

## **Chapter – 4 – The Indian Partnership Act, 1932**

### **Unit – 1 – General Nature of Partnership**

#### **Definition (Section - 4)**

Partnership - '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.

Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm', and the name under which their business is carried on is called the 'firm name'.

#### **Elements of Partnership**

##### **1) Association of Two or More Persons:**

- Partnership is an association of 2 or more persons. Only persons recognized by law can enter into an agreement of partnership.
- Minor can't be a partner in a firm, but with consent of all partners, may be admitted to benefits of partnership.
- firm, since it is not a person recognized in the eyes of law cannot be a partner.
- Maximum No. of Partners - IPA - silent but section 464 of the Companies Act, 2013 put a limit of 50 partners.

##### **2) Agreement:**

- Partnership is the result of an agreement. There must be a voluntary contractual agreement.
- It may be express or implied, It may be oral or in writing.

##### **3) Business:**

- There must be some business. (Includes every trade, occupation & profession)
- Motive of business is "acquisition of gains"
- No Partnership, If no intention to carry business & to share profits.

##### **4) Agreement to Share Profits:**

- Sharing of profit is essential, No partnership where only one partner gets whole profits.
- But sharing of losses is not essential, Any manner of PSR is allowed.
- In lossess, unless otherwise agreed, these must be borne in PSR.

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

- There should be a binding contract of mutual agency (This is cardinal principal of partnership)
- Act of one partner in the course of business is an act of all partners.
- Each partner is principal as well as the agent for all other partners.
- Agent as he can bind other partners and principal as he is bound by other partners.

- True test of partnership is mutual agency rather than sharing of profits. (No mutual agency, No partnership)

**In KD Kamath & Co. - SC has held two essential conditions for partnership**

- Sharing of profits as well as losses and
- Business must be carried on by all or any of them acting for all.
- If exclusive power & control by agreement is vested with one partner, These are not destructive of partnership theory if above 2 conditions are satisfied.

### **True Test of Partnership (Section - 6)**

#### **1) There was an agreement between all the persons concerned; (Section - 5)**

- Agreement/Relationship is created by agreement and not by status.
- Member of HUF or a Burmese buddhist husband and wife are not partners in business.

#### **2) Agreement was to share the profits of a business and**

- Sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.
- The receipt of profits or payment contingent upon earning does not itself make the following persons as partners of the business
  - by a lender of money to persons engaged or about to engage in business
  - by a servant or agent as remuneration
  - by a widow or child of a deceased partner, as annuity, or
  - by a previous owner or part owner of business, as consideration for the sale of the goodwill or share thereof.
- Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence.
- When there is no specific agreement as to determination of partnership, Refer Sec - 6.
- All relevant facts such as written or verbal agreement, real intention, conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the partnership.

#### **3) Business was carried on by all or any of them acting for all (Point 5 of elements)**

**In Santiranjan Das Gupta Vs. Dasyran Murzamull (SC looked to conclude no partnership)**

- Parties have not retained any record of terms and conditions of partnership.
- Partnership business has maintained no accounts of its own, which would be open to inspection
- No account of the partnership was opened with any bank.
- No written intimation was conveyed to Deputy Director of Procurement w.r.t new partnership.

### **Partnership Vs. Joint Stock Company**

1) Legal Status	2) Agency	3) Profit distribution	4) Extent of Liability
5) Property	6) Transfer of Shares	7) Management	8) Registration
9) Winding Up	10) No. of Members	11) Duration of Existence	

### Partnership Vs. Club

1) Definition	2) Relationship	3) Interest in Prop.	4) Dissolution
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### Partnership Vs. Hindu Undivided Family

1) Mode of Creation	2) Death of Member	3) Management	4) Authority to bind
5) Liability	6) Closure of A/cs	7) Governing Law	8) Capacity of minor
9) Continuity	10) No. of Members	11) Share in the business	

### Partnership Vs. Co-ownership

1) Formation	2) Implied Agency	3) Nature of Interest	4) Trf of Interest
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### Partnership Vs. Association

1) Meaning	2) Example
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### Kinds of Partnership

#### 1) Partnership at Will (Section - 7)

- No fixed period has been agreed upon for the duration of the partnership; and
- No provision made as to the determination of the partnership.
- If there is an agreement either for duration determination, then it is not partnership at will.
- Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.
- A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

#### 2) Partnership for a fixed period

- Provision is made by contract for duration of the partnership
- Created for a particular period of time, Ends after expiry of the fixed period.

