



Gujarat

Judicial Services Exam

The High Court of Gujarat

Volume - 8

The Indian Partnership Act 1932, The Negotiable Instruments Act 1881, The Probation of Offenders' Act 1958, The Juvenile Justice (Care and Protection of Children) Act 2015, The Indecent Representation of Women (Prohibition) Act 1986, The Protection of Children from Sexual Offences Act 2012



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The Indian Partnership Act, 1932

Chapter-1 Preliminary

1. Background and Origin

- ✓ The Indian Partnership Act, 1932 superseded the earlier provisions related to partnership that were contained in the Indian Contract Act, 1872.
- ✓ A partnership arises from a contract, and where the Partnership Act is silent, general principles of contract law (e.g. offer, acceptance, consideration, legality of object, etc.) are applicable.
- ✓ The Act is mainly based on the English Partnership Act, 1890.
- ✓ Therefore, English case law is considered relevant and useful in construing the provisions of the Indian Act.

2. Definitions under Section 2

- ✓ Unless repugnant to the subject or context:

(a) "Act of a Firm"

Means any act or omission by all the partners or by any partner or agent of the firm, Which gives rise to a right enforceable by or against the firm.

(b) "Business"

Includes every trade, occupation, and profession.

(c) "Prescribed"

Means prescribed by rules under this Act.

(d) "Third Party"

In relation to a firm or a partner, refers to any person who is not a partner in the firm.

(e) Undefined expressions

Any expression used but not defined in this Act and defined in the Indian Contract Act, 1872, shall have the meaning assigned to them in that Act.

3. Nature and Advantages of Partnership

- ✓ Partnership is a form of business organisation where two or more persons join to carry on a business jointly.
- ✓ It is an improvement over sole proprietorship, where only one individual conducts business using his own resources, skill, and effort.

Advantages over Sole Proprietorship:

- ✓ Pooling of resources – more capital, skill, and effort.
- ✓ Can undertake larger businesses than a sole proprietor.
- ✓ In case of losses, the burden is divided among partners.

Advantages over Company:

- ✓ Simpler formation – fewer procedural formalities.
- ✓ Simpler dissolution.
- ✓ Less statutory control than a company.

Chapter 2

The Nature of Partnership

4. Definition of "Partnership", "Partner", "Firm", and "Firm Name"

- ✓ **Definition of Partnership:**
 - “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.
- ✓ **Definition of Partner:**
 - Persons entering into partnership are called “partners”.
- ✓ **Definition of Firm:**
 - Collectively, such persons are called “a firm”.
- ✓ **Definition of Firm Name:**
 - The name under which the business is carried on is the “firm name”.

5. Comparison with Earlier and English Definitions**A. Earlier Indian Definition (Sec. 239, Indian Contract Act):**

- ✓ “Partnership” was defined as a relation which subsists between persons who have agreed to combine their property, labour or skill in some business and to share the profits thereof.

Criticisms:

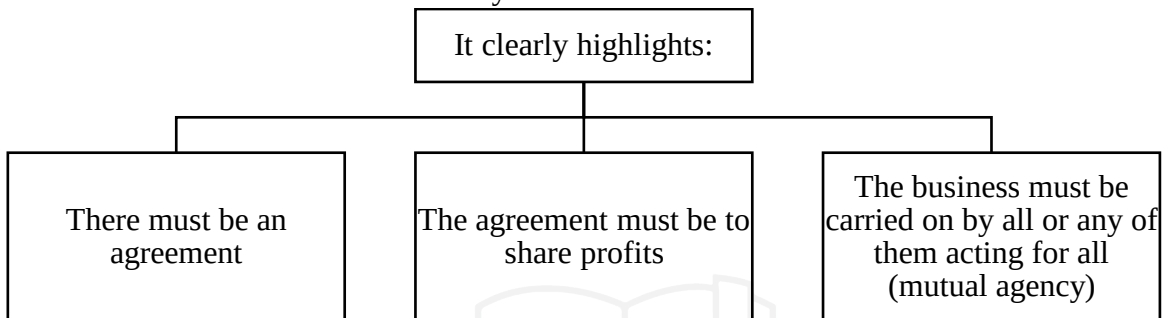
1. "Combination of property, labour or skill" is not essential – it is only incidental.
2. A person may be a partner without contributing capital or labour (e.g. someone who lends only their name).
3. Under English law, a dormant partner may contribute neither capital, skill, nor labour.
4. Sometimes, widows or relatives of deceased partners are given a share in profits without contributing anything.

B. Present Definition (Sec. 4) – Based on Pollock:

- ✓ Removes the requirement of combination of property, labour, or skill.
- ✓ Wider and more accurate than the earlier one.
- ✓ Emphasizes on the element of mutual agency – i.e., “all or any of them acting for all”, which is essential in every partnership.

