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## Critical Analysis of the Position of a Minor in a Partnership Firm

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*A Partnership according to partnership law means an agreement to share profits arising out of a business and the Indian Partnership Act is the comprehensive law governing such partnerships. This research paper will focus on the position of a minor under the partnership law, its rights and liabilities and how this position can be ratified once it attends the majority hence becoming a full partner, and how then the position concerning the rights and obligations changes. It will also compare the concept of beneficial contracts with that of minor partners wherein in beneficial contracts a guardian can enter into the contract whereas in a partnership it is the minor who can himself enter. Also, in contract law, a minor cannot ratify a contract on attaining a majority entered during minority as it's the same as implementing a void contract thereby will try and draw a comparison between the Contract and Partnership law concerning the stance both offer for the minors and how different they are yet conforming to the basics as laid down in the contract act. This paper will also analyse the stance of a minor in a partnership firm through the various case laws and judgments given over time in this very contradicting area of law. For this, the research paper will adopt the method of doctrinal research and different judgments to uphold the critical analysis of the position of a minor in a partnership.*

**Keywords:** *partnership, minor, contract law, benefits.*

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## INTRODUCTION

The Indian Partnership Act, 1932 (IPA) is a statute that comprehensively defines and explains the law regarding partnerships in India.<sup>1</sup> The IPA lays down the definition of a partnership as a relationship arising out of an agreement to share the profits of a business carried by any one or all of them.<sup>2</sup> However, as per the Indian Contract Act, a minor is not competent to enter into a contract.<sup>3</sup> By Section 3 of the Indian Majority Act<sup>4</sup>, a minor is someone who has still not reached majority, which in India is 18 years of age. In *Mohoribibi v Dharmodas*<sup>5</sup>, this is to say that a contract with a minor is void-ab-intio. Does that mean that a minor can have no stake in a partnership firm? No, a minor cannot be a partner of the firm but can have a stake in it by being permitted to the advantages of a partnership on the approval of all the partners in the firm.<sup>6</sup>

The Contract Act governs contracts in general and restricts a minor from contracting.<sup>7</sup> Though there are certain contradictions and differences between the Contract Act with the IPA, both laws make it certain that a minor can be only part of the benefits of a partnership, where there are already two or more adults in the partnership agreeing to the minor being a part.<sup>8</sup> However, a minor cannot become a partner through his or her guardian.<sup>9</sup> Moreover, a partnership agreement that intended to induct a minor into the firm could not be registered.<sup>10</sup> However, it should be kept in mind that if a minor son is left as the legal heir of a deceased partner, in a firm in which there are two partners, the surviving heir would not automatically be inducted into the firm as the firm ceases to exist on the death of that partner.<sup>11</sup>

The provisions relating to a minor in the IPA form a grey area, as it at once restricts as well as enables a minor to be a partner. Contracts in general are governed by the Contract Act, and it is

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<sup>1</sup> Indian Partnership Act 1932, Preamble

<sup>2</sup> Indian Partnership Act 1932, s 4

<sup>3</sup> Indian Contract Act 1872, s 11

<sup>4</sup> Indian Majority Act 1872, s 3

<sup>5</sup> *Mohori Bibee v Dharmodas Ghose* (1903) SCC OnLine PC 4

<sup>6</sup> Indian Partnership Act 1932, s 30(1)

<sup>7</sup> Indian Contract Act 1872, s 11

<sup>8</sup> *CIT v Dwarkadas Khetan* (1971) 80 ITR 283 Bom

<sup>9</sup> *Kundan Lal & Anr v Multani Ram & Anr* AIR (1953) P&H 270

<sup>10</sup> *Ibid*

<sup>11</sup> *Lachmi Narain v Beni Ram* AIR (1931) All 327

also observed that the IPA and its provisions stand in contradiction with that of the Contract Act. This paper attempts to analyse the position, rights, and liabilities of a minor as per the IPA, how it changes when he or she attains majority, along with a clear understanding of the contradictions between the provisions of the Contract Act and the Partnership Act, and how both the Acts work together to form a harmonious set of law. Further, the paper analyses whether the law in place is exhaustive enough and if there is a scope and need for more legislation in this respect.

