CHAPTER - I

A BRIEF REVIEW OF THE DEFINITIONS OF MINOR
AND PARTNERSHIP AND POSITION OF MINOR
UNDER CONTRACT LAW.

At the outset the researcher undertake an humble attempt to understand the meaning of the word “Minor” in common Parlance and subsequently analyses the statutory meaning of the word minor under different Acts as prevalent in India and in England as English Law influences the development of Indian Law.

Milton\(^1\) rightly says ‘Child shows the man as morning shows the day’. Generally Minors are in a developing stage of mind and body and are like growing buds in flowers. As such they are the weakest person in the world who is fully dependent on their parents or guardians. This is probably the reason for which special privileges have been endowed on them statutorily under various Acts both in India in particular and the whole world, in general, thereby the law protects their persons, preserves their rights and estates, excuses their laches, and assists them in their pleading, the judges are their counsellors, the jury are their servants and law is their guardian.
Should the children resort to litigation for securing their fundamental right or enjoy the playful moments of life?

While answering the question, all the social scientist, psychologist and legal experts are unanimous on the subject that children must be kept away from the courts as their guardians including the government must fulfil the constitutional obligation of ensuring right to life to them.

In a Seminar organised by the Supreme Court Advocates on Record Association under the heading 'Access to Justice', Hon'ble Judge of Supreme Court Ruma Pal told the august gathering that “though meting out justice to children is the responsibility of every citizen, every institution and every limb of Government yet the task has been left to the Judiciary”.

Waking up from its long slumber, the Central Government has decided to set up a National Commission for Children to give protection to children and act as an independent “Ombudsman” for them. But unfortunately the Government has yet to pass the bill in this regard although the decision to do so was taken long back.
Even in a report published by UNICEF under the heading *The State of World's Children 2003* it is observed that the adult thinking and behaviour towards the children should be changed from an exclusionary to an inclusionary approach—from a world defined solely by adults to one in which children contribute to building the kind of world they want to live in.

Because children have proved that when they are involved, they can make a difference in the world around them. They have original ideas, experiences and insights that enrich even the adult understanding and make a positive contribution to adult action. An authentic and meaningful participation prepares children for their stake in the future.

It was further observed in the report that when the drive to participate by children neither respected nor nurtured, when children are excluded or ignored by adults, their potential to contribute to their communities is compromised. Such children are likely to act as they have been treated i.e. as Social outcast—with their energies and creativity directed into subcultures and away from creating a cohesive Society.
In this connection Justice Subba Rao⁴, the former Chief Justice of India also epitomised that-

“Social justice must begin with children. Unless tender plant is properly tended and nourished, it has little chance of growing into a stray and useful tree. So, first priority in the scale of social justice shall be given to the welfare of children”.

V.R. Krishna Iyear⁵ informs us that even Nobel Prize winning Poet Gabriela Mistrel of Chile has written-

“We are guilty of many errors and many faults but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answers “Tomorrow”. His name is “Today”.

In a hallmark judgement⁶ the Apex Court while delivering its verdict observed that –
“....Now, the theory is that the sovereign as parens patriae has the power and is indeed under a duty to protect the interest of minors, and that function has devolved on the Courts. In the discharge of that function, therefore, they have the power to control all proceedings before them wherein minors are concerned. They can appoint their own officers to protect their interest, and stay proceedings if they consider that they are vexatious”.

In Halsbury’s Laws of England it is again observed that—

“Infants have always been treated as specifically under the protection of the sovereign, who, as parens/patriae, had the charge of the persons not capable of looking after themselves. This jurisdiction over infants was formerly delegated to and exercised by the Lord Chancellor, through him it passed to the court of Chancery, and is now vested in the Chancery Division of the High Court of justice. It is independent of the question whether the infants has any property or not”. 
1.1 Meaning of the Word 'Minor':

In all laws, minors are persons, whose ages are below a certain years of age as per different Acts.

Firstly according to Section 3 of the Indian Christian Marriage Act 1872, “minor” means a person who has not completed twenty-one years of age and who is not a widower or a widow.

