

CAPACITY TO CONTRACT*

* Mushtaq Ahmad, Law/DDE, University of Kashmir.

1. **INTRODUCTION TO MINOR'S AGREEMENT**

In the Law of Contract, persons below the age of majority were formerly called infants. There are now more generally called minors. The Indian Majority Act was amended in 1999 and the age of majority is now 18 in all cases even if the guardian for minor's person or property has been appointed by the Court. But the question whether persons under 18 years are bound by contracts can still arise today e.g. in cases of "contracts for the benefit of minors" or "necessaries" supplied to minor (goods or services). Legal problems can also arise where a claim is made by the minor against the other party, either to enforce the contract or to reclaim money or property the minor has parted with. If minor's agreement is void from the very inception (*void ab initio*), no suit can lie against him, nor can the minor ratify it on attaining majority. The law on this subject is based on two principles:

1. *The first and more important is that the "law must protect the minor against his inexperience, ignorance and immaturity which may enable an adult to take unfair advantage of him or to induce him to enter into a contract."*
2. *The 2nd principle is that the "law should not cause unnecessary hardship to adults who deal fairly with minors." (e.g; in case of supply of necessaries, beneficial agreements etc)*

One of the essential requirements of a valid contract under section 10 is that the parties must be competent to contract.

"All agreements are contracts if they are made by the free consent of the parties competent to contract, for lawful consideration and with a lawful object, and are not expressly declared to be void".(S.10)

Section 11 describes the persons who are competent to contract. It provides:

"Every person is competent to contract who is of age majority according to 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".

According to section 11 following persons are **competent to contract**:

- (1) Who is of age of majority?
- (2) Who is of sound mind?
- (3) Who is not disqualified from contracting according to the Law to which he is subject?

Conversely, it is clear from section 11 that the following persons are **incompetent to contract**:

1. **Minors**;
2. Persons of **unsound mind**; and
3. Persons **disqualified by law** -from contracting.

The age of majority: Earlier it was 21 years when a guardian to person or property of minor was appointed, now a minor becomes a major when he is of 18 years, in all cases. The reason of age limit of 21 years was that where disputes arise as to the management of properties of a minor, a court would like to safeguard the property till the minor attains the age of 21 years. This inconvenience has been removed by 1999 Amendment and now in all cases the age of majority is 18 years.

Law to which he is subject: The capacity to enter into agreements depends upon the law of the place where the contracting party is domiciled. But there is a tendency not to accept this law of domicile.

Disqualified by Law: Some persons can be disqualified by law of the land from entering into such agreements by issuing a notification to that effect e.g. persons or firms or companies blacklisted by government, countries at war, enemies of country, etc.

Explaining the extent of section 11, which deals with persons who are competent to contract, the Gujrat High Court in *Shantimiketan Co-op Housing Society LTD v. District Registrar Co-op Societies (AIR 2002 Guj.428)* held that there is no prohibition under section 11 of the Indian Contract Act for a foreign citizen to become a party to a contract. Section 11 requires that parties to a contract must be of the age of majority according to law to which they are subject and should not be disqualified from contracting.

2. **NATURE OF MINOR'S AGREEMENT:**

Section 11 clearly provides that a minor is not competent to enter into a contract. Is he absolutely incompetent or is he absolved only from the liability of the contract? If minor's agreement is void, no suit can lie against him. Nor can the minor ratify it on attaining majority. Section 11 of I.C. Act is silent about the nature of the minor's agreement. And it is not clear whether it is void or simply voidable. There was great controversy in this connection among the Indian High Courts upto 1903 and the the Privy Council finally resolved the controversy by declaring **that the combined effect of Section 10 and 11 is to make the minor's agreement void.** This was held by the Privy Council in *Mohori Bibi v. Dharmdas Ghosh. [(1903 301 A 114)]*. The Privy Council held that the minor's agreement is void and not merely voidable on the basis of Section 10&11 of Indian Contract act. A minor's agreement is *void ab-initio*.

