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THE CRITICAL ANALYSIS OF MINOR ADMITTED TO THE BENEFITS TO THE OF PARTNERSHIP

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ABSTRACT

A partnership is defined as a relationship between two or more people who have agreed to share the earnings of a business that is run by all or some of them. The Partnership Act of 1932 governs partnerships that are formed by a contract. In situations where the Partnership Act is silent, the partnership is also governed by the basic provisions of the Indian Contract Act. The partnership will be subject to the contract's rules governing ability to contract, offer, acceptance, and so on. However, because Section 30 of the Partnership Act, 1932, deals with minors, the laws governing their status will be determined by that act. The partnership legislation is covered in Section 4 of the Indian Partnership Act of 1932. A partnership is one of the oldest types of business connections and a unique type of contract that is formed as a result of an agreement. A partnership agreement is required to establish a legal connection. The cooperation agreement serves as the foundation or framework for the project. The breadth of minors allowed to partnership benefits has been thoroughly examined in this paper, with all significant landmark decisions regarding minors in partnerships, historical context as required, laws and the status of minors in partnerships, historical background, and a conclusion.

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INTRODUCTION

A partnership is a group of people who has decided to split the profits from a company that is run by all of them or by one of them working on behalf of all of them. Individually, they are referred to as partners in partnerships, and collectively, they are referred to as a company or a firm. The Partnership Act of 1932 governs the formation of a partnership through a contract. In the absence of the Partnership Law, the partnership is controlled by the basic laws of the Indian Contract Act. It is specifically stated that any provision of the India Contract Act that has not been abolished will apply to Partnership until and until such provision is in conflict with any provision of the Partnership Act, 1932. The contract standards governing contract capacity, offer, acceptance, and so on will also apply to the partnership. However, the rules governing minor status will be governed by the partnership act. A minor could be one who, underneath the laws of the country to that he's subject, hasn't exceeded the constitutional age of majority. "The Indian Majority Act of 1875"² is the legal system to which an Indian minor would be subject. According to the "Section 3"³ of the respective act stipulates that an individual at the age of eighteen, a citizen of India is deemed to have achieved majority. A relationship cannot be established if the only other member is a minor. A partnership relationship results from a contract, and a minor is unable to contract, so a partnership contract cannot be entered into with a minor. Hence under "section 11 of the Indian contract Act"⁴, a minor cannot become a qualified partner. A person who is a minor under the laws of the country to which he is subject may not be a partner in a business, but he may be entitled for the time being, to the rewards of partnership with the approval of both partners. Any document that goes beyond the Indian partnership's section 30 cannot be considered legitimate for the purposes of registration.⁵ When a minor attains the benefits of partnership, he has a number of rights that he can exercise. They have the right to audit, sue, and earn a share of the profit as well as rights after reaching the age of majority. In addition to the benefits of partnerships, there were also liabilities that were imposed on the minor. "A minor may only be liable to the extent of his share in the partnership and cannot be liable directly to the partnership for the firm's damages,"

² The Indian Majority Act, No. 9 of 1875.

³ The Indian Majority Act 1875, §3.

⁴ Indian Contract Act 1872, § 11.

⁵ The Indian Partnership Act 1932, § 30.

says "Section 30(3) of the Indian Partnership Act"⁶. In *Addepally Nageswara Rao and Bros V, CIT*⁷, The Court ruled that "in case he contributes money or is entitled to a share of the firm's earnings, the liability may be fastened on the minor to that degree." However, the minor's individual or the other property that he has not brought into the partnership's properties can't be command liable. In *Sanyasi Charan Mandal vs. Asutosh Ghose*⁸ case As per a Calcutta High Court Verdict, the beneficiary can only reclaim the insert from a juvenile to the degree of his shareholdings, but they cannot sue the minor specifically. This advantage isn't enjoyed by the key members of the firm. In addition, once a minor reaches the age of majority, he or she becomes liable for a variety of other obligations. If all of the partners are contract-capable, they can create a partnership; but, if any of the requirements are not satisfied, the contract and the partnership will be regarded unlawful and illegitimate in the law. As a result, in order to enter into a formal partnership, all of the elements for a valid contract must be met. Within the following paper, these and alternative aspects of the minor admitted to benefits of the partnership are going to mentioned comprehensive. This paper formulates all aspects of minor in the relationship with the proper theoretical analysis.

1. Historical Background

The principles of English law form the basis of the Indian partnership law. The Indian Partnership Act went into effect on October 1, 1932, except Section 69, which dealt with partnership registration and went into effect later on October 1, 1933. Except for Jammu and Kashmir, this act applies to the entire country of India. The concepts of the partnership were already introduced under the Indian Contract Act, 1872, under chapter-9, section 239-266, in an appropriate format based primarily on the usage and custom of Indian traders and commercial people. With the subsequent development of trade and business in India, it was beginning to feel that these sections were insufficient and that a separate partnership act was required. As a result, the Indian Partnership Act was enacted, and sections 239-266 of the Indian Contract Act that listed partnership laws were revoked.