Secondly as per the Section 3 of the Indian Majority Act 1875, a person is said to be minor till he becomes major according to the provisions of Indian Majority Act and a person is deemed to have attained majority when he has completed the age of 18 years. However, under the Indian Majority Act if the minor is the ward of a guardian appointed by the Court or is a ward under the Court of Wards Act the attainment of majority is fixed at the completion of 21 years and not on completion of 18 years as provided in Section 4(a) of the Hindu Minority & Guardianship Act 1956. Whenever there is a difference between the enactment in the Hindu Minority and Guardianship Act and any other provision, it is this provision that must prevail, both because this is a later provision dealing with the same subject of minority and also because to the extent of that subject as applicable to the majority of Indians because people belong to the Hindu Religion constitute about 85% of the Indian population.
The present scholar opines that probably this is a codification in the sense of a complete enunciation of law. So where there is a guardian appointed for a Hindu minor by Court or when even a Hindu minor is a ward of a Court of Wards, the minority may be held to terminate with the completion of 18 years and not with the completion of 21 years as provided in the other enactment. This also gains substantial support from the overriding effect of the Hindu Minority & Guardianship Act as contained in Section 5 of the said Act according to which any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act. It further stipulates that any other law in force immediately before the commencement of this Act shall cease to have effect so far as it is inconsistent with any other provisions contained in this Act.

Thirdly Section 2(8) of the Indian Registration Act 1908 defines a “minor” as a person, who according to the personal law to which he is subject has not attained majority.

Fourthly, the Workmen's Compensation Act 1932 in Section 2(ff) and the Citizens Act 1955 in Section 2(e) define “minor” as a person who has not attained the age of eighteen years.

Fifthly, Section 2(e) of the Indian Succession Act 1925 defines “minor as any person, subject to the
Indian Majority Act 1875, who has not attained his majority within the meaning of the Act and any other person who has not completed the age of 18 years and "minority" means the Status of any such person.

Sixthly, in India Child Marriage Restrain Act 1929 defines in Section 2(d) as a minor person of either sex who is under eighteen years of age.

Seventhly Section 3 (c) of Hindu Adoption and Maintenance Act 1956 defines “minor” as a person who has not completed his or her age of eighteen years.

Eighthly, the definition of Minor as per Section 4(a) of the Hindu Minority and Guardianship Act 1956 is similar to the Hindu Adoption and Maintenance Act 1956.

Ninthly, Section 2(b) of the Public Provident Fund Act 1968 defines a “minor” as a person who is not deemed to have attained majority under the Indian Majority Act. 1875.

Tenthly, mention maybe made here that under the old Hindu Law, the age of minority of both males and females terminates on completion of fifteenth year, i.e., it continues till the commencement of the age of sixteen.

All the laws are there for the well being of the society and protect the weak from the strong but the
implementer of law must be aware of it and consciously implements the same. But unfortunately, even though in India there are more than 115 different Acts for the protectors of minor, the administrator of such laws are not aware of the presence of such laws. And probably due to this simple reason, inspite of so many statues for the protection of minor, India is so low among several Nations in proper caring for and protecting its children.

Legal reforms by itself may not go far enough, for much depends on how the law is applied. Law in theory and Law in practice are distance neighbours. Much also depends on the attitude, the approach and the imagination of those who actually handle children's problems.

The National policy for children adopted in 1974 by the Indian Parliament declares children as a 'supremely important assets' and emphasis the need to provide adequate services to children both before and after birth through the periods of growth.

Even the Convention of the Rights of the Child, drafted in 1989 by the U.N. Commission on Human Rights, aimed at setting standards that would help defend children against the various forms of neglect and abuse they face every day, in every country. According to Article I of the Convention, A "Child means every human being
before the age of 18 years unless under the law applicable to the child, majority is attained earlier”.

Upholding the view that, children are neither the property of their parents nor helpless objects of charity, the convention to which India is a signatory- states that they are the subject of their own rights. It offers a vision of the child as an individual and a member of a family and a community, with rights and responsibilities appropriate to his/her age and stage of development.

Though the convention gave a new perspective to the rights of children and the child’s needs became legally binding rights in many countries, the rights can mean little as long as they remain confined to the statute books.

In India, in every major and minor statute as referred earlier, efforts are being made to do real justice to the minor as per as possible for the better development of the children as they are called the ‘future of the country’.

Having said this now the scholar will examine the position of minor under different laws of India.
1.2. **Minor under Criminal Law:**

Under India criminal law a child below 7 years of age is not liable at all. A child between the age 7 to 14 years shall be tried under the Children Court Act by a Magistrate especially empowered in this behalf but he cannot be convicted. The reason is very clear because it is an accepted fact that a person of that age cannot form an opinion of his/her own. In other words the age of discretion begins at the age of 12 when a child can decide things more rationally. But a boy of the age of 14 to 18 years is held liable like an adult persons for any crime. Section 437(1) of the Cr.P.C. also prohibits release of a person accused of a Capital offence on bail. However an exception to this provision is that a woman or a child under 16 years of age and a sick man can be, released on bail. In an important case Rajasthan High Court had rightly declared this provision as consistent with Art. 15(3) of the Indian Constitution.

