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Author:

Srsty Verma

Symbiosis Law School, Noida

2nd Year, BBA LL.B.

MINOR'S COMPETENCY TO CONTRACT- INDIA AND UK**Abstract**

In the modern age, minors are becoming more prominent in public life than ever before. A minor would travel, attend movie theatres, interact with educational groups, and purchase several items on his own. As a result, legal protection for or against the minor, as well as indicating his situation, is critical.

*A minor is a citizen who has not yet reached the age of majority under the applicable legislation. The age specified by the legislation may change according to the jurisdiction. According to **the Indian Majority Act of 1875**¹, the age of majority in India is attained at the age of 18 years.*

In the UK as well, Individuals' contractual ability has been fixed at 18 since 1969, and reaching that age is described as achieving an age of majority.

Introduction

When discussing contract law, one of the most often used phrases is 'capacity.' In today's globalised world, it is critical for a party to have the ability to contract in order to engage in economic transactions.

¹Available at: [https://indiankanoon.org/doc/153138729/#:~:text=Section%203%20in%20The%20Indian%20Majority%20Act%2C%201875&text=\(1\)%20Every%20person%20domiciled%20in,eighteen%20years%20and%20not%20before](https://indiankanoon.org/doc/153138729/#:~:text=Section%203%20in%20The%20Indian%20Majority%20Act%2C%201875&text=(1)%20Every%20person%20domiciled%20in,eighteen%20years%20and%20not%20before). (Ref on: August 2, 2021 6:06 AM)

Under English law, the term "capacity" refers to the ability of the contracting parties to enter into legally bound relations with one another. If either party fails to comply with this requirement, subsequent contracts may be considered void based on the facts and circumstances of the case.

Considering Indian Contract Law is mainly based on English Common Law, Capacity to Contract has the same weight as under the latter law, and qualifies as one of the most important components of a legal contract.

A person is deemed capable of entering into a legitimate contract if he meets three requirements set out in the Act: he must be of legal age, he must not be of unsound mind, and he must not be barred from entering into a contract by any legislation. However, it is important to highlight that the contract's subject matter should not be unlawful or even invalid for grounds of public policy.

Is a minor's agreement voidable or void ab initio?

In India

Section 10 of the Indian Contract Act² addresses the parties' competency, whereas **Section 11**³ addresses those who are not permitted to engage in a contract. However, neither part makes it clear what the implications of a minor entering into an agreement will be, whether it would be voidable at his discretion or entirely void. As a result, these clauses have generated a legal problem regarding the nature of a minor's agreement. The Privy Council ultimately settled this dispute in 1903 with the landmark case of **Mohori bibi v Dharmodas Ghose**⁴, in which Dharmodas Ghose, a minor, mortgaged his residence to a moneylender for Rs. 20,000.

The legal entity acting on behalf of the moneylender was aware that the party was a minor at the time of the contract. The minor sued the moneylender, claiming that because he was a child at the time of the arrangement, the deal was void and incompetent. However, the defendant died at the time of the Privy Council appeal, and the appeal was submitted by his wife, Mohori Bibi.

² Available at: <https://legislative.gov.in/sites/default/files/A1872-09.pdf> (Ref on: August 2, 2021 6:06 AM)

³ Available at: <https://legislative.gov.in/sites/default/files/A1872-09.pdf> (Ref on: August 2, 2021 6:06 AM)

⁴ Available at: Mohori Bibi v. Dharmodas Ghose [1903] I.L.R., 30 Cal., 539. (Ref on: August 2, 2021 6:06 AM)

By clearing the air in the preceding instance, the Privy Council stated that the minor's agreement is void ab initio, i.e., void from the start. In the case of a minor, the widespread idea that "every man is the best judge of his own interests" is not applicable.

In the United Kingdom

It was stated in **Goode v Harrison**⁵, Contracts with minors can be avoided by minors, but if no actions are made to repudiate the contract during their minority or within a reasonable period after attaining the age of majority, they become binding and cannot be avoided afterwards. The underlying premise of this law is that if a minor engages in such a contractual responsibility, it "remains until he considers fit to terminate it."

As a result, a contract signed with a minor is voidable. This implies that the minor has the right to terminate or avoid any contract at any moment before attaining the age of 18 and for a reasonable time afterwards. A minor is not required to provide a cause for cancelling the contract.

