

**REGULATORY FRAMEWORK OF BUSINESS - II**  
**Unit 1**  
**INDIAN PARTNERSHIP ACT- 1932**

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**Q. 8: Is registration of partnership firms, compulsory? Discuss the effects of non-registration of partnership firm.**

**Ans.:** While the English Law makes registration of firms compulsory and levies a fine for non-registration, the Indian Partnership Act, 1932 has no such compulsions for firm registration and no fines for non-registration either. However, it is always advisable to register the firm since a registered firm enjoys special rights which aren't available to the unregistered firms.

Registration may be done at any time- before starting a business or anytime during the continuation of partnership.

An application form, signed by all the partners or their agents, along with the prescribed fee is to be submitted to the Registrar of Firms of the State in which the firm is situated. The following documents are to be submitted along with the application form:

- a) Specimen of Affidavit
- b) Certified original copy of partnership deed,
- c) Proof of principal place of business (ownership documents or rental/lease agreement)

The name of the firm cannot be identical to an existing firm doing the same business, and not contain words like emperor, crown, empress, empire or any other words which show sanction or approval of the government.

If the Registrar is satisfied with the documents and the name of the partnership firm, he will register the firm in the Registrar of Firms and issue Certificate of Registration.

Section 69 of the Act imposes certain disadvantages on non-registered firms. Let us discuss the consequences of not opting for registration.

1. No suit in a civil court by the firm or other co partners against any third party: an unregistered firm or its partner cannot file a suit against a third party for breach of contract which the firm has entered into.
2. No suit by an aggrieved partner against other partner or the firm: A partner of an unregistered firm cannot file a suit against other partner(s) or the firm.
3. No relief to partners for set-off of claim: Without firm registration, any action brought against the firm by a third part having a value more than Rs. 100 cannot be set-off by the firm or any of its partners.

**Q. 9: What are the rights of partners?**

**Ans.:** The partners in a firm enjoy the following rights:

- (a) Every partner has a right to take part in the habits and management of business.
- (b) Every partner has a right to be consulted and heard in all matters affecting the business of the partnership.
- (c) Every partner has a right of free access to all records, books and accounts of the business, and additionally to examine and copy them.
- (d) Every partner is entitled to share the profits equally.
- (e) A partner who has contributed more than the agreed share of capital is entitled to interest at the rate of 6 per cent per annum. But no interest can be claimed on capital.
- (f) A partner is entitled to be indemnified by the firm for all acts done by him in the direction of the partnership business, for all payments made by him in respect of partnership debts or liabilities and for expenses and disbursements made in an emergency for protecting the firm from loss provided he acted as a person of regular prudence would have acted in similar circumstances for his own personal business.
- (g) Every partner is, as a rule, joint owner of the partnership property. He is entitled to have the partnership property used exclusively for the purposes of the partnership.
- (h) A partner has power to act in an emergency for protecting the firm from loss, but he must act reasonably.
- (i) Every partner is entitled to prevent the introduction of a new partner into the firm without his consent.
- (j) Every partner has a right to retire according to the Deed or with the consent of the other partners. If the partnership is at will, he can retire by giving notice to other partners.
- (k) Every partner has a right to continue in the partnership.
- (l) A retiring partner or the heirs of a deceased partner are entitled to have a share in the profits earned with the aid of the proportion of assets belonging to such outgoing partner or interest at six per cent per annum at the option of the outgoing partner (or his representative) until the accounts are finally settled.

**Q. 10: What are the duties of partners?**

**Ans.:** Every partner in a firm has the following duties:

- (a) Every partner is bound to work diligently for the business of the firm to the greatest common advantage.
- (b) Every partner must be just and faithful to the other partners.
- (c) A partner is bound to keep and render true, proper, and correct accounts of the partnership and must permit other partners to check out and copy such accounts.
- (d) Every partner is bound to indemnify the firm for any loss prompted by his willful neglect or fraud in the conduct of the business.
- (e) A partner ought to not carry on competing business, nor use the property of the firm for his private purposes. In each case, he must hand over to the firm any profit or gain made by him but he must himself suffer any loss that might have occurred.
- (f) Every partner is bound to share the losses equally with the others.
- (g) A partner is bound to act within the scope of his authority.

(h) No partner can assign or transfer his partnership interest to any other person so as to make him a partner in the business.

