

REGULATORY FRAMEWORK OF BUSINESS - II

Unit 1

INDIAN PARTNERSHIP ACT- 1932

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Q. 1: What do you understand by partnership? Explain its main features.

Ans.: The Indian Partnership Act, 1932 defines a partnership as, “the relation between two or more persons who have agreed to share the profits from a business carried on by either all of them or any of them on behalf of/acting for all”

So, in such a case two or more persons come together as a unit to achieve some common objective. And the profits earned in pursuit of this objective will be shared amongst themselves. The entity is collectively called a “Partnership Firm” and all the members are the “Partners”.

Partnership business displays the following characteristics:

- 1. Formation/Contract:** According to the Act, a firm must be formed through a legal agreement between all the partners. So, a contract must be entered into to form a partnership firm. Its business activity must be lawful, and the motive has to be one of profit. So, two people forming an alliance to carry out charity and/or social work will not constitute a partnership.
- 2. Unlimited Liability:** In a unique feature, all partners have unlimited liability in the business. The partners are all individually and jointly liable for the firm and the payment of all debts. This means that even personal assets of a partner can be liquidated to meet the debts of the firm.
- 3. Continuity:** The death, retirement, bankruptcy, insolvency or insanity of a partner will dissolve the partnership. The remaining partners may continue the partnership if they so choose, but a new contract must be drawn up. Also, the partnership of a father cannot be inherited by his son. If all the other partners agree, he can be added on as a new partner.
- 4. Number of Members:** There should be a minimum of two individuals for a partnership. The Partnership Act is silent on the maximum number but the Companies Act, 2013 provides clarity in this regard. Accordingly, the maximum number of partners is 100.
- 5. Mutual Agency:** In a partnership, the business can be carried out by any of the partners (one or several) acting for all of them or on behalf of all of them. So there exists mutual agency among the partners. He represents the other partners in some cases so he is their agent. But in different circumstances, he is bound by the actions of any of the other partners making him the principal as well.

Q. 2: How will you determine that partnership exists among a group of individuals?

Ans.: In order to determine whether there exists partnership among a group of individuals, three aspects must be observed, also known as true test of partnership.

- **Mutual Agency:** This is the truest test of a partnership. So if a partner is both the principle as well as an agent of the firm we can say that mutual agency exists. This means that the actions of any partner/s will bind all the other partners as well.
- **Agreement/Contract between Parties:** For there to be a partnership between two or more people there has to be an agreement of partnership between them.
- **Profit Sharing:** Sharing of profits is an aspect of the true test of a partnership. However, profit sharing is only a prima facie evidence of a partnership. The Act does not consider profit sharing as a conclusive evidence of a partnership. This is because there are cases of profit sharing that are still contradictory to a partnership. For example, if a share of the profit is given to a widow or child of a deceased partner does not make them partners.

Q. 3: Distinguish between partnership and company.

Ans.: The key differences between a partnership and a company are enlisted below:

Sl. No.	Partnership	Company
1.	A partnership is an agreement between two or more persons who come together to carry out a business and share profit and losses mutually.	A company is an incorporated association, also called an artificial person having a separate identity, common seal and perpetual succession.
2.	Registration of partnership firm is not compulsory.	A company needs to be compulsorily registered.
3.	For the creation of partnership, there must be at least two partners.	For the formation of a company, there must be at least two members in case of a private company and seven in case of a public company.
4.	The limit for the maximum number of partners in a partnership firm is 100.	The maximum number of members in a private company is 200 and in case of a public company the maximum number is unlimited.
5.	There is no minimum capital requirement for starting a partnership firm.	There is minimum capital requirement for starting a company.

6.	There are no legal formalities in the event of dissolution of a partnership firm.	A company has many legal formalities for winding up.
7.	A partnership firm can be dissolved by any one of the partners.	A company cannot be wound up by any one of the members.
8.	A firm is not bound to use the words 'limited' or 'private limited' at the end of its name.	A company has to add the word 'limited' if it is a public company and 'private limited' if it is a private company.
9.	The liability of partners is unlimited.	The liability of members is limited to the extent of shares held by them or guarantee given by them.
10.	Partners are mutual agents of one another.	Shareholders of a company are not mutual agents of one another.

