

# Chapter - 3 Indian Partnership Act, 1932

## UNIT - 1 General Nature of Partnership

Partnership - Relation b/w persons who have agreed to share profits of the business carried on by all or any of them acting for all.

Partners - Persons who have entered into partnership with one another collectively called firm

Firm name - name under which business is carried on is called <sup>name</sup> firm

### Elements of Partnership

(1) Partnership is an association of two or more persons:

- Min 2 persons - recognised by law can become partners
- Minor cannot be a partner - can be only admitted only for benefits - with consent of all partners - firm cannot be a partner
- max 50 partners per sec 464 of company's act

(2) Agreement:

- ~~Partnership~~ partnership is result of agreement
- relates to voluntary contractual nature
- can be - express / implied, Oral / Written
- shows mutual understanding

(3) Business:

- Business means any trade, occupation or profession
- Motive - acquisition of gains



(4) Agreement to share profits:

- essential feature - no partnership exists without sharing of profits
- sharing of losses is not mandatory
- Partners must agree to <sup>share</sup> profits as discussed.

(5) Business carried on by all or any of them acting for all:

- Cardinal principle of partnership
- Shows there must be binding contract b/w both firm & partners
- Every partner is liable for firm as well as other partners
- A partner is principle as well as agent of both firm & any other partner.

mutual Agency  
 - Cardinal principal  
 - most imp  
 - conclusive evidence

Profit sharing  
 - essential  
 - persuasive evidence

## True Test of Partnership (Section 6)

### 1) Agreement:

- Partnership is created by agreement & not by status.
- Unlike HUF or Burmese Buddhist husband wife carrying

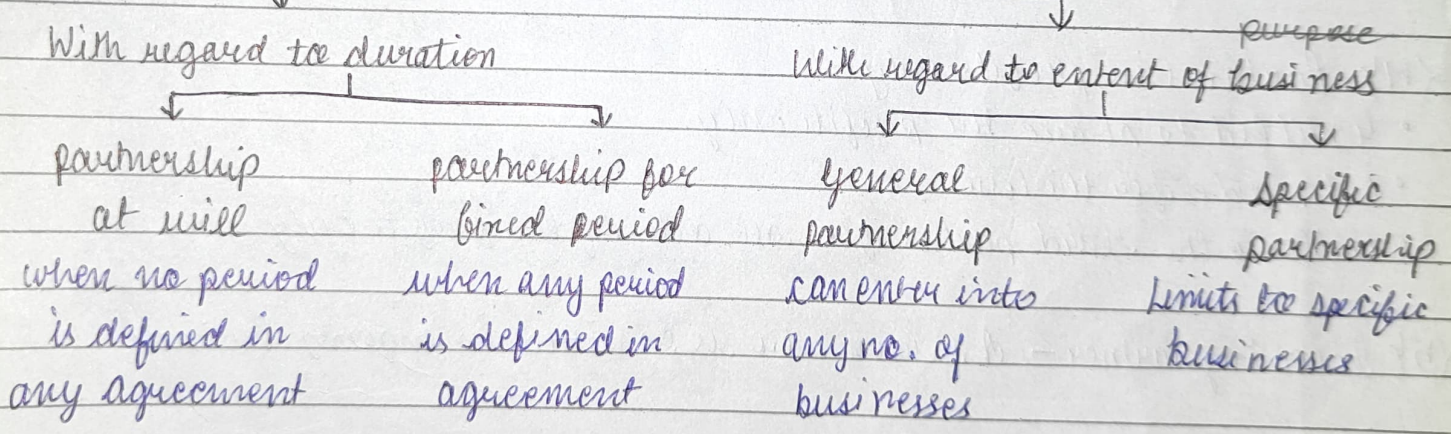
### 2) Sharing of profit:

- Every partner must be willing to share profits earned
- Acts as a prima facie evidence, as there are certain persons who shares profits but are not partners - like legal representatives of a deceased partner, commission agents, employees, etc.

### 3) Agency:

- Conclusive evidence
- Every partner shall be liable for act of other partner
- B/W partner's mutual agency is must

## Kinds of Partnership



~~Partnership~~ Partnership Deed :- Agreement b/w partners - oral or written has to be written if any immovable property exists - must be made with consent of all partners.

Contents -

- 1) Firm name
- 2) Partner's name
- 3) firm's Address
- 4) Date of commencement
- 5) Duration of firm
- 6) Capital contribution by partners
- 7) PSR
- 8) Admission (Retirement)
- 9) Remuneration, IOE, IOV, Drawings etc.
- 10) Rules of expulsion
- 11) Provision of settlement of A/Cs.

