CHAPTER III
CHAPTER - III
ROLE OF MINOR'S GUARDIAN 
ON THE 
PARTNERSHIP DEED

In the forgoing Chapter the present Scholar has analysed about the minor’s incompetency to become a partner in depth. In the present Chapter, the present Scholar proposes to examine the role of a Guardian of a Minor, who has admitted to the benefit of partnership.

Generally this question of “Guardian” comes in relation to minor only. As referred in the earlier Chapter the present Scholar has discussed that the very intention of the law is to protect the interest of the minor who is quite innocent and immature to understand the complicated world from the unscrupulous design of the major. Thereby whenever transaction takes place between a minor and major, law always looks upon in a piercing eye to satisfy as to whether such transaction is beneficial to the minor? And whether the minor is well guarded by his guardian? Thus by the very purpose of the guardian is to protect the child from the unscrupulous design of the outsiders and to properly guide the minor into a full bloom major.

At the outset the scholar is presenting the meaning “Guardian” under different enactment?
As per *Child Act 1960*, Sec. 2(K) "Guardian" in relation to a child includes any person who, in the opinion of the competent authority having cognisance of any proceedings in relation to a child, has for the time being, the actual charge of or control over, that child.

According to *Children Pledging of Labour Act 1933*, Sec. 2 "Guardian includes any person having legal custody of or control over a child.

According to *Guardians, and Wards Act* of the 1890, Section 4(2) "Guardian" means a person having the care of the person of a minor or of his property or of both his person and property.

According to *Hindu Minority and Guardianship Act*, 1956, Section 4(6) "Guardian" means a person having the care of the person of a minor or his property or both his person and property and includes –

(I) A natural Guardian.

(II) A Guardian appointed by the will of the minor’s father or mother.

(III) A Guardian appointed or declared by a Court, and

(IV) A person empowered to act as such by or under any enactment relating to any Court of wards.
While interpreting the above section the Apex Court\(^1\) removed the age old impact of Male chauvinism reflected in the Act. Up to that time it was interpreted that, no doubt the mother is a natural guardian of the minor child but her role comes as a natural guardian only after the demise of father. This gender bias was removed by the Hon’ble Supreme Court in the above case on the principle of Gender justice and declared that the mother has been held to be the natural guardian even when the father is alive and active.

Under the *Mohamadan Law\(^2\)*, so far as guardianship of minor person is concern the mother is entitled to the custody of her male child up to seven years and of her female child until puberty. After her, comes the right of the father. As to the Guardianship of property, the father has the first claim.

As per *Code of Civil Procedure*, 1908, order 32 Rule 3(1), where the dependent is a minor, the Court on being satisfied by the fact of his minority, shall appoint a proper person to be legal guardian for the suit for such minor in the absence of natural Father and Mother.

According to the *Halsbury’s Laws of England\(^3\)*, an infant is defended in all proceedings by a Guardian and litum and a person to fill that office must be named before appearance is entered or any other step is taken on behalf of or against the infant.
The *World Book Encyclopedia* also defines guardian, in law, as a person appointed by a court to care for another person called a ward, or for another person's property or both. A guardian may be appointed for minor (People under legal age), spend thrift, insane, or feeble-minded persons, or people unable to take care of themselves.

Thus from all the above citation, it is crystal clear that the very purpose of Guardian is to guard the interest of the minor till he attains majority.

However for this purpose, both the *Indian Contract Act* and *Indian Partnership Act* are silent. Even the *Indian Income Tax Act* is also silent but of late, the Department of Income Tax insist that "the Deed of Partnership" should be signed by the guardian on behalf of a minor which puzzles even experts.

