



CONTRACTUAL CAPACITY OF MINORS UNDER INDIAN CONTRACT ACT AND INDIAN PARTNERSHIP ACT: A JUDICIAL STUDY

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i. **Abstract**

A minors contract is void ab initio. Partnership arises out of contract and not by status as per section 5 of the partnership Act. The minor is incompetent to contract. However according to section 30, (I) of the Indian Partnership Act 1932, a minor can be admitted as a partner for the benefits of partnership with the consent of other partners. A minor is incapable of either making a contact himself, or authorizing the same, he cannot legally ratify act done on his behalf. A minor partner cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the official receiver or official assignee. When a minor is not given his due share of profit, he has a right to constitute a suit for his share of the profit or property of the firm. But he cannot do so, only if he wants to separate his connection with the firm. A minor partner has a right to his agreed share of the profit and of the property of the firm. A minor partner can also have access to inspect and copy of the accounts of the firm, but not books of the firm.

ii. **Importance of the study**

The law of contract in India came into existence in 1872. It is the foundation upon which the structure of modern business is built. In business transaction quite often promises are made at one time and the performance follows later. If either of the parties were free to go back on his promise without incurring any liabilities, there would be complication and it would be impossible to carry on trade and commerce.

But, all persons cannot enter into contact. For a valid contact came into existence law prescribes certain qualifications. One of the qualifications is capacity of the parties. This means to say that all persons cannot enter into a contact. Person of sound mind, not disqualified by law and person who have attendant a particular age can only enter into contacts. Thus, the persons who have not attended the particular age to contact are known as minors. They are those persons who lack of the ability and so law prohibits them making contact.

However, under Indian Partnership Act 1932 the minor are admitted to the benefits only. A person who is a minor according to the law to which he is subject 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. Such minor has a right to such share of property and the profits of the firm as maybe agreed upon. He may have access to aspect and copy any of the accounts of the firm. Such minor's Share is liable for the act of the firm, but the minor is not personally liable for any such act .

iii. Position of minor in Indian Contract and Partnership Act

According to section 3 of the Indian majority Act 1875, a minor is a person who has not completed the age of 18 years. The Minority extends to 21 years if a guardian of minors person or property is appointed (under the guardians and Ward's act 1890) . In England, a person below the age of 21 years was a minor till 1969. With the passing of the family reforms act 1969, the age of minority is reduced to 18 years. According to section 11 of Indian contract act 1872, a contract with minor is void abinitio i.e. not valid from the very beginning. This view was laid down by the Privy Council.

However, according to section 30(i) of the Indian Partnership Act 1932, a minor can be admitted as a partner for the benefits of partnership with the consent of all other partners. This provision is based on the rule that " a minor cannot be a promiser, but he can be a promisee or beneficiary' . In other words, he can share gains, but he is not liable for losses. Thus, a minor can only be admitted to the benefits of the partnership and cannot be full pledged partner (additional C.I.T vs U.K.P Kumar AIR1978 All 397)¹.

Competence to contract is defined in section 11. 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 his subject.

The age of majority is generally eighteen, except when a guardian of minor person are property has been appointed by the court, in which case it is twenty one². The age of majority of a person is to be determined according to the law to which he is subject. In England also according to the Family Law Reform Act 1969, " a minor is a person under the age of 18 years".

Section 10 requests that the parties to a contract must be competent and section 11 says that a minor is not competent. Neither section makes it clear whether, if a minor enters into an agreement, it would be voidable at his option or altogether void. These provisions had, therefore, quite naturally given rise to a controversy about their nature of a minor's agreement, the controversy was only resolved in 1903 by the Privy Council in *Mohoribi vs Dharmodas Ghose*³.

Section 11 of the Act 1872, provides that for the purpose of executing a contract, the person must be of the age of majority according to the law to which his subject.

The age of a majority as well as the disqualification from contracting is, thus to be determined by the law to which the contracting party is subject.

In *Kashiba vs Shripat*⁴ the Bombay High court ruled that it was the law of domicile⁵ of the party which determine the age of majority of the party. In the instant case, a Hindu widow, above the age of 16 years and under the age of 18 years, whose husband had his domicile in British India, executed a bond in Kolhapur (outside British India) where she was then residing. The question arose whether her liability on the bond was to be governed by the law of Kolhapur (*Lex loci contractus*), or by the law of British India (law of her domicile). According to the former law, she would have been liable on the bond as the age of majority according to the Law of Kolhapur, was 16 years while according to the law in British India namely the Indian majority act 1875, She was not liable as the age of majority according to that law was 18 years and the contract was made when she was under the age of 18 years.