Example: A, a minor sold a shop to B, the consideration was paid to A, but the sale-deed could not be registered as A was a minor. On a suit by B it was held that as A was minor, the contract was void and amount of consideration was not recoverable.

Under English Law all contracts entered by the minor are not void, some are voidable while others are absolutely void. There minors are protected by Infant Relief Act, which renders contracts, by Infants:

- i) **Valid** if for necessities or for Infants benefit;
- ii) **Void**, if for goods supplied to minor(not for _Necessaries) or money paid by cash.

a) **Fraudulent Misrepresentation by Minor:**

In *Mohori Bibi v. Dharmdas Ghosh 1903 30 Cal. 539*: Plaintiff, a minor, mortgaged his house in favour of the defendants, a money lender, to secure a loan of Rs. 20, 000/- A part of the amount was actually advanced, to him, while considering the proposed advanced, the attorney who was representing the money lender received the information that plaintiff was still a minor. Subsequently it was the minor who commenced his action stating that he was under age when he executed the mortgage and the same, therefore, should be cancelled.The Privy Council held that the court will not compel restitution by a minor even when he is plaintiff, where the other party was aware of the infancy so that he was not deceived or where the other party has been in scrupulous in his dealing with minor.

The court was of the opinion that under its discretionary powers it could order restitution against and by the minor, but the court did not order it in the present case because appellants had advanced loans to the minor while knowing that he was a minor, *therefore minor is not liable as the nature of agreement was void from the very inception (void abinitio)*.

In England some of the minor's contracts are merely voidable, where as others are absolutely void. But in India, minor's agreement is void *ab-initio*(*Mohori Bibi case*). **The ruling of the Privy Council in**

Mohori Bibi Case was generally followed by the courts in India and applied both to the advantage and disadvantage of minors. In *Raja Rami v. Prem Adib* (AIR 1949 Bom. 215), A film producer entered into an agreement with a minor girl to act in a film and the same agreement was entered into by the father of the minor on her behalf with the producer, when the producer failed to keep up with the commitments. The minor sued the producer through her father. The court said that agreement is void, as one of the parties to a contract is minor. The consideration moving from the father was the girls' promise to act and as the girl was not legally competent to promise, there was no consideration at all. Hence contract between producer and girl's father is void.

b) Contract for the Benefit of Minor-Valid:

However, In its subsequent pronouncement in *Subramanyam v. Subba Rao* (AIR 1948 PC 25), the **Privy Council** overruled earlier decisions and entertained no doubt that “*it was within the powers of the mother of a minor as guardian to enter into a contract of sale for the purpose of discharging his father's debts*” In the instant case (Subba Rao) in order to pay off the promissory note and the mortgage debt of his father, the minor son and his mother sold a piece of land to the holder of promissory note (mortgagee) and paid the mortgagee accordingly. The possession of land was given over to him. Afterwards the minor brought an action to recover back the possession of land sold to the promissory note holder/ mortgagee. The P.C held:

“It was found as a fact that the transaction was for the benefit of the minor and the guardian had the capacity to contract on his behalf.... Section 11 and Mohori Bibi case leave no doubt that a minor cannot contract and that if the mother as guardian had taken no part in this transaction, it would have been void. The contract being for the benefit of the minor was held to be binding upon him.”

Following this decision the Orissa High Court held that the endowment of property for religious purposes by guardians on behalf of minors, being within their competence, was specifically enforceable (*Durga Thakurani v. Chintamani*, AIR 1982 Ori. 158). In *C I T v. Hukumchand & Co.* (AIR 1971 SC 383), the properties belonging to certain minors were contracted to be sold, to raise money for their marriages. The Supreme Court held that “*it was within the power of the manager of a family to contract on behalf of the family including minor members. The court held agreement valid and allowed the specific performance of contract*”.

