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Minor's Contracts: A Study on Major Problem with Indian Contract Act, 1872

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Abstract

The law of contract was enacted mainly with a view to ensure reasonable fulfilment of expectations created by the promises of the parties and also enforcement of obligations prescribed by an agreement between the parties. The Indian Contract Act is one of the oldest mercantile laws of our country. It came into effect on the 1st of September 1872 and is applicable to the whole of India with the exception of Jammu & Kashmir. Containing a total of 266 sections it is the principal law regulating contracts in India. Now contract Act, 1872 does not affect any usage or custom of trade. A minor amendment in section 28 of the Act was made by the Indian Contract (Amendment Act, 1996. The Indian contract act is largely based on the principles of English law. Even at present, where a case is not covered within the particular provisions of Indian Contract Act nor any other law in force in India the court must follow the principles of English Common Law which are not inconsistent with the Indian conditions. Generally, a contract is an agreement between two or more persons to do a particular act or abstain from doing a particular act. By entering in to a contract, it creates legal obligation between the parties. The Indian Contract Act is closely related to the Pollock's definition and the Section 2(h) of the Act clearly states that "an agreement enforceable by law is a contract." Before the enactment of the Indian Contract Act, 1872, there was no codified law governing contracts in India. Thus, where goods are sold under contract which exempts the supplier from liability and if a third party is injured by the use of them, the supplier will be liable to the third party irrespective of the exemption clause. The law of contract lays down the legal rules relating to promises: their formation, their performance, and their enforceability. Given the rapid growth and increasing importance of the outsourcing industry in India, it is pertinent to study the

contractual aspects of how outsourcing transactions, especially offshore ones, are agreed upon and implemented

Keywords: Indian Contract, Constitution, Minors Contract, Law

Introduction

Section 10 of the Indian Contract Act, 1872 stipulates that all agreements made with the 'free consent' of parties who are 'competent' to contract are enforceable as contracts. The Indian Contract Act codifies the way we enter into a contract, execute a contract and implement provisions of a contract and effects of breach of a contract. Indian Contract Act enacted in 1872 but was later codified as separate laws. The general rules of contract bear a striking resemblance to the modern law of contract. For e.g. as mentioned in the Manusmriti, the first and the foremost requirement for a contract process to start is the competence of the persons who are willing to enter into a contract. All agreements are contracts, if they are made by the free consent of the parties, capacity of parties to contract, for a lawful consideration with a lawful object, and not hereby expressly to be void.

Modern contract law has developed itself into a specialized branch of law. Contract law is governing, foundational law in terms of regulation of all forms of contract; one must appreciate that business contracts have grown beyond the proposition of the century-old Contract Act. Under traditional contracts, the governing law would be the law of the state where the transaction occurred, unless agreed otherwise by the parties to the contract, for which the rules of private international law were used in case of transnational contracts.

The legislations of various countries and international conventions themselves provide for the consumer protection in such contracts of adhesion and prohibit the exclusion of their jurisdiction and consumer favourable laws by the contractual terms.

Concept of Minor

An individual who has not achieved the time of greater part is a minor. The term minor/minors is nowhere characterized in the Indian Contract Act of 1872. Be that as it may, in the event that anybody read the wording of Segment 11 which spells a minor is an individual who has not accomplished the age of 18 years. The period of dominant part is characterized in Article 3 of Indian Majority Act, 1857. An individual who is of 17 years of age and 364 days old, he will be called as a minor according to law. Minor ought not go into the agreement in order to give a security to the minor so no one can exploit his minority. Since law presumes that minor personality isn't full grown enough to comprehend the idea of understandings. It implies what is reasonable, what is out of line, what is valid, what is false, what is veritable and what is hoodwink. So as it were by suspending or by excluding an individual who is a minor to go into the agreement, it is all in light of a legitimate concern for the minor. Minor age is comprehended in various enactments in India diverse age bunches which are talked about under the side heading minors in worker's organization individuals and work laws.

Minor's Agreement in India

An settlement made with a minor is void ab initio ie., void from the very beginning. Any settlement made with a minor is not at all a contract. It is a settlement which does now not legal effect in court of law. It capability it is now not enforceable in court of Law Those agreements are name void agreements. In other words it would no longer experience the legal effect. Minors' agreements are clearly void and it was located in Privy Council Judgment in the land mark case of Mohirii Bibi v. Dharmadas Gosh. The plaintiff used to be Dharmodas Ghosh, who used to be a minor, mortgaged his property to the defendant, a moneylender. Defendant's attorney had the understanding about plaintiff's age at the time of contract. The plaintiff later paid only Indian Rs. 8000 but refused to pay rest of the money. The plaintiff's mom used to be his felony guardian at that time, so he commenced an motion towards the defendant announcing that at the time of making of a contract, he was once a minor, so the contract being a void one, he is no longer certain via the same. The court docket held that except the events have competence underneath Section 11 of the Act, no agreement is a contract. These agreements were considered to be nullity and non-existent in the eyes of regulation as per the above section.

Indian Contract Act, 1872

Indian Contract Act-1872 provides that ―Every agreement by which anyone is restrained from exercising a lawful profession or trade or business of any kind, is to that extent void. Indian courts have also consistently refused to enforce post termination non-compete clauses in employment contracts as ―restraint of trade‖ is impermissible under section 27 of the Indian Contract Act-1872, and have held them as void and against the public policy because of their potential to deprive an individual of his or her fundamental right to earn a living.