6. Comparison with English Definition (Partnership Act, 1890):

- ✓ “Partnership is the relation which subsists between persons carrying on a business in common with a view to profit.”
- ✓ The Indian definition is more analytical:



Essential Features of Partnership

- Section 4 of the Indian Partnership Act, 1932 defines a 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.”
- From this definition, the following five essential elements of a partnership emerge:

1. Relation Between Persons

- ✓ Partnership is a relation, not merely an agreement or contract.
- ✓ It arises from a contract and not from status (as per Sec. 5).
- ✓ The use of the phrase “who have agreed” in Section 4 confirms this.
- ✓ Association is not an apt term for partnership as it may include other entities like companies; thus, 'relation' is used.
- ✓ Minimum two persons are necessary; they can be natural or artificial persons (e.g., a company).
- ✓ Persons must be competent to contract:
 - (1) A minor or person of unsound mind cannot be a partner.
However, a minor can be admitted to the benefits of partnership.
 - (2) An insolvent cannot be a partner.
- ✓ Firm is not a legal person, so:
 - (1) A firm cannot be a partner with another firm.
 - (2) Partners in their individual capacity can enter into another partnership.
- ✓ **Case Law:**
 - (1) Dulichand Laxminarayan v. CIT (AIR 1956 SC 354): A firm is not a person.
 - (2) CIT v. Jadavji Narsidas & Co. (AIR 1963 SC 1497): Individual partners of a firm can enter into another partnership.

2. Agreement ('who have agreed')

- ✓ Partnership must arise out of a contractual agreement (express or implied).
- ✓ The form is not prescribed: it can be oral, written, or inferred from conduct.
- ✓ The agreement must be voluntary.
- ✓ Case Law:

(1) **Lakshmibai v. Roshan Lal (AIR 1972 Raj 288):**

- Courts may infer partnership from conduct and participation in the business.
- Mere use of the term "partner" is not conclusive.
- Witnesses confirmed the existence of partnership through conduct.
- Joint family business is not a partnership: it arises from status, not contract.

(2) **Abdul Badsha v. Century Wool Industries (AIR 1954 Mys 33):**

- Mutual understanding from consistent conduct can constitute implied partnership.

3. Carrying on of Business

- ✓ Partnership must be for carrying on a business.
- ✓ As per Sec. 2, "business" includes trade, occupation, or profession.
- ✓ Not all occupations/professions are businesses; intention of profit is essential.
- ✓ Religious, charitable associations or clubs do not qualify.
- ✓ There must be continuity in operations:
 - (1) A single act (e.g., buying and selling property once) is not business.
 - (2) A series of acts or continuity is necessary.
- ✓ Temporary ventures can also be partnerships (see Sec. 8).
- ✓ Partnership comes into existence only after commencement of business.
- ✓ Agreement to start a business in the future does not create partnership.
- ✓ **Case Law:**

(1) **R.R. Sarna v. Reuben (AIR 1946 Oudh 68):**

- There was no partnership as the intended business never started.
- Existence of business is a precondition for partnership.

4. Sharing of Profits

- ✓ Derives from Latin "to part" (i.e., to divide).
- ✓ It is essential that profits are to be shared. No one can claim to be a partner without a right to share profits.
- ✓ However, sharing profits alone is not conclusive proof of partnership.
- ✓ Sharing of losses is not mandatory (Sec. 4 is silent):
 - 1. Sharing of losses may be inferred as an incident, not a test.
 - 2. Partners may agree that only one bears the loss.
- ✓ The form of profit sharing may vary (e.g., described as rent or remuneration).
- ✓ Case Law:

1. **Girdharbhai v. Saiyed Md. Kadri (AIR 1987 SC 1782):**
 - Rent may be considered as a share of profit.
2. **Walker v. Hirsch (1884) 27 Ch D 460:**
 - Agreement to share losses strengthens inference of partnership.
- ✓ Conclusion: Sharing of profits is a strong indicator, but not conclusive or presumptive evidence. Mutual agency (next feature) is the decisive test.

5. Mutual Agency

- ✓ This is the real test of partnership.
- ✓ Each partner is both a principal and an agent:
 1. Agent: acts on behalf of others.
 2. Principal: is bound by acts of others.
 3. Expression “carried on by all or any of them acting for all” (Sec. 4) confirms this.
- ✓ Not all partners need to manage; sleeping partners may exist.
- ✓ If business is carried on by others but not on one’s behalf, then no partnership exists.
- ✓ Case Law:
 1. **Hirabai v. Bhagirath & Co. (AIR 1964 Bom 174):**
 - Plaintiff got share in profits, but business was managed solely by the defendant company. No mutual agency; thus, no partnership.
 2. **Cox v. Hickman (1860) 8 HLC 268:**
 - Sharing profits is not conclusive of partnership.
 - Trustees carrying on business were agents, not principals. Hence, no mutual agency, and thus no partnership.
 - Lord Cranworth: “Liability of one partner for acts of co-partner is liability of a principal for acts of his agent.”
- ✓ **Principle from Cox v. Hickman:**
 1. Right to share profit does not automatically make one a partner.
 2. Agency relationships are essential.
 3. Courts examine the capacity in which profits are received.
 4. Person receiving profits as an agent, servant, or creditor ≠ (is not a Partner.)

