FROM MOHORI BIBEE TO SOCIAL MEDIA INFLUENCERS: REFORMING MINOR CONTRACT LAW IN THE DIGITAL ERA

Stuti Kumari, LLB (Hons.), School of Law, UPES

ABSTRACT

In Indian Contract Act, 1872, agreement with a minor is void ab initio. Minor’s Agreement is one of the strictest and most rigid doctrines in Indian Contract law. This rule was clearly established in the landmark judgement by the Privy Council in Mohori Bibee v. Dharmodas Ghose and is mentioned in Section 11 of the Indian Contract Act, 1872. The main purpose of this being so rigid was to protect minors from exploitation and contractual liability. Even if a contract is fair, commercially well accepted, but it is not legally binding with a Minor. This rigidness has played an important protective role in past, but this generation has new challenges to offer. There is a drastic rise in minor content creators, social media influencers, professional gamers, digital entertainers, and online content creators. While doing so they enter in contracts such as brand endorsement deals, monetization arrangements with digital platforms, and sponsorship agreements that may involve significant financial value.

This research paper will study the conflict between rule to protect minor and modern reality of minors entering contracts. It will study how the Indian Contract Act deals with contracts involving Minors. The paper also analyses the concept of “necessaries” under Section 68 of the Indian Contract Act, 1872. This concept basically includes the basic needs of a Minor such as food, education, livelihood, clothing etc. Where as in modern time, the digital tools- high-performance computers, gaming equipment, cameras, and other content-creation devices, are now basic for Minors to earn and learn. This paper will study if these tools be included in necessaries.

This paper uses a doctrinal and analytical research method. It studies relevant laws, court decisions, academic writings, and comparative legal approaches, along with current industry practices in influencer marketing and digital content monetization. This paper argues that the rule established in Mohori Bibee v. Dharmodas Ghose, are negligent of arising modern issue. This paper suggests reforms and flexibility in legal framework which could achieve both – protection of minor and modern reality of young talent earners. At the same time, any legal change must ensure that strong safeguards remain in place to prevent the exploitation of minors in commercial arrangements.

Keywords: Void Ab Initio; Minors; Contract; Agreement; Indian Contract Act, 1872; Digital Era; Necessaries.

1. INTRODUCTION

A contract is an agreement between two parties with mutual free consent, and the law of contract is the backbone of commercial and legal relationships. The law of contract defines a valid contract and the competency of the parties for a valid contract.[1] The Indian Contract Act, 1872, states a strict and uncompromising approach regarding the competency of the parties, which includes minors not being a competent party[2]. The doctrine of *Void Ab Initio*[3] has been justified by the judicial interpretations that minors being incompetent to contracting protects the minors from exploitation[4], fraud, unfair practices, and contractual obligations. The protection for the minors because, according to the law, minors are perceived[5] as dependent individuals who could be easily manipulated, incapable of informed decision-making, lack legal capacity, and are susceptible to exploitation with limited participation in economic activities. However, in the contemporary digital era, minors are actively participating in the economy. The digital platforms engage minors in diverse activities, such as social media influencing, content creation, online gaming, and digital entrepreneurship. This creates a disconnect between the traditional doctrine and the modern reality.

While the central argument of the paper is that the traditional doctrine protects the minors and must remain, there is a concern that the existing legal framework needs reforms to align with the contemporary world.

2. LITERARURE REVIEW

This paper explores the conflict between the traditional doctrine of *Void Ab Initio*[6] and the modern reality where the minor digital creators, such as influencers, gamers, and digital entrepreneurs.[7] It has been examined in the paper that the law aims to protect the minors from

[1] Indian Contract Act, 1872, § 11.
[2] Id.
[3] *Mohori Bibee v. Dharmodas Ghose*, (1903) 30 IA 114 (PC).
[4] Id.
[5] Avtar Singh, *Law of Contract* .
[6] *Mohori Bibee*, supra note 3.
[7] OECD, *Children in the Digital Environment* .

exploitation[8] and unfair practices, but it excludes the digital economy. In the Mohori Bibee v. Dharmodas Ghose case[9], which is treated as landmark case which strictly restricts minors to form any contract, and any contract formed by the minors would be void from the beginning[10].

