CHAPTER-5
PROTECTION TO CHILD UNDER THE COMMERCIAL LAWS

GENERAL

The Indian Law of Contract is largely an imitation of English Law of Contract with only few changes introduced to meet the local conditions. Section 11 of Indian Contract Act provides—

"Every person is competent to contract who is of age of majority according 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 the requirement of valid contract is that the parties should have capacity to contract. The principle is that everybody has this capacity, but there are number of exceptions, most important is concerning the age of majority.

See 11 (2) of Indian Contract Act\(^1\) deal with capacity to enter into contract. This section rests on three fundamentals:

a) The contracting party should be major.

b) He should be of sound mind.

c) No law to which he is subject should disqualify him.

The laws fails to distinguish between minors of different ages, rules apply equally to babies in the arms and young men and women of seventeen. In reality cases involving child of tender age rarely occur or if they do they are settled by the common sense of the parents rather than by litigation. The object of rules governing the contractual capacity of minor, seems to be based on the principle that child should be protected for his own experience, while at the same time, he should not be allowed to benefit from the privilege at the expenses of adult. But

\(^1\) Indian Contract Act, Sec. 11(2).
still harsh reality is that though Indian Courts have laboured hard to overcome these shortcomings, but they have not succeeded in formulating the clear cut rules to govern all forms of contractual relations effecting child.

The party must be in a position to comprehend the nature of transaction since the minor is immature, lacks the experience and is incapable of forming an independent and accurate judgment. Thus in matters of contract, competency is the rule and incompetency is an exception. In India the minor becomes major when he is 18 years except when he is a ward of a court in that event the age of majority is 21 years. However, in respect of marriage, dower, divorce and adoption person, the minor below 18 or 21 can enter into contract, notwithstanding the provisions of Section 11 if he is major according to law to which he is subject. The competency inserted in Section 11(2) of Indian Contract Act, 1872 is so imperative for the validity of contract that if the minor does not take the plea of minority, it is the duty of the court to protect him and give effect to the statutory prohibitions. The contract being void ab-initio the minor need not set aside the contract.

As section 10 requires that the parties to a contract must be competent and section 11 declares that a minor not competent. But neither section makes it clear whether, if a minor enters into an agreement, it would be voidable at his option or altogether void. This controversy as to the nature of child’s agreement was resolved in 1903 by Judicial Committee of the Privy Council in their well known pronunciation in Mohori Bibe’s, case holding that all contracts entered by a child are void ab-initio. It was held that mortgage entered by the minor was void and the mortgagee who has advanced the money to the minor on the security of a mortgage was not entitled to repayment of money under Section 64 and 65 of the

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2 Indian Majority Act 1875, Sec. 3.
3 Hindu Law – Age of majority 16, Muslims 15, others 18 & 21.
4 Hawahar vs. Manma, 124 IC 436.
5 Mohori Bibe vs. Dharmoda Ghose, (1903) 30 IA 114.
Indian Contract Act, 1872 as mortgage is invalid. Sir Ford North while delivering the judgment observed:

“...Looking at these Sections, their Lordships are satisfied that the Act makes it essential that all contracting parties should be competent to contract and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act .... The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in case of an infant.”

I) Difference between Indian Law and English Law:

(A) At Common law persons under the age of 21 were designated “infants” and had only a limited capacity to contract. From January 1, 1970, the Family Law Reforms Act 1969 reduced the age of majority to 18 and authorised the term “minor” as an alternative to “infant”. “Minor is now the preferred term. The capacity of a minor to contract is still regulated by the common law, modified by the Minor’s Contracts Act 1987 which repealed a troublesome statute, the Infant Relief Act. 1874.

The general principle is that a contract made by a minor with an adult is binding on the adult but not on the minor. If, after attaining his majority, he ratifies it by an act of confirming the promise he made when a minor, he is bound. There need be no consideration for the act of ratification. A contract by a minor is not void and any money or property transferred by him under the contract can be recovered only if there has been a total failure of consideration. There are three exceptional cases where a minor is to some extent bound –

(i) Necessaries
(ii) Beneficial contracts of services and
(iii) Restitution by a minor
(B) Under Indian Law, the position is not same. The ruling of the privy council in the Mohori Bibi case has been generally followed by the courts in India and applied both to the advantage and disadvantage of minors. Another decision of the privy council in line is Mir Sarwarjan case.

In the Mir Sarwarjan's case,⁶ a contract to purchase certain immovable property had been made by a guardian on behalf of a minor, and the minor sued the other party for a decree of specific performance to recovery possession. The Court observed that it was not within the competence of the guardian to bind the minor or his estate by a contract for the purchase of immovable property. The suit was dismissed.