Minors Liability

- Minor under Insolvency Act A minor in India cannot be declared insolvent or bankrupt nor can his properties to be attached.
- Minor under various Labour Laws under the Factories Act, 1940; the Miner Act, 1952 and Plantation Acts, 1951, a minor of 14 years to 18 years can be employed at Factory, Mines and plantation as a Worker.
- Minor as a Trade Union Member A minor over the age of 15 years and below the age 18 years can be member of registered Trade Union and can enjoy all rights and privileges unable to such member

Contract Farming in India

The era of globalization, the concept of 'Contract Farming' is an effective way to co-ordinate and promote production and marketing in agriculture. Contract farming is essentially an agreement between unequal parties, companies, Government bodies or individual entrepreneurs on the one hand and economically weaker farmers on the other. The main feature of contract farming is that the buyer/contractor supplies all the material inputs a technical advice required for cultivation to the cultivator. History of contract farming contract farming can be traced back to colonial period when commodities like Collin Indigo were produced by the Indian farmers for English factories. Seed production has been carried out through contract farming by the seed companies quite successfully for more than four decades in the country. Contract Farming has been promoted in the recent three decades as an institutional innovation to improve agricultural performance in less developed countries.

Contract: (i) Definition:-

According to section 10, an agreement becomes a contract if it is entered into between the parties who are competent to contract.

Every person is competent to contract who is or 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.

Section 11, that a person is incapable of entering into a contract under the following circumstances:

(i) Minor: Is a person who has not attained the age of majority according to the law to which he is subject;

(ii) Insane: If he is of unsound mind, that is, if he is a lunatic or an idiot or suffering from a similar disability; and

(iii) Disqualified: If he is disqualified from contracting by any law to which he is subject.

A minor who falsely representing himself of age has induced a person to enter into a contract with him, can nevertheless plead 'minority' as a defence in an action on the agreement. There can be no estoppel against a minor.

A minor cannot, in a suit to avoid a contract which is void, be compelled to compensate for or refund any benefit which he has received under such contract. Sections 64 and 65 of this Act do not apply to such cases. But equity requires a minor who seeks to avoid a contract which he induces the opposite party to enter with him by fraudulent representation as to his age, to return the consideration which he received in it. There is no rule of equity, equity and good conscience which entitles a court to enforce a void contract of a minor against him under the cloak of restitution.

No specific performance: There can be no specific performance of the agreement entered into by a minor as they arc void ab initio.

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Minor as a Partner: A minor cannot become a partner in his own right since he is incapable of contracting under Section 11 of the Contract Act.

Minor as an Agent: An agent is simply a 'connecting link' between the principal and the third party.

Minor along with a major: Where a contract is entered into by a minor and a major jointly with another person, the minor is not liable under the contract.

Types of Contracts

Contracts may be classified in terms of their (1) validity or enforceability, (2) mode of formation, or (3) performance.

Contracts may be classified according to their validity as (i) voidable (ii) void (iii) valid, (iv) illegal, or (v) unenforceable**:-** A contract to constitute a valid contract must have all the essential elements discussed earlier. If one or more of these elements is/are missing, the contract is voidable, void, illegal or unenforceable.

According to Mode of Formation

There are different modes of formation of a contract. The terms of a contract may be stated in words (written or spoken). This is an express contract. Also the terms of a contract may be inferred from the conduct of the parties or from the circumstances of the case. This is an implied contract (Section 9).

According to Performance

Another method of classifying contracts is in terms of the extent to which they have been performed. Accordingly, contracts are: (1) executed, and (2) executory or (3) unilateral, and (4) bilateral, (5) Contracts under Seal (6) Express Contracts (7) Implied Contracts

The Indian Contract Act, 1872, lays down in its first seventy five-sections, judicial decision on contractual problems. The sections of the general principles of the law of contract. It also deals with the special contractual relationships of agency, indemnity, guarantee and bailment. The law of contract was nothing but the law relating to promises-their formation, performance and enforceability.

Compensation by a Minor in India

In England restitution, that is, the restoring returned the property by a fraudulent minor is permitted, if the property can be traced. In India, the query is how some distance a minor can be asked to repair back the advantage wrongly bought by way of him or her under a void agreement? Another query is whether a minor be asked to pay compensation to the different birthday party? Question of compensation is underneath the two kinds, i) whether a minor can be asked to pay compensation beneath Sections: sixty 64 &; 65, Indian Contract Act for the benefit bought by means of him under a void agreement? And ii) whether or not a minor can be requested to pay compensation in view of the provisions contained in Sections 39 and forty one of Specific Relief Act, 1877?. This aspect is blanketed beneath the facet heading Minor legal responsibility under Indian Contract Act.

Conclusion

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Law of contract is a peculiar branch of substantive law. It does not enumerate the rights and duties of the parties. It provides only the circumstances in which promise made by a person is legally binding on him. All agreements are not contract only those agreements are contract which fulfills the conditions of section10. Contract law lays down conditions for parties to enter into contract. Anson stated that contract is a mixture of subjectivity and objectivity concept. According to section 10, consent is subjective concept but the whole is objective concept. Under the Indian Contract Act, however, the position is different. A minor is absolutely incapable to enter into a contract. This means that the agreement is void ab initio. Such a contract cannot be ratified. The minor is not bound even after he attains the age of majority. Under English Law contracts without consideration are valid. The formal contracts of English Law are binding by their form alone and are older than the doctrine of consideration.

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