Another legal framework is Section 68[11], Doctrine of Necessaries in which persons are only liable for "necessaries" including minors and no luxury items are involved. Here, the paper questions that modern tools should be considered as necessaries[12] with the increasing digital participation by the minors which tends to them forming contracts with brands and partners, however, declaring it *Void Ab Initio*[13] makes things complex for the minors. Later, the paper looks at the comparative legal analysis with the UK and US and some legal reforms are suggested.

3. LEGAL FRAMEWORK GOVERNING MINORS' CONTRACTS IN INDIA

4.1 Section 11 – Competency to Contract

The Indian Contract Act, 1872, laid down the competent parties to contract in Section 11[14], 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." Three essentials have been established in the section, that are as followed: -

1. Attainment of the majority

2. Soundness of mind

3. Absence of legal disqualification

Hence, a minor, i.e., a person who has not attained the age of majority, is incompetent to contract.

[8] Indian Contract Act, 1872, § 11.
[9] *Mohori Bibee*, supra note 3.
[10] Id.
[11] Indian Contract Act, 1872, § 68.
[12] Avtar Singh, Law of Contract .
[13] *Mohori Bibee*, supra note 3.
[14] Indian Contract Act, 1872, § 11.

The Indian Majority Act, 1875, defines the age of majority in India[15], which states that the general age of majority is 18 years, and in case of adoption, it extends to 21 years where a guardian has been appointed by a court. Any person below the said age in the act is legally incapable of entering into a contract. The presumption of the law is that a minor lacks the maturity and mature judgement, and they are likely to be influenced and exploited by others, and they cannot fully understand the legal consequences of their actions. Therefore, the rule of minors not being competent to contract is protective in nature, and it is designed to shield minors from unfair practices and legal liabilities.

As a consequence of which, minors are completely barred from the contractual capacity, unlike the persons of unsound mind, whose contracts may be held valid during lucid intervals.

4.2 Doctrine of Void Ab Initio

Firstly, the meaning of the term ab initio is "from the beginning." Hence, the doctrine of *Void Ab Initio*[16] is one of the most stringent principles in the minor's agreement, and it has been treated as if it never existed in law, and as the contract never existed for law, there are neither legal rights nor obligations, nor is it enforceable by either of the parties.

The contract of *Void Ab Initio* is different from the Void contracts, Voidable contracts, and illegal contracts.

Section 2(j) of the Indian Contract Act, 1872[17], defines the void contract, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable." It means that the contract has no legal effect and cannot be enforced by law and it will treat as if it never existed in the eyes of law. It is different from the *Void Ab Initio* because a void contract may initially be valid, but it later becomes void due to a change in circumstances or impossibility or the illegality to perform the contract, which has been stated in Section 56 of the Indian Contract Act, 1872[18], which explains the doctrine of frustration.

Void Agreement and Void Contract are different, as the former is not enforceable from the beginning and the legal status of it is void ab initio, and the latter is initially valid and becomes

[15] Indian Majority Act, 1875, § 3.
[16] *Mohori Bibee*, supra note 3.
[17] Indian Contract Act, 1872, § 2(j).
[18] Indian Contract Act, 1872, § 56.

unenforceable later.

Section 2(i) of the Indian Contract Act, 1872[19], defines the voidable contract, "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract." It means that a contract is voidable when it arises due to defects in free consent. Consent obtained under: -

(a) Section 15, i.e., Coercion[20], where the consent is obtained by threat or force;

(b) Section 16, i.e., Undue Influence[21], where one party is in a dominant position and uses it to gain an unfair advantage with said consent;

(c) Section 17, i.e., Fraud[22], where consent is taken by intentional deception to induce another party into a contract;

(d) Section 18, i.e., Misrepresentation[23], where consent was given when a false statement was made without the intent to deceive, but which induced the contract;

(e) An illegal contract is an agreement that is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of law and it is a void contract.

