

## Effect of Minor's Contract in the Legal System of Bangladesh

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### Abstract

*The Minor's are also the man power of the country with the Major. Almost 38% are minor of total people of the country. Now a days minors are not mere a minor. Understanding levels of the minor are increasing day by day. The minors are taking responsibility. Minors are playing, studying, serving in the private sector, entering into contract of apprentice, becoming partners in the firms and companies, getting property by inheritance, transfer through the various modes such as succession, gift, sale, mortgage, lease and exchange etc. It is fact that Minor's are doing heinous offences like fraud, cheating, deceit, forgery, murder and rape etc. So minor's are taking part in the activities of the country and they are innocent and helpless guys and need proper care and nourishment during the growing years so that they become useful members of the society. In the Criminal Procedure there are some procedures for offences of the minors. But in the Contract Act, The Specific Relief Act there is no specific provision for the minor. In this age it is needed to change the law to Safeguard their interest, protect the society and to save the minors rights. State should take actions for implementing a specific Act or amend the laws for the welfare of the minor<sup>1</sup>.*

**Keywords:** *Minor means "a person who has not completed his or her 18 years of age."; Contract means "According to section 2 (h) of The contract Act,1872 "an agreement enforceable by law is contract."; Legal means "Rules of law and System is considered principles of procedure. The boundary of the Legal System or circle encompasses the elements- Parliament, Executive Divisions, Legal Educational Institutions, Law Commission, Legal Professional Institutions and Judicial Divisions, which have been performing their functions inter-dependently. Each element has its own structure and function which is performed by this structure independently."<sup>2</sup>*

### Introduction:

The present legal system of Bangladesh, to a great extent, has been taken place on the basis of British Legal system left by the British. During the rule of British period, in this subcontinent the legal system took shape and features on the basis of British Indian political

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culture. British Indian Government has enacted the Indian Contract Act, 1872 in order to regulate the contractual relations and to protect the mercantile interest of British Indian Government and their people, basically. There after The Indian Contract Act, 1872 was enacted with some variations.<sup>3</sup> During the rule of Pakistan the said Act was adopted and Pakistan was substituted in place of India and in Bangladesh The Contract Act, 1872 was adopted and The word Bangladesh was substituted for the word Pakistan, basically there is no change. In our Bangladesh The Contract Act 1872, which is sole piece of law regulating the terms of valid contract and agreement, cover the minor's agreement. But it declares a minor is incompetent to enter into a contract (section 10 and 11 of the Contract Act 1872). Here the term minor/minor's are no where defined in the Contract Act, 1872.

#### **a. Definition of Minor**

A person who has not completed his or her 18 years of age signifies as minor. About the age of majority the Contract Act, 1872 is silent. It merely says that a person be, to do contract, major according to the law to which he is subjected. To determine age of majority The Majority Act, 1875 comes into play. According to section 3 of Act of 1875 for natural person age of majority is 18 years and for a person the age of majority is, for which guardian has been appointed by the court, 21 years.

#### **b. Definition of Contract in The Contract Act, 1872 :**

**Section 2.(a)** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

**Section 2.(d)** "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains, from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

**Section 2.(e)** "Every promise or set of promises forming the consideration for each other, is an agreement"

**Section 2.(h)** "An agreement enforceable by law is contract."

**Section 10.** "All agreements are contract 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.

This section further says that nothing in this section contained shall affect any law in force in Bangladesh, and not hereby expressly repealed, which may require a contract to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

**Section 11.** "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

**Section 12.** "A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when is of sound mind. A person, who is

usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

**Section 13.** “Two or more persons are said to consent when they agree upon the same thing in the same sense.

**Section 14.** “Free consent” defined-

- (1) Coercion, as defined in section 15, or
- (2) Undue influence, as defined in section 16, or
- (3) Fraud, as defined in section 17, or
- (4) Misrepresentation, as defined in section 18, or
- (5) Mistake, subject to the provisions of section 20, 21 and 22.

