

Voyage of the Limited Liability Partnership and its Impact on Legal Profession in India

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Abstract

In India, apart from the judges one of the most vital apparatuses of the justice delivery system is its human resource component, namely advocates. No matter what they charged for their services, it is equally true that charging fees is still neither the purpose of advocacy nor the criteria for their successes in the courtroom. Their role is marvelous as they live for others and in a suit of law, they act as a bridge between the aggrieved parties and the administration of justice itself. They are the torch bearer of the society and play an important role in shaping the humanity. On the other hand, this fact may also not be ignored that in recent times due to money money-oriented elements in the advocacy, this institution is changing its path and there will be no hesitation to say that, it is now converting itself into the bread-butter supply industry. Undoubtedly, using the business vehicle in the advocacy will have certain benefits even to the clients but questions always arise about the true spirit of the advocacy.

Key Words: Legal Profession, Limited Liability Partnership, Globalization, Business Vehicles.

Introduction

Maintaining a separation between business and service was deliberate in the past and had some specific purpose. Nevertheless, in India, the acceptance of the concept of globalization, liberalization, and privatization policy has changed that earlier line of thinking and recognizes a mixed concept of business and service. Consequently, the legal profession which was totally and purely a social service and free from the element of the profit motive, stirred on the way to profit-making institutions in the name of a more liberalized professional world.

Due to this revolutionary change; several ethical and legal issues concerning the spirit of the legal profession arose, such as what is the rationality of mixing business theories into the service norms. The question has also arisen against forming the group by the lawyers for practice, as the Advocates Act, 1961 provides the right to practice only to an individual, not to the group. It is also debatable that up to what extent it may apply in the area of the legal profession and what benefits of this principle will be made applicable in the legal profession. The last but not the final question is whether its beneficial credence is more than its terrible effects on the legal profession.

Against this background, this paper proposes to discuss the pros and cons of the application of the limited liability partnership system in the legal profession. The study will move around the issue of how the above-mentioned conflicting interests will be harmonized.

I. Voyage of Limited Liability Partnership: Global Outlook

A partnership is a saleable relation between persons carrying on any business with the intent to achieve profit on their reciprocally agreed conditions through which, they deal with their inter-se relations and maintain the relation with others who are a concern or transacting with their business. At the outset, the mode of partnership has its Athenian foundation, and probably from the Greek it widens over other parts of the world, however, a limited form of partnership becomes well-known in America.¹ Over time in almost all parts of the world, the business through partnership become a mounting

¹ Limited Liability Partnership in America was started only after 1991.

mode of business and added number of partners in that group.²

It will be important to note here that the concept of limited liability partnership was developed as an instrument and device to limit the vicarious liability of partners in the beginning as due to the unlimited liability concept even the attorneys and accountants who have given their services or were otherwise associated with the firms were at risk of the compensatory liability.³ Over time, it was shaped by the consequences of the collapse of real estate and energy prices in Texas even in the decade of 1980. The chief problem was that due to this economic crisis, uncounted firms were suffering from huge losses in their business, and in their winding-up situation the required amount was much higher than the available amount in banks. In this circumstance, the limited liability law was passed to shield innocent partners and associated professionals of these partnership firms from unlimited liability. In India, this business vehicle was introduced through Limited Liability Partnership Act, 2008. While retaining the basic structure of limited liability, numerous countries have framed their laws with suitable changes. A brief reference to this will be appropriate at this juncture:

The origination of limited liability partnerships may be traced out in different parts of the world but Louisiana was the first State of America, which adopted this unique business entity concept under the framework of commandment.⁴ In the year of 1991, the limited liability partnership concept finally came in black and white in Texas, inspired by government litigation against law and accounting firms that had done work for failed savings and loan associations.⁵ It was mainly in response to the liability that was imposed on partners in partnership sued by government agencies concerning massive saving and loan failures in 1980. The Texas statutes save the partners from personal liability for claims related to a co-partner's negligence, error, and omission in competency, or malfeasance. After that in a very short period, all United States

² In England the business guild was named as *Commanda* and *Sociétés*.

³ *Ibid.*

⁴ The first limited partnership Act in the United States was adopted in New York in 1822 and was copied largely from the then-extant French statute.

