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# The Indian Concept of Limited Liability Partnerships

Navdeep Parbhakar
*Assistant Professor, Anand College of Engineering & Management, Kapurthala, Punjab, India*

***Abstract:*** ***An alternative business structure that combines the traits of a traditional partnership and a private company is an LLP. Through an agreement between the partners, LLP offers its partners limited liability status as well as the flexibility of internal arrangement. In contrast to a sole proprietorship or a traditional partnership, this combination will provide entrepreneurs and businesspeople with a more organised business vehicle. On October 21, 2008, the Rajya Sabha received the LLP Bill, 2008. On October 24, 2008, the Rajya Sabha approved this. On December 12, 2008, the Lok Sabha approved the bill. The President signed this bill into law on January 7, 2009. This has made it easier for business owners to get into the corporate sector. With the growing trend of LLP registrations and the conversion of classic unlimited partnerships to LLP status in the global landscape, the topic of limited liability partnerships has become increasingly important. The globe over has shown a growing amount of serious interest in converting to LLP status in recent years. With each passing day, the conversion to LLP gains speed. As a type of alternative business vehicle, the LLP was also introduced in nations including the United States, United Kingdom, Singapore, India, and Japan. A new organisational form called an LLP combines the benefits of a company's limited liability with the flexibility of a partnership at a low cost of compliance. It is a body corporate that operates continuously like a firm and has its own legal identity.***

***Keywords: LLP, Concept, Legislative History, Professional Expertise, Framework, Innovation***

## I. INTRODUCTION

In order to examine changing and updating Indian business legislation, the Indian government has formed several committees during the last 20 years, most of which are composed of prominent government officials and business leaders. A body corporate created and incorporated under the LLP Act, the LLP is a versatile corporation with perpetual succession. Unless they meet specific requirements, including being insolvent or mentally ill, any individual or body corporate may be a partner in an LLP. The maximum number of partners in an LLP is uncapped. A member's liability is capped to the amount of money they invested in the company. Unless he agreed to a personal duty of care or a personal contractual responsibility, a member who is held personally liable (for instance, in a negligence claim) should be shielded by limited liability. A customised members agreement, which is a confidential document, is highly advised for an LLP. Otherwise, the LLP regulations contain default clauses that are inappropriate for the majority of enterprises. The amount of capital contributions from members is one of the issues that the members' agreement must resolve because an LLP lacks a share capital. The Limited Liability Partnership (LLP) Act, 2008 was ultimately introduced by the Government of India on January 9, 2009, after a protracted wait. In December 2006, the initial bill was presented to the Rajya Sabha. That specific Bill has been revised into the current Act. The idea of an LLP has existed since the Naresh Chandra Committee's report on private company and partnership regulation and the JJ Irani expert committee's report on company law were submitted. As the name implies, the law establishes a corporate form of partnership in order to offer the benefit of limited liability. A Limited Liability Partnership is defined as a partnership established and registered under the Limited Liability Partnership Act, 2008, in accordance with section 2(n). A limited liability partnership is a body corporate created and established under this act, and it is a legal entity distinct from its partners, according to section 3(1) of the Act once again. With the flexibility of a partnership business, LLP is a Body Corporate that was established and registered under the LLP Act 2008. It will be set up and run according to a contract called a "LLP Agreement" and will include the following features:

- Indefinite succession
- The ability to sue and be sued
- The ability to purchase and sell real estate under its own name
- Typical seal

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## II. DEVELOPMENT AND ORIGINATION

1) 1957: The iron, steel, and hardware merchants' chamber proposed LLP legislation, but the 7th Law Commission on Partnership Act, 1932, rejected it because they did not want to undermine the goal of the most recent Companies Act revision
2) In 1997: The Abid Hussain Committee on Small Scale Industries suggested that India enact laws pertaining to LLPs.
3) In 2003: The Naresh Chandra Committee, which was established to regulate partnerships and private firms, recommended that limited liability partnerships be used in the service sector.
4) 2005: The JJ Irani Expert Committee on Company statute once more recommended the introduction of an LLP statute. It recommended creating a distinct LLP Act and extending the reach of LLPs to small businesses. They believed that this would give small businesses the flexibility they needed to obtain technology and embark into joint venture arrangements.
5) On July 23, 2005: The 2nd Naresh Chandra Committee turned in its report, noting the following: "Being a partner in a partnership firm with limitless liability is, to put it mildly, hazardous and unappealing in a market that is becoming more litigious. In fact, this is the main reason why professional firms—like accountants—haven't expanded to the size necessary to successfully compete on a global scale. Because of this, an L.L.P. is a very alluring option for professional collaboration between accountants and attorneys.
6) 2006: The Union Cabinet passed the LLP bill on December 7. The Rajya Sabha received the LLP bill on December 15.
7) 2007: The Parliamentary Standing Committee (PSC) was tasked with reviewing the LLP bill from 2007. The PSC presented its findings to the Parliament on November 27th, suggesting several modifications to the 2006 LLP statute.
8) 2008: The Union Cabinet approved the introduction of a new measure (the 2008 LLP bill) on May 1st, replacing the 2006 LLP bill. The LLP law was presented to the Parliament on October 21st. The Rajya Sabha approved the LLP bill on October 24. The Lok Sabha approved the LLP bill on December 13.
9) 2009: The President approved the LLP bill 2008 on January 7. The LLP Act of 2008 was released in the Official Gazette on January 9. On April 1, 2009, the LLP Act, 2008's operational rules (also known as the LLP Rules 2009) were introduced. The regulations pertaining to the conversion of partnership firms, private companies, and unlisted public companies into limited liability partnerships (LLPs) went into force on May 31, 2009. On April 1st, 2009, the government also launched a website, www.llp.gov.in, to operationalise the numerous procedures outlined in the LLP Rules, 2009.

