Q. Define partnership under the Indian Partnership Act, 1932 and explain its essential features.

Section 4 of the Indian Partnership Act, 1932 defines '**Partnership**' as "Partnership is a relation between persons who have agreed to share the profits of business carried on by all or any of them acting for all."

A contract of Partnership is a special type of contract. The persons entering into the contract are called 'Partners' and the collectively are called a 'Firm'.

From the above definition the following can be drawn as essentials or characteristics of a Partnership Firm.

1) **Association of two or more persons** :- There must be **atleast two** persons to form a partnership. The maximum no. of persons in a partnership is not provided in the Partnership Act but Section 11 of the Companies Act, 1956 provides for the same. Accordingly, if the partnership firm is engaged in a **banking business** the maximum number of partners permissible is **10** and in case the partnership firm is **in any other business** the maximum number of partners permissible is **20**.
2) **Presence of a Contract**:- There is a contractual relationship between the partners. Therefore there must be a agreement between the partners. The agreement may be express or implied. This agreement must fulfill all the essentials of a valid contract under the Indian Contract Act.
3) **To conduct Business** :- The idea of few persons coming together and doing some activity for charitable purpose cannot be termed as partnership. The intention to conduct business is essential for the partnership. The term business is defined in Section 2(b) as 'business includes every trade, occupation and profession.' The word business generally covers the intention of doing transactions to achieve some goal.
4) **Sharing of profits :-** The purpose of partnership should be to earn profits. The term profits means 'net profits'.

Q. "The law of partnership is an extention of the law of principal and agent". Explain

Section 6 of the Partnership Act, specifies that in determining whether a group of persons is or is not a firm, or whether a person, is or is not a partner in a firm, regard shall be had to the real relation between the parties shown b all relevant facts taken together. The intention of the partners will have to be decided with reference to the terms of the agreement and all the surrounding circumstances.

The true test in determining the existence of partnership is 'Agency and Authority'. In determining the existence of partnership, it is essential to find out the real intention of the parties to the agreement and circumstances of the case. The question to be asked is – Whether the relation of principal and agent exists between the parties? **Section 18** also provides that subject to the provisions of Partnership Act a partner is the agent of the firm for the purposes of the business of the firm.

In **Cox Vs. Hickman** it was held that the receipt by a person of a share in the profit is a prima-facie evidence that he is a partner but this is not a conclusive test the question whether a person is a partner or not therefore depends in all cases upon whether or not he has the authority to act for other partners and whether or not the other partners have the authorities to act for him. Thus a partners assumes a dual role; (a) he is an agent of the firm with regards to third parties and can thus bind the firm by his acts. (b) he is principal in respect of the act of the other partners.

Q. Distinguish between Partnership and Hindu Undivided Family.

	PARTNERSHIP	**HINDU UNDIVIDED FAMILY**
1. Definition	Partnership is 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.	A Joint hindu Family which carries on business handed down from its ancestors.
2. Agreement	It can arise only by an agreement of the Partners.	It arises by operation of law. It cannot be created by an agreement of the members.
3. Admission of interest	A new partner can be admitted in the Partnership, only with the consent of all the Partners.	A person becomes the member only by birth in the family.
4. Acquisition of interest	A partner acquires interest in the business only by an agreement.	A person acquires interest in the business by birth in the family.
5. Number	There is a statutory limit on maximum number of Partners i.e. 10 in case of a firm carrying on banking business and 20 in any other business.	There is no statutory limit on maximum number of members.
6. Minor members	A minor cannot become a full fledged partner. He can only be admitted to the benefits of partnership with the consent of all the partners.	A male minor is the full-fledged member. He becomes member merely by birth in the family.
7. Mutual agency	There is a relationship of agency between the partner i.e. all the partners are mutual agents.	There is no such agency relationship between all the members of the family. The Karta (i.e. manager) of the family is the only representative of the family.
8. Implied Authority	Every Partner has an implied authority to bind the firm by his acts done in the ordinary course of the business.	Only the Karta has an implied authority to bind the family by his acts. Other members of the family do not have such authority.

