The Indian Partnership Act-1932

Dr. Vibhuti Sharma

What is Partnership ?

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all **(Section 4).** It, therefore, follows that a partnership consists of three essential elements:

What is Partnership ?

(i) It must be a result of an agreement between two or more persons.

(ii) The agreement must be to share the profits of the business.

(iii) The business must be carried on by all or any of them acting for all.

All these essentials must coexist before a partnership can come into existence.

Essential Elements of Partnership

(1)**Agreement:** Partnership must be the result of an agreement between two or more persons.An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

Essential Elements of Partnership(Cont..)

(2) Sharing profits of the business: First, there must exist a business i.e. trade, occupation and profession. The motive of the business is the acquisition of gains.Therefore there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

Essential Elements of Partnership(Cont..)

Secondly, there must be an agreement to share profits. The agreement to share losses is not an essential element. However in the event of losses, unless agreed otherwise, these must be born in the profit sharing ratio.

Essential Elements of Partnership(Cont..)

(3)Business carried on by all or any of them acting for all: Each partner carries on the business as a principle as well as the agent on behalf of the other partners. This is the cardinal principle of the partnership Law.

Therefore, the true test of partnership is mutual agency rather than sharing of profits.

True test of Partnership

The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

True test of Partnership(Cont..)

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specially speak of partnership. In such a case for testing the existence or otherwise of partnership relation, **Section 6** has to be referred. According to this Section, regard must be had to the real relation between the parties as shown by all relevant facts taken together.

Distinction between partnership and firm

Persons who have entered into partnership with one another are called individual “Partners” and “collectively” and the name under which the business is carried on is called “firm name”. Partnership is merely an abstract legal relation between the partners. A firm is a concrete thing signifying the collective entity for all the partners. Partnership is thus that invisibility which binds the partners together and firm is the visible form of those partners who are thus bound together.

Partnership vs. Joint Stock Company

1. **Personality :** A firm is not legal entity I.e., it has no legal personality distinct from the personalities of its constituent members. On the other hand, a registered company is a judicial person distinct from its members.
2. **Agency:** In a firm, every partner is an agent of the other partners, as well as that of the firm, but in the case of the company a member is not an agent of the other members or of the company.

Partnership vs. Joint Stock Company(Cont.)

3. **Distribution of profits:** the profits of the firm must be distributed among the partners according to the term of the partnership deed but there is no such compulsion in the case of company.
4. **Extent of liability :** In a firm,the liability of the partners is unlimited.while in the case of the company the liability of the shareholder is limited to the amount, if any unpaid on his shares, in the case of the company limited by shares; otherwise to the guaranteed amount.

Partnership vs. Joint Stock Company(Cont.)

5. Property: The firms property is that which is the joint state of all the partners as distinguished from the separate state of any of them and it does not belong to a body distinct from its members. So in the case of insolvency , the joint estate, after meeting the liability in respect of the joint debts devolves on the partners.

Partnership vs. Joint Stock Company(Cont.)

6. Transfer of shares: In a firm,a share in the partnership cannot be transferred without the consent of all the partners but in the public limited company it is freely transferable.

Partnership vs. Joint Stock Company(cont.)

7. **Management:** In the absence of an express agreement to the contrary all the partners are entitled to participate in the management of the firm but the members of the company are not entitled to participate in the management unless they have been appointed as directors.

Partnership vs. Joint Stock Company(Cont..)

8. **Number of membership:** In the case of a firm carrying banking business the number of members cannot exceed 10 but otherwise 20.A private company may have as many as 50 members but not less than two and a public company may have any number of members but not less than seven.

Partnership vs. Club

A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc. On the other hand, partnership is also an association of persons but formed with the object of earning profit.

Partnership vs. Club(Cont..)

1. Unlike a partner, a member of a club is not the **agent** of other members nor is he liable to a creditor of the club, except when he is responsible for the contract which gave rise to the liability.
2. A member of a club has no **interest in the property** of the club, as a partner has in the property of the firm. Also, the change in the membership of a club does not affect its existence.

Partnership vs. Hindu Undivided Family

1. **Creation:** The relation of partnership is created necessarily by an agreement, whereas the right in the joint family is created by status. The creation of a right by status means its creation by birth in the family.
2. **Death:** Death of a partner ordinarily leads to the dissolution of partnership. But the death of a member in the Hindu undivided family does not give rise to dissolution of the family business.