⁵ J.J. Henning, *Partnership Law Review: The Joint Consultation Papers and the Limited Liability Partnership Act in Brief Historical and Comparative Perspective*, *Comp. Law.* 2004, 25(6), 163-170, p. 168

jurisdictions adopted the same legislation, that remains a general partnership regulated by either the Uniform Partnership Act 1914 or the Revised Uniform Partnership Act 1994. However, in America, the liability of partners varies from State to State. Section 306 (c) of the Revised Uniform Partnership Act, 1997 grants the firms a form of limited liability like a company. One thing that will be very interesting to note here is that, in most of the early limited partnership legislations it was provided that a limited partner either in person or through any agent cannot transact any business on account of the partnership, and in case of infringement of that he would be deemed a general partner.⁶

Moving to the United Kingdom, firstly in the year 1837 a commission was constituted under the chairmanship of Bellenden Kerr, which considered whether elements of limited liability might be introduced into partnership law. Again in 1851 a select committee of the House of Commons also considered whether limited liability should be introduced but on neither occasion was there a clear conclusion and until the first legislation on partnership in 1890 was passed the law of the partnership was simply the judge made law.

On the line of America, major accountancy firms in the United Kingdom launched an operation for the creation of the limited liability partnership vehicle and consequently, the United Kingdom Companies Act, 1989 was amended to allow accountancy firms to work as limited liability companies. The joint and several liabilities of general partners, however, remained untouched, for which another movement was started in the year 1990. United Kingdom has enacted the Limited Liability Partnership Act, 2000 which has attempted a fusion of principles of company law and partnership law. This Act was based on three broad principles limited liability, corporate personality, and partnership flexibility.⁷ Presently in England, Wales, and Scotland, limited liability firms are governed by the Limited Liability Act of 2000, and In Northern Ireland, it is regulated through the Limited Liability Act, 2002. Though in the United Kingdom limited liability firms are considered as body corporate, particularly in England and Wales they do not have

⁶ *LLP in India: As Advantageous Business Model*, *Global Journal of Management and Business Studies*, ISSN 2248-9878 Volume 3, Number 10, pp. 1051-1056 (2013).

⁷ Stuart R. Cross, *Limited Liability Partnerships Act, 2000: Problems Ahead*, J.B.L., 268-283, (2003).

independent existence. Therefore, partners have a joint responsibility to the extent that they may agree to an agreement but they don't have any personal responsibility for each other's actions. Its legal existence is not continuing and has its limit.

In Japan limited liability firms are governed by the Corporation Act, 2005, where, it may be constituted for any purpose with a condition that the object must be mentioned under the deed. Here, this business model cannot be used by the advocates as the legal profession is required to be conducted only with the un-liability concept. Thus, in Japan, a limited liability partnership is not a corporation but rather exists as a contractual relationship between the partners, like an American limited liability partnership.

In Canada in the beginning the provinces of Ontario and Alberta as well as the territory of Nunavut have allowed limited liability partnerships of advocates but after the 2004 amendment now it is permitted to other professionals too. In Singapore, a limited liability partnership is formed under the Limited Liability Partnerships Act 2005.

In China, the structure of limited liability firms is restricted to the knowledge-based professions and technical services industries. In China, partners are not responsible for any willful misconduct or gross negligence of any co-partners or group of partners. In Germany, it is allowed only for non-commercial professionals working together. The partners, however, are jointly and severally liable for all the partnership's debts except when only some partner's misconduct caused damage to another party and then only if professional liability insurance is mandatory.

Coming to India, the attractiveness of limited liability partnership has been expressed by the various committees constituted in this regard as well as on other objects, which expressly came into the picture with the recommendations of the Bhatt Committee in 1972 and by the Naik Committee in 1992. Following the same situation, in the year 1997, the Abid Hussain Committee suggested a separate legislation on limited liability partnership in India. The study group of small sector enterprises headed by Dr. S. P. Gupta also recommended for limited liability partnership in the year 2001. Further, The Naresh Chandra Committee on Regulation of Private Companies and Partnerships recommended strongly and expressed the necessity of this model to compete with the contemporary world. The committee submitted its report in July 2003 and agreed to

the suggestion of introducing the concept of limited liability, as per prevalent international norms, in India for partnership firms of professionals. The Committee however wanted to restrict the limited liability partnership to professionals only and did not favour the extension of limited liability partnership to trading or manufacturing firms. Subsequently, Dr. J. J. Irani Committee was appointed in August 2004 to examine the issue of Limited Liability Partnerships.