4.2.1 Legal Consequences of the Doctrine

There is no enforcement of the contract when the contract is Void Ab Initio, which means that neither the minor nor the other party can enforce the contract. A minor cannot ratify[24] the agreement upon attaining majority because a ratification requires a valid agreement since the beginning, and a void agreement cannot be revived. No Estoppel against the minor[25], even if a minor misrepresents their age.

4.3 Landmark Case Analysis

The doctrine of the *Void Ab Initio* was established in the landmark case of Mohori Bibee v.

[19] Indian Contract Act, 1872, § 2(i).
[20] Indian Contract Act, 1872, § 15.
[21] Indian Contract Act, 1872, § 16.
[22] Id. § 17.
[23] Id. § 18.
[24] *Mohori Bibee*, supra note 3.
[25] Id.

Dharmodas Ghose[26]. In this case, Dharmodas Ghose, who was a major at the time of the contract, entered into a mortgage agreement with Brahmo Dutt. Under this agreement, Dharmodas mortgaged his immovable property, and in return, he received a loan amount of ₹20,000. The transaction was structured as a secured loan, where the property served as collateral. The Brahmo Dutt's agent, at the time of executing the mortgage, had the knowledge of the Dharmodas Ghose's age, and the knowledge acts as a legally significant factor because the knowledge eliminated any claim of good faith or mistake on the part of the lender.[27]

The issue arose when the lender sought to recover the advanced money. Although the mortgage was for ₹20,000, the entire amount was not paid to the minor, and the issue was whether restitution could be claimed against a minor. Dharmodas Ghose, through his mother/guardian, filed a suit in court to declare the mortgage void and to cancel the agreement on the ground that Dharmodas Ghose was a minor at the time of execution of the contract. It was held by the Privy Council that a minor's agreement is *Void Ab Initio* and the mortgage was unenforceable. Thus, the minors cannot be compelled to repay the loan under the contract. It was firmly established in the case that the protection of minors is absolute in Indian Contract Law, and equity cannot override statutory provisions.[28]

This case forms the foundation of the rigid minor contract law in India, and no contractual liability arises against a minor.

5. EXECPTION TO THE RULE: DOCTRINE OF NECESSARIES

5.1 Section 68 - Necessaries Supplied to a Minor

Section 68 of the Indian Contract Act, 1872[29], is an important exception to the minor's agreement rule, which is void ab initio. The section states, "If a person, incapable of entering into a contract, or anyone 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[30]."

To invoke this section, the persons must be incapable of entering into a contract which, includes

---

[26] *Mohori Bibee*, supra note 3.
[27] Id.
[28] *Mohori Bibee*, supra note 3.
[29] Indian Contract Act, 1872, § 68.
[30] Id.

minors and persons of unsound mind, and this provision recognizes that such persons require goods/services essential for survival. However, these goods/services must qualify as necessaries, only those that are essential for existence or reasonable living. Necessities are determined based on the social status, economic background, and the lifestyle of the person. Reimbursement from the mentioned persons in the provision cannot be done by personal liability. Repayment from a minor can be claimed from the minor's property or the estate because the minor is not personally liable. Hence, it makes the contract a quasi-contractual obligation, not a real contract.

Quasi-contracts are governed by Sections 68 to 72 of the Indian Contract Act, 1872[31], in which these provisions don't create actual contracts, but they impose legal duties which resembles with the contractual obligations. No mutual agreement is an essential feature of quasi-contracts between the parties, and it is imposed by law, not by consent. Quasi-contracts are based on equity, justice, and good conscience, which aim to prevent unjust enrichment.

A contracting firm built temporary godowns, roads, and sheds for the Civil Supplies department of Bengal at the request of local officials. The payment for two projects was withheld even though the government benefited from the work because the contracts were not executed in the prescribed form by the Government of India Act, 1935. The firm sued the provincial government for the compensation under Section 70 of the Indian Contract Act, 1872[32], which states, "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered." It was held by the Supreme Court of India, with the application of Section 70, it creates an equitable duty to compensate for benefits accepted without a valid contract, even against the government.[33]

It remains a foundational precedent on quasi-contracts, unjust enrichment, and State liability in Indian Contract law.

