
IS REGISTRATION OF PARTNERSHIP FIRM NECESSARY?

BY SURYANSH CHAWLA¹

ABSTRACT

If we talk about this paper, the author has beautifully explained the concept of Partnership Firm and its registration. Partnership means when two or more persons come together to perform business and share profits equally or as agreed at the time of partnership. For budding business initiatives, registering a partnership firm is a crucial factor. The importance of registering a partnership business is examined in this abstract. The main benefits of registration are legal protection and recognition. When a partnership is registered, it separates from its participants and becomes a separate legal entity, protecting personal assets from business obligations. Additionally, it gives parties the ability to enforce rights and duties through legal channels, maintaining the integrity of the contract. As banks and other financial organisations sometimes need official registration as a requirement for financial assistance, registration also makes it easier to acquire loans and credit. As the partnership's specifics are made public, it also promotes openness and confidence among partners and outside parties. The benefits of registration in terms of legal protection, financial sustainability, and legitimacy make it a crucial step for every partnership business, even though it comes with a certain administrative complexity. The author has tried his best to explain the concept of Partnership firm governed under the Indian Partnership Act, 1932 and I hope all the readers will read this paper with full interest and dedication.

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¹ A second-year law student from JEMTEC Department of Law, Greater Noida affiliated to GGSIP University, New Delhi

I. INTRODUCTION: WHAT IS A “PARTNERSHIP”, “PARTNERS”, “FIRM”

A partnership is a crucial form of business organization wherein two or more individuals join forces to conduct business and share profits in an equitable manner, as stipulated at the time of forming the partnership. The regulations governing partnerships between individuals are administered by the Indian Partnership Act of 1932, which became effective on October 1, 1932. As partnerships arise from contractual agreements, they fall under the purview of both the general provisions outlined in the Indian Contract Act of 1872 and the specific provisions delineated in the Indian Partnership Act of 1932.

According to Section 4 of the Indian Partnership Act, the individuals who enter into a partnership with each other are referred to as "partners" individually and collectively as a "firm." The business conducted under the partnership is identified by the term "firm," and it is advisable to have a documented partnership deed to circumvent legal restrictions and capitalize on the legal standing outlined below. Partnerships can be categorized into two types: partnership at will and particular partnership.

In the case of partnership at will, there is no specified duration for the partnership between two individuals. Conversely, in a particular partnership, the partnership is established for a specific period agreed upon by the partners. Each partner is held equally responsible for any actions taken or omitted in the name of the partnership firm. For instance, if partners A and B are involved in a firm that engages in fraudulent activities, both A and B bear equal responsibility for any resulting losses, illustrating their joint liability.

II. WHAT IS REGISTRATION OF FIRMS AND PROCEDURE OF IT?

Registration of a partnership firm refers to the filing of a partnership deed with the appropriate State's competent authorities (often the REGISTRAR OF FIRMS) or the payment of the applicable stamp duty. The Indian Partnership Act, 1932 consists of 74 (seventy-four) sections as of right now. Registration of a partnership firm is covered in Sections 56 through 70. Registration of partnership firm is important step which provides several privileges to a registered firm in comparison of unregistered firm. A proper procedure should be followed for the registration of the firm.

Steps for registering the firm:

Step 1: Application for registration

According to section 58 of IPA², 1932, The very first step for registration of firm is application, for registration the firm, an application should be posted to registrar at any time in which following ingredients must be mentioned-

- The firm name
- The place or principal place of business of the firm
- The names of any other places where the firm carries on business
- The date when each partner joined the firm
- The name in full and permanent addresses of the partners
- Duration of the firm

The application must be signed by all the partners of the firms or by an agent specially authorised on this behalf and a firm's name shall not contain words like "crown", "emperor", "express", "empire", "imperial", "king", "queen", "royal".

