

Minors in Contract: An Analysis of Rules Relating to Minors in Indian Contract Act, 1872

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Abstract

The Indian constitution provides many rights to its citizens, as well as has pointed different duties to be performed by the citizens. A MINOR is a person who has not attained the age of majority according to the law to which he/she is subject. This age has been fixed differently by different legal systems at different times, and different ages may be fixed for different purposes by the same legal system at the same time. The Indian constitution tries to resolve two conflicting positions of a minor due to his immaturity arising out of his age must be protected against enforcing unconscionable contracts which he may be led to enter, but a minor like an adult has to have his existence in the world and, therefore, some protection has to be extended even to minor's agreements. Through this paper, researcher will try to find out all the constitutional provisions regarding the rules of minors in the Indian Contract Act, 1872.

Keywords: Constitution of India, minor, judiciary, the Indian Contract Act, 1872

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INTRODUCTION

Constitution is a living document, an instrument which makes the government system work. Its flexibility lies in its amendments. The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. It was adopted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950.

The Indian Constitution provides many rights to its citizens, as well as has pointed different duties to be performed by the citizens. It has also illustrated certain rights and duties for minors also.

Definition of Minor

According to Section 3 of the Indian Majority Act, 1875, a person domiciled in India who is under the age of 18 years, is a minor.

Why Does It Matter?

From 18th birthday onwards, people have all the rights and obligations of an adult citizen.

Before that age also, people need some protection, and their acts are often viewed with more leniency than are the actions of adults. Minors are also referred to as being infants. According to Indian Contract Act, 1872, the general position is that a minor is not bound by a contract, unless it is for necessities. Though a minor is generally not bound by a contract, the minor may nevertheless enforce a contract in most circumstances.

The minors have been given many rights in Constitution of India such as:

Some Constitutional Guarantees that are meant Specifically for Children

- Right to free and compulsory elementary education for all children in the 6–14-year age group (Article 21 A).
- Right to be protected from any hazardous employment till the age of 14 years (Article 24).
- Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)).
- Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and

youth against exploitation and against moral and material abandonment (Article 39 (f)).

- Right to early childhood care and education to all children until they complete the age of 6 years (Article 45).

Besides, Children also have Rights as Equal Citizens of India, Just as Any Other Adult Male or Female

- Right to equality (Article 14).
- Right against discrimination (Article 15).
- Right to personal liberty and due process of law (Article 21).
- Right to being protected from being trafficked and forced into bonded labour (Article 23).
- Right of minorities for protection of their interests (Article 29).
- Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).
- Right to nutrition and standard of living and improved public health (Article 47).

The minors have special rights and duties in the Indian Contract Act 1872, and the Partnership Act 1932. This paper will highlight the different rules related to the minors in the Indian Partnership Act 1872.

Who are Competent to Contract?

Section 11 of the Indian Contract Act, 1872 provides: 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.

CONTRACT BY A MINOR: RULES RELATING TO A MINOR'S CONTRACT (Figure 1)

As per the Indian Contract Act, 1872, a minor is not competent to contract.

A Contract made with or by a Minor is Void *ab-initio*

A minor is not competent to contract; and any agreement with or by a minor is void from the

very beginning. In the leading case of *Mohori Bibi vs. Dharmo Das Ghose* (1903), "A, a minor borrowed Rs. 20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and led a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled. It was held that a mortgage by a minor was void and B was not entitled to repayment of money. It is especially provided in Section 10 that a person who is incompetent to contract cannot make a contract within the meaning of the Act.

No Ratification after Attaining the Age of Majority

A minor cannot ratify the agreement on attaining majority as the original agreement is void *ab initio* and a void agreement can never be ratified. Example: X, a minor makes a promissory note in the name of Y. On attaining majority, he cannot ratify it and if he makes a new promissory note in place of old one, here the new promissory note which he executed after attaining majority is also void being without consideration.

Minor can be a Beneficiary or can take Benefit Out of a Contract

Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit. A minor cannot become partner in a partnership firm. However, he may, with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

A Minor can always Plead Minority

Plead means making an emotional appeal. A minor can always plead minority in his/her defense.

