Introspection of Necessaries Contract for Minor Under the Indian Contract Act

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Abstract

Section 11 of the Indian Contract Act, 1872 specifies the competency of a person to enter into contract, on the basis of his/her age, mental lucidity and his/her not being forbidden by statutes of the nation. Technically, these parameters build up the capacity to get into a commercial deal, decided by the statutes and judicial decisions as well. But do the provision is said to be refraining or preventive? Agreement with a minor or lunatic is not exactly refraining rather it preserve them from being cheated. The minors are always unable to understand what is good and fair for them. They are very often exploited, and their benefits and assets may be taken away. Law provides that the court should be careful and protect them and safeguard their properties against unwanted interference into their interests because of their lack of maturity and experience. But minor can be placed as a beneficiary in any deal he enters into. Statute further decides minor's liability especially when necessaries are supplied to him/her. Contract obligation so constituted possesses several fundamental features that distinguish it from adjacent forms of private obligation recognized by law, including in particular tort obligation on the one hand and fiduciary obligation on the other.

Keywords: Contract, Minor, Lunatic, Competency, Necessaries

Introduction

Legal capacity is the attribute of a person who can acquire new rights, or transfer rights, or assume duties, according to the mere dictates of his own will, as manifested in juristic acts, without any restraint or hindrance arising from his status or legal condition. Competency is all about his/her ability; qualification; legal power or right. Attribute of persons either being natural being or artificial, evolving out of their status or juristic condition, enables them to perform civil acts; as capacity to hold lands, capacity to devise, to sue and alike acts. This, according to Black’s Law Dictionary, is how one could define capacity. In simpler terms:

In every case of a valid contract there must be assent of the parties. But a man cannot be said to assent that he will be bound, unless he be endowed with such a degree of reason and judgment as will enable him to comprehend the subject of negotiation. Hence it is, that the assent which is requisite to give validity to a contract, necessarily presupposes a free, fair and serious exercise of the reasoning faculty; or, in other words, the power, both physical and moral, of deliberating upon and weighing the consequences of the engagement about to be entered into. If, therefore, either of the parties to an engagement be absolutely deprived of the use his understanding, or if he be deemed by law not to have attained to it, there can in such a case be no aggregaitomentum (agreement) and, consequently, no agreement which shall bind him. The rule of law, therefore, which requires the assent of the parties to a contract, assumes that such assenting parties shall be competent to contract; and accordingly, in order to there being a valid contract, a capacity to contract is absolutely necessary. The contract by a lunatic is void. The subordinate Judge is a Person and is capable of entering into a contract. Adult pardanashin women of sound mind
are sui juris and must not be treated as though they were minors and were incapable through mental deficiency in conducting their own business.

Illness may prevent a person from electing an agreement but does not prevent a transfer by others in his favour as he is a passive party. The competency laid down by section 11 is indispensable for the formation of an agreement which may become the embryo of a contract, and unless it is present in both parties the result is infertility. Such competency is a personal qualification.”

**Contract for Necessaries for Minor under Indian Contract Act:**

The Indian Contract Act, 1872 as per its Section 11 specifies the competency of a person to enter into a contract, it states “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.”

**The Status of a Minor**

The section 3 of the Indian Majority Act, 1875 provides for the age of majority. “A person who has attained the age of 18 is considered to be major.

Age of majority of persons domiciled in India -

1. Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.
2. In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.”

**Nature of Minor’s Agreement**

It is pertinent to understand that the nature of agreement of minor, the competency of minor was decided in 1903 in the case of *Mohori Bibee v. Dharmodas Ghose* the set the precedence for the rule which renders a minor incapable of binding himself in a contract.

The facts of the case are as follows-

“Dharmodas Ghose, the plaintiff, being a minor mortgaged his property to secure loan in the favour of the defendant, Brahmo Dutt, a money-lender. The attorney who acted on behalf of the money-lender knew that the plaintiff was a minor. An action was brought against Brahmo Dutt by the minor contending that the execution was done when he was a minor and thus the same stands void and should be called off. In his defence, the executors of the money lender contended that minor had fraudulently misrepresented his age and law of estoppel should be applied against him and the amount should be refunded if the agreement is cancelled, the issues which discussed were as follow:

(i) “Whether the deed was void under section 2, 10 and 11 of the Indian Contract Act, 1872 or not?
(ii) Whether the defendant was liable to return the amount of loan which he had received by him under such deed or mortgage or not?
(iii) Whether the mortgage commenced by the defendant was voidable or not?”

