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**CASE ANALYSIS OF MOHORI BIBI V. DHARMODAS GHOSE (1903)**- Shrishti Pansari<sup>1</sup>**ABSTRACT**

According to Indian Contract Act 1872 and Section 11, the parties covered by the contract include all with three exceptions:- Minor, insane, and a person legally forbidden by the law. The main purpose of this paper is to analyze whether a contract or contract entered into with a minor is invalid or invalid and to understand whether the principle of estoppel applies. This paper also discusses the Doctrine of Restitution in case for minors.

Under the Section 3 of the Indian Majority Act of 1875, a person who has reached the age of 18 is a minor and with an exception to the cases wherein the court has appointed a guardian then that person is said to attain majority at the age of 21.

**INTRODUCTION**

Contracts with minors are subject to particular rules under the law. The belief is that minors are legally incapable of giving permission and, as a result, require protection in their interactions with others. Under common law, there are two basic concepts that regulate the law relating to contracts with minors: first, a minor is legally incapable of contracting because he lacks the necessary permission, and so he must be protected in his dealings with others. Second, the law must address the difficulties that this rule implies so that adults dealing fairly with minors are not subjected to unnecessary burden. Under this principle, certain contracts with minors are valid and enforceable, while other contracts are invalid at the choice of the minor. English common law also stands modified by statutes that deal with the subject.<sup>2</sup> Section 10 of the Contract Act provides that "all agreements are contracts if they are made by the free consent of the parties

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<sup>2</sup> See Minors' Contract Act, 1987 (Eng.)

competent to contract...(emphasis supplied).”<sup>3</sup> Section 11 of the Contract Act provides that "every person is competent to contract who is of the age of majority according to the law to which he is subject."<sup>4</sup> Under Indian law, the majority is governed by the Indian Majority Act of 1875. Section 3 of this law provides that persons residing in India are considered to have reached the legal age when they reach the age of 18. In case however, a guardian has been appointed with respect to a minor, this age of majority is deemed to be attained on completing the age of 21 years.<sup>5</sup> If a person, incapable of entering into a contract, is supplied by another person with necessaries adapted to his situation in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person, says Section 68 of the Contract Act. The provisions, especially Section 11, require that the person be a legal adult as a necessary element of legal capacity. However, this wording obscures the nature of contracts entered into by minors, as Section 11 addresses the issue in terms of legal capacity rather than incompetence. Therefore, prior to 1903, there was uncertainty as to whether such an agreement with minors was invalid or could simply be contested. So in the case of *Mohori Bibee vs. Dharmodas Ghose* is a landmark case in the realm of minor agreements. As the case shows, a minor's contract should be void or voidable. A minor cannot enter into a contract, as stated in section 11 of the Indian Contract Act, and as stated in section 10 of the Indian Contract Act, parties entering into a contract must be competent to contract, i.e., eligible to contract. However, there were no rules that explained the legal status of a minor who is a party to a contract. As a result, the case defines the legal status of a minor who is a contractual party to a contract.

## RESEARCH METHODOLOGY

### RESEARCH OBJECTIVE

- To analyze the minor agreement is void, voidable or void- ab- initio.

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<sup>3</sup> S. 10, Indian Contract Act, No. 9, Acts of Parliament, 1872 [hereinafter "Contract Act"] states "What agreements are contracts.-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 hereby expressly declared to be void."

<sup>4</sup> S. 11, Indian Contract Act, 1872 states -"Who are competent to contract.-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."

<sup>5</sup> S. 3, Indian Majority Act, No. 9, Acts of Parliament, 1875.

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- To highlight the principle of estoppel is applied on minor or not.
- To understand the concept of doctrine of restitution in the case of minors.

### RESEARCH QUESTION

1. Whether the minor agreement is void, voidable or void -ab - initio ?
2. Whether the principle of estoppel is applied to minors or not ?
3. What is the Doctrine of Restitution in case of minors ?

### LIMITATIONS

The researcher would do secondary research. This would be Doctrinal research which would include library - based data, i.e. articles, books etc. have been examined to unfold the objective of the research.

### LITERATURE REVIEW

#### **Swaminathan, S., & Surana, R. (2021)**

In this article researcher discuss the case *Mohori Bibee v. Dharmodas Ghose* (1903), its Privy Council read the Act as providing a definitive answer to this question, holding that minors' contracts were void ab initio (not voidable or void), meaning that neither party could enforce it, nor could they seek restitution under provisions requiring restitution in the case of either voidable (section 64) or void (section 65) contracts. Since then, Indian courts have referred to *Mohori Bibee* as though it were an unassailable tenet of Indian contract law. The Privy Council's reading of the Act in *Mohori Bibee* is problematic, as is its establishment of the category of contracts void ab initio, and unsupported the act as according to this article.

#### **Prachi Sahay (2021)**

In this article it discusses the estoppel. When a person says something and makes others believe it is true, tell him not to step back or change his mind from that statement. Estoppel and its species were specifically defined in Indian Evidence Law, but in reality the law is much broader. This paper attempts to analyze the relevance of this doctrine in modern Indian evidence law. First, I traced the history of the doctrine to understand its true meaning. This is followed by

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a detailed analysis of the types of estoppel edited from numerous laws, their actual application in cases, and other analytical material.