## III. FICCI'S RESPONSE TO THE LAW AND RECOMMENDATIONS

The Federation of Indian Chambers of Commerce and Industry (FICCI) has endorsed the measure and suggested certain revisions to eliminate any ambiguity and make the proposed statute as comprehensive as feasible. The following are the 13 amendments that FICCI has proposed to the bill:

1) UK laws provide for a mandatory insurance coverage to satisfy judgments and decrees against an LLP to a reasonable degree in order to safeguard the interests of anyone who may have claims against the LLP. The Indian LLP law may also include provisions pertaining to mandatory insurance.
2) By making the required changes or clarifications to the Foreign Exchange Management Act, 1999 (FEMA) and Foreign Direct Investment (FDI) guidelines, LLP legislation would need to be brought into line with other economic laws.
3) According to the Bill, the Central Government may mandate that any LLP be subject to the provisions of the Companies Act, 1956, with any exceptions, modifications, and adaptations that the government may specify. As a result, like a private corporation, an LLP would be subject to the Companies Act of 1956. It is proposed that the LLP Act itself should contain appropriate rules in this area to lessen the government's irrational discretion.
4) In the UK, the operations and assets of the current partnership or corporation must be transferred after an LLP is formed. Any property transferred within the first year of conversion is exempt from stamp duty. In India, existing partnerships, private firms, and unlisted public companies that convert to limited liability partnerships (LLPs) are eligible for a stamp duty waiver.
5) Rather than through the LLP statute, the taxes elements can be addressed independently by amending the Income-tax Act, 1961 as needed. Does the Ministry of Company Affairs have the power to introduce tax-related legislation? According to FICCI, the Ministry of Company Affairs and the Ministry of Finance must collaborate on tax-related matters while introducing LLP law.
6) It appears that the taxation outlined in the Bill conflicts with the Income-tax Act's provisions. According to the Bill, an LLP is a body corporate. As a result, the LLP would be treated as a corporation under the Act and would be subject to entity-level taxes, or company taxes, as well as dividend distribution tax (DDT) if dividends were paid out. Therefore, the Income-tax Act of 1961 would need to be amended appropriately if pass-through classification for an LLP is desired. According to the Income-tax Act of 1961, LLPs would need their own taxing plan.

*7)* In order to offer specific exemptions from capital gains tax for gains resulting on conversion, the Income Tax Act of 1961 would need to be revised. Additionally, the exemptions outlined in Section 47 would need to be expanded to include conversions to limited liability partnerships.

*8)* It should be made clear that LLPs would be qualified organisations to receive foreign investment through the automatic method from the standpoint of exchange control and foreign direct investment.

*9)* Before a new partner is inducted, approval from all existing partners is needed. Securing this consensus could be challenging and unattainable, particularly if the LLP is quite big. Democratic governance would be the norm, with the exception of unanimous decision-making when starting a new company. Once more, an uncooperative minority of one or two might potentially halt an LLP in its tracks. Therefore, a three-fourths majority may be the standard for important choices, such as starting new companies.

*10)* Even though having at least one manager or general partner with unlimited liability may be required by law, the LLP's liability in no circumstances may be extended to all of its partners. Additionally, it may be made sure that an LLP doesn't have a manager dummy. Because he is in charge of making sure that the important aspects of the enactment are followed, the enactment may specify that a partner must have certain requirements, such as having solid financial and accounting skills.

## IV. SUGGESTIONS AND ADVICE

*1)* The Finance Act of 2009 should be amended, and the pass-through method should be implemented.

*2)* Provisions for the LLPs' conversion back should be included.