In the judgement of the Privy Council, their Lordship took into account the sections 2, 10 and 11 of the Indian Contract Act (1872), held that it is fundamental in the act that all contracting parties should be competent to contract, and explicitly provided that a person who by reason of minority is incompetent to contract can’t make a contract within the meaning of the Act. They likewise observed various other provisions of the same Act to call attention to void character of a contract by a minor.

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1 Manupatra Commentaries, Commentary on Section 11 of the Indian Contract Act
2 https://www.indiacode.nic.in/bitstream/123456789/2187/1/A1872-9.pdf
3 The Indian Majority Act, 1875
4(1903) 30 I.A. 114 (P.C.)
Section 68 of the Indian Contract Act, states that if a person incapable of entering into a contract or any one whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. Thus, it is clear from the Act that a minor is not liable even for necessaries, and that no demand with respect to the same is enforceable against him by law, though a statutory claim is created against his property.\(^6\)

The case was decided by the Privy Council while rejecting the defendant’s arguments, decided that there cannot be a contract with a minor by a major person and any contract as such is void ab-initio. The development of the rule began with the above mentioned case.

The Contract Act requires that the person who will be the party to the contract must be at least 18 years old and above, should be a person of sound mind and not disqualified otherwise by any other law. We can garner from this that a minor, that a person below the age of 18, cannot enter into a contract as per the law.

It is the rule of law that an infant is incapable of binding himself by a contract, such contract are void-ab-initio. So, a contract with a minor is considered null and void and neither party can impose it, these agreements cannot be ratified even after attainment of majority.

Minority stands as a defence for minor in a suit against him, so the principle of Estoppel cannot be procured against the minor. A minor cannot be obliged to fulfil the promise, which he made during his minority. For example, If A, a minor visit a shop and buys a mobile phone on a promises to the shopkeeper that he will pay when he attains majority, such promise is void as a minor is incompetent to enter into a contract as per the law, no suit can be proceeded against A and he cannot be forced to pay for the same when he attains majority.

The principles that guide the law of minor’s agreement are mainly

a) Providing protection to an infant against any dishonest agreements and manipulations by anyone.

b) To protect the minor from his own immaturity as it is presumed that he doesn’t understand the outcome of his activity.

Effects of Agreement with Minor:

The minor’s agreement can be recognized as follows-

i. Principle of Estoppel: As observed in “Sadiq Ali Khan v/s Jai Kishori” a deed was executed by the minor in the favour of the plaintiff who was ignorant of his minority. In this case the minor represented himself as a major; however by applying the doctrine of estoppel, the court through the law of contract provided protection to the minor even though his actions were fraudulent.

ii. Doctrine of Restitution: This doctrine works on the law of restoring to the rightful person his rights. However, in case of minor, he cannot be held liable to restore for the benefits he had received. Although it has been observed that if a minor dishonestly or fraudulently misrepresents his age then the court may order restoration of such property to the owner. This doctrine would not be applicable in the case where the infant secured cash instead of good.

If we read the case of Leslie v/s Sheil\(^8\) “which is considered as the first leading case in which Lord Summer observed that:

- Infant can’t be held liable for a wrong when the cause of action is ex contractu or is so directly connected with the contract that it would be an indirect way of enforcing the contract. But, if the wrongful act though connected with the subject matter of the contract, yet is independent of it in the sense of not being an act contemplated by it, then infant can be liable.”\(^9\)

\(^6\)“http://lawtimesjournal.in/mohori-bibee-ant-vs-dharmodas-phose/”

\(^7\) 30 Bom.L.R.1346

\(^8\) (1914) 3 KB 607

\(^9\) http://alegaldictionary.com/capacity://indiancaselaw.in/leslie-ltd-v-sheill/
• Restitution stopped where repayment began\textsuperscript{10}

**Exception to Rule of Minor’s Agreement:**

There is an exception to the general rule of void agreement with agreement such rule is Beneficial Contracts and Claim for Necessaries for person incapable under Section 68 of the Act. A minor is legally obliged to pay for the necessities supplied to him/her.

In the case of Chapple v. Cooper\textsuperscript{11}, it was held that necessities are not only basic needs of food, housing or clothes it also extends to education or sacred pious duties and anything which is necessary for life.