Step 2: Registration by registrar

When all the credentials mentioned in section 58 of IPA,1932 is posted to registrar and if registrar is fully satisfied by the given details, he must provide a certificate of registration and enter the statement in the "Register of Firms" registry. (IPA, 1932, Section 59).

(The firm may be registered upon payment to the registrar of a penalty of one hundred rupees per year of delay or a portion thereof if the statement in respect of any firm is not received or delivered to the registrar within the time provided in sub-section 1A of section 58.)

Step 3: Alteration (section 60-63)

The next stage is amendment, which entails sending the registrar a statement outlining the alteration and signed and confirmed in accordance with Section 58 of the Partnership Act, together with the required fee. Changes can be made to the firm name or the location of the registered company's main office. When the given statement is accepted, the firm's registrar is required to include it with the statement for the companies filed in accordance with section 59 and to amend the firm's record in the registrar of firms to reflect the statement.

According to section 61 of IPA Noting of closing and opening of branches, any partner or agent of a registered firm may notify the registrar of the termination of a registered firm's operations at any location or the start of a registered firm's operations at any location that is not the

² Indian Partnership act, 1932

registered firm's principal place of business. The registrar shall record the notification in the entry relating to the registered firm in the register of firms and shall file the notification with the statement pertaining to the registered firm filed pursuant to section 59.

Section 62 of IPA Noting of changes in names and addresses of partners, any partner or agent of the firm may notify the registrar of any change in a registered partner's name or permanent residence, and the registrar will record the change in the register of firms.

IPA Section 63 Any partner, new or old, who joins or departs a registered firm, any partner who was a partner right before the dissolution, that partner's agent, or a person specially permitted in this regard, may notify the registrar of the change or dissolution, stating the date thereof, and the registrar shall record the notice in the entry associated to the firm in the register of firms.

When a minor who has been given access to a firm's benefits of partnership reaches majority and chooses whether to become a partner or not, and the firm is at that point a registered firm, he or his agent may notify the Registrar that he has or has not become a partner, and the Registrar will handle the notice in the manner outlined above.

III. IMPORTANCE OF REGISTRATION OF FIRM

The registration of a partnership firm is voluntary and not required under the terms of the Indian Partnership Act, 1932. The partners will decide whether they want to. The firm may be registered at the time of its establishment, incorporation, or ongoing operation as a partnership. However, it is usually desirable to register the partnership business because registered firms are entitled to a number of unique rights and advantages over unregistered ones. A registered partnership business can profit from the following:

- **Power of a partner to bring a lawsuit in court against the company or other partners:** A partner may launch a lawsuit against any other partner or the partnership itself in order to assert his contractual rights against a partner or the business. Partners cannot sue an unregistered partnership firm or their other partners to enforce their rights. However, one partner in an unregistered firm has the option of accusing the other partner in a criminal matter. Therefore, if a partner steals corporate property or sets company buildings on fire, any partner may file a lawsuit against that partner.
- **Higher credibility:** A Partnership Firm that has successfully completed the process of Online Registration of Partnership Firm has better credibility than a Partnership Firm that is not registered. Despite the fact that both registered and unregistered

partnership firms are legitimate and legal under the relevant Act, authorities strongly favour registered firms over unregistered ones.

- **Power to take legal action against third party:** A registered partnership may bring legal action against any third party to enforce a contractual interest. An unlicensed firm cannot launch a lawsuit to enforce a right against a third party. Although an unregistered business cannot bring a lawsuit against a third party, it should be emphasised that the third party always has the right to bring a lawsuit against both a registered and an unregistered firm.
- **Ability to claim set-off:** A registered company may use set-off or other legal actions to enforce a contractual right. The unregistered company cannot use setoff in any legal action brought against it. It is usually desirable to form a partnership firm with the government, taking into account the aforesaid advantages.

