Minors’ Rights under Intellectual Property Rights Laws: A Myth or Reality?

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In principle and practice there exists a clear divide between legal competence of minors and majors. A minor’s agreement being void is wholly devoid of all effects: creating no contractual obligation and right. In this paper it is argued that the contractual incapacity attached to the minor is detrimental to him as far as the exploitation and enforcement of his innovative, creative and intellectual talents are concerned. The contractual incapacity averts him from commercially exploiting the fruits of his intellectual labour. The Indian laws on intellectual property rights do not debar minors from acquiring intellectual property rights. However, the contractual incapacity creates impediments on minors in exploiting the IPRs by entering into licenses or assignments.

Keywords: Minors, intellectual property rights, legal disability to contract, contractual capacity of minors

The law of contract presumes that everyone has a capacity to contract, unless and until one is exempted from liability to fulfil an obligation by reason of want of capacity.¹ ‘Minority’ of a contracting party is a major determinant in the examination of the validity of contracts, both written and implied. A minor is a person who is under the age of legal competence. The age of minority depends upon jurisdiction and application. As per Section 3 of the Indian Majority (Amendment) Act, 1999, each person domiciled in India attain the age of majority on his completing the age of eighteen years and not before.² The general principle in contract law is that a contract made by a minor with an adult is binding on the adult but not on the minor.³ The only contracts, which are absolutely binding on the minor, are contracts of necessaries which substantially benefit the minor.

The contract theory of IPR treats the system of IPR as a contract. Social contract theory states that IP is a contract between society (state) and inventors. State recognizes that the invention and the knowledge underlying the invention are socially beneficial. Without guaranteed protection, inventors may have difficulty in recouping their investment of innovation. In the absence of IPR, inventors may stop innovating and society loses out. The solution is to reward inventors through the system of IPR. State grants the inventor, for a temporary period, exclusive rights over the invention. In return, the inventor agrees to share the know-how behind the invention and once the invention falls in the public domain after the expiry of protection, the same may be freely used to develop further innovations. A central aspect of IPR governance at state level is that there exists an implied contract between the inventor and the state. The social contract theory by justifying IPR holds that the function of the IPR system in general and patent system in particular, is to promote the diffusion of innovative knowledge. Assuming that in the absence of patent protection innovators would largely rely on trade secrecy rather than disclosure, it views patent as a contract between innovators and society whereby a property right is granted in exchange for disclosure. In the landmark judgment of Universal Oil Products v Globe Oil & Refining,⁴ the US Supreme Court endorsed the patent contracts whereby a temporary property right is granted in exchange for disclosure. It observed thus:

As a reward for inventions and to encourage their disclosure, the United States offers a … monopoly to an inventor who refrains from keeping his invention a trade secret. But the quid pro quo is disclosure of a process or device in sufficient detail to enable one skilled in the art to practice the invention once the period of the monopoly has expired; and the same precision of disclosure is likewise essential to warn the industry concerned of the precise scope of the monopoly asserted.

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When IPR system functions on a notion of contract, it impliedly connotes that the parties to such contracts must be eligible to enter into contractual relationship. However, a careful perusal to the existing IP laws in India would reveal that the state attaches no legal impediment on a minor to acquire IPR rights. No statutes on IPR provide for any age limit to acquire IPR rights. The grant of IPR rights to any human entity is regardless of one’s age and one’s capacity to contract under Section 11 of the Contract Act. The friction between IPR laws and contract laws commences at the time of alienation of the said granted rights by way of contracts.

**Role of Contract in IPR Transactions**

IP is one of the most valuable assets and its commercial exploitation takes place only through sale, license and assignments. Licences and assignments are the common forms by which an owner of IPR transfers his rights therein on agreed terms and conditions. A licence in IPR is a contract between an intellectual property rights owner (licensor) and another (licensee) whereby the latter will be permitted to deal with the IP rights in exchange of an agreed payment/royalty. All types of IPR licences – sole, exclusive and non-exclusive licences – are contracts and are required to be in writing. Similarly, an assignment of IPR results in the transfer of those rights absolutely to a third party either pro bono or in return for payment. The assignee derives his rights from the assignor through transfer of the IPR and the signing of the assignment empowers him to do all acts in relation to the assigned IPR as though it belonged to him.