Summary of Tests of Partnership:

Test	Status
Agreement	Essential
Sharing of Profits	Strong Evidence
Sharing of Losses	Not Essential
Carrying on of Business	Essential
Mutual Agency	Conclusive Test

Mode of Determining Existence of Partnership

Section 6: Statutory Provision

General Rule

- To determine whether:
 - a. A group of persons is a firm, or
 - b. A person is a partner in a firm,
- The real relationship between the parties must be considered.
- All relevant facts taken together must be examined.

Explanation I

- Sharing of profits or gross returns from a joint or common interest in property: Does NOT itself create a partnership.

Explanation II

- Receiving share of profits or payments linked to profits: Does NOT by itself create a partnership.
- Specifically, the following do NOT constitute partnership merely by such receipt:
 - a. Lender of money to the business.
 - b. Servant or agent receiving remuneration.
 - c. Widow or child of a deceased partner receiving annuity.
 - d. Previous owner/part-owner receiving consideration for sale of goodwill/share.

I. Principle of Section 6

A. Core Principle: 'Real Relation' Test

- ✓ Section 6 is based on the rule laid down in *Cox v Hickman* (1860).
- ✓ The court must look beyond mere formalities or terminology.
- ✓ It is not enough that parties satisfy the definition in Section 4; the substance or essence of the relationship must indicate a partnership.
- ✓ Even if parties call themselves 'partners', the court is not bound by such terminology. (*Mollow, March & Co. v. Court of Wards*; *Pooley v Driver*)

B. Key Test: Mutual Agency

- ✓ The ultimate test of partnership is mutual agency, i.e., whether business is carried on by all or any of them acting for all.
- ✓ Profit-sharing, though important, is not conclusive.
- ✓ Community of profit and loss plus mutual agency = Partnership.
- ✓ **Cox v Hickman (1860) 8 HLC 268**
 1. Facts: Creditors were given a share in profits of the business as a means of recovering a debt.

-
2. Held: Mere sharing of profits does not constitute a partnership. The true test is whether there exists a mutual agency — i.e., whether the person in question has authority to act on behalf of others.
 3. Importance: Established that mutual agency is the real test for determining partnership, not merely profit-sharing.

II. Explanation I: Joint Ownership is Not Partnership

- ✓ Merely owning property jointly and sharing its income does not create a partnership.
- ✓ Example:
 - If A and B jointly own a house and share the rent, no partnership exists.
 - But if they use the income for business, manage it jointly, and divide net profits:
 - Partnership is created.

Judicial Interpretations and Illustrations:

I. Difference Between Co-Ownership and Partnership

- ✓ **Lindley's View:**
 - Where co-owners employ property for profit and divide it, the line between co-ownership and partnership becomes thin.
- ✓ **Coope v Eyre (1788):**
 - If parties are jointly involved in purchase, they must also be jointly involved in resale to be considered partners.

II. Birdichand v Harakchand (AIR 1940 Nag 211):

- ✓ A, B, and C each agreed to supply goods worth £3000 on a joint adventure, and divide profit as per individual contribution → Held: Not a partnership (no mutual agency).
- ✓ Agreement to jointly purchase cotton for resale and divide profit/loss, where no party could independently sell → Held: Partnership exists.

III. Champaran Cane Concern v State of Bihar (AIR 1963 SC 1737):

- ✓ Two persons purchased land and appointed a manager for cultivation. They shared profits but were not engaged in the business themselves → Held: Not partners, as no mutual agency.
- ✓ **Evolution from Co-Ownership to Partnership**
 1. Mere joint ownership doesn't equal partnership.
 2. But if co-owners:
 - a. Engage in a common business,
 - b. Share profit/loss,

Allow one to act for others (mutual agency) → They become partners.
- ✓ Example: Two persons owning land and actively cultivating it together with mutual arrangements → Held: Partnership exists.

IV. Section 6, Explanation 2 – Profit-Sharing Not Conclusive Test of Partnership

Principle:

1. Mere receipt of profits or sharing of profits does not necessarily create a partnership.
2. The real intention of the parties and the existence of mutual agency are key to determining a partnership.
3. Profit-sharing can occur in various non-partnership arrangements such as loans, services, inheritance, or sale of goodwill.

A. Lender of Money Receiving Profits

- ✓ Rule: If a lender agrees to receive a share in profits in lieu of or in addition to interest, that alone does not make him a partner.

- ✓ Cases:

1. **Cox v Hickman (1860)**

- Held: Sharing profits does not establish partnership. Real test is mutual agency.

2. **Molloy, March & Co. v Court of Wards (1872)**

- A Raja lent money to a firm, with control rights and profit share.
- Held: He was not a partner. Real intention was security, not partnership.

3. **Pooley v Driver (1876)**

- Facts: A person provided capital and was described as a partner but had no participation in control or decision-making.
- Held: Describing someone as a partner does not create a partnership if the real facts show otherwise.

4. **Frowde v Williams (1886)**

- Money lender received half profits and control rights.
- Held: Arrangement amounted to partnership due to substantial involvement.

B. Servants or Agents Receiving Profits

- ✓ Rule: Receipt of profits as remuneration (salary/commission) does not make a servant or agent a partner.

