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## Importance of capacity to contract

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### Abstract

A Contract is a legally binding agreement. When discussing contract law, one of the most frequently used terms is 'capacity.' In today's globalised world, it is critical for a party to have the ability to contract in order to engage in commercial transactions. This article will discuss how one person is or is not competent to enter a valid contract with another, with a focus on the Indian Contract Act, 1872 (hereinafter 'the Act'), relating case laws, and a critical analysis of the subject in the Indian context.

**Keywords:** Psychiatric disorders, suicide, suicide attempt, first admission, recurrent admission, schizophrenia, bipolar disorder, depression; substance abuse disorder

### Introduction

According to Sec 10, All agreement are contract if they are free consent, competent to parties, for lawful object and lawful considerations are not be expressly declared as void. Thus one of essential elements of valid contract is competent to parties. Competent party means a person or organizations having the required legal capacity to enter into a binding contract. Almost every transaction around us is a result of a contract. Example- When you buy car from the seller, you promise to pay him money in exchange for CAR. If you own a shop, you enter into two contracts; one with the manufacturer of the goods and second with the customer who will buy the goods from your shop. While buying a CAR we might not pay attention as to whether the seller is competent enough to enter into a contract. However, if you are a shopkeeper, you need to check and be sure that the manufacturer is legally capable of doing so. This becomes important for you to hold the manufacturer legally liable for any defaults committed by him during the terms of the agreement.

### Objective of this study

- To know about the Capacity to contract in case of Occurrence of Fraud.
- To analyse Section 2(h) Of Indian contract act deals with contract.
- To examine contract is an oral or spoken agreement and
- To know all contracts are agreement but all agreement are not contract.

### Research Methodology

It obtained primary source of data by conducting an empirical study on seeking responses from the general public based on a questionnaire and also relied on secondary sources of data such as books, journals, sources, articles and newspaper The present paper is conclusive, descriptive and based on empirical design. Qualitative data was generated to test the research hypothesis. It is empirical type of research which is done by the survey method.

### Review of Literature

Sec. 11 of the Indian Contract Act, 1872 lists down the qualifications which enable a person in India to enter into contracts-

- A person should have attained the age of majority as per the law of the country of which he is a citizen.

In India, the age of majority is governed by the Indian Majority Act, 1875. As per Sec. 3 of the Indian Majority Act, 1875, an Indian citizen is said to have attained the age of majority upon completion of eighteen years of age. In the USA (many of the states) and the UK, the age of majority is 18 years as well.

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**Who are competent to contract?**

**Sec.11 of the Indian Contract Act, 1872** every person is competent to contracts:

- Major.(A person should have attained the age of majority as per the law of the country of which he is a citizen.)
- Sound mind and
- Not disqualified from contracting by any law to which he is subject

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In the USA (the majority of the states) and the UK, the age of majority is 18 years as well.

However, if a person is below the age of 18 years and a guardian has been appointed for him, he shall attain majority at the age of 21 years.

**A person should be of sound mind at the time of entering into a contract.**

As per Sec. 12 of the Act, a person can be said to be of sound mind when he can assess, understand his actions and realize the consequences of obligations imposed on him at the time of entering into a contract.

- A person should not be disqualified under any law to which he is subject.
- Disqualifications for entering into a contract

Thus contractual capacity is basically defined in relations to age, soundness of mind and legal qualifications

According to sec11 of the Indian Contract Act, 1872 all persons who do not meet the criteria as per Sec. 11 of the Act are incompetent to contract. Hence, we can deduce that the following category of persons do not possess the legal capacity to enter into a contract-

- Minor.
- Persons of unsound mind.
- Persons of disqualified of any law.
- Minor

In India, a minor is an Indian citizen who has not completed the age of eighteen years. A minor is incapable of understanding the nature of the liabilities arising out of an agreement. Hence a contract with a minor is void ab initio (void from the beginning) and cannot be enforced in a court of law. The result is that a party cannot compel the minor to perform his part of obligations as enumerated in the agreement (plead specific performance of an agreement/rule against estoppel).

