

“Minors’ Right to Disaffirm a Contract”

Saloni Devpura

Nirma University, Ahmedabad

Smriti Jain

Nirma University, Ahmedabad

“Together let us build the global alliance to realize that goal, secure in the knowledge that in serving the best interests of children, we serve the best interests of all humanity.”

- Carol Bellamy

Since time immemorial, contractual obligations have been developing in various forms, between varied parties and considering various utilities to be derived; though they were prevalent but the major drawback that existed was that there was no coercive power backing the breach and hence performance of them was unpredictable and thus haphazard in nature. Time-to-time efforts were put to define what actually a contract means which was finally put into effect when THE INDIAN CONTRACT ACT, 1872 came into force. According to the **Section 10** of this act, only those agreements are said to be 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.¹

Out of all the essentials mentioned in Section 10, the most debatable one is the contention regarding Competence of the parties involved in the contract which is discussed in the very next section i.e. **Section 11** which clearly 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.”²

Contractual Capacity (meaning, the legal capability to form a binding contract) considers age of majority as major criteria for being capable of entering into a contract which is stated in the Section 3 of **The Indian Majority Act 1875**. It clearly addresses that, “A person is said to have attained the age of majority when he is of **eighteen years of age or above**.” Hence, definition of a minor can be nicely derived as, “A person who has yet not attained the age of majority.” Whereas in case of contracts relating to the transfer of property being entered into by the guardians or legal representatives appointed on behalf of minors, age of majority is deemed as 21.

The basic purpose behind developing this concept of contractual capacity is to safeguard those vulnerable sections of people who are deemed by law as not possessing the required intelligence, maturity and understanding which according to a prudent person is required to be able to judge the nature and consequences of a contract. The general presumption that every man is the best

¹See Section 10 The Indian Contract Act, 1872

²See Section 11 The Indian Contract Act, 1872

judge of his own interest is suspended in the case of children.³ Hence, for this reason, minors are devoid of being called as contractually capable of becoming a party to a contract and thus **minors' contracts are said to be void-ab-initio**i.e. being treated as invalid from the outset or the very beginning.

Despite the fact of minors' contracts being void-ab-initio, if a minor enters into a contract, he can avail right of avoiding his contractual liability which is termed as **right of disaffirmance of a contract**. The legal avoidance or setting aside, of a contractual obligation is referred to as disaffirmance.⁴ But this definition is not exhaustive in nature and has certain restrictions attached to it questioning its universal applicability. To disaffirm, a minor must express his or her intent, through words or conduct, not to be bound to the contract. The minor must disaffirm the entire contract, not merely a portion of it.⁵ And this right is voidable at the option of the minor.

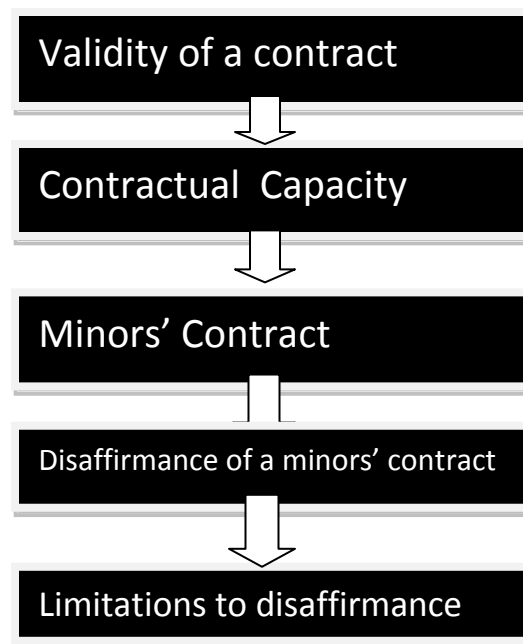


Figure 1: Flowchart depicting the sequence in which the topic in question is dealt with.

Ordinarily, a contract can be disaffirmed in two ways: i) at any time during minority and ii) within a reasonable time after reaching majority. Reasonable time may vary according to the discretion of the court and if found that the contract has not been disaffirmed within the

³ Anthony T. Kronman, Paternalism and the Law of Contract, (1988) 92 Yale LJ 763, 786

⁴ Clarkson Miller Cross, Business Law: Text and Cases Legal, Ethical, Global and Corporative Environment, p. 256 (12th ed.)

