



MINOR'S AGREEMENT: NEED TO REFORM IT IN A GLOBAL CONTEXT

Parth Sharma*

ABSTRACT

According to the Indian Contract Act, 1872, a minor is defined as a person under 18 years of age. In India, a contract with a minor is void ab initio, which means it is void since its inception. A contract with a minor is ultimately not a contract, since from the beginning. It is merely a void agreement. In India, a minor is never personally liable for the losses. If anyone deals with a minor, so, the minor is not personally liable for any wrong. But in the USA and the UK, contracts with a minor are voidable contracts at the option of the minor. So, in this research article, we will compare the contracts with minors in India and other countries like the UK and the USA. We analyse why there is a need for India to reform its contracts with minors at the global level. In this research article, we will discuss the legal position of contracts with minors in India, compare it with the international perspective, challenges in India with respect to minors' contracts, and well as recommendations for contracts with minors. So, we understand the essence of contracts with minors.

Keywords: Void Ab Initio, Restitution, Law of Estoppel, Capacity to Contract, Comparative Analysis.

INTRODUCTION

In India, these are the essentials needed for a valid contract:¹

1. There must be an agreement between two parties: There must be an offer or proposal by one party, and it must be accepted by the other party.
2. Parties must be competent to contract: It is particularly said that parties must be of a major (18 Years or above) Sound mind and must not be declared incompetent by the respective court.

*BCOM LLB, THIRD YEAR, CHANDIGARH GROUP OF COLLEGES, JHANJERI, MOHALI.

¹ Indian Contract Act 1872, S 10

3. There must be a lawful object and a lawful consideration of an agreement.
4. There should be free consent of the parties when they enter into the contract.
5. An agreement must not be declared void expressly.

So, these are the essentials of a valid contract. In this article, we will discuss the second point, which is that parties are competent to contract.

Parties Competent to Contract:² Every person who is above 18 years of age, not of unsound mind, and not disqualified by any law for contracting is competent to contract. Let's discuss the significance of a contract with a major and why the contract with a minor is Void ab initio, which means void from its inception. In India, a contract with a minor is void from its inception, or we can say not a valid contract.

LEGAL POSITION IN INDIA REGARDING MINORS' CONTRACTS

In India, we know the contract with a minor is null and void. Let's discuss this from a case law:

Mohori Bibee V. Dharmodas Ghose, 1903³

Facts: The plaintiff, Dharmodas Ghose, was a minor, and he mortgaged his property in favour of Brahmo Dutt, who was a moneylender. During the time of the transaction, the attorney of the moneylender was well known of the fact that the plaintiff was a minor. Then, the Dharmodas Ghose takes action against Brahmo Dutt, stating that when he entered into the contract, he was a minor, and the mortgage was invalid, and it should be cancelled. By the time of the appeal, Brahmo Dutt was dead, and the Appeal was executed by the executors.

Contentions of the Defendants:

1. The Minor has fraudulently misrepresented his age, according to which the Law of Estoppel should be applied against the Minor.
2. If the mortgage was cancelled by the minor, then he should return the money to the defendants

The contentions of the defendant were rejected, and the Privy Council gave its view regarding the contentions:

² Indian Contract Act 1872, S 11

³ Mohori Bibee V Dharmodas Ghose (1903) 30 IA 114 (PC)

1. The first contention was rejected by the Privy Council, the Council stated that the minority of the plaintiff was in the knowledge of the attorney of plaintiff. So, the Law of Estoppel did not apply against the minor.
2. Another contention of the Minor is also rejected, which stated that if the mortgage was cancelled by the minor, then the minor should return the money to the defendants.

In the second Contention, the Privy Council takes the help of sections 64 and 65 of the Indian Contract Act, 1872:

According to Section 64,⁴ it is only applicable to voidable contracts. Minor's agreement is void, so section 64 is not applicable in the case of the minor, and the minor could not be asked to pay back the amount to the defendants.