**Nature of minor's agreement**

- **Mohri bibi vs. Dharmodas ghose (1903) pc**
1. The respondent, Dharmodas Ghose, a minor, had mortgaged his property in favor of the moneylender, Brahma Dutt for securing a loan amounting to INR 20,000/-.
  2. Mr. Brahma Dutt had authorized Kedar Nath to enter into the transaction through a power of attorney. Mr. Kedar Nath was informed of the fact that Dharmodas Ghose was a minor through a letter sent by his mother.
  3. However, the deed of mortgage contained a declaration that Dharmodas Ghose was of the age of majority.

4. The respondent's mother brought a suit on the ground that the mortgage executed by his son is void on the ground that her son is a minor.
5. The relief sought by the respondent was granted and an appeal was preferred by the executors of Brahma Dutt before the Calcutta high court. The same was dismissed.
6. An appeal was then made to the Privy council.

**The Privy council's judge lord north held that-**

- a. A contract with a minor is void-ab-initio.
- b. Sec.7 of the Transfer of Property Act, 1882 states that a person competent to contract is competent to transfer a property.
- c. Hence, the mortgage executed by the respondent is void.

However, if a minor enters into a contract and performs his part of obligations, the other party can be compelled to perform and fulfill its obligations, and, in such instances, the contract becomes legally enforceable.

**Suraj Narain Dube VS. Sukhu Ahir**

1. Suraj Narain lent money to Sukhu Ahir who was a minor. The minor executed a promissory note against the money borrowed.
2. After four years, when the minor attained majority, he and his mother executed a second promissory note in favour of Suraj Narain in respect of the original loan plus the interest accumulated over the years.
3. **The court held-**
  1. The first agreement entered into by the parties is void as a minor is incompetent to contract. The minor had no liability to pay under this agreement. However, the minor made a promise and provided the promissory note, amounting to consideration.
  2. A minor has no power to ratify the contracts entered into by him upon attaining the age of majority.
  3. In the second agreement executed by the parties, there was no consideration from the Plaintiff. The original advance was no consideration for a second agreement. The second agreement is void due to want of consideration.

In certain instances, a contract entered into by the minor or by the minor's guardian for his benefit is valid in the eyes of law-

1. A contract for marriage entered into by a minor/his guardian.
2. A partnership contract entered into with a minor admitting him to the benefits of a partnership. However, the minor cannot be held personally liable for the losses incurred.
3. A contract relating to the minor's property entered into by his guardian if it is for the benefit of the minor.
4. A contract of apprenticeship with a minor.
5. A contract supplying the minors with goods and services necessary for life.

Websites such as YouTube expressly mention in their terms and conditions that any minor while using its services represents that he has the permission of his parent/ guardian

to do so. Parents and guardians are held liable for the child's activity on such websites.

### Person of unsound mind

- **Idiots:** An idiot, in medical terms, is a condition of mental retardation where a person has a mental age of less than a 3-year-old child. Hence, idiots are incapable of understanding the nature of the contract and it will be void since the very beginning.
- **Lunatic:** A person who is of sound mind for certain duration of time and unsound for the remaining duration is known as a lunatic. When a lunatic enters into a contract while he is of sound mind, i.e. capable of understanding the nature of the contract, it is a valid contract. Otherwise, it is void.

**Illustration-** A enters into a contract with B for sale of goods when he is of sound mind. A later becomes of unsound mind. The contract is valid.

- People under the influence of the drug- A contract signed under the influence of alcohol/drug may or may not be valid. If a person is so drunk at the time of entering into a contract so that he is not in a position to understand the nature and consequences, the contract is void. However, if he is capable of understanding the nature of the contract, it will be enforceable.

**Illustration-** A enters into a contract with B under the influence of alcohol. The burden of proof is on A to show that he was incapable of understanding the consequence at the time of entering the contract and B was aware of his condition.

### Persons disqualified by law

- **Alien enemy-** An alien enemy is the citizen of a country India is at war with. Any contracts made during the war period with an alien enemy are void. An Indian citizen residing in an alien enemy's territory shall be treated as an alien enemy under the contract law. Contracts made before the war period either gets dissolved if they are against public policy or remain suspended and are revived after the war is over, provided they are not barred by limitation.

