

The Indian Partnership Act 1932

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Page

Sec-4:-

Definition:- A partnership is a relationship between two or more people, who have agreed to share profits carried on by all or any of them acting on behalf of all.

- * Each person is called a partner.
- * Together, they are referred to as a firm.
- * The name they use for their business is known as firm name.

Sec-5:-

Agreement in partnership:-

- A partnership is formed through an agreement, not by status.
- It arises from a contract, not personal or family relationship.
Eg.- Member of a hindu undivided family or a buddhist couple running a family business are not partners.

Sec-6:-

Mode of Determining Existence of partnership (sec-6):-

1.) **Agreement:-** Partnership must arise from an agreement, not status.

2.) **Sharing of profit:-** Sharing of profit is essential but not conclusive evidence of a partnership.

• Sharing profits does not make someone a partner if:-

- a) They are a lender of money.
- b) They are servant/agent receiving remuneration.
- c) They are widow/child receiving an annuity.
- d) They are a seller of goodwill receiving consideration.

• The entire agreement & conduct must be considered to establish partnership.

3.) **Mutual Agency:-**

- Each partner is an agent & principal for other.
- Actions by one partner on behalf of the firm bind all partners.
- Mutual agency is a key factor to confirm the existence of partnership.

Sec-7:- Partnership at will:-

A Partnership at Exist at (will) when:-

- 1-) No fixed duration is agreed upon for the partnership.
- 2-) No conditions are set for ending the partnership.

Key points:-

- ★ If there is an agreement specifying the duration or condition for termination, it is not a partnership at will.
- ★ A fixed term partnership that continues after its term expires becomes a partnership at will.
- ★ A fixed term partnership that continues after its term expires becomes a partnership at will.
- ★ It can be dissolved by any partner by giving written notice to all other partners.

Sec-8:- Particular Partnership:-

- 1-) A specific venture or undertaking :- The partnership exists only until the specific project or task is completed.
- 2-) A fixed time period:- The partnership ends once the agreed period expires.

Note:- If the partners continue business beyond the venture or period without renewal, it may become a partnership at will.

Sec-28:- Partner By holding out:-

A partnership by holding out, also called partnership by Estoppel arises when:-

- ★ A person represents themselves as a partner or allows others to present them as a partner.
- ★ Creditors act on this belief & extend credit to the firm.
- ★ Such person is liable for firm related debts, even if they are not an actual partner.

Key points:-

- 1) **Inducing belief**:- Liability arises if someone, by words, actions or silence, leads others to believe they are a partner.
- 2) **No fraudulent Intent Required**:- fraudulent Intent is not necessary to impose liability.
- 3) **former partner**:- A Retired partner who hasn't given public notice of Retirement is also liable for debts incurred by the firm using their name.

Sec-33 :- **Expulsion of Partner**:-

A partner can only be expelled from the firm if:-

- 1) **Power of Expulsion**:- It must be included in partnership contract.
- 2) **Majority decision**:- The decision must be made by a majority of partner.
- 3) **Good faith**:- The Expulsion must be in good faith, in the best interest of the firm.

*** If any of these conditions are not met, the Expulsion is invalid.**

Test of Good faith:-

- 1) The Expulsion must benefit the partnership.
- 2) The expelled partner must be served with notice.
- 3) The expelled partner must be given an opportunity to be heard.

Key points:-

*** Invalid Expulsion**:- If the Expulsion is not done in good faith, it is void but does not automatically dissolve the firm.

*** Continued partnership**:- An Invalid Expulsion does not end the Partnership, even if the partnership was at will & it will continue as before.

Liability of partner for acts of firm :- (Sec-25)

- **Joint & Several liability** :- partners are jointly & severally liable to 3rd parties for all acts within the scope of their express or implied authority.
- **Acts of firms** :- Refers to acts or omission by any partner or agent that given to rise a right enforceable by or against the firm.
- **conditions** :- The act must have been done while the person was a partner.

Liability of the firm for wrongful acts of a partner (Sec-26)

- **firm's liability** :- The firm is liable to the same extent as a partner for any loss or injury caused to a third party due to wrongful acts by a partner, provided :-
 - The act was done in the ordinary course of business.
 - The act was done with the authority of the partners.
- **Unauthorized Methods** :- The firm is liable even if partner's method was unauthorized, as long as the act was authorized in substance.