It can be illustrated initially with the example of patents. Under Section 6 of the Indian Patents Act, 1970, an application for a patent for an invention may be made by any person claiming to be the true and first inventor of the invention. The Act nowhere specifies that the applicant must be a major person. Section 83 states that patents are granted not merely to enable patentees to enjoy a monopoly of the patented product/process, but to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent. The patentee would, under Section 84, face dire consequences for non-working of patents including the grant of compulsory licenses. Section 48 provides that the exclusive rights of the patent may be enjoyed by the patentee himself or by his licensee. Further Sections 68 and 69 of the Act provide that assignments, etc. will not be valid unless the same is reduced to writing and registered. A combined reading of these sections gives the following proposition:

1. An application for a patent for an invention may be made by person of any age but claiming to be the true and first inventor of the invention;
2. A patentee has exclusive rights in his invention;
3. These exclusive rights can be enjoyed by the patentee himself or he can transfer his rights by way of assignment or license for a consideration (Since commercial exploitation involves the question of the capacity of the patentee to provide capital and technology, in many cases, the patentee prefers to license the patents rather than wait for working the patent by himself and take the risk of compulsory licence for non-working);
4. A patentee has a duty to commercially exploit his invention in India; and
5. Patent licenses and assignments etc. will not be valid unless it is written and registered (It must fulfil all requirements of a valid contract).

Strict compliance of legal formalities are *sine qua non* for transfer of all kinds of IPR. To illustrate further, the Copyright Act 1957, under Sections 18, 19 and 30, makes analogous provisions regarding copyright assignment and licensing. The Act confers copyright on original works of authorship under Section 13 subject to other statutory requirements, however, enabling persons of any age to acquire a valid copyright. Any person claiming to be the proprietor of a trademark used or proposed to be used by him and who is desirous of registering the mark can register a trademark under Section 18 of the Trade Marks Act, 1999. Nevertheless, Sections 38 to 45 of the Trade Marks Act furnish identical scheme for trademark assignments and transmissions. In respect of transfer of ownership in industrial designs, Section 30 of the Designs Act, 2000 presents a parallel reading. One can find corresponding provisions in sections 20 to 23 of the Semiconductor Integrated Circuits Layout Designs Act, 2000.

The above discussion clarifies that though there is no statutory impediment on a minor to acquire an intellectual property, there are impediments in exercising and enjoying his IP rights since the commercial exploitation and alienation of IPR are
effected through licenses and assignments. There is no meaning in conferring mere property titles without conferring the rights and means of their enjoyment. This inherent injustice can be undone only by enabling the minor with the legal competence to enter into IPR contracts. In other words, the Contract Act, 1872 and IPR statutes require a revisit and the contractual incapacity attached to the minors needs to be removed at least for the purpose of enabling them to gain financial benefits out of their intellectual or artistic creations. This would encourage minor children to engage in creative and intellectual activities and to produce useful and aesthetic creations. If a child has a legal duty to respect others’ intellectual property, say for example not to copy from a copyrighted material or not to infringe a patent; and a child can be held liable for plagiarism, etc., there is no justification in denying him the opportunity to benefit from his own intellectual, creative and artistic talents.

Lessons from Other Countries

Legislative endeavours are taking place to this effect in other parts of the globe. For instance, Tennessee Protection of Minor Performers Act grants discretionary power on Tennessee courts to approve as valid, contracts involving minors as per Section 50 of the Act. Contracts eligible for approval under the Tennessee Act include contracts pursuant to which a minor person is employed, employs, or agrees to perform or render artistic or creative services, either directly or through a third party. As per Section 50 of the Act before granting the order to approve a contract involving minors’ artistic and creative performance the court would take every step to ensure that the contract is reasonable, prudent and in the best interests of the minor. The Act takes care of financial savings of the minor while requiring that in an order approving a minor’s contract under the Act, the court shall require a minimum of fifteen percent of the minor’s gross earnings pursuant to the contract to be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor until the minor reaches the age of majority.

