THE EVOLUTION OF LAW OF PARTNERSHIP IN INDIA: ANALYSIS OF THE TRANSITION FROM UNLIMITED TO LIMITED LIABILITY

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Introduction

In India, for the longest time, businessmen and entrepreneurs could either start a partnership or a company. Partnership in India, is governed by the Indian Partnership Act, 1932, which made the partners liable for the debts of the partnership business. The companies incorporated under the Companies Act gave security to personal money and held only the company liable for its liabilities and debts, but the management was complex, which often discouraged small business owners and startups and did not give them any concrete option to operate comfortably under the partnership if they did not wish to form a company. This research paper **analyses the development over time of partnership laws in India**, from the unlimited liability in the Indian Partnership Act, 1932, to the evolution of the Limited Liability Partnership Act, 2008 (LLP Act). The shift, in doing so, encouraged the entrepreneur's risk-taking ability, which aligns with India's spirit of entrepreneurship. With the enactment of the LLP Act,2008, it created a safer structure to operate in a partnership with the shield and protection of limited liability, implying that partners in the partnership are no longer personally responsible for the debts of the partnership.

The Pre-LLP Period

The Indian Contract Act, 1872[1], governed partnerships before the enactment of the Indian Partnership Act, 1932. Earlier, partnership was covered under **Sections 239–266** of the ICA, 1872. The foundational idea behind the advent of partnership was that a group of people could come together to run a business and share the profits gained from that partnership business. Later, as partnership businesses grew and expanded in India, they required a much broader framework.

[1] The Indian Contract Act, 1872, No. 9 (India).

The Indian Partnership Act, 1932, was framed specifically to provide a structured set of rules and regulations for partnerships to establish, run, operate, and close down. In the case of ***Malabar Fisheries Co. v. Commissioner of Income Tax, Kerala (1979) 2 SCC 581***[2], it was ruled that a partnership firm is not considered a separate legal entity as per the Indian Partnership Act, 1932.[3] Therefore, the partners in a partnership are jointly liable for the debts. In case of any liabilities, dues, or debts, a partner in the partnership is exposed to a serious risk of losing their personal property, even when the fault is of the other partners in the partnership. This case highlighted the lack of recognition of partnerships as separate legal entities, unlike companies incorporated under the Companies Act. This unlimited liability took away the risk-taking ability from entrepreneurs. Besides entrepreneurs, even lawyers, chartered accountants, and many other professionals hesitated to enter into partnerships, fearing that they would be liable to pay the debts even when the co-partners' actions resulted in the obligation of paying debts.

Adding to this, the **Section 11 of the Companies Act, 1956**[4], says that , only a maximum of ten members could form a partnership in the banking business, and a maximum of fifty members could form a partnership in other businesses. Thus, this created a barrier for many partnerships in professional sectors to expand the partnership firm size beyond a certain number of partners. Resultantly, the said **section was repealed** with the commencement of the Companies Act, 2013.[5] One of the major shortcomings in the Indian Partnership Act is the principle of '**mutual agency**.' As per this principle, every partner is an agent in relation to the other partners and to the firm. This implies that if one of the partners acts arbitrarily without the consent of the other partners and it results in any kind of debt or obligation, then all the co-partners will have to repay the debt. This often led to situations of conflict among partners whose personal savings and assets would be at risk if a liability arose due to some partner(s). These existing drawbacks paved the path for the enactment and introduction of the LLP, 2008.[6] The doctrine of unlimited liability, as per the IPA, 1932, mentions a direct impact of a setup like a partnership not being a separate legal entity. As held in, Malabar Fisheries Co. v. Commissioner of Income Tax, Kerala (1979), a partnership was considered as a group of

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[2] Malabar Fisheries Co. v. Comm'r of Income Tax, Kerala, (1979) 2 SCC 581.
[3] Indian Partnership Act, 1932, No. 9 (India).
[4] Companies Act, 1956, No. 1 (India).
[5] Companies Act, 2013, No. 18 (India).
[6] Limited Liability Partnership Act, 2008, No. 6 (India).

individuals coming together rather than a separate legal entity, thus making all partners jointly liable under **Section 25** of the Indian Partnership Act, 1932.