Consent is said to be so called when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Section 24 to 30, further, elaborates the conditions under which the agreement is void.

### **Objective of Research:**

The Objectives of this Research are as follows:

The specific Objectives of this Research are as (1) To explore the policy changes and consequent changes of legislation regarding minor’s contract (2) To clarify the status of minor’s agreement-whether void and voidable (3) To enlighten the landmark judgments of court regarding minor’s agreements for their benefit (4) To provide policy recommendation for the minor’s agreements in the legal system of Bangladesh (5) To recognize the fact whether minor personally or his property will be answerable (6) To clarify that restitution rules for the minor.

### **Materials and Methods:**

In the light of the objectives of the proposed research work, the following tools and materials, having considering the purview of the situation and circumstances, were used:

**Study design:** The study was survey and case study type.

**Study area:** The study was conducted 8 (Eight) divisions of Bangladesh.

**Sampling method:** Purposive sampling method was used for the study.

**Sample size:** Total 400 (Four hundred) respondents (Judges, Advocates, Litigant public and law making agencies) were selected for the study.

**Sources of data:** Data were collected from primary and secondary sources.

**Sources of primary data:** Primary data were collected from the respondents of the study area through structured Questionnaire.

**Sources of Secondary Data:** Secondary data were collected from Ministry of Law, Bangladesh Bureau of Statistic, Newspapers; write up of Laws, Legal tabloids, International Journals and Law reference books, etc.

**Method of Data Collection:** Data were collected through face to face interview with respondents.

**Data Analysis:** Data were computerized, analyzed and interpreted using computer Program Microsoft Excel.

- (a) As the secondary sources of information, all published and reported materials, like books, articles, research reports, official printed documents from both home and abroad were used.
- (b) My dissertation has been made in the system of empirical and historical, keeping in mind the importance of statistics in legal materials. In collecting in formations, multiple methods were also used. Such as:
- (c) Data sheet was prepared and used to collect information from the case reports.
- (d) A number of persons directly related to the legal system were consulted for ascertaining the real position and effectiveness of the related sub-systems and overcoming the limitations faced by them.
- (e) As a legal teaching professional introspective approach was used to realize the real position and situations of the legal institutions and organizations, as because no official personnel disclosed their official secret problems which stand in the way of their functioning property.
- (f) For preparing this research observation and communication techniques were also applied.
- (g) Having collected data as required by using the above mentioned sources, the statistical tools and methods were also used to analysis, tabulating and comparative discussion of the data.

### **Methodology:**

#### **Specific Question**

- Can the existing Contract Act, 1872 insures the right of the Minor's contract ?
- Is there any necessary to change the legislation regarding minor's contract as per their necessity ?
- Do common people know about the law in respect of Minor's agreement ?
- Do people have faith that the amended laws will be implemented properly and impartially ?

### **Result and Discussion:**

Considering the above definition my analysis is here that proposal, acceptance and consideration are necessary in the every agreement but did not mention the "intention" in this definition, whereas it has very vital role making the agreement, in the English law intention has very vital place making the agreement.

Willingness is in Section 2 (a) "free consent" used in section 14 of this Act, that the proposal be made with free consent. Willingness, free consent, intention should be included in the definition.

Thus contract is the combination of agreement and its enforceability by law.

According to those "All agreements are contract if they are made by the free consent of parties competent to contract for a lawful object and are not hereby expressly declared to be void."<sup>4</sup>

In the above definitions the minors have no specific law relating to an agreement in the Contract Act, 1872. We are to depend upon the precedent of the Higher Court and it is very much difficult to the common people to realize the actual position of the minor's right and

the position of the agreement capacity. Results and Concomitants relevant discussions can be mentioned as below:

If the agreement is without lawful, free consent, willingness, intention that will not be enforceable by law so the contract is the combination of lawful agreement and its enforceability by law. To make enforceable an agreement by law section 10,11,12, 13 and 14 of Act of 1872 requires few essential. Hence, these sections prescribes essentials of a valid contract as followings-

- a) An agreement,
- b) Willingness
- c) Proposal and acceptance
- d) Free consent of parties,
- e) Competency of parties,
- f) Sound mind,
- g) Considerations
- h) Object of agreement should be lawful,
- i) Such agreement shouldn't be declared void by law, and
- j) Attestation—contract in writing, in the presence of witness and registered, where any law in force in Bangladesh.

