CHAPTER-3

THE POSITION UNDER THE INDIAN LAW- SECTIONS 68 & 69

It is worth mentioning that quasi contract is generally said as an assumed contract or a contract implied in law. It arises as quasi ex contractu. The term quasi contract does not figure in the Indian Contract Act, 1872. The Act deals with the term ‘agreement’ under its S. 2(e), the term ‘contract’ under S. 2(h), the term ‘void agreement’ under S. 2(g), the term ‘void contract’ under S. 2(j) and the term ‘voidable contract’ under S. 2(i). But the term ‘quasi contract’ does not figure in any of Sections of the Indian Contract Act. Nevertheless, it is to be noted that provisions ensconced under Sections 68 to 72 of Chap. V of the Act obviously, manifest theoretically the idea of quasi contract though practically the term quasi contract has not been mentioned in this chapter. These Sections deal with such relations which resemble those created by contract. That is to say, when provisions of Sections 68 to 72 of the Indian Contract Act, 1872 are examined with the minute approach, we find that these are putting emphasis on such relations or obligations which are just like those relations created by a contract. Thus, in one way or another, provisions of these sections can be said to deal with five kinds of quasi contracts separately.

Keeping in view the convenience, the study of the aforementioned sections has been categorised in two Chapters. Provisions of Sections 68 and 69 of the Act have been examined in
Chapter 3 and provisions of Sections 70, 71 and 72 have been examined in Chapter 4 of the thesis. It is therefore, submitted that we endeavour to discuss only the provisions of Sections 68 and 69 of the Act in this Chapter of the thesis.

3.1 SECTION 68 OF THE ACT (CLAIM FOR NECESSARIES SUPPLIED) -

Section 68 of the Indian Contract Act, 1872 deals with the principle of law which supports a person to seek reimbursement for necessaries supplied by him to a person incapable of entering into a contract or to persons to whom such incapable person is legally bound to supply necessaries. It is pertinent to mention that this Section does not apply where necessaries are supplied to a person who is competent to contract. For instance, in Kanhayalal Bisandayal Bhivapurkar v. Indarchand ji Hamirmal ji Sisodia1 it was held that S. 68 of the Indian Contract Act, 1872 will not apply where necessaries have been supplied to someone, who as a person competent to contract is bound to support. Such person cannot seek reimbursement under this Section.

It is to be noted that S. 68 of the Indian Contract Act, 1872 runs as under:

“If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.”

1 A.I.R. 1947 Nag. 84.
S. 68 of the Act stands to backup the claim of a person for reimbursement for necessaries supplied by him to a person who is incapable of entering into a contract or to such person to whom the incapable person is legally bound to supply necessaries. The expression “a person incapable of entering into a contract” has neither been defined in S. 68 of the Act nor has it been explicitly defined in any of the Sections in Indian Contract Act. But when we critically examine the provision of S. 11, we can gather information about a person who is incapable of entering into a contract. S. 11 of the Act does not expressly provide law for such person who is incapable to make a contract. It provides that “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.”

Thus, S. 11 expressly provides for three qualifications of a person who wants to become a party to a contract. These qualifications are-

1. A person must be major according to the law to which he is subject;
2. He must be of sound mind; and
3. He must not be disqualified from contracting by law to which he is subject.

These three qualifications must be possessed by all the parties to a contract irrespective of the fact that he is a proposer or he is an acceptor.

If an inference is drawn on the basis of S. 11 of the Act it can strike to mind whether a person who is minor or who is of unsound mind
or who is disqualified (i.e. debarred) by law from contracting can enter into a contract. In other words an implied implication of S. 11 gives rise to proposition for consideration a minor or a person of unsound mind or a person debarred by law may make an agreement irrespective of the fact that the agreement so made by him is void. To explain further, where both the parties to an agreement are minor, the agreement is obviously void. But where only one party to an agreement is minor, the agreement is still void ab initio in the light of the principle laid down by the Privy Council in the leading case of **Mohori Bibi v. Dharmodas Ghose**\(^2\). It was observed by the Privy Council that a minor is not in a position to form rational opinion of his decision upon his interest. In other words due to minority a minor is incapable of forming a rational opinion of effect of his act upon his interest. Briefly stating a minor cannot take reasonable decision whether effect of his act will be beneficial or detrimental to his interest. So, he is not in a position to form rational judgment of the effect of an agreement upon his interest. That is to say legally he is not in a position to decide reasonably as to whether an agreement made by him will protect his interest or it will cause loss to his interest.

Where a person is appointed as a teacher who is below age of majority, the appointment made so is void. **Ram Ashish Chaudhary v. State of U.P.**\(^3\) by an agreement, a person was appointed as a teacher. But he was a minor at the time of agreement. The Court held that the agreement was void ab initio due to minority of the person appointed, in the light of S. 11 of the Act and Mohori Bibi’s case. Since the appointed

\(^2\) (1903) 30 Cal. 539, 548 (P.C.): (1903) 30 I.A. 114.
teacher is an incompetent to contract, therefore, agreement made by such teacher is void.

Again, sale of property of a minor even by his power of attorney cannot always be held to be valid. It can be valid only when the attorney has legal right to sell such property, sale is in the interest of minor and he has no other source of income to meet emergent situation of requirement of necessaries. In *Lakhvinder Singh v. Paramjit Kaur*\(^4\) it was observed that sale deed of property of minor executed by the minor’s power of attorney is not binding. The contention of the buyer was that he was not at fault, was rejected by the Court on the ground that he did not make inquiry into the matter as to whose property was being sold. The Court held that the buyer was under a duty to enquire into the matter whether of the property was minor or he was major person.

In *M.S. Madhusoodhanan & Anr. v. Kerala Kaumudi (P) Ltd.*\(^5\) it was held that where a minor is in the requirement of certain necessaries and he has no other source of income to face them, a share of his property can be sold by his legal guardian. In the instant case, a minor’s share of property was sold by legal guardian to his father who in turn transferred the same property further, the transaction was held to be valid.

It can therefore be submitted that selling of minor’s property by his legal guardian to meet out emergent situation relating to necessaries is not always invalid. If the sale by the legal guardian is in interest of the


minor and the minor has no other source of income to meet the exigency, 
the sale of minor’s property by the legal guardian is valid.

However, a minor has an authority to avoid the contract made by 
his guardian after attaining majority by way of filing a suit or by any 
other act or omission. Surta Singh v. Pritam Singh\(^6\) it was held by the 
Court that a contract within the competence of the guardian and for the 
benefit of the minor is valid and binding on the minor, but the minor may 
avoid the transaction on attaining the majority. Further, Karnataka High 
Court has gone one step ahead in prescribing a time to be observed by a 
minor in avoiding such transaction. In M.C. Nagalakshmi v. M.A. 
Farook\(^7\) the Court held that if the minor does not avoid the transaction 
made by his guardian within three years after becoming major, or he 
accepts it, the agreement can be enforced. While holding such view the 
Court relied on provisions of Art. 60 of The Indian Limitation Act, 
1963, which provides for observance of three years time by a minor after 
attaining majority to avoid the contract made by his guardian to sell his 
immovable property in violation of Ss. 8 (1) and 8 (2) of the Hindu 
Minority and Guardianship Act, 1956.

Similarly, where a party to an agreement is of unsound mind, 
the agreement is void under S. 12 read with S. 11. Again, when a 
party to an agreement is disqualified from contracting, the 
agreement is void. In all these situations the agreement can neither 
be enforced against minor nor against a person of unsound mind nor 
against a person who is disqualified to make a contract.

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\(^7\) A.I.R. 2007 Kant. 105.
Thus a cumulative effect of provisions of S. 68 and S. 11 of the Indian Contract Act, 1872 leads us to say that the expression “a person incapable of entering into a contract” as incorporated under S. 68 of the Act means and includes a minor, a person of unsound mind and a person disqualified from contracting. Consequently, S. 68 applies to cover such necessaries which are supplied to a minor, a person of unsound mind and a person disqualified from contracting are such persons to whom these persons are legally bound to support. This Section also applies for necessaries supplied to both dependants of incapable persons to make a contract and incapable persons.

3.1.1 NECESSARIES-

It is evident that S. 68 provides for reimbursement only for necessaries supplied by a person to a person who is incapable of entering into a contract, or any one whom such incapable person is legally bound to support. Therefore, the question naturally arises what the term ‘necessaries’ denotes? The term has not been defined in the Indian Contract Act, 1872. But in common parlance necessaries can be defined to include all such goods and money which are necessarily required to support a person so that he can live a dignified life as well as his reasonable requirements are fulfilled. Thus, reasonable supply of goods and money to a person regarding his food, wearing articles, medical expenditures, educational expenditures, entertainment expenditures and so on may be included in the term necessaries. Reasonable services rendered to a minor etc. are also included in the term necessaries.

