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# INDIAN PARTNERSHIP ACT-1932

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## Chapter -I

### Abstract

#### **PARTNERSHIP Act 1932**

Abstract: The Indian Partnership Act, 1932 is playing a pivotal role in Indian society as because it is find that one person is not able to perform all the functions all the job alone; he need partners to execute the objected goal .This partner/ partners helps by sharing responsibility by dint of all respect such as resources, labor, stillness, ideas , many more to gain the profit from their agreement. We shall try to definition of partner. type of partner, capacity to become a partner partnership deed, few sc

### Introduction:

The Indian Partnership Act 1932 defines a partnership as a relation between two or more persons who agrees to share the profits of a business run by them all or one or more persons acting for all. Relation between partners means partnership. It arises by an agreement. In this -Act, unless there is anything repugnant in the subject or context -

An " act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm": " business includes every trade; occupation and profession. 'Prescribed" means prescribed by rules made under this Act" "Thirdly party " used in relation to a firm or to a partner therein means any person who is not a partner in the firms" and expression used but not defined in this Act and defined in the Indian<sup>1</sup>

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<sup>1</sup> <https://www.mca.gov.in>

Application of provisions of Act 9 of 1872 - The unrepealed provisions of the Indian contract Act, 1872, save in so far as they are inconsistent with the express provision of this act, shall continue to apply to firm Agreement creates such relationship. Agreement may be written or by understanding in them or by conduct of partners. Written agreement is called Partnership Deed .Partners collectively called a firm .

Essential elements of Partnership:

1. Association of two more persons. Minimum number member is 2, maximum number 50.
  - 2) Carrying on business: Partnership can be formed only for the purpose of some business.
  - 3) Agreement: Partnership originates from an agreement/contract between person.
  - 4) Sharing of profits : (a) Sharing the profits of business is the essence of partnership but it cannot be the conclusive evidence as to existence of partnership.  
(b) Sharing of profits implies sharing of losses as well , unless agreed otherwise.
- © Ratio in which profits and losses will be shared in the base of agreement amongst them. p

Mutual Agency :- (a) A partner is both an agent and principal. (b)  
Partner can, by his acts, bind other partners and is in turn bound by acts of other partners.

## Chapter II

Definitions of terms and Explanation:

" Partnership", "partner", firm" and "firm name"- "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually " partners" and collectively " a firm" , and the name under which their business is carried on is called the " firm name".

-Sec.4- Partnership is an association of persons carrying business & in law the firm name is compendious method of describing partners-Deoha F.Guzder Bombay Vs C.I.T. Air, 1955 SC74.

Sec5- Partnership not created by status- The relation of partnership arises from contract and not from status : and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such, are not partners in such business.

6. Mode of determining extended of partnership - In determining whether a group of persons is or is not a firm, or whether a person is or is not partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together

7. Partnership at will - Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "

Partnership at will"

8. Particular partnership - A person may become a partner with another person in particular adventures or undertaking<sup>2</sup>

## RELATIONS OF PARTNERS TO ONE ANOTHER

9 General Duties of partners- Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

-sec.9- Sleeping partner can file a suit for rendition of account - SitaRam vs. Radha Rai, AIR 1968 SC 534<sup>3</sup>.

Duty to indemnify for loss caused by fraud- Every partner shall indemnify the firm for, any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners: (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing. Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

2) Agreements in restraints of trade- Notwithstanding anything contained in Sec. 27 of the Indian Contract Act, 187, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner. The conduct of the business- Subject to contract between the partners-Every partner has a right to take part in the conduct of the business. Every partner is bound to attend diligently to his duties in the conduct of the business. any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without any consent of all the partners and every partner has a right to have access to and to inspect and copy any of the books of the firm.

## Chapter III

Mutual rights and liabilities - Subject to contract between the partners -

a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

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<sup>2</sup> <https://www.mca.gov.in>

<sup>3</sup> <https://www.mca.gov.in>

The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm. Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits .a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent, per annum The firm shall indemnify a partner in respect of payments

made and liabilities incurred by him.

i) In the ordinary and proper conduct of the business, and

fi) In doing such act, in an emergency, for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances and a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

Sec 13- All the partners are entitled & liable for equal share in loss &profit in absence of any agreement.

