CHAPTER - II

POSITION OF MINOR UNDER THE INDIAN PARTNERSHIP ACT AND HIS INCOMPETENCY TO BECOME A PARTNER

In the First Chapter the scholar had discussed about the legal status of a minor in the partnership firm but in this Chapter he proposes to examine about the position of minor under the Indian Partnership Act of 1932. Section 30 of the Indian Partnership Act reads as follows:-

(1) A person who is 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.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.
(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 share of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, which ever 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.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the facts 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,

(7) Where such person becomes a partner:-

(a) His rights and liabilities as a minor continue up to 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 and,

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

(8) Where such person elects not to become a partner:-
(a) His rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice.

(b) His share shall not be liable for any acts of the firm done after the date of the notice, and

(c) He shall be entitled to sue the partners for his share of the property and profits in accordance with sub section (4)

(9) Nothing in sub-section (7) and (8) shall affect the provisions of Section 281.

2.1 Minor in Partnership Act under English Law:

There is no corresponding Section under the English Law. However, under English Law\(^2\) there is nothing which can preclude a minor to become a partner. During his minority he cannot be made liable for debts incurred by the partnership but he is not entitled to any share of the partnership assets until the firm’s debts have been paid. The most peculiar aspects of English law is that if on behalf of the partnership he enters into contract with third parties, those contract bind his adult partners.

Further there is nothing under English law to prevent an infant becoming a partner, and until his contract of partnership is disaffirmed, he is a member of
the firm. An infant, however, cannot incur liability for the debts of the firm or for the acts of his co-partners, but if on behalf of the partnership he enters into contract with third person(s), those contracts bind his adult partners and the adult partners are entitled to insist that the partnership assets shall be applied in payment of the partnership liability before the infants receive anything. An infant partner who commits a wrongful act, for example, by falsely representing his firm to be connected with stranger’s business may be restrained by injunctions and ordered to pay costs, so also an infant is liable in Equity for fraudulent mis-representation as by holding himself out as a person of full age.

While deciding the effect of partnership between an adult and a minor in a land mark judgement in the case of Lovell V. Beauchamp.

Lord Ashburne observed that if the adult member of a partnership could evade liability because one of the partners was a minor, minors would be found in many partnership, in fact, there would be a premium on minors if such a new career of usefulness were thrown open to them.

This position was however made more clear by Lord Herschell L.C. in the same case. He observed that :-
“I think it clear that there is nothing to prevent an infant trading or becoming a partner with a trader and that until his contract of partnership be disaffirmed, he is a member of the trading firm. But it is equally clear that he cannot contract debts by such trading, although goods may be ordered for the firm he does not become a debtor in respect of them. The adult partner is however entitled to insist that the partnership assets shall be applied in payment of the liabilities of the partnership, and until these are provided for no part of them shall be received by the infant partner, and if the proper steps are taken, this right of the adult partner can be made available for the benefit of the creditors.”

However in the opinion of the present scholar the Section 30 of the Indian Partnership Act is not in accord with the English Law, though the said Act was enacted in the year 1932, when India was ruled by British Crown.

2.2 Partnership in Ancient India:

In ancient India, the concept of partnership was there since the time immemorial and references are found in the early scriptures. These have been referred in the opening Chapter.
According to Manu⁵, the ancient law giver of India, a contract made by an infant is invalid. Even for the protection of the minor, Manu also went a step further and said that the king shall protect the inherited and other property of a minor, until he has passed his minority. During the era of Manu, the commercial activities were not so well developed as it is now. But the concept of partnership was there in crude form. Only there was law for sharing of fees by officiating priests⁶.

The Adhvaryu priest shall take the chariot, and the Brahman at the kindling of the fires, a horse, the Hotri Priest shall also take a horse, and the Udgatri the cart, (used) when (the Soma) is purchased. Further more, the (Four) Chief Priests among all (the Sixteen) who are entitled to one half shall receive a moiety (of the fee) the next (four) one half of that, the group entitled to a third share, one third, and thou entitled to a fourth and quarter. But the application of these principles the allotment of shares must be made among those men who hire (below) performs their work conjointly.

After analysing the principles laid down by Manu, it can be safely inferred that even Manu had conceived about Partnership among individuals even if that was in a limited sense
V.K. Gupta and R.P.Kangle informed that Law of contract as envisaged by Kautilya shows that agreements shall be made with one’s own people or with strangers, in the presence of witnesses, with no secrecy, properly declaring it with respect to place, time, quantity and quality. Again Kautilya went a step further and opines that there are six transactions, which are valid. However contract which is not covered by the above six transactions like contract by dependent, slave, old person, by a convict, monk, handicapped and lastly but most important from scholar’s view point i.e. contract by a minor are not valid as per law.

As referred above, even in those ancient days in India a minor was prevented from entering into a contract to do partnership business as he had no legal right to do so. Every suretyship of a minor was void. Kautilya had advised the judges to take cognisance of contract entered into by minor suo moto and take appropriate action. Even in cases of payment of debts defaulted for ten years or more except in case of minor could not be recovered.

For protection of minors, law was formulated in more details by Kautilya that, elders of the village were empowered to look after and augment the property of orphan minor till the latter attains majority. Even in cases of persons who had neglected to maintain his/her children or minor brother, there was provision for pecuniary
punishment. Thus even in the ancient time there were enough provisions for the protection of the minors from the unscrupulous design of the elders.

