

A Study of Minors' Capacity to Contract in Recent Context

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ABSTRACT

Contracts made in India are administered by the Indian Contract Act of 1872. This law also applies to electronic contracts. An agreement formed by a minor is considered to be obligatory on the other party and minors are not held liable. Minors are proficient with processors and other digital devices, and traversing virtual world may be part of the routine for many of them. But when minors use these electronic devices to sign contracts, the conventional perspective regarding minors entering into an agreement provide protection to minors from accountability, letting them wreck the electronic trading mechanism with hardly any legal ramifications. Regulating e- contracts has also grown more complicated when they are completed online. It appears impractical to force retailers to the stringent liability standard when dealing with minors in era of e-commerce. The problem for merchants is figuring out how to do their due diligence and make sure they are not doing business with minor at the other side of an e - commerce system. This study examines the validity of agreement with minors and whether the current law requires revision. This article concerns the validity of the minimum contracting age i.e., 18 years. An effort has been put to explain the legislative systems and age verification procedures that protect minors in digital economy.

Keywords: Minor, Legal competence, E- contract, Digital era, E- commerce.

INTRODUCTION

As per the section 2 (h) of the Indian Contract Act, 1872¹, a contract is an agreement enforceable by law. Section 10 of the Contract Act ²defines which agreements become contracts. It asserts with the informed consent of parties who are qualified enough to sign contracts, for a legal consideration, for a legal purpose, and if it hasn't been made clear that it's not valid then only a contract can be said to be formed.

The quintessential element for a contract to be valid is competency to engage in an agreement. According to section 11 of the Indian Contract Act, 1972³. —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.⁴ This section mentions the requirements of a contract. In light of this section, a person who is who is not a minor, has a sound mental state, not barred from entering into contracts under any applicable laws.



¹ The Indian Contract Act, 1872, (Act 9 of 1872).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

1. Who is a Minor?

In India the age of majority is regulated by The Indian Majority Act, 1875⁵. Section 3⁶ states: Every person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of eighteen years, and not before. According to this, when an individual turns eighteen, a person can be considered to be a major. From this observation we can infer, anyone who is below the age of 18 is a minor.

i. Nature of minor's agreement

Section 10⁷ requires a person to be qualified to form a contract. Additionally, section 11⁸ obliquely implies a minor cannot form a contract. However, both the section is silent on the legitimacy of the agreements formed by a minor. Only in *Mohori Bibee v Dhurmodas Ghose*⁹ the said issues was settled. Sir Lord NORTH observed: "Looking at Section 11 their Lordships are satisfied that the Act makes it essential that all contracting parties should be competent to contract and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act. The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant."¹⁰ The Privy Council clarifies who is permitted to form a contract. And also mentions that a minor cannot be allowed to form an agreement as per Section 11.

The Privy Council later changed this rule in *Srikakulam Subramanyam v. KurraSubba Rao*¹¹. The Privy Council held minor's parent could without difficulty can form a contract if it is in the interest of minor.

In the case of *Rajkumar v. Nathi Devi*¹², the claimants, who were minor at the time, executed the gift deed in his capacity. However, the other party contended that a minor cannot form a contract hence, the gift deed is null and void from the outset. Nonetheless, the court ruled that the plaintiffs can rightly claim the property that had been passed on from their father. The gift

⁵ The Indian Majority Act, 1875 (Act 9 Of 1875).

⁶ *Ibid.*

⁷ *Supra* n. 1.

⁸ *Supra* n. 1.

⁹ *Mohori Bibee v Dharmodas Ghose*, ILR 30 Cal 539 (PC).

¹⁰ *Ibid.*

¹¹ *Srikakulam Subramanyam v KurraSubba Rao*, ILR 1949 Mad 141 PC.

¹² *Rajkumar v. Nathi Devi*, 2015 SCC OnLine Raj 9704.

deed was considered to be benefit for the minor. A minor can claim it even if he does not sign it but the gift deed transferred should be under his name.

In *Meher Nigar v CESC Limited and Another*¹³, the petitioner applied for electricity connection in her minor son's name. The Court referring to the Indian Contract Act held that it would generate additional impediments if the petitioner applied in her minor son's name. And backed up the CESC Limited's previous denial based on the petitioner's son's minority. Furthermore, the petitioner was instructed to submit a new application for electrical connection in her own name. The Court considered the agreement to be invalid since the contract did not provide any benefit to the minor.

ii. *Effects of minor's agreement*

a. **No estoppel against minor**

In the case of *Jagar Nath Singh v Lalta Prasad*¹⁴, it was held that estoppel cannot arise in case of minor. However, minor can take infantile defences. Contract law's aim is to safeguard minors from being responsible for contracts, and it is not possible to make use of the estoppel concept in minor's contract. Beaumont CJ looked at the previous cases and came to this conclusion: "The court is of opinion that where an infant represents fraudulently or otherwise that he is of age and thereby induces another to enter into a contract with him then in an action founded on the contract the infant is not estopped from setting up infancy."¹⁵ It can be inferred from the statement that a minor who creates a contract even when he misrepresents his age, He cannot be prevented from using the defence of infancy, when a suit is filed. In *Pearls Dream Palaces Construction (P) Ltd. v. Vikas*¹⁶, the court said, if it is established that the plaintiff had been a minor at the point of the sale deed's execution, the contract for the sale should not be considered a lawful and legitimate document and must be reserved to the degree of the plaintiff's share. Statutes cannot be subject to estoppel under the law. Using the doctrine of estoppel, the contract signed by a minor cannot be considered binding.