It was thus held that her capacity to contract was regulated by the Indian majority act 1875 being the law of her domicile and that under the act, she was not liable on the bond. It was thus held that the age of majority of a party to an agreement was to be determined according to the law of his or her domicile.

As it got the ordinance mercantile contracts, it was held by the Madras High court that the age of majority was to be determined by the law *lex loci contractus*, i.e., the law of the place where the contract was entered into. Thus in *TNS Firm vs Muhammad Hussain*⁶ a person aged 18 years domiciled in British India, endorsed certain negotiable instruments in Ceylon, by the law of which he was a minor, he was held not to be liable as an endorsee⁷.

IV. Nature of a minor agreement

As noted above a minor is not competent to contract. One question, which arises in case of an agreement by a minor is, whether the agreement is void or voidable? The Indian contract act 1872, does not have any provision to answer this question. In the absence of any statutory provision, there had been controversy among high court on this point. The controversy was set at rest by the decision

of the Privy Council in Mohori. Bibee vs. Dharmodas Ghose in 1903. It was held that the agreement by a minor was a void.

The facts of Mohori Bibee's case are as under: the plaintiff, Dharma Das Ghose, while he was a minor, mortgage, his property in favor of the defendant, Brahma Datta, who was a money lender to secure a loan. At the time of the transaction, the attorney who acted on behalf of the money lender had the knowledge that the plaintiff was a minor.

The minor brought an action against the money lender stating that he was a minor when the mortgage was executed by him and therefore, the mortgage was void and inoperative and the same should be cancelled, by the time of Appeal to the Privy Council the defendant, Brahma Datta died and the appeal was prosecuted by his executors⁸.

V. The nature of Partnership Contract

Partnership is the relation between person who have agreed to share the profit of a business carried on by all or any of them acting for all. Section 4 lays down the following essentials.

(1) Agreement- A Partnership cannot be the result of status as in joint Hindu family business but only of a contractual agreement between the various parties⁹ It also does not arise by operation of law as in case of co ownership for example. **(2) Association of two or more person-** To constitute partnership, there must be at least two persons. **(3) To carry on business-** A partnership can exist in business and business alone. "Business" being essential to partnership, the question arises what does it mean? Section 2 only say that it "includes every trade, occupation and profession". This definition cannot be taken literally, because while every trade may be a business, every occupation or profession is not. **(4).Sharing of profit-** The purpose of partnership must be to earn and share the profit in common profit mean excess of returns over advances, the excess of what is obtained over the cost of obtaining it. Profit must be distributed among the partners in an agreed ratio. **(5) Mutual agency-** The expression "mutual agency" denotes "business carried on by all" or any of them acting for all. In simple words, "all act for one and everyone act for all".

Partnership arise out of a contract¹⁰. It is, therefore necessary that the parties to the contract of partnerships should be competent to contract. A minor being incompetent to contract cannot become a partner. According to Section 11 of Indian contract act 1872, a contract with minor is void abinitio i.e. not valid from the very beginning. This view was laid down by the Privy Council.

However, according to section 30 of the Indian Partnership Act 1932, a minor can be admitted as a partner for the benefits of partnership (1). A person who is minor according to the law to which he is subject 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.

(2) Such minor has right to such share of the property and of the profit of the Firm as may be agreed upon and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm but the minor is not personally liable for any such acts.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profit of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48.

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm and thereupon the courts shall proceed with the suit as one for dissolution and for settling accounts between the partners and the amount of the share of the minor shall be determined along with the shares of the partners.

On attending 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 6 months from the date of attending 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 6 months of his obtaining the knowledge that he had been admitted to the benefits of partnership. Such 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 6 months, he automatically becomes a partner¹¹.

If a minor, who had been admitted to the benefits of partnership, becomes a partner, his rights and liabilities as that of a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done, since he was admitted to the benefits of partnership¹². It means that if a minor on attending majority has become a partner, his liability towards third parties is not only for the acts of the firm which were done after he becomes a partner. But his liability towards the third parties is retrospective for all the acts of the firm done since the date of his admission to the benefits of partnership. His share in the property and profits of the firm shall be the share to which he was entitled as a minor¹³.

In case, on attending majority, he elects not to become a partner, his rights and liabilities cell continue to be those of a minor. As stated above, up to the date on which he gives public notice. His share will not be liable to any act of the firm which is done after such notice¹⁴.

vi. Conclusion & Suggestion

Minors are those person who are supposed to be not fully mentally developed one. Their mental faculties are immature. That's why they are very often ill-treated and their properties may be stolen, so law gives protection to them. Law provides that it is the duty of the court to guard against their lack of knowledge and experience. The actions of the older persons aggravate ill use of minors.

The law relating to minors provides protection to both minors and innocent persons as far as practicable which in the opinion of the court is "just and equitable".

