

## **Constitutional Validity of LLP Established With Object to Provide Legal & Allied Services:**

### **A Viewpoint**

*By Danish Khan*

The Ministry of Company Affairs paved the way for Limited Liability Partnership (“LLP”) in India by passing Limited Liability Partnership Act, 2008 (“LLP Act”) on January 9, 2009.

LLP is a form of business organization with each partner’s liability limited to the contribution made by that partner in relation to the LLP. It is a new corporate structure that combines the flexibility of a partnership and the advantages of limited liability of a company at a low compliance cost. It is a form of business model, which is organized and operates on the basis of an agreement between the partners; provides flexibility without imposing detailed legal and procedural requirements; and enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner. Owing to these advantages, LLPs are fast becoming an alternative form of business model as against a company and a partnership.

The LLP Act does not restrict the benefit of LLP structure to certain classes of professionals only. Any two or more persons associating for carrying on a lawful business with a view to profit may set up an LLP. The concept of LLP offers great opportunity to professionals like advocates as it would result in lifting of the ceiling for maximum number of 20 partners in a partnership firm under the Partnership Act, 1932 read with the Companies Act, 1956.

However, the legal fraternity is still doubtful about the applicability of the LLP Act on Advocates for provision of legal services. There seems to be a difference in the understanding-of applicability of LLP Act to the legal services sector-between the practicing advocates and the Bar Councils (especially the Bar Council of Delhi). The Bar Council of Delhi had earlier sent communication to various law firms who had converted to LLP warning them that the same could amount to professional misconduct within the meaning of Section 35 of the Advocates Act, 1961. It is the primary concern of the Bar Council that prima facie only one class of persons, namely advocates, are allowed to practice profession of law (Section 29) and are entitled to appear before courts or any other authorities (Section 33). A LLP, despite the fact that it enjoys a separate legal personality, can never be registered as an advocate since the Advocates Act only allows individuals to be registered as advocates.<sup>1</sup> Thus, it appears that there may not be any fallacy in the warning of the Council that the law firms practicing law as LLP may violate Sections 29 and 33 of the Advocates Act.

The scheme of the LLP Act does not prohibit any class or category of professionals from carrying on business as LLP. However, Section 71 of the LLP Act provides that the provisions of the act shall be in addition to, and not in derogation of, provisions of any other law for the time being in force. An inference can be drawn from the above section in LLP Act that the jurisdiction of Bar Council(s) over regulation of the legal profession as LLP shall sustain. Such inference is further supported by Rule 18(2)(xvi) of the LLP Rules, 2009 which provide that where the proposed LLP name contains words such

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<sup>1</sup> S. 24 of the Advocates Act, 1961

as 'Advocates', 'Legal', 'Attorneys', etc. such name shall only be reserved after obtaining permission from Bar Council(s). Thus, it seems that the LLP Act at least intends to put the onus of the regulation of LLP on the Bar Council(s).

Despite the concerns of the Bar Council, a different approach to the LLP Act leads to contradictory opinion. As per Section 2(1) (e) of the LLP Act, 'business' is defined to include *every* trade, profession and occupation. Since the LLP Act does not expressly prohibit advocates from operating as LLP, it is reasonable to assume that the definition of 'business' as stated above carries free and wide meaning relatively attributed as in Article 19(1)(g) of the Constitution. The State cannot prevent a citizen from carrying on any business except by law placing reasonable restriction in general public interest, so long as the business carried on is not illegal, immoral or opposed or dangerous to public policy to be allowed.<sup>2</sup>

The Ministry of Corporate Affairs views Company Secretaries, Chartered Accountants, and Advocates as likely beneficiaries of the LLP Act.<sup>3</sup> The empowering legislation for Company Secretaries and Chartered Accountants were amended vide Company Secretaries (Amendment) Act, 2011 and Chartered Accountant (Amendment) Act, 2011, respectively to facilitate the formation and operation of inter se multi disciplinary partnership firms to offer in competent and competitive manner in association with both local and overseas business associates. However, the Advocates Act has not yet been amended co-extensively to reflect the same.

There doesn't seem to be any reasonable restriction which should render services offered by law firms acting as LLPs subject to permission of Bar Council(s), especially taking into account the fact that Rule 18(2) (xvi) of the LLP Rules requires permission from Bar Council only if the name of LLP consists of words which reflect the profession. Also, owing to the fact that the Central Government has enacted Amendments to reflect the changes brought by LLP Law in sectors of accountancy and company secretarial practice, delaying changes to the Advocates Act would be tantamount to violating Fundamental Right of Equality guaranteed to advocates by Article 14 of the Constitution.

LLPs are an innovation of the progressive business world, which aim at opening up new vistas in ways of conducting business transactions. Lawyers, like any other profession, stand to benefit in a number of ways by functioning as LLP. However, the current impasse only serves as a hurdle towards impending progression of the legal services sector. The arguments from both the sides are strong and valid. It is not to say that law firms functioning as LLP would be in the interest of the larger public- that is for the policy makers to decide. A progressive dialogue between all stakeholders is the need of the hour.

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<sup>2</sup> *Hari Shankar v. Deputy Commissioner* AIR 1975 SC 1121

<sup>3</sup> Source: [LLP FAQ](#)