¹³ *Meher Nigar v CESC Limited and Another*, 2022 SCC OnLine Cal 1205.

¹⁴ *Jagar Nath Singh v Lalta Prasad*, ILR (1908-10) 21 All21.

¹⁵ *Gadigeppa Bhimappa Meti v Balangowda Bhimangowda*, AIR 1931 Bom 561.

¹⁶ *Pearls Dream Palaces Construction (P) Ltd. v. Vikas*, 2019 SCC OnLine P&H 6022.

b. No liability in contract or in tort arising out of contract

"You cannot convert a contract into a tort to enable you to sue an infant." ¹⁷In India, this approach is widely followed. According to this, the other party cannot recast a contract into tort for making minors accountable for the contract. For example, the Calcutta High Court held that loans made on bonds cannot be held liable in tort. According to the court: "If the tort is directly connected with the contract and is the means of effecting it and is a parcel of the same transaction, the minor is not liable in tort." ¹⁸ Even if there is a straight link between tort and the contract formed, the minor cannot be held responsible for the tort committed. Pollock on Contracts¹⁹: "he (i.e., the infant) cannot be sued for a wrong when the cause of action in substance is *ex contractu*, or is so directly connected with the contract that the action would be an indirect way of enforcing the contract. But if an infant's wrongful act, though concerned with the subject-matter of a contract, and such that but for the contract there would have been no opportunity of committing it, is nevertheless independent of the contract in the sense of not being an act of the kind contemplated by it, then the infant is liable."²⁰ Based on Pollock's view, a minor cannot be charged for a wrong committed when it is highly linked with the terms of the contract. If he is the subject of a legal action, it would amount to enforcing a contract which is considered void since its inception. However, if a minor commits a wrong even if the contract does not provide a window for it, minor should be held responsible for his act.

c. Doctrine of restitution

When a minor gains asset by concealing his age, he is obliged to reinstate it when the asset or things are traceable. This is called "equitable doctrine of restitution". However, it does not apply if the minor received money²¹.

However, when a minor wants court assistance in terminating a contract, the court may grant his request and order relief only when the minor replenishes all advantages obtained through the contract or offer adequate reparation to the complainant. This aspect had been articulated in Section 41 of the original Specific Relief Act of 1877²².

¹⁷ *Jennings v Rundall*, (1799) 101 ER 1419.

¹⁸ *Harimohan v Dulu Miya*, ILR (1934) 61 Cal 1075.

¹⁹ Frederick Pollock and P.H. Winfield, *Principles of Contract* (Stevens & Sons, 1946), 78.

²⁰ *Ibid.*

²¹ *Leslie (R) Ltd V Sheill*: (1914) 3 KB 607 (CA), 618.

²² Specific Relief Act, 1877, (Act 1 Of 1877).

In *Khan Gul v Lakha Singh*²³, the scope of redress attainable against a dishonest minor was indicated. However, Section 41 of the Specific Relief Act, 1877²⁴, might not be of assistance to the minor, if he is the one who rescinds the contract. As Sir Shadilal CJ acknowledged: "the language of the section no doubt shows that the jurisdiction conferred thereby is to be exercised when the minor himself invokes the aid of the court."

The Law Commission of India²⁵ favoured the perspective of Sir Shadilal CJ and amended Specific Relief Act, 1963. New terms of the Section 33²⁶ are as follows:

“(1) Where a void or voidable contract has been cancelled at the instance of a party thereto, the court may require him to restore such benefits as he has received under the contract and to make any compensation to the other party which justice may require.

(2) Where a defendant successfully resists any suit on the ground that the contract, by reason of him being incompetent, is void against him, he may be required to restore the benefits, if any, obtained by him under the contract, but only to the extent to which he or his estate has benefited thereby.”

Even if the minor is plaintiff, the court will not make him pay anything back, where:

- I. The other side was cognizant of the infancy, so he could not be duped²⁷.
- II. The other side's conduct with the infant were immoral²⁸.
- III. Despite the fact that the minor falsified his identity, the other side was so eager to complete the purchase that the misrepresentation had no impact on him.²⁹
- IV. The opposing party provides no evidence for the court to conclude that fairness warrants the recovery of the amount paid to minor.³⁰

The court in *Maniyan Nadar v. Harikumar*³¹ case, held that a minor who rejects transfer of his assets by a guardian is not required to return the advantages he obtained from the transaction if the buyer was cognizant of the minor's age and he did not commit fraud or deception. In such circumstances, the buyer has no recourse against either the minor or his asset. Depending on the contents of the agreement in question, the guardian may be accountable for transacting

²³ *Khan Gul v Lakha Singh*, ILR (1928) 9 Lah 701.

²⁴ *Supra* n. 14.

²⁵ Law Commission of India, 9th Report on the Specific Relief Act (July, 1958).