In the modern set up of society, it is not practicable to adhere to the categorical declaration that child's contract is always void ab-initio. The children now-a-days, deal, more frequently than ever before the book-sellers, general merchants, transporters, tailors, clothiers, drycleaners, barbers and employees etc. The Courts, therefore, started modifying their earlier decisions. In SriKakulam Subrahmanyam's case,⁷ the Court held that where a contract is entered into on behalf of a minor, by his guardian or by a manager of his estate, it can be enforced specifically by or against the minor if the contract is one which it is within the competence of the guardian to enter into on his behalf so as to bind him by it, and, further, if it is for the benefit of the minor. There are certain legal implications of child agreements given below:

RATIFICATION

An agreement by a minor is totally void and unenforceable. In such circumstances there can be no ratification of what is void. It is necessary that a fresh contract should be made on attaining majority and a new contract will also

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⁷ SriKakulam Subrahmanyam vs. Kurra Subba Rao, AIR 1948 Nag. 293.
require fresh consideration. The consideration which passed under the earlier contract cannot be implied into the contract into which the minor enters on attaining majority. In Shri Ram’s case, it has been laid down that for a valid ratification there must be three requisites – (a) attainment of majority (b) full knowledge of the nature and effect of transaction to be ratified and (c) a clear promise or an act inductive of intentional acknowledgement of the liability. In a similar case, I. Ramaswamy’s case, a minor borrowed a sum of money and executed a simple bond for it. After attaining majority he executed a second bond in respect of original loan plus interest. The Apex Court held that the suit on second bond was not maintainable as it was without consideration.

A minor need not pay debt incurred by him on attainment of majority. But if he pays it he cannot later sue for refund on the footing that the debt was itself void. It must be deemed that what he paid was a gift and as such cannot reclaimed. In S. Shanmugan Pillai’s case, dealing with the case of persons who were minors at the time the transaction was entered up to, Subha Rao, C.J., in the course of judgement observed that the ‘mere act of succession to the father may not amount to satisfaction as the son’s enjoyment is consistent with his right of inheritance to the father. But he can either expressly or by necessary implication ratify the transaction entered into by the father. But if the original transaction conferring the benefit was in favour of the minor, different consideration would arise. His enjoyment of the benefit after attaining majority may itself be a sufficient act of ratification’.

No Estoppel Against Minor :- If a minor by misrepresenting his age induces another to contract with him, will there by any estoppel against him, or in other

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8 Shri Ram vs. Mohan Ram, AIR 1935 Nag. 127.
9 I. Ramaswamy vs. A. Cheetiar, (1906) 16 M.L.J. 422 ; see also Suraj Narain vs. Sukhu Atris (1928)
10 Anant Rai vs. Bhagwan Rai, AIR 1940 All 12.
11 S.Shanmugan Pillai vs. K.Shanmugan Pillai, (1923) 2 SCC 312, at p. 320.
words, will he be precluded from disclosing his true age in a litigation resulting from the contract? This question also at one point of time had created a controversy. But it is now settled down in some cases like Brahma Dutt’s case, and Nawab Sadiq Ali Khan case that there is no such estoppel against a minor. The infant is now not estoppel from setting up the defence of infancy. The reason is quite simple. There can be no estoppel against a statute. The policy of the law of contract is to protect persons below age from contractual liability and naturally the doctrine of estoppel cannot be used to defeat that policy. ‘Even if a minor makes a fraudulent misrepresentation as to his age, agreements with him all void, and the minor is not precluded from setting up the plea of minority as there cannot be any estoppel against the statute.’ Beaumontin, C.J. in Gadigeppa Bhimoppa Mets’s case, reviewed the earlier authorities and concluded by saying:

"......The Court is of opinion that where an infant represents fraudulently or otherwise that he is of age and thereby induces another to enter into a contract with him, then in an action founded on the contract, the infant is not estopped from setting up infancy...."

Thus, the law of estoppel cannot be invoked in order to validate that which is void ab initio.

RESTITUTION

Where a minor misrepresents his age and takes a loan or any other goods not covered by the necessaries, the action at common law against the minor will not succeed. Equity however will not sit idle and will, in certain circumstances intervene in order to prevent infant from taking advantage of his own deceit. Lord Chancellor Hard Wicke said the “minors are not allowed to take advantage of

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12 Brahma Dutt vs. Dharmodas Ghose, (1899) 26 Cal. 381.
14 Ibid.
16 Earl of Burkinghamshire vs. Drury, (1760)2 ed. 60 & 71.
infancy to support a fraud.’ Equity thus developed a principle, which requires benefits to discarded, if they are in possession of fraudulent minor. It is also obvious that infants are no more entitled than adults to gain benefits to them by fraud. For instance, if a minor misrepresents his age gets motor car on credit, the motor car can be recovered if it is still is in possession. If he has sold it, he can be restrained from parting with money or if he has purchased any other thing with that money, the dealer can follow that thing. But if he has spent the amount, nothing can be recovered by him. In any case there is no personal liability of minor. Restitution stops when repayment beings. There are three type of situation in which it is relevant.

a) Infant who obtains property by means of misrepresentation of full age can be compelled to restore the property to the person deceived.\(^{17}\)

b) Secondly, it is doubtful where an infant disposed of actual thing got by fraud can be made to restore its proceeds. The doctrine of restitution can be invoked in this case, because if infant will be liable to restore the goods or repay it back, it will amount to enforcing a contract declared void by state. Thus in *Leslie (R) Ltd. vs. Sheill*,\(^ {18}\) Lord Summer stated that “where there is no question of tracing or no possibility of restoring a thing got by fraud, then if he will be compelled to compensate, it will amount to an enforcing a void contract.”

c) Thirdly, the essence of the loan of money is that borrower shall repay the equivalent amount but it is not necessary that the borrower shall restore the identical benefits.\(^ {19}\)

In India if the contract is void on the grounds of minority the other party is entitled to return the money so advanced. In *Mohori Bibi’s case*,\(^ {20}\) court held that

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\(^{17}\) *Clarke vs. Cibley*, (1789) CEC 173, *Lempriere vs. Lange*, (1879) 12 Ch. D. 675.