9. Liability	A Partner is personally liable for the business obligations of the firm. The share of each partner in the partnership property and profits alongwith his private property is liable for the discharge of debts of the partnership.	A member is not personally liable for the business obligations of the family. Only his share of property and profits in the family is liable for the discharge of the debts of the family. However, the karta is personally liable for the business obligations of the family.
10. Effect of death/ insolvency	It is dissolved on the death or insolvency of any one partner.	It is not dissolved on the death or insolvency of any member.
11. Right to demand accounts	A Partner has right to demand inspect and copy any accounts of the firm. Moreover, he also has the right to demand the dissolution of the firm.	A member has no right to ask for accounts of the past dealings of the family. There is no concept of dissolution of the family.
12. Dissolution	A partner has right to demand for dissolution.	A member has right to demand the partition of the joint family property.
13. Registration	Registration is not optional but the unregistered firm suffers certain disabilities.	There is no concept of registration of Hindu Undivided family.

Q. Distinguish between Partnership and Company.

	PARTNERSHIP	COMPANY
1.Definition	Partnership is 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.	A Company means a company formed and registered under this Act or an exiting Company.
2.A Legal Person	A firm is not a legal Entity.	A Company on the other hand , is a Legal Person.
3. Liability	In a Partnership, the liability of partners is unlimited.	In case of a company, which is limited, the liability of the members is limited to the extent of its share capital.
4.Transfer of Shares	In a firm, a partner cannot transfer or assign the whole of his share without the consent of all the partners of the firm	In a company, a shareholder can transfer his share subject to the provisions of the Articles of the Company.
5.Mutual Agents	In a firm, all partners are mutual agents.	In a company, a member is not an agent of the other member.

6.Registration	Registration of a firm is not compulsory under the Partnership Act, 1932.	Registration of a company is compulsory under the Companies Act, 1956.
7.Management	Management vests in the hands of the Partners except in the case of Sleeping Partners.	Management vests in the board of Directors, elected periodically by the shareholders.
8.Creditors	Creditors of firm are also creditors of the partners individually as well.	Creditors are only the creditors of the company and not of the individual shareholders.
9.Statutory obligations	A partnership has less statutory obligations	A company is strictly regulated under the Companies Act, 1956.
10.Accounts	Accounts of a partnership firm need not be audited by the auditor.	Accounts of a company must be audited by an auditor.
11.To whom property belong.	The property of affirm belongs collectively to the partners.	The property of a company, on the other hand, belongs to the company, and not to the shareholders.
12.Effect of death of partners and members	In the case of a firm, death or insolvency of a partner resolution the dissolution of the firm, unless there is a contract to the contrary.	In the case of a company, death or insolvency of a member of the company does not result in the dissolution of the company.
13.Contract with the firm or company	A Partner cannot enter into a contract with the firm, in which he is a partner, because the firm is not a legal person.	A shareholder, on the other hand, can enter into a contract with the company, of which he is a member, because the company is a legal person.
14.Power to dispose of property	A partner can dispose of the property of the firm.	A Shareholder cannot dispose of the property of the company.
15.Effect of Restrictions on authority	In a partnership firm, when restrictions are imposed on the authority of a partner, they are of no avail against third person who has no knowledge of it.	In the case of a company, the restrictions of a company are absolutely valid, because the memorandum and articles of company serve as a public notice.
16.Limit on number of members	In the case of a firm, the number of partners must not exceed 10 for carrying on banking business and 20 for any other business.	In the case of a company, a Private Company : Minimum 2 and Maximum 50 and in case of Public Company : Minimum 7 and Maximum unlimited.

Q. What are the effects or consequences of non registration of a Partnership Firm?

The Indian Partnership Act does not make registration of a firm compulsory nor does it impose any penalty for non registration. It is optional for the firm to get itself registered or not. However, **Section 69** puts down certain disabilities to a non registered firm which normally forces the partners the partners to get the firm registered. The effects of non registration are as follows:

(a) **No suit by a partner against other partners or firm –** a partner of a unregistered firm cannot sue the firm or any partner of the firm to enforce a right arising from the contract or conferred by the Partnership Act. He can do so only if the firm is registered and the person suing is shown as a partner in the register of firms.

