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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Head & Associate Professor

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Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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“COMPARATIVE STUDY OF MINOR CONTRACTS – IN INDIA, UK, SOUTH AFRICA”

AUTHORED BY - GEETA A. PATIL

CLASS: - L.L.M. 1ST Year, SEMISTER:II ROLL No:- 114

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Progressive Education Society's Modern Law College
Ganeshkhind, University Circle, Pune (Law Of Contract And General Principles)

Savitribai Phule Pune University, Pune, 411007

Abstract

Minority is a fact rather than a privilege! Before the Act was enacted, the contractual relationship was governed by the personal laws of different religious communities like different laws for Hindu and Muslims. But later on 25th April 1872 The Indian Contract Act was enacted. Which brings within its ambit the contractual rights that have been granted to the citizens of India. It endows rights, duties and obligations on the contracting parties to help them to successfully conclude business- from everyday life transactions to evidencing the businesses of multi-national companies. With the path of technological advancement, the people are gaining wide-range of information even before the age of majority. In modern times, minors are appearing more in social life contributing equal as the person of more than their age. Minors are becoming responsible and trying to fulfill their respective needs as well catering the needs of the family with their hard work. A part time job in any firm, selling or buying things and participating in a show gives the financial freedom to minor and hence, it has become the new – normal. Performance as well as impact of minor contracts in various fields and study its legal implications as well as merits and demerits. Minor entering into contract for any work is unrecognized by law. But with the coming times, the thoughts of the people have changed and now, minors know their god or bad without consulting other and this requires the new law to be changed. The law must make new rules and provisions for protecting minors from any fraudulent activity but also not limit them to and the other party from coming into contracts and also the definition for minor should be graded. The researcher has undertaken the topic to study current position of minor contracts and the rules and regulations related to it with the help of three jurisdictions of India, UK and South Africa.

Key Words-Advancement, Contract, India, Minor, UK, South Africa

1. **Introduction:-**

The researcher has selected the topic “Comparative Study of Minor Contracts – In India, UK, and South Africa” to study about the various aspects related to minor contracts, the reasons for its growth with its advantages and disadvantages to the market. With the path of technological advancement, the people are gaining wide-range of information even before the age of majority. Minority in India is a fact but not privilege like other countries. The Indian Contract Act states that the minors are not competent to hold any form of contracts. The agreement made by the competent parties is recognized by law. A person who is not competent cannot make a valid contract like the minors. Minor’s agreement with some exceptions stands void and hence he is discharged from all the contractual obligations. ¹

In modern times, minors are appearing more in social life contributing equal as the person of more than their age. They are becoming responsible and trying to fulfil their respective needs as well catering the needs of the family with their hard work. A part time job in any firm, selling or buying things and participating in a show gives the financial freedom to minor and hence, it has become the new- normal. But in the eyes of law, minor coming into contract for any work is unrecognizable by law. The law says that a person under the age of 18 years are not mature enough to understand the types of agreements and not aware of what is right and wrong for them. Law always protects a minor. They are not well acquainted with people and may get trapped into any fraudulent contract by the other party. So, law does not give them the power to take the legal decisions. But with the coming times, the thoughts of the people have changed and now, minors know their good or bad without consulting other and this requires the law to be changed. The law must make new rules and provisions for protecting minors from any fraudulent activity but also not limit them to and the other party from coming into contract. The Indian Contract Act, 1872 (ICA) is a progressive legislation that seeks to go beyond the constraints present within its source, the English common law. In several areas, be it consideration, communication of offers, or remission of performance, amongst many others, the rules embodied within the ICA are an improvement on the source material Swaminathan 2008; Swaminathan 2017;

¹ Capacity to Contract - Rules & Regulations available at <https://www.indiafilings.com/learn/capacity-to-contract/>
last seen on 24/04/2024

Swaminathan 2018). However, one area where this assertion does not hold is that of incapacity, specifically those agreements where one of the contracting parties is a minor. Minority is well established as a form of legal incapacity across jurisdictions and laws. Some countries grant minors with limited capacity to contract while others consider all minors' contracts¹ to be void and unenforceable.² This bar, whether partial or absolute, is in place to protect the interests of the minors (Beatson et al. 2020; MacFarlane 2001; McKendrick 2015; Pollock and Mulla 2014). There are two questions to consider here. Do all individuals below the age of 18 years need protection? Is it always in the interest of minors to prevent them from entering into fully legally enforceable contracts? To answer the first question, this paper does not make the argument that all minors must be recognised under Indian law as capable of entering into contracts. However, it does argue that it is expedient to grant limited contractual capacity to some minors, as has been done in several other countries. A lack of capacity does not equal a lack of understanding (MacFarlane 2001). Once we accept that freedom to contract is a central tenet, what matters is the meeting of the two minds—many minors can assent to the terms of a contract in the same manner as adults (Ibbetson 2001). It is also apposite to remember the origin of this rule is common law principles that once considered married women to be incapable of entering into contracts (MacFarlane 2001). From a law and economics perspective, prohibiting an entire class of willing and able individuals to enter into contracts is inefficient. Such a policy imposes private costs on the parties willing but unable to enter into a contractual relationship with each other. It also imposes widespread social costs since the economy is deprived of several contracts that could have made a positive contribution to the wellbeing of society as a whole (Cooter and Ulen 2008; Posner 2010). To answer the second question, the idea that all minors “require protection from certain bargains seems out of step with modern psychology and the economic realities of life” (MacFarlane 2001). These rules were laid down in the pre-digital age. Minors today are entering into a greater volume and diversity of transactions than the generations before them, be it shopping on e-retail websites (like Amazon and Etsy), creating social media accounts (such as Facebook, WhatsApp, Instagram and Snapchat) or providing online services on online platforms (e.g., creating or consuming products for e-education sites like Unacademy or apps for Play

² Minors' Contracts in the Digital Age available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9212194/> last seen on 24/04/2024

