# Introduction

There are two fundamental principles which govern the relation of partners to one another. The first principle provides that all the partners in a partnership firm are free to form an agreement with regard to their mutual rights and duties. However, there are certain duties mentioned in [The Indian Partnership Act, 1932](https://indiacode.nic.in/bitstream/123456789/4095/1/the_indian_partnership_act_1932.pdf) which can not be altered by entering into an agreement to the contrary. [Section 11](https://indiankanoon.org/doc/1400145/) of the Act gives statutory recognition to this principle.

The second principle is of fundamental nature. It provides that the relation of partners to one another is of the utmost good faith. It provides that every partner is an agent of each other, therefore, the contract entered by one of the partners will bind all the partners. Thus, the relation of partners to one another is based on mutual trust and confidence. The principle is recognised by [Section 9](https://indiankanoon.org/doc/1410442/) of the Partnership Act.

Following are the duties of partners:

1. Duty to act in good faith
2. Duty not to compete
3. Duty to be diligent
4. Duty to indemnify for fraud
5. Duty to render true accounts
6. Duty to properly use the property of the firm
7. Duty not to earn personal profits

## Duty to act in good faith

* [Section 9](https://blog.ipleaders.in/prevention-and-control-of-noise-pollution-with-case-laws/) of the act provides that it is the duty of partners to act for**the greatest common advantage**of the firm. Therefore, the partner should work to secure maximum profits for the firm. A partner should not secure secret profits at the expense of the firm.
* In [Bentley v. Craven](https://webstroke.co.uk/law/cases/bentley-v-craven-1853),[1] there was a partnership in a sugar refinery firm. One of the partners was skilled in buying and selling sugar. Therefore, he was entrusted with the task of buying and selling sugar. However, the partner sold the sugar from his own stock and thus, gained profit. When the partners discovered this fact, they brought an action to recover profits earned by the partner. It was held by the court that the partner can not make secret profits and therefore, the firm was held entitled for profits earned by the partner.
* The duty continues to exist even after the partnership has ceased to exist. The partners owe the duty to legal representatives of the partner as well as the former partner.

## Duty not to compete

* [Section 16(b)](https://indiankanoon.org/doc/1350687/) of the act provides that if the partner makes a profit by engaging in a business which is similar to or competing with the firm, then the partner should account for such profits.
* In [Pullin Bihari Roy v. Mahendra Chandra Ghosal](https://indiankanoon.org/doc/1639526/),[2] there was a partnership for buying and selling of the salt. One of the partners while buying the salt for the firm, bought some quantity of salt for himself and then gained profit by selling it on his personal account. He was held to be liable to account to his co-partners for the profits earned.
* However, a partner can carry on any business which is outside the scope of the business of the firm.
* The duty can be altered by the partnership deed. The partners may enter into an agreement which allows a partner to carry the business competing with the business or can restrict the partner from carrying any business other than that of the firm. [Section 11](https://indiankanoon.org/doc/1400145/) provides that such an agreement will be valid and can not be considered as a restraint in trade.
* If a person breaches such agreement and carries on a personal business which not competing to the business of the firm then such a partner will not be liable to account for the profits, but his co-partners can apply for dissolution of the partnership.

## Duty to be Diligent

* [Section 12(b)](https://indiankanoon.org/doc/916928/) provides that a partner is bound to diligently attend his duties. [Section 13(f)](https://indiankanoon.org/doc/1942309/) states that a person should indemnify the firm for any loss caused to the firm because of his wilful neglect
* A partner cannot be made liable for *mere errors of judgment*or acts done in good faith.
* In [Cragg v. Ford](http://www.commonlii.org/int/cases/EngR/1842/269.pdf),[3] there was a partnership between the plaintiff and the defendant. The defendant was the managing director of the firm and therefore, the conduct of dissolution was left on him. Plaintiff advised the defendant to dispose of certain bales of cotton. However, the defendant said that the same would only be done after the dissolution. Meanwhile, the prices of cotton fell and very less amount was realised by selling the cotton as compared to which could have been otherwise realised.
* An action for indemnity under this head can be brought only by the firm or partners on behalf of the firm. A partner can not bring an action for indemnity in his personal capacity.

