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Law of Minor Agreements – Time ripen for change

Ayush Kumar^a

^aHidayatullah National Law University, Raipur, India

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The paper deals with the intricacies of agreements with minors, which includes firstly, the validity of these agreements. The law on the face of it says that an agreement with a minor is void and the paper discusses this conundrum with the help of two landmark cases namely Mohori Bibee V Dharmodas Ghose and Mir Sarwarjan V. Fakbruddin Mahomed Chowdhary. Further, the paper delves into the after-effects of these agreements. The issues discussed here are estoppel against a minor and the liability of tortuous activities that arise from a contract with a minor. The next thing dealt with is the contract that is made for the benefit of minors. This paper also deals with the recourse that a person has when a minor falsely misrepresents his age and enters into a contract. This process of restitution is dealt with in detail. In the conclusion part, the paper analyzes the loopholes subsisting in the legislation. It also provides for the changes that would be helpful in alleviating the situation.

Keywords: *minor, agreement, contract.*

INTRODUCTION

The journey of a statement becoming an agreement and that in turn becoming a contract is quite complex. There's a hierarchy that is supposed to be followed. The starting part of any agreement is a proposal or the willingness to enter into a contract. According to section 2(a) of the Indian Contract Act, 1872, "A person is said to make a proposal if he is willing to do something or to abstain from doing something in order to take the assent of the person to

whom he is offering.”¹ After the proposal is made, it is very important for the person to whom the proposal is made to give his assent to it and that converts the proposal to promise.² This is illustrated in section 2(b) of the ICA, 1872, “A person to whom the offer is made is said to accept the offer if he gives his assent thereto.”³

After the offer is converted into a promise, there has to be a consideration that has to flow from each party in relation to the accepted offer. This is given in section 2(d) of the ICA, 1872, which reads "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."⁴ After the fulfillment of all these criteria's a mere proposal becomes an agreement. This is given in section 2(e) of the ICA, 1872, "Every promise and every set of promises, forming the consideration for each other, is an agreement."⁵ For an agreement to become a contract there're certain requirements that are to be fulfilled. Section 10 of the ICA, 1872 provides for the same. According to the section 10 “All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”⁶ The interpretation of this article clearly demarcates that if even one of the criteria is not fulfilled the agreement becomes unenforceable.

VALIDITY OF AN AGREEMENT WITH MINOR

Agreements with minors are generally considered to be *void ab initio*. This essentially means that agreements are unenforceable from the starting and this is due to the fact that minors fall under the category of people who are not competent to contract. This is provided in section 11 of the ICA, 1872, which says, “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

¹ Indian Contract Act 1872, s 2(a)

² *Ibid*

³ Indian Contract Act 1872, s 2(b)

⁴ Indian Contract Act 1872, s 2(d)

⁵ Indian Contract Act 1872, s 2(e)

⁶ Indian Contract Act 1872, s 10

contracting by any law to which he is subject.”⁷ Section 10 of the ICA provides that the parties should be competent and section 11 says that minors are incompetent. There is no mention of the nature of the agreement with a minor expressly.⁸

This conundrum was first solved in the case *Mohori Bibee v Dharmodas Ghose*.⁹ The facts of the case were such that the respondent i.e., Dharmodas Ghose (minor) was the owner of an immovable property and he mortgaged that property in favor of Bhramo Dutta (plaintiff) for 20000 at a 12% interest rate. An advance payment of 10500 was done by the plaintiff. Despite knowing the fact that the respondent is a minor the contract was commenced. So, consequently, the respondent along with his mother filed a suit claiming the contract to be void.¹⁰ The judgement pronounced by all the three hierarchical courts was the same. The trial court was of the opinion that since the contract was commenced despite knowing the minority of the respondent amounts to the contract being void as per section 11 of the ICA. In his judgement Sir Lord North of the privy council was of the opinion that section 11 of the ICA 1872 clearly demarcates that the parties entering into the contract should be competent and it also clearly says that a minor is not competent to enter into a contract.¹¹ The question of whether the contract is void or voidable is baseless considering the fact that it presumes that the contract exists. In the case of minors, the state of an agreement becoming a contract is never achieved. In the research paper *Paternalism and the Law of Contracts*, this fact has retreated that the preconceived notion that a person is the best judge of himself is not applicable when dealt with minors.¹²

Another landmark case related to the agreements with the minors is *Mir Sarwarjan v Fakhruddin Mahomed Chowdhary*.¹³ The facts of the case were such that a guardian made a contract on behalf of a minor to sell certain immovable property. The minor referred to above sued the other party pleading minority. The court was of the opinion that a person