Store or the App 1 The term “minors’ contracts” is incorrect when considered in the Indian context. Section 2(h) of the ICA lays down that contracts are those agreements that are enforceable by law. Section 10 of the ICA states that those agreements are contracts that are made by ‘parties competent to contract’. As such, the transactions entered into by minors are void agreements and do not transform into valid contracts. However, I will use this term for reasons of expediency, more so since my argument is that these agreements should be granted the legal status of contracts. Minors’ Contracts in the Digital Age 13 Store). These transactions are distinct from and in addition to, the minors’ contracts that have existed for centuries (such as contracts for necessary goods, employment, apprenticeship, service or education) in terms of both the nature and mode of the contract. Legislatures and judiciaries have sufficiently engaged with the latter categories of minors’ contracts but the former is a different beast altogether. Indian courts have recently started recognising e-contracts, i.e., contracts formed via electronic means such as email and WhatsApp messages³. However, these are examples of contracts formed electronically; contracts that are performed in the online realm are yet to be fully considered by the Indian judiciary (Pandey and Raghunath 2020). As we traverse further into the digital age, it is the World Wide Web that is increasingly becoming the cornerstone rather than the marketplace (MacFarlane 2001). This paper seeks to look at those minors’ contracts that take place on the World Wide Web and not the physical marketplace. It will examine how the three jurisdictions of India, England and South Africa deal with minors’ contracts. While South Africa permits minors above the age of seven years to enter into contracts with parental assistance, the English and Indian position is that minor contracts are unenforceable, unless they are ‘contracts for necessities’ or contracts for the benefit of the minor.³ The paper will summarise the statutory provisions and case law to showcase and compare the different approaches taken by the three countries. Finally, the paper will make the argument that the current understanding of ‘contracts for necessities’ and contracts for the benefit of the minor is inadequate to address the issues that will arise from the mismatch between law (where minority is almost synonymous with incapacity) and reality (where minors are increasingly entering into contracts). It is proposed that the definition for

³ Minors' Contracts in the Digital Age available at <https://link.springer.com/article/10.1007/s10991-022-09298-3>
last seen on 24/04/2024

minority for contractual liability should be graded, as it is with criminal liability, and that there are some gains to be had from the South African system.

2. Who Is Minor :

According to Section 11, a minor is a person who has not attained the age of majority. Different countries have different laws stating the age of majority. As per Section 11 of the Indian Majority Act, 1875 (amended in 1999):⁴ (1) every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before. (2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. Thus, to enter into a contract, even a day less than the majority age disqualifies the person from being a party to the contract.

3. Minor Contract In India :

Under Sect. 3 of the Indian Majority Act, 1875, one attains majority at the age of 18 years (or at the age of 21 years if a guardian has been appointed by the state for the individual). Section 11 of the ICA states that every person who has attained the age of majority is competent to contract, provided that s/he is of sound mind and not otherwise disqualified. Two interpretations are possible: the minor is incompetent to contract and thus their agreement is void, or that h/she is not bound by the contract, while the other major contracting party is, which results in a voidable contract. Several Indian courts followed English common law and held that minors' contracts were voidable at the option of the minor. Other courts strictly interpreted Sect. 11 to mean that all minors' contracts were this lack of consensus arose because the ICA does not explicitly state the consequences of a minor entering into a contract; nowhere is it mentioned in the ICA that the status of a minors' contract is void. It is this ill-drafted provision that seems to be the source of the difficulties faced by the Indian courts.

⁴ The Indian Majority Act, 1875 available at <https://indiankanoon.org/doc/80664820/> last seen on 24/04/2024

4. Minor Contract In U.K :

The current position in common law is that, except for contracts for necessities, education, service and apprenticeship, minors' contracts are either voidable at the option of the minor, or unenforceable against them unless ratified by the minor after attaining majority . In both situations of voidable or unenforceable contracts, the minor could enforce the contract if s/he so chooses, and could even recover damages if the other party breaches the contract, though the remedy of specific performance is not available to them. The age of majority is fixed at 18 years by the Family Law Reforms Act, 1969. In 1984, the Law Commission considered the question of minors' contracts. In an earlier Working Paper, the Commission had proposed the principle of "qualified unenforceability" under which contracts were unenforceable against minors. They also discussed an "Alternative Proposal" whereby the line would be drawn at age 16; all contracts would be enforceable against a minor above the age of 16 years as if they were adults, and no contract would be enforceable against a minor below that age, regardless of the nature of the agreement. This was proposed to be fair to the adults who entered into transactions with minors. Public opinion, however, did not support the "Alternative Proposal". Therefore, the Commission decided against codifying all aspects of the law relating to minors' contracts, instead seeking to remedy the defects in the existing law. And so, the Commission simply recommended that Sect. 1 of the Infants Relief Act, 1874 be repealed, which ensured that no adult could be sued for contracts entered into during infancy, even if they had ratified the same. This was, following the Commission's recommendation, repealed by the Minors' Contracts Act, 1987.

5. Minor Contract In South Africa:

South Africa has a mixed legal system; it contains elements of both Roman-Dutch law and English common law. The common law of South Africa also incorporates elements of the customary law of several African tribes. English common law's contribution to the formation and development of contract law in South Africa has been 'appreciable' albeit with significant departures. One such notable difference is the treatment of minors' contracts.

6. Minor's Capacity To Contract:

This section of the paper will evaluate how the three jurisdictions of England, India and South Africa engage with the issue of minority as incapacity and state their distinct and disparate positions on minors' contracts. Minors' contracts are voidable or void under English common law, subject to certain exceptions. Minors' contracts in India are void ab initio, subject to the exceptions of executed contracts, contracts of marriage and some contracts of apprenticeships. The South African position is at 2. In the UK, beneficial contracts are a recognized exception to

the general rule of incapacity of minors. However, in India, this broad exception does not exist. Instead, some narrower exceptions have been developed, e.g. marriage and apprenticeship although they appear to stem in part from a notion that these contracts are beneficial for minors.⁵ Therefore, in order to account for the divergence and avoid any possible confusion in the use of the term “beneficial contracts”, when referring to UK and Indian law together, the paper will refer to “contracts for the benefit of the minor”. English and Indian position in that minors have limited contractual capacity granted by statute.

