

**DE JURE NEXUS LAW JOURNAL**

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**LIMITED LIABILITY PARTNERSHIP AS A BETTER ALTERNATIVE IN  
INCORPORATION****Abstract**

*By incorporating the features of both types of business, the Limited Liability Partnership (hereinafter referred to as, 'LLP') was formed as a hybrid form of general partnership and incorporation business type. This paper aims to research the LLP's evolution and how it found its way into being adopted by the Indian Legislation all the way from the U.S. State of Texas and the UK. It attempts to give an analysis of the idea behind the concept along with its definition along with its features as employed by the provisions of the Limited Liability Partnership Act, 2008. This paper assesses the advantages that an LLP has over incorporation and certain loopholes that exist in the LLP Act, 2008. There has been a usage of descriptive and inferential statistical tools in order to analyse the popularity of LLPs in the current Indian scenario with the number of registered LLPs and the active ones amongst those. It has been concluded that LLP form of business creates a better environment for investors especially amongst the small enterprises by enhancing the ease of doing business in India.*

**Introduction**

The business world of today accommodates and caters to a variety of business types that are produced by individuals according to their convenience after weighing the pros and cons of each kind. Among them, one of the oldest types of business relationships is the partnership type of business form.

With the advent of Limited Liability Companies (LLC), the limelight that the partnership has kept over the years has been stolen but is still preferred for small trading companies, particularly by professionals in India and abroad. Due to its key inherent drawback of each partner having to risk their personal assets in case a liability occurs, the 'General Partnership' form has increasingly become less common. There was a need for a hybrid business form that combined the versatility of a collaboration and the benefits that came with choosing an integration at a low enforcement cost due to the observations made about the functioning and popularity of all these models. This very need gave rise to the Limited Liability Partnership (LLP) form of business. There has been a gain in momentum of various business holder opting for LLP owing to the factors such as better control and management, flexibility<sup>1</sup>, lower compliance cost and most importantly the primary advantage of limited liability of each member. The limited liability partnership ('LLP') acts as an 'alternate corporate vehicle' which seeks to attain the principal benefits of both forms of business organization- partnerships and companies.<sup>2</sup> The LLP was first established in the 1892 German Company Law called, Gesellschaft mit beschränkter Haftung (GmbH). But the concept that is applied in the present date originated in the United States in the late 1980s and the early 1990s when during a financial crisis hundreds of saving and loan firms were declared bankrupt the liability of a million dollars' worth of claims against which lay against the partners which led to the promulgation of the Revised Uniform Partnership Act in the United States in 1994.<sup>3</sup> It has been introduced in India as a form of corporate entity beneficial to small and medium-sized companies and is regulated by the Limited Liability Act, 2008. Unlike general partnerships, LLPs are not subject to the rules of the Indian Partnership Act of 1932. It is important to research further upon whether this is a feasible form of business over and above incorporation as there exist certain loopholes in the current legal position with regards to the taxation of Limited Liability Partnerships in India and the Limited Liability Partnership Act, 2008 and the Finance Act, 2009.

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<sup>1</sup> Hickson & Turner, *Corporation or Limited Liability Company*, The Journal of Economic History, Vol. 63, no. 4, 2003, pp. 931–958.

<sup>2</sup> Amit M. Sachdeva & Sachin Sachdeva, *The Indian LLP Law: Some Concerns for Lawyers and Chartered Accountants*, SEBI & Corporate Law, Vol. 92 No. 6, (2009).

<sup>3</sup> Ashwin Shah, *Incorporation and Registration of LLP*, 6 Income Tax Rev. Vol. XXXV 18 (2009).

## Literature Review

### Meaning

A partnership firm is defined under as “the relation between two or more persons who have agreed to share the profits of a business<sup>4</sup> carried on by all or any one of them acting for all”<sup>5</sup> whereas a Limited Liability Partnership on the other hand is defined as<sup>6</sup>: -

*“A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership which is formed and registered under the LLP Act<sup>7</sup> with the signing of an LLP partnership agreement<sup>8</sup>”*

It is a body “corporate formed and incorporated under the LLP, Act.<sup>9</sup> It has a "separate legal body"<sup>10</sup> and consists of all the attributes of a separate legal identity very similar to a company's, such as perpetual succession,<sup>11</sup> the ability to own and otherwise deal with land, the presence of rights and obligations of the company that would not be affected by a change in the partners, the ability to protect and be sued and a common seal because it is an artificial individual.