An analyses of Sec.30 of the Indian Partnership Act'1932, it is found by the scholar that Sec. 30(4) enables a minor to sever his connection with the firm and if he does so, the amount of his share has to be determined by evaluation made, as far as possible in accordance with the provisions contained in Sec.48 of Indian Partnership Act, which amongst others, stipulates that in settling the accounts of firm after dissolution, losses including deficiencies of capital shall be first paid out of profits, next out of capital. Such severance may be effected on behalf of a minor by his guardian. As a matter of fact the guardian is also entitled to refuse to accept the benefits of a Partnership or agree to accept the benefits of Partnership. Sec. 30(5) proceeds on the basis that the minor may or
may not know that he has been admitted to the benefits of Partnership. This sub section enables him to elect on attaining majority, either to remain a partner or not to become a partner in the firm. Thus it contemplates that a Guardian may have accepted the benefits of a partnership on behalf of a minor without his knowledge. Hence the guardian has the power to scrutinise the terms on which the minor is to get the benefits and the conditions on which the benefits of the partnership are being conferred. Hon'ble Supreme Court of India in a very lucid language spelt out that “The Guardian can do all things necessary to effectuate the conferment and receipt of the benefits of the partnership”.

Again implied authority of a partner does not empower him to refer a dispute relating to the business of the firm to arbitration. But when all the partners have joined in a reference, the share of the minor will be bound by the award. Privy Council long back in *Mohori Bibi V. Dharmadas Ghose* held that an agreement of arbitration signed by a minor would be absolutely void. But subsequently it was held that an agreement signed on behalf of the minor by his guardian, natural or legal stands on a different footing provided such agreement is within the guardian’s competence.

However, in an interesting case their Lordship of Supreme Court while upholding the right of minor, who can understand their well being better held that in some cases such an agreement by a guardian may be avoided by the minor if it was not entered into for his benefit but the agreement will remain valid so long as it is not avoided by the minor.
But the Scholar here respectfully differs from the above view. Whether a minor can legally avoid such an agreement by saying that what his guardian is doing is genuinely against his welfare. As it has already discussed earlier that a minor is always protected by law because of their immaturity and most of the time they failed to understand the unscrupulous mind of the major person and it is the Guardian and Guardian alone has the responsibility to see to the welfare of the minor. Thus, in the opinion of the present scholar, how a minor can avoid legally the decision of his guardian on the pretext that the above decision is not for his welfare. This aspect is a very much a factual one and the court should analyse each case separately from the others without pronouncing a precedence.

Minor is incompetent to contract but there is nothing in law to prevent his guardian from contracting on his behalf. But what is prevented by law is that a guardian cannot contract on behalf of the minor so as to make him a full-fledged partner even when the other partners are consenting to it. But Rangoon High Court did not support this view. The fact of the case is that there was a Mohammedans who was carrying on a business in Partnership with another, died leaving his widow and minor children. After the death of the husband the widow entered into a contract of Partnership on behalf of herself and also on behalf of the minor children. The court held that she had no power to enter into such a contract so as to bind the minors, but never the less, it was held that as between the widow and the partnership to the extent of her interest the partnership was legal.
However this view of Rangoon High Court was not acceptable today in view of the landmark decision of the Supreme Court\textsuperscript{11}.

Even prior to this, Calcutta High Court\textsuperscript{12} while deliberating on the above subject held that "the deed of Partnership was executed on behalf of Krishna Murari by his natural father Jagdish Prasad. After adoption, Jagdish Prasad ceased to be the natural guardian of the minor and he had no right to enter into contract on behalf of the minor. In the absence of the consent of the natural guardian of the minor, it is not even possible to held that the minor was admitted to the benefits of Partnership.

Prior to this, Madras High Court\textsuperscript{13} took the same view.

Capacity to contract must always be distinguished from authority to contract. "Capacity" means power to appoint oneself while "Authority" means power to appoint another. In other words, "Capacity to contact" means power to bind oneself by the contract and "authority to contract" means the authority to bind another by contract. While capacity is the part of the law of status, authority is part of the law of principal and agent. While capacity is usually a question of law, authority is usually a question of fact. And it is only under this category that contracts are entered into on behalf of others as agents, representative or guardians.
The question for consideration was whether a guardian had power to enter into agreement so as to personally bind his minor ward? A guardian had covenanted for himself and his infant ward to indemnify the purchaser of the ward's estate against any Government claims for revenue. Lord Hobhouse, delivering the judgement of the Privy Council\textsuperscript{14}, remarked that "equity and good convenience" had been "generally interpreted to mean the rules of English Law if found applicable to Indian Society and circumstances". As regards the facts of the instant case, he pointed out that there was no rule in the Indian law giving a guardian and manager greater power to bind the infant ward by a personal covenant than existed in the English Law. There was also no reason as to why it should be so in India. The Privy Council thought it to be a very improper thing to allow a guardian to make covenants in the name of his ward, so as to impose a personal liability on the ward.