The term ‘necessaries’ was defined in S. 2 of the old English Sale of Goods Act, 1893 as follows:
“Goods suitable to condition in life of such infant or other person and to his actual requirement with the time of sale and delivery.”

However, the definition given as above is inadequate because the word necessaries include not only goods but it also extends to cover services and money given to or incurred for benefit of such incompetent persons to make contract. Therefore, following are included in the term necessaries:

a. Reasonable goods supplied according to social status and financial condition of a person incapable to make a contract or his dependents,

b. Services reasonably rendered to a person incapable to make a contract or his dependents, and

c. Loans advanced or expenditures incurred to protect interest of a person incapable to make a contract or his dependents.

So, S. 68 takes care of necessities supplied to a person incapable of making a contract or his dependent or both of them.

The judicial decision pronounced in an English case Chappel v. Cooper\(^8\) may be quoted here to explain the term ‘necessaries’. The decision is as follows-

“Things necessary are those without which an individual cannot reasonably exist. In the first place, food, raiment, lodging and the like. About these there is no doubt. Again, as the proper cultivation of the

\(^8\) (1844) 13 M.N.W. 252, 258. Avtar Singh, Contract and Specific Relief, 11\(^{th}\) ed., p. 163 may also be seen.
mind is as expedient as the support of body, instruction in art or trade or intellectual, moral and religious education may be necessary also.... Then the classes being established, the subject and extent of the contract may vary according to the state and condition of the infant himself. His clothes may be fine or coarse according to his rank; his education may vary according to the station he has to fill; and the medicines will depend on the illness with which he is afflicted and the extent of his probable means when of full age.... But in all these cases it must first be made out that the class itself is one in which the things furnish are essential to the existence and of reasonable advantage and comfort of the infant contractor. Thus, articles of mere luxury are always excluded, though luxurious articles of utility are in some cases allowed.”

Further, in Johnstone v. Marks⁹ the term ‘necessaries’ has been defined as goods suitable to the condition in life of an infant and to his actual requirements at the time of the sale and delivery.

Again, in Ryder v. Wombwell¹⁰ it was observed that necessaries or things which the minor actually needs; they will not be necessary if he is already sufficiently supplied with things which a person of his condition may reasonably require for ordinary use.

In Roberts v. Gray¹¹ a contract was made between a minor and a renowned billiard player the purpose of the contract was that the minor wanted to learn the game and in lieu of it agree to pay certain amount of

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money to the billiard player. The minor also agreed to play with the billiard player during his world tour. The contract was performed by the billiard player but the minor refused to pay him agreed money. It was held by the Kings Bench that the minor was liable to pay the agreed money because the contract was for necessaries as it involved teaching of instructions necessarily required for a game.

It is to be noted that goods supplied for luxury cannot be included in the scope of necessaries. To illustrate, it can be said that in Nash v. Imam\textsuperscript{12}, Imam was a minor boy. He was having sufficient clothes even though he purchased on credit 11 fancy waist coats. Upon his refusal to pay for it, the suit was filed by Nash against him to recover price of the waist coats. It was held that he was not liable to pay the price of the waist coats because such goods were not necessaries. These goods were related to luxury items which cannot be included in the term necessaries.

In Jogan Ram Marwari v. Mahadev Prasad Sahu\textsuperscript{13} meaning and scope of necessaries have been briefly stated. The Court has observed that objects of mere luxury or excessively costly articles though of real use are not necessaries. It further opined that interest on value of goods supplied as necessaries cannot be included in necessaries.

Summarising the above discussion, the term necessaries can be defined as such goods, services and expenditures (including loans) which are reasonably required by a minor or a person of unsound mind or a person disqualified from contracting and such persons to whom the


\textsuperscript{13} (1909) 36 Cal. 768.
minor or a person of unsound mind or the person disqualified from contracting is legally bound to support and are suitable to the condition in life of such persons. It may vary from one class of person to another to whom the necessaries are supplied. That is to say, while allowing the claim for reimbursement for necessaries, the reasonableness of necessaries has to be decided also on the basis of class of society in which such minor and person of unsound mind usually live.

3.1.2 NECESSARIES SUPPLIED TO MINOR OR NECESSARIES SUPPLIED TO SUCH PERSONS WHOM MINOR IS LEGALLY BOUND TO SUPPORT OR BOTH OF THEM-

Whatever necessaries are supplied to minor can be sought to be reimbursed only through the property belonging to such minor. Contrary to it, if the minor has no property, the claim of supplier of necessaries for reimbursement will be defeated. Further, the claim for reimbursement is enforceable only for such necessaries which are reasonable in the life of a minor. To explain the point certain judicial verdicts which have been delivered from time to time by the Courts widening as well as confining the scope of necessaries supplied to a minor may be quoted here.

Mukundi v. Sarabsukh\footnote{I.L.R. (1884) 6 All. 417.} the claim for the reasonable marriage expenses of a minor incurred by plaintiff was allowed by the court and the minor was held bound to be reimbursed such expenses through the property. Likewise, in Jogan Ram Marwari v. Mahadev Prasad Sahu\footnote{(1909) 36 Cal. 768.} the Court laid down that wedding presents for the bride of the infant may be necessaries and the claim of persons purchasing such
presents for reimbursement under S. 68 is maintainable. Again in *Nandan Prasad v. Ajudhia Prasad*\(^{16}\) the full Bench of Allahabad High Court held that claim of reimbursement for reasonable expenses for the marriage of sister of a minor is enforceable under S. 68 of The Indian Contract Act 1872 through the property of the minor. However, in *Tikki Lal Jaithu Teli v. Komalchand*\(^{17}\) the Court observed that where the marriage of minor is forbidden by law the position will not be the same regarding necessaries supplied to him as it was laid down in Jogam Ram Marwari’s case. In Tikki Lal’s case, the Court further laid down that the passing of *The Child Marriage Restraint Act, 1929*\(^{18}\) the law has been affected and the monies advanced for the marriage of male Hindu minor are not to be considered as necessaries. The court again said that where the funds are supplied by a person to a minor to perform the marriage ceremony of minor female in the family, the lender may be able to get himself reimbursed from the property of minor.

It is worth mentioning that S. 68 of The Indian Contract Act, 1872 applies equally to minors and lunatics belonging to all the communities, such as Hindu, Muslim, Christian and so on. That is to say, where a minor of any community is advanced money by another person to perform his (minor’s) marriage or marriage of his brothers and sisters, he is liable through his property to reimburse the lender or the person who has advanced money under S. 68 of the Act. For instance, in *Rahima Bibi v. A.K. Sherfuddin*\(^{19}\) it was observed by the Court that

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\(^{17}\) A.I.R. 1940 Nag. 327.

\(^{18}\) It has now been replaced by a new Act known as Prohibition of Child Marriage Act 2006.

\(^{19}\) A.I.R. 1947 Mad. 155.
expenses for a marriage of a Muslim minor girl are recoverable as necessaries, if the payment was not gratuitous.

However, where an act for which necessaries are supplied, is forbidden by law, the result may entirely be different i.e. the reimbursement may not be allowed. For example in Tikki Lal’s case\(^{20}\) the Nagpur High Court has observed that with the passing of the Child Marriage Restraint Act, 1929 the law has been affected. It has held that the Court of Justice scarcely regard expenditure on a purpose forbidden by law as expenditure on necessaries.

Similarly, where a minor borrows money to perform funeral rites, Shradh ceremony, Pind Daan etc. of his father, mother and other near relatives which he is bound to perform by virtue of religious tenets or tradition of his family, he is bound through his property to reimburse the lender provided the money so spent has reasonably been utilised in performance of the ceremonies. For example in Bechu Singh v. Baldeo Prasad\(^{21}\) the plaintiff advanced loan to a minor to perform funeral rites of his father. The minor refused to repay the debt on the ground that as he was a minor therefore on the basis of principle laid down in Mohoribibi’s\(^{22}\) Case the agreement is void. Thereupon, the suit was filed by the lender to get reimbursement in pursuance of S. 68 of the Indian Contract Act, 1872. The Court allowed the claim and held that the lender was entitled to be reimbursed through the property of the minor in lieu of debt under S. 68.

\(^{20}\) A.I.R. 1940 Nag. 327.
\(^{21}\) A.I.R. 1933 Oudh 132.
\(^{22}\) (1903) 30 Cal. 539 (P.C.): (1903) A.C. 6: (1903) 30 I.A. 114.
Again, in *Vishwanath v. Shiam Krishna*\(^{23}\) certain goods were supplied to a minor as necessaries. The supplier brought a claim for being reimbursed through the property of the minor which he actually paid as a price of goods. The court allowed the claim only for reasonable price and not the agreed price for the goods. The court laid down that the relief contemplated by this section is not dependent on any contract but is independent of it. It is not necessary that there should be any agreement between the parties. The section creates a statutory claim against the property of the person who is incapable of entering into a contract and has been supplied with necessaries suited to his condition in life.

