

“Limited Liability of Partnership in India (Laws Related to it in Comparison to other Countries)”

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ABSTRACT:-

The basic aim of research work is to lighting the loopholes related to the limited liability partnership and its role in India. Problems related to LLP's and legal measures. Lightning some acts such as: United Kingdom Partnership Act, 2000, Indian Partnership Act 1935, Limited Liability Partnership Act 2008. Further focuses on some case laws of Indian limited liability partnership. The study has been made in the light of the current legal position in various countries like Germany, UK, etc. The researcher also thinks that there is ample scope for further research in this issue.

INTRODUCTION –

Business in India is basically divided in many shapes; it can be individual ownership or single ownership, joint Hindu Family, partnership and many more. Partnership business is eye catching in modern time. Each and every youngster who wants to do business in coordination prefers partnership business. According to the Partnership Act 1890 defines partnership as the “the relation which subsists between person carrying on a business in a common with a view of profit”¹ and Partnership Act 1932, explains under section 44 (d) “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.”²

Partnership deals with if one person agreed to do a single business with other person, forming terms and condition without any limitation. Now there is a need felt to limit the liability of partners in a business because working in a prescribed manner is more effective than doing it in wider sense. A fish didn't get destination moving in a limitless ocean similarly a person in a partnership deed cannot work properly unless one rule of law imposed on him or her hence this limiting the liability concept takes place. There are many philosophers who contributed and supported in the functioning and adaptation of LL.P, they assure then this may help small business including small scale industries (SSI's), because the vast majority of small

¹ *Elsbeth Deards, Solicitor and Senior lecturer in law, Partnership Law 01(1999).*

² *"Justice K Chandru answers questions posed by readers", The New Indian Express, 23 January 2017.*

entrepreneurs are exposed to unlimited liability for debts of their businesses, which operate in a highly competitive environment.³

MEANING OF LL.P –

It is a corporate business under which gives benefit of limiting liability of partnership or a company and provides flexibility; partners are liable for their sort of damages or loss and not liable for loss suffered by other partner in partnership. LL.P is continuous and unchanging. It is not depending on going of old partners and recruiting the new ones. Partners are limited by law to corporate in LL.P.

ORIGIN OF THE CONCEPT OF LIMITED LIABILITY IN PARTNERSHIP:-

Limiting the unlimited liability of partners in a partnership to the extent of personal asset is the base of concept of LLP. Best way to explain the concept is to put your risk for what you put in, whatever loss is suffered to the partner he is liable for it, one partner is not liable for the misconduct of another for example - Any investor, partner, or member of the company that by law has limited liability cannot be made responsible for any unfulfilled company obligations and debts that are more than the amount that the person has invested.⁴

The origin of limiting the liability of partnership can be generated; development can be traced from United States. During the financial crises in U.S during 1980's and early 1990,s hundred of loan firms is declared insolvent resulted in collapse of legal firm and lots of legal claim is instigated by U.S government. Burden is on those partners who are not even responsible for crises even have to pay millions then in 1991 the concept of LLP is introduced. The first state or the only state which adopted the LL.P's for the 1st time was LOUISIANA. According to the Louisiana civil code article 2817, each partner is bound only for his virile share of the partnership debt. In every other jurisdiction partners are jointly and severally liable for debts or obligations incurred by the partnership.⁵ The concept was soon enacted in other countries. The first act of limiting the liability in partnership embraces by New York in 1822.

UNITED KINGDOM LIMITED LIABILITY PARTNERSHIP ACT (2000):

The act was introduced in 2000 by the name of LL.P act 2000 and came into force from 2001. The act basically tells about a limited liability is a body corporate which is formed by being incorporated, under this act and in the various provision of this act (except the phrase of 'oversea limiting partnership) and in any other enactment (except provision made in context) also a limited liability partnership have unlimited capacity, the partners under this have to contribute

³ <http://www.legalserviceindia.com/article/I122-Limited-Liability-Partnership.html>

⁴ <https://www.myusacorporation.com/articles/what-is-limited-liability-and-why-it-is-important>

⁵ Magan Causey, Louisiana Law Review, 528, number 2 winter 2006.