5.2 Meaning and Scope of "Necessaries"

The traditional interpretation of the necessaries includes food, clothing, shelter, education, and

[31] Indian Contract Act, 1872, §§ 68–72.
[32] Indian Contract Act, 1872, § 70.
[33] *State of West Bengal v. B.K. Mondal & Sons*, AIR 1962 SC 779.

medical care.[34] These necessaries are considered essential survival, basic development, and welfare for the minor. However, the courts have clarified the interpretation of necessaries, which is not limited only to bare survival, but also includes things that are required for reasonable comfort and development.

An English Contract law case which concerns a minor's legal capacity to contract for goods. In this case, a tailor supplied then minor several expensive garments, which includes a number of waistcoats, on credit. The tailor sued the minor to recover payment. The court held that the clothes were not necessaries because the minor already had sufficient clothing. The case established the principle that even useful goods are not necessaries if they have already been adequately supplied.[35]

The key principles that were derived after the judicial interpretations, necessaries depend on actual requirement and not mere utility. Luxury items are excluded from this, and the goods that are necessaries must be suitable and required at the time of supply.[36] Indian courts follow the English common law principles, which focus on necessity and suitability.

5.3 Judicial Developments Post-Mohori Bibee

Following the Mohori Bibee v. Dharmodas Ghose case, Indian courts have always upheld that the principle of minor agreements is void. The courts have taken a strict judicial approach, where courts have refused to enforce even fair or beneficial contracts and denied remedies based on equity or fairness, and prioritized statutory protection over commercial logic.[37]

Despite the rigidity, certain exceptions have evolved, such as Section 68 of the Indian Contract Act, 1872[38], where a supplier of necessaries can claim reimbursement and liability is against the minor's property, not personal. Certain contracts are enforceable that involve minors if they are purely for the benefit of the minor. However, this exception was applied by the Indian Courts very cautiously.

---

[34] *Nash v. Inman*, [1908] 2 KB 1.
[35] Id.
[36] *Nash v. Inman*, [1908] 2 KB 1.
[37] *Mohori Bibee*, supra note 3.
[38] Indian Contract Act, 1872, § 68.

5.4 Critical Analysis

The legal framework that governs the minors' contracts in India is highly protective and acts as a shield for the minors, it is overly rigid in modern contexts. The concept of the necessaries as defined above are traditional, narrow, and outdated. It focuses on survival, not economic participation. However, in the contemporary world, minors are active economic participants where they are especially involved in social media influencing, gaming, digital content creation, and online education. The modern necessities include laptops and computers, smartphones, cameras, and recording equipment, internet access and software tools. These essentials are for education for online learning, skill development, and livelihood generation.[39]

However, the key legal question is, can digital tools be considered "necessaries" under Section 68 of the Indian Contract Act, 1872? Everything has two approaches, in favour and against. Arguments in favour of digital tools being considered as necessities are that the digital tools are essential for modern education, and they enable minors to earn and support themselves. For the new generation, just as books are necessary, so are digital tools. Arguments against considering digital tools as necessities are that there is a risk of over-expansion, where luxury items may be disguised as necessities, and it is very difficult to define the boundaries.[40]

6. THE DIGITAL WORKFORCE

6.1 Rise of Digital Participation

In the contemporary world, the digital economy has transformed[41] the nature of economic participation across age groups, which includes minors as well. In this digital ecosystem, the minors have direct, independent, and large-scale participation in income-generating activities.

The transformation has been brought by digital platforms such as YouTube, Instagram, Twitter (now called 'X'), TikTok, Esports ecosystems, etc.,[42] which have allowed minors to create content across the platforms and build an audience and monetize their skills and creativity. Contemporarily, minors actively engage in multiple digital professions: -

---

[39] Avtar Singh, *Law of Contract*.
[40] OECD, *Children in the Digital Environment*.
[41] Id.
[42] Id.

(a) Social Media Influencers - They promote brands, products, and services, and earn through the sponsorships after having millions of followers.

(b) Content Creators - They produce videos, reels, blogs, and digital content to engage the viewers and earn through advertisements, subscriptions from the views, and platform monetization.