On the other hand, a concept paper on Limited Liability Partnership Law was also brought out by the Ministry of Company Affairs in 2005. A Bill in this regard namely, Limited Liability Partnership Bill, 2006 was introduced in the Rajya Sabha on 15th December 2006 and referred to the Parliamentary Standing Committee on Finance. The Parliamentary Standing Committee on Finance submitted its report on 27th November 2007. This Limited Liability Partnership Bill, 2008 was considered and passed by the Rajya Sabha on 24th October 2008. The Lok Sabha granted its assent to the Bill on 12th December 2008. The Act, 2008 received the assent of the President on 7th January 2009. The Limited Liability Partnership Act 2008 was published in the official Gazette of India on 9th January 2009.⁸

II. Concept of Limited Liability Partnership

In comparison with the different business modes, like sole proprietorship, partnership, company, Hindu undivided family business, trust, and societies, the limited liability partnership is an innovative mode of business in India. It is an unusual business entity that provides the benefits of limited liability along with the flexibility of organizing its internal structure as a partnership based on a mutually arrived agreement. Therefore, a limited partnership is still a partnership with slight modifications regarding its incorporated structure and the nature of liability, which provides the benefit of a limited liability company along with the flexibility of organizing their internal management based on a mutually arrived agreement as happened in the case of a partnership firm. This new model of limited liability firms provides a platform for small and medium enterprises as well as professional firms to conduct their business efficiently, smoothly, and under a

⁸ Parliament enacted the Limited Liability Partnership Act, 2008 and notified it on 31.03.2009. Limited Liability Partnership Rules 2009 notified on 01.04.2009. First LLP registered on 02.04.2009.

shield of confined liability.

To understand the concept of limited liability partnership in profundity, it will be relevant to memorize the main features of this business vehicle:

a. Nature and Characteristics of Limited Liability Firms

Like a company, a limited liability partnership firm is a body corporate, with a distinct legal entity separate from that of its partners.⁹ It has perpetual succession and a common seal.¹⁰ From the date of registration specified in the certificate of registration, all tangible moveable or immoveable and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the Limited Liability Partnership without further assurance, act or deed and the firm or the company shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.¹¹

No partner would be liable on account of the independent or unauthorized actions of other partners or their misconduct.¹² However, the liabilities of the firms and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the Limited Liability Partnership. Any change in its partners, will not affect the existence, rights, or liabilities of the limited liability partnership. The mutual rights and duties of partners of a Limited Liability Partnership inter-se and those of the Limited Liability Partnership and its partners shall be governed by an agreement between partners or between the Limited Liability Partnership and the partners subject to the provisions of the Limited Liability Partnership Act, 2008.

b. Constitution of Limited Liability Firms

Unlike a traditional partnership, a limited liability partnership is not an unregistered

⁹ See, section 3 (1) of the Limited Liability Act, 2008.

¹⁰ Id, section, 3(2).

¹¹ Ibid.

¹² For effect of registration of limited liability firms, see section 14 of the Limited Liability Act, 2008.

association, therefore, the Indian Partnership Act, 1932 applicable to the traditional partnership shall not apply to a limited liability partnership.¹³ Under the Act, a limited liability firm may be constituted by an individual or by a body corporate. The minimum number of partners to be associated with limited liability firms is two and there is no restriction as to the maximum number of partners is concern.¹⁴ To constitute an entity under the Act they may associate themselves for carrying on a lawful business to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar of Companies. It shall have at least two individuals as designated partners, of whom at least one shall be resident in India.

It will be necessary to note that if any corporation is the partner in any limited liability firm then it may appoint an individual to act as a designated partner. In this regard, the incorporation document may specify who will be the designated partners.¹⁵ Designated partners are liable to all penalties imposed on the Limited Liability Partnership, 2008.¹⁶

c. Application of Financial Rules

As the limited liability partnership is considered a body corporate under the Act, just like a company the rules regarding finance will apply to it. Therefore, it shall be under an obligation to maintain annual accounts reflecting the true and fair view of its situation. A statement of accounts and solvency shall be filed by every limited liability partnership with the Registrar every year.¹⁷

d. Winding up and Dissolution of Limited Liability Partnership

The winding up of a limited liability partnership may be either voluntary or by the Tribunal. Section 64 of the Limited Liability Partnership Act provides for circumstances in which a limited liability partnership may be wound up by the Tribunal. It is governed by the Limited Liability Partnership (Winding Up and Dissolution), Rules 2012. Section 75 of the Limited

¹³ Section 4 of the Limited Liability Act, 2008.