²⁶ *Supra* n. 14.

²⁷ *Bhim Mandal v Mangaram Corain*, AIR 1961 Pat 21.

²⁸ *Mohd Said v Bishamber Nath*, AIR 1924 All 156.

²⁹ *K. Maungll v Ma Hda On*, 1939 Rang 545.

³⁰ *Kampa Prasad v Sheo Gopal Lai*, ILR (1904) 26 All 342.

³¹ *Maniyan Nadar v Harikumar*, 2015 SCC OnLine Ker 12506.

minor's property in violation of Section 11 of the Hindu Minority and Guardianship Act of 1956.³²

2. Beneficial contracts

i. Contracts of marriage

A contract of marriage for minor is presumed to be for their benefit. It is now firmly accepted, "that while the contract of marriage could be enforced against the other contracting party at the instance of the minor it cannot be enforced against the minor".³³ A marriage can be enforced against the other party, but not against a minor.

ii. Contracts of apprenticeship

The Indian Apprentices Act, 1850 stipulates that minor may enter into contracts of service that are legally binding. In *Raj Rani v Prem Adib*, Desai J propounded: "though according to English Law the minor would be liable in the case of a contract of service where the contract was for his benefit, it is clear that under Section 11, the minor's contract being void, the minor would not be held liable".³⁴ It can be deduced that English Law may not provide shield to minors when it is for his advantage, in India they cannot be held liable even in service contract as per Section 11.

iii. Partnership

A minor, who is a business associate holds a role that is distinct from that of a shareholder in the company. Despite the fact that partnership is considered to be a perpetual one, a minor as a partner of the firm is not obliged to do so.³⁵ Minor is not accountable for liabilities generated in the firm; however, is also not granted any percentage of the company's profits till corporation's bills are paid.³⁶ In *Commissioner of Income Tax v R. Dwarkadas*,³⁷ the Supreme Court has decided an individual who has not yet reached the age of 18 years old cannot legally join an established business as an equal partner. The only exemption that is granted by Section 30³⁸ is the possibility that a minor would be allowed to participate in the advantages of an ongoing business.

³² Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956).

³³ *Abdul Razak v Mohd Hussain*, ILR (1916) 42 Bom 499.

³⁴ *Raj Rani v Prem Adib*, AIR 1949 Bom 215.

³⁵ Jack Beatson, Andrew Burrows, and John Cartwright.. *Anson's Law of Contract* (Oxford, 2016), 257.

³⁶ *Lovell and Christmas v Beauchamp*, [1894] AC 607.

³⁷ *Commissioner of Income- Tax v R. Dwarkadas and Co.*, 1971 80 ITR 283 Bom.

³⁸ Indian Partnership Act, 1932 (Act 9 of 1932).

3. Ratification

Ratification refers to “a person's binding adoption of an act already completed but either not done in a way that originally produced a legal obligation or done by a third party having at the time no authority to act as the person's agent³⁹”. A minor cannot ratify a contract unless he reaches majority.⁴⁰ If necessary, a new agreement should be formed after the majority has been reached. The previous contract's consideration will not be assumed in the contract entered into by the minor upon gaining majority.⁴¹

4. Liability for necessities

According to Section 68 of the Indian Contract Act, 1872,⁴² if a person receives "necessaries" through some other person, then the other person is entitled to be recompensed from the person who has received the benefit.

Meaning of “necessaries”

To get a sense of what the term “necessaries” means, one can refer to *Chapple v Cooper*⁴³; judgement- " Things necessary are those without which an individual cannot reasonably exist. In the first place, food, raiment, lodging and the like. About these there is no doubt. Again, as the proper cultivation of the mind is as expedient as the support of the body, instruction in art or trade, or intellectual, moral and religious education may be necessary also then the classes being established, the subject and extent of the contract may vary according to the state and condition of the infant himself. His clothes may be fine or coarse according to his rank; his education may vary according to the station he is to fill; and the medicines will depend on the illness with which he is afflicted, and the extent of his probable means when of full age.... But in all these cases it must first be made out that the class itself is one in which the things furnished are essential to the existence and of reasonable advantage and comfort of the infant contractor. Thus, articles of mere luxury are always excluded, though luxurious articles of utility are in some cases allowed."⁴⁴ As per this judgement, “necessaries” are things which are

³⁹ Bryan A. Garner, *Black's Law Dictionary* (West Publishing Co., 2009), 1376.

⁴⁰ *Nazir Ahmad v Jivan Das*, AIR 1938 Lah 159.

⁴¹ *Ibid*

⁴² The Indian Contract Act, 1872, (Act 9 of 1872).

⁴³ *Chapple v Cooper*, (1844) 13 M&W 252, 258.

⁴⁴ *Ibid*.

indispensable to sustain life. It may include clothes, food, shelter, medicines, etc. however, it is not limited to physiological requirements. It also pertains to the things which are pertinent for intellectual development like education, life- skills, etc. Although, minors are permitted to claim things based on the class to which they belong and are not entitled to demand luxuries. One of the categories of agreements that a minor can legally enter form is for "necessaries".