\(^{18}\) Ibid.

\(^{19}\) Ibid.

\(^{20}\) *Supra n 5.*
section 64 and 65 of Contract Act have no application, as both sections presume agreement between competent parties, hence minor cannot be ordered for restitution under these provisions.

The first well-known case decided under the section is that of Mohoribibi vs. Dharmodas Ghose.21

The plaintiff, a minor, mortgaged his houses in favour of the defendant, a money-lender, to secure a loan of Rs. 20,000. A part of this amount was actually advanced to him. While considering the proposed advance, the attorney, who was acting for the money-lender, received information that the plaintiff was still a minor. Subsequently the infant commenced this action stating that he was underage when he executed the mortgage and the same should, therefore, be cancelled.22

The relief of cancellation had to be granted as the plaintiff was entitled to it under Section 39 of the Specific Relief Act, 1877 [S. 31 of 1963]. The money-lender’s only request was that the relief should be made subject to the condition of the minor repaying to him the sum of Rs. 10,500 advanced as part of the consideration for the mortgage. He first relied upon Section 64 of the Contract Act. According to this section, a person who, having the right to do so, rescinds a voidable contracts, he shall have to restore to the other party any benefit received by him under the contract. The Privy Council held that this section applies only to voidable contract and cannot apply to the agreement of a minor, which is absolutely void. Similarly no relief was allowed under Section 65 of the Act. The essence of this section is that a party receiving any benefit under a contract shall have to restore it if the contract becomes void or is discovered to be void. Quite obviously the Privy council said “that this section, like Section 64, starts from the basis of there being an agreement or contract between competent parties, and has

21 30 UA 114: 30 Cal 539 (1903).
22 Under Section 39 of the original Specific Relief Act of 1877 courts were authorised to order cancellation of void contracts. Now Sec. 31 of the Act of 1963.
no application to a case in which there never was, and never could have been, any contract.23

Finally, the money-lender relied upon Section 41 of the Specific Relief Act, 1877 [S. 33 of 1963], which was as follows: “On adjudging the cancellation of an instrument the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.” As to this their Lordships said: “This section no doubt gave a discretion to the court; but the court of first instance and subsequently the Appellate Court, in the exercise of such discretion, came to the conclusion that under circumstances of this case justice did not require them to order the return by the respondent of money advanced to him with full knowledge of his infancy, and their Lordships see no reason for interfering with the discretion so exercised.”

The second landmark in this line of cases on the extent of relief available against a fraudulent minor was the decision of the Lahore High Court in Khan Gul’s case.24

The defendant, while still a minor, by fraudulently concealing his age, contracted to sell a plot of land to the plaintiff. He received the consideration of Rs. 17,500 and then refused to perform his part of the bargain. The plaintiff prayed for recovery of possession or refund of consideration. There could be no question of specific enforcement the contract being wholly void. The only question, therefore, was: “Can a minor who has entered into a contract by false representation refuse to perform the contract and at the same tie retain the benefit he may have received therefrom?” Section 41 of the Specific Relief Act, 1877, would not help the plaintiff as Sir Shadilal, CJ admitted that “the language of the section no doubt shows that the jurisdiction conferred thereby is to be exercised when the minor himself invokes the aid of the court.” Nor would the

23 30 IA 114, 124, See also the judgement of Sulaiman CJ in Ajudhia Pd vs. Chandan Lal, AIR 1937 All 610, 612.
24 Khan Gul vs. Lakha Singh, AIR 1928 Lah 609.
principle of restitution as explained by Lord Sumner in Leslie case, be of any help unless it was extended in India to cover cases of money also. The learned Chief Justice found sufficient reason for this extension as he said:

“There is no real difference between restoring the property and refunding the money, except that the property can be identified but cash cannot be traced.... It must be remembered that, while in India all contracts made by infants are void, there is no such general rule in England. There should therefore be a greater scope in Indian than in England for the application of the equitable doctrine of restriction.”

Referring to Sections 39 and 41 of the specific Relief Act, 1877 [now Ss. 31 and 33 of Act 1963], His Lordship said: “The doctrine of restitution is not however confined to cases covered by those sections. The doctrine rests upon the salutary principle that an infant cannot be allowed by a court of equity to take advantage of his own fraud” Accordingly, the learned Chief Justice ordered refund of the consideration.

This opinion was not followed by the Allahabad High Court in another landmark on the subject, namely, Ajudhia Prasad vs. Chandan Lai.

A sum of money was borrowed by two minors under a mortgage deed. They were more than 18 but less than 21 years of age, but fraudulently concealed the fact that a guardian had been appointed for them. The question was whether the lender could get a decree for the principal money or sale of mortgaged property.