### RESEARCH QUESTIONS

- Do the provisions related to minors stand in contradiction with the provisions related to the rights and liabilities of a full-fledged partner, as mentioned in the Indian Partnership Act, 1932?
- Do the provisions related to a minor mentioned in the Indian Partnership Act, 1932 unfairly place minors in an advantageous position, as compared to the other partners of the firm?
- Is the Indian Partnership Act, of 1932 coming in conflict with the Indian Contract Act, of 1872?
- Can the Indian Partnership Act, of 1932 be considered to be exhaustive law for the provisions related to minors in a partnership firm?

### RIGHTS AND LIABILITIES OF A MINOR IN A PARTNERSHIP FIRM

According to Section 30(1) of the Partnership Act<sup>12</sup>, as also mentioned in the case of *CIT v Dwarkadas*<sup>13</sup>, the position of a minor in a partnership firm will be that a minor can only be admitted to the benefits of the firm, and not become a full-fledged partner, with the consent of the partners of the firm. The guardian of a minor can contract for the minor to become a partner

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<sup>12</sup> Indian Partnership Act 1932, s 30(1)

<sup>13</sup> *CIT v Dwarkadas Khetan* (1971) 80 ITR 283 Bom

if it is advantageous for the minor<sup>14</sup>. However, a minor can also do away with such a partnership if it is not beneficial for the minor, as held in the case of *Dharam Vir v Jagan Nath*<sup>15</sup>.

According to Section 30(2)<sup>16</sup> of the Partnership Act, a minor who is benefitting from the partnership also has the right to share property or other profit made by the partnership firm, in a proportion that has been agreed upon previously, along with the right to inspect and copy accounts of the partnership firm. In *CIT v Oswal Fertilizers*, the court held that “the guardian of a minor also has the right of inspection of accounts of the firm, and to exercise certain rights to protect the minor’s interest.” However, a minor can only enjoy the benefits, he or she cannot be held liable for any losses, in terms of the property or profit of the partnership firm. In the case of *CIT v Shah Mohandas*, it was held “explaining the intention of the above-mentioned section of the Partnership Act, that Section 30(2) of the Partnership Act, intends to not make minors liable for losses. Moreover, Section 30(3) of the Partnership Act, clearly states that “a minor cannot be personally liable for the acts of the firm.”

A minor also has the right to sever his connections with the firm, with the aid of his guardian, and to determine his share in the firm, as per the rules as far as possible of § 48 IPA<sup>17</sup>. However, a minor cannot sue the partners for an account or payment of his share.<sup>18</sup> In a partnership at will<sup>19</sup>, if the partnership gets dissolved by a notice of the dissident partner, then if such a partner is minor he will be subjected to the remedy as available under § 30 (4) IPA.<sup>20</sup>

A minor is not personally liable for the acts of the firm but his share in the firm is liable for the same.<sup>21</sup> It was held in the *Addepally Nageshwara Rao* case that the purport and scope of § 30 (3)

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<sup>14</sup> *Commissioner of Income Tax v Kedarmall Kessardeo* AIR (1968) Gau 68

<sup>15</sup> *Dharam Vir v Jagan Nath* AIR (1968) P H 84

<sup>16</sup> Indian Partnership Act 1932, s 30(2)

<sup>17</sup> Indian Partnership Act 1932, s 48

<sup>18</sup> Indian Partnership Act 1932, s 30(4)

<sup>19</sup> Indian Partnership Act 1932, s 7

<sup>20</sup> *Addepally Nageshwara Rao v Commissioner of Income Tax* (1971) 79 ITR 306 AP

<sup>21</sup> Indian Partnership Act 1932, s 30(3)

IPA is that in no case is the property of the minor which he has brought into the firm nor personally can he be held liable for any of the acts of the partnership firm.<sup>22</sup>

### **OPTIONS AVAILABLE TO A MINOR ONCE HE ATTAINS A MAJORITY UNDER THE INDIAN PARTNERSHIP ACT**

Indian Partnership Act,<sup>23</sup> in subsections (5) to (9) of Sec 30, provides the two options available to minors once they attain the age of majority. These are: -

Within the period of 6 months of attaining a majority, they should give a public notice mentioning that will he elect to be a partner or not be a partner of the firm. If he fails to provide such notice, then automatically, he will be the partner of the firm after the expiry of six months.<sup>24</sup> If the minor argues that did not have any information that he was a part of the firm and he should be given a notice of 6 months. Herein the minor has to prove that he was not privy to such information.<sup>25</sup>

#### **When Minor elects to be a partner: -**

- Once a minor becomes a partner, he is obligated to the third parties for both past liabilities as well as future liabilities.<sup>26</sup>

According to Gujarat High Court<sup>27</sup>, “the rights and liabilities of a minor admitted to the benefit of partnership continue up to the date on which he becomes a partner. A minor who has elected to become a partner under section 30(5) will be personally liable not only for all acts of the firm done after he became a partner but also for all such acts of the firm as had been done since he was admitted to the benefit of the partnership.”

