possession, the doctrine does not apply to
money. In case law—Leslie v Sheil (1914), minors
cannot be asked to pay back the money, again.

Indian law: Compensation by a minor

According to English law, restoration of
property by a fraudulent minor is
permitted if it is traceable.

In India, the compensation is under
provisions

→ Sec 64, 65, Indian Contract Act

→ Sec 89, 91, Specific Reliefs Act

In case of Moti Bibi v Dharmodas Ghose
(1914), the Privy Council had held that
the question of compensation under
Section 64 and 65, Indian Contract Act,
arises where the parties are competent
to contract and these provisions do not
apply to case of a minor's agreement.

But law commission negates this
by stating that compensation under
65 be allowed even if the invalidity of
the agreement is because of the fact that
a party is incompetent to contract.

However, there has been a recommendation
to amend the Sec 65, to indicate
that it is applicable whereas a minor enters into an agreement on false representation that he is a major. But there has still no amendment been made in the Act so far.

Compensation under Specific Relief Act 1965

Imps- Khan Gul v. Lakha Singh, AIR, 1928 Lahore, 609

There the plaintiff who had advanced the sum of Rs. 17,500 to minor brought an action against him to recover. The minor was held to refund the same.

According to Sec. 39, SRA 1877, a minor may sue for the cancellation of an instrument pertaining to avoid agreement and when he goes to the court to claim the relief the court may ask the minor to pay compensation to the other side. Under Sec. 41.

In this case the minor was the defendant. The Lahore high court still held that the minor should be asked to pay back.
the money. In its view the other party deserves to be compensated by a fraudulent minor in equal if irrespective of the fact that the minor is the plaintiff or the defendant.

He also made a significant departure from Leslie v Sheldrake according to which there can be only restoration of specific property wrongfully obtained by fraudulent minor. He cannot be asked to pay back money as it cannot be identified. The relief is allowed not because there is a contract between the parties but it is because there is no contract under but one of the parties unequally benefited at the cost of the other.

Position of minors in India

1. Contract of Service: In India, a contract of service entitles into a contract ended by further on behalf of his minor daughter was void for another reason also, that is, The same without any consideration because consideration moving from a third party who is a minor is no consideration. Case Law: Rajkari v Prem Adib (1949)
Contract of Marriage

A contract of marriage are supposed to be beneficial to minors and therefore a minor is entitled to enforce them. In Khimji Dhirubhai V Lalji Karamsi v. (1941), a minor girl entered into a contract of marriage made by her mother on behalf of her with a major boy. This contract could be enforced and she could sue him for breach of contract.

Contracts of immovable property by the minor’s guardian

In Mir Swarjan v. Sakhrudin (1911), guardian of a minor entered into a contract on behalf of minor for the purchase of land. The minor sued for the specific performance of the contract. Even though the contract was to the advantage of the minor, the minor’s suit was dismissed.

Subramanyam v Subba Rao. (1948)
It was held that the minor's contract entered into through the motive for purpose of discharging minor's father's debt was invalid, that the minor was bound by the transaction.

Position of minor in partnership.

partnership arises out of contract. Minor being incompetent to contract cannot become a partner.

If a minor is being made a full-fledged partner along with other major persons, the agreement would be void, and the said contract would be unenforceable even as between the other major partners.

A minor is not competent to enter into contract. He can however accept benefits of a contract.

PERSON OF UNSOUND MIND.

A person of unsound mind is incompetent to contract just like minor. Any transfer of property by a gift deed of any other contract made by
A person is said to be of sound mind for the purpose of making a contract at the time when he makes it. He is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

Soundness of mind is required only at the time of making a contract. Two situations when a person in such condition is:

1) A person who is generally of sound mind but occasionally of unsound mind may not make a contract. Thus a sane man who is delirious from fever or who is drunk that he cannot understand the terms of contract or make a rational judgement as to its effect on his interests cannot make a contract in such delirium of drunkenness.
A person who is usually of unsound mind by virtue of unsound mind may make a contract when he is of sound mind.

It means that a person who is usually of unsound mind can make a contract during lucid intervals i.e. at such intervals when he is of sound mind.