So also Section 125 (1) of the Criminal Procedure Code deals with the maintenance of wives, children (it is immaterial whether he is legitimate or not) and parents. So, Section 125 (1) of the Cr.P.C. put an onus on the sons to look after their parents, on the husbands to take care of their wives and on the fathers to take care their children properly.

Further more, Section 10 of the *Probation of offenders Act* 1958 under the heading provision as to
sureties provides that the provision of Section 122, 126, 126-A, 406-A, 514, 514-A, 514-B and 515 of the Criminal procedure code shall, so far as may be applied in the case of bonds and sureties given under this Act. Section 514-B of the Cr.P.C. which lays down the procedure in the event of a person required to execute a bond being a minor, runs as follows:

“When the person required by any court or officer to execute a bond is a minor, such court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only”

Thus, from the correct analysis of the above provisions of the Criminal laws it is crystal clear that these laws are mainly based on the age factor of the child. These provisions are filled with both social justice and social safety and development of the child.

1.3 Minor under Evidence Act:-

The general principle regarding witnesses says that all persons shall be competent to testify. However so far as children are concerned it was observed that if a child possesses sufficient knowledge of nature and consequence of an oath, its testimony can be received. Calcutta High Court is of the opinion that the intellectual capacity of a child to understand questions and to give rational answers thereto is the sole test of his testimonial competency and not any particular age. However Supreme Court had cautioned that “it is a sound rule in practice not to act on the uncorroborated evidence of a child,
whether sworn or unsworn but this rule is of prudence and not of law."

Thus from the above analysis it can be safely concluded that children accepted as witness on sole ground that generally they are innocent and truth reflects in their words.

1.4 Minor under Civil Laws:

Under civil law especially relating to Marriage, election and contract, age factors affect the rights and liabilities. For instances, as regards the matrimonial relations, the age of the parties differ as per their personal laws and generally they can marry before attaining the age of majority with the consent of their guardian. But marriage contracts are allowed as they give rise only to the status and no obligations as in case of Mercantile Law.

Order XXXII of the Civil Procedure Code consists of the provision relating to suits by or against the minor, which protects the interest of the minor. The minor must be represented by his next friend or Guardian in a suit. The very object of this order is that an infant in law is regarded as immature in intelligence and discretion and owing to his want of capacity and judgement is disabled from binding himself except when it is for his benefit. Long back the Apex Court had opined that a decree passed against a minor or lunatic without appointment of a guardian is a nullity and is void and not voidable. Even
the order XXXII put lot of restriction on the guardian or the next friend of the minor. Rule 7 of order XXXII categorically stipulates that before compromising on the suit the next friend must take the prior approval of the court and the court must approve the compromise formula before its implementation. As per rule 8, the next friend cannot retire from the suit without approving another proper next friend and as per rule 9 if the next friend act against the interest of the minor, then the court has every right to remove him.

Thus in all respect under the Civil laws, interest of the minor have been guarded.

1.5 Minor under Hindu Laws:

In India Hindu law is nothing but a development of different usages and customs of the society through ages for the good of the people at large. And in spite of enactment of so many laws it has its own importance. Some of the Acts and laws which are enacted for the benefit of minor are discussed in brief below-

1.5a. Child Marriage Restraint Act 1929-

In ancient time child marriage became rampant and it is more chronic and cruel in the case of girl child. According to Kautilya's Arthasastra¹², the age of
discretion was 12 for girls and 16 for boys. That means at that age they can marry as per their wishes. But in reality, they were forced to marry and in the case of girl child, they were forced to marry to the grooms, who are much more elderly to them. In fact, prevalent of this practice had been created social havoc and imbalances in the societies because at that tender age neither the girls nor the boys are fully matured to bear the mental and physical burden and social responsibilities and as a result there were lot of death at the time of child birth and children lost their age of joy or the Golden period of their lives.

Thus to protect the children from such inhuman treatment by their illiterate parents and prevalent social norms, Child Marriage Restraint Act 1929 more famously known as Sharda Act was enacted which was again amended in 1949. The said Act clearly laid down that the marriage between a boy of 18 years and a girl of below 15 though not invalid but must be restrained.

