"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"

Persons who have entered into partnership with one another to carry on a business are individually called "**Partners**"; collectively called as a "**Partnership Firm**"; and the name under which their business is carried on is called the "**Firm Name"**

What is the scope of The Indian Partnership Act, 1932?

The scope of a partnership is primarily a matter of partners' intentions. The application of the powers it chooses to exercise at any time is not restricted except prohibition on illegal, immoral or fraudulent behavior that applies equally to individuals.

1. If consent is given by the constituent company's partners, a partner may itself be a member of another company.
2. If the contract appears to be authorized or ratified by all partners, there usually is no further question as to its validity.

The cases where the partnership contract validity issue arises is where one partner made the contract without specific authority from his co-partners. Their implicit scope of partnerships may be divided into non-trading and commercial classes. Partners of either type can exercise certain powers in partnership. A partner can thus retain a lawyer to safeguard the interests of the company.

Essential elements of a partnership

All of 5 elements mentioned above must co-exist in order to constitute a partnership. If any of these is not present, there cannot be a partnership. These 5 essential elements of a partnership firm are explained below in detail.

1.Number of members

Since partnership is the result of a contract, at least two people are necessary to constitute a partnership. The Indian Partnership Act, 1932 does not mention anything about the **maximum no. of partners** in a partnership firm but as per the Companies Act, a partnership consisting of more than 10 persons for a banking business and more than 20 persons for any other business would be considered as illegal. Hence, these should be regarded as the maximum limits to the number of partners in a partnership firm.

Only, the persons competent to contract can enter into a contract of partnership. Persons may be natural or artificial. A Company may, being an artificial legal person, enter into a contract of partnership, if authorized by its Memorandum of Association to do so. There could even be a partnership between 2 companies.

2.Agreement

The partnership is an agreement in which two or more person has decided to carry out business and share the profit and losses equally. To create a legal relationship it is necessary to form a partnership agreement.

The partnership agreement becomes the foundation or the basis on which it is based. It can be either written or oral. The written agreement is known as a partnership deed. Partnership deed mainly consists of the following details:

- Name and address of its firm and business
- Name and address of its partner
- Capital contributed by each partner
- Profit and loss sharing ratio
- Rate of interest on capital, loan, drawings etc
- Rights, duties and obligation of partners
- Settlement of accounts on the dissolution of the firm
- Salaries, commission payable to partners
- Rules to be followed in case of admission, retirement and death of a partner
- Mode of settlement on disputes among partner.
- Any other affecting the rights of the partners

Partnership does not arise from status, operation of law or inheritance. Thus, at the time of death of the father, who was a partner in the partnership firm, the son can claim share in the partnership property but cannot become a partner unless he enters into a contract for the same with other persons concerned.

Similarly, the members of a HUF carrying on a family business cannot be called partners for their relation arises not from any contract but from status. Thus, a “contract” is the very foundation of partnership.

3.Business

The third essential element of a partnership is that the parties must have agreed to carry on a business. The term “business” is used in its widest sense and includes every trade, occupation or profession. Therefore, if the purpose us to carry on some charitable work, it will not be a partnership.

Similarly, if a number of persons agree to share the income of a certain property or to divide the goods purchased in bulk amongst them, there is no partnership and such persons cannot be called partners because in neither case they are carrying on a business.

Thus, where A and B jointly purchased a tea shop and incurred additional expenses for purchasing pottery and utensils for the job, contributing the money in equal proportions and then leased out the shop on rent which was shared equally by them , it was held that they are only co-owners and not partners as they never carried on any business.

4.Mutual agency

In the definition of partnership provides that the business must be carried on by all the partners or any (one or more) of them acting for them all, i.e. there must be a mutual agency.

Thus, every partner, is both an agent and principal for himself and other partners, i.e. he can bind by his acts the other persons and can be bound by the acts of other partners. The importance of the element of mutual agency lies in the fact that it enables every partner to carry on the business on behalf of others.