5. Rationale behind not allowing minors to form a contract

In the case of *Lal Chand v. Ram Kishan and Ors*⁴⁵, there were seven defendants and three of them were minor. And defendants sold their property on their behalf. However, no authorization to sell on their place was granted by the appropriate authority. According to the court's ruling the land owned by the minor is proscribed to have been offered without the authorization of the court, and as a result, the agreement to sell was said to have no binding effect on the rights of the parties involved.

In *Virendra Singh v Rohit and Ors*⁴⁶, the defendant who were minor contended that the plaintiff obtained illegally signed documents from defendants without payment. Additionally, the defendants claimed that the contract should be declared null and void. In announcing the specific performance remedy and providing the alternative remedy, the court relied on the terms of Section 8 of the Hindu Minority Guardianship Act⁴⁷ and discarded the plaintiff's appeal.

The laws of minors' agreements are mostly judge-made and consists of a set of specific rules governing various types of transactions. Nonetheless, certain concepts are unmistakable because of the fact that minors are generally naïve. An immature minor is unable to comprehend the implications, and so should not be permanently tied by the results of their immature mistakes. The primary idea is that he needs to be protected not only from dishonest adults but also from himself. This safeguard is provided by the general principle that contract entered into by minor are not enforceable against them however, the contracts are enforceable by minors.⁴⁸

⁴⁵ *Lal Chand v. Ram Kishan and Ors.*, 2016 SCC OnLine P&H 14782.

⁴⁶ *Virendra Singh v Rohit and Ors.*, 2015 SCC OnLine All 9374.

⁴⁷ Hindu Minority Guardianship Act, 1956 (Act 32 of 1956).

⁴⁸ Working Paper No. 81, *The Law Commission*, 1982, accessed May 29, 2022, <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/08/No.081-Minors-Contracts.pdf>.

6. Minors contracting in Digital Era

Almost four decades ago, a researcher observed, “The minor has long remained a special charge of the law. But in our fast moving and rapidly changing society, the ancient timeworn cloak of protection thrown over him has long since lost its real need or useful purpose. The technologically oriented and knowledgeably mature youth of our hectic age is not at all comparable to the minor of even five or six decades ago who needed the solicitous attention and protection the law so thoughtfully afforded him.”⁴⁹ In our fast-paced, ever-changing culture, the shelter provided to minors by law has lost its purpose. Digitally-savvy minors are more mature when compared to minors of even 30 years ago. Minors in present are more aware of their surroundings and also have slight knowledge of the consequences of their actions.

“Miserable must the condition of minors be; excluded from the society and commerce of the world.”⁵⁰ This remark, originally written more than two centuries ago, was intended to convey the idea that minors were considered incapable to enter into contracts. However, in today's digitally driven commerce world, minors, on the other hand, seem to have the last laugh. Minors, in fact, are not exempted from the global marketplace. The fact that market leaders explicitly try to attract individuals who are below the age of eighteen suggests how crucial this demographic is to the economy.

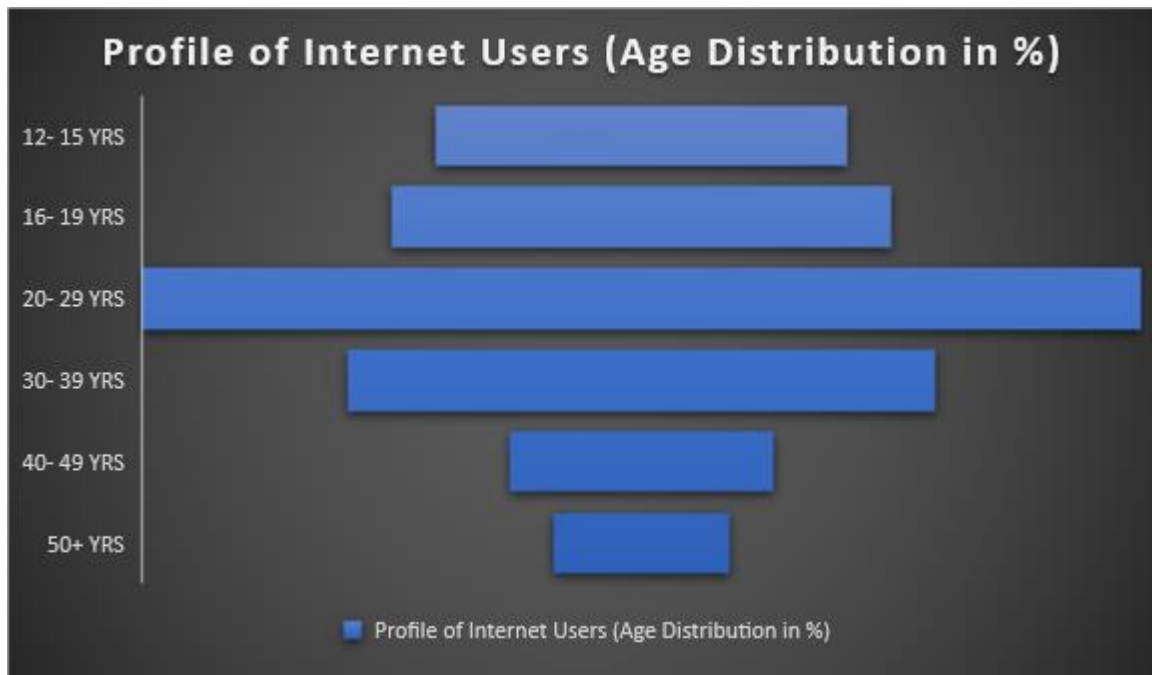
Despite their apparent expression of acceptance to commercial conditions, it is established that persons under the age of consent have a non-stick shell under contract law. Current contract law concerning minors permits them to rescind contracts established by them.