In U.K.:

Contracts for necessities Contracts for necessities could always be enforced against the minor. In *Peters v. Fleming*⁹, the question before the court was whether a gold ring, a gold watch chain and other items of jewellery were necessities or not. The defendant was an under-18. The Law Commission Accessed 7 July 2021. This section stated thus: “All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void: Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.” Minors’ Contracts in the Digital Age 13 graduate student at the University of Cambridge and the minor son of a Member of Parliament. Parke, J. stated that “the word necessities

⁵ Minors' Contracts in the Digital Age available at <https://link.springer.com/article/10.1007/s10991-022-09298-3> last seen on 24/04/2024

was not confined, in its strict sense, to such articles as were necessary to the support of life, but extended to articles fit to maintain the particular person in the state, station, and degree in life in which he is.” It was held that articles were not merely ornamental but had real use and thus, were necessities. The authority on this issue is the judgment of *Nash v. Inman*¹² where the court expounded on what constitutes necessities. A tailor plying his business on Saville Row, London brought this action against an undergraduate student at the University of Cambridge, a minor, to recover the price of the eleven waistcoats, amongst other items of clothing that he had supplied to the defendant. While ruling for the defendant, Buckley L.J. noted that two conditions must be met to hold enforceable a minor’s contract for necessities: “the contract must be for goods reasonably necessary for his support in his station in life, and...he must not have already a sufficient supply of these necessities. “Contracts for the Benefit of the Minor Minors’ contracts of employment or education are enforceable as long as they are beneficial to the minor. An example is provided by *Clements v. London and North Western Railway Company*. A minor was employed by a railway company as a porter. He also became a member of an insurance society, agreeing to contribute to the fund and also waiving his rights under the Employers’ Liability Act, 1880. One of the advantages of this insurance society was that it provided compensation for even those injuries which were not caused by the negligence of the employer. The plaintiff suffered an accident and sued the railway company. Lord Escher noted that a minor cannot repudiate a contract if it was for his advantage.¹⁵ The appeal was dismissed since it was held that the contract was for the benefit of the minor and thus binding on him.¹⁶ Kay, L.J. added that “contracts of apprenticeship and with regard to labour are not contracts to...which the plea of infancy is a complete defense, and the question has always been, both at law and in equity, whether the contract...is for the benefit of the infant.”¹⁷ *Chaplin v. Leslie Frewin (Publishers) Ltd.*¹⁸ is an interesting case that involved the minor son of the famous filmmaker and comedian, Charlie Chaplin. Michael Chaplin, the 19-year-old minor son, 19 who was estranged from his father, entered into an agreement with two journalists to ghostwrite his autobiography, *I Couldn’t Smoke the Grass on My Father’s Lawn*. His wife and he also entered into an agreement with a firm of publishers to sell this work. An advance amount from the royalties was paid to the couple. They approved the galley proofs but sought to repudiate the contract a few weeks later on the ground that the finished work showed the plaintiff in a bad light. It was argued that the plaintiff was entitled to avoid the contract since it was “neither for necessities nor for his advantage.” The court did not accept this argument and held that the contract under question was advantageous since it would aid the plaintiff to start his career as an author, while also enabling him to maintain his wife and child. One could not avoid a contract merely because the benefits were “not as great as the parties anticipated. “The judge also famously remarked that the “mud may cling but the profits

will be secured.”⁶ Compare this with the case of *De Francesco v. Barnum*. Helen Maude Parnell, a girl of 14 years, executed an apprenticeship deed with the plaintiff, Giuseppe Venuto de Francesco, in December 1886, for a period of seven years. She was to learn his art, be remunerated for performances if and when they took place, and not contract any professional engagements without his consent, among other conditions. Another deed, on the same date and with similar terms, was executed between the plaintiff and Ada Parnell, Helen’s 12-year-old sister. In August 1889 both girls contracted with the defendant, Phineas T. Barnum, to perform as stage dancers for his show for a weekly wage. The plaintiff sued the minors for damages and for an injunction to restrain them from performing in the defendant’s show. Fry, L.J. noted that there was “no provision for remuneration of any sort...except during the engagement.” The apprenticeship deed did not require the plaintiff to pay wages to the girls except during engagements. It also empowered the plaintiff to send the girls to perform on shows in foreign countries. Fry, L.J. also expressed concern over the condition that required the girls to not take any other professional engagements for the period of the contract but did not place a similar constraint on the plaintiff. The plaintiff also had the power to put an end to the contract unilaterally, after a fair trial and written notice to the minors. Fry, L.J. held that these stipulations put “an inordinate power into the hands of the master” and it was not one for the benefit of the minor. Earlier courts had held that “an infant cannot bind himself to be liable to a penalty.” The appeal

19 The Family Law Reforms Act fixed the age of majority at 18 in the year 1969. Several of the cases studied in this paper predate that legislation and were decided in a time when the age of majority was 21 years. *Minors’ Contracts in the Digital Age* 13 was dismissed as the court was loath to turn “contracts of service into contracts of slavery. “Another instance where a contract of employment was not enforced against a minor

⁶ *Minors' Contracts in the Digital Age* available at <https://link.springer.com/article/10.1007/s10991-022-09298-3> last seen on 24/04/2024

was in the case of *Sir W. C. Leng & Co. Ltd. v. Andrews*. The plaintiffs were proprietors of a newspaper and, in July 1905, employed a 19-year-old William Linton Andrews (the minor defendant) as a junior reporter. One of the conditions of employment was that the defendant, after leaving this employment, could not be connected with any newspaper in the town of Sheffield or within a 20 miles radius of the town hall. Andrews worked for the *Sheffield Daily Telegraph* till October 1907 and in March 1908 sought employment from the *Sheffield Independent Press, Limited*, a rival newspaper business. Plaintiffs claimed this was a breach of their agreement and sued for an injunction to restrain the defendant from working for the second newspaper. Cozens-Hardy, M.R. found that this restriction was ‘unusual’. It was also unreasonable and against public policy to expect a young man to bind himself for the rest of his life in such a manner, in a business and employment of this kind. Even if this unusual condition was valid in the case of an adult contracting party, it was invalid in the case of a minor defendant.