*3)* If there are any tax obligations following the conversion, the situation should be made explicit.

*4)* Section 47 should also grant exemption from capital gains taxation.

*5)* The government's objective should be to encourage LLPs rather than discourage them by raising taxes.

*6)* The stance on foreign partners' investments under the FEMA, 1999, should be unambiguous.

Following a thorough examination of the constitutionality of narco analysis in the context of human rights and the law, the researcher reached the conclusion that some recommendations should be made in order to immediately put an end to this practice.

*a)* Instead of using inhumane and unlawful methods like narco analysis, the government should provide better training for the investigating agencies so they can improve their investigative abilities and turn to constitutional methods of investigation.

*b)* It is necessary to improve the soundness and efficiency of intelligence systems.

*c)* In so far as scientific methods of inquiry violate human rights and amount to torture, they should not be allowed.

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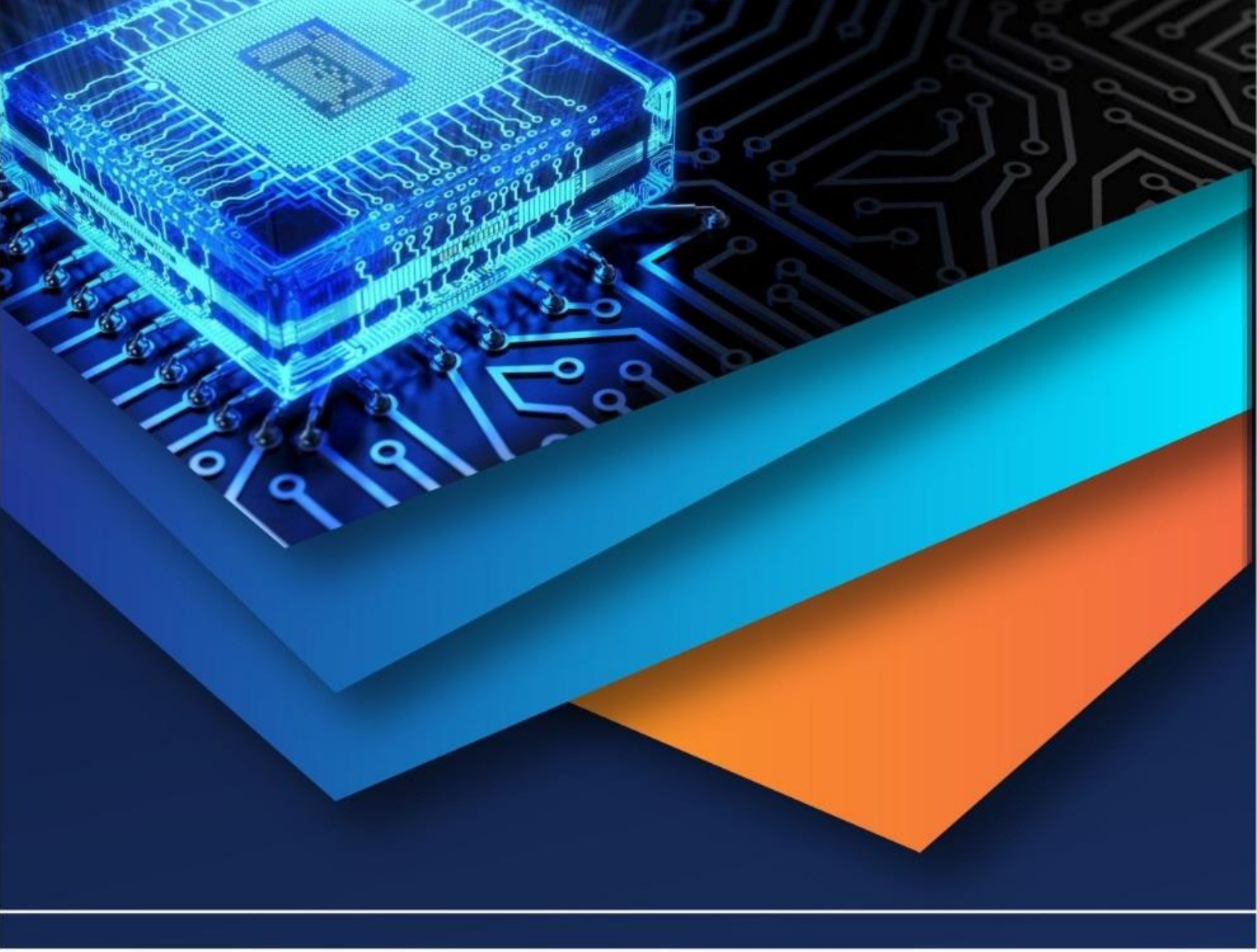
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