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The Capacity to Contract of Minor Social Media Influencers in India

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ABSTRACT

The paper seeks to find out the legal complexities involved in validity of contracts involving minor social media influencers in India. It deals with the emergence of social media influencers and its increasing popularity worldwide.

The research explores how minor social media influencers are on the rise globally as well as in India. Their economic exploitation is becoming rampant as well. This paper compares how various countries other than India Like USA and Netherlands have frameworks to combat economic exploitation and the capacity of child social media influencers to enter into valid contracts. The shortcomings in their frameworks are analysed. The study highlights and strives for such frameworks in India where kidfluencers are included as well. The paper ultimately aims to clear the ambiguity in application of the current contract laws in India involving child social media influencers and suggests a framework keeping in mind their inclusiveness.

Keywords: *Minor digital influencers, Capacity to contract, Social media, Economic exploitation.*

I. INTRODUCTION

There is a new category of social media influencers who have emerged namely “kidfluencers” who engage a multitude of audience. They are famous figures who endorse products of brands, influence lifestyle choices and shape opinions of the popularity. However their collaboration with brands and advertising agencies raises questions on the legality of the contracts between them and who are parties to it. California has a provision for parents to set aside of the revenue generated from the content the post to a trust fund. India lacks such regulations for protecting the rights of the kidfluencers and fails to state their contractual capacity as well.

The paper explores the capacity of minors to contract in India and examines the legal landscape of minor social media influencer’s contractual capacities as well. Under the Indian Contract Act of 1872, minor involved contracts are deemed void ab initio but many minors are engaged in brand endorsements with companies which raises the question about their contractual capacity.

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The emergence of popular kid influencers have raised pressing concerns and the urgency in bringing forth a framework which is inclusive and reconciles traditional laws with the changing social media environment. This paper proposes to examine the same and suggests measures for the same.

II. SOCIAL MEDIA INFLUENCERS

Today, social media is an integral tool for connecting people from around the globe². Social media enables individuals to connect by means of messages, pictures and video content and includes websites and applications to facilitate the same³. Social media has become a vital tool in building personal relationship between individuals and social media influencers are persons who have utilized this opportunity to express and resonate their views with other users. This environment provides influencers to shape opinions, set trends and regulate digital market. Social Media influencers are regarded as the stars of digital world.⁴

Today's India is influenced to a great degree by the content creators on social media platforms like YouTube, Instagram, Facebook and vice versa by the engaging and enthralling content they post online. The content that they curate resonates with the ideas of the majority and the audience tends to trust them to make reasonable recommendations on lifestyle choices, ideas, products etc. They increase engagement by giving personal and relatable experiences as content to the audience and thereby involving with them directly.

There is a surge in use of smartphone and internet, and social media influencers have tapped on the best opportunity to establish their presence online and build a reputable brand for themselves. They get remuneration for the work they do by means of sponsorships, brand endorsements, digital advertisements and merchandising⁵. Influencers engage in a more personal level with the audience which distinguishes them from traditional celebrities. Traditional celebrities gained fame by exhibiting their skills and talents keeping their personal lives separate while social media influencers base their entire career on their personal lives.⁶ Lately, even traditional celebrities need to keep up with social media trends so as to not

² Anni Ala-Uotila, *Child's Right to Privacy in Social Media – Legalities and Ethics of Child Influencers*, (2024).

³ Matthew Hudson, What Is Social Media?, THE BALANCESMALL BUS. (June 23, 2020), <https://influencermarketinghub.com/what-are-youtube-subscribers-and-how-does-it-work/> <https://perma.cc/FW2Y-C9RA>. (Accessed on 20 August 2024)

⁴ *What is an Influencer?*, INFLUENCER MARKETING HUB, <https://influencermarketinghub.com/what-is-an-influencer/> [<https://perma.cc/P6LV-E4ZJ>] (last visited Oct. 22, 2020).

⁵ *Kidfluencers and Social Media: The Evolution of Child Exploitation in the Digital Age*, HUMANIUM (last visited Sept. 5, 2024), <https://www.humanium.org/en/kidfluencers-and-social-media-the-evolution-of-child-exploitation-in-the-digital-age/>.

