

DISSOLUTION OF PARTNERSHIP FIRM BY NOTICE

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Introduction:

The Indian Partnership Act, 1932 is an act enacted by the Parliament of India to regulate partnership firms in India. Before the enactment of this act, partnerships were governed by the provisions of the Indian Contract Act 1882.

Partnership refers to an agreement between persons to share their profits or losses arising on account of actions carried on by all or one of them acting on behalf of all. The persons who have entered into such an agreement are called partners and give their collective business a name, which is necessarily their firm-name.¹

Features of a partnership firm are as follows:

1. Association of two or more persons
2. Agreement must be there
3. Must be agreed to carry on a business
4. Agreement must be to share profit
5. Mutual agency relation must be there

Sometimes, due to some disputes or some other reasons like completion of partnership term or object, the firm is to be dissolved. This is called dissolution of partnership firm.

The term dissolution of firm is defined under sec. 39 of Indian Partnership Act 1932. It implies the complete breakdown of the relation of partnership

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¹ https://en.wikipedia.org/wiki/The_Indian_Partnership_Act,_1932

between all the partners. When the relation between all the partners of the firm comes to an end, this is called dissolution of the firm.²

Dissolution of a Partnership firm may be affected in the following two ways:

- 1. Dissolution without the intervention of the Court(S.40 to S.43)**
- 2. Dissolution by Court (S. 44)**

Dissolution of firm by notice is a method of dissolution of firm without the intervention of the court and is enshrined under sec. 43 of Indian Partnership Act 1932. Dissolution of firm by notice can be done only in case of a partnership at will. It can be done by giving notice in writing to all the other partners of his intention to dissolve the firm.

Striking features of dissolution of firm by notice:

- 1. Possible only in case of partnership at will**
- 2. An absolute right**
- 3. A legal right and not an equitable right**
- 4. A valid notice**

Dissolution of firm:

The term dissolution of firm is defined under sec. 39³ of Indian Partnership Act 1932.

² www.manupatrafast.com/articles/PopOpenArticle.

³“The dissolution of the partnership between all the partners of a firm is called the dissolution of a firm.”

It implies the complete breakdown of the relation of partnership between all the partners. When the relation between all the partners of the firm comes to an end, this is called dissolution of the firm.⁴

Dissolution whether a question of law or fact:

Dissolution of firm basically includes 2 aspects as to whether it is a question of law or fact. First of all, whether the firm stands dissolved or not and secondly on which date or when the firm stands dissolved. With respect to the first question, whether from the facts, a legitimate inference can be drawn that the partnership between the parties has come to an end or not, is a question of law⁵ and with respect to second question when a partnership firm is dissolved is a mixed question of fact and law.⁶

When the ground of dissolution arises:

If there has been breach of agreement or the conduct of parties is destructive of the mutual understanding of the partners, certainly such conduct can give rise to a ground for dissolution of partnership firm.⁷ Dissolution will arise when it appears that the state of feelings between the partners and their conduct have been such that the business cannot be continued with advantage of either party.⁸

⁴ www.manupatrafast.com/articles/PopOpenArticle.

⁵ Vazirbhai Sultanbhai Tamboli v. Gadmal Nathumal Marwadi AIR1940Bom263; Wali Mohd v Mohd Baksh AIR1930PC91

⁶ The Law Of Partnership, by M.R. Mallick, 2nd Edition, Eastern Law House

⁷ The Law Of Partnership, by M.R. Mallick, 2nd Edition, Eastern Law House

⁸ V.H. Patel and Co. v. H.K.H. Patel (2000)4SCC368

Forced Dissolution:

When there is a partnership of 2 partners and one partner retires, then there is no question of continuing the partnership. The partnership does not exist and it is called the forced dissolution of firm.⁹

Date of dissolution of firm:

In the event of dispute between the partners as to the date on which the partnership stood dissolved, it is the duty of the court to determine first as to whether the firm stands dissolved or not. For such purpose, the court is to consider the grounds of dissolution specified in the act to decide as to whether those provisions or any one of them was attracted so that it can be held that the partnership stood dissolved and from which date.¹⁰

Indian Partnership Act recognizes the distinction between the terms dissolution of firm and dissolution of partnership. Dissolution of a partnership firm merely involves a change in the relation of partners; whereas the dissolution of firm amounts to a complete closure of the business.