## Types of Partners

119 Active or ostensible partner - (Sec 24)

- who became partner by agreement
- who are actively involved in conduct of partnership
- On retirement, must give public notice

~~sleeping or Dormant Partner~~

129 Nominal Partner -

- who are partner's by agreement
- who are not actively involved in conduct.
- No need of public notice on retirement

139 Nominal partner -

Lend his name to firm → without having real interest in firm → Not entitled to profits of firm → Does not take part in business → liable to third party for acts of the firm

149 Partners in profits only -

- entitled to share the profits only
- Not liable for the losses
- Liable to the third parties for all acts of the profits only.

159 Incoming Partner - A person who is admitted in ongoing Business

169 Outgoing Partner -

A partner who leaves firm - rest of partner continues - until public notice is <sup>given</sup> given

179 Partner by Holding out (Sec 28)

- When a person represents himself
- or knowingly permit's other's
- to be represented as partner of firm
- he shall be liable as partner of firm
- to anyone who on such faith or representation given credit to firm.

# The Indian Partnership Act, 1932

Sections (Unit 2)

## Unit-2 Relations of partners

9-13	29-30
14-15	31-35
16-17	36
18-22	37
23-24	38
25-27	

### Section 9: General duties of a partner

- partner must be just and faithful to each other
- render true accounts and info
- bound to carry on business to the greatest common advantage

### Section 10: Duty to Indemnify for loss caused by fraud

- Partner shall be liable for any loss caused to firm by his fraud.

### Section 11: Rights and Duties of partner by contract b/w the partners -

- (1) determined / written in contract with consent of all partners
- (2) Agreement in restraint of trade (a partner shall not carry on any business other than that of firm while he is a partner).

Exception is Sec 27 of ICA

### Section 12: Conduct of Business

- (1) Right to participate
- (2) Perform duty diligently
- (3) Decision by majority
- (4) has right to access/inspect books of accounts
- (5) In death of a partner → his legal representatives has right to inspect books of firm.

} every partner

### Section 13: Mutual Rights and Liabilities (Deed is silent)

- (1) Remuneration - Not compulsory
- (2) PSR - equally
- (3) Interest on capital - only out of profits
- (4) Advance given by partner to firm - Interest @ 6% p.a
- (5) Advance given by partner to firm - firm has to repay
- (6) partner has to repay the loss incurred by him due to willful neglect

## Section 14 - Property of firm

- Joint property - Firm's property = partner's property
- Mutual Rights - partner must care firm's assets as their own
- Goodwill

## Section 15 - Application of property of the firm

the property of firm shall only be held / used for business purpose.

## Section 16 - Personal profit earned by partners

- (1) In transaction with firm } partner has to repay to firm
- (2) Competitive business

## Section 17 - Change in Rights & Duties of partner if

- Admission
- Retirement
- Death
- change of business
- Genuine

No change in  
R&D

## \* Section 18 - Partner as Agent of firm

Partners are agent to firm as well as partners for the purpose of the business of the firm and liable towards third party.

partner/authority - binds the firm

## Section 19 - Implied authority of partner / agent of firm

subject to sec 22.

(1) binds firm - if transaction in ordinary conduct of business

(2) Exceptions

(i) does not take firm to arbitration

(ii) open bank A/c on behalf of firm in his own name

(iii) purchase / acquire fixed assets (immovable prop.)

(iv) enter into a partnership on behalf of firm

(v) transfer immovable property

(vi) cannot admit any liability

(vii) cannot settle / compromise / relinquish case on behalf of firm -

\* Section 22 - mode of binding firm

An act/instrument should be done → on behalf of firm  
(signing the documents)

Section 20 - Extension & Restriction of partners's implied authority depends on third party if they knew rights or not.

Section 21 - Partner's Authority in an emergency

If partners → pays on firm's behalf → firm's duty is to repay  
(to protect the firm from loss) (such acts binds the firm)

Section 23 - Effect of admissions by a partner

Any act in ordinary course of business within authority shall bind firm.

Section 24 - Effect of notice to acting partner:

Firm shall be liable towards all acts of partners done in good faith except in case of fraud.

Section 25 - Liability of a partner for acts of firm

Every partners shall be liable for all acts towards third party

Section 26 - Liability of firm for wrongful acts of a partner

Firm shall be liable towards third party for all wrongful acts of partner

Section 27 - Liability of firm for misapplication by partners

Any amount received by firm / partner (as partner) has misapplication than firm shall be liable towards third party.