5.Sharing of profit

This essential element provides that the agreement to carry on business must be with the object of sharing profits amongst all the partners. Thus, there would be no partnership where the business is carried on with a philanthropic motive and not for making a profit or where only one of the persons is entitled to the whole of the profits of the business. *The partners may however, agree to share the profits in any ratio they like.*

Sharing of losses not necessary

To constitute a partnership, it is not essential that the partners should agree to share the losses . It is open to one or more partners to agree to bear all the losses of the business.

Moreover, the **manner in which the profits/losses are to be shared should be expressly stated in the partnership deed.** In the absence of this being mentioned in the partnership deed, the provisions of the Partnership Act, 1932 would apply which state that the profits/losses should be distributed equally among all partners.

True Test of a Partnership

The true test of a partnership is a way for us to determine whether a group or association of persons is a partnership firm or not. It also helps us recognize the partners of the firm and separate them from the third parties.

The idea behind such a true test is to examine the relevant facts and determine the real relations between parties and conclude about the presence of a partnership.

Let us take a look at the three important aspects of a true test of a partnership, namely agreement, profit sharing and mutual agency.

1] Agreement/Contract between Parties

For there to be a partnership between two or more persons there has to be an agreement of partnership between them. The partnership cannot arise family status or any operation of law. There has to be a specific agreement between the partners.

So if family members of a HUF are running a business together this is not a partnership. Because there is no agreement of partnership between them. The members of HUF are born into the HUF, so they cannot be partners.

2] 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. Let us see some such cases

- Sharing of profits/ gross receipts from a property that two or more persons own together or have a joint interest in is not a partnership
- A share of profits given to an agent or servant does not make him a partner
- If a share of the profit is given to a widow or child of a deceased partner does not make them partners
- Part of the profits shared with the previous owner as a part of goodwill or as a form of consideration will not make him a partner.

Now ascertaining this motive becomes difficult if there is no express agreement between the concerned parties. In such a case we will consider the cumulative effect of all relevant facts. This will help us to determine the true relationship between the parties.

3] Mutual Agency

This is the truest test of a partnership, it I the cardinal principle 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.

So whenever there is a confusion about the existence of a partnership between people we check for the presence of a mutual agency. If such an agency exists between the parties who run a business together and share profits it will be deemed that a partnership exists.

Kinds of Partnership

The distinction between partnerships can be done on the basis of two criteria. They are as follows

1. With Regard to the Duration of the partnership – either Partnership at Will or Partnership for Fixed Duration
2. With regards to the extent of the business carried by the partnership – either General Partnership or Particular Partnership

So let us take a look at these kinds of partnership in some detail.

1] Partnership at Will

When forming a partnership if there is no clause about the expiration of such a partnership, we call it a partnership at will. According to Section 7 of the Indian Partnership Act 1932, there are two conditions to be fulfilled for a partnership to be a partnership at will. These are

- There is no agreement about a fixed period for the existence of a partnership.
- No provision with regards to the determination of a partnership

So if there is an agreement between the partners about the duration or the determination of the firm, this will not be a partnership at will. But if a partnership was entered into a fixed term and continues to operate beyond this term it will become a partnership at will from the expiration of this term.

2] Partnership for a Fixed Term

Now during the creation of a partnership, the partners may agree on the duration of this arrangement. This would mean the partnership was created for a fixed duration of time.

Hence such a partnership will not be a partnership at will, it will be a partnership for a fixed term. After the expiration of such a duration, the partnership shall also end.

However, there may be cases when the partners continue their business even after the expiration of the duration. They continue to share profits and there is an element of mutual agency. Then in such a case, the partnership will now be a partnership at will.

3] Particular Partnership

A partnership can be formed for carrying on continuous business, or it can be formed for one particular venture or undertaking. If the partnership is formed only to carry out one business venture or to complete one undertaking such a partnership is known as a particular partnership.

After the completion of the said venture or activity, the partnership will be dissolved. However, the partners can come to an agreement to continue the said partnership. But in the absence of this, the partnership ends when the task is complete.

4] General Partnership

When the purpose for the formation of the partnership is to carry out the business, in general, it is said to be a general partnership.