For example:

When any of the partners dies, retires or become insolvent but if the remaining partners still agree to continue the business of the partnership firm, then it is dissolution of partnership not the dissolution of firm. Dissolution of partnership changes the mutual relations of the partners. But in case of dissolution of firm, all the relations and the business of the firm comes to an end¹¹.

⁹ Sri Krishan Gupta v. Ram Babu Gupta AIR 1990 All 171

¹⁰ Jiwan Singh v. Lakhmi Chand AIR 1935 Lah 132

¹¹ www.bayt.com/en/.../q/.../differences-between-dissolution-of-a-firm-and-partnership

The distinction between both the terms is given below:

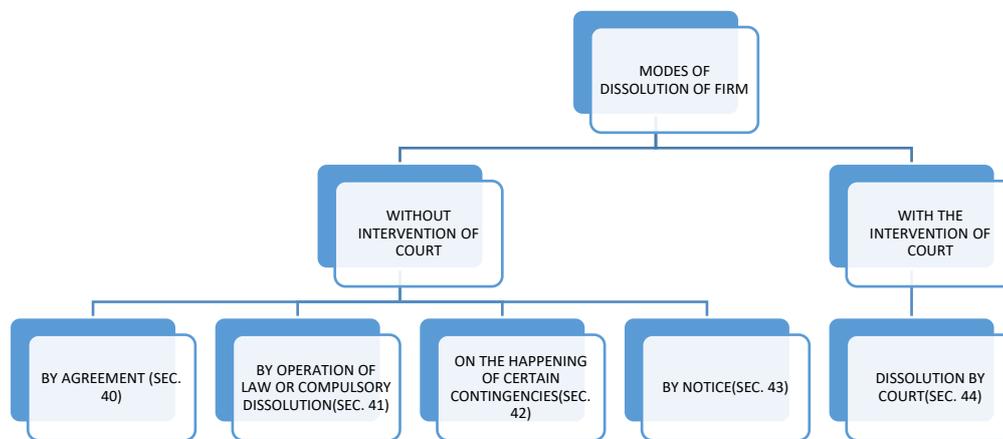
Basis of Difference	Dissolution of Partnership	Dissolution of Partnership Firm
Meaning	It means change in the partnership deed (or the agreement) among the partners.	It means that the business is wound up and the firm is dissolved.
Discontinuation of business	It does not affect the continuation of business.	It affects the business. Firm is closed in this case.
Assets and liabilities	Assets and Liabilities are revalued. New balance sheet is prepared.	Assets are sold and realised. Liabilities are paid off.
Intervention by court	There is no intervention by the court.	Court has inherent power to intervene. By its order, a firm can be dissolved.
Economic relationship	Economic relationship among partners may remain or change.	Economic relationship among partner comes to an end.
Closure of books of accounts	No need to close account books, as the business continues to operate.	All books of account are closed.

12

¹²https://www.google.co.in/search?q=distinction+between+dissolution+of+partnership+and+dissolution+of+firm&biw=1458&bih=649&site=webhp&source=lnms&tbm=isch&sa=X&sqi=2&ved=0ahUKEwjTuczg_r7QAhVGKo8KHTdKBwcQ_AUIBygC&dpr=0.94#imgc=g9J-QC7w6H86HM%3A

Modes of dissolution of firm:

The following table shows different modes of dissolution of firm:



Dissolution of a Partnership firm may be affected in the following two ways:

1. Dissolution without the intervention of the Court
2. Dissolution by Court

Dissolution without the intervention of Court:-

1. By Agreement (S.40):-

A partnership firm can be dissolved at any time with the consent of all the partners whether the partnership is at will or for a fixed duration. A partnership can be dissolved in accordance with the terms of the Partnership Deed or of the separate agreement.

