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# **UNDERSTANDING THE LEGAL INCOMPETENCE OF MINORS IN CONTRACTS: A CRITICAL REVIEW**

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## **Abstract**

Minors are protected and kept safe by law when it comes to their capacity to contract. This article will analyse critically the minor's capacity to contract. First things to be explained will be the very basic questions like who is a minor basically, what is the capacity to contract under Indian as well as English Law etc. It will look through various sections in Indian Contract Act, 1872 which deal with it. Short brief about Minor as a Shareholder, a Partner and as a transferee will follow. Briefly study the various judicial interpretations interlinked with it. It will also include comparing and analysing minors' capacity to contract under the Indian Law and the English Law. The vast majority of people feel they are capable of entering into a contract. People who are under the age of 18, inebriated, or mentally sick have a variety of options after signing a contract. They have the option to disaffirm the contract, indicating that they do not wish to be bound by it. This may be done in a number of ways, including actively and audibly. Ratification, on the other hand, expresses their desire to be bound by the terms of the contract. This can be accomplished in a variety of ways, both active and passive. Ratification will triumph against disaffirmation. The courts will not allow someone to terminate a contract from which they have already benefited significantly. Because they have already benefited from the contract and are bound by it, the court considers this proof of acceptance. That is the very reason it is important for one to know who is in capacity to enter into a contract and the need to analyse the minor's capacity to enter into a contract or not.

## **Keywords:**

English Law, Contract, Indian Law, Minor

## **Introduction**

According to Section 10 for enforceability of an agreement, it is necessary that parties must be competent to contract. Section 11 provides who are competent to contract. It says that every

person is competent to contract who is -

- a) Major
- b) Of sound mind
- c) Not disqualified from contracting by law.

The principle behind this provision is that the parties must be mature enough to assess the impact of contractual obligation so that they are in a position to protect their interest. Sometimes the parties are also exploited at the hands of others owing to immaturity or incompetency. Such kind of situations are sought to be prevented by this provision. The law tends to protect the interest of weaker sections of the society; therefore, the policy of law is to discourage incompetent persons from entering into contractual obligations.

According to Indian Majority Act, 1875 a minor is a person who has not completed the age of 18 years. According to Section 11, minors are not incompetent to contract. However, neither Section 10 nor Section 11 makes it clear whether the agreement would be void or contract would be voidable. In other words, what will be the nature of minor's agreement is not mentioned in the Act.

### **Nature of Minor's Agreement**

**Position in English law:** Under English law minor is agreement is generally considered a voidable contract. It is voidable at the option of the minor. However, under Infants Relief Act, 1874 following categories of agreement with minor are declared void:-

1. Agreement for repayment of money lent or to be lent.
2. Agreement for goods supplied or to be supplied, other than necessities.
3. Agreement for account stated.

**Position in India:** There was a controversy in India whether the minor's agreement is void or contract voidable. Privy Council in *Mohori Bibee v. Dharmodas Ghose*<sup>1</sup> resolved the controversy. In this case, Brahma Dutt, who as a mahajan, carried out business of money lending through his agent. Dharmodas Ghose approached the agent of mahajan for a loan. He was minor and represented himself to be major. Agent was aware that Dharmodas Ghose was minor. Loan agreement was made between mahajan and minor through agent. Mahajan made

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<sup>1</sup> Mohori Bibee V Dharmodas Ghose ILR (1903) 30Cal 539 (PC)

the part payment of certain sum of money and minor mortgaged his two properties. Dharmodas' mother filed a suit for cancellation of mortgage on the ground that he was minor. Mahajan raised the following contentions:

1. Minor's agreement is a voidable contract and not void agreement.
2. Principle of estoppel should have been applied and the minor should be estopped from denying the fact of his majority.
3. If, mortgage deed could not be enforced, the minor should return the benefit he has received under Section 64 of the Act.
4. Restitution against minor should be allowed in light of Section 65 of the Act.

**Observations of the court:** The court held that minor's agreement is not a voidable contract. It is an agreement void ab initio. Court held that according to Section 11 it is essential that all contracting parties should be competent to contract and it is expressly provided that person who is not of age of majority cannot make a contract. The court further held that the question whether the contract is voidable presupposes the existence of contract. There is no contract at the first instance so there is no question of it being voidable. Therefore, now the law is settled that minor's agreement is void ab initio.