#### 3) Particular partnership

- Organized for the prosecution of single adventure or conduct of a continuous business

- person becomes a partner with another person in any particular adventure or undertaking
- Subject to any agreement, dissolved by the completion of the adventure or undertaking.

#### 4) General partnership

- Constituted w.r.t the business in general. (Business is not known)
- Different from particular partnership & LLP.
- Liability of partner in particular partnership extends only to that adventure, but not so in case of general partnership.

#### Partnership Deed

- Partnership is the result of an agreement
- No formalities required, may be in writing or verbal, but desirable in writing to avoid disputes.
- Contains various T&C as to the relation of partners to each other is called partnership deed.
- Should be drafted with care and stamped according to the Stamp Act, 1899.
- If Immovable property, Instrument must be in writing, stamped & registered.

#### Contain the following information's:

1) Name of the partnership firm.	2) Names of all the partners.
3) Nature & Place of business of firm	4) Date of commencement of partnership.
5) PSR of partners	6) Admission & Retirement of partner
7) Rates of Int on capital, drawings & Loans.	
8) Provisions for settlement of accounts in the case of dissolution of the firm.	
9) Provisions for expulsion of a partner in case of gross breach of duty or fraud.	
Note: A partnership firm may add or delete any provision according to the needs of the firm.	

#### Types of Partners:

##### 1) Active or Actual or Ostensible partner

- Acts as an agent of other partners for all acts done in the ordinary course of business
- On retirement, he must give a public notice in order to absolve himself of liabilities.

##### 2) Sleeping or Dormant Partner:

- Share Profit & Losses but are not liable to third parties.
- Also, no public notice required on retirement.

##### 3) Nominal Partner:

- lends his name to the firm, without having any real interest in it,

- Neither invest, nor takes any part in business but are liable to third parties for all acts.

#### **4) Partner in profits only:**

- Entitled to share the profits only without being liable for the losses
- Also liable to third parties for all acts.

#### **5) Incoming partners:**

- Admitted as a partner into an already existing firm with consent of all the existing partners
- Remains liable to third parties for all acts of firm until public notice is given of his retirement.

#### **6) Outgoing partners:**

- Partner who leaves a firm in which the rest of the partners continue to carry on business
- Remains liable to third parties for all acts of firm until public notice is given of his retirement.

#### **7) Partner by holding out/Partnership by estoppel (Section 28):**

- Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.
- A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner.
- Only the person to whom the representation has been made and who has acted thereon that has, right to enforce liability arising out of 'holding out'.
- It is not necessary to show that purpose of representation was a fraudulent intention.
- Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement.

In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

## **Chapter – 4 – The Indian Partnership Act, 1932**

### **Unit – 2 – Relations of Partners**

#### **Relation of Partners to One Another**

<b>1) General Duties of Partners (Sec - 9)</b> -> Carry business on greatest common adv. -> Render full information -> Utmost good faith -> Render a/cs to each other (Kept by one, prima facie proper person to explain)	<b>2) Duty to indemnify for Loss caused by fraud (Sec - 10)</b> -> Make good the loss sustained by firm -> Amount bought - Divided between partners -> If fraud, Co-partners can throw whole consequences upon him.
<b>3) Rights &amp; Duties by Contract (Sec - 11)</b> -> Subject to the provisions of this Act determined by contract -> Varied by consent of all the partners	<b>4) Conduct of the Business (Sec - 12)</b> i) Take part in the conduct of business ii) Attend diligently in the conduct of business iii) Right to be consulted -> Difference - Majority but no change in the nature of business without the consent of all. iv) Access to books of accounts (allowed to all) v) Right of LR/H/A -> Access, Inspect, take copies of BoA.
<b>5) Mutual Rights &amp; Duties (Sec - 13)</b> <b>i) Right to remuneration</b> -> No remuneration for taking part in business subject to express agreement or dealings. But, If customary to pay remuneration, partner can claim it even without <b>ii) Right to share Profits</b> -> If no agreement is made, partners will share profit and loss equally. If agreement made, It will prevail. Also there is no connection between PSR and capital contribution. <b>iii) Interest on Capital</b> -> Following elements required for interest on capital - (i) Express agreement or Practice of partnership (ii) Trade custom (iii) Statutory provision <b>iv) Interest on advances</b> -> Claim interest @6% per annum on amount paid in addition to capital contribution.	

-> It will keep running even after dissolution and up to the date of payment.