2. **Compulsory Dissolution or Dissolution by operation of law (Sec.41):-**

In case, any of the following events take place then it becomes compulsory for the firm to dissolve:

- **Insolvency of Partners:-** In case all the partners or all the partners except one become insolvent
- **Unlawful Business:-** In case the firm's business become unlawful on the happening of a subsequent event. e.g. trading with alien country.

3. **Dissolution on the happening of contingent event (S.42)**

A firm may be dissolved on the happening of any of the following contingent event:

- **Expiry of Fixed Period:-** If the firm is constituted for fixed period, then the firm is dissolves automatically.
- **On achievement of specific task:-** If the firm has been constituted for the achievement of specific task, on achievement of that task, firm ceases to exist, unless there is an agreement to the contrary.

- **Death of Partner:-** Death of any of the partner dissolves the partnership.
- **Insolvency of Partner:-** In the absence of a **contract** to the contrary, the insolvency of any of the partner may dissolve the firm. The rule shall apply even though the partnership has been constituted for a fixed term and the term has not been yet expired or has been constituted for particular venture and the same has yet not been completed.

4. Dissolution by notice (S.43)

In case of partnership at will, a partner can dissolve it by giving written notice of dissolution to other partners duly signed by him. Notice must be very clear and certain. A notice once given cannot be withdrawn without the consent of other partners.

Dissolution by Court:-

The court may order for the dissolution of the firm on the following grounds given under sec 44:-

1. **Insanity of Partner:-** On the application of any of the partner, court may order for the dissolution of the firm if a partner has become of an unsound mind. Lunacy of a partner does not itself dissolve the partnership but it will be a ground for dissolution at the instance of other partners. It is not necessary that the lunacy should be permanent. In the case of a dormant partner the court may not order dissolution even on the ground of permanent insanity, except in special circumstances.

2. **Permanent incapacity of Partner:-** If a partner has become permanently incapable of discharging his duties and obligations then court may order for the dissolution of firm on the application of any of the partner. The incapacity must be of a permanent nature, as in the case of *Whitwell v Arthur*¹³, the court refused the dissolution of partnership because the incapacity was not of a permanent nature. Where a partner is imprisoned for a long period of time the court may dissolve the partnership.
3. **Misconduct of Partner:-** If any partner other than partner suing is responsible for any loss to the firm, which amounts to misconduct and prejudicially affects the carrying on of business then the court may order for the dissolution of the firm. In the case of *Snow v Melford*¹⁴, the court refused to dissolve the firm because a customer's money cannot be said to be in danger only because of the fact that one of the partner is guilty of adultery.
4. **Constant breach of agreement by partner:-** The court may order for the dissolution of the firm if the partner other than the suing partner is found guilty for constant breach of agreement regarding the conduct of business or the management of the affairs of the firm and it becomes impossible to continue the business with such partner.
5. **Transfer of Interest:-** When any of the partner other than the suing partner transfers whole of its share to the third party for permanently.

¹³ [1865] 35 Beav. 140; 55 ER 848

¹⁴ (1868) 18 LT 142

6. **Perpetual or continuous Losses:-** The court may order for dissolution if the firm is continuously suffering losses and there is no more capital available for the future growth of the firm.
7. **Just and Equitable:-** The court may order for dissolution on any other ground which court think is just, fair and equitable. e.g. loss of total confidence between the partners¹⁵.¹⁶

Dissolution of firm by notice:

Dissolution of firm by notice is enshrined under sec. 43¹⁷ of Indian Partnership Act 1932.

Partnership at will may be dissolved by any partner giving written notice of dissolution to all the other partners of his intention to dissolve the firm.

The dissolution of firm by notice is possible only in case where the partnership is a partnership at will and no other partnership.