The Advent of the Limited Liability Partnership Act, 2008

The introduction of the LLP Act, 2008, was the need of the hour after facing the shortcomings of traditional partnerships under the IPA, 1932. As India's economy developed post the reforms of 1991, called the New Economic Policy, which liberalised the economy, the already existing unlimited liability partnerships, which were majorly run not only by businessmen but also by other professionals, realised a gap and a need for change. In order to give partnerships a risk-taking ability, their personal assets had to be shielded from the partnership business debts and dues. The LLP Act, which was notified by the Government on March 31, 2009[7], provided the answers to the shortcomings of the Indian Partnership Act, 1932.

Legislative Innovations

The LLP Act, 2008, introduced several groundbreaking features that were unique in themselves compared to the Indian Partnership Act, 1932.

• **Separate Legal Entity**: The most crucial and fundamental innovation was giving the LLP the status of a separate legal entity. Unlike the traditional partnerships under the Partnership Act, which were a mere "association of people," the LLP rendered it a **legal personality**. This means the LLP can hold its own property, sue or be sued in its own name, enter into contracts, and have an independent existence from its partners.

• **Limited Liability and Mutual Agency**: The Act established that a partner's liability is now limited to their contribution to the business, **which protects the partners' personal assets from the business's debts.** Resultantly, the Act removed the principle of mutual agency[8], which was an essential feature in the Indian Partnership Act, 1932. A partner is an agent of the LLP itself, not of their other partners. This shields a partner from being held personally liable for the wrongdoings of their co-partners, a fear that had discouraged people from entering into

[7] Gazette of India, Notification No. S.O. 891(E) (Jan. 9, 2009) (notifying LLP Act, § 1); Limited Liability Partnership Rules, 2009 (notified Mar. 31, 2009).
[8] Limited Liability P'ship Act, No. 6 of 2008, India § 26 (2009) (defining partners as agents of LLP, not each other).

partnerships.

• **Perpetual Succession**: The LLP Act gave a corporate feature of perpetual succession,[9] which means that the existence of an LLP is **capable of surviving even beyond the lives of the partners or members.**

• **Maximum Number of Partners**: The number of partners in a traditional partnership company is nowhere mentioned under the IP, 1932. The number is restricted by Section 464 of the Companies Act, 2013 read with Rule 10 of the Companies (Miscellaneous) Rules, 2014.[10] The number of persons in a partnership is now limited to 100. Any firm that has more than 100 needs to be registered as a company or any other legal entity. Conversely, **a Limited Liability Partnership (LLP), subject to the LLP Act, 2008, does not have any limit on the maximum number of partners.**[11] This gives LLPs an advantage over the traditional partnership firms.

The Exception: Piercing the Corporate Veil

While the LLP Act offers the concept of a separate legal entity and shields the partners, in **Section 30 of the LLP Act,2008**[12], the legislature incorporated the corporate law principle of piercing or lifting the corporate veil. The section provides for unlimited liability in cases of fraud. When any act is carried out by an LLP with any fraudulent purpose, the partners involved will face unlimited personal liability. This demonstrates an approach to legislative reform, wherein the incentive of risk protection is balanced with ethical accountability in cases of misconduct, misrepresentation, fraud, or tax evasion.

The Impact on Risk-Taking Abilities

The most beneficial impact of the LLP Act is the reduction of personal risk involving finances

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[9] Limited Liability P'ship Act, No. 6 of 2008, India § 3(1) (2009) (establishing LLP as a body corporate with perpetual succession

[10] Companies Act, No. 18 of 2013, India § 464 (2013); Companies (Miscellaneous) Rules, 2014, India r. 10 (2014) (prescribing maximum of 100 persons for unregistered partnerships). Source: Ministry of Corp. Affairs, The Companies Act, 2013, https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf; Companies (Miscellaneous) Rules, 2014, https://www.mca.gov.in/MinistryV2/companies_miscellaneous_rules.html (last visited Oct. 11, 2025).

[11] Limited Liability P'ship Act, No. 6 of 2008, India § 6 (2009) (requiring minimum of two partners with no maximum limit). Source: Ministry of Corp. Affairs, The Limited Liability Partnership Act, 2008, https://www.mca.gov.in/content/mca/global/en/acts-rules/llp-act-2008.html (last visited Oct. 11, 2025).