- ✓ Cases:

1. **Walker v Hirsch (1884)**

- A clerk received fixed salary + 1/8th profit share.
- Held: He remained a servant, not a partner; lacked mutual agency and decision-making power.

2. **Abdul Latif v Gopeshwar (1933)**

- Defendant managed business and received $\frac{3}{4}$ profits.
- Held: It was a case of agency, not partnership. Business and liabilities were of the plaintiff.

3. Krishnamachariar v Sankara Sah (1921)

- Capitalist partner claimed he was not a partner.
- Held: It was a partnership – common business and profit-sharing implied so.

C. Widow or Child of Deceased Partner Receiving Profits

- ✓ Rule: Receiving profits (like annuity) by heirs of deceased partners does not create partnership, unless a clear agreement exists.
- ✓ **Holme v Hammond (1872)**
 - Executors of a deceased partner received 1/5th profits.
 - Held: No partnership. No agreement and no mutual agency existed.

D. Seller of Goodwill Receiving Profits

- ✓ Rule: A seller of goodwill receiving share in future profits is not a partner unless there's a clear agreement indicating such intent.
- ✓ **Pratt v Strick (1932)**
 - Doctor sold goodwill, agreed to introduce patients and share profits.
 - Held: Despite profit share, he was not a partner due to absence of mutual agency.

Partnership Not Created by Status – Section 5, Indian Partnership Act, 1932

1. Statutory Provision (Section 5)

- ✓ "The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu Undivided Family (HUF) carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such, are not partners in such business."

2. Essence of Section 5

- ✓ Partnership is based on an agreement.
- ✓ Family or status-based associations do not amount to partnerships.
- ✓ Only individuals who enter into an agreement are recognized as partners under the law.
- ✓ It cannot arise by operation of law or status.
- ✓ Reinforces Section 4, which requires parties to "agree" to become partners.

3. Hindu Undivided Family (HUF) and Family Business

- ✓ A person born into an HUF becomes co-owner of a family business by birth, not by agreement.
- ✓ Such persons do not become partners under the Partnership Act.
- ✓ Rights and obligations are governed by personal laws, not by contract.

4. Distinction between Partnership and HUF

Partnership	HUF
Arises from contract	Arises from status
Governed by Partnership Act	Governed by Hindu Law
Every partner is an agent	No agency between co-parceners
Changes in composition dissolve firm (unless agreed)	Composition changes by birth/death

5. Devolution of Business Upon Heirs

- ✓ Heirs do not automatically become partners due to community of interest.
- ✓ Agreement (express or implied) is necessary to establish partnership.
- ✓ Continuation of business after death may imply contractual intent.

6. Co-Parcener in Family Business vs Partner

- ✓ A co-parcener is not a partner under the Partnership Act.
- ✓ However, co-parceners can form a partnership by mutual agreement.
- ✓ Members of a trading family may enter into a partnership but often must sever joint status to do so.

7. Nature of 'Family Business'

- ✓ Ancestral business or a new business started using family funds/assets.
- ✓ A new business qualifies as "family business" if:
 1. All adult members consent, and
 2. In respect of minors, it is within the powers of Karta and for family benefit.

8. Karta Entering into Partnership

- ✓ If Karta of HUF joins with a stranger, other family members do not automatically become partners.
- ✓ Only contracting members are recognized as partners under the law.

9. Case Laws:

(1) R.K.P.S. Pichhappa Chettiar v C. Pillai (AIR 1934 PC 192)

Held: A joint family as a unit cannot be a partner; only individuals (even if representing family) can be partners.

(2) Ram Laxman Sugar Mills v CIT (1967) 66 ITR 611 (SC)

- Facts: Karta of a joint family executed a partnership deed; later, joint family status ended by partition.
- Issue: Whether the partnership deed remained valid after partition.
- Held:

1. HUF is not a juristic person for contracts.
2. Manager/Karta can enter into partnership with a stranger on behalf of HUF.
3. Other members do not get automatic rights in the partnership.
4. Partnership is between the Karta and the other party, not the HUF as a whole.
5. Therefore, partition of HUF does not dissolve the partnership.

(3) Bhagat Ram Mohanlal v Commr. of P.E.T (AIR 1956 SC 374)

- Facts: Karta entered into partnership; later, co-parceners also joined.
- Held: Initially, only the Karta was a partner. Subsequent entry of co-parceners amounts to change in constitution of the firm. Co-parceners do not automatically become partners; express action is needed.

Duration of Partnership

Section 7 – Partnership at Will

➤ **Statutory Provision:**

- ✓ “Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is ‘partnership at will’.”

➤ **Classification Based on Duration:**

1. Partnership for a Fixed Period:

- ✓ Formed for a specified time period or particular venture.
- ✓ Dissolves on expiry or completion.
- ✓ May continue further by consent – becomes a partnership at will unless a new fixed term is decided.

2. Partnership at Will:

- ✓ Formed without any fixed term or condition for termination.
- ✓ Continues so long as partners mutually wish to carry it on.

➤ **Essentials of a Partnership at Will:**

- ✓ To qualify as a partnership at will, the following two conditions must be met:
 1. No agreement (express or implied) about duration of partnership.
 2. No clause regarding termination or determination of partnership.
- ✓ Note: Even an implied or vague condition on retirement or dissolution takes the firm out of the category of ‘at will’.