Partnership vs. Hindu Undivided Family(Cont..)

3.Management: The right of management of joint family business generally vests in the Karta, the governing male member of the family. But in the case of a partnership, all the partners are equally entitled to take part in the partnership business.

4. **Authority to bind the firm:** In the joint family, the Karta or the manager, has the authority to contract for the family business. In partnership, every partner can, by his act, bind the firm.

Partnership vs. Hindu Undivided Family(Cont..)

5. **Liability:** In a partnership, the liability of a partner is unlimited; but in a Hindu undivided family, only the liability of the Karta is unlimited, and the other copartners are liable only to the extent of their share in the profits of the family business, unless they take part in the act performed or transactions entered into by the Karta.

Partnership vs. Hindu Undivided Family

6. **Calling for accounts:** On the separation of the joint family, a member is not entitled to ask for account of the family business. But a partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.
7. **Governing Law:** A partnership is governed by the Partnership Act; a Joint Hindu family business is governed by the Hindu Law.

Partnership vs. Hindu Undivided Family

8. Minor's capacity: In a partnership, a minor cannot become a partner, though the can be admitted to the benefits of partnership, only with the consent of all the partners. In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.

Partnership vs. Hindu Undivided Family

9. Continuity: A Joint Hindu Family has the continuity till it is divided. The status of Joint Hindu Family is not thereby affected by the death of a member, but a firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.

Partnership vs. Co-Ownership

1. Partnership always arises out of a **contract,** express or implied co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
2. In partnership, there is **community of interest**. It means that profits and losses must have to be shared but co-ownership does not necessarily involve sharing of profits and losses.

Partnership vs. Co-Ownership(Cont..)

3. In the case of partnership, a partner is the **agent** of the other partners, but in the case of a co-ownership, a co-owner is not the agent of other co-owners.
4. A share in the partnership is transferred only by the consent of other partners. Co-ownership may be dissolved at the will of co-owners; also a co-owner may **transfer his interest** or rights in the property without the consent of other co-owners.

Partnership vs. Association

1. Partnership means and involves setting up relation between two or more persons who have entered into a business for gains, with the intention of share the profits of such a business; but partnerships does not exist between members of a charitable society or religious association or an improvement scheme or building corporation etc.

Partnership vs. Association(Cont…)

2. Partnership does not exist between members of a mutual insurance society.
3. In a trade combine or protection association, the relation between the members is not that of partnership.

Types of Partners

1. ‘Partner’ by holding out’ (Section 28)

A person may himself, by his words or conduct have induced other to believe that he is a partner or he may have allowed others to represent him as a partner, though actually he is not. He is liable like a partner in the firm to any one who on the faith of such representation has given credit to the firm. The result in both the cases is identical. Partnership by ‘holding out’ is also known as partnership by estoppel.

Types of Partners (Cont..)

2. **Sub-partnership:** A sub-partnership may arise when, consequent upon an agreement between a partner in a firm and a stranger, the latter is vested with interest jointly with that partner so far as his share in the firm is concerned. Such an agreement will not render the stranger a partner of the main firm. A sub-partner can claim the agreed share from the actual partner, but he can have no right against the main firm to take part in or to interfere with its business or to examine its account.

Minor's Position in Partnership

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under **Section 30** of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under **Section 30** as follows:

Minor's Position in Partnership (Cont..)

Rights:

(i) A minor partner has a right to his agreed share of the profits of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

Minor's Position in Partnership (Cont..)

Rights:

(iv) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

Minor's Position in Partnership (Cont..)

Liabilities: **(i)** The minor's share is liable for the acts of the firm, but he is not personally liable for any such act. **(ii)** Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm.

Minor's Position in Partnership (Cont..)

If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.if the minor becomes partner of his own willingness or by his failure to give the public notice within specified time, the position will be as follows:

Minor's Position in Partnership (Cont..)

(i)He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(ii)His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

Mutual Rights and Duties of Partners

The contract may provide that a partner shall not carry on any business other that that of the firm while he is a partner **(Section 11).** Subject to a contract between the partners the mutual rights and liabilities are as follows:

Rights:

(1) **Right to take part in the conduct of the Business:** Every partner has the right to take part in the business of the firm. This is because partnership business is a business of the partners and their management powers are generally coextensive.

Mutual Rights and Duties of Partners(Cont..)