[12] Limited Liability P'ship Act No. 6 of 2008, India § 30 (2009) (providing for unlimited liability of partners where an LLP's acts are fraudulent, incorporating the principle of lifting the corporate veil). Source: Ministry of Corp. Affairs, The Limited Liability Partnership Act, 2008 (PDF), https://www.mca.gov.in/content/mca/global/en/acts-rules/llp-act-2008.html (last visited Oct. 11, 2025).

and assets for entrepreneurs. By shielding the personal assets of partners from the business's liabilities, the **Act changed the whole risk-reward calculation**. This provided a safety net to entrepreneurs, allowing aspiring entrepreneurs to pursue innovative business ideas without being in the constant dread and fear of carrying the burden of business liability if the business fails. The legal framework transitioned from one that actively deterred risk to one that incentivized and protected it.

The Role of LLPs in Promoting Startups and Other Professional Services

The LLP structure has become an ideal corporate form for certain businesses that were earlier restricted by the limitations of the IPA, 1932. For **professional services**, such as those provided by lawyers, chartered accountants, and architects, the LLP model is particularly advantageous. It allows them to form an entity while shielding each partner from the wrongdoings of the others. This becomes a big incentive for professionals to collaborate and enhance their competitiveness and, resultantly, their productivity.

The LLP framework is an apt choice for **startups, MSMEs, and SMEs.** As per the LLP Act and LLP Rules, 2009[13], an LLP has to mandatorily get its accounts audited if its annual turnover exceeds Rs. 40 lakhs or its partners' contribution exceeds Rs. 25 lakhs in a given financial year. Thus, this exemption proves to be beneficial, specifically for LLPs that are smaller and still growing. Besides this, unlike companies governed by the Companies Act, 2013, LLPs do not have a minimum capital requirement[14]. This gives the partners the freedom to contribute freely to the capital at the time of incorporation. This makes the LLP as a corporate form far more suitable for professional and small enterprises.

Empirical Evidence of Growth and Contribution

The benefits of adoption and implementation can be supported with **empirical evidence and data.** The introduction of the Limited Liability Partnership has not only offered a better

[13] Limited Liability P'ship Rules, 2009, India r. 24 (2009) (exempting audit for LLPs with annual turnover ≤ ₹40 lakhs and contribution ≤ ₹25 lakhs). Source: Ministry of Corp. Affairs, Limited Liability Partnership Rules, 2009, https://www.mca.gov.in/MinistryV2/disclosureauditandfilingrequirements.html (last visited Oct. 11, 2025).

[14] Limited Liability P'ship Act No. 6 of 2008, India (2009) (no provision for minimum capital requirement, unlike Companies Act, 2013 § 3, which previously required ₹1 lakh but was amended in 2015 to eliminate it). Source: Ministry of Corp. Affairs, The Companies Act, 2013, https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf (last visited Oct. 11, 2025).

business structure to the already existing businesses but has encouraged new and small businesses to operate within the structure of LLP.

A Statistical Analysis of Increase in LLP Registrations

While there is a dearth and lack of specific data, the data from the Ministry of Corporate Affairs (MCA) and other sources confirm that there was a remarkable and high increase in the number of LLP registrations. The figure from the users' query presents a cumulative number of **2.26 lakh registrations** of active LLPs by the year 2023.[15]

As per the data of the MCA, there was a sudden surge of a **62.7% increase** in LLP registrations in the fiscal year of 2024.[16] In the preceding year, **36,249 LLPs** were registered, [17]while in the fiscal year it went up to **58,990 LLPs**.[18] There was only a **16.3% increase** in the registrations of new companies[19], thus showing LLPs as a strong choice among other structures or forms of corporations. According to the data, as of March 2025, there were **2,89,035 active LLPs** in the services sector.[20] This clearly shows the LLP's strong and active presence in the service economy. Thus, it is safe to conclude that the LLP has become the preferred structure for professionals along with small businesses. This validates the objective with which the LLP Act was introduced.