The court made various other observations for different contentions raised by mahajan. We will discuss each issue separately under the below mentioned headings.

### **I. Estoppel against Minor**

On the question of principle of estoppels, the court held that this principle is not applicable in the facts of this case because the agent of the mahajan knew the fact that the person was minor. According to the concept of agency, knowledge to agent means knowledge to principal. Hence, there was no question of misrepresentation in this case *Mohroi Bibee Vs Dharmada's Ghosh*<sup>2</sup> Regarding applicability of estoppel in case of minor's agreement apart from facts of Mohori Bibee's case it can be said that doctrine of estoppel is not applicable in case of minor's agreement. It is a settled principle that estoppel does not operate against law. In simple words, the question is if the minor represents himself as major and enters into an agreement and other party believes the statement and changes the position whether minor is estopped from denying his statement or will he be bound by his statement. If the principle of estoppel will apply then

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<sup>2</sup> Mohori Bibee V Dharmodas Ghose ILR (1903) 30Cal 539 (PC)

the minor will be estopped from denying his representation it means the agreement will be held to be valid. This will go against the settled provisions of law that minor's agreement is void. Therefore, court in *Gadigeppa Bhimappa Meti v. Balangowda Bhimangowda*<sup>3</sup> and held that if the infant represents fraudulently or otherwise that he is major and induces other to enter into a contract with him then the infant is not estopped from setting up the plea of infancy.

## II. Ratification of minor's agreement

If agreement is made by a person when he is minor, can he ratify the agreement after attaining majority? The principle of ratification is not applicable in case of minor's agreement. It is because ratification has retrospective effect. Once the ratification is allowed, it will be deemed to be effective from the date of agreement and not from the date of ratification. Hence, what cannot be done directly cannot be done indirectly.

## III. Doctrine of restitution

When a minor enters into an agreement with another and receives certain benefits out of the agreement then the question is whether the minor is liable to return the benefit? In other words, can there be restitution against the minor?

**Position in English law:** Leading case on this point in English law is *Leslie (R) Ltd. v. Sheill*

<sup>4</sup>In this case a minor borrowed certain sum of money and did not return. Creditor filed a suit for return of money. In this case, court made a distinction between repayment-of-debt-and restitution of money. Court held that if the debt is repaid it will not be restitution. It will amount to enforcement of contract. Court-remarked that 'restitution stops where repayment begins'.

The court laid down following proposition of law in case of restitution against minors:

1. If the benefit received by minor is property, restitution is allowed provided that property is traceable.
2. If the benefit received is money, restitution against minor is not allowed. If the minor has converted the property into money, then also restitution is not allowed.

**Position in Indian law:** The question of restitution was first discussed in Mohori Bibee's case. It was argued in this case that if, mortgage deed could not be enforced, the minor should return

<sup>3</sup> Gadigeppa Bhimappa Meti V Balangowda Bhiman Gowda, AIR 1931 Bom. 561

<sup>4</sup> Leslie Ltd. V Sheill (1914)3 K.B. 607

the benefit he has received under Section 64 or 65 of the Act. The court held that restitution cannot be granted under Section 64 of the Act because Section 64 is applicable when the contract is voidable. In minor's case, the agreement is void ab initio. Regarding Section 65 the court held that this section is applicable when 'contract becomes void'. There is no question of 'contract becoming void' because in first case there is no contract in case of minor i.e. the contract does not become void, it is agreement that is void ab initio.

