

Capacity to contract

introduction

One of the essentials of a valid contract, mentioned in Section 10 of the Indian Contract Act,, is that the parties to the contract should be competent to make the contract. According to Section 11: "Every person is competent to make 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."

It means that the following three categories of persons are not Competent to make contract

1. A person who has not attained the age of majority, i.e. one who is a minor
2. A person who is of unsound mind
3. A person who has been disqualified from contracting by Some law.

Position of minor

A minor is one who has not attained the age of 18, and for every contract, the majority is a condition precedent. By looking at the Indian law, minor's agreement is a void one, meaning thereby that it has no value in the eye of the law, and it is null and void as it cannot be enforced by either party to the contract. And even after he attains majority, the same agreement could not be ratified by him. Here, the difference is that minor's contract is void/null, but is not illegal as there is no statutory provision upon this.

Mohiri Bibi v. Dharmodas Ghosh

The case goes back to the year 1903 in which, for the first time, the Privy Council held that a minor's contract is void-ab-initio that it is void from the beginning

Facts of the case – the plaintiff Dharmodas Ghosh, when he was a minor, mortgaged his property to the defendant, a moneylender. At that time, defendant's attorney had the knowledge about plaintiff's age. The plaintiff later paid only Rs 8000 but refused to pay rest of the money. The plaintiff's mother was his next friend (legal guardian) at that time, so he commenced an action against the defendant saying that at the time of making of a contract, he was a minor, so the contract being a void one, he is not bound by the same.

The court held that unless the parties have competence under Section 11 of the Act, no agreement is a contract.

Effect of minor's agreement

- **No liability arising out of either tort/contract:** A minor is incapable of giving consent, and the nature of minor's agreement is a nullity and cannot be enforced
- **Restitution of benefit:** According to Section 64 of the Indian Contract Act, when a person at whose option a contract is voidable rescinds it, the other party need not perform it. This applies to contracts that are voidable, but a minor's contract is void, and therefore, he cannot be asked to refund the amount money to the moneylender.

exceptions

When minor has performed his obligation: In a contract, a minor can be a promisee but not a promisor. So if the minor has performed his part of the promise, but the other party hasn't the minor being in the position of a promisee he can enforce the contract

A contract entered into by guardian of minor for his benefit: In that case, a minor can sue the other party when it does not perform its promise. In the case of *Great American Insurance v. Madan Lal* [\[1\]](#) the guardian on the behalf of her son entered into an insurance contract in respect of fire for the minor's property. When the property was damaged and minor asked for the compensation, the insurer denied it by saying that a contract with a minor is a void one. But later the court held that this contract was enforceable, and he is liable to pay compensation.

Necessities supplied to minor

If a person is incapable of entering into a contract is supplied by another person with necessities of life, the person who has supplied is entitled to get reimbursement from the property of such incompetent person, including a child as well. But if the minor has no property of his own, then he cannot be bound to reimburse the other person.

Kuwarlal v. Surajmal: Regarding necessities provided to minors it was held that the house given to a minor on rent for living in it and to continue his studies is part of necessities, and therefore he is entitled to payment of rent from minor's property.

Can a minor be a partner

The way of a contract creates a partnership, and the essential of a contract is that the both the parties should be of the age of majority. However, as an exception as per Section 30 of the Partnership Act is that with the due consent of all the partners, the minor can be admitted to the benefit of partnership for the time being. But he will not be liable for any of his acts.