When it concerns e-commerce, applying the stringent responsibility to merchants who interact with minor is unrealistic. The issue for traders is to take all necessary measures to verify that they are not conducting business with a minor via the Internet. A new generation of children and adolescents who are fluent in Internet use their computer, initiating an abundance of cyberspace exchanges. Minors make up a significant component of the digital world, as evidenced by the statistic that children are at ease and skilled in traversing cyberspace than

⁴⁹ Irving M. Mehler, “Infant Contractual Responsibility: A time for Reappraisal and Realistic Adjustment?”, *U. KAN. L. REV.*, 11 (1963): 361.

⁵⁰ *Zouch v. Parsons*, (1765) 97 Eng. Rep. 1103.

most of the adults.⁵¹ As per the Internet and Mobile Association of India (IAMAI)⁵², Of the overall Internet population, 433million are 12+ years old and 71 million are 5-11 years old.



53

With the way society is right now because of the disease outbreak, an e-contract has become one of the effective ways to start a deal. Connectivity is no more hampered by spatial or temporal constraints. More data is now being exchanged. This is where e-commerce helps the business world to be more efficient in aspects of geography, time, and expense. E-contracts are being used a lot more now that e-commerce is becoming more popular.

As per the Section 10A of the IT Act, 2000,⁵⁴ a contract is enforceable or valid even if before the formation of contract electronic means were used to send or receive the offer and approves it.

i. Issues in E- Contracts concerning Minors

⁵¹ Michele N. Breen, "Comment, Personal Jurisdiction and the Internet: "Shoehorning" Cyberspace into International Shoe", *SETON HALL CONST. L.J.*, 8 (1998): 763.

⁵²Nandita Mathur, "India now has over 500 million active Internet users: IAMAI", Mint, May 5, 2020, accessed June 3, 2022, <https://www.livemint.com/news/india/india-now-has-over-500-million-active-internet-users-iamai-11588679804774.html>.

⁵³ SOURCE – IRS JAN'19-NOV'19.

⁵⁴ The Information Technology Act, 2000 (Act 21 of 2000).

a. Competence to Contract

One of the main components of e-contract is that the individual who becomes a signatory is legally able to do so. Frequently, an unknown user becomes a part of an agreement. The party at the other end has no notion that the user who selected on the "I Agree" icon is legally competent to become a party to an agreement. One of the key features of the agreement considered by the Indian Contract Act, 1872 is the party's ability to form contract. Sections 10, 11, and 12 of the Act deal with the party's ability to establish an agreement.⁵⁵

b. Age verification

In India, the present regulatory framework internet service providers are not compelled to use age verification processes to safeguard children. The Delhi High Court inquired from the Government about the registration of minors on social networks.⁵⁶

c. When doctrine of infancy fails to protect minors

In *E.K.D. ex rel, Dawes v Facebook, Inc*⁵⁷, the claimants (minors) and claimed Facebook breached privacy rights by exploiting identity of them and images in commercial advertisements. The inclusion of hyperlinks on every webpage was adequate for effective comprehension of the formal terms, according to the court. The court's findings indicate minor's susceptibility to online jargon.

