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How Partnership Act Ease-out doing Business for Partnership Firm?

Harsh Nayak[a]

[a]Hidayatullah National Law University, Raipur, India

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This paper explains to you the importance and need of partnership firms in the business world. It explains the drawbacks of the sole proprietorship, which intern become one of the important reasons to form a partnership firm. This paper defines the real meaning of the term partnership. It mentions the importance of the law of contract in the partnership business. It also gives you some knowledge about the types of partnerships existing in India. It also mentions some cases in order to explain this clearly. This gives you a brief of the Partnership Act 1932. Along with the brief, it also throws some light on benefits that a partnership firm receives if it registers with the provisions of the Partnership Act 1932. It also mentions the minority provision of the act.

Keywords: *partnership, firm, business.*

INTRODUCTION

There are many ways in which people around the world perform business, one of them is Partnership. It is one of the prevalent forms of doing business. A person who performs his business as a sole proprietorship suffers from various limitations such as lack of resources, lack of helping hands, shortage of investment money, lack of skills[1]. In order to overcome these drawbacks, the person expands his or her business by introducing a partner this, in turn, will increase the capital; increase the managerial skills, and increases the financial resources of the business.[2] A partnership does involve risk but this risk is very much healthy for the business to grow. These disadvantages of the proprietorship bring people with different skills, knowledge, and financial status together.[3]

When two or more people come together in a relationship to handle a business organization to earn profit it is termed as a partnership. Partnership act, 1932[4] controls the partnership business in India. Earlier chapter XI of the Indian Contract Act, 1872,[5] contained the provision related to the partnership business but this 1932 Act superseded the provisions in the Indian Contract Act[6]. Further, we will discuss the various sections of the partnership act 1932, along with understanding the concept of partnership and partnership firms.[7]

DEFINE: PARTNERSHIP AND PARTNERSHIP

Section 4 of the Partnership Act 1932; defines the partnership as "*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*"[8]. Indian Contract Act 1872 also defines the partnership as "*Partnership is the relationship between persons who have agreed in some business organizations to combine their property, labor, or skills and share their benefits*".

The fact that a partnership is formed as a result of a contract means that it is regulated not only by the Partnership Act 1932 but also by the general law of contract for those problems that are not expressly addressed by the partnership act. It is explicitly stated in the Partnership Act

[1] Hemant More, 'Partnership' (*The Fact Factor*, 8 August 2019) <https://thefactfactor.com/facts/management/general/partnership/2375/> accessed 26 July 2021
[2] *Ibid*
[3] *Ibid*
[4] Partnership Act 1932
[5] Indian Contract Act 1872
[6] Akber Ahamad, 'Scope & Nature Of Indian Partnership Act 1932' (*legal service India*) <http://www.legalservicesindia.com/article/158/Indian-Partnership-Act,1932.html> accessed 27 July 2021
[7] More (n 1)
[8] Partnership Act 1932, s 4

stating, the unrevoked provisions of the Indian Contract Act, 1872 continue to apply, unless they are in conflict with the express provisions of this Act. A partnership agreement is a contract between two or more people who are legally competent to enter into a contract; they must have reached the age of majority and be of sound mind, and they must not be barred from contracting by the laws of their respective countries[9].

Persons who form partnerships are referred to as "partners" individually and as a "firm" collectively, and they conduct their business under the term "firm-name".[10] A partnership company is not a different legal entity from its partners; rather, it is just a term given to the group of individuals who work together to create it.[11] As a result, unlike a corporation, which has a separate legal body distinct from its members, a partnership cannot own property or hire employees.[12] Furthermore, a firm cannot be both a debtor and a creditor, unlike a corporation. You can't sue a firm, too.[13] This was also held in the case *Malabar Fisheries Co. vs I.T, Commissioner, Kerala*[14].

TYPES OF PARTNERSHIP IN INDIA

- General partnership - Partnerships in which management and decision-making rights and responsibilities are shared equally. Each partner should assume full responsibility for the other partner's debts and liability[15]. All other partners are deemed accountable if one partner is sued. The creditor or court holds the personal assets of the partner. Most partners, therefore, don't choose this partnership.