The other and most important requirement of a valid contract is that the contracting parties must be competent. Under section 11 and 12 of this Act, it has been declared that who is competent to contract and who is not. According to section 11 “Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.” Therefore every person is competent to do contract provided the person is-

- i. Of the age of majority,
- ii. Of sound mind, and
- iii. Not disqualified from contracting by any law to which he is subject.

What is sound mind for the purpose of contracting has been given in section 12 of this Act. According to it a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when is of unsound mind.

How to make agreement we have already discussed. Consent and Free consent, under section 13 and 14 of Act of 1872 have not been defined.

Such elements as coercion, undue influence, fraud, misrepresentation or mistake are, presence of which vitiates the consent, also known as vitiating elements. The contract is, in which the consent was not free but aroused out of such vitiating elements, voidable contract. Lawful considerations and objects are also not unlawful. According to it- The consideration or object of an agreement is lawful, unless-

- i. It is forbidden by law; or
- ii. Is of such a nature that, if permitted, it would defeat the provision of any law; or
- iii. Is fraudulent; or
- iv. Involves or implies injury to the person or property of another or;
- v. The Court regards it as immoral. Or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Since the Contract Act, 1872 prescribes only the bare rules for the creation of a valid contract, it does not operate in the vacuum; therefore it has to be associated with other laws responsible for the conveyance of the interest of the parties under it. Such laws are Transfer of Property Act, 1882, Sales of Goods Act, 1930, Partnership Act, 1932, Company Act, Intellectual property Laws and Negotiable Instrument Act etc. Therefore, if under these laws there is requirement that the contract to be in writing, attested by the witnesses or to be registered, the contract will not be complete, unless it fulfills such requirements, and can't be enforced by law.

Every person is competent to contract who is of the age of majority according to the law of contract provided the person is-

#### **a. Can a Minor Enter into a Contract?**

**Yes**, a minor can legally enter into a contract. However, whether the contract is enforceable will depend on a number of factors.

For the first time in *Mohiri Bibi v. Dharmodas Ghose*. Privy Council declared that the minor's contract is void ab initio. It is void from its very beginning.<sup>5</sup> (1903) ILR 30 CAL 539(PC).

The general law remains, Judiciary has given some solution in this regard.

A contract by a minor is void ab initio and not merely void able and hence cannot be sued<sup>6</sup> PLD 1976 S.C 258. Such a contract has no existence in the eye of law. It entails no liability<sup>7</sup> AIR 1927 Lah 24 (DB). It is void abinitio and is incapable of ratification or confirmation. Law forbids the enforcement of such a transaction event if the minor were to ratify it after attaining majority<sup>8</sup> PLD 1976 SC 258. It must however be noted that a minor can after attaining majority dispose of his property in any way he likes. Therefore if he transfers his property by sale on attaining majority in consideration of debt which he incurred as a minor the transaction is valid as such sale is neither a contract nor it can be said to be ratification of a void contract<sup>9</sup> PLD 1971 Dhaka 281.

A person whose estate is under Court of Wards is under the Court of Wards Act, incompetent to enter into any kind of contract involving pecuniary liability<sup>10</sup> AIR 1936 Nag. 15 (DB).

A minor has no legal competency even to authorize another to enter into a contract on his behalf<sup>11</sup> AIR 1956 Andhra 33.

A transaction in which a minor is not a contracting party but is only a beneficiary is a valid transaction. Thus the purchase of a property to be held in trust for the minor is not a not an invalid transaction and the minor's right under the trust would be given effect to by the Court<sup>12</sup> AIR 1954 Bom. 347.

