



## **Capacity of Minor's Contracts under the Contract Act in Pakistan: A Critical Appraisal**

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### **ABSTRACT**

According to Section 10 of the Contract Act, 1872 (CA), an agreement concluded by the parties is only enforceable where the consent of the parties is free with their competence. Section 11 indicates that minors lack the legal competence to enter into contracts. CA specifically highlight the effects if the contract is entered into by the vitiating factor provided under sections 19, 19A and 20 but does not suggest any inference about the contracts of minors. In this regard the Privy Council (PC) in its verdict of Mohori Bibee v. Dharmodas Ghose answer this proposition and interpreted the CA and declared that contracts by the minors are ab initio void neither the contracts are void nor voidable. As to this interpretation contracts of minors cannot be enforced against them and nobody can claim restitution under section 64 as voidable contract and under section 65 as void contract. Since the courts accepted the above interpreted rule in stricto meaning as unquestionable. This article suggests that the PC's interpretation in the Mohori Bibee (MB) case of CA is problematic, and its creation of new type of contract as void ab initio is not supported by CA. Embargo on the minors to contract or seek remedy need urgent judicial reinterpretation or reforms in legislation in Pakistan. In this paper doctrinal methodology is applied.



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## **1. Introduction**

Section 10 of the CA provides that contracts must be concluded between parties who have capacity and free consent. Section 11 provides that competency lie on those who have attained majority by law and are not of unsound mind. Section 10 fails to explain what consequences of consent if it is absent in contract as relevant other provisions of CA provide. Sections 19 and 19A articulate the cases where consent obtained by dreadful manner by either party through fraud, coercion, undue influence or misrepresentation will be voidable on the aggrieved person's choice and section 20 declares that contract becomes void where the consent is caused by the mistake of both parties. So, the CA does not provide the consequences of insufficient capacity. The law pertaining to contracts with minors was develop in three different stages (Swaminathan & Surana, 2021). Firstly, after the establishment of East Indian Company which follow the common law relating to contracts of minors. Secondly, after the enactment of CA which was originally framed on the foundation of common law and lastly, in Mohori Bibee where the PC decided that CA provides that minor's contracts are void ab initio and contracts entered by them neither can be enforced nor restitution can be provided so as to put the parties in their original position

(Garg, 2021). The decision had a significant impact on following case law, and it became accepted as unassailable principle of the contract law. The rule established by PC as contracts of minors are ab initio void has rendered law of contract with a major irregularity and uncertainty. Prior to this interpretation, contracts by minors were just voidable. Thus, a lot of moral concerns at play that go into explaining whether, in certain situations, an agreement concerning the minor ought to be executed, including shielding the minor from thoughtless or damaging consequences; and interest of the person who with bonafide intent enters into contractual deal with minors. The ruling that agreements of the minors are ab initio void combines these considerations quite unwell and, more ambiguously, harmfully destabilises the welfares of the minors it attempts to safeguard by rejecting implementation even to the deals that are obviously for the advantage of the minor. To make sure, there have been court rulings that have showed understanding of the challenges that arise from strictly enforcing the principle in Mohori Bibee and attempted to reduce its effects by creating ways around it. These rulings, on the other hand, have gently moved round Mohori Bibee, never actually calling it into question; as a result, they have only had limited success. Even though common sense accepts the hundred-year-old MB case as basic and hence without any question or discussion. According to this article, the decision of MB case resulted in a mismatch, such as a fitted suit that did not fit the individual. The PC's decision that minors' agreements are ab initio void is inconsistent with the bodies and requirements of minors in Pakistan, and it does not represent a proper interpretation of the CA.

## **2. The Law Prior to and Afterwards Mohori Bibee Decision**

Earlier to the CA, minors' contracts were often voidable at the choice of the minors (Cheong, Dhankar, & Star, 2023). This was comparable to the common law approach, which viewed contracts of the minors as voidable, necessities contracts were the exception and were binding upon the minor (Anson, 1917). Similarly, the CA specifically approved the grant of necessities to an infant under section 68. Otherwise than this section which is its nature as quasi ex contractu instead of ex contractu, the CA clearly leave the matter unresolved with regard to the agreement of the minors and their consequences. But where the CA showed its silence then the courts were inclined and induced to follow the common law on all the matters which are often considered as voidable at the minor's option (Debya, 1891). In generally, decisions in India since the enactment of the Indian Contract Act prior to Mohori Bibee, as Sir Ford North himself conceded in his observations in Mohori Bibee, regarded minors' contracts as voidable. MB took the decision to adjust everything in just one moment, using the CA to justify.