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25 Supra n. 18.
27 See also Dattaram vs. Vinayak, (1903)28 Bom. 181.
28 AIR 1937 All 610 (FB).
29 The case was first argued under Section 65 of the Contract Act. But SULAIMAN CJ who delivered the judgement, followed the ruling of the Privy Council in Mohoribibi vs. Dharmodas Ghose, (1903) 39 IA 114, noted above, to the effect that Section 65 is not applicable to a minor’s agreement. After quoting extensively from their Lordships’ judgment, the learned Chief Justice said: “Where, therefore, one of the parties is a minor and is incapable of contracting so that there never is and can never be a contract, Section 65 can have no application to such a case as that section starts from the basis of there being an agreement or contract between competent parties.” (at p. 613).
Sulaiman CJ who delivered the judgement of the Full Bench, refused to follow the enlarged view of restitution as applied in Khan Gul vs. Lakha Singh. His Lordship felt that the courts in India were probably bound by the principle of restitution as explained and restricted by Lord Sumner in Leslie (R) Ltd. vs. Sheill, as it had already been approved by the Privy Council. In Mohd. Syedol Ariffin case, In the opinion of his Lordship, any other “view would be contrary to the great preponderance of authority both in England and in India and would ignore the well-recognised distinction between the position of a minor when suing as a plaintiff and when he is being sued as a defendant.” The learned Chief Justice added: “Where the property is not traceable and the only ways to grant compensation would be by granting a money decree against the minor, decreeing the claim would be almost tantamount to enforcing the minor’s pecuniary liability under the contract which is void.... There is no rule of equity, justice and good conscience which entitles a court to enforce a void contract of a minor against him under the cloak of restitution.”

Amended provisions in Specific Relief Act, 1963

The Law Commission of India preferred the view of Court in Khan Gul case, and accordingly the controversy has now been set at rest by the new Specific Relief Act 1963. The principle of restitution is contained in Section 33 of the new Act. The net result of the amendment may be stated in terms of the following two propositions:

(1) Where a void or voidable contract has been cancelled at the instance of a party thereto, the court may require him to restore such benefit as he has received under the contract and to make any compensation to the other party which justice may require.

30 Supra n. 24
31 Supra n. 18
33 AIR 1937 All 610, 617.
34 Supra n. 24
(2) Where a defendant successfully resists any suit on the ground that the contract, by reason of his being incompetent, 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 to which he or his estate has benefited thereby.

But in case of an agreement where promise is made to compensate wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor is legally compellable to do, is enforceable by law.\textsuperscript{35} It is necessary to attract this exception that the service should be rendered voluntarily.\textsuperscript{36} Similarly in \textbf{Karam Chand case},\textsuperscript{37} a promise made by a minor after attaining majority to pay goods supplied to the promisor during minority has been held to be within the exceptions. Rattigan J observed that it is now settled law that a promise by an infant is in law a mere nullity and void, but we fail to see how an agreement made by a person of full age to compensate a promise, who has already done something for the promisor even at a time when the promisor was a minor does not fall within the purview of Section 25(2) of the Indian Contract Act. As at the time when the thing was done the minor was unable to contract the person who did it for the minor must, in law, be taken to have done it voluntarily. But he has in fact done something for the minor, and if words mean anything at all. Surely his case must be deemed to come within the scope of the Act. The inference is that a promise by a minor after attaining his majority to compensate the services rendered to him voluntarily by the promise falls within the scope of Section 25(2) of the Act.

\textsuperscript{35} Supra n. 1, Sec. 25(2).
\textsuperscript{36} Ahmedabad Jubilee S & M Co. vs. Chottu Lal Changan Lal, (1908) 10 Bom. LR 141.
\textsuperscript{37} Karam Chand vs. Basant Ram, (1911) Punjab Records No. 31, 91.
A contract of service is binding on an infant, if viewed as a whole, if the contract is not beneficial then it will be void. Thus in *Clements vs. L & N.W. Ry Co.* an infant party has agreed to join insurance scheme, to which his employees contributed, and to give up any claim for personal injury under Employees Liability Act, 1880. His rights under the scheme were more beneficial than these rights under the Act. But the compensation was smaller than the amount recoverable under the Act. It was held that contract was on the whole beneficial and Court will not allow the infant to sue under the Act. On the other hand a clause which simply limits or includes the liability of an employer without giving the infant any right to return is unlikely to be upheld. In deciding whether a service contract is on the whole beneficial the Court is entitled to look at surrounding circumstances. Where a service contract is in restraint of trade, contract will be void even though beneficial to infant. Similarly, in *Doyle case*, an infant, a professional boxer, was engaged to fight for £ 3000, win, draw or loose subject to the rules of the British Boxing Board of Control. Under these rules, a boxer who was disqualified could not file his claim. Doyle lost and was disqualified for hitting below the belt. It was held infant was bound by the rules and hence cannot recover. Contract was on the whole beneficial to the boxer.

Similarly, in *Raj Rani's case*, the plaintiff, a minor, was allotted by the defendant, a film producer, the role of an actress in a particular film. The agreement was made with her father. The defendant subsequently allotted that role to another artist and terminated the contract with the plaintiff’s father.

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38 (1894)2 Q. B. 482.
39 *Osen vs. Corry Graiesent Ltd.*, (1936) & All ER 241.
40 Section 27 of Indian Contract Act is violated.
41 *Doyle vs. White City Stadium Ltd.*, (1939)1 KB 118.
The Bombay High Court held that neither she nor her father could have sued on the promise. If it was a contract with the plaintiff, she being a minor, it was nullity. If it was a contract with her father it was void for being without consideration. The promise of a minor girl to serve, being not enforceable against her, cannot furnish any consideration for the defendant's promise to pay her a salary.

Thus, in India, it is not possible for a minor to succeed in suit for a suit for damages for the breach of contract of services entered by minor himself. A minor is allowed to enforce a contract which is of some benefit to him and under which he is required to bear no obligation. In contracts by guardian of a minor on his behalf, measure of damages must be based on damage suffered by guardian and not on the damage suffered by the minor.