During the Anglo British period in India when the Britishers introduced the English concept of Laws, the real concept of minor got a legal shape in the Chapter-XI of the Indian Contract Act of 1870 and subsequently due to the inadequate provisions contained in the above chapter of Indian Contract Act of 1870 to deal with all situations and after lot of deliberation of different committees, a special Act was passed which is known as the Indian Partnership Act of 1932. It will not be out of place to mention here the observation of a Special committee set up by the British Government regarding the position of minor which reads as under:-

“We have carefully considered the position of a minor under the Indian Law of Partnership. Under the English law there is nothing to preclude an infant from entering into contract of partnership, though speaking generally, while he is an infant, he incurs no liability and is not responsible for the debt of the firms, and when he becomes of age or even before, he may disaffirm past transactions. In view of Sec. 11 of the Indian Contract Act and the decision of the Privy Council in Mohori Bibi's case as to the general incapacity of an infant to
enter into a contract we feel that there is no justification with reference to law of partnership only, for departing from this principle of the Indian law, and thereby unsettling it. At the same time it has been the law since 1866 that minor may be admitted to the benefits of partnership and that a minor becomes personally liable for the obligation of the firm if he does not repudiate the partnership within a reasonable time after his attainment of majority vide Section 247 and 248 of the Chapter-XI of Contact Act which has been repealed by Section 73 of Indian Partnership Act. Section 247 has been interpreted by the judicial committee to mean that the minor cannot be a partner in the firm. The contract Act is defective, however, in that it does not, in express terms provide that the minor on attaining age of majority becomes a partner if he does not repudiate his connection with the firms within a reasonable time, though this principle is implied in Section 248. The Act is also defective in omitting to lay down fully the rights and remedies of a minor sharer and as such, clause 30, while retaining the existing law as to minor’s position is intended to remedy the defects above pointed out".
The Select Committee\textsuperscript{10} made the following improvement in their report and clause 30 of the said report reads as under-

"In Sub-clause (2) we have made it explicit that a minor admitted to the benefits of partnership may be entitled to such share of the profits, as well as of the property, as may be agreed upon. Also we consider it dangerous to give the minor, or any one acting for him, access to all the books of the firm as some of the books may contain secrets which should be restricted to the partners. We therefore altered the word "books" to "accounts".

"We have made it quite clear in Sub-clause (4) that the minor cannot sue for his share of the property or profits except when he wishes to sever his connection with the firm".

"We have deleted sub-clause (5), as we prefer to leave all arrangements relating to the minor's share of the property to be settled by agreement made when the minor is admitted to the benefits of partnership".

"As regards the last sub-clause, there is a strong volume of opinions that the period within which the minor should give notice of his intention to leave the firm should be a
definite period. In deference to this opinion we propose that the period should be fixed at six months. As this is a considerable stretch of time in which many things may happen, we have deemed it expedient to workout in greater detail the rights and liabilities of the minor when he attains majority. We propose that, he should be required to give public notice whether he elects to become or not to become a partner, and we have worked out the rights and liabilities on the general idea that his minority shall be deemed to continue until he gives notice or until the expiry of the six months, as the case may be. We have done this in sub-clause (6), (7) and (8) and have added sub-clause (9) to safeguard the interest of third parties in cases where the minor after attaining majority in fact acts as a partner before giving public notice”.

Now with the back drop of *Mohori Bibi* case and the subsequent development of position of minor in the Partnership Act, the present scholar is prompted to further critically examine along with the relevant case laws in order to deeply study and systematically analyse here after.
2.3 Minor’s Incompetency to Become a Partner:

In the above the Scholar has already examined about the position of minor under the Indian Partnership Act. Here he proposes to discuss about some aspects of Minor’s in-competencies to become a partner.

The present topic under discussion revolves around the landmark judgement of *Mohori Bibi V. Dharmadas Ghose* which declares minor’s contract as void *ab initio* still holds good after passing through the litmus test for almost all the High Courts and the Supreme Court for nearly 100 years.

Even the two Committees i.e. Special Committee and Select Committee set up by the Government did not venture to alter the position of minor in the Partnership Act.

As such, Sec. 5 of the *Partnership Act* lays down that:

“The relationship of partnership arises from contract and not from status”.

With respect to this Section, the Special Committee observed that this clause lays emphasis on main element of the definition, namely, that partnership is the result of a voluntary agreement.
In another landmark judgement it was logically interpreted that, from the definition of Partnership in the Act, as in Sec. 239 of the Indian Contract Act, and in correspondence with Sec. 4 of the present Act, it is clear that the relation of partnership cannot arise from status, as mutual agreement is one of the essential element of Partnership.

In the view of the Scholar "Status" means a person's relation to others fixed by law. No partnership can be created by the operation of law and the same is only created by the contractual relation between the parties.

Thus, in the eye of law without an agreement there cannot be partnership and that agreement should be valid one. A minor's agreement or contract with somebody is void ab initio so far as Indian Law is concerned.

In the changed circumstances of Society in modern days it does not seem to be possible and much less desirable for law to adhere to the categorical declaration that Minors agreement is always absolutely void. Minors are appearing in public life today more frequently than ever before and if we strictly adhere to the above principle of the Privy Council the legal protection against contractual liability would be too dear for Minors. Hence an exception is recognized to the above general rule by the Hon'ble Supreme Court of India to the extent that
when an agreement confers benefit on a Minor, the said contract was held to be valid and is enforced at his option\textsuperscript{17}.

Further, minor is allowed to enforce a contract which is of some benefit to him and under which he is required to bear no obligation.

"Benefit of partnership includes benefits which the minor will enjoy, like a major. Thus minor so admitted is vested with certain rights under Section 30 of the \textit{Indian Partnership Act 1932}\textsuperscript{18}. The basic aim of this principle according to the Scholar is to protect the minor's interest as his immature mind may not understand the intricacies of mind of majors and also to protect the major from the hardship to tackle the tender and immature mind of minor.

However, in this conjecture a multi million dollar question arises in the mind of the Scholar as to what is the yardstick of majority? Can boys / girls of 18 years are more mature than boys/girls of 17 years or 17 years 6 months or 17 years 11 months. Here the law fails to give us befitting and satisfactory answer.