It follows from the opinion of the Allahabad High Court where goods is supplied to a minor the claim of supplier for reimbursement will be enforced under S. 68 of the Act only when- 1) Goods is reasonably necessary, 2) Goods is suited to the condition of minor according to class of society to which he belongs, and 3) The price of goods is reasonable i.e. it is not exorbitant.

In *Kanwar Lal v. Surajmal*\(^{24}\) the Court observed that house provided to a minor for educational needs may come within the ambit of term necessaries. If the **educational needs** are reasonable and residential accommodation is provided reasonably to a minor to fulfil his educational needs, the expenses incurred for such act by the supplier can be reimbursed to him upon his claim for it through property of the minor.

\(^{23}\) A.I.R. 1936 All.819.  
\(^{24}\) A.I.R. 1963 M.P. 58.
Again, the scope of necessaries has been so widened by Judicial Activism that it includes expenses incurred by a person (acting on behalf of a minor) to defend him in a litigation filed against him or to protect his interest by filing a case on behalf of a minor against another person who infringes a right of a minor provided the expenses so incurred are reasonably justified. To illustrate, it can be said in Kedar Nath v. Ajudhia Prasad\textsuperscript{25} a minor’s estate was to be sold in execution of a decree. The plaintiff came forward and spent certain amount of money to prevent such sale of minor’s estate and he was successful in doing so. Thereafter, he sought for reimbursement of his money through minor’s property. His claim was allowed by the Court of law on the ground that such money comes within the scope of the term necessaries.

This is a very clear verdict of a Court where it upheld act of a person in spending money for protecting interest of a minor by specially saving his landed property from being sold in pursuance of a Court order.

Likewise, in Shyam Charan Mal v. Choudhary Debya Singh\textsuperscript{26} a criminal proceeding was going on against a minor for his alleged involvement in a case of dacoity. Certain amount of money was advanced by the plaintiff to him so that the minor’s interest could be protected. Later on the lender claimed for reimbursement of his money through the property of the minor. The Court allowed his claim. It was observed by the Court the minor’s liberty was at stake so money

\textsuperscript{25} (1883) Punj. Rec. 165. See also Avatar Singh, Law of Contract and Specific Relief Act, 11\textsuperscript{th} ed., p. 164.

\textsuperscript{26} (1894) 21 Cal. 872.
advanced by the lender to protect his interest in a prosecution going against him must be taken to have been borrowed for necessaries.

It is obvious from the aforementioned judgment that whether case is of a civil nature or a criminal, in both the conditions if money is advanced by a person to a minor or has been spent by such person to protect interest of minor, in the case so filed against the minor, it will surely come within paraphernalia of necessaries. The only condition which has to be considered is that the money must have been spent in a reasonable manner. It is because the liability of reimbursement, in no case, extends to cover money spent unreasonably for fulfilling needs of minor.

It is to be noted that the term necessaries includes not only goods but it also covers money advanced to a minor or spent in protecting interest of minor. In *Meenakshisundaram v. Rang Ayyangar* 27 it was observed by the Court that money advanced for necessary purpose can be treated as money advanced for necessaries within the meaning of S. 68 of the Indian Contract Act, 1872.

Where money has been spent by a person- in the capacity of the guardian of a minor or in the capacity of a third person as his well-wisher, he can seek reimbursement under S. 68 of the Act through property of the minor only when he satisfactorily proves that he has really spent such money in minor’s interest. To explain, *Raghunathan v. Ravuthakanni* 28 can be quoted. In this case it was observed that where guardian of a minor had contracted to sell the minor’s property

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ostensibly for discharge of pressing debts and received a portion of the amount from the vendee, no decree could be passed against the minor’s estate under S. 68 of the Act in absence of proof of the application of the money.

It is evident from the above mentioned cases that money advanced to a minor to protect his interest comes within the term necessaries under S. 68 of the Act. The person advancing such money is entitled to be reimbursed from the property of the minor under S. 68 of the Act. But it is significantly to note that the burden of proof that money has been spent or advanced to protect minor’s interest lies on shoulders of the person advancing or spending the money. Therefore, where he fails to prove that the money has been spent reasonably to protect minor’s interest or to promote minor’s purpose, he would fail to claim reimbursement successfully for such money through minor’s property under S. 68 of the Act.

By virtue of judgment delivered by the Privy Council in Mohori Bibi’s case it is well settled that a minor’s agreement is void. Therefore, the question naturally arises whether liability of a minor to make reimbursement can be contractual in a case where he has borrowed money for necessaries by entering into an agreement with the lender. The answer is very simple and it is that since a minor’s agreement is void, therefore, he cannot be held liable under an agreement. That is to say, he bears no contractual or agreemental liability for repayment or reimbursement of such money on the ground that the agreement is void. But he can certainly be held liable through his property to make reimbursement with regard to money so borrowed in the light of S. 68 of the Act. To illustrate the point, the case of Sriramulu v.
Pundarikakshayya\textsuperscript{29} can be mentioned here. It was observed in this case that the estate of a person, of entering into a contract can be made liable for necessaries, even though the instrument executed by him is void. It is amply clear from this judgment that where a minor has borrowed money for necessaries from other person by entering into an agreement with the lender, the agreement so made by the minor is, undoubtedly void in the light of S. 11 of the Indian Contract Act and interpretation made by the Privy Council of this Section in Mohori Bibi’s case. But through his property, the minor is liable to make reimbursement to the lender in pursuance of application of S. 68 of the Act.

3.1.3 **NECESSARIES SUPPLIED TO A PERSON OF UNSOUND MIND OR NECESSARIES SUPPLIED TO SUCH PERSONS WHOM THE PERSON OF UNSOUND MIND IS LEGALLY BOUND TO SUPPORT OR BOTH OF THEM**-

A person who is of unsound mind is not competent to make an agreement according to S. 11 of the Indian Contract Act, 1872. Therefore, if he makes an agreement with another person who is competent to contract, the agreement is void ab initio in the same way and with the same logic on which a minor’s agreement is void. **S. 11 read with S. 12** of the Act supports the concept that an agreement made by a person of unsound mind is void.

By virtue of **S. 11** of the Act, soundness of mind of both the parties to a contract is obviously, one of the three qualifications prescribed for competence of parties. It can thus, be inferred from S. 11

\textsuperscript{29} A.I.R. 1949 F.C. 218.
of the Act that a person of unsound mind is not competent to contract. It is why a person of unsound mind is covered by S. 68 of the Act within the expression ‘a person incapable of entering into a contract.’

**S. 12** of the Indian Contract Act which deals with soundness of mind for the purpose of making of a contract may be quoted here-

“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 of forming a rational judgment as to its effect 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 not make a contract when he is of unsound mind. **Illustrations**

(a) A patient in a lunatic asylum, who is, at intervals, of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.”

The fundamental spirit underlying this Section is that a person must be of sound mind at the time he enters into a contract. So, what happens to a party to a contract before making the contract and after completion of the contract is immaterial. What is material and what is necessarily required are that a party to a contract must be of the sound
mind when he makes the contract. Consequently, a person after being affected by unsoundness of mind cannot make a valid agreement.

For the sake of convenience a person of unsound mind can be classified into the following categories:\(^\text{30}\):

1. Lunatic,
2. Idiot,
3. Drunken person, and
4. Intoxicated person.

A **lunatic** is a person who is intermittently of sound mind and of unsound mind. In other words, when there is lucid interval (i.e. interval of soundness of mind) between two unsoundness of mind of a person, such person during unsoundness of mind can be said to be a lunatic. Similarly, when there is gap of unsoundness of mind between two soundness of mind of a person, he becomes a lunatic during unsoundness of mind. So, a lunatic cannot be said to be a person of unsound mind permanently. Accordingly, he cannot make an agreement when he is a lunatic because the agreement so made is void ab initio. But when he is under influence of soundness of mind, he is entitled to make a contract which will be enforceable by law.

Again, an **idiot** is a person who cannot understand even an ordinary thing. For example, if a person cannot tell his address completely or cannot count mathematical number correctly from 1-20, etc. can be said to be an idiot. An idiot person is permanently of unsound mind and in law he is not considered to form rational judgment of effect.

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of his act upon his interest. So, an agreement made by him is void ab initio.

