



# IMPLIED AUTHORITY OF A PARTNER IN A FIRM

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## ABSTRACT

Section 4 of the Indian Partnership Act, 1932 defines “Partnership”. As per this definition, a “Firm” is the collective of partners where partners together/ any of the partners acting for all, are/ is required to carry on the business. The authority of a partner may be express or implied, i.e., it may be either given by words, spoken or written or it may be implied where there is no express agreement on it. In the cases of implied authority, law grants certain powers to the partners and also poses certain restrictions on several other functions. In some cases, such restrictions imposed upon a partner can also be extended. Implied signifies the authority being vested on the partner which is based upon his apparent position in the business of the firm. It has various meanings in various context. Sections 18, 19, 20, 21, 22, 23 and 24 of the act deal with the “Implied Authority of a partner” which is widely dealt in this study

## INTRODUCTION

The relationship of partnership acts as one of the most vital essences for testing a partnership as an agency. Hence a partner can be regarded as a principal and also as an agent. The relationship between the partners is that of principals whereas they act as agents of the firm to the third parties and also to other partners for the purpose of the firm’s business. Hence a partner holds a dual responsibility, as a partner and as an agent. Therefore every partner is an agent of one another. Also, a partner can bind his co-partners in the course of the firm’s business if he had an intention to bind his co-partners either expressly or impliedly when he is acting on behalf of the firm to the third party in order to contract in the name of the firm. If a partner contracts in his own name with a third party, in such cases, there is no collective liability for the firm and the partner alone incurs personal liability. Also, if a partner borrows money for the purpose of business of the firm in his own name by placing a security at his own risk on his personal property, it doesn’t render other partners liable even if the other partners had the knowledge of such borrowing.

For the purpose of the firm’s business, a partner is declared as an agent of the firm under section 18 subject to the other provisions of the partnership act. Section 19 deals with the implied authority of a partner in a firm, its binding effect on the firm and the restrictions imposed upon the partners. Section 20 expands on section 19 by providing extension and restriction on the implied authority of the partner. Section 21 allows a partner’s act to bind the firm even when his act is out of his implied authority in cases of emergency. Section 22 provides the mode in which a partner should act for his act to bind the firm and Section 23 throws light on the effect of a partner’s admission. Finally, Section 24 of the act explains the effect of the notice provided to the acting partner on the firm.

## ANALYSIS

1. Generally implied authority can also be called as ostensible authority or apparent authority. It is the authority implied on a partner to act on behalf of another firm or a person. The partner who acts under the scope of his implied authority does whatever is reasonably required for him to perform his acts properly and effectively. The facts and circumstances of the case can be considered to be a determinant factor for the partner to undertake the acts using his implied authority. In short words, the implied authority of a partner is defined nowhere, but it is something which a partner assumes to possess for the purpose of carrying on the business on behalf of the firm. Certain acts that fall under the implied authority of a partner are purchase and sale of goods for the firm, acceptance of the payments on debts owing to the firm, signing for a new lease on behalf of the firm. It remains impossible to define each and every aspect of a partner’s implied authority through a written deed of partnership. Thus, two vital elements for the constitution of a partnership have been laid down by the Supreme Court in the case K.D. Kamath vs. C.I.T. One of the elements is the requirement of an agreement for sharing the profits and losses and the other element was the business must be carried on by all of the partners or it shall be carried on by any one among them, but in the interests of all. Besides sharing profits and losses, the second element is one of the most essential tests in order to determine the mutual agency and partnership. As the

works are done on behalf of the firm, the principal of an agency is not entitled to the right of reasonable remuneration for the work carried on. A prudent partner is not absolved of his personal liability and also is entitled to hold the firm liable even if the prudent partner had no knowledge or has been disapproved of the same. The acts carried on by the partner under the scope of his implied authority are outside the usual course of the firm's business then, such acts cannot bind the firm though those acts have been regarded as prudent decision and ratified by each and every partners of the firm. Precisely a partner can carry on any act within

his usual authority and is restricted to do anything unusual. Here, on identifying the nature of the kind of business undertaken by a firm, it shall be determined whether the authority is usual or unusual. In order to perform an act under the scope of a partner's usual authority, the act carried on must be with respect to the business of the firm and the act should be carried on in a usual manner in relation to the business of the firm. The main reason for holding a firm liable for an act carried on by a partner under his implied authority is because it is impossible for a third party to have knowledge about the type and extent of authority granted to each and every partner of the firm. However, a third party shall have an assumption that a partner of the firm could have been conferred an authority necessary to carry on acts whichever is necessary for the business of the firm, as a partner is also regarded as an agent of the firm.

