
THE DOCTRINE OF RESTITUTION, CAPACITY, AND FAIRNESS IN BAILMENT FOR MINORS UNDER THE INDIAN CONTRACT ACT, 1872

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ABSTRACT

This study examines the complex legal situation of minors in the context of bailment under the Indian Contract Act, 1872. While Section 11 declares contracts involving minors void ab initio to protect them from exploitation, the concept of bailment, a relationship based on the transfer of possession rather than ownership, raises tricky legal issues when minors act as bailors or bailees. This paper explores a minor's capacity to participate in bailment and the consequences of such agreements under Indian law. The study highlights how courts combine legal incapacity with fairness principles, such as restitution and unjust enrichment, through doctrinal analysis supported by key case laws such as *Mohori Bibee v. Dharmodas Ghose* and *Suraj Narain v. Sukhu Aheer*. By examining English and American law side by side, we may better understand the best practices, especially regarding the notion of advantageous contracts. The study demonstrates that, although formal contracts with minors are unenforceable, courts may impose quasi-contractual duties in bailment cases to foster fairness and justice. This convergence of contract law and equity illustrates changing judicial interpretations of adolescents' legal responsibilities in practical, real-world situations.

Keywords: Minors and Contracts, Bailment, Quasi-Contract, Beneficial Contracts, Unjust Enrichment, Comparative Legal Analysis.

I. Introduction

The Indian Contract Act of 1872 governs bailment law, which is part of contract law. Delivery of goods by the bailor, first person, to the bailee, second person, under a contract requiring one party to return or dispose of the items by the bailor's instructions, is known as bailment. Regarding bailment, this rule is obvious, and when minor parties enter into such arrangements, issues occur. A newborn or juvenile is generally incompetent to contract, according to the Indian Contract Act Section 11. This raises significant legal questions about their competency and jurisdiction to enter bailments.

Contracts made by minors, including bailment agreements, are void ab initio as per Indian law.¹ The broader objective of protecting children against exploitation because of their immaturity and lack of legal competence is reflected in this principle.² Courts must consider the legality and legitimacy of such agreements since children frequently participate in modern transactions, including car rental, storing goods, or borrowing products. The court has to balance the concepts of justice and fairness when deciding whether children can lawfully serve as bailors or bailees in bailment matters.³

A continuous effort to strike a compromise between the principles of equity and fairness and the strict legal incapacity of children is seen in judicial interpretations of bailment by minors. In some situations where it is in the interest of justice and does not harm the minor, courts have recognized that juveniles can act as bailors or bailees.⁴

II. Research Objectives

1. To examine the extent to which a minor can be a party to a contract of bailment and the implications of such participation in Indian law.
2. To analyze comparative legal frameworks, including English, American, and Indian laws, to determine best practices in regulating bailment by minors.

¹ Indian Contract Act 1872, s 11.

² Indian Majority Act 1875, s 3.

³ Guardians and Wards Act 1890, s 6.

⁴ *Mohori Bibee v Dharmodas Ghose* (1903) 30 Cal 539.

III. Research Questions

1. Can a minor legally enter into a contract of bailment under Indian Contract Law, and what are the legal consequences of such a bailment?
2. How do different legal systems, including common law and civil law jurisdictions, address bailment involving minors, and what principles can be derived from them?

IV. Understanding Bailment under the Indian Contract Act, 1872

Bailment can be understood as a legal relationship where the bailor, the first party, gives things to the bailee, the second party, with the expectation that the items, provided for the specific purpose, will be dealt with by the bailor's instructions.⁵ Section 148 of the Indian Contract Act, 1872, governs the idea of bailment, which is defined as the giving of commodities by one person to another for a specific reason, with the agreement that they will be returned once the purpose is fulfilled.⁶

The essence of bailment is the temporary transfer of possession rather than ownership, as well as mutual agreement between the parties. It is commonly used in legal and economic transactions, such as leases, warehouses, and promises.⁷

A. Essentials of Bailment

- **Possession Delivery:** The bailor must turn over possession of the goods to the bailee. This can be either actual (physical) or constructive (symbolic).⁸
- **Ownership Retained by the Bailor** The bailor retains title of the goods; only possession is transferred. Bailments must have a defined function, such as safekeeping, maintenance, or transportation.⁹
- The bailment must be established for a specific purpose, such as safekeeping,

⁵RK Bangia, Indian Contract Act (Allahabad Law Agency 2019) 244.