The study of child development focuses on the quantitative and qualitative ways in which children undergo changes with the progress of time. Quantitative changes are fairly straightforward and relatively easy to measure. A child's growth in height and weight is a
quantitative change. So are the expansion of vocabulary, the proliferation of physical skills, the number of relationships with other people, and so forth. The study of qualitative change is more complex, involving, as it does, 'leaps' in functioning—those changes in kind that distinguish an infant from a toddler or a talking child from a non-verbal baby, that traces the growth of intelligence, creativity, sociability, morality. But even then leaps result from a series of small steps. No child wakes up on his 18th birthday suddenly thinking and acting vastly different from the day before. Both the developments are results of continuous, irreversible and complex process.

Furthermore, in the opinion of the Scholar no child grows up in a vacuum. When the scholar talks about normal development for a child in favoured circumstances, he can not generalise his conclusion to a child who was born to a malnourished teenager, is raised in a rural shack, does not know his father, does not get enough to eat, fends for himself most of time, is rarely spoken to at any length, and receives a deficient education. This child is growing up in a world light years away from that of the 'typical child', what the Scholar says about one often does not apply to the others.

In some societies, adolescence ends at puberty, when an individual has completed sexual development and is capable of bearing or siring children. Cognitive
maturity is reached when a person is capable of abstract thought. Sociological adulthood is attained when an individual is self supporting or has chosen a career, or has married, or has formed a family. Legal adulthood comes when one can vote, marry without parental permission, enlist in the army, or be responsible for legal contracts, and can view "A" rated movies and in India one is able to do all these things only after one attains 18 years of age except marriage as legal age of marriage for boys has been fixed at 21 years of age. And in the psychological sense, adulthood is reached when one has dealt with their tasks, discovering one's own identity, becoming independent from one's parents, developing one's own system of values, and becoming able to form mature, interdependent relationship of friendship and love. By these criterion, it is obvious that some people never become adults, irrespective of their chronological age.

However law does not distinguish between minors of different ages. Law cannot be applied with the same vigour to the babies in the arms and to the young men and women of the 17 years old. Hence in the opinion of the present Scholar modern law is needed to be changed with prior deliberation with Anthropologist, Child Psychologists and Sociologist etc. There must be an interdisciplinary approach to the subject of this vital importance. The law relating to minor's contract is presently in an unsatisfactory state. Again the law fails wholly to protect the minor where he has performed his
part of contract by sometimes holding that he cannot recover the money paid or property transferred under it. This branch of law needs absolute reforms. Of course, Law in theory and Law in practice are distanced neighbours.

However, Sub Section 1 of Section 30 of the Partnership Act gives a very special impetus to the minor in a partnership which provides that with the consent of all the partners of the firm a minor may be admitted to the benefits of the partnership. The wording of the Section 30(1) of the *Partnership Act 1932* are significant. The wording that 'A person who is a minor ..........may not be a partner in a firm'. Now the use of the auxiliary verb *may* raises a reasonable doubt, in the mind of the present Scholar that, if a minor is disqualified from being a partner, then instead of using the auxiliary verb "shall" why the auxiliary verb "may" has been used? For, it is well settled that the term "shall" is used in the mandatory or compulsory sense, disobedience of which entails some legal consequences, while the term "may" is used in the permissible sense, that is enabling the person concerned or giving him some freedom or discretion to act as he thinks fit. This view have been corroborated by many important cases of India19.

Thus, the peculiar terminology employed by Section 30(1) leads to the inference, through extreme and sheer logical analysis that despite the general
disqualification provided by Section 11 of the *Contract Act 1872* even a minor can be a partner, if so agreed upon amongst the person concerned. This may be substantiated by Sub Section (2) of Section 30 of the Partnership Act which confers right on the minor to have access to and inspect and copy any of the accounts of the firm. As a matter of general rule, a minor is legally disqualified from entering into contract because of his immaturity and for this reason only he is unable to understand the complicated terms and conditions of a contract and accounting jargons, nevertheless the aforesaid statutory provisions impliedly indicates the possibility that a minor could be a full fledged partner.

Although the above inference goes against the settled legal position that a minor cannot be made a full fledged partner with equal rights and liabilities as those of the adult partners, still it could not be overlooked for being hypothetical either because, the inference has been drawn from the concrete statutory indication contained in Sub-Section 30(1) and 30(2) of the *Indian Partnership Act* 1932.

Under this section there must be at least two adult partners before a minor can be admitted to the benefits of the partnership\(^{20}\). Because the partnership is based on contract, the privilege conferred by this Section does not give the minor the power to create a firm, that is to say that a Partnership based on contact must be in
existence before he can be admitted to its benefits, for he cannot be admitted into an institution / firm which does not exist\textsuperscript{21}.

"The benefits of Partnership" referred to in this Section means benefits which the minor would have received by being made a partner if he were \textit{sui juris}\textsuperscript{22}. "Benefits of partnership" include benefits which the minor will enjoy, if he were a major\textsuperscript{23}. Thus minor so admitted is vested with certain rights under Section 30 of the Indian Partnership Act, 1932.

Thus in the opinion of the Scholar here the basic disadvantage to the minor aged 17 years old is that he cannot participate in the affairs of the firm whereas the adult partner can.

Again there is no distinction between a minor contributing his capital either in shape of cash or estate to a firm and a minor who inherited the same after the demise of his father. A minor can earn a huge surplus in a legal manner by his own artistic endeavour, writing capacity, awards, scholarship which he at a more mature stage of his minority can utilise by entering into a partnership business through his legal guardian. And in that event his legal position is the same with that of a minor of say 1 day old who becomes orphan on that particular date and other partners of the partnership firm in which his father was a partner, admitted the minor with the prior consent of his legal guardian to the benefit of
partnership business. It is irrational rather inequitable to treat both types of minors alike.