➤ **Legal Consequences of a Partnership at Will:**

1. Retirement – Sec. 32(1)(c):
 - ✓ A partner may retire anytime by giving notice to other partners.
2. Dissolution – Sec. 43(1):
 - ✓ Any partner may dissolve the firm by giving notice in writing to all other partners.

3. Other Modes of Dissolution:

- ✓ Firm may also dissolve by:
 1. Mutual consent (Sec. 40),
 2. Insolvency of a partner (Sec. 42(d)),
 3. Death of a partner (Sec. 42(c)).

➤ Judicial Interpretations and Case Laws:

1. **R.N. Kothare v. Hormasjee Dinshaw AIR 1927 Bom 187**

- ✓ Facts: A & B formed a partnership for 1 year. Due to A's illness, B continued alone for years with no new agreement.
- ✓ Held: Partnership initially for a fixed term, but on continuation without any fresh agreement, it became partnership at will. Important principle: Continuation without defining a term makes it 'at will'.

2. **K.T. Chettiar v. E.M. Muthappa AIR 1961 SC 1225**

- ✓ Facts: There was an implied clause about mode of dissolution in the partnership deed.
- ✓ Held: If the agreement contains provisions (even implied) for duration or determination, it is not at will. Court emphasized that even slight restrictions disqualify it from being a firm at will.

3. **Moss v. Elphick (1910) 1 KB 486**

- ✓ Facts: Parties agreed to carry on partnership business indefinitely until mutually terminated.
- ✓ Held: This was a fixed-term partnership (joint lives or mutual termination). Not a partnership at will, because termination required mutual agreement.

4. **Abbott v. Abbott (1936) 3 All ER 823**

- ✓ Facts: Agreement provided that death or retirement of a partner would not dissolve the firm, and if a partner committed an act of dissolution, he would be treated as retired.
- ✓ Held: Firm was not at will, as the partnership continued regardless of individual decisions. A single partner could not dissolve the firm, only the relationship as to himself.

5. **Nissar Ahmed v. Nasima Bi (1970) 1 Mad LJ 512**

- ✓ Facts: Three partners. One could exit by receiving a fixed amount; business continued by remaining two with rights to goodwill and trademark.
- ✓ Held: Not a firm at will as exit clause and succession provision existed. Implied structure of continuation excluded "at will" status.

6. **Suresh Kumar v. Amrit Kumar AIR 1982 Del 131**

- ✓ Facts: Retirement required 6 months' notice; firm continued with remaining partners and legal heirs.
- ✓ Held: Not a partnership at will, as the intention was that business should continue indefinitely. Requirement of notice and provisions for heirs were restrictions on unilateral dissolution.

7. **Gobardhan v. Abani Mohan AIR 1991 Cal 195**

- ✓ Facts: Firm formed to obtain a cinema licence; no duration specified.
- ✓ Held: Partnership at will, since there was no term or clause for determination.

➤ **Partnership for Successor Clause:**

- ✓ Example: Where a deed provided that after one partner's death, his nephew would act in his place.
- ✓ Held: No duration or determination clause – firm is at will. Successor clause alone doesn't change the character.

➤ **Partnership to Continue Until New Deed:**

- ✓ Example: If deed states that the firm continues until new agreement is executed,
- ✓ Held: This is a firm for a fixed term, not a partnership at will.

Section 8 – Particular Partnership

I. Statutory Provision:

- ✓ “A person may become a partner with another person in particular adventures or undertakings.”

II. Meaning and Nature of Particular Partnership:

- ✓ A Particular Partnership is one which is formed for a specific venture, project, or undertaking, and terminates on its completion.
- ✓ Unlike general partnerships (which are ongoing), particular partnerships are limited in scope and duration.
- ✓ Not a permanent bond: The partnership need not be a permanent or long-term arrangement. It may exist solely for a single, specific business venture or undertaking.
- ✓ Example: Partnership for:
 1. Building a bridge
 2. Producing a film
 3. Cropping a crop
 4. Contractual maintenance work
- ✓ As long as the elements under Section 4 (i.e., agreement, business, sharing of profits) are satisfied, the temporary or singular nature of the venture is irrelevant.

III. Characteristics of Particular Partnership:

- 1. Limited scope and duration:** Restricted to a specific project, season, or transaction.
- 2. Continuous business activity required:** A single isolated act is not enough.
 - ✓ Examples of valid particular partnerships:
 1. Purchase and sale of specific jewels
 2. Working of a patent
 3. Carrying out a specific crop season
 4. Managing a contract of service
 5. Two solicitors working jointly on a specific case

3. Liabilities limited to the venture: Partners' rights and liabilities are confined only to that particular business and not beyond.

IV. Legal Test for Validity:

- ✓ Not just a single transaction test: The test is not whether there is one transaction, but whether:
 1. The activity requires joint participation
 2. The business is being carried on over time
 3. There is a profit motive and division of profits
- ✓ Illustration: If partners jointly buy multiple bales, and sell them over time, and divide profits — this is “carrying on business”.