⁶ Indian Contract Act 1872, s 148; Pollock & Mulla, Indian Contract and Specific Relief Acts (14th ed, LexisNexis 2012) 1531.

⁷ RK Bangia, Indian Contract Act (Allahabad Law Agency 2019) 244.

⁸ Chitty on Contracts (32nd ed, Sweet & Maxwell 2015) para 27-031.

⁹Pollock & Mulla, Indian Contract and Specific Relief Acts (14th ed, LexisNexis 2012) 1531

maintenance, or transportation.

- Return of items: After the purpose is completed, the bailee must return those things or dispose of them according to the bailor's instructions.¹⁰

V. Legal Principles and Duties of Bailment

Bailment places specific legal requirements on the parties:

The bailee's duties include taking reasonable care of the commodities (Section 151, Indian Contract Act, 1872). In the event of negligence, the bailee is responsible for damages.

For example, in *Coleman v Hill* (1919), the court held the bailee accountable for negligence that led to property damage.

Duties of the Bailor: The bailor must reveal known faults in the items. Failure to do so may render the bailor accountable for any resulting loss or damage.

The necessary care level varies based on whether the bailment is gratuitous or mutually beneficial.¹¹

A. In bailment cases, restitution arises when:

- A minor accepts items but refuses to return them.
- The products are damaged or misused due to the minor's negligence or wrongdoing.
- The bailee minor gains an unfair advantage from the ownership of commodities.

VI. Indian Contract Act (Section 11)

Section 11 exempts minors from the legal repercussions of contracts by declaring them void ab initio.¹² This precaution ensures that minors are not exploited because they lack expertise and judgment. However, this general approach complicates dealing with bailment, which is not

¹⁰ Indian Contract Act 1872, s 152.

¹¹ *Coldman v Hill* [1919] 2 KB 748 (CA).

¹² Indian Contract Act 1872, s 11.

entirely contractual but entails a transfer of possession with specific obligations and duties attached.

In bailment, the bailor transfers possession of things to the bailee for a special motive, with the duty to return or dispose of the commodities as directed. The courts have recognised that, while a formal contract cannot legally bind a minor, a bailment relationship can nevertheless exist, and the equitable principles of fairness and restitution apply to protect both parties from unfair loss or benefit.

VII. Minor Position in Contract

According to Section 11 of the Act of 1872, a minor cannot enter into a contract. In the Judgement of *Mohori Bibee v. Dharmodas*, the Privy Council upheld this principle by ruling that a contract made by a minor is null and void from the start. Because of this, a minor is typically not allowed to sign a bailment agreement that imposes legal duties. However, this was further confirmed in *Khan Gul v. Lakha Singh* (1928)¹³ A decision, which held that minors are not obligated to a contract but can still profit from legitimate arrangements, like bailment, in which they are merely beneficiaries and not obligors¹⁴. It implies that while a minor might be both a bailor and a bailee, his bailment need not be voidable in every situation, and a minor should be a beneficiary, not an obligor.

VIII. Can a Minor become a Bailor?

A minor may provide things to another person to bail them out. Nonetheless, since a minor's contract is void, they cannot be bound by its provisions.¹⁵ This raises the question of whether the bailee can be held accountable if the goods are not returned or are damaged. Courts have ruled that, while a minor's contract is unlawful, a claim for reimbursement is possibly permitted if the minor delivers over property for safekeeping and the bailee acts in bad faith.¹⁶

In conditions where a minor has bailed things for safekeeping, courts have occasionally recognized an equity exception, concluding that the minor should not suffer an unfair loss solely because they lack the legal capacity to contract.¹⁷ The theory is consistent with

¹³ *Khan Gul v. Lakha Singh* (1928) AIR 1928 All 440.

¹⁴ *Ibid.*

¹⁵ Indian Contract Act, 1872, s 151.

¹⁶ *Suraj Narain v. Sukhu Aheer* (1928) AIR 1928 All 440.