The argument in MB case was that the legality of deed of mortgage signed by the minor in favour of the moneylender against the loan in which the minor disputed the validity of the contract of the mortgage and asserted that it was not enforceable while the deed was executed in his minority. The court also considered whether the moneylender might seek reimbursement for the money advanced under Sections 64 or 65 of CA. Section 64 of the CA demands the restoration of any advantage acquired under a voidable contract, whereas section 65 necessitates the recompense of any advantage obtained under a contract which has become void. The PC interpreted two provisions, section 10 and 11 of CA as required all contractual parties must be capacity to contract, and concluded that people who were not competent to contract because they were minors could not enter into a contract under the Act. Thus, the PC found the inference inescapable that contract of the minor was not enforceable, i.e., void. The PC challenged this outcome by highlighting that the voidness anticipated by section 65 presumed the presence of a contract. However, due to a lack of capacity, a minor could never enter into such a contract in the first place. It is presently usual to refer to this concept as the statement void ab initio contracts, yet the logic and result reached are erroneous.

## **3. Facts of Mohori Bibee and Consequences after the Decision**

A money lender Brahmodat was the resident of Calcutta provided loan to the defendant Dharmodas Ghose who was a minor at the time of execution of mortgage deed and showed himself as an adult. At the time of provision of mortgage money to the minor Dharmodas Ghose, the agent of the Brahmodat, Kedarnath got information about the minority of the Dharmodas Ghose (minor) and advised his principal not to execute the

mortgage deed even then he executed the mortgage deed and provided money to the defendant Dharmodas Ghose (minor). After receiving the money from the mortgage deed and at the time of redemption of mortgage deed, the minor through his guardian and mother filed the suit for the cancellation of mortgage deed and asserted that at the time of execution of mortgage deed he was not competent to execute it and prayed for its cancellation. So, the trial court cancelled the mortgage deed as prayed for by the judge of trial court (Cheong et al., 2023).

The High Court also dismissed the appellant's appeal against the order; therefore, he filed an appeal with the Privy Council. Brahmodat had died at the time of filing this appeal. So, he was succeeded by Mohori Bibee (Ghose, 1898).

The high court disregarded the arguments of the mortgagee on the ground that the lawyer of the mortgagee Kedar Nath Mitter was completely well conversant about the age of the minor and this information have also been given by the guardian of the mortgagor as well as by the counsel of the mother of the minor to the mortgagee while signing the mortgage deed. The Court also rejected the mortgagee's argument that the minor was estopped from declaring that he did not make the representation based on his age under Section 115 of the Evidence Act (EA) 1872 Anonymous (1984) The court found that the expression 'person' according to Section 115 of the EA pertains to an adult. Similarly, the claim of the moneylender for the restitution of the advantage received by the minor under the section 64 of the CA was declined and held that the word person mentioned in section 64 contemplates the person of the full age i.e. the person of the age of majority which is provided in section 11 of the CA. However, the interpretation by the court remained unanswered on the point that section 64 contemplates the contract as voidable for want of free consent as misrepresentation or fraud. so, for the PC, the principal point of argument was section 64 of CA.

For the determination remedy under section 64 of the CA as a question, the PC scrutinized whether the contract by the minor was ab initio void or voidable. in this regard, other than the case of Hari Ram, many other case laws were presented as references between 1865 and 1901, in which the courts declared the agreements of the minor were voidable. On the other hand, counsel representing the mortgagor maintained that because minors lacked the capacity to contract, any agreements they formed were unenforceable, citing section 2(g) of the CA. The contention of the mortgagor was accepted by the PC and declared that the minors were not competent to contract, and their contract was never ever considered a contract or agreements, and section 64, in its true sense, starts with a presumption of agreement and contract between the competent parties but not otherwise.

