INTRODUCTORY REMARKS

Law is a code of conduct. It's creator as well as consumer are the human beings. It has two faces primarily it works as a mechanism to regulate the Social life through distinct institutions and practices, and secondarily it is nothing but a doctrine or ideas, which can be logically or dogmatically interpreted to the best of interest of the Society. Again Law has to be creative and it has to be amended from time to time as per social experience as well as the abstract logic. The meaning and significance of legal rules also evolved from the way in which they are applied, if at all, to actual social situation and relationship.

Further society consists of a large number of Social institutions in various forms. Social changes in most cases begin in some of these institutions which in turn influence other institutions, and elements until the whole of the society changes. Any Social transformations carried forward through legislative changes, are also reflected in all the key legal institutions including the judicial process and the numerous other agencies of law enforcement agencies.

(A) AIM OF THE STUDY;

In Society the normal developments of a human species is a very complex one. It needs constant care since its embryonic stage to full grown baby
during its development in the wombs and thereafter it further needs the constant attention of both the parents as well as the peers till it becomes ready to face the challenges of life. And looking into this aspect, the formulators of law also have been specifically made special provisions for minors. However, inspite of all the care and good intention, there are certain provisions in different Acts and Rules of India which puts the minor in a position of under privileged. In this backdrops, the Section 30 of the Indian Partnership Act’1932 and Section 64 of the Indian Income Tax Act’1961 needs further analysis and probing because such provisions of law are at times works against the vary norms of social responsibility towards minors.

The concept of partnership can be traced to the origin of human beings itself. Prior to the passing of the Indian Partnership Act we find that there were laws governing the relationship of partners, it’s earliest references are to be found in Bhrigu’s version of Manusmriti and in traditional Indian law books through the ancient & middle ages. In the early part of the last century Indian Court were used to deal with disputes between business partners in accordance with the customs and usages prevailing during those periods.

With the passage of time, due to necessity of economic interdependence and needs of manpower, the
concept of Partnership in the field of business assumed importance and as much as a natural corollary sometimes it leads to conflict of interest among the partners. Therefore, the need of codified law to regulate the business of partnership become necessary. The first Indian codified law relating to Partnership constituted a Chapter of the *Indian Contract Act 1872*. Subsequently, the Indian Partnership Act was enacted in 1932 which is based on the provisions of the English Partnership Act 1890.

The Indian Partnership Act defines Partnership as:

"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".

And such relationship should not be abstract but it should be in reality. The relation of partnership arises from contract and not from status. Since a minor cannot enter into a contract he is not competent to be a partner. In the leading case of *Mohori Bibi Vr. Dharamdas Ghose*, the Privy Council held that the minor’s contract is void and not voidable. But, Sec. 30 of the Indian Partnership Act ‘1932 clearly lays down that though a minor cannot become a partner, with the consent of the adult partners, the minor may be admitted to the benefits of the Partnership.
Further this second part of Sec.30 of Indian Partnership Act’1932 subsequently created a lot of controversies and till date is not self-explanatory but full of ambiguities. In this proposed research, the basic objectives and sincere attempt of the Scholar will be to throw further light on the unknown issues as it needs crystal clear enlightenment. Even the Indian Income Tax Act accepted the above definition of Partnership in toto, thus adding to the legal controversy more spices.

Added to this the clubbing provisions of the Income Tax Act’1961 with regard to minor’s income from partnership business is against the very interest of minor and therefore, it needs amendments. The basic philosophy behind the clubbing provisions is to check diversion of income of parents with a aim to reduce their Income Tax burden. Upto that point the operating provision of clubbing are absolutely alright but there are certain instances when even in the absence of diversion of income by the parents in the name of the minor son / daughter, the provision of clubbing has been invoked to the detriment of the poor parents. These areas needs further probe. The scholar till date does not find a single research work in this area of controversy.
(B) HYPOTHESIS OF THE STUDY:-

Research always starts from a question or a problem of some sort as the real purpose of research is to discover answer to questions through the applications of scientific procedures.

As the present study is purely a doctrinal one, the present Scholar, after an in-depth study of many legal literatures found that some areas remain unexplored to pose some hypotheses which are stated below for a critical probing. Therefore the main seven major and minor hypotheses which have arisen for consideration in the present studies are:-

(i) What are the major incompetencies for a minor to become a partner in a Partnership Firm? Whether a Guardian of a minor shall sign on behalf of minor on the Deed of Partnership.

(ii) What are the rights and liabilities of a minor admitted to the benefits of Partnership and whether the present provisions of Section 30 of the Partnership Act is sufficient to protect the minor’s interest in the Partnership business.

(iii) What is the legal position of a minor partner attaining majority as per the original Deed of Partnerships.
(iv) Whether the death of the Guardian of the minor partner who signs on behalf of the minor in the Partnership Deed automatically deprives the minor from the benefit of partnership from the date of death of the Guardian?

(v) What is the provision of Tax Planning and complication in respect of admission of minors to the benefits of Partnership?

(vi) Whether the clubbing provisions of the Income Tax Act regarding income of minor from Partnership are proper?

(vii) Whether under the present law a minor admitted to the benefit of Partnership can be a working Partner in the Partnership Firm?

(C) METHODOLOGICAL NOTES:-

The problems stated above inspired the present Scholar to make an attempt to throw further light on the legal status of a minor in Partnership Firms. Here research data and materials have been collected both from the original and secondary sources. But while collecting data, the scholar had to give special emphasis to the Statutes books, legislative deliberation and judicial trend. As and
when required some judicial verdicts of different interesting Court cases have been also cited.

(D) SCHEME OF CHAPTERISATION:-

It is customary in the introduction to offer an explanation of the nature of his work. Thus in this study the following seven Chapters plunge straight into the theme already mentioned as under:

In the First Chapter, a brief review of the definitions of 'Minors' and partnership and position of Minor under Contract Law will be attempted.

In the Second Chapter, there will be highlights of the position of minor under the Partnership Act and the legal consequences of the minor's incompetency to become a partner are to be dealt with.

In the Third Chapter, there will be a detailed analysis that whether guardian of a minor sign on behalf of a minor on the Partnership Deed.

In the Fourth Chapter, whether a minor share the losses of the Partnership Firms are to be devoted.

In the Fifth Chapter, a key legal question that is about the registration of Firm and the attainment of majority by the minor will be discussed.
In the *Sixth* Chapter, various Tax Planning in respect of a minor, the benefit of partnership and its complications will be examined.

And in the *Seventh* Chapter various conclusions reached by the scholar in course of their studies are to be summarised. These Chapterisations are updated and organized by the scholars as per advice of the examiner.

Last but not the least in this study there will be a Bibliography of authorities relied upon and the said Bibliography has been restructured as per advice of the foreign examiner vide S.U. letter No. 5260/EC III dated 21.12.2011.

Thereby this study will be the prime concern of the Scholar to examine whether there are any statutory requirement in this field or not. Because in the modern days it is very essential to know the law on the admission of minors to the benefit of Partnership. Further the findings of this study is believed to be of immense help to all concerned with the partnership business under the status of Partnership Firm.