Ch-4 # Indian Partnership Act, 1932

Introduction :-

1. Business can be done either in Single ownership or Shared ownership.
2. Share owner means entire Capital is Contributed by one Single person. He is the Sole owner by business assets and Solely liable for expenses and liabilities
3. Sole proprietership is best in freedon POV. but it has limited resources and limited prospects.
4. So, when business requires huge amount of Capital and resources, Business must be Contributed by more than 1 Person.
5. If more than one person are Contributed Capital, It is a Case of Shared ownership. All owners will invest Capital and will Share return on investment.
6. when there are multiple owners, there is high probability of disputes among them.
7. Such disputes can be Settled only when 2 major activities are performed in advance.
   a) Expressed / clear agreement among all owners regarding rights, duties and liabilities.
   b) All owners must get there business with their names registered with govt. authorities.
8. So, when there are more than 1 owners, it is necessary to have mutual agreement and to have registered with government authorities.

9. Registration of business with several owners can be done in a variety of ways. It can be registered as -
   a) Partnership under Partnership Act, 1932.
   b) LLP under LLP Act, 2008
   c) Company under Companies Act, 2013.

10. These 3 Structures have their own rules for registration of business and Running of business.

11. It depends on the Owners of business, which category of business Registration, they wish to adopt.

12. Once registred, business need to follow all the provisions of the act under which registration was taken.

Origin of Partnership Act, 1932

1. Partnership Act, 1932 was earlier a part of Indian Contract Act, 1872 itself.

2. Provision regarding partnership which are Specific in nature were Separated from Contract law which was general in nature.

3. So, partnership is now an independent law dealing with Various issues such as Registration of partnership, Dissolution of firm etc.

Definition of 'Partnership' (Sec-4)

→ Partnership is relationship
→ b/w persons
→ who have agreeds to share profits
→ of a business
→ {Carried on by all or any of them
→ acting for all.}

Partnership is relationship

1. Relationship is of 2 Kinds :-
   a, Relationship arising by birth
   b, Relationship arising by agreement

2. Relationship in partnership arises by agreement which means partnership doesn't get created automatically, it takes birth only when partners make an agreement to run business together.
3. There is a form of business called Hindu Undivided family in which relationship arises by bith. The moment a child takes birth in the family, Such child becomes

Co-owner / Co-parcever of Family business.

4. Partnership which is created by agreement works on the principle of mutual consent. All partners must have a common consent of opening and running the business together.
5. Agreement made b/w partners need not to be mandatorily expressed, it can be implied as well ~~as~~. Agreement b/w them can be expressed implied, oral, written, registered or unregistered.
6. Irrespective of nature of agreement, partnership is deemed to be valid, provided it is doing a legal business.
7. A registered agreement will become an evidence in the court but unregistered agreement will not make the firm illegal.

Between Persons

1. Minimum partners in a partnership firm should be 2.

2. Law is silent on the issues of min. and max. no. of partners.
3. Partnership Act, 1932 contains no such provision but Sec-464 of Companies Act, 2013. which says that Max no. of partners in the partnership firm should not more than 50.

4. If a partnership has more than 50 persons, it must be Converted into Company as per Section 464 of Companies Act, 2013.
5. If the partnership does not want to convert into Company, number of partners must be reduced back to 50 or even less.

who have agreed to Share profits

1. Profit sharing is an essential element of the business of partnership.
2. There can not be a case where a partner is having losses only. It means profit must be distributed among all the partners.
3. Partners can decided profit sharing ratio among themselves. If they do not decided anything for profit sharing, it must be distributed equally among all partners.
4. It means if partnership agreement specifies a particular profit sharing ratio, this shall be adopted otherwise it will be an equal distribution.
5. when we talk about profit distribution, we mean profits only. It means it is compulsory to distribute profit among all but it is not compulsory to distribute losses as well.

6. It means –
- There can be a partner in profit only.
- There cannot be a partner in losses only.

Of a business

1. If there is no business, there is no partnership.

2. Business may be of any nature, whether belonging to goods or services.
3. whether goods are sold after manufacturing or after purchasing. it is business.
4. It does not matter whether business is small, large, medium in size, if it is registered as partnership it is partnership.
5. Business is a compulsory element because profits arising out of business needs to be shared. If 2 people are sharing some money which is not arising from business, it can not be partnership.

Carried on by all or any of them

1. It is not necessary that partnership business must be run by all Collectively

2. It is true that more than one owner are present in partnership but it is not mandatory that all such owners run the business together.

3. Business management and administration can be handed over either to one or few or all partners, depending upon the mutual consent.

4. It does not matter whether the firm is being run by all or few or one partner, whatever profit losses arise, will belong to all ~~profit~~ partners.