V. Judicial Interpretation and Case Laws:

(a) Gherulal Parekh v. Mahadeodas (AIR 1959 SC 781):

- ✓ A partnership was formed to engage in wagering transactions for a particular season.
- ✓ Held: A valid particular partnership, despite being for a specific term and nature. Even short-term or seasonal transactions can form the basis of a partnership if business is carried on.

(b) Ram Dass v. Mukut Dhari (AIR 1952 A.P. 1):

- ✓ If a transaction ends immediately after a single act of purchase and sale, with no continuity, it does not amount to carrying on business.
- ✓ Carrying on of business requires:
 1. A length of time
 2. Repetitions in the process: buying, storing, selling
 3. Management of goods and finances
- ✓ Defined period or scope: If defined (like for a season or quantity), it is a particular partnership; if undefined, it may be a general partnership.

(c) K. Jaggaiah v. K. Venkatasatyanarayana (AIR 1984 A.P. 149):

- ✓ Facts: Plaintiff and defendants jointly obtained a road maintenance contract.
- ✓ Held: Partnership existed in this activity.
- ✓ Reasoning: Though a single contract, the work required:
 1. Hiring workers
 2. Supervising work
 3. Preparing bills
 4. Getting Government approval
- ✓ All these activities constituted “carrying on of business” under Section 4.

VI. Conclusion:

- Section 8 recognizes Particular Partnership as a valid form of partnership restricted to specific ventures or undertakings.
- It must ful-fill the basic definition of partnership under Section 4.
- Single isolated acts are not sufficient; there must be a carried-on business activity. Judicial decisions affirm that temporary or single-object ventures can amount to partnerships if the business is carried on jointly and with profit motive.

Chapter - 3

Relations of Partners to One Another

I. General Overview:

- Chapter III deals with inter se relationships among partners.
- It covers rights and duties of partners as between themselves, i.e., mutual or internal relationships of partners.

Section 11 – Determination of Rights and Duties of Partners by Contract Between the Partners

- Section 11(1): Mutual rights and duties may be determined by contract between the partners.
- Such contracts may be:
 - a. Express, or
 - b. Implied by the course of dealing. - Such contracts may be varied by:
 - a. Consent of all the partners, and
 - b. Such consent may be expressed or implied by course of dealing.
- Section 11(2): Notwithstanding Section 27 of the Indian Contract Act, 1872 (which bars restraint of trade), the partners may agree that:

A partner shall not carry on any business other than that of the firm, while he is a partner.

Essence and Importance of Section 11:

- Section 11 embodies a fundamental principle of partnership law: “Partners have the freedom to arrange their internal affairs by mutual agreement.”
- Examples of what can be agreed upon:
 1. Capital contribution or labour of each partner.
 2. Profit-sharing ratio.
 3. Division of responsibilities or roles.
- Variability of terms:
 1. Terms once agreed can be changed later by unanimous consent of all partners.
 2. Such flexibility often leads to informal arrangements.

Judicial Observation:

- In **Peat v Smith (1889) 5 TLR 306**, the court remarked: “Though partnership is frequently said to be a branch of the law of agency, it must also be correctly described as a branch of the law of contract... when something aliunde (from elsewhere) was introduced by agreement, it is as much a part of the partnership as if provided by the original deed.”

Limitations on the Freedom of Contract:

- The freedom to contract is subject to the provisions of the Act.
- In case of conflict between:
 1. Partnership agreement and
 2. Provisions of the Act
- The Act prevails and inconsistent contractual terms are invalid.
- **Examples:**
 1. Section 69 – Disabilities of an Unregistered Firm:
 - ✓ The disabilities (such as inability to sue) cannot be overridden by agreement.
 2. Section 41 – Compulsory Dissolution:
 - ✓ Provisions for compulsory dissolution are binding on every firm.

Relation with Sections 9 to 17:

- Sections 9 & 10:
 1. Contain mandatory duties of partners.
 2. These cannot be negated by any contract.
- Sections 12 to 17:
 1. Lay down default rules about mutual rights and duties.
 2. These are "subject to contract between the partners", i.e., 3. They apply unless excluded or modified by an agreement.
- Illustration – Section 13(b):
 - ✓ Default Rule: Equal sharing of profits among partners.
 - ✓ If agreement provides unequal sharing, the agreement prevails.
 - ✓ If no specific agreement, then equal sharing under Sec. 13(b) applies.

II. Duties of the Partners

- The duties of the partners which emerge from the provisions of this Chapter are as follows:
 1. Duty of absolute good faith (Sec. 9)
 2. Duty to carry on business to the greatest common advantage (Sec.9)
 3. Duty to render true accounts and full information of all things affecting the firm
 4. (Sec.9)
 5. Duty to indemnify for fraud (Sec. 10)
 6. Duty to be diligent (Secs.12(b) and 13(f)).
 7. Duty to properly use the firm's property (Sec. 15)
 8. Duty not to earn personal profits/not to compete (Sec. 16).