¹⁷ *Leslie (R) Ltd v. Sheill* [1914] 3 KB 607.

international legal doctrines, which frequently allow minors to enforce contracts that are advantageous to them.¹⁸

- **Illustration**

A 17-year-old girl, Anushka, gives her bicycle to her neighbor, Rohan, for safekeeping while she is out of town. Anushka instructs Rohan to return the bike after one month. This is a bailment, with Anushka as the bailor and Rohan as the bailee. Anushka being a minor, this bailment is not considered valid, considering there is no monetary consideration, and neither was there a contract obligation against her part; in fact, the purpose is mere custody of goods. If there is any future dispute, it cannot bind him to any written agreements.

IX. Can a Minor be a Bailee?

A minor cannot be held liable under a contract, although they may be a bailee in certain circumstances. Section 151 of the Act of 1872 requires a bailee to care for the goods reasonably.¹⁹ Even if a minor is not contractually bound, courts may impose a responsibility to prevent unfair enrichment based on the quasi-contract principle.²⁰

Suraj Narain v. Sukhu Aheer is a notable case in this regard, in which it was determined that any contract does not cover a minor acting as a bailee, but he can still be held guilty under equity rules.²¹ Similarly, in Leslie (R) Ltd v. Sheill, the UK courts ruled that a minor cannot be compelled to undertake contractual commitments, but can be ordered to deliver the goods obtained.²²

- **Illustration**

Pankaj, a minor, borrows a camera from his friend Nisha for a school project. Nisha expects Pankaj to return the camera in the same condition after one week. If Sonia negligently damages the camera, she may not be contractually liable as a minor. However, Sonia is still expected to take reasonable care of the camera as per the general duty of care under the law of bailment.

¹⁸Minors' Contracts Act 1987 (UK).

¹⁹Indian Contract Act 1872, s 151.

²⁰Indian Contract Act 1872, s 70.

²¹Suraj Narain v. Sukhu Aheer (1928) AIR 1928 All 440.

²²Leslie (R) Ltd v. Sheill [1914] 3 KB 607.

X. International Perspective on Minors' Bailment

- As per **English law**, contracts made by minors are voidable but can be enforced if necessary.²³
- The **Uniform Commercial Code (UCC)**²⁴ States that bailment contracts involving minors are typically voidable. However, minors can be held liable for tortious interference with goods. Comparative legal analysis reveals that many jurisdictions balance the stringent rule of minor incapacity and ideals of fairness and restitution. The concept of "beneficial contracts" for minors, which is recognised in English and American law, implies that bailment arrangements may be upheld provided they are in the minor's best interests.

XI. The Restitution Doctrine in Bailment involving Minors

The Doctrine of Restitution ensures that whoever unfairly keeps a benefit at the expense of another must surrender or compensate for it. This notion is fundamental in bailment cases, as contracts with minors are often void.²⁵ Even when a written agreement is invalid, courts use restitution principles to protect the bailor's or bailee's interests and prevent undue enrichment.

XII. Conclusion

The legal situation of minors in bailment under Indian law strikes a delicate compromise between minors' strict contractual incapacity and the equitable ideals of fairness and restitution. Contracts with minors are declared void ab initio under Section 11 of the Indian Contract Act, 1872, to protect them from exploitation due to their immaturity and lack of legal capacity. Despite this, the doctrine of bailment, a non-contractual relationship based on possession and particular obligations, makes several exceptions for children to act as bailors or bailees. Courts have consistently used equitable principles to promote fairness and prevent unfair enrichment in such circumstances. For example, minors acting as bailees may still be held accountable under quasi-contractual obligations for failure to take reasonable care, as outlined in *Suraj Narain v. Sukhu Aheer and Leslie (R) Ltd v Sheill*.²⁶

A comparative study of English and American legislation reveals that these jurisdictions take a more flexible approach, recognising advantageous contracts for minors but enforcing

²³Minors' Contracts Act 1987 (UK).

²⁴ Uniform Commercial Code (USA).

²⁵*Mohori Bibee v. Dharmodas Ghose* (1903) ILR 30 Cal 539.

²⁶*Leslie (R) Ltd v Sheill* [1914] 3 KB 607.

restitution-based liability for unjust enrichment. When formal contractual remedies are unavailable, the equity-based notion of restitution is critical in protecting both parties' interests. Thus, bailment involving minors demands a judicial balancing act, enforcing fairness while protecting minors from potential harm, and provides a strong example of the dynamic link between contract law and equitable remedies.

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