SYNOPSIS

1. Short title and commencement:

2. Definitions:

3. Application of provisions of Act of 1872:

1. Short title and commencement

This Act shall be called the Indian Partnership Act, 1932, shall apply throughout India and shall come into force on 1 October 1932, except section 69, which shall come into force on 1 October 1933.

(1) This Act may be called the Indian Partnership Act, 1932.

(2) It extends to the whole of India.

(3) It shall come into force on the 1st day of October, 1932, except section 69, which shall come into force on the 1st day of October, 1933.

Section 1 is the preliminary provision of the Act and does three things. Sub-section (1) gives the Act its short title, the name by which it is cited. Sub-section (2) sets its territorial extent as the whole of India, so every partnership formed or carried on in India is governed by it. The original text excluded the State of Jammu and Kashmir, but that exception was removed after the Jammu and Kashmir Reorganisation Act, 2019, and the Act now applies there as well. Sub-section (3) fixes when the Act took effect: generally on 1 October 1932, when it replaced the partnership provisions formerly in Chapter XI of the Indian Contract Act, 1872. Section 69 alone was brought into force a year later, on 1 October 1933. Section 69 disables an unregistered firm and its partners from suing to enforce contractual rights against third parties or against each other. The deferment gave existing firms a full year to register before that penalty applied. For example, suppose X and Y have run an unregistered partnership since 1930, and in December 1932 the firm sues a customer, Z, to recover an unpaid debt. The suit is maintainable, because the Act was in force but section 69 was not yet operative. If the same unregistered firm filed the suit in November 1933, it would be barred by section 69, since that section had come into force by then and the firm was still not registered.

2. Definitions:

Opening word — Every word defined in the Indian Partnership Act shall carry its defined meaning, unless the subject or context requires otherwise.

In this Act, unless there is anything repugnant in the subject or context, —

Section 2 of the Indian Partnership Act, 1932 opens with the words: “In this Act, unless there is anything repugnant in the subject or context”. These words govern every definition in the section: “act of a firm” (s. 2(a)), “business” (s. 2(b)), “prescribed” (s. 2(c)), “third party” (s. 2(d)), and s. 2(e), which says that words not defined in this Act but defined in the Indian Contract Act, 1872 take their meaning from that Act. As a rule, wherever a defined word appears in the Partnership Act, it carries the meaning given in Section 2. This keeps the Act’s terms uniform across provisions on the relations of partners with each other and with outsiders. The rule gives way only where applying the definition would clash with the subject matter of a particular provision or the context in which the word is used. In that case the court reads the word in the sense the context requires. The Supreme Court explained this kind of opening phrase in *Vanguard Fire & General Insurance Co. Ltd. v. Fraser & Ross* (AIR 1960 SC 971). A defined term ordinarily bears its statutory meaning, but it may be read differently where the context clearly demands it. For example, s. 2(d) defines “third party”, in relation to a firm or a partner, as any person who is not a partner in the firm. Suppose X, Y and Z run a firm, and Y buys goods for the firm’s business from a supplier, S. When the Act speaks of the firm’s liability to “third parties” for acts of partners (as in ss. 18 and 19), the word applies in its defined sense. S is a third party because he is not a partner, so the firm is bound by Y’s act done within his implied authority. Likewise, “business” under s. 2(b) includes every trade, occupation and profession. A firm of chartered accountants or lawyers is therefore carrying on “business” for the purposes of the Act, even though in ordinary speech a profession is often distinguished from a business. Only if a particular provision used one of these words in a setting where the defined meaning would be plainly unsuitable would the opening words allow the court to depart from it.

2.a Act of a firm — An act or omission of all the partners, or of any partner or agent of the firm, shall be an act of the firm if it gives rise to a right enforceable by or against the firm.

(a) an "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;

Section 2(a) of the Indian Partnership Act, 1932 defines when conduct counts as conduct of the firm. A firm is not a separate legal person; it acts only through its partners and agents. So the Act treats something as an “act of a firm” when it is done or omitted by any of three groups: all the partners together, any one partner, or an agent of the firm. The test is the legal effect, not the number of people involved: the act or omission must create a right that the firm can enforce against others, or that others can enforce against the firm. “Act” also covers omissions, such as failing to deliver goods or pay a debt on time, when that failure gives rise to a legal claim. A purely private act of a partner, unconnected with the firm’s business, creates no such right and is not an act of the firm. The definition works together with other provisions. Every partner is an agent of the firm for its business (s. 18). A partner’s act done within implied authority binds the firm (s. 19), provided it is done in the firm name or in a manner showing an intention to bind the firm (s. 22). All partners are jointly and severally liable for acts of the firm done while they are partners (s. 25). For example, A, B and C run a furniture business as partners under the name “Ace Traders”. A, acting alone, orders ₹2 lakh worth of timber from a supplier in the firm’s name for the business. This is an act of the firm, because it gives the supplier a right to recover the price from the firm, and A, B and C are all liable for it. Likewise, if the firm’s manager (an agent) fails to deliver furniture to a customer under a contract made by the firm, that omission is an act of the firm, and the customer can sue the firm for breach. But if A buys a television for his own home on his personal account, that purchase creates no right by or against the firm and is not an act of the firm.