⁷ Indian Contract Act 1872, s 11

⁸ *Ibid*

⁹ *Mohori Bibee v Dharmodas Ghoshe* (1903) ILR 30 Cal 539 (PC)

¹⁰ *Ibid*

¹¹ *Ibid*

¹² Anthony T Kronman, ‘Paternalism and the Law of Contracts’ (1988) 92 Yale LJ 763, 786

¹³ *Mir Sarwarjan v Fakhruddin Mahomed Chowdhuri* (1912) 14 BOMLR 5

whomsoever it may be, can't enter into a contract on behalf of a minor.¹⁴ This judgment was overruled in the case *Sirkakulam Subramanyam v Kurra Subba Rao*.¹⁵ It was said that a guardian can enter into a contract on behalf of the minor and in this case the guardian being the mother, was allowed to enter into the contract on behalf of his son. The contract was for discharging the debt of his father. ¹⁶ Lord Morton in this case was of the opinion that section 11 clearly shows that a minor cannot enter into a contract if his/her guardian is not involved in it on behalf of the minor.

MINOR AGREEMENTS AND ITS EFFECTS

An agreement with the minor is void. So, ideally, if there is no contract there shouldn't be any effects of it. Obligations that arise out of the agreement with the minor are supposed to be dealt with independent from the parent agreement.

Another point that arose of the agreements with minors was that could there be estoppel against a minor? To put this a simpler way, could he plead infancy as a defense after misrepresenting his age in an agreement. This question was answered in a case named *Kanhyalal v Girdharilal*. It was held in this case that there can't be an estoppel against a minor.¹⁷ An infant can't be prevented from pleading minority even if he misrepresents his age. The law is of opinion that a minor should be protected from any kind of liability arising out of an agreement. Also, an estoppel can't be against a policy established by law.¹⁸ This was further reinstated in the case *Gadigeppa Bhimappa Meti v Balangowda Bhimangowda*,¹⁹ before the Bombay high court.

The minor is also not liable for any tortuous activity arising out of the contract. A minor is supposed to be incapable of consenting to an act or abstinence. This was first discussed in

¹⁴ *Ibid*

¹⁵ *Sirkakulam Subramanyam v Kurra Subba Rao* (1948) 50 BOMLR 646

¹⁶ *Ibid*

¹⁷ *Kanhyalal v Girdharilal* 13 Ind Cas 956

¹⁸ *Ibid*

¹⁹ *Gadigeppa Bhimappa Meti v Balangowda Bhimangowda* (1931) 33 BOMLR 1313

England in 1665, in a case named *Johnson v Pye*.²⁰ The facts of the case were such that a minor obtained a certain sum of money as a loan by falsely representing his age. In the judgment, it was said that the minor aforementioned can't be compelled to repay the money back to the other person.²¹ Also, it was held in *Jennings v Rundall* that just for punishing a minor, a contract cannot be converted into a tort.²² But there should a clear distinction as to whether the action is arising out of a tort is merely connected to the contract or the action arising is directly connected to the contract and has the means of affecting it. This was verified in a case named *Burnard v Haggis*.²³ The facts of the case were such that a minor borrowed a horse for riding stating that he won't use it for jumping. He then lent that horse to a friend who used it for jumping and as a result, the horse got killed. The minor was held liable for this tort citing the reason that the act did was not under the purview of the contract.²⁴

CONTRACTS FOR THE BENEFIT OF MINOR

In the *Mohori Bibee case*, it was held that a minor entering into an agreement is considered to be absolutely void. This judgement is followed to date but the boundaries of the cases have become smaller that can be subjected to the order given in the aforementioned case i.e., the cases which involve a minor being subjected to obligations that the other party seeks to enforce against the minor. The current scenario is such that a minor cannot be subjected to fulfillment of obligations of his side but if the contract is for the benefit of the minor he can enter into the contract. This was dealt with in a case named *Raghav Chariar v Srinivasa*,²⁵ by a full bench of the madras high court. The facts of the case were such that there was a mortgage in the name of a minor, who afterward supplied the whole money back. Resolving the conundrum of whether the contract can be enforced by the minor or anyone on his behalf, the court said that the very fact that minors are considered incompetent to enter into a contract is to provide protection for them. Now, if in a contract the minor or anyone on his behalf has parted with money and they

²⁰ *Johnson v Pye* 110 Tex 572, 222 SW 153

²¹ *Ibid*

²² *Jennings v Rundall* (1799) 8 Term Rep 335

²³ *Burnard v Haggis* (1863) 143 ER 360

²⁴ *Ibid*

²⁵ *Raghav Chariar v Srinivasa* 36 Ind Cas 921

are not allowed to enforce the contract then it would totally defeat the purpose of safeguarding the interest of the minor.²⁶ The same view was given in a judgment by the Bombay high court. The bench was of the opinion that if the other party pleads the defense of the minority of the 1st party and that party has already done its performance then the other party can't make the contract void as it would prove to be detrimental to the minor.