#### Chapter -IV

##### The Property of the Firm-

Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm; and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm Partner to decide: the partners, by an ,by an agreement, are free to determine as to what shall be the property of the firm and what shall be treated as separate property of one or more of the partners<sup>4</sup>.

Factors for consideration: when there is no such agreement, to ascertain property belongs to the firm or not ,the following shall be considered:-

(a)source from which the property had been acquired,

(b)Purpose for which the property was acquired, and

© Manner in which such property has been dealt with.

Sec 14 of Partnership Act1932: When there is no contract to to the contrary, property of the firm

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<sup>4</sup> Hannd book for Insolvency Professional's examination Vol-2CA G. Sekar page B- 138,Commercial Law Publishers (India) Pvt. Ltd.

include<sup>5</sup>s –

- (a) All properties, rights and interests brought into the stock of the firm,
- (b) Property acquired by purchase or otherwise by or for the firm,
- (c) Property acquired for the purpose and in the course of business of the firm,
- (d) Property ,rights and interest in the property with money belong to the firm,and
- (e) Goodwill of the firm’s business.

#### Section-15 Partner’s Property-whether Firm’s ?

When a partner’s property is used for firm’s business, it does not automatically becomes the firm’s .In case where the partner’s have an intention to make it as firm’s property, it can made so.

Application of the property of the firm –

Subject to contract between the partners, the property of the firm shall be held and usedby the partners exclusively for the purposes of the business.

Firm’s liability for the acts of a Partner :-

- a) Implied authority -Sec-19;The act of a partner which is done to carry in usual way that effect binds the firm.
- b) Admission by a partner, Sec-21; In the ordinary course of business ,where a partner makes admission into firm ,as per terms and condition ,representation of firm ,the firms are liable.
- c) Acting with intent to bind the firm, Sec-22; Any act of a partner done in the firm’s name and intent to bind it, shall bind the firm.
- d) Wrongful act of partners,Sec-26; A wrongful actor omission on the part of a partner which he has done it in the ordinary course of the firm’s business with the authority of partners .The firm is liable to extent of erring partner.
- e) Misapplication by partners,Sec-27; A partner ,acting within his apparent authority receives money or property ,he cannot account for his personal name, Firm can make good that amount.

#### Chapter-V

“Notice to an acting Partner is the notice to the Firm”<sup>6</sup>.

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<sup>5</sup> Hannd book for Insolvency Professional’s examination Vol-2CA G. Sekar page B- 138,Commercial Law Publishers (India) Pvt. Ltd.

<sup>6</sup> Hannd book for Insolvency Professional’s examination Vol-2CA G. Sekar page B- 139 ,Commercial Law Publishers (India) Pvt . Ltd

- Notice to an acting Partner, Sec.21; Notice to a partner, generally acts in the business of the, of any matter relating to affairs of Firm operates as notice to as notice to the firm.
- Agency principle: A notice to an agent to his principal, notice to a partner is equivalent to notice rest of the partners of the firm.
- Conditions: (a) This notice must be actual and not constructive (b) It must be received by a Working partner and not by a Dormant or Sleeping partner (c) It must relate to the firm's business.
- Notice to an agent of a firm : It means that also constitute a notice to the firm.
- Exception, sec-24; In case of fraud on the firm committed by or with consent of partner, a separate notice has to be given to the firm.

### Public Notice

Section 72 speak about the mode of giving public notice and given following reasons when a notice is being served as :

- (a) Retirement of partner, or
- (b) Expulsion of partner or
- (c) Dissolution of firm, or
- (d) Minor's exercise of option on attainment of majority, to become a partner or cease relationship with the firm.

Method adopted for serving Public Notice:

A copy of the notice is sent to the Registrar of the firm.

The notice is to be published in (I) the Official Gazette and (II) in one vernacular circulating in the district where the firm's principal place of business situated newspaper.