**Unsound Mind**

A contract of sale like any other would be invalid if the consent of either of the two parties is given by a person of unsound mind according to Sec 11. A person who is competent to contract is the one who can understand the terms of the contract and effect of it on his life interest. So a lunatic and a person of unsound mind are not same.

(case law - Chacko v. Mahadevan 2007)

In this case A executed a sale deed of his land in favour of B when he was suffering from delusional psychosis, medical fact.
FREE CONSENT

According to section 10, for a contract to be valid, it should have free consent of both the parties.

According to Sec 14, consent is said to be free when it is not caused by-

1. Coercion (Sec. 15)
2. Undue Influence (Sec. 16)
3. Fraud (Sec. 17)
4. Misrepresentation (Sec. 18)
5. Mistake (Sec. 20, 21, and 22)

When consent to an agreement is caused by coercion, undue influence, fraud, misrepresentation and mistake, the agreement is a contract voidable at the option of the party whose consent was so caused.

However, if the consent is caused by mistake, the agreement is void.
Sec 15 defines "coercion is the committing or threatening to commit any act forbidden by IPC or the unlawful detaining or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement."

Illustration: If A threatens to shoot B if B does not agree to sell his property to A at a stated price. B's consent is obtained by coercion.

Case law: Chikkam, Ammisaj and Chikkam, Seshanata at...
is punishable. But a successful attempt to suicide is not punishable under IPC. And in this case there was only a threat to commit suicide therefore should be considered coercion.

There has been continuous issue which justify the need for amendment of Sec 15 and insertion in there. The law commission is of the view that "act forbidden under the phrase should be removed and substituted by a wider expression in order to cover all the penal laws."

\[\text{ii) Unlawful Detaining}\]

Coercion could also be caused by the unlawful detaining or threatening to detain any property to the prejudice of a person with the intention of causing any person to enter into an agreement.

\[\text{Case Law} - \text{Muthian Chettiar v Karuppan Chettu (1927)}\]

If an outgoing agent refuses to hand
UNDUE INFLUENCE

Sec 16 defines undue influence as:

1. A contract is said to be induced by undue influence where the relations subsisting between parties are such that one of the parties is in a position to dominate the will of the others and uses that position to obtain unfair advantage over the other.

A person is said to be in a position to dominate the other:
1) Real or apparent authority
2) Fiduciary relationship
3) Person in mental or bodily distress.

1. Real or Apparent Authority:
If a person has authority over the other contracting party, it is expected that he would not abuse the authority to gain an undue
advantage from the other.

2) Fiduciary relationship

A fiduciary relationship means a relation of trust and confidence. When a person confides in somebody, it is expected that he will not be betrayed. If a person betrays the confidence and trust and gains unfair advantage over the other party, it may void the contract.

The principle of undue influence is applied when influence is acquired and abused.

Smith v Kay (1859)

Illustration: A having advanced money to his son B, during his minority upon B's coming age, obtains, by misuse of parental authority, a bond from B for a greater amount than sum due in respect of the advance. A employs undue influence.
A person is deemed to be in a position to dominate the will of another also in a situation where he makes a contact with a person whose mental capacity is temporarily or permanently damaged by reason of age, illness or mental or bodily distress.

If a contract is made to the prejudice of such a person there is deemed to undue influence in such a case.

Illustration:—A, a man enfeebled by disease of age, is induced by B's influence over him as his medical attendant to agree to pay a bill of B for a unreasonable sum for his professional services. B employs undue influence.

Presumption of Undue Influence

Where a person who is in a position to dominate the will of another enters into a contract with him, the transaction appears on his face or on the evidence cited as presented but in unconscionable bargains the burden of proving
that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. Thus when

1. One of the parties who has obtained the benefit of a transaction in a position to dominate the will of the other.

2. The transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence.

Illustration: A being indebted to B, a money lender of the village, contracts a fresh loan on terms which appear to unconscionable. It lies on A to prove that the contract was not induced by undue influence.

**Exception - Pindanashinlady**

**Case Law:** Wajid Khan v Raja Ali Khan (1891)

When a person enters into a contract with a Pindanashinlady, the burden of proof lies on such person and he has to prove that the terms of the contract are fair and equitable and that the document was explained to her and she understood the same, and that she acted on independent advice.
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see 19, where the centroid of a plate is Osborne
4. any other act fitted to deceive
5. any such act or omission as the law specially declares to be fraudulent.