Three major aspects of the PC's decision can be argued to undermine its authority. First, by interpreting the subsections 2(e), (g), (h), and (i), the PC applied the literal approach. and sections 10 as well as 11 Savirimuthu (2005) accepted the mortgagor's submissions. The argument of the mortgagor incorrectly defined that the incapacity of party is the ineligibility to enter into the contract is the misapply the notion of enforceability with the nature of the agreement deciding the agreement of the minor not executable. In this situation, the notion qualified enforceability, which contemplates that the contracts entered into by the minor are voidable and enforceable at the option of the minor but not enforced or executed against the minor. As against the reasonings of the PC, it is not easy to answer the voidable or void character of the minor's agreement in which the legal interpretation is given of sections 10 and 11 of the CA, which address and analyze whether or not the agreements are the contract. Suppose the impartiality of the CA, where the contracts executed by the minors, recent findings and ruling by the courts of the contracts of minors are voidable should be perceived (Andrews, 2015).

Secondly, the PC wrongly reliance on Kanjian (1980), the House of Lords in this case decided that money lent to the infant and the mortgaged property that stood as the guarantee for the security of the payment of loan were completely void against the infant, under the English Infants Relief Act 1874 (IRA). The mortgagee was not entitled to any return under, which rendered all loan and supply contracts (otherwise than for necessities) entirely void. The PC's reliance on IRA and Thurstan case is questionable. The IRA relates to borrowing contracts, loans, and contracts for the return of commodities; expanding its scope to declare every deal involving infants ab initio void would constitute an unwarranted

expansion. Furthermore, given the PC's approach to statutory interpretation of the CA, IRA that was enacted after the two years of the CA, the PC had not to be relied on it. Where the CA was enforced, the value of the IRA was only persuasive in nature but not the binding force.

Third, the PC did not base its findings on the personal laws of the inhabitants. Rather, at the end of its decision, it simply said that the legislative interpretation was by Hindu law. Furthermore, it was acknowledged that there were many decisions which are of significant value before the CA was enacted in which the agreements of the minors were considered as voidable as following the English law. The MB decision is a misinterpretation which departed from the principles laid down in the English common law principles and principles of British Indian laws as well as general principles laid down in CA while exercising its discretionary powers, the PC took an unusual stance of holding that minors contracts were void from the beginning (Swaminathan & Surana, 2021).

#### **4. Credibility of Contracts Signed by the Guardians on Minor's Behalf**

The second approach for MB was derived from the Muslim personal laws and Hindu laws, which historically empowered guardians to make decision-making on behalf of minors as long as the guardian's action was for the minor's advantage other than necessities (Macpherson, 1864). After the MB decision, the capacity of the guardian was restricted and cannot bind the minor in a transaction in sale and purchase of the property even where it was absolutely for the benefit of the minor (Mohd, 1912). These two decisions of PC made the contracts of minors unenforceable even then the contracts were clearly concluded for the best advantage of the minor by the guardians (Jagannadham, 1919). In the treatise of Pollock and Mulla under the editorship of Sir Maurice Gwyer, the 7<sup>th</sup> edition published in 1944, observed that in spite of the decision of PC in Mohori Bibee the courts in India permitted the enforcement of contract made by the guardian for the best advantage of the minors (Gwyer M. P., 1944).

#### **5. Ratification of Contracts by the Minors Himself after the Decision of the Mohori Bibee and position at Common Law before this Decision**

After the MB decision the contracts and all contractual transactions made by the minors were declared void ab initio in the subcontinent and it is up till now. The minor cannot ratify the transaction concluded by himself since the vender (minor) was unable to enter into it at that time. As a result, the vendee is defenceless in initiating any case against the minor to enforce the transaction, which is void from the very beginning (A.M.v.M.K. Begum, 2001). The limitation defence against the vendor is only available to the purchaser. Since it is a well-established rule of law (Mohori Bibee Rule) that any agreement signed by a person without capacity is unenforceable and void ab initio, and since an individual who is under lawful disabilities is not capable of ratification and approval, as stipulated under Section 11 of the CA, the law explicitly forbids this kind of agreement for compliance, even if the incapacitated person (minor) is determined to ratify after obtaining their age of maturity (Ahmad, 2008).

