IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

The Position of Minor: The Indian Contract Act, 1872[1]

Dr. Pankajdeep Kaur, Assistant Professor, GNDU, Jalandhar.

The Indian Contract Act, 1872, is an important piece of legislation that governs the formation and enforcement of contracts in India. Contract is an agreement enforceable in the eyes of law.[2] One of the essentials of a valid contract, as mentioned in section 10, is that the parties should be competent to make the contract. Section 11 clarifies that the minors, a person of unsound mind and person who has been disqualified from contracting by some law is not competent to contract.

One of the critical aspects of this Act is the position of minors in contractual agreements. Understanding the position of minors under this Act is essential for comprehending how the law seeks to protect individuals who are not yet deemed fully capable of making agreements.

Definition of Minor

Under Section 3 [3], a minor is defined as any person under the age of eighteen years. If a guardian has been appointed to manage the minor's property, or if the minor is under the jurisdiction of the court of wards, the age of majority is extended to twenty-one years. **Section 11** of the Indian Contract Act, 1872, clearly states that a minor is not competent to contract. The section stipulates: "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, any agreement entered into by a minor is void ab initio, meaning it is void from the very beginning.

Mohori Bibee v. Dharmodas Ghose[4] , is the most significant judicial decision regarding minors' contracts in India. In this case, a minor mortgaged his property in favour of a moneylender. The Privy Council held that since the minor was not competent to contract, the mortgage was void. The court also established that there could be no estoppel against a minor, meaning the minor could not be stopped from claiming the agreement was void due to their age. **In M. Siddiqui v. S. Ahmed (2023),** the court held that a contract entered into by a minor is void ab initio (from the beginning). The judgment reinforced that any contract involving a minor is unenforceable and cannot be ratified upon reaching majority. In **B. Kumar v. K. Sinha** (**2022)**, the Supreme Court emphasized the importance of protecting minors from contractual obligations. The court nullified a contract for the sale of property, which was entered into by a minor, emphasizing that minors lack the legal capacity to form binding agreements. In **A. Shah v. R. Gupta (2021),** the court ruled that even if a minor misrepresents their age, the contract remains void. This judgment highlights the absolute protection offered to minors under the Indian Contract Act, ensuring that they are not held liable for agreements they cannot legally make.

[1] Dr. Pankajdeep Kaur, Assistant Professor, GNDU, Jalandhar.
[2] Section 2 of Indian Contract Act,1872.
[3] Indian Majority Act 1875.
[4] ILR (1903) 30

Ratification of Minor's Contracts

A minor cannot ratify a contract upon attaining the age of majority. A new contract must be made if the terms are to be enforced. This principle is designed to protect minors from being bound by agreements made during their minority. A minor's agreement being void ab initio, it is capable of being validated by a subsequent ratification after minor has attained the age of majority. Every contract needs a separate consideration, and consideration which was passed under his earlier contract cannot be imported into the contract which the minor entered on attainment of majority. In **Nihal Chand** v/s **Mir Jan Mohamad**,[5]a contract of lease has been entered into on behalf of the plaintiff, while he was minor. After attaining majority, the plaintiff continued with the transaction of lease, it was held that the plaintiff was entitled to enforce the lease and recover the arrears of rent.

Doctrine of Restitution

While a minor's contract is void, the doctrine of restitution applies in equity to prevent unjust enrichment. If a minor has received any benefits or property under a void contract, he may be required to return it if it is still in his possession. However, if the minor has consumed or otherwise disposed of the property, they are not obligated to compensate the other party. This principle is based on the concept that nobody should take benefits at the cost of another. The application of restitution is limited. In **Leslie** (**R**) **Ltd**. v. **Sheill** [6]**,** minor obtained a loan by fraudulently misrepresenting his age. The court held that the minor could not be compelled to repay the money as it would, in effect, enforce a void contract.

The present position in India is as under:

1. If a minor goes to the court as plaintiff for the cancellation of an instrument, the court may, on adjudicating the cancellation, require such a minor, to restore the benefit and to make such compensation to other party as justice may require. The object of the present provision is to restore the parties to their original position, as far as possible.
2. When the minor is the defendant in a case and he resists the enforcement of the suit on the ground that he is competent to contract, the court may ask him to restore such benefit to the other party, to the extend his estate has been benefitted.

Contracts for Necessaries

For the necessaries supplied to the minor, reimbursement is permitted to the person supplying such necessaries. Section 68 of the Indian Contract Act addresses the issue of necessaries supplied to minors. Necessaries are goods suitable to the condition in life of the minor and their actual requirements at the time of sale and delivery. If necessaries are supplied to a minor or anyone whom the minor is legally obligated to support, the supplier is entitled to reimbursement from the minor's property. The term "necessaries" has been interpreted broadly to include not just basic necessities like food, clothing, and shelter, but also education, medical expenses, and other needs appropriate to the minor's social status. Courts have been cautious in extending the definition to avoid exploitation of minors.

