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TOPIC : Indian partnership Act

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Introduction to Topic

- ✓ One of the forms in which business can be carried on is 'partnership', where two or more persons join together to form the partnership and run the business. In order to govern and guide partnership, the Indian Partnership Act, 1932 was enacted.
- ✓ Since public at large would be dealing with the partnership as customers, suppliers, creditors, employees or any other capacity, it is also very important for them to know the legal consequences of their transactions and other actions in relation with the partnership.

Indian partnership act 1932

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- ✓ **The law relating to partnership was in sections 239 to 266 of the Indian contract Act 1872. These sections have been replaced to other act name Indian Partnership Act.**
- ✓ **It came into the force on 1st October, 1932 except section 69, which came into the force one year later.**

- ✓ **This act is specially meant for governing business of partnership in India. The act mainly contain necessary provisions relating to the formation of the partnership, the rights, duties and liabilities of partners and the procedure of its dissolution.**

Features of Partnership Act, 1932

- ✓ Indian Partnership Act, 1932 is a Central Act. (made by Parliament)
- ✓ This Act deals with special type of contract.(contract of partnership)
- ✓ Provisions regarding contract of partnership were earlier contained in the Indian Contract Act, 1872.
- ✓ This Act extends to the whole of India except the state of Jammu and Kashmir.
- ✓ This Act came in to force on 1.10.1932, except section 69 which came into force on the 1st Day of October, 1933.

Meaning & Definition of 'Partnership'



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✓ **Simply speaking, a partnership is an association of persons who conduct some business activity and agree to share profits earned out of it.**

✓ **Acc to Indian Partnership Act:**

Partnership is the relation between two or more persons who have agreed to share the profit of a business carried on by all of them or any of them acting for all.

Thus, Partnership is the name of legal relationship between/among persons who have entered in to the contract of partnership.

Meaning of 'Partner' 'Firm' and 'Firm Name'

- ✓ **Section 4 of Indian Partnership Act, 1932 provides that**

Persons who have agreed into partnership with one another are called individually 'PARTNERS' and collectively 'FIRM' and the name under which their business is carried on is called the 'FIRM NAME'

“Partnership is thus, invisibility which binds the partners together and firm is the visible form of those partners who are thus bound together”.

Maximum Limit on Number of Partners

- ✓ Section 11 Companies Act provides that the maximum no. of persons, a firm can have:

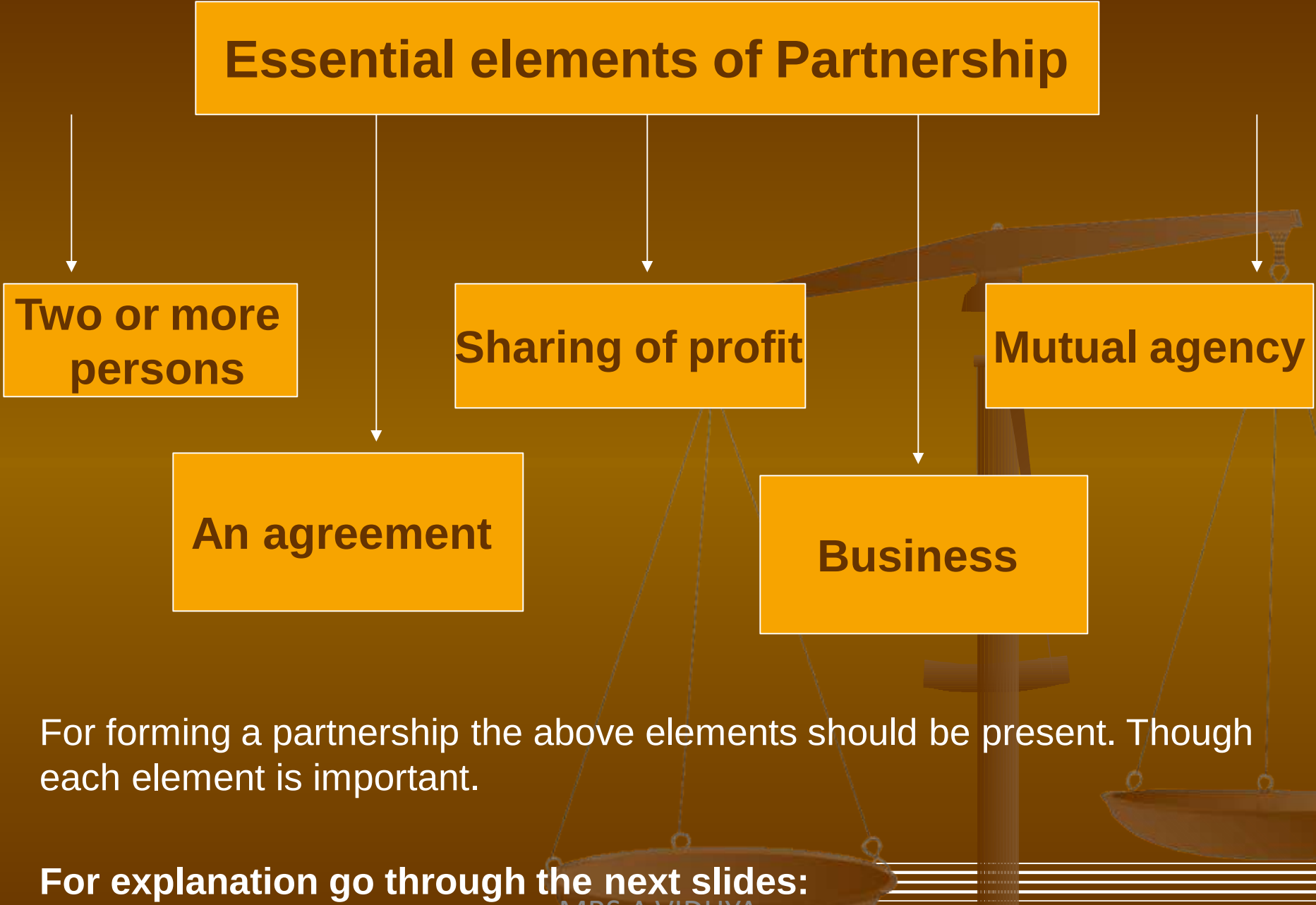
In case of partnership firm carrying on a banking business 10