(b) **No suit against any third party –** an unregistered firm cannot sue a third party to enforce a right arising from a contract. The firm can only do so if the firm is registered and the person suing is shown as a partner in the register of firms.

(c) **No right to counter claim or to claim setoff –** an unregistered firm or any partner thereof cannot claim setoff in the proceedings instituted against a firm by a third party to enforce a right arising from a contract. Setoff means a claim by the firm which would reduce the amount of money payable to the claimant.

(d) **Arbitration proceedings –** in **Jagdish Chandra Gupta Vs. Kajaria Traders (India) Limited** it was held that arbitration proceedings were barred if the firm was unregistered.

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

(i) The right of a third party to sue the unregistered firm or its partners.

(ii) The right of a partner to sue for dissolution of a firm or for accounts of a dissolved firm or any right to realise the property of the dissolved firm.

(iii) The Power of a official assignee or court receiver to realise the property of an insolvent partner.

(iv) The right of a firm or partners of a firm having no place of business in India.

(v) The right of a unregistered firm to enforce a right arising otherwise then out of a contract.

(vi) One partner can bring a suit for damages for misconduct against the other partner.

(vii) The right to claim Setoff in a suit for an amount not exceeding Rs.100/- in value.

Q. Explain the different types of Partnership.

The following are the different types of Partnership :

(i) **Partnership for a fixed Term –** Where Partners have agreed to carry on the business for a definite period of time, the partnership is said to be for a fixed period. It shall come to an end only after the expiry of the stipulated period. Where the partners continue the business even after the stipulated time the partnership gets converted into a partnership –at-will.

(ii) **Particular Partnership –** Where two or more persons agree to do a business in a particular adventure or undertaking such a partnership is called a 'particular partnership'. *For example : A and B enter into a partnership for producing of film.*

(iii) **Partnership-at-will –** when no provision is made by the contract between the partners for the duration of the partnership or for the determination of the partnership, the partnership is called partnership-at-will. The partnership-at-will has no fixed or definite date of termination and therefore death or retirement of any of the partner does not affect the existence of the partnership.

A partnership-at-will can be dissolved by any partner by giving notice in writing to all the remaining partners about the intention of such dissolution.

Q. What are the different types of Partners?

The different types of Partners are :

(i) **Active Partner –** A person who is actively, actually or effectively engaged in the conduct of business of the partnership firm is known as an Active Partner. He is the agent of the other partners and has authority to bind the firm and the other partners in the ordinary course of business.

(ii) **Sleeping or Dormant Partner** – A sleeping partner is one who does not take and active part in the conduct of business of the firm. He invests capital and share the profits of the firm and is also equally liable along with other partners for all the liabilities of the firm.

(iii) **Nominal Partner –** A person who lends his name to the firm, without having any real interest in it is called a Nominal Partner. He does not invest any capital in the business nor does he takes any active part in the business nor does he share any profit of the firm. However he is liable along with other partners for all the liabilities of the firm.

(iv) **Partner in Profit only –** Where a partner agrees with the other partners that he shall share only profits and shall not be liable for any losses of the firm he is called Partner in Profit only. However he remains liable to the creditors for the debts of the firm since under the Partnership Act the liabilities of the partners is joint, several and unlimited.

(v) **Sub-Partner** – Where a partner agrees to share his profits earned form the firm with a third person then that third person is known as the sub-partner. A sub-partner has no rights against the firm and cannot represent himself as a partner of the firm. He is in no way connected with the firm and is thus not liable for the liabilities of the firm.

(vi) **Partner by Estoppel or by Holding Out** - Sometimes strangers represents themselves to be partners in a firm and thereby induce third parties to give credits to the firm such strangers are called as partners by Estoppel or Partners by Holding Out . **Section 28** of the Partnership Act prescribes that a person be liable as a partner by Holding out must fulfill the following condition:

(a) he must have by words, written or spoken or by his conduct, represented himself to be a partner or

(b) he must have knowingly permitted himself to be represented as a partner to the other person and

(c) the other person must have acted on the faith of such representation and have given credit to the firm.

