

## Chapter - 11 :-

### The Indian Partnership Act, 1932

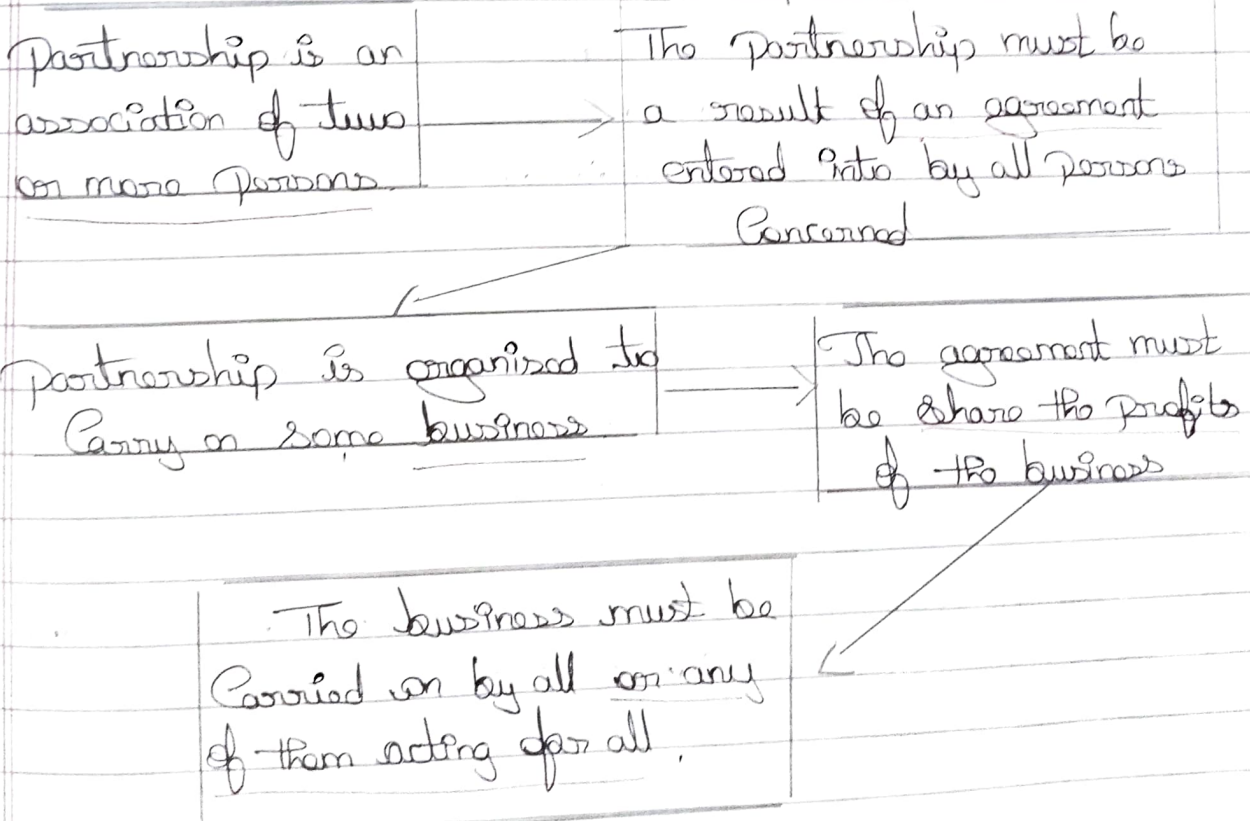
#### Unit - 1 : General Nature of Partnership

#### The Indian Partnership Act 1932

Section 4 of the Indian Partnership Act, 1932 defines Partnership in the following terms.

"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.

#### ELEMENTS OF PARTNERSHIP :-



## TRUE TEST OF PARTNERSHIP

- \* There was an agreement between all the persons concerned.
- \* The agreement was to share the profits of a business and.
- \* The business was carried on by all or any of them acting for all.