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<sup>22</sup> *Addepally Nageshwara* (n 20)

<sup>23</sup> Indian Partnership Act 1932

<sup>24</sup> Indian Partnership Act 1932, s 30(5)

<sup>25</sup> Indian Partnership Act 1932, s 30(6)

<sup>26</sup> Indian Partnership Act 1932, s 30(7)(a)

<sup>27</sup> *VJ Masarwala v P Sheth & Co* (1981) 22 GLR 689

- His allocation in the property and gains of the firm will be the same as before.<sup>28</sup>

#### **Position of a minor when he elects not to be a partner: -**

- Till he issues a public notice that he is no more a partner, he will continue to have liabilities and rights the same as a minor.<sup>29</sup>
- Once he gives the notice publicly, his portion isn't liable for the future doings of the firm.<sup>30</sup>
- He gains the right to sue the firm's partner for his share of the profits and property.<sup>31</sup>

In *Lachmi Narain v Beni Ram*<sup>32</sup>, the court said that "A minor who elects not to become a partner, his rights and liabilities are enumerated in this sub-section. He is liable to the extent of his share both in the property as well as in the profits of the firm for all obligations incurred by the firm up to the date on which he gives public notice of his intention to sever his connection with the firm and his share is not liable for acts of the firm done after such notice. He can bring a suit for the account and ask for the amount of his share in the partnership property and profits on the date of his severance."

#### **PROVISIONS FOR MINORS IN INDIAN PARTNERSHIP ACT V. INDIAN CONTRACT ACT: A COMPARISON**

Sec 10 of the ICA, 1872<sup>33</sup> says that the parties must be eligible for a contract, and partnership is a form of contract as well. According to ICA, minors are not competent to contract<sup>34</sup>. Thus, contracts entered into with a minor are void as it is assumed that a child may show poor judgment owing to his immaturity while entering into a contract and thus this law is for the protection of the child. Thus, minors cannot enter into a partnership as well which was held by the Supreme Court in the cases of *Dwarka Das*<sup>35</sup> and *Hardutt*<sup>36</sup>. But there is an exception where

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<sup>28</sup> Indian Partnership Act 1932, s 30(7)(b)

<sup>29</sup> Indian Partnership Act 1932, s 30(8)(a)

<sup>30</sup> Indian Partnership Act 1932, s 30(8)(b)

<sup>31</sup> Indian Partnership Act 1932, s 30(8)(c)

<sup>32</sup> *Lachmi Narain* (n 11)

<sup>33</sup> Indian Contract Act 1872, s 10

<sup>34</sup> Indian Contract Act 1872, s 11

<sup>35</sup> *Commissioner of Income Tax v R Dwarkadas & Co* (1971) 80 ITR 283 Bom

<sup>36</sup> *Hardutt Ray Gajadhar Ram v Commissioner of Income Tax* (1950) 18 ITR 106 (All)

minors can enter into a contract if it is for their benefit and protection as was laid down in *A.T. Raghava Chariar v O.A. Srinivasa Raghava Chariar*, where the Madras High Court in its full bench held that a contract was enforceable by him or by someone on his behalf provided the minor is to bear no obligation in this contract. Also, it is held in the case of *Great American Insurance Co Ltd v Mandanlal Sonulal*<sup>37</sup> and *Srikakulam Subrahmanyam v Kurra Subba Rao*<sup>38</sup> that a legal guardian may enter into a contract on behalf of the minor if the contract is beneficial to him. Hence, the Indian Contract Act does allow for beneficial contracts that can be entered by a legal guardian for the minor.<sup>39</sup> The Courts have also made it clear through the cases of *Nazir Ahmed v Jiwan Das*<sup>40</sup> and *Tukaram Ramji Shendre v Madhorao Manaji Bhangre*<sup>41</sup> that a minor on attaining majority cannot ratify a contract entered into in his minority and make it valid as then it would be the same as enforcing a void contract and thus contradicting with sec 10 and 11 of the ICA, 1872.<sup>42</sup>