There is no implicit obligation of trust in LLPs as opposed to general partnerships and the relationship between the partners is fiduciary in nature.<sup>12</sup> The floating of the idea for an LLP in India dates back to 1957 by the Law Commission of India<sup>13</sup> which wasn't accepted initially due to its inherent shortcomings back in the day since the Companies Act, 1956 was as strict as it is now.

### Difference between Limited Liability Partnership and Incorporation: -

S. No.	Point of Comparison	Limited Partnership	Liability	Incorporation (Private/Public)
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<sup>4</sup> J.J. Henning, *Partnership Law Review: The Joint Consultation Papers and the Limited Liability Partnership Act in Brief Historical and Comparative Perspective*, Comp. Law. 25(6) 163-170 (2004).

<sup>5</sup> Indian Partnership Act, §4 (1932).

<sup>6</sup> Ministry of Corporate Affairs, *Limited Liability Partnership Act, 2008* (September 26, 2020)

<http://www.mca.gov.in/MinistryV2/llpact.html>

<sup>7</sup> §2(n), Limited Liability Partnership Act, 2008.

<sup>8</sup> §2(o), Limited Liability Partnership Act, 2008.

<sup>9</sup> §§34(2), 35(1), Limited Liability Partnership Act, 2008.

<sup>10</sup> §3 (1), Limited Liability Partnership Act, 2008.

<sup>11</sup> §3 (2), Limited Liability Partnership Act, 2008.

<sup>12</sup> RODERICK I'ANSON BANKS, *Lindley & Banks on Partnership* 2-37 (18th ed. 2002).

<sup>13</sup> Yeo Hwee Ying, *Liability of Partners in a Limited Liability Partnership Regime*, SAclJ, Vol. 15. (2003).

1	Establishment	By the LLP. Act, 2008	By the Companies Act, 2013
2.	Minimum Capital	No requirement	₹1 Lakh for Private and ₹5 Lakh for Public Companies
3.	Board of Directors	Not required	Required of Minimum 2 members
4.	Maintenance of Statutory	N/A	Applicable as per Companies Act, 2013 <sup>14</sup>
5.	Agreement documents required	LLP Agreement <sup>15</sup>	Memorandum and Articles of Association <sup>16</sup>
6.	Name Suffix	LLP	Limited/Private Limited
7.	No. of Board Meetings to be conducted	As decided under the LLP Agreement	At least 4 meetings in a year is mandatory
8.	Shareholders Meetings	N/A	According to Companies Act, 2013
9.	Dissolution	By agreement or order of National Company Law Tribunal	As soon as the affairs of the company has wound up; by court order.

**The advantages of forming an LLP instead of an incorporation are as follows: -**

- Less capital required for establishment
- The LLP has a higher ease of doing business than an incorporation
- It decreases the variety of taxes regulating our indirect taxation structure. As a consequence, the procedure is streamlined and uniformed.
- It leads to a method of preventing double taxation in many industries, such as software, hospitality, and contracting.

<sup>14</sup> §120, Companies Act, 2013.

<sup>15</sup> §2(o), Limited Liability Partnership Act. 2008.

<sup>16</sup> §§4&5, Companies Act, 2013.

- It eliminates the possibility of tax cascading because the Input Tax would be applicable across all goods and services at any point of supply
- It leads to less investment in capital and labour to keep records of the variety of taxes, which contributes to lower enforcement costs.
- As can be seen from the above stated advantages, taxation is one of the major motivational driving forces that makes people opt for LLP apart from limited liability. It has thus been suggested by Singh in his paper from 2007, that there must be suitable changes in the income tax related provisions of the LLP Act.<sup>17</sup>

In the paper titled, “Limited Liability Partnership in India: Study of Different Aspects for Optimum Growth” the authors summarized the various issues relating to concepts and taxation loopholes with regards to Limited Liability Partnerships.<sup>18</sup> It concluded by stating that there will be plenty more LLPs that will be established in India due to its advantages over other forms of organisation such as partnership and company.

In the year 2013 a sectoral breakdown of LLPs in the UK was made and examined which explained the growth in the number of LLP registered.<sup>19</sup> It also identified the underlying factors that contributed to this increasing number and whether one should opt for this form of business by assessing whether it encouraged a greater economic likelihood of starting a business. It categorized all the forms and types of LLPs that come under the SME sector and evaluated their tax benefits and incentives associated with setting them up.