¹⁴ Ibid, section 6.

¹⁵ See, proviso to the section 7 of the Limited Liability Act, 2008

¹⁶ Section 8 of the Limited Liability Act, 2008.

¹⁷ Section 34 of the Limited Liability Partnership Act,2008.

Liability Partnership Act provides for power to the Registrar to strike off the name of a defunct limited liability partnership the register of Limited Liability Partnership. Before striking off the name of a limited liability partnership the Registrar is required to give a reasonable opportunity to the limited liability partnership to be heard. The Registrar may exercise the power *suo-motu* if the limited liability partnership is not carrying on any business for two years or more; or on application by the limited liability partnership made with the consent of all partners if the limited liability partnership is not carrying on business for one year or more.

The above-mentioned characteristics of the limited liability partnership make it clear that this new business vehicle carries both the beneficial natures of the company as well as the traditional partnership. The coming study will focus on the primary and outer shell of a limited liability partnership is like a limited company but in stipulations of conduct of internal affairs it would be similar to a traditional partnership, however, there are several issues on which the traditional firm and the limited liability firms are different. Some of the points are summarized as under:

The traditional partnership can be constituted by two partners and the maximum number of partners is fifty¹⁸, but in the case of a limited liability firm, there is no maximum limit.¹⁹ In traditional partnership minors can be admitted for the benefit of the partnership, however in this regard, there is no specific provision under Limited Liability Act, 2008. Again, in the case of a traditional partnership, there is unlimited personal liability of each partner for any dues of the partnership firm and not only this but their personal property may also be held liable for the same. On the other hand, in a limited liability partnership, there is no personal liability of the partner, except in case of fraud.²⁰ Further, to constitute a traditional partnership written agreement is not essential as registration is not mandatory under the Partnership Act, 1932, but in limited liability partnership firm incorporation documents shall be required. If the partners are willing to

¹⁸ Section 464 of the Companies Act, 2013.

¹⁹ Section 6 of the Limited Liability Act, 2008.

²⁰ Section 27 of the Limited Liability Act, 2008.

register their firm under the Act of 1932, then the registration documents are required to be filed with the Registrar of Firms of the respective State, but in the case of limited liability firms as the Act does not provide any registering officer so that they would file the documents before Registrar of Companies under Companies Act, 2013. As the traditional partnership firms are purely domestic arrangements, therefore, filing of accounts, statements of solvency, and annual returns are not required, which shall be compulsorily required under the Act of 2008. In both partnership firms, each partner of a traditional partnership firm can take part in the business of the firm, but in limited liability firms, the agreement may provide the contrary.

III. Limited Liability Partnership and Legal Profession

There is no direct connection between the limited liability partnership and the profession of law as most commonly limited liability partnership is a mode of business, however, at the outset, it was indicated that the Limited Liability Partnership Act 2008 does not restrict the benefit of limited liability partnership structure only to businessmen and will be available for use by any small and medium enterprise including the professional firms, like accounting and legal firms that fulfill the requirements of this proposed Act. An issue in this regard has been always the matter of disputes as the legal profession is a unique type of profession whose ambit and object is not to collect money but to provide services to the general public should and can do it through limited liability a firms which is a mode of business.

To discuss this question and some contemporary issues in this regard it will be relevant to have a little focus on the rules regarding practice in India.

a. Right to Practice

Under the Advocates Act, 1961 for the first time a unified, independent, and autonomous bar was designed. For proper and effective regulation of the legal profession, the Act provides two types of mechanisms in the form of the State Bar Councils and the Bar Council of India. Both bar councils are accompanied by a lot of administrative as well as

managerial powers, especially regarding enrolment, the practice of profession, action-taking, and guiding principles of their conduct and behavior.

Regarding the question that who can practice in India, section 29 provides that, 'subject to the provisions of this Act and any rules made there under, there shall, as from the appointed day, be only one class of persons entitled to practice the profession of law, namely, advocates.' By a plain reading of this section after 16th August 1961, which is the date of enforcement of the Advocates Act, only an advocate can practice the profession of law.²¹ The language of the above section is so explicit and much clear therefore; no one can practice the profession, without being an advocate under the provisions of the Act. This intention of the legislature is again repeated and mentioned under section 33 of the Act, which provides that, except as otherwise provided in this Act or any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act.