S.C ruling on gift of property to minors: (The Times of India Jan.2004): In 1945, one Devyani of Mayyanad Charry in Kerala executed a registered gift deed in favour of her 16-year-old son and minor daughter giving them one half of the land property inherited by her from her father. However in 1970, she executed a cancellation deed nullifying the gift-deed of 1945 and thereafter executed a will bequeathing the property to her daughter. The son filed suit against this ‘will’ in favour of daughter only excluding son. The trial court had dismissed the suit filed by the son, K Balakrishnan, claiming title to the property on the ground that the donee (son) was a minor at the time of execution of the gift-deed and no one has accepted the gift on his behalf. Though the District Court took a view contrary to the trial court view, the High Court had upheld the earlier verdict. The Supreme Court has ruled that property gifted to minor children by parents cannot be revoked by them at a later stage on the grounds that the child had not expressly accepted the gift. Settling an 18 year-old litigation between a brother and sister over the property gifted by their mother, a bench comprising *Justices YK Sabharwal and DM Dharmadhikari* said: “*Where a gift is made by a parent to a child, there is presumption of acceptance of the gift by the donee.*”

In today's society it does not seem possible, much less desirable for law to adhere to the categorical declaration that a minor's agreement is always “absolutely Void”. Minors are appearing in public life today more frequently than ever before. A minor has to travel to get his dress tailored or cleaned, to visit cinema

halls and deposit his car, cycle, etc for safe custody at a stand. A minor has to deal with educational institutions and purchase so many things or avail services for the facility of life. If in any one of these cases, the other party to the contract could brush aside the minor on the ground that the agreement is void, the **legal protection** against contractual liability would be too dear to minors (A. Singh, 2018 Ed.). The courts had, therefore, to modify the earlier decisions. The present position, therefore, is the same as laid down by the Privy Council in 1948 in *S. S. Bramanayam case* when it was held that if the **contract is for the benefit of the minor** and within the powers of the guardian, it is binding upon him.

3. **EFFECTS OF MINOR'S AGREEMENT:**

Since a minor's contract is void, a pertinent question arises as to what will happen if a minor misrepresents himself to be major, and induces a person to enter into a contract with him or induces him to lend some money, or mortgaging his property. Since such a contract is void it cannot be enforced. There is a general presumption that since minor's agreement is *void ab initio* (void from inception/beginning), ordinarily should be wholly devoid of all effects. Will it imply that the minor's agreement in such a case cannot be enforced? Will it imply that the minor in such a case retain the money as well as the property or he may be compelled to restore the benefits, which he has derived under the contract? The situations are discussed as under:

a) Restitution:

If a minor obtains some property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. This is called **equitable Doctrine of Restitution**. Under English Law minor may be compelled to restore the goods or property so long as they are traceable and in his possession. Money being generally not traceable, a minor cannot be asked to restore it, because it is very difficult to trace and acknowledge the same notes/coins.

This was held in the well-known English case ***Leslie R, Ltd. v. Sheil (1914) KB 607*** wherein the limits of the restitution were explained. In this case the defendant minor by fraudulently misrepresenting his age, induced the plaintiff to lend him two sums of \$ 200 each. The plaintiff filed the suit to recover \$ 475 being amount of advances with interest. The defendant (minor) on the plea of Infancy resisted this action.

The court dismissed the suit and pointed out that it was necessary to safeguard the weakness of the infants at large, "***even though here and there a juvenile slipped through***". While discussing the suit, **LORD SUMNER** observed:

"When an infant obtained an advantage by falsely stating himself to be of full age, equity required him to restore his ill-gotten gains or to release the party-deceived from obligations, or acts - in law induced by the fraud, but scrupulously stopped short of enforcing against him a contractual obligation entered into while he was an infant even by means of fraud - restitution stops where repayment begins."