Another situation sending Public Notice, since the firm is not registered.; the notice to be published in (i) the Official Gazette and (ii) in one vernacular newspaper circulating in the district where the Firm's principal place of business situated.

Copy of notice need not to be sent to registrar since the firm is not registered

### Chapter-VI

Minors admitted to the benefits of partnership<sup>7</sup> –

(1) 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 .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

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<sup>7</sup> <https://www.mca.gov.in>

accounts of the firm. Such minor share is liable for the acts of the firm, but the minor is not personally liable for any such act. 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 Sec. 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 shares 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, whichever 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 fact 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 -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 .his share in the property and profits of the firm shall be the share to which he was entitled as a minor. Where such person elects not to become a partner. 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 .his share shall not be liable for any acts of the firm done after the date of the notice, and 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 sections (7) and (8) shall effect then provisions of Sec. 28. In minors admitted to the benefits of partnership - (1) 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. Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, an he may have access to and inspect and copy any of the accounts of the firm .Such minors share is liable for the acts of the firm, but the minor is not personally liable for any such act .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 Sec. 48.

## Chapter-VII

### Reconstitution of Partnership Firm<sup>8</sup>:

Reconstitution of firm takes place in following method as given here to: -

- a) Admission, b) Retirement, c) Expulsion, d) Insolvency e) Death and f) transfer of interest

A-Section 31 speak of Admission:

- i) A person can be admitted into already existing firm, only, with the consent of all existing partners.
- ii) Such new partner is not liable for any act done by the firm before his admission, where he specifically agrees bear the past liabilities, he will be liable for that.
- iii) Third party can not hold him liable since there is no privity of contract between the new partner and the creditors,

B\_ Retirement, Sec-32: modes of retirement: partner may retire-

- i) With other partner's consent
- ii) In accordance with an express agreement
- iii) By given written notice of his intention to retire in a partnership at will.

C -Expulsion, sec-33; A partner cannot be expelled from a firm by majority of partners except in good faith of powers conferred by the contract between the partner. When a partner is otherwise expelled than in good faith, it is null and void. He continues to be a partner, and can (a) claim reinstatement (b) sue for the refund his share and of capital and profits of the firm.

## Chapter-VIII; Dissolution<sup>9</sup>.

There are two modes of dissolutions those are (a) without order of the Court [ Sec 40 -43 ] and (b) by order of the Court [ sec-44].

(a) Without order of the Court [ Sec 40 -43 ] is given below as:-

- i) Mutual agreement between partners
- ii) Compulsory dissolution and it has two phenomenon one is insolvency of all or all but one partner second is business of the firm becoming unlawful .

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<sup>8</sup> Hand book for Insolvency Professional's examination Vol-2CA G. Sekar page B- 140 ,Commercial Law Publishers (India) Pvt . Ltd

<sup>9</sup> Limited Insolvency examinations by S.K. Pandab ,Roshan Lodha 5<sup>th</sup> edition vol -1 page no 3.92 and 93.

IV) on happening of certain contingency and by notice.

and (b) by order of the Court [ sec-44]; those are

- i) **Insanity:** If a partner has become unsound mind firm gets dissolved by Court order.
- ii) **Permanent incapacity:** a partner is incapable of performing his duty as a partner.
- iii) **Misconduct:** If a partner is found guilty of conduct which is likely to affect the carrying of business of the firm prejudicially. Application to Court shall made by one who is not guilty of misconduct that is other partners
- iv) **Persistent Breach of contract:** The Court may dissolve the firm if-(a) partner willfully and persistently commits breach of agreement as to management or (b) Partner conduct himself in a such a way it is nit reasonable practice for other partners to carry the business.in the partnership with him.
- v) **Transfer of interest:** The court may order dissolution when a partner has in any way (a) Transferred the whole of his interest in a firm to a third party , or (b) allowed his share to be charged on account of decree passed by a court towards payment of liabilities of that partnership, or allowed to sold in the recovery of arrears of land revenue.
- vi) **Perpetual loss:** The firm has been continuously Suffering losses. No chances of turn around.
- vii) **Any other just equitable ground:** If, on any other ground, it can be proved to the satisfaction of court that it is just an equitable to dissolve the firm, the court may order dissolution. Sufficient reasons include – (a) Deadlock in management, (b) Disappearance of substratum(c) Partners not on speaking term.