their assets in the case of loss suffered. The UK Limited Liability act came up with an exciting new vehicle for international business. The essential features of the UK LLP include:• An LLP is a body corporate and has a separate legal personality, An LLP can own any property and undertake any contract; the liability of Members is normally limited to the extent of the amount contributed, Partnership law does not apply.⁶The schedule which talks about limiting liability of partners impose, at least two or more person agreed to form a lawful business with lawful means with a view of profit making and have given name in documents to be agreed on LL.P business. There are some rules which are imposed on the members related to LL.P, it is a type of written legal documentation such as state the name and address of each of the persons who are to be members of the limited liability partnership on incorporation, and either specify which of those persons are to be designated members or state that every person who from time to time is a member of the limited liability partnership is a designated member.⁷

EXPOSURE IN INDIA

In India, which is known as federal country but the business activities revolve around sole partnership and partnership and joint Hindu family. There is some barriers in business activities have to be fulfilled so that there will be development in the service sector especially related to professional. Inversion of LL.P was made with the hope that there may be growth in Small sector and other companies. Recent aspect added has been a proposal to include Small Scale Industries in the ambit of Limited Liability Partnership Act (30-May-06). The ministry of Small Scale Industries (SSI) is inclined for bringing small enterprises in the ambit of the proposed Limited Liability Partnership Act. After this act the LL.P are known to the society and people are being aware of this new form of business. Slowly – slowly the changes are seen under small industries as organized and operated on the basis of agreements, also provide relaxation and flexibility in procedural needs. Proper expertise also result in the good working of LLP's in India. Recent report of Economic Times, February 2016 says “India has over 15.27 Lakhs of registered companies as per data compiled by corporate affairs ministry”. The economic structure is economic for registration for a company. LLP have simpler taxation process as compared to private companies. One of the report there were many listed companies which are registered in LL.P for example, knowledge media venture, MOC music studio, etc. According to the report of Government of India (ministry of affairs) there are in 2014 – 2015 about 14849, 2015- 2016 it is 22934 and in 2016 – 2017 it is 29723 companies registered under LLP .We can see there is increase in the number of registration year by year.

⁶ <http://www.legalserviceindia.com/article/I122-Limited-Liability-Partnership.html>

⁷ http://www.legislation.gov.uk/ukpga/2000/12/pdfs/ukpga_20000012_en.pdf

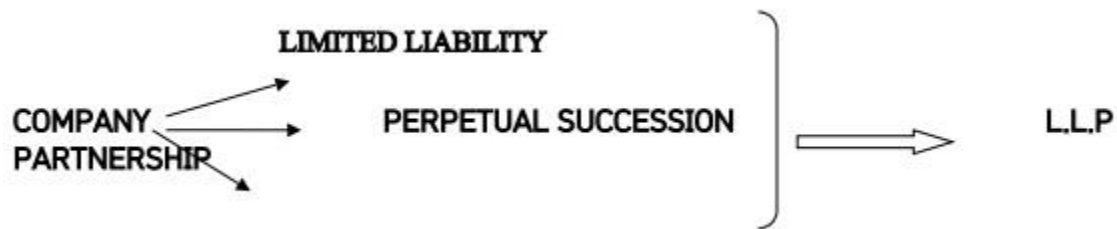
COMPARISON OF ACTUAL PARTNERSHIP WITH LIMITED LIABILITY PARTNERSHIP:-

Consist of different role of partnership and LLP in companies, both are proved to be essential at their part of working. It can be described that in partnership liability of partners is broad whereas in LLP the liability of partners is limited. There are many such points which proved the basic difference:-

1. In partnership firm minimum 2 and maximum 20 partners can be a member of partnership firm. Whereas in LLP there must be minimum 2 members and no limit for maximum to be partner.
2. No minor can be partner in LLP firm and in partnership minor can be partner.
3. In LLP the registration can is done with ministry of corporate affairs, and in partnership registration is done by registrar of firm.
4. Shares are easily transferable, in partnership consent of all the partners are needed to transfer shares.
5. LLP is the new concept and it comes under Limited Liability Act 2008 on the other hand partnership is old one and follows Indian Partnership Act 1932.