What are the consequences of the minor's agreement?

There is no estoppel against a minor.

Estoppel is a legal principle that prohibits a person from arguing or asserting a right that contradicts what they previously declared or committed to under the law. A child or minor is not barred from establishing a defence of incapacity owing to the minority. This is because the aim of contract law is to insulate minors from contractual obligation, and so the defence of estoppel cannot be utilised against them.

Thus, in a Bombay High Court decision, it was said that even if a minor falsely misrepresents his/her age and gets another person to enter into a contract with them, the minor is not barred from establishing a defence of minority.

There is no liability arising from a contract or a tort.

No Liability Arising In Contract or Tort

In this concept, a minor's agreement has no legal consequences. In this case, **Johnson v Pye**⁶, pronounced in 1965, it was decided that if a minor got a loan by falsely identifying himself, he

⁵ Available at: *GOODE v HARRISON* [1821] 5 B & Ald 147 (Ref on: August 2, 2021 6:06 AM)

⁶ Available at: *Johnson v Pye* 82 ER 1091 (Ref on: August 2, 2021 6:06 AM)

could not be forced to repay the loans as a kind of deception damages. As a result, a minor cannot be held responsible for anything that would directly or indirectly enforce any agreement. The Calcutta High Court maintained the concept that a contract cannot be made into a tort in order to suit a minor.

In the case of **Burnard v Haggis**⁷, the defendant, a minor and a Cambridge undergraduate, leased a horse for the intention of going for a ride. After then, the defendant handed the horse to a friend, who used it for jumping. As a result, it slipped and fell, injuring itself. The minor was thus found responsible for the animal's injuries since, according to the contract, the horse was only to be used for riding and jumping. The horse's injuries were outside of the contract and could not be considered contract abuse.

Jennings v Rundall⁸ is another instance. The defendant rented the horse with the intention of riding it on a short excursion but ended up taking it on a considerably longer journey. As a result, the horse sustained injuries. However, the court ruled that he was not responsible because the action was based on the contract.

Doctrine of Restitution

Jennings v Rundall is another instance. The defendant rented the horse with the intention of riding it on a short excursion but ended up taking it on a considerably longer journey. As a result, the horse sustained injuries. However, the court ruled that he was not responsible because the action was based on the contract.

According to this, if a minor gains property or goods by lying about his age, he can be asked to return it, but only if it is traceable in his hands. This is referred to as the equitable notion of reparation. If the minor has sold or converted the items, it cannot be forced to return the value of the commodities since doing so would be equivalent to entering into a void contract.

Contracts for necessities

In India

A minor is accountable for the necessities. The term "necessaries" is not defined in the Indian Contract Act; however, Alderson B provides an illustrative description of the phrase in his

⁷ Available at: *Burnard v Haggis* (1863) 143 ER 360 (Ref on: August 2, 2021 6:06 AM)

⁸ Available at: *Jennings v Rundall* (1799) 101 ER 1419 (Ref on: August 2, 2021 6:06 AM)

judgment in **Chapple v Cooper**⁹, Things that are required are those without which a person cannot function effectively. First and foremost, there is food, clothing, and lodging. Articles of pure pleasure are frequently excluded, but luxury products might be included under specific circumstances. A minor is frequently held accountable for the essential services provided to him, such as schooling, medical care, or legal counsel.

Thus, "necessaries" is a relative concept that may be determined based on the circumstances and facts of the situation.

Section 68 of the Indian Contract Act¹⁰ states that If a person incapable of entering into a contract or a person legally bound to support the contract is provided by another person with the necessaries that are suited to his or her life, the person who provided the supplies is entitled to be reimbursed from such an incapable person's property.

1. The contract should be for the items necessary for the contract's support or for the contract's quality of life.
2. The availability of these requirements must not be adequate on its own.

Though a minor is provided with the requisite products, even if he already has a large quantity of the required goods in stock, the minor is not liable for repayment to the vendor, and the price is irrecoverable. In India, a minor's culpability is not contingent on his or her permission. It happens as a result of a quasi-contractual character, which implies that the duty is limited to the minor's properties.

In the United Kingdom

Minors are legally obligated to pay for necessities for their upkeep, however, they will only be forced to pay a reasonable amount for any necessities acquired. **Section 3 of the Sale of Goods Act 1973**¹¹ defines necessities as goods suited to the minor's situation in life and their real requirements at the time of sale.

