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Indian Partnership Act ,1932

Historical :

Initially, partnership was governed by provisions contained in *Sections 239 to 266* of chapter XI of the Indian Contract Act, 1872. These sections were repealed in 1930 and a new act – the Indian Partnership Act, 1932 was passed. The Act came in to force on the 1st of October 1932, except *Section 69* which came into force on the 1st of October, 1933. It aims to define and amend the law relating to partnership.

Partnership is a special kind of contract and thus, the provisions of Indian Contract Act, 1872 also apply to a partnership firm unless the Indian Partnership Act provides otherwise.

INTRODUCTION

a partnership is an association of people who have common objectives and goals. Even a business owned or managed by two or more people is termed as partnership. The idea of a partnership or such collaboration is that every member or partner contributes something which helps achieve an aim and is beneficial to all the members. A member may contribute money, skill or labour which in turn makes it easier to achieve the common objective. Thus, partnership is an arrangement where people consent to work together and advance their mutual interests.

For example, two doctors may decide to work together on the same case as partners and share the fees.

PARTNER

The term 'partner' is linked to various other words. It is said to be derived from the Latin term '*partitionem*' which means 'portion or division'. The word 'partner' is also associated with the French term '*parçener*' which means 'joint heir' or 'one that shares or has a part with another'. The term can also be broken down to '*to part*' which means 'to divide' or 'to share'.

PARTNERSHIP

Section 4 of the Indian Partnership Act 1932 defines 'partnership' as the "relation between persons who have agreed to share the profit of a business carried on by all or any of them acting for all".

THE NATURE OF PARTNERSHIP

Part = to share the profits

Partnership = relation between persons- to share the profits of a business carried by all or any of them.

According to Section 4 “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”.

Essentials: (Sec 4)

- (i) Agreement**
- (ii) Share profits**
- (iii) Business**

Partners, Firm and Firm Name

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”. (Section 4)

Essentials of a Partnership

1. Association of two or more persons
2. Agreement
3. Business
4. Sharing of Profits

1) ***Two or more people:*** Minimum two people are needed to create a partnership. The Indian Partnership Act, 1932 does not prescribe any upper limit on the number of people who can be partners. However, *Section 11* of the Companies Act, 1956 provides that number of partners cannot exceed 10 persons in case of banking business and 20 in other businesses. If the number of partners exceeds the limit, the partnership becomes an illegal association. Similarly, if the number falls below two, the partnership is deemed dissolved.

The people who are partners in a firm must be competent to contract. If all partners are minors or if there is only one adult partner, it is not a partnership at all.

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2) **Valid Agreement:** The foundation of partnership is an agreement. *Section 5* clearly states that partnership is not created by status – the relationship of partnership can arise only out of a contract. Thus, if a Hindu Undivided Family is carrying on a family business, it is not a partnership. Similarly, a Burmese Buddhist husband and wife carrying business are not partners in such business.

The partnership agreement must fulfil all the requirements of a valid contract. There should be free consent, competency of the parties, lawful consideration and object. The agreement to create partnership may be express or implied. The agreement can also be inferred from the conduct of the parties. The agreement need not be in writing except where required under the Income Tax Act or if the partners wish to get the firm registered.

Partnership does not arise by mere joint acquisition of property like in the case of co-ownership. If a wife entrusts her *stridhan* to her husband, it is not an agreement of partnership even if the husband uses the property for business.

Tarsem Singh v Sukhinder Singh(1998) 3 SCC 471 ,

The Supreme Cour, in has held that it is not necessary under the law that every contract must be in writing. There can be an equally binding contract between the parties on the basis of oral agreement, unless there is a law which requires the agreement to be in writing.

3) ***Created for the purpose of carrying on business:*** The partnership must have been created to carry on business. It is not necessary that all the partners actively participate in the conduct of the business. For example, one partner may contribute skill or experience while another may contribute capital for the firm. The business may be permanent or temporary, trading or non trading.

Section 2(b) of the Indian Partnership Act, 1932 says that 'Business' includes every trade, occupation and business. Thus, a partnership does not exist between members of a religious association and the like.

Services rendered jointly also constitute a partnership. For example, if two advocates may agree to jointly plead a case and divide the fees, they are partners in respect to that case. But an agreement to carry on business in the future is not a partnership.