Voidable Minors’ Contracts Those contracts which involve the devolution of continuous rights and duties, or where the minor acquires interest in property or avails of some benefit under the contract, are voidable at the instance of the minor. She has the option to avoid the contract during the infancy or within a reasonable period upon attaining majority and must exercise this option in a timely manner or remain contractually bound. In *Edwards v. Carter*, [1893] AC 360, the House of Lords had to decide what was a reasonable time period for repudiation of minors’ contracts. Albert Marcius Silber entered into a covenant with the respondent trustees to pay a sum of £1500 a year during the life of his minor son’s wife and any progeny of this marriage. The trustees were to pay this sum to Martin Albert Silber, the minor son, for the duration of his life or until he declared bankruptcy. It was also agreed between Martin Albert Silber and the trustees that if he inherited any property from his father, he would vest that in the trustees. At the time of making this covenant, Martin Silber was a month away from attaining majority. The father died four years after the entering into of this agreement, leaving his property to his two sons. One year from his father’s death, Martin Silber sought to repudiate the contract he had entered into in his minority. Lord Herschell noted that the son had taken no steps to repudiate during the lifetime of his father. He sought to do so only after the passage of four years and eight months after his death. This was more than a reasonable time and thus the appeal was dismissed with costs.

Unenforceable Minors’ Contracts entered into by minors that do not fall in the preceding three categories, fall within this category, viz. they are enforceable by the minor but not binding upon them unless ratified upon attaining majority (Chitty 2018). Most of the minors’ contracts can be grouped in this class (Chitty 2018). *Williams v. Moor* concerned itself with a minor’s contract for sale and delivery of work and materials, not being necessities. The defendant minor ratified this contract after coming of age and before the commencement of this suit. observed such a

contract is void in the sense that it cannot be enforced against the minor. However, the law allows the minor contracting party to validate contracts entered into during their infancy because, upon coming of age, they acquire the power to decide for themselves whether the contract is of “meritorious character” or not. The judgment was entered for the plaintiff since the defendant had ratified the contract after attaining majority and made himself liable under it.

In India:

Contracts for Necessaries this common law exception to the voidable status of minors’ contracts is codified in Sect. 68 of the ICA. Any person who supplies goods to a minor, which are in nature of necessaries suited to the minor’s condition in life, can get reimbursed for such supplies from the property of the minor.⁷ The section applies to anyone who is incapable of entering into a contract and thus includes both minors and persons of unsound mind, and their legal dependents. However, this provision falls under that chapter of the ICA which deals with quasi-contracts, to wit those situations which resemble *con66 AIR 1949 Bom 215 (India)*. It was not a contract of apprenticeship since Acting is not one of the trades recognized by the Apprenticeship Act, 1961. The *Fernandez* case was also decided by the Bombay High Court and thus operates as precedent for the Raj bench. The judges in the Raj decision sought to distinguish the case from *Fernandez* on the ground that *Fernandez* dealt with a contract of marriage while *Raj* dealt with a contract of service. Minors’ Contracts in the Digital Age 13 tracts. Thus, strictly speaking, these transactions are not contracts but are enforced because of principles of equity. As has been noted by the court in *Mohori*

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The Contract Act, 1872 | 68. Claim for necessaries available at <http://bdlaws.minlaw.gov.bd/act-26/section-254.html> last seen on 24/04/2024

Bibee, under Sect. A minor is not personally liable to honour contracts for necessities and only a statutory claim exists against his or her property.⁷² *Kunwarlal Daryavsingh v. Surajmal Makhanlal* is a decision of the High Court of Madhya Pradesh on this point.⁷³ Tulsiram, the minor son of Surajmal and the second defendant in this suit, took a house on rent from the plaintiff in Shujalpur. Later the father-son duo refused to pay the rent and hence Kunwarlal brought a suit for recovery of Rs. 15, the arrears of rent. Khan, J. allowed the revision, holding that a house rented to a minor so that he could reside there and continue his studies, was a necessity suited to his condition in life.⁷⁴ Contracts for necessities, though, predominantly find expression in credit sales. If a minor is in a position to pay for the item in question and does so before taking possession of the goods, it will not be a contract for necessities. It is for this reason that shopkeepers have no qualms in conducting business with minors as long as they pay upfront. We all can speak from experience of buying personal goods from the neighborhood store as children. Most shopkeepers will first take the money and then supply goods, making this transaction an executed contract. It is only in cases of credit sales (which is an executory contract since the shopkeepers supply the goods first) that this situation of contracts for necessities arises, and the attendant need to be reimbursed for goods already given away. The Treatment of Minority under Other Indian Legislations Section 10 of the ICA provides a general principle that minors cannot enter into legally binding contracts. As has been pointed earlier, law and the courts do not prevent minors from entering into contracts, they simply will not enforce such agreements; mostly against the minors, sometimes even against the adult contracting parties. Minors' contracts occupy a grey area that is found in other civil statutes as well. For instance, *Mohori Bibee* dealt with the transfer of immovable property, which is a special contract and thus governed by different rules. Under Sect. 7 of the Transfer of Property Act, 1882 (TPA), minority is not an absolute bar to being a transferee in certain cases. Since minors are not competent to contract, they are also not considered competent to transfer property. However, property can be transferred to them if certain conditions are met. Examples include gifts in favour of minors that do not impose onerous obligations, a conveyance where consideration is provided by a third party and one that does not impose any obligations on the minor, and even conveyances where the minor provides the consideration and the transaction is complete, if the minor does not need to perform any outstanding obligations. The underlying theme seems to be that minors can enter into commercial transactions which do not impose any obligations on them. This is akin to the category of contracts entered into for the benefit of the minor. Minors thus cannot enter into lease agreements, whether as lessor or lessee, since this instrument, in some cases, has to be executed by both parties, or usually requires the payment of rent periodically after the formation of the contract. Another legislation that provides limited recognition to the contractual capacity of minors is the

Apprenticeship Act, 1961. Section 3 of this statute states that no one below the age of 14 years can be engaged as an apprentice. Under Sect. 5, a minor can start apprenticeship training in specified trades only after his guardian enters into a contract of apprenticeship with their employer. Thus, despite the agreement placing obligations on the minor, the promise flowing from the minor and consideration flowing towards the minor in the form of stipends, the minor is not a contracting party under this Act.