No personal liability is attached to him during the period of minority since he is doliincapax, the principle of law is that what a minor is not allowed to do during the period of minority can not be ratified even after attaining the age of majority so as to render void agreement into a valid one. Sub Section 7 of Section 30 of the Partnership Act specifically deals with the rights and liabilities of a minor electing to became a partner and lays down that a minor who has become a partner under Sub Section 5 of Section 30 of the said Act will be not only personally liable for "all acts of the firm" done after he becomes a partner, but also for all such acts of the firm as had been done by it ever since he was admitted to the benefits of partnership. Whereas Section 30(3) of the Partnership Act speaks that the minor's share is liable for the acts of the firm but the minor is not personally liable for any such act. Here the English law differs from Indian one. Under the English Law a person who does not repudiate would be liable from the date of his attaining majority and not from the date of original admission to the partnership.

The irony is that when Section 30(3) speaks of limited liability on the part of the minor who is admitted to the benefits of the firms. But his liability cannot be enlarged on electing to become a partner or failing to
elect. If we enlarge the liability the sanctity of section 30 (3) is totally taken away by Section 30(5). In other words, it is nothing but treating the minor partner as a full fledged partner from the date of admission which negatives the fundamental principles of law of contract. Thus an amendment of the law in the line of the English law is warranted.

Furthermore the other concept which supposedly exempts the minor from the personal liability is hardly a benefit in the true sense of the term. Because in the day to day affairs, of the business, it is the adult partners, who manage the show and they are in a better position to manipulate the accounts which suits them. In that case the minor is not in a position to assess his loss due to the manipulation of the adult partners. It may so happen that, what the profits and loss accounts actually reveal is only an eyewash. Even if it is in the profit side, it is difficult for a minor to assess the actual profit. This concept is not a wild conjecture but a fact, which can be inferred from the results of different successful raids conducted by different law enforcing agencies in various business firms unearthing huge undisclosed income.

Perusal of the provisions contained in Sub Section (1) and (3) of Section 30, of the Partnership Act indicates that minor is not personally liable for the acts of the firm though his share in the property and profit is liable. In the light of the above discussion, here also the
minor has not been unduly favoured, since the partners actively participate in the acts of the firm whereas the minor is not allowed to participate in the same, therefore, it is of natural consequence and not as a matter of favour that he is excluded from personal liability for the acts of the firm. If the law forbids one to be party to a particular act how can it hold him liable for the consequence of that act?

In the opinion of the present Scholar not only a minor be exempted from the personal liability as enumerated in the Partnership Act, but fresh legislation should be immediately made to protect the share of the minor in case of loss because, if law assumes that a minor should be protected from the unscrupulous design of the adult partners, then an immediate suitable legislation in this direction is needed and warranted.

The registration of every firm must be made obligatory in the line of Company Law so that the interest of the minor in the firm’s property becomes a public document of which any third person who intends to deal with the firm is supposed to be aware of and thus deal with the firm subject to such interest.

Again under Sub Section (4) of Section 30 of the Partnership Act, minor is not allowed to claim the share of the profits of the firm, during the subsistence of the firm, whereas an adult can, if there does not exist any
previous contract in the Partnership Deed contrary to the effect. The situation is very much against the interest of the minor because only if he opts for dissolution then only he can claim subsistence. The most tragic flaw in the Act is that even after auditing the books of accounts either by the minor himself or by his authorised agent if any mistake is detected in the share allocation to the disadvantage of the minor, then also the minor cannot legally claim the share out of that detected portions without opting for dissolution of the firm. The provision should be corrected.

However, in case the minor is deprived of a portion of a share by improper accounting, which is subsequently detected during the course of audit by the minor himself or his guardian, the minor simply cannot even demands for correction of the same to his advantage, which is against the principles of Justice and Equity.

The General principle of law is that “a right without a remedy is in vain”. Under Clause (1) a minor is vested with a right to have a share in the profit because he has been admitted to the benefit of the partnership.

The partnership comes into being by means of a contract between the parties. However, the General Principle of contract law speaks that where a contract is entered between the parties for the benefit of the third party, the third party though a stranger is entitled to sue
under the contract. Section 30 speaks that a minor admitted to the benefits is conferred a privilege. But that privilege does not make him a partner. As a beneficiary, he can sue for his share of profits either by himself or through his guardian as the case may be. The Principle is "Ubi Jus Ibi remsdium". Where there is a right, there must be a remedy. Thus according to the present Scholar the correct view should be that in case, right of share of profit is deprived to him during the period of minority the remedy must be exercised without severing his connection with the firm. Thus law should be suitably amended to accommodate the present view of the Scholar.

Again the question of minor’s right to sue came for discussion and other partner objected on the ground that he is not a full fledged partner, therefore, he cannot sue the other partners for accounts. But this contention was rejected and it was held that a minor cannot become a partner in a firm by contract, but he can sue for partnership benefit to which he has been admitted. However here the Court is silent on the question that whether the minor can sue for his right of profit while remaining in the partnership as beneficiary.

Section 30(5) of the Indian Partnership Act provides alternative choice to a person, who was minor and has now attained the majority. He may either choose to become a full fledged partner in the firm or alternatively he may sever his connection with the firm.
For exercise of this choice by him six months time has been allowed from the date of attaining the age of majority. In case the minor does not know that he was admitted to the benefit of partnership, the period of six months is to be counted from the date when this fact of his having been so admitted comes to his knowledge. This alternative provision has been made to safeguard the interest of the minor in cases where the other partners try to conceal the facts from the minor with a malafide intention.

However Section 30(6) of the partnership Act states that the knowledge of being a profit recipient in a firm is a question of fact and the burden of proof lies on the persons who allege that the minor had no knowledge of his having been admitted to the benefits of partnership during his minority, when such minor becomes major and the statutory period of 6 months after majority age has also expired. The rule embodied in this section does not, however apply, where a minor becomes major before the Partnership Act came into being i.e. 1st October'1932.

While protecting the interest of the minor by invoking the above provisions of law Hon’ble Supreme Court while delivering its judgement held that a minor cannot be held to have become a partner of a dissolved firm by reasons of his inaction after he had become a major within the time prescribed under Section 30(5).