Likewise, a **drunken person** is also not competent to make a contract provided he is so drunk that he cannot understand reasonably the nature and effect of the agreement. The state of drunkenness debars a person to make a contract when such state exists at the time of making a contract.

Again, a person who has become **non compas mentis** (not of sound mind) be reason of illness is also put in the category of a person who is of unsound mind provided at the time of making an agreement is not mentally in a position to understand the agreement and to form rational judgment of its effect upon his interest. So, a person who is delirious (of unsound mind) on account of illness, he is disqualified to make an agreement during such state of delirium (unsoundness).

Further, use of **intoxicants** by a person may disqualify him from contracting under the head of unsoundness of mind. But for this purpose it is necessary that such person entering into a contract is under influence of intoxicants in such a way that he is mentally in a position not to understand reasonably the nature and effect of the agreement.

Certain decided cases will further clarify the point-

In **Kamola Ram v. Kaura Khan**\(^{31}\) the Court held that as a party to the agreement under dispute was a person of unsound mind, therefore the agreement made by him is void on the same analogy on which a

minor’s agreement has been declared void by the Privy Council in the case of Mohori Bibi v. Dharmodas Ghose. The Court also centred its judgment on the provisions of Ss. 11 and 12 of the Indian Contract Act, 1872.

It is remarkable to note that the other party who is of sound mind cannot escape his liability under an agreement made by a person of unsound mind. For example, where a person of unsound mind as advanced loan to a person of sound mind, undoubtedly the agreement is void but the person of unsound mind is bound to refund the loan borrowed by him. The reason lies in the logic that if the person is of unsound mind is allowed to retain such money, the retention by him will amount to an unjust enrichment i.e. an unlawful gain by him. In no case, the Court can allow a person to retain and unjust enrichment obtained by him.

In Jugal Kishore v. Cheddu32 a person of unsound mind advanced loan to a person of sound mind and in lieu of it a mortgage was executed by the person of sound mind in favour of the person of sound mind. It was observed by the Court that the agreement so made is void under S. 12 read with S. 11 of the Indian Contract Act, 1872 due to unsoundness of mind of the person advancing the loan but the person who has mortgaged the property is legally bound to fulfil his liability to make the repayment of the loan.

In Amina Bibi v. Saiyid Yusuf33 it was observed by the Allahabad High Court that a lease where a party to it is a minor is

32 (1903) 1 All. L. J. 43.
33 I.L.R. (1922) 44 All. 748.
absolutely void. As a minor is incapable of understanding an agreement and of forming a rational judgment as to its effect upon his interest, therefore the agreement is void.

When a person is of mentally sound mind at the time the agreement is made, the agreement is valid even though later on such person becomes of unsound mind. In other words, the soundness of mind of a person is relevant at the time of making of an agreement. For example, in **Nilima Ghosh v. Harjeet Kaur**\(^{34}\) at the time of agreement a party to it was of sound mind but was declared of unsound mind after the agreement was made. It was held by the Court that for the purpose of declaring an agreement to be void what is relevant is that the person in question was suffering from disability on the date of execution of agreement, the report of medical unfitness of the year 1989 being much later in point of time has no bearing on the agreements entered into in the years 1985 and 1987 respectively.

Where a person is medically proved that he is of unsound mind and the agreement is made by him during lucid interval, the agreement is valid provided he was completely in a mental position to understand agreement and form rational judgment of its effect upon its interest. In **Bahadur Singh Chhetri v. Vir Bahadur Singh**\(^{35}\) an agreement was made by a person when he was in a lucid interval. It was held by the Court that where unsoundness of mind is proved by definite medical evidence, the fact that the person was in lucid interval when he made the contract must also be proved by strong and much demonstrative evidence. It was further observed by the Court that where a guardian or a


\(^{35}\) A.I.R. 1956 Cal. 213.
manager of a lunatic has been appointed by the Court, such guardian or manager is merely conferred with the power to act on behalf of the lunatic under the Indian Lunacy Act, 1912 and the Mental Health Act, 1987. But a contract made by a mentally ill person during a lucid interval must be adjudged under S. 12 of the Indian Contract Act, 1872. But burden of proof will shift on the person who alleges that such lunatic or mentally ill person was sane at the time of making the contract.

In **Inder Singh v. Parmeshwardhari Singh**\(^{36}\) a party to the agreement was idiot since birth. The agreement was declared to be void. Briefly, the facts were that a property worth Rs. 25,000 was agreed to be sold by the allegedly idiot person for Rs. 7,000 only. His mother proved in the Court of Law that he was idiot since birth. Therefore, he could not understand transaction. She also stated before the Court that he usually wandered. The Court observed that due to unsoundness of a party to the agreement, the agreement of sale was void.

**Hon’ble Mr. Justice Sinha**, while deciding the case explained the legal effect of the S. 12 of the Indian Contract Act as follows-

“According to this Section, therefore, the person entering into the contract must be a person who understands what he is doing and is able to form rational judgment as to whether what he is about to do is to his interest or not. The crucial point, therefore is to find out whether he is entering into the contract after he has understood it 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

\(^{36}\) A.I.R. 1957 Pat. 491.
to all appearances behave in a normal fashion but at the same time, he may be incapable of forming a judgment of his 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 his own judgment."

Even where a person is abnormal at the time of entering into a contract and due to such behaviour he cannot take rational judgment, the contract made by him may be declared void. For example, in **Jyotindra Bhattarcharjee v. Sona Bala Bora** a family member was not happy with other family members and used to live away from them. He had also filed several cases against family members. In the meantime, he transferred property of the family to such extent that the other family members become homeless. On the other hand, the transferee failed to provide any evidence regarding the fact that at the time of sale the transferor was mentally sound. The Court observed in this case that the mental state of the person transferring the property is an evidence to prove that the transferor was not a person of sound mind within the meaning of S. 12. Therefore, the contract made by him was void.

It is obvious from this judgment that a person can be declared as being of unsound mind even though he is neither idiot nor lunatic. It is a matter of fact to decide whether a person who is otherwise of sound mind was not of sound mind at the time of entering into an agreement by reason of his abnormal mental faculty.

Where Power of Attorney of a person of unsound mind is not valid, an agreement made by such attorney is void. To illustrate, it can be

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said that **Kimtu v. Lachhi Devi**\(^{39}\) wife of an insane husband sold his property claiming that she enjoys power of attorney of her insane husband. The power of attorney was not valid. The purchaser did not make any inquiry about title of the wife. The purchaser resold the property. It was held by the Court that the agreement was void and consequently it ordered that property must be recovered from the second purchaser without paying anything and must restored to the insane person.

When a person is under influence of liquor and at the time of making an agreement is not in a position to understand the agreement and form a rational judgment of its effect upon his interest, the agreement so made is void in the same way as it is declared void when a person is of unsound mind.

In **Chacko & Anr. v. Mahadevan**\(^{40}\) a person was suffering from alcoholic psychosis. While being in such a mental state, he transferred certain valuable property for very nominal amount. The drunkenness state of the transferor was established by medical certificate. It was held by the Supreme Court that the agreement was void, therefore it was liable to be set aside. The Supreme Court observed that on account of influence of alcoholic psychosis, the transferor was not capable of understanding nature of the agreement and he was also incapable of forming rational judgment of its effect upon his interest. Therefore, the agreement is void under S. 12 of the Indian Contract Act, 1872.

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\(^{40}\) (2007) 7 S.C.C. 363.
However, if at the time of making an agreement a person of alcoholic nature is not under influence of the alcohol, he can make a valid agreement with the other party under S. 12 of the Indian Contract Act, 1872. For example, in *Jai Narain v. Mahavir Prasad*\(^{41}\) an agreement was made by a person who was drug addict. But at the time of entering into the agreement he was not under influence of alcohol. He was a person of sound mind at that time and could understand the nature and effect of the agreement. It was held that the agreement was valid as the soundness of mind of a party at the time of formation of agreement made him competent to contract.

S. 12 of the Indian Contract Act, 1872 cover also the cases of marriage where a party to it is not in a position to understand the nature of agreement and its effect upon his interest. For example, in *Asfaq Qureshi v. Aysha Qureshi (Nivedita Yadav)*\(^{42}\) Ms. Nivedita Yadav was converted to Muslim religion when she was under influence of intoxication. Just after conversion ceremony her Nikah ceremony was performed with a Muslim male. She was also not conscious at the time of Nikah ceremony. The marriage was registered under the Hindu Marriage Act, 1955. She proved that she did not live with the Muslim husband even for a single day. The Division Bench of Chhattisgarh H.C. held that the registration of the marriage was illegal. It also observed that the Family Court is competent to declare the status of the parties and that of the marriage to be void.