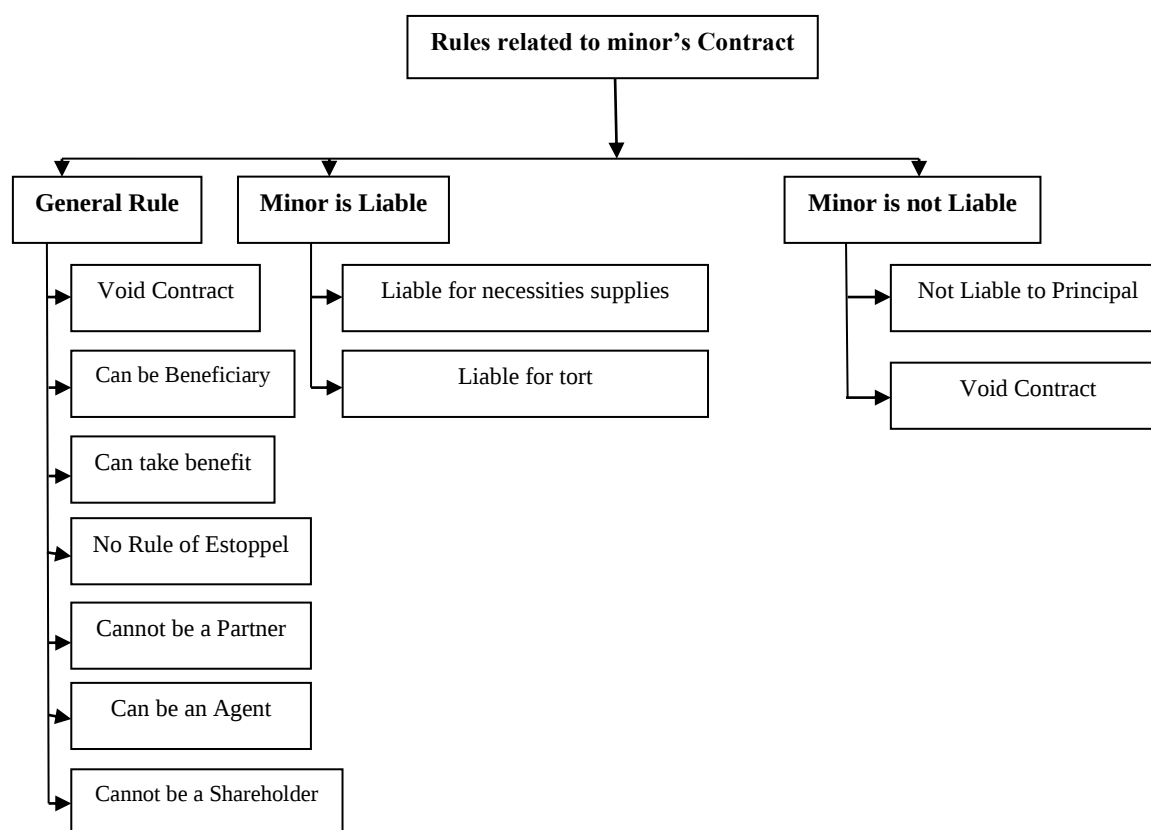


Fig. 1: Rules Related to Minors Contract.

Liability of Minor for Necessaries

Section 68 of the Indian Contract Act deals with the necessities supplied to the minor. The minor is not liable whereas his property is liable for the necessities supplied. Two conditions must be satisfied for enforcement:

- The contract must be made for the goods that are necessary for the minor's life.
- Sufficient amount of the necessities should not be available with the minor's.

'Necessaries' does not include luxury or costly or unnecessary items.

Contract by Guardian: How Far Enforceable?

Though a minor's agreement is void, his guardian can, under certain circumstances enter into a valid contract on minor's behalf. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be valid contract which the minor can enforce. But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contract for the purchase of

immovable property. But a contract entered into by a certified guardian (appointed by the Court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract.

No Specific Performance

As minor's agreement is void, so there is no requirement of the specific performance.

No Insolvency

A minor is not capable of contracting and debts and dues are paid from personal properties, he or she is not personally liable so he or she cannot be insolvent.

Cannot Enter into Partnership

A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership.

Minor Can be an Agent

A minor can act as an agent. But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.

Minor cannot Bind Parent or Guardian

In the absence of express or implied authority, even for necessities, an infant is not capable of binding his parent or guardian. If the child is acting as an agent for parents, then only the parents will be held liable.

Joint Contract by Minor and Adult

In the case of Sain Das vs. Ram Chand, a joint purchase was made by two purchasers in which one was minor and other was major, it was held that major purchaser can be enforced not the minor.

Surety for a Minor

In a contract of guarantee if an adult gives surety for a minor then the adult one will be liable to the third party.

Minor cannot be a Shareholder

As a minor is not eligible to do contract, so he or she cannot be a shareholder of any company. The name of the minor should be removed from the register if included by mistake.

Minor is Liable for Torts

A tort or a wrongful act or an infringement of a right: A minor is liable in case of tort if it gives rise to a breach of contract. For Example, a minor is liable for the instrument taken for him/her and transfer to his/her friend.

CONCLUSION

As majority of rules related to minors in contract are for protecting them, it is very clear

that the legislative is working very effectively for protecting minors from being involved in contract as they are not mature. But few reliefs have been given in the case of necessities provided to them by the other party. So, it is suggested to not contract with minor until or unless it is necessary to minors.

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