Acting for all

1. Every partner is considered as agent of other partners and of the firm.
2. It means every partner is principal as well as agent of other partners.
3. It means Mutual Agencies is present in partnership. which means all partners share same role of principal and agent among each other.
4. Due to this mutual agency, partners get bound by action of each other.

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5. Every action of a particular partner will bind all partners collectively as well as individually, whether

Such action produces profits or losses, assets or liabilities, Income or expenses.

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6. If few people are doing business together to earn and share profit, it may be a partnership, Company or LLP. So, there must be some Symbol by which we can find out whether partnership exists or not Such Symbol is Mutual Agency. Mutual Agency is called True test of Partnership.

7. In simple words if we need to find out whether a particular relationship or not, we must rely on the presence of Mutual Agency only. It is because presence of business, More than 1 owners and profit distribution can be present without partnership as well.

8. Mutual Agency is a unique feature which is not at all present elsewhere. Thus is the reason, it is called True test of Partnership.

Types of Partnership

As per time duration

- Partnership at will
- Fixed Partnership

As per purpose of Partnership

- Particular Partnership
- General Partnership

Classification with respect to time duration

1- Partnership at will –
Partnership in which no duration is fixed in advance is called partnership at will. Partnership continues until dissolved by partners. This partnership gets closed when desired by partners.

2- Fixed Partnership –
when partnership is created for a pre-determined period time, which means a fixed period, it is called fixed partnership. This partnership comes to an end when the Said period becomes over.

Classification as per purpose of partnership

1- Particular Partnership –
when partnership is created for a particular pre-determined purpose, it is called particular partnership. This partnership remains in force unless the purpose gets solved.

2- General Partnership –
when partnership is created with a going Concern Concept, it is called General partnership. At is Continuous in nature and runs forever without any Specific objective.

Types of Partners

1- Active Partner –
Partner who is Known to all outsiders of the firm. He takes active participation in the business of firm. He needs to give public Notice whenever he takes exit from the firm.

2- Sleeping or Dormant Partner –
Partner who seems to be not participating in the business of the firm. He is not Known to the outsiders of the firm. public Notice is not necessary when he takes an exist.

3- Incoming Partner –

Whenever a new partner gets admitted to the firm, he is called Incoming partner. A new partner can come only after consent of all the existing partners.

4- Outgoing partner –

partner who is taking exist from the firm due to any reason such as Death, Retirement, Insolvency is called outgoing partner.

5- Nominal Partner –

Partner whose name is taken for the benefit of firm is called Nominal partner. He is not liable to contribute capital but he is liable to third parties as his name is shown to public in the capacity of partner.

6- Sub - Partner –

when a partner gives his share to someone else, he is called Sub-partner. In simple words, he is not partner of the firm, He is partner of partner.

7. Partners in Profits only —
He doesnot Shares losses of the firm, if the firm earns profit, it is Shared, but if the firm Incures losses, it is not Shared with him. This deal is made with people who are Key resources for the firm but they are not willing to face burden of losses.

8. Partner by Holding out / By Estoppel —
There may be 2 Situation :-
a) A person may falsely declare that he is partner in the firm and if firm does not object, people will presume that he is partner.
b) A firm may falsely declare that a particular person is its partner and such particular person does not object, people will presume that he is partner.

In both, these Situation, that person is deemed to to be a partner.

Relation of Partners to each other

1- General Duties of Partners –
General duty of every partner is to perform operations of partnership business for the greatest common advantage. we must operate the business as if it belongs to us only.

2- Duty to indemnify firm for any fraud Committed –
If a partner has Committed Some fraud, because of which, firm had to Suffer losses, Such partner will Compensate the firm and other partners.

3- Determination of rights and duties by Contract amoung partners –
Partners Should generally make a well drafted partnership deed which Specifies duties and rights of all partners. Such Deed / Agreement / Contract will be referred whenever there is a dispute among them.

Conduct of Business of Partnership

1- Right to participate in business
All partners have equal rights to participate in the business of the firm. He is part owner So he can enjoy ownership.

2- Right to get consulted -
whenever a decision is taken or an activity is done, all partners must be / consulted opinion of every partner must be taken on every matter so that all partners feel that they are important to firm.

3- Right to have access to books of accounts -
As every partner is a co-owner, each of them has his right of demanding, accessing and inspecting books and records maintained by the firm.

4- Right of legal Representative / Agent -
After death of partner, his legal heir / Representative / Agent has right to get the a/c settled.

Mutual Rights and liabilities

1- Right of Remuration -
Although there is no requirment as per law to give remuneration to any partner but they may decide by agreement to give the Same.

2- Right to Share Profit -
If partnership deed Specifies a particular profit Sharing ratio, Such ratio Shall be followed. However, if no such ratio is Specified, profit Shall be devided equally

among them.