**Saiman, C. (2008)**

In the following article the law relating to restitution compensation for advantages given by parties to agreements that are unlawful due to the minority of one of the parties is discussed in this article. It is maintained that while the case law provides norms that are unclear and undesirable in terms of policy, an establishment's restatement based on themes explored in Canadian instances is both conceivable and desirable. This article delves into the law of restitutionary issues that arise once it is determined that the minor's agreement is unenforceable. Is it possible for the minor to recover the value of benefits he has already conferred on the other party to the agreement in a restitutionary claim? Is it possible for the opposite party to recover the value of advantages given to the minor? Should the minor, on the other hand, be obliged to repay the value of benefits received as a condition of being allowed to invoke the provision that deems the agreement unenforceable? As will be seen, the rules governing these issues are extremely complicated, possibly even more so than the laws governing enforceability.

**1. Minor Agreement :-**

According to Section 11, a minor is a person who has not attained the age of majority.<sup>6</sup> Different countries have different laws governing adulthood. According to Section 3 of the 1875 Indian Majority Act (Revised 1999) :-

1) Persons residing in India shall be adults under the age of 18.

(2) When calculating the age of a person, the date of birth of the person is counted as one day, and the beginning of the 18th anniversary of that day is regarded as the age.

Therefore, in order to conclude a contract, the person has already been excluded from the contracting parties within one day of adulthood. Therefore, even if you are 17 years and 364 days, you are legally a minor.

Any agreement established with a minor is void-ab-initio, meaning it is void from the start. It isn't even close to being a contract. It is a contract that cannot be enforced in a court of law. Even

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<sup>6</sup> Indian Contract Act, 1872, § 11, No. 9, Acts of Parliament, 1872 (India).

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if the minor gains the majority, he cannot ratify the same agreement. Any agreement established with a minor is void-ab-initio, meaning it is void from the start. It isn't even close to being a contract. It is a contract that cannot be enforced in a court of law. Even if the minor gains the majority, he cannot ratify the same agreement.

- **Nature of the Agreement :**

Section 10 states: "The parties to the contract must have legal capacity and consent must be free. Therefore, the capacity of the contracting parties is the most important part of the contract. Before 1903, it was thought that the language in Sec. 11 "Any person of the age of majority is able to contract" meant "every person of the age of majority is qualified to contract." It can be interpreted in two ways:

- (1) If a minor is unable to contract, the agreement is null and void.
- (2) An agreement with the minor voidable, he is not liable but the other party is liable.<sup>7</sup>

A person under the age of 18 is called a minor, and if a contract is signed with either party, that contract is called invalid or void ab initio.

In the case Mohiri Bibi vs. Dharmodas Ghosh<sup>8</sup>, a minor, Dharmo Das, received 20,000 rupees and mortgaged his home in support of moneylender Brahma Dutt. He paid half and refused to pay the rest. The minor's mother was his legal guardian and sued the moneylender because Dermo Das was a minor at the time the contract was signed and was not obliged to pay money. The Privy Council has made the final decision that the contract with a minor or infant is invalid from the beginning. Plaintiff Dharmo Das was unable to provide such a mortgage.

Therefore, he was not bound by the contractually redeemed promise and cannot force him to repay the prepaid amount. The court found it invalid under Articles 10 and 11.

## **2. Principle of Estoppel :-**

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<sup>7</sup> COURSEHERO.COM (Jan. 13, 2021), <https://www.coursehero.com/file/48128481/MINOR-ICA-1877docx/>.

<sup>8</sup> AIR 1903 ILR 30 Cal 539 (Pc).

Estoppel is a legal rule of evidence which prevents a party from alleging something that contradicts what he previously stated.<sup>9</sup> There is no estoppel against the minors. Section 115 of the Indian Evidence Act of 1872 establishes estoppel. This prevents a minor from later using his minority as a defense if he fraudulently concludes a contract that claims to be major when it isn't. The first requirement is adulthood. The contracting party must be of legal age. You must not be a minor under the age of 18. Therefore, contracts with minors are invalid from the beginning. Void ab initio means it is disabled from the beginning. As a result, this type of contract is of no value from a legal point of view. Minors who pretend to be adults and sign the contract shall not be liable for it. He can call the minority at any time to challenge the contract. Estoppel does not apply to him.

### 3. Doctrine Of Restitution

Section 65 of the Indian Contract Law deals with the principle of compensation. If a contract turns out to be invalid, or if the contract becomes invalid, the person who receives profits under such contract or contract is obliged to return or indemnify it to the person who obtained it. I have. The principle set forth in this section is that if a party enters into a valid contract, some profit is transferred from it, and then the contract is declared invalid, the party receiving the profit of others. Is that you have to return it to the party.

If a minor obtains property or goods at the wrong age, the child may be forced to return them, but only if the goods are owned, this is known as a principle of return increase. If an infant sells or exchanges such merchandise, the contract is invalid and the repayment of the value of the merchandise cannot be requested.