1.5b. Hindu Minority and Guardianship Act 1956-

This Special Act is to protect the Hindu child from the selfish world at large. The natural guardian of a Hindu minor is the custodian of both minor’s person as well as his property excluding his / her individual interest in joint family property. So far as the interest of the minor in Hindu Undivided Family Property is concerned, it is the Karta\textsuperscript{13} of the Hindu Undivided Family who is responsible.
In case of illegitimate child, even if the father is known, the mother remains the natural guardian of the illegitimate child as per the above Act\textsuperscript{14} and the primary reasons for this is that illegitimate child comes to this world due to either immature behaviour or reckless behaviour of the male and female and as the female carries the burden for 10 months with all the social stigma, she must have a definite liking, love and affection for the child than the illegitimate father.

Under this Act the \textit{de facto} guardian has no authority to dispose of or deal with the property of a Hindu Minor. It is the duty of the court to appoint any person as the guardian of the Hindu minor and behind such appointment the paramount consideration of the court shall be the welfare of the minor.

The guardian can not bind the minor by a purely personal covenant and the minor can not be made personally liable by contracts entered into by the guardian even if those contracts are entered by the Guardian for the welfare of the minor.

\textbf{1.5c. Hindu marriage Act:}

Section 26 of this Act is very categorical about the well being of the minor child. The said section highlights that for proper custody, maintenance and education of minor children, consistent with their wishes, the court may pass interim orders or decree and also the
court in future from time to time can amend such interim order or decree for the welfare of the minor child.

1.5d. Hindu Succession Act 1956:

Section 20 of the Hindu Succession Act is based on a very peculiar fiction of law which is unique in nature. It accepts the principle that a child in the womb shall be deemed to have acquired the right to inherit to the intestate as if he or she had been born before the death of the intestate because at the time of the death of the intestate the child is very much alive in the womb of the mother. However, this right cannot be exercised unless the child is born alive.

The Court in India have always been confronted with the problem of giving effect to the principle of Supremacy of paternal right and interest of the child. But it is seen that the judges always have tried to give importance to the welfare of the minor child over the paternal rights so as to fulfil the social needs and justice.

1.6 Minor under Labour Laws:

The protection of minor is more glaringly seen in different labour laws than in any other laws of India. The Factories Act prohibits employment of children below 14 years in any factory. Children above 14 years and
below 18 years may be employed subject to a few restrictions. They are to obtain a certificate of fitness from a certifying surgeon. Children below 17 years cannot be employed at night. A child between the age group of 14 and 15 cannot be employed for more than 4 hours in any day and he cannot be employed in two shifts and cannot be allowed to work in more than one factory on the same day.

With regard to age of employment, hours of work, medical examination etc, the provisions of the Mines Act are more stringent than the Factories Act, but they are less strict in the case of employment in shops and establishment. The Apprentices Act 1961, prohibits engaging children below 14 years as apprentices.

Further Central Children Act 1960, which applies to the Union Territories, defines that the Child means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. There are Provincial variation with regards to the definition of a child in relation to this age.

The Universal Declaration of the Rights of Child 1959, affirms the right of the Child to enjoy special protection to be given to develop in a healthy environment to enjoy benefit of social security including education and provides protection against all forms of neglect, cruelty and exploitation. This declaration also
specifies that a child should not be employed before an appropriate age. As such under Indian laws this age is prescribed as 14 years of age.

However even in current Indian legal and administrative practice the dividing line between adults and younger people is less clearly defined than is expected. The age of attaining legal majority is 18. The right to vote has been lowered to 18 by late Mr Rajiv Gandhi yet the minimum age to become a member of Lower house of Parliament is 25 years of age and for upper house it is 35. Even for a marriage the law has fixed the age for 18 for girls and 21 for boys. But if a Hindu girl of say 16 years of age gets married then legally it is acceptable and a Muslim girl after attaining puberty can get married. It will be not out of place to mention here that there was an occasion when a Muslim girl got married at the age of 9 because she attained puberty.16

However to utter surprised, the Ministry of Women and Child Development in its draft bill for protection of children from Sexual Offences Bill, 2010 fixes the legal age of consensual sex at 16 years both for girls and boys.17 That means even minor child aged about 16 to 18 years can indulge in consensual sex even if law debar them from marriage because legal age of marriage is 18 for girls and 21 for boys. Even Hon’ble Andhra Pradesh High Court in its judgement dt. 01.06.2006 and Hon’ble Delhi High Court in its judgement dt. 05.10.2005 allowed
underage girls to marry their beloved. While delivering the judgement Hon’ble Courts are of the view that they are aware of the law but ruled in favour of the underage couples in view of the confusions created by a host of laws in force in India at present. However fortunately while assuring those whose marriage were held valid by the both the High Courts, Hon’ble Supreme Court had in 2006 asked all the Courts not to draw inspiration from the two judgements of the two High Courts orders.

