
CAPACITY TO CONTRACT: WITH A FOCUS ON THE POSITION OF MINORS IN THE INDIAN CONTRACT ACT

Karan Kaul, Jindal Global Law School

ABSTRACT

Minors in any society are a class of individuals that deserve certain safeguards and institutional protections. This paper will be divided into three sections. The first part consists of the introduction of the concept of capacity under the Indian Contract Act along with its statutory standing. In the second part, I will give my analysis as to why the concept of protection of minors should hold the highest importance as part of a contract through various case laws which have described its applicability within India and my opinions on the same. In the final part of the paper, I will provide my concluding remarks.

I - Introduction

An agreement that can be a contract as defined by §10. of the Indian Contract Act¹ if broken up into parts can be categorized as one if² (i) there being an existence of competent entities (ii) there being consent between the entities; (iii) the consent in question is not coercive and is free by nature; (iv) consideration (v) the lawful nature of the object and consideration; and (vi) that said agreement is not void under the law.

For the purposes of this paper, I will be largely focusing on (i). That is the aspect of competency or capacity of an individual to enter a contract. When we discuss the concept of the ability to contract, I also must pay heed to why contracts are important in society. The freedom to and from a contract have been seen as twin liberal values³ in the modern day and I find myself

¹ The Indian Contract Act 1872, “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.” This specific wording helps us derive that there are certain tenants that constitute a valid contract.

² Pollock & Mulla: The Indian Contract and Specific Relief Acts, 16th ed

³ Randy E. Barnett, Some Problems with Contract as Promise, 77 Cornell L. Rev. 1022 (1992)

agreeing with this proposition quite strongly. For I believe that we would to a degree be a havoc-wreaked society if we are not bound by contracts, whether to the state or one another. A very interesting definition of contracts that I came upon during my research was that of Prof. Charles Fried⁴. I do not necessarily agree wholistically with this idea and definitions, but I feel it also encompassed to some extent a very stripped-down essence of what it might mean to enter a contract. To paraphrase his definition; an agreement based on trust, to become a promise where the parties in question have a strong commitment to do what's written on the contract.

Apropos this, I come back to how I believe these notions have been embodied within Indian Statutes through §11 and §12 of the ICA 1872. These will remain the two tenants of my focus to show why the concept of capacity must be given the most importance in a contract.

II - Capacity

A reading of §11 of the ICA very categorically tells us the individuals that it presumes to have the capacity or competency to enter a contract. Three distinct categories of competent individuals arise. These are (i) Persons who have attained majority; (ii) persons of sound mind (iii) persons not disqualified from the law. I believe that these are all reasonable conditions and as we will see have also had some exceptions placed within the statutes themselves through established case law. From these, one is also able to deduce the categories of persons who cannot enter a contract.

I. Minors

One of the foremost cases that depict the importance of protection for minors in agreements is that of *Mohori Bibee v/s Dharmodas Ghose*⁵, The facts of the case were such that Minor Dharmodas mortgaged his property in favour of Defendant/money lender Brahma Dutt to secure a loan of 20k. At the time of the transaction, the attorney acting on behalf of the money lender knew that Plaintiff is a minor. 10.5k was advanced as a loan. Plaintiff brought an action against Defendant stating he was a minor when the mortgage was executed. The important ruling that arose out of this case was that under Indian statutes contracts with any minors were void ab initio. I have two thoughts on this. The first being, that I believe that any contract made by a minor (with some exceptions) should be declared void. This grants protection to a class of

⁴ Fried, Charles. *Contract as Promise: A Theory of Contractual Obligation*. Oxford University Press, 2015.

⁵ (1903) ILR 30 Cal 539 (PC)

persons who in my opinion is of due requirement. Minors are rightfully granted many privileges and protections under other Indian Laws, so it would make sense to apply the same here. This would bring me to my second thought on the subject which is the need for codification of a special class of minors, between the ages of 16-18 that are not holistically afforded the same protections. A parallel to provide an example would be the 2015 Amendment to the Juvenile Justice Act which provides for more discretion of the courts in matters where a heinous offence has been committed by minors in the same age bracket.

