

THE INDIAN PARTNERSHIP ACT, 1932

M T W T F S S

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YOUVA

Date

(w.e.f. 1/10/1932)

PARTNERSHIP AND ITS ESSENTIALS :

competent = contract
karrir ke layak

- (1) Prior to this Act, the law of partnership was dealt with in chapter XI of the Indian Contract Act, 1872.
- (2) At least 2 persons are required to form a partnership and all partners must be competent to contract. If at anytime number of partners in firm gets reduced to one (whether by death/insolvency) the firm gets dissolved automatically. Asset Liability
- (3) Section 11 of the Companies Act states that partners in a firm carrying on Banking Business must not exceed 10 and other firms carrying on business for gain must not exceed = 20.
- (4) Partnership does not enjoy separate legal entity status. Partnership arises from an agreement and not from status. Where there is no agreement or contract there cannot be a partnership. Partnership (deed) Agreement can be oral ^{or} written.
↓
immovable asset/property
- (5) Partnership must be created (formed) for a lawful purpose. Partnership is void (invalid) if the business is unlawful (illegal).
Also,

NO BUSINESS = NO PARTNERSHIP

- ★ (6) AS PER SECTION 4 OF IPA, 1932: Partnership is a relation between 2 or more persons who have agreed to share profits of a business, carried on by all ^{or} any of them acting for all.
- (7) Partnership is a mutual agency. [This is the True Test of Partnership] (Read with sec. 4: definition of Partnership). Every partner can carry on business on behalf of all partners and can by his actions bind all partners of the firm.

★ **NOTE** :- Registration of deed is not mandatory. Deed can be registered with registrar of firms. Including alterations

(8) A Partnership Deed: 'Contract of partnership'

- It must be clear and not ^(confusion creating) ambiguous.
- Terms must not be ^[complex] unlawful.
- Deed must be signed and duly stamped.
- Must clearly state rights and duties of partners. powers obligations

→ REGISTRATION OF PARTNERSHIP: (Section 58 and 59)

- (1) A firm can be registered with R.O.F. (Registrar of firms).
 R.O.F. is appointed by state government. Registration of firms is not compulsory.
- (2) Registration is affected at anytime, before/after its formation.
- (3) Wordings in firm name:-

permissible Wordings	Non-Permissible wordings
(1) Associates	(1) Crown, king, queen
(2) Management	(2) Empire, empress, emperor
(3) Consultant	<u>except</u> : when govt. signifies its acceptance by written order
(4) Brothers	

(4) DETAILS TO BE GIVEN

- In Registration application
- Firm name. (branch)
 - Principal places of business and other place of business.
 - Date when partners joined the firm.
 - Name and ^{residence} place of each partner.
 - Duration of firm.

It is that place of business (registered office)

dissolution → end of life of firm
of firm

→ Partnership formed by - Trader, manufacturer,
etc.

(5)

DETAILS NOT TO BE GIVEN

In registration application.

- Capital contribution by each partner.
- Banks A/c's of firm.
- Goodwill of the firm.
- PAN of firm.
- Details of Auditor of the firm.

(6)

WHEN IS REGISTRATION COMPLETE?

Ans :-

- (1) When R.O.F is satisfied that above formalities (procedures of section 58 and section 59, have been duly followed; the ROF shall issue a certificate of registration rightly.
- (2) Application form ⊕ fees must be paid, as prescribed.
- (3) Recording of entry in the Register of firms is the routine duty of Registrar.

RECONSTITUTION OF FIRM:

- (1) By Introduction of a partner. (section 31)
- (2) By Retirement of a partner. (section 32)
- (3) By Expulsion of a partner. (section 33)
- (4) By Insolvency of a partner. (section 34)
- (5) By Death of a partner. (section 35)
- (6) By Transfer of partner's interest. (section 29)

suit = case filed for the first time (filed at magistrate)
litigation = suit is postponed due to want of evidence

→ WHAT HAPPENS IF A FIRM IS NOT-REGISTERED?

(effects of non-registration)

(1) An unregistered firm cannot claim a set-off from a third party > ₹100.

(2) Cannot file a suit for:

(1) Dissolution of firm.

(2) Accounts of dissolved firm.

(3) Rights of 3rd party to file a suit against the unregistered firm or its partners remain unaffected.

(4) No suits can be filed by:

(1) One partner against another partner.

(2) Partner against the firm.

(5) Non-registration will not affect the enforcement of rights, arising otherwise than out of contract.

Eg:- Z is an independent party. Mr. ABC and company is an unregistered partnership firm. The firm made infringement of copy rights of Mr. Z. Can Mr. Z sue the firm?

→ Yes. Non-registration will not affect the enforcement of rights, arising otherwise than out of contract.

INFRINGEMENT = copying brand/violate

Membership arises from a contract.

