Indian Partnership Act

Nature of Partnership

When two or more persons join hands to set up a business and share its profits and losses it is called Partnership. Section 4 of the Indian Partnership Act 1932 defines partnership as 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'.

Partners are the persons who have entered into partnership individually with one another. Partners collectively are called 'firm'. The essential features of the partnership are as follows.

Two or More Persons

There should be at least two persons coming together to form the partnership for a common goal. In other words, the minimum number of partners in a partnership firm can be two.

Indian Partnership Act, 1932 has put no limitations on maximum numbers of partners in a firm. But however, Indian Companies Act, 2013 puts a limit on a number of the partners in a firm as follow:

- For Banking Business, Partners must be less than or equal to 10.
- For Any Other Business, Partners must be less than or equal to 20.
- If the number of partners exceeds the limits, the partnership becomes illegal.

Agreement

The partnership is an agreement between two or more persons who decided to do business and share its profits and losses. To have a legal relationship between the partners, the partnership agreement becomes the basis. The agreement can be in written form or oral form. An oral agreement is equally valid. But, preferably the partners should have a written agreement, in order to avoid disputes in future.

Business

To carry on some business there should be an agreement. Mere co-ownership of a property does not amount to the partnership. The business must also be legal in nature, a partnership to carry out illegal business is not valid.

Mutual Agency

The business of a partnership firm may be carried on by all the partners or any of them acting for all. This statement has two important implications. First, to participate in the

conduct of the affairs of its business, every partner is entitled. Second that a relationship of mutual agency between all the partners exists.

For all the other partners, each partner carrying on the business is the principal as well as the agent. He can bind other partners by his acts. And also is bound by the acts of other partners with regard to the business of the firm.

Sharing of Profit

The agreement between partners must be to share profits and losses of a business. Sharing of profits and losses is important. The partnership is not for the purpose of some charitable activity.

Liability of Partnership

Each partner is liable jointly with all the other partners. And also when is a partner, severally liable to the third party for all the acts done by the firm. Liability of the partner is not limited. This implies that for paying off the firm's debts, his private assets can also be used.

Rights and Duties of Partners

All partners are free to form their own terms and conditions with respect to functioning in their partnership deed. The Indian Partnership Act, 1932 has also prescribed provisions to govern their relationship *inter se* (amongst them), and these provisions are applicable if no such deed exists. Let us take a look at the duties and the rights of partners.

Right to Determine Relationship

Partners can determine their mutual rights and duties by a contract called partnership deed, which determines aspects of general administration, such as which partner will do what work, what will be their share in profits, etc. It may be varied by express or implied consent of all the partners.

Such deed can be expressly made or implied by a course of dealing. For example, if one partner checks accounts of the firm daily and others do not object, his conduct will be presumed to be a right of all partners in the absence of a written partnership deed between them. So they can themselves determine the rights of partners.

Agreement in Restraint of Trade is Valid

Section 27 of the Indian Contracts Act, 1872 declares contracts in restraint of trade as void. All agreements restraining exercise of a lawful profession, trade or business are invalid.

Section 11 of Partnership Act, however, states that partners can validly levy such a restraint on each other, but such restraint must be provided for under the partnership deed. Partners can use this agreement to prohibit each other from carrying on any business other than that of the firm.

Rights of Partners *Inter Se*

Partners can exercise the following rights under the Act unless the partnership deed states otherwise:

1. **Right to participate in business:** Each partner has an equal right to take part in the conduct of their business. Partners can curtail this right to allow only some of them to contribute to the functioning of the business if the partnership deed states so.
2. **Right to express opinions:** Another one of the rights of partners is their right to freely express their opinion. Partners, by a majority, can determine differences with respect to ordinary matters connected with the business. Each partner can express his opinion to decide such matters.
3. **Right to access books and accounts:** Each partner can inspect and copy books of accounts of the business. This right is applicable equally to active and dormant partners.
4. **Right to share profits:** Partners generally describe in their deed the proportion in which they will share profits of the firm. However, they have to share all the profits of the firm equally if they have not agreed on a fixed profit sharing ratio.
5. **Right to be indemnified:** Partners can make some payments and incur liabilities through their decisions in the course of their business. They can claim indemnity from each other for these decisions. Such decisions must be taken in situations of emergency and should be of such nature that an ordinarily prudent person would resort to under similar conditions.
6. **Right to interest on capital and advances:** Partners generally do not get an interest on the capital they contribute. In case they decide to take an interest, such payment must be made only out of profits. They can, however, receive interest of 6% p.a. for other advances made subsequently towards the business.

Duties of Partners *inter se*

Now that we have seen the rights of partners let us see the duties the Act has prescribed,

1. **General duties:** Every partner has the following general duties like carrying on the business to the greatest common good, duty to be just and faithful towards each other, rendering true accounts, and providing full information of all things affecting the firm. etc

2. **Duty to indemnify for fraud:** Every partner has to indemnify the firm for losses caused to it by his fraud in the conduct of business. The Act has adopted this principle because the firm is liable for wrongful acts of partners. Any partner who commits fraud must indemnify other partners for his actions.
3. **Duty to act diligently:** Every partner must attend to his duties towards the firm as diligently as possible because his not functioning diligently affects other partners as well. He is liable to indemnify others if his willful neglect causes losses to the firm.
4. **Duty to use the firm's property properly:** Partners can use the firm's property exclusively for its business, and not for any personal purpose, because they all own it collectively. Hence, they must be careful while using these properties.
5. **Duty to not earn personal profits or to compete:** Each partner must function according to commonly shared goals. They should not make any personal profit and must not engage in any competing business venture. They should hand over personal profits made to their firm.

Reference:

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