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## MINOR CONTRACT: SHOULD IT BE LEGALIZED?

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### Abstract

*In India contract formed by minors is considered invalid from the beginning as it is a necessary condition for formation of a valid contract that the person entering into a contract should be a major. Thus from time to time contract made by minors has been declared as void by the judiciary in India through various decisions. Therefore, it has become necessary for the parties entering into the contract that they should check that whether the other party is competent to enter into the contract or not. But there have been a number of instances in which a minor person has posed as a major and have made the other party believe that he or she can enter into a contract and thus at the end causing loss to the other party as a minor cannot be held liable for a breach of contract. Thus creating a need for changes to be done in the existing contract laws so that any more of such cases or instances can be prevented from happening. This article is aimed understanding the meaning of a contract and competency to contract. It is also aimed explaining the provisions of contract law which determine whether a contract is void or not and the position of Minor Contract in India and in other countries.*

**Keywords** – Minor, Contract, Competency, Capacity, Void, Legal, Enforceable

### Introduction

All the contracts made in India whether written agreement or oral agreement are governed under a single statute or under a single legislation called Indian Contract Act which has come into effect in the year 1872. Indian Contract act contains all the provisions which determine whether a contract entered into by the parties is a valid contract or not. Contracts entered between individuals or groups or organizations or businesses all are governed and regulated under this Act. Contract formation in the recent course of history has gone through some major changes as in starting it used to be typed on papers and now it can be seen in the form of printed documents or even in electronic format, for example – the agreements to which we have to agree when in order to install any software or application on our smart phones or computers. However there are still some changes required regarding who

can enter into a valid contract as there have been various cases where a person who despite of being a minor had enough mental capacity to understand the provisions of a contract in which he or she was entering and was able to deceive the other party regarding his or her competency. So it has become necessary that the contract law in India should be provided with a much wider scope as with the developments which has taken place in the recent years contracts have not only become digitalized or electronic but they have also gone global thereby requiring some changes to be made in the existing contract law so that it can be adapted to the evolved situation in the current period.

### Meaning of a Contract

- A contract can be easily understood as an agreement entered into by two parties in respect of some consideration by both the



parties to each other in order to achieve some purpose. So in other words it means that contract is an agreement entered into between two parties who have made a lawful consideration against each other and they have done so for achieving a lawful purpose or objective and both parties are competent to enter into such an agreement and to perform such an agreement. According to the Indian Contract Act, 1872 a contract is “an agreement enforceable by law”. There are some essential conditions for formation of a valid contract which are mentioned under section 10 of Indian Contract Act, 1872. These conditions are as follows :-

- There must be two parties to enter into a contract.
- There must be an offer made by one party and there must be acceptance of the same offer by the other party
- The acceptance made by the other party must be made out of its free consent.
- The purpose for which the parties are entering into an agreement they (i.e., the parties) must agree to the same thing (i.e., purpose of agreement) in the same sense.
- There must be a lawful consideration between the parties.
- The parties entering into a contract must be competent to do so.
- The contract should be made for a lawful objective.
- The terms of a contract should not be uncertain and the contract should be made with an aim of creating legal relationship between the parties.

So after all these conditions are fulfilled an agreement becomes a valid contract and gains the force of law i.e., it becomes enforceable by law.

### **Competency to enter into a Contract**

In simple words competency can be understood as the capacity of the parties in a contract to understand all the terms and conditions of the contract. In other words it can also be explained as to look into whether the

opposite party which entering on a contract with is having enough capability and capacity to understand the terms and conditions of a contract or not. Competency for a person to make a contract is mentioned under section 11 of the Indian Contract Act, 1872. This section states that a person is competent to make a contract only when he is :-

- Of age of majority – This means that the person who is a party in a contract should have attained the age of majority according to the laws to which he or she is subjected to. In Indian context the age of majority is 18 years for an individual as mentioned by the Indian Majority Act, 1875. Thus in India a person who has attained the age of 18 years or more is capable of entering into or making a contract.
  - Of sound mind – This means that the person who is entering into a contract can understand the terms and conditions of the contract and can easily give his free consent. For example a person who is intoxicated or is suffering from insanity attacks etc., if he gives his consent then such a contract will be a void contract. However if a person enters into an contract when he is not suffering from an attack of insanity then such a contract will be enforceable under law.
  - Not barred by any law for the time being in force to enter into an agreement or a contract – For example a person who is convicted for murder and is going through his sentence in the prison cannot enter into a contract. Another example can be taken of a person who is declared as a terrorist, in such a case no one can make a legal contract with such a person under law of the land.
- After all the above mentioned three conditions are fulfilled then only a person would be considered as competent to enter into or make a valid contract as if any of the three conditions remains unfulfilled or is violated then such a contract will become void or lose its enforceability.