Now suppose this management power of the particular partners is interfered with and he has been wrongfully precluded from participating therein. Can the Court interfere in these circumstances? The answer is in the affirmative. The Court can, and will, by Injunction, restrain other partners from doing so.

Mutual Rights and Duties of Partners(Cont..)

The main point is that a partner who has been wrongfully deprived of the right of participation in the management has also other remedies, e.g., a suit for dissolution, a suit for accounts without seeking dissolution, etc. The above mentioned provisions of law will be applicable only if there is no contract to the contrary between the partners.

Mutual Rights and Duties of Partners(Cont..)

2. Right to be consulted: Where any difference arises between the partners with regard to the business of the firm, it shall be determined by the views of the majority of them, and every partner shall have the right to express his opinion before the matter is decided. But no change in the nature of the business of the firm can be made without the consent of all the partners [Section 12(c)].

Mutual Rights and Duties of Partners(Cont..)

3. Right to remuneration: No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration.

Mutual Rights and Duties of Partners(Cont..)

4. Interest on Capital: The interest will be payable only out of profits. As a general rule, interest on capital subscribed by partners is not allowed unless there is an agreement or usage to that effect. The principle underlying this provision of law is that regards the capital brought by a partner in the business, he is not a creditor of the firm but an adventure.

Mutual Rights and Duties of Partners(Cont..)

5. Interest on advances: The partner is entitled to claim interest thereon @6% per annum **[Section 13(d)].** While interest in capital account ceases to run in dissolution, the interest on advances keep running even often dissolution and up to the date of payment.

Mutual Rights and Duties of Partners(Cont..)

6.**Right to share profits:** partners are entitled to share equally in profits earned and so contribute equally to the losses sustained by the firm(section 13(b))

7.**Right to access the books of accounts:** Every partner whether active or sleeping is entitled to have access to any books of firm and to inspect and take out the copy thereof(Sec12(d))

Mutual Rights and Duties of Partners(Cont..)

8 Right to be indemnified: Every partner has the right to be indemnified by the firm with respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business as well as in the performance of an act in an emergency for protecting the firm from any loss. (Section 13(e))

Mutual Rights and Duties of Partners(Cont..)

9.Right to stop admission of a new partner:

Every partner has the right to stop the introduction of the new partner without the consent of other partners.(section 31)

10.Right to retire: Every partner has the right to retire with the consent of other partners and in the case of partnership at will, by giving notice to that effect to all other partners.(section 32(1))

Mutual Rights and Duties of Partners(Cont..)

11.Right not to be expelled: Every partner has got a right not to be expelled from the firm by the majority of the partners.(Section33)

12.Right to dissolve the firm: Every partner has the right to dissolve the partnership with the consent of other partners and in the case of partnership at will,by any partner giving notice to that effect to all other partners.(section 40)

Mutual Rights and Duties of Partners(Cont..)

13. **Right of outgoing partner to carry on competing business:** An outgoing partner can carrying on business competing with the firm and he may advertise such business, but without using the firm name or representing himself as carrying on the business of the firm or soliciting the custom of persons who were dealing with the firm before he ceased to be a partner (Section36(1)).

Mutual Rights and Duties of Partners(Cont..)

14. Right of outgoing partner to share subsequent profits: When any partner has died or ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of the accounts as between them and the outgoing partner, than at the representative option, can either take the proportion of the profits attributable to the share of property or interest at the rate of 6% per annum.

Mutual Rights and Duties of Partners(Cont..)

Duties:

1. Partners are bound to carry on business of the firm

a. to the greatest common advantage

b. To be just and faithful to each other

c. To render to any partner or his legal representative a true account and full information of all the things affecting the firm(Section9)

Mutual Rights and Duties of Partners(Cont..)

Duties Cont.. :

2. Every partner is liable to indemnify the firm for any damage caused ti it by the reason of its fraud in the conduct of his business of the firm(Section10)
3. Every partner is bound to attend diligently to his duties relating to the conduct of the firms business(Section12(b))

Mutual Rights and Duties of Partners(Cont..)

Duties Cont.. :

4. All the partners are liable to contribute equally to the loss sustained by the firm.
5. If a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or the firm's name then he is bound to account for that profit and refund it to the firm.(Section16(a)

Mutual Rights and Duties of Partners(Cont..)