FIRM	LLP
—	Max. & unlimited
Mfg. Partner	professionals

→ Liabilities are joint, several and unlimited.

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→ Active partner is agent of a firm & sleeping partner is not an agent of a firm

TYPES OF PARTNERS :-

(1) **ACTIVE-PARTNER**: A.P conducts business in a usual way and acts as an agent of the firm. Since, he acts as an agent, he binds himself and all his co-partners by his acts done in usual-course of business. When an A.P retires or is expelled, he should give a public-notice of the same, in order to limit his liability after retirement or expulsion.

(2) **SLEEPING (DORMANT) PARTNER**: S.P becomes partner by agreement and contributes capital. but does not takes part in the conduct of the business. S.P cannot bind other partner by mutual-agency. However, his liability is unlimited towards 3rd party, towards debt of firm. If his existence as partner is known to some persons dealing with firm, notice of his retirement must be given atleast to them.

★ Partnership by holding out

(3) **PARTNER BY ESTOPPEL**: A person is held liable as a partner by estoppel when: (a) he by spoken/written words / by conduct represents himself to be a partner in a firm. **OR** he knowingly permits himself to be represented as a partner in a firm and. (b) Any other person having faith on such representation given credit to the firm.

Partner by estoppel: becomes liable jointly and severally only to the person who have given the credit to the firm on the faith of his representation.

A retiring person also becomes a partner by estoppel. If he does not give a public notice of his retirement and the continuing partners use his name as a partner. However, rule of estoppel, does not apply in case of death/insolvency of a partner.

(4) ^{IMP} NOMINAL PARTNER: Nominal partner is one who lends his name to the firm without having ^{monetary} pecuniary interest in the business of the firm. He neither contributes capital nor does he shares profits or losses of the firm. Nominal partner does not even takes part in conduct of business activities. However, he shall be liable to all third parties for the acts of the firm just like remaining partners. Even a nominal partner is bound to give public notice, of his retirement in order to free himself from the liability for the future acts of the firm after his retirement.

(5) ^{IMP} SUB PARTNER: Sub-partnership may arise when there is an agreement between a partner of the firm and a stranger. The stranger does not becomes partner of the firm even though there is an agreement between the stranger and the partner of the firm. The sub partner can claim a share of profit from the partner of the firm but he has no rights to take part in the active business of the firm or to examine the books of accounts of the firm.

Major hone ke baad 2 option hata hai

yaa to continue kare
yaa to firm chod de.

batane ke liye
minor ko 6 months ka time hai
ditya jata hai
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MINOR AS A PARTNER :

(1) Can a minor enter into a contract?

Ans NO, Minor's agreement is void-ab-initio. (Invalid from beginning)

(2) Can a minor be a partner in a firm?

Ans NO, Minor cannot become a partner in a firm. However he can be admitted for the benefits of the firm.

(3) Does rule of estoppel apply to Minor?

Ans NO, estoppel rule cannot be applied on minor.

(4) Rights of Minor :-

a] Minor has right to his agreed share of profits.

b] He can

→ Inspect accounts access and copy accounts of firm.

→ Sue partners for accounts / payment of his share.

→ On Attaining majority elect to become a partner not to become a partner, within 6 months of attaining majority.

c] If he elects to become a partner then he is entitled to the share to which he was entitled as a minor.

d] If he does not elects to become a partner then he is not liable for any acts of the firm after the date of public-notice served to that effect. If he fails to give public notice he shall become a partner of firm after the expiry of 6 months.

IMPLIED - AUTHORITY OF PARTNERS : [sec. 19 read with sec. 22]

(1) Every partner of the firm has an implied-authority to bind every other partner for the acts done in the name of the firm, provided the same falls within the ordinary course of Business, done in the usual-manner, unless otherwise provided in the partnership deed.

contract → Expressed — bolne ki zaroorat hai (express karna padta hai)
 → Implied — It is understood (bolne ki zaroorat nahi hai)
 ↓
 not be even written

yaad rakhna padega

fayda firm ka ho raha hai toh ye sab kaam ke liye poochna nahi padta hai

ka kaam I.A

Acts within the scope - I.A

- To buy/sell goods in the ordinary course.
- To accept payment of debts due to the firm & issue receipts for the same.
- To employ servant for the business.
- To acknowledge sustaining debts.
- To borrow money on credit of the firm.
- To pledge goods for borrowing money on behalf of the firm.
- To render accounts to the creditors of firm.
- To create equitable mortgage by depositing title deed of property for money borrowed.
- To defend actions brought against the firm and to engage lawyer.

(2) Restrictions on I.A's - Statutory Restrictions

kaha pe I.A nahi chalega

- (1) To submit disputes to Arbitration.
- (2) To open Bank A/c on behalf of firm in his own name.
- (3) To withdraw suit.
- (4) To Acquire / Transfer immovable property.
- (5) To admit any liability.

