



The implication and challenges in the legality of E-contracts by minors in India

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Abstract

In the digital era we are faced with questions challenging the legality of minors and electronic contracts. E contracts are electronic agreements in order to engage in contemporary commerce. The area which rises a complex issue is where the age cap for minors to get into contracts come into the picture. It is a common notion that individuals under the age of 18 have no legal capacity to enter into a contract. For convenience and efficiency, one may prefer electronic form of contract though there are repercussions in the area of consent.

There are courts of some jurisdictions strictly deny the capacity of minors and on the other hand various digital platforms have age cap and age verification checks that confront these issues which the minors may find a way around to dodge it. It is pertinent to address the issue looking over our conventional legal framework and adapt to a more nuanced approach.

Keywords: Minor, E-contract, Cyberspace, Clickwraps

Introduction

In India, a citizen is acknowledged to be a major if he attains the age of 18.¹ This implies though a person is of age 17 and just one day away from turning into 18 years old, the contract which he enters will be deemed to be void in the eyes of law. This scenario begs the question the basis under which a minor's capacity to contract is established in the Indian Contract Act, 1872. In the cyberspace, there are several instances which will be addressed below in the form of illustrations, where a minor could be conditioned to enter into a contract and also it has been well established that in the recent year's minors are in close quarters with cyberspace in terms of usage of social media and accessing the internet. With a single click of an 'OK' or 'I AGREE' button be it a minor or even a toddler could be entering into E-contracts.² Hence it has become pertinent to delve into the existing legal framework governing minors entering in E-contract.

¹ Indian Majority Act, 1875

² Thomson Reuter Practical law, <https://uk.practicallaw.thomsonreuters.com/>, (last visited Nov.14, 2023)

Legal framework

A minor according to the Indian Majority Act, 1875 is stated in Section 3 as someone who must be domiciled in India and who must have completed eighteen years of age. According to Indian Contract Act, 1872, Section 11 deals with competency to contract wherein the person contracting must not be a minor or someone who is not of sound mind or someone who is disqualified. Section 10 states that an agreement will be a contract if there exists lawful consideration, lawful object, consent and competency³. According to section 10A, E-contracts are recognized by law and cannot be declared unenforceable just because it has been made under electronic means⁴.

In USA, European Union and England there are international organization namely, United Nations Commission on International Trade Law (UNCITRAL) which deals with certifying online contracts, Conventions on Contracts for International Sale of Goods (CISG) and Uniform Computer Information Act (UCITA) where both the aforementioned organizations legitimize and approve online contracts⁵.

Clickwrap agreements and Adhesion contracts

Clickwraps are agreements made online with a click of a button where the terms and conditions are to be read by scrolling through the document. As the name suggests the party who accepts becomes wrapped by the binding nature of the contract with just a click⁶. Mostly clickwraps are utilized when downloading and installing a software or when finalizing a purchase online. In clickwrap agreements it is possible that any person, even someone with an unsound mind could enter into a binding contract without going through and understanding the terms and conditions of the contract. Adhesion contracts takes place when a party to the contract exercises control over the framework of the contract and in turn has an advantageous position.

In the case of Central Inland Water Corporation Limited v. Brojo Nath Ganguly & Anr., the Apex Court succeeded in distinguishing unconscionable adhesion contracts from valid adhesion contracts but did not provide any exhaustive list⁷. In LIC v. Consumer Education & Research it was held that there must be equal bargaining power to both parties and also to what extent the court can interfere if one of the parties had more negotiating power⁸.

Literature Review

The paper on ‘Can minors enter clickwraps?’ by Saransh Jauhari addressed the realm of clickwraps and the changes in technicality if minors enter into one⁹. The line which fades away where clickwraps are contracts but it is enforced against minors who are legally incapable to enter into contracts is explained through enforceability and restitution with cases like Khan Ghul v. Lakha Singh¹⁰ and Leslie V. Sheil¹¹. Only the measures to be taken under the purview of social media contracts are given by the author.

³ Indian Contract Act, 1872

⁴ Ibid.

⁵ United Nations Commission On International Trade Law, <https://uncitral.un.org/en>, (last visited Nov.14,2023)

⁶ Thomson Reuter Practical law, <https://uk.practicallaw.thomsonreuters.com/>, (last visited Nov.14, 2023)

⁷ 1986 AIR 1571

⁸ 1995 AIR 1811

⁹ Saransh Jauhari, India: Though Click-Wraps Are Legal, Can Minors Enter Click-Wraps, Mondaq,(2023)

¹⁰ AIR 1928 Lah 609

¹¹ (1914) 3 KB 607

‘Minor’s contract in digital age’ by Shivangi Gangwar is a comparative analysis over the same topic concentrating on three jurisdictions i.e., England, India and South Africa where in the former two countries minor contracts are unenforceable unless it is a contract for necessities or benefit of the minor and in the latter minors who is of age above seven¹² are able to make contracts with parental guidance¹³. The author sheds light upon some questions like, do all individuals below the age of 18 need protection? and is it always in the interest of minors to protect from entering into fully legally enforceable contracts?