### Status of Minor Contract in Abroad

**USA** – In USA in all the states the legal age for a person to enter into a contract is 18 years. However in case for fulfilling of necessities like food , shelter, clothing a minor can enter into a contract and such contract will be enforceable. However there are also cases in which a minor has presented himself as an adult and even after due checking the party was deceived by the minor. Thus in such cases if the minor still possesses the consideration provided by the other party than the is made to return back such consideration. But if there is a case in which consideration cannot be returned back and because of this there will be a huge loss to the other party then in such case the contract enters into by the minor will applicable on him as it would have been applicable if he would haven been an adult. Also in case of non-necessity goods a minor can enter into a contract for such goods after having due consideration of his or her parents and such a contract will be applicable on that minor. For example in entertainment industry if a minor enters into a contract with an entertainment company without his parents due consent than such contract can be cancelled or destroyed if the parents of the minor asks the company to do so.

**UK** – In UK the age of a person to be considered as a major is 18 years according to the Births and Deaths Registration Act 1953. After attaining this age a person becomes bound by the terms and conditions of the contract in which he or she enters or becomes a party. However In UK also a minor person is bound by the contract if such contract is a contract of necessity. It means that if a person who is a minor enters into a contract for fulfillment office needs such as food, shelter, clothing, medicines, education etc. , Then such person becomes bound to perform his part of the contract as such contract was only made for his benefit. In UK for a person to enter into a contract three conditions are to be satisfied which are as follows :-

- He or she should not be under the age of 7 years old.
- He or she should not be of having a grave mental health issue.
- He or she should not be intoxicated or should not be drug addicted as it hampers a party's decision making capability.

From these conditions it is clear that a person who is above seven years of age is capable of entering into a contract even if he or she is a minor. Also he or she can anytime make the contract void according to their wish without even giving any reason but this should be done by him or her before becoming 18 years old. Thus contract made by a person who is above 7 years of age but is below 18 years of age is a voidable contract. However this can be resolved if the parents of a minor gives guarantee on that, then if there is a breach of the contract the parents of the minor can be held liable for such breach and damages can be recovered from them.

In India the minor's right to take defense of his minority is not estopped by law and thus in any case he cannot be held liable for breach of a contract. However a minor can enforce a contract in case he has given some money as mortgage money and the mortgage was also made in his favor or was made to him. A minor also has the right to enforce the execution of promissory note made in his favor. However in India if a contract was made with a minor to supply him with necessities such contract can be enforced and the costs of such necessities provided can be recovered from that minor's property.

### Cases relating to the contract made by minors

<sup>20</sup>Mohir Bibee v. Dharmodas Ghosh

This is a very landmark case as in this the plaintiff who was a minor mortgaged his property the defendant a money lender. However later on after making a payment of only Rupees 8,000 the plaintiff refused to make rest of the payment. A case was filed against

<sup>20</sup> [1903] UKPC 12,



the defendant by the plaintiff and in this case plaintiff took defense of his minority. The court in this case held that a contract would only become enforceable after provisions of Section 11 of the Indian Contract Act, 1872 are met.

### <sup>21</sup>**Khan Gul v. Lakha Singh**

In this case a minor by hiding his actual age deceived the other party by presenting himself as a major and thus fraudulently entered into a contract that he will sell his land to the other party. After the other party paid that minor a consideration of Rupees 17,500 the minor refused to sell that land the other party. A case was filed against the conduct of the minor and the court let the minor go under the defense of his minority. However the court in this case ordered the minor to refund the consideration received by him.

### <sup>22</sup>**Jamna Bai v. Vasanta Rao**

The question which arose in this case was whether a minor can be held liable for a contract if he jointly with an adult enters into a contract with a third party. The court gave a decision that even if a minor is a part of such a contract he or she cannot be held liable for that contract and such contract can be wholly enforced against that adult with whom the minor entered into the contract.

### **Conclusion**

In India a person's minority can be easily used as a defense for dodging the enforceability of the contract. There also have been various instances over the years of fraudulent conduct by the minors in a contract. However there also has been a positive change seen that now if the minor has not used the consideration provided to him by the other party than the minor can be compelled by the court to return back such consideration. In abroad parents can guarantee the performance of contract by their child and they will also be held liable if there is breach of contract thus ensuring proper performance of

the contract. In India there has been no such provision but if any such provision is made then it might prove to be useful as it will reduce the possibility of fraudulent conduct by a minor and will also ensure proper performance of the contract thereby making the process of contracting simple and easy.

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<sup>21</sup> 1928 Lahore High Court

<sup>22</sup> (1916) ILR 39 M 409