The gap that has been ascertained through literature review is the grey area found in the provisions of the Limited Liability Partnership Act, 2008 with regards to certain ambiguities that exist in the procedures such as winding up of the LLPs and transfer of assets during the process of conversion of Partnership firms<sup>20</sup>, Companies etc. to LLPs.

### **Objectives and Issues**

There has been a stark difference in the way how global business environment regulations work ever since the opening up of markets that make the process of globalisation and international trade

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<sup>17</sup> Singh, Pradeep Kumar, *Limited Liability Partnership (LLPS) & Taxation Issues*, (2007).

<sup>18</sup> Sharma, Radheyshyam and Garg, *Limited Liability Partnership in India: Study of Different Aspects for Optimum Growth*, 720-725 IRACST 5 Vol. (2014).

<sup>19</sup> Fletcher, Denise, Jane Frecknall-Hughes and Dr Stephen Williams (2013), *Understanding Limited Liability Partnerships in the Small and Medium-sized Business Sector*, ICAEW, www.icaew.com/academic, ISBN 978-0-85760-661-7, London EC2R 6EA.Pp1-74.

<sup>20</sup> Elspeth Deards, Solicitor and Senior lecturer in law, Partnership Law 01(1999)

streamlined. India in the recent times with the various financial policies that are introduced by the government is being shifted towards well-functioning private sector. In order to do this various long-term policy, need to be introduced that remove administrative barriers and strengthen other laws that promote entrepreneurship.<sup>21</sup>

Following are the objectives of this paper with regards to the empirical search conducted: -

- Analyse the meaning and concept of LLP and its history
- Identify the number of Limited Liability Partnerships (LLPs) registered as of March 31, 2020, in India.
- Assessing the “obligation of contribution range” of the LLPs in India as of 31<sup>st</sup> March, 2020 so as to represent it gaining popularity.
- Examine how the COVID-19 pandemic impacted the LLPs as on 31<sup>th</sup> March, 2020.
- Discuss the limitations of the Limited Liability Partnership, Act, 2008.
- Give suggestions with regard to the grey area in the LLP Act, 2008

### **Research Methodology**

This research paper aims towards analysing the concept and ideology behind a Limited Liability Partnership. It depends on a mix of both doctrinal data in the form of case laws, articles, journals etc. and also empirical data from secondary sources. It was based on an empirical-doctrinal methodology which consists of data collated and analysed from various secondary sources.

#### ***Data Collection and Statistical Tools***

This research paper is aimed towards being explorative in nature and is based on a detailed analysis of data and statistics as found on secondary sources of data and statistics. It includes information collected from Ministry of Corporate Affairs, Reserve Bank of India, Ministry of Finance, WTO Reports, NITI Aayog, professional institute reports and journals, published Journal/Articles reference books related to corporate law, Bare Acts and publications by state and centre. In this study there is a usage of descriptive statistical tools such as tables, charts, percentage analysis for interpretation and analysis of data. The period that is covered in this paper surrounding the conception of LLPs is till the date of 31<sup>st</sup> March, 2020.

#### ***Description of Data***

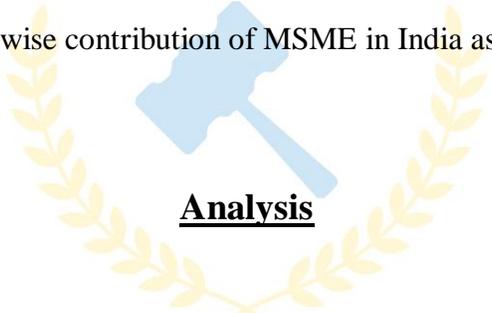
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<sup>21</sup> GEORGIEVA, KRISTALINA, *A World Bank Group Flagship Report*, (15th Ed. 2018).

Chart 1 shows the obligation of contribution wise distribution of LLPs as on 31s March, 2020, Chart 2 shows the trend of registration of Companies and LLPs and the Effect of the Covid-19 pandemic on the numbers.

Chart 3 and 4 shows the sector-wise contribution LLPs and Incorporations respectively as on 31st March, 2020

Chart 5 represents the sector-wise contribution of MSME in India as on 31<sup>st</sup> March, 2020.