## Duty to indemnify for fraud

* [Section 10](https://indiankanoon.org/doc/1224716/) of the Indian Partnership Act, 1932, provides that if a loss is caused to the business of the firm because of the act of the partner then he shall indemnify his co-partners for such loss.
* The purpose of this section is to induce partners to deal fairly and honestly with the customers.
* **Illustration:**A, B, C, and D entered into a partnership for the banking business. A committed fraud of ₹30,000 against one of the customers. As a result, all the co-partners i.e. B, C, and D were held liable. Here, A is bound to indemnify the firm for the loss caused to the firm because of fraud committed by him.
* The liability to indemnify for fraud cannot be excluded by entering into an agreement to the contrary. Because entering into any such agreement is opposed to public policy.

## Duty to render true accounts

* [Section 9](https://indiankanoon.org/doc/1410442/) of the Act, provides that the partners are bound to disclose and provide full information about the things that affect the firm to any partner or his legal representatives. This means that a partner should not conceal things from other co-partners in relation to the business of the firm.
* Every partner has the right to access the accounts of the firm.
* In [Law v. Law](https://swarb.co.uk/law-v-law-1905/),[4] it was held by the court that if a partner is in possession of some extra information then he is bound to deliver it to the co-partners. If the partner enters into a contract with other co-partners without furnishing them the material details which is known to him but not his co-partners then such a contract is*voidable.*

## Duty to properly use the property of the firm

* [Section 15](https://indiankanoon.org/doc/1997142/) of the act, provides that property of the firm should be held and used by the firm only for the business of the firm.
* A partner can not make use of the property for his personal purpose and if does so, then he will be accountable to all the co-partners. He could be made liable for the losses caused because of any such use.
* This duty can be avoided by entering into an agreement to the contrary.

## Duty to account for personal profits

* [Section 16](https://indiankanoon.org/doc/1828398/) of the Partnership Act, provides that:
* If a partner makes the use of the property of the firm and earns profit out of it, then he should account for the property. This duty arises because of the *fiduciary relationship*between the partners.
* **Illustration:**A, B, and C were partners in a firm. Goods were supplied to a person D. D paid some extra commission to A, for using his influence to deliver the goods to D. Here, A has the duty towards the co-partners to account for the commission.
* If a partner enters into a business which is competing with the business of the firm then the partner should account for the profit earned from any such business.
* **Illustration:**A, B, and C were partners in the business of sale of bottles. B started to carry on the same business and started to influence the customers to buy the bottle from him rather than the firm. Here, B has a duty to account for the profits earned from the business.
* However, a competing business can be carried out after the dissolution of the partnership. The firm has the right to put reasonable restrictions on carrying the competing business by the ex-partners such as, any reasonable time for which the ex-partners can’t carry the competing business or the geographical limits where he can’t carry the business.
* This is not a compulsory duty and thus, can be avoided by entering into an agreement to the contrary

# Rights of Partners

Mutual Rights of the partners generally depend upon the provisions of the agreement. But subject to their agreement, the law confers following rights on partners:

1. Right to take part in the conduct of the business
2. Right to be consulted
3. Right to access and inspect books
4. Right to indemnity
5. Right to share profits
6. Right to Interest
7. Right to remuneration

## Right to take part in the conduct of the business

* [Section 12(a)](https://indiankanoon.org/doc/807053/) of the act, provides that every partner has a right to take part in the conduct to the business of the firm.
* This right can be curtailed by the provisions of the agreement. Thus, allowing only a few partners to actively participate in the functioning of the business.
* This right should be used by the partners for promoting the business of the firm and not for damaging the business.
* In [Suresh Kumar Sanghi v. Amrit Kumar Sanghi](https://indiankanoon.org/doc/807053/),[5] a partner in order to undermine the position of the managing partner wrote to the principals to not supply motor vehicles to the firm and to the banker’s to not to honour the cheques of the firm.
* The Delhi High Court provided an injunction against the partner saying that the partner’s act was to damage the business of the firm.

## Right to be consulted

* [Section 12(c)](https://indiankanoon.org/doc/186356/) provides for resolving disputes relating to the ordinary course of business between the partners by the majority. It states that every partner shall have the right to express an opinion before the matter is decided.
* If for example, there is a difference in opinion among the partners for introducing the son of one of the partners for the *purpose of learning* *business*then the majority decision will prevail.
* However, if the dispute is related to the Fundamental matter of the business i.e. the nature of the business then the consent of every partner is required.
* **For Example:** If a minor is to be included as a beneficiary in a partnership then the consent of all the partners is required.