(vii) **Minor Partner –** As per **Section 11** of the Indian Contract Act, 1872 a minor cannot enter into an agreement. However **Section 30** of the Partnership Act provides that with the consent of all the partners for the time being a minor may be admitted to the benefits of Partnership.

Q. Enumerate the rights and duties of partners in a partnership Firm.

The Rights of a partner are as under:

(i) **To take active part in the business –** Every partner has a right to take active part in the conduct and management of the business of the firm.

(ii) **To share Profits –** Every partner has a right to share profits earned and are liable to contribute to the losses incurred by the firm.

(iii) **To be consulted** - Every partner has a right to be consulted in all matters affecting the business of the partnership firm before any decision is been taken. In case of difference of opinion it may be settled by decision of majority of the partners.

(iv) **To have access to the accounts -** Every partner has a right to have access, inspect and copy the books of accounts of the firm.

(v) **To be indemnified** - Every partner has a right to be indemnified for the expenses incurred or payments made in the ordinary course of business.

(vi) **To use the property of the firm** - Every partner has a right to use the property of the firm for the purposes of the business of the firm. If the partner uses the firms property of the private purpose then he is liable to compensate the firm for the same.

(vii) **Interest on capital** - Every partner has a right to receive interest on capital at a certain rate as may be specified and agreed in the partnership agreement. Such interest is payable only out of profits, in any, earned by the firm.

(viii) **Interest on loan** - Every partner has a right to receive interest on loan at the rate of 6% p.a. on any loans or advance payments made by him beyond the capital. Such interest is payable not only out of the profits but also from the assets of the firm.

(ix) **To act as agent of the firm** - Every partner has a right to act as the agent of the firm and to bind the firm and other partners for acts done by him in ordinary course of business.

(x) **To retire –** A partner has a right to retire (a) with the consent of all the other partners, or (b) in accordance with the express agreement between the partners or (c) in case of Partnership-at-will by giving notice to all the other partners of his intention to retire.

The duties of a partner are as under :

(i) **To carry on the business to the common advantage –** Every partner is bound to

(a) Carry on the business of the firm to the greatest common advantage.

(b) To be just and faithful to each other in the mutual dealings.

(c) To use reasonable care and skill in the performance of his duties and

(d) Render true accounts and full information of all things, affecting the firm, to any partner or his legal representative.

(ii) **To indemnify –** Every partner is bound to indemnify the firm

(a) For any loss cause to it by his fraud in the conduct of business of the firm.

(b) For any loss incurred due to his willful neglect in the conduct of the business of the firm.

(iii) **To attend diligently to his duties –** Every partner is bound to attend diligently to his duties in the conduct of the business of the firm. He must use his knowledge and skill for the benefit of the firm.

(iv) **To account for private profits –** If a partner derives any benefit, without the consent of the other partners from any transactions of the firm or from any use of the partnership property, name or business connection. He must account for it and compensate it to the firm. There exists a fiduciary relationship between partners and therefore no partner is entitled to make any personal profit.

(v) **To account for profit in competing business –** A partner must not carry a business as of competing nature with the firm. If he does that then he is bound to account for and compensate to the firm all the profits made by him in that competing business.

(vi) **To act within authority –** Every partner is bound to act within the scope of his actual or implied authority.

(vii) **To hold and use the property of the firm exclusively for firms business –** Every partner is bound to hold and use the property of the firm exclusively for the purposes of the business of the firm.

(viii) **Not to assign his rights –** A partner cannot assign rights and interest in the firm to an outsider so as to make him the partner of the firm. He can, however, assign his share of the profit and share in the assets of the firm.

(ix) **To be liable jointly and severally –** Every partner is liable jointly with all the other partners and also severally for all the acts of the firms done during the period he his the partner.