Sometimes, **old age** of a person may render him disqualified from contracting under S. 12 read with S. 11 of the Indian Contract Act,

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\(^{41}\) A.I.R. 1926 Oudh 470.
\(^{42}\) A.I.R. 2010 Chh. 58.
1872. But in such a case it is necessary that the old person on account of his age must not be in a mental position to understand nature of transaction and its effect upon his interest. If it is so, an old aged person may be treated as a person of unsound mind.\textsuperscript{43} For example, in \textit{Govind Swami Naicker v. K. N. Srinivasa Rao}\textsuperscript{44} a party to an agreement was suffering from \textit{senile dementia}. Actually, it happened that a person, who was 70 years of age, gifted his property to his daughter. At the time of contract of gift he was under delusion that he was having thousands of acres of land. But the reality was that he held hundred acres of land in Rangoon and 50-20 acres land in India. It was held by the Court that such delusion from which he was suffering made him incompetent to make the gift because he could not form rational judgment of his decision of making gift upon his interest.

However, mere \textbf{weakness of mind} of a person is not unsoundness of mind provided he is in a mental capacity to understand nature and effect of contract made by him. In \textit{Kanhaiyalal v. Harring Laxman Wanjari}\textsuperscript{45} the Court observed that mere weakness of mind is not unsoundness of mind. Similarly, in \textit{Rajkumar Sen Choudhary v. Ram Sundar Saha}\textsuperscript{46} the Privy Council laid down that mere loss of memory of a person does not make him unfit for management of his own affairs in his lifetime.

It is pertinent to mention that there is fundamental difference between incapacity of a person due to unsoundness of his mind under S. 11 and 12 of the Indian Contract Act, 1872 and undue influence upon a

\textsuperscript{44} A.I.R. 1940 Mad. 73.
\textsuperscript{45} A.I.R. 1944 Nag. 232.
\textsuperscript{46} A.I.R. 1932 P.C. 69.
party to a contract under S. 16 of the Act. When a person is of unsound mind, he is completely incapable to make an agreement. If he makes an agreement, it is void ab initio. On the other hand, where a person is unduly influenced (though otherwise he is competent) to make a contract, it is voidable under S. 19-A read with Ss. 16 and 14 of the Act.

It is worth mentioning that the presumption is always in favour of sanity of a person of unsound mind. In other words, regarding burden of proof of soundness and unsoundness of mind is that a person is sane. Therefore, the onus of proving that such person is insane lies with the person who alleges unsoundness of the concerned person.\(^{47}\) Whether a person was of sound mind or of unsound mind at the time of making a contract is a question of fact therefore, before or after formation of an agreement, unsoundness of mind of a party is of no importance. Such state of unsoundness of mind before and after the formation of agreement may only create a confusion and suspicion also regarding the fact that such person was also of unsound mind at the time of formation of agreement. But such confusion and suspicion can disappear as soon as soundness of mind is proved.

For example, in Mohanlal Madangopal Marwadi v. Vinayak Sadashev Sonak\(^{48}\) with regard to question of proving soundness or unsoundness of mind of a party to an agreement, the Court observed that once it has been established that a person is of unsound mind, the onus is on the person who alleges that the document was executed during a lucid interval to prove it.


\(^{48}\) A.I.R. 1941 Nag. 251.
It is therefore evident that where a person tries to avoid an agreement on account of unsoundness of his mind, the onus to prove that he was of sound mind at the time of agreement lies on the other party.

Thus, where necessaries are supplied to a person of unsound mind or his dependants or both of them, S. 68 of the Indian Contract Act, 1872 comes into play. By virtue of this section the person who supplies the necessaries is entitled to be reimbursed through the property of person of unsound mind. The remedy available to the person supplying the necessaries is purely statutory and not contractual. Nevertheless, a quasi contract can be inferred between the person supplying the necessaries and the person of unsound mind. Moreover, the person of unsound mind bears no personal liability under such quasi contract. Whatever liability is borne by him is proprietary i.e. through his property. If he has no state through which reimbursement can be made for necessaries, his liability to reimburse is automatically absolved.

3.1.4 NECESSARIES SUPPLIED TO A PERSON DISQUALIFIED FROM CONTRACTING BY ANY LAW OR TO SUCH PERSON TO WHOM DISQUALIFIED PERSON IS LEGALLY BOUND TO SUPPORT OR BOTH OF THEM-

There is third category of person as enumerated under S. 11 of the Indian Contract Act, 1872 who is incapable to enter into a contract. In this category such persons are included who are disqualified from contracting by any law to which they are subject. To explain, it can be said that a prisoner cannot enjoy all such rights which other people can enjoy and exercise. For example, he cannot go outside jail to purchase anything of his choice or to make any kind of contract. He can go outside
jail only on parole granted for special purpose granted by appropriate authority. Similarly, on account of political or professional status a person’s civil right including the right to make contract can be taken away by law of his country. Again, a person can be deprived of his right to make a contract by some special law. For example, by virtue of the **Guardians and Wards Act, 1890** a guardian is not entitled to make any contract on behalf of the ward. He can make only such contracts for which he has been authorised by the natural guardian or by the Court. Such contract must be in the interest of ward and must aim at protecting his conditions of life.

When a person disqualified by law make a contract or anyone to whom he is legally bound to support or both of them or supplied with the necessaries by another person, a quasi contractual obligation comes into being under S. 68 of the Indian Contract Act, 1872 between the person supplying the necessaries and the person to whom necessaries are supplied. Consequently, the person supplying the necessaries is entitled to get reimbursement through the property of such disqualified person.

It is to be noted that S. 68 applies when the person incapable of entering into a contract has no means of necessaries and necessaries supplied to him or his dependants or both of them are reasonably supplied. Further, S. 68 of the Act incorporates the term **reimbursement** and not **repayment**. It signifies that total amount of necessaries are not necessarily to be paid through the property of incapable person to make a contract. The person supplying the necessaries has to be reimbursed in lieu of the price of necessaries. The reimbursement may be of full price of the necessaries or a part of it. Thus the person supplying the necessaries cannot claim for repayment of price of necessaries. What he
can claim is only reimbursement for necessaries. The supplier of necessaries is also not entitled to claim interest on the amount claimed for necessaries. However there is a case of **R.V. Rajarathna Chettiar v. Shari Shaick Mahboob Sahib** the Court awarded interest at the rate of 6% on the reimbursement amount for necessaries. But such interest was awarded only on equitable ground and not on the ground of law. Therefore, the general law is that the supplier of necessaries can only claim for reimbursement for necessaries. He can neither claim repayment of price of necessaries nor can he claim interest on such reimbursement or price of necessaries.

Thus it follows that under S. 68 of the Indian Contract Act, 1872 liability of incapable person through his property to make reimbursement to person who has supplied necessaries is **statutory** and accordingly it can be said to be a quasi contractual liability of a person incapable to make a contract.

### 3.2 SECTION 69 OF THE ACT (CLAIM FOR PAYMENT OF LEGAL DUES OF ANOTHER PERSON) -

S. 69 of the Indian Contract Act, 1872 posits as follows-

“A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.”

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50 A.I.R. 1940 Mad. 106.
Obviously, S. 69 of the Act implies the idea of quasi contractual liability. The liability is relating to reimbursement to a person who is interested in payment of money which the person making the reimbursement is legally bound to pay and who actually pays it. That is to say, where a person is interested in payment of such money for which another person is under legal obligation to pay and who voluntarily pays it, he is entitled to be reimbursed by the person on whose behalf money has been paid. As soon as voluntary payment of money by interested person is made, a quasi contract comes into effect by operation of law under this section whereby the person making the payment becomes entitled to be reimbursed by another person. The liability of reimbursement under this section is also statutory because it has expressly been mentioned under the section. Such liability to make reimbursement is implied by law and it is not contractual. That is to say, the liability of the person bound to make reimbursement under this Section is not based on the contract as no contract is made between them at all to make reimbursement. So, the liability of making reimbursement is implied by law i.e. it is inferred by letter and spirit of this Section and thus it is quasi contractual.

For example, A lives in B’s house on rent. He pays rent of his portion regularly. The rent paid by him includes water, electricity, etc. charges. Electricity charges of B’s house is in arrear for a long time. He is given last notice for payment of electricity dues which he failed to pay. The concerned officials came to his house to disconnect power supply resulting in non supply of electricity to A also. In case of disconnection of power supply A has no option other than to search a new house on rent. But it is not possible for A because from next day
Civil Services examination has to begin in which A has to appear and in course of searching new house he will have to waste time and may lose his hope to qualify the examination. Therefore, A is very much interested in preventing disconnection of power supply by making payment of dues on behalf of B. Consequently, A voluntarily pays the dues which B was legally bound to save the disconnection of power supply. The officials accept the payment and returned back without disconnecting power supply. The quasi contract has come into existence automatically by operation of law between A and B. Accordingly, A is entitled to seek reimbursement from B for the payment of electricity dues made by him under S. 69 of the Act.