Now talking about the insolvency, the conditions consist of when persons or firm liability exceed its liability. In the case of insolvency the person's liability may suffer as any overblown amount from accounts whether current or capital has to be repaid. Before two years of commencement of insolvency there is any withdrawal that also has to be repaid. Any remaining income tax will come under personal liability of insolvent. If a member's capital and current accounts together are in credit, after taking into account the member's drawings, that member will not have a direct personal liability to the LLP. ⁸If any of the partners in LLP didn't paid tax, the Indian income tax department may ask directly from that particular person. Whereas in partnership it is quite similar as LLP, that if any person or firm is insolvent then they are liable to pay from personal assets. Due to the unawareness about this LLP concept most of the companies may face bad experiences and sometimes they misconduct limited liability concept as partnership, but both the things have a slight change which differentiate meaning of both concept. There is need of perfect agreement between the partners of company regarding the consequences of insolvency.

⁸ <https://www.mercerhole.co.uk/restructuring-blog/insolvent-llps-the-members-nightmare>



Registration with ROC

LIMITED LIABILITY PARTNERSHIP ACT, (2008):-

The act makes provisions for the formation of rules and regulations and the matter conducted. It is extended to the whole of India and different dates were adopted for different provision. Requirements of act are consist of address, advocate, appellant tribunal and body corporate. Hereby "limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership.⁹

• LIMITATIONS OF THE ACT –

The act was introduced by Indian Parliament and after that the new wave of LLP comes in Indian Business market. It is enacted 12 December 2008 and commenced on 31st March 2009. Partner in limited liability partnership means every person became a partner with the accordance of limited liability partnership agreement, have knowledge about terms and conditions to join any LLP. Any offence is committed under this act ‘court’ is having jurisdiction as per provision section 77. LLP is a legal entity partnership as the registration is done through ROC, it is said to be hybrid form of company and partnership.

Limited liability is called as perpetual succession unlike partnership and like company, means in partnership there is no role of perpetual succession, but in LLP there is great role of it. Perpetual succession is nothing but continuation of organization or other corporation without any hindrance, existence goes on despite death, bankruptcy and insolvency. Under this act liabilities are limited up to the shares. No ceiling in numbers of partners unlike in partnership can only have 20 partners. There is a written agreement between partners of LLP on mutual rights and duties of partners and their duties in relation with LLP. It is not compulsory to enter in LLP agreement as per LLP ACT 2008. If anyone is found guilty under this act no punishment is

⁹ legislative.gov.in/sites/default/files/The%20Limited%20Liability%20Partnership%20Act%2C%202008.pdf

provided but a sort of fine exceeding 5 lakhs rupees but not less than 5000 rupees but can extend to 50 thousand rupees in one day

CASE LAW:-**NARMADA ELECTRODES PVT LTD. V STATE BANK OF INDIA AND ANR (2017):-**

Appellant file a suit against BOI for converting his private limited company to Limited Liability Company. Subsequently he prayed in front of court to convert company in previous status as private company. Such prayer is allowed. The concerned department is directed to amend the cause title of the memorandum of appeal accordingly.¹⁰

M/S HANNAH CARRIER EXCELLENCE LLP V. COMMERCIAL TAX OFFICER :-

Petitioner communication has been issued under LLP ACT 2008; a form is signed with the name and number of shares of each partner in partnership firm of petitioner. It is to be noticed that the petitioner is a partnership firm, though one of limited liability to the partners and there is no reference to the Indian partnership act in the specific provision as extracted herein above. It is also to be noticed that many legal entities have been referred to in Rule. The petitioner contention is under sub clause (IV) of Kerala Income tax rules 2005. Here section (4) of LLP act, provision of Indian Partnership Act 1932 made incapable. The petitioner would be entitled to comply with the aforesaid directions before the registering authority. The writ petition would stand disposed off¹¹.

LEGUM LAW AWARENESS SOCIETY V. UNION OF INDIA:-

The present writ petition under Article 226 of the Constitution of India has been filed praying for following reliefs:- Directing the respondent to include the Advocates/corporate advocates in the list of Practicing Professionals and enable them to issue various certificates integrated into various e-Forms, notified under the Companies Act, 1956 and the Limited Liability Partnership Act, 2008 ,Directing the Respondent to eliminate the obligatory certification of e-Forms notified under the Companies Act, 1956 and the Limited Liability Partnership Act, 2008 and convert them into their previous format therefore physical format as above. Directing the Respondent to amend various e-Forms notified under the Companies Act, 1956 and the Limited Liability Partnership Act, 2008 . Realizing that no direction in nature of mandamus can be issued to the Legislature to legislate in the manner which has been suggested in the prayer clause, learned counsel for the petitioner has relied upon Sections 33 and 459 of the Companies Act.¹²