The ratification by the minor is not as per the MB case allowed even on attaining the age of majority because ab initio void transaction cannot be ratified even after attaining the majority. Ratification dates back to the roots of the contract. If the minor on attaining the majority ratifies the contract, it will be the new contract without consideration. The High Court of Allahabad resolved a case in which the following facts were presented: A minor performed a basic bond to borrow money, then when he became a major, he signed another bond to repay the initial debt plus interest. The subsequent bond was held to be unenforceable since the initial bond was lacking remuneration and did not come under paragraph (2) of section 25 of the CA (Ahir, 1928).

Where the natural guardian of the minor alienates the property without the prior authority/ permission of the court such transaction by the natural guardian is void ab initio against the minor and the minor is competent to get back the possession of immovable property at any time even after the expiration of the limitation period because the

transaction that is not lawful or void, the limitation period starts from the date of knowledge of such transaction (M.U.k.v.M.A. Begum, 2001).

Therefore, a transaction or contract made by the minor himself is not legal but subject to a general exception, which states that a transaction or a contract made by the guardian on behalf of the minor is only valid which is sanctioned by the competent court having authority over the subject matter of the property under the Guardian and Wards Act, 1890 and that transaction must be for the benefit of the minor and that deal may be ratified by the minor on the attaining of majority (Rehman, 1990). Where a contract is made of an immovable property in favour of minor in which the property was transferred in favour of minor and the defendant contended that it is not executable because the one of the contracting party was a minor (beneficiary) and denied to transfer the possession of immovable property in favour of the plaintiff (minor). The court of first instance decreed in the favour of the minor. The defendant appealed against the order of the trial court and the appellate court also gave its verdict in favour of the minor and held that where the transaction is of an immovable property takes place in favour of the minor by the guardian is executable in the minor's favour and the principle of agreement ab initio void is not accepted also by the appellate court. A lease of property is also be made by the guardian but subject to ratification of the minor after attaining of the age of majority (Yasmin, 1993).

## **6. Fate of the Contract after Ratification by the Minor**

The minor cannot ratify the contract because the contract is void ab initio as per MB rule. Still, there is an exception to this rule where the contract is entered by the competent or natural guardian on the minor's behalf for his/her benefit or advantage. On attaining the majority, the minor, with his intention and full knowledge, affirms or ratifies the contract becomes binding on him, and he cannot later on call it into question transaction. When a mother who is a Muhammadan entered into a contract on behalf of her minor son, it was held that the minor son was not bound to ratify the contract made by her mother without the authority of the competent court (Jaikaran, 1937).

## **7. Time Limitation for the Cancellation of Transaction made by the Guardian**

For the cancellation of a contract concluded by the guardian on behalf of the minor, the minor can file a suit against the purchaser of property within three years provided by the Limitation Act, 1908 under the article 44 on attaining the majority. Where the contract which is made by himself and the contract is ab initio void the minor can cancel the contract in a reasonable time from the date of knowledge on attaining the majority. Where the minor does not assert his right to do so, the purchaser/ vendee can take the plea of defense of limitation on the basis that the minor has acquiesced to the transaction intentionally (Nawaz, 2010).

## **8. Minors Contractual Position at Common Law before the Mohori Bibee Rule**

The contracts made by the minors before the Mohori Bibee case were voidable, and the minor's choice was to affirm or repudiate the contracts entered by him/her. In this regard the affirmation or ratification may be of two types i.e. express or implied from the conduct of the minor. The contract which has been ratified becomes binding upon the minors in contrast, where the minor is not interested in obeying or executing the contract, it becomes void. For this purpose, the minor has to repudiate his contract within a reasonable time on attaining the majority. If he does not cancel the contract, then he will be responsible for the consequences and outcome of the bargain. In England there are four categories of voidable contracts entered into by the minor that can be affirmed or repudiated by the minor after attaining the majority: Firstly, in a transaction about the permanent interest in the property which is subject to rights and liabilities and to which some benefits are attached under the contract are binding upon the minor unless within a reasonable time on attaining the age of majority repudiate or affirm (Garg, 2021). Secondly, contracts about buy the company's shares which are not completely paid up when called upon until he repudiates the contract in a reasonable time on attaining majority (Jamshed, Rafique, Baig, & Ahmad, 2022). He will be responsible for the outstanding