Again, the illustration attached to S. 69 of the Indian Contract Act, 1872 will further explain the application of S. 69 of the Act. The illustration is as follows-

“B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B’s lease. B to prevent the sale and the consequent annulment of his own lease, pays the Government the sum due from A. A is bound to make good to B the amount so paid. B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B’s lease. B to prevent the sale and the consequent annulment of his own lease, pays the Government the sum due from A. A is bound to make good to B the amount so paid.”

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The illustration given with the Section clarifies that the liability of the defendant to pay money to a third person may be personal or it may be through some land held by the defendant. In *Mothooranath Chattopadhyya v. Kristo Kumar Ghose*\(^{51}\) the basic contention of the defendant was that he can be held liable to reimburse when he has personal liability to pay debt to the third person and it did not apply when his liability is attached to the land. But the Court rejected the contention. The Court said that it is clear from the illustration that this is not the intention of the legislature. The illustration gives the case of a lessee paying of revenue due to Government; but the liability to pay revenue due to Government is not a personal liability to the zamindar, but a liability which is imposed upon the zamindar’s land. It is therefore clear that the Section was intended to include the cases not only of personal liability but all liabilities to payments for which owners of land are indirectly liable, those liability being imposed upon the lands held by them.

Similarly, liability of the defendant may be primary or it may be ultimate. In *Brooks Wharf & Bull Wharf Ltd. v. Goodman Brothers*\(^{52}\) the defendant had stored imported goods in the ware house of the plaintiffs. The plaintiffs were required to pay custom dues because they were primarily liable under statute. Upon failing to do so the plaintiffs would have committed an offence under such statute. The defendant importers were ultimately liable to pay the custom dues. It was held by the Court that the defendants may bound to reimburse the amount to the plaintiffs.

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\(^{52}\) (1937) 1 K.B. 534: (1936) 3 All E.R. 696.
3.2.1 **CONDITIONS FOR APPLICATION OF SECTION 69 OF THE ACT**

The term ‘**reimbursement**’ has been mentioned under S. 69 which clearly shows that claim for reimbursement can only be made. If the claim for repayment is made, the suit will fail to lie against the defendant under this section. The reason is obvious in the sense that S. 69 of the Act does not provide for a contractual obligation but it is restricted to quasi contractual obligation and the obligation so made is statutory due to it being provided under S. 69 of the Indian Contract Act, 1872. Further, the term reimbursement implies the idea that reimbursement may be less or equal as compared to the total amount paid. But in common parlance it can be taken to mean that reimbursement is less than the total amount paid by the plaintiff. No doubt the defendant is not restrained by this Section to make the total payment in term of reimbursement but generally it happens that reimbursement signifies less amount than the total amount paid by the defendant to the plaintiff.

It is to be noted that for the sake of convenience of explaining and examining the provision of this Section, the person who is interested and pays the money has been termed as plaintiff and the person who is legally bound to pay and on whose behalf the money is paid has been named as defendant.

Moreover, for claiming reimbursement the plaintiff has to establish the existence of the following conditions-

1. The plaintiff is interested in payment,
2. The defendant is legally bound to make such payment,
3. The plaintiff actually pays such amount.

These grounds can be examined separately to make a vivid application of S. 69 of the Act.

3.2.1.1 The Plaintiff Is Interested In Payment-

S. 69 of the Indian Contract Act, 1872 begins with the expression ‘A person who is interested in the payment of money’. Such expression becomes the first ground which has to be proved by the plaintiff for claiming reimbursement. In other words, the plaintiff must be interested in payment of such money which the defendant is legally bound to pay to some other person. The interest of the plaintiff must be legal. It is because in case the interest of plaintiff is illegal, his claim for reimbursement under this section will naturally fail.

In Pankhbati v. Nani Lal\textsuperscript{53} it was observed by the Court that the words, “interested in the payment of money” etc., include the apprehension of any kind of loss or inconvenience and not merely the actual detriment capable of assessment in money. Similarly, in Suradhani Debi v. Hari Charan,\textsuperscript{54} it was held that a payment made by a person in order to sale of certain properties in which he himself had an interest can be recovered if the person paying had a reasonable apprehension that his interest in the property would be adversely affected. It is not necessary that it should be established that the sale


would have actually prejudiced the position of the person who pays the money.

It follows that such principle laid down by law is clear to establish that if the actual loss can be assessed in term of money, a person will surely be interested in payment. But in case of apprehension of loss, a person can also be interested in payment of money. Similarly, in case of apprehension of inconvenience a person may also be interested in payment of money. So actual loss is not only a necessary ground but apprehension of loss or inconvenience can also be ground of interest of a person to make payment. That is to say, the plaintiff may be said to be interested in payment when actual loss likely to be suffered by him may be estimated. He may again be said to be interested in such payment when there is mere apprehension of loss or inconvenience when the money is not paid.

For application of this Section it is not necessary that the plaintiff who is interested in payment of money on behalf of another should have legal proprietary interest in the property in respect of which the payment is made. However, in some circumstances he may have some proprietary interest as it is clear from illustration attached to this section of the Act.\textsuperscript{55}

Normally, the provision of S. 69 of the Act is attracted to apply when a situation arises when the defendant who is legally bound to pay some money, cannot pay or does not intend to pay. In such circumstance the plaintiff having interest in such payment makes the payment. However, where the plaintiff is himself bound to pay the money under some statute, he cannot claim for reimbursement of it under S. 69 of the Act.\textsuperscript{55}

\textsuperscript{55} T.R. Desai, The Indian Contract Act and The Sale of Goods Act, 20\textsuperscript{th} ed., p. 391 may also be seen.
Act. For example, in *Trustees of the Port of Madras v. Bombay Co.*\(^{56}\) it was laid down by the Madras High Court that S. 69 of the Indian Contract Act, 1872 does not apply to a payment made by a person who is bound to pay under a statutory liability directly imposed on him.

In *Subramania v. Rungappa*\(^{57}\) plaintiff’s immovable property was attached due to debt due by defendant to another person. The plaintiff paid the debt voluntarily to save his property. Upon a suit brought by the plaintiff against the defendant for reimbursement, the Court allowed the suit. It was observed by the Court that a person whose immovable property is attached for a debt due by another is interested in paying the debt to save the property and can recover from the person by whom it is due.

Similarly, in *Bhuneshwari Devi v. Sheo Govind Lall Missir*\(^{58}\) has still sufficient interest in the mortgaged property so as to entitle him to make payment in order to save property from destruction, sale or forfeiture on default by the mortgager in payment of revenue dues.

On the same line, it can be noted that where a purchaser of certain immovable property pays off an earlier mortgaged it concerning that property is entitled to be reimbursed by the seller.\(^{59}\) In *Vaikuntam v. Kallapiram*\(^{60}\) it was held that where the defendant improperly refused to perform the marriage of his deceased brother’s daughter, and the mother of the girl performed the ceremony, the mother was interested in

\(^{56}\) A.I.R. 1967 Mad. 318.
\(^{57}\) (1910) 33 Mad. 232.
\(^{58}\) A.I.R. 1963 Pat. 185.
\(^{59}\) Mussamat Bhagwati v. Banarsi Das, (1927) 32 C.W.N. 705 (P.C.) may be seen.
making the payment for marriage ceremony for which the defendant was liable to reimbursed. Further, in Prosunno Kumar v. Jamaluddin\(^61\) it was observed by the Court that a lessee, who satisfies a decree for rent obtained by the landlord against himself and his co-sharer, is a person interested in the payment and the co-sharer is bound to make compensation to him. Again, in Pokhi Pal v. Lal Madho Ram\(^62\) the Court while expanding the scope of S. 69 of the Act opined that where a person who had sold his property to another, but whose name through no fault of his continued in the government records had to pay the land revenue in respect of the property, he is entitled to recover such land revenue from the purchaser.