Applying the same principle, we can draw that a minor is very much capable of entering into an agreement for the purchase of immovable property and can also thereafter sue the other party for gaining possession of the property. In this regard, it was held in *Jyakant Harikrishna Shah V. Durgashankar Vilji Pandya* that a lease is not covered under the transfer of property bracket consequentially a minor can't enter into an agreement for a lease.²⁷

Another landmark case that dealt with the contract that is beneficial for the minors was *Raj Rani v Prem Adib*.²⁸ The facts of the case were such that the plaintiff, who was a minor, was allotted a role of an actress in a particular film by the defendant (a film producer). Considering the fact that the plaintiff was a minor, the contract was made between the father and the producer. In the turn of events, the role was taken from the plaintiff and given to another individual and due to this the contract between the father and the producer became void.²⁹ Now the father of the plaintiff moved to the court contending that the contract was for the benefit of the minor and with the producer not performing his part, should be ordered to pay the damages. The bench of Bombay High Court was of the opinion that neither the plaintiff nor her father can sue the producer for the damages, the reason being that if the contract is supposed to be with the father, then there is no consideration from his part making the contract void on account of lack of consideration and if the contract is supposed to be entered by the minor, then it is void on account of her being incompetent to enter into the contract. The

²⁶ *Ibid*

²⁷ *Jyakant Harikrishna Shah v Durgashankar Vilji Pandya* AIR 1970 Guj 106

²⁸ *Raj Rani v Prem Adib* (1949) 51 BOMLR 256

²⁹ *Ibid*

court also added if the consideration would have flowed from the plaintiff's side then the court would have ordered the restitution.³⁰

RESTITUTION IN CASE OF AGREEMENTS WITH MINOR

A minor can be forced to restore the goods or property that he has taken from the other party after falsely representing his age, but only to an extent that the goods are under the tracing limits. This is widely known as the equitable doctrine of restitution. If the minor has converted or sold the goods then he can't be forced to restore the goods or to repay. This is so because it would amount to enforcing a contract that is void in nature. There is also a clause for the equitable doctrine of restitution i.e., if the minor had obtained cash rather than any goods then this doctrine won't apply in that particular case. This was also established in a landmark case named *Leslie (L) Ltd v Sheil*.³¹ The facts of the case were such that a minor took a loan of 400 Euros from a moneylender after falsely representing his age. The plaintiff was under the misconception of the respondent being an adult. While dealing with the case, LORD SUMMER was of the opinion that considering the fact that the money obtained by the respondent has been used, ordering the respondent to repay the money back would be equivalent to enforcing a void contract.³²

LOOPHOLES IN AGREEMENTS WITH MINORS

The stand of agreements involving minors in India is not very firm. There are a lot of loopholes in the ICA 1872 regarding the competency of minors. ICA, 1872 clearly says that minors are not competent to contract and this was also testified in the *Mohori Bibee judgement*,³³ in which it was said that a contract with a minor is *Void ab Initio* i.e., it can't be established in the first place. Another issue regarding the undue benefits that the minors are given in these scenarios was raised. This issue was discussed in a case named *Khan Gul v Lakha Singh*.³⁴ This case was basically related to the extent of relief that a part can be given in case a minor does a

³⁰ *Ibid*

³¹ *Leslie (L) Ltd v Sheil* 1914 3 KB 607

³² *Ibid*

³³ *Mohori Bibee* (n 9)

³⁴ *Khan Gul v Lakha Singh* AIR 1928 Lah 609

fraudulent behavior and gains undue benefit. The facts of the case were such that the minor (respondent) entered into a contract with an adult to sell a plot of land after misrepresenting his age. He received a consideration of Rs 17500 and afterward, he abstained from performing the contract. The plaintiff on account of deserting the contract went to the court for the refund of consideration. The judges were of the opinion that the ICA, 1872 doesn't contain concrete information on whether the minor should be ordered to refund the money or not. Regarding sections 31³⁵ and 33 of the Specific Relief Act,³⁶ the court opined that minors cannot be allowed to reap the fruits of their fraudulent behavior. Accordingly, repayment of consideration was ordered. The Allahabad high court in another case dissented with the *Khan Gul* judgement.³⁷

³⁵ Specific Relief Act 1963, s 31

³⁶ Specific Relief Act 1963, s 33

³⁷ *Khan Gul* (n 34)