But if a minor, after attaining majority, does in fact, acts as a partner before giving public notice of his election not to become a partner, he will be personally
liable to the third parties on the principle of withholding act as enunciated in Section 28 which is part of the law of estoppel, as if he were in fact a partner in spite of any rule contained in Sub Section 8 of Section 30 regarding his non-liability for acts of the firm.

Further within six months of one's attainment of majority or obtainment of knowledge that he was admitted as a partner during his minority, whichever is later, the person has to either opt to become a full fledged partner or should withdraw from partnership and in case one opts to become a partner, then he has to shoulder the liabilities of the firms, which was created during one's minority. Here the law is definitely at fault. How can a person be responsible for no acts of his fault? Here the English Law is more rational which created liability from the date of ones attaining majority if one opts to become a full fledged partner. Indian law should be amended in the line of English law.

Again last, but not the least, to overcome the doubt as to whether a minor can be a partner in view of the auxiliary verb 'may' occurring in sub-section (1) of Section 30 of the Partnership Act 1932, it is submitted that the term 'may' occurring in the opening part of the Section 30(1) be substituted by the auxiliary verb 'shall' so that it could be clarified beyond any reasonable doubt that a minor can in no way be a full fledged partner of a partnership firm.
However, this lacuna or deficiency in the working of the Section 30(1) of the Indian Partnership Act 1932 has been subsequently corrected by different courts while settling the disputes on this score. Some of them are briefly quoted below.

Where the partnership is base on contract the privileges conferred by this section does not give the minor the power to create a firm, i.e. that a partnership based on contract must be in existence before he can be admitted to its benefits, for he can not be admitted to what does not exist.26

By merely being admitted to the benefits of partnership a minor does not become a partner. It is only by his acquiescence that he can be said to have accepted the position of a partner with all his liabilities.27

Where the members of a family carry on a business and there are minor members in the family, there must be some positive conduct from which the Court can infer that the adult members intended to admit certain minor members to the benefits of the partnership. The mere fact that every body concerned assumed by some error of law that all the children of the family, whether major or minor, were in some manner interested in the business does not suffice to bring the section into operation.28 There may be a definite and conscious act on
the part of the partners in the firm and there must be
unanimous consent of those partners indicating on
admission of a minor to the benefits of Partnership. There
may also be an express agreement between the partners to
admit the minor to the benefits of partnership, or there
may be some positive conduct on their part from which it
can be inferred that they agreed to so admit the minor.

As an agreement is an essential ingredient in a
partnership, it follows that a minor cannot enter into an
agreement of partnership. A person can become a partner
only by an act of consent on the part of himself and other
partners and for such an act, a minor is incapable in law.

The mere description of the minor as partner in
the preamble of the Partnership deed will not make a
minor a partner unless the body of the deed contains
recital to the effect that he is being admitted to the
benefits of partnership only. Even if such deed is not
signed by the minor it will be valid.

A person can only become a partner by an act
of consent on the part of himself and his other partners,
and as a minor is incapable of such an act by virtue of
Section 11 of the Indian Contract Act, he cannot as
expressly provided by this subsection become a partner in
a firm.
A minor can not be admitted to a business firm with a sole adult. That is to say, between one adult person and one minor, no partnership firm can be created\textsuperscript{33}.

A partnership deed must be construed reasonably and read as a whole. In the instant case, mere description of the minors as partners in a clause of the deed by itself did not make the minor partners in the firm when the very same clause in terms provided that the minors had been merely admitted to the benefit of the firm\textsuperscript{34}.

However, in the views of the present scholar, inspite of above interpretations of different courts, the auxiliary verb 'may' occurring in Section 30(1) of the Partnership Act should be substituted by 'shall' by way of amendments to give a clear meaning to it in stead of leaving it to the Courts to interprets it. From the host of cases cited above it is clear that inspite of interpretation of different courts people are going on committing the same mistake.

2.3a Minor can not be declared insolvent.

A minor was carrying on business in the name of the firm. His liability was held to be restricted up to the special fund in the firm, which was created for the sole purpose of the minor. In the event of a firm being declared insolvent along with its partners and an official receiver is appointed by the Court, minor's share becomes
liable and vests in the official receiver, but Court can not declare the minor as insolvent. The Courts are positively prohibited from declaring a minor as insolvent\textsuperscript{35}.

A minor can in no circumstances be adjudged an insolvent, either on his own petition or on the petition of the creditor even though a debt was contracted in the course of a trade carried on by him, or even though it be in respect of necessities.

Where a minor's father is insolvent and the partners of a firm in consideration of services rendered to them by the minor's father agree to have the minor admitted as a partner in respect of a certain share, the minor does not become a partner\textsuperscript{36}.

2.4 Position of a Minor Partner for the determination of numbers of partners for validity of Partnership Firm.

Another most interesting issue of the partnership Act vis-à-vis Indian Income Tax Act is that whether the minors admitted to the firm as partners should be taken into consideration for determining whether the firm had more than 20 partners during the relevant years. And this question though look very innocuous, still creates so many divergent views among the High Courts that finally the Apex Court intervenes and sort out the problem.
One school of thought which is supported by several High Courts is that minors who are admitted to the benefit of partnership shall be omitted, while counting the number of partners to determine the validity of partnership, whereas the other school thought otherwise.

2.4(a) The view of the first school according to whom, the minors, who are admitted to the benefit of the partnership should be omitted while counting the numbers of partners to determine the validity of the partnership are as under.

(i) However Hon'ble Madras High Court, while deciding a case\(^{37}\) took a contrary and peculiar view and held that under Income Tax Law a minor admitted to the benefits of a partnership becomes a partner. And on this analogy, while counting the number of partner for the purpose of Registration read with Section 11 (3) of the Company Act, a minor also should be counted.

(ii) And this position of law of Madras High Court has again been reconfirmed by the same High Court\(^{38}\).

(iii) Even Hon'ble Patna High Court\(^{51}\) took a very interesting view and held that Agreements entered into between several persons, some of whom are by law incompetent to contract, are not wholly null and void, but one only less
effective than if all the parties to them were competent to contract.