Section 9 – General Duties of Partners :-

- Section 9 enshrines essential fiduciary obligations of partners – loyalty, transparency, and common benefit.
- It emphasizes that partners must operate not as competitors but as collaborators, ensuring fairness and honesty both during the partnership and even after its dissolution.
- Thus Sec.9 lays stress upon three mutual duties of partners [(1), (2) and (3) below].

1. Duty to be Just and Faithful to Each Other

- ✓ **Principle of Utmost Good Faith (Uberrimae fidei):**
 - Just like in insurance contracts, partners must deal with each other in good faith.
 - The entire partnership is based on mutual confidence and trust.
- ✓ **Mutual agency:** Each partner is an agent of the other; hence, honesty and loyalty are vital.
- ✓ **Quote (Helmore v Smith, 1886):**
 - “It is because they trust one another that they are partners in the first place; it is because they continue to trust one another that the business goes on.”
- ✓ **Situations Requiring Good Faith:**
 - Expulsion of a partner.
 - Purchase of one partner’s share by another.
 - A working partner acting for a sleeping partner.
 - Any transaction giving a partner an advantage at the cost of others.
- ✓ **Case Law: Abbott v Crump (1870) 5 Beng. LR 109:**
 - If a partner's conduct destroys mutual confidence (e.g., adultery with another partner’s wife), it can be grounds for dissolution.
- ✓ **Continuity of Duty:**
 - Good faith is owed even after cessation of partnership.
 - Also extends to legal representatives and former partners.
- ✓ **Case Law: Pathirana v Pathirana (1967) 1 AC 233 PC:**
 - Defendant issued notice of dissolution, obtained renewal of a petrol agreement in his own name, and resumed business post-dissolution.
 - Held: He must account for profits made to the former partner.
- ✓ **Reciprocal Nature of Duty:**
 - partner in breach of duty cannot demand compliance from others unless he also performs his duty.
- ✓ **Case Law: Const v Harris (1824) T & R 496 –** One must be ready to fulfill their own obligations first.

2. Duty to Carry on Business to Greatest Common Advantage

- ✓ Partners must aim for maximum benefit to the firm, not personal profit.
- ✓ Must not exploit a firm's resources or position for private gain.
- ✓ Must share any undue benefit with the firm.
- ✓ See also Section 16(a) – Relates to accountability for secret profits.
- ✓ **Examples of Breach:**
 - Making secret profits from firm transactions.
 - Procuring contracts for oneself instead of the firm.
 - Buying firm goods for oneself at lower price for resale.
- ✓ **Case Law: Bentley v Craven (1853) 18 Beav. 75:**
 - partner supplied his own sugar to the firm at market price but made profit from earlier purchase.
 - Held: Firm entitled to the hidden profit due to lack of disclosure.
- ✓ **Dunne v English (1874) LR 18 Eq 524:**
 - Partners jointly bought a mine to resell at £10,000 profit. One partner sold it to a company where he had an interest and earned more.
 - Held:
 - ☞ Full disclosure was necessary.
 - ☞ Partner must share the whole profit, not just £10,000.
 - ☞ Legal Principle: Any amount above authorized profit is also to be shared unless clearly agreed otherwise.

3. Duty to Render True Accounts and Full Information

- ✓ Partners must maintain proper records of all firm-related financials.
- ✓ They must not misuse or misappropriate firm funds.
- ✓ All expenditures must be justified with vouchers.
- ✓ Mixing personal funds with a firm's money is not permitted.
- ✓ **Agency Principle Applies:**
 - Every partner being an agent of the firm is bound to disclose material facts.
 - Concealment makes a partner liable to co-partners.
- ✓ **Implication:**
 - If one partner buys out another's share without full disclosure of firm's assets, the contract is voidable.
- ✓ **Case Law: Law v Law (1905) 1 Ch. 140:**
 - If the aggrieved partner waives disclosure and agrees to revised terms knowingly, he cannot later repudiate the agreement.

Section 10: Duty to Indemnify for Fraud

➤ **Essence of the Provision:**

- ✓ Fraud by a partner in the course of a firm's business makes that partner solely liable to indemnify the firm.
- ✓ It is a specific application of the broader principle that partners must act fairly and honestly with:
 1. Their co-partners, and
 2. Third parties (customers, clients) dealing with the firm.

➤ **Principles:**

1. Exclusive Liability of Fraudulent Partner:

- ✓ If a partner deviates from honesty and thereby causes loss to the firm, he alone must compensate the firm.
- ✓ This reflects the duty of good conduct and fairness inherent in a partnership.

2. Purpose of the Rule:

- ✓ To induce honesty in dealings with clients/customers of the firm.
- ✓ It discourages fraudulent conduct and provides a remedy to the firm if harmed by such misconduct.

➤ **Illustration:** Suppose a partner commits fraud in the ordinary course of business and the firm is held liable to the aggrieved customer. In such a case, the firm may recover indemnity from the partner responsible for the fraud.

➤ **Case Law: Campbell v. Campbell (1834) 12 Sh 573:**

- ✓ Facts: Managing partners of a firm made some illegal purchases. The plaintiff partner had no knowledge of these acts.
- ✓ Held: The managing partners were jointly and severally liable to indemnify the innocent partner against the amount he was made to pay due to their wrongful acts.

