

**DE JURE NEXUS LAW JOURNAL**

Author:

Deepasha Sharma

Symbiosis Law School, Noida

1<sup>st</sup> Year, BA LL.B.

**AN ANALYSIS OF MINORS CAPACITY TO CONTRACT****Abstract**

*Minors are protected and kept safe by law when it comes to their capacity to contract. This article will analyse critically the minor's capacity to contract. First things to be explained will be the very basic questions like who is a minor basically, what is the capacity to contract under Indian as well as English Law etc. It will look through various sections in Indian Contract Act, 1872 which deal with it. Short brief about Minor as a Shareholder, a Partner and as a transferee will follow. Briefly study the various judicial interpretations interlinked with it. It will also include comparing and analysing minors' capacity to contract under the Indian Law and the English Law.*

*The vast majority of people feel they are capable of entering into a contract. People who are under the age of 18, inebriated, or mentally sick have a variety of options after signing a contract. They have the option to disaffirm the contract, indicating that they do not wish to be bound by it. This may be done in a number of ways, including actively and audibly. Ratification, on the other hand, expresses their desire to be bound by the terms of the contract. This can be accomplished in a variety of ways, both active and passive. Ratification will triumph against disaffirmation. The courts will not allow someone to terminate a contract from which they have already benefited significantly. Because they have already benefited from the contract and are bound by it, the court considers this proof of acceptance. That is the very reason it is important for one to know who is in capacity to enter into a contract and the need to analyse the minor's capacity to enter into a contract or not.*

**Keywords**

*Capacity, Contract, Minor, Void, Voidable, English Law, Indian Law*

**Introduction**

Indian Contract law is heavily influenced by English common law. The capacity or eligibility of partners to create a legal contract is the most important aspect of a legitimate contractual relationship. The legal ability of an individual or an entity to join into a partnership is referred to as "capacity to contract." Before signing a contract, the partner must be competent and meet the stipulated standards, according to law.

“According to section 2 (h) of the Indian Contract Act, 1872<sup>1</sup>, a contract is defined as an agreement established between two or more individuals that is enforceable by law. A contract is a legally enforceable agreement. The Indian Contract Act regulates the establishment and enforcement of contracts or agreements between parties in India. According to Section 10 of the Indian Contract Act<sup>2</sup>, the parties must be competent to contract. Competence is defined under Section 11 of the Indian Contract Act<sup>3</sup>. It provides that everyone who is of sound mind and is not banned from contracting by any law to which he is subject is competent to contract if he is of legal age of majority according to the laws to which he is subject. Minors, individuals of unsound mind, and anyone disqualified from the legislation to which they are subject are all declared incapable of forming a contract as a result of this article”<sup>4</sup>

### **Who is a Minor and What is Minors Capacity to Contract?**

“According to Section 3 of the Indian Majority Act of 1875, the age of majority is ordinarily eighteen years, unless a guardian of person, property, or both has been appointed by the court, in which case the age of majority is twenty-one years. The legal age of majority in England is 21 years old. According to the Family Law Reform Act of 1969, a minor is now defined as a person under the age of eighteen. Previously, minors were referred to as infants, but this act changed the term to minor. However, if a minor signs a contract, the language of Sections 10 and 11 of the Indian Contract Act are uncertain as to whether the contract can be voidable at his discretion or is absolutely void.

Capacity refers to a contracting party's ability to enter into legally binding agreements under English law. Following contracts may be unlawful if one party has the legal capacity to contract; nonetheless, there is a prima facie presumption that both parties have the legal capacity to contract. Contracts entered into without a complete comprehension of the subject matter, or by those who are illiterate or unfamiliar with the English language, are unlikely to be released from their commitments.”<sup>5</sup>

A minor can be defined as anyone under the age of 18 under English contract law. Until the Family Law Reform Act of 1969, the legal age was 21. In general, a minor is not bound by contracts he enters into, but the adult person with whom he enters into them is. When a minor reaches the age of adulthood, he might choose to ratify a contract formed while he was still a

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<sup>1</sup> Indian Contract Act, §2, No. 09, Acts of Parliament, 1872 (India)

<sup>2</sup> Indian Contract Act, §2, No. 09, Acts of Parliament, 1872 (India)

<sup>3</sup> Indian Contract Act, §2, No. 09, Acts of Parliament, 1872 (India)

<sup>4</sup> Minor's Capacity To Contract. (n.d.). Minor's Capacity to Contract.

<https://www.legalserviceindia.com/legal/article-5326-minor-s-capacity-to-contract.html>

<sup>5</sup> Minor's Capacity To Contract. (n.d.). Minor's Capacity to Contract.

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minor. This rule applies to a variety of contracts that a minor is bound by, as well as his ability to repudiate those commitments.

### **Minor as a Shareholder, a Partner and as a Transferee**

The Companies Act prohibits a minor from owning shares in a firm under his name. A guardian, on the other hand, can buy shares on behalf of a child. A minor can become a partner in a corporation with the approval of all partners, according to Section 30 of the Indian Partnership Act<sup>6</sup>. The minor, on the other hand, cannot be held accountable for the company's losses. It is vital to remember that if a person decides to continue in the partnership after reaching majority, his choices will have a retrospective impact, and he will be considered a full and equal partner from the day he first entered the relationship. During this time, he will be held responsible for all of his decisions and actions, as well as the firm's losses.

The Property Act of 1872 has sections 13, 14, and 127 that deal with the transfer of property to minors. Rules against perpetuity are discussed in Sections 13 and 14, which say that a property of a person can be transmitted to an unborn person through a live person. On the other hand, Section 127 deals with a burdensome gift to a minor. In such circumstances, the youngster has the option of accepting or rejecting the gift.