liabilities if he does not disaffirm or exercise his vested right to disaffirm or repudiate. On repudiation, his name shall be removed from the roll of the company's register and liabilities (Cazenove, 1847). Thirdly, a minor is a competent to become the partner of an enterprise or firm and is only responsible for terms enumerated in the partnership deed/agreement. He cannot be sued during the period of minority and nor he is responsible of any liability arising inside the firm. He shall be responsible of all the liabilities and losses of the firm if he does not repudiate the contract of partnership after attaining the age of majority or within a reasonable time after attaining the majority. If he continues so, he will not be entitled to any profit, assets and property of the firm until the liabilities of the firm are fully discharged. Fourthly, all the marriage settlement contracts about property by the minor are binding upon him unless these are specifically repudiated or disaffirmed within a reasonable time after the attaining the age of majority (Carter, 1893).

## **9. Misinterpretation of the Contract Act by PC**

section 10 of CA enumerates the essentials of the contract and provides the consequences of absentness of their elements. The PC while interpreting the provisions of section 10 and 11 of CA and required that in a contract, all parties must be competent to contract and followed the logic that who are not competent to contract cannot create or enforce a valid contract under the CA. It should be noted that the CA does not specifically explain the implications if anyone among the parties is not competent for the contract i.e. lacking ability. However, the PC came to the obvious conclusion that a contract with someone lacking competence was void. There is a clear mistake in the PC's thinking, and the determination that it arrived is far from unavoidable. As per section 10, an agreement to qualify for the contract has to fulfil four requirements, i.e., free consent, competency to contract, with lawful object and consideration, and not declaration as especially void under the Act. First thing which is to be noted that the wording of section 10 denotes that a contract is binding unless it is expressly declared void, in the CA it is clearly provided by the sections in which the agreements are void and not enforceable i.e. section 23-31 where there is mentioned the object and consideration is unlawful. Section 10 does not itself made these contracts void. Likewise, consider the instance of non-existence of 'consent,' which is one more requirement for a legal contract provided in Section 10 of CA. If the PC's argument was sound, any contract lacking 'consent' should be void. However, this is not consistent with the Act's scheme. Some other provisions of the CA explicitly state the significances of a non-existence of will. Sections 19 as well as 19A articulate that if a contract is concluded due to fraud, coercion, undue influence, and misrepresentation, it is voidable at the option of the party whose consent is caused due to the provisions mentioned above. Section 20 provides that where both parties are at a mistake, the contract becomes void. This sees the conclusion of PC with doubt that if any of the fundamental elements is absent, the contract becomes void under section 10 of the CA. Section 10 is silent and neither assigns any reason for its requirement nor provides any consequences of the contract entered by the minors. Where the statute is silent, then how should the PC proceed? In this scenario, it would be the board's duty to follow the common law's position before Mohori Bibee's verdict and declare the contracts by the minor voidable.

## **10. Position of Minors in Common Law and the Silence of CA**

Before the coming into effect, the CA all contracts and contractual disagreements were decided by the courts as per the common law based on good conscience, justice, and equity (Jain, 1972). After the enactment and implementation of CA the principles of good conscience, equity and justice were followed by the court to decide the issues and disputes between the contracting parties as per the standard of common law and as per the requirement and circumstances of the cases where they are not contrary to the law was enforce (Parshottamdas, 1966). The CA was enacted with the declared objective of defining and revising some contract-related laws. It is noted here that whatever the purpose of the preamble suggests about the CA but its codification followed the basic principles of the common law which are suited for the people of Indian community and their conditions of contractual dealings (Pollock, 1909). It is universally true and totality correct that where there are some crucial circumstances the CA attempted to differ from the English law (Swaminathan, 2016). Furthermore, as the PC its own defined as early as in 1891, the inclusion of 'amend' and 'define' in preamble suggested the CA did not adhere to be an