The firm is dissolved from the date mentioned in the notice if no date is mentioned, as from the date of the communication of the notice.

Striking features of dissolution of firm by notice:

1. Possible only in case of partnership at will:

¹⁵ Havidatt singh v. Mukhe Singh AIR1973 J&K46

¹⁶ <http://www.manupatrafast.com/articles/PopOpenArticle>.

¹⁷ “Dissolution by notice of partnership at will.—

(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.”¹⁷

Dissolution of firm by notice is possible only in case of partnership at will and not in any other type of partnership. Partnership at will is defined under sec 7¹⁸ of Indian Partnership Act 1932.

So, it will be partnership at will, when in the deed of partnership, no provision is made either for the duration of the partnership or for the determination of the partnership. It is only when there is neither any provision relating to the duration of the partnership nor as to how such partnership will be determined, then a partnership is a partnership at will within the meaning of sec. 7 of the act.

Whether a partnership is a partnership at will or not is a question to be decided by the competent court having the jurisdiction over the matter.¹⁹

When the clauses of partnership if read together lead to the conclusion that the partnership is not at will. Notice given by the plaintiff to dissolve the partnership has no effect.²⁰

In the case of Karumuthu Thiagrajan Chittiar v. M. Muthuppa Chittiar²¹, the court held that there is an implied provision of dissolution of firm. When one partner relinquishes his interest in favour of other partner, the firm would be dissolved automatically because there are only two partners in the firm. Therefore, dissolution

¹⁸ “Partnership at will.—Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is ‘partnership at will’.”¹⁸

¹⁹ Ashok Kumar Sen v. Tapan Kumar Sen 1996 AIHC 194 (Cal.)

²⁰ Anant Purushottam Athavale v. Govind Purushottam Athavale AIR 2005 Bom.301

²¹ AIR 1961 SC 1225

of firm by notice is not valid because the firm is not a partnership at will.

In another case of Abott v. Abott²², the partnership agreement provided that if one partner leaves the firm, the other partners having right to purchase his share in the firm. The court held that the partnership is partnership at will because there are more than two partners in the firm.

Similarly, in the case of Mohamad Vaduman v Mohamad Aslam²³, the partnership agreement provided that the firm would be continued till there were 2 partners in the firm. As there were more than 2 partners in the firm, therefore the court held that it is a partnership at will.

In the case of Nisar Ahmed v Nisima B²⁴, the partnership agreement particularly provided for survivorship of the trademark and goodwill, that provision could not be implemented if the partners could dissolve their partnership at will. Thus, it was held that it was not a partnership at will and hence cannot be dissolved by notice.

2. An absolute right:

In a partnership at will, there is no question of the grant or refusal of the relief of dissolution of the firm depending on the exercise of discretion of the court. Therefore, the right of partner to dissolve the

²² (1936)3 AllER 523

²³ AIR1991SC1020

²⁴ (1970)1MadLJ12

firm by serving of notice is an absolute legal right which cannot possibly be denied to him by any court or judicial authority²⁵.

If the dissolution of the firm cannot be denied to the partner filing the suit after service of such notice, then it may appear obvious that the court has no discretion in the matter of the grant or denial of that relief.²⁶

3. A legal right and not an equitable right:

The right under this sec. is a legal right and not an equitable right. Before moving further, let us first of all discuss the meaning of both the terms.

An equitable right is a legal right guaranteed by equity as opposed to a legal right which derives authority from a legal source. An example of an equitable right could be seen in Land law, where mention is made of a beneficial interest i.e. vested interests in an estate which are protected by equity.²⁷

In the case of Ram Singh v. Ram Chand²⁸, the Privy Council held that the plaintiff, a partner issuing the notice was not seeking any equitable relief, that the partnership was at will and any partner is entitled to dissolution of the partnership firm by issuing a notice and when that is done, the dissolution cannot be refused only on the ground that in equity, having destroyed the valuable documents and records of the partnership firm, he was not entitled to seek the relief of dissolution on the basis of that notice.