⁶ *Id.*, § 30(3).

⁷ *Addepally Nageswara Rao and Bros v. CIT*, (1971) 79 ITR 306 AP.

⁸ *Sanyasi Charan Mandal vs. Ashutosh Ghose*, AIR 1915 Cal 482.

1.2 Concepts of Partnership

Section 4 of the Indian Partnership Act of 1932 defines partnership as a relationship between two or more persons who have agreed to divide the profitability of the firm brought on by everyone or any of them attempting to act for all. Individuals who have opted to form a partnership with one another in order to start a business are referred to as partners, and the group as a partnership company and the name under which their business is carried on is referred to as the firm name. firm isn't a separate legal body from its participants. It's just a group name for the people who make it up. As a result, but unlike the company, that has an independent legal body distinct from its participants, a firm cannot own assets or employ servants, nor can it be a borrower or debt collector. Also, it cannot sue others and can't be sued in business, terms like firm's assets, worker of the firm, a suit against the firm, and so on are used for convenience, but in the field of law, it essentially implies the partner's assets or action against the partners for the firm

1.2.1 Essentials of partnership

The partnership concept includes the following elements listed below, which must exist before a partnership may be formed. It is also specified in Section 4 of the Indian Partnership Act.

- i. Association of two or more people- To form a partnership, at least two people must get together. A person may use any name for a partnership unless it is misleading or illegal. A minor cannot be a partner in a business, but he or she may be eligible for partnership advantages with the permission of all partners.
- ii. Agreement- To conduct business, all parties must agree. All of the parties involved must reach an agreement. This aspect pertains to the partnership's voluntary contractual nature. As a consequence, the cooperation is both voluntary and contractual in nature. Section 5 states that a partnership is constituted by contract, not by status. It is feasible to express an agreement that gives rise to a partnership link. It may also be deduced from an act committed by partners and a consistent pattern of conduct displayed by them, exhibiting mutual comprehension. It may also be deduced from an act committed by partners and a consistent pattern of conduct displayed by them, exhibiting mutual comprehension. It might be either verbal or nonverbal. Nevertheless, there is no requirement for a formal or written agreement. An agreement to form a partnership also might result from the participants' actions. In the case of the *Abdul v. Century wood*

*Industries*⁹, it was ruled that an agreement does not have to be express; it might evolve in the course of business. There should also be a contract in place to continue the ongoing business. The contract may be for a set or transitory time. It might be for a certain enterprise or at random. The contract should include all of the necessary elements.

- iii. Business- Business encompasses all trades, occupations, and professions. The presence of a business is required. Second, the goal of the business is to make money, which leads to the establishment of a partnership. As a result, there can be no partnership if there is no purpose to continue on the business and split the profits.
- iv. Profit-sharing- It is a fundamental component of the partnership. There can be no partnership only if a single member is liable to the entire benefit of the enterprise. Partners must agree to split earnings in any way they see proper. The goal of forming a partnership should be to earn and share profits. However, a loss-sharing agreement is not required. One or more partners may agree to share all losses. However, unless so agreed, losses must be included in the profit-sharing ratio.
- v. Mutual Agency-: The firm must be operated on by all of the partners or by one or more of the partners working on behalf of all of the partners. This is the core idea of partnership law. In other words, the parties should have a legally binding mutual agency contract. In the course of the firm's operation, an act of one partner is an act of all partners. The individual who conducts the partnership's business acts as an agent for all partners. They are both agents for one another and principals in their own right. Because their partnership is regulated by the law of the agency, a partner serves as both Principal and Agent. He is an agent in the sense that his actions can tie the other partners, and he is a principle in the sense that he is bound by the aforementioned acts of others

2. Admission of New Partner

Section 31 of the Indian Partnership Act specifies that a new partner cannot be added without the permission of all partners until otherwise consented upon. When a new partner is added to an established firm, he is not accountable for any debt committed by the firm

⁹ Abdul v. Century wood Industries, AIR 1954 Kant 33.

before his admission as a partner. The new partner cannot be held liable for the actions of the previous partner unless it is proven that the rebuilt firm has undertaken the duty to pay debt and also that the creditor involved has consented to approve the reconstituted business as his debtor and release the previous firm from obligation. Only the minor admitted to the benefits of partnership is individually liable for all acts of the company since he was admitted to the benefits of partnership if he decides to become a partner in the business after reaching majority. A newly admitted partner is solely accountable for debts incurred or transactions entered into by the business once he becomes a partner.