## Right to access, inspect and copy books

* [Section 12(d)](https://indiankanoon.org/doc/186356/) of the act, provides the right to partners to access, inspect and copy account books.
* A partner can exercise this right by himself or by his agent but none of them is authorised to use the gained information against the interest of the firm.
* **Example:** If a dormant partner wants to sell his shares to a co-partner and appoints an expert to inspect the account and his share in the firm then, co-partners can not object to same.
* For raising an objection the co-partners should provide reasonable grounds such as protection of trade.

## Right to be Indemnified

* [Section 13(e)](https://indiankanoon.org/doc/1392314/) provides the right to be indemnified to the partners. This section provides the right to indemnity under two circumstances:
* A partner is entitled to recover for any expenses incurred by him in the ordinary and proper conduct of the business.
* **Illustration:** There was a partnership between A, B, C, and D. The firm has incurred a debt of ₹2,00,000 from the bank. A paid the debt in the name of the firm. In this case, B is entitled to be indemnified from his co-partners.
* When a partner has incurred expenses in an emergency in order to protect the firm from loss; provided that the partner must have acted in a reasonable manner.
* The right to be Indemnified is not lost with the dissolution of the firm. Settlement of accounts is also not important to indemnify the partner.
* The rationale behind this right is that the burden of expenses of helping partnership should not be borne by a single partner.

## Right to share profits

* [Section 13(b)](https://indiankanoon.org/doc/392563/) of the Indian Partnership Act, provides that the partners are entitled to share the profits and losses equally.
* Right to share profits is not affected by the fact that the partners have contributed unequally in the firm, possess different skills, have laboured unequally in the firm.
* In [Mansha Ram v. Tej Bhan](https://indiankanoon.org/doc/1658334/), [6] where there was no satisfactory evidence to show that in what proportion the partners were to divide the remuneration. It was held by the Punjab and Haryana High Court that the partners were entitled to share equal profits irrespective of the fact that they had been paid separately and had done unequal work.
* However, the right to share profits equally can be altered by the partners by entering into an agreement to the contrary. Thus, the partners can fix the share of profits or agree to be paid by way of salary rather than profits.

## Right to Interest

* **Interest on Capital:**[Section 13(c)](https://indiankanoon.org/doc/1226296/) provides that a partner is generally not entitled to claim on the capital. But if there is an express agreement between partners that allows interest on capital then, such an interest will be paid only out of the profits of the firm. Interest is not provided to the partner on capital except when there is an express agreement or a usage to the effect, because a partner is deemed to be an adventurer rather than the creditor.
* Interest on Advances: [Section 13(d)](https://indiankanoon.org/doc/283954/) states that a partner is entitled to the interest of six percent per annum for the advances made by him to the firm beyond the capital he had agreed to subscribe.
* **Illustration:** A person X, invests ₹50,000 in a partnership firm and provides ₹60,000 to the firm as advance. In this case, X will receive interest from the profits of the firm for ₹50,000 which he had invested in the firm and will get 6% interest on the advances made by him to the firm.
* It must be noted that the interest in capital ceases after the dissolution of the firm, but the interest on advances exist until it is paid. Thus, the dissolution of a firm has no impact on the Interest on Advances.

## Right to remuneration

* [Section 13(a)](https://indiankanoon.org/doc/283954/) provides that no partner in a firm is entitled to claim remuneration for taking part in the conduct of business. However, the remuneration can be provided to certain partners along with the share in profits if they have entered into an agreement to that effect or when such remuneration is payable under the continued usage of the firm.
* **For Example,**there is a firm consisting of Active and Dormant partners. In such a case, the partners can form an agreement entitling the active partners to receive a particular sum as remuneration.

# What is Partnership Property?

It becomes important to determine the property of the firm as opposed to the personal property of partners. *For example*, when the partnership is dissolved then the debts are first paid out of the property of the firm. Again, the partnership property should be used only for the business purpose and not for personal purposes.

## Concept and Nature of Partnership Property

A partnership is not a legal person and is, therefore, incapable of holding any personal property. Partnership property is nothing but the joint property of all the partners, however, none of the partners can personally claim the property. Thus, when one of the partners brings his personal property for the purpose of the partnership, he loses his personal rights over it. He will only get the share of profits which may be agreed by the partners.

## What constitutes the Partnership Property?

Generally, it is an agreement between the partners which specifies what shall constitute a partnership property.