Now, it is important to note that I am merely suggesting that individuals once they turn 16 have more of a mental capacity and should not be treated as infants. Thus, I would like to see some codification and less of a blanket clause application when it comes to minors who are very close to attaining majority. What may help supplement my stance is my disagreement with how promissory estoppel was applied within *Gadigappa Bhimappa Meti v. Balangowda Bhimangowda*⁶. In his judgement on appeal, Patnikar. J states that he finds it difficult to apply a principle where a general intention can be superseded by the legislature of a particular intention. I find this hard to understand as a statement in the context of applicability within this situation. A statement that affirms my stand can be found later within the same by Broomfield. J which states that “if the conditions of estoppel are satisfied then the minor who is estopped must possess so many attributes of a person sui juris that it is possible for him to deceive the other party into an honest belief that he is a major. A person who can do this is in little need of protection.”

Along with the fact that these contracts are void ab initio, there remain certain exceptions where certain contracts have remained enforceable. One such case⁷ was of an executed contract prior to *Mohoro Bibee*, where it was held that the contract executed from the side of a minor was not void as no such liability remained for the minor. As these laws are meant to protect minors from harm and liability, this holds value in my books and seemed to be the correct decision. It was held⁸ once again, even after the judgement of *Mohiri Bibee* thus in my mind reinforcing my position mentioned in the introduction of this paper, that capacity to contract remains of utmost importance when discussing the tenants of a contractual agreement. An important note must also be made of the judgement that categorically brought to notice the error-ridden

⁶ (1931) 33 BOMLR 1313

⁷ *Hanmant Lakshman v. Jayarao Narsinha* ILR (1889) 13 Bom 50

⁸ *A.T. Raghava Chariar vs O.A. Srinivasa Raghava Chariar* 36 Ind Cas 921, (1916) 31 MLJ 575

application of Mohori Bibee. This was Mathai Mathai v Joseph Mary⁹ through which it was assessed that if there is any liability on the minor, the contract was void ab initio.

A few more exceptions had been carved out to this rule but an important one in my eyes is that of Great American Insurance v. Madan Lal¹⁰ wherein a contract was entered into for the benefit of a minor by its guardian for fire insurance. When there was a fire and consequent damage the company refused to pay claiming that the contract was void ab initio. Later the court held the contract was enforceable, as it was made for the benefit of a minor and there was no liability on the minor in this situation. I also can see how this can be used to take advantage of the immunity afforded to minors. However, “if a minor has undertaken liability jointly with an adult, immunity of the minor cannot absolve the adult promisor from liability”¹¹. To conclude this section, I would like to reiterate my view on why I believe this aspect of the statute to be of grave importance. I believe and as the esteemed courts of our nations have shown on multiple occasions, that a contract can only be made at a minimum between two parties. One must then posit the use and rightful nature of a contract if there is no inherent capacity or competency to follow through with or carry out to its rightful potential the contract in question. That is also the reason I wish there be made a change within the wording of §10 to place competency before anything else. This change although arbitrary on the face of it, in nature may help create a certain order of importance thus placing competency at the top of the pedestal and reinforcing the notions of protection already imbibed within this statute. There in my opinion remains an absolute need for this judicial interpretation and consequent amendment.¹²

II. Persons of Unsound Mind

I believe it is also of some importance to have this classification within competency, as with minors, to an extent a person of unsound mind as defined by §12 of the ICA can be the subject to unfair practices carried out against them if they are not afforded with the sound protection

⁹ Joseph Mary & ors. Case: Mathai Mathai v. Joseph Mary & ors. Citation: (2014) INSC 376)

¹⁰ (1935) 37 BOMLR 461

¹¹ Pollock, *supra* note 2, at p1

¹² See Frank, Jerome. “Words and Music: Some Remarks on Statutory Interpretation.” *Columbia Law Review*, vol. 47, no. 8, Columbia Law Review Association, Inc., 1947, p. 1264: “Those who today complain of any “judicial legislation” in statutory interpretation are complaining of the intrusion of the judges’ personalities. However, just as Krenek shows that the effect of the performer’s personal reactions cannot be excluded, so legal thinkers, in increasing numbers, have shown that the personal element in statutory construction is unavoidable. Yet Krenek’s mean, too, has its judicial parallel: The creativeness of the judges should always be limited; but, within proper limits, it is a boon not an evil.”