In US, parents are required to open custodial/trust accounts for the children in compliance with the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfers to Minors Act (UTMA) as the case may be. Under the UGMA or UTMA, the ownership of the funds works like it does with any other trust and the donor must appoint a trustee to look after the account for the benefit of the beneficiary. Trust accounts for minors are required by the state of California, New York, Louisiana, New Mexico etc. Many US states have enacted legislation to legitimize minor’s contract.

The California Child Actor's Act makes the earnings/accumulations by an unemancipated minor in specified contracts the sole legal property of the child. Section 6750 provides for the types of contracts covered by the Act.

The Act is applicable to all contracts in respect of artistic or creative services entered into between unemancipated minor and third party after January, 2000. The contracts specified in Section 6750 have to be approved by a superior court. Approval of court given under this section extends to the whole of the contract and all of its terms and provisions. In an order approving a minor's contract of a type described in Section 6750, the superior court shall require that 15 percent or more of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753 (ref. 14). Generally, the parent/s or legal guardian of the minor, unless the court determines for a different individual in the best interest of the minor, would be appointed by the court as the trustee. The employer of the minor is obliged to deposit the requisite funds in the trust within 15 business days of receiving the order of the court. Once the required funds are transferred by the employer, the minor's employer has no further obligation or duty to monitor or account for the funds.

The trustee is the only individual with the obligation to monitor and account for those funds deposited by the minor's employer. The trustee, in accordance with sections 16062 and 16063 of the Probate Code, has to do an annual accounting of the funds held in trust. The court has continuing jurisdiction over the trust established pursuant to its order and in suitable cases the trust may be amended or terminated.

Section 6752 (c) (1) further provides that in respect of contracts where no court approval have been sought, or for which the court has issued a final order denying approval, 15 percent of the minor's gross earnings pursuant to the contract shall be set aside by the minor's employer in trust reserved for the benefit of the minor.
Applicable to both court-approved and non-court-approved minors’ contracts for creative or artistic employment, the law thus requires 15 percent of a minor's earnings to be set aside and deposited into a coogan trust account, invested in low-risk financial vehicles and blocked from use until the minor is emancipated or reaches eighteen years of age.

Chapter 48A of North Carolina General Statute provides almost similar provisions by mandating a ‘set-aside requirement’ in respect of minors employed in creative and artistic services. Article 48A-11 enlists the types of contracts which would be considered as valid though entered into by a minor. This article empowers unemanicipated minors to create legally binding contractual relations in respect of artistic and creative services.\(^{16}\) § 48A-12 states that a contract, otherwise valid, of a type described in § 48A-11, entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract, or at any time thereafter, if the contract has been approved by the superior court. The procedure of court’s approval, appointment of guardian etc. are same as provided under California Child Actor’s Act. While § 48A-14 provides for financial safe guards in court orders by requiring that a minimum fifteen percent of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust for the benefit of the minor, § 48A-15 provides for financial safeguards of minors earnings when there is no court order.

§ 48A-16 of the Act envisages establishment of a trust with any banking institution for the purpose of preserving for the benefit of the minor the portion of the minor's gross earnings within seven business days after the minor’s contract is signed by the minor and the employer. The trustee, within 10 business days after the minor's contract is signed, has to prepare a written statement explaining the details of the trust under penalty of perjury. The statute prohibits withdrawal of funds on deposit in trust by the beneficiary or any other individual before the beneficiary attains age of 18 years.

As in the case of contracts of artistic and creative services, the Act, under § 48A-17 (b), validates talent agency contracts entered into by minor artists. Under the Act, talent agency means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists. A minor is disallowed to disaffirm a contract, otherwise valid, entered into during minority with a talent agency to secure engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field including, but without being limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer, where the contract has been approved by the superior court of the county where such minor resides or is employed. In such cases, on the petition of either party to the contract the superior court would approve the contract.