Minors have received special treatment in English law also. According to the Encyclopaedia Britannica “infant” bears the same meaning as “minor” and is described as a person who has not attained his full age or majority and is therefore subject to disabilities.

In Encyclopaedia Americanna, minor in law, is a person who has not reached the age at which law recognises a general contractual capacity and at which full civil rights are accorded.

The World University Encyclopaedia also describes minor as a person usually under 21 years old, whom the law considers incapable of making of his own contract or managing his own estate.

The word “minor” as defined under Hutchinson 20th Century Encyclopaedia, says that under the Family Law Reforms Act 1969 of England and Wales, the age of
majority in civil laws is reduced to 18 and those under age are described as minors instead of infants.

According to *Oxford Companion to Law* in English Law, infant is a person of either sex under the age of 21. Certain statutes also recognise the word 'child' and 'Young persons' as those under 14 and aged 14-17 respectively.

Under the English Law "Infancy" is the term applied to the period of life whether in males or females, which precedes the completion of the twenty first year and persons under that age are called Infants. That rule has one exception in the case of Sovereign who is considered to have attained full age at the eighteenth years.

In Roman Law, age of puberty was fixed at 14 for male and 12 for female which was recognised as a dividing line.

In United States, the English common law rules that the age of legal majority for both sexes at 21 years has been generally accepted and adopted. But in some State the age of majority is 18 for woman.

The American Bar Association's standard Relating to Rights to Minors proposes that "all persons who have attained the age of eighteen years should be regarded as adults for all legal purposes."
Thus from above analysis of different Indian laws and English Laws, it is crystal clear that in both the countries, the formulator of law have taken special care for the protections of the interest of minors and all most all acts recognizes the period upto 18 years as the age of minority. However, there are exceptions, so far as, the age of marriage is concerned and it varies with the local customs and religious belief.

After examining the various Acts of India and other Countries with regard to minor in nutshell, let us now try to trace the history of “Partnership Law” and how the said term has been understood from time to time.

In the beginning the concept of Partnership can be traced to the origin of human being itself. In common parlance Partnership is understood to be alliance of two or more persons for mutual benefit.

In ancient Indian scriptures like Ramayana17 and Mahabharata18, we come across alliances resembling partnership between persons for a common end. In Ramayana there is a holy alliance between Lord Rama and the Banarasena to eliminate Ravana. In Mahabharat there is partnership among different Kingdoms under the leadership of the Pandavas and Kauravas for their mutual benefits.
Further the traces of partnership in its rudimentary form found places in Bhrigus version of Manusmriti\textsuperscript{19} and Kautilya’s Artha Shastram\textsuperscript{20}. However all the ancient Dharmasastra are silent about Partnership in commercial sense. Instances of Priests officiating at religious ceremonies jointly performing their duties and distributing the fees are mentioned by early writers. But Partnership for business was a later development. It was called Samoharya Samuthanam\textsuperscript{21} a business enterprise by several persons acting together. In India before the passing of the Partnership Act until the middle of the last century Indian Court used to deal with disputes between business partners in accordance with the prevalent customs and usages as applicable in India.

The concept of business in partnership however assumed greater importance and during the British regime in India codified law to regulate the general norms was evolved as the partnership became necessary to serve their mercantile interest. The first Indian codified law relating to partnership constituted a chapter of Indian Contract Act 1872\textsuperscript{22}. Subsequently the Indian Partnership Act was enacted in 1932, which is based on the replica provisions of the English Partnership Act 1890.

Section 4 of the Indian Partnership Act\textsuperscript{23} defines the said term partnership as:

“Partnership is the relationship between person who have agreed to share the profit of a
business carried on by all or any of them acting for all”.

And such relationship should not be in abstract manner but it should be in reality. The relation of partnership arises from contract and not from status. Since a minor cannot enter into a contract under the Indian law, he is not competent to be a partner.