(4) Sharing of Profits:-

To constitute a partnership, the parties must have agreed to carry on a business and to share profits in common.

“Profits” mean the excess of returns over advances, the excess of what is obtained over the cost of obtaining it.

Sharing of profits also involves sharing of losses. But whereas the sharing of profit is an essential element of partnership, the sharing of losses is not. It is open to one or more partners to bear all the losses of the business. It follows that the sharing of profits is an essential ingredient of partnership and there would be no partnership where only one of the partners is entitled to the whole of the profits of the business. But it is open to the partners to agree to share the profits in any way they like. They may agree to share the profits either in specific proportions or in specific sums.

Sharing of Profits is not Conclusive Test Although sharing of profits is a prima facie evidence of the existence of partnership, this is not the conclusive test of the same. A person may have a share in the partnership profits, but still may not be a partner. For instance, a joint owner of a property sharing its return or members of non-profit or non-trading associations will not be called partners.

True Test of Partnership

Mutual agency is the foundation of partner's liability. Each partner is both an agent and principal for himself and others; that is the significance of the phrase "carried on by all or any of them acting for all". Each partner is an agent binding the other partners who are his principal and each partner is again a principal, who in turn is bound by the acts of the other partners

It may be observed that the question whether a person is or is not a partner depends almost in all cases upon whether he has the authority to act for other partners and whether other partners have the authority to act for him. It follows that the agency relationship is the most important test of partnership.

Formation of Partnership

According to the definition of partnership under the Indian Partnership Act, 1932, there must be an agreement between the partners of a partnership firm.

The partnership agreement must comply with all the essentials of a valid contract. There must be free consent of the parties who must be competent to contract and the object of partnership should not be forbidden by law or immoral or opposed to public policy.

Two exceptions, however, may be noted:

- (i) A minor may be admitted to the benefits of a partnership with the consent of all other partners.
- (ii) As relations of partners inter se are that of agency, no consideration is required to create the partnership.

Classification of Partnership

A partnership may either be for a particular adventure or for a fixed period. It may also be a partnership at will. From the duration point of view, a partnership may be classified into the following two categories:

(i) **Particular Partnership (Section 8)** “A person may become a partner with another person in a particular adventure or undertaking”. When two or more persons agree to do business in a particular adventure or undertaking, such a partnership is called “Particular Partnership”. Thus, a particular partnership may even be for a single adventure or undertaking.

(2) **Partnership at Will (Section 7)** “Where no provision is made by contract between the partners for the duration of their partnership or for the determination of their partnership, the partnership is called Partnership at Will”.

A partnership is deemed to be a partnership at will when

(i) no fixed period has been agreed upon for the duration of partnership, and
(ii) there is no provision made as to the determination of partnership in any other way. The partnership at will has no fixed or definite date of termination and, therefore, death or retirement of a partner does not affect the existence of such partnership.

Kinds of partnership

The various types of partnership are based on two different criteria.

On the basis of duration of the term of partnership:

Partnership at will

when no fixed period is prescribed for the expiration of partnership then it is a partnership at will. According to [Section 7](#) two conditions need to be fulfilled:

No agreement about the determination of the fixed period of partnership

No clause with respect to the determination of partnership.

Partnership for a fixed period

When the partners fixed the duration of the partnership firm then after the expiration of the fixed period the partnership comes to an end. When the partners decided to continue with the partnership even after the expiry of the fixed period then it becomes a partnership at will.

On the basis of the extent of the business carried by a partnership

Particular Partnership [\(Section 8\)](#)

When the partnership is created for completing any project or undertaking. When such an undertaking or project have been completed then partnership comes to an end. The partners have a choice to continue with the firm.

General Partnership

when the partnership is created for the purpose of carrying out the business. There is no particular task that has to be completed. The task is general in nature.

Differences between Partnership and HUF Business

The main points of **differences between a partnership and HUF business** are as follows.

1. Basis of formation

A partnership arises out of a contract between partners. Whereas an HUF arises by the operation of Hindu Law. It is created by status or birth in the family, no agreement is needed for it.

2. Regulating law

A partnership is governed by the provisions of the Indian Partnership Act, 1932. An HUF business is governed by Hindu Law Succession Act.