The Florida Statute by Section 743.08 removes contractual disabilities of minors in respect of contracts on artistic or creative services and professional sports.\(^ {17}\) Such contracts are valid subject to the approval of probate division of the circuit court or any other division of the circuit court. The court’s approval is subjected to the filing of a guardianship plan by the parent or legal guardian of the minor describing the scheme for savings of guardianship of the property for minor. The minors are debarred from disaffirming such contracts, either during minority or upon reaching majority, on the ground of minority or asserting that the parent or guardian lacked authority to make the contract. Once the contract is so approved by the court, all earnings, royalties and other compensation earned by the minor pursuant to the approved contract become the sole property of the minor as per Section 743.08 (3) (b). However, no contract would be approved by the court if it runs beyond a period of 3 years.\(^ {18}\)

The court is empowered to revoke its approval if it finds that (i) the physical or mental well-being of the minor is being impaired by the performance thereof or (ii) the contract is in violation of any child labour law. While approving a minor’s contract, the court has to fix the amount or proportion of net earnings to be set aside as it deems for the best interests of the minor. In fixing such proportion, the court has to consider the financial circumstances of the parent of the minor and the needs of their other children. If the minor has no dependents, then the court cannot require the setting aside of an amount in excess of two-thirds of the net earnings of the minor.

Road Ahead for India

The legal practice in the above mentioned jurisdictions shows that at least in the matters of
artistic and creative services, the law confers contractual right on minors. It seems to be a good beginning. As law is dynamic and adapts itself to the changing demands of society, the contractual capacity enjoyable by the minors can also be extended to other forms of IPR.

The existing fiduciary relationship between minor and his guardian in India needs a revisit from this standpoint. There are several instances of misuse of earning of minors by their guardians. The alleged sale of child-star Rubina Ali, who played significant role in Slumdog Millionaire, by her father is a recent example. In Marim Bibi v Cassim Ebrahim, it was observed that a parent stands in a fiduciary relation towards his child and any transaction between them by which any benefit is procured by the parent to himself or to a third party, at the expense of the child will be viewed with jealousy by Courts of Equity. In India, legislative intervention is urgent to safeguard minors’ earnings from artistic and creative services and to hold the minors’ parents/ guardians responsible for the management and use of the minors’ earnings.

Amendments are required in the Indian Contract Act to afford contractual capacity to minors. Minor must be given some relaxation in the Contract Act so far as his IP rights are concerned. Sections 2, 10 and 11 of the Contract Act require amendment to incorporate ‘child rights of contract in matters of IPR.’

Legislators, in India, have given IPRs a special status and in many pieces of legislations, IPRs are being treated as a class apart. For instance, the Right to Information Act, 2005 exempts certain information from its purview. Section 8 (d) provides that the public authority will have no obligation to provide information to any citizen if information includes commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party. Likewise, there must be explicit provision in the Indian Contract Act whereby a minor’s contractual disability can be removed for the purpose of protecting and exploiting minor’s intellectual property creations. As far as contractual capacity of minors are concerned there can be even an enabling provision in the Indian Contract Act.

The Indian legislations on various kinds of IPR require a reconsideration to confer certain rights on minors. The principles of ‘territoriality’ and ‘dynamism,’ and the concept of ‘statutory rights’ – the principles which explain certain basic characteristic of IPR and which are universally accepted – make such explicit amendments indispensable.

Principle of Territoriality: Intellectual property laws are territorial in nature. The acquisition and enforcement of different IPR are governed by the municipal laws. Hence we need to amend the Indian IP related statutes to confer and enforce various IP rights in India on minors.

Principle of Dynamism: Dynamism is a universally accepted feature of all forms of IPRs. The intellectual property system is dynamic and characterized by its ability to evolve and adapt to the demands of time. Social evolutions necessitate constant re-evaluation of IPR system. Since the concept of ‘child right’ is getting expanded and finding its way to all fields of legislations, the law on IPR too should respond accordingly by extending and expanding the scope of IPR protection to protect the intellectual, creative and artistic works of minors. Children must be given their due.

Statutory Rights: IPRs are statutory rights governed by the provisions of corresponding legislations. To put it differently, intellectual properties are creations of statutes. Hence there must be statutory amendments to incorporate special rights for minor children who engage in the creative and innovative activities.

