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## Validity of a Minor's Agreement in India

An important element of a valid contract is that the parties to the contract should have the capacity to enter into a contract.

According to **Section 11 of the Indian Contract Act**, “Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”

Therefore, declaring the following persons to be incompetent to enter into a contract:

1. Minors,
2. Persons of unsound mind, and
3. Persons disqualified by any law to which they are subject.

## Who is a minor?

At many places it is said that 18 years is the age of majority but if the guardian has been appointed, the age of majority rises to 21 years. In regards to that, the **Section 3 of the Indian Majority Act** has been amended and now overall the age of majority is marked as 18 years, whether a guardian being appointed or not.

## Dharmodas Ghose vs. Mohori Bibee (1903)

Dharmodas Ghose was a boy who wanted to take a loan of Rs. 20000, by mortgaging his property. For this purpose, he went to Brahmoo Dutt. Brahmoo Dutt, not being there, gave the loan of Rs. 8000, through his attorney, Kedarnath. Although Kedarnath knew about the boy's age of minority, which meant he was not eligible to contract, the agreement was still entered into. And after that, it was this only agreement against which Dharmodas Ghose went to the court, as Dharmodas Ghose

wanted back his mortgaged property. The case was started as Dharmodas Ghose versus Brahma Dutt, but while the case was ongoing, Brahma Dutt died, and his wife took his place, whose name was Mohori Bibee, and so the case became Dharmodas Ghose versus Mohori Bibee. When the matter went in appeal, as Mohori Bibee claimed the amount of Rs. 10,500 (loan amount + the interest charged on it), the case name was then, Mohori Bibee versus Dharmodas Ghose.

It was held that, **if an agreement is entered into with a minor**, then that agreement will be called as **void ab initio**. And in that situation, no recovery can be done. Meant- In this case, Dharmodas Ghose was returned with his property and wasn't even made to return the money.

### **Return of benefit secured by a fraudulent minor**

The provisions were unreasonably benefiting the minors but after this, more cases came, like **Khangul v. Lakha Singh** and **Leslie v. Sheill**. Apart from these cases, one more statutory enactment came into force, which was Section 33, Specific Relief Act.

When you read all these three cases together, one more thing is brought up i.e. **the Doctrine of Traceability**, according to which, restitution stops when repayment begins. This meant, if an agreement is entered into with a minor, and if anything is to be taken back regards to the agreement, then only that part can be returned which can be traced. To understand this, consider the illustration, Riya sold her scooty to Chotu, who's a minor. Now, if that scooty is still in Chotu's possession, it can be recovered back, but if that scooty is sold by Chotu, then the money cannot be recovered back.

This was also problematic, which is why these cases went further and were discussed and in accordance with the recommendation of the Law Commission, the principle of compensation has now been incorporated in **Section 33 of the Specific Relief Act, 1963**. This provision requires the payment of money compensation by a minor irrespective of the fact whether the minor is the plaintiff, or the defendant in the case.

### **What contracts can be entered into?**

Minors can enter into various types of contracts, like they can form a negotiable instrument(**Section 26, Negotiable Instruments Act, 1881**), which will bind everyone except themselves. What does that mean? Understanding it with this illustration, Rahul is a minor, who wrote a promissory note and gave it to Meena stating that “I promise to pay you Rs. 10000”. That promissory note was then given by Meena to Vivek, and by Vivek to Sahil. So all these other people are obliged to that promissory note except Rahul, because he is a minor. He will have to pay the money, it doesn't mean he won't have to pay the money if he's done an agreement, it can be tried to be taken out of his property or any other way but that promissory note in itself won't be binding on Rahul.

### **Contracts of apprenticeship**

Although Indian law does not make a minor bound by the contract or service(void), which may be explained by referring to Raj Rani v. Prem Adib,1890, **contracts of apprenticeship are binding** under the **Indian Apprenticeship Act, 1850**. Such contracts could be validly entered into by a minor's guardian on behalf of the minor.

### **Contracts of marriage**

Contracts of marriage are supposed to be beneficial to minors and, therefore, a minor is entitled to enforce them.

### **Position of a minor in Partnership**

A minor is not competent to enter into a contract. He can, however, accept benefits. In accordance with that position of a minor, **Section 30, Indian Partnership Act**, declares that a minor may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership. If a minor is admitted to the benefits of partnership, he has a right to such share of the property and of the profits of the firm as may be agreed upon and may also have access to and inspect and copy any of the accounts of the firm. Such a minor is not personally liable towards the third parties for any act of the firm but only his share is liable for such acts. Understanding it with this illustration, if a minor is getting profits of Rs 100000, then he can bear the losses to the extent of Rs 100000 only.

On attaining majority, such a minor has an option either to become a partner or not to become a partner and leave the firm. This option can be exercised by him within a period of six months from the date of attaining the majority. But if he did not know that he had been admitted to the benefits of partnership, then he may exercise the option within six months of obtaining the knowledge that he had been admitted to the benefits of partnership. Such an option has to be exercised by him by giving a public notice. If he fails to exercise the option either way, then on the expiry of the above stated period of six months, he automatically becomes a partner.

### **Minor's liability for Necessaries**

If a minor has necessities, which are necessary in accordance with the circumstances of his life and someone get him those, then reimbursement is permitted to the person supplying such necessities. This is not on the basis of any contract between the parties but because it is deemed to be a quasi-contractual obligation, as under **Section 68 of Chapter V of the Indian Contract Act**, which recognizes "Certain Relations Resembling Those Created by Contract", i.e., Quasi-contractual relations.