Most importantly, when a minor is admitted to the benefits of Partnership the question arises as to, whether the signature of the guardian in the "Deed of Partnership" is essential?

In this connection the analysis of the Partnership Act reveals that a minor may be admitted to the benefits of the Partnership only if other major partners agree among themselves to so admit him. So far such admission is concerned the consent of all the partners is a necessary pre-condition. The agreement is not
between the minor and the other partners but the agreements should be amongst the partners.

Sec. 184(2) of the Income Tax Act 1961, obligates that the application of registration shall be made to the assessing officer and shall be signed by all partners (not being minor) personally or in the case of a dissolved firm by all persons (not being minors) who were partners in the firm immediately before its dissolution. In case of Form No.11 (for registration of newly constituted firms and Form No. 11A (for change in constitution of firm) of the Income Tax Act. The signature of all the adult partners were mandatory prior to the Finance Act 1992. There was no column in Form No.11 or Form No.11(A) requiring either the signature of the minor or that of a natural guardian of the Minor.

Therefore from the aforesaid provisions of the relevant law, i.e. Indian Partnership Act, and Indian Income Tax Act, it is clear that, no obligation is cast on the minor to sign the deed nor is there any obligations on the natural guardian of a minor to append his signature for and on behalf of the minor. So why such requirement is being insisted upon? Here to enforce their demand, the Revenue appears to have placed reliance on the decision of the Allahabad High Court\(^{15}\) where the Assessee firm was constituted by a Deed of Partnership dated 15\(^{th}\) November'1961, with two major partners. Two minors were also alleged to have been admitted to the benefits of the Partnership. The minor were not only admitted to the benefits of the partnership but were made full fledged partners and the Income Tax Officer did not register the documents. First Appellate Authority confirmed the decision of the Income Tax
Officer. Income Tax Appellate Tribunal rejected the decision of both the ITO & First Appellate Authority on the ground that already two major partners have entered into a partnership and by the time the partnership deed accepted the admission of two minor partners which is necessarily legal. However, on a Reference to the Allahabad High Court, it observed that the minor were not only admitted to the benefits of partnership but they have been made liable even for the losses. On examination of Sec.30 of the Partnership Act, the Division Bench observed that, from the above provisions, an inference can legitimately be drawn that a minor, for all practical purposes, when admitted to the benefits of a partnership, becomes a partner but does not enjoy the rights and bear the liabilities of a partner till he attains majority. The Court again observed that, even for admission of the minor to the benefits of partnership, an agreement was required between him and the existing partners does not appear to be correct or acceptable.

Prior to the above decision long long back, Allahabad High Court held that the involvement of the guardian of a minor does not appear to be necessary for minor’s admission as it is not a contract by him but it was held for the first time by the same Allahabad High Court that “in the absence of the consent of the natural guardian of the minor it is not even possible to hold that the minor is admitted to the benefit of the partnership.

Again, when the minor is incapable of entering into a contract under Indian law, how can he enter into an agreement for the benefits of partnership? Long long back it was held by Jammu & Kashmir High Court that where a minor is admitted as a
partner, the guardian of the minor can sign the partnership deed on behalf of the minor. The partnership deed would be illegal only if the minor himself signs as a partner. Secondly, Sec. 30 also does not provide for such a provision. For that reason, in the opinion of the present Scholar the Court invented the novel idea that the Guardian should sign for and on behalf of the minor.