Hence, by virtue of both sections, only an advocate can practice under the Act. It will also be relevant to note here that as per section 2(1) of the Act, "advocate" means an advocate entered into any role under the provisions of this Act. Therefore, to be an advocate and get a right to practice under section 30 of the Act, one must be enrolled before any State Bar Councils under the Act. The condition of enrollment is written under section 24 of the Advocates, Act, 1961.

²¹ See, section 55 of the Advocate Act, 1961, as per the section, Notwithstanding anything contained in this Act,— (a) every pleader or vakil practising as such immediately before the date on which Chapter IV comes into force (hereinafter in this section referred to as the said date) by virtue of the provisions of the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920), or any other law who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; 2[(c) every mukhtar practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law, who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; (d) every revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879 (18 of 1879), or any other law,] shall, notwithstanding the repeal by this Act of the relevant provisions of the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920), or other law, continue to enjoy the same right as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed or, as the case may be, to which he was subject immediately before the said date and accordingly the relevant provisions of the Acts or law aforesaid shall have effect in relation to such persons as if they had not been repealed.

As per the provision to get enrollment under the Act, he must fulfill the following conditions:

(1) He is a citizen of India. However subject to the other provisions contained in this Act a national of any other country may be admitted as an advocate on a state roll, if citizens of India, duly qualified, are permitted to practice law in that other country.

(2) He has completed the age of twenty-one years.

(3) He has obtained a degree in law, recognized by the Bar Council of India, and

(4) He fulfills such other conditions as may be specified in the rules made by the State Bar Council for this purpose, and he has paid in respect of the enrolment, stamp duty if any chargeable under the Indian Stamp Act, and prescribed enrolment fee.

In the above regard, it will not be out of mark to note that, apart from section 29 read with sections 24 and 30 of the Act, which provides the condition of practice and enrolment there is another condition of practice which is given under Part VI, Chapter III of the Bar Council of India Rules, 1975.²² This rule is known as, the Bar Council of India Rules (Conditions for Right to Practice) Rules, 2010, which added another condition of practice by providing that no advocate enrolled under section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India.²³

²² As amended by the Bar Council of India through its resolution by its meeting held on 10th April, 2010 and which was published in the Gazette of India on June 12, 2010.

²³ The All-India Bar Examination shall be conducted by the Bar Council of India. It shall be held at least twice each year in such month and such places that the Bar Council of India may determine from time to time. It shall test advocates in such substantive and procedural law areas as the Bar Council of India may determine from time to time. Such substantive/procedural law areas and syllabi shall be published by the Bar Council of India at least three months prior to the scheduled date of examination. The percentage of marks required to pass the Bar Examination shall be determined by the Bar Council of India. An unsuccessful advocate may appear again for the Bar Examination, without any limit on the number of appearances. The Bar Council of India, through a committee of experts, shall determine the syllabi, recommended readings, appointment of paper setters, moderators, evaluators, model answers, examination hall rules and other related matters. The Bar Council of India shall determine the manner and format of application for the examination. Upon successfully passing the Bar Examination, the advocate shall be entitled to a Certificate of Practice. The Certificate of Practice shall be issued by the Bar Council of India to the address of the successful advocate within 30 days of the date of declaration of results. The

It is clarified that the Bar Examination shall be mandatory for all law students graduating from the academic year 2009-2010 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961.

A scrutiny of the above provisions makes it clear that in India right to practice is given only to the individual advocate and not to the group, in any form like partnership firms, associations, or companies. However, if all the members of that group are advocates as defined under section 2(1) of the Act, then they can profess the profession authoritatively under section 29 read with sections 30 and 33 of the Act.

b. Prohibition against Involvement in Business Activities

Concerning the use of limited liability partnership firms in the legal profession, the second argument is related to certain rules contained under the Bar Council of India Rules, 1975. The very first rule provides that, an advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.²⁴

In the above reference, it is that the legal profession is considered a very serious occupation that requires full-time attention towards the profession. Due to this reason any person if he is doing any job or other service on a permanent nature or regular basis then he or they will not be able to choose or continue with the legal profession. In the case of *Hans Raj Chhulani v. Bar Council of India*²⁵, a medical practitioner who has also obtained a law degree and applied for enrolment before the State Bar Council. The council rejected the application on the reason that he was a practicing doctor. He contended that it was a violation of rights guaranteed under Articles 14, 19 as well as 21. Rejecting all the contentions Supreme Court held that the above articles were not violated by the council. The rule made by the Bar Council restricting the entry of persons already carried on other professions is not admitted and therefore not violative to Article 14, 19(1) (g), and Article

Certificate of Practice shall be issued by the Bar Council of India under the signature of the Chairman, Bar Council of India.