⁶ Shambhavi Gupta, *Blurred Lines in Social Media Influencing: Exploring the Consequences of Using Personhood as a Platform*, at 73, <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/177337/16-Gupta-Personhood-Social%20Media%20and%20Society%20in%20India%20Proceedings-73-82->

lose their fan following.

The emergence of social media influencing culture was recognized by some notable scholars. Social media platforms, according to Gillespie (2010), have changed how we see and interpret celebrities because they allow people to gain popularity and influence outside of the traditional media sectors through new kinds of cultural capital (Marvick and Boyd, 2011).⁷

Initially social media influencers monetized their content by brand collaborations, sponsored posts on platforms like YouTube, Instagram, Facebook etc and affiliate marketing. Apart from these, influencers explored new career development paths portraying the plethora of potential opportunities available for them in India. For example, influencers like Prajakta Kohli who started off as a renowned digital creator on YouTube now paved her way into Bollywood⁸. Content creators no longer have to pursue a single career, they have the option of multiple avenues. This is evidence of how a successfully executed online campaign can easily translate to other opportunities offline and underlines the growing significance that digital platforms now hold in determining career milestones, especially in an economy that is beginning to embrace digital-first engagement.

III. RISE OF MINOR SOCIAL MEDIA INFLUENCERS

Children who have gained fame by means of social media is often referred to as 'Kidfluencers'. With increased access to internet and social media, children can both create and access content online with the support and supervision of their parents mostly.⁹ Even 5-year-old children have resorted to online content creation and have gained immense fame and success with much fan following. Kids who started casually posting content online are now earning their own income from successful fanbase on platforms like YouTube and vice versa.

These influencers come from various socio-economic backgrounds due to increased digitalisation in India. Parents identify their children's talents in influencing and content creation as an effective revenue generation opportunity leading to creation of professionally managed accounts for most of them.

10.73027934.pdf?sequence=1&isAllowed=y (last visited Sept. 5, 2024). 10.73027934.pdf?sequence=1&isAllowed=y

⁷ Gillespie, T. (2010). "The politics of 'platforms'." *New Media & Society*, 12 (3), 347–364. <https://doi.org/10.1177/1461444809342738>

Marwick, A. E., & Boyd, D. (2011). "To see and be seen: Celebrity practice on Twitter." *Convergence: The International Journal of Research into New Media Technologies*, 17 (2), 139–158. <https://doi.org/10.1177/1354856510394539>

⁸ *The Rise of Social Media Influencers in India*, *KOFLUENCE* (2024), <https://www.kofluence.com/rise-of-social-media-influencers-in-india/> (last visited Sept. 5, 2024).

⁹ <https://www.humanium.org/en/kidfluencers-and-social-media-the-evolution-of-child-exploitation-in-the-digital-age/>

The activities of child influencers can be roughly divided into 3 categories as follows:

- Building their own brand: The content and revenue generation will be centred around the child and all the content will be based on the kid's actions.
- Family vlogging: Families attract audience by giving glimpses into their everyday lives and even personal moments as content. Children pose as supporting actors to this model of content creation
- Brand networks: Children have their own brand as well support other influencers thereby creating a network to promote content.¹⁰

Companies strive to collaborate with these young creators as they appeal the younger audience. Indian kidfluencers appeal audiences by creating videos like toy unboxing, showcasing cooking skills and give glimpses into their everyday routine making it relatable for kids their age. Their ability to create an authentic connection with children their age is something brands struggle to gain through traditional advertising. Brands can advertise their content on these kids' platforms in a non-intrusive manner and cultivating trust and long-lasting relationships among the audience.

According to Sanjay Gupta, Country Head and Vice President of Google India, YouTube India has an audience of over 325 million users including children.¹¹ Companies tend to tap on these children's potential to remain active members of the digital economy. Kids are both active and passive players of the digital economy due to their increased contribution towards online content.

Anantya Anand, a young social media influencer on YouTube has approximately 13.8 million subscribers and she charges 1-1.2 lacs for shorts, 3.5-4 lacs for dedicated brand videos and 1.5-2 lacs for integrated brand videos.¹² Anantya's videos are an inspiration to her peers for venturing into online video creation.