**v) Right to be indemnified**

-> In respect of payments made and liabilities incurred in ordinary conduct & emergency.

**vi) Right to indemnify the firm**

-> For loss caused by it by wilful misconduct of the business of the firm.

**Partnership Property (Section - 14)**

The property which is deemed as belonging to the firm in the absence of any contract

- All property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- All the property, rights and interest acquired or purchased by or for the firm
- Goodwill of the business.

**Note:** Whether it is property of firm or not will depend upon the intention of the partners. Partners may by agreement convert exclusive property, into a partnership property.

**About Goodwill**

- It is the value of reputation of a business house in respect of profits expected in future over and above the normal level of profits
- Partnership firm is dissolved every partner has a right, to have the goodwill of business sold
- It can be sold separately or along with the other properties of the firm.
- Agreement in restraint of trade in case of sale of goodwill is valid if the restrictions imposed are reasonable.

**Application of Property of the firm (Section - 15)**

- Property of the firm shall be held and used exclusively for the purpose of the firm.
- In partnership, there is a community of interest which all the partners take in the property.
- Partner doesn't have any proprietary interest in the assets of the firm.
- Every partner of the firm has a right see that all the assets of the partnership are applied to and used for the purpose of partnership business.

**Personal Profit Earned by Partners (Section - 16)**

- If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of firm or the firm name, he shall account for that profit and pay it to firm, subject to contract.
- 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.

**Rights & Duties of Partners after a change in the Firm (Section 17)**

According to section 17, subject to contract between the partners-

- after a change in the firm:
- after the expiry of the term of the firm:
- where additional undertakings are carried out:

The rights & duties will be the same as those as it was in it's previous operations.

### Relation of Partners to Third Parties

#### **1) Partner to be an agent of firm (Sec - 18)**

- > Character of both principal & Agent
- > Difference between mere agent and partner agent is community of interest.
- > Agent only for the purpose of business of the firm.

#### **2) Implied authority of partner as agent of the firm (Sec - 19)**

- > Act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
- > Authority to bind the firm is called Implied Authority
- > In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower
  - i) Submit a dispute relating to the business to arbitration
  - ii) Open a banking account on behalf of the firm in his own name
  - iii) Compromise or relinquish any claim or portion of a claim by the firm;
  - iv) Withdraw a suit or proceedings filed on behalf of the firm;
  - v) Admit any liability in a suit or proceedings against the firm;
  - vi) Acquire immovable property on behalf of the firm;
  - vii) Transfer immovable property belonging to the firm; and
  - viii) Enter into partnership on behalf of the firm.

#### **Mode of Doing Act to bind the firm (Sec - 22)**

In order to bind a firm. the act or instrument executed should be executed in the firm name with an intention to bind the firm.

#### **Implied authority have following restrictions:**

- > Act done must be within scope of authority and relate to usual business of firm.
- > Act is done for normal conduct of business
- > Act to be done in the name of the firm with an intention to bind the firm

#### **If partnership be of a general commercial nature,**

- > he may pledge or sell the partnership property;
- > he may buy goods on account of the partnership;
- > he may borrow money, contract debts and pay debts on account of the partnership;
- > he may draw, make, sign, endorse, transfer, negotiate and procure to be discounted, Promissory notes, bills of exchange, cheques and other negotiable papers in the name and on

account of the partnership.

### 3) Extension & Restriction of Partners Implied Authority (Sec - 20)

- > Restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party, when third party knows about it and third party does not know that he is dealing with a partner in a firm.
- > Any one partner, or even a majority of the partners, cannot restrict or extend the implied authority, Consent of all partners is required for the restriction.

### 4) Partner's Authority in an Emergency (Sec - 21)

- > A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

### Effect of Admissions by a Partner (Section - 23)

- Partners, as agents can make binding admissions but only in ordinary course of business.
- Admission will not bind the firm if the authority is limited and other party knows about it.

### Effect of Notice to Acting Partner (Section - 24)

- The notice to a partner, who habitually acts in business of the firm, relating to affairs of the firm, operates as a notice to the firm. Notice to one is equivalent to notice to all.
- Exception - Fraud, committed by or with the consent of that partner.
- Notice must be actual and not constructive
- Must be received by a working partner and not by a sleeping partner
- Notice must relate to firm's business then only it will constitute notice to firm.