²⁴ See, Chapter II Part VII, Rule 47, Bar Council of India Rules, 1975.

²⁵ 1996 S.C.C. (3) 342.

21 of the constitution. Therefore, considering the seriousness of the legal profession if any person is engaged in any other profession or service regularly then he could not be an advocate under the Act.

The thing that is prohibited under the rules is active involvement in any service or business that may disturb his devotion to this serious profession. Due to this reason, Indian advocates are debarred from being the partners of any partnership firms, though they may be sleeping partners in the same firm. However, an advocate who has inherited, or succeeded by survivorship to a family business may continue it, but may not personally participate in the management thereof. He may continue to hold a share with others in any business which has descended to him by survivorship or inheritance or by will, provided he does not personally participate in the management thereof.²⁶

Thus, the above-mentioned rules proved that the Indian bar considered the legal profession as too serious occupation which creates a full devotion amongst the professionals to keep the environment clean and pure. It goes without saying that the spirit of the profession demands that if any person has enrolled himself as an advocate then being a representative of his client he should concentrate his skill and experience only on the legal profession in the interest of his client. This state of the profession also indicates the high estimation of the legal profession.

c. Use of Name and Fame of Advocate by others

The rules contained under Rule 37, Part III, Chapter III provide that an advocate shall not permit his professional service or his name to be used in advertisement or to make possible the unauthorized practice of law by any agency. This is to maintain the dignity of the profession again. Thus, the above-discussed rules provided under the Bar Council of India Rules, 1975 as well as the provisions of the Advocates Act, 1961 indirectly contravene with use of limited liability firms in the legal profession.

²⁶ Ibid, Rule 50.

IV. Benefits of Limited Liability Firms

It will be very pertinent to note that acceptance of globalization policy and liberalization of the legal profession and allowing business tactics under the arena of the legal profession is not a sole issue rather it mother of several issues, whether legal or ethical. While discussing the issue related to the application of limited liability firms in the legal profession, no one can outright reject the valuable and advantageous belongings of this system of business. Some of the benefits of using a limited liability partnership by the advocates are discussed as under:

1. The practice of law through a limited liability firm is a combination of a numerous skill and many well-trained legal professionals. They all devote their service to a common goal for the benefit of the firm. Therefore, it is client-centered practice. It frequently makes sense to consider more than one professional viewpoint when trying to resolve a particular problem.
2. The services provided by the group are delivered with an integrated team approach. This system involves many brains to meet a problem so it can efficiently cater to the needs of the clients rather than an individual approach.
3. Due to the nature of the profession future of an advocate may come under misgiving even without his weakness. The application of a limited liability firm in the legal profession is also competent to remit this challenge as it provides a secured feature to them because of the payment of regular salary.
4. It is well well-established fact that Indian society has never faced the problem of lack of legislative provision on any point but lack of the effective mechanism to implement that legislation to the members of society. It has been experienced in almost all the fields that government agencies are not doing well due to numerous reasons along with the lengthy procedures given under different legislations. Apart from these, unfortunately, delayed justice is also a key problem²⁷ of the Indian legal

²⁷ There were 44.75 lakh cases pending in the various High Courts and at the District and Subordinate Court levels, the number of pending cases stand at a 3.14 crore over the country; the Wire Government law; 27th November, 2019.

system.²⁸ Against these limitations, the practice through a limited liability firm will be much better because its management is much easier as they have their own rules of professional conduct.

5. The problem of unemployment has been a common and difficult issue in the country. Indian law firms which will work through this system will employ graduates from different parts of the country. Therefore, up to a certain extent, it may be argued that employment opportunities will be created by the use of limited liability firms in the legal profession. Legal Process Outsourcing will also benefit hugely and consequently offer better salaries to law graduates.
6. It is believed that the use of limited liability firms will also decrease the cost of litigation in India.
7. It is also believed that in areas like International Trade, International Arbitration, Information Technology, and Cyber Crime any law firm can provide better quality services by using their internal cooperation system and this system of practice will increase the overall quality of the legal profession in India.

Thus, it is clear from the above discussion that legal practice through limited liability firms is a good system of practice presently. The main features of this system are time and money saving system which is the common requirement of the present-day society.