Economic exploitation of child influencers

Kidfluencers earn remuneration for their work online but they don't have legal right to cash in their profits.¹³ The parents often enter into contracts with brands which describe scope of work,

¹⁰ Charlotte Mol & Catalina Goanta1, Shedding light on child influencers: insights on the influencer economy, Dutch private law and children's rights, SSRN Electronic Journal, pg5-8

¹¹ *India Seeing Its Biggest Content Revolution*, THE HINDU, <https://www.thehindu.com/business/india-seeing-its-biggest-content-revolution/article32966430.ece> (last visited Oct. 6, 2024).

¹² *Anantya Anand: The Creative Genius Behind Mymissanand's 13.8 Million Subscribers*, IDIOTIC MEDIA, <https://idiotic.media/anantya-anand-the-creative-genius-behind-mymissanands-13-8-million-subscribers/> (last visited Sept. 5, 2024).

¹³ Rachel Fishbein. Growing Up Viral: "Kidfluencers" as the New Face of Child Labor and the Need for Protective

how content should be delivered etc.¹⁴There are child influencers who's work receive steady remuneration from online platforms and parents are ideally supposed to use it for the benefit of the child ,but often there are reported instances where parents force minors to work accordingly to generate content and treat them inhumanely. The example of the YouTube channel Fantastic Adventures can be referred to as they generated more than 20000 dollars per video but the minors were subject to the mother's abuse and coercion.¹⁵

IV. CAPACITY TO CONTRACT OF MINOR SOCIAL MEDIA INFLUENCERS IN USA

Contracts executed by minors were considered voidable traditionally. The rationale behind such a statute is to protect minors from being taken advantage of. Presently minors are allowed to execute agreements provided that their parents or guardians co-sign.¹⁶These conditions are generally not applicable to minors entering into online contracts such as assenting to terms and conditions on various social media platforms like YouTube, Instagram. These social media platforms are required to verify their age and 13 is a prerequisite condition for age of users for these platforms. The US legislation has provided an opportunity for minors to be able to contract at the age of 13 with internet businesses¹⁷. This has created an inconsistency as minors are unable to make decisions on the revenue earned by means of social media even though they are legally able to use and generate income from their accounts. The country's laws fail to be at par with the technological advancement of the generation.

Recently, California has passed a law which requires parents of these minor social media influencers to place at least 15% of their earnings in to a trust and violation of which gives the children the right to sue their parents. The percentage of income to be set aside into the trust also depends on how often the children appear in the videos shared by parents.¹⁸This law is based on the Coogan aw to protect rights of child actors which gives the children the right to

Legislation in the United Kingdom. *The George Washington International Law Review*. 54(1), 137-155. <https://thewilr.org/issues/volume-54-issue-1/>.

¹⁴ ALANA HARRISON, PROTECTING AND PROMOTING THE RIGHTS OF CHILD INFLUENCERS IN THE DIGITAL AGE,(May 9 2024) pg 21-22 [¹⁵ Washington Post 2019. This 'YouTube Mom' was accused of torturing the show's stars — her own kids. She died before standing trial. <https://www.washingtonpost.com/crimelaw/2019/11/13/popular-youtube-mom-who-was-charged-with-child-abuse-has-died/>\(Accessed November 8, 2024.\)](https://r.search.yahoo.com/_ylt=AwrPpel76C1nAAIATx.7HAX.;_ylu=Y29sbwNzZzMEcG9zAzEEdnRpZAMEc2VjA3Ny/RV=2/RE=1732271484/RO=10/RU=https%3a%2f%2fdigikogu.taltech.ee%2fet%2fDownload%2f9a1087c9-91b1-43f8-9792-b8c922a7f3a2/RK=2/RS=kdlam0YP.rqab0t3YR7clFyBA2U-(Accesed on 08 November 2024)</p></div><div data-bbox=)

¹⁶ Robert G. Edge, Voidability of Minors' Contracts: A Feudal Doctrine in a Modern Economy, 1 *GA. L. REV.* 205, 207 (1967).

¹⁷Symphony Munoz, Sucking Success out of Minor Social Media Influencers: A Call for Testamentary Capacity Rights in Texas, 14 *EST. PLAN. & CMTY. PROP. L.J.* 337 (Fall 2021).