Section 28 Right of estoppel (Unit 1)

### \* Section 29 - Right of transferee of a partner's interest

- Just like asset → partner's interest/share in a firm can be sold/mortgaged
- Right's of transferee → ~~can~~ receives profit  
→ cannot interfere in business nor can ask for books of accounts.
- if partner leaves the firm or firm dissolve  
↳ transferee can claim his share

### \* Section 30 - Minor admitted to the benefits of partnership

- Minor cannot be partner in partnership firm
- However, can be admitted for profits only with consent of the existing partners
- Rights - can ask for books per Accs.  
- can sue partners for account or non-payment of his share
- only the profits share is liable for losses and not his personal liabilities

After Attaining majority → within 6 months

- ↳ quit (public notice)
- ↳ continue (as a normal partner)

### Section - 31 - Introduction of a partner

- by consent of all partners ~~and all per agreement~~
- shall not be liable for acts/liability before such admission

### Section 32 - Retirement of partner

- consent of all partners
- according express contract/agreement
- should give public notice → after giving PN he is not liable for liabilities & profits
- can ask for share settlement

### Section 33 - Expulsion of a partner

- agreement power
  - majority
  - good faith
- ↳ partnership interest  
↳ public notice  
↳ opportunity of being heard

## Section 34 - Insolvency of a partner

- Adjudicated as insolvent → partner ceases to partner
- Partner assets / estate → not liable for firm
- Firm's assets / estate → not liable for partner

## Section 35 - Death of a partner

- estate of partner not liable for any act of firm after death
- non-payment of share can create annuity
- legal representatives can ask for inspect of books of accounts

## Section 36 - Rights of outgoing partner to carry on competing business:

- Can carry on business without using  
→ firm's name  
→ represent himself as carrying business of firm  
→ solicit persons dealing with firm before.
- Agreement in restraint of trade → period of business

## Section 37 - Right of outgoing partner to share subsequent profits if account unsettled → charge create → profit share / 6:1 interest

## Section 38 - Revocation of continuing guarantee

partner change → continue guarantee revoked automatically  
firm

### Sec 31 - Admission

### Sec 32 - Retirement

### Sec 33 - Expulsion

### Sec 34 - Insolvency

### Sec 35 - Death

### Sec 36 - Retire partner to carry on competing business

S - Solicit

R - Representation

N - Name



## Unit-3 Registration and Dissolution of firm

### Registration of firm -

Sec 58 - Application in prescribed form with prescribed fees along with following details:-

1. Name of firm
2. Principal & other place of business
3. Date when each partner joined firm
4. Name & address of partners
5. Duration of firm

Application shall be signed by all partners

Sec 59 - On ~~stat~~ satisfying register shall enter firm name in Register of firm.

### Section 69 - Consequences of Non-registration \*

1) No civil suit can be filed by partner against firm or other co partner.

