

student

RIGHTS OF PARTNER

1. Right to take part in the conduct of Business (Section 12(a))

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.

2. Right to be consulted (Section 12(c))

Where any differences 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.

This means that in routine matters, the opinion of the majority of the partners will prevail.

Of course, the majority must act in good faith and every partner must be consulted as far as practicable.

- But no change in the nature of the business of the firm can be made without the consent of all the partners.

3. Right of access to books (Section 12(d)):

Every partner whether active or sleeping is entitled to have access to any of the books of the firm and to inspect and take out of copy thereof. The right must, however be exercised bona fide.

4. Right of Legal heirs / representatives / their duly authorized agents (Section 12(e))

In the event of death of a partner, his heirs or legal representatives or their duly authorized agents shall have a right of access to and to inspect and copy any of the books of the firm.

5. Right to receive Remuneration (Section 13(a))

No partner is entitled to receive any remuneration in addition to his share in profits of the firm for taking part in the business of the firm. But this rule can always be waived by an express agreement, or by course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, where it is customary to pay remuneration to a partner for conducting the business of the firm.

6. Right to share profits (Section 13(b))

Partners are entitled to distribute profits and losses in profit sharing ratio. If there is no agreement, then profit and loss is distributed equally between them. Burden of proving that the shares are unequal, will lie on the party alleging the same.

There is no connection between the proportion in which the partners shall share the profits and the proportion in which they have contributed towards the capital of the firm.

7. Interest on capital (section 13(c))
The following elements must be there before a partner can be entitled to interest on money brought by him in the partnership business:
An express agreement to that effect or practice of the particular partnership or any trade custom to that effect or
→ a statutory provision which entitles him to such interest.
8. Interest on advances (section 13(d))
Suppose a partner makes an advance to the firm in addition to the amount of capital to be contributed by him, in such a case, the partner is entitled to claim interest thereon @ 6% p.a. while interest on capital account closes to run on dissolution, the interest on advances keep running even after dissolution and up to the date of retirement.
9. Right to indemnified (Section 13(e))
Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss.

10. Rights of Outgoing Partner

(i) To carry on competing business (Section 36)

An outgoing partner may carry on business competing with that of the firm and he may advertise such business if there is no agreement against it.

Provided he may not -

- a. Use the firm name
- b. represent himself as carrying on the business of the firm or
- c. solicit the customers of persons who were dealing with the firm before he ceased to be a partner.

(ii) In certain cases to share subsequent profits (Section 37)

where any member of the firm has died or otherwise ceased to be 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 accounts as between them, then, if there is no agreement against it, the outgoing partner or his estate is entitled at the option of himself or his representatives

- a. To claim share in profits or
- b. To interest at the rate of six percent per annum of on the amount of his share in property of the firm.

whichver is higher

V. Imp
11.

Rights to stop Expulsion (Section 33)

A partner cannot be expelled from firm even with the consent of all the partners.

Exception

However, According to provisions of section 33 of the Indian Partnership Act, 1932, a partner can be expelled from a firm on the fulfilment of the following conditions:

- (i) When the power of expulsion of a partner is expressly conferred on the partners in the deed of partnership.
- (ii) The power of expulsion must be exercised by majority of partners in the interest of the firm.
- (iii) The power of expulsion must be exercised in good faith. Further the power of expulsion is said to have been exercised in good faith only if -
bonafide
- (a) The expelled partner has been served with a notice of charges against him.
- (b) The expelled partner has been given a reasonable opportunity of being heard by the other partners.
- (c) The expulsion is in the interest of the firm.

Questions

4. X, Y, and Z are partners in a partnership firm. They were carrying on business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

(Defn. + Exceptions)

Ans. In the given case it is evident that expulsion of Y was not valid since it was not in good faith.

Thus Y, the expelled partner shall have a right to sue the partners for reinstatement in the firm.

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5. Ram & Co. a firm consists of three partners A, B & C having equal share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advice A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act 1932.

Ans.

Thus A & B can expel C, provided the power of expulsion is given by the partnership deed and the expulsion is being done in good faith, in the interest of the firm, after giving C a reasonable opportunity of being heard and notice with respect to same is served on C.

6. Ms XYZ and Associates, a partnership firm X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th Aug. 2016 they introduced Mr G an expert in the field of carpet manufacturing as their partner. On 10th Jan. 2018 Mr G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of partners.
- Examine whether action by partners was justified or not?
 - What should have the factors to be kept in mind prior to expelling a partner from the firm by other partners according to provisions of Indian Partnership act, 1932?

Ans.

- Thus, applying the above stated provisions it is evident that the action of the partners was not justified since all the conditions required for the lawful expulsion of Mr G were not duly

complied. Expulsion of Mr G would have been valid if such a power existed in the contract of partnership and if all conditions of expulsion made in good faith were satisfied.

- (b.) The partners before unanimously expelling Mr G should have assured that
- the power of expulsion must have existed in partnership deed.
 - Mr G should have been served with a notice of expulsion.
 - Mr G should have been given an opportunity of being heard.

REGISTRATION OF FIRM (Section 58, 59, 59(A), 69)

Registration of firm is optional

Deed for Registration → Registration of firm
form fees

Application for Registration (Section 58)

The registration of a firm may be registered at any time by sending by post or delivering to the registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and along with prescribed fee, stating -

- a) The firm's name
- b) The place or principal place of the firm.

- c. The names of any other places where the firm carries on business.
- d. the date when each partner joined the firm.
- e. the names in full and permanent addresses of firm partners and
- f. duration of firm.

1. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.
2. A firm name shall not contain any of the following words namely:

Note: 'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to use of such words as part of the firm-name by order in writing.

Registration (Section 59)

→ When the registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a Registrar called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration.

→ However, registration is deemed to be completed as soon as application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar.

- The recording of an entry in the register of firms is a routine duty of Registrar.

Late Registration on payment of Penalty (Section 59A)
If the statement in respect of any firm is not sent or delivered to the Registrar within the specified time, then the firm may be registered on payment, to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof.

Consequences of Non-Registration (Section 69)

Registration of firm is not compulsory, However, under Section 69, non-registration of partnership gives rise to a number of disabilities which are as follows:

- Suits between partners and firm [Section 69(1)] A partner of an unregistered firm cannot file a suit against the firm or any partner thereof, for the purpose of enforcing a right arising from contract or a right given by the Partnership Act.
- Suits between firm & third parties [Section 69(2)] No suit can be filed by or on behalf of an unregistered firm against any third party for the purpose of enforcing a right arising from a contract, unless the firm is registered and the persons suing are registered as partners in the firm.
However, Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.

→ Claims of set off [Section 69(3)] An unregistered firm cannot claim a set-off in excess of 100 value.

Exceptions :

Non registration of a firm does not, however effect the following rights :

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignee, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue for claim a set off if the value of suit does not exceed Rs 100 in value.
5. The right to sue and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realize the property of the firm.