### Liability to third parties (Section - 25 to 27)

#### 1) Liab of partner for acts of the firm (Sec - 25)

- > Partners are jointly & severally liable for all acts which comes under the scope of their express or implied authority because the act is done towards business of firm.
- > Act means rights enforceable by or against the firm.
- > Act to be enforceable must

#### 2) Liab of firm for wrongful acts of partner (Sec - 26)

- > Firm is liable to the same extent as partner for any loss or injury caused to third party by the wrongful act of partner done in the ordinary course of business & within authority of partner.
- > Method employed by partner in doing wrongful or unauthorised act would not

#### 3) Liab of firm for mis-application by partner (Sec-27)

- > If partner acts within the authority and received money or property of third party and misapplies it (Not necessary that money should come in its custody)
- OR
- If money or property comes into the custody of firm and

have been done while he was a partner.

affect the question.  
-> All partners liable to third party for loss or injury caused to him by the act of any partner acting in ordinary course.

misapplied by any partner  
The firm will be liable in both the cases.  
-> If receipt was not in authority of partner, It can't be said that money received by firm, hence firm not liable unless money comes into firm's custody or control.

### Rights of Transferee of a Partner's Interest (Section - 29)

- A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

#### **Rights of such a transferee**

i) During the continuance of partnership, transferee is only entitled to receive share of profit & he is bound to accept it, cannot challenge it.

- **Such transferee is not entitled to**

(a) Interfere with conduct of business (b) Require accounts (c) Inspect books

ii) **On Dissolution of firm or Retirement of transferring partner, Transferee is entitled**

(a) To receive the share of assets of firm to which transferring partner was entitled

(b) For the purpose of ascertaining share, entitled to accounts as

**Note:** Partner can transfer it's share but only after approval from other all partners.

### Minors admitted to the benefits of partnership (Section - 30)

- Minor cannot be bound by contract because a minor's contract is void.
- Minor can't become partner in partnership firm as he is incompetent to contract but he can be admitted to the benefits of partnership with the consent of all partners under section 30.

#### **Rights of a Minor**

- > Agreed share of profit
- > Access, Inspect & copy of accounts of the firm
- > Sue the partners for A/cs or payment of his share but only when he is

#### **Liabilities of Minor**

##### **Before Majority**

- > Confined only to the extent of his share of profits & property
- > No personal liability

##### **After Majority**

- > Within 6 months of majority or after knowledge that he is admitted to the benefits of partnership, Whichever date is later - Decide whether to remain partner or leave the firm

severing his connection with the firm.  -> On majority, may within 6 months elect to become partner or not to become. If become a partner - Entitled to share as earlier If does not - His share is not liable for any act of firm after public notice.	for debts of the firm  -> Can't declare as insolvent but if firm is declared insolvent then minor's share vest with the official assignee/receiver. (Can claim from official assignee)	-> If became partner wilfully or failure to give public notice - Personally liable to third parties for all acts of firm since he was admitted to the benefits of partnership & his share remains same as earlier.  -> Not to become partner - Rights & Liabilities remains same up to date of public notice, Failure to give it within 6 months will make minor liable as partner. - Share not liable after public notice. - Can sue partners for shares. Note: Notice to registrar on becoming partner or not to become partner is mandatory.
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### **Legal consequences of Partner Coming in & Going out (Section - 31 to 35)**

- Any change (Admission, Retirement, Expulsion, Insolvency etc) in relationship of partner will result in reconstitution of firm.

### **Introduction of a partner (Section -31)**

- No new partners can be introduced into a firm without the consent of all existing partners.

### **Rights and liabilities of new partner:**

- Liabilities ordinarily commence from the date when he is admitted, unless he agrees to be liable for obligations incurred by the firm prior to the date.
- The new firm may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners.
- The creditor's consent is necessary in every case to make the transaction operative.
- Novation is the technical term in a contract for substituted liability.
- But a mere agreement amongst partners cannot operate as Novation.
- Partnership of two partners automatically dissolved by death of one (Sec 31 will not apply)

### **Retirement of a Partner (Section -32)**

- A partner may retire - (i) with the consent of all other partners ii) By express agreement iii) By giving notice in writing to all other partners of his intention to retire in case of partnership at will.

- Retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm
- Partners continue to be liable to third parties before retirement, until public notice is given. (Not liable if third party deals with firm without knowing that he was a partner.)
- In the event of retirement, partnership business will not come to an end. (Supreme court in Vishnu Chandra Vs Chandika Prasad)

### **Expulsion of a Partner (Section - 33)**

- **If all these conditions are not present, the expulsion is not deemed to be in bona fide interest**
    - i) Power of expulsion must have existed in a contract between the partners
    - ii) the power has been exercised by a majority of the partners; and
    - iii) it has been exercised in good faith.
  - **The test of good faith as required under Section 33(1) includes three things:**
    - i) Expulsion must be in the interest of the partnership
    - ii) Partner to be expelled is served with a notice
    - iii) He is given an opportunity of being heard.
- If a partner is otherwise expelled, the expulsion is null and void.

**Note:** Expulsion doesn't result in dissolution of partnership neither invalid expulsion puts an end to the partnership, even if it is partnership at will, It will be deemed to continue as before.

### **Insolvency of a Partner (Section - 34)**

- Where a partner in a firm is adjudicated as an insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is hereby dissolved.
- Estate of a partner so adjudicated is not liable for any act of firm & the firm is not liable for any act of the insolvent, done after the date of order of adjudication is made.

### **Effects of Insolvency**

- i) Insolvent partner cannot be continued as a partner.
- ii) He will be ceased to be a partner from the date on which the order of adjudication is made.
- iii) Estate of Insolvent partner is not liable for acts of the firm done after the date of order.
- iv) firm is also not liable for any act of the insolvent partner after the date of order.
- v) Ordinarily, insolvency of partner results in dissolution of firm; but the partners are competent to agree among themselves that the adjudication will not give rise to dissolution of firm.

### **Liability of Estate of Deceased Partner (Section - 35)**

- Ordinarily, the effect of the death of a partner is dissolution of the partnership,

- But partners are competent to agree that, death of one will not have the effect of dissolving.
- Estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm. (No public notice required in case of death)

#### **Rights of Outgoing partner to carry on Competing Business (Section - 36)**

- An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,
  - (a) use the firm name,
  - (b) represent himself as carrying on the business of the firm or
  - (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
- Agreement in restraint of trade valid if reasonable to make an agreement with partners that on ceasing of partnership, he will not carry on any similar business within a specified period or within specified local limits.

#### **Rights of Outgoing Partner in certain cases to share subsequent profits (Section - 37)**

- When a partner dies or otherwise ceased to be partner, and the remaining partners continue the business using the firm's property without settling accounts with the outgoing partner or their estate
- The outgoing partner or his estate is entitled to either:
  - a) A share in the profits earned since their exit (to the extent attributable to the use of their share in the property) Or
  - b) Interest at 6% p.a. on the amount of their share in the firm's property
- However, if the continuing partners purchase the outgoing/deceased partner's interest (and the option to do so is properly exercised), then the outgoing partner or their estate is not entitled to any further profits or interest.

#### **Revocation of Continuing Guarantee by change in firm (Section - 38)**

- A continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, revoked as to future transactions from the date of any change in the constitution of the firm. (in the absence of an agreement to the contrary,

## **Chapter – 4 – The Indian Partnership Act, 1932**

### **Unit – 3 – Registration & Dissolution of a Firm**

#### **Registration of Firms (Section - 58, 59, 59A-1)**

##### **Application for Registration (Section - 58)**

- Registration of a firm may be effected at any time by sending
- by post or delivering to Registrar of the area in which any place of business situated or proposed to be situated,
- a statement in the prescribed form and fee, stating-

1) firm's name	2) Place or principal place of business	3) Names of other business places	4) Date when each partner joined
5) Full name & permanent address of partners		6) Duration of the firm	

- Statement shall be signed & verify by all partners, or by their agents specially authorised
- A firm name shall not contain any of the following words, namely: - 'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

##### **Registration of Firm (Section - 59)**

- Registrar is satisfied then, → record an entry of the statement in RoF & file the statement.  
→ Issue Certificate of Registration
- Effective date - Registration is deemed to be completed as soon as an application in prescribed form, fee & necessary details of partnership is delivered to Registrar.
- Recording of an entry in the RoF is a routine duty of Registrar.
- Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered & then file a fresh suit.

##### **Late Registration on payment of penalty (Section - 59A-1)**

- If the statement of any firm is not sent or delivered within the time specified then, firm may be registered on payment of penalty of 100Rs per year of delay or a part thereof to Registrar.

##### **Consequences of Non-Registration (Section 69)**

- Registration of firms is not compulsory as per IPA, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration

##### **1) No suit in a civil court by firm or other co-partners against third party**

- cannot bring an action against the third party for breach of contract entered
- unless the firm is registered and the persons suing are or shown in the RoF as partners

## 2) No relief to partners for set-off of claim

- If an action is brought against the firm by a third party,
- Neither the firm nor partner can claim any set-off, if the suit be valued for more than Rs 100.