Thus rule laid down in *Leslie v. Sheill* was approved by the Privy Council in ***Mohd. Syedol Ariffin v. Y. O. Gark (1916) PC.242***. The court observed:

*A case of fraud by the appellant on this subject on his age was setup, but it cannot be doubted that principle of *Leslie v. Sheill* as applied by Privy Council in *Mohri Bibi case* would apply and such a case would fail.*

But in ***Khan Gul v. Lakha Singh (1928) Lah. 701***, the Lahore High Court had not followed the above decisions and minor was held liable to refund the money to the plaintiff. In this case the minor (defendant) by fraudulently concealing his age contracted to sell a plot of land to the plaintiff. The minor received a

consideration of Rs.17500= and then refused to perform his part of the bargain. The plaintiff brought an action against the minor(defendant) to recover the amount and the court held the minor liable to refund the same.

The only question before the court was “can a minor refuse to perform the contract and at the same time retain the benefit received”. **SHADI LAL C. J.** observed:

“Where a contract of property is void and such property can be traced, the property belongs to promisor and can be followed. There is every equity in his favour for restoring the property, to him. But where the property is not traceable and the only way to grant compensation would be by a money decree against the minor”

The other party deserves to be compensated (in equity) by a fraudulent minor. The restricted view of English Doctrine of Restitution is not applicable in India. The Doctrine rests upon the principle that---an infant cannot be allowed to take advantage of his own wrong...this is not enforcement of contract but restoration of pre-contract position....There is no contract but one of the parties has been unjustly benefitted at the cost of other.”

C.J.Shadi Lal applied the Doctrines of Equity and Restitution ,and held the minor liable to refund instead of performance of agreement.

Latter, Allahabad Full Bench in *Ajodhia Prasad v. Chandan Lal* {AIR, 1937,All, 610 (FB)} refused to follow *C.J Shadilal's* view but instead held that Indian Courts were probably bound by the principle of restitution as explained and restricted by *Lord Sumner in Leslie case*(supra) as it has already been approved by Privy Council in subsequent decisions *Mohd. Syedul case*(supra).

In the instant case, money was borrowed by two minors under mortgage-deed.They were mor than 18 years but less than 21 years of age but fraudulently concealed the fact that guardian had been appointed for them.C, Justice Sulaiman held that minors cannot be held liable, and observed:

“Where the property is not traceable and the only way to grant compensation would be by granting money decree against the minor. Decreeing the claim would be almost tantamount to enforce the minors pecuniary liability under the contract which is void. There is no rule of equity, justice and good conscience which entitle the court to enforce a void contract of minor against him under the cloak of restitution”.

The full bench held that mortgage deed cannot be enforced on any such ground. However, the distinction between the above judgements is too thin to be ignored.

Law Commission, however, favoured the view of *Lord Shadi Lal*, CJ in *Khan Gul v. Lakha Singh*(supra) and the **section 33** of the **new Specific Relief Act, 1963** was amended by incorporating a provision so as to be in line with the Justice Shadi Lal's view.

The net result of the amendments may be stated in two propositions: -

- i) Where a void or voidable contract has been canceled at the instance of the party, the court may repute him to restore such benefits as he has received under the contract and to make compensation to the other party which justice may require.*
- ii) Where a defendant successfully resists any suit on the ground that the contract by reason of being incompetence is void against him, he may be required to restore the benefits, if any, obtained by him under the contract, but only to the extent, which he or his estate has benefited thereby.*

Thus the courts have the discretion to require the minor plaintiff to restore the benefits obtained under a void contract. Thus “where infants under age induce others to purchase property from them, they are liable

in equity to make restitution to the purchasers for the benefit they have obtained before they can recover the possession of the property sold”.{ Jagar Nath v. Lalta Prasad (1908) 21, All, 21 }