²⁵ The Law Of Partnership, by M.R. Mallick, 2nd Edition, Eastern Law House

²⁶ Sat Pal Anand v. R.K. Ahuja AIR 1973 Punj. 197

²⁷ https://en.wikipedia.org/wiki/Equitable_right

²⁸ AIR 1924 PC 2

4. Essentials of a valid notice:

In order to operate as notice for dissolution of a partnership at will under sec 43 of the act, the notice must fulfil the conditions from which it can be inferred that it is a notice of dissolution. The conditions are as follows:

- It must clearly state the intention of the partners giving notice to dissolve the firm.
- It must be in writing to all the other partners of the firm.
- It must not be ambiguous and vague and must be factually explicit and final.²⁹

These were the essential conditions of a valid notice, now some of its important features or points:

- An oral notice or notice to some of the partners of the firm is not sufficient for considering it as a valid notice.
- It cannot be dissolved by a notice giving a retrospective date for dissolution.³⁰ For example, where the partners executed a deed of dissolution on 12th august 1949 but mentioned therein an anterior date, that is 2nd November 1948, as the date of dissolution, it was held that the firm was dissolved on 12th august 1949.³¹
- In case of partnership at will, notice can be given by any partner at any point of time.³²
- A dissolution notice once given cannot be withdrawn without the consent of all the partners.³³

²⁹ Chain Karan v. Radha Krishen AIR 1990 Nag. 46

³⁰ V.P. Thangaranjan v. K.V. Perumal Chettiar AIR 1980 Mad. 7

³¹ Fazal Bhai Dhalal v. Custodian, Evacuee Property AIR 1961 SC 1397

³² Farth v. Amslake (1964)108 SJ 198

³³ Jones v. Lloyd (1874) LR 18 Eq 265

- In case of partnership at will, it stands dissolved from the date of notice, and it is not open to the court to extend the date of dissolution of the partnership firm.³⁴

Date of dissolution of firm by notice:

Sec. 43(2)³⁵ discuss about the date on which the firm is said to be dissolved when it is dissolved by notice.

It means that the firm is dissolved from the date mentioned in the notice if no date is mentioned, as from the date of the communication of the notice.

Other important points related to date of dissolution of firm is as follows:

- It cannot be dissolved by a notice giving a retrospective date for dissolution.³⁶ For example, where the partners executed a deed of dissolution on 12th august 1949 but mentioned therein an anterior date, that is 2nd November 1948, as the date of dissolution, it was held that the firm was dissolved on 12th august 1949.³⁷
- In case of partnership at will, it stands dissolved from the date of notice, and it is not open to the court to extend the date of dissolution of the partnership firm.³⁸

³⁴ Motilal v. Heeralal AIR 1955 NUC 4664 (Raj.)

³⁵ “Dissolution by notice of partnership at will.—

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.”

³⁶ V.P. Thangaranjan v. K.V. Perumal Chettiar AIR 1980 Mad. 7

³⁷ Fazal Bhai Dhalal v. Custodian, Evacuee Property AIR 1961 SC 1397

³⁸ Motilal v. Heeralal AIR 1955 NUC 4664 (Raj.)

Distinction between dissolution of firm by notice under English and Indian law:

The distinction between dissolution of firm by notice under English law and Indian law is as follows:

1. Enshrined in which provisions:

Indian law:

It is given under sec 43 of Indian Partnership Act 1932.

English law:

It is given under 2 sections of English Arbitration Act 1890 i.e. sec. 26(1)³⁹ and sec. 32(c)⁴⁰.

In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or if no date is so mentioned as from the date of communication of the notice.”⁴¹

2. Written notice:

Indian law:

It is mandatory that the notice must be given in written.

English law:

It is not mandatory that the notice must be given in written, it can also be given orally.

It is argued that, just as a partnership at will may be created or varied orally, it may also be dissolved by oral notice of dissolution, whether that partnership is constituted by oral or written agreement.⁴² It is also

³⁹ “where no fixed time has been agreed upon for the duration of partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.”