#### EXCEPTION

- If there is no agreement or contract between the parties, the principle of compensation does not apply.

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<sup>9</sup> Minors Capacity Enter Contract, IPLEADERS.IN (Jan. 13, 2021), <https://blog.ipleaders.in/minors-capacityenter-contract/>

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- Section 65 does not apply if the contract is invalid.
- If there is an agreement between an adult and a minor, the principle of compensation does not apply.

## CASE ANALYSIS

### Mohori Bibee vs. Dharmodas Ghose

#### **Facts :-**

Respondent Dharmodas Ghose is a minor in this case. He has sole ownership of the property and his mother was recognized as his legal guardian by the Calcutta High Court. The applicant, Brahma Dutta, was a moneylender company such as Calcutta, and his lawyer was Kedar Nath. On July 20, 1895, a mortgage loan was issued in favor of Brahma Dutta of Dharmodas Ghose. This is a mortgage on Dharmodas' assets to repay 20,000 rupees at 12% interest. At the time of the crime, Dharmodas was a minor by law. Brahma Dutta was absent throughout the deal and was done through his lawyer, Kedar Nath. On July 15, 1895, Kedar Nath received a letter that Dharmodas Ghose was an infant under the age of 21 and that anyone who lent him money did so at his own risk.<sup>10</sup> Kedar Nath denied the fact that he received the letter, but the court ruled that he had received the letter personally. Kedar Nath asked Dharmodas Ghose to sign a long statement stating that he was old on July 17th and that money would be lent out under his promise.

Dharmodas Ghose's mother filed a proceeding against Brahma Dutta on September 10, 1895, and Dharmodas Ghose was a toddler on the day the mortgage was made and the entire transaction must be considered invalid. Said. The court of first instance investigated the facts of the case and granted the required legal protection. The Court of Appeals dismissed the appeal, Brahma Dutta died shortly thereafter, and Brahma Dutta's legitimate executioner appealed to the Privy Council.

#### **Issue :-**

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<sup>10</sup> Mohori Bibee v Dharmodas Ghose MANU/PR/0033/1903

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1. Is the deed void under sections 2, 10[5], and 11[6] of the Indian Contract Act, 1872?
2. Is the defendant obligated to repay the amount of the loan he obtained under such a deed or mortgage, or not?
3. Is the mortgage that the defendant started voidable or not?

**Judgment :-**

1. According to the Trial Court's decision, the mortgage deed or contract entered into between the plaintiff and the defendant was void because it was executed by a person who was a baby at the time of the mortgage's execution.
2. Brahma Dutta filed an appeal at the Calcutta High Court after being dissatisfied with the Trial Court's decision.
3. According to the Calcutta High Court's ruling, they concurred with the verdict of the Trial Court and dismissed Brahma Dutta's appeal.<sup>11</sup>
4. Then he appealed to the Privy Council to appeal, and the Privy Council also dismissed Brahma Dutta's appeal, holding that a contract between a minor and a major person cannot be sought.
5. The Council's final ruling was as follows :-
  - 5.1 Any contract sought with a juvenile or infant is void/ void ab-initio (void from beginning).
  - 5.2 Because the minor was unable to create such a mortgage, the contract made or started by him or her is void and unenforceable in the eyes of the law.
  - 5.3 Because he was not bound by the pledge that was executed in a contract, the minor, Dahrmodas Gosh, cannot be forced to return the money that was advanced to him.

**Opinion :-**

The Privy Council in this case strictly stated that all agreements with minors were invalid from the point of view of the ab initio of the law, that is, void ab initio. Since then, this rule has been

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<sup>11</sup> Ibid note 9

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followed in India. Indian adult law defines those who have reached the legal age, that is, everyone who lives on top of India.

According to my understanding, this is one of the best rules laid down by courts that any agreement by a minor should be void ab-initio. This opinion that a minor or infant cannot give free consent to an agreement is correct as they could not give their free consent as an ordinary man would do and also according to law the minor is not capable to understand the nature of an agreement, and which is right as well. The agreements with minor must be stopped as they sometimes create a wrong image in society and is also harmful to society, and any person who comes into an agreement with minor must be punished with imprisonment or must be fined or both, so that agreement with a minor be stopped except to agreement where minor is getting the necessities for another party reason being that when a minor is a party to an agreement, major can dominate or influence the consent of minor and that led to the violation of an important condition of a contract i.e., free consent.

#### **CONCLUSION :-**

In the landmark judgment *Mohiri Bibee vs Dharmodas Ghose*, at the end it concluded that any agreement or deed in which a minor is a party to it or is included in such a contract in any way shall be considered null and void since such an agreement is not an agreement in the eyes of the law. Any arrangement made with a child cannot be used against them. In circumstances involving children, parents or custodians are not liable for the deals carried out by the minor without their approval or knowledge, and hence are not obligated to restore the money obtained by the minor due to moral obligations. However, when a minor or a child acts with the consent of his or her parents or caretakers, parents and guardians will be obliged to reimburse the money. If a kid makes a profit as a result of the void contact, he or she cannot be made to pay it back or compensate for it.

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