→ Charge → right to hold / lien

→ TYPES OF PARTNERSHIPS :-

- ★ (1) PARTNERSHIP AT WILL : Section 7
- when partnership is not for a fixed period
 - ② No provision is made as to when and how the partnership will come to end.
 - The essence of partnership at will is that it is open to either partner to dissolve the partnership by giving notice in writing to all other partners.
- ★ (2) PARTICULAR - PARTNERSHIP : Section 8
- when a partnership is formed for a particular adventure the completion of the adventure ^{joint} _{venture} results into end of partnership. (particular purpose ke liye)
- (3) PARTNERSHIP FOR A FIXED PERIOD :
- when a provision is made in the contract for the duration of partnership and it is dissolved on the completion of activity.
 - eg :- construction of $\left\{ \begin{array}{l} \text{Bridge} \\ \text{ship} \end{array} \right.$
- (4) GENERAL PARTNERSHIP :
- constituted with the respect to the business in general.

DISSOLUTION OF PARTNERSHIP :-

- (1) Dissolution means end of life of the firm.
- (2) Under the Indian Partnership Act, a partnership can be dissolved with the order of court or without the order of court.

(3) DISSOLUTION BY ORDER OF COURT :- (unsound)

Partner logo
 ko suit file
 karna hota hai,
 court ko deni
 nhi aata hai.

- a) On account of insanity.
- b) On account of permanent incapacity which can be physical or mental.
- c) On account of misconduct, (when one partner becomes guilty, a suit maybe filed by another partner)
 - example - (i) theft of books of accounts of the firm.
 - (ii) breach of trust.
 - (iii) ^{hera-pheri} embezzlement of funds of client.
 - (iv) ^{continuous} persistent breach of agreement by any partner in relation to conduct of business.
 - (v) Perpetual losses. ^{fair enough}
 - (vi) Any other just an equitable reason, that the firm should be dissolved as the court think fit.

(4) DISSOLUTION ~~BY~~ WITHOUT COURT ORDER :-

- a) Dissolution by agreement with the consent of all partners.
- b) On the expiry of the fixed period.
- c) On the completion of adventure.
- d) By giving noticing writing to all other partners.
- e) Death or insolvency of partner, when there are only two partners.

HOW TO SETTLE THE ACCOUNTS OF A DISSOLVED FIRM?

When a firm is dissolved, the accounts may be settled in accordance with the provisions of section 48, section 49 and section 55 of Indian Partnership Act, 1932 as follows:-

a] **Goodwill** shall be included in the Asset and it might sold separately along with the property of the firm.

[Goodwill means an advantage which is acquired by a firm from the connections which the firm has built up with its customers and the reputation that the firm has created. Goodwill is a monetary value of the reputation which the firm has created over a period of time and it ^{shows} depicts the efficiency, effectiveness and the integrity of the firm, its operations, products and services.] ^{honesty}

b] Any loss including capital deficiency should be paid off in the following sequence:

- (i) first out of profits.
- (ii) next out of capital.
- (iii) lastly out of partner's individual profit sharing ratio.

c] The assets of the firm shall be applied in the following manner:

- (i) to pay off debts of the firm to the third party.
- (ii) to pay each partner of what is due to him from the firm.
- (iii) to pay each partner of what is due to him on account of capital.

d] Any loss arising on account of insolvency of partner should be beared by solvent partners in the capital ratio as held by courts in Garner v/s Murray.

e] The property of the firm should be applied to pay off firm liabilities and then partners personal liabilities. Similarly, partners personal property shall be 1st applied to pay off partners liabilities and surplus if any can be applied to pay off firm liabilities.

