

Education Sector Hotline

May 24, 2019

CONTRACTING "APP" TLY

Let's face it -apps dominate every minute of our daily lives. From food delivery, to cab booking, to health monitoring, there is an app for everything possible! Infact, apps exists for things we can't even think of. So why should education, an integral part of our well-being and growth, be left behind?

Education Technology or Edtech for short, has ensured that education reaches the fingertips of all. From nursery rhymes for toddlers, to learning science for school students, and AI for the professionals, the "app" world has it all. Just a click away.

Each app that we download dictates its own terms and conditions, which govern the relation between the app owner and the users, the manner of use, the purpose of use, et all. Thus, these terms and conditions result in a contract between the app owner and users. The users, in most instances are adults, who are capable of concluding a valid contract. However, what happens when the apps are targeted for use by children and are downloaded by them? Between whom is the contract formed in such case? Are children capable of forming a valid contract in such case?

Under Indian law, a child is not competent to contract. This is because as per Indian Contract law, only a person who has reached the age of majority is competent to contract. The age of majority in India is 18 years as provided under the Indian Majority Act, 1895. Therefore, contract with a child would be void *ab initio*. This means that the app owner cannot enforce the contract with minor child even if they would want to.

However, a guardian can enter into a contract on behalf of the minor (i.e child) for their benefit. Under Indian law, a guardian can either be a natural guardian (parent) or a court appointed guardian under the Guardians and Wards Act, 1890. Under Hindu law, the father and then the mother are considered natural guardians. Under Muslim law, the father is the natural guardian.

"Benefit of the minor" has been interpreted broadly by the courts and is usually a factual matter. For instance, a contract for purchase of property by a guardian on behalf of a minor has been held to be for the "benefit of the minor". Applying the analogy, a purchase of an app by a parent from the playstore or appstore, for use of their minor child is likely to be considered for the benefit of minor.

Thus, it is important to ensure that contracts / terms and conditions of apps directed towards minors should be entered into directly with a parents or guardian of a minor. For example, a contract for use of an online learning app offering game based solutions for minors should be entered into with a parent or a guardian, who may, in turn allow use of the services by a minor based on the parent/guardian's discretion. This can be ensured by clarifying in the terms and conditions clearly that the contracting party should be an adult capable of contracting under law, using tools checking for the age of the user who downloads the apps etc. These steps will ensure that the contracting party for all purposes is the person who has the capability to contract, i.e parent / guardian from a validity of contract perspective.

— Aparna Gaur, Aarushi Jain & Vivek Kathpalia
You can direct your queries or comments to the authors

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