

# Research and Development on Partnership Firm

**Mr. Mit Chauhan**

Research Scholar

The Byramjee Jeejeebhoy College of Commerce, Mumbai, Maharashtra, India

**Abstract:** According to section 4 of the Partnership Act of 1932, "Partnership is defined as the relation between two or more persons who have agreed to share the profits of a business carried on by all or any one of them acting for all". This definition superseded the previous definition given in section 239 of Indian Contract Act 1872 as – "Partnership is the relation which subsists between persons who have agreed to combine their property, labor, skill in some business, and to share the profits thereof between them". The 1932 definition added the concept of mutual agency. The Indian Partnerships have the following common characteristics:

1) A partnership firm is not a legal entity apart from the partners constituting it. It has limited identity for the purpose of tax law as per section 4 of the Partnership Act of 1932.

2) Partnership is a concurrent subject. Contracts of partnerships are included in the Entry no.7 of List III of The Constitution of India (the list constitutes the subjects on which both the State government and Central (National) Government can legislate i.e. pass laws on).

3) Unlimited Liability. The major disadvantage of partnership is the unlimited liability of partners for the debts and liabilities of the firm. Any partner can bind the firm and the firm is liable for all liabilities incurred by any firm on behalf of the firm. If property of partnership firm is insufficient to meet liabilities, personal property of any partner can be attached to pay the debts of the firm.

4) Partners are Mutual Agents. The business of firm can be carried on by all or any of them acting for all. Any partner has authority to bind the firm. Act of any one partner is binding on all the partners. Thus, each partner is 'agent' of all the remaining partners. Hence, partners are 'mutual agents'. Section 18 of the Partnership Act, 1932 says "Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm"

5) Oral or Written Agreements. The Partnership Act, 1932 nowhere mentions that the Partnership Agreement is to be in written or oral format. Thus the general rule of the Contract Act applies that the contract can be 'oral' or 'written' as long as it satisfies the basic conditions of being a contract i.e. the agreement between partners is legally enforceable. A written agreement is advisable to establish existence of partnership and to prove rights and liabilities of each partner, as it is difficult to prove an oral agreement.

6) Number of Partners is minimum 2 and maximum 50 in any kind of business activities. Since partnership is 'agreement' there must be minimum two partners. The Partnership Act does not put any restrictions on maximum number of partners. However, section 464 of Companies Act 2013, and Rule 10 of Companies (Miscellaneous) Rules, 2014 prohibits partnership consisting of more than 50 for any businesses, unless it is registered as a company under Companies Act, 2013 or formed in pursuance of some other law. Some other law means companies and corporations formed via some other law passed by Parliament of India.

7) Mutual agency is the real test. The real test of 'partnership firm' is 'mutual agency' set by the Courts of India, i.e. whether a partner can bind the firm by his act, i.e. whether he can act as agent of all other partners..

**Keywords:** Mutual Agents