In comparison, the IPA, 1932 has its own set of norms that allow a minor to become a partner in a partnership if all the partners consent to it which on the face of it contradicts the Indian Contract Act, of 1872. The same was cited by the court in the case of *Shriram Sadarmal Didwani v Gourishankar*<sup>43</sup> where the court held that “a minor cannot be a partner of the firm as it contradicts the provisions of Indian Contract Act stating that a minor is incompetent to enter into a contract.<sup>44</sup> Sec 30<sup>45</sup> of the IPA on the other hand states that a minor may be admitted to a partnership firm as a partner if all the partners assent to it but he will not be a full-fledged partner but will be entitled only to the benefits of a partnership as is held in the case of *CIT, Bombay v Dwarkadas Khetan & Co*<sup>46</sup>.” Here the Supreme Court had observed that a minor is not a full-fledged partner and is admitted only for its benefits and will not be rendered as an

<sup>37</sup> *Great American Insurance Co Ltd v Madanlal Sonulal* (1935) SCC OnLine Bom 14

<sup>38</sup> *Srikakulam Subrahmanyam v Karra Subba Rao* (1943) SCC OnLine Mad 266

<sup>39</sup> Avtaar Singh, *Contract and Specific Relief* (Eastern Book Company 2013) 150

<sup>40</sup> *Nazir Ahmad v Jiwan Das* (1937) SCC OnLine Lah 198

<sup>41</sup> *Tukaram Ramji Shendre v Madhorao Manaji Bhangre* (1946) SCC OnLine MP 71

<sup>42</sup> Avtaar Singh, *Contract and Specific Relief* (Eastern Book Company 2013) 162

<sup>43</sup> *Shriram v Gourishankar* (1959) SCC OnLine Bom 155

<sup>44</sup> Abhay Pandey, ‘Minor as Partner under the Partnership Act’ (*iPleaders*, 23 May 2022)

<<https://blog.iplayers.in/minor-as-partner/>> accessed 01 January 2023

<sup>45</sup> Indian Partnership Act 1932, s 30

<sup>46</sup> *Commissioner of Income Tax, Bombay v Dwarkadas Khetan & Co* AIR (1961) SC 680

ordinary partner. The apex court observed that the signing authority conferred on a minor is to give him equal opportunities and does not make him a competent partner so as not to contradict the Indian Contract Act.<sup>47</sup>

It is to be noted that a minor cannot be the sole member of the firm but will be admitted only if two major partners are existing and with their consent to its benefits. Also, in the case of *Hardutt Ray Gajadhar Ram v Commissioner of Income Tax*<sup>48</sup>, the Allahabad High Court held “a partnership deed to be void because it imposed liabilities on the minor and held that a minor will be entitled only to the benefits and not to any kind of obligations.”<sup>49</sup>

*Commissioner of Income Tax v Kedarmall Keshardeo*<sup>50</sup>, in this case, the Guwahati High Court held, “that a minor may contract through his guardian but again no liability can be imposed on the minor and the benefits have to be accepted by the guardian though the minor can do away with the agreement if he feels it is not for his benefit.” Also, in contrast to the provisions in the contract act, a minor in a partnership can become a full-fledged partner upon giving public notice upon his attaining majority or doing away with the firm.<sup>51</sup>

## ANALYSIS

The Indian Partnership Act, of 1932 does not specify the position of a minor and this creates a grey area, where a minor may be confused about his/her position, rights, and liabilities in the firm. Section 30(2) of the Act, provides the right to a minor to have a share in the property and profits of the firm. This is similar to the provisions mentioned in Section 13(b) of the Act, where a full-fledged partner of the firm has the right to share the profits of the firm equally. Moreover, Section 30(2) of the Act, also provides the right to a minor to inspect and copy accounts of the firm, which is similar to the rights granted to a full-fledged partner, as per Section 12(d) of the