Similarly where a minor has paid consideration for hiba-bil-iwaz prior to the gift, he being only a beneficiary and not a contracting party to the gift, the gift is valid and he can benefit from it.<sup>13</sup> PLD 1964 Dacca 451= 15 DLR 671 But a minor after obtaining a declaration that a contract into by him is void cannot enforce the contract subsequently by making a claim under a provision in that contract which is beneficial to him.<sup>14</sup> AIR 1953 All 134.

Where a contract has been made by four persons jointly two minors and two adults, in such a case that part of the contract which relates to contract by minor is to be disregarded and the rest of the contract made by the adults should be taken to have been validly entered into by them and they are to be considered to be entitled to enforce the contract and claim specific performance of the same.<sup>15</sup> PLD 1967Kar 158.

### **b. Lease or Purchase of Lands**

A lease granted by minor is void and confers no rights to possession in the lessee.<sup>16</sup> AIR 1924 Rang 288 (Lease). Where a minor had granted a lease and possession had been delivered to the lessees there is no obligations on the part of the minor to be enforced by the defendants, the lessees. Obligations are created by the lease to be discharged by the lessees and it can be enforced by the minor.<sup>17</sup> PLD 1959 Dacca 625+ ILR 40 Mad. 308 (FB).

-In a lease by the minor in favour of the defendants and of which the lease – hold property was given in possession of the defendants, there is no obligation on the part of the minor which can be enforced by the defendants- Lessees.<sup>18</sup> 11 DLR 185.

No contract which imposes a liability on a minor is enforceable under the law. Therefore a lease in favour of a minor imposing a liability on him is null and void.<sup>19</sup> AIR 1918 Pat.626= 3 Pat. Jour 518 (DB).

-Principle that a minor cannot legally bind himself by a contract cannot be invoked where the minor occupied a position of tenant under the statutory provisions of particular law – if the minor defaults to pay rent for the premises in his occupation even after attaining majority, his plea that while a minor he could not enter into contract to pay rent is not available in a proceeding for ejection after he attained majority. Ghulam Muhammad vs Khan Muhammad sabar lal.<sup>20</sup> 21 DLR (SC) 54.

-Minor Transfer of property- If a minor's property is sold by an unauthorized person such as the mother is under the Muslim Law, the sale is void and if the transfer is let into possession of the property his possession is no better than that of trespasser.<sup>21</sup> 1 PLR (Dac) 627.

-Where a person sells a property to a minor, it is not open to him to take advantage of the minor's statutory inability to contract in order to avoid the transfer.<sup>22</sup> 11 DLR 185.

-Property- If can be transferred to a minor- In the lower Court by mistake it was held that an infant being incapable of contracting under section 11 of the Contract Act was also incapable of being the transferee under a sale deed of immovable property. Mst Aminul vs Mahboob Hussain.<sup>23</sup> PLD 1959 (Kar) 362

Where a contract made by a minor involves the acquisition of an interest in property of a permanent nature with continuing obligations attached to it, the minor may, at his option,

avoid the contract either before or within a reasonable time after he attains majority. Until he avoids the contract, he is bound by the obligations under it.

### **Can a minor be a partner?**

#### **a. Partnership Agreements**

Minor-Cannot create partnership-May be admitted to benefits of partnership<sup>24</sup> (1964) 16 DLR 83,

-Minor and partnership. A minor cannot be admitted into partnership. But he can be admitted to the benefits of partnership under section 3 of the partnership Act with the consent of all partners for the time being<sup>25</sup> (1954) 6 DLR 285.

- A contract entered into by a minor is void. But the doctrine of the minor's incapacity is a doctrine for his protection by preventing others from injuring him by taking advantage of his incompetence<sup>26</sup> (1954)4 DLR 285.

A minor may be included a partnership and when included it means he has been admitted to the benefits of partnership and he cannot be made liable personally his liability is limited to the extent of his share in the partnership<sup>27</sup> 21 DLR WP 325.