## Analysis

### **International History**

The LLP Act of 2008 was passed on December 12, 2008, and went into effect on March 31, 2009 in India. It is broadly based on the U.K. and Singapore LLP laws and is suited to the Indian scenario. The Singapore Limited Liability Partnership Act, 2005 came into effect<sup>22</sup> on April 11 is observed to be based on the Delaware Revised Uniform Partnership Act (the “Delaware Code”). It is broadly based on the LLP statutes of U.K. and Singapore and is suited to fit the Indian scenario. The Singapore Limited Liability Partnership Act, 2005 came into effect<sup>23</sup> on April 11 is observed to be based on the Delaware Revised Uniform Partnership Act (the “Delaware Code”). We have adopted the minimum requirement of two partners from this as if the LLP is left with a sole partner he/she assumes unlimited liability and is vulnerable to be wound up by courts.<sup>24</sup> In the United States LLPs were introduced as a result of the promulgation of the Revised Uniform Partnership Act (‘RUPA’) after which a number of states allowed<sup>25</sup> for the formation of LLPs<sup>26</sup> which was followed by the adoption of the Uniform Limited Liability Company Act in 1996 and revised in 2006.<sup>27</sup> The concept of LLPs made a way into the region of the Great Britain when the UK Limited

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<sup>22</sup> Magan Causey, *Limited Liability for General Partnerships: Another Louisiana Anomaly?* La. L. Rev. 528 (2006).

<sup>23</sup> Causey, *supra*, 22.

<sup>24</sup> Binoy Chacko, *Incorporation of LLP: Procedures and Advantages*, THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (ICSI),

<https://www.icsi.edu/media/portals/22/Incorporation%20of%20LLP%20by%20CS%20Binoy%20Chacko.pdf>

<sup>25</sup> Robert W.Hillman, *Limited Liability in historical perspective*, Washington and Lee Law Review, Vol 54, Issue 2.; Weidner, Pitfalls, *Partnership Law Reform: Some United States Experience*, 26 Journal of Corporation Law 1031.

<sup>26</sup> Alberta Law Reform Institute (1999), Limited Liability Partnership Final Report No. 77 p. 37 <http://www.assembly.ab.ca/lao/library/egovdocs/alilr/1999/67876.pdf> (April, 1999).

<sup>27</sup> Bromberg, Alan R., *Bromberg & Ribstein On Limited Liability Partnerships*, The Revised Uniform Partnership Act, And The Uniform Limited Partnership Act (2001), 15 Aspen (2003).

Liability Partnerships Act 2000 came into force that is on April 6, 2001.<sup>28</sup> The concept also existed in early Islamic Law.<sup>29</sup>

### **Indian History**

In India, the concept and idea of an LLP<sup>30</sup> was first floated in 1957 to the Law Commission of India<sup>31</sup> which owing to its shortcomings towards the provisions of the Companies Act, 1956 (that have only recently been made stricter<sup>32</sup>) that were foreseen was scratched of in its initial stages. In 2003, the Naresh Chandra Committee Report re-introduced the LLP and the need of it in the service industry by describing it as a hybrid between a partnership firm and a company.<sup>33</sup> After recommendations from the J.J. Irani Expert Committee a separate legislation was enacted for the LLPs in India<sup>34</sup> which led to extending of LLP's scope to small enterprises.<sup>35</sup>

### **Advantages of Limited Liability Partnership over Incorporation**

The very reason why LLPs were implemented and adopted in our country, as seen from its past in India, is because it is a rather practical and lucrative choice for small businesses and a need for changing times.<sup>36</sup> The following are the reasons this is the case:

#### **i) Minimum Capital Not Required**

LLPs do not need any such minimum contributions, unlike Private Limited Companies that require a minimum capital of Rs. 1 Lakh, making it favourable for small businesses with a lower budget.

#### **ii) Limited Liability**

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<sup>28</sup> Margaret Bartschi, (2000), *Foundations of Business Organizations for Paralegals*, Delmar, West Legal Studies, p. 3.

<sup>29</sup> S.W Hasanuzzaman, *Limited Liability of Shareholders: An Islamic Perspective*, 28 ISLAMIC STUD. 353 (1989).

<sup>30</sup> Amit M. Sachdeva & Sachin Sachdeva, *The Indian LLP Law: Some Concerns for Lawyers and Chartered Accountants*, SEBI & Corporate Law, Vol. 92 No. 6, 2009, <http://ssrn.com/abstract=1423766> (Last visited on December 22, 2011).