**Q. 11: What authority do partners have in a partnership firm?**

**Ans.:** Section 19 of the Indian Partnership Act, 1932, lays down the implied authority of a partner as:

Subject to Section 22, the 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. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- a) submit a dispute relating to the business of the firm to arbitration,
- b) open a banking account on behalf of the firm in his own name,
- c) compromise or relinquish any claim or portion of a claim by the firm,
- d) withdraw a suit or proceeding filed on behalf of the firm,
- e) admit any liability in a suit or proceeding against the firm,
- f) acquire immovable property on behalf of the firm,
- g) transfer immovable property belonging to the firm, or
- h) enter into partnership on behalf of the firm.

According to Section 20 of the Act, the partners can make a contract to extend or restrict the implied authority of a partner.

Section 21 of the Act provides for a partner's implied authority in an emergency. Accordingly, 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.

Section 22 adds that the act which was done by a partner to bind the firm must be done in the name of the firm or in any other manner which implies an intention to bind the firm.

**Q. 12: State the liabilities of a partner.**

**Ans.:** The following are the liabilities of a partner to third parties:

- i. Every partner is jointly and severally liable for all acts of the firm done while he is a partner.
- ii. A partner is liable to third parties for losses caused to them because of his wrongful act or omission or negligence.
- iii. An incoming partner is liable for the debts and acts of the firm from the date of his admission into the firm.
- iv. A retiring partner is liable for the acts of the firm done before his retirement only, provided a public notice of his retirement is served. No such notice is required in case of a dormant partner.

**Q. 13: State the rules relating to admission, retirement and expulsion of partners provided in the Indian Partnership Act, 1932.**

### **Ans.: Admission or Introduction of a Partner (Section 31)**

According to this section, the consent of all the existing partners is necessary before introducing a new partner into a [partnership](#) firm. This is subject to the [provisions](#) of Section 30 regarding minors in the firm. Further, the new partner has no liability for any actions of the firm done before his admission.

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

A partner retires when he ceases to be a member of the firm. If a partner withdraws from a firm by dissolving it, then it is a dissolution and not retirement of a partner. The retirement of a partner from a firm does not dissolve it.

In a partnership, a partner may retire:

- With the consent of all the partners,
- In accordance with an express agreement among the partners, or
- If the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

### **Liabilities of an Outgoing Partner**

A retired partner continues to be liable to the third party for acts of the firm till such time that he or other members of the firm give a public notice of his retirement. However, if the third party deals with the firm without knowing that he was a partner in the firm, then he will not be liable to the third party.

The retired partner, however, continues to be liable for acts of the firm done before his retirement. This liability holds good unless there is an agreement between him, the concerned third party, and partners of the reconstituted firm. Such an agreement can also be implied by the course of dealings between the third party and the reconstituted firm after announcement of the retirement of a partner.

If the partnership is at will, then it can relieve a partner without giving a public notice. To do so, the partnership needs to give a notice to all the partners of his intention to retire.

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

A partnership firm can expel a partner provided:

- The power of expulsion exists in the contract between the partners,
- Majority of the partners exercise the power,
- The power is used in good faith.

The test of good faith includes three aspects:

1. The expulsion should be in the interest of the partnership.
2. Before expelling a partner the firm serves a notice to him.
3. The partner being expelled is given an opportunity to state his version of events leading up to the expulsion.

If these aspects are not met, then the expulsion is not considered to be made in good faith and is null and void.

It is important to note that the expulsion of partners does not necessarily result in the dissolution of the firm.

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

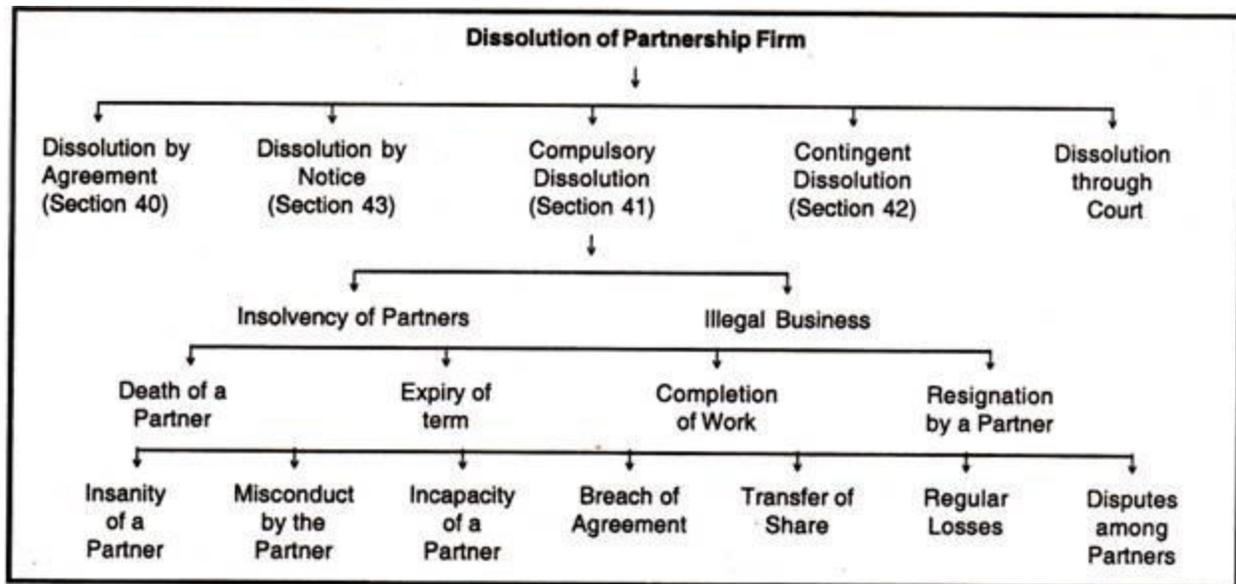
Usually, the death of a partner results in the dissolution of the partnership. However, if the partners contract to not dissolve the partnership post the death of any partner, then the surviving partners continue the business of the firm after absolving the deceased partner's estate from any liability of the future obligations of the firm.