Unlike a particular partnership in a general partnership the scope of the business to be carried out is not defined. So all the partners will be liable for all the actions of the partnership.

Partnership Deed

Now a partnership is when two persons form an association to carry out a business with the motive to earn profits. They share the profits from such a business. Such an association will be voluntarily entered into by the partners based on an agreement between them.

Such an agreement between partners can be written or can even be oral. However, it is strongly advised for legal and practical purposes that such an agreement or contract be in the written form. And this written agreement between partners to form a partnership firm is what we call a Partnership Deed.

Contents of Partnership Deed

This partnership deed will contain all the conditions and the legalities of the partnership deed. It will provide a guiding basis for all future activities. And in case of a dispute or legal proceedings, it can also be used as evidence. A general partnership deed will contain the following information,

- The agreed name of the Partnership Firm. Please note that such a name cannot have the words “company” or “private company” in it.
- The nature of the business will also be mentioned in the deed
- Date of commencement of such business
- The place of business, i.e addresses of main office or branch offices if any, where communication can be sent
- The duration of a partnership if it is a partnership for a specific purpose or time. If it is a partnership at will then no such duration will be mentioned
- Contribution to the capital of all the partners
- Profit sharing ratio. However, if no ratio is given it is assumed that the profit is shared by all the partners equally.
- Salary of all active partners
- Interest on contribution and the interest on drawings (must be according to the provisions of the Indian Partnership Act 1932)
- Terms and conditions of the retirement or expulsion of a partner, and the terms to continue the partnership after such an incident
- The day-to-day functioning of the firm and the distribution of the managerial duties among the partners
- Preparation of the firm’s accounts and the provisions for internal and statutory audit
- Procedure for voluntary or forced dissolution of the firm
- Guidelines for solving any disputes and arbitration process to be followed

Registration of Partnership

As per the Partnership Act 1932, it is not compulsory to register a partnership firm. The firm does not have a separate legal identity and registration will not alter this fact. However, registration is the definite proof of the existence of the firm and its legality.

Non-registration of a firm has some real-life legal consequences for the partners and the firm itself. So it is always advisable to draw up a written partnership deed and register the firm with the Registrar of Firms. The consequences of not doing so are as follows,

- The firm cannot file legal proceedings against any third party for any situation. For example, if the client has not paid his dues to the firm, the firm cannot sue him if it is unregistered.
- An unregistered firm cannot fail a case against a partner for any reason (like mismanagement, theft etc)
- A partner of an unregistered firm cannot file a suit against one of the other partners either.

Procedure of Registration

According to the India Partnership Act 1932, there is no time limit as such for the registration of a firm. The firm can be registered on the date when it is incorporated or any such date after so. The requisite fees and fines must be paid. The procedure for such a registration is as follows,

1] Application to the Registrar of Firms in the prescribed form (Form A). Nowadays this facility is even available online. Such an application must contain certain basic details about the firm such as,

- Name of the Partnership Firm
- Name and address of all partners
- Place of business (address of main and branch offices)
- Duration of the partnership

- Date of joining of partners
- Date of commencement of business

2] The duly signed copy of the Partnership Deed (which contains all the terms and conditions) must be filled with the registrar

3] Deposit/pay the necessary fees and stamp duties

4] Once the registrar approves the application, the firm will be entered into the records. And the registrar will also issue a certificate of incorporation.

And this is how the process of registration will be completed and the firm will attain legal recognition.

Consequences of Non Registration of Firm

Section 69 of the Indian Partnership Act, 1932 offers a detailed explanation of the consequences of not opting for firm registration. These are:

1] No suit in a civil court by the firm or other co-partners against any third party

If the firm registration is not done, then the firm or any other person on its behalf cannot file a suit against a third party for breach of contract which the firm has entered into. Further, the person filing the suit on behalf of the firm should be in the register of the firm as a partner.

2] No relief to partners for set-off of claim

Without firm registration, any action brought against the firm by a third party having a value of more than Rs. 100 cannot be set-off by the firm or any of its partners. Pursuance of other proceedings to enforce rights arising from the contract cannot be done either.