2. The implied authority of a partner is said to be restricted when such a partner is allowed to do only limited acts within his scope of implied authority. Such kind of restriction can be classified into two types as:

- a. Statutory restriction
- b. Restriction imposed by agreement

2.1. Statutory restrictions are known as those restrictions imposed upon a partner's implied authority through the legislation. Section 18 of the Indian Partnership Act says that for the purpose of the firm's business, each partner can be regarded as an agent of the firm. Section 19(1) of the act states that, the act of a partner in the course of the business shall be considered as the act of the firm. Section 19(2) lists down various matters not to be done under the liberty of implied authority unless and otherwise a contract to the contrary or usage or custom is present. As per section 19(2), a partner on behalf of the firm is not empowered to submit a dispute, open a bank account, compromise any claim, withdraw a suit, admit any liability in a suit, acquire/transfer immovable property or enter into partnership. Though this section doesn't list down every limitation, it helps in measuring and limiting the implied authority of partners when no other statutory precedents are present. But if the authority is restricted and the act of the partner done on behalf of the firm exceeds the restriction, then in such cases also the partner's act binds the firm if the person dealing with the partner is unaware of the restriction placed on the implied authority of the partner or if such person did not believe/ know the partner to be a partner. The business's nature and the practice of the persons engaged in such business are to be checked and analysed in order to determine whether the act has been done in the usual course of business or not. Also there can be no fixed definition for the term "usual course of business" because it varies from time to time.

2.2. The other type of restriction is the restriction imposed either by means of a deed or through an agreement between the partners. The partners are granted implied authority under Section 20 either in a restricted manner or in an extended manner by way of contract between the partners. This section is supported by section 11 by recognising that the partners shall be granted as much freedom required for them to regulate their relations within the firm. The extension and the restriction allowed on the implied authority of the partners shall not be decided either by one person or even by majority, but can only be decided when all the partners consent for it. The binding effect of a partner's act beyond the restrictions imposed upon his implied authority through contracts is the same as the binding effect of a partner's act when he exceed the statutory restrictions imposed upon his implied authority. The extension on the implied authority has to be seen along with the partner's intention to whether his act should bind the firm or not. His intention can be inferred from the facts and circumstances of the situation. However the partner's intention in any subsequent times is not necessary but the partner's intention at the time when he acts is the one to be checked. In the case of *Mercantile Credit Co. Ltd. vs. Garrod, Parkin* was an active partner and Garrod was a sleeping partner. They both were carrying on the business of car repairing service and letting lock-up garages. The partners have been prohibited by one of the clauses of the deed to purchase and sell cars on behalf of the firm. Being an active partner, Parkin sold a car and received £700 for which the firm had no authority. On knowing that the seller did not have any authority to carry on sales, the buyer of the car claimed his money of £700 from the sleeping partner Garrod. Usually garage owners have implied authority to sell second hand cars and hence Garrod has been held liable. Though the plaintiff had no knowledge of the restriction clause in the deed at the time of the transaction, he had the knowledge that the partner with whom he dealt had the scope of his usual authority. In another case of *Moti Lal vs. Unnao Commercial Bank*, though there was a restriction in the deed of partnership on borrowing money, by accepting a bill of exchange one of the partners of the firm borrowed money. Here the other party who gave the money was unaware of this restriction in place. Therefore, the trading firm was held liable for the money borrowed. The court stated that even if the implied authority of a partner has been cancelled unless the third party has the knowledge regarding the cancellation of the extended implied authority, the firm can be held liable for the act of the partner.

3. When one of the partners of the firm enters into a contract, it generally binds the firm and the other partners of the firm, if the contract's validity is not denied by any of the partners. If a partner's act, which is a legal act, exceeds his implied authority, its validity can be upheld by means of the ratification of the other partners subsequently or by not denying the validity of such a contract by any of the partners.

3.1. A partner's implied authority does not allow him to enter into a partnership with another person involved in another business. Entering into a partnership is completely different from being engaged in a single transaction. There is a clear distinction between involving the firm in a single transaction like buying and selling for the business of the firm and entering into another partnership

for some other business in order to share its profits. The former is allowed where the latter does not come under the scope of the implied authority of a partner. In the case of *Mann vs. D'Arcy*, the business of buying and selling of potatoes were carried on by the defendants. On an agreement with the plaintiff, one of the active partners entered into a joint venture for sharing the profits on a part of cargo of potatoes. Now the question here was whether this arrangement comes under the partner's implied authority or not. As this falls under the form of buying and selling which the partner is actually authorised to do in his usual course of business, this transaction comes under the implied authority of the partner.