Duties Cont.. :

6. A partner must identify the firm for any loss caused to it by the willful neglect of the business of the firm. (Section13(f))
7. If a partner carries on business of the same nature as and competing with that of the firm, then he must account for and pay to the firm all profits made by him in the business and the firm is not liable for any loss(Section16(b))

Personal Profit Earned by Partners (Section 16)

Where a partner derives any profit for himself from any transaction of the firm or firm the use of the property or business connection of the firm name, he must account for that profit and pay it to the firm. A deed of partnership may contain a clause that some or all the partners are not to carry any business other than of the firm during the continuance of partnership **[Section 11(2)].**

Personal Profit Earned by Partners (Cont..)

A breach of such a provision may entitle the other partner to recover damages from the defaulting partner, but it will not gives rise to any occasion for accounting to his copartners for the profit earned unless the business is shown to be in rivalry with the business of the firm.

Rights and Duties of Partners after a Change in the constitution of the firm (Section 17)

Change in the constitution can occur in one of the four ways, namely:

(i) where a new partner or partners come in,

(ii) where some partner or partners go out, i.e., by death or retirement,

Rights and Duties of Partners after a Change in the constitution of the firm (Section 17)(Cont..)

(iii) where the partnership concerned carries on business other that the business for which it was originally formed,

(iv) where the partnership business is carried on after the expiry of the term fixed for the purpose.

Rights and Duties of Partners after a Change in the constitution of the firm (Section 17)(Cont..)

(a) where the change occurs in the constitution because of the first three reasons then the mutual rights and duties of the partners remains the same as before. **(b)** where the partnership business is carried on after the expiry of the term fixed for the purpose so far they are consistent with the incidents of partnership at will.

Relation of Partners to Third Parties (Sec. 18-30)

The principal distinction between him, and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

Relation of Partners to Third Parties (Sec. 18-30)(Cont..)

Partner is the agent of the firm for the purpose of the business of the firm, cannot be applied to all transaction and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

Implied Authority of a Partner of the firm

If the act is "outside the usual course of the business of the firm" it will not bind the firm even if it is prudent or has benefited the firm unless it is ratified and approved by all the partners. Power to do the usual does not include power to do the unusual.

Implied Authority of a Partner of the firm(Cont..)

A partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.

Acts Beyond Implied Authority (Section 19)

If there is no usage or custom of trade to the contrary, the implied authority of the partner does not empower him to:

(a) Submit a dispute to the business of the firm to arbitration as it is not the ordinary business of partnership firm to enter into a submission for arbitration:

Acts Beyond Implied Authority (Section 19)(Cont..)

(b) Open a bank account on behalf of the firm in his own name;

(c) Compromise or relinquish any claim or portion of a claim by the firm against a third party (i.e. an outsider).

(d) Withdraw a suit or proceedings filed on behalf of the firm;

Acts Beyond Implied Authority (Section 19)(Cont..)

(e)Admit any liability in a suit or proceedings against the firm;

(f)Acquire immovable property on behalf of the firm;

(g)Transfer immovable property on belonging to the firm; and

(h)Enter into partnership on behalf of the firm.

Liability to Third Parties (Section 25 to 27)

1. **Contractual liability:** Under **Section 25,** it is necessary that the act of the firm, in respect of which liability is bought to be enforced against a party, must have been done while he was a partner.

Liability of Third Parties (Section 25 to 27)

2. Liability for tort or wrongful act: Section 26, the fact that the method employed by the partner in doing it was unauthorised or wrongful would not affect the question. Furthermore, all the partners in a firm are liable to a third party for loss or injury caused to him by the negligent act of a partner acting in the ordinary course of the business.

Liability of Third Parties (Section 25 to 27)

3. **Liability for misappropriation by a partner: Section 27** provides that **(a)** when a partner, acting within his apparent authority, receives money or other property from a third person and misapplies it or **(b)** where a firm, in the course of its business, received money or property from a third person and the same is misapplied by a partner, while it is in the custody of the firm, is liable to make goo

Rights of Transferee of a Partner's Share (Sec. 29)

A share in a partnership is transferable like any other property but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner. The supreme court has held the assignee will enjoy only the rights to receive the share of the profits of the assignor and the account of profits agreed to by other partners.

