

## MOHORI BIBEE V DHARMODAS GHOSE

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### INTRODUCTION

On a daily basis, all of us enter into contracts- knowingly or unknowingly - but are all of them legally binding? For instance, if person A's father promises to buy him a bike if he gets a good score in his examination, is he legally obliged to fulfil this promise? To answer this question, this is when the Indian Contract Act, 1872 comes into the picture. This Act contains all the laws dealing with contracts in India. It was passed by the Third Indian Law Commission and is based on the principles of the English Common Law. It is essentially concerned with the circumstances in which promises made by the parties shall be legally binding on them.<sup>1</sup>

The Contract Act, being an essential part of Law, has witnessed many landmark judgements dealing with its several complexities, a very important one being Mohori Bibee v/s Dharmodas Ghose. The aforementioned case covers the ambit of entering into a contract with minors. (a person of either sex who is below the age of 18)<sup>2</sup> It makes a clear distinction between contracts entered into by adults and those entered into by minors. This mainly stems from the belief that minors are incapable of making major decisions, which require logical thinking and reasoning.

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### FACTS OF THE CASE

The plaintiff, Dharmodas Ghose, was a minor, and the sole owner of his immovable property, while his mother was authorised to act as his legal guardian by the Calcutta High Court.<sup>3</sup> On 20th July 1895, he mortgaged his property in favour of Brahma Dutt, the defendant, who was a moneylender, to secure a loan of Rs. 20,000 at an interest rate of 12% per annum. However, the actual amount of loan given was less than Rs. 20,000. At the time of the transaction, Kedar Nath (the attorney), who acted on behalf of the Brahma Dutt, was aware that the plaintiff was a minor. To add on, the plaintiff's mother made the defendant aware of the minority of her son

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<sup>1</sup> Shraddha Agarwal, 'Mohori Bibee v. Dharmodas Ghose' (Lawctopus, 22 October 2015) <[Mohori Bibee v. Dharmodas Ghose - Academike \(lawctopus.com\)](#)>

<sup>2</sup> Majority Act, 1875

and also stated that the money lent would be at the risk lender's risk, on the date on which such mortgage deed was started.<sup>3</sup>

The plaintiff sued the defendant, stating that he was a minor when the mortgage was executed by him, thereby making the mortgage void. Thus, he asked for such a contract to be revoked.

By the time of appeal to the Privy Council, Dharmodas Ghose, the defendant, had passed away, causing the petition to be indicted by his executors.<sup>3</sup>

The Defendant, amongst other points, contended that the plaintiff had fraudulently misrepresented his age, due to which no relief should be given to him, and that, if the mortgage is cancelled, as requested by the plaintiff, the plaintiff should be asked to repay the sum of money already advanced to him.<sup>1</sup>

## LEGAL ISSUES

The following legal issues were raised:

1. Whether the deed was void or not under Section 2, 10[5], 11[6], of the Indian Contract Act, 1872.<sup>3</sup>
2. Whether the defendant was liable to return the amount of loan which he had received under such deed or mortgage or not.<sup>3</sup>
3. Whether the mortgage commenced by the defendant was voidable or not.<sup>3</sup>

## LEGAL PRINCIPLES INVOLVED

**Section 2<sup>4</sup>** defines acceptance as the signification of assent to a proposal.

**Section 10<sup>5</sup>** emphasises how 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.

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<sup>3</sup> Simran, 'Case Analysis- Mohori Bibee v/s Dharmodas Ghose' (Legal Service India) <[Case Analysis-Mohori Bibee v/s dharmodas Ghose \(legalserviceindia.com\)](http://legalserviceindia.com)>

<sup>4</sup> Indian Contract Act 1872, s 2

<sup>5</sup> Indian Contract Act 1872, s 10

**Section 11<sup>6</sup>** states that for a person to be capable of entering into a contract, they should have attained the age of majority, be of sound mind, and not otherwise be disqualified from contracting by law. However, this does not specify whether a minor's contract is void or voidable at the minor's option.<sup>8</sup>