2.b Business — Every trade, occupation and profession shall be treated as a business.

(b) "business" includes every trade, occupation and profession;

Section 2(b) of the Indian Partnership Act, 1932 defines “business” in deliberately wide terms. The word “includes” makes the definition inclusive rather than exhaustive, so trade, occupation and profession are the main

examples it names, not a complete list. “Trade” covers buying, selling or exchanging goods or services for profit. “Occupation” covers any regular activity by which a person earns a living. “Profession” covers work that calls for specialised learning or skill, such as that of doctors, lawyers, architects or chartered accountants. The definition matters because s. 4 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. So persons can be partners only if they are carrying on a business in this wide sense, with a view to sharing its profits. Joint ownership or co-ownership of property, without any business carried on for profit, does not by itself make the owners partners (s. 6, Explanation 1). For example, two doctors, A and B, run a clinic together and share its earnings. Their medical practice is a profession, so it counts as a business under s. 2(b), and they are partners under s. 4. By contrast, if C and D jointly inherit a house and simply share its rent, they are co-owners and not partners, because merely sharing the income from jointly owned property is not carrying on a business.

2.c Prescribed — Every matter that the Partnership Act requires to be “prescribed” shall be fixed by rules made under the Act.

(c) "prescribed" means prescribed by rules made under this Act;

Section 2(c) of the Indian Partnership Act, 1932 defines “prescribed” as prescribed by rules made under the Act. The Act sets out the substantive law of partnership and leaves procedural details, mostly about registering firms under Chapter VII, to be fixed by rules. Section 71 gives the State Government the power to make these rules. Under it the State may prescribe the fees for filing documents with the Registrar of Firms, for inspecting records and for obtaining copies. It may also prescribe the forms of the statements and notices to be filed under ss. 58 to 63 and the way the Register of Firms is to be kept. These rules are laid before the State Legislature, and because each State frames its own, the forms and fees vary from State to State. Only rules made under this Act count as “prescribed”, so a direction from any other source cannot take their place. The rules must also stay within the limits of s. 71 and cannot add substantive conditions the Act does not authorise. For example, s. 58 provides that a firm may be registered by sending the Registrar a statement “in the prescribed form and

accompanied by the prescribed fee", giving the firm's name, its place of business, the partners' names and similar details. The Act does not set out the form or the fee itself. Partners of a firm in Patna would therefore have to use the form and pay the fee laid down in the rules made by the Bihar Government. A statement in some other format, or one filed without the correct fee, would not satisfy s. 58. The same applies when the firm later notifies a change in its place of business under s. 61 or in its constitution under s. 63, since those notices must also be in the prescribed form under the State's rules.

2.d Third party — Every person who is not a partner in a firm shall be treated as a third party in relation to that firm and its partners.

> (d) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm;

Section 2(d) of the Indian Partnership Act, 1932 defines "third party" by exclusion. In relation to a firm or any of its partners, anyone who is not a partner in that firm is a third party. This includes customers, suppliers, creditors, debtors, employees and agents of the firm, a partner who has retired, and a person who has not yet been admitted as a partner. Whether someone is a third party depends on their relationship to a particular firm, so a partner in one firm can be a third party to another. The definition matters because the Act has separate rules for the relations of partners among themselves (ss. 9 to 17) and for the relations of partners to outsiders (ss. 18 to 30). In dealings with third parties, a partner is an agent of the firm (s. 18). An act within a partner's implied authority binds the firm (s. 19). Every partner is jointly and severally liable for acts of the firm (s. 25). A person who holds himself out as a partner is liable to third parties who give credit to the firm on that basis (s. 28). An unregistered firm cannot sue a third party to enforce a right arising from a contract (s. 69(2)). For example, A, B and C are partners in "ABC Traders", and D, a wholesaler, sells the firm goods worth ₹3 lakh on credit on an order that A signs in the ordinary course of business. D is a third party because he is not a partner. A's act binds the firm, and D may recover the full amount from the firm or from A, B or C personally. If C later retires and then supplies goods to the firm, C is a third party in that transaction. However, if C gives no public notice of his

retirement, he may remain liable to third parties who deal with the firm believing he is still a partner (s. 32(3)).