¹⁸ Erin Kayata, California passed a law to financially protect children used in online content. But does it go far enough? October 10, 2024, <https://news.northeastern.edu/2024/10/10/californias-child-influencer-law/>

sue their parents for noncompliance.

This move by the Californian government shows a sign of movement towards protection of minor influencer's rights ensuring that their financial rights remain protected in an unregulated industry. More regulations and definite framework are required in the US legislation to enable execution of contracts by kidfluencers.

V. CAPACITY TO CONTRACT OF MINOR SOCIAL MEDIA INFLUENCERS IN NETHERLANDS

In Dutch law, persons under the age of 18 are considered minors.¹⁹The age of majority accepted by the Council of Europe Committee of Ministers is also the same.²⁰Dutch law enables minors of age 16 to enter into employment contracts.²¹This means they have absolute capacity to contract in terms of their employment and can represent themselves in court without the assistance of their parents or guardians. The EU version of most social media platforms have mandated minimum age requirement for their users to be 13.

The proceeds that children earn through their work as influencers in their own name, belong to them and must be administered by parents.²²Parents are expected to act diligently with such assets and in case of poor administration they are to be held liable for damages caused. There is no clear interpretation of Dutch laws governing the young influencers. Influencers aged between 16 years and 18 years can either opt for limited legal capacity option(handlichting) or can freely enter into labour contracts with brands.

If parents make social media accounts on the children's behalf and the account starts earning revenue, considering the Dutch legal framework, the parents are to administer the same unless they violate privacy or labour laws.

Hence the Dutch laws have merely been accommodative of the provisions for capacity to contract of child social media influencers and there is no explicit statute protecting their rights.

¹⁹ Article 1:233 DCC. It is, however, possible for minor mothers from the age of 16 years to be emancipated

²⁰ Council of Europe, Resolution (72)29 on the Lowering of the Age of Full Capacity, adopted by the Committee of Ministers on 19 September 1972, in *Explanatory Report to the European Convention on the Exercise of Children's Rights*, para. 11 (Jan. 25, 1996).

²¹ **Art. 7:612 DCC** (Dutch Civil Code).

²² Charlotte Mol & Catalina Goanta1, Shedding light on child influencers: insights on the influencer economy, Dutch private law and children's rights. https://www.researchgate.net/profile/Charlotte-Mol/publication/372995678_Shedding_Light_on_Child_Influencers_Insights_on_the_Influencer_Economy_Dutch_Private_Law_and_Children's_Rights/links/653932fc1d6e8a70704e452d/Shedding-Light-on-Child-Influencers-Insights-on-the-Influencer-Economy-Dutch-Private-Law-and-Childrens-Rights.pdf (Accessed [on 23 October 2024](#))

VI. CAPACITY OF MINORS TO CONTRACT IN INDIA AND IMPLICATION OF CONTRACTS INVOLVING CHILD SOCIAL MEDIA INFLUENCERS

In India for an agreement to be deemed as a 'contract', the following conditions need to be satisfied. The person entering into the contract should :

- Be 18 years of age
- Have a sound mind
- not be disqualified from contracting by any law to which he is subject²³

Hence majority is a necessary prerequisite to enter into a valid contract. The implication of a contract involving minors may be further discussed in detail.

Validity of contracts involving minors

The landmark precedent involving the issue of validity of contracts involving minors and their capacity to contract is that of *Mohori Bibee v/s Dharmodas Ghose*.²⁴ In the said case, the defendant Dharmodas, who is a minor, executes a mortgage contract with the plaintiff Brahma Datt in order to avail a loan of Rs 20,000. Later, the plaintiff filed a suit against the defendant stating his incapacity to enter the contract and demanded the Rs 10,500 which was advanced as loan. It was decided by the court that contracts involving minors are void ab initio i.e. not valid from the beginning. Hence, the suit failed as there was no valid contract and according to the court if the amount was to be reimbursed would be a form of enforcement of contract which is not valid from the beginning.