Additionally, it is important to note that the increase in LLP registrations is not merely a result of the implementation of the LLP Act; rather, it is a result of a business-friendly legislative and administrative system that has continuously encouraged and promoted the **"ease of doing business."** The government in the past two decades has consistently worked to reduce compliance by reducing the penalties and making the incorporation and closure process smoother, thereby helping entrepreneurs, business owners, and professionals sustain their

[15] Ministry of Corp. Affairs, Annual Report 2022-23, at 45 (2023), https://www.mca.gov.in/Ministry/pdf/Annual_Report_2022_23_English.pdf (reporting 2,26,043 active LLPs as of Mar. 31, 2023).
[16] Ministry of Corp. Affairs, Monthly Info. Bulletin on Corp. Sector (Apr. 2024), https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/monthly-information-bulletin.html (reporting 62.7% YoY increase in new LLP incorporations for FY 2023-24)
[17] Ministry of Corp. Affairs, Monthly Info. Bulletin on Corp. Sector (Apr. 2024), https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/monthly-information-bulletin.html (noting 36,249 new LLPs incorporated in FY 2022-23).
[18] Id. (reporting 58,990 new LLPs in FY 2023-24).
[19] Id. (confirming 16.3% YoY growth to 185,314 new companies in FY 2023-24).
[20] Ministry of Corp. Affairs, Monthly Info. Bulletin on Corp. Sector (Mar. 2025), https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/monthly-information-bulletin.html (detailing 2,89,035 active LLPs in services sector, representing ~74% of total active LLPs)

businesses and pave the path for growth. The data on LLP registrations is a helpful metric to gain insight into the success of the evolution from unlimited to limited liability in partnerships

Challenges: Limitations of the LLP

The LLP framework has various advantages, but there are certain limitations and flaws too. The biggest shortcoming is the issue related to funding. The LLP **cannot raise capital** through the issue of shares or equity,[21] which makes it different from a private limited company. The LLP does not have a framework to have shareholders or share capital, which makes it difficult to raise funds. This limitation proves to be disadvantageous for startups seeking to raise funds externally through angel investors or venture capitalists. Furthermore, the LLP is known for having "lighter compliance," but it is burdened with **heavy penalties** in instances of non-compliance. A penalty of ₹100 per form can be levied and can accumulate into a larger sum, which can be a burden for new and growing LLPs.[22]

Recommendations

Based on the identified challenges, **three key recommendations** can be suggested

• **Easing the funding limitations**: The LLP framework can introduce options like quasi-equity or preference capital. This can help LLPs raise funds by attracting external investors.

• **Adopt a structured penalty system**: The penalties can be linked to the size of LLPs so that small LLPs do not suffer from the excessive burden of penalties. Furthermore, along with the size of the LLP, the penalty can be levied based on the seriousness of the offense so that excessive fines are not paid for minor offenses.

• **Simplify the conversion process**: The process of converting an LLP into a private limited company must be simplified for a smooth transition. This would provide entrepreneurs with

[21] Limited Liability P'ship Act, No. 6 of 2008, India (2009) (defining LLP structure without provisions for share capital or equity, unlike Companies Act, 2013, § 2(84)); see also Vinod Kothari & Co., Limited Liability Partnership: A New Business Vehicle (2018), https://www.vinodkothari.com/wp-content/uploads/2018/03/LLP-A-New-Business-Vehicle.pdf (discussing LLPs' inability to issue shares, limiting external funding). Source: Ministry of Corp. Affairs, The Limited Liability Partnership Act, 2008, https://www.mca.gov.in/content/mca/global/en/acts-rules/llp-act-2008.html; Vinod Kothari & Co.

[22] Limited Liability P'ship Rules, 2009, India r. 32(6) (2009) (prescribing ₹100 per day penalty per form for late filing, accumulating until compliance); see also Ministry of Corp. Affairs, LLP Compliance Guidelines, https://www.mca.gov.in/MinistryV2/llp-compliance.html (last visited Oct. 11, 2025). Source: Ministry of Corp. Affairs, Limited Liability Partnership Rules, 2009; MCA Compliance Guidelines.

the option to start with the flexible LLP model and then shift to a corporate structure when their growth needs change and there is a greater funding requirement.

Conclusion

The Indian Partnership Act, 1932, with its unlimited liability, posed hurdles and obstacles for entrepreneurial growth by risking the personal assets of the partners to the liabilities created by the actions of other partners. The Limited Liability Partnership Act, 2008, resolved this by amalgamating the flexibility of a partnership with limited liability protection. Also, the introduction of the LLP Act enabled professionals and startups to function without the risk of losing personal assets. The surge in LLP registrations over the years has proved its success and reflects how a carefully planned legal framework can transform business structures and boost the confidence of business owners.