

Competency of parties in forming a contract and jurisprudence behind Section 11 of Indian contracts Act, 1872

Abstract:

Contractual capacity refers to a person's ability to make an agreement that can be enforced by the other party. At common law, it was presumed that all persons had such capacity. However, exceptions were given under the common law to protect the interest of certain set of people whereby if allowed to enter into a contractual relationship it will be misused and it results in an adverse law in the society. The category in this position and the reason behind their special treatment vary considerably. The common law provides for such exception so as to have an ease in forming a contract. Usually people who are exempted do have disabilities in performing or forming a contract to understand the implications binding on them due to the contract entered.

Keywords:

Contractual capacity, Contractual Relationship, disabilities

Introduction:

Indian contract Act, 1872 which is a colonial legislation made during the British India regime try to force the Common law reasoning in India. The persons so protected can be classified into three major categories namely,

1. Minority
2. Unsound mental capacity
3. Disqualified by law

The category of classification is explicitly provided in the Section, 11 of Indian Contracts Act, 1872

“Whereby it states that every person is competent to contract who is of the age of majority according to the law which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject “

By this provision it protects the person not by the Locus Lex i.e law of the land, but it expressly states that the competency is decided by the law which he is subject or governed by. Thus in this, we will have a detail understanding about the competency of parties. The

reasoning behind the competency of parties in the contract law is to protect the parties whose interest are at stake like minor, who don't have capacity to understand the legal implications of the binding contract entered.

Whereby the contracts benefiting these people can be entered and such claims are being protected by law. E.g. Section 56 of Indian Contracts Act, 1872 whereby the law protect that a person can claim his expenses incurred for providing the necessities for the minor.

Analysis:

Minority:

The minority laws are governed by the Indian Majority Act, 1875 whereby the usual age of majority is 18 which may extend up to age of 21 if the court appoints a guardian. The minors are being protected because they don't have a capacity to form an opinion and enter into contract. If they are still allowed to enter into contact, minor's interest will be misused. Thus these minors enjoy a special treatment in the contracts law where minors are being protected from all the liabilities and they can be admitted for benefits.

Indian courts applied the common law precedent to those cases where the minor has incurred any liability or where the liabilities on both sides are outstanding. In such cases the minor is not liable. But if the minor has carried out his part performance, then the courts have held that he can proceed against the other party. The rationale is to protect minor's interest. According to the transfer of property Act, a minor cannot transfer a property but can be a transferee (person accepting transfer). If a minor enters into a contract it is void ab initio and it cannot be ratified after the age of majority as law strictly questions the existence rather than its ratification. However an agreement by a parent or guardian entered into on behalf of the minor is not binding provided it is for the benefit or the legal representation of the minor. Thus these are the reasoning behind the minor not being allowed to enter into the contract.

The Apex court in the case of **Mohiri Bibi v Dharmodas Gohse**¹, the court held that, "*An agreement with minor parties is void and hence the contract with a minor cannot be enforced*". India courts have heavily relied on this judgement to abrogate minors from their contractual obligations.

¹ Mohiri Bibi v Dharmodas Gohse, ILR 1903 30 Cal 539

Unsound Mind:

The Indian Contract Act purposely makes contract with an unsound person as void and in exceptional cases it makes it as valid. It is because the person of unsound mind is incapable of forming a rational judgement as to its effect upon its interest.

A lucid interval is the time when a person of unsound mind has a state of mind whereby he is a person of sound mind. If a person of unsound mind enters into contract at lucid intervals it is a valid contract and it's binding on the person so entered. Even if a person of unsound person enters into a contract for his benefit then it is held as valid.

Madangopal Marwadi v. Sadasheo Sonak²

In this case the court held that, where a person is usually of unsound mind, the burden of proving that he was of sound mind at that time lies on the person who affirms it. Whereas, in the case where a person is usually in a sound state of mind the burden of proving that he was in an unsound state of mind lies upon the person who challenges the validity of the contract. However, in case of drunkenness or other cause, the onus lies on party who sets up that disability to prove that it existed at the time of the contract and it has to be proved that the party was so drunk as to unable to comprehend the meaning and effects of an agreement, and, under the English law also that the other party was aware of his condition. Thus the laws protect the interest of the person of unsound mind.