In case of partnership firm carrying on any other business 20

If the number of partners exceeds the limit, the partnership firm becomes an illegal association.

If an association of persons or firm having members or partners exceeding the Above limit will not be an illegal association if that firm's objective is not to earn profit. MRS.A.VIDHYA

Essential elements of Partnership



Two or more persons

An agreement

Sharing of profit

Business

Mutual agency

For forming a partnership the above elements should be present. Though each element is important.

For explanation go through the next slides:

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Essentials of Partnership

- ✓ **At least two person**
 - ✓ **Agreement or Contract**
 - ✓ **Business- A partnership is formed for the purpose carrying on business.**
- 1. The business must be in existence at the time of formation.**
 - 2. The business must be a running business**
 - 3. The business must be lawful**
 - 4. The purpose of business must be to earn profit**

Meaning of Mutual Agency

Mutual agency refers to the relationship of principal and agent Among partners

**Example in case of
firm of A,B and C**

**When A acts
A- Agent
B and C- Principal**

**When B acts
B- Agent
A and C- Principal**

**When C acts
C- Agent
A and B- Principal**

- ✓ **Mutual agency- A business carried on by all of them or any of them acting for all can bind all the partners of the firm.**

Relationship in case of a firm of A, B and C



**A- Agent
B and C- Principals**



**B- Agent
A and C- Principals**



**C- Agent
A and B- Principals**

- ✓ **Share profit- Sharing of losses by all the partners is not essential. The partners may have express agreement, may agree that any one or more of them shall not be liable for the losses. But if nothing is expressly agreed upon by the partners, it is implied that the profit and losses will be shared equally.**

Advantages of Partnership Firm

- ✓ **Easy to form:** Like sole proprietorships, partnership businesses can be formed easily without any compulsory legal formalities. It is not necessary to get the firm registered. A simple agreement or partnership deed, either oral or in writing, is sufficient to create a partnership.
- ✓ **Availability of large resources:** Since two or more partners join hands to start a partnership business, it may be possible to pool together more resources as compared to a sole proprietorship. The partners can contribute more capital, more effort and more time for the business

Advantages contd.

- ✓ **Better decisions:** The partners are the owners of the business. Each of them has equal right to participate in the management of the business. In case of any conflict, they can sit together to solve the problem. Since all partners participate in the decision-making process, there is less scope for reckless and hasty decisions.
- ✓ **Flexibility in operations:** A partnership firm is a flexible organization. At any time, the partners can decide to change the size or nature of the business or area of its operation. There is no need to follow any legal procedure. Only the consent of all the partners is required.

contd.

Contd.