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<sup>47</sup> Chetan Yadav, ‘Position of a Minor as a Partner’ (*Jus Corpus Law Journal*, 1 October 2021) [https://www.juscorpus.com/position-of-minor-as-partner/#\\_ednref17](https://www.juscorpus.com/position-of-minor-as-partner/#_ednref17)> accessed 01 January 2023

<sup>48</sup> *Hardutt Ray Gajadhar Ram v Commissioner of Income Tax* (1950) 18 ITR 106 (All)

<sup>49</sup> Soumyadeep Ghorai, ‘Minors as Partners of Firm’ (*Legal Services India*) <<https://www.legalserviceindia.com/legal/article-1526-minors-as-partners-of-firm.html>> accessed 01 January 2023

<sup>50</sup> *Commissioner of Income Tax* (n 14)

<sup>51</sup> *Ibid*



Act, “wherein, all the partners of a partnership firm have the right to inspect and copy accounts of the firm. However, the Act limits this right for a minor saying that a minor can only have access to the accounts and not any other document containing trade secrets.” Thus, even though the Act grants a minor a similar right to that of a full-fledged partner, it limits the rights of a minor to a certain extent. It can also be understood that it creates contradictions among the provisions of the Act, itself. When a minor is admitted to the benefits of a partnership, a minor shall be allowed to enjoy the benefits to the fullest and not find herself to be limited in every part of the conduction of the business of the partnership firm.

Moreover, a minor is not personally liable for any losses as per Section 30(3) of the Act. This is indeed unfair, as full-fledged partners of a firm are jointly and severally liable to each other, as per Section 25 of the Act. This unnecessarily places a minor in an advantageous position, which may be harmful to the conduction of the business of the firm. A minor can be made liable for the losses, as well, and he or she might have to pay for the losses through their guardian, or, just like the provisions in the ICA, 1872<sup>52</sup>, a minor’s guardian can be made liable for the losses suffered by the firm.

On comparing the provisions of ICA<sup>53</sup> and IPA, 1932<sup>54</sup> it can be seen that there exists an area of conflict between these two laws. As per Sec 11<sup>55</sup> of the Act, it can be seen that a contract with a minor is void-ab-intio which has been stated through various judgments, and partnership being essentially a contract contradicts this law. The Act confers benefits on a minor which though similar to beneficial contracts under ICA<sup>56</sup> but still there exists a contradiction as in the case of beneficial contracts in contract law it is the guardian who will enter on behalf and not the minor himself. Not to mention that the partnership act enforces ratification whereby a minor can ratify its partnership entered into in the minority which essentially comes in conflict with the contract law which says that ratifying a contract entered in the minority is similar to enforcing a void contract hence again creating a contradiction and conflict area. Thus, it can be said that the

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<sup>52</sup> Indian Contract Act 1872

<sup>53</sup> *Ibid*

<sup>54</sup> Indian Partnership Act 1932

<sup>55</sup> Indian Partnership Act 1932, s 11

<sup>56</sup> Indian Contract Act 1872

partnership laws try to be in conformation with contract law by limiting the liabilities of a minor but there are major areas where it contradicts the Indian Contract Act.

## **CONCLUSIONS AND SUGGESTIONS**

To conclude that a partnership firm can't be created with minors as the only other member. Once a minor turns major, he has the options available either to become or not to become a partner in the firm. In today's world, a minor even before attaining a majority is far more capable than a lot of adults. Therefore, it must be re-evaluated, if minors in today's world can still be considered incompetent to take the rational decision and therefore be deprived of such rights even after being a part of the partnership firm.

It is also to be noted that there is still a lacune concerning a partner getting allowed so along with the ordinary partners even the guardian should also be consulted before a minor is let in. The partnership law tries to conform with the contract law by not making a minor liable for his losses but it is an unfair beneficial position that he receives and so the researcher thinks that the guardian can be made liable for his losses. The minor cannot access any business secrets nor can he actively participate and make changes in the accounts records which is unfair as being a partner also he is not getting all the rights so the act can be changed to remedy this. Lastly, the act is frequently coming in contradiction with the basic elements regarding minors as enshrined in the ICA and thus there need to be relevant amendments in the act to bring it in conformity with the ICA. It can also be concluded that the provisions of the Act, do create a grey area in the understanding of the law, and therefore there is a need for more case laws and legislation in this aspect of the law.