2.e Closing word — Expressions used but not defined in the Partnership Act and defined in the Indian Contract Act, 1872 shall have the meanings given to them in the Contract Act.

> (e) and expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872), shall have the meanings assigned to them in that Act.

Section 2(e) of the Indian Partnership Act, 1932 connects the Partnership Act to the Indian Contract Act, 1872. The law of partnership was originally Chapter XI of the Contract Act (ss. 239–266). It was taken out and enacted as a separate statute in 1932, and s. 73 of the Partnership Act repealed those Contract Act sections. Partnership, however, still rests on contract, because it arises from an agreement between persons and not from status (s. 5). For that reason the Partnership Act defines only the terms special to partnership: “act of a firm”, “business”, “prescribed” and “third party” in s. 2, and “partnership”, “partner”, “firm” and “firm name” in s. 4. It leaves general contractual terms to the Contract Act. So wherever the Partnership Act uses a term such as “agreement”, “contract”, “consideration”, “proposal”, “promise”, “void”, “voidable” or “agent” without defining it, the term carries its Contract Act meaning. This keeps the two statutes consistent and avoids defining the same term twice. A companion provision, s. 3, goes further. It says that the unrepealed provisions of the Contract Act continue to apply to firms, except where they are inconsistent with the Partnership Act’s express provisions. Section 2(e) imports definitions, while s. 3 imports substantive rules. Terms that the Partnership Act defines itself keep the meaning the Act gives them. For example, s. 4 defines 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.” The Partnership Act does not define “agreement”, so under s. 2(e) it means what s. 2(e) of the Contract Act says: “every promise and every set of promises, forming the consideration for each other”. A partnership therefore needs a genuine agreement between persons competent to contract (s. 11, Contract Act) and made with free consent (ss. 13–14). Suppose A and B sign a partnership deed, and B signed only because A threatened him. B’s consent was caused

by coercion, so the agreement is voidable at B's option (s. 19, Contract Act), and B may avoid the partnership. Similarly, s. 18 provides that "a partner is the agent of the firm for the purposes of the business of the firm." "Agent" is not defined in the Partnership Act, so it takes its meaning from s. 182 of the Contract Act: a person employed to do any act for another or to represent another in dealings with third persons. When partner C buys raw material in the usual course of the firm's business, C acts as the firm's agent in that sense, and the firm is bound (s. 19, Partnership Act).

3. Application of provisions of Act of 1872

The unrepealed provisions of the Indian Contract Act, 1872 shall apply to firms, except where they are inconsistent with the express provisions of the Indian Partnership Act, 1932.

> The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.

Section 3 of the Indian Partnership Act, 1932 connects the Partnership Act to the general law of contract. Partnership law was originally contained in Chapter XI (ss. 239 to 266) of the Indian Contract Act, 1872. When the 1932 Act was passed, that chapter was repealed (originally by s. 73 and the Schedule of the 1932 Act), but the rest of the Contract Act stayed in force. Partnership arises from a contract between the partners (s. 5), so the general principles of contract continue to govern firms wherever the Partnership Act is silent. These include offer and acceptance, capacity, free consent, consideration, lawful object, the rules on void and voidable agreements, and the law of agency in Chapter X, which matters because every partner is an agent of the firm (s. 18). The Partnership Act therefore does not operate as a complete code; it works alongside the Contract Act. The provision also sets a rule of priority: if a Contract Act provision conflicts with an express provision of the Partnership Act, the Partnership Act prevails as the special law. For example, A and B form a partnership firm, and A agrees to join only because B fraudulently misrepresents the profits of his existing business. The Partnership Act does not deal with consent obtained by fraud, so the Contract Act applies: under ss. 17 and 19, A's consent was not free and A may avoid the partnership agreement. Likewise, if the firm's object is smuggling, the agreement is void under s. 23 of the Contract Act. By

contrast, under s. 11 of the Contract Act a minor cannot make a valid contract (*Mohori Bibee v. Dharmodas Ghose* (1903) 30 IA 114), but s. 30 of the Partnership Act expressly allows a minor to be admitted to the benefits of an existing partnership with the consent of all the partners. On that point the Contract Act yields to the express provision of the Partnership Act, so the minor's admission to benefits is valid.