- ✓ **Sharing risks:** In a partnership firm all the partners “share” the business risks. For example, if there are three partners and the firm makes a loss of Rs.12,000 in a particular period, then all partners may share it and the individual burden will be Rs.4000 only. Because of this, the partners may be encouraged to take up more risk and hence expand their business more.
- ✓ **Benefits of specialization:** Since all the partners are owners of the business, they can actively participate in every aspect of business as per their specialization, knowledge and experience. If you want to start a firm to provide legal consultancy to people, then one partner may deal with civil cases, one in criminal cases, and another in labor cases and so on as per the individual specialization. Similarly, two or more doctors of different specialization may start a clinic in partnership.

Contd.

- ✓ **Protection of interest of each partner:** In a partnership firm, every partner has an equal say in decision making and the management of the business. If any decision goes against the interest of any partner, he can prevent the decision from being taken. In extreme cases an unsatisfied partner may withdraw from the business and can dissolve it. In such extreme cases the “partnership deed” is required. In absence of the partnership deed, no legal protection is given to the partners.

Disadvantage of Partnership Firm

- ✓ **Unlimited liability:** All the partners are jointly liable for the debt of the firm. They can share the liability among themselves or any one can be asked to pay all the debts even from his personal properties depending on the arrangement made between the partners.
- ✓ **Uncertain life:** The partnership firm has no legal existence separate from its partners. It comes to an end with death, insolvency, incapacity or the retirement of a partner. Further, any unsatisfied or discontent partner can also give notice at any time for the dissolution of the partnership.
- ✓ **No transferability of share:** If you are a partner in any firm, you cannot transfer your share or part of the company to outsiders, without the consent of other partners. This creates inconvenience for the partner who wants to leave the firm or sell part of his share to others.

Contd.

Contd.

- ✓ **Lack of harmony:** In a partnership firm every partner has an equal right to participate in the management. Also, every partner can place his or her opinion or viewpoint before the management regarding any matter at any time. Because of this, sometimes there is a possibility of friction and discontent among the partners. Difference of opinion may lead to the end of the partnership and the business.
- ✓ **Limited capital:** Since the total number of partners cannot exceed 20, the capital to be raised is always limited. It may not be possible to start a very large business in partnership form.■

Types of Partnership

On the Basis of Duration

**Partnership at Will
(Sec.7)**

**Particular Partnership
(Sec.8)**

Partnership at Will [Sec.7 read with Sec.43)]

- ✓ When there is no provision in partnership agreement (known as partnership Deed, if in writing) for:
 - ✓ The duration of their partnership, or
 - ✓ The determination of their partnership,then the partnership is called 'Partnership at Will'.
- ♣ Special feature of '**Partnership at will**' is that such partnership may be dissolved by any partner by giving a notice in writing to all other partners of his intention to dissolve the partnership.
- ♣ The partnership will be dissolved from that date which is mentioned in the notice as the date of dissolution and if no date is mentioned then from the date of communication of notice.

Particular Partnership [sec. 8]

- ✓ When a partnership is formed for a
 - ✓ Specific venture or undertaking, or
 - ✓ Particular period (fixed term)then such partnership is called a ‘particular partnership’.
- ✓ Such partnership comes to an end on the completion of the venture or the expiry of time period.
- ✓ If such partnership is continued after the expiry of term or completion of venture, **it is deemed to be a partnership at will.**
- ✓ A particular partnership may be dissolved before the expiry of the term or completion of the venture **only by the mutual consent of all the partners.**

Contd.

- ✓ **Sec. 17 (b)** of the Act provides that if a firm, constituted for a fixed term, continues to carry on business after the expiry of that term, **then** the partnership will become **partnership at will** **AND** mutual rights and duties of partners will remain same as they were before the expiry.

Partnership deed

- ✓ A partnership is formed by an agreement. This agreement may be in writing or oral though the law does not expressly require that the partnership agreement should be in writing, when the contract of partnership is made in writing, it takes the form of a document. The document which contains the term of a partnership as agreed among the partners is called “partnership deed”.
- ✓ The partnership Deed is to be duly stamped as per the Indian Contract Act, and duly signed by all the partners.

Contents of partnership Deed

However, a Partnership Deed should contain the following clause:

- ✓ Name of the firm, Name of the partners
- ✓ Nature and place of business
- ✓ Duration of partnership
- ✓ Capital
- ✓ Share of partners in profits and losses
- ✓ Bank Account firm, Books of account
- ✓ Rules as to admission, expulsion, retirement of partners
- ✓ Powers of partners
- ✓ Dissolution of firm
- ✓ Settlement of disputes

Registration of Partnership



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- ✓ **Obtaining prescribed form**
- ✓ **Preparing statement in the prescribed form**
- ✓ **Signing the statement**
- ✓ **Verifying the statement**
- ✓ **Submitting the statement with fee**
- ✓ **Registration**
- ✓ **Issue of certificate of registration**

Types of Partners



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- ✓ **Active or Actual partner**
- ✓ **Sleeping partner**
- ✓ **Nominal partner**
- ✓ **Sub- Partner**

- **Active partner**–Actively participates in the conduct of the business
- **Sleeping Partner**–Doesn't take active part
- **Nominal Partner**–A partner who lends his name to the firm without having any real interest in it.
- **Sub-Partner**–When a partner agrees to share his profits derived from the firm with a third person, a sub-partnership may arise. The third person is called as sub partner.