[Section 14](https://indiankanoon.org/doc/804661/) of the Act, provides what shall constitute the partnership property. It must be noted that this is subject to the agreement, and the partners can explicitly mention in the contract that what will be the partnership property. Hence, Section 14 will apply only in the cases when there was no agreement between the partners stating that what would be the partnership property.

## The property originally brought in

The property of the firm includes all property, rights, and interests which were originally brought into the stock of the firm by the partners at the commencement of the business.

In [Boda Narayana Murthy and sons v. Valluri Venkata Suguna](https://indiankanoon.org/doc/1937918/),[7] there were five people who purchased a land jointly and subsequently constructed a cinema hall with the joint money. Then all the five persons entered into a partnership to form firm to exhibit the film there. It was held by the Andhra Pradesh High Court that the land and the hall was not the property of the firm but subject to co-ownership, as there was no intention could be inferred to convert the property into the firm’s property.

### Goodwill of the firm

Goodwill of the firm is treated as the property of the firm. Goodwill is nothing but the **reputation of the firm**. When a partner buys the firm then he is entitled to the goodwill as well. say, for example, there were two partners in a firm, A and B, B sold his partnership shares to A, A will be entitled to the goodwill of the firm as well i.e. B cannot use the name of the firm when he opens the business and cannot represent himself as a partner of the firm.

If a person dies or retires, then he or his legal representatives will be entitled to claim for the goodwill. This is because the goodwill of the firm is the result of his joint efforts along with other partners.

## Property subsequently acquired

When a property is subsequently brought for the purposes of the firm or in the ordinary course of the business, then it would constitute the property of the firm. Any property bought by the firm’s money will be the property of the firm,

In [Mohan Lal Bahri v. K.L. Bahri](https://indiankanoon.org/doc/1836333/),[8] a chief working partner bought property by the firm’s money in his own name without the consent of other partners. It was held by the court that, the fact that the property is not included in the assets for income tax purposes is immaterial and hence, the property belonged to the firm and not to the partner.

## Partner’s property in the firm’s use

Sometimes, the personal property of the partner may be used in a firm. If such property constitutes the property of the firm or not will depend upon the agreement of the partnership and intention of the partners.

The mere use of a partner’s personal property does not mean that it is the firm’s property and the owner of the property does not lose his rights over that property.

In [Jai Narayan Mishra v. Hashmathunnisa Begum](https://indiankanoon.org/doc/165222/),[9] one of the partners had contributed the land for the use of business and the other had constructed the cinema hall on land. There was no provision in the agreement stating that the property would be treated as the property of the firm. It was held by the court that the properties were the personal property of the partners and not the firm’s property.

## Conversion of the joint into separate property

Where the property is bought by the partner from the partnership money but for the sole benefit of the partner, then, in that case, a partner will become the debtor of the firm and the property would be the partner would be the sole owner of any such property bought by him.

# Change in the firm

When a partnership is created for a fixed period or for a particular adventure then such a partnership automatically comes to an end after the expiry of such period or adventure. However, sometimes the partners continue the partnership beyond the expired term. [Section 17](https://indiankanoon.org/doc/1593946/) of the Act provides that such a change in the firm will not affect the mutual rights and duties of the partners unless the agreement alters it. The change in the firm can be understood under three broad heads:

## Change in Constitution

When there is a change in the constitution of the firm i.e. if a partner retires or a new partner is added, the mutual rights and duties will remain the same as they were before the change.

## After the expiry of the term

When the partnership is for a fixed term but the partners carry it on beyond such term then such partnership will become the *partnership at will* and the mutual rights and duties remain the same.

## When additional undertakings are carried out

Where the partnership was formed to carry out the specific adventures but carries out other adventures or undertakings, then the partnership becomes the partnership *at will*and the rights and duties are not affected by any such change.

# Conclusion

In a partnership, the partners are free to form an agreement and decide the mutual rights and duties. Relation of partners in the partnership is of utmost good faith, therefore, it is the duty of every partner to work for the greatest common advantage of the firm and to work diligently in order to avoid any loses to the firm.

Mutual rights of the firm generally depend upon the provisions of the agreement but, there are certain rights which are conferred by the act in the case when there is no explicit agreement between the partners, these rights can be abrogated by entering into an agreement to the contrary.

While deciding the shares of the partners in a firm it becomes highly important to determine the partnership property. Theoretically speaking, the partnership property is nothing but the joint property of all the partners.

If there is any change in the constitution of the firm or if the partnership continues after the expiry of the term or undertaking for which it was constituted then it does not affect the mutual rights and duties of the partners.