Mention may be made here that in this connection, the reason given by the Allahabad High Court\textsuperscript{18} is very curious one. The Court observed that if a minor is admitted to the benefits of a Partnership by the unilateral act of partners, a situation may arise where the partners may refuse to give the benefits to the minor where the minor is not a party to the agreement. The minor may not be in a position to claim the profits of the partnership because of absence of privity of contract. This view of Division Bench was again approved by Full Bench of the Allahabad High Court\textsuperscript{19} and the full Bench went on to say that “A minor’s guardian can do all that is necessary to effectuate the conferment and receipts of the benefits of partnership. The fund or property of a minor cannot be transferred to a partnership without the guardian of minor doing so. Thus consent of the Guardian is a necessary precondition for admission of minor to the partnership as a beneficiary and signature of the Guardian is the sole evidence of his consent.

However the same Allahabad High Court\textsuperscript{20} in another interesting case took just the opposite view and said that the mere fact that the guardian did not sign the Partnership Deed would not disentitle the firm from getting registration and thus the Partnership Deed is a valid one.
Even Calcutta High Court\textsuperscript{21} long back went on record that signature of the minor would not make it a contract binding on the minor and a minor could enter into a valid partnership with others. It is further held that the fact that the minor was represented by his guardian would not make the agreement valid, as a minor could only be admitted to the benefits of a Partnership under the law and would not be made a partner even by his guardian.

However the same Calcutta High Court\textsuperscript{22} in another case modify its earlier stand and was of the opinion that minor signing the partnership deed as a partner hardly matter and will be treated as technical defect which is certainly not prejudicial to the interest of the revenue provided the dominant clause of the partnership deed simply admit the minor only to the benefit of the partnership.

Calcutta High Court is not very consistent in its approach and in a another case\textsuperscript{23} held that minor admitted to the benefits of partnership but Partnership deed was not signed by the guardian of the minor as evidence of acknowledgement of such admission is not fatal to the validity of deed because here minor is not admitted as a full fledged partner and one of the clause in the Partnership deed said that minor should contribute capital to firm is not a ground to say that the partnership deed is an illegal one.

Another interesting development has been made by Andhra Pradesh High Court\textsuperscript{24} who went a step further and is of the opinion that the signature of either the minor or a person acting as a guardian of the minor is a neutral circumstance. It neither fasten any liability nor creates any rights, which are not other wise, conferred by law.
Even legal jurist like *Lindley*\textsuperscript{25} held that agreement entered into between several personals, some of whom are by law incompetent to contract are not wholly null and void, but are only in some respect less effective than if all the parties to them were competent.

However the present Scholar differs from the reasons presented above on the grounds that whosoever receives benefits on behalf of the minor is bound to render an account to the minor. Failure to do so will give a valid cause of action to the minor within three years of his attaining majority to bring an action against the person who failed to render an account. Merely because some one acting as a guardian of the minor happens to be a signatory to the partnership deed or to the application for registration u/s 185 of Income Tax Act, no inference flows that the interests of the minor would be safe.

Subsequently in a different case\textsuperscript{26} Bombay High Court cited the case of a Supreme Court\textsuperscript{27} where Supreme Court was of the opinion that, it was clear that the mere fact that guardian of a minor had signed the documents of partnership would not be of much consequence and the entire deed will have to be considered to decide the question whether the minor had been made a full fledged partner or had been merely admitted to the benefits of the partnership and gave its judgement by saying that the minor was merely admitted to the benefit of partnership and was not made a full fledged partner and the mere fact that the document was signed or executed by the minor's natural guardian and mother can not run counter to the true and proper spirit of the document.
However while limiting the power of the Guardian, Supreme Court\textsuperscript{28} went on to held the view that a guardian of a minor can not enter into an agreement of partnership on behalf of his ward with third parties so as to make the minor a partner. The partnership would be \textit{ab initio} void. But the Hon’ble Court\textsuperscript{29} in another interesting case while appreciating the role of a Guardian held that “The guardian of a minor is entitled to do all things necessary for effectuating the conferment of the benefits of partnerships to the minor. There is no bar in law to the guardian of a minor agreeing to the starting of a business and constitution of a firm on the condition that the minor shall not be a full partner but shall only be entitled to the benefits of partnership for he is only securing thereby the benefits of partnership as the minor”.