The Entertainment Industry has always been a center of attraction for people of all age groups. Earlier only some child actors used to get roles in television shows or the opportunity to perform and showcase their talent. Now, the participation rate has increased. The modern era of the entertainment industry is filled with children occupying centre stage in the movies, songs, videos which has added more growth in the show business. With such advancement, problems involving contracts of minor are becoming very important. The industry must be able to form a legal contract with people under 18 years of age to give them the opportunity for showcasing their talent. Any law must not limit them. Basic Legal Principle Generally, a minor lacks the competency to enter into a contract which legally binds them to their agreement. An adult and a minor who are party to a contract can be voided by the minor at any point of time until he enters the age of majority, but the adult has to still perform his side of the deal as he is legally bound. Even if the parents or the guardian of the minor's side approves the contract, in most jurisdictions, the law does not permit the minor to honor it. The reason being the minors do not have the ability to understand questions involving contractual rights. Consequently, any person dealing with a minor does so at the mercy of the minor's right to void the contract. Approval of a contract by the parent or guardian of a minor does not bind the minor¹⁵. In New York, contracts with minors for anything other than the minor's necessities are termed as voidable by the minor. All people in the entertainment industry looks for chance to expand their business through films, shows, etc. The minor and the professional, both parties to an agreement should fully understand the terms and conditions on which they are contracting. An agreement may regulate both parties' behavior for a considerable period of time and the effects of a bad deal can lead to loss for one party or another¹⁶. The Entertainment Industry The main problem regarding the minor's contract in the industry is the right to cancel contracts. There has been cases in Hollywood where guardian of a minor child would enter into contract and then leave in the midway, later resulting as a financial setback for the other party. Hence, the other party were unwilling to invest in any child performers since the minor is not legally bound to perform the entire contract with terms and conditions. Modern Law Earlier, laws were enacted to prevent fraud or malicious activity in the entertainment industry but the modern laws now contain substantial protection for the child

entertainers.⁸ For example, in California a statute is present applying for both the parties i.e. the minor and the professional. It limits the minor's right to cancel the contract. New York also authorizes judicial approval of 15 Overview of minor's contract in the entertainment industry, minor entertainers' contracts. In the case of earnings, the court will usually determine the income to be set aside by considering: • the parents' financial circumstances • the needs of the minor's family and parents' other children, if any • whether the minor is married Intellectual Property Rights Entertainment contracts with minors often require them to transfer IPC (intellectual property rights). California's e statute of disaffirmation is basically applied to contracts for the transfer of intellectual property rights. It also applies to contracts "pursuant to which a minor agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field." For a practical way, problems involving the transfer of copyright of minors can be neglected, easily by contracting with them on a "work for hire" basis.

In South Africa:

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https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3802560_code4612031.pdf?abstractid=3802560&mirid=1 last seen on 24/04/2024

Limited Capacity to Contract Section 17 of the Children's Act, 2005 has fixed the age of majority at 18 years. An additional distinction is created at law between infants and minors (Watt 2012). Infants, i.e., children below the age of seven years, are absolutely barred from entering into a contract. Minors, those individuals between the ages of 7 and 18 years, have limited contractual capacity; they can enter into valid contracts with the consent of their guardians. However, it is still open to the minor to avoid this contract, otherwise valid in the eyes of law, until a reasonable time upon attaining majority, if she can show that it was prejudicial to their interests at the time of its formation. The contract will be invalidated and the minor can claim *restitutio in integrum*. In *Wood v. Davies*, the minor plaintiff's father, acting as his legal guardian, used a portion of his inheritance to purchase a house from the defendant. The plaintiff sought to avoid the contract in court. Sutton, J. found that the father exceeded his capacity while entering into this contract of sale. The minor plaintiff resided in a boarding school while the house was purchased, at an excessive price, for his family, making it an unnecessary and expensive buy. The terms of the contract imposed onerous obligations on him that would extend beyond his minority, while also eating into a substantial portion of his inheritance. Since this was held to be a contract prejudicial to the interests of the minor, he was entitled to cancel the contract and claim *restitutio in integrum*.

Minors' Contracts in the Digital Age 13 In *Edelstein v. Edelstein*, it was held that a contract entered into by a minor without their guardian's consent cannot be enforced against the minor, but is binding on the other party.⁷⁸ However, a contract entered into by an unassisted minor can later be ratified by the guardian, or the minor themselves upon attaining majority. Interestingly, a contract entered into by an unassisted minor that is not ratified by them or their guardian is not void *per se*. It has been described as a 'limping contract'—the minor represents the weak leg as s/he has no contractual obligations but only a natural obligation; the other party represents the strong leg as they are fully bound to perform the contractual obligations under the contract. There have been calls to declare such contracts as voidable or *inchoate* or *sui generis* but no consensus has emerged on this point. Thus, unlike the English and Indian positions, a contract for necessities, or one for the benefit of the minor, is not binding and/or enforceable against the minor if s/he is not assisted by the guardian whilst entering into this contract. This was not always the position. At the end of the 19th century, several South African courts started holding, based on principles imported from English common law and later termed the 'benefit theory', that unassisted minors' contracts would be enforced if the minor was enriched under the contract.⁸⁰ The law came full circle with the decision in *Tanne v. Foggit* which rejected the benefit theory.⁸¹ The appellant ran typewriting classes at a college in Germiston. The minor defendant contracted to take typewriting classes from him three times a week for two and a half months, for a fixed sum which was payable in advance at the beginning of each month. Foggit

paid the fees for and attended classes in the first month, but did not pay for or attend classes thereafter. Tanne brought an action for the amount due to him for the remaining months. Tindall, J. ruled in favour of the minor since he had entered into this contract without the consent of his father, his natural guardian.⁸² It was held that in cases of unassisted minor contracts, the minor is only bound to the extent of the benefit derived from the contract.⁸³ There was no obligation on Foggit since he had derived the benefit of only those classes he attended which had already been paid for. This position of law was later reframed in *Edelstein*. In this case, a minor woman entered into a marriage with the necessary consent of her mother and her father's constructive consent (the parents were divorced and custody of the minor was with the mother). She signed a prenuptial contract with her husband, without the assistance of her father (her natural guardian), and under the assumption that her mother's consent was enough. Later the validity of this prenuptial contract was called into question. Van der Heever, J. conclusively rejected the benefit theory, finding it "incapable of practical application" due to the inherent methodological difficulties in determining what constitutes a benefit to the minor. An unassisted minor is not binding on them even if it is generally beneficial, as long as it imposes obligations on the minor.⁸⁵ Thus, an unassisted minor is not liable for necessities under South African law (Spiro 1985).