d. Personal Data infringement

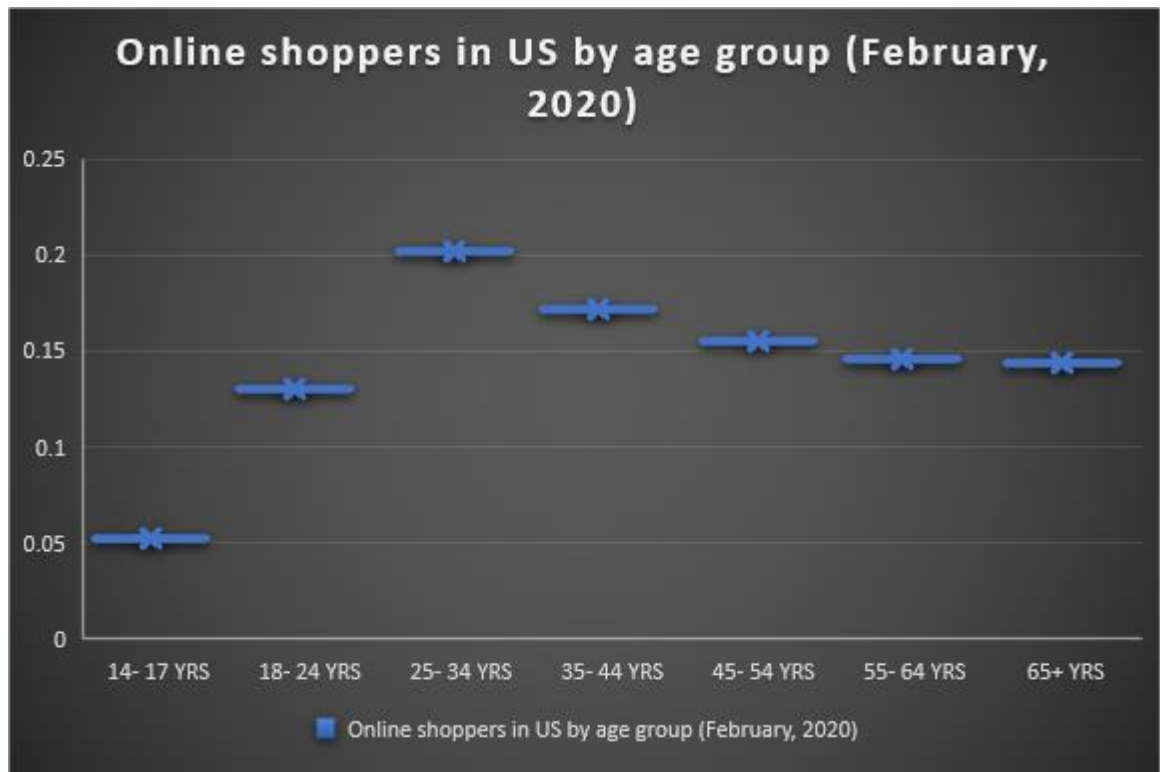
The majority of internet contracts include a licence from the user granting the website administrator permission to misuse and even alter the user's personal uploaded information.⁵⁸

⁵⁵ Aditya Gaur, "E-Contracts, Legal issues and challenges involved: An overview", *JETIR*, 8 (2021): 404, accessed May 31, 2022, <https://www.jetir.org/papers/JETIR2101054.pdf>

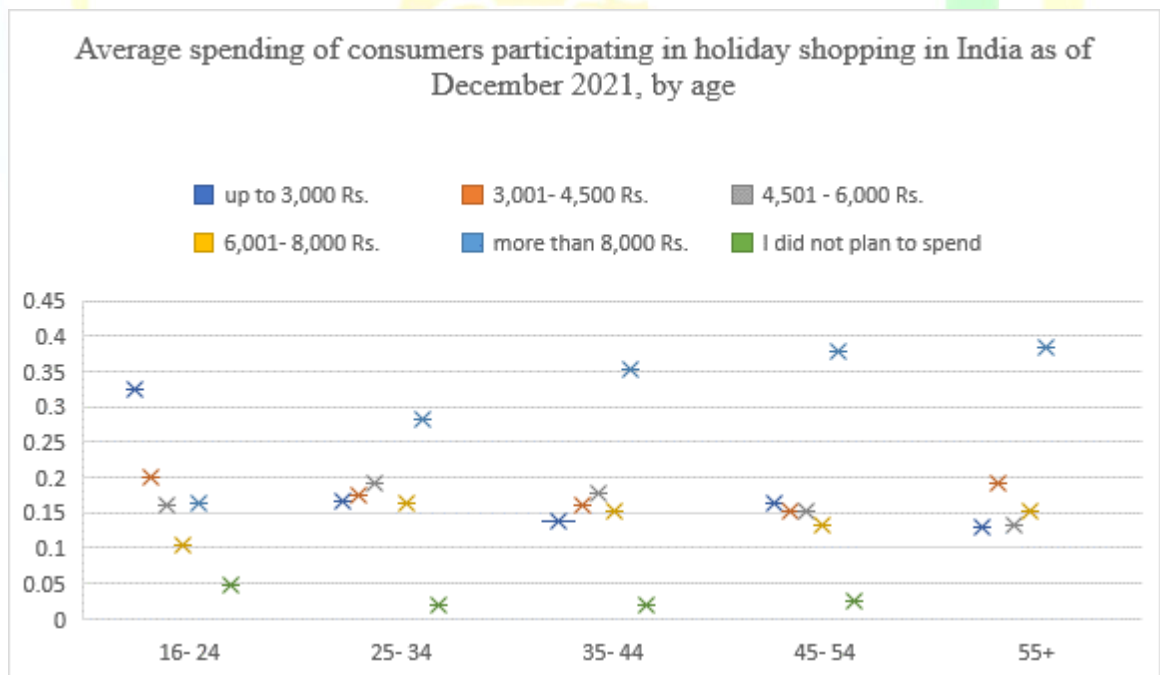
⁵⁶ *K.N. Govindacharya v. Union of India*, W.P.(C) 3672/2012 and CMS Nos. 7709/ 2012.

⁵⁷ *E.K.D. v. Facebook, Inc.*, 885 F. Supp. 2d 894 (S.D. Ill. 2012).