3. Number of members

In a partnership business, the number of members cannot exceed 20 in case of non-banking business and 10 in case of banking business. But there is no such ceiling on the number of members (coparceners) in HUF.

4. Admission of new members

No new partner can be admitted to the existing partnership without the consent of all the other partners. In case of HUF firm, a person becomes a member (coparcener) merely by his birth.

5. Minor member

A minor cannot become a full-fledged partner in a firm; he can be admitted only to the benefits of partnership. In an HUF, a male child becomes a full-fledged member by birth.

6. Rights of females

In a partnership, women can become partners and they enjoy the same rights and privileges, as do male partners. In case of an HUF business, on the other hand, the membership is restricted to male members only. However, as per Hindu Law Succession Act, 1956, a female relative of a deceased male member gets a coparcenary interest in the event of his death.

7. Implied agency

In a partnership, every partner has implied authority to represent the firm and bind the other partners by his acts. In HUF this right rests with the Karta only, other members may be allowed by Karta expressly or impliedly to contract debts on behalf of the firm.

8. Liability of members

In a partnership, the liability of all the partners is unlimited. Every partner is jointly and severally liable to third parties for the full debts of the firm. Whereas in case of HUF, liability of each member, except the Karta, is limited to the extent of his share in the property of the family.

9. Right to accounts

Each partner not only enjoys a right to inspect the books of account of the firm and demand a copy thereof, he can even demand the accounts of the past dealings. But a coparcener has no right to ask for the accounts of past dealings. He can ask for the position of the existing assets only.

10. Mode of dissolution

A partnership firm is dissolved on the insolvency or death of a partner. But the death, lunacy or insolvency of a coparcener does not affect an HUF. It continues to operate even after the death of a coparcener.

Distinction between Partnership and a Company

1. Regulating Act:

A company is regulated by Companies Act, 1956, while a partnership firm is governed by the Indian Partnership Act, 1932.

2. Registration:

A company cannot come into existence unless it is registered, whereas for a partnership firm registration is not compulsory.

3. Number:

The minimum number in a public company is seven and in case of a private companies two. In case of partnership the minimum number of partners is two. The maximum limit of members in case of a private company is fifty but in case of public company there is no maximum limit. In partnership the number should not exceed twenty, while in case of banking business, it should not exceed ten.

4. Liability:

In case of joint stock company the liability of shareholders is limited (except in case of unlimited companies) to the extent of face value of shares or to the extent of guarantee, whereas, in case of partnership the liability of partners is unlimited.

5. Management:

The affairs of a company are managed by its directors. Its members have no right to take part in the day to day management. On the other hand every partner of a firm has a right to participate in the management of the business unless the partnership deed provides otherwise.

6. Capital:

The share capital of a company can be increased or decreased only in accordance with the provisions of the Companies Act, whereas partners can alter the amount of their capital by mutual agreement

7. Legal Status:

A company has a separate legal status distinct from its shareholders, while a partnership firm has no legal existence distinct from its partners.

8. Transfer of Interest:

Shares in a public company are freely transferable from one person to another person. In private company the right to transfer shares is restricted, while a partner cannot transfer his interest to others without the consent of other partners.

9. Insolvency/Death:

Insolvency or death of a shareholder does not affect the existence of a company. On the other hand a partnership ceases to exist if any partner retires, dies or is declared insolvent.

10. Winding up:

A company comes to an end only when it is wound up according to the provisions of the Companies Act. A firm is dissolved by an agreement or by the order of court. It is also automatically dissolved on the insolvency of a partner.

11. Books:

The provisions of Companies Act, 1956 have their bearing on the preparation of accounts books of a company but in case of firm there is no specific legal direction to this effect.

12. Audit:

Audit of accounts of a company is compulsory whereas it is generally, discretionary in case of a firm.

13. Authority of Members:

A shareholder is not an agent of a company and has no power to bind the company by his acts. A partner is an agent of a firm. He can enter into contracts with outsiders and incur liabilities so long as he acts in the ordinary course of firm's business.

14. Commencement of Business:

A company has to comply with various legal formalities and has to file various documents with the Registrar of Companies before the commencement of business while a firm is not required to fulfill legal formalities.

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