Right and duties of partners Subject to contract (Between the partners)

Rights of Partners

- ✓ **Right to take part in business**
- ✓ **Right to be consulted**
- ✓ **Right to access to books**
- ✓ **Right to share the profits**
- ✓ **Right in emergency**
- ✓ **Right as an agent of the firm**
- ✓ **Right to prevent admission of a new partner**
- ✓ **Right not to be expelled**

Duties of Partners

- ✓ **To carry on business to the greater advantage**
- ✓ **To be faithful**
- ✓ **To render true accounts**
- ✓ **To give full information**
- ✓ **To indemnify for fraud**
- ✓ **Duty to share losses**
- ✓ **To act within authority**
- ✓ **To be liable for the act of the firm**

INCOMING AND OUTGOING PARTNERS

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v . Introduction of a partner

- v (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.**
- v (2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.**

v . Retirement of a partner

(1) A partner may retire-

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

✓ **Expulsion of a partner**

- ✓ **(1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.**
- ✓ **(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.**

✓ **Insolvency of a partner**

(1) Where a partner in a firm is adjudicated 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.

✓ **By death of a partner**

(1) Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

DISSOLUTION OF A FIRM

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DISSOLUTION OF PARTNERSHIP AND DISSOLUTION OF FIRM



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✓ **The dissolution of partnership between all the partners of a firm is called the dissolution of the firm. [section 39]. Thus, if some partner is changed/added/ goes out, the 'relation' between them changes and hence 'partnership' is dissolved, but the 'firm' continues. However, complete breakage between relations of all partners is termed as 'dissolution of firm'. After such dissolution, the firm no more exists.**

- ✓ **Thus, ‘Dissolution of partnership’ is different from ‘dissolution of firm’. ‘Dissolution of partnership’ is only reconstruction of firm, while ‘dissolution of firm’ means the firm no more exists after dissolution.**

- ✓ ***Dissolution of a Firm* - A partnership firm is an 'organization' and like every 'organ' it has to either grow or perish. Thus, dissolution of a firm is inevitable part in the life of partnership firm some time or the other.**
- ✓ **Dissolution of a firm without intervention of Court can be (a) By agreement (section 40) (b) Compulsory dissolution in case of insolvency (section 41) (c) Dissolution on happening of certain contingency (section 42) (d) By notice if partnership is at will (section 43).**

Mode of dissolution of firm



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- v *** Dissolution by agreement - [section 40].**
- v *** Compulsory dissolution in case of insolvency - [section 41]**
- v *** Dissolution on the happening on certain contingencies [section 42]**
- v *** Dissolution by notice of partnership at will [section 43(2)]**
- v *** Dissolution by the court**

Dissolution by agreement

✓ . **Dissolution by agreement : A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.**

Compulsory Dissolution

- ✓ **A firm is dissolved**
- ✓ **a) by the adjudication of all the partners or of all partners but one as insolvent or,**
- ✓ **b) By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.**

Dissolution on happening of certain contingencies

- ✓ **a) If constituted for a fixed term, by the expiry of that term**
- ✓ **b) If constituted to carry out one or more adventures or undertakings by the completion thereof.**
- ✓ **c) by the death of a partner.**
- ✓ **d) by the adjudication of a partner as an insolvent.**

Dissolution by notice of partnership at will

- ✓ **(1) Where the partnership is at will the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.**
- ✓ **(2) The firm is dissolved as from the date mentioned in the `notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.**

Dissolution of partnership by Notice

- ✓ **Dissolution of partnership at will**
Notice in writing to other partners is necessary

Dissolution by the Court

- v a) That a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner.
- v b) That a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner.

v

- v **c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.**

- v d) that a partner, other than the partner suing, willfully or persistently commits breach of agreement relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matter relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him.**

- v e) That a partner, other than the partner suing has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 or has allowed it to be sold in the recovery of arrears, of land revenue or of any dues recoverable as arrears of land revenue due by the partner.**

- ✓ **f) That the business of the firm cannot be carried on save at a loss.**
- ✓ **g) On any other ground which renders it just and equitable that the firm should be dissolved.**