Exception— Mere silence as to the fact likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of the case are such that, regard being had to them, it is the duty of a person keeping silence to speak or unless his silence is in itself, equivalent to speech.

Two essentials of fraud:—
False statement of fact [Sec. 17(1)C]

In order to constitute it is necessary that there should be a statement of fact which is not true.

If A intending to deceive B falsely represents that five hundred maunds of indigo are made usually at A's factory, and thereby induces B to buy the factory the contract is voidable at the option of B.

More reliance on Active Concealment [Sec. 17(2)]
when there is an active concealment
of a fact by having knowledge or belief of the fact, that can also be considered to be equivalent to a statement of fact and amount to fraud. By an active concealment of certain facts, there is an effort to make that the other party is not able to know the truth and he is made to believe as true which in fact not so.

Illustration: A is entitled to succeed to an estate at the death of B. B dies. C having received intelligence of B's death, prevents the intelligence reaching A and thus induces A to keep from his interest in the estate. The sale is avoidable at the option of A.

Promise without any intention to perform it. See 17(c)

When a person makes a promise there is deemed to be an undertaking by him to perform it. If there is no such intention when the contract is being made it amounts to fraud.

Illustration: If a man takes a loan without
any intention to repay or when he is insolvent, or purchases goods on credit without any intention to pay for them there is a fraud.

Any other act fitted to deceive, sec. 17(4)

Clause (4) further provides that any other act fitted to deceive will also amount to fraud. This clause is generally and is intended to include such cases of fraud which would otherwise not come within the purview of the earlier three clauses.

Any act of omission which the law declares as fraudulent, sec. 17(5)

According to sec. 17(5), fraud also includes any such act or omission as the law specially declares to be fraudulent. In some cases the law requires certain duties to be performed, failure to do which is expressly declared as a fraud.

Wrongful Intention

It is necessary that a person should intentionally make a false statement with an intent to deceive another
A change in price which would affect B's willingness to proceed with the contract. A is not bound to B.

Case law: Shri Krishna v. Kaveri Kumar University (1976)

It was held by the Supreme Court that there was no fraud by the candidate of the university, as no power to withdraw the candidature.

**Exceptions**

In some cases silence may be deemed to be an act of deception. The rule that mere silence is not fraud also mentions two exceptions:

i) when there is a duty to speak, keeping silence is fraud.

ii) when silence is, in itself, equivalent to speech, such silence is a fraud.

1) Duty to speak.

When there is a duty to speak and disclose the facts, one should do so rather than remain silent. By remaining silent, one may be responsible for creating false impression in mind of the other.
(1) Silence is equivalent to speech.

Sometimes keeping silent is to certain facts, may be capable of creating an impact or certain situation.

Illustration: B says to A: "If you don't obey it I'll kill you. Assume that horse is sound." A say nothing, the A's silence is equivalent to speech.
MISREPRESENTATION

An innocent misstatement or false statement is known as misrepresentation.

According to Sec 18,

Misrepresentation means and includes:

1. The positive assertion in a manner not warranted by the information of the person making it of that which is not true though he believes it to be true.

2. Any breach of duty which induces an intent to deceive, gains an advantage to the person committing it or anyone claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him.

3. Causing however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of agreement.

Illustration: A sells a horse to B which is sound but A himself does not know about this fact. He tells B that the horse is sound. There is misrepresentation.
Case law: Derry v Peek (1889)

Effect of flaw in consent

(See 19)

Sec 19 states: Voidability of agreement without free consent

When the consent to an agreement has been caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract whose consent was caused by fraud or misrepresentation may if he thinks fit insist that the contract shall be performed, and that shall be put in the position in which he would have been if the representation made had been true.

When the consent of a party to the contract has been caused by coercion, misrepresentation or fraud, the contract is voidable on the option of such party.
Sec 19A - Power to set aside a contract induced by undue influence.

In case of undue influence also, the contract is voidable at the option of the party whose consent has been so caused. Any such contract may be set aside either absolutely or by the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court seem just.
Mistake

When one or both the parties are under some misunderstanding from each other the agreement is then caused to be by mistake.