### **OBSERVATIONS MADE BY THE COURT**

At first, when the case was taken to the Trial Court, it was held that the contract itself was void since the plaintiff was a minor at the time of the contract. Disappointed with the appeal, the defendant filed an appeal at the Calcutta High Court, which concluded with the High Court reaffirming the decision of the Trial Court, thereby dismissing the appeal altogether. The defendant then went to the Privy Council, which upheld the decision of the lower court and held that since the respondent, Dharmodas Ghose, was a minor during the execution of the mortgage deed, the contract was void and no relief could be sought by the appellants since they were aware of the minority of the respondent.<sup>7</sup> Further, the Privy Council declared that the contract was 'void ab initio' or void from the very beginning, as the plaintiff's minority made him incompetent to enter into a contract (under 11[2] of the Indian Contract Act, 1872). As a result, the plaintiff could not be compelled to return the loan money received under the mortgage.<sup>8</sup>

### **ANALYSIS AND SIGNIFICANCE**

The landmark judgement 'Mohori Bibee v Dharmodas Ghose' has played a significant role as a stepping stone for laws dealing with minors entering into a contract and has also established a well-thought-out framework for contracts involving minors. As a result, it is often a precedent for cases dealing with contracts with minors. Earlier, there was no clarity as to whether contracts entered into with minors were void or voidable.<sup>1</sup> This landmark judgement, however, made it clear that contracts entered into with minors were void.<sup>1</sup> This judgement supports the premise that minors do not possess the maturity or the ability to make major decisions after thinking of all the possible repercussions and consequences, thus declaring them to be incapable of entering into a contract. In other words, it has asserted that any agreement with a

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<sup>6</sup> Indian Contract Act 1872, s 11

<sup>7</sup> Zara Suhail Ahmed, 'Mohori Bibee v Dharmodas Ghose- Case Analysis' (Law Corner, 4 April 2022) <[Mohori Bibee v Dharmodas Ghose – Case Analysis - Law Corner](#)>

<sup>8</sup> Tejas Pardeshi, 'Landmark Judgements on Contract with Minors' (iPleaders, 19 July 2021) <[Landmark judgments on contract with a minor - iPleaders](#)>

minor is 'void ab initio' or void from the very beginning, due to which it cannot be administered against them. To add on, it also highlighted how parents or guardians of minors shall not be liable where the minor enters into a contract without their consent or knowledge. Therefore, they will not be liable to return the amount taken by the minor only due to moral obligations.<sup>3</sup> However, when the same is done with the consent of their parents or guardians, they are liable to repay the whole amount involved. Finally, this judgement also made it clear that in case any minor has obtained any profit from the void contract he/she cannot be forced to pay compensation for it or make a reimbursement.<sup>3</sup> However, I believe, we must maintain a tab on the minors who have entered into a contract and thereby profited. This will ensure that they do not enter into such contracts repeatedly, and consequently take the law of the land for granted.

In the current scenario, an exception has been made to the rule derived from section 11 of the Indian Contract Act, 1875 which allows minors to enter into a contract of 'necessity'. In simple words, this means that a minor is allowed to enter into any contract with another party that is meant for his/her benefit and is a necessity. As the main aim of the court is to protect the interests of minors, the laws have been interpreted in such a manner as to allow for the enforcement of contracts that are beneficial to, and necessary for the minor.<sup>9</sup> Thus, these contracts can be administered against them, despite the fact that they are a minor.

## CONCLUSION

To conclude, the Mohori Bibee v Dharmodas Ghose judgement has emphasised how any agreement or deed to which a minor is a party, cannot amount to a legal contract and shall be declared void ab initio or 'void from the very beginning' because such an agreement is not valid in the eyes of law.<sup>3</sup> Thus, by doing so, the Indian Contract Act, of 1872, not only safeguards minors, who are incapable of giving their assent or making a legal offer, from the repercussions of the contract they are entering into, but also protects minors from the doctrine of promissory estoppel. Through this landmark judgement, we can also get a glimpse into how the laws of our country consider every intricate complexity, thereby protecting the citizens of India.

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<sup>9</sup> Ritwik Tyagi, 'Minor Agreements' (Law Column, 9 May 2020) <[MINOR AGREEMENTS | Law column](#)>