3- Interest on Capital -
Generally, Int. on Capital is not given. However, if agreement Says So, Int. is possible. It means law does not make Int. on Capital Compulsory. It simply leave the decision on partners.

4- Interest on loan -
If a partner gives financial assistance to firm in addition to the Capital Contributed Such financial assistance Shall be a loan. Thus will attract int. @ 6% per annum; unless otherwise agreed.

5- Right of firm to get indemnity from partner -
If firm Suffer a loss because of Some partner Such partner will compensate the firm.

6- Right of partner to get indemnity from firm -
If there is a common loss to all partners Collectively, due to which a particular partner also Suffers in his individual capacity, firm will Compensate him for Such loss.

Partnership Property

1- Partnership property means property which belong to the firm and collectively to all partners.
2- This property includes both tangible and intangible assets.
3- This property includes monetary and non-monetary both the assets.
4- Basically, following 3 types of properties are ~~condu~~ counted as partnership property:-
  a) Assets invested in the form of Capital.
  b) Assets acquired in normal Course of business.
  c) Goodwill of the firm valued as per appropriate accounting principles.
5- Partnership property must be utilized for the business of partnership exclusively, not for any individual use by partners.

Personal property earned by partners -

1- Firm is a Collective body of all partners, which run on the principle of good faith.

2- All partners must work for common advantage and not just for personal profit.

3- If a partner receives Some personal profit or income which orginally belongs to firm, Such partner must ~~Surrounde~~ Surrender the Same to the firm.

4- In addition to this, partners must not carry out any Competitive business as that of the firm. If he indulges in any competitive business on his own, he has to Surrender all private profits earned to the firm.

Admissions by a partner

1- As all partners have equal authority, any of them can give public statements.

2- when a partner Speaks anything in public or give a declaration in public or make acceptance of Some fact or give assertions or does some submission it Shall be deemed to be done by all partners collectively.

Effect of Notice given to a partner

1- As all partners operate Collectively, it is not necessary that any information or notice Should come to each partner Separately.

2- If Some information or notice is delivered to one partner, it is assumed that all have been Communicated.

3- The only conditions is that Such partner who got the information or notice, must be an active partner.

Right of outgoing partner to carry on Competing business

1- when a partner has taken exit from the firm, He can perform business in the Same line.

2- If remaining partners ~~wh~~ wish to make an agreement with retiring partner that he will not carry on Same business for a particular period of time or in a particular area, Such agreement Shall be valid Subject to free Consent.

3- However, when he does competing business after taking the exist, he should not use firm name, he should not use firm resources and should not solicit clients of the firm.

Right of outgoing partner to Share Subsequent profit even after retirement / death -

1- whenever a partner takes exit either because of retirement or death his settlement of accounts should be done without delay.

2- If settlement of accounts is delayed firm will have to Share profits of the period b/w retirement / death to final settlement of a/c.

Rights and Duties of Partners after change in Firm

1- when there is a change due to reconstitution of firm, rights and duties of partners remains Same and do not change.

2- when duration of partnership is already over but Still partners are continuing the operations, Rights and duties do not change and remain Same.

3- when the purpose for which partnership made, gets over and partners Stills carry on business, rights and duties of partners do not ~~Same~~ change and remain Same.

Relations of Partners to third Parties

1- Partners is the agent of the firm. All the activities done by the partner in the usual course of business and in the name of firm Shall bind the firm and all partners collectively.

If partners carries on Something which is not usual Course of business or he does Something which is not in the name of firm, He will be personally liable.

2- Every partner has an implied authority to carry on business in an independent manner which will bind the firm as well as all partners.

When partners come together to do a business they stand an equal footing. Each partner has an automatic authority approved by law that he can do whatever is generally done in the ordinary course of business. There is no need of approval from partners. Implied authority is available with every partner by default. However, following 8 activities are not covered in definition of implied authority and for them, consent of all partner is needed :-

(i) Submit a dispute for arbitration.
(ii) Open bank a/c in firm name.
(iii) Compromise or Relinquish any claim.
(iv) withdraw a case.
(v) Admit a liability in the court.
(vi) Acquire immovable property in firm name.
(vii) Transfer immovable property of the firm.
(viii) Enter into partnership on behalf of the firm.

3- Partners can collectively decide to increase or decrease level of implied authority of any or all Partners. It means partners collectively can decide to increase or decrease powers of all partners. A power which ~~is tak~~ is available can be taken back and a power which is not available can be given.

4- In case of emergency a partner is allowed all the acts. which can save the firm, even if they are not covered in implied authority.

Liabilities toward third parties

1- Firm is liable for acts of a partner done in usual course of business and firm name.

2- Similarly, partner is liable for acts of a firm which are done collectively.

3- Firm is also liable if a particular partner does mis application of funds.

Minor as partner

1- Minor is not capable of entering into a Contract. So, He is not allowed to become partner in the firm.