(c) Esports (Professional Gamers) - They participate in multiple tournaments of games and sign contracts with gaming organizations. They earn through the prize money and sponsorship income.

(d) Digital Entrepreneurs - They sell digital products such as art, courses, NFTs, etc., and run online businesses or channels.

The participation of minors economically plays a major role, which reflects a shift from dependency to economic agency, which the traditional legal framework does not recognize.

Despite the active participation of the minors in the economy, according to the Indian Contract Act, 1872, minors are incapable of contracting, which disconnects the economic reality and legal capacity.

6.2 Nature of Contracts Entered by Minors

There are types of contracts that involve minors entering into commercial agreements that are complex and high-value in nature.

(a) Brand Endorsement Agreement - In this, minors promote brands through their platforms, and the agreements include payment terms, deliverables such as posts, videos, and reels, and exclusivity clauses.

(b) Sponsorship Agreements - Companies sponsor minors for minors and for long-term collaboration.

(c) Platform Monetization Contracts - In this contract, agreements happen with platforms such as YouTube or Instagram, which govern ad revenue, content rights, and payment structures.

(d) Licensing and Intellectual Property Agreements - It involves the use of content, music, or digital creations and the transfer or sharing, or rights

(e) Talent Management Contracts - Agreements that manage agencies such as brand deals, public image, and revenue streams.

The contracts mentioned above are commercially sophisticated, and they are legally binding in nature.[43]

6.3 Legal Issues Arising

The intersection of contract law and digital participation creates several legal issues. Firstly, the contracts with minors are considered void ab initio[44]; hence, brands cannot enforce obligations upon minors, and minors cannot enforce payment claims upon brands. The result of this leads to businesses avoiding working with minors through digital platforms[45], or they use informal or exploitative arrangements.

7. CONFLICT BETWEEN TRADITIONAL DOCTRINE AND MODERN REALITY

The rigid doctrine of *Void Ab Initio*[46] conflicts with the modern reality. As mentioned throughout the paper, the doctrine is rigid and in no situation allows a minor to enter into a contract.[47] Also, in the contemporary world, the role of minors in the economic world has evolved[48] and their participation has grown; hence, the doctrine undermines their participation. Due to the incapability of minors entering into a contract stated by the law, the business avoids engaging with minor creators.[49] It can be seen that the doctrine of *Void Ab Initio* protects the minors and shields them from exploitation and unfair practices[50]; however, it doesn't provide remedies in cases of exploitation[51].

[43] Indian Contract Act, 1872, § 10.
[44] *Mohori Bibee*, supra note 3.
[45] OECD, *Children in the Digital Environment*.
[46] *Mohori Bibee*, supra note 3.
[47] Indian Contract Act, 1872, § 11.
[48] OECD, *Children in the Digital Environment*.
[49] Id.
[50] *Mohori Bibee*, supra note 3.
[51] Avtar Singh, Law of Contract.

8. THE COMPARATIVE PARADIGM

8.1 United Kingdom

In the UK, minor contracts are treated as voidable rather than void[52], which provides flexibility while maintaining protection[53].

8.2 United States

In the US, minors can enter into contracts, but they retain the right to disaffirm them.[54]

9. NEED FOR LEGAL REFORMS

In the contemporary world, the Indian legal framework[55] needs to be updated and include the digital economy and the role of minors in the economic world[56]. Reforms are necessary[57] to ensure that the law remains relevant and effective.

10. CONCLUSION

The doctrine of Void Ab Initio was established in Mohori Bibee v. Dharmodas Ghose, which played a crucial role in protecting minors. However, throughout the paper, it has been established that a balanced approach is required where the opportunity for the minors is necessary and the law can adapt to the digital era without compromising its protective purpose and expanding legal definitions and introducing flexibility.

[52] *Nash v. Inman*, [1908] 2 KB 1.
[53] G.H. Treitel, *The Law of Contract*.
[54] Restatement (Second) of Contracts § 14 (Am. L. Inst. 1981).
[55] Indian Contract Act, 1872.
[56] OECD, *Children in the Digital Environment*.
[57] Avtar Singh, *Law of Contract*.