CHAPTER VII
CHAPTER-VII

CONCLUSION AND SUGGESTION

In the foregoing Chapters of the present research work, the Scholar has attempted to explore different aspects of minor in a Partnership Firm by way of conceptional analysis of Indian and English Laws. The Scholar has also analysed the problems regarding minor partners and Tax Planning. Now in the epilogue to put the matter succinctly after having analysed the definition of “minor” under various Indian and Foreign Statutes, the Scholar tried to make an in-depth critical analysis of the position of minor under the Indian Contract Law, English Contract Law together with common law, Indian Income Tax Laws and has arrived at the following conclusions.

In the *First* Chapter, the Scholar extensively dealt with and analysed the definition of minor under different Major Acts of India and different conventions at International level and how the law specifically protect the minor from the unscrupulous design of the adult with special emphasis as to the law of Contract Governing the minor’s agreement. But law also at the same time safeguard the interest of the adults and see that the minor should not be allowed to reap benefit at the expenses of the adult by virtue of the privileges enjoyed by him. Hence the Scholar suggest that even if, all the laws are there to protect the interest of minor still, it is seen that at
the implementation stage there are lots of problems, as a result in most of the cases the minors are not able to take advantages of the law. Hence special emphasis should be given to the implementation aspects of the laws.

In the Second Chapter the Scholar has made an attempt to examine the position of minor under the Indian Partnership Act and the English Law. Hence the Scholar also try to throw light on the development process of Partnership Law from Ancient India to the present law with special emphasis on the position of minor in it.

In this Chapter some aspects relating to minor's incompetency to become partner in a Firm has been also analysed by the Scholar. It has also been highlighted that law does not distinguished between minor of different ages, because a minor aged 17 years and 11 months can not be said to be less mature than a major who is aged 18 years and one month. Even law does not distinguished the minors developed in indifferent sociological background because a minor child born and brought up in a rural background with utter poverty can not be same with a minor child born and brought up in urban area with reasonably good education. Hence it has been suggested that modern law needs to be changed in consultation with Anthropologists, child psychologists.

Again in this Chapter the Scholar try to throw some lights on how Admission of the minor to the benefits
of the Partnership puts him (minor) in a disadvantageous position vis-à-vis other Partners rather than in a beneficial position. Hence it is suggested by the Scholar that-

(a) Like English Law of Partnership, the minor share in the property and profits of the Firm should remain protected even when the minor on attaining majority choose to became a Partner for the acts of the Firms committed before his election to become a Partner.

(b) Registration of Firms should be made obligatory/mandatory as a result of which the third parties or public at large who wishes to deals with the firm where the minor is admitted to the benefit of Partnership may be deemed to be aware of the minor's secured interest in the firm.

(c) In a democratic country like India Law cannot be a draconian and fascist one especially for minor children. A minor admitted to the benefits of Partnership should be legally entitled to claim his share in the profits of the firm even during his minority without severing his relation with the firm. But the present law is that during his continuance in the Partnership, a minor cannot do so without severing his connection with the firm.
(d) In the present law, the minor may have access to and inspect and copy any of the accounts of the firm but he cannot question the genuineness of the accounts of the firm without risking the dissolution of the firm. That means, a minor has to accept whatever is given to him as benefit from Partnership. Even he cannot question the genuineness of the accounts when his entire share in the firm has been wiped out due to faulting management and accounting. Hence the law should change and the minor should be entitled to question the genuineness of the accounts of the firm during his minority.

(e) In the present legal system, a minor admitted to the benefits of Partnership is not counted as partner and he has no say in the day-to-day activities of the business. However it is suggested by the Scholar that the minor, even if, not admitted as a full-fledged partner, still should be counted as partner, if he is in his adolescence age say in between 16 and 18 so as to enable him to develop a sense of belongingness and he can share his minds with other major partners.

(f) Even if the Partnership Act is silent the Scholar through interpretation of different High Court cases proves that Deity is always minor and can be admitted to the benefit of Partnership. The Act
should specifically adopt it so as to enable the Partnership business to have an access the money lying idle in the name of God.

In the Third Chapter, the Scholar has made an endeavour to analyse the meaning of "Guardian" under various Acts because it is guardian and guardian alone whose statutory duty is to protect and safeguard the interest of the child or minor from the unscrupulous designs of the outsiders. In India firstly the Guardians & Wards Act was passed in 1890 which conferred on the Courts the power of appointing guardians of minor children belonging to any community. Later on, another Hindu law of guardianship of minor children has been codified and reformed by the Hindu Minority & Guardianship Act, 1956. Further legally speaking "guardian is a person having the care of the person of the minor or his property or of both person and property". It may be emphasized that in the modern law guardians exist essentially for the protection and care of the child and to look after its welfare. This is expressed by saying that welfare of the child is the paramount consideration. Even if a guardian has signed in a Partnership Deed for and on behalf of a partner, he cannot make a minor a full-fledged partner in a firm. He can only be admitted to the benefits of the partnership. There are divergent judicial opinions regarding the necessity of signature of a guardian in
a Deed of Partnership where a minor is being admitted to the benefits of Partnership. However it is obligatory for the guardian to give his consent to the admission of the minor to the benefits of the partnership and there must be some positive evidence of the guardian having given such consent. The Indian Partnership Act is silent about the role of Guardian while admitting the minor to the benefits of Partnership. It is for the first time Allahabad High Court while facing with a problem, deliberated the need of consent of the Guardian while admitting the minor to the benefit of Partnership. Thus the Scholar suggested that the Act should be suitably amended and the role Guardian with its rights and liabilities should be clearly enumerated.