→► **Recent Position & Case Law:**

In *Padinhare Veeti v. Pachikaran Balakrishnan* (AIR 2010 ker. 111) the appellant had purchased joint property of the respondent(son) and his mother. The sale deed was executed by the mother on behalf of herself and her minor son. The property was sold for Rs. 6000/-, out of which Rs. 4000/- were immediately paid for meeting the liability of the father of the minor. The remaining amount of Rs. 2000/- was paid at the time the sale deed was executed. This amount was utilized by the mother for purchasing of land on behalf of her minor son and the sale deed executed also made mention of consideration amount of Rs. 2000/-. On attaining the age of majority, the minor filed a suit for setting aside the sale deed in which his mother had sold his property by contending that his father had no liability and there was no necessity to sell the property. He also pleaded that the alienation by his mother was wrongful and injurious to him as it was for a meagre consideration. He expressed ignorance about the property which had been purchased in his name by his mother out of Rs. 2000/- received from the defendant. The lower court set aside the sale deed that was challenged in the present appeal.

Decision of HC in Appeal: The decision of the lower court was reversed by the High Court, court borrowed the opinion expressed in *Chacko v. Sreeja*(1991)1 KLT 191) in which sections 64 and 65 of the Contract Act were invoked. In both these sections, the doctrine of restitution “requires that the party who approaches the court for rescission of the contract which is voidable or void or has become void or is discovered to be void may be asked to restore the "benefit" or "advantage" which that party has received from the defendant and only then the relief sought can be granted”. The High Court adopted an equitable approach by enlarging the scope of the doctrine of restitution in case of a minor's agreement. *The court did not confine the scope of this doctrine to the return of immediate benefits but extended it to those benefits that may indirectly accrue because of the benefits which a minor has received from the major.* The court ruled that the doctrine of restitution demands that the minor should return the land which he has purchased for Rs. 2000/-, an amount which he received as a part of the consideration for the sale of his property which he now wants to rescind. The court further ruled that the return of Rs. 2000/- to major would result into injustice to him as the price of the property over the period of time has increased.

Comments on the above case: This decision is in the right direction and in resonance (tone) with the equitable principle that “one who seeks equity must do equity”. This wide construction to the words "benefit" and "advantage" would deter the minor to blow hot and cold as per his choice and convenience. It may, however, be remembered that the court has invoked sections 64 and 65 of the Contract Act forgetting the fact that the Privy Council had long way back in the celebrated case of *Mohoribibi v. Dharmodas Ghose* (1903 PC) ruled that these two sections were inapplicable to minor's contract as the contract with minor is *void ab initio* and not merely voidable. The court should have taken the help of section 33 of the Specific Relief Act, 1963 to resolve this issue as it is the relevant section on the subject which deals with the doctrine of restitution. Interestingly, the word "benefit" is used in section 33 also. The above broad construction adopted by the court would equally apply to section 33 also.

b. Principal of Estoppel- whether applicable:

If a minor fraudulently misrepresents himself to be of full age and induces another person to lend him some money or to enter into a contract, can he be later on allowed to plead that such a contract is void because of the reason that when he contracted, he was minor or whether in such case Section 115 of the Indian Evidence act will apply. It is now settled by preponderance of the authority that there is no such estoppel against the minor. The infant is not estopped from taking up the defense of infancy/ minority. The

policy of law is to protect the person below age from contractual liability and naturally the Doctrine of Estoppel cannot be used to defeat that policy.

c) Minors/Infant's Liability for Torts:

Though, as a rule, infant is not liable for the contract but he is always liable in Tort. In the words of Lord Mansfield. "The protection of infancy must be used as a shield and not as a sword". Infant or minor is generally no less than an adult in tort, but it must be carefully remembered that when a tort arise out of a contract and the contract is not enforceable against the infant, he cannot be made liable by treating the breach of contract as a tort, unless it can be severed from the contract "You cannot convert a contract into tort to enable you to sue an infant, if it were the power of a plaintiff to convert that, which arises out of contract into tort, there would be an end of protection given to infants by law". In one of the cases *Burnard v. Hughes (1863) 14, C B, 45*, where an infant under-graduate of the Cambridge, hired a mare for riding on the road and inspire of being expressly told that it was not let for jumping or larking nevertheless rode it across the country and fatally injured it by jumping he was held liable. He did an act, which was outside his preview of contract of hiring. It was as such a tort as if he had taken the mare out of the field without any hiring and killed it.