**b. Partnership by minor.** A minor cannot become a partner in his own right as he is incapable of contracting under section 11,<sup>28</sup> AIR 1951 Nag. 448= ILR 1951 Nag. 480 (DB).

Minor may be admitted to benefits of partnership. Although a minor cannot be made a full-fledged partner liable for the losses incurred by the partnership there is no bar to his being admitted to the benefits of the partnership.<sup>29</sup> AIR 1958 Pat 177.

Liability of a minor under the Negotiable Instrument Act

**As per Section 26** of the Act, a minor can draw, endorse, and negotiate and he can bind everybody except himself. Every person who is capable of contracting according to the law to which he is subject may bind himself and be bound by the making, drawing, accepting, delivery and negotiation of a promissory note, cheque or a bill of exchange.

**Promissory note.** A minor cannot execute a promissory note either himself or jointly with another person make a person Is void against both.

**Pronote** or bond in favour of minor. A pronote executed in favour of a minor is valid and can be sued upon when the minor does not subject himself to any detriment by accepting it.<sup>37</sup> AIR 1924 Rang. 136, Similarly a money bond executed in favour of a minor is good in law and may be sued upon.<sup>30</sup> 13 Bom. 50 (DB).

#### **Others contract**

**Partition.** A minor cannot become a party to a partition agreement. Therefore partition agreement between a father and his minor children is not valid.<sup>31</sup> AIR 1934 Rang 2 (DB).

**Mortgage.** A mortgage executed by a minor is not merely voidable but void.<sup>32</sup> 26 All 342 (DB) (Mortgage).



**Service contract.** A contract for personal service by a minor is void under the law and the mere fact that it is for his benefit would not entitle the minor to sue under the contract.<sup>33</sup> AIR 1949 Bom 215.

**14. Compromise.** A compromise entered into by minors for settling a dispute as regards inheritance between themselves and their father's collaterals is void and not binding on them.<sup>34</sup> ILR 1938 Lah. 313.

**Consent decree.** A consent decree against a minor stands on no higher footing than a contract and cannot be given effect to by a Court of law.<sup>35</sup> AIR 1927 Pat 271= 6 Pat 388 (DB).

**Maintenance** A minor has a statutory right to receive maintenance under section 488, CR. P. C and he cannot get himself out of it either himself or through any other person including his mother for the short and sensible reason that the minor is incompetent to enter into a contract.

**Transfer** in favour of minor. An executor cannot be entered into by a minor, but a minor or a lunatic is not disqualified as such from being the transferee of immovable property as purchaser or mortgagee under an executed contract.<sup>25</sup> Therefore purchase of property for the benefit of the minor by the father of the minor<sup>36</sup> PLD 1968 Kar. 165. or by his maternal-uncle is valid and if in the latter case the property is alienated by the minor's father, the minor is entitled to recover it.<sup>37</sup> AIR 1915 Mad. 412= 37 Mad. 390.

**Gift.** A minor, although not competent to contract, can accept gift through his natural guardian. There is no principle forbidding a natural guardian to accept a gift subject to a condition, and then perform that condition, if the whole transaction is for the minor's benefit<sup>38</sup> ILR (1947) 2 Cal 1.

**The Minor's Specific Performance:** Minor cannot be sued for specific performance.

#### **Liability for Necessaries:**

A minor who enters into a contract which are necessary to the minor's health and safety, such as to purchase food, lodging, shelter and clothing. In some instances, automobiles are considered necessities. The law relating to the sale of necessary goods is governed by section 2 of the Sale of Goods Act 1930, and the law relating to the supply of other necessities is governed by the common law. In substance, however, the concept of what a necessary means is the same whether the statute or the common law applies. By way of extension of the concept of necessities, certain contracts of service will bind a minor if they are for his benefit.