2) No suit in civil court by firm against third party

3) Firm cannot make set-off or other proceedings

4) Third party may sue firm

### Exceptions -

1. Third party may sue firm.

2. Partner has right to sue for dissolution

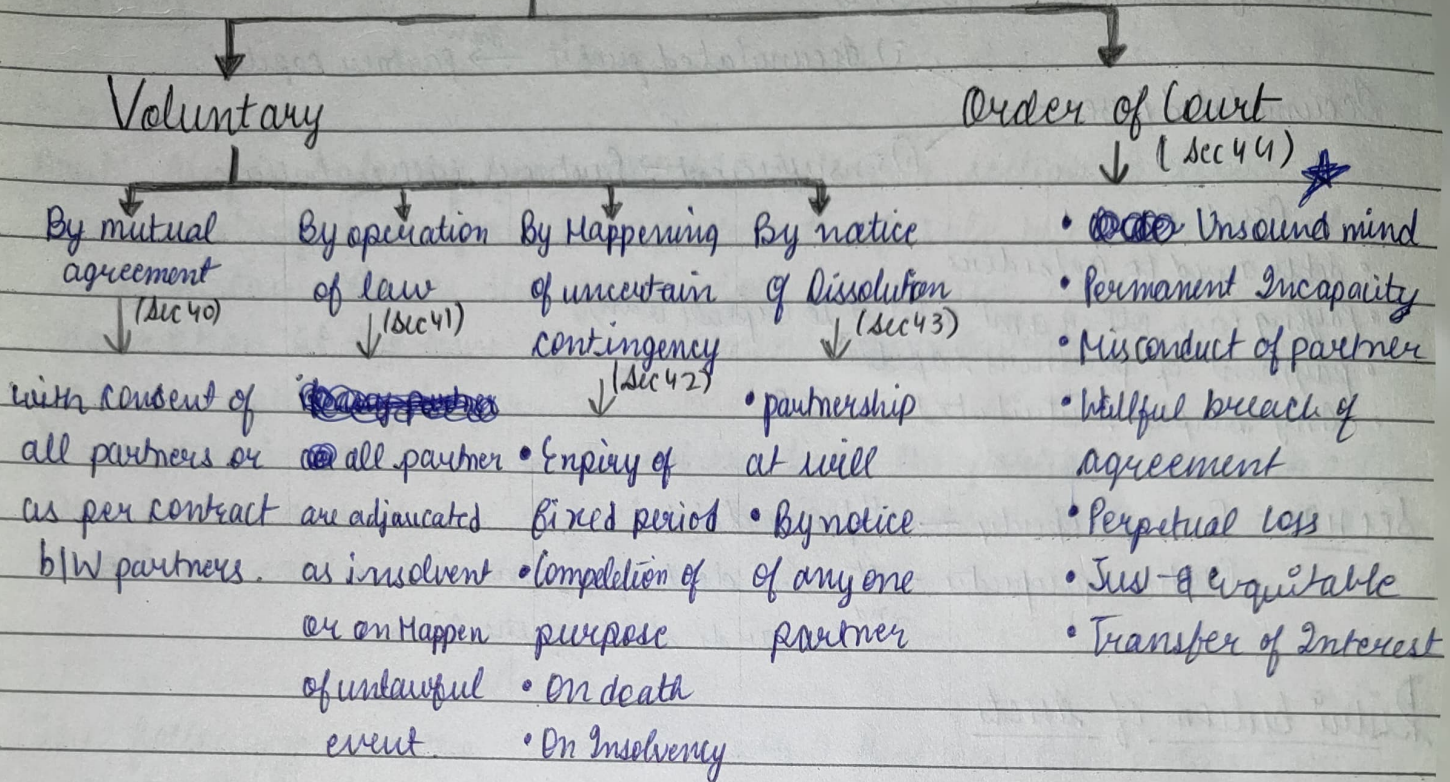
3. Power of official assignee or liquidator

4. Right to sue or claim a set-off, if the value of suit does not exceed ₹100.

### Section 39 - Dissolution of firm

Discontinuance of legal relation b/w all partners of firm

# Mode of Dissolution (Section 40-44)



## Section 45-55 — Consequences of Dissolution (Not asked)

1. Partners shall continue to be liable until they give public notice.
2. Partners have right to windup business.
3. Continuing authority of partners ~~after~~ after winding up.
4. Settlement of partnership accounts.
5. Personal profit earned by partners.

### Consequences of Non-registration -

① Firm registered → Partner dies  
A B (C) } can sue the third party in firm name is valid  
 • continue firm in same name (A+B)  
 • Without informing ROF.

② Same as ① case - On death of new partner admitted  
D admits - ROF is not informed  
A B (D) - Firm cannot sue in same name

Two conditions to sue third party → ① partners should be same as earlier  
 ② Firm should be registered

## Mode of Settlement - (Sec 43)

Accumulated losses  $\left\{ \begin{array}{l} \text{i) Accumulated profit} \xrightarrow{\text{then}} \text{partner capital} \\ \text{ii) Insufficient} \rightarrow \text{Partners will contribute} \end{array} \right.$

### Assets Use

- debts owed to outsiders
- paying each other amt related to capital (loan)
- payment of partners' capital
- Any surplus distributed in PSR

Sec 49 - Firm property - 1<sup>st</sup> firm debts

Partner property - 1<sup>st</sup> own debts of partners

- 2<sup>nd</sup> towards debts of the firm

## Distribution of Assets

Sec 45 - Dissolution by self  $\rightarrow$  Public Notice

(Dissolution not active until public notice)

Any person Retire, Dead, Insolvency  $\rightarrow$  not liable

Sec 46 - Right of partners  $\rightarrow$  sell assets  $\xrightarrow{\text{pass}}$  liability

Surplus arise  $\rightarrow$  distribute in PSR

Sec 47 - Authority while winding up -

1. complete the Incomplete transaction
2. winding up by selling assets & pay off liability.