Moreover the Privy Council decision in Mohori Bibi’s case created a lot of controversy as it did not clearly lay down the position of minor. The Privy Council declared a minor’s contact to be void ab initio. But Section 30(1) of the Indian Partnership Act clearly lays down that a minor cannot become a partner though with the consent of the adult partners, he may be admitted to the benefits of the partnership.

And this second part of Section 30(1) of Indian Partnership Act subsequently created a lot of controversies and till date the position is not fully settled but has been subjected to lot of ambiguities. In the present research the basic objective and sincere attempt of the scholar will be to throw focus on this issue as it needs crystal clear enlightenment. Even the Indian Income Tax Act accepted the above definition of partnership and also the provisions contained in Section 30 of the Partnership Act in toto, thus adding to the controversy more spices. With the above sole objective to test the legal status of minor in a partnership firm both as per Indian Partnership
As examined in the foregoing pages, that the relation of partnership arises from contract and not from the status. So before digging further knowledge into the main theme, the scholar thought worthwhile to further analyse the position of minor under the *Indian Contract Act* 1872 and also *Contract law* of England.

Prior to passing of the *Indian Contract Act* 1872, British court in India used to administer English Law of the Partnership with due regards to customs and usages of this country. In 1866 the Indian Law Commission prepared a draft and the same was passed by the Indian Legislature in 1872. The law relating to Partnership was contained in Chapter XI of the *Indian Contract Act* 1872. But with the passage of time many of its provisions became obsolete and out dated. After feeling these deficiencies Governor General in Council appointed a Committee in accordance with the Legislative Resolution No.354-1/29 C&G dated the 24th March 1930 which is called the Special Committee.

The Special Committee was of the opinion that-

"we have carefully considered the position of a minor under the *Indian Law of Partnership*. Under the English Law there is nothing to
preclude an infant from entering into a contract of Partnership, though generally speaking while he is an infant, he incurs no liability and is not responsible for the debts of the firm, and when he comes of age or even before he may disaffirm past transactions. In view of Section 11 of the *Indian Contract Act* and the decision of Privy Council in *Mohoribibi*’s case as to the general incapacity of an infant to enter into a contract, we feel there is no justification, with reference to the law of Partnership only, for departing from this principles of the Indian Law and thereby unsettling it”.

As referred earlier The *Indian Contract Act* 1872 is largely based on the principle of English law of contract and the common Law. Though our law is largely an imitation of English law of Contract, it has introduced few small changes here and there in order to fit into the local Indian conditions.

In India, Minor’s contract is thus based on English Pattern. As such, in an important case such as *Irrawaddy Flotilla Co. Ltd. Vs. Bhagwan Das*²⁹, it has been held that

When any matter cannot be brought within particular provisions of the *Indian Contract Act*, and inconsistent with some provisions of
the *Indian Contract Act* it would be permissible to apply English principle while dealing with the matter.

1.7 Minor in Contract Law of England:

As narrated above, at common law the age of minority was below 21 years. However after the enactment of *Family Law Reform Act* 1969, the age of minority was reduced to less than 18 years i.e. the age of majority is 18 years and above and again all the rights and liabilities of minors under contract depend on the common law rules which was subsequently effected by *Infant Relief Act* 1874.

But, in common law only two classes of contracts to which the Infancy did not afford some sort of defence was the contract for necessaries and beneficial contracts of service. In all other cases, common law treated an infant's contract as being voidable at his options, either before or after attaining the age of majority.

1.7a. Contract for Necessaries:

It means an infant is obliged to pay for necessaries that have been supplied to him. Necessaries mean not only food, drink etc but things suitable to the infant's situation in life, which includes other things such as teaching, medical aid and legal advice. Thus
necessaries are variable according to the social status of the minor child. In the words of Baron Parke\textsuperscript{31}: “the word necessaries is not confined to articles necessary to support life, but includes articles and services fit to maintain the particular person in the station of life in which he moves”.

However according to Alderson\textsuperscript{32} “things necessary are those without which an individual cannot reasonably exist”.

1.7b. Beneficial Contract for service:

The courts and scholars, Jurist and Legal luminaries have been holding the same views since time immemorial that, an infant may bind himself by a contract of apprenticeship or of service, education or instruction, since it is to his advantage that he should acquire the means of earning his livelihood. But such contract always weigh in favour of infant at the time when it is made and in case of disputes, it is the duty of the court to decide whether the balance is in favour of the infant or not.