In England minor may enter into a contract of apprenticeship but he cannot be sued there on. While in India such contracts of apprenticeships are binding on minor. The predominant consideration for enforcement of contract of service and apprenticeship is the benefit to the minor. If they are detrimental to the minor they are void. So while service contracts are deemed to be void the apprentice contracts are not.

**CHILD'S LIABILITY IN TORT**

A minor may be held liable to Tort (civil wrong). But if in the course of doing what he is entitled to do under the contract, he is found guilty of negligence, he cannot be made liable on tort if he is not liable on contract, e.g., in Burnard's case, a minor hired a horse promising not to jump. He lent the horse to his friend who used the horse against the instructions and this led to the death

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43 A Razak vs. Md. Hussain, AIR (1917) Bom. 61.
44 Indian Apprentices Act, 1850.
46 Burnard vs. Huggis, (1863)4 BNS 45 : 8 LT 328.
of the horse. The minor was held liable in tort. But in another case of Jenning's case,\textsuperscript{47} a horse was hired for riding. The horse was injured due to over-riding. The minor could not hold liable since the injury resulted from negligence in the course of what he was entitled to do under the contract. Since he was not liable on the contract himself, he could not be held liable in tort too.

**MINOR AND CONTRACT OF AGENCY**

A minor is incapable of entering into a contract because an agreement by a minor is void. What a minor cannot do himself, he is not capable of doing the same through an agent. Section 183 of Indian Contract Act lays down that "any person who is of the age of majority, according to the law, to which he is subject and who is of sound mind, may employ an agent." There is a bar to a minor becoming an agent. An agent is merely a connecting link between his principal and the third persons, and it is they who should be competent to contract. Section 184\textsuperscript{48} provides that as between the principal and the third person any person (even a minor) may become an agent. Even if a contract has been created through an agency of a minor, the principal and the third person would be bound to each other. It has to be noted that a minor is capable of becoming an agent for the purpose of binding the third person and his principal. So far as minor's own liability towards the principal is concerned, that will not be there because of his minority.

1) Claim for Necessaries Supplied

The necessaries supplied and delivered to an infant or to a person who is incapable of entering into a contract, must be paid for at a reasonable rate, if they are wholly benefited the recipient. The word 'necessaries' has since the earliest

\textsuperscript{47} Jenning vs. Randall, (1799) 87 R. 335.
\textsuperscript{48} Section 184 of Indian Contract Act, 1872 "No person who is not of the age of majority and of sound mind can become an agent, so as to responsible to his principal according to the provisions in that behalf herein contained."
days of English Law do not give a clear definition. As early as in 1844\textsuperscript{49} the court used the term to denote all those things which are essential for maintenance of the life of an infant and extends from giving food, lodging, to provide education, intellectual, moral and religious information.\textsuperscript{50} However, the luxuries articles may also be allowed if they constitute infants necessaries.\textsuperscript{51} This view was approved in various cases. In 1893 the Section 3 of the Sale of Goods Act gave the definition of the term:

Necessaries mean good suitable to the conditions in life of such infants or minors or other persons and to this actual requirement at the time of sale of delivery.

In 1908 the Court proceeded to interpret the word ‘necessaries’ in Nash’s case.\textsuperscript{52} A historic judgment was delivered by Flecher Moulton LJ which declared that infant being incapable of entering into contract, if the man satisfies infant needs, law will imply an obligation on infants part to repay him for his services rendered. The Court laid down the text that:

a) goods supplied to infants are suitable to the condition in life of an infant.

b) that they are suitable to his actual requirement at the time of sale and delivery.

Section 68 of Indian Contract Act provides that “if a person, incapable of entering into a contract of anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supply in entitled to be re-imbursed from the property of such incapable person.” The section carried the following two illustration:

\textsuperscript{49}Chapple vs. Cooper, (1844) M & W 252.

\textsuperscript{50}Ryder vs. Wombell, (1866) LR4 Ex. Ch. 32.

\textsuperscript{51}Johnstone vs. Marks, (1887)19 QB 575.

\textsuperscript{52}Nash vs. Inmen, (1908) All ER Rep 317 KB.
1. A supplies B, a minor, with necessaries suitable to his condition in life. A is entitled to be re-imbursed from B’s property.

2. A supplies the wife and children of B, a minor with necessaries suitable to their conditions in life. A is entitled to be re-imbursed from B’s property.

Section 68, is based on a laudable principle that persons who are incapable of entering into contract shall be sufficiently protected, be not allowed to suffer for want of necessaries in life. What is necessary is a relative fact, to be determined with reference to the fortune and circumstances of infant. Thus articles supplied to an infant for his wedding, money needed for the defence of a minor in a case, money needed for the marriages of minor’s sister whether minor is Hindu or Muslim, money paid in respect of lawful debt, and fees paid to the doctor who attends the child are deemed to be necessaries. But the things like money supplied on expensive clothes, money borrowed for male minor’s wedding and money paid for tobacco expenses etc will not come under the definition of necessaries.