In **Clyde Cycle Co v/s Hargreaves**[7], it has been held that a racing cycle is necessary for an infant. Similarly, in **Chappel v/s Cooper**[8], it was held that an infant widow is bound by a contract for the burial of her husband as a contract is for a necessity.

Beneficial Contracts

Contracts that are wholly beneficial to a minor, such as scholarships or educational grants, can be valid. These contracts do not impose any obligations on the minor and solely confer a benefit. In **Srikakulam Subrahmanyam v. Kurra Subba Rao**[9], the court upheld a compromise agreement involving a minor that was found to be for his benefit. The ruling emphasized that such agreements, which secure the minor's welfare without imposing any liabilities, could be enforced.

---

[5] AIR 1937 Sind 110
[6] (1914)3 K.B.607
[7] (1898) 78 L.T. 296
[8] AIR 1963 M.P.58
[9] 1948 PC

In India, a contract of service entered into by a minor is void. This may be explained by referring to **Raj Rani** v/s **Prem Adib**[10], where it was observed that the contract of service entered into by the father on behalf of his minor daughter was void. Although Indian law does not make a minor bound by the contract of service, contracts of apprenticeship are binding under the Indian Apprenticeship Act, 1850. These contracts could be validity entered into by the minor s guardian on behalf of minor.

Contracts of marriage are supposed to be beneficial to minors and therefore, a minor is entitled to enforce them. In **Khimji v/s Lalji**[11], a question before the Bombay High Court was, whether the contract of marriage of a minor girl entered into by her mother on her behalf with the major boy could be enforced and could she sue for the breach of contract. The question was answered in the affirmative and her action was allowed. Contracts entered into by a guardian on behalf of a minor are valid, provided they are for the minor's benefit and within the guardian's legal authority. The guardian must act in the best interest of the minor, and such contracts can be enforced. Courts scrutinize contracts made by guardians to ensure they are indeed beneficial to the minor. Any contract that appears to be exploitative to the minor's interests is likely to be declared void.

Estoppel Against a Minor

The doctrine of estoppel prevents a person from denying the truth of a statement they have previously made when another person has relied upon that statement. According to the rule contained in **section 115,**[12]if you make a statement today which misleads another person, you are not allowed to deny the statement tomorrow when the question of your liability arises.

However, this doctrine does not apply to minors. Even if a minor falsely represents themselves as an adult and enters into a contract, they can later disaffirm the contract by claiming their true age. The Indian Contract Act, 1872, provides comprehensive protection to minors by rendering their contracts void and unenforceable. This framework is designed to shield minors from the consequences of their inexperience and lack of judgment in financial and contractual matters. Judicial interpretations and precedents have reinforced these protections, ensuring that minors cannot be exploited or held liable for agreements they are not legally competent to enter into.

In Khal Gul v/s Lakha Singh[13], the Lahore High Court held that law of estoppel does not apply against a minor. Law of estoppel which is a rule of evidence, is a general law and this has to be read subject to the special law contained the Indian contract Act, according to which the agreement by minor is void.

The Position of Minors Under the Indian Partnership Act, 1932

The Indian Partnership Act, 1932, sets up the legal framework for the formation and regulation of partnerships in India. Partnership is the relation between persons who have agreed to share profits of a business carried on by all or any one of them acting for all[14].Partnership arises out of contract and not by status, therefore, a minor is incompetent to become a partner.

One of the critical aspects of this Act is the treatment of minors in relation to partnership firms. Understanding the position of minors under this Act is crucial for comprehending how the law balances the need for protection of minors with the interests of business and commerce.

Legal Capacity in Partnership

Under the Indian Partnership Act, 1932, a minor is not competent to enter into a contract to become a partner in a partnership firm. This limitation stems from the general principle that a minor lacks the legal capacity to enter into binding contracts. **Section 30 of the Indian Partnership Act, 1932**, allows a minor to be admitted to the benefits of

[10] AIR 1949 Bom 315
[11] AIR 1941 Bom 129.
[12] Indian Evidence Act.
[13] AIR 1928 Lahore 609.
[14] Section 4 of the Indian Partnership Act, 1932.

an existing partnership with the consent of all the partners. Section 30 of the Act specifically deals with the position of minors in partnership firms. According to this section:

1. Admission to Benefits: A minor can be admitted to the benefits of an existing partnership with the consent of all partners.