## Partnership vs Company

Basis	Company	Partnership firm
Liability	In a Company, liability of the members can be limited by shares by guarantee. There can be unlimited liability also.	Liability of members is unlimited in a partnership firm.
Agency	A member is not an agent of Company or of other members.	Partner is an agent of firm and other partners.
Management	only director members can take part in management.	partners can take part in management of a firm.
winding up	A Company is wind up by National Company law Tribunal or its name is struck off by the court.	A Partnership may be dissolved by any partner at any time if all the partners agree.

## Partnership Vs Club.

Basis	Partnership	Club
Objective.	Profit	Not profit.
Relationship	Partners	Members
Interest in the profit	Yes	No
Dissolution	Change in partners effect existence.	Change in the membership of a club does not affect its existence.

## Partnership Vs Co-ownership

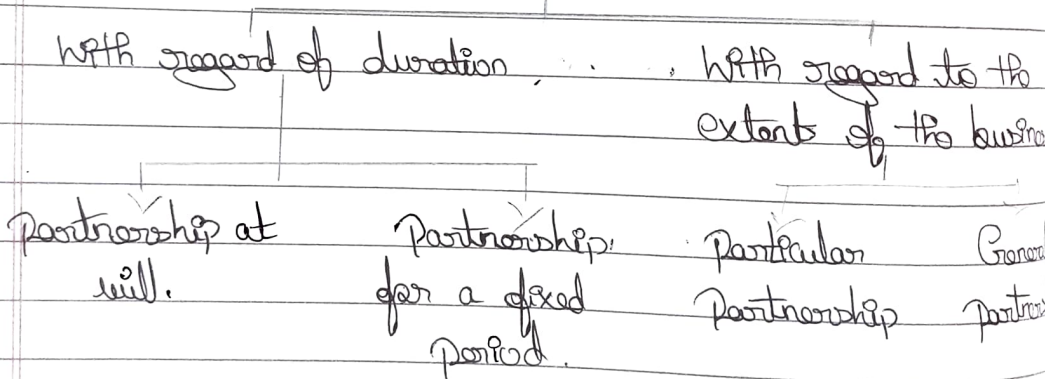
Basis	Partnership	Co-ownership
Formation	Contract, express or implied.	Agreement operation of law inheritance.
Implied agency	Yes	No
Nature of interest	Sharing of Profit and losses.	Not necessarily profits and losses.
Transfer of ownership	Only with transfer of partners.	Without owners.

## Partnership Vs Association

Basics	Partnership	Association
Objective	To share the profits of a business.	Share profit interests is not to enter in a business.
Examples.	To run a business to profit thereon.	Corporation in religious association.

## Kinds of Partnerships

### kinds of partnership



## Partnership deed:

- \* A Partnership is formed by an agreement.
- \* This agreement may be in writing or oral. Though the law does not expressly require that the Partnership agreement should be in writing is desirable to have it in writing in order to avoid any dispute with regard to the terms of the Partnership.
- \* The document which contains the terms of a Partnership as agreed among the partners is called "Partnership Deed".
- \* The Partnership Deed is to be duly stamped as per the Indian Stamp Act, and duly signed by all the Partners.

Partnership deed may contain the following information:-

- \* Name of the Partnership firm.
- \* Names of all the partners.
- \* Nature and place of the business of the firm.
- \* Date of Commencement of Partnership.
- \* Duration of the Partnership firm.
- \* Capital Contribution of each partner.
- \* Profit sharing ratio of the partners.

- \* Admission and retirement of a partner.
- \* Rates of interest on Capital, Drawings and loans.
- \* Provisions for settlement of accounts in the case of dissolution of the firm.
- \* Provision for salaries or Commission, payable to the partners, if any.

### Types of Partners:

- \* Active or ostensible.
- \* Nominal
- \* Sub partner
- \* Outgoing partner
- \* Sleeping or dormant
- \* Partner in profits only
- \* Incoming partner.
- \* Partner by holding out,

Unit-2

## Relations of Partners.

## Relation of Partners to one another.

## General duties of partners :-

- \* To Carry on the business of the firm, to be just and faithful, to give true accounts and Complete information.
- \* To indemnify the firm for the loss caused by him during the conduct of the firm's business.
- \* To contribute to the losses of the firm in equal proportion.
- \* Not to assign his own share to some other party.
- \* To attend to his duties diligently.