## Chapter-VIII

Case Law: Garner Vs Murray<sup>10</sup>.

This above case law in the year of 1904, where Garner (G) ,Murray (M) and W were partners of the firm . their profit sharing was equal but they contributed capital in unequal shares. On dissolution of the firm the assets were insufficient to pay the partners capital after paying the creditors and advances of the partners W was insolvent and could not pay anything G contributed

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<sup>10</sup> Limited Insolvency examinations by S.K. Pandab ,Roshan Lodha 5<sup>th</sup> edition vol -1 page no 3.93and 94.

more capital than M The question was how much each solvent partner G and M should contribute and in what ratio to repay the capital of the firm.

- Decision: It was held that the solvent partners should first contribute the deficiency of the capital in cash and then, assets available to be applied in paying the partners rateable what is due to them for their capital contribution.
- In other word, the deficiencies in the capital of the insolvent partner are distributed among the solvent partners in ratio of their capital

Goodwill of Partners:

Good will is not defined in the Indian Partnership Act1932.It is a thing, which is very difficult to defined. It may be said as advantage enjoyed any commercial under taking beyond its capital, stock, fund or property employed in the firm.

Goodwill is the advantage enjoyed by the firm for the reputation of the firm or partners built upby years of honest work. As provided in section 14,it is the property of the firm unless contrary is proved . It is an intangible asset in substantial form nebulas( without any definite edges) in character and denotes benefits arising from connection and reputation of the firm.It is that value of reputation of the firm which contributes to the profitability of the firm.

Treatment<sup>11</sup>: Though it is an intangible asset ,it has value ; unless otherwise agreed in the partnership agreement, upon dissolution it must be sold and the proceed of sale distributed as capital.

Right of Buyer and Seller on Sales of Goodwill:

(a) Buyers Right: On the sale of goodwill the buyer may, unless the term of contract of sale provide otherwise (i) represents himself in continuing the business, (ii)maintain his exclusive rights to use of the firm name.

Sellers Right: The vendors may enter into a competition with purchaser unless he is prevented by a valid restraint clause in the contract of sale.

Chapter-IX

Registration of Partnership Firm:

Registration of Partnership firm, it is given in sec 56 to 59 of Indian Partnership Act1932 .

Section 57: is appointment of registrar, the State government appoints the Registrar of Firms for the purpose of the Act, it also defines the areas within which they shall exercise their power and

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<sup>11</sup> Hannd book for Insolvency Professional's examination Vol-2CA G. Sekar page B- 146, Commercial Law Publishers (India) Pvt. Ltd

perform their duties.

Sec -56, firms get exempted from the registration provision, and State government shall grant such exemption by way of notification in Official Gazette.

Sec-58 to 59 is the procedure for Registration of partnership firm, registration may be effected at any time during the continuance of partnership. Generally where principal office of firm is located Registrar of firms will do registration in that area.

Registration by Registrar If the provisions of Sec-58 are duly complied with, the Registrar upon satisfaction of the same shall record an entry of statement(application) in the Registrar of the firms.

Conclusion:

Partnership is the backbone of Indian economy, it has been generating employment in Indian society since ancient time. It plays vital role to develop the country in all aspect. Although Indian partnership Act denies HUF cannot form a partnership firm but the formation of partnership has no limit and has many success are found in partnership firm. A partnership is a sort of business origination in which owners are personally liable for the company's debt. A general partner manages the business on a daily basis in the organizations that provides personal services such as legal firms , auditors and gardening partnership, and Self Help group are popular organizational structure. To revive partnership firm Government of India has brought Limited Liability Partnership Act 2008 LLP Act-2008, which paved the way to bring better scope and opportunity for them. It is pertinent to say government department's official ,other professional should come forward to educate them in technically, counselling in different type of business.

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