Alternatively, as in the case of Californian Child Actor’s Act, the legislatures may enact a comprehensive legislation to remove the contractual disability of minors. India has been a forerunner in legislating IP related statutes. Similarly, we should enact law to enable minors to earn not only from their artistic and creative talents but also from their intellectual creativity.

Conclusion

In any economic system contracts play a very significant role. Contract law is the child of commerce and has grown with the growth of nations’ demands. The proposed amendment in the Contract Act as well as IP statutes and enactment of law favouring minors’ contracts for artistic, creative and intellectual services would not only stimulate young talented brains for creative and innovative works but it would in turn also contribute to the economic prosperity of the nation.

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References
1 Generally, three classes of individuals are subject to some degree of personal contractual incapacity: minors, mentally incompetent persons and intoxicated persons. Section 11 of Indian Contract Act says; 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 sound mind and is not disqualified from contracting by any law to which he is subject, and s. 10 reads: All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void.

2 In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

3 Mohoribibee v Dharmodas Ghose, (1903) ILR 30 Cal 539 (PC).

4 Universal Oil Products Co v Globe Oil & Refining Co, 322 US 471 (1944).

5 Section 83 reads: General principles applicable to working of patented inventions _ Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely, (a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay; and (b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.

6 Section 68 reads : Assignments, etc., not to be valid unless in writing and registered: An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller... and s. 69(1) reads: Registration of assignments, transmissions, etc. Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.


8 By amending the Tennessee Code Annotated, Title 50, Chapter 5.

9 For the purposes of this Act, when a minor renders services as an extra, background performer, or in a similar capacity, through an agency or service that provides one or more performers for a fee, the agency or service shall be considered the minor's employer.

10 No. SB 1162, the Act is known as Coogan Act. (It is named after the famous child actor Jackie Coogan who discovered after attaining his majority that he was left with none of the earnings he earned as a child actor. As a child actor, he has earned $3 to $4 million. Under the then California law, the earnings of the minor belonged solely to the parent. Coogan sued his mother and step father. The legal battle gave him $126,000 from his remaining earnings of $250,000.

16 North Carolina General Statute : § 48A 11- Certain Contracts of Minors - Applicability - This Article applies to any of the following contracts entered into between an emancipated minor and any third party or parties:

(1) A contract pursuant to which a person is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation or loan out company. As used in this Article, the term "artistic or creative services” includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt person, voice over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.

(2) A contract pursuant to which a person agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.
A contract pursuant to which a person is employed or agrees to render services as a participant or player in a sport.

Where a minor renders services as an extra, background performer, or in a similar capacity, through an agency or service that provides one or more performers for a fee, such as a casting agency, the agency or service shall be considered the minor’s employer for the purposes of this Article.

Section 743.08 (4) (c) No contract shall be approved which provides for an employment, use, or exhibition of the minor, within or without the state, which is prohibited by law and in particular by any federal or state child labor law, and could not be licensed to take place in this state.

(d) No contract shall be approved by the court:
1 Unless a written acquiescence to such contract by the parent or parents having custody, or other person having custody of the minor, is filed in the proceeding;
2 Unless written approval is given by the guardian ad litem appointed by the court in this proceeding; or
3 If the court shall find that the minor is emancipated.

(e) No contract shall be approved, if the term during which the minor is to perform or render services or during which a person is employed to render services to a minor, including any extensions thereof by option or otherwise, extends for a period of more than 3 years from the date of approval of the contract. If the contract contains any other covenant or condition which extends beyond such 3 years, the same may be approved if found to be reasonable and for such period as the court may determine.

A recent ‘sting’ carried out by an international tabloid reported that Rubina’s father wanted to sell Rubina, who stayed with her father and step mother to an Arab couple. Following this, Rubina’s biological mother sought a probe into the matter. However, the police report sent to the zonal deputy commissioner of police recommended closure of the probe as the police could find no evidence to support the allegation.


By enacting, the Protection of Plant Varieties and Farmer’s Rights Act, 2001 India became the first country in the world to grant formal rights to farmers under an independent statute.