Q. Write short notes on

A] Partnership Property

Property of the firm is taken to mean the joint property of all the partners. The Partners in fact by an agreement amongst themselves may determine, what constitutes the property of the firm. In the absence of such agreement, the following shall constitute the property of the firm.

(i) **Property Originally brought in by the firm –** Any property which is brought by the partners, at the commencement of the partnership and put into joint stock of the firm

(ii) **Property acquired afterwards –** Any property which is acquired by or for the firm, after the commencement of the partnership is the property of the firm.

(iii) **Partner's personal property in the firm's use –** Where the personal property of a partner is used in the business of the firm, it depends upon the intention of the parties whether it has become the property of the firm or not.

Example: A partner's personal car is been used exclusively for firm's purpose, the car becomes the property of the firm and the partner becomes creditor for that amount.

(iv) **Conversion of joint properties into separate property –** Where a property is bought with the money of the firm, but in the name and for the exclusive benefit of a partner, the partner becomes a debtor to the firm for the purchase money; and the property becomes the personal property of the partner. Similarly, where a part of the joint properties is allotted to a partner, on the dissolution of a firm, it becomes his separate, personal property.

***Example*:** Car bought of the joint fund of the firm is used by A, a partner for private use only. The car should become the property of A and he becomes a debtor to the firm for the car amount.

(v) **Goodwill –** The term goodwill has been not been defined in the act. It means every advantage and good representation and reputation which the firm has acquired while carrying out its business. Goodwill is the property of the firm and it can be sold either separately or along with the other property of the firm. Hence goodwill is the part of the property of the firm

B] Partner by holding out

Sometimes strangers represents themselves to be partners in a firm and thereby induce third parties to give credits to the firm such strangers are called as '***Partners by Estoppel or Partners by Holding Out'***. **Section 28** of the Partnership Act prescribes that a person be liable as a partner by Holding out must fulfill the following condition:

(a) he must have by words, written or spoken or by his conduct, represented himself to be a partner or

(b) he must have knowingly permitted himself to be represented as a partner to the other person and

(c) the other person must have acted on the faith of such representation and have given credit to the firm.

It is immaterial whether the person making representation does or does not know the representation has reached the other person.

The commonest example of partner by holding out arises where the partner has retired from a firm and no public notice has been issued regarding his retirement and the continuing partner still use his name as a partner on firms letter heads and other documents. He will be personally liable to the creditors who have acted on the faith of he being a partner.

Section 28 (2) further specifies that the doctrine of holding out does not extend to bind the estate of the deceased partner, where after partners death, the business of the firm is continued in the old firms name.

It does not apply where a partner has been adjudicated as an insolvent. After attaining majority and before giving public notice, a person may be held liable for holding himself as a partner.

Q. Explain the position of a minor in a Partnership Firm.

Minor Partner – As per **Section 11** of the Indian Contract Act, 1872 a minor cannot enter into an agreement. However **Section 30** of the Partnership Act provides that with the consent of all the partners for the time being a minor may be admitted to the benefits of Partnership. This provision is based on the rule that a minor cannot be a promisor but he can be a promisee or a beneficiary.

Rights of a Minor before attending the age of Majority.

(i) He has a right to share the profits and the property of the firm as may be agreed.

(ii) He has a right to have access to and inspect the books of accounts of the firm.

(iii) Right to sue for payments of his share of profit or property in case of his severance of connection with the firm.

(iv) He has a right to elect to become a partner on attaining the age of Majority.

(v) He has a right to elect not to become a partner on attaining the age of Majority.

Liabilities of a Minor before attending the age of Majority.

(i) A minor's share is liable for the acts of the firm.

(ii) He is not personally liable for sharing any liabilities or losses of the firm in his personal capacity nor is his personal property liable.

Position of the Minor on Attending the age of Majority

On attending Majority the minor partner has to decide within six month whether he want to continue as partner in the firm or discontinue as a partner from the firm. The period of six months start from the date of his majority or from the date when he first comes to know that he has been admitted to the benefits of the partnership, whichever is later. Within the said period of six months he should give a public notice of his choice whether to continue as a partner or not to continue as a partner.