1.7c. Voidable Contract:

Voidable contracts are those which are valid and binding on an infant unless he himself repudiates them during infancy or within a reasonable time after the attainment of his majority.
These voidable contracts are divided into two classes namely, "Positive voidable contracts" and "secondly "Negative voidable contracts".

(I) The first class of contract are those in which a minor acquires an interest in some subject matter of a permanent or continuous one. And the said contracts are binding on him until he thinks proper to put an end to it. These classes of contracts are known as positive voidable contract.

(II) The second class of contracts are those which are not continuous in their operation. Hence the common law principles is that they are not binding on him unless, he ratifies them within a reasonable time after attaining majority. These class of contract are called negative voidable contract.

At the common law, both of these classes of contracts are only voidable at the option of the infant and not fully void and enforceable at the option of the minor, though they could not be sued or enforced against the infant.
1.7d. Contract under Infants Relief Act:

A specific Act known as Infant's Relief Act was enacted by parliament in the year 1874, which specifically dealt with minors. It has been designed to guard minors not merely against the results of youthful inexperience but against the consequences of honourable scruples as to the disclaimer of contract upon the attainment of majority.

The above Act has two main interesting Section. Section 1 declared some contracts as absolutely void which reads as –

“All contracts whether by speciality or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for foods supplied or to be supplied (other than necessaries), and all accounts stated with infants, shall be absolutely void, provided always that this enactment shall not invalidate any contract into which an infant may by any existing or future statutes or by the rules of common law of equity enters except such as now by law are voidable”

After an in depth examination of the Section I of the above Act, the following types of contracts entered into by a minor are treated to be absolutely void.
(I) Contracts entered into by minor for the payment of money lent or to be lent.

(II) Contracts for goods supplied or to be supplied (other than necessaries) and

(III) Contracts for all accounts settled with infants.

Again, Section 2 of the Infant’s Relief Act 1874 provided ratifications of contract by an infant impossible. The second Section is as follows-

“No action shall be brought where to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new considerations for such promise or ratification after full age”.

However these positive voidable contracts which were binding at common law unless repudiated before or within a reasonable time after attainment of majority are not affected by neither the Sec. 1 nor Sec. 2 of Infants Relief Act.

Again the provision in Section 1 of the Act exempts from its operation contracts into which a minor could validly enter and which, at the same time, were not voidable by him, whatever the other meaning of this, it definitely comprehends contracts for necessaries, which in any case, are expressly exempted by the Act.
There is nothing under English Law to prevent an infant becoming a partner, and until his contract of partnership is disaffirmed, he is a member of the firm. An infant, however, cannot incur liability for the debts of the firm or for the Acts of his co-partners, but if on behalf of the partnership he enters into contract with third person, those contracts bind his adult partners and the adult partners are entitled to insist that the partnership assets shall be applied in payment of the partnership liability before the infant receives anything. Any infant partner who commits a wrong, for example, by falsely representing his firm to be connected with stranger's business may be restrained by injunctions and ordered to pay costs, so also an infant is liable in Equity for fraudulent mis-representation as by holding himself out as a person of full age.

1.8 Minor in Indian Contract Act:

The Indian Contract Act 1872 does not state expressly whether a contract entered into by a minor is void or voidable. Section 10 and Section 11 of the Indian Contract Act 1872 are relevant to determine as to which agreements are contracts and who are competent to contract, Section 10 of the Contract Act requires amongst other that the parties must be competent to contract. Hence the competency to contract is of vital importance. Section 11 further stipulates as to who are competent to contract which reads as follows:-
"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"

Added to this, in India, there is a specific legislation known as Indian Majority Act 1875 according to which the majority or minority of a person is determined.

But, unfortunately both Section 10 or Section 11 of the Indian Contract Act 1872 are silent on the effect of minor’s agreement which had created more controversies than solved any. And these controversies were put to rest by the landmark judgement of Privy Council in Mohoribibi, V. Dhananidas Ghose which declared that the contract by a minor is void ab initio or absolutely void and incapable of finding place of estoppel whether it is simple contract, or contract to execute lease, promissory note, bond, pledge or contract for sale. This decision has been uniformly followed by the Privy Council and subsequently after independence by Indian Courts in the cases before them. The legal basis for adopting this view is that an agreement based on a minor’s promise is void because a minor is considered disabled and incapable of making a promise giving rise to a legal liability on him because owing to want of maturity he does not understand the effect of the transaction on his interest.
However in case of a contract, which is beneficial to him, he can enforce it. In a case Allahabad High Court\textsuperscript{34} on the following facts i.e. a manager of a Hindu family entered into a transaction of sale and an agreement to resell by registered documents with four persons including a minor for whom his brother signed. The Vendees agreed also to reconvey the same property to the Vendors on the condition that they received back the sale price within the specified years. It was held that if the agreement was beneficial to the minor he is bound by it and if he contends that it was not for his benefit he can reconvey the property and claim the return of the sale price.