2.2 Status of A Minor

According to Section 18 of the Indian Contract Act 1872, no individual under the age of eighteen years can engage in a contract, implying that no juvenile can enter into a contract. However, Section 30 specifies that a juvenile cannot be a partner in a partnership business, although he may benefit from the partnership business. This means that a person who is a minor under the applicable legislation would not be a partner in a firm, but he'll be allowed to the benefits of the partnership by the approval of all of the other partners. Minor does have the rights to an agreed-upon portion in the firm's property and earnings, as well as accessibility to, an inspection of, and copying of any of the firm's accounts. Moreover, shares of the minor are responsible for the firm's actions, but he is not individually responsible for any of them. He may not sue the members for payments of his part of the firm's property or earnings, except when his affiliation with the business is terminated, in which case the value of his share shall be determined by an evaluation completed in accordance with the guidelines stated in section 48. In such a scenario, if all of the partners are functioning jointly, or any partner who is compelled to dissolve the business upon notice, the other partner may choose to sue to dissolve the company, in such a situation, the court shall proceed with dissolution and account settlement of other partners and The minor's portion must be calculated in conjunction with the partners' shares.

2.2.1 An Analysis of Section 30

- **Rights of Minor**

- The right to examine the books of accounts

- Rights to a portion of the firm's profits
- Right to use any or all partners for his share of advantage or profit
- He has limited liability, which implies that his personal assets cannot be sold to pay the firm's debts.
- When a minor reaches the age of 18, he or she has the option to become a full-fledged partner.

- **Liabilities of Minor**

A minor's liabilities as a partner are restricted since he can only be held accountable to a limited amount for profits or property. A minor cannot be held individually accountable for the partnership firm's actions. In the historical case of *Commissioner of Income-tax v. Dwarkadas Khetan and Co.*¹⁰ the Supreme Court reversed a prior decision of Bombay High Court. In this example, among the four partner there was a one who was a minor whose name was Kantilal, He was depicted as a full-time partner of the company, with all of the benefits and duties of a normal partner, and registration was made available. In this case, the minor partner was also given voting rights. According to Section 30, a minor cannot be a full-fledged partner, but he can be awarded all the advantages of the business with the permission of the other partners; nonetheless, in this case, because the youngster has been provided voting rights, the courts ruled the registration of this partnership to be valid.

- **Before the Age of Majority**

- The minor's responsibility is limited to the amount of his part in the company's profits and property.
- Minor bears no personal obligation for the firm's debts accrued during his minority period.
- Minors cannot be declared bankrupt; nevertheless, if the firm is declared bankrupt, his share in the corporation is transferred to the official beneficiary or assignee.

¹⁰ Commissioner of Income-tax v. Dwarkadas Khetan and Co., AIR 1961 SC 680.

- **After the Age of Majority**

- Under [section 30(5)] within six months of attaining the age and becoming aware that he has been allowed to the benefits of partnership, the minor must decide and may offer public notice of his intention to become or not become a partner in the corporation. The minor's status in the firm will be determined by such notification, and if he fails to submit such notice, he becomes a partner of the firm after the six-month of expiry period.
- Under [section 30(6)] when a minor claims that he had no information of his admission and hence should be allowed six months from the date of knowing, the minor must bears the responsibility to prove that he had zero understanding.
- Under [section 30-(7a) (7b)] when a juvenile becomes a partner, his rights and duties remain in effect. He also becomes individually liable to the third party for any actions taken in the firm since gaining access to the benefits of a partnership. In addition, as a minor, he will be eligible for a percentage of the firm's assets and revenues.
- However, when minor chooses not to become a partner, his rights and duties remain like that of a minor till the date when he provides public notice, his share is not responsible for any actions of the firm done just after the date of the notice, and he has the ability to sue the members for his share in the company and profits.

CONCLUSION AND SUGGESTIONS

Based on the foregoing discussion, a researcher can conclude that partnership is a fairly prevalent type of business. It has numerous benefits for the firm. This Act is comprehensive since it covers all areas of the partnership. By satisfying all of the terms of an agreement, the minor as a partner can experience all of the benefits of the partnership. The minor has various rights and duties as a partner, but a partnership cannot be established with a minor as the only other member to operate a firm or do any business. A contract between the partners is essential to form a partnership connection; hence, a minor is unable to engage in a contract, and contact with a minor is invalid. According to the Supreme Court's decisions in various case laws, a juvenile cannot be a complete

partner under any situation and does not have all of the rights and obligations of a normal partner. The only benefit provided by section of the Indian Partnership Act is that he can be allowed to the earnings derived from the partnership with the permission of the other partners. Furthermore, we realized that Minor, as a partner, had severely limited rights and responsibilities.