⁴⁰ “subject to any agreement between the partners, a partnership is dissolved- (c) if entered into for an undefined period, by any partner giving notice to the other or others of his intention to dissolve the partnership.

⁴¹ Sec. 32(c) of English Arbitration Act 1890

⁴² Pg no. 574 Partnership Law, Michael Twomey, Butterworths

apprehended that a partnership at will which is constituted by deed may be dissolved by oral notice⁴³

This is also concluded in the case of Bolton v. Carmichael⁴⁴.

3. Notice to all partners:

Indian law:

It is a mandatory condition that the notice must be given to all the partners of the firm.

English law:

It is not a mandatory condition that the notice must be given to all the partners of the firm.

In the case of Walters v. Bingham⁴⁵, it was said that the requirement that notice of the dissolution be given to all the other partners cannot be construed too literally since to do so would make the sec, unworkable in certain circumstances such as in case of large firms where it would be impossible to communicate to all partners at one time. So, once the partners are left in no doubt as to the intention of the partners giving the notice, this would be sufficient.⁴⁶

4. Subject to contrary agreement:

Indian law:

The provision is not subject to contrary agreement between the partners.

English law:

The provision is subject to contrary agreement between the partners as given in the sec. itself.

⁴³ Walters v Bingham [1988]138NLJ7

⁴⁴ (1856)1 Ir Jur (ns) 298

⁴⁵ [1988] 138 NLJ 7

⁴⁶ Syers v Syers [1876] AC 174 at 183.

Example can be suppose if the partners themselves provide that a dissolution of the partnership firm will only be effective if done by a deed, then this requirement must be satisfied.

As was the case in Hutchinson v Whitfield⁴⁷, the partnership deed provided that the firm can be dissolved only by deed. Hence, it was held that since the submission to arbitration and the award of arbitrator were both by deed, the requirement that the dissolution be under seal was in fact satisfied.

Conclusion:

For concluding my research work, I would like to answer my research questions one by one.

1. When is the dissolution of firm by notice possible?

It is clearly mentioned in the section that this type of dissolution is possible only when the partnership is partnership at will, otherwise the question of dissolution of firm by notice does not arise.

2. What would be the date of dissolution of firm?

This is also clearly mentioned in clause 2 of the section. The firm is dissolved from the date mentioned in the notice if no date is mentioned, as from the date of the communication of the notice.

3. What are the essentials of a valid notice?

The essentials of a valid notice are as follows:

- It must clearly state the intention of the partners giving notice to dissolve the firm.
- It must be in writing to all the other partners of the firm.

⁴⁷ (1830)Hayes78

- It must not be ambiguous and vague and must be factually explicit and final.

4. Is there any distinction between dissolution of firm by notice given under Indian law and English law?

Yes, there are some minor distinctions between the two that have discussed in chapter 2 of the project.

Suggestions:

There are no as such suggestions I would like to give except the one which is stated below:

There is a principle in English law that serving of notice to all the partners is not necessary which is necessary in case of Indian law.

My suggestion is that in case of a large partnership firm say with 300 or more partners where it is not possible or feasible to serve notice to all the partners separately, the notice to the managing partners or who habitually act for the firm should suffice or similarly where it is not possible to communicate to all partners at one time, once the partners are left in no doubt as to the intention of the partner giving the notice, this must be sufficient.

For example, in case of a partnership firm of say lawyers, being professional firm, there is no limit on the number of partners in the firm, suppose there are 500 partners, it is not possible or feasible to serve notice to all 500 partners, notice only to the working partners or managing partners must suffice which is not the case in Indian Law.

Such a notice is of no use or importance to a partner who is not a managing partner or who is say a sleeping partner. So, it's better to serve the notice only to the managing partners of a firm only in case of large partnership firms.

This is one that principle that is enshrined in English Law and not in Indian Law and must be enshrined in Indian Law as well.