Further, it is not necessary for the firm to give a public notice or inform the persons dealing with the firm about the death of the partner.

An exception is a partnership consisting of only two partners. In such cases, the death of a partner results in the dissolution of the partnership.

**Q. 14: What do you understand by the term “dissolution” of firms? Explain the modes of dissolution of firms.**

**Ans.:** The dissolution of a firm means discontinuance of its activities. When the working of a firm is stopped and the assets are realised to pay a range of liabilities it amounts to dissolution of the firm. The dissolution of a firm should not be confused with the dissolution of partnership. When a partner agrees to continue the firm underneath the same name, even after the retirement or death of a partner, it amounts to dissolution of partnership and not of firm. The remaining partners may purchase the share of the outgoing or deceased partner and continue the business under the same name; it involves solely the dissolution of partnership. The dissolution of firm includes the dissolution of partnership too. The partners have a contractual relationship among themselves. When this relationship is terminated it is an end of the firm.



A firm may be dissolved under the following circumstances:

**(a) Dissolution by Agreement (Section 40):**

A partnership firm can be dissolved by an agreement among all the partners. Section 40 of Indian Partnership Act, 1932 approves the dissolution of a partnership firm if all the partners agree to dissolve it. Partnership concern is created by settlement and

similarly it can be dissolved by agreement. This type of dissolution is known as voluntary dissolution.

**(b) Dissolution by way of Notice (Section 43):**

If a partnership is at will, it can be dissolved by any partner giving a notice to other partners. The notice for dissolution must be in writing. The dissolution will be effective from the date of the notice, in case no date is mentioned in the notice, and then it will be dissolved from the date of receipt of notice. A notice as soon as given cannot be withdrawn without the consent of all the partners.

**(c) Compulsory Dissolution (Section 41):**

A firm may be compulsorily dissolved in the following circumstances:

- Insolvency of all the partners or all but one partner as this makes them incompetent to enter into a contract.
- When the business of the firm becomes illegal due to some reason.
- When due to some event it turns into unlawful for the partnership firm to carry its business. For example, a partnership firm has a companion who is of another country and India declares war against that country, then he becomes an enemy. Thus, the business becomes unlawful.

**(d) Contingent Dissolution (Section 42):**

In case there is no agreement among partners related to certain contingencies, partnership firm will be dissolved on the happening of any of the situations:

- (i) Death of a partner
- (ii) Expiry of the term of partnership.
- (iii) Completion of Work.
- (iv) Resignation by Partner.

**(e) Dissolution via Court (Section 44):**

A partner can apply to the court for dissolution of the firm on any of these grounds:

- (i) Insanity of a Partner
- (ii) Misconduct by the Partner
- (iii) Incapacity of a Partner.
- (iv) Breach of Agreement.
- (v) Transfer of Shares
- (vi) Regular Losses.
- (vii) Disputes amongst Partners.

**Q. 15: Explain the consequences of dissolution of a firm.**

**Ans.:** Section 45-55 of the Indian Partnership Act, 1932, provides details on the consequences of the dissolution of a firm.

i. Liability for Acts done by Partners after the Dissolution of Firm (Section 45)

According to this section, the partners of a firm are liable to a third party for any act done by means of any of them unless they give a public notice of the dissolution. This notice can be given by way of any partner. It also specifies that the estate of a partner who dies, retires from the firm, becomes insolvent, or that of a person who the third party is not aware of being a partner of the firm, is not liable under this section (from the date he ceases to be a partner).