d) Ratification: -

Since the minor's agreement is void, he cannot therefore validate it by ratification after attaining majority for the obvious reasons that ratification relates back to the contract. In an Allahabad case a minor borrowed some money by executing a bond. When he became major he executed a second bond for earlier borrowed money as well as interest on it. The court held that second bond was invalid because it was without consideration.

e) Specific performance of minor's contract:

Since the minor's agreement is wholly void, the question of specific performance on the part of minor of such a agreement will not arise. Even the contract entered by the guardian to bind the minor is void and cannot be specifically enforced by or against the minor. But agreements, which are beneficial to minor, are perfectly valid. A contract may be entered into on behalf of minor by guardian or by manager of the estate. In such o case contract can be specifically enforced by or against the minor in the following circumstances: -

- i) The contract is such that minor or manager is competent to enter into such a contract on behalf of the minor so as to bind the minor.
- ii) The contract is for the benefit of minor.

f) Contracts of Apprenticeship:

Contract of apprenticeship is again a contract, which is beneficial to the minor and thus binds the minor. In England, the contract of service and apprenticeship are put on the same footing as the contracts for necessities. The well-known English case is *Roberts v. Gray (1913) KB, 520*. The facts of the case are: The defendant an infant agreed with the noted billiard player, to join him a billiard-playing tour around the world. The plaintiff spent time and money in making arrangements for billiard matches but the defendant repudiated the contract. The plaintiff succeeded in recovering damages for the breach of contract. The contract was held to be one of the necessities as it was for the infants good, teaching or instructions whereby he would profit himself afterwards. Therefore, contract was valid though entered with minor.

4. LEGAL STATUS OF PERSONS OF UNSOUND MIND & I.C .Act:

Besides an infant, a person of unsound mind is also incompetent to enter in contract. Section 12 of the Act provides as to what is sound mind for the purpose of contracting. It provides:

“A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it, he is capable of understanding it and forming a rational judgement as to its effects upon his interests”.

“A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind”.

“A person who is usually of sound mind but occasionally of unsound mind, may make, a contract when he is of sound mind”.

Thus if a person, at the time of making contract is capable of understanding it and of forming a rational judgement as to its effect upon his interests, he will be declared to be of sound mind. Even a person who is usually of unsound mind, but occasionally of sound mind may contract when he is of sound mind. These provisions are further cleared by the illustrations of Section 12:

- a) A patient in a lunatic asylum, who is at intervals of sound mind, contract during those intervals.
- b) A sane man who is delirious from fever, or who is drunk that he cannot understand the terms of the contract or form a rational judgement as to its effects on his interests cannot contract when such delirious or drunkenness continues.

Under English law, a contract by a person of unsound mind is not void it is simply voidable at his instance, in case the other party know that he was insane while entering into contract. In India, however, an agreement entered by a person of unsound mind is absolutely void in the same way as of a minor.

In *Inder sing v. Parmeshwardhari Singh (AIR 1957 Pat 491)* a property worth about RS.25000 was agreed to be sold by a person for RS.7000 only. His mother proved that he was a congenital idiot, incapable of understanding the transaction and that he mostly wandered about. Holding the sale to be void, SINHA J explained the effect of section 12 in the following words:

“...According to this section, the crucial point, therefore, is to find out whether he is entering into the contract which he has understood and has decided to enter into that contract after forming a rational judgment in regard to his interest...it does not necessarily mean that a man must be suffering from lunacy to disable him from entering into a contract. A person may to all appearances behave in a normal fashion, but, at the same time, he may be incapable of forming a judgment of in own, as to whether the act he is about to do is to his interest or not. In the present case he was incapable of exercising in own Judgment.”