The paper on ‘Contract law in common law countries’ by Manasi Kumar discusses the law of impossibility and other disciplines like mailbox rule across different jurisdictions. It is suggested that common law approach to contract law could be made possible after monitoring different jurisdiction.

‘A study of minor’s capacity to contract in recent context’ by Drishti Baranwal examines the nature of minor contract and the restitution doctrine. The author has conducted an empirical research study on the countries including USA and China¹⁴. The issues in E-contract like competence, age verification, personal data infringement, doctrine of infancy is discussed. It is also proposed by the author that the demarcation between teen and adult must be considered.

Research Problem

As the realities shift there comes a strain on the legal doctrine because there are many E-contracts being made where there are no proper legal framework governing minors entering into E-contract. There exists the question of vulnerability in the context of social media contract, in the instance of a minor YouTube influencer where it will be considered as a contract of employment or if the profit-sharing agreement be beneficial to the minor or deemed to be necessities in this scenario. In England the Law Commission had reported in the Working Paper for a proposal considering the principle of qualified unenforceability, to let minors of more than sixteen years enter into contracts legally¹⁵. There have been no initiatives taken to form a commission or to look into the intricacies of minors and E-contracts. The National Crime Records Bureau prescribed for a requirement of a special bracket for the age cap in Juvenile Justice Act where the person under 16 to 18 be treated adults and be awarded the same punishment. Also, there exists a question that whether the twin test be applied in the minor and E-contract scenario same as it being applied for insanity i.e., to consider both the individual’s capability of understanding and forming a rational judgement. Under Companies Act, minors are given the privilege to become a stakeholder.

Research Methodology

The methodology undertaken in this paper is doctrinal research and it is predominantly a forecast analytical paper. The literature is taken from published articles and research papers in reputed journals like Springer Nature. This paper predominantly focuses on analyzing various existing doctrines and principles, for instance infancy doctrine.

¹² Children’s institute, <https://www.childlinesa.org.za/>, (last visited Nov.13,2023)

¹³ Shivangi Gangwar, Minor’s contract in digital age, Liverpool law review, (2022)

¹⁴ Drishti Baranwal, A Study of Minors’ Capacity to Contract in Recent Context, Burnished law journal, Vol.3, (2022)

¹⁵ Law Commission, <https://lawcom.gov.uk/>, (last visited Nov.13,2023)

Research Questions

- 1) Whether the clickwrap contract entered by minor without looking into the terms and conditions will be valid or not?
- 2) Whether E-contract entered by minor deemed to be valid in any other country?
- 3) Whether the consent of the minor without any awareness will be considered to be a valid one?
- 4) Whether the infancy doctrine can be used in cases of E-contracts by minors in the Indian context?

Implications faced in India

Let's look into some illustrations and precedents in order to understand the scenario in India better. Firstly, if a person aged 15 years wants to get a product worth of 500 rupees from Flipkart which is an online E-commerce portal and when he is asked to choose the method of payment, he chooses to pay by cash on delivery. When the order arrives, he may refuse the amount to pay stating that he is a minor where the contract will be not valid but the delivery agent has no option but to collect the amount and deliver the product. In this scenario the minor had utilized the concept of infancy doctrine but has exploited the protection given to him.

Another scenario would be a social media contract where a minor may enter into social media by posing as someone older to create an account which may lead to him committing another offence. Here, he was not supposed to use the app in the first place according to the existing legal framework but according to the social media age verification system which may be poor in determining whether the person creating an account is really not a minor. This would become detrimental to the minor in the long run.

Also, under social media there are lot of influencers who may be willing to promote a product through social media. If the person is minor, then the question arises whether the transaction becomes a benefit for the minor or if this is a contract for employment. Here, there are chances of the other party who is recruiting could take advantage of the minor.

In Mohiri Bibee case, it was held that minor contracts are void ab initio ¹⁶but in Trimax International Limited v. Vedanta Aluminium Limited, the Indian courts started to recognize contract via social media¹⁷. This shows that there are certain precedents which will become contradictory in upcoming years as minors could also make contracts through social media and so this points to the significance of gaining a provision which would specify the loopholes of minor contracts and especially E-contracts.

Scope

The paper is investigated only in the aspect of Indian context though it is suggested to take into consideration the scenario in USA and other countries. There are many loopholes with respect to E-contract by minors as the legal consequences are still vague. This paper comprehensively will give suggestions for these loopholes which will be of aid to future disputes. The judiciary is left with the Indian Contract Act, 1872 or the existing judicial precedents

¹⁶ (1903) LR 30 IA 114

¹⁷ Trimex International Fze ... vs Vedanta Aluminium Limited, India, <https://indiankanoon.org/doc/658803/>, (last visited Nov.13, 2023)

which are notably sparse in the cyberspace context. As India is a developing country, there is significant growth in the technological sector and so it will be required by the lawmakers to frame and amend certain laws but the scenario as of now is that there are no specific laws regulating E-contracts by minors and no specific provision as to the capacity of minors in -contracts.