⁵ Clarkson Miller Cross, Business Law: Text and Cases Legal, Ethical, Global and Corporative Environment, p. 256 (12th ed.)

stipulated reasonable time period, it is assumed to have been ratified by the minor and hence deemed as valid in nature.

The adult party has no option to avoid the contractual obligation and cannot step back from its liability so unless and until the minor doesn't apply his right of disaffirmance, the opposite party is bound by it.

So to get a better and in depth understanding of disaffirmance and related aspects, let us analyze few landmark cases of Indian Law and English Common Law.

1.) MOHORI BIBEE V. DHARMODAS GHOSE (1903) 30 CAL 539

In this case, Dharmodas Ghose, a minor took 20000/- INR from a moneylender, BrahmoDutt in return of mortgaging a land in favor of the defendant. Minor paid only 800/- INR and refused to pay the rest amount by taking the plea that at the time of entering into the contract he was a minor and thus can refuse to carry out the contract on the basis of his minority. So he brought an action through his mother as a next friend against the moneylender. Meanwhile the moneylender died and the appeal was brought by his executors. It was held by the court that unless parties possess the required contractual capacity, agreements cannot be called as contracts. Minors contracts being void-ab-initio is not enforceable by law. The Privy Council held that the minority of the party was known to the defendant's attorney and hence it cannot be said that defendants were misled by any facts regarding the age of the minor and minor could not be asked to repay the loan taken by him.

Another case having similar facts was of

2.) KHAN GUL V. LAKHA SINGH 1928 LAH 609

In this case, defendant who was a minor took a loan of 17500/- INR from the plaintiff, a moneylender in return for his landed property by fraudulently misrepresenting his age. After getting the desired money, the minor refused to perform the contractual obligation on his part. Subsequently, the plaintiff brought an action against the minor requesting for transfer of possession or refund of the given money. The court held that the contract was not valid since every contract with a minor is void-ab-initio and thus no rule of estoppel applies here. Further reliefs were granted to the plaintiff under Section 41 of Special Relief Act 1877 as it was held that no minor should be benefitted by his own fraud.

Key issues raised in these two cases were:

- Whether a minor has induced the person to enter into the contract – RULE OF PROMISSORY ESTOPPEL :Estoppel has been defined under the Section 115 of the Indian Evidence Act 1872 which states that no person is allowed to deny the statement which he earlier said or declared.

In *MohoriBibee vs. DharmodasGhose*, the Privy Council held that rule of estoppel cannot be made applicable, because though the minor concealed his age but the very fact was already known to the attorney of the moneylender.

In *Khan Gul vs. Lakha Singh*, the Lahore High Court held that rule of estoppel does not apply against a minor as they contended that estoppels being a rule of evidence is a general law and has to be studied peripherally with the special law of Indian Contract Act declaring the contract with a minor is void.

Concluding, *Rule of Estoppel cannot be applied against a minor.*

- If in case the mortgage is cancelled, whether the minor should be asked to refund the amount of the respective loan- EQUITABLE DOCTRINE OF RESTITUTION :

According to the English law, if a minor has obtained undue benefit in any transaction he is required to restore back the benefit so received by him, under the equitable doctrine of restitution. Under the doctrine he is asked to restore back the exact things taken by him.⁶ But this doctrine is limited in its scope as it is applicable only to goods and property possessed by minor and can be claimed as long as it is **traceable**.

Section 64⁷ and Section 65⁸ of The Indian Contract Act 1872 are taken into ambit when restitution of goods or property is concerned.

In *MohoriBibee* case, the Privy Council held that the applicability of Section 64 is restricted to voidable contracts but the contract with minor in question is void ab initio and cannot come under the purview of this section. In the same manner, even Section 65 cannot be entertained in case of minors' contracts because it talks about contracts becoming void or discovered to be void as the whole prominence is upon the competency of the parties and Indian law deems minors as incompetent. In this regard, Privy Council held "that this section, like Section 64, starts from the basis of there being an agreement or contract between competent parties, and has no application to a case in which there never was, and never could have been, any contract."⁹

In *Khan Gul* case, the court raised only one question that, "Can a minor who has entered into a contract by false representation refuse to perform the contract and at the same time retain the benefit he may have received therefrom?"¹⁰ It was decided that there is equal jurisdiction of the court and duty lies on the part of the minor and thus refund must be done by the minor of 17500/- INR earlier taken as a loan.