- Limited partnership - Limited business partners have limited business control (limited to their investment). The firm daily operations are not related to them. In most cases, limited

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[9] *Ibid*
[10] Karan Batra, 'What is a Partnership Firm and 5 Essential Elements of a Partnership' (*Chartered Club*) <https://www.charteredclub.com/partnership-firm/> accessed 28 July 2021
[11] Ahamad (n 6)
[12] Batra (n 10)
[13] *Ibid*
[14] *Malabar Fisheries Co v IT, Commissioner, Kerala* AIR 1980 SC 176
[15] 'Partnership: Characteristics, Partnership at will' (*Byju's*) <https://byjus.com/commerce/what-is-partnership/> accessd 28 July 2021

partners only invest and take a share in profit[16]. They have no interest in management and decision-making. This failure to participate means that they are not entitled to compensate for the losses from their return of income tax.

- Partnership at will – when there is no clause of expiration of the partnership in the agreement then it is termed as a partnership at will. According to Section 7 of the Indian Partnership Act of 1932,[17] the two conditions for a firm to become a Partnership at will are as follows; there shall be no fixed expiration date for the partnership agreement, there shouldn't be any specific determination of the partnership.

- Particular partnership - An entity created specifically to accomplish a certain endeavor, business, or project is referred to as a particular partnership. When the partnership's objective has been accomplished, the partnership comes to an end, and the partnership ends. For example, if a partnership is established to construct a bridge, the partnership will be limited in scope and will come to an end after the structure has been built successfully.[18]

PARTNERSHIP ACT 1932

The present partnership act is based on the English Partnership Act, 1890[19] with some modifications. Earlier the 1932 Act; Indian Contract Act carried the provisions responsible for the governing of partnership in India. After the enactment of the Partnership Act 1932, section 239-266 of the Indian Contract Act was repealed.

Preamble

The preamble is an admissible construction aid. It provides an overview of the intention and design of the legislature and shows its scope and purpose. However, it cannot be utilized to control or to describe the exact and unambiguous language of the act[20]. The preamble may only

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[16] *Ibid*
[17] Partnership Act 1932, s 7
[18] Partnership (n 15)
[19] English Partnership Act 1890
[20] Ahamad (n 6)

be recalled to determine reasons for enactment and, consequently, parliamentary intent and if there is a doubt as to the meaning of provisions.[21]

SCOPE OF THE PARTNERSHIP

The partnership's scope is mainly determined by the parties' objectives. The use of such rights is not constrained and can be used whenever possible with the exception of illegality, immorality, or fraud, which applies to every single human being[22].

- If the component business's partners agree, a partner may be a member of another company.
- When all parties seem to have approved or accepted the contract, its legality is generally not questioned further.[23]

The legality of the partnership contract comes into an issue when one partner enters into a contract without the express consent of his or her partners. They may be divided into two categories based on their implied scope: non-trading and business. Both kinds of partners are able to exercise some specific powers in a partnership. Because of this, a partner may retain an attorney to defend the interests of the company.

Section 4 of this act defines partnership[24] (mentioned in chapter 1); it contains three elements –

- All persons concerned must enter into an agreement.
- The sharing of the profit must be mentioned in the agreement.
- All the partners or the person representing all of them must carry out the business.

[21] *Ibid*
[22] Janhavi Arakeri, 'Scope and Nature of The Indian Partnership Act 1932' (*iPleaders*, 27 May 2019) <https://blog.ipleaders.in/scope-and-nature-the-indian-partnership-act-1932/> accessed 28 July 2021
[23] *Ibid*
[24] Partnership Act 1932, s 4

There constitute some essentials that are necessary to form a partnership –

Agreement - The partnership is the result of a contract or an agreement between competent individuals. An agreement can be of any type oral, written, or implied.[25] If an owner gives his employee a share of profits, it cannot be referred to as a partnership unless there is a partnership agreement between the two.

Two or more people – section 11 of the act,[26] maximum number of person allowed to come together in partnership in the banking business is 10 and for other business activities is 20. And minimum there must be two people for the partnership to work. Breaking the prescribed limit required for the partnership leads to the illegal association of the people.