The principle of 'estoppel' is also not applicable to a minor in a contract even if a minor by misrepresenting his age induces another to contract with him. Here it is quite clear that the other contracting party a major must be alert and take every necessary care not to enter into any contract with a minor, since such contract is void under the Act. It is also quite common belief of the people that an infant may not have firm knowledge of his age etc and because of this reason a minor could not be blamed for misrepresenting his age in a contract but this argument as per the present scholar does not hold good to minor of say 16 to 18 years who in today’s World are quite aware of their age and most of them are consciously aware and understanding of many more events beyond the exact date and year of their birth.
The survey conducted by Tata Consultancy Services support the above view of the present Scholar. Tata Consultancy Services Conducted a survey of 14000 children aged between 12 to 18 in 12 Indian cities and found that 63% of urban students spend an hour online daily; more than 80% have access to mobile phones and one in four have laptops. They do their homework and assignments online, access report cards, chat, blog, game, download, SMS and send photos via Bluetooth. The internet is becoming friend, philosopher and guide for the 'screenagers', supplying them with endless friendship requests, enlisting them for socials causes and sometimes offering emotional solace.

Even Clinical psychologist and student counsellor Dr Etishree Bhati agrees with the above view and of the opinion that “the way the children now use technology redefines the way they judge themselves and interact with everyone else. Earlier, children turned to parents and siblings for emotional support. Today, they are checking up personality, IQ and other tests online themselves. Coming to is the last option. Sometimes, they even crosscheck whether what I tell them tallies with these test results”.

Before the development in codification of Indian Contract Act 1872, the Supreme Court of the Presidency had sought to apply English Law in all areas except those which were covered by the Personal Laws of Hindus and
Muslims. This principle had aptly been applied in a case\textsuperscript{37}, where a lease entered into by an individual in the name of his minor son was held to be ineffectual as according to the Hindu Law, a contract entered into by a minor was void \textit{ab initio} and, accordingly, no claim could be founded thereon either against the minor or his surety.

A ‘Minor’ is also exempted from tortuous liability of a contract if the tort is directly connected with the contract and means of effecting it as a part and parcel of the same transaction which implies that the wrong of children should not be considered seriously and such wrongful acts of children must be excused as innocent acts.

So also the doctrine of ‘restitution’ is not applicable to infants under the Indian contract Act and thus if an infant obtain property or goods by misrepresenting his age, he can be compelled to restore it but only if the same is found in his possession. The reason behind such contractual laws is that the policy of law of contract is to protect persons below the specified age from contractual liability and normally the above mentioned principles can not be used to defeat the policy. In a case\textsuperscript{38} Supreme Court aptly supported the above view and held that a child is exempted from general rule of liability mainly because of age and other partners to have unfair deal with the minor.
And till date the decision of Privy Council in Mohori Bibi\textsuperscript{39} case continues to remain as the backbone in legal field or the single vital precedent which is being followed by Indian Courts both to the advantages and disadvantages of the minor.

To sum up, from foregoing analysis of the scholar, the position of minor under Common law, Infant's Relief Act 1874 and Indian Contract Act 1872 and other major Acts of India, it becomes crystal clear that the basic objective of all laws including the law of contract governing the minor's agreement is to protect the minor for his own inexperience while at the same time, he should not be allowed to get benefit from the privileges at the expenses of the adult or a minor like all adult has to have his experience in the affairs of the world.


3. UNICEF report 'Document-To build a world fit for Children'- The Telegraph, dt 27th June 2003, P-13


5. V.R.Krishna Iyear Law & Life Page 8 (1979)


8. Mt. Cholki v. State AIR 1957 Raj. 10


12. V.K.Gupta Kautilyan Jurisprudence Published by G.D.Gupta.

13. KARTA:- Means the head of the traditional joint and Undivided Hindu Family. Generally the senior most male member of the family is regarded as Karta of the family.

14. Rajalakshmi. V. Ramchandran. 1966 MLJ 420


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CHAPTER II