a promisor,"<sup>9</sup> is applicable on voidable contract so it cannot be applied on the contract that was void-ab-initio. Coming up to section 65 states "When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."<sup>10</sup> The court held that it was applicable on void contracts not on those which were hollow from their inception i.e. void ab initio. Also if in case of minor were asked to restore the benefits he received through the

<sup>8</sup> Simran, 'Case Analysis-Mohori Bibee v/s Dharmodas Ghose' Legal Services India E-Journal <<https://www.legalserviceindia.com/legal/article-232-case-analysis-mohori-bibee-v-s-dharmodas-ghose.html>> accessed 20 December 2023

<sup>9</sup> 'Before The Privy Council', (2022) Manupatra <[http://student.manupatra.com/Academic/Studentmodules/Judgements/2022/June/MANU\\_PR\\_0049\\_1903.pdf](http://student.manupatra.com/Academic/Studentmodules/Judgements/2022/June/MANU_PR_0049_1903.pdf)> accessed 22 December 2023

<sup>10</sup> Indian Contract Act 1872, s 65

contract it would indirectly lead to the enforcement of the contract. Now the question of estoppels was decided by stating that estoppels as per section 115 of the Indian Evidence Act, "When one person has by his declaration act or omission intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."<sup>11</sup> The court said that this section does not apply to minors also this was an irrelevant question in the context of this case as here the defendant did not act upon such misrepresentation by the plaintiff as he knew the facts. Then the last question is whether the minor was bound to restore the benefit received according to section 41 of the Specific Relief Act which states that "On adjudging the cancellation of an instrument the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require."<sup>12</sup> This question was decided by the court of first instance and the appellate court that the minor is not required to give any compensation as the respondent acted in full knowledge of the minority, therefore Privy Council did not intervene with this and was contended with the discretion of lower courts. Thus, the suit was decided in the favour of Dharmodass Ghose.

### **KHAN GUL V LAKHA SINGH (1928) LAHORE HIGH COURT**

Here the facts were as follows- Defendant, who represented himself as major entered into an agreement for the sale of half a square land amounting to Rs 17,500. The plaintiff paid the amount was partly paid in cash before the sub-registrar and the remaining was secured by a payable at a demand. Plaintiff alleged that he had discharged the part-payment of the amount outstanding through another promissory note in favour of Mohd. Hussain (the defendant's brother-in-law) upon the request of the defendant is ready to pay the rest. The defendant refused to transfer possession, plaintiff demanded the same or the amount of Rs 17,500 with interest. The defendant took the plea of minority.<sup>13</sup>

In this case, Sir Shadi Lal, C.J held that-

The fraudulent minor should compensate the other party whether he is a plaintiff or defendant. Also, he dissented from the English doctrine of restitution decided in Leslie v Sheill, restoration

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<sup>11</sup> Indian Evidence Act 1872, s 115

<sup>12</sup> Before The Privy Council (n 9)

<sup>13</sup> Urwashi Ahuja, 'Case Summary Khan Gul vs. Lakha Singh' (2019) Law Times Journal <<https://lawtimesjournal.in/khan-gul-vs-lakha-singh/>> accessed 24 December 2023

of specific property obtained by the minor fraudulently possible only if such property could be traced otherwise restoration couldn't be claimed if the property cannot be identified, it would be considered as enforcement of a void agreement.<sup>14</sup> But in this case, Sir Shadi Lal held that it won't amount to enforcement of a void contract but restoration of pre-contractual position therefore, a minor has to restore the benefit which he has received due to false representation.<sup>15</sup>

### **AJUDHIA PRASAD V CHANDAN LAL 1937, ALLAHABAD HIGH COURT**

Here the full bench of Allahabad High Court gave an opposite view of what was said by Lahore High Court. It was held that when a minor is a defendant he would not provide any relief to the other party. The court also adhered to the rule laid down in *Leslie v Sheill*, that if the property can be traced or is recoverable it can be demanded but compensation in monetary terms will not be claimed from a minor.<sup>16</sup>

### **PRESENT RULES FOR RESTITUTION**

The recommendations of the Law Commission regarding the compensation when the minor has misrepresented his age have now been incorporated under section 33 of the Specific Relief Act, 1963 which are as follows-

1. Where the minor approaches the court as the plaintiff and demands for cancellation of his agreement, the court would ask the minor to restore the benefits that he has received out of the agreement in the form of money or property if not then compensate justly. It is based on the principle 'one who seeks equity must do equity himself too'.<sup>17</sup>
2. Where the minor is the defendant then the court would ask to restore the money or property received from the other party to the extent of the benefits received by him or his estate, such should be traceable.<sup>18</sup>
3. Where the other party was not deceived by such misrepresentation of the minor or was so eager to enter into a contract that they neglected the minority and if the court believes

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<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> *Ajudhia Prasad and Anr v Chandan Lal and Anr* (1937) ALL 610

<sup>17</sup> Himanshu Arora, 'Legal Position of Minor and Minor's Agreement' (2014-2015) 2(2) International Journal of Management and Commerce Innovations,

<<https://www.researchpublish.com/upload/book/Legal%20Position%20of%20Minor%20and%20Minors%20Agreement-1135.pdf>> accessed 24 December 2023

<sup>18</sup> *Ibid*

that to do justice restoration should not be claimed then a minor will not be compensated.<sup>19</sup>

## **RATIFICATION**

A minor cannot ratify an agreement made during his minority, after attaining majority. A void contract cannot be validated subsequently.

## **ESTOPPEL**

The rule of estoppel cannot be applied to the minor.

## **BENEFICIAL AGREEMENTS RELATED TO MINOR**

Contracts of Necessities- If a minor is supplied with necessities of life, the person supplying can claim reimbursement from the minor's property. If there is no such property then he cannot be bound to pay.

Contracts of Service- A minor's contract of service is void in India, unlike English Law.

Contracts of Apprenticeship- Such a contract is protected under the Indian Apprenticeship Act 1850 and is a valid contract by a minor.

Contracts of Marriage- If the contract of marriage is beneficial to a minor then he can enforce it, but such cannot be enforced against him.

Contracts of Agency- A minor cannot become the principal but he can act as an agent, as the liability is of the principal.

Contracts related to Negotiable Instrument- A minor can draw or negotiate a negotiable instrument, which is binding on the other party but not himself.

Therefore, we understand that contracts with a person under 18 years or 21 years, if the guardian is appointed by law, are called a contract with a minor and are void ab initio, except in a few cases where such a contract is beneficial to a minor. The court has changed its position time and again and concluded the same as discussed above regarding the position of a minor

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<sup>19</sup> *Ibid*

to contract and the enforceability by them and against them in various landmark cases, which clarified the status of the agreements entered by the minor.