of the law. This statute very clearly lays down the nuances that are existent when it comes to contracts and unsound minds. What I find myself agreeing with and find most interesting within this provision is the liability that is assessed when treating drunk individuals as those of unsound minds. As conceptually a person of unsound mind is unable to help their own circumstance and has not voluntarily chosen to be of unsound mind, it is correct to make a distinction in situations where a reasonable person has voluntarily gone into a temporary state of inebriation. However, where this is forced, rightfully the contract has been declared void ab initio.

III. Persons Disqualified by Law

Now, upon my assessment of this part of the provision, one thing becomes clear to me. The categories of individuals classified as disqualified largely relate to persons in positions where they carry unfair advantage and can place themselves in situations to benefit greatly but not justly. A common example that is universal would be that of the illegal nature of insider trading. In India, however, these may include persons who hold positions in tax offices being exempt from dealing with properties they have directly assessed¹³. Alien enemies are also one such category that are exempt unless afforded special provision by the state.

III - Conclusion

I found a very interesting case¹⁴ during my study of tort law, wherein a minor could not be held liable for injuring a mare as the agreement that the minor had to ride the mare was void ab initio under contract law and could not be converted into an action for being negligent under tort law. Although this case occurred in a separate jurisdiction and several years before the ICA, I find it interesting how contract law has developed internationally and over time. Even under common law systems in the UK, we have differences in things such as the application of estoppel, ratification of contracts by minors and how contracts made with minors are treated. All this is to say that even though the specifics may vary from jurisdiction to jurisdiction, the overarching notion of protection when it comes to those not competent to contract remains

¹³ D S Senthilvel v Tax Recovery Officer, decided by Madras High Court, Madurai Bench in WP (MD) No 2932 of 2018, decided on 7 March 2018

¹⁴ Jennings V. Rundall (1799), 8 Term Rep 335

largely the same. This as mentioned throughout Section II of this paper is in congruence with my beliefs about the importance of §11 and §12 of the ICA.

REFERENCES

1. The Indian Contract Act 1872
2. Pollock, Frederick, et al. Pollock & Mulla the Specific Relief Act 1963. LexisNexis, 2018.
3. Barnett, Randy E. "Some Problems with Contract as Promise." Georgetown University Law Center, Georgetown Law, 1992, https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2272&context=facpub&bcsi_scan_AB11CAA0E2721250=5IZHfCcTwbxiQ2RLx7bAg1g2hPQyAQAAfouMHQ==:1.
4. Fried, Charles. Contract as Promise a Theory of Contractual Obligation. Oxford University Press, 2015.
5. Mohori Bibee v/s Dharmodas Ghose (1903) ILR 30 Cal 539 (PC)
6. Gadigappa Bhimappa Meti v. Balangowda Bhimangowda (1931) 33 BOMLR 1313
7. Hanmant Lakshman v. Jayarao Narsinha ILR (1889) 13 Bom 50
8. A.T. Raghava Chariar vs O.A. Srinivasa Raghava Chariar 36 Ind Cas 921, (1916) 31 MLJ 575
9. Joseph Mary & ors. Case: Mathai Mathai v. Joseph Mary & ors. Citation: (2014) INSC 376)
10. Great American Insurance v. Madan Lal (1935) 37 BOMLR 461
11. Pollock, Frederick, et al. Pollock & Mulla the Specific Relief Act 1963. LexisNexis, 2018.
12. Frank, Jerome. "Words and Music: Some Remarks on Statutory Interpretation." Columbia Law Review, vol. 47, no. 8, Columbia Law Review Association, Inc., 1947, pp. 1259–78, <https://doi.org/10.2307/1118098>.
13. D S Senthilvel v Tax Recovery Officer, decided by Madras High Court, Madurai Bench in WP (MD) No 2932 of 2018, decided on 7 March 2018
14. Jennings V. Rundall (1799), 8 Term Rep 335