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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **PRACTICALITY OF MINORS AS** **AGENTS - PART I**

AUTHORED BY - DHRUV MALPANI

## **I. Introduction**

Chapter X of the Indian Contract Act, 1872 constitutes the ambit of Agency.<sup>1</sup> Section 182 defines the terms 'Principal' and 'Agent'<sup>2</sup> while Section 183 states 'Who may employ agent'<sup>3</sup> i.e., who may be a principal.

S. 182 – 'An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".'

S. 183– 'Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.'

Our focus though, will be on Section 184 of the Indian Contract Act (ICA), 1872 which says, 'As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.'<sup>4</sup>

## **II. Reasoning**

Though the definition and parameters set in S. 184 of the ICA seem exhaustive and limited, it is not so. The language seems straightforward but contains complexities within.<sup>5</sup>

At a first cursory glance, it may seem clear that a person who's attained majority and of sound mind can only be competent as an agent to a contract. But this understanding is not to be. An explicit exception is not presented before us, but rather an implicit one. Rather than a proviso, the section entails an innate exception within itself. Perusing through the words of the section, we

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<sup>1</sup> 1872, The Indian Contract Act, 1872: Contents, Professionals' Publishers

<sup>2</sup> 1872, The Indian Contract Act, 1872: Section 182, Pg. 43, Professionals' Publishers

<sup>3</sup> 1872, The Indian Contract Act, 1872: Section 183, Pg. 43, Professionals' Publishers

<sup>4</sup> 1872, The Indian Contract Act, 1872: Section 184, Pg. 43, Professionals' Publishers

<sup>5</sup> Ibid.

might get asense of the exception. If we divide the section into two parts, and read through it properly, we might comprehend this exception after all.

‘As between the principal and third persons, any person may become an agent’,full stop. This would be the first part, distinguished for the understanding of this article. This is very unambiguous and self-explanatory.

The second part of the section is what this article is all about. Excluding the conjunction but, we get ‘No person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.’ With a rudimentary glance, it seems perfectly clear that the section does not allow minors and people of unsound mind to become agents. This again would be rather premature. The comma makes all the difference. What could have been simply understood, is now construed as minors and people of unsound mind can be agents, as long as they are not held liable i.e., the principal is responsible for their conduct.

Even after a thorough comprehension, there is a contention for a more visible and overt exception, if the makers of this act desired minors and people of unsound mind to be agents. For a layman to go through this section andunderstood its meaning holistically; this expectation is bigoted and ridiculous. Theauthor can even go as far as claiming that someone highly proficient in the English language would have to go through the section’s complexitiesrepeatedly.

### **III. Precedents**

It is imperative to note that there is no law in United Kingdom, from whom weinherited and modified the law, which allows for minors to be agents in agencycontract. Nor are there any case judgments that deal with the topic at hand.

The main question which arises now is whether there are any precedent case lawsin Indian law history or not.

‘(1) Minor can be agent of a principal, who is competent to contract. AIR 1928Lah 854 (854, 855), AIR 1918 Lah 269 (270) (DB).

(2) Minor agent is not responsible for loss caused by his guardian. AIR 1917 Nag97 (98).

(3) Person knowingly appointing minors as his agents – Contract subsisting for some time – Person cannot subsequently say that the contract is void, being madeby minors. (1902) 4 Bom LR 627 (629).’<sup>6</sup>

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<sup>6</sup> The AIR Manual – Civil Criminal, 6<sup>th</sup> Edition Vol. 15: Pg. 464, Nagpur, All India Reporter



Even the AIR manual stays silent on the possibility of actual competence of minors as agents. To add insult to injury, all the precedent cases would not uphold in courts in today's ethos. The cases, being from the Victorian era and especially, in the Lahore's court, it seems rather irrational that this precedent would be followed in India's courts.

Would the Indian courts and judicial system be so brazen to follow on rule upon the redundant and olden cases, and blindly associate without contextualization?

#### **IV. Contention**

The author contends for the innate nature of the exception of Section 184 to be purely theoretical and has no practical basis in real life. The nonsensical notion of minors to be capable and competent of being an agent is a foolish one, and naïve at best. What kind of a principal would be naïve enough to employ a minor as an agent, and not a person of majority and commonsense? Why would a principal hire a minor as an agent in the first place?

For a law to be maintainable and sustainable, it is important for the relevant precedent case laws to uphold in contemporary atmosphere. We clearly saw that the previous case laws such as Lahore Judgements<sup>7</sup>, Bombay Judgement<sup>8</sup> and Nagpur Judgement<sup>9</sup> would not work in today's socio-legal climate (More on them in Part II).

The contention is very unambiguous: The inherent language of the Section is flawed, and perplexing, as law needs to be firm on its stance, but here upon different readings, the meanings derived are different and varied. There is an urgent need to revise the Section, to be accessible to the public at large, and not just a few people with necessary acumen; practicality of minors as people with common sense and competence need to be revisited. The largest marking point is the lack of relevant case laws involving minors as agents, and thus could see the law in actual use which is minimal.

In Part II of the Article, the author will go through the analysis of relevant case laws relating to minors as agents and decipher the pragmatic approach to deal with the inconsistency in the statute.

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<sup>7</sup> AIR 1928 Lah 854 (854,855), AIR 1918 Lah 269 (270) (DB)

<sup>8</sup> 1902 4 Bom LR 627 (629)

<sup>9</sup> AIR 1917 Nag 97 (98)