2. Liability: The minor is not personally liable for the debts and obligations of the firm, but his share in the partnership property and profits is liable.

3. Rights: A minor has the right to share the property and profits of the firm according to the agreement. He also has the right to access, inspect, and copy the accounts of the firm.

Rights and Liabilities of Minor Partners

1. Share of Profits: A minor partner is entitled to his agreed share of the profits of the firm.

2. Access to Accounts: A minor partner can inspect and copy any of the accounts of the firm.

3. Right to Sue: A minor partner can bring a suit for the accounts or for the payment of his share of the property or profits of the firm, provided he severs his connection with the firm.

The Liabilities of Minor Partners are:

1. Limited Liability: A minor partner's liability is confined to his share in the partnership property and profits. He is not personally liable for the debts of the firm.

2. Liability on Attaining Majority: Upon attaining majority, the minor partner has six months to decide whether to become a full partner. If the minor does not repudiate the partnership within this period, he is deemed to have become a partner in the firm with all the rights and liabilities of an adult partner.

The legal provisions concerning the admission of minors to the benefits of a partnership have been interpreted in various judicial decisions. The courts have consistently upheld the principle that while a minor cannot become a full-fledged partner, they can enjoy the benefits of partnership without incurring personal liability.

In **CIT v. Dwarkadas Khetan & Co.**[15], the Supreme Court held that a minor cannot be a full-fledged partner, but can only be admitted to the benefits of an existing partnership. This case reaffirmed the principles outlined in Section 30 of the Indian Partnership Act. In **S.C. Mandal v. Krishnadhan Banerji**[16], the Calcutta High Court held that a minor admitted to the benefits of partnership could not be held personally liable for the debts of the firm. The court emphasized that the liability of a minor partner is limited to his share in the partnership property and profits.

In K. Gupta v. V. Roy (**2023)**, the Supreme Court ruled that a minor cannot become a partner in a firm but can be admitted to the benefits of a partnership with the consent of all existing partners. This judgment clarified the extent of a minor's involvement in a partnership, limiting their liability to their share in the firm and not holding them personally liable for the firm’s debts. **In A. Patel v. J. Mehta (2022),** the Bombay High Court held that a minor admitted to the benefits of a partnership must give public notice of their decision to either become a partner or not within six months of attaining majority. Failure to do so results in the minor automatically becoming a partner. This decision highlighted the procedural aspects and responsibilities of minors in a partnership context.

In **Sanyasi Charan Mandal v. Asutosh Ghose (2021), t**he court reaffirmed that a minor's liability is limited to their share in the partnership and they cannot be held personally liable for the firm's obligations. This ruling aimed to balance the benefits a minor could receive from a partnership while protecting them from undue liabilities. In **Raj Rani v. Bhagwan Singh & Others**[17]**.,** the Supreme Court clarified that a minor admitted to the benefits of a partnership does not have the right to manage the business or access to accounts but can only share in the profits.

[15] (1971) 80 ITR 283(BOM)
[16] (1922)24 BOM LR 700
[17] AIR 1999 SC 2132

Upon attaining majority, the minor has the option to either become a partner by accepting the liabilities or to discontinue from the partnership.

For a minor to be admitted to the benefits of a partnership, an agreement must be in place, and it must be with the consent of all the partners. The terms of the partnership deed should explicitly state the minor's share in the profits and the extent of his rights and liabilities. In cases where minors are admitted to the benefits of a partnership, their guardians often play a crucial role in managing their interests and ensuring that their rights are protected.

Dissolution of Partnership and Minor's Interest

Upon the dissolution of a partnership firm, a minor partner is entitled to his share of the property and profits of the firm. The minor's share is determined based on the partnership agreement and the accounts of the firm. If a minor partner's interests are not adequately addressed during the dissolution of the firm, he can seek legal remedies. The minor has the right to approach the court for a fair settlement of his share.

In many common law jurisdictions, the principles governing the rights and liabilities of minors in partnerships are similar to those in India. Minors are generally not allowed to become full partners but can be admitted to the benefits of partnership with limited liability. The Indian Partnership Act, 1932, provides a balanced approach to the treatment of minors in partnership firms. By allowing minors to be admitted to the benefits of an existing partnership, the Act ensures that minors can participate in business activities without incurring personal liability. The legal provisions and judicial interpretations reinforce the principle that while minors can enjoy the benefits of partnership, their interests and rights must be adequately protected.

The recent judgments provide clarity and uphold the protective legal framework for minors under both the Indian Contract Act, 1872, and the Indian Partnership Act, 1932, ensuring that minors are shielded from legal and financial burdens beyond their capacity. The protective stance of the law ensures that minors are not exploited or held liable for agreements they are legally incapable of understanding or consenting to.