Legal business organization – the business activities for which the individuals come together should be lawful and must not contain any type of illegal activity. This is mentioned in section 12 of this act.[27]

Sharing of profit of business – firstly there has to be a business in order to bring individuals under the partnership. The motive for a business is the "procurement of profits," which results in a partnership being formed. There can therefore be no partnership in which a company does not intend to carry out and share the benefits derived from it.[28]

Mutual business – in a partnership every partner is an agent for each other and a principle for himself. The act of any of the partners will affect the lives of other partners.[29] Each of them is responsible and liable for the acts of one another[30]. The most important element of the mutual business is that every partner carries out business on behalf of other partners. This is mentioned in section 13 of this act.[31]

[25] Ahamad (n 6)
[26] Partnership Act 1932, s 11
[27] Partnership Act 1932, s 12
[28] *Ibid*
[29] Partnership Act 1932, s 13
[30] *Fisheries* (n 14)
[31] Partnership Act 1932, s 13

REGISTRATION

Registration of a firm is not compulsory under Indian laws; but the registration of a firm gives headway towards some important benefits that a person may be able to avail of under the Partnership Act, 1932. The choice of registration solemnly stays with the partners. It is always beneficial for a firm to register it; the registered firm always has an edge above then the unregistered one. The only registered firm is counted under the legally established firm. These are provided under article 69 of the act.[32]

The benefits that come with the registration of the firm –

❖ Benefits availed by the partners –

If there is a conflict arising from a partnership deed which is a contract or any right arising from the partnership act to that effect, any partner of a company can sue the other partner, the ex-partner, or a firm. On the contrary, if the firm is not registered, the partner cannot exercise such powers. If the partners wish to sue any third party for exercising any right arising from a contract or from any other legal instrument, it is necessary for the company to be registered, and the partner to do so must be a partner whose name is registered in the firm registered.

❖ Benefits availed by the creditors –

To settle the firm's debts, if any partner is requested by the creditor then all partners named in the deed are equally liable for the third party's obligation. This allows lenders to recover their money from the company. When creditors receive such benefits from the registered business, the company's trustworthiness improves significantly. While both registered and unregistered businesses are legally valid, creditors prefer to lend to registered businesses.

❖ Power to claim set off –

[32] Partnership Act 1932, s 69

The registration of the Partnership Company enables partners to claim reimbursement. When any third party sues the partners, the partner company may claim compensation against the third party's claim, if any. Such claims are not available if the Partnership Company is not yet registered with the 1932 Indian Partnership Act.[33]

- A registered business may claim tax advantages under the Income Tax Act,[34] saving lots of money that can be used for the firm's growth. This gives an edge in terms of money when compared to non-registered firms.

MINORITY CLAUSE IN THE ACT

Children are not competent to enter into any kind of contractual relationship under Indian law, although partnerships are an exception to this rule, as stated in Section 11 of the Indian Contract Act 1872[35] and the decision in the case Mohribibi vs Dharamdas Ghosh.[36]. There are no restrictions on minors participating in the affairs of a partnership, although they are not permitted to sign the partnership's contract. However, minors are permitted to participate in the benefits of a partnership. In accordance with Section 30(1) of this Act,[37] a minor may not be a partner, but he may be granted the right to share profits, the right to inspect accounts, and the right to sue for accounts or a portion of profits only if all of the partners agree to this.

With just six months after attaining majority, a minor is given the opportunity to choose whether or not to become a partner, which may be done either by providing public notice or by being informed that he or she has accepted partnership benefits, at any time in the future.[38] In the event that he fails to give notice, he will be treated as a partner in the business once six months

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33 *Ibid*
34 Income Tax Act 1961
35 Partnership Act 1932, s 11
36 *Mohribibi v Dharamdas Ghosh* (1903) LR 30 IA 114
37 Partnership Act 1932, s 30(1)
38 *Mohribibi* (n 36)

have passed.[39] The details of his partnership participation are set out in various Section 30 sub-clauses.[40]

CONCLUSION

My opinion on the importance of partnership stems from the fact that we enter into partnership agreements every day with the assistance of an increasing number of individuals, and that by bringing together partners, significant objectives are accomplished. A successful work or job is achieved via the joint efforts of all individuals, and this task or job may be readily performed. The division of labor results in increased efficiency in the work of different collaborators. The collaboration makes it possible for the business to go forward more quickly and lowers the number of problems associated with money in the organization. A partnership is a well-chosen business structure because of the benefits it provides.

[39] *Ibid*

[40] Partnership Act 1932, s 30