2.4(b) The contrary viewed teaches by second school of thought are as under-

(i) While dealing with the above problem, honourable Allahabad High Court in a case\(^{39}\) held that –

"Section 11(2) of the Companies Act prohibits the formation of a Company, Association or Partnership consisting of more than 20 persons for the purpose of carrying on any business for gain unless it is registered as a Company. Partnership being the result of a contract between the partners, and a minor being incompetent to enter into a contract, only adult persons who constitute the partnership on the basis of an agreement are to be taken into consideration for finding out whether a partnership consists of more than 20 persons and minors, not being partners, cannot be taken into account for the purpose of Section 11(2) of the Companies Act".

(ii) In another interesting case\(^{40}\) Kerala High Court corroborating the same views held that –

"The common law principle is that a minor, not being competent to enter into a contract, is incapable of becoming a partner, is not altered
by the Income Tax Act. On the other hand, that the said principle has been recognised by the Act is clear from the provisions contained in Sub-Section (3)(a) of Section 184. The Sub-Section says that the application for registration of a firm shall be signed by all the partners (not being minors) personally. A reference in this connection to Section 30(1) of the partnership Act is relevant. This Section provides that a minor cannot become a partner although, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership. Any deed of partnership which goes beyond this Section cannot, therefore, be regarded as valid for the purposes of registration under the Income Tax Act. The definition section 2(23) of the Partnership Act, cannot be said to mean that, in a given case where a minor has, contrary to law, been admitted as a full partner, the document is to be regarded as valid. What the definition does is to empower the authority concerned to apply to a minor admitted to the benefits of partnership all the provisions of the Income Tax Act. The definition, in other words is designed to confer equal benefits upon the minor by treating him as a partner"
(iii) Under similar circumstances, Karnataka High Court\textsuperscript{41} also went a step further and opines that-

"Under the provisions of the Indian Partnership Act, a minor cannot be a partner because a minor is not competent to enter into any contract. A minor can only be admitted to the benefits of the partnership. Therefore, the law which enables the formation of a partnership, that is, the Partnership Act does not recognise a minor as a partner at all when a minor is admitted only to the benefits of the said partnership. Consequently, while computing the number of partners, the number of minors who have been admitted to the benefits of the partnership will have to be excluded".

(iv) While deliberating on similar facts, Andhra Pradesh High Court\textsuperscript{47} who confirmed the above view and held that while counting the member of partners in a partnership firm, the minor who have been admitted to the benefits of the partnership must be excluded on the ground that –

(a) They are not full fledged partner but only admitted to the benefits of the partnership.
(b) Section 184 (3) of Income Tax Act 1961 emphasised that the application for registration should be signed by all the partners (not being minors) personally. Here the minor is specifically excluded.

(c) Again the provision of Section 11 (2) of the Companies Act must be read in the context of and in harmony with Section 4 and 30 of the Indian Partnership Act.

(v) Even Calcutta High Court long back while deciding on a point took a view that where in a firm, a person represented in his individual capacity, as well as representative capacity of his H.U.F and infants taken to the benefit of partnership, the partnership cannot be a genuine one on the ground that here only one person is eligible for the partnership and he can not form a valid partnership with himself. For the purpose of counting the number of partners, minors are excluded from the partnership.

Thus in that analogy, Partnership is not invalid and for the purpose of Registration under the Income Tax Act the minor should be counted.
However, to resolve this controversy Supreme Court\(^44\) affirmed the decision of Allahabad High Court\(^45\) decided on 12.07.1991 which excludes minors partner while counting the number of partner in a partnership firms for Section 11 (2) of Company Act read with Section 4 and 30 of Indian Partnership Act.

Prior to that Hon'ble Supreme Court in another landmark judgement\(^46\) after reviewing all the divergent views of judgements of different High Courts as referred earlier available at that time as to whether minors partners can be counted for the purpose of Section 11(2) of the Companies Act laid down the principle that Section 30 of the Partnership Act clearly held that a minor cannot become a partner, but he can only be admitted to the benefits of Partnership. While interpreting the definition of "Partner" given in the Section 2(6B) of the Income Tax Act 1922 which is similar to Section 2(23) of the Income Tax Act,1961, which includes a minor who has been admitted to the benefits of the Partnership, the Apex Court\(^47\) observed that-

"What the definition does is to apply to a minor admitted to the benefits of Partnership all the provisions of the Income Tax Act applicable to partners. The definition is designed to confer equal benefits upon the minor by treating him as a partner, but it does not render a minor a competent and full
partner. For that purpose, the law of Partnership must be considered, apart from the definition in the Income Tax Act."

That means that while calculating the number of partners, the minor partners who have been admitted to the benefits of Partnership must be excluded for the purpose of Section 11 (2) of the Companies Act. However, in the views of the present scholar, the minors, who are admitted to the benefit of partnership should be counted for the sole and only purpose to determine the validity of the partnership as by excluding them, the number of members of the partnership unnecessarily extended beyond the legally allowable numbers, thus reducing the profit accordingly, depriving the minor a higher share in it.

2.5 Deity as a Partner in a Firm:

In another interesting area of Minor in Partnership is that whether God being always minor, can be admitted to the benefit of Partnership?

Deity is the supreme of all powers and it is a question of faith and belief. God is an invisible being, the presence of whom can be realised only in heart and mind but can not be touched. One always remembers Him daily at some time or other irrespective of caste, creed and religion unless he is a non-believer of God.
Sir Ashutosh Mukherjee of Calcutta High Court in a case very rightly observed that

"it is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy, the vivified image is regaled with necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest".

Thus probably the Indian Partnership Act, Indian Income Tax Act and even General Clauses Act while defining the word "Person", includes Artificial juristic person within its ambit and scope. And God being an Artificial juristic person, whether can legally enter into a Partnership or not is one of the interesting question of the present Scholar in the current research.