Section 2 of the Sale of Goods Act 1930 provides that where necessities are sold and delivered to a minor he must pay a reasonable price for them. According to Section 2(14) Specific Goods means 'Goods identified and agreed upon at the time of contract for sale and made'<sup>40</sup> 10 DLR 348. The burden of showing not only that the goods were suitable to the condition in life of the minor but also that they were suitable to his actual requirements at the time of the sale and delivery, rests upon the supplier of the goods. Thus, where a minor has

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already been sufficiently supplied with the goods in question, even though this fact is not known to the supplier, the contract will not bind him.

**(a) Food and Drink**

Since the early development of the law of contract, the courts have held that food and drink may be necessities in certain circumstances. But equally clearly there can be occasion where beverages may not constitute necessities.

**(b) Clothing**

The courts have frequently held that clothing may be a necessary, but it is of course clear that certain items of apparel may not be necessities.

**(c) Board and Lodging**

The provision of board and lodging may constitute a necessary in certain cases.

**(d) Transport**

Train journeys have been held to constitute necessities in a number of cases. While it would appear likely that the purchase of an air ticket could in some cases

**(e) Medical Aid**

The provision of medical aid may constitute a necessary ..

**(f) Legal Aid- Marriage Settlements**

A marriage settlement, or an agreement for a marriage settlement, may be avoided by a minor during minority or within a reasonable time thereafter. The minor must either accept or reject the settlement in its entirety.

The provision of legal aid for the purposes of litigation or for non-litigious matters such as the preparation of a marriage settlement may constitute a necessary.

**(g) Loans for Necessaries**

At common law, a loan of money to a minor to pay for necessities was not recoverable. But where a minor had borrowed money for this purpose and had actually paid the money for the necessary the lender could stand in the place of the person who had supplied the necessary and sue for the money lent.

**(h) Bank Accounts**

Most courts require minors to comply with the terms of their banking agreement. They are subject to the same fees and penalties as other consumers.

**(i) Employment Contracts**

Many people who are under the age of 18 have some type of employment.

**(j) Education, and Contracts of Service**

Certain contracts which, taken as a whole, are for the minor's benefit, are treated as though they were contracts for necessities, and will bind the minor. These include contracts of apprenticeship, education, and service, and contracts in analogous areas.

It is clear that trading contracts do not bind a minor.

### **Effects of Minor's Agreement :**

It depends upon nature of agreement:

**(a) Estoppels:** If a minor makes a false representation about his age and contracts, he shall not be liable for his act. Hence this rule does not apply. Since statute doesn't allow doctrine of estoppels against a minor in terms of creating contractual obligation against a minor<sup>41</sup> AIR 1936 Cal 567. Therefore, now it has become settled law that there can be no estoppels against minor otherwise it amounts to enforcement of contractual obligation against a minor for which statutory law never intended.

**(b) Liability for the tort:** No liability in tort arising out of contract, but he is liable for the tort. A minor is incapable of giving consent, and the nature of minor's agreement in respect of Tort is a nullity and cannot be enforced.

**(c) Restitution: Section 65-** When a minor fraudulently represented his age seeks to set aside the transaction on the ground of his minority, the court can direct refund of consideration received by the minor as a condition for cancellation of the deed<sup>42</sup>

Where minor entered into a mortgage by fraudulently representing as major and subsequently instituted a suit as plaintiff for restitution of mortgaged property, it was held that restitution was valid but he must refund the consideration money<sup>43</sup>

-Void agreement-any persons receiving advantage under a void agreement is bound to restore the goods obtained under the agreement or to make compensation for it. Amaanullah vs M/S Karnaphuli Paper Mills Ltd.<sup>44</sup>

**(d) Ratification:** Ratification means subsequent sanction. A minor's agreement is void and being nullity has no existence in the eye of the law and therefore it cannot be ratified, it cannot support a fresh promise by the infant after attainment of majority. An agreement which is void ab initio cannot be validated by ratification. Julhash Mollah (Md) and another vs Ramani Kanta Malo and another<sup>45</sup>

### **Ratification may be either express or implied.**

**Express Ratification:** Expressly ratify the contract by stating, orally or in writing, which they intend to be bound by the contract.