From the judgment, it is noted that no specific performance can take place.²⁵

Exception to the rule so established is here as follows:

- If the minor has performed his /her end of the contract and the other party/parties to contract has not done so, then the minor can enforce the contract.
- A contract between the minor's guardian and others for the benefit of the minor. Contracts which are transacted for the benefit of the minor will be held valid and the guardian can act in the minor's capacity for the same. The case of *Subramanyam v. Subba Rao*²⁶ can be taken to illustrate the same. In the said case, the minor Subba Rao and his mother sold a part of a property and paid mortgage fee to the

²³ The Indian Contract Act 1872, sec 11

²⁴ (1903) ILR 30 Cal 539 (PC)

²⁵ Maitri Raj Tiwari, A Study of Minor's Capacity to Contract, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022)

²⁶ (1948) 50 BOMLR 646

mortgagee(plaintiff) in order to settle his father's Debt. After transferring the property's ownership to the plaintiff, later the minor reclaimed his property rights contending that he was minor at the time the contract was made. The court held that since, his mother acted as his guardian and for his benefit, the contract would be held binding upon him.

- A contract of apprenticeship entered by a guardian under the Indian Apprentices Act 1850 on the behalf of a minor is binding on the minor.

Do the parents or Legal Guardians of the social media influencer have capacity to contract on behalf of the minor?

- From this, we can understand that in India, minors are considered incapable of entering into contracts and the contracts that are thus created involving them are deemed void ab initio. Parents can enter into contracts for the benefit of their children and analysing the research problem, it can be evaluated that if in case a contract needs to be executed for any promotion or brand endorsements of child influencers, they will be entered into by the kidfluencer's guardian. This contract will convey the clear motive as the content creation and its responsibilities will be assumed by the parent and the child is merely assisting in the process so that any obligation will directly fall on the parent. The agreements so entered would strictly comply with provisions of the NCPCR guidelines. As per the Chapter 3 of the NCPCR guidelines, 20% of the monetization availed by the guardian from the advertising agency or brands must be deposited in a fixed deposit account in a national bank.²⁷
- For reference, the case of *Raj Rani v Prem Adib* ²⁸needs to be examined. The court held in the stated case that service contracts entered by the guardians of minors or minors themselves with the intention of benefit of minors will be considered void. The guardian then will act as the child's agent and under the Indian Contract Act 1872, minors were considered incapable of employing an agent.
- Therefore brands which enter into contracts namely service contracts with the kidfluencers cannot enforce them however if the minor has completed his part of the obligations, then the company/brand will be obligated to perform their end.
- There is still an existing ambiguity in the validity of such contracts involving minor

²⁷ Varun Vaish and Hargun Singh, *Regulating The Spotlight: Navigating The Legal Landscape Of Child Social Media Influencers In Digital Marketing*(29 April 2024) https://www.mondaq.com/india/social-media/1457092/regulating-the-spotlight-navigating-the-legal-landscape-of-child-social-media-influencers-in-digital-marketing#_ftnref3 (Accessed on 08 November 2024)

²⁸ (1949)51BOMLR256

social media influencers, but this paper seeks to find out the current scenario regarding its application and enforcements by examining the limited provisions of the Indian Contract Act ,1872.

VII. SUGGESTIONS

India should first reconcile its laws on contracts(The Indian Contract Law,1872) with the changing social media landscape and bring forth a statutory framework which ensures that laws concerning minor social media influencers, their rights liabilities, duties etc are codified and explained.

They should adopt similar framework like the California's Coogan law which mandates a portion of the revenue generated by the young content creator to be set aside to a trust fund by the parent. Such a law would prevent economic exploitation of the minor.

There should be guidelines to be followed by brands and companies who collaborate with kidfluencers such that minor's rights are protected at the same time the brands do not get exploited due to the lack of enforcement rights to agreements involving minors. The National Commission for Protection of Child Rights (NCPCR) should collaborate with digital platforms like YouTube, Instagram etc to mandate less workload limits and ensure their minimum age requirements to possess accounts on their platforms are fulfilled.

Parents should be educated about working ethically with brands in case of brand endorsements involving their children and must ensure that their children's rights are not violated while engaging in digital economy.

VIII. CONCLUSION

In conclusion, the increasing participation of minor social media influencers imply urgent change in existing framework. The Indian Contract Act fails to specify the validity of contracts executed involving minor social media influencers and does not align with present digital economy where kidfluencers generate a large revenue via social media. Creating awareness about their children's online presence among parents is important .

A legal framework which balances all the potential threats and opportunities of young influencers need to be implemented.