If he fails to give a public notice he is deemed to have become a partner in the firm on the expiry of the said six month.

Position of a minor if he elects to become the Partner after attending the age of Majority.

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

(ii) His share to the profits of the firm is the same as he was entitled to as a minor partner.

Position of a minor if he elects not to become the Partner after attending the age of Majority.

(i) His rights and liabilities of the partner as a minor continue up to the date of the notice.

(ii) His share is not liable for any acts of the firm done after the date of the public notice.

(iii) He is entitled to sue the partners for his share of the profits and property of the firm.

Q. Discuss the rights and liabilities of partners on dissolution of a firm.

The rights of a partner on dissolution of a firm are as under :

(i) **Right to an equitable lien –** Under **Section 46** every partner is entitled to have the property of the firm applied in payment of outside debts and liabilities of the firm and to have the surplus distributed among the partners in accordance with their rights. Such a right of a partner is called as 'equitable lien' of partners.

(ii) **Right of partners to have the business wound up –** The authority of each partner to bind the firm and the other mutual rights and obligations of the partners continue to wind up the affairs of the firm **(Section 47)**.

(iii) **Right to have the debts of the firm settled out of the property of the firm –** When a firm is dissolved, the debts of the firm are settled out of the property of the firm, and if there is any surplus it is utilized towards the payment of the private debts of the partners. Similarly, the separate property of any partner (private estate) shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm **(Section 49)**.

(iv) **To account for personal profits after dissolution –** In case of transactions by any surviving partner or by the representatives of a deceased partner undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up, he shall account for the profits he derives from such transactions and pay it to the firm. However, this rule will not apply in cases where any partner or his representative has bought the goodwill of the firm on its dissolution. **[Section 16(a) and Section 50].**

(v) **Right to return of premium on premature dissolution (Section 51) –** Where a partner has paid a premium on entering into partnership for a fixed term and the firm is dissolved before the expiration of the term, he is entitled to repayment of the whole or part of the premium. However, no refund shall be paid to him if the dissolution –

(a) Is due to the death of a partner

(b) Is due to the misconduct of the partner who has paid the premium or

(c) Is in the pursuance of an agreement which contains no provision for the refund of the premium.

(vi) **Right where partnership contract is rescinded for fraud or misrepresentation (Section 52) –** Where partnership is rescinded on the ground of fraud or misrepresentation of one of the partners, the partner entitled to rescind has the following rights -

(a) Right to lien on the surplus assets – He has a lien on the surplus assets after the debts of the firm have been paid, for any sum paid by him for the purchase of his share in the firm and for any capital contributed by him.

(b) Right of subrogation – If a partner pays off a creditor from his pocket, he steps into the shoes of that creditor and can claim money from the firm as that creditor.

(c) Right to be indemnified – He also has a right to be indemnified by the partners or partner guilty of fraud or misrepresentation against all the debts of the firm.

(vii) **Right to restrain from use of firm name or firm property (Section 53)** – After the firm is dissolved, every partner may restrain any other partner from carrying on a similar business in the firm's name or from using any of the property of the form for his own benefit, until the affairs of the firm have been completely wound up, unless a partner has purchased the goodwill of the firm.

The liabilities of a partner on dissolution are as under:

(i) **Liability for acts of partners done after dissolution –** Until public notice of dissolution of the firm is given, partners continue to be liable to third parties for any act done by any of them. However this liability does not apply to a partner who is dead or who is adjudged as insolvent or a sleeping partner.

(ii) **Continuing authority of partners for purpose of winding up –** After dissolution of a firm, the authority of each partner to bind the firm and the other mutual rights and obligations of the partners continue, so far as may be necessary –

(a) to wind up the affairs of the firm and

(b) To complete transactions began but unfinished, at the time of the dissolution.

(iii) **Liability to share profits earned after dissolution –** If any partner earns any profit from any transaction connected with the firm, after the dissolution, he must share it with the other partners and the legal representative of any deceased partner.