Statutory Recognition The contractual capacity of minors is primarily governed by the principles of South African common law. The Consumer Protection Act, 2008 (CPA) seeks to codify one fraction of minors' contracts and obligations. Section 3(1)(b) recognizes minors as "vulnerable consumers" and aims to reduce some of the potential disadvantages that can be faced by them. Section 39 expounds on the status of minors' consumer contracts. A contract for the supply of goods or services is voidable at the option of the minor if, at the time of making the agreement, the minor was emancipated, unassisted by their guardian, or if the agreement has not been ratified by their guardian or by themselves upon attaining majority. This right to avoid the contract is not conferred upon a minor who has acted fraudulently. It has been argued that though the purpose of this provision was to reduce the uncertainty regarding the common law position, rather than to replace it, the section has fallen short of its . It does, however, somewhat strengthen the 'limping' status of this category of unassisted minors' contracts.

7. Comparative Study :

A close examination of the approaches taken by the three jurisdictions under question provides us with two options. One is to hold that all minors' contracts are void subject to the broad exceptions of contracts for necessities or contracts for the benefit of the minor. The second is to allow a certain class of minors to enter into enforceable contracts with the consent and assistance of their legal guardians, subject to a possible claim of restitution in integrum in the future if the

contract is found to be prejudicial to the minor's interests.⁹ One commonality between the two approaches is the recognition that it is futile and impractical to prevent all minors from entering into any and all sorts of consumer or commercial transactions. Broadly speaking, contracts in today's digital age can be categorized into three classes: (i) contracts that are formed and performed exclusively in the physical world; (ii) contracts that can be formed/performed in both the traditional and the electronic way; and (iii) contracts that are formed/performed exclusively in the digital world. The first category of contracts has been in existence since the beginning of commerce in the human world and legal systems have put in place policies and rules, albeit not wholly adequate, to govern minors who enter into such contracts. The latter two categories are a creation of the digital age. The second category of contracts comprises those transactions which enjoy the best of both worlds. An example is that of consumer transactions such as the sale of goods and services. Minors could earlier go to brick-and-mortar stores to buy books, clothes and foodstuff. Now, especially in *Minors' Contracts in the Digital Age* 13 the current COVID-19 pandemic, most choose to have the same products delivered to their doorsteps, a facility readily offered by e-commerce websites like Amazon, Flipkart or Myntra. Digital transactions of this nature have not been able to fully replace the traditional methods of entering and performing these simpler consumer transactions. Nor is that the intention. Contracts in this category exist to reduce transaction costs; the means are different but

⁹ *Minors' Contracts in the Digital Age* available at <https://link.springer.com/article/10.1007/s10991-022-09298-3> last seen on 24/04/2024

the ends remain the same. The third category consists of those transactions for which there has been no equivalent in the physical world. Examples of this would be the creation of social media accounts such as Facebook , providing advertising services or putting up content on personal YouTube channels or podcasts , creating apps to be sold on the Google or Apple app stores , esports player contracts and the like. The subject matter of these contracts exists in the digital realm and they are meant to be performed exclusively in the digital sphere. While it is possible to enter into these contracts using the traditional route, it is more expedient to do so electronically, especially when it requires nothing more than a few clicks of the mouse. This paper argues that we need to think about how to deal with the second and third categories of contracts. Many of these contracts are novel by-products of the age of technology in the sense that they would not exist had it not been for the technological developments in the recent past. Moreover, it is an inescapable fact that it is the younger generations who are more adept at using technology, faster to adapt to new and emerging applications, and thus are the primary beneficiaries of the digital economy. Perhaps due to these reasons, the contracts in question concern subject matters that appeal more to the digital natives than they do to older generations. In a sense, digital contracts self-select minors as the intended contracting parties. This leads to increased participation by minors in the contractual sphere, and these new contracts are also executory in nature, though not for necessities, and thus beyond the protection afforded by the existing exceptions to minors' incapacity. Moreover, in the digital space, there is a methodological problem in ascertaining the age of the contracting parties. These contracts can be between two minors or between a minor and an adult. The digital age presents tremendous opportunities for both the consumer-minor and the entrepreneur-minor, whether contracting with each other or with major parties individually. For this analysis, let us consider two specific contracts—one where the minor has an Instagram account (the consumer-minor contract), and another where the minor is a professional e-sports player (the entrepreneur-minor contract). The English Common Law/ Indian Option the English and Indian courts would have to decide whether minors' contracts falling in the aforementioned second and third categories could be regarded as contracts for necessities or contracts for the benefit of the minor. Signing up for an account on Instagram involves entering into a contractual relationship with its parent company Meta (formerly known as Facebook). The minimum age to have an Instagram account is 13 years, although most social media companies do not have an age verification mechanism in place, potentially enabling under-13-year-olds to enter into these contracts with the company . Even if they did, their policies nevertheless allow minors between the ages of 13 and 18 to enter into contracts with them. The terms of use for these 'Meta Products'

include collecting and storing the information and content provided by the user consciously, and the metadata provided unconsciously, and by third parties, among others. Essentially, the consideration provided by the user to partake in these 'free services' is the user's data; minors give information about themselves in return for the opportunity to use the app and engage with the world. Nevertheless, despite both parties doing or abstaining from doing 'something' for the other, this is not a contractual relationship, merely because one of the parties is not of age. In the absence of a legally enforceable contractual relationship between the two parties, rights and obligations do not flow either way. How, then, can the consumer- minor's interests be safeguarded in this scenario? Substantial research has been done on the effects of social media on children and young adults . Quite a lot is known about the deleterious consequences of the improper use and consumption of these services. In this light, how willing would a court be to hold that having an Instagram account is for the benefit of the minor, or a necessary suited to the consumer-minor's condition in life One may flip the situation to consider the case of an Instagram influencer who promotes and advertises products or services, and gets paid in cash or kind. Unlike a consumer- minor who uses the services rendered by or on Instagram, this entrepreneur-minor provides services to or on Instagram. This is the case of a minor entering into business or commercial transactions with corporations for marketing purposes, making them the promisor rather than the promisee. If they keep up their end of the bargain and put out a sponsored post on their Instagram feed, and the company refuses to pay up, what remedy is available to the minor in this case If she sues the company, will the courts be required to decide whether this employment contract was for the benefit of the entrepreneur-minor? In India, a contract of employment can be considered to be a contract for necessities if the minor in question is indigent. It is unlikely, though, that an Indian court would accept .The policy term reads thus: "Instagram requires everyone to be at least 13 years old before they can create an account (in some jurisdictions, this age limit may be higher). Accounts that represent someone under the age of 13 must clearly state in the account's bio that the account is managed by a parent or manager." 87 Instagram's data policy clearly states that the app 'must process' information about the user in order to provide the Meta Products. Section I provides details on the type of information collected: "We collect the content, communications and other information you provide when you use our Products, including when you sign up for an account, create or share content and message or communicate with others. This can include information in or about the content that you provide (e.g. metadata), such as the location of a photo or the date a flee was created. It can also include what you see through features that we provide, such as our camera, so we can do things such as