⁹Available at: Chapple v Cooper (1844) 153 ER 105 (Ref on: August 2, 2021 6:06 AM)

¹⁰ Available at: <https://indiankanoon.org/doc/1164247/> (Ref on: August 2, 2021 6:06 AM)

¹¹Available at: [https://www.legislation.gov.uk/ukpga/1979/54#:~:text=\(3\)A%20sale%20of%20goods,made%20before%2018%20May%201973.](https://www.legislation.gov.uk/ukpga/1979/54#:~:text=(3)A%20sale%20of%20goods,made%20before%2018%20May%201973.) (Ref on: August 2, 2021 6:06 AM)

Nash v Inman is a prominent example of this, in which a tailor sued a minor for whom he had provided clothing, including 11 beautiful waistcoats. The clothing was deemed appropriate for the minor's station in life because he was an undergraduate at Cambridge University at the time. later, it was also deemed that they were unnecessary because he already had enough clothes. It is a legal and factual matter if articles are required.

The court's first task is to determine whether the item is capable of becoming a necessity under the circumstances. The burden of proof is on the claimant to show that the commodities are of a description reasonably suited to the minor defendant's position in life. If the claimant fails, the court will be unable to find the claimant due to a lack of evidence, and the case will be dismissed.

If the court finds that the goods are capable of becoming necessities, it will be a matter of fact as to whether they are necessities under the given circumstances.

Judiciary pronouncements

1. **Srikakulam Subrahmanyam v. Subbarao**¹² - In order to pay off his parents' promissory note and mortgage obligation, the minor sold a piece of property to the holders of the promissory note in order to fulfil the debt. He paid off the mortgage and became the owner of the property. However, due to his minor status, the minor then claimed that the contract was null and void and demanded possession of the land. However, the court determined that the contract was for the benefit of the kid and had been entered into by his guardian, his mother, and so was valid.

2. **Suraj Narain v. Sukhu Aheer**¹³

In this case, a person lent money while he was still a minor and then made a new commitment to pay that amount plus interest when he reached majority, but the contract was not enforceable because the consideration obtained while he was still a minor was not a good consideration.

3. **Kundan Bibee v. Sree Narayan**¹⁴

S received products from K in connection with his firm when he was a minor and was owing to him; after he gained the majority, he borrowed additional money and issued a bond to pay

¹² Available at: Srikakulam Subrahmanyam v. Subbarao (1948) 50 BOMLR 646 (Ref on: August 2, 2021 6:06 AM)

¹³ Available at: Suraj Narain Dube vs Sukhu Aheer And Anr. AIR 1928 All 440 (Ref on: August 2, 2021 6:06 AM)

¹⁴ Available at: Kundan Bibee v. Sree Narayan (1906) 11 CAL W.N. 135 (Ref on: August 2, 2021 6:06 AM)

the full sum to K. S contended that he was not entitled to pay since he looked to be in his minority in an action brought by K to retrieve the money. S, on the other hand, was required to pay the whole sum due to the addition of a new component.

4. **Kuwarlal v. Surajmal**¹⁵

Regarding the needs provided to minors, it was determined that a property supplied to a minor on rent for the purpose of living and completing his or her education constituted one of the necessities and that he or she is therefore entitled to pay the minor's rent.

Conclusion

After carefully examining the legal requirements under English and Indian law, it must be discovered that the latter's statute does not explicitly state whether a minor agreement is void or voidable. Though the Mohari Bibee case cleared it to the point of becoming void-ab-initio, it has sparked a lot of debate on this subject. But, in the meanwhile, the law in England on the subject is very clear, stating that a child can enter into a contract that is voidable until he or she reaches the age of eighteen, implying that once they achieve majority, they can either enforce or cancel the contract at their discretion.

However, in the absence of exceptional circumstances, India is unable to ratify. Again, there have been a wide variety of legal rulings on this subject, leaving the situation unsettled.

Finally, it should be noted that, while Indian Contract Law has its origins in English Law, the interpretation and positions of both nations differ on numerous points, as already indicated. To be exact, English law is clearer than Indian law because what has to be understood has already been codified, and grey areas are not left to be filled by court decisions, as they are in India.

¹⁵Available at: [Kuwarlal v. Surajmal AIR 1963 MP 58 \(Ref on: August 2, 2021 6:06 AM\)](#)