<sup>31</sup> Yeo Hwee Ying, *Liability of Partners in a Limited Liability Partnership Regime*, SAcLJ, Vol. 15 p. 392 (2003)

<sup>32</sup> The Law Commission of India, *Seventh Report on Partnership Act, 1932*, (1957).

<sup>33</sup> . Naresh Chandra Committee-II, *Report of the Committee on Regulation of Private Companies and Partnership*, para 3.11, Recommendation 3.1 [http://www.llponline.in/naresh\\_chander\\_committee.php](http://www.llponline.in/naresh_chander_committee.php), (July 1, 2013).

<sup>34</sup>J.J. Irani Committee, *Recommendations of the J.J.Irani Committee*, [http://www.llponline.in/ji\\_irani\\_committee.php](http://www.llponline.in/ji_irani_committee.php)

<sup>35</sup> Naresh Chandra Committee-II, *Report of the Committee on Regulation of Private Companies and Partnership*, para 3.11 [http://www.llponline.in/naresh\\_chander\\_committee.php](http://www.llponline.in/naresh_chander_committee.php), (July 1, 2013) [http://www.llponline.in/naresh\\_chander\\_committee.php](http://www.llponline.in/naresh_chander_committee.php).

<sup>36</sup> S.J. Prashant, *Limited Liability Partnership in India- A Critical analysis of the Naresh Chandra Committee Report*, 'Regulation of Small Companies and Partnership' (August 25, 2013) <http://www.indlaw.com/display.aspx?41CA374E-CC62-4453-A14E..>

This ensures that the partners are free from paying up liabilities through their personal assets at the time of bankruptcy (except in the case of fraud committed by a specific partner).<sup>37</sup>

**iii) A separate legal unit**

All legal contracts are dealt with and signed as a separate legal party on behalf of the LLP, so that the partners are still free to come and go without being influenced by the legal responsibility of the LLP.

**iv) Other fees and workings**

In contrast to an Incorporation, the statutory filing fees and the cost of creation are considerably lower. Per year, the number of board meetings is a minimum of 4, which is mandatory for incorporation. An LLP does not have any clear specifications.

**Limitations of the Limited Liability Partnership Act, 2008.**

- i) Double taxation:** Even though LLP has acted as a boon for foreign investors<sup>38</sup> in India by allowing Foreign Partners in an LLP there remains the problem of taxes being deducted from their earnings in India as well as their resident country. There also exists a certain amount of ambiguity in the same sense with regards to conversion of unlisted companies to LLPS having no tax implications whatsoever.
- ii) Implications of taxes on conversion of company:** There is no tax implication in case of conversions of general partnerships firms to LLPs since they are treated as confirmed by the Explanatory Memorandum attached to the Finance Bill. There is no liability surrounding conversions to LLPs mentioned in the Income Tax Act either because of which only an internal change in the organisation<sup>39</sup> that is require and most of the financial work goes unscrutinised paving the way for fraudulent practices through conversion.<sup>40</sup>
- iii) No Capital Gains Tax Exemption:** According to §47 of the Income Tax Act, 1961 the transfer from sole proprietorships to other organisation form with limited liability would be exempted from capital gains if certain conditions are complied with. There is no provision that specifies such a gain for LLPs since it is new to the legal system.

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<sup>37</sup> David Johnston, *Limiting Liability: Roman Law and the Civil Law Tradition*, 70 CHI.-KENT L. REV 1515 (1995).

<sup>38</sup> Robert S. Lopez & Irving W Raymond, *Medieval Trade in the Mediterranean world*, 174 (1955)

<sup>39</sup> Hamilton, *Registered Limited Liability Partnership: Present at the Birth*, 66 University of Colorado Law Review

<sup>40</sup> Narmada Electrodes Pvt Ltd. v. State Bank of India and Anr., CAN 7145 of 2016.