In easy words, Section 45 endeavors to protect third parties who have no clue about the dissolution of company and also the partners of a dissolved firm from liabilities towards third parties post-dissolution.

ii. Wind up the Business Post-Dissolution (Section 46)

Once a firm is dissolved, every partner or his representative has a right to apply the property of the firm in payments of debts and liabilities of the firm. The surplus, if any, can be distributed among the partners according to their rights.

Also in accordance to section 47 post-dissolution, the authority of each partner to bind the firm, alongside with other mutual rights and obligations, continue till such time that they can wind up the affairs of the firm.

This gives them a risk to complete the unfinished transactions at the time of dissolution. This does not include the acts of a partner who has been adjudicated insolvent.

iii. Settlement of Partnership Accounts (Section 48)

Section 48 lays down certain rules for settlement of partnership accounts after the dissolution of firm under the usual path of business. However, the partners can mutually agree for a different settlement mode. The rules are as follows:

Any losses or deficiencies of capital will be paid out of profits. If the profits are not sufficient, then they are paid out of the capital and finally, if necessary, by the partners. The partners contribute in the proportion in which they receive their share in profits. The asset of the firm, which includes the sums contributed by way of the partners to make up for the deficiency in the capital, is applied in the following order:

- Repaying the debts of the firm to third parties
- Paying each partner rate ably what is due to him from the capital
- Paying each partner rate ably what is due to him on account of capital
- If any quantity is left, then dividing it among the partners in proportions in which they receive their share in profits.

iv. Paying Firm Debts and Separate Debts (Section 49)

If there are joint debts due from the association and separate debts due from any partner, then the payment of firm debts is given priority. If there is any surplus, then the share of each partner is applied to his separate debts. It can also be paid to him.

The separate property of the partner is utilized first in the payment of his separate debts. IF there is any surplus, then it is applied to the payment of firm debts.

v. Personal Profits Earned after Dissolution of Firm (Section 50 and 53)

A firm is dissolved by the death of a partner. If the surviving partners, either by themselves or with the representative of the deceased partner, carry on the business of the firm, then they have to account for any personal profits through them, before winding up the firm.

So, if a lease expires on the death of a partner and the surviving partners renew it before the firm winds up, then the profits belong to the firm.

Section 53 clearly states that in the absence of an agreement to the contrary, a partner can restrain other partners from carrying on a similar business in the name of the firm or from using the property of the association for their own benefit, unless the winding up process is complete.

vi. Return of Premium on the Premature Dissolution of Firm (Section 51)

If a firm dissolves formerly than the time fixed for it, then the partner paying the premium can receive a return of a reasonable part of the premium. This holds true except when the partnership is dissolved:

-Due to the death of a partner

-Due to the misconduct of the associate paying the premium

-Post an agreement which has no provisions for the return of premium

-Also, the partner paying the premium gets a return of a proportionate part of the premium. This holds true when the partnership is dissolved:

-Without either partner being at fault

-Owing to the fault of both the partners

-Due to the fault of the partner receiving the premium

-Due to unawareness about the insolvency of the partner receiving the premium

vii. Contract Rescinded for Fraud or Misrepresentation (Section 52)

If the contract creating a partnership is rescinded due to fraud or misrepresentation, then the party who can rescind the contract is entitled to:

- a) Lien on the assets of the association remaining after the debts of the firm is paid. This lien is for any sum paid by him for the purchase of a share in the firm and capital contributed by him.
- b) Rank as a creditor of the firm for any payment made by using him towards the debts of the firm.
- c) An indemnity from the partners guilty of the fraud or misrepresentation towards all debts of the firm.

viii. Sale of Goodwill after the Dissolution of Firm (Section 55)

The goodwill is included in the assets during the settling of the accounts of a firm after dissolution. The goodwill can be sold separately or along with the different assets of the firm. This is subject to the contract between the partners.

Once the goodwill of the firm is sold after dissolution, an associate can carry on and advertise a business competing with that of the buyer of goodwill. However, subject to the agreement between him and the buyer, he may not:

- Use the name of the firm
- Represent himself as carrying on the business of the firm
- Solicit the customs of persons dealing with the firm before the dissolution.

It is also important to notice that a partner can make an agreement with the buyer of goodwill that he will not raise on any business similar to that of the firm or with certain neighborhood limits. Such an agreement, notwithstanding Section 27 of the Indian Contract Act is valid if the restrictions are reasonable.

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