suggest masks and filters that you might like, or give you tips on using camera formats. Our systems automatically process content and communications that you and others provide to analyze context and what's in them for the purposes described below.” 88 Consideration is defined in § 2(d) of the ICA thus: “When at the desire of the promisor, promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence, or promise is called a consideration for the promise.” 254 Minors' Contracts in the Digital Age 13 that argument. Social media is generally viewed as a distraction and not as a serious money-making venture. Rags to riches stories are few and far between. It is not difficult to imagine a judge ruling that there are better ways to earn a living for an indigent minor. Moreover, an Instagram influencer's work profile is not protected by the provisions of the Indian Apprentices Act, 1961 and thus that door is shut. When minors across the board are dissuaded by law from entering into contracts, how willing will a court be to rule in favour of this entrepreneur-minor? One can do deeper down the rabbit hole. Even if a court determines that a social media account is a contract for necessities, or that it is a contract for the benefit of the minor, will the court go into questions of determining how many social media accounts a minor can contract for, or whether one social media account is more beneficial than another for a minor's well-being? If a court does find that social media accounts are not necessities for a consumer-minor, and not beneficial for an entrepreneur-minor, we are faced with a situation where thousands of minors will continue to enter into void contracts that will not confer any rights on them. Although the consumer-minor would have already provided valuable user data, they would not be able to sue the social media company for breach of their privacy obligations. Similarly, despite having worked hard to create a popular YouTube channel, the entrepreneur minor would not be able to sue YouTube for their proper share under the revenue sharing contract (YouTube 2021).⁸⁹ The ICA will be more honored in the breach than in the observance. On the other hand, some of these questions shift the focus to judicial regulation of social media consumption rather than protection of minors' contractual interests. Is it the role of contract law to regulate social media? Decidedly not. One may argue that regulation of social media is not the intention of this judicial inquiry but it is difficult to envision how the courts will rule on the enforceability of these kinds of digital minors' contracts without considering normative questions surrounding the optimum level of social media consumption. This will open the Pandora's Box by raising its own set of privacy and liberty issues. What started as an innocuous conversation on minors being protected as they engage with the world will devolve into a discussion of who they can interact with and how. Another example of a digital contract

that is being entered into by entrepreneur minors is e-sport player contracts, which are on the rise with the increasing popularity of competitive gaming. E-sports involve multiplayer video games played online. By their very nature, they can be performed only in the digital realm. E-sport organizations contract with players and hold tournaments, just like regular basketball teams or football clubs (James 2020). The careers of most e-sport athletes (and also traditional athletes) usually take off before they come of age, thus making minority an issue in such contracts. For example, Anathan Pham, a professional Dota 2 player, dropped out of high school, and moved to China from Australia, to turn pro at the age of 16 years. Under English common law, these The YouTube Partner Program allows content creators a share in the ad revenue and YouTube Premium subscriber's subscription fee, among other benefits. The creator needs to be "at least 18 years old, or have a legal guardian older than 18 years of age who can handle your payments via AdSense," have a certain number of subscribers, and should "create content that meets our advertiser-friendly content guidelines." contracts would be categorized as employment contracts and held enforceable as they are for the benefit of the minor. The validity of e-sports contracts in India turns on the question of whether these are contracts of service or apprenticeship. Following the ruling in *Raj Rani*, if these are contracts of service, they are void ab initio like most other minors' contracts. One would then have to show that e-sports player contracts are contracts of apprenticeship to gain the protection of the law. This will be a futile endeavor since the list of trades designated under the Apprentices Act does not include sports players, even though it (ironically) does recognize sports good makers (Directorate General of Training 2021).⁹⁰ The other issue to be considered is whether these e-sport contracts are for the benefit of the minor. Since the idea of teenage athletes making it big is relatively more plausible, the question here turns on the acceptability of e-sports as a lucrative career option. Hence, there is a possibility that courts may recognize e-sport player contracts as contracts for the benefit of the minor, but it's difficult to gauge the strength or success of this approach in the absence of precedents. Once again, we face a situation where the current legal provisions are incapable of dealing with the changing nature of contracts. Both kinds of entrepreneur-minors, whether an Instagram influence or an e-sports player, are left to fend for themselves, without the protection of the law. We have seen earlier how judicial interpretation of these exceptions has been fluid and indeterminate, especially in the Indian context. The imprecise and ambiguous expositions do not bring clarity on how these emerging kinds of minor contracts can be assimilated within the existing rules. The South African Option the courts adopting this approach will consider two questions: what is the age of the minor and whether they had the consent or assistance of their legal guardian while