2- Minor can be admitted only in the benefits / profits of the firm.

3- This way minor shall be receiving share of profit but he will not be liable to share any losses.

4- when minor becomes major, He must decide about whether he wish to become partner in the firm or not.

5- This decision should be made within 6 months of becoming major.

6- If no decision is made in 6 month period, he will deemed to be included as partner on expiry of 6 months.

7- If he decides to become partner or becomes partner automatically after 6 months. He will become liable for losses & liabilities since the date he was admitted to the firm for the first time as minor.

8- As minor, He cannot interfere in the daily working of firm but he can claim his Share of profits, can access books of A/c and can decide about partnership upon becoming major.

Entry and Exit of partners :-

1- Partner can be admitted only after obtaining consent of all existing partners.
New partner will bring capital and Share of profit losses in a pre determined manner.

2- Retirement of partner can take place at any time depending upon the decision of outgoing partner.
He will be able to retire without any approval of other partners.

3- Death can also be a reason for exit of a partner. upon death, legal Heir or representative can claim Settlement of accounts.

4- Insolvency is also a reason of exit when a partner becomes insolvent, He is unable to take and meet liabilities.

As he is not capable of making Contract, he can not remain in firm as partner.

If insolvent partner has any estate, it will be liable to the extent possible.

5- A partner can be expelled by majority partner only when following things are Considered :-

(a) Majority partners must decide expulsion.

(b) It must be done in good faith.

(c) It must be result of wrong done by partner.

(d) Such wrong done must create a bad impact on firm.

Right of transfree of a partners Interest :-

1- If a partner wishes to direct Some Share of his Share of profits, in favour of Someone else, this is allowed.

2- Partner who is giving his Share is called transferor and person who is receiving Such Share Shall be called transfree.

3- This transfree has no right of participating or interfering in the business of firm.

Revocation of Contrinuining guarantee after change in firm.

1- whenever there is a re constitution of firm, any guarantee running in Continuous nature gets cancelled.

2- If guarantee is to be reactivated, it must be again signed by new set of partners.

Registration of Partnership Firm

1- Registration means Submitting necessary papers to the registrar of firms and obtaining a certificate of Registration.

2- Once registered, partnership firm becomes an existing firm in the eyes of law.

3- After registration firm name should have a Suffix. i.e, Regd or Registered.

4- After registration partnership firm will have its own PAN and will become an assessee of Income tax.

5- Partnership registration is not compulsory in india. It means if a firm is unregistered, it can also operate the way registered firm operates.

6- Non-Registration does not make a firm illegal.

7- The only problem is that an unregistered firm suffers from certain disabilities.

(i) Partners can not claim any set off exceeding ₹100

(ii) Partners can not Sue third parties but third parties can Sue partners.

(iii) Partners can not Sue of each other except for the ~~set~~ matter of settlement of accounts upon ~~distri~~ dissolution.

8- These are the matters due to which it is always advised to get the firm registered.

9- It is not necessary that the firm needs to be registered from date of creation itself. It can be registered whenever needed.

10- Registration of partnership firm is done with the State government.

11- Partnership firm should not have certain names, otherwise registration may be refused :-

(a) Any name which gives an impession that it is a government enterprise.

(b) Crown

(c) Emperor

(d) Empress

(e) King

(f) Queen

(g) Empire

(h) Royal.

12- when partnership is to be registered following information must be submitted to Registrar of firm (ROR):-

(a) Name of the firm

(b) Nature of business

(c) Duration of firm
(d) Name and details of all Partners
(e) Address of principal place of business
(f) Address of other places of business
(g) Copy of partnership Deed.
(h) Date of Commencement of business.

Dissolution :-

1- Dissolution of partnership and dissolution of firm are 2 different things.

2- whenever there is entry exit of any partner due to admission, retirement, death, insolvency, expulsion, old partnership agreement ends and a new agreement starts.

This is called Dissolution of partnership but not the dissolution of firm.

3- Upon entry and exit of partners, partnership gets dissolved but firm continues to operate.

4- whenever business of firm is closed and relations of all partners come to an end, only then it is called Dissolution of firm.

5- whenever firm is dissolved, public Notice Should be given. After giving public notice, firm will not incur any new liability, otherwise liabilities will continue.

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6- Dissolution can be done in various ways. They are discussed under 2 Categories. They are as follows :-

(a) without order of Court — 4

(b) with order of Court — 7

7- following are the 4 ways in which dissolution may take place without intervention of Court :-

(a) By Mutual agreement —

which means all partners Collectively decide to discontinue the firm.

(b) By ~~compulsory~~ Dissolution mode —

which means partners are not willing to close the firm but circumstances are not allowing the Continuance.

Eg- Insolvency of all partners, business becoming illegal etc.

(c) Upon happening of an event -
which means an event takes place causing