Though Indian Law relating to Necessaries seems to be wide and clear, but even in this area, in certain circumstances law is inadequate and needs a change. For instance, if the necessaries are supplies to the wife of a minor or to the children of a lunatic such minor or lunatic is liable to re-imburse the supplier. In Sadhu case, wife sued her husband for recovery of expenses incurred on the marriage of their minor daughters. The Court refused to grant her decree on the ground that marriage of a minor daughter was the duty of the father and not of the mother and that mother’s act was purely voluntary. In this case, the court should

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53 Nilkanth vs. Chander Ban, AIR (1922), Nag. 247.
55 Nandan Prasad vs. Ajudhia, (1910)32 All 325.
57 Tikilal vs. Komal Chand, AIR (1940) Nag 329.
58 Nanda Mathur vs. Gijan Bhai.
have taken a view in favour of wife as she had done what was the duty of the father to do. Another controversy is with regard to that whether minor girls property is liable for the necessaries supplied to her impecunious husband. Under English Law the answer is affirmative as (husband and wife) are deemed to be one person in the eye of law, hence minor girls estate will be liable for necessaries supplied to her husband Muslim women (wife) is not bound to maintain her husband. The Hindu wife seems to be bound to maintain her husband. But it seems to be unfair that minor girls shall be liable. Thus even this area seems to be clouded with inadequacies and controversies.

II) Child and Business Associations

The law relating to the position of child i.e. minor in business association like firms cannot be read in isolation. It has to be read with the general principles of the law of contract.

The first question that arises regarding minors is whether a minor can be a partner? The clear answer of this question is that a minor cannot be a partner. By virtue of Sections 10 and 11 of the Indian Contract Act, 1872, a minor is incompetent to contract and therefore, a minor’s contract is void ab initio. According to Sections 4 and 5 of the Partnership Act, partnership arises out of contract. Since a minor is incompetent to contract, he cannot be a partner. A minor can, however, be admitted to the benefits of partnership. Section 30(1) of the Partnership Act provides:

“A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.”

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For a minor to be admitted to the benefits of partnership certain conditions must be satisfied. In *Venkatrama Iyer’s case*, the Madras High Court held that where members of a family carry on the business and some of the members are minors, there must be some positive act on the part of the regular members so that the Court may infer that the minors have been admitted to the benefits of partnership. The mere fact that on account of an error of law all had accepted that all the children of the family whether minor or adult shall have equal interest in the business, is not sufficient.

In *Addl. Commr. of Income Tax’s case*, the Court clarified the legal position and held that Section 30(2) makes it clear that even to admit the minor to the benefits of partnership, it is necessary to have an agreement between the minor and the existing partners. Since the property and money of the minor can be used for the uses of the firm, it is necessary that there must be an agreement between the existing partners and someone on behalf of the minor. Minor cannot be admitted to the benefits of partnership by an agreement to which minor is not a party. In the instant case, the partnership deed was signed neither by the minor nor any one on his behalf. Thus minor was not a party to the partnership deed.

In *V.P.R. Prabhu’s case*, the Division Bench of the Kerala High Court approved the observations of the above two cases and while clarifying the legal position observed: “In order to prove that a minor was admitted to the benefits of partnership, in the first place there must be proof of consent of all the partners, secondly there must be an agreement as contemplated under Section 32(2).”

In short, a minor can be admitted to the benefits of partnership where the conditions mentioned in Sections 30(1) and 30(2) are satisfied. According to Section 30(1), a minor may be admitted to the benefits of partnership with the

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63 *V.P.R.Prabhu vs. S.P.S.Prabhu*, AIR 1985 Ker 265.
consent of all the partners for the time being. According to Section 30(2), *such a minor has the right to such share of property and of the profits of the firm as may be agreed upon.*

(A) Rights and Liabilities of a Minor Admitted to the Benefits of Partnership

The rights and liabilities of a minor admitted to the benefits of partnership are following:

1. A minor admitted to the benefits of partnership has a right to such share of the property and of the profits of the firm as may be agreed upon.\(^6^4\)

2. Such a minor may have access to, and inspect and copy, any of the accounts of the firm.\(^6^5\)

3. Such minor’s share is liable for the acts of the firm but the minor is not personally liable for any such act.\(^6^6\)

4. Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made, as far as possible, in accordance with the rules contained in Section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the court shall proceed with the suit as one for dissolution, and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.\(^6^7\)

(B) Right of Election to become or not to become a Partner by a Minor after he becomes a Major-

According to Section 30(5) – At any time within six months of his attaining majority or of his obtaining knowledge that he has been admitted to the

\(^6^4\) *Indian Partnership Act 1932*, Section 30(2).
\(^6^5\) Ibid.
\(^6^6\) *Supra* n. 64, Sec. 30(3).
\(^6^7\) Id; Sec. 30(4).
benefits of partnership, whichever date is later, such person may give public notice that he has elected to become, or that he has elected not to become, a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

Where any person has been admitted as a minor to the benefits of partnership in a firm the burden of proving the fact, that such person had no knowledge of such admission, until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.68

Take one illustration; suppose C, a minor, was admitted to the benefits of a partnership. There were two firms of the name of “M.B. Sadalge” and “C. N. Sadalge” who were carrying on the business of commission agents and manufacturing and selling partnership. The partnership had become indebted and was dissolved. C became major subsequently. He, however, did not exercise the option to which he was entitled. The creditors demanded their dues but the partners were not able to pay. Thereupon, the creditors started insolvency proceedings against the partners in the court. They impleaded C also in the insolvency proceedings.”