It is pertinent to mention that S. 69 of the Act applies only when payment by the plaintiff has been made bona fide. That is to say, the plaintiff can be held entitled to seek reimbursement in lieu of payment made by him only when the payment so made is bona fide. For example, Sardimba v. Pallabheranaya\(^63\) it was held that where the plaintiff has spent money in respect of an estate which is subsequently found to be another’s, he can recover only if it is shown that he made the payment in good faith in the interest of the estate and he must also show that he believed in his own title to the estate. However, where payment made by the plaintiff is not bona fide, he cannot seek reimbursement for it.\(^64\)

In order to prove that the plaintiff’s interest in making the payment he can take help of documentary evidences. He can also prove

\(^61\) (1913) 18 C.W.N. 327.
\(^62\) (1929) 27 All. L.J. 1081.
\(^63\) (1931) 60 M.L.J. 13.
\(^64\) See Himatsinghji v. Bavabhai, (1880) 4 Bom. 643 (it was held that if a person makes a payment not bona fide but with a view to manufacturing evidence of title to land, he cannot recover it at all).
it by establishing that he has honest belief that he is interested in the payment so that the defendant’s interest can be protected. However, the interest of the plaintiff should not be based on the contract made with the defendant. In *Munni Bibi v. Triloki Nath*65 the Allahabad High Court held that an honest belief of the plaintiff he has an interest to protect is enough to seek reimbursement under S.69 of the Act. Moreover, the interest of the plaintiff in performing his contract is something different from a voluntary interest.

But where interest of plaintiff is not bona fide he cannot seek reimbursement under S. 69 of the Act for the money which he had paid to a third person so as to clear legal dues of the defendant. For example, in *Janaki Prasad Singh v. Baldeo Prasad*66 the plaintiff purchase certain properties from the defendant. It was found that the sale was fictitious. The real owner got a decree against the defendant. In execution of such decree he announced sale of the property. The plaintiff voluntarily paid the money on behalf of the defendant to real owner to protect the property from being sold. It was observed by the Court that as the sale between defendant and plaintiff was fictitious, the money paid by the plaintiff cannot be recovered from the defendant because the interest of plaintiff in paying the money was not bona fide.

The interest of plaintiff must be a present interest. In other words, at the time of payment of money, the interest of the plaintiff to such money must exist. To illustrate, the case of *Sami Pillai v. R. Naidu*67 can be quoted. In the instant case the plaintiff was a mortgagee of a

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65 I.L.R. (1932) 54 Al. 140.
66 (1908) 30 All. 167.
67 A.I.R. 1972 Mad. 4.
tenant’s crop. The tenant was mortgagor of the crop. The tenant had borrowed some loan from the government which he did not pay. The crop was attached by the government to realised loan from the mortgagor. The mortgagee paid the loan voluntarily to the government. In a suit brought by the mortgagee against the mortgagor, the Court held that as the mortgagee was interested in payment of loan which the mortgagor was bound to pay to the government, the mortgagee (plaintiff) was entitled to recover it from the tenant (mortgagor i.e. defendant).

Likewise, in Urban Improvement Co. (P.) v. Ujagar Singh\(^{68}\) it was held that a developer who paid increased development charges was entitled to recover from the purchaser.

In Govind Ram Seksaria v. State Of Gondal\(^{69}\) it was observed by the Privy Council that where a party had agreed to purchase certain mills, he was entitled to recover from the seller such overdue municipal taxes which were to be paid by the seller and he actually paid them to save mills from being sold in execution. The Court further observed that by agreeing to purchase the property, the purchaser had acquired sufficient interest in it to safeguard.

In the instant case, a Maharaja had not paid municipal taxes of certain mills. He sold such mills without paying overdue municipal taxes. The buyer of the mills paid the arrears of taxes to save the mills from being sold by the government (i.e. by municipal corporation). Here the plaintiff i.e. Govind Ram Seksaria was the buyer of the mills. Lord Radcliffe of the Privy Council expressed his opinion that the Maharaja

\(^{68}\) A.I.R. 1996 P.&H. 167

\(^{69}\) (1949) 52 Bom. L.R. 450 (P.C.); A.I.R. (1950) 99 (P.C.). See also Avtar Singh, Contract & Specific Relief 11th ed. P. 545.
was bound to pay this money in the sense that he made a legally enforceable contract with Seksaria to pay it unless the words ‘bound by law to pay’ where they occur in the Section, exclude those obligations of law which arise iterpartes, whether by contract or by tort and embrace no more than those public duties which are imposed by statute or general law, the Maharaja was a person from whom reimbursement could be claimed under the Section. Their Lordships thought that the words ‘bound by law to pay’ extend any obligation which is an effective bond of law.

It is worth mentioning that where payment made by the plaintiff is not voluntary but it is statutory (i.e. his liability is statutory), he cannot make claim for reimbursement under S. 69 of the Act. To illustrate, in the case of Port of the Trust Madras v. Bombay Co. (P.) Ltd.\textsuperscript{70} it was held by the Court in this case that where a port authority was under a statutory liability to pay an injured workman and actually paid him, it could not recovered from the defendant, a contractor whose negligence had caused injury because the port authority was not only interested but was also bound in it’s own independent obligation to pay.

It is thus evident that the first condition to be fulfilled by the plaintiff for seeking reimbursement of his payment is that he is interested in the payment. Besides, he is to also prove that he has made the payment voluntarily and bona fide. Here the term bona fide implies that he has belief that his interest to make payment is genuine.

On the other hand, briefly stated the Indian rule under this Section for reimbursement is wider than the English rule. In India under

\textsuperscript{70} A.I.R. 1967 Mad. 367.
S. 69 the person seeking reimbursement should be interested in payment of money which another is liable to pay, but in England the person seeking reimbursement must necessarily prove that he was compelled to pay the debt or discharge the liability of another.\textsuperscript{71}

3.2.1.2 The Defendant Is Legally Bound To Make Such Payment-

The action of plaintiff for reimbursement can only lie for such money which the defendant was legally bound to pay to a third person. If the defendant is bound by law to pay him certain amount of money, this Section does not apply for reimbursement by the plaintiff. In \textit{Rasappa Pillai v. Mittu Zamindar Dorai Swami Reddiar}\textsuperscript{72} it was observed by the Court that the term ‘bound by law’ does not mean bound by law to the plaintiff, but that the defendant, at the suit of any person, might be compelled to pay. It is further to be noted that the obligation of the defendant must be an existing obligation i.e. such obligation of the defendant to pay money to third person must be in existence at the time when the plaintiff discharges it. To illustrate, in case of \textit{Banwari Lal v. Raj Kishore Guru}\textsuperscript{73} it was opined by the Court that S. 69 of the Indian Contract Act, 1872 cannot apply unless the obligation of other to pay was in existence at the date when the payment in respect of which, the suit is laid, was made.

It is evident that if the plaintiff is primarily liable to pay money, he cannot claim reimbursement from the defendant under S. 69 of the Act. In \textit{Habibul Rahman v. Sheonandan Singh}\textsuperscript{74} the Court was of the

\textsuperscript{71} Eastern Mortgage & Agency Co. v. Muhammad, (1925) 52 Cal.914 (purchaser of land paid the arrears of rent to superior landlords).

\textsuperscript{72} A.I.R. 1925 Mad. 1041.

\textsuperscript{73} A.I.R. 1946 Nag. 21.

\textsuperscript{74} A.I.R. 1928 Pat. 552.
opinion that a plaintiff’s claim under this Section obviously fails if it is concluded that he was really the person bound to pay. Further, where the plaintiff was required to pay on account of a primary obligation imposed upon him by statute, to plaintiff’s claim under this Section will not be maintainable.75

Therefore, it is necessary for the plaintiff to prove that he was interested in payment of that money for which the defendant was bound by law to pay. The liability of defendant may be legal as well as contractual. In other words, the liability of the defendant may be fixed by some statute (i.e. it may be statutory) or it may be contractual or it may be both. For example, in Angne Lal v. Sidhgopal76 it was held that the liability of the defendant to pay money need not only be statutory but it can also be contractual liability. Further, the liability of the defendant may also be tortuous. To illustrate, Thirumalasubbu v. Smt. Rajammal77 it was observed by the Court that the liability of the defendant to pay money may be contractual and it may also be tortuous liability. Therefore, if the plaintiff is interested in payment of such money which is related to contractual or tortuous liability of the defendant, he is entitled to claim reimbursement under S. 69 of the Act.

Again, in Govind Ram Seksaria v. Gondal State78 the Judicial Committee of the Privy Council laid down that the words ‘bound by law to pay’ do not exclude those obligations of law which arise inter partes, whether by contract or tort; and are not only confined to those public duties which are imposed by statute or general law.

76 A.I.R. 1940 All. 214.
It therefore follows that liability of the defendant to pay money may be statutory or by general law (e.g. regulations, ordinances, order, etc.) or it may be contractual or tortuous too. Such liability of the defendant is not thus confined to only public duties which are imposed by statute or general law.

Further, liability of the defendant is not confined to his personal liabilities but it includes also such liability for which he is indirectly bound to pay. For instance, in Nandan Sahu v. Fateh\textsuperscript{79} it was observed by the Allahabad High Court that S. 69 includes not only personal liabilities of the defendant but it also includes all such liabilities for payment for which owners of land are indirectly liable to pay.