In the *Fourth* Chapter the Scholar has attempted to analyse whether a minor can be made to share the losses of the Partnership in which he can be and has been admitted to the benefits only. After in-depth study of the law and case laws on the subject as dilated above, the Scholar is of the view that law relating to sharing of loss in a Partnership Firm by minor partners, which is presently limited in its scope should be totally deleted from the Statute Book. The reason is very much clear. Here the “minor” is admitted to the “benefits”. The word “benefit” and “profits” are not synonymous. Where the word profit is used than loss is the natural
corollary but where the word 'benefit' is used, the question of loss does not arises. So the Scholar is in favour of deleting the provisions from the Statute Book.

In Chapter Fifth, the Scholar has examined the law relating to registration of firms under the Partnership Act 1932 and also under the Indian Income Tax Act 1961. Although Section 69(1) of Indian Partnership Act begins with the clause "that no suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to or to have been a partner in the firm unless the firm is registered, yet in some of the Court decisions, it has been held that subsequent registration before decree validates proceeding by unregistered firm.

It is submitted with respect that mandatory nature of the provision has thus been flouted.

Even the conditions or restrictions imposed for allowance or grant of registration to a firm for the purpose of reducing the burden of Income Tax on the firms even prior to 1992 amendment as stated in the foregoing paragraphs
still held good even now to determine the genuineness of the firm. If the genuineness of the firm is not proved from facts, than the firm is assessed in the status of an Association of persons by the Income Tax Authorities resulting in considerable burden of tax on the firm.

In Chapter Sixth, the Scholar has made some suggestions regarding possible Tax Planning in the event of admission of minors to the benefits of Partnership and the concomitant complications., He has also dilated on the meaning of “Tax Planning”.

Law is an instrument of Social Control and organization and a means of human welfare and happiness. But at the same time, it is a part, nay, a vital part of the realities itself. In the view of the Scholar, law, in order to be proper law, must exist as a reality, which manifolds itself in different forms, which manifests and grow endlessly to realise the highest purposes of life. Thus, after analysing various clubbing provisions, the Scholar has suggested for rectification / amendment of the clubbing provisions in the event of admission of a minor married daughter to the benefits Partnership Firm in which one of her parent is a partner. This is because according to Indian Hindu Personal Law, the parents cease to be in control of the married daughter even if she is minor and it is the husband and in the event of death of her husband it is the eldest among the nearest Sapindas of
her husband who becomes her guardian. So also the case with Christian Personal Law and Mohammedans Law. As per Christian Law, the obligation to maintain the minor married daughter lays with the husband, the daughter cannot enforce her right to be maintained by her father through Civil Court. The position of minor married daughter under Mohammedans Law also is no exception.

During the study the Scholar has also find out practical difficulties arises out of implementation of clubbing provisions. The clubbing provisions are there to check the diversion of income of parents to children thereby reducing their tax burden and defrauding the revenue from its legitimate dues. But there are so many instances, where there is no diversion of income and still clubbing provisions are invoked and putting both the parents and minor children in to pecuniary loss. It is suggested that the entire gamut of clubbing provisions should be reviewed and suitable changes should be made.

Furthermore law is not merely a precept or formulation but is a living law, a working principle and enlightened guidance, which is conducive to happiness and welfare. Law partakes of the reality, nay, it is the reality itself. As such when required the Scholar has suggested amelioration of the anomalies of some of the clubbing provisions by suitable amendments.
Looking into the whole of the aforesaid discussions and the opinions reflected through this research it may not be inappropriate to state here that the Scholar has cautioned to make Tax Planning not in a generalised manner but to keep the planning flexible so as to fit in with the prevalent law varying from year to year either by way of suitable amendment to the *Income Tax Act* or changes caused in the Finance Act of the concerned year.

The sum and substance of this thesis is that the legal position of all guardians being fiduciary, the guardians of all types is personally liable for breach of trust. No guardian is entitled to remuneration unless permitted under the will or under provisions of the *Guardians & Wards Act*.

Furthermore, the guardian's legal position being fiduciary, he can not take possession of minor's property adversely, no matter how long he may be in its possession. The law lays down and requires from a guardian that he will manage prudently the properties, business and affairs of the minors. Prudent management does not mean that he is bound to contest every possible claim against the minor or to litigate on behalf of the minor, irrespective of the chances of success. Whatever pecuniary advantages are received out of minor's estate, the guardian is bound to hold them for minor's benefit. This will include not merely the actual profits received
out of the use of minor's property but also all those profits which would have been received but for the gross and wilful negligence. However, if the minor after attaining majority, discharges the guardian after full knowledge of all facts, guardian's liability for the acts or omissions comes to an end.

Guardian's fiduciary position also makes the guardian liable to render all accounts. However, once the minor on attaining majority reaches a settlement of accounts with the guardian, he can get them re-opened only if he establishes fraud against the guardian.

In summing up law has already blessed us with legal concepts in the past, which ushered in an era of peace, tranquillity, harmony and good will. Being a born optimistic the Scholar hope that in our further efforts to make this worldly life happier now, we do not miss to build on the wisdom of the past, which, if suitably and appropriately utilised will consecrate our whole legal system.

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