Q. 4: Draw out differences between partnership and H.U.F. business.

Ans: 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 a HUF arises by means of the operation of Hindu Law. It is created by status or birth in the family, no agreement is wanted for it.

2. Regulating law:

A partnership is governed by the provisions of the Indian Partnership Act, 1932. An HUF business is governed by way of 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 different partners. In case of HUF firm, a person becomes a member (coparcener) merely by his birth.

5. Minor member:

A minor can't become a full-fledged partner in a firm; he can be admitted only to the benefits of partnership. In an HUF, a child becomes 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, each 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 additionally 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 that of 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 company 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 company 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 loss of life of a coparcener.

Q. 5: What is partnership deed? What are its contents?

Ans.: Partnership is an agreement between persons to carry on a business. The agreement entered into between partners may be either oral or written. But, it is always suitable to have a written agreement so as to avoid misunderstandings and unnecessary litigations in future. When the agreement is in written form, it is known as 'Partnership Deed.' It must be duly signed by the partners, stamped and registered. Any alteration in partnership deed can be made with the mutual consent of all the partners.

Although it is left to the choice of the partners of the firm to decide themselves as to what should be mentioned in their partnership deed, yet a partnership deed usually contains the following:

1. Name of the firm.
2. Nature of the business.
3. Names of partners.
4. Place of the business.
5. Amount of capital to be contributed by each partner
6. Profit sharing ratio between the partners.
7. Loans and advances from the partners and the price of interest thereon.
8. Drawings allowed to the partners and the rate of interest thereon.
9. Amount of salary and commission, if any, payable to the partners.
10. Duties, powers and obligations of partners.
11. Maintenance of accounts and arrangement for their audit.
12. Mode of valuation of goodwill in the event of admission, retirement and demise of a partner.
13. Settlement of accounts in the case of dissolution of the firm.

Q. 6: Explain the different types of partners.

Ans.: Partners in a partnership firm may be of the following kinds:

1. **Active Partner:** As the name suggests, such a partner takes active participation in the business of the firm. He contributes to the capital, has a share in the income and also participates in the daily activities of the firm. His liability in the company will be unlimited.
2. **Dormant Partner:** Also known as a sleeping partner, he does not participate in the daily functioning of the business but makes his share of contribution to the capital. In return, he will have a share in the profits. His liability will also be unlimited.
3. **Secret Partner:** Here the partner's association with the firm is not known to the public. He will not signify the firm to outside agents or parties. Other than this his participation with respect to capital, profits, management and liability will be the same as all the other partners.
4. **Nominal Partner:** This partner is solely a partner in name. He allows the firm to use his name and the connected goodwill. But he does not contribute to the capital and hence has no share in the profits. He does not involve himself in the firm's business. But his liability too will be unlimited.
5. **Partner by Estoppel or by holding out:** If a person makes others believe, through his conduct or behavior, that he is a partner in a firm and he does not correct them, then he becomes a partner by estoppel. However, this partner too will have unlimited liability.

Q. 7: Discuss the different types of partnerships.

Ans.: Partnerships may be of different types such as the following:

- **General Partnership:** When the purpose for the formation of the partnership is to carry out the business in general, it is said to be General Partnership.
- **Partnership-at-will:** When there is no agreement about a fixed period for the existence of partnership and no provision with regard to the determination of a partnership, it is said to be a Partnership-at-will. Such a kind of partnership may be dissolved at the will of any of the partners by serving a notice on the others.
- **Partnership for a fixed term:** When the partners agree on a definite duration of the partnership, it is called Partnership for a fixed term and such a partnership will be dissolved after the expiry of such duration of time.
- **Particular Partnership:** When a partnership is formed for carrying on one particular joint venture or one undertaking, it is called Particular Partnership.
- **Limited Partnership:** A limited partnership allows each partner to avoid personal liability to the amount of his or her business investment. They have at least one general partner who is fully responsible for the business and one or more limited partners who provide money but do not actively manage the business.
- **Limited Liability Partnerships (LLP):** In an LLP, some or all partners have limited liabilities. It exhibits elements of partnership and corporations. Each partner is not held liable for the actions of others.