## Rights of partners.

- \* Right to take part in the conduct of the Business.
- \* Right to be consulted
- \* Right of access to books.
- \* Right to remuneration.
- \* Right to share Profits.
- \* Right to Interest on Capital.

- \* Right to Interest on advances
- \* Right to be Indemnified.

## Partnership Property

The Property of the firm  
(Section 14)

Goodwill of the  
firm

Application of the property  
of the firm (Section 15)

- Where the property belongs to a person, it does not become a property of the Partnership merely because it is used for the business of the Partnership, unless transferred through agreement.
- The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following terms.



## Personal Profit earned by partners

According to Section 16,

- (a) If a partner derives any profit for himself from any transactions of the firm, or from the use of the property or business connections of the firm or the firm name, he shall account for that profit and pay it to the firm.
- (b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

## Relation of partners to third parties

- \* Nature and extent of liability of firm from the acts of a partner (Sec. 18-27)
- \* Doctrine of Holding out - Creating liability of a non partner (Sec. 28)
- \* Rights of transferee of a partner's interest (Sec. 29)
- \* Position of minors admitted to the benefits of partnership (Sec. 30)

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## \* Nature and extent of liability of firm for the acts of a partner (Sec. 18-21)

Section 18 Partners to be agent of the firm - Subject to the provisions of this act, a partner is the agent of the firm for the purpose of the business of the firm.

All the laws applicable to agent would apply on partners as well.

Agency extended only to the business and does not cover works in the individual capacity.

The agency operates against sleeping or dormant partners as well, they too are liable for the acts of acting or ostensible partners.

### Authority of a partner:

\* It means capacity of partner to bind others by this act.

\* Does all acts of partners binds the firm ???

\* No, only the acts related to the business of the firm binds the firm.

\* Example - ABC firm, Mr. A, a partner in the firm books tickets through travel agent for a holiday. This partner A does not make payment to the travel agent. Can we say firm is bound for this act of A?

\* Firm will not be bound by his acts because this act was done for his personal purposes.

## Implied authority of the partners (Section 19)

- \* Expressed authority - Given by agreement on Partnership deed.
- \* Implied authority - the acts or conduct of the partner is related to the normal business of the firm.
  - ↳ acts in usual way of carrying the business.
  - ↳ acts in firm's name or intention to bind the firm.

## Restrictions on Implied Authority

Statutory restrictions on Implied authority - means partner's cannot do the following acts unless agreed in the partnership agreement:-

- \* Submit a dispute for arbitration
- \* open a banking account on behalf of the firm in his personal name;
- \* Compromise or relinquish any claim by the firm
- \* Withdraw a suit or proceeding filed by firm.
- \* Admit any liability in a suit or proceeding against the firm.
- \* Acquire immovable property on firm's behalf.
- \* Transfer immovable property belonging to the firm.
- \* Enter into partnership on behalf of the firm.

## Extension and Restriction of Partner's Implied Authority (Section 20)

Partners by mutual agreement extend or restrict the implied authority.

This third party is not bound by such restriction, unless he has knowledge about such restrictions.

Example:- A, B and C partners selling furniture. A agreed not to buy furniture of more than Rs. 10,000. But he purchased furniture of Rs. 20,000 from X. X is not aware of this restriction. So X can always claim the money from the firm. But if X is aware of the restriction that A cannot buy more than 10,000 & still he supplies him furniture for Rs. 20,000 then he cannot claim it from the firm as he was already aware of restriction.

## Liability of Third Parties (Sec 25-27)

⇒ Liability of a Partner for acts of the firm:

Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

⇒ Liability of firm for wrongful acts of partner:

Done in ordinary course and within authority firm will be liable.

→ Liability of firm for misapplication by partners.

Partners receive money while acting in authority or money come into the custody of the firm and it misapplied by partners, firm will be liable to third party.