According to Section 65,⁵ it is applicable in the case of a void contract, but in the case of a minor, there is no contract formed between the parties, and as a result, the minor cannot be asked to pay back the money to the defendants.

So, by this landmark case law, we can say that the contract with a minor is nothing but completely null and void.

JUDICIAL POINT OF VIEW IN THE CASE OF MINORS' AGREEMENT

Rely on Landmark Judgements **Mohori Bibee V. Dharmodas Ghose**: Indian Courts particularly rely on the landmark judgements like Mohori Bibee V. Dharmodas Ghose. In this particular case, the agreement with a minor is void, and no contract is formed in the case of the minor. Agreement with Minor is particularly null and void.

No Law of Estoppel can be Applied: In today's time, if a minor fraudulently represents himself as a major, and to a contract with the other party, that law of estoppel can't be applied against the minor. This is another big problem with the fraudulent acts of the minor. According to the law, if there is no valid contract between the minor and the party, then there is no use of estoppel in case of a minor's agreement.

Minor is only a partner in profits: A minor can only be a partner in the profits, but not in the losses of the firm. A minor has the full right to get the company's shares, share in profit, but

⁴ Indian Contract Act 1872, S 64

⁵ Indian Contract Act 1872, S65

his obligation to the creditors will be null. In any type of contract, a minor will only be part of the profits.

Claim for Necessaries:⁶ This topic will be covered under Section 68 of the Indian Contract Act, 1872. This tells us that if any person provides the necessities to the minor, then that person recovers his or her share from the property of the minor, but not from the minor personally.

Cannot Subject to Ratification: A minor's agreement cannot be ratified after attaining the age of majority because the agreement is void with minor since from its inception. If an agreement can't be formed since its inception, it can't be ratified because there is no contract in existence.

So, we can say that the Indian judicial system is a protective wall for the benefit of the minor. As the Court already said, the agreement with a minor is null and void. It can't be subject to Ratification; there is no use of the Law of Estoppel in the case of the agreement with a minor.

A minor can't be a partner in the losses of the firm, but a minor can demand the profit from the firm. A minor can be a party in the beneficial contract with a firm but not in the losses. In case of necessity, if any person supplies the necessities to the minor, he or she can only recover his or her share from the property of the minor, but not recover his or her share from the minor personally. An agreement with a minor can't be ratified when he becomes a major. So, these are the judicial points of view in respect of the minor.

COMPARATIVE ANALYSIS OF THE POSITION OF THE MINOR IN OTHER COUNTRIES LIKE THE UK/ CHALLENGES IN INDIAN LAW

A minor is a person who has not yet reached the age of 18 years or is under 18 years of age. The contract with a minor differs in India and the UK. In India, the agreement with a minor is null and void, but in the UK, the contract with a minor is voidable at the option of the minor. There was a controversy in India regarding whether the agreement of a minor is void or voidable. The Privy Council laid down the decision in the case of *Mohori Bibee V. Dharmodas Ghose* (1903) 30 IA 114 (PC). In this case court held that the minor was not liable for any restitution of benefit. Now we move to the concept of the doctrine of restitution in English Law and in Indian Law.

⁶ Indian Contract Act 1872, S 68

DOCTRINE OF RESTITUTION IN ENGLISH LAW

In English Law, when a minor agrees with the other party and a minor receives a benefit in that agreement, is this agreement subject to restitution of the benefit in case of the cancellation of the agreement? We will understand this with the help of the case law: **Leslie (R) Ltd V. Sheill [1914] 3 KB 607 (CA)**:⁷

Facts:⁸ The defendant, Sheill, was a minor, and he borrowed the money from the plaintiff, but he did not return the money to the plaintiff. The court held that if the debt is repaid by the party, it will result in the enforcement of the contract, but not in the form of restitution. The court held that this can be done in the case of restitution:

1. If any benefit is received by the minor in the form of property, then the restitution can take place, but that property will be traceable.
2. Minors can't be personally liable for the voidable contract.