3.2. Trading business and a non-trading/ professional business have been distinguished by the courts by way of various judgments. This is because borrowing money and issuing negotiable instruments are extremely necessary and helpful for a trader whereas it is of no use to the professionals. So there cannot be an implied authority to borrow money for the purpose of non-trading business. For example, a firm can be held liable if a partner of the firm has borrowed a sum of money for the purpose of the firm, but without the authority of the firm. In the case of *Higgins vs Beauchamp*, Beauchamp and Milles were proprietors in partnership in the business of cinematographic theatre. Here Beauchamp was a sleeping partner whereas Milles was acting as a managing partner. They had an agreement between them that without the consent of a partner or in the usual course of business, the other partner cannot borrow money. Two sums of money have been borrowed by Milles saying that it is to be used for the purpose of the partnership business, but Milles used it inappropriately. The one who gave money sued the other partner Beauchamp. However, he was not held liable as there was no actual authority for Milles to borrow money for their business. Therefore, the presence of implied authority has to be proved from the nature of the business. In this case, there is no implied authority as the business of Beauchamp and Milles was found to be a non-trading business. In another case law *Wheatley vs. Smithers*, trading business has been tried to be defined. In a firm of auctioneers, one of the partners has accepted a bill of exchange in the name of the firm in order to borrow money. Since an auctioneer has been regarded as a non-trader, the firm was not held liable in this case. Though trading cannot be defined accurately, one of the essential elements of a trading business is that it involves the buying and selling of goods. As an auctioneer don't buy goods and only sells the goods of others, auctioneering cannot be regarded as a trading business. A firm carrying on the business of purchase and sales of copper and brass utensils has been held liable for the money borrowed by one of the partners as this firm was found to be a trading firm. In the case of *Keshari Engg Works vs. Bank of India*, all the partners collectively were held liable for the loan as they all have signed the loan documents irrespective of one of the partners claiming that it has been taken by him as his personal loan. In another case of *Porbandar Commercial Co-op Bank Ltd. vs. Bhanji Lavji*, two separate loans have been advanced by a co-operative bank to a person named P.V. Simaria. On behalf of the firm, an instrument as a guarantee for the repayment of the loan has been executed for the purpose of each loan by one of the partners of the two various firms. As the principal debtor failed to repay the loan amount, the Bank took action against every partner belonging to each of the firms asserting that although only one of the partners from each firm executed the surety bond it is enough to hold each and every partner of the firm liable. But the court held that in order to bind all the partners of the firm, the concerned act must be carried on in a usual manner the business is done by the firm. In this case the business carried on by both the firms.

3.3. The implied authority of a partner empowers him to defend any suit brought against the firm. Also he shall assign a lawyer for the same purpose. In certain cases, in a deed of partnership there can be a separate clause mentioning the extent till which a partner can be allowed to act representing the firm and also it can specify the requirement of the consent of the other partners for certain actions in order to act on behalf of the firm. In the case of *Tomlinson vs. Broadsmith*, the firm has been sued as the managing partner of the firm bought goods on credit. He assigned a solicitor in order to defend the suit. Though the other partner was unaware of the credit purchase and the action taken he has been held liable describing the action of the partner as an ordinary incident taking place in the course of business. The court concluded by declaring that the working partner shall maintain the solicitor for the purpose of recovering the debt due to the partnership and the sleeping partner shall be held liable for paying the fees and other expenses.

3.4. If a partner has done any act under the scope of his implied authority but for his own purpose and not for the purpose of the firm, with the knowledge of the third party, then the firm cannot be held liable for it. A firm is not liable if the funds of the firm are used by a partner for the purpose of clearing his own personal debts, which can also be recovered back by the firm. In the case of *S.N. Soni vs. Taufiq Farooki*, a partner assigned a promissory note for a lesser value which was considered to be exceeding his implied authority. However, when the other partners ratified it, the Delhi High Court found this act of partner to be binding on the firm. In another case of *Sanganer Daal and Flour Mill vs. FCI*, it was held by the court that it is in the hands of the partners either to claim that no authority is vested on one among the partners who contracted or to assert that one of the partners did not contract on behalf of the firm. If any such objection has not been raised by the partners and also if there has been no protest by the other party for the forfeiture of the security deposit, then the firm shall be held liable to bind the transaction.

3.5. In the cases of negotiable instruments, usually one of the members of the banker's firm, on behalf of the firm, draws and either accepts or indorses a bill of exchange where asking the signature of each and every member of the firm is practically not possible. Though the drawing and acceptance of the bill of exchange does not fall under the usual course of a solicitor's business, the firm shall be held liable to bind by it in no way whatsoever.