IV. IS REGISTRATION OF PARTNERSHIP FIRM NECESSARY?

The Indian Partnership Act of 1932 essentially governs or authorises a partnership business. Every company must adhere to a number of procedures and regulations before beginning any kind of business. One registered firm and the other unregistered are the two types of partnership firms. Registered businesses have a number of advantages versus unregistered businesses. The Indian Partnership Act of 1932 makes registration of a firms either optional or not necessary. To obtain the advantages of Registration, it is possible. The choice to register the business is up to the partners, and there are no consequences for not doing so

However, it provides certain disabilities for an unregistered firm and the partners of such firm or the partners whose name have not shown as registered partners even though the firm is registered.

In *Mahendra Singh Chaudhary v. Tej ram Singh*³, In order for the money to reach the firm's bank accounts, one of the partners, partner "A," filed a lawsuit for an injunction ordering that the checks for payment be made jointly in the names of A and B rather than individually to partner "B." The aforementioned company lacked a registration.

It was held that because "A" filed the lawsuit on behalf of a company that was not registered, the lawsuit could not be maintained under section 69 of the IPA.

³ AIR 1987 All 152

V. EFFECT OF NON-REGISTRATION OF FIRMS

As was already established, there are drawbacks to a firm's operation without the formalities of incorporation. Not all of a non-registered firm's rights are equivalent to those of a registered firm. Its operation differs from that of a registered business, and a non-registered firm's rights are constrained. Section 69 of the Indian Partnership Act of 1932 states the consequences of a partnership not being registered. There are certain negative effects to it, including the following:

- **No suit to enforce rights under the act:** A company that has not gone through the incorporation procedure is ineligible to sue another company or third party. The ability to launch a lawsuit, like all other registered businesses, is not available to unregistered firms. Another crucial component of this sub-point is that the person or party suing the unregistered business must already be listed as a firm in the register.
- **No suit to enforce right against any third party:** A non-registered firm is prohibited from suing a third party in any court, and a registered firm is prohibited from suing any other party or being sued by any other party. In any Indian court having jurisdiction, no lawsuit may be brought.

In case of *Muthu Kumaraswami v. Kumar Textiles*⁴, It has been decided that section 69(2)'s requirements must be followed, and that the firm's registration is a prerequisite to its ability to file a lawsuit. The clause in section 69 cannot be disregarded, even if the defendant does not protest. In order for the trial court to determine whether the plaintiff firm is registered, the court should let the parties to provide evidence to that effect.

In case of *M/s Shreeram finance corpn. V Yasin Khan*⁵, A registered firm lodged a lawsuit upon a revision to the firm's constitution. Two partners left the company, one partner joined, and two minors were admitted to the partnership for their benefit, but none of these changes were reflected in the Register of Firms on the date the lawsuit was filed. Additionally, the plaint was changed at a later time, but the highest court ruled that this did not salvage the case. The lawsuit was subject to

⁴ AIR 1996 Mad 433.

⁵ AIR 1981 SC 1769.

dismissal because the partners who filed it were not included in the register of firms on the day it was filed.

- **No proper relief:** There is no relief available to the party in this respect if there is no registration of the company since claims above Rs 100 cannot be offset by a third party. Only the registered firm is entitled to use such a privilege.
- **Partners cannot bring action against each other:** An unhappy partner in an unregistered partnership cannot sue the other since they lack the legal standing to do so or the authority to enforce their rights.

VI. CONCLUSION

In conclusion, there are several reasons why registering a partnership business is unquestionably required. It gives the company and its partners crucial legal status and protections. The separation between personal and company assets, the availability of legal recourse, and better financial prospects are all strong arguments in favour of registration. In the perspective of potential investors, creditors, and clients, it also promotes openness and confidence. Even while there may be some administrative challenges involved in the registration procedure, the long-term benefits outweigh them. Formal registration provides a base for stability, development, and legal compliance in a company environment that is competitive and changing quickly. In the end, it is impossible to emphasise the importance of partnership firm registration since it is a sensible and strategic move towards assuring the prosperity and security of the company and its stakeholders.