**Illustration-** A, of country X, orders goods from B, of country Y. The goods are shipped and before they could reach Y, country X declares a war with country Y. The contract between A and B becomes void.

- **Convicts:** A convict cannot enter into a contract while he is serving his sentence. However, he regains his capacity to enter into a contract upon completion of his sentence.

**Illustration:** A, is serving his sentence in jail. Any contract signed by him during this period is void.

- **Insolvent:** An insolvent is a person who is declared bankrupt/ against whom insolvency proceedings have been filed in court/resolution professional takes possession of his assets. Since the person does not have any power over his assets, he cannot enter into contracts concerning the property.

**Illustration:** A enters into a contract for sale of goods with B. Before the sale takes place, an insolvency suit is filed

against A. A sell the goods to B during pendency of insolvency proceedings. The contract is valid.

- **Foreign sovereign:** Diplomats and ambassadors of foreign countries enjoy contractual immunity in India. One cannot sue them in Indian courts unless they submit themselves to the jurisdiction of Indian courts. Additionally, sanction from the central government is also required in such cases. However, the foreign sovereign has the authority to enforce contracts against the third person in Indian courts.
- **Body corporate:** A company is an artificial person. The capacity of a company to enter into a contract is determined by its memorandum and articles of association.

### Is Minority a Disqualifications?

Minority is not a disqualification but a shield which provides a lot of protection to the minors. When minor entered into agreements can be summarized as following heads:

**Valid Contracts:** When necessities supplied.

**Voidable contracts:** Minor as a payee or endorsee.

**Void ab initio:** All agreements other than valid and voidable contracts are void ab initio.

### Competency of Parties to enter into an e-contract

A party can enter into an e-contract if it satisfies the legal requirements as per Sec. 11 and Sec. 12 of the Indian Contract Act, 1872.

### Competency to contract on behalf of another

As per the Indian Contract Act, 1872 a person can employ another who shall enter into contracts with the third person on his behalf. The person in this instance is known as *the principal* and the other person so employed is known as *the agent*.

Any person may be employed as an agent. However, a minor or a person of unsound mind cannot be held liable for their acts to the principal.

An agent's authority may be either-

1. *Express*, i.e. By word of mouth.
2. *Implied*, i.e. by conduct.

### Companies ensure competency of each other while entering into a contract

Most companies while entering into contracts with one another want to make sure that the other party is competent enough to enter into a contract. This is required to avoid any legal complications in the future. This is mostly done through the inclusion of a representation clause in a contract stating that the company, as per its memorandum and articles of association, is capable of entering into a contract through its authorized representatives.

A copy of the articles of association may be annexed by both parties to confirm the representations made.

If the memorandum and articles provide otherwise, a condition precedent clause is incorporated into the agreement stating that the company shall pass necessary board resolutions to alter its articles of association. A stipulated date called a long stop date is given to the other party to comply with the conditions precedent failing which the agreement shall stand terminated.

A party might be asked to produce a copy of board resolution so passed/ changes made in the articles of

association to the other party to prove its compliance with the condition precedent. It is expressly mentioned in the agreement that both the parties indemnify each other from any suits, proceedings, or liabilities arising from breach of the representation clause.

### Conclusions

Contract regulation performs a critical role in business law. It is difficult to carry on any trade, business or any hobby without settlement regulation. The aim of the contract law is to make sure that rights and treatments are honoured which raised by means of settlement. Contract law lays down conditions for parties to go into in to contract. Anson stated that contract is a mixture of subjectivity and objectivity concept. Competency of parties to contract is one of the most important requirements to make an agreement valid and enforceable in a court of law. A contract made by a person who does not possess the mental capacity to understand the nature and consequences of the contract is void ab initio. On the other hand, contracts with lunatics, people under the influence of the drug may/may not be void depending upon the circumstances surrounding the situation. A person regains the legal capacity to contract upon removal of any of the disqualifications. Companies while entering into contracts with one another always try to safeguard their interests. Representation and indemnification are the most commonly used clauses to ensure that both the parties are competent to contract.

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