Rights of Transferee of a Partner's Share (Sec. 29)

The rights of such a transferee are as follows:

(1) During the continuance of partnership, such transferee is not entitled **(a)** to interfere with the conduct of the business, **(b)** to require accounts, or **(c)** to inspect books of the firm. He is only entitled to receive the share of the share profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

Rights of Transferee of a Partner's Share (Sec. 29)

(2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners: **(a)** to receive the share of the assets of the firm to which the transferring partner was entitled, and **(b)** for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

Rights of Transferee of a Partner's Share (Sec. 29)

By virtue of **Section 31,** which we will discuss hereinafter, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his stead, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

Legal Consequences of Partner Coming in and going out (Section 31-38)

Introduction of new partner (Section 31): As we have studied earlier, subject to a contract between partners and to the provisions regarding minors in a firm, no new partners can be introduced into a firm without the consent of all the existing partners.

Legal Consequences of Partner Coming in and going out (Section 31-38)

Introduction of the new partner: The liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners.

Legal Consequences of Partner Coming in and going out (Sec.31-38)(Cont..)

Retirement of a partner: A partner may retire:

(i) with the consent of all the other partners;

(ii)by virtue of an express agreement between the partners; or

(iii)in the case of a partnership at will, by giving notice in writing to all other partners of his intention to retire.

Legal Consequences of Partner Coming in and going out (Section 31-38)

Retirement of a partner(Cont..):

Such a partner, however, continues to be liable to the third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by other partners. But the retired partner will not be liable to any third party of the latter deals with the firm without knowing that the former was partner [Sub-Section (3) and (4)].

Right of outgoing partners

(i) However, the partner may agree with his partners that on his ceasing to be partner, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable **[Section 36(2)].** A similar rule applies to such an agreement of sale of the firm's goodwill **[Section 53(3)]**.

Right of outgoing partners(Cont..)

(ii) (a) On the retirement of a partner, he has the right to receive his share of the property of the firm including goodwill.

(b) An outgoing partner, where the continuing partners carry on business of the firm with the property of the firm without any final settlement of accounts with him, is entitled to claim from the firm such share of the profits made by the firm, since he ceased to a partner, as attributable to the use of his share of the property of the firm.

Right of outgoing partners:

In the alternative, he can claim interest at the rate of 6% per annum on the amount of his share in firm's property **(Section 37).**

(c) However, if by a contract between the partners, an option has been given to the surviving or continuing partners to purchase the interest of the outgoing partner and the option if duly exercised, the outgoing partner or his estate will not be entitled to any further share of the profits.

Right of outgoing partners:

Liabilities of an outgoing partner: The retired partner will not be liable to any third party of the latter deals with the firm without knowing that the former was partner **[Section 32 (3)&(4)].** Expulsion of a partner **(Section 33):** It is, thus, essential that: **(i)** the power of expulsion must have existed in a contract between the partners; **(ii)** the power has been exercised by a majority of the partners; and **(iii)** it has been exercised in good faith.

Right of outgoing partners(Cont..)

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.The test of goods faith as required under **Section 33(1)**includes three things:

(a)That the expulsion must be in the interest of the partnership.

(b)That the partner to be expelled is served with a notice.

(c) That he is given an opportunity of being heard.

Right of outgoing partners(Cont..)

Insolvency of a partner **(Section 34):** When a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date of the order of adjudication whether or not the firm is thereby dissolved. His estate (which thereupon vests in the official assignee) ceases to be liable for any act of the firm done after the date of the order, and the firm also is not liable for any act of such a partner after such date (whether or not under a contract between the partners the firm is dissolved by such adjudication).

Right of outgoing partners(Cont..)

Death of a partner **(Section 35)**: Where under the contract a firm is not dissolved by the death of partner, the estate of the deceased partner is not liable for act of the firm after his death. Ordinarily, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner is subject to a contract between

Right of outgoing partners(Cont..)

competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partner sunless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

Right of outgoing partners(Cont..)

In relation to **Section 35,** let us consider a concrete case. X was a partner in a firm. The firm ordered goods in X's lifetime; but the delivery of the goods was made after X's death. In such a case, X's estate would not be liable for the debt; a creditor can have only a personal decree against the surviving partners and a decree against the partnership assets in the hands of those partners.

Right of outgoing partners(Cont..)

A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This because there was no debt due in respect of the goods in X's lifetime.

Right of outgoing partners(Cont..)

Revocation of continuing guarantee by change in the firm (Section 38): It provides that a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transaction from the date of any change in the constitution of the firm.

THE END

The Indian Partnership Act,1932