Sec-27 :- liability of the firm for Misapplication by partners :-

- ★ A firm is liable for the misapplication of money or property within their authority but misapplies it [Clause-a]
 - ★ The Money or property is in the firm's possession & it is misapplied by a partner. [Clause-b].
- In both cases, the firm is liable for the misapplication.

Sec-37:- Right of outgoing partner in certain cases to share Subsequent profits:-

1. Applicability:-

* When an outgoing partner (due to death or otherwise) leaves without final A/C Settlement.

* Remaining partners continue the business using firm's property.

2. Right of outgoing partner or Estate:-

* Option-1:- Share of profits made after they ceased to be a partner, based on the use of their share of firm property.

* Option-2:- Interest at 6% p.a. on their share in the firm's property.

Exception:-

* If the partners have a contract giving the continuing partners the right to buy the outgoing partner's share, & the contract terms are followed:-

* Failure to comply with the contract terms makes the partner liable to A/C for profit.

* The outgoing partner or their estate cannot claim additional profit.

Sec-24:- Effect of Notice to Acting partner:-

1. Notice to an active partner is considered notice to the firm.

2. Not valid in case of fraud by or with that partner's consent.

3. Must be actual, received by a working partner, & related to the firm's business.

Sec-30(5) :- position of Minor Partner :-

A minor, upon attaining majority must :-

- 1) Decide whether to continue as a partner or not within 6 months.
- 2) This period starts from :-
 - The date of Majority, or
 - The date they gain knowledge of their admission into the partnership, whichever is later.
- 3.) Failure to decide within the time frame makes them a partner by default.

Dissolution of firm :- Sec-39 :-

- * Refers to the discontinuation of the legal relationship between all partners in the firm.
- * Dissolution of partnership occurs when one or more partners retire, die or become incapacitated, but the remaining partners may choose to continue the business.
- Dissolution of firm, refers to the end of the entire firm's existence.

Modes of Dissolution [Sec-40-44].

- **Dissolution by agreement :- Sec-40 :-** Partner can agree to dissolve the firm based on mutual consent etc an existing partnership contract.
- **Compulsory Dissolution :- Sec-41 :-** A firm compulsorily dissolved if all partners are adjudicated insolvent or the business becomes insolvent or business becomes unlawful. However, if the firm carries out separate undertakings illegality of one does not dissolve the entire firm.

• **Dissolution by contingencies [Sec-42]:** A firm can be dissolved upon certain events outlined in the partnership contract; Eg death of a partner, completion of venture

• **Dissolution by Notice :- Sec-43:-** In a partnership at will, any partner can dissolve the firm by giving written notice. The dissolution takes effect from the date in the notice or the date of communication.

Sec-44:- Dissolution by court :-

The court may dissolve a partnership firm on following grounds:-

- 1) **Insanity :- 44(a) :-** If a partner becomes unsound mind.
- 2) **Permanent Incapacity :- ^(44b)** If a partner is permanently incapable / unable to work.
- 3) **Misconduct :- (44)c -** If a partner's misconduct harms a business.
- 4) **Breach Agreement :- ^(44d)** If a partner transfers their share without consent.
- 5) **Transfer of Interest - (44-e) -** If a partner transfers their share without consent.
- 6) **Continuous losses :- (44f) :-** If the business can only operate at a loss.
- 7) **Just & Equitable ground - (44g) -** For other reasons like deadlock or loss of business purpose.

Sec-69:- Following consequences of Non-registration of Partnership firms in India:-

- 1.) No suit in civil court by firm or other co-partner against 3rd party:- No any partner can file a suit in civil court if firm is not Registered.
- 2.) No Relief to partner for set off claim:- if any action brought against the firm by 3rd party neither the firm nor the partner can claim the set off exceed ₹ 100 only.
- 3.) Aggrieved party cannot bring legal action against other partner or the firm:-
A partner of unregistered firm cannot file a suit on other partner except dissolution, during dissolution partner can raise or sue for account & realization of his share in the firm's property where the firm is dissolved.
- 4.) Third party can sue the firm:- in case of unregistered firm, an action can be brought against the firm by 3rd party.

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