### **Judicial Interpretation**

“In the case of *Mohori Bibee v Dhurniodas Ghose*<sup>7</sup>, the Judicial Committee of the Privy Council settled the whether the contract will be voidable at his discretion or completely void matter in 1903.

Plaintiff Dharmodas Ghose was a minor and the only owner of immovable property. The Calcutta High Court appointed his mother as his legal guardian and keeper. Dharmodas Ghose mortgaged his property to Brahma Dutta, an appellant (defendant). As a minor, Dharmodas mortgaged the property and secured the mortgaged deed for Rs. 20,000 at a 12% annual interest rate. The counsel for the defendant was well aware of the plaintiff's age. The plaintiff afterwards paid just Rs. 8000 and refused to pay the remaining amount. Dharmodas was a minor when the agreement was made, thus the plaintiff's mother, as his legal guardian, filed a lawsuit against the defendant. He is not compelled or required to carry out an agreement with a minor since it is invalid. A minor's contract is void-ab-initio, according to the court, and no agreement constitutes a contract unless the parties have competence under Section 11 of the Act.

This judgement has been applied to minors in a variety of instances, with both benefits and drawbacks. *Mir Sarwarjan V Fakhruddin Mahomed Chowdhury*<sup>8</sup> is another important Privy Council decision in this case.

The guardian had entered into a contract to acquire certain immovable property on behalf of the youngster in this case. Later, the minor sought a decree of particular performance from the

<sup>6</sup> Frederick, P. (2007). Indian Partnership Act / Pollock & Mulla LexisNexis Butterworths.

<sup>7</sup> Mohori Bibee v. Dhurniodas Ghose, (1903) ILR 30 Cal 539 (PC)

<sup>8</sup> Mir Sarwarjan V Fakhruddin Mahomed Chowdhury, (1912) ILR 39 Cal 232(9) All LJ 33)

opposing party in order to reclaim ownership. The court ruled against his move. In its ruling, the court stated that no contract could be used to tie the minor's property, both movable and immovable. This is due to the minor's inability to contract, the lack of mutuality, and the minor's inability to obtain particular fulfillment of the contract.

In the subsequent case of *Srikakulam Subramanyam V Kurra Subba Rao*<sup>9</sup>, the Privy Council reversed the earlier judgement and held that it was within the jurisdiction of the child's mother as a guardian to engage into a contract of sale on behalf of the minor for the purpose of paying off his father's debts. Following these rulings, the Orissa High Court ruled that the guardians' holding of property for religious reasons on behalf of the minor was expressly enforceable.

A few years later, under Section 20 of the Specific Relief Act of 1963, if the contract is within the competence of the minor's guardian, it is specially enforceable for the minor's benefit.

In *Leslie v. Sheill*<sup>10</sup> the defendant in this case was a child who acquired a loan from the plaintiff by lying about his age. Later, the plaintiff filed a lawsuit alleging that the child is accountable for fraud and that he should be forced to repay the money in equity. However, the court disagreed, holding that requiring the youngster to pay an equivalent sum from his current and future resources would amount to the execution of an invalid contract, and hence could not be done, even if the newborn entered into the contract through fraud.

The question in *Raghava Chariar v. Srinivasa*<sup>11</sup> case was whether a mortgage in favor of a minor who has paid the mortgage in full is enforceable in a court of law by the minor or any other person acting on his behalf. The High Court of Madras decided that a minor is allowed to enforce any transaction that benefits him or her and in which he or she is not obligated to bear any costs.

In the case of, *Campbell v. Hooper*<sup>12</sup> the mortgagee got a court order to repay the obligation. However, there was proof that the mortgagor was an insane person at the time the contract was signed, and the mortgagee was completely oblivious of this. The basic sheer fact of insanity cannot render a contract illegal in English law; but, if the other party was aware of the lunacy, the contract would become voidable at the lunatic's discretion. As a result, in English law, knowledge is a significant component.”<sup>13</sup>

## Analysis and Conclusion

Following a comprehensive review of the validity standards under English and Indian law, it was determined that the Indian law's does not specifically indicate if a minor agreement is voidable or not. Regardless of the fact that the Mohari Bibee case made it invalid from the outset, it has prompted a lot of debate on the topic. However, the law in England on the topic is very clear, indicating that a juvenile may enter into a contractual obligation until the age of

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<sup>9</sup> Srikakulam Subramanyam V Kurra Subba Rao, 1948 AIR PC 25

<sup>10</sup> Leslie v. Sheill, (1914) 3 KB 607

<sup>11</sup> Raghava Chariar v. Srinivasa, (1916) ILR 40 Mad 308

<sup>12</sup> Campbell v. Hooper, (1855) 3 Sm&G 153

<sup>13</sup> Law Of Contract: Capacity To Contract – Lexlife India. (2020, June 6). Lexlife India. <https://lexlife.in/2020/06/06/law-of-contract-capacity-to-contract/>.

eighteen, meaning that once they gain majority, they can either enforce or dissolve the contract at their choosing.

India, but at the other hand, is unable to endorse in the absence of exceptional circumstances. Again, a stream of judicial rulings have been released on the case, leaving the situation unsettled. Furthermore, under English law, an unsound person is competent to contract, but he may escape it if he can demonstrate the court that he was unable to comprehend and that the other party was aware of his incapacity. In India, however, the circumstances are different, and any contract signed into by a mentally unwell individual is regarded null and invalid.

Finally, although Indian Contract Law has its origins in English Law, as previously indicated, the interpretation and attitudes of both countries disagree on a number of matters. To be exact, English law is clearer than Indian law as what has to be understood has already been specified, and grey areas are not filled by court rulings as they are in India. Finally, unsoundness under incapacity, which embraces public businesses, minorities, and those who are inebriated or mentally ill, illustrates the English Common Law's greater range.



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