¹⁰ <https://www.casemine.com/judgement/in/59aaa62bce686e4dfbee3c62>

¹¹ **ibid**

¹² <https://www.casemine.com/judgement/in/56090dace4b014971117a377>

NEW PROVISIONS AND COMAPRISION WITH OTHER COUNTIRES:-

After the commencement of LLP ACT 2008 in India many changes were seen in the small sector companies doing business without any fear of unlimited liability of partners and drastic development. Proper registration procedure is setup so that there is no consequences related to registration example registration of user is done through filling an online form, obtaining designated partner identification number , reserve name proposed of LLP etc. Form – 2 is required to be filed by registrar with legal documents. A private company or unlisted company can be converted into LLP by following certain procedure after that the assets and liabilities is transferred from CO. to LL.P. Mentioning about other countries then, in some U.S. states (including California and New York), LLPs can only be formed among professional, particularly lawyers, accountants and architects. This position is very different from Japanese LLPs as Japanese LLPs may not be used by lawyers or accountants, as these professions are required to do business through an unlimited liability entity.¹³

- In Japan the LLP concept is introduced in 2006, Japanese LLP is not function in corporation it is rather exists in contractual relation between partners similar as American concept of LLP.
- In United Kingdom LLP works under the limited liability of partnership Act 2000, the Act defines LLP is a corporate body with continuance of legal existence independent of its members. It has no restrictions for number of partner and each partners liability is limited to one extend.
- In Singapore, LLPs are formed under the Limited Liability Partnerships Act 2005. This legislation draws on both the US and UK models of LLP, and like the latter establishes the LLP as a body corporate. However for tax purposes it is treated like a general partnership, so that the partners rather than the partnership are subject to tax.¹⁴
- In India the Legislature, keeping in view, the international business trends where a range of services is being offered by professionals and businesses in the form of Limited Liability Partnerships, has commenced the much awaited Limited Liability Partnership Act. A bill named ‘The Limited Liability Partnership Bill, 2006’, was approved by the Cabinet on Dec 7, 2006 and was introduced in the Rajya Sabha on 15th Dec, 2006. It was afterwards referred to the Department Related Parliamentary Standing Committee on Finance for examination. The Committee submitted its report to both Houses of

¹³ <https://taxguru.in/corporate-law/overview-provisions-relating-limited-liability-partnership-llp.html>

¹⁴ **ibid**

Parliament on 27th Nov, 2007, recommending some changes along with some suggestions regarding the LLP Bill, 2006. ¹⁵

The act done under the provision must do lawfully following legal aspects. Now there is an e – form which is mandatory to be filled for availing services in LLP. People is being aware about the LLP and starting business under heads. They are managed by partners themselves and functions according to the guidelines of LLP act. There is a concept of designated partners now available in LLP.

LLP are generally suitable for small medium scale business, startups, business in which investors are silent partners and many more. A foreign national can be a partner of LLP in additional compliance. Much foreign investment is supporting India in LLP. Minor and insanity are exceptions hence person are not eligible to perform the LLP are prohibited.

SUGGESTION:-

- a) There must be a clear picture of limited liability in front of public so that they take decisions easily regarding LLP business.
- b) The concept of limiting liability of partners is good but there must be some limitation on number of partners performing too so that lack of coordination and conflicts may not rise.
- c) More provision for winding up or dissolution of LLP.
- d) There must be new laws dealing with the fluctuating problems in LLP.
- e) Regular inspection by a renowned team may help in clearing obstacles.

CONCLUSION:-

Limited liability concept plays a very great role under Indian business as people have a choice instead of choosing rigid functioning of partnership firms they can go for LLP. After the LLP ACT 2008, new birth to 2 parties functioning gives rise. Likewise other developing countries we have to try to make our country not lagging behind in LLP concept. Measures must be effective and have regularity. Limited liability restricts partners to perform their liability in limited manner. The law must have to involve more and more people to give a new way to this new concept. Profit percentage is going higher and higher of the LLP companies as compared to partnership firm.

¹⁵ <https://iaccindia.wordpress.com/2010/11/11/limited-liability-partnership-an-emerging-concept-in-india/>