⁵⁸ Roxanne Christ and Brian Fox, "Online IP Contracts: The Major Minor Problem", *The Hollywood Reporter, ESQ*, 1 (2006), accessed May 31, 2022, <https://www.lw.com/thoughtLeadership/online-ip-contracts-problems-with-click-throughs>



59



60

⁵⁹ eMarketer. "Distribution of digital buyers in the United States as of February 2020, by age group." Chart. March 26, 2020. Statista, accessed July 18, 2022. <https://ezproxy.svkm.ac.in:2307/statistics/469184/us-digital-buyer-share-age-group/>

⁶⁰ Rakuten Insight. "Average spending of consumers participating in holiday shopping in India as of December 2021, by age." Chart. January 17, 2022. Statista. Accessed July 28, 2022. <https://ezproxy.svkm.ac.in:2307/statistics/1287792/india-average-spending-of-holiday-shoppers-by-age/>



Organisation for Economic Corporation and Development expound e- commerce as “*all forms of transactions relating to commercial activities, including both organizations and individuals, which are based on the processing and transmission of digitized data including text, sound, and visual images.*”⁶² As per this definition, e- commerce requires more than just digital services. E-commerce comprises any transactions which generate and transmit digital data, including text, audio, and visual images.

Minors are constantly bombarded with marketing. Teen users have been identified as a large market due to an increase in their spending power, and advertisers have aggressively pursued them as a result. A contract that used to take weeks of reading terms and conditions may now be signed with a single click.⁶³

⁶¹Fastdata. "Distribution of traditional e-commerce and live commerce users in China as of November 2021, by generation." Chart. January 14, 2022. Statista, accessed July 18, 2022.

<https://ezproxv.svkm.ac.in:2307/statistics/1284686/china-age-breakdown-of-traditional-and-livestreaming-e-commerce-users/>

⁶² Organization for Economic Co-operation and Development, “Measuring E- commerce Some New Developments”, accessed June 5, 2022, [Measuring E-Commerce: Some New Developments \(unctad.org\)](https://www.unctad.org/en/publications-and-articles/publication-detail/50942)

⁶³ Allen Chappell, “What a Teen Consumer Wants”, *IMEDIA* (Oct. 21, 2004), <http://www.imediaconnection.com/articles/ported-articles/red-dot-articles/2004/oct/what-a-teen-consumer-wants/>

Minor make up a sizable portion of web users, and this category is continually growing.⁶⁴ Marketers know that minors are customers with considerable disposable income, and in some situations, their very survival depends on the support of minors.⁶⁵

ii. *Issues in e-commerce contracts*

- a. These agreements aren't just non-negotiable; they're also non-modifiable. Consumers are unable to counteroffer or renegotiate the terms of service.
- b. Minor will incur expenses for which their guardians will be responsible, will accrue debt without understanding credit, and will indulge in "earn-and-spend" habits at an early age.
- c. The prospect of financial advantage deters businesses from carefully researching the age of online consumers.⁶⁶

CRITICAL ANALYSIS

When entering into a contract, minors are given certain protections under the law. Since a minor is young and unsophisticated, they are often unable to realize the ramifications. Therefore, according to the law, contracts made by minors are not enforceable against them. In the case of *Lal Chand v Ram Kishan and Ors*⁶⁷. and *Virendra Singh v Rohit and Ors*⁶⁸., it can be established that the law's reasoning is justified. In both of these mentioned cases, minors were inveigled by the adults to enter into a contract.

However, instances where minors are hoodwinked is challenging to find in contemporary society. In technology- oriented world, minors can get access to every information available in the world. And this in turn has made them acquainted with their surroundings and also about the functioning of society.

In present society, the tables have turned and it is the merchants or traders who are deceived by minors. If they enter into a contract with minor, they suffer due to minors' act if they breach

⁶⁴ Ronald J. Mann & Jane K. Winn, *Electronic Commerce* (Aspen Law & Business, 2005), 202.

⁶⁵ "FED. TRADE COMM'N, PRIVACY ONLINE: A REPORT To CONGRESS" 12 (1998), accessed 29 May, 2022 <http://www.ftc.gov/reports/privacy3/priv-23a.pdf>

⁶⁶ Somini Sengupta, June 18, 2012, "Groups Urge Facebook Not to Aim Ads at Children Under 13", *New York Times Bits Blog*, accessed June 2, 2022, <http://bits.blogs.nytimes.com/2012/06/18/groups-urge-facebook-not-to-aim-ads-at-children-under-13/>

⁶⁷ *Lal Chand v. Ram Kishan and Ors.*, 2016 SCC OnLine P&H 14782.

⁶⁸ *Virendra Singh v Rohit and Ors.*, 2015 SCC OnLine All 9374.

the terms of the contract. They cannot even think of compensation since contract law does not hold minors accountable for the contract.

If a minor can misrepresent his age when he enters into a physical contract then they can effortlessly do the same in e- contracts. Since, in e- contracts the other party does not have the knowledge about the party who is at the other end.

As per the statistics provided above, we can conclude that minors make up for a substantial percentage in the e- commerce. The aforementioned statistic which shows the number of online consumers in India shows that younger people are potential consumers and the market of the future will be mostly dependent on them. Hence, they are also an important part of the economy. If minors age will be reduced to 16 then more contracts would be considered legal and valid. Then, it will also help in developing the economy of a country.