Now the society is well developed, so supplementary principles are necessary to make law of contract suitable to the present commercial world. So the law of contract should also be developed because of unsatisfactory working of the Indian Contract Act creates problems for the judiciary while they interpret the Act. It is necessary to develop a progressive law of contract from the old Act to meet the requirement of a developing nation and a welfare state judiciary has interpreted the Act to make it suitable to the present condition but still it is handicapped by the law of the legislature.

There are two instruments which are most important to fill the time gap between the law passed at a particular time and onward march of the society with passage of time. They are judicial interpretation and amendment. However the legislatures have not made remarkable effort to bring changes in the provisions of the law of contract as a whole, especially, in the field of minor's agreement.

In many important case laws, the courts have pointed out deficiencies, lacunas that exist in the existing Indian Contract Act. But their function is limited within the framework of the section.

The courts have followed the strict letter of the law even though such decisions have injured the interest of the minors and hence caused hardship to them. The courts have knowledge that strict interpretation within the letter of the law push minors in disadvantage position. Again several aspects of minors agreements are not outside the judicial controversy. In such situations a uniform law done by the Supreme Court or by the legislatures.

It will be not out of place to mention that fifth law commission of India submitted the 13th report on the contract Act, 1872. The law commission considered subject of restitution relating to the minors agreement and the judicial controversy on the doctrine of restitution between Lahore high court and Allahabad high court. The law commission included on the interpretation made by Shadila C.J

The Privy Council in *Mohori Bibee vs Dharmodas Ghosh* case held that the question of compensation under section 64 and 65 of the Indian Contract Act, 1872, arises whose the parties are competent to contract and so do not apply to the case of minors agreement. The law commission disagreed with the interpretation put to section 65 by the Privy Council. The commission expressed its view that compensation under section 65 is allowed even if the agreement is void due to the incompetence of the party to the contract. The commission also recommended an explanation to be added to section 65. The explanation is that section 65 is applicable where a minor enters into an agreement on the false representation that he is a major. But no amendment has been made in the Contract Act so far to give effect to these recommendations. Further, the minors of the present society are so aware and some of them wanted to get benefit by misrepresenting their age. Because they well known about the position in the commercial world. They are entitled to get profit from the Indian Partnership Act, 1932. According to section 30, Indian partnership Act, a partner who is a minor cannot be a partner in a firm but with the consent of all the partners he may be admitted to the benefits of partnership, and certain consequences follow, one of them being that the minor is not personally liable for the acts of the firm and cannot sue the partners of the firm for accounts or profits except when he is severing his connections with the firm. But section 184 of the Indian contract Act, shows that a minor cannot act as agent.

In summing up, this article the following suggestions may be made to improve the contractual capacity of minors.

1. Section 11 of the Indian contract Act, 1872 does not provide the age of majority. It only says that every person is competent to contract who is the age of majority according to the law to which he is subject. Section 3 of the Indian Majority Act, provides about the age of majority such as when a person completes the age of 18 years and where a guardian is appointed under guardian & ward Act by the court for his person or property his age of majority is 21 years. The two ages of majority 18 and 21 create artificial distinction. Hence uniform age for all minors should be prescribed and artificial distinction be abolished.
2. Section 11 of the Indian Contract Act preserves that all contracting parties should be competent to contract. This raises a significant question is he absolutely incompetent or is he absolute only from liability on the contract. This point should be considered.
3. There is judicial controversy on the point of ratification which should be settled by the legislature. A minors contract is void. Ratification after attaining majority does not make the contract of having legal force.

4. The recommendation of the law commission that an explanation to be added in section 65 i.e section 65 is applicable where a minor enters into an agreement on the false representations that he is a major. This should be inserted in the section 65 by an amendment.
5. There should be penalties provisions in the provisions of Indian Contract Act as well as in Indian partnership Act to check ground of a minor.

References

1. Dr. Rega Surya Rao, Lectures on contracts-II Reprint 2006 page 81.
2. Indian Majority Act, 1875, section 3
3. (1903) 301A114: 30 cal 539.
4. (1894) 19 Bom 697
5. "Domicile" means permanent residence. It is the place where a person actually resides with the present intention to reside there permanently for details, see Narender Kumar, Constitutional law of India 2011, 54.
6. A.I.R 1933 Mad 756
7. Narender Kumar the Indian Contract Act, 1872 reprint 2019, page no 93.
8. Dr. R.K Bangia, Contract I reprint 2015 page 100
9. Section 5 Indian partnership Act 1932
10. op. cited No.9, Section 4.
11. Ibid, Section 30 (5)
12. Ibid, Section 30 (7) (a)
13. Ibid, Section 30 (7)(b)
14. op. cited No.8, page 124-125