Lastly, the party relied on Section 41 of the Specific Relief Act, 1877 (old Act). It provided that if the plaintiff seeks remedy of cancellation of document then if he has received any benefit under the document that benefit has to be returned. This rule is based on equity. Here, it is important to note that the court did not go into the question of restitution under Specific Relief Act. The court at the outset held that the intention of mahajan was mala fide and the conduct was inequitable. Since this provision is based on equity 'he who seeks equity must do equity' the mahajan was not entitled to restitution. Therefore, the court did not go

There were several conflicting judgments regarding the scope of doctrine of restitution in India. In *Khan Gul v. Lakha Singh*<sup>5</sup> Justice Shadilal held that principle given under *Leslie (R) Ltd. v. Sheill*<sup>6</sup> is not applicable in India. The court held that doctrine of restitution is based on the doctrine of unjust enrichment. Nobody should be allowed to unjustly enrich himself at the cost of other. Restitution must be granted against minor to avoid unjust enrichment. The benefit received by the minor, whether property or money, should be returned under the provisions of Indian law. Therefore, the distinction made in English law regarding money and property was not accepted by court in *Khan Gul's case*. Finally, this view was given legislative recognition in form of Section 33 of Specific Relief Act, 1963.

### **Beneficial Contracts**

The proposition that minor's agreement is void ab initio is generally limited to those cases where the minor is charged with obligation and other party seeks to enforce the obligation against the minor. Court in *A.T. Raghava Chariar v. O.M. Srinivasa Raghava Chariar*<sup>7</sup> observed that provision which renders minors incompetent to bind themselves by contract was enacted for their protection. The law will not enforce the contractual obligation against minor.

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<sup>5</sup> *Khangul V Lakha Singh* AIR 1928 Lah 609

<sup>6</sup> *Leslie Ltd. V Sheill* (1914)3 K.B. 607

<sup>7</sup> *A.T. Raghava Chariar V O.M. Srinivasa Raghava Chariar*, ILR (1916) 40 Mad. 308

Minor is allowed to enforce a contract which is of benefit to him and under which he is required to bear no obligation. On the same principle court in *Thakar Das v. Pulli*, AIR 1924 Lah 611 held that minor is capable of purchasing immovable property and he may sue to recover possession of the property purchased upon tender of the purchase money.

These cases are confined to those matters in which minor is not charged with any obligation. Minor has already done his or her part of obligation and there is nothing remaining to be done by the minor. However, where consideration is still to be supplied by the minor the principle of *Mohori Bibee's* case will be applicable. In *Raj Rani v. Prem Adib*<sup>8</sup>, the plaintiff who was minor was allotted a role in a film by a film producer. The agreement was made with her father. The producer subsequently allotted the role to another artist. The court held that neither she nor her father could have sued on the promise. If it was an agreement with plaintiff, it was void because she was minor and if it was agreement with her father then it was void for lack of consideration.

Under English law, minors can be held liable under the contract of service or apprenticeship. These contracts are treated at par with supply of necessaries under English law. In *Roberts v. Gray*<sup>9</sup>, the defendant, an infant, agreed to join plaintiff, a noted billiards player, to join him in a billiards tour. Plaintiff spent expenditure in making arrangements for billiards matches but defendant repudiated the contract. The plaintiff was successful in recovering the damages for breach of contract. The court held that it was contract of service which was necessary for the training purposes of defendant. Under Indian law contracts of apprenticeship are governed by Indian Apprentices Act, 1850. It provides for contracts in the nature of contract of service which are beneficial for minors. Under the Act, the contract is made by the guardian on behalf of the minor.

### Conclusion

The law relating to a minor's capacity to contract is firmly settled in India through judicial precedents and statutory provisions. Section 11 of the Indian Contract Act, 1872 categorically excludes minors from the category of persons competent to contract, and the landmark judgment in *Mohori Bibee v. Dharmodas Ghose* laid down the binding principle that a minor's

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<sup>8</sup> Raj Rani V Prem Adib, AIR 1949 All 211

<sup>9</sup> Roberts V Gray (1913) 1 KB 520

agreement is void ab initio. This position ensures that minors are protected from exploitation due to immaturity or lack of judgment. The doctrines of estoppel and ratification are inapplicable to such agreements, as enforcing them would contradict the protective intent of the law.

However, Indian courts have also recognized certain exceptions where contracts that are solely for the benefit of a minor may be enforceable by the minor, reflecting the law's equitable approach. The doctrine of restitution, though limited in *Mohori Bibee*, has evolved under Indian jurisprudence to prevent unjust enrichment, and now finds place in Section 33 of the Specific Relief Act, 1963. Thus, while the general rule is that a minor cannot bind themselves to a contract, Indian law allows some flexibility where justice, equity, and the minor's welfare demand it.