1. Mistake in mind of all parties is such that there is no genuine agreement at all. There may be the offer and acceptance do not coincide and thus no genuine agreement is constituted between the parties.

2. There may be an agreement, but there may be a mistake of fact relating to that agreement: Mistake, when there is no consensus ad idem or there is absence of consent.

In Raffles v. Wichelhaus (1864)

There were two ships of the same name and both were to
to sail from Bombay but one in October or other in December. The buyer
had in mind: peerless sailing October
but seller had thought of the ship
sailing in December. The seller dispatched
cotton by December ship but the buyer
refused to accept the same. In this case,
the offer and acceptance did not coincide
and there was no contract and therefore
it was held the buyer was entitled to
refuse to take delivery

Mistake as to a matter of fact essential
to the agreement

Sec 20 deals with:
Agreement void where both parties are
under mistake as to the matter of fact
where both the parties to an agreement are
under mistake as to a matter of fact
essential to the agreement, agreement is
void.

Illustration A agrees to sell B a specific
cargo of goods supposed to be on its
way from England to Bombay. It turns
out that before the day of the bargain,
the ship conveying the cargo had been
lost at sea and goods lost. Neither party
was aware of these facts. The agreement
was void.
Mistake of fact

There should be mistake of fact and not of law. The validity of the contract is not affected by mistake of law.

Sec 21: "A contract is not void-voidable because it was caused by a mistake as to any law in force in India but a mistake as to a law in force in India has the same effect as a mistake of fact."

Illustration: A and B make a contract grounded on the erroneous belief that a particular debt existed. Based by the Indian law of Limitation, the contract is not voidable.

Bilateral Mistake

If the mistake is unilateral, e.g. only one of the party had some mis-impression, the validity of the agreement is not affected thereby.
Sec. 82. Contract caused by mistake of one party as to matter of fact—

"A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to the matter of fact."

Mistake as to the identity of the parties

If I intend to enter into contract with A for the purchase of goods from him and I place the order accordingly, B cannot accept the offer, and if B supplies me the goods, I have no obligation to pay him because if I never wanted to make any contract with him.

Case law: Boulton v/s Jones (1857)

If it is clearly indicated that A does not want to enter into a contract with B, but B, acting through an agent, make it to enter into a transaction under the wrong impression in the mind of A that the other party is other than B, in such a case, B cannot take advantage of such a contract and cannot sue A for its breach.
Contract by parties in each other's presence.

In Rand v. Lindsay, there was a mistake in the writing of a party to contract. When the parties were not face to face but negotiating through post, when the parties negotiate in each other's presence, the decision about the validity of the contract on the ground of mistake in the identity of the parties is quite a different one.

Mistake as to the existence of a material fact.

If the mistake is regarding a fact essential to the agreement, the agreement is void. But if the mistake does not relate to the existence of a material fact concerning the subject matter of the contract, the validity of the contract may not be affected thereby.
Doctrine of Frustration

If the performance of a contract is impossible, then the contract is void.

Sec 56

1. An agreement to do an act impossible in itself is void.

2. A contract to do an act which becomes enforceable if the act becomes impossible for a reason of some event the promisor could not prevent.

Initial Impossibility

Section 56 says:

"An agreement to do an act impossible in itself is void."

The object of making any contract is that the parties to it would perform their respective promises. If a contract is impossible of being performed, then it would be impossible for the parties...
to fulfill their object and hence
such an agreement is void.

Illustration 6-

i. A agrees with B to discover
   treasure by magic or
ii. an agreement to bring a dead
    man to life; are void
   contracts

Impossibility here means that there
is no possibility of the
performance of contract because
it would be unlawful to
do that, the agreement is void.

Section 23. A for a valid contract
the consideration or object should
be legal.
If it is unlawful then the contract
is void.

Illustration 6-
A contracts to marry B, being
already married to C, and being
forbidden by law to practice
polygamy. The arrangement
for A to marry B is void.
where one person has promised to do something which he knew or with reasonable diligence might have known and which the promise did not know to be impossible or unlawful such promise may make compensation to such promisee for any loss which such promisee "sustains through the non-performance of the promise." 