## 3) Aggrieved partner cannot bring legal action against other partner or the firm:

- Partner of an unregistered firm is precluded from bringing legal action against the firm or alleged partner or have been a partner in the firm
- May sue for dissolution or for accounts & realization of his share when firm is dissolved

## 4) Third party can sue the firm - Action can be brought against the firm by a third party.

**Exceptions - non-registration of a firm does not, however effect the following rights:**

- 1) Right of third parties to sue the firm or any partner
- 2) Right of partners to sue for dissolution or settlement of A/cs or for realization of property.
- 3) Power of an Official Assignees, Receiver of Court to release the property of insolvent partner
- 4) Right to sue or claim a set-off if the value of suit does not exceed Rs 100 in value.
- 5) Right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

## Extra Note on Filing of Suit

- To file a suit, check if suit must be instituted by or on behalf of the firm which had been registered & person(all) suing had been shown as partner in the register of firms
- No notice to registrar required for subsequent dealings, In case business was carried on after death of one of the partners
- In case of new partner admission, notified to Registrar required who shall make a record of the notice in the entry relating to the firm in the Register of firms

## Dissolution of Firm (Section 39 to 47)

As per Section 39, Dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

## Difference between Dissolution of Firm & Dissolution of Partnership

1) Cont. of Business	2) Winding up	3) Order of court	4) Scope
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## 5) Final closure of books of accounts

**Mode of Dissolution of Court**

Without Court Intervention/ Voluntary	With Court Intervention
1) Dissolution by Agreement (Sec - 40) → By Consent of all or subject to contract	1) Insanity/ Unsound Mind → Temporary sickness is no ground
2) Compulsory Dissolution (Sec - 41) → All partners/All except one - Insolvent → Any event making business Unlawful (Doesnot affect lawful business)	2) Permanent Incapacity → May result from physical disability or illness etc.
3) Happening of Certain Contingencies (S - 42) → Expiry of Fixed term → Completion of adventure or undertaking → Death of a partner → Adjudication of a partner as insolvent	3) Misconduct → Affect prejudicially the carrying on business → Not necessary that it is related to business → Imp is adverse effect on business
4) Notice of Partnership at Will → By any partner in writing stating intention → Date of dissolution mentioned - Same date Date not mentioned - Date of comm of notice	4) Persistent Breach of Agreement → Wilfully or persistent breach relating to management or conduct or reasonable not practical to carry on business Cases - Embezzlement, Erroneous A/c, Holding more cash than allowed, Refusal to show A/cs
	5) Transfer of Interest → Interest wholly transferred or charged
6) Continuous Perpetual Losses	7) Just & Equitable Grounds → Deadlock in management, Partners are not talking, Loss of substratum, Gambling

**Consequences of Dissolution (Sec - 45 to 55)****1) Liability for acts of partners done after dissolution (Section 45):**

- Partners continue to be liable unless public notice is given.
- Provided deceased partner estate, Adjudicated Insolvent or who is not known to the person dealing with the firm (sleeping partner) not liable as no public notice required.
- Objective of Notice - It seeks to protect third parties dealing with firm and also to protect partners of dissolved firm from liability towards third parties.

**2) Right of partners to have business wound up after dissolution (Section 46):**

- Every partner or representative entitled to have property of firm to be applied in payment of debts and liabilities of firm and to have surplus distributed according to their rights.

**3) Continuing authority of partners for purposes of winding up (Section 47):**

- After dissolution, Authority of partner to bind the firm continues as necessary to wind up the affairs of the firm and to complete transactions begun but unfinished.
- Provided firm not liable for adjudicated insolvent & not affect liability of Partner by estoppel.

**4) Mode of Settlement of partnership a/cs (Sec - 48):** Following rules, subject to contract

- Losses including deficiencies of capital = Profits → Out of capital → Partners individually, if necessary, in proportion of PSR.
- Assets including deficiencies of capital applied = Debt of the firm to third parties → To each partner due to him from capital → To each partner due to him on account of capital → Residue if any to be divided by partner in proportion of profits

**5) Payment of firm debts and of separate debts (Section 49):**

Where there are joint debts due from the firm and also separate debts due from any partner:

- Property of the firm = payment of the debts of firm, surplus, if any partners separate debts
- Separate property of partner = Payment of his separate debts, surplus, if any, payment of debts of the firm.