As regards drunkenness, if the man is so drunk that he cannot understand the terms of a contract, or form a rational judgement regarding its effects on his interest the contract into by him in such a state will be void.

Similarly in *J. Ghattacharjee v. S. B. Bora (AIR 1994 Gau 99)*, the person in question filed cases against family members, remained away from home for long periods, transferred family properties to the extent of making the family homeless, the court said that all this was sufficient to indicate that the vendor was not normal and was not mentally sound at the time of sale. The purchaser adduced no evidence that the under was of sound mind.

In *Nilima Gosh v. Harjeet Kaur (AIR 2011 Del. 104)*, the Delhi High Court was called to elucidate combined effect of sections 11 and 12 regarding competence of the parties due to unsoundness. It was laid down that section 11 expressly provides that only a person of sound mind can enter into a contract and it follows from section 12 that unsoundness of mind of a person has to be seen at the time when he enters into a contract and it is immaterial if such a person is usually of unsound mind but occasionally of sound mind or is usually of sound mind but occasionally of unsound mind. ***What is to be seen is whether at the relevant time, the party executing a contract was of sound mind or of unsound mind. The state of mind of the executant at the time of the execution of the contract is critical for determining his capacity to contract. The court rightly did not declare two agreements to sell dated 2 1.02.1985 and 07,09.1987 void on the ground that the***

executant was declared medically unfit on 10.01.1990 and not on the above two dates when he executed these, agreements.

5. **NECESSARIES SUPPLIED TO MINOR, LUNATIC, OR THEIR DEPENDANTS**

According to **section 68** of I.C. Act, “*if a person is incapable entering into a contract, or any one whom he is legally bound to support, is supplied with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person*”.

Illustrations:

- i) A supplies B a lunatic, with necessaries suitable to his conditions of life. A is entitled to be reimbursed from B’s property.
- ii) A supplies the wife and children of B a lunatic, with necessaries suitable to three conditions in life A is entitled to be reimbursed from B’s property.

The liability is only for necessaries, but there is no definition of the term “necessaries” in the Act. Thus, whether the particular goods supplied is a necessary or not will depend upon the facts and the circumstances of each case. As pointed out by Cheshire and Fitoot, “*The word necessaries is not confined to article necessary to the support of life but includes articles and services fit to maintain a particular person in the station of life in which he moves*”.

In *Chappel v.Cooper (1844) 13 M&W 252.j. Alderson,J.* remarked the connotation of the word “necessaries” in the word: “**Things necessary are those without which an individual cannot reasonably exist**”.

Pollock and Mulla have also applied remarked:

“*Necessaries must be things which he minor actually needs; therefore, it is to enough that they be of a kind which a person of his condition may reasonable want for ordinary use, they will not be necessary, if he is already supplied with the things of that kind and it is immaterial whether the other party knows or not. It may be presumed that court in India would follow the English decision on this point, which does not appear to be precisely covered by the language of Section 68. Objects of mere luxury cannot be necessaries, nor can objects, which though of real use, are excessively costly*”.

To render an infant’s estate liable for necessaries, two conditions must be satisfied; namely: (1) the contract must be for goods reasonably necessary for this support in his station in life, and (2) he must not have a already a sufficient supply of these necessaries. The supplier has to prevent only that the goods supplied were suitable to the condition in life of the infant, but that he was not sufficiently supplied with the goods of that class. This is the principle of *Nash v. Inman (1908) 2 K B 1*, where an under-graduate in the Cambridge University, who was amply supplied with proper clothes according to his position, was supplied by the Plaintiff with a number of dresses, including eleven fancy waist coats. The price was held to be not recoverable.

Nature of Liability Theories:

There are two theories relating to the liability of a minor’s estate for necessaries. According to one of the theories, the liability does not depend upon the minor’s consent. It arises because the necessaries have been supplied. An infant like lunatic is in capable of making a contract of purchase in the strict sense of the word.