entering into the contract under question? Minors over the age of seven years have limited contractual capacity under the South African regime. Since most social media companies want their users to be at least 13 years of age, the age requirement in the case of both the Instagram consumer-minor and the entrepreneur-minor contract is met. Then all that remains is to determine whether the consumer-minor had parental consent or the assent of their guardian to open an Instagram account. The same is the case with the e-sport entrepreneur-minor contract. Any child above the age of seven can enter into these e-sport gaming contracts as long as they have the assistance of their guardian. In both these situations, the court will not undertake a normative determination of the nature of the minor's contract to rule upon its validity. Compared with the English/Indian approach, the South African approach, by focusing on procedural requirements, considerably eases the implementation of rules relating to contractual capacity.⁹⁰ Details about the trades covered under the Apprentices Act is available online.⁹¹ For a rich, detailed discussion on the status of minors' contracts in the entertainment and sports industries. Major differences in minors' contracts: a comparative analysis into the validity of contracts with minors in the sport and entertainment industry. Minors' Contracts in the Digital Age 13 the problem with the South African system lies in determining that the minor had parental assent. It is easier to prove parental supervision in the traditional contracts regime rather than in the digital one. When a minor goes to buy a house or books, the other party can communicate directly with the parents/guardians to check if they have assented, be it face-to-face or through a signed undertaking which they can hold in their hands and verify. This might not be the case given the anonymity provided by the digital space. How does one ensure that the parents/guardians have assented when all communication happens through the impersonal, online medium? How can anyone know who exactly is sending the email or clicking the 'I Agree' button? There is also the issue of perverse incentives. Most social media companies are lax about enforcing their age requirements, thus enabling underage children to use their products, and gaining users they might not have had otherwise. They are similarly lax about ensuring that their minor consumers do actually have the permission of their parents. YouTube's terms of service assume that the minor user has their parent or guardian's consent to use their services (YouTube 2021).⁹² It also assumes that a parent or guardian whose ward uses YouTube does so with their permission and thus they are bound by the terms of the agreement, even if they themselves might not be YouTube users (YouTube 2021).⁹³ This is unexplored territory, and policy and technological solutions to the issue of age verification should be further investigated. One hopes that the adult contracting parties will be more particular in dealing with minor parties, and create more robust frameworks

for determining the presence of parental or guardian assent. Otherwise, lack of care on their part might lead to a caveat adults situation, which, in the long run, will be to the detriment of both parties. The other option is that as more cases of digital contracts come up for adjudication, the judiciary and the legislature are able to formulate guidelines for the same.

8. Conclusion :

Anson famously determined contract law to be the child of commerce. Minors today are increasingly entering into contracts, whether as consumers or creators and thus it is imperative that “law strike an appropriate balance between the empowerment and protection” of this class of contracting parties. It is this author’s opinion that the present understanding of capacity under Indian law is incapable of effectively dealing with the contracts that are the product of the digital age. One way forward is to follow the South African system and introduce a limited contractual capacity regime in India. Instead of determining whether the minor’s contract is for their benefit, or is a quasi-contract and thus a transaction for necessities, in a bid to get around the statutory prohibition against minors contracting, the 92 The term reads thus: “If you are considered a minor in your country, you represent that you have your parent or guardian’s permission to use the Service. Please have them read this Agreement with you.” The term reads thus: “If you are a parent or legal guardian of a minor in your country, by allowing your child to use the Service, you are subject to the terms of this Agreement and responsible for your child’s activity on the Service.” courts will merely have to determine a question of fact, to wit whether the parent or guardian assisted the minor when forming the contract. Not only will this approach give legitimacy to the many minors’ contracts already in existence, but also it will continue to protect minors from exploitation if their parents or guardians actually do oversee their contractual activities. A variant of the parental or guardian consent system does exist informally in several commercial relationships. Parents are often asked by educational institutions to undertake good behavior on the part of their wards. A few schools in Bangalore, in a bid to curb cyberbullying, have also asked parents to ensure that their children do not have social media accounts, specifically targeting Facebook. Following the South African model will result in formalizing existing tried-and-tested systems. Another way forward would be the partial implementation of the South African system. The ICA can experiment with graded capacity, fixing the age at 7, 12 or 14 years, and hold these minors’ contracts as voidable at the instance of the minor, instead of full-fledged valid contracts. This system takes the age requirement from the South African regime but does away with the parental consent or assistant of the guardian element. Since lack of free

consent also results in voidable contracts, this approach utilizes a framework that already exists in the Indian contractual regime, instead of adding a new variable as the previous suggestion does. It should be noted that minority does not manifest as incapability across the legal spectrum. Actions can be brought against minors under tort law and criminal law. The Indian Penal Code, 1860 uses a system of graded capacity. Children below the age of 7 years enjoy absolute immunity from prosecution and punishment, while those between the age of 7 and 12 enjoy qualified immunity. A child above the age of 7 years will be held as liable as an adult if the prosecution can prove that such child had “attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion”. It is preferable that a graded contractual capacity regime fixes a specific age and use only that as the criteria, because it is much easier to determine the age of a person than it is to determine their state of mind, several years after the fact. The other form of incapacity recognized by the ICA is insanity, though the lawmakers used a less paternalistic approach when dealing with persons of unsound mind than with children. Section 12 of the ICA does not prescribe a complete bar, drawing upon the disparate approaches taken by medicine and law in defining insanity. The section lays a twin test: at the time of entering into the contract, was the party was capable of understanding the contract; and was the party capable of forming a rational judgment as to the effects of the contract on their interests? This enables a person of unsound mind to enter into contracts during their lucid phases. Why not apply the twin tests to minority too? As long as a child above a certain age is capable For example, Ram Ratna Vidya Mender, a residential high school in Thane, Maharashtra, requires that parents/guardians sign an undertaking ensuring that their ward “report punctually to the school” and “does not carry any eatables, cash, electrical gadgets or any other costly items to the hostel & school”, among others. Indian Penal Code, Minors’ Contracts in the Digital Age 13 of understanding the terms of the contract and the effect it will have on his or her life, such a child should be allowed to enter into such contracts and have the law recognize the same. The ICA is using traditional methods to address a modern problem. It needs to evolve if it wants to keep up with the rapidly changing times. Whichever way the Indian legislators choose, a change is inevitable. Sir Henry Maine remarked on the movement of progressive societies from ‘status’ to ‘contract’ (Maine 1963). It is time that the ICA also moved beyond a minor’s position and take into account their will and intention.

The present laws concerning the minors’ contract is in a number of respects confused and contradictory. Much of the difficulty of the traditional laws has arisen from the reluctant of adults

to deal with minors because of the fear of financial loss. The greater role played by minors in today's times and hardships has forced the law to be reformed. The law must be flexible enough to bind the minor to his contractual promises. A minor who is desirous and wants to engage in any business, the courts must enquire and empower for removal of all the disabilities. Courts should be empowered, on petition of either party, to approve single. Such a provision would enable an adult to protect himself so long as he has not overreached. Age of majority should be uniform in India as different legislations explains different age of minor and different age limits. The age of majority should not be strictly based on age instead it must be based on capability of minor who could know what he or she is doing at the time of making an agreement. Amendments or new provisions should be incorporated to the existing laws so that minor could not use minority as sword but he or she could use it as a shield only.

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