**MUTUAL RELATIONSHIP BETWEEN PARTNERS**

**Relationship of Partners to Each Other**

Each partner has a right to share in the profits of the partnership. Unless the partnership agreement states otherwise, partners share profits equally. Moreover, partners must contribute equally to partnership losses unless a partnership agreement provides for another arrangement. In some jurisdictions a partner is entitled to the return of her or his capital contributions. In jurisdictions that have adopted the Revised Uniform Partnership Act(RUPA), however, the partner is not entitled to such a return.

In addition to sharing in the profits, each partner also has a right to participate equally in the management of the partnership. In many partnerships a majority vote resolves disputes relating to management of the partnership. Nevertheless, some decisions, such as admitting a new partner or expelling a partner, require the partners' unanimous consent.

Each partner owes a fiduciary duty to the partnership and to copartners. This duty requires that a partner deal with copartners in Good Faith, and it also requires a partner to account to copartners for any benefit that he or she receives while engaged in partnership business. If a partner generates profits for the partnership, for example, that partner must hold the profits as a trustee for the partnership. Each partner also has a duty of loyalty to the partnership. Unless copartners consent, a partner's duty of loyalty restricts the partner from using partnership property for personal benefit and restricts the partner from competing with the partnership, engaging in self-dealing, or usurping partnership opportunities.

Chapter III (Sections 9 to 17) of the Indian Partnership Act,1932 contains provisions concerning 'Relations of partners to one another i.e., the rights and duties of the partners as between themselves.

Section 11 of the Act contains the general rule that the rights and duties of the partners are to be determined by mutual agreement. The provision is as under:

**SECTION 11. Determination of rights and duties of partners by contract between the partners.-**

(1) Subject to provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

(2) Agreements in restraint of trade. Notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than

that of the firm while he is a partner. As it has been noted above, this section incorporates the general principle that the mutual rights and duties of the partners may be determined by a contract between themselves. They may themselves decide that how much investment or labour is to be put by whom, or whether a partner will be entitled to any remuneration, apart from sharing the profits, or what will be the profit sharing ratio, etc., etc. Such contract may be expressed or may be implied by a course of dealing. The mutual rights and duties which may have been agreed upon between the partners may be subsequently varied by the consent of all the partners. Such variance or change in the mutual rights and duties may also be made either expressly or by an implied consent through a course of dealing between the partners.

In **Pabitra Construction Co. v. UCO Bank AIR 2008 Cal. 103**, three partners opened a joint account with the respondent Bank with special instruction that any of the two partners would be entitled to operate the bank account. In the course of business transaction, disputes arose between them and one of them gave written instruction to respondent bank, not to clear any cheque unless all the three partners jointly operate the account in deviation from the earlier instruction. The Bank, in view of such instruction, refused to clear two issued by two of the partners. The action taken by the Bank was held as quite justified by the Calcutta High Court The Court explained that in a partner-business, all the partners were equally interested in case of profit and loss arising out of business and if all the three partners jointly opened an account, one of them could subsequently decide not to continue with the said account and even give instruction to stop further transaction unless the dispute among them was resolved.

The Court held that if one of the joint account-holders decided to change the mode of operating the account, which was initially agreed to by the parties, the Bank should not continue with the account based on the instruction initially given to it so long the dispute was not settled by the parties.

**Agreement in restraint of trade**

Section 11(2) gives the liberty partners to make a contract that a partner should not carry on any business other than that of the firm while he is a partner. Although according to Sec. 27 of the Indian Contract Act, agreement in restraint of trade is void, but such an agreement entered into between the partners as stated above will be valid.

The right of the partners to make any contract to regulate their mutual rights and duties is subject to the provisions of the Partnership Act. For instance, certain duties of the partners are incorporated in Sections 9 and 10, which have to be adhered to by all the partners and they are not subject to contract between the partners.

Thus, the disabilities suffered by the partners of an unregistered firm, as envisaged by Section 69, are binding on every partnership and the partners cannot agree contrary to those provisions. Similarly, the provision contained in Section 41 regarding compulsory dissolution of a firm on the happening of certain events is binding on every firm. In the same way, the right of the partners to file a suit for dissolution of a firm under Section 44, is not subject to contract between the partners. Section 11, which permits partners to make any contract for regulating their mutual relations, is subject to the provisions of the Act, and Section 44 is one such provision. Therefore, it was held in the case of **N. Satyanarayan v. M. Venkata Bala AIR 1989 A.P 167,** that a partner can always invoke the jurisdiction of under Section 44 for the dissolution of the firm.

As has been noted above, Sections 9 and 10 certain duties by which all the partners are bound and the duties cannot be negatived by a contract between the partners. Sections 12-17 contain various other mutual rights and duties of the partners one of those sections has been made 'subject to contract between partners'. It means that the rights and duties incorporated in Section 12 to 17 are to be applied to the partners, if they have not made any contract to the contrary. For instance, if the partners have agreed to the proportion in which they will be sharing profits and looses, then their agreement will prevail, but if the partners have not agreed to anything on the points, then according to Section 13(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm.

**Various mutual rights and duties of the partners are as follows:**

**RIGHTS OF THE PARTNERS**

1. Right to take part in the conduct of the business[sec 12(a)].
2. Right to express opinion.[sec 12(c)].
3. Right to have access to books of the firm.[sec 12(d)].
4. Right to share profits.[sec 13(b)]
5. Right to interest on capital and advances[sec 13(c) and 13(d)].
6. Right to indemnity[sec 13 (e)].

**DUTIES OF THE PARTNERS(SEC 9 AND 10)**

1. Duty to carry on the business to the greatest common advantage.
2. Duty to be just and faithful to each other.
3. Duty to render true accounts.
4. Duty to render full information of all things affecting the firm.[section 9]
5. Duty to indemnify for fraud[Section 10]
6. Duty to be diligent.[sec 12(b) and 13(f)]
7. Duty to properly use the firm’s property[sec 14 and 15]
8. Duty not to earn personal profits or to compete[section 16]

**LIABILITIES OF PARTNERS**

i) **Joint & Several**: Every partner is liable jointly and severally for all the acts of the firm done while he was a partner. The liability of a partner is always unlimited.

ii) **Liability for Losses causes by HIM**:   Every partner shall be liable to make good any loss caused to the firm by his fraud or wilful neglect in the conduct of business. No partner can in any way exempt himself from such loss.

iii) **Liability for Secret Profits**: A partner is liable to account for and pay to the firm any private profits earned from the business of the firm or property or goodwill of the firm.

iv) **Liability for Profits from Competing Business**: If a partner carries on any business of the same nature and competing with that of the firm, he would be liable to account for and pay to the firm all profits made by him in that business.

v) **Liability to Render true Accounts**: A partner is liable to render true accounts to profit to other partners. He is liable to disclose any legal or illegal accounts which fall within the scope of business of the firm.

vi) **Liability for Losses of the firm**: As a partner has a right to share the profits of the firm so is he liable to share the losses equally unless otherwise agreed upon.