**Implied Ratification:** Impliedly ratify the contract by acting in a manner that is clearly inconsistent.

### **Contracts Valid Unless Repudiated**

When a contract by a minor to purchase shares will bind him until he repudiates it during minority or within a reasonable time thereafter.

Where a minor enters into a contract involving the acquisition of an interest in property of a permanent nature, with continuing obligations attached to it, he may repudiate it at his option either before or within a reasonable time after attaining his majority.

### **Obligations on Disaffirmance:**

When a minor disaffirms a contract, all property that he or she has transferred as consideration **can be recovered** -- even if it was subsequently transferred to a **third party**.

**Parents' Liability:** As a general rule, parents are not liable for the contracts made by their minor children unless:

- (1) one or more parent(s) co-sign the contract, and thereby assume personal liability for its performance, even if their minor child disaffirms the contract; and/or
- (2) the minor child committed some wrongful act associated with the contract at the direction of one or both parent(s).

**A contract entered into by guardian of minor for his benefit:** In that case, a minor can sue the other party when it does not perform its promise. In the case of *Great American Insurance v. Madan Lal(1)* the guardian on the behalf of her son entered into an insurance contract in respect of fire for the minor's property. When the property was damaged and minor asked for the compensation, the insurer denied it by saying that a contract with a minor is a void one. But later the court held that this contract was enforceable, and he is liable to pay compensation.

**A guardian** of a minor is competent to contract on behalf of the minor. But he can function only within the doctrine of legal necessity or benefit. Contract for purchase of land for minor by the guardian, valid. *Muhammad Mursaleen Vs Syed Hussain* <sup>46</sup>

### **Contracts contrary to Statute:**

Contract for Gambling, for Licensing, for plumber, taxi driver, to commit a Crime etc. Generally the contract is unenforceable or rescindable and contrary to Public Policy are void.

**Rescission of minor's contract.** A contract with a minor is void. But when a person purchases property from a minor without knowledge of the executant's minority, the sale can be rescinded on the ground of the executant's minority only on condition that the minor refunds to the purchases the amount of consideration received from him<sup>47</sup>

**Unconscionable Contracts or Clauses:** basically we are talking about an agreement that is so unfair as to be "void of conscience". race, creed, national origin, religion, gender and /or age. Others include requiring someone to perform a tort, interfere with a public official, and or delay prevents or obstructs the legal process.

### **Conclusion**

Generally it is assumed that mental faculties of a minor are in developing state. He is not mature enough to understand what is good and what its implications on his interest are. In the light of it, law protects a minor, so that any person by making an agreement with him cannot exploit him.

The contract Act, 1872, has also granted privileged position to a minor with regard to agreements made by him. In any agreement he does not incur personal liability. He is allowed to get benefit in an agreement entered into by him. Not only this, but entire judicial mechanism helps him, judges are their counselors, jury are their servants and law is their guardian. But at the same time, it is ensured that while protecting interest of minor, unnecessary hardships should not be created for the persons who deal with a minor.

According to modernization theory solution to underdevelopment was simple; following western model the underdeveloped will go through the same steps and will become developed.

According to Article 27 of our constitution “all citizens are equal before law and are entitled to equal protection of law.”

Everyone has the right to the protection of the law against such interference or attacks.

All human beings are born with equal and inalienable rights and fundamental freedoms.

### **Recommendation:**

In the meantime the England had enacted The Minors Contract Act, 1987, and Bangladesh Government about 1101 laws in Bangladesh of which 430 are pre independence and 671 have been made after the independence but did not take any step for enacting The Minors Contract Act for the minor's. Now we are to depend upon the precedents of the Higher court and it is very hardship. **So, my** opinion is that the entire law regarding the contractual capacity of a minor as per their necessity should be revised and modernised having regard to aforesaid discussions for insuring the right of the Minor's contract, for modern social and economic developments. Finally, in this Report, I analyse the deficiencies in the present The Contract Act, 1872 and make recommendations for its reform.

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