V. Drawback of Limited Liability Firms

After discussing the benefits of limited liability firms in the field of legal profession to develop a better and favoritism-free understanding it will be necessary to discuss the second face of the coin. In reality, the use of business vehicles in the legal profession to some extent undoubtedly may be beneficial but it is to be noted that penetration of business tactics into the legal will not be free from blemishes. Therefore, its shortcomings may be discussed in the following heads:

²⁸ As per the official record of the Supreme Court there is 60469 pending cases which was on 1 march, 2020.

1. Practice of law through limited liability firms will be a group service in which, members of the group are bound to devote their time towards the activities of the group. So this compulsion may be a serious threat to the seriousness of the profession which may disturb the spirit of the legal profession.
2. It is well established that the legal profession has its surroundings free; from any pecuniary purpose and it has been always guided and controlled by certain core values of the profession. Practice through business vehicles will be not only a question of profit and losses but rather deeply attached to the ethical values of the legal profession. How one can oppose this contention that this practice will be a mode of business rather than a profession while law is considered a noble profession?
3. Supporters of this system believed that advertising should be allowed in the field of the legal profession, so that the public may be aware of the services of the firms available along with the cost of those services. On the other hand, advertisement is considered always against the spirit of the profession. The same is true with slight relaxations²⁹ still prohibited under rule 36 of the Bar Council of India Rules, 1975.³⁰
4. Advocates are prohibited from taking any case in which he is personally interested³¹ but in this system, the restriction cannot work because members will work in the interest of the group, not in the interest of a particular client.

²⁹ See, Amendment of 2008 in Rule number 36.

³⁰ An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing, or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. His sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organization or with any cause or matter or that he specializes in any particular type of worker or that he has been a Judge or an Advocate General.

³¹ After 2008 under a proviso has been incorporated in rule 36 in Section IV, Chapter II, Part VI of the Bar Council of India Rules, which provides that this rule will not stand in the way of advocates furnishing website information as name, address, telephone, email address and area of interest prescribed in the Schedule under intimation to and as approved by the Bar Council of India. Any additional other input in the particulars than approved by the Bar Council of India will be deemed to be violation of Rule 36 and such advocates are liable to be proceeded with misconduct under Section 35 of the Advocates Act, 1961.”

5. Indian legal practitioner is also prohibited under rule, 20 of Chapter II, Part II of the Bar Council of India Rules from offering or accepting contingent fees from their clients, and under this system of practice, there is a strong possibility of demanding the contingent fees from the clients.³²
6. Duty toward clients may be impaired because the practitioners of each discipline are not bound to have the same degree of care and devotion as the members of the legal profession owe to their clients.
7. The practice through limited liability firms poses a possible threat to the confidentiality of information too. For instance, the accountant with whom the client has shared his information could be called as a witness against the client.

VI. Concluding observation

The paper began with a note that there is a clear distinction between business and profession and therefore, the area of the profession should be kept free from any business motive elements. Even it will be not proper to use any commercial vehicle to run any profession and provide the professional service by the same. Undoubtedly, the newly introduced limited liability partnership is a very effective and beneficial commercial vehicle for small and medium enterprises which provides its users and entrepreneurs double benefits as it gives free hands in the case of internal management of their business affairs just like a traditional partnership, whether regulated under Partnership Act, 1932 or not, and it also gives the security of limited liability like a limited company constituted under Companies Act, 2013 or any previous legislation on company in India. The same system of business is very useful to the contemporary world as it is an era of liberalization, privatization, and globalization, wherein the entire globe is considered as one unit or a village and it is a consensus that one should not keep close its boundaries for others, limited liability partnership should be used by legal professionals in their services or not.

³² An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

Bibliography

Acts/Statutory

- Chapter II Part VII, Rule 47, Bar Council of India Rules, 1975
- The Advocate Act, 1961
- The Companies Act, 2013.
- The Limited Liability Act, 2008
- The Limited Liability Partnership Act, 2008

Articles/Journals/Reports

- LLP in India: As Advantageous Business Model, Global Journal of Management and Business Studies, ISSN 2248-9878 Volume 3, Number 10, (2013).
- Stuart R. Cross, Limited Liability Partnerships Act, 2000: Problems Ahead, J.B.L., (2003).
- J.J. Henning, Partnership Law Review: The Joint Consultation Papers and the Limited Liability Partnership Act in Brief Historical and Comparative Perspective, Comp. Law. 2004, 25(6).