Doctrine of Restitution in respect of Indian Law:

In Indian law, if a minor fraudulently agrees with the other party, who is a major and believes that the minor is a major, then that party can't have the right to restitution. According to Section 64 of the Indian Contract Act 1872.⁹ It is only applicable in the case of voidable contracts, but the contract with a minor is void ab initio. So, it can't amount to restitution according to this section.

According to Section 65 of the Indian Contract Act 1872,¹⁰ it is only applicable in void contracts, but there is no contract with a minor from inception. So. This section will not apply. In case of necessity, supplies to a minor which covered under section 68 of the Indian Contract Act.¹¹ The person who supplies the necessities to the minor can recover his or her amount from the property of the minor, but not from the minor personally. A minor is never personally liable according to Indian law. So, this was the clear distinction between the right of restitution in

⁷ Leslie (R) Ltd V Sheill [1914] 3 KB 607 (CA)

⁸ Diksha Ranjan, 'Analysis Between Indian Contract Law and English Contract Law' (iPleaders Blog, 17 April 2021) <<https://blog.iplayers.in/analysis-between-indian-contract-law-and-english-contract-law/>> accessed 18 July 2025

⁹ Indian Contract Act 1872, S 64

¹⁰ Indian Contract Act 1872, S65

¹¹ Indian Contract Act 1872, S68

Indian Law and English Law. Now we move forward to the recommendations given by us in the agreement with a minor.

RECOMMENDATIONS GIVEN BY US FOR THE REFORMATION OF THE MINORS AGREEMENT IN INDIA

Conversion of Void Contracts to Voidable Contracts: There is a conversion of void contracts to voidable contracts, which is voidable at the option of the minor. If the agreement with a minor becomes voidable at the option of the minor, then we can say it can be reformed at a global standard, like the UK and the USA.

Allow Beneficial Contracts with a Minor: There must be an allowance for the contract in which there is a benefit to the minor, like in contracts for educational purposes, training contracts with a minor, from which a minor can get the benefit and from that training, he or she can earn their livelihood from that training when they become a major.

If their consent is given by their Guardian or Parent: If a minor is to be a party in a contract, then a minor must obtain consent from their parents or guardian because if any mishap happens in the contract, the other party can cover their expenses from the parents of that child.

Amendment in Law: If any minor can fraudulently enter into a contract with another party by convincing him or her that he is a major, then the Law of Estoppel must be applied to the minor, and if he or she takes money from the other party, the minor must be bound to return their money. The doctrine of restitution must be applied against a minor.

Right of the other party to recover their damage from the property of the Minor: If a minor falsely presents himself as a major, as well as takes the money from the other party, the other party must have the right to recover their damage from the property of the minor. This can be done in the case of necessities supplied to a minor, but this can extend to the wrongful acts done by the minor.

Final Suggestions:

- There must be an amendment from which the agreement with a minor can become voidable from a void agreement.

- There must be an introduction of a guardian for the acts done by the minor. If a minor commits any wrongful act, then the guardian must be liable for the acts done by the minor.
- A minor must not have any past criminal record. If the character of a minor is not good, then he or she must be disqualified from entering into a contract.

So, these are some of the recommendations given by us for reforming the contracts with the minors with a global standard, like in the UK and the USA. If contracts with a minor can take place, it will be very good for our country, as our country's business will expand to a global level as well, and it is very good for minors to gain hands-on experience in their field. Now, we move forward to the conclusion of this topic:

CONCLUSION

At the end of this topic, we can say that there is a significant need to transform the agreement with a minor. If we follow all the recommendations that I gave previously, then we will grow like other developed countries, like the USA and the UK. In this research article, we cover almost every aspect of the agreement with a minor and how we can transform the contracts in India with Minors like the other developed countries, like the USA and the UK.