## Unit - 5 : Registration and dissolution of a firm.

### Registration of firms

- (a) Application for registration (Section 58):
- (b) The firm's name
- (c) The place or principal place of business of the firm,
- (d) The names of any other places where the firm carries on business,
- (e) The date when each partner joined the firm,
- (f) The name in full and permanent addresses of the partners
- The duration of the firm.

### Registration of firm:

Section 59 when the registration is submitted that the provisions of section 58 have been duly complied with, he shall record an entry in the register which is called register of firms and shall file the statements

Then he shall issue a certificate of registration.

### Registration when complete.

- ⇒ Compliance [Section 58] ⇒ Certificate of registration.
- ⇒ Recording of statement in register [Section 59].

## Consequences of non-registration (Section 69)

- \* No suit in a Civil Court by firm or other Co-partners against third party.
- \* No relief to partners for set-off of claim
- \* Affiliated partners cannot bring legal action against other partners or the firm.
- \* Third party can sue the firm.

## Dissolution of firm (Section 39-47)

According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the dissolution of the firm.

## Modes of dissolution (Section 40-44)

Dissolution by agreement (Sec. 40)

Compulsory dissolution (Sec. 41)

Contingent dissolution or dissolution by operations of law (Sec. 42)

Dissolution by notice (Sec. 43)

Dissolution by Court (Sec. 44)

## Dissolution by agreement: (Sec. 40)

- Section 40 A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.
- Depends on the Contract.
- Dissolution can be inferred also from the circumstances such as closure of the business or final accounts.

## Compulsory dissolution (Section 41)

- A firm is Compulsorily dissolved
- ⇒ By the adjudication of all the partners or of all the partners but one as insolvent; or
- ⇒ By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

## Dissolution on the happening of Certain Contingencies (Section 42):

- Where the firm is constituted for a fixed term, on the expiry of that term.
- Constituted to carry out one or more adventures.
- By the death of a partner, and
- By the adjudication of a partner as an insolvent.



## Dissolution by Notice:

- ⇒ Section 43 dissolution by notice in Partnership at will
- ⇒ Section 43(1) Any partner can communicate his intention for dissolution of the firm.
- ⇒ Section 43(2) The effective date of dissolution is the date which is mentioned and if no date is given the effective date would be the date of communication.

## Dissolution by Court (Section 44)

- \* Partner becomes of unsound mind 44(a)
- \* Permanent incapacity. 44(b)
- \* Guilty of conduct which affects carrying on the business. 44(c)
- \* Wilfully or persistent breach of ~~any~~ agreement 44(d)
- \* Transfer of interest. 44(e)
- \* Loss in the business. 44(f)
- \* Just and equitable grounds. 44(g)

## Consequences of dissolution (Section 45)

### (a) Liability for acts of partners done after dissolution (Section 45):

- \* Section 45 has two fold objectives.
- \* It seeks to protect third parties dealing with the firm who had no notice of prior dissolution.
- \* It also seeks to protect partners of a dissolved firm from liability towards third parties.

### (b) Right to have business wound up after dissolution (Sec. 46):

Right to clear off the debts and appropriate the surplus among partners or their representatives.

### (c) Continuing authority of partners for purpose of winding up (Sec. 47):

A mere dissolution does not bring about a complete extinction of the firm, which continues and till the liability of the firm are not paid, no partner can claim any particular property or his share in assets.

## iv) Mode of settlement of Partnership accounts (Section 48)

48 (a) losses, including deficiencies of Capital to be paid.

Payment first by profit. Capital. Personal assets in proportion to share.

48 (b) The assets of the firms to be applied as

- Third party entitlement. Partner entitlement against firm share contribution. Towards entitlement as per Capital of the partners. The residue is to be divided among the partners in P & R.

## Payment of firm debts and of separate debts (Section 49):

⇒ Property of the firm shall be applied in payment of firm debt and if any surplus is there, then share of each partner shall be applied to the payment of his separate debt.

⇒ Separate property of any partner shall be applied first in the payment his separate debt and if any surplus, it should be used for payment of firm debt.