➤ **Public Policy Consideration:**

- ✓ Liability for fraud cannot be contractually excluded.
- ✓ Any such agreement is void as it is against public policy.
- ✓ A partner cannot escape liability for his own fraud under any agreement.
- ✓ Note: While partners may enter into agreements to limit liability for:
 1. Negligence
 2. Want of skill
 3. Misconduct
 4. Or other such conduct
- ✓ But fraud stands as a non-excludable liability.

4. **Duty to be Diligent [Section 12(b)] & Duty to Indemnify for Wilful Neglect [Section 13(f)]**

- ✓ **Sections 12(b) and 13(f) together:**
 - Promote responsible conduct in business,
 - Allow for reasonable human errors,
 - Provide relief to the firm in cases of deliberate neglect.

-
- ✓ **Partners** are expected to act as they would in their personal matters, and the firm cannot expect more skill or prudence than the partner inherently possesses.

- ✓ **Essence of the Provisions:**

1. Obligation of Diligence:

- ✓ Every partner must carry out his duties with due care, attention, and effort.
- ✓ Diligence here implies a careful and responsible approach to managing firm affairs.

2. Consequence of Negligence:

- ✓ Negligence by a partner may result in a loss to the firm, not just to the partner himself.
- ✓ Hence, Section 13(f) imposes a duty on the negligent partner to indemnify the firm, but only when the negligence is wilful.

- ✓ **Meaning of Wilful Neglect:**

- **Wilful** neglect is not mere carelessness or accidental omission.
- It **must** be:
 1. Deliberate
 2. Intentional
 3. Purposeful

- ✓ It **involves** a conscious disregard of one's duty—awareness that an act/omission is wrong is good evidence of wilful neglect.

- ✓ **Good Faith Exclusion:**

- An act done in good faith or bona fide does not amount to wilful neglect.
- Honest errors, lack of foresight, or genuine misjudgements are not punishable under this section.

Case Laws:

1. Cragg v. Ford (1842) 1 Y & C. Ch. Cas. 280:

- ✓ Facts: A partner tasked with winding up the firm delayed selling cotton, ignoring another partner's advice. Prices fell, causing a loss.
- ✓ Held: No liability—since the act was done bona fide with no anticipation of market fall.
- ✓ It was a judgement call, not wilful neglect.

2. S.K. Bandopadhyaya v. Man Gobinda (AIR 1919 Pat 386):

- ✓ Facts: A partner failed to timely sue two firms. One claim became time-barred, the other was lost as the debtor had become insolvent.
- ✓ Held:
 - Liable for the time-barred claim—negligence was apparent.
 - Not liable for an insolvent debtor's claim—the partner learned too late.
- ✓ Court's Observation:
 - Partners are not required to use “middle diligence” (average prudence).
 - If a partner acts as he would in his own affairs, he cannot be faulted for lacking greater skill or prudence.
 - The firm must bear the consequences of choosing a partner with lesser skill.

➤ **Distinction from Fraud (Sec. 10):Key Difference:**

- ✓ Fraud (Sec. 10) = Liability cannot be avoided by agreement
- ✓ Wilful Neglect (Sec. 13(f)) = Liability can be contractually excluded
- ✓ However: If wilful neglect amounts to fraud, Section 10 applies, and liability becomes non-excludable.

Section 15: Duty to Properly Use the Firm's Property

- Section 15 ensures that firm property remains dedicated solely to partnership business.
- It prevents misuse by individual partners and upholds collective ownership.
- Any unauthorised personal gain through firm property triggers liability under Section 16.

➤ **Essence of the Provision:**

1. **Exclusive Business Use:**

- ✓ All firm property must be used only for the business of the firm.
- ✓ Personal use of firm property by any partner is not permitted, unless there is a specific contract to the contrary.

2. **Common Ownership Without Individual Rights:**

- ✓ Although every partner has an interest in the firm's property, no partner has the right to:
 - a. Treat any item of the property as his own, or
 - b. Assign or transfer his interest in any specific item of the firm's property.

3. **Nature of Partner's Right in Property:**

- ✓ A partner's right is not to individual items, but to:
 - a. A share in profits, as they arise;
 - b. A share in surplus assets at the time of dissolution, after liabilities are discharged.

Section 16: Connected Provision

- If a partner uses firm property for personal gain or benefit, he must:
 - a. Account for such profit to the firm, and
 - b. Pay back the amount so earned.

➤ **Important Judicial Pronouncement:**

➤ **Addanki Narayanappa v. Bhaskara Krishnappa (AIR 1966 SC 1300):**

- ✓ Observation by the Supreme Court:
 - a. No partner can deal with specific items of firm property as his own.
 - b. A partner's interest lies in the overall assets and profit-sharing, not in individual items.
 - c. Upon dissolution, partners get a share of the residual assets.

5. **Duty Not to Earn Personal Profits / Not to Compete [Section 16]**

➤ **Section 16 ensures that partners:**

- (a) Do not abuse firm property, goodwill, or information for personal gain.
- (b) Do not engage in competing ventures without liability.

It upholds the fiduciary duty of loyalty, good faith, and fair dealing between partners.