But the controversy continue and Hon’ble Calcutta High Court\textsuperscript{30} while dismissing the contention of the Income Tax Department’s view that Guardian must sign on behalf of the minors on the deed of partnership held that, in view of Sec.4 and 30 of the Partnership Act 1932, a minor cannot be a party to a contract or an agreement, but he may be entitled to the benefits of the partnership. There was no authority for the proposition that the Guardian of the minor should necessarily sign “Deed of Partnership”. The High Court went a step further and held that it cannot be said that the “Partnership Deed” not having been signed on behalf of the minor was fatal to the validity of the deed.
However this time in a consistent manner Calcutta High Court\textsuperscript{31} reiterated the same view by saying that where a minor is admitted to the benefits of the partnership in a firm, the deed of partnership need not be signed by the guardian of the minor and the fact that the deed had not been signed by the guardian of the minor would not be fatal to the validity of the deed.

In another landmark judgement, the Andhra Pradesh High Court\textsuperscript{32} while pondering over the issue, held that, as per Sec.30 of the Partnership Act a minor cannot be admitted as a partner, but can be admitted only to the benefits of the partnership. The consent of all the partners at that time was necessary for such admission to the benefits of partnership. There is no agreement between the minor or his guardian and other partners, but only between or amongst the other partners. There was no provision in the Partnership Act requiring an agreement either between the minor or between the natural guardian acting for and on behalf of a minor and other partners. Again Form No.11 and 11 (A) as prescribed under Rule 22 of Income Tax Rules require that the same need not be signed by the minors or the guardians on behalf of the minors. Thus there is no provision either under the Income Tax Act or the Partnership Act, which obligates the guardian of the minor to sign the application for registration of the firm or the partnership deed.

Corroborating the same view, in another decision\textsuperscript{33} Andhra Pradesh High Court also upheld its earlier stand taken in the above case and observed that:-
“The principle that emerges is that it is not necessary in law that the guardian of the minors admitted to the benefits of the partnership should necessarily sign either the “Partnership Deed” or the application for registration. Of course, it is necessary to show that he had consented to the admission of the minors to the benefits of the partnership. This consent can be established either by direct evidence, like letter, affidavit or indirect evidence like the entries in the accounts books or such other evidence as may be available with the Assessee”

The above view was also subsequently supported by Punjab & Haryana High Court34, but with an additional observation that the guardian should not refuse to verify or sign the document if required to do so.

The above views of the Andhra Pradesh High Court and Punjab & Haryana High Court got an endorsement by Allahbad High Court35 where the natural guardian i.e. father did not sign the original Partnership Deed but later on filed an affidavit which showed that he had given his consent to the minor being admitted to the benefits of the Partnership.

Kerala High Court36 while deliberating on the issue held that when the admission of minor to the benefit of the partnership was confirmed by the guardian subsequently by declaring that the minor was admitted to the benefit of partnership with his consent and knowledge is sufficient to rectify the original
defect of not signing on the deed by him i.e. the Guardian. In other words minors can be admitted to the benefits of partnership only with the prior consent and knowledge of the Guardian.

As such the guardian’s signature on the instrument of partnership may, however, be considered to be essential where some property or funds belonging to the minor are to be invested in the business of the partnership and this view has got its legal sanctity by Allahabad High Court\textsuperscript{37}. And in the view of the present Scholar, this is certainly a correct position of law.

The peculiar features which the present scholar found while making an in depth study of different case laws referred above is that in catena of cases the Allahabad High Court supported its stand taken in the Addl. CIT V. \textit{Uttam Kumar Promod Kumar}\textsuperscript{38} so far as regarding signing of guardian in the partnership deed is concerned but its view on the minor signing the partnership deed is not consistent. But on the other hand Andhra Pradesh High Court consistently supports its view that neither the Guardian’s signature nor the minor’s signature is necessary in all the decision. Even Calcutta High Court\textsuperscript{39} also maintains its position that neither the guardian’s nor the minor signature is required in the “Deed of Partnership”.

The guardian of a minor is entitled to do all things necessary for affecting the conferment of the benefits of partnership on the minor. A guardian can agree on behalf of the minor to contribute capital for the business of the firm in which the minor is
admitted to the benefits of partnership. There is thus no bar in law for the guardian of a minor agreeing to the starting of a business and the constitution of a firm on the condition that the minor shall not be a full-fledged partner; but shall only be entitled to the benefits of partnership, for, he is only securing thereby the conferment of the benefit of partnership on the minor.