- iv) **Taxation has unlimited liability of the partners:** According to the new provision of §167C of the IT Act every partner of an LLP is made jointly and severally liable until their period of association with the LLP as a partner. There is an exemption to this, only in case of a gross neglect, misfeasance or breach of duty on the part of any particular partner<sup>41</sup>. This goes against the notion of limited liability upon which an LLP is set.
- v) **Conversion of Company:** A business can only be transformed into an LLP if there are no security interests on its properties or in place at the time of application. This clause is a major hindrance in the process of conversion since most have security interest subsisting on assets thus<sup>42</sup>, this restricts the convertibility of such companies. This was taken into cognizance by the court in the cases of Ramasundari Ray v. Syamendra Lal Ray<sup>43</sup> and Vali Pattabhirama Rao.<sup>44</sup>
- vi) **Conversion back:** There is no clause that regulates or confirms the transfer of an LLP back to a partnership or a corporation.
- vii) **Foreign Partner's investment:** There are a range of ambiguities and instances that are ignored by the government as the definition of LLP is still very new to India, whether it is with regard to the provisions of legislation or the procedure. One such problem is the treatment of international partners in an LLP. This may be a boon for the Indian market especially for the LLPs but there's a lot of adjustments that need to be made with regard to Foreign Direct Investment along the same lines. There have been no simultaneous changes that have been made to the Foreign Exchange Management Act, 1999 which still only allow a "company" to receive foreign direct investments in India. This acts as a disincentive for foreign investors to invest in LLPs as they are still waiting for a proper legislation affirming the same to be introduced by the Government.

### **Statistics analysing the popularity of LLPs in India**

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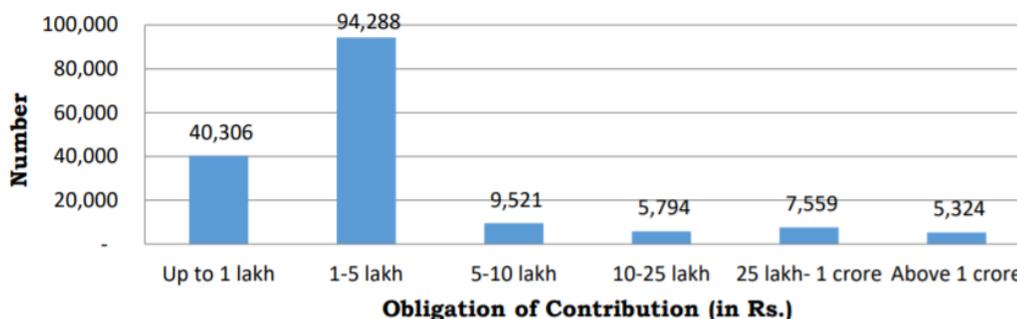
<sup>41</sup> DR. MADHUSUDAN SAHARAY, *Textbook on Indian Partnership Act with Limited Liability Partnership Act*, New Delhi, Universal Law Publishing House, p. 246.

<sup>42</sup> Chaudhry Sharmendra, *Limited Liability Partnership in India*, 17-18 (August 25, 2013).

<sup>43</sup> Ramasundari Ray v. Syamendra Lal Ray, (1947) ILR (2) Cal 1.

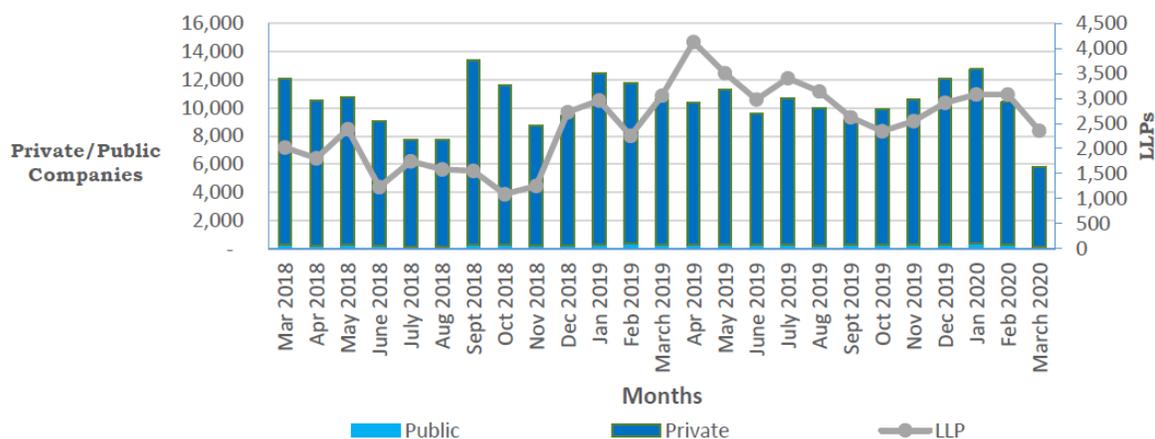
<sup>44</sup> Vali Pattabhirama Rao And Anr. v. Sri Ramanuja Ginning and Rice, (1986) 60 Com Cas 568

