

PARTNERSHIP ACT 1932 → Concurrent List  
Unit 1 → Nature

IX OF 1932: Act number IX of 1932 in Indian Legislative Calendar

\* Indian Legislative Calendar → (planned schedule) refers to schedule of sessions during which legislative bodies, such as Indian Parliament & State legislatures → convene to discuss, debate and pass laws and policies.

Parliament → meets in three main sessions

- 1] Budget Session → [Feb - May]
- 2] Monsoon Session → [July - Aug / Sep] leg work & policy
- 3] Winter session → [Nov - Dec]

Purpose

insures that law & policies are made, budgets are approved & pressing issues are debated in a planned & time bound manners

\* exact dates are decided by government

\* Contracts & partnerships → concurrent list  
ie. A State law can ammend or supplement the central law within that state.

2] IN IT'S APPLICATION TO MAH → maharashtra made specific ammendments → efforts from Jan 1 1985.

## Section 1:

- 1] May be called Indian Partnership Act 1932
- 2] It extends to whole of India except J&K
- 3] Came into force → 1<sup>st</sup> day of October 1932  
But sec (69) → 1<sup>st</sup> day of October 1933

## Section 2: Definitions

## Section 3: unrepealed provisions of ICA

→ Explanation →

- 1] ICA originally governed all contractual relationship including those related to partnerships.

So, ICA unrepealed provisions continue to apply unless there is direct inconsistency with the Indian Partnership Act 1932.

- \* Conflict of two → IPA will prevail
- \* IPA detailed provisions override ICA, general provisions.

eg → IPA governs how partnership is formed → But relies on general principle of valid contract.

→ Agency relationships → mutual agency Sec 184 19 → specific → overrides general → ICA



Example → ICA applies

1] Agreement to form partnership → coercion  
→ ICA applies → voidable

2] Partnership override → dispute regarding profit sharing

Section 4 → Partnerships, Partners, firm & firm's name

1] Partnership → is the relationships between the person who have agreed to share the profits of business carried on by all or any of them acting for all.

Analysis :

1] Relationships b/w person → two or more persons  
Sec 464 → Man 10 → Banking & 50 for others  
Rule 10 → Misc → Competent to contract

2] Who have agreed → Agreement is foundation of Partnership  
→ arises from agreement  
→ No partnership → operation of law → always mutual consent  
→ Agreement governed by ICA

3] To share profits → Key feature  
→ must agree to share profits  
→ sharing of losses is not mandatory under the act, though it is common impracticable  
→ It differentiates partnerships from relationships like co-ownership (Profit sharing w/o Agency)

- 4] of a Business → Business refers to trade, occupation or profession.  
→ Non profit activities - do not constitute a partnership.

**Mutual - doing same things for each other.**

- 5] Carried on by all or any one of them  
→ refers to operational flexibility and mutual agency among the partners.

- Joint ownership of business operations  
- business is collectively owned and operated by all.  
→ Mutual Agency

**cornerstone of partnership**

Every partner is both a principal and an agent.

- 1] As a principal a partner can act independently to manage the firm.
- 2] As an agent, the partner is bound by actions of other partners performed within the scope of business.

**Key features of mutual agency**

- 1] Authority to bind the firm.

- 2] Joint and several liability

### • Example

A, B, C → partners (constructing business).

A → contract → purchasing material worth ₹10,000 w/o B & C consent.

↳ contract is binding to firm

↳ jointly liable to pay supplier

Essential elements of partnership.

1] There should be an agreement between two or more persons.

2] Agreement between persons.

3] Business.

4] Sharing of profits.

5] Business carried on by all or two or more of them.



→ The term partners is defined as persons, who have entered into partnerships with one another are called individually partners

→ collectively → a firm (not a legal entity)

→ name under which the business is carried on  
→ firm's name

Essential elements of partnership.

- 1] There should be an agreement between the parties.
- 2] agreement between persons
- 3] Business
- 4] sharing of profits
- 5] Business carried on by all or one mutual agency.

Section 5: Partnership not created by status.

→ Based on voluntary agreement b/w individuals

→ cannot be created by default or as result of any status.

→ HUF → arises from birth status.

→ do not voluntarily agree to carry on business;

part → virtue of their birth

→ Burmese Buddhist Husband & wife.

→ Buddhist law or customs → may jointly carry on a business as a part of their marital arrangement

→ jointly venture arises from their marital relationship.

## Section 6: Mode of Determining existence of Partnership

COX	VS	Hickman
↓		↓
Plaintiff		Defendant

Facts: COX & Hickman → Business arrangement

share profit ← contributed capital      operations of business

COX hold → Hickman personally liable for Debts.

Hickman says → I'm not a partner  
→ It is agency relationship.