A minor admitted to the benefits of partnership cannot be impleaded in insolvency proceeding against the firm on the ground that he had become a major after the dissolution of the firm but had not exercised his option to become or not to become a partner. Since the dissolution of the partnership had taken place before the minor had attained majority, the partnership was then not in existence and legally it had become impossible to become a partner of the dissolved firm. A minor cannot be held liable on the mere ground that he had not exercised his right of election under Section 30(5). The provisions of Section 30 presuppose

68 Id; Sec. 30(6).
that partnership exists. A minor after attaining majority cannot elect to become a partner in a firm which does not exist. Since he is not a partner of the firm, he cannot be impleaded in insolvency proceedings.

It may be noted that the facts of the above problem have been taken from the case of Shivganda Ravji Patil’s case,69 decided by the Supreme Court. The Supreme Court gave the same decision as has been stated above.

(C) Rights and liabilities of a minor who becomes a partner after exercising his election to become a partner-

Where a minor who has been admitted to the benefits of partnership becomes a partner after electing to become a partner on attaining majority, his rights and liabilities are follows:-

(1) His rights and liabilities as a minor continue upto the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.70 The basis of this rule seems to be this : Since a minor’s contract is void, he is never personally liable. But as he becomes competent to contract after attaining majority and elected to become a partner he becomes personally liable for the acts of the firm.

(2) His share in the property and profits of the firm shall be the share to which he was entitled as a minor.71

(D) Rights and liabilities of a minor admitted to the benefits of partnership on his election not to become a partner on attaining majority-

Rights and liabilities of a minor admitted to the benefits of partnership on his election not to be come a partner on attaining majority are following :

(1) His rights and liabilities shall continue to be those of a minor under Section 30 up to the date on which he gives a public notice.72

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69 Shivganda Rajiv Patil vs. Chandrskant Neelkant Sadalge, AIR 1956 SC 212.
70 Supra n. 64, Sec. 30(7) (a).
71 Id; Sec. 30(7) (b).
72 Id; Sec. 30(8) ( a).
(2) His share shall not be liable for any acts of the firm done after the date of the notice.\textsuperscript{73}

(3) He shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4)\textsuperscript{74} which has been noted above.

It may be noted here that nothing in sub-sections (7) and (8), as noted above, shall affect the provisions of Section 28,\textsuperscript{75} i.e. the provisions relating to holding out which have been discussed in detail earlier.

The law describing the position of a minor is more than a century old. A look into its working as attempted in the foregoing discussion shows that it has neither benefited the minor nor extended a safeguard to his interest as is purported to have been its functions. Moreover, the society during the period that has elapsed since the enactment of Indian Partnership Act, 1872 has passed through numerous changes. It has passed through many phases of development, sometimes adhering to the concept of status and at other times shifting to contract. The law of partnership vis-à-vis minor needs be reviewed and revised, more so in view of disparity between our law and the law of Britain, where the minor is put in a comparatively advantageous position. It would be advisable to reform Section 30 of Indian Partnership Act with suitable changes so that the minor’s position is bettered in relation to adult partners of the firm.

CHILD AND INCOME TAX LAW

Section 4 of the Income Tax Act, 1961 is the charging Section which \textit{inter-alia} provides that tax is to be charged on the income of the previous year of every person. The term ‘person’ includes an individual, a Hindu undivided family, a company, a firm, an association of persons or body of individuals, a local authority, artificial, juridical person etc. A child is an individual and even though

\textsuperscript{73} Id; Sec. 30(8) (b).
\textsuperscript{74} Id; Sec. 30(8) (c).
\textsuperscript{75} Id; Sec. 30(9).
he has not attained the age of majority his income would be chargeable to Income-tax under this section of the Act. For instance where minor child is employed and he has salary income, which is chargeable to tax under the Act, in such a case, even if a guardian of that minor were to be appointed, the guardian would not become entitled to receive the salary from the employees of his ward nor would he be in actual receipt of that income, so the provisions of Section 160(i) (ii) of the Income Tax Act, 1961 would not apply. In such cases, it is clear that the income will be and should be taxable in the hands of the person earning the income even though he may not have attained majority under the Indian Majority Act, 1875. Similarly, if there be a Hindu undivided family consisting of several male members none of whom has attained the age of majority, the income of Hindu undivided family would still be liable to be charged to income tax under Section 4 of the Income Tax Act, 1961. So in the case of a firm where minors are admitted to the benefit of partnership the firm will be charged to tax under the provisions of Income Tax Act. The associability of an association of persons is not affected by the fact that some of members are minors.

This point that minor is chargeable to tax was decided long back by the Court of Appeal in England in Rex's case, for the New Market Division of Suffolk (Ex-parte Huxley) In this case Mr. Huxley received income as jockey. He has not attained majority. The question had arisen whether Huxley who had not attained majority. The question had arisen whether Huxley who had not

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77 Supra n. 3
78 Shridhar Udaya Naryan vs. CIT,(1962) 45 ITR 577 All.
79 See Muhammed Noorulah vs. CIT, (1961)2 ITR 115.
80 Rex vs. Commissioner of Tax, (1961)7 Tax Cas. 49.
attained the age of 21 years which was the age of majority in England, could be directly taxed in respect of the income which he was receiving as a jockey. It was contended on behalf of Huxley that he had not the requisite discretion to make the return and defend the proceedings or to appeal under the income tax law in England. Replying his contentions, Cozens Hardy M.R. observed:

“It is to my mind almost absurd to suggest that a jockey making a large income and, I presume, assisted by clerks or other servants, has not the requisite discretion to enable him to deliver, or procure to be delivered, all proper particulars, and, if necessary to instruct legal advisers to protect his rights.”