Here the expression ‘bound by law’ does not denote that the defendant is bound to the plaintiff. What does it signify is that the defendant must be bound by law to make some payment to a third person and not to the plaintiff. For instance, in Soomashastri v. Swamirao\textsuperscript{80} it was held that the term ‘bound by law’ does not mean bound by law to the plaintiff but it means that the defendant at the suit of any person might have been compelled to pay.

However, where the defendant is not legally bound but he is only morally bound to pay some money, the plaintiff cannot claim reimbursement for such money which he has paid to a third person for discharging moral obligation of the defendant. In Raghavan v. Alamelu


\textsuperscript{80} (1915) 42 Bom. 93.
Ammal\(^{81}\) the facts may be simplified and the plaintiff may be called as B and the defendant may be called as A. It was laid down by the Court that when the income tax authorities assessed B in respect of certain income alleged to be derived by him and recovered the tax so assessed. B could not recover the amount from A on the ground that A was in actual receipt of the income. The Section did not apply as A not being assessed was not legally bound to pay the tax.

In case of **joint judgment debtors**, S. 69 applies provided one judgment debtor has satisfied the entire amount mentioned in the decree. In other words, where for example, there are two judgment debtors and the whole decretal amount is paid by only one judgment debtor and another fails to pay the amount, that judgment debtor who has paid the whole amount as stated in the decree, can claim reimbursement from the other judgment debtor under S. 69 of the Act. It is because the liability of judgement debtors who are jointly and severally liable to the decree-holder for the entire decretal amount stands unaffected by any agreement between the judgment debtors _inter se_ to the effect that one of them was liable exclusively to satisfy the decree. For example, **Ram Lal Mandal v. Khiroda Mohini Dasi**\(^{82}\) it was laid down by the Court that if as a result of failure on the part of a judgment debtor to satisfy the decree, another judgment debtor pays the decretal amount, he is entitled to claim reimbursement from him under S. 69 of the Indian Contract Act, 1872.

Likewise, a co-surety who has paid the whole amount under a **contract of guarantee** to the creditor on behalf of principal debtor can

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seek reimbursement from the other co-surety under S. 69 of the Act. In *Tirumali Savuri Naicker v. Royar*\(^{83}\) the majority of the Judges held that S. 69 of The Indian Contract Act, 1872 applies where one co-surety paying more than his share seeks to recover the proportionate share from another co-surety. Accordingly, the suit of the plaintiff (one co-surety) was allowed against the defendant (another co-surety). However, *Hon’ble Mr. Justice Ramesam* dissented from the majority opinion. He expressed his view that such suit by a co-surety should be brought against another co-surety under S. 140 of the Act and not under S. 69 of the Act.

On the aforementioned decision, my submission is also that the dissenting opinion in the present case seems to be more relevant than the majority opinion. The reason is very simple there are **specific provisions**\(^{84}\) for contract of guarantee in The Indian Contract Act, 1872. Sections 140 and 146 specially deal with right of one co-surety against another. Therefore, one co-surety should bring an action against another co-surety under Sections 140 and 146 rather than to bring such action under S. 69 of the Act.

It would not be out of point to throw some light on **contribution**. Basically there is radical difference between the term **reimbursement and contribution** because these two terms are coined on different footing. **Whereas, reimbursement is sought by a person who is interested in the payment and actually makes payment of such money which another is legally bound to pay, while contribution may be sought by such person who is jointly liable as well as**

\(^{83}\) A.I.R. 1921 Mad. 530.
\(^{84}\) S. 126 to S. 147 of The Indian Contract Act, 1872.
severally liable. Further, the person seeking reimbursement under S. 69 of the Act is not legally bound to pay, but the person seeking contribution is legally bound to pay. Again, reimbursement is founded on law (i.e. statutory provision incorporated under S. 69 of the Act) while the contribution is normally based on a doctrine of equity to promote the concept of burden and obligations and it does not depend upon contract.\textsuperscript{85} For example, where B and C are joint tort feasors for commission of tort of negligence against A. suit for damages was filed by A against B and C. the suit was decreed. Now B and C are jointly and independently liable to A. If A has recovered the whole amount of decree only from B, in such a case B has right to seek contribution from C and he cannot seek reimbursement from C. It was laid down in Satya Bhushan Bandhopadhyaya v. Krishna Kali Bandhopadhyaya\textsuperscript{86} by the Calcutta High Court that the test of mutuality is considered as the basis of contribution. In this decision when we look at the term of ‘mutuality’, it can be submitted that all the defendants in a single suit must be mutually liable to each other to make contribution.

Although, there are some cases\textsuperscript{87} in which claim for contribution have been allowed under S. 69 of the Indian Contract Act, 1872, yet in a number of cases suits for contribution under S. 69 of the Act have been rejected. However the majority view is that S. 69 of the Act does not deal with the contribution and it only deals with reimbursement. It is very specific Section and incorporate provisions for reimbursement only

\textsuperscript{86} A.I.R. 1915 Cal. 278.
to a person who is interested in payment of money and actually pays it to a third person voluntarily. The payment so made must be a legal obligation of another person and it must not be legal obligation of the person paying the money. Such payment is made in a situation where the person legally bound to pay does not pay or fails to pay. In Venkat Simbhadri Jagapati Raja v. V. Lakshmi Nrusimharoopa Sadrusannam Arad Dugarazu Dakshina kavatadugaraju\textsuperscript{88} it was held that S. 69 of the Act deals with reimbursement and not with contribution to all, for the person who is interested in the payment of money which another is bound by law to pay must be a person who is not himself bound to pay the whole or any portion of the money. It is to be noted that such view have been expressed by several High Courts in a number of decisions.\textsuperscript{89}

Thus, liability of the defendant for reimbursement arises under S. 69 of the Act only when the plaintiff pays such money voluntarily for which the defendant was legally bound to pay. So, a claim of the plaintiff for reimbursement under this Section will be defeated if he has paid such money on behalf of the defendant for which the defendant was not legally bound to pay.

It is worth mentioning that in its 13\textsuperscript{th} Report, The Law Commission of India has also made recommendation that S. 69 of the

\textsuperscript{88} A.I.R. 1916 Mad. 980.

Indian Contract Act, 1872 should be considered to deal with reimbursement and not with the contribution.\footnote{Para 90 of the 13\textsuperscript{th} Report of the Law Commission of India recommends substituting the words ‘who though not bound by law to pay, is interested in the payment of money’ for the words ‘who is interested in the payment of money’ in S. 69 of the Act}

My submission is that the view that S. 69 of the Indian Contract Act, 1872 deals with reimbursement and not with the contribution is logical, relevant and in consonance with true spirit and letter of provision of the Section. The recommendation of the Law Commission for amendment to this Section may be accepted by the Parliament and an amendment to this effect can be made to make the language of Section much clear and unambiguous.

3.2.1.3 \textit{Payment To Third Person-}

The payment of money must be made by the plaintiff to a third person and not to the defendant. It is obvious that the term ‘\textit{third person}’ has not explicitly been mentioned under S. 69 but on the basis of spirit of underlying the Section and also on the basis of judicial interpretation. The term third person can be assumed to be implicit in the Section. It is because there will be no reimbursement if payment of money by the plaintiff is made to the defendant. The Section will also not be applicable if defendant is bound to pay money to the plaintiff as in such a case the question of reimbursement does not arise. Again, the Section does not apply where plaintiff is bound legally to pay money to some third person. It is therefore submitted that the idea of ‘third person’ is implied under S. 69 of the Act. Consequently, it is clear that plaintiff must be interested in payment of such money to a third person for which the defendant is under a legal obligation to pay. That is to say the
plaintiff must not only be interested in payment of money but he must also actually pay the money voluntarily to such third person to whom the defendant is legally bound to pay.

Where money is paid by the plaintiff to himself in different capacity, he cannot seek reimbursement. For example, in *Secretary of State for India in Council v. Farnandes*91 certain land was there in South Canara. The land was held by the government as a permanent tenant at a definite rent under a landlord. Arrears of revenue were due to the government from the landlord. The government paid the arrears of revenue to itself. The purpose of such payment was to prevent the land from being sold. The suit of government as a tenant for reimbursement was rejected by the Court under S. 69 on the ground that the arrears of revenue were paid to the government itself and not to a third person i. e. the payment was a kind a transfer of a money by the government to itself from one head to another and it was not a payment to a third person.

It is therefore submitted on the basis of the above discussion that when for example the plaintiff is interested in payment of such money to a third person which the defendant is legally bound to pay and the plaintiff actually pays it, a quasi contract comes into existence by virtue of S. 69 of the Act where the defendant is liable quasi contractually to reimburse the plaintiff.

91 (1906) 30 Mad. 375.