However minor signing the “Deed of Partnership” is not a fatal fact in view of the catena of the Court decisions and by his signing, a minor cannot be full-fledged partner because a minor cannot enter into an agreement with others. His status always remains the same in the Partnership.

Calcutta High Court\textsuperscript{40} of the view that the signature of the minor in the Partnership Deed is a technical defect, which is certainly not prejudicial to the interest of the revenue. Even Andhra Pradesh High Court\textsuperscript{41} said that it is clear that no obligation is cast on the minor to sign on the application seeking registration for the purposes of the Income Tax Act, nor is there any obligation on the natural guardian of a minor to append his signature for and on behalf of the minor.

Further another peculiar position of law is that in a Partnership firm where the guardian himself is a partner and along with other partners, if he has assented, then his minor son / daughter can also be admitted to the benefits of the partnership and in the instrument of partnership not only he signs as a partner but also he can represent his minor son / daughter in the capacity of guardian. But his signing the Deed of Partnership in the capacity of guardian is not mandatory. This view has got its legal sanctity by A. P. High Court\textsuperscript{42}. 
However one cannot form a partnership in dual capacity i.e. himself and as guardian of his minor son or daughter without the presence of a third party, who must be a major. Even one can not form a valid partnership between an adult on the one hand and minors represented by the same adult or same adult as their guardian on the others.43

Bombay High Court44 took a very peculiar stand in one case by deliberating that Guardian of the minor had signed the document only as a witness. He therefore took the view that the signature of the guardian did not enlarge the rights of the minor.

On this issue undoubtedly, a guardian's capacity to act for and on behalf of a minor within the limitation that he must do so within the scope of his authority and for the benefits of the minor cannot be called into question. But even a guardian while he can supply the deficiency suffered by the minor in age, in law cannot supply the defects, which the law prohibits. If the law, as section 30 of the Indian Partnership Act. 1932, prohibits a minor to become a partner in a firm, then no guardian acting on his behalf can over reach the law and argue that as the guardian is a major, the minor becomes a partner of a firm which the law expressly prohibits because his guardian did it for him. Such a contract will be hit by Sec. 23 of the Contract Act on the ground that it is forbidden by law.

However if the guardian of the minor himself or herself enters into a partnership with others, there is nothing in the law of Partnership against doing so, even if he has entered into a Partnership to protect the interest of the minor i.e. he has become a
partner in the firm by virtue of investment of the property of the minor. But in such case what happens if the partnership business suffers losses? In the opinion of the present scholar, as a partner the guardian is definitely liable to third parties even if the real beneficiaries of the partnership is the minor and if the loss exceeds the capitals of the partnership, then it is the minor partner is liable to the extent of his capital in the firm and not the other assets of the minor which are not invested in the Partnership business.

One of the interesting features in this area is that a widow is not entitled to become the Karta of Hindu Undivided Family (HUF) and she cannot enter into partnership with others on behalf of minors though the HUF consists of widow mother and minors only. Such a partnership will be invalid and cannot be registered. However in the capacity of a natural guardian she can enter into a Partnership for the benefits of the minor. Whether she signs the documents of Partnership or not is immaterial.

However where the male members of a joint Hindu Family are minors and their natural guardian is the mother, the mother can represent the HUF for the purpose of assessment and recovery of taxes under the Income Tax Act.

Thus when a widow mother can represent in the above case before the Income Tax authorities what is the harm in law if she represent their interest in a partnership firm as a Karta or head of the Hindu Undivided Family?

Another peculiar area is regarding the status of a minor married daughter. It is not superfluous to mention here that a married
daughter severs her legal connection and liability of being maintained ceases at the very moment she is married. And she would in future be maintained by her husband only.

It is therefore worth mentioning that the assets belonging to a married daughter, though she is minor will remain under the control of her husband and the natural parents cannot have a control over that. Therefore in all future contracts after her marriage the husband is legally eligible to enter into contract on behalf of the minor wife. Here also the signature of the husband is not a must in case his minor wife is admitted to the benefit of the partnership. But the peculiarity of the Income Tax Law is that the income of that minor daughter will be clubbed with the income of the father who no more remains the natural guardian.