Before jumping into the topic under research the Scholar proposes to re-examine the real legal meaning of a Partnership. Thus let us turn to the definition of it.

2.5a Partnership, Person and Partner:

Section 4 of the Indian Partnership Act clearly defines Partnership as 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 it is those persons who have entered into Partnership are called “Partners”. Indian Partnership Act does not define “person” but the word “person” is defined under clause 39 of Section 3 of General Clause Act (X of 1897) as “to include any Company or Association or Body of individual whether incorporated or not”. From this definitions it is clear that person may be natural or artificial or some natural or other artificial.

Section 2(31) of the Indian Income Tax Act 1961 defines “person” which includes

i. an individual.

ii. a H.U.F.(Hindu Undivided Family)

iii. a company

iv. A firm,

v. An association of person or a body of individuals, whether incorporated or not,

vi. A local authority and

vii. Every artificial juridical person not falling within any of the preceding sub-clauses.

Section 2(23) of the Income Tax Act 1961 stipulates that the expression “Partner” shall also include any person who, being a minor, has been admitted to the benefits of Partnership.
And now an important question hovers around the probing mind of the present Scholar is that whether God, or Almighty or Deity is an artificial juridical person or not?

To probe into the question raised above, it is normally understand that an Artificial juridical person includes a collection of an association of individuals, such as, company, firm, association of persons, etc., but there are other kinds of artificial person as well and according to Indian law, an idol clothed with personality and as such accepted as an artificial juridical person.

Long back in a case (which is more popularly known as Dakhor temple case) Bombay High Court held beyond doubt that a Hindu idol is a juristic person.

The above view of the Bombay High Court was again confirmed by Madras High Court.

Even Pollock and Maitland said that “perhaps the oldest of all juristic person is the God, hero or the saint”

Thus, from the above observation, it is crystal clear that God whether, that are Gods and Goddesses of Hindu, or Allah of Muslims or Jesus of Christian or any
other God regarded by any other religion or faith is a juridical person.

2.5e Deity is always a minor and needs a Guardian.

The above captioned fact has been again confirmed by Supreme Court. Supreme Court while upholding the above view went on to held that “such ascription of legal personality to an idol must however be incomplete unless, it is linked to a natural person with reference to the preservation and management of the property. Hence the treatment of idols as if they are infants perpetually and the provisions of human guardians for them variously designated in different parts of the Country”.

It will not be out of place to recount here that even outstanding judicial scholar like Pollock and Maitland went on to opine that “A Church is always underage and is to be treated as an infant”

Calcutta High Court in a judgement held that a Hindu Deity is juristic person capable of having property and acted through the Shebait, who held the property, realised the income and looked after the estate of the deity and did all acts in connection therewith.

The above view of Calcutta High Court again got a confirmation by the same High Court in another interesting case.
Thus, God or Deity or Almighty is always a minor who needs a legal guardian to run His affairs.

2.5d **Deity being a minor can be admitted to the benefits of Partnership:**

Now coming back to section 30(1) of the Indian Partnership Act 1932 which runs as under:-

"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".

Thus according to the above definition God being perpetually a minor and legally accepted as an artificial juridical person may be admitted to the benefits of Partnership with the consent of all other adult partners.

It is most respectfully submitted here that the view taken by Calcutta High Court in a case\textsuperscript{57} that Almighty is a non-personal being and cannot enter into a partnership with material person appears to be based on wrong footing. Because the property of the Almighty irrespective of the religions have to be managed by some persons and it is he who manages the affairs of Almighty to His benefit i.e. indirectly to the general people.

In another case the Hon’ble Supreme Court\textsuperscript{58} held that under the Mahomedan Law, the property vests
only in Almighty but the *Mutwalli* acting in his name, utilizes the income for the advantage of the beneficiaries.

The position of Mutwalli as per Mahomedan Law is clearly pointed out by Hon’ble Patna High Court in a case where it was held that the position of the Mutwalli is not that of a mere temporary lessee. He is the manager and for all practical purpose in the position of a trustee of the *wakf* property until he is removed from his Mutwalliship.

Thus in the humble view of the present scholar, even in Mahommedan Law the Almighty can enter in to the benefit of Partnership through Mutwalli as His Guardian.

However the position in Hindu Law is more clear and the Hindu Deities can be admitted to the benefits of the partnership through the manager or Shebait. And this position of law is affirmed by the same Calcutta High Court and more recently by Hon’ble Income Tax Appellate Tribunal Hyderabad Bench held the same view and held that “A deity can not be *sui juris* so as to be taken in as a partner of a firm unless the deity is represented by Shebait.

In the above case, the Registration of Partnership under the Indian Income Tax Act was rejected because the Partnership deed provided that Deities are
also personally liable for the losses of the firm, who have entered into the partnership through Shebait. God being perpetually Minor, can not be personally liable for the losses of the partnership as per Section 30(3) of the Indian Partnership Act.

Lahore High Court in a very interesting but controversial judgement held that “Artificial Juridical Persons can enter in to agreement of Partnership”. But this view of Lahore High Court is definitely an extreme one as it is the accepted principle of law and usages that God WHO is an artificial juridical person is a minor and being a minor He can enter into a partnership as a beneficiary with the consent of the other partners.

Division Bench of Calcutta High Court in a case while upholding the position of God as juristic person held that Shebait is competent to sign a form of the Income Tax Return on behalf of the Deity and such signature should be taken to be the signature of the Deity. If we accept this principle of deeming that the signature of the Shebait or trustee is deemed to be the signature of the God or Deity, then we are violating or contradicting the other accepted principle that God is a minor and Indian Contract Act very clearly envisages that minor signing a contract does not carry any meaning. It is only the Guardian of the minor and in the instant case it is the Shebait or trustee is the Guardian of the God who can sign
on behalf of the minor or God and that cannot be deemed to be the signature of the minor.

Thus from the above discussion it can be safely concluded that Deity can be admitted to the benefits of partnership through His guardian i.e. Shebait or trustee etc with the consent of all other partners and it can be a useful Tax Planning tool and thereby the property of large member of temples can be brought to use for constructive purposes.