**Chart 1: Obligation of Contribution wise distribution of LLPs as on 31<sup>st</sup> March, 2020<sup>45</sup>**



By analysing Chart 1 it can be perceived that the total number of LLPs registered in India as on 31<sup>st</sup> March, 2020 is 1,81,363 out of which about 1,62,792 were active. From this number 1,35,594 LLPs have an obligation of contributing less than or equal to Rs. 5lalkhs each whereas 5,324 have an obligation of contributing above Rs. 1 crore each. This shows that most of the organisations that opt for LLPs are small in nature of business and monetary contribution.

**Chart 2: Trend of Registration of Companies and LLPs- Effect of the Covid-19 pandemic**



By analysing the registration of new companies from the time period between March 2018 and March 2020 it can be seen that monthly registrations of the companies have been the lowest i.e., 5,788 in March 2020 as compared to a number of 10,570 in march, 2019. The same drop was also seen in in the total number of LLPs which was from 2,356 LLPs to 3,056 LLPs. This has been

<sup>45</sup> Ministry of Corporate Affairs, <http://www.mca.gov.in/MinistryV2/indianandforeigncompaniesllps.html>

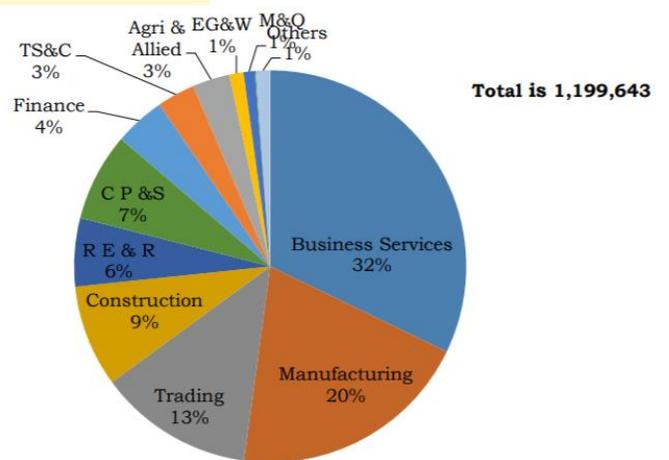
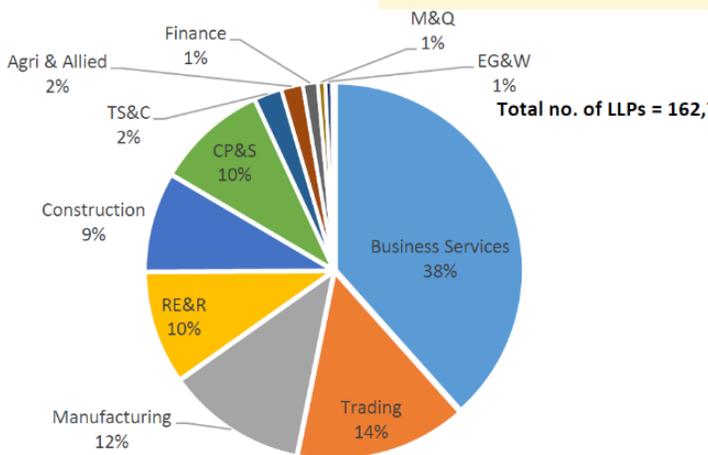
mainly owing to the COVID-19 pandemic and the lockdown measure that were. The LLP graph is almost sloping upwards showing a subtle rise in its popularity above Incorporations.



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**Chart 3: Sector wise LLPs**

**Chart 4 Sector wise Companies as on March 31, 2020<sup>46</sup>**



*'M&Q' is Mining & Quarrying, 'TS&C' is Transport, Storage and Communication, 'CP&S' is 'Community, Personal & Social Services', 'RE&R' is Real Estate and Renting, 'EG&W' is Electricity, Gas and Water*

<sup>46</sup> Ministry of Corporate Affairs, MIC Bulletin Board, [http://www.mca.gov.in/Ministry/pdf/MIBMarch\\_27042020.pdf](http://www.mca.gov.in/Ministry/pdf/MIBMarch_27042020.pdf)