⁶ Allahabad Law Agency, CONTRACT I, R.K. Bangia (6th Ed.) p. 107

⁷ "When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit there under from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received."

⁸ When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

⁹ Eastern Book Company, Contract and Specific Relief, Avtar Singh (10th ed.) p. 159

¹⁰ Eastern Book Company, Contract and Specific Relief, Avtar Singh (10th ed.) p. 160

Concluding, *minor will have to restore the goods or property derived as long as it is traceable in his possession and thus status quo of the parties as was before the contract has to be maintained.*

- Can a minor be compelled by the court to restore the gains received in the agreement so as to meet the ends of justice- RESTORATION OF BENEFITS :Section 41 of The Specific Relief Act 1877 (Section 33 of the amended act of 1963) specifically talks about provision of injunction that if on weighing the consequences, court feels that there is a need of compensating the adult party, then directions may be given to the minor to pay the compensation which justice may require.

In the MohoriBibee case, it was held by the court that the justice did not require any payment of compensation by the minor as the money was advanced while having the full knowledge of the minority of the defendant.

In Khan Gul case, it was held that the minor can be compelled to undo the gains received under the agreement as the principle of equity and justice necessitate that the minor cannot be allowed to take advantage of his own fraud.

Concluding, *minor may be compelled to make compensation to the opposite party so as to meet the ends of justice.*

- Can a minor be compelled to perform the contract of his part after receiving the benefits if party demands- SPECIFIC PERFORMANCE: Section 12 of The Specific Relief Act 1963 speaks of specific performance of contract if so requires meeting the ends of justice if the innocent party demands. It means that the party who breaches the contract can be compelled to comply with the rules guarding the contract and also can be ordered to perform his part of the contract earlier promised. Minors cannot be ordered for specific performance as the basic requirement of a valid contract prevailing stands missing in minor's contract which is void ab initio.

Concluding, *no specific performance of a contract can be ordered to a minor party.*

Hence, we could notice that even if there was misrepresentation of age on the part of minor, he was not prohibited from disaffirming the contracts, but with certain restrictions.

Now let's analyze a foreign judgment wherein concept of Guardianship also gets highlighted.

3.) WARNER BROS. PICTURES v. BRODEL 31 Cal.2d 766

In this case, on behalf of Miss Brodel (a minor of seventeen years) her mother entered into a contract with a producer of motion pictures i.e. Warner Bros. Pictures to perform dramatic services for a predetermined period of time. The minor continued with the contractual performance but as soon as she attained majority, she refused to continue with the contract and tried disaffirming it. Hence, action was brought against the defendant (Minor).

The Californian Court held that a minor cannot disaffirm a contract on the ground that while in minority; the **superior court has considered and approved** its making. So, no blanket judgment can be passed in this regard. Also, the contract was being entered by her mother (deemed as her **guardian**) and was made in the **benefit of the minor**, so no question of later disaffirming comes into play. It was also held that the terms and conditions are **reasonable and not exploitative** and consequently only **mutual disaffirmance** can be there; no scope of unilateral disaffirmance arises here. Still if disaffirmance is done, minor can be compelled to **compensate for the irreparable loss** that the company undergone due to the sudden avoidance of contractual performance on the minor's part.

In the light of this issue regarding contracts entered into by the guardians on behalf of minors, **The Hindu Minority and Guardianship Act, 1956** speaks that if on behalf of a minor, a guardian buys a **property**, then minor will said to have attained the majority at the age of 21. The guardian can even sell the property if in **the benefit of the minor** and/or if **approved by the court** and minor would be bound by it.

EXCEPTIONAL CASES TO MINOR'S LIABILITY IN DISAFFIRMANCE OF CONTRACT

✓ CONTRACTS FOR NECESSARIES :

As the name suggests, these contracts involve transfer of necessities to a minor for supporting not only the basic continuance of life but for the purpose of maintaining the station of life in which the minor moves. For such contractual agreements, the minor cannot avail the right of disaffirmance and will have to reimburse the opposite party in return of necessities.

This is not on the basis of any contract between the parties but because it is deemed to be a quasi-contractual obligation.¹¹ This has been dealt in the Section 68¹² of Indian Contract Act 1872. The section basically makes a provision for reimbursement for the necessities supplied to the minor and entails two basic conditions necessary to establish infant's liability which are as follows: i) the supply of necessities must be for the purpose of maintaining the existing condition in which the minor lives and ii) there should not be an already existing stock of such necessities.

