



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

## MINOR'S POSITION IN INDIA

The Indian Contract Act, 1872, under section 2(h), defined contract as – *an agreement enforceable by law is a contract.*<sup>1</sup> Furthermore, section 10<sup>2</sup> of Indian Contract Act, talks about the elements of a valid contract, which are free consent of parties competent to contract, a lawful consideration, a lawful object and not expressly declared to be void.

Moreover, section 11 of the Indian Contract Act, talks regarding parties who are competent to a contract. It states that *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.*<sup>3</sup>

Thus, the aforementioned section implies that the following people are not competent or incapable to enter into a contract.

- i. Minors
- ii. Persons of unsound mind, and
- iii. Persons who are disqualified by law to enter into a contract to which he is subject.

### Minor

After the amendment, according to section 3 of the Majority Act, 1875, a person is considered major whenever he completes the age of eighteen and not before, irrespective of the fact that in respect of them any guardian has been appointed.

It says that- *Age of majority of persons domiciled in India. — (1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before. (2) In computing the age of any person, the day on which he was born is to be included as a*

<sup>1</sup>THE INDIAN CONTRACT ACT, 1872, § 2(H), NO. 9, ACTS OF PARLIAMENT, 1872 (INDIA)

<sup>2</sup>THE INDIAN CONTRACT ACT, 1872, § 10, NO. 9, ACTS OF PARLIAMENT, 1872 (INDIA)

<sup>3</sup>THE INDIAN CONTRACT ACT, 1872, § 11, NO. 9, ACTS OF PARLIAMENT, 1872 (INDIA)

*whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.*<sup>4</sup>

However, there's no clarity regarding the nature of minor's agreement in section 10<sup>5</sup> or 11<sup>6</sup> of the Indian Contract Act, as to whether it will be voidable or void. Due to this absence, there had been various controversies among various High Courts for the same. It was later in 1903, that this controversy was resolved by *Mohori Bibee v. Dharmodas Ghose*<sup>7</sup>, wherein, it was held that the agreement by a minor was void.

The appellant, Dharmodas Ghosh, mortgaged his house to the defendant, the moneylender when he was a minor. At this point, the defendant's counsel knew the age of the complainant. Later, the complainant paid only Rs 8000 but declined to pay the remainder of the revenue. The mother of the complainant was his legal guardian at the time, so he started an action against the claimant, claiming that he was a minor at the time of the contract, so that the contract, being void, is not bound by the same.

To which the court held that, unless the parties have authority under section 11 of the Indian Contract Act, no arrangement is a contract.

Moreover, in the case of *Srikakulam Subrahmanyam v. Kurra Suhha Rao*<sup>8</sup>, the Privy Council overruled the earlier decision and stated the possibility that was within the power of the mother of minor as a guardian to enter into a contract on behalf of the minor to enter into a contract of sale just to clear his father's debts. The Orissa High Court held that holding of property for religious purposes by the guardians on behalf of the minor was specifically enforceable.<sup>9</sup>

Hence, a minor's contract is therefore void, which implies there can't be any obligation on any of the parties to fulfil any aspect of it. But what will happen in the cases where a minor enters into an agreement by misrepresenting himself as major, or making the other party unclear about his age?

### **Effects of minor's agreement**

---

<sup>4</sup>THE MAJORITY ACT, 1875, § 3, NO. 9, ACTS OF PARLIAMENT, 1872 (INDIA)

<sup>5</sup>THE INDIAN CONTRACT ACT, supra note 2

<sup>6</sup> THE INDIAN CONTRACT ACT, supra note 3

<sup>7</sup>*Mohori Bibee v. Dharmodas Ghose*, (1903) 30 I.A. 114 (P.C.): 30 Cal. 539

<sup>8</sup>*Srikakulam Subrahmanyam v. Kurra Suhha Rao* A.I.R. 1948 P.C. 95: (1949) I.L.R. Mad. 141 (P.C.)

<sup>9</sup>LEGALSERVICESINDIA, <https://www.legalserviceindia.com/legal/article-5326-minor-s-capacity-to-contract.html> (last visited, Apr. 08, 2024)

- **No estoppel against a minor** – Section 115, Indian Evidence Act<sup>10</sup>, lays down the law of estoppel, which says that if any person has misled the other, he is not allowed to deny his words at the time when the liability arises.

The question of estoppel arose in the case of *Mohori Bibee v. Dharmodas Ghose*<sup>11</sup>, as the minor misrepresented his age while taking loan, but this was known to the moneylender. The Calcutta High Court had held that Law of Estoppel does not apply against a minor.<sup>12</sup>

From various decisions of different High Courts, it is clear that the law of estoppel does not apply against a minor. Hence, he is allowed to plead minority as a defence and avoid liability under an agreement even though he misrepresented himself as major.

- **Doctrine of Restitution** – If a minor has obtained undue benefit in any transaction, he is required to restore back the benefit so received by him, under the equitable doctrine of restitution. Under the doctrine he is asked to restore back the exact things taken by him. It is applicable only to goods or property received by a minor so long as they can be traced, and are still in his possession. Since it is difficult to identify money and to prove whether it is the same money or different one, the doctrine does not apply to money. Even as regards goods or property, if the same have been consumed or transferred and are no more traceable, the doctrine of restitution does not apply there.

There were many cases explaining the aforementioned doctrine, such as *Leslie v. Sheill*<sup>13</sup>. According to the facts of this case, a minor deceived some money lenders by misrepresenting their age, obtaining a total of 4000 euros. Their attempt to recover the money and subsequent damages was unsuccessful due to the aforementioned doctrine. However, when a minor seeks the court's assistance in cancelling a contract, the court may provide relief on the condition that he restore all benefits acquired under the contract and compensate the other party appropriately.

This aspect of the Doctrine of Restitution is explicitly stated in Section 41 of the original Specific Relief Act of 1877<sup>14</sup>. The first well-known case determined under this principle is

---

<sup>10</sup>THE INDIAN EVIDENCE ACT, 1872, § 115, NO. 1, ACTS OF PARLIAMENT, 1872 (INDIA)

<sup>11</sup>Supra note 7

<sup>12</sup>DR. R.K. BANGIA, CONTRACT-I 112 (7<sup>th</sup> ed. 2017)

<sup>13</sup>*Leslie v. Sheill* (1914) 3 K.B. 607

<sup>14</sup>THE SPECIFIC RELIEF ACT, 1877, § 41, NO. 1, ACTS OF PARLIAMENT, 1877 (INDIA)

Mohori Bibee v. Dharmodas Ghose<sup>15</sup>. The plaintiff received cancellation of the relief under Section 39 of the Specific Relief Act of 1877<sup>16</sup>.

- **Provisions of Specific Relief Act** – The principle of restitution is contained in Section 33 of the new Specific Relief Act of 1963<sup>17</sup>. The amended provisions are as follows:
  - Where a void or voidable contract has been canceled at the instance of a party, he may be required to repay the benefits he/she has received under the contract and also make necessary compensation to the other party
  - When the defendant successfully resists any suit on the ground that the contract is void against him due to his incompetence, he may be required to repay the benefits, if any received by him under the contract but only to the extent which his estate has been benefitted.<sup>18</sup>

---

<sup>15</sup>Supra note 7

<sup>16</sup>THE SPECIFIC RELIEF ACT, 1877, § 39, NO. 1, ACTS OF PARLIAMENT, 1877 (INDIA)

<sup>17</sup>THE SPECIFIC RELIEF ACT, 1963, § 41, NO. 47, ACTS OF PARLIAMENT, 1963 (INDIA)

<sup>18</sup>Supra note 9