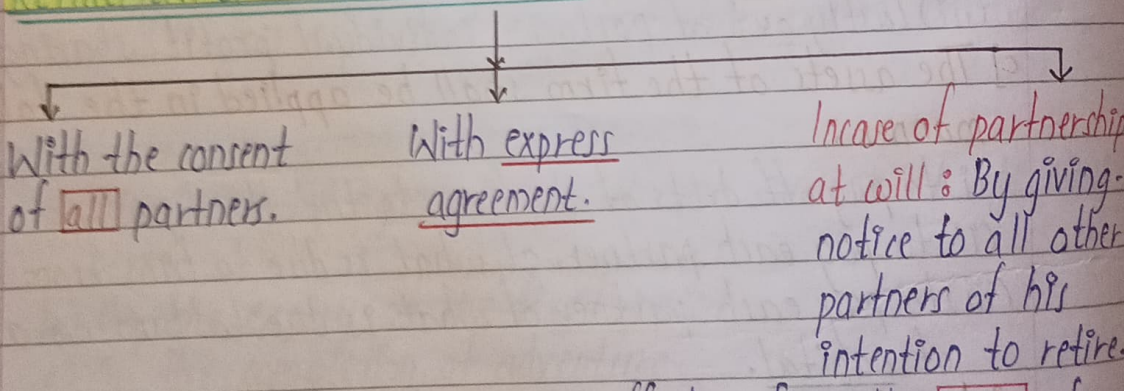
→ **RECONSTITUTION OF FIRM :-**

● **ADMISSION OF PARTNER [Section-31] :-**

Novation → admission

- (i) Liability of new partner commences from the date of his admission. New partner cannot be held liable for the acts of the firm done before the date of admission. [since, there was no mutual agency]. However, he can agree to be liable for those debts which pre-existed before his admission.
- (ii) Third party cannot bind the New partner of the firm.
- (iii) New partner becomes liable to firm as well as creditors of the firm if :-
 - a) New firm agrees to take over the liability of old firm.
 - b) Creditors agree to discharge the liability of old firm and creditors agree to accept new firm as their debtor. [Principle of Novation]

● **RETIREMENT OF PARTNER [Section-32] :-**



case study

(1) As to third parties, Retirement is effective from the Date of Public-Notice, in case, no date is mentioned from the date of communication of notice. But date of Retirement cannot be prior to the date of communication of notice.

case study

(2) Retiring partner is liable to third parties for acts done by firm after retirement but before public notice of his retirement.

→ Defame = naam ko kharab karna.

(3) RIGHTS OF RETIRING PARTNER :

- a] He can carry on competing business and even advertise such business.
- b] can share profits in capital ratio / 6% interest on paid capital. ^{mcqs*}

However, he cannot use the name of the firm. He cannot solicit firm's customers.

↳ to attract someone

IMP ● EXPULSION OF PARTNER [Section 33] : [debarment = expulsion]

- (1) Expulsion must be as per Terms of contract. → (partnership deed)
- (2) Power must be exercised by Majority of Partners.
- (3) Expulsion must be in good faith.
- (4) If expulsion happens without fulfilling above-mentioned conditions it will be termed as irregular expulsion.
- (5) In that case expelled partner will have following remedies:
 - a] can claim ^(bring back) Reinstatement as a partner in the firm.
 - b] can claim Refund for his share capital.
 - c] can carry on any competing business with that firm.

● INSOLVENCY OF PARTNER [Sec. 34] :

- (1) If a partner is ^(to decide judicially) adjudicated as an insolvent, ceases to be a partner in the firm from the date of order. → legally
- (2) If firm carries on Business, the ^(bach kuchi property) estate of insolvent partner is not liable for any act of firm done after the date of order of adjudication.
- (3) No Public-Notice is required to be given on insolvency of partner.
- (4) In case the firm is not dissolved the share of property and profits of the insolvent partner remains (vests) with the official assignee or Receiver.

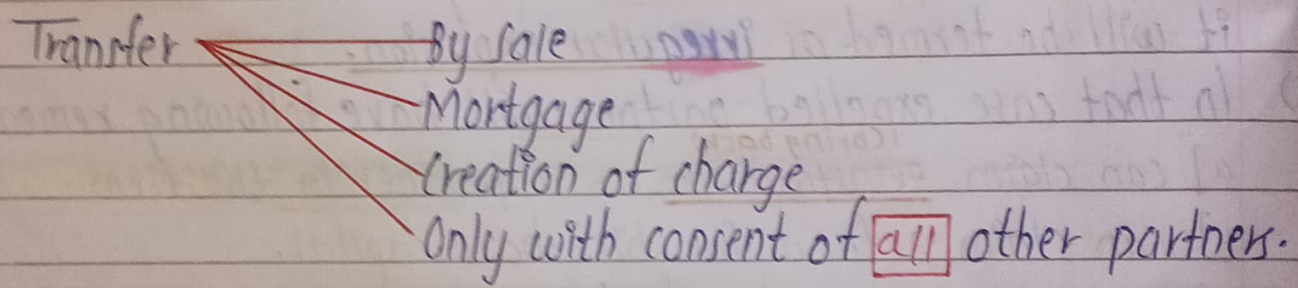
(liquidator)

DEATH OF PARTNER [Section 35] :

- (1) A firm is dissolved on account of death of partner in the absence of any contract to the contrary.
- (2) The legal-estate of deceased partner is liable for any acts done by the firm before his death.
- (3) Estate won't be liable for goods ordered before his death but actually received after his death and any money borrowed by partners after his death.
- (4) No public-notice is required to be given on account of death of partner.

case study

TRANSFER OF PARTNER'S INTEREST [Section 29] :



- (1) Transferee is not entitled to :-
 - a] Inspect books of firm.
 - b] Challenge accounts for profits.
 - c] Interfere in the conduct of Business.