In regard of the above views, let's understand the concept of necessities through a landmark judgment namely **Kunwarlal v. Surajmal**¹³ in which the plaintiff rented a house to a minor for living and studying purpose with respect to the minor's condition of

¹¹Allahabad Law Agency, CONTRACT I, R.K. Bangia, (6th ed.) p. 114

¹²Claim for necessities 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 necessities 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.

¹³ A.I.R. 1963 M.P. 58

life. It was held that minor would be compelled to reimburse the landlord by the way of rent as renting of house was deemed as a supply of necessities.

✓ BENEFICIAL CONTRACTS OF SERVICE :

As the name suggests, these are the contracts in which the party at benefit is bound by that contract to pay for the benefits availed by him and this general rule is applicable in case of contracts entered into by the minors as well. But this rule is restricted to the contracts in which infant bind himself by a contract of apprenticeship or of service; there being an earning made by the minor to carry out his livelihood.

In regard of the above views, let's understand the concept of beneficial contracts of service through a landmark judgment namely **Clements v. London and North Western Rail Co.**¹⁴ in which the minor was working in a railway company as a porter and has a consensus agreement with his employers to avail the benefit of company's own insurance scheme and in case, if any personal injury takes place he will not have any option to claim under the Employers' Liability Act 1880. Though the rate of compensation under the company's insurance scheme was less as compared to the aforesaid act but it dealt with larger number of insurance claims than the act mentioned. According to the facts stated, it was held that the contract in question was for the benefit of the minor and hence he is bound by it.

CONCEPT OF RATIFICATION :

The concept of ratification is the exact opposite of the concept of disaffirmance as in the former; there is materialization of intention to be bound by the contract unlike the latter in which there is avoidance of the liability to be bound. It states that on attaining majority, a minor cannot ratify an agreement entered into at the time of minority.

When entering into the contract as a minor, the contract was declared as void; it cannot be made valid by ratifying it subsequently. Even necessity arises; a fresh contract can be made after attaining majority but along with a fresh consideration.

In regard of the above views, let's understand the concept of ratification through a landmark judgment namely **MC Nagalakshmi v. M AFaroq**¹⁵ in which the defendant while at the time of executing a deed about his interest in the estate, was a minor. He filed a suit when he attained majority. He did not ratify the agreement within a stipulated time after becoming a major and subsequently admitted it. The court held that the contract in question was enforceable to the extent of minor's interest in the estate.

CONCLUSION :

¹⁴ (1894) 2 Q.B. 282

¹⁵ A.I.R. 2007 KANT 105

Minors' contracts have been a debatable point of discussion in the field of contractual laws. As the Sections 10 and 11 of The Indian Contract Act 1872 gives a brief understanding that an agreement becomes a contract when the parties to a contract are competent and carry the maturity of judging the nature and consequences of the contract. Minor's being non competent are devoid of entering into any contract and hence their contracts are called to be void-ab-initio unless a guardian enters on his behalf. For the protection of minor against his incompetence and immaturity, right of disaffirmance has been provided where he can avoid the liability arising out of the contract. However, when a minor enters into a contract certain questions may arise. Rule of Estoppel doesn't apply in case of minors. Furthermore, minors may be compelled for the restitution of property unless the very fact of his minority is known to the other party involved. Also restitution can be there only when the property or goods are traceable in the possession of the minor. Extending this, the minor may also be compelled to restore the benefits availed and to compensate the opposite party as the justice may require. Lastly, there may be an order of specific performance to be done on the part of the minor. Contract entered into by a guardian of a minor is binding on the minor even if he may desire to disaffirm because of the very facts that it was entered into for the benefit of the minor and was approved by the superior court.

There may be contracts entered by the minor for obtaining necessities which are necessary for continuing his existing condition of life and these contracts are binding upon the minor and thus can't be disaffirmed. Minors entering into beneficial contracts in the form of service or apprenticeship are bound by such contracts and can't be disaffirmed by taking the plea of minority. There is another concept of ratification which is opposite to disaffirmance and minor is said to ratify a contract when a fresh contract and fresh consideration arises once majority is attained.

Hence, disaffirmance of a contract by a minor is a right which is given as a protection of the child who is incompetent and immature but it cannot be misused at the same time by a fraudulent minor and no minor can escape his contractual liability of breach under the shield of this protective device.