Suggestions

The suggestion to be given which is quite evident is that there must be a separate provision not an act as such with regards to minors and E-contracts. The Indian Contract Act was enacted in the year 1872 when the world has not witnessed half of the technological boom. Hence, it is pertinent to establish that the capacity to a contract by minors must be amended to complement the current affairs. Moreover, the children and even the toddlers of the current generation are well aware of their acts and possess immense knowledge over the electronic world. Even those who are not aware are being influenced by their peers or by their set of circumstances. For instance, during COVID-19 there became a circumstance which required students of all age groups to be in close quarters with electronic devices and the internet which could be utilized in a contradictory manner.

As per Section 84 of the Indian Penal Code describes the application of twin test to determine the capacity of an insane person deemed to be liable rests on two factors. The two factors for the plea of insanity being the person must not be in incapable of understanding the actions and its consequences and the person pleading not guilty must prove that he is incapable of forming a rational judgement¹⁸. If both these conditions are being proved then he will be declared not guilty and will be given the plea of insanity. If this concept of determining the capacity of an insane person, then it is suggested that the same to be used for determination of the capacity of a minor while entering into contract. If the minor has with his full mind and convenience has formed a rational judgment to enter into a contract and has fully understood the consequences of his actions at the time of making the contract, then he might as well be equipped to be liable if he has committed a breach of contract.

Section 82 of Indian Penal Code deals with a concept called Doli incapax which means if a child under 7 years commits an offence, the child will be absolutely immune from prosecution as it will not be considered an offence. Whereas Section 83 of Indian Penal Code says that partial immunity can be granted if a child above 7 years and below 12 years has committed an offence since the child would not have been mature enough to understand the consequences. So, this distinction of age cap for determining the culpability of a child could also be taken as a backing in order to construct an exclusive age cap for minors entering into contract.

Furthermore, the Juvenile Justice (Care and Protection of Children) Act, 2015 states that the minors committing heinous crimes who are between the age of 16 to 18 will be considered to be an adult and would be tried as if he were a major though the final call from the Juvenile Justice Board decides whether he has both the mental and physical capacity to commit the crime¹⁹.

In addition to this, the current scenario in USA is that age verification platforms in order to dictate the minimum age for users is set as 13 years for some social media services like Facebook and Instagram. The Children's Online

¹⁸ Indian Penal Code, 1860

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2015

Privacy Protection Act governs this aspect of age verification²⁰. Even in India a minor is free to open up a social media account and this is a crucial loophole as opening up a social media account itself is a contractual agreement to accepting the terms and conditions of the social media application in order to use it. In England it has been proposed by the report from the Working Paper that for considering a person to be major he must be above the age of 16 and in South Africa it is instituted that a minor who is of 7 years of age could enter into contracts with parental guidance²¹. These instances point to India where no initiatives are taken to consider that minors are entering into contracts but still there are not specific legal framework has been established to govern them. It is suggested that it is high time that India must be influenced by these countries to at least start initiating to include a provision with regard to minors and E-contract.

Conclusion

From the aforementioned suggestions it is derived that young adults and adolescents have the rational and cognitive thinking that are required to make a contract and in exceptional cases it is opined that the judiciary must step in. It is imperative for the legislators to address the loopholes that are present in the virtual domain. To answer the above-mentioned research questions,

1) Whether the clickwrap contract entered by minor without looking into the terms and conditions will be valid or not? Yes, even traditional contracts are deemed to be valid as it is prevalently seen in precedent cases. If the minor is unaware of the terms and conditions while entering into the contract, the burden of proof will lie with the minor to prove the same.

2) Whether E-contract entered by minor deemed to be valid in any other country? Yes, there are certain exceptions made as mentioned previously in countries like USA and South Africa and even in England where the notion has been proposed but has not come into existence.

3) Whether the consent of the minor without any awareness will be considered to be a valid one? This is still ambiguous but if the existing provisions with respect to minors and contracts are taken into consideration, then the contract itself will not be valid and so the validity if the consent becomes pointless. If 'without awareness' could take in the meaning of not capable of fully understanding the consequences of the terms and conditions then, since it is an exceptional circumstance, the consent will not be a valid one and the contract will be deemed to be invalid too.

4) Whether the infancy doctrine can be used in cases of E-contracts by minors in the Indian context? The infancy doctrine could backfire as in, it could make the other party to the contract end up in a disadvantageous position as minors may take advantage of the same as this is the only viable protection. It can be used by minors but the judiciary must be wary of the facts and circumstances of each case. It is also opined that certain amendments be made or certain provisions be inserted in Indian Contract Act or the Information Technology Act so that neither of the parties be in an advantageous position i.e., no party should be in a position to coerce the other party.

²⁰ Children's Online Privacy Protection Act, <https://www.ftc.gov/>, (last visited Nov.13,2023)

²¹ Ibid 4.