exhaustive codification governing laws pertaining to contracts, indicating that in ungoverned cases, it was not only wise but essential to fall returning to the English common law (ECL) (Bugwandas, 1891). Consequently, whenever some uncertainties occur and matter is not properly conducted in such a situation the courts seek guideline from the ECL and resolved the matters (Rankin, 2016). The CA left the consequences and problems of minors contract unregulated but it was essential for the PC to decide the matters as the ordinary courts were deciding after coming into force the CA based on the common law practice. It is previously stated as in the common law the contracts of the minor were voidable at the options of the minors except those which are specifically concluded for the purpose of necessities (Leake, 1867). Sir Ernest Trevelyan offered this strategy in 1877 while delivering lecture at Calcutta University about the consequences of contracts by the minors ; the CA is not a complete code of contract laws and it does not provide the contract of the minor as void but it is not the intention of the legislature to deviate from the existing law relating to the minors which are only voidable by the minors only and these contracts may specifically be enforced against the minors after the attaining the majority on their ratification.

## **11. Restitution under Section 65 of CA and Absolute Voidness**

The PC superfluously relied on the wording of the IRA, which was passed after the 2 years of the enforcement of CA, which modified the ECL and declared the contracts of the infants with slight exceptions. In this way, the IRA rendered the contracts of the infants absolutely void. Pollock and Mulla narrated the IRA as a statute of good intention but made out with the not perfect workmanship, the wording of the IRA influenced the PC's interpretation of the CA that promoted the rule as the contracts of the minors are absolutely void, the law established by the PC (in operation) did not draw the intention of the legislature preserved in the statute books (Commission, 1985). While under the IRA a few contracts are void absolutely and declared unenforceable against the infants but they are fully enforceable against the other contracting parties (Commission, 1892). Consequently, the IRA had little effect on the legal status of minor contracts in England. It would be amusing if the phraseology of the IRA influenced the PC's reading of the CA, while English courts fought to avoid its ramifications. A different scheme of two laws creates a problem situation in which the wording of absolutely void in their context in IRA and CA. It is to be noted that the PC ruled and prevent the restitution under section 65 of the CA and made a significant distinction and conceptual framework that between the contracts that are void and absolutely void and declared that section 65 does not provide the relief to the aggrieved party where the contract is void ab initio or absolutely void. Section 65 of CA state that obligations of the persons who have taken some benefits under the void agreement or contract that on the later stage has become void. Where the person who has taken the benefit or advantage under the void contact or agreement that as discovered void is bound by the law to restore the benefit or make compensation to the person from whom he has taken the benefit or advantage.

The contention of the PC here is that section 65 is applicable only those contracts which are initially legal according to law were concluded. The application of section 65 does not applicable on the contracts that are ab initio void. This presupposition is questionable. The CA considers four ways in which an agreement might become void: (i) an agreement expressly declared void under the contractual provisions 23-31 or by other legislation); (ii) vitiation of consent bilaterally; (iii) if breach is caused by one contracting party and other avoids the contract; and (iv) impossibility as to performance by the contracting party. The PC contention is only applicable on the proposition of above (iii) and (iv) where the contract becomes void due to the breach and impossibility to perform but the case of Mohori Bibee does not fall above said categories. Section 2(g) defines void agreements not enforceable while 2(h) defines legal agreement enforceable and therefore, we see that an agreement is not enforceable is void. The agreement mentioned above in category (i) and (ii) above are all void and are not enforceable are equal to the argument that they are void. But declaration of them void ab initio or from the inception is no logical and add nothing. It is essential to say that agreements that are void mentioned in category (i) and (ii) are not void. It can be said that there are no stages of voidness among those agreements mentioned in category (i) and (ii) of course there is no space for another category of void agreement that may be called as void ab initio or void from the beginning on the basis of competency of the parties. The contention was that section 65 is only applicable to the

cases where the initially contract was concluded according to law and section 65 does not apply to the cases where the contract or agreement is void from the beginning, therefore, in this regard the argument of PC is erroneous. the actual question before the PC, which could not be addressed, is whether section 65 is applicable to the illegal or immoral agreements on the basis of ex turpi causa principle, and recompense is allowed in section 65. The PC did not answer this question and directly approached the issue of contract void ab initio which make no plausible concern within the context of CA.