4. Section 21, 22, 23 and 24 of the Act deals with the authority of a partner in times of emergency, the mode of exercising the authority of a partner, the effect of admission carried on by a partner and the effect of issuing notice to a partner. Generally a partner's implied authority permits him to carry on such acts which are usually done in the course of business of the firm. A partner does not have any power to do any act that is unusual when inferred from the facts and circumstances under which the act has been carried out. However, there is an exception available to do so, only in the times of emergency. Under Section 21 of the Act, the implied authority of a partner has been provided an extension to carry on any act which is necessary for the preventing of

the firm from facing loss. Precisely this section requires an emergency situation for the partner to try protecting his firm from falling into any kind of loss which could be incurred due to the situation. In such a case, he is required to act with reasonableness and do what a man with ordinary prudence would do under such circumstance. Though it is impossible to list down each and every act falling under the implied authority of a partner granted to him for the purpose of the business of the firm, Section 22 of the act has laid down the manner in which such a partner should act for his acts to be bound by the firm. The requirement for the acts of a partner to bind the firm he is acting on behalf is that the partner should have executed the act or an instrument either in the name of the firm or in a mode which indicates his intention of his acts to bind the firm, in an express manner or in an implied manner. Section 23 holds the firm liable when a partner admits any fact or liability and also is held liable when a partner represents or misrepresents in the course of the business of the firm. Section 24 of the Act describes the effect of a notice provided to an acting partner. When a partner of the firm acting for the business of the firm is given a notice of any issue with respect to the functions and affairs of the firm, it can be implied that the notice is provided to the firm itself. Nevertheless, there is an exceptional clause stating that this will not be applicable when the firm has been involved in or blamed of any fraudulent activity with the consent of a partner, then in such case a notice to the partner with whose consent the fraudulent act has taken place cannot be considered as a notice to the firm itself.

### **CRITICAL ANALYSIS**

In general, for the purpose of the business of a firm, each partner is considered to be an agent of the firm. This can be inferred in two ways as, in one way he is regarded as a principal when he acts in his own interest and in another aspect he is regarded as an agent of the firm if he acts in the interest of the other partner. Also in the partnership business each partner is an agent of the other partners irrespective of the arrangements made between them and such a partner's act binds the firm. This section acts as a very essential key for the partnership since the agency is an important determinant factor to execute partnership. Though there are various restrictions placed upon a partner's implied authority under Section 19, on allowing the partners to either extend or further restrict the authority of a partner under section 20, there arises no need for the enlargement of the scope of the implied authority of a partner. It is very important that the act done by the partner should be in the usual course and nature of the kind of business generally carried on by the firm. Section 21 of the act allows extending the authority of a partner acting under his implied authority for the purpose of saving the firm from any loss in emergency situations. This section has adopted test of reasonableness. It is

nothing but the partner acting under implied authority must take action in a way which any man with ordinary prudence would carry on such act under the same circumstances when acting for his own purpose. Section 22 asserts that the other party must have the knowledge regarding the representation of the partner as an agent on behalf of the firm. The knowledge might be delivered by the partner to the other party either expressly or impliedly. In case the partner failed to do this, he will be personally held liable for such acts and the firm will not bind his acts as the other party did not have the knowledge about the partner's representation as an agent of the firm. The section 24 of the act requires the notice to be actual notice and not to be constructive notice. It is essential that the notice must be provided a partner who actually is an active partner acting on behalf of the firm for its business and should not be a dormant/ sleeping partner. The one who receives the notice being a partner should not hold back the notice from the firm either by means of his own fraud or by even being in conspiracy with another third person. When the essence of this section has been appropriately followed and a proper notice is delivered, then such a notice has power even against any partner who has retired.

### **CONCLUSION**

The relation between a partner playing dual role as a principal and as an agent of the firm and the third party has been analysed. On analysing the implied authority of a partner acting on behalf of a business of a firm under the Indian Partnership Act 1932, it is clear that there is no specific set of rules laid down for the purpose of determining such a partner's implied authority. Section 19 of the Act though has prescribed certain restrictions on a partner's implied authority it has not placed a complete and definite restriction on the implied authority of a partner. And also even if required, such restrictions are subject to extension under Section 20. In order to determine the partner's implied authority, various requirements, essentials and parameters have been laid down in numerous judgments and precedents. One among the essentials is that a partner must carry on any act under his implied authority only in the usual course of the firm's business. Thus it can be concluded that the implied authority of a partner cannot be determined in a single context but it varies by being influenced by many factors.

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