Decision → House of Lords [Upper house of Parlia → OK]

1] No evidence of sharing profits in a way → partnership  
Hickman was not intended to share profits equally  
with COX → he was acting in different capacity.

2] Hickman was acting as an agent.

- \* Must have mutual agreement to share profits & losses.
- \* Requires a contract → not merely contribution.



True test →

Acc to Sec 6 → real relations between partners  
 ↳ as shown by all relevant facts taken together.

Conclusive evidence → mutual agency.

→ ie the capacity of partners to bind other partners by his act done in firm's name and be bound by the acts done other partner's in firm's name.

→ Sharing of profits → prima facie evidence

Partnership does not exist

1] Mam (Mr. A)  $\xleftrightarrow[\text{5% share of profit}]{\text{chai ki tapri loan ₹ 500000}}$  Student (Mr. B)

2] Sales over certain target → 10% of profits.

servant or Agent as Remuneration.

3] Widow or child of deceased partner as Annuity.

→ Mr A → partner → received ₹100000 per year  
 → as annuity

→ died

Mrs. A → receives annuity as financial support.

#### 4] Part Owner

→ sold business for → 50,00,000 +

→ continues receiving 5% of profits next 5 years → goodwill.

→ sharing of profits → primary liability

Partnership does not exist

Shareholder (M.A.)	Shareholder (M.A.)	Shareholder (M.A.)
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Share over certain to be a share

Share over certain to be a share

Share over certain to be a share

Share over certain to be a share

Share over certain to be a share

Share over certain to be a share

## TYPES OF PARTNERSHIP

1] General Partnership →

- i] Liability → unlimited
- ii] Business in general.

2] Particular Partnership [Sec-8]

- i] Particular objective / venture
- ii] automatically dissolves on **completion**.
- iii] If still continues → Partnership at will

3] Partnership for fixed period

- i] duration of partnership is decided.

4] Partnership at will [Sec 7]

- no provision for duration of partnership
- can be dissolved → by giving notice by any partner to all other.



## Types of Partners.

- 1] Working or active partner
  - i] also known as actual / ostensible partner.
  - ii] takes active part in business.
  - iii] liable to third parties for all acts of firm
  - iv] give public notice on retirement
  - v] insanity / incapacity → may be grounded for dissolution of firm.
- 2] Sleeping or Dormant partners
  - i] does not take active part in business
  - ii] simply contributes capital
  - iii] liable to third parties
  - iv] shares profit / losses
  - v] need not give public notice
  - vi] insanity / incapacity → no ground for dissolution
- 3] Nominal Partner
  - i] lends his name
  - ii] no capital / no profit / loss / no participation
  - iii] liable to outsiders as if actual partners
  - iv] give public notice
  - v] insanity / incapacity → no ground for diss<sup>n</sup>.

- 4] Secret partner (Module only)
- i] contributes capital & takes part
  - ii] shares profits / losses
  - iii] Unlimited
  - iv] not known to outside world.
  - v] liable to third parties.
- 5] Limited Partner [Module only]
- i] limited liability → extent of his shares in capital & profits.
  - ii] not entitled to take part in business.
  - iii] firm is not dissolved → death / lunary.
- 6] Partners in profit only
- i] share profits
  - ii] no losses
  - iii] not allowed to take part in management.
  - iv] associated for money & goodwill
  - v] liable to third parties
  - vi] give public notice
  - vii] insanity / incapacity → ground for diss<sup>n</sup>
- 7] outgoing Partner / Retiring.
- i] partner- leaving the firm while rest of the partners continue.

## 8] Incoming Partner

i] partner who is admitted into existing firm.

## 9] Sub-partner

i] partner agrees to share profits with third person → sub partner

ii] transferee of share

iii] no right against firm → or take part

iv] not liable to third parties

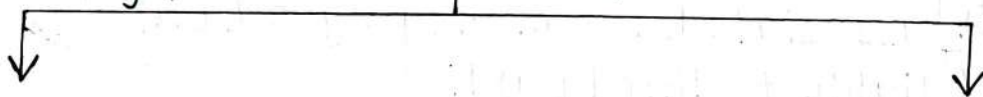
v] cannot bind the firm by his acts.

vi] no public notice needed.

vii] insanity/incapacity → no ground for diss<sup>n</sup>

## 10] Partner by estoppel by holding out.

Holding out → means to represent.



Partner must have represented himself to be a partner



by words spoken or written  
on by his conduct.

Other person acting  
on faith of such  
representation  
must have given  
credit to the firm.

→ Liable for the acts of firm

→ Also applicable to the former partner who has retired from the firm

→ becomes personally liable for the acts of firm  
as if he is a partner.