Person disqualified by law:-

Some statues disqualify certain persons governed by them, to enter into contract. Thus these people are not considered to enter into the contract for various reasons. These people either have privilege or they have disqualified for other reasons.

There are various categories in this namely:-

1. Alien enemies
2. Foreign Sovereigns and Ambassadors
3. Professional persons
4. Corporation

²Madangopal Marwadi v. Sadasheo Sonak (AIR 1941 Nag 251)

Alien Enemies:-

An alien may be either an alien friend or a foreigner whose sovereign or state is at peace with India, has usually contractual capacity of an Indian citizen. On the declaration of war between his country and India he becomes an alien enemy. A contract with an alien enemy becomes unenforceable on the outbreak of war.

For the purpose of civil rights, an Indian citizen of the subject of a neutral state who is voluntarily resident in hostile territory or is carrying on business there is an alien enemy, trading with an alien enemy is considered illegal, being against public policy.

Foreign Sovereigns and Ambassadors:-

Foreign sovereigns and accredited representatives of foreign states, i.e. ambassadors, High commissioners enjoy a special privilege in that they cannot be sued in Indian Courts, unless they voluntarily submit to the Jurisdiction of the Indian courts. Foreign sovereign governments can enter into contracts through agents residing in India. In such cases the agent residing in India becomes personally liable

Corporations:-

A corporation is a artificial legal person created by law, e.g., a company registered under the companies act, properly incorporated, it has a right to enter into a contract. It can sue and it can be sued in its own name. There are some contacts in which a corporation cannot enter without using its common seal. A company for instance cannot contract to marry. Further, its capacity and powers to contract are limited by its charter or memorandum of association. Any contract beyond such power is ultra vires and void. Thus here also the law tries to protect the interest of such artificial persons and making it regulated in the society.

The common law court in the case of **Saloman v Saloman & Co Ltd**³, the court held that, *“Saloman & Co Ltd was a real company fulfilling all the legal requirements. It must be treated as a company, as a entity consisting certain corporations. Thus it was decided that a corporate body has its own existence or personality separate and distinct from its members and therefore, a shareholder cannot be held liable for the acts of the company”*.

³ Saloman v Saloman & Co Ltd, UKHL 1 (1987) AC 22

The Apex court in the case of **M/s Electronics Corporation of India Ltd v Secretary Revenue Department**⁴ held that, *“There should be a clear distinction between a company and its shareholders, even though the shareholder may be only one i.e. Union Government or State Government. In the eye of law, a company is registered under the companies act is a distinct legal entity or entities that hold its shares”*.

Analysis:

No liability of contract:

As discussed minor is a person who is unable to understand the nature of a contract, and would lack the capacity to contract. Hence the minor lacks in framing of contract, hence there would be no liability on part of the minor.

Rule of estoppel:

The rule estoppel is a legal evidencing principle which prevents the person from going country to his previous actions and would entail a liability on person so acting. The rule of estoppel would not be available for a minor. It prevents the minor from the legal liability of a minor.

A minor is one who has not accomplished the age of 18, and for each agreement, the majority is a condition point of reference. By taking a gander at the Indian law, minor's arrangement is a void one, which means along these lines that it has no worth in the eye of the law, and it is invalid and void as it can't be authorized by one or the other party to the agreement. And surprisingly after he accomplishes majority, a similar understanding couldn't be sanctioned by him. When a minor enters a contract, as he lacks the capacity to contract, his minor's agreement is void/invalid,

Conclusion:-

Thus these are the various provisions under which the competency of parties are required to enter into a contract and these are the various provisions in Common law whereby the competency of parties are restricted to protect the interest of those people that the law feels to protect we have also dealt with many common law provisions and the reasons behind such protection. Thus these were the various grounds, the act actually helps in governing contract

⁴ M/s Electronics Corporation of India Ltd v Secretary Revenue Department, AIR 1999 SC 1734

in a broad sense and it helps the courts in interrupting the statutes. Even though the provisions discussed are a colonial common law provisions but these still holds good and it helps in all daily day to day transactions. It is a presumption of the law that everyone has the capacity to contract. If a party does lack the capacity, the contract is usually voided and the party without capacity will not need to comply with their obligations to the contract. Both parties must have contractual capacity to create a binding contract.

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