If the promise knows the fact that the contract is impossible or unlawful but this fact is unknown to the promisee, then the promisee is liable to compensate to the promisee for the losses incurred.

If a married man knowingly agrees to marry another woman, he is bound to compensate to the other party for the breach of contract.
SUBSEQUENT IMPOSSIBILITY

Intervention of some event which may make the performance of the contract impossible. This is stated in Sec 56 (para 2).

A contract to do an act which after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes unlawful or stated impossible.

Assumption that the parties to the contract will be able to perform the contract when the due date of the performance arrives. But if due to some circumstances the performances of contract is impossible then the contract becomes void.

Illustrations:
Void Agreements.

- Agreements of which consideration is not lawful (Sec 23)

- Agreement without consideration (Sec 25)

- Agreement in restraint of marriage (Sec 26)

- Agreement in restraint of trade (Sec 27)

- Agreement in restraint of legal proceeding.

- Agreement which is ambiguous and uncertain (Sec 29)

- Agreement by way of wages (Sec 30)

- Agreement to do an impossible act (Sec 58)

Also - Agreement without consideration as a general rule is void.

- Agreement to do an impossible act is also void declared under Section 58 of the ICA.
Section 23

I. Consideration should be lawful.

Under Sec 23, following points are considered unenforceable by Sec 23:

1. It is forbidden by law
2. It would defeat the provisions of any law
3. It is fraudulent
4. It involves or implies injury to the person or property of another
5. The court regards it as immoral
6. It is opposed to public policy

II. Forbidden by law

Anything which is forbidden under IPC or by some statute cannot be done as

Something which is forbidden by law and agreement to do that thing is unlawful. An agreement to do anything which is forbidden by IPC or any other law cannot be enforced.
A contract to pay some money if a crime or offence of tort is committed it is void.

An agreement offending a statute or public policy is void from the beginning and same cannot be enforced and become valid even if the parties agree to that effect.

Case Law - Nandan Kr. v/s II. Additional District Judge, Laxmipur, Banda, AIR, 1994 All 298

It has been held that an agreement of lease between a landlord and tenant without allotment or release order as required by law is void.

Other Case Laws:
1) Universal Plast Ltd. v/s Santosh Kumar
2) Rgi. Mohan v/s MPSRT Corporation
3) S.L. Fernandes v/s M. M. Fernandes
If the agreement does not satisfy the clear and unequivocal requirement of a state, it is void.

Re Mahmud and Iphani

If the agreement is not forbidden by law, unlawful or opposed to public policy, the same is enforceable.

Suman Singh v/ Mohd. Chande

2. Defeat the provisions of any law.

If the object or consideration of an agreement is of such a nature that if it is permitted it would defeat the provisions of any law, such an agreement is void. Certain acts may not be expressly forbidden by law but if they result in circumventing any law, they cannot be encouraged.

3. Fraudulent purpose

If the consideration or object of an agreement is to commit fraud, the agreement is void.
Agreement injurious to the person or property of another.

If the consideration or the object of an agreement is to cause an injury to the person or property of another, the agreement is unlawful and therefore void.

Immoral

If the consideration or object of an agreement is regarded by the court to be immoral or opposed to public policy, the agreement is unlawful and void by Sec 93.

Section 24

Agreement is considered void, if consideration and objects are unlawful in part.

If any part of the consideration for one or more objects or anyone or any part of any one of several considerations for a single object is unlawful, the agreement is void.
If A promises to suppress on behalf on behalf of B, illegal manufacture of indigo and an illegal traffic in other articles, and B promises to pay A a salary of 10,000 rupees for both the jobs, the whole agreement is void.

Agreement without consideration

Sec 25.

An agreement made without consideration is said to be void. Consideration is an important essential for the formation of contract.

Agreement in Restraint of Marriage

Sec 26.

According Sec 26, ‘Every agreement in restraint of marriage by any person other than a minor, is void. An agreement which restricts a person’s freedom to marry, or to marry any person by his choice is against public policy and is void.”

Low v Peers (1768)
Agreement in restraint of trade

(Sec 27)

Sec 27 states, "every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Sec 27 which declares an agreement in restraint of trade as void, does not allow any distinction between a total restraint or partial restraint."