Even if a minor has his own separate income purely earn from his own endeavour still than he can not sign his own Income Tax Return and his Guardian only can sign as a representative assessee. In a far reaching Judgement Hon’ble Karnataka High Court held that when a Guardian filed an Income Tax Return of a minor as representative assessee, he is responsible to file the same correctly. The Guardian can not escape from the responsibility on the ground that everything was done under his advice. Because a careful reading of the definition of ‘person’ in section 2(31) of the Income Tax Act would show that a minor could not said to be a person for the purpose of section 271(1)(C) of the Act. Even otherwise a minor has to be protected on account of the age factor. A minor can not be saddled with any penalty for the wrong done by the Guardian while filing his Income Tax Return.
It is therefore safely concluded from the above observation that there is no obligation as per law for the guardian to sign in the instrument of Partnership Deed and if necessary to prove the consent of the guardian in other ways like letter and affidavit can adduced.

While concluding the present chapter, the present scholar tempted to suggest the following amendments of the law of partnership in relation to the admission of minor to the benefit of partnership in relation to the role of minor’s Guardian.

1. That a person is called minor because of his / her mental immaturity to tackle the complex world around him / her. Therefore, even though the law of partnership accepted the facts that a minor can be admitted to the benefits of the partnership, nowhere the formulator of law clearly stipulated the role of a minor’s guardian in such admission. It is an accepted fact that without the consent of the guardian, minor’s property can not be utilized by the minor for his own benefit. Thus the role of Guardian should be clearly stipulated in the Partnership Act by suitable amendments to avoid unnecessary interventions and interpretations of courts.

2. Widow mother or a female major member of a Hindu Undivided Family (shortly known as HUF) consists of minor sons and daughters should be allowed to enter into partnership on behalf of
minors utilizing HUF property for the benefit of the minors. For this limited purpose, she should be declared as Karta of the HUF till the age of the minor male majors attains the age of majority.

3. The scope of definition of 'Guardian' should be enlarged and the husband of a minor married girl should be declared as Guardian of his wife instead of the father and mother of the minor girl, because such marriages are quite prevalent in Hindu Society and even Child Marriage Restraint Act'1929 accepted the fact that marriage of a minor girl aged 15 years is not legally invalid. Even recently Hon'ble Delhi High Court and Andhra Pradesh High Court declared such marriages valid though Hon'ble Apex Court cautioned other Courts not to draw inspiration from the two High Court decisions. Of late National Commission for Women also raised this issue and want a debate whether marriage contracted by a boy with female less than 18 years could be whether valid and whether the custody of the girls in such cases should be given to the husband?

4. A Provision may be inserted in the Indian Partnership Act allowing the Guardian of minor to sign the Partnership Deed on behalf of the minor admitted to the benefit of Partnership thereby by recognising the role of the Guardian as a custodian of interest of minor.
NOTES & REFERENCES


04. The World Book Encyclopedia Vol. 8, Page-403


06. Mohori Bibi V. Dharamdas Ghose I.L.R. 30 Cal. 539


08. Supra Sr-5


11. Supra Sr-5


16. Supra Sr-12

18. Supra Sr-15


27. Supra Sr-5


31. Supra Sr-23

32. Supra Sr-24


37. Supra Sr-35

38. Supra Sr-15 & 19

39. Supra 23

40. Supra Sr-22
41. Supra Sr-24


43. Mohanlal Shyamlal In re. (1942) 10 I.T.R. 219 (All)


45. Karta means the head of the traditional Joint Undivided Hindu Family. Generally the senior most male member of the family is regarded as Karta of the family.


47. Sushila Devi Rampuria V. ITO ibid Chandra Kumari Singh V. Addl. Member Board of Revenue, W.B. (1962) 46 I.T.R. 81 (Cal.)


51. News Item under the caption “Wedding Age should not be raised” National Commission for Women not to bet for proposal Published in Times of India, Bhubaneswar Edition 29.10.2010 at Page - 8