## **12. Restitution under Section 65 for Contracts of minors and Ex Turpi Causa Rule**

The situation became clear after the analyses of the deceptive interpretation of PC of section 65 with regard to contracts that were declared as absolutely void. The questions that need to be addressed are as follows: If section 65 embodies the principal ex turpi causa then whether this principle applies to contracts of minors. This article does not dispute the prevailing knowledge that says that reparations under section 65 is subject to the ex turpi causa rule (Mirza, 2017). Moreover, in section 65 the word is used discovered to be void (Company, 1944). This typically means that this clause can never be applicable if parties "understood" the agreement was void (Stokes, 1888). The provisions of section 65 does not apply where the agreement is unlawful. The assumption is that section 65 does not establish the ex turpi causa principle and prevents its operation of restitution, and the question is whether this principle bars the remedy for reimbursement in the contracts of the minors. According to Adrian Briggs and Andrew Burrows view the operation of section 65 must be on the contracts concluded by the minors except all illegal contracts and ex turpi causa rule (Briggs & Burrows, 2017).

It is held that the moral principles support that ex turpi causa prevent the parties who initiate the claim on the wrongdoing basis but it does not prevent the remedy in cases pertaining to the contracts with minors. There are moral and other policy considerations that inevitably consider that contracts with minors are unlawful. Conversely, there are also moral issues at play that contribute into understanding whether a contract involving a minors should be executed in a certain scenario, such as shielding the minor from impetuous or destructive conduct; the minor's interest in the market platform, notably for approach to valuable services and commodities; and interests of community that is rightly transacting with the minor (Treitel, 2015). The practical approach to the contracts of the minors that ECL established requires a balancing of these components. If this were not the case at ECL could not have made minor's contracts for necessities enforced, nor would contracts of the minors be especially voidable at their choice. None of this would be imaginable if enforcing minor's contracts was essentially morally bad. So, the question of applying an ex turpi causa theory to contract of minors is by nature separate from the subject of the doctrine's application in the case of fundamentally forbidden actions that are criminal, immoral, or otherwise undesirable in character. Not all atrocities are created equivalent, and an ex turpi causa dictum would have mini weight against a request for reparation in agreement of minor that does not include immorality. While historically, the ECL permitted repayment in the case of some dishonesty on the minor's behalf; this stance has since been superseded by the Minors' Contracts Act 1987, which permits compensation even in lack of proof of fraud. In the context of the above evaluation, it should be evident that defining whether the contract is 'absolutely void' is insufficient for considering whether restitution should be provided in the case of certain types of void contracts.

## **13. Conclusion**

MB declared all contracts by the minor ab initio void whereas ECL was adopted at the time of drafting of the CA, and rendered contracts of minors voidable at the option of minors conditioned with two exceptions. Necessary contracts were not voidable; on the majority, they become valid whenever a contract is ratified. A law developed by Mohori Bibee that deems all minor contracts ab initio void not only only to recognize the multipart moral consideration at play but also prejudiced the very benefits of the minor. Minors engage into a number of contractual dealings in their everyday life. The domain of minor's contracts is large and ever-expanding, ranging from buying a ticket for the bus or hiring a car to signing up for an electronic mail account or using a social media platform. By



declaring all of these contracts ab initio void, minors are denied entrance to the marketplace for what might otherwise be deemed valued goods or services for them. However, it should be observed that a responsibility which is provided in section 68 is quasi ex contractu not ex contractu. Some ramifications come from this. Firstly, the minor's only responsibility in this case is to pay the money's worth of the necessary supplies that connect to the property of the minors. Secondly, the quasi-ex contractu method does not provide minors access to a variety of needs that do not require financial transactions or anything else. For example, an online services platform or creating an email account is a contractual right that generally does not contain any transaction of financial values, which may be noted as a contractual model that developed fast in the digital and modern age. Though logging into an email is undoubtedly a contract for an 'essential' service, it falls beyond the reach of section 68 and, unnecessary to say, it would be void ab initio. Many of the irregularities mentioned here can be resolved in two ways. Firstly, legislative reforms to permit minors to enter into contracts or re-evaluation/ reinterpretation of MB case by the superior courts in Pakistan.

### Authors Contribution:

Nadir Hussain: Conceptualization of the research topic, conducting literature review, drafting the manuscript and review and revision of the manuscript.

Samza Fatima: Supervision and providing expertise in legal matters and Final review and approval of the manuscript before submission.

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