But if a man satisfies the needs of infant or the lunatic by supplying to him necessaries, the law will impose an obligation to repay him for the services so rendered, and will enforce that obligation against the estate of the minor. The consequence is that basis of the action is hardly contractual. The real foundation is an

obligation is quasi-contractual, which law imposes on the infant to make a fair payment in respect of the needs so satisfied.

6. **CONCLUDING REMARKS - SUMMARY OF IMPORTANT POINTS :**

- “All agreements are contracts if they are made by the free consent of the parties competent to contract, for lawful consideration and with a lawful object, and are not expressly declared to be void”.(sec.10)
- “Every person is competent to contract who is of age majority according to 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”. (Sec. 11)
- The Indian Contract Act makes it essential that a contracting parties should be competent to contract and expressly provides that a person who by reason of infancy/minority cannot make a contract within the meaning of the Act.
- The age of majority(18 years in India) of a contracting party is necessary element for the validity of a contracts.
- Under English law all contracts entered by minor are not void some are voidable. But in India minor’s agreement is as a general rule void.
- The question whether persons under 18 years are bound in cases of beneficial contracts or necessities supplied to minor. The answer is ‘yes’.
- Where a claim is made by a minor against the other party, minor can file suit against the other party where he departs from money or can claim performance of agreement.
- If minor’s agreement is void, no suit can lie against him, nor can the minor ratify it on attaining majority.
- So the rule laid down in *Mohri Bibi case* by the Privy Council was applied by some High Courts to the disadvantage of minors without taking into consideration the rationale behind the law relating to minor’s contracts.
- The ruling of the Privy Council in *Mohori Bibi Case* was generally followed by the courts in India sometimes to the advantage and sometimes to the disadvantage of minors.
- “Where a gift is made by a parent to a child, there is presumption of acceptance of the gift by the donee.”
- Since Minor’s agreement is void *abinitio*, ordinarily should be wholly devoid of all effects.
- Present rule under Specific Relief Act, 1963 is that “where an infant obtained an advantage his age equity requires that he should restore his ill-gotten gains”.
- A mortgage deed was executed by defendant in favour of plaintiff. The dependants pleaded that they were minors at the time of execution of mortgage deed , held ***agreement is void.***
- The Doctrine of Estoppel cannot be applied to defeat the policy of law viz protection to the minor.
- Minor cannot ratify an agreement after attains the age of majority. There must be some new consideration to minor.
- Since minor’s contract is void, no specific performance can take place. However, agreement in favour of minor absolutely valid.
- If contract is entered by legally appointed guardian of a minor on behalf of and for the benefit of minor, ***the contract is valid if it is beneficial to minor.***
- Where necessary supplied to minor, the contract is enforceable. The person who supplies the necessities is entitled to reimbursement from the minor’s estate, but minor is not personally liable.
- In India, however, a agreement entered by a person of unsound mind is absolutely void in the same way as agreement entered into by a minor.
- Since minor’s contract is void, no specific performance can take place. However, agreement in favour of minor can bespecifically performed being a beneficial agreement. **The ruling of the Privy Council in *Mohori Bibi Case* was generally followed by the courts in India and applied both to the advantage and disadvantage of minors.** However, In its subsequent pronouncement in *Subramanyam v. Subba Rao (AIR 1948 PC 25)*, the Privy Council overruled earlier decisions and entertained no doubt that it

was within the powers of the mother of a minor as guardian to enter into a contract of Sale for the purpose of discharging his father's debts. But still limited protection is available to minors if the unscrupulous persons intend to deceive minors. The court will not compel restitution by a minor even when he is plaintiff, where the other party was aware of the infancy so that he was not deceived or where the other party has been in scrupulous in his dealing with minor. **On the other hand minors should not use minority as a sword but as a shield.**

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