SUGGESTIONS

It will be impossible to establish the parties' competence in an e- contract because they will not be engaging with each other face to face. Identity certification and a confirmation about a person's contracting capacity are necessary to overcome this problem.⁶⁹ The Indian Contract Act of 1872, originated from the legal system of the then England, that was inadequately defined, contains the notions of contract law, specifically minor's agreements. The 13th Report of Law Commission⁷⁰ illustrates that due to the effect of time, numerous provisions of the Act have become obsolete, mandating the adoption of new laws.

The best way to deal with a minor who engages into an e- contract is to apply criminal and tort law principles. Perhaps the demarcation between teen years and adulthood in contract law should be eliminated since it may not correspond to a child's maturing cognitive ability to think and understand in a same manner as an adult.

In the online world, many contracts are established and negotiated online with the help of adhesion contract or click-wrap agreement that may be approved with the press of a button. The wisest course of action would be to treat minors as they are in other legal problems, such as criminal law and the law of torts, where they are given more liability. Legal interpretation and amendment are major tools for bridging the gap between a statute issued at

⁶⁹ Noraida Harun, Asiah Bidin, Kamaliah Salleh, and Noor 'Ashikin Hamid, "Minor's Capacity to Contract in Malaysia: Issues and Challenges", *International Journal of Academic Research in Business and Social Sciences* 8 (2018): 1549, accessed May 29, 2022, <http://dx.doi.org/10.6007/IJARBS/v8-i12/5257> .

⁷⁰ Law Commission of India, 13th Report on the Indian Contract Act, 1872 (September, 1958).

moment in history and the present society with changing moral and religious, sociocultural, industrial and commercial, scientific advancement.⁷¹

According to the Srikrishna Committee study, the minimum legal age as 18 may appear excessively high from the standpoint of the minor's cognitive development.⁷² The Juvenile Justice Act, 2015 stipulates that any "minor" between the ages of 16 and 18 suspected of doing a felony can be tried as a major according to the Indian Penal Code.⁷³ IEEE is now working on standards to create a system for age-appropriate online services with children as end users, which will allow the services to be tailored to their needs.⁷⁴

To reflect the changes in times, it is essential to reform the method to a minor's capacity under contract law. With minors' current access to technology and depending on their usual contracting practises there is a need for a fresh approach.

CONCLUSION

Continued allegiance to the concept that minors have no legal capacity to contract neglects that minors constitute a substantial portion of the consumer market and are contracting in large numbers.⁷⁵ It appears prudent for legislators to understand the current condition of affairs and design guidelines to support fair contract of trade with minors in virtual domain. It is necessary to take another step toward implementing a system that recognises minors' cognitive development, empowers them to accept responsibility for their actions, and allows traders to access e-commerce to without the limitations provided by law. If electronic commerce is beneficial, contract law will definitely be able to overcome this antiquated barrier, allowing society as a whole to realise the full benefits of this growing technology.⁷⁶

Jean Piaget, renowned for his beliefs on cognitive development thought that a person undergoes four phases of cognitive development. As per his theory, in formal operational stage (12 or older), a person can contemplate in abstract terms, and reason logically about what is

⁷¹ R.S. Pandey, "Minor's agreements in India and the UK", *Journal of the Indian Law Institute*, 205 (1972): 250, accessed may 29, 2022, <https://www.jstor.org/stable/43950180>.

⁷² Government of India, Report: *Committee on A Free and Fair Digital Economy*, (Ministry of Electronics and Information Technology, 2018).

⁷³ Juvenile Justice Act, 2015 (Act 2 Of 2015).

⁷⁴ "Standard for Age-Appropriate Digital Services Framework - Based on the 5Rights Principles for Children", *IEEE Standards Association*, accessed May 27, 2022, <https://standards.ieee.org/project/2089.html>

⁷⁵ Robert G Edge, "Voidability of Minor's Contracts: A feudal Doctrine in a Modern Economy", *GA. L. Rev.*, 1 (1967): 205, accessed may 26, 2022, <https://digitalcommons.law.uga.edu/glr/vol1/iss2/4> .

⁷⁶ Juanda Lowder Daniel, "Virtually Mature: Examining the Policy of Minor's Incapacity to Contract through the Cyberscope", *Gonzga Law Review*, 43 (2011): 239, accessed June 1, 2022, <http://blogs.gonzaga.edu/gulawreview/files/2011/02/Daniel.pdf>.

probable.⁷⁷ Adolescents have the cognitive ability to reason like adults from early teen years, and should be responsible when enter into a contract like an adult is accountable.

The perils of dealing with minors and their unrestricted capacity to back out from the contract exceed the advantages of swiftly concluding transactions through e-commerce. Consequently, merchants are less inclined to fully engage in the computerised transaction. As a result, society may forego the technological potential.⁷⁸



⁷⁷“Piaget’s 4 Stages of Cognitive Development Explained”, last modified on May 2, 2022, accessed on June 4, 2022, <https://www.verywellmind.com/piagets-stages-of-cognitive-development-2795457>.

⁷⁸Juanda Lowder Daniel, “Virtually Mature: Examining the Policy of Minor’s Incapacity to Contract through the Cyberscope”, *Gonzga Law Review*, 43 (2011): 239, accessed June 1, 2022, <http://blogs.gonzaga.edu/gulawreview/files/2011/02/Daniel.pdf>