While concluding the present chapter, the present Scholar feels the necessity of the following approaches to amend and rectify the present law in the line of the following suggestions to strengthen the existing law relating to minor in the partnership.

1. While formulating any new law or amending any existing law relating to minor or infant, an integrated approach should be adopted with prior deliberations with Anthropologist, Child Psychologist, Sociologist, Educationist, and Economist.

2. The concept of limited liability in case of ‘minor’ admitted to the benefit of partnership should be done away with and the minor share should be legally protected.

3. The registration of the Partnership Firm should be made compulsory for the knowledge of all
others that property of minors are involved in the partnership.

4. The minor should allow to demand his share without severing his links with the firm.

5. The ‘minor’ admitted to the benefit of partnership should be counted for the limited purpose to determine the number of partners for the validity of partnership deed to give them proper share of benefit.
NOTES & REFERENCES

01. S.D. Singh & J.P. Gupta
   Law of Partnership in India, Page – 423

02. A.G. Guest (ed)
   Anson’s Law of Contract 26th Edition

03. Lovell V. Beauchanep
   1894, A. C. 607

04. ibid

05. F. Max Muller (ed)
   The Sacred Books of the East Vol. XXV.

06. Officiating Priest as per Manu Smriti means who chooses to perform a sacrifice, abandon his work, a share only (of the fee) in proportion to the work (done) shall be given to him by those who work with him. But he who abandons his work after the sacrificial fee have been given, shall obtain his full share and caused to be performed (what remains) by another (Priest). However if (specific) fees are obtained for several parts of a rite, shall be (also performs the part) receive them, or shall they all share them.

07. V.K. Gupta
   Kautilyan Jurisprudence

08. R.P. Kangle
   The Kautilya Arthasastram, Part – III

09. K.M. Ghose
   Partnership Law in India & Pakistan Page-504-515, Appendix A(I).

10. Supra Sr. 1

11. Mohori Bibi V. Dharamdas Ghose
   I.L.R. 30 Cal. 529

12. Ibid.

13. Supra Sr.-9

14. Supra Sr.-1

15. Supra Sr.-9

16. Mahabir V. Ramkishan
   1936 A, ALJ 1151

17. Padma Vithaba V. Md. Mutam
   A.I.R. 1963 S.C. 70

18. Tulsidas V. Gangaram Ghanshyam Das
   A.I.R. 1925 Sind 272

19. Alcoch Ashdown & Co. Ltd. V. Chief Revenue Authority. Ibid.
   A.I.R. 1923 P.C. 138
Chief Controlling Revenue Authority V. Maharstra Sugar Mills Co. Ltd. Ibid, (1952) S.C.R., 536, L.

L. Dwarka Dass V. National City Bank (1956) I.T.R. 60 (All)

20. Chidambaram V. National City Bank (1936) 71 MLJ 373.


22. Supra Sr-18

23. ibid

24. ibid


26. Devi Ditta V. Taha Mal (1933) 34 PLR, 364

27. Venkatasuryanarayan V. Ramaya (1921) 62 I.C. 802

28. Venkatarama V. Balayya A.I.R (1936) Mad 595

29. ibid

30. Sanyasi Charan Mandal V. Krishnadhan Banerji (1922) 49 Cal. 560


32. Jiwan Ramchander V. Sita Ram Khamkar 118, IC, 141 (Pat)

33. A.A. Khan V. Ameerkhan A.I.R. 1952 Mys 131


35. Abdul Rajak V. Rauf Ahmad A.I.R. 1936 Oudh 245

36. Supra-18

37. Jakka Devayya & Sons V. C.I.T., Madras (1952) 22 I.T.R. 264(Mad)

38. P. Vincent & Others Coimbatore V. CIT (1952) 22 I.T.R. 264(Mad)


43. Messers Hoosen Kasam Dada V. C.I.T.
Bengal (1937) 5 I.T.R. 182 (Cal.)

44. C.I.T. V. Bhawanilal Prasad Giridhari Lal & Co.
SLP No. 11821 of 1991

45. Supra Sr. 39

46. Supra Sr. 44

47. ibid

48. Rambrahma Chatterjee V. Kedar Nath Banerjee
A.I.R. 1923 Cal. 60 relevant Page-62

49. Manohar Ganesh V. Lakhmiram
(1887) I.L.R. 12 Bom 247

50. Vidyapurne Tirth Swami V. Vidyanidhi Tirtha Swami
(1904) I.L.R. 27 Mad. 435

51. Pollock & Maithland
History of English Law, Vol-I, Page -481

52. Jogendra Nath Naskar V. C.I.T.

53. Supra Sr.-52
History of English Law, Vol-I, Page -483

54. Sri Sri Sridhar Jew V. I.T.O.
(1967) 63 I.T.R. 192 (Cal.)

55. Shebait means who takes care of the Hindu Idol and its properties as caretaker by performing Seba or duty as a servant without any pecuniary interest.

56. C.I.T. West Bengal V. Tapang Linght Foundry & Co.

57. Supra Sr.-48

58. C.I.T. V. Puthiya Ponmanichintakam Wakf
(1962) 44 I.T.R. 172 (S.C.)

59. Mutwalli means nothing but a trustee or manager though not in the sense of English law. Then also the primary duty of his is to look after the property of the Almighty and as a manager may enter into a partnership for the benefit of the Almighty and Almighty being a juristic person, there is no bar in it.

60. Shah Mohammed Habib Sajjado Nassin V. A.I.R. 1966 Pat. 45
Moulvi Manzoor Ali

61. Wakf means the permanent dedication by a person professing Islam of any Movable and Immovable property for any purpose recognized by the Muslim Law as pious, religion or charitable.
62. *Supra Sr-56*

63. *Hakim Rai V. Ganga Ram*  
   *A.I.R. 1926 Lah 340*

64. *Supra Sr-54*