The Court came to this conclusion on the principle that under the charging section of the income tax law where the word used was ‘person’ that word would include an infant who had not attained the age of 21 years and direct taxation of income in his hands is permissible. Lord Phillipmore while dealing with the question of incapacity of an infant who had not attained the age of 21 years held that the word ‘incapacity’ may be rightly confined to the case of an infant who does not receive or control his own property and who is, therefore, incapable of making a return Lord Justice expressed his view by saying that an infant who controls and manages his own concern may well be treated as capable of doing what is required under the Income Tax Act.

In India too this point has been discussed in quite detail in Shridhar Udai Narayan’s case. In this case a Hindu undivided family carried on business under the M/s Shridhar Udai Narain of which Shridhar was karta. He filed a return of the income of the Hindu undivided family for the year 1946-47, and the assessment was completed. After his death, income tax officer had definite information that income of the above mentioned year has escaped assessment and

\[81\] Shridhar Udai Narayan vs. CIT, (1962)45 ITR 577 (All).
issued notice under Section 34\textsuperscript{82} of the Income Tax Act, 1922 which was addressed to the Hindu undivided family Shridhar Udai Narayan. The notice was served on the eldest male member of the family Udai Narayan Trivedi who was Karta after the death of Shridhar. On the date of service of notice Udai Narayan was minor. In response to the notice served on him, Udai Narayan filed a return wherein he described himself as Karta of the assessee family. The question to be decided was whether service of notice on Udai Narayan was a valid service within the meaning of Section 63\textsuperscript{83} of the Income Tax Act, 1922.

Section 63(2) of the Income Tax Act 1922 \textit{inter-alia} provided that any notice or requisition may be addressed in case of Hindu undivided family to the manager or any adult male member of the family.\textsuperscript{84} In the context of this provision, the court was to decide whether there can be a minor adult. Answering this question in affirmative, the Court observed:\textsuperscript{85}

"It appears to us that if the intention had been that the notice must be addressed to a person who had attained majority under the Indian Majority Act the Legislature could very conveniently have used the expression ‘any male member of the family who has attained majority’, and when the legislature could very conveniently have used the expression ‘adult member of the family’ need it was intended that expression ‘adult member of the family’ need not be construed with reference to the provisions of the Indian Majority Act, 1875. The Indian Majority Act has been passed almost solely with the purpose of declaring when a citizen of India was to attain majority and if there had been the intention of the legislature that in case of a Hindu undivided family the

\textsuperscript{82} New Section 148 of Income Tax Act, 1961.
\textsuperscript{83} Now Section 282(2) (a) of 1961 Act.
\textsuperscript{84} Now Section 282(2) of the 1961 Act refer to ‘any adult member of the family.’ The word ‘male’ which was there in 1922 Act has been deleted in the present Act.
\textsuperscript{85} See Supra note 212, p. 581.
notice must be served only on a member of the family who had attained majority care would have been taken to use the language which would have clarified the position. Instead, the legislature used the word 'adult' and consequently in interpreting the word 'adult' we should not make a reference to the provisions of the Indian Majority Act."

The Court then proceeded to explain the term ‘adult’. In the dictionary ‘adult’ has been defined as connoting a person who has attained the age of discretion. The age of discretion is normally considered to be 16 years in case of a male person. The word adult is to be interpreted, not with reference to the actual age in years but with reference to the circumstances, whether the person in respect of whom the word ‘adult’ is being interpreted has or has not attained discretion.

MINOR AND NEGOTIABLE INSTRUMENTS

Section 26 of Negotiable Instruments Act, 1881 lays down the provision explaining the capacity to a contract in case of negotiable instruments:

"Every person capable contracting, according to the law to which he is subject may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation on a promissory note, bill of exchange or cheque.
A minor may draw, endorse, deliver, negotiate such instrument so as to bind all parties except himself."

It is clear that minor is incapable of doing two things i.e. making of a promissory note and acceptance of bill of exchange. The main obligation in case of a promissory note depends on the promise made by a maker and in case of bill of Exchange on the undertaking by the acceptor. If they are incompetent to

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86 Ibid.
87 Hari Charan Singh vs. Chander Kumar Dey(1908) ILR 35 Cal 286; In re, Desouza 29 AIR (1932) All 374.
88 Ibid.
contract, the whole of instrument becomes inoperative. It is, therefore, necessary that a maker of the promissory note and the acceptor of bill of exchange must be competent to contract. A minor has been authorized to draw, indorse, deliver and negotiate a negotiable instrument. Ordinarily, an endorser incurs liability towards indorse and the subsequent parties under the Act but if the endorser is minor, he will not incur such liability. In such a situation minor binds all parties except himself.

The above study reveals that a minor child can be directly assessed as any other individual, he can be representative alive assessee in respect of income of the deceased, and there can be representative assessee for the income of the minor child. A close examination of Indian law on contract in relation to minor is inadequate. These rules remain fundamentally as they were enunciated by the Act drafted hundred years ago or by judges of nineteenth and early twentieth century. In view of the changes taking place in these fields and also desire on the part of the state to provide people’s welfare and social justice, it seems necessary to introduce drastic changes in the rights and liabilities of the parties to a minor’s contract, so that law will become broad based and reach a level of adequacy.