**Section 68** “Claim for necessaries supplied to person incapable of contracting, or on his account.—If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.”\textsuperscript{12}

**Necessaries:**

**What are Necessaries?**

As per the Merriam Webster’s dictionary-“Necessaries means goods or services delivered to a minor that are considered by reference to his or her circumstances to warrant holding the minor to a contract for them despite an attempt to disaffirm it.”\textsuperscript{13}

In Chapple vs. Cooper\textsuperscript{14}, Alderson B stated necessaries excludes the articles of mere luxury, for providing necessaries factors such as the society, the class, the situation i.e. the nature and the extent should be kept in mind.

Necessaries include basic needs, items and services that are crucial for minor’s health and safety. Under the Contract Act, 1872 in order to make a minor liable for necessities, there are two conditions which must be fulfilled, these are –

1. That such contract is necessary goods which will reinforce the minor in his life.
2. That the minor should not already possess such necessaries.

Under the English Law, the Sale of Goods Act, “1979 under Section 3 provides:

(2) Where necessaries are sold and delivered to a minor or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price for them.

(3)In subsection (2) above necessaries means goods suitable to the condition in life of the minor or other person concerned and to his actual requirements at the time of the sale and delivery.”\textsuperscript{15}

It is important to understand by the above meaning and definitions that necessaries is not restricted to basic food clothing and shelter but it also extends to other articles which upholds the life of a minor. Necessaries can also be accounted as the services provided to a minor, it might also at times extend to automobiles. It is important to observe the socio-economic, physical and mental capacity of the minor to provide him under Section 68 of the Act. As per the Indian Contract Act, there is no accurate definition of what necessaries add up to, however, the meaning of it can be understood through various dictums and judgements of Courts.

In Kunwarlal v/s Sarajmal\textsuperscript{16} it was observed that a house which had been rented to a minor in order to live and continue his studies comes under the umbrella of necessities supplied to the minor, such rent for the house is liable to be recovered by the minor.

\textsuperscript{10} ibid
\textsuperscript{11} 6. (1844) 153 ER 105.
\textsuperscript{12} https://www.indiacode.nic.in/bitstream/123456789/2187/1/A1872
\textsuperscript{13} https://www.merriam-webster.com/legal/necessaries
\textsuperscript{14} supra
\textsuperscript{15} https://www.legislation.gov.uk/ukpga/1979/54/section/3
\textsuperscript{16} Kunwarlal D. Singh vs Surajmal Makhanlal and Ors. on (1961) AIR 1963 MP 58
In the case of *Meenakshisundaram v. Rang Ayyangar*\(^\text{17}\), the court held that amount of money which advanced for necessary purpose can be treated as money advanced for necessaries within the meaning of section 68 of the Indian Contract Act, 1872.\(^\text{18}\)

It is pertinent to note that the law while applying the doctrine of unjust enrichment specifically provides for necessaries reason being that any person who thought that a minor could easily get away from his promise or contract, then that render the person or trader unpaid and thus, they will resist entering into any contract with minor for necessaries as well.. It was observed in the case of in the case of *Jagon Ram Marwari vs Mahadeo Prasad Sabu* that “the question as to what are necessaries, is a mixed question of fact and law.” \(^\text{19}\)

In *Shyam Charan Mal vs. Choudhary Debya Singh*\(^\text{20}\) It was observed by the court in the case where money has been executed for the purpose of minor’s defence. The court stated that “The liberty of the minor being at stake, the money advanced must be taken to have been borrowed for necessaries.”

**Conclusion:**

Thus from the view expressed above we can infer that the intent of the legislation is to protect the minor from his own immaturity and from the any manipulation which is from any person wishes to take advantages for the immaturity of a minor. In Dharmodas Ghose case\(^\text{21}\) the court points out that there was no need to pay special relief as the appellant knew that they were contracting with a minor. Thus, it is presumed that person making an agreement with the minor has to be cognizant before making a agreement with the minor. The court also observed by applying the principle of equity that one who seeks equity must do equity (cannot take advantage of your own faults). However, the Act provides for exceptions to its own rule, this again is based on the doctrine of equity. The exception to the rule gives the minor a freedom to enter in contract for his necessity which might also extend to services, education and clothes as well as it protect the interest of the lender, mortgagee or any person who provides for such necessaries without the fear of being at loss. The court has harmonised the legislation with the doctrine of equity through its multiple dicta.

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\(^{19}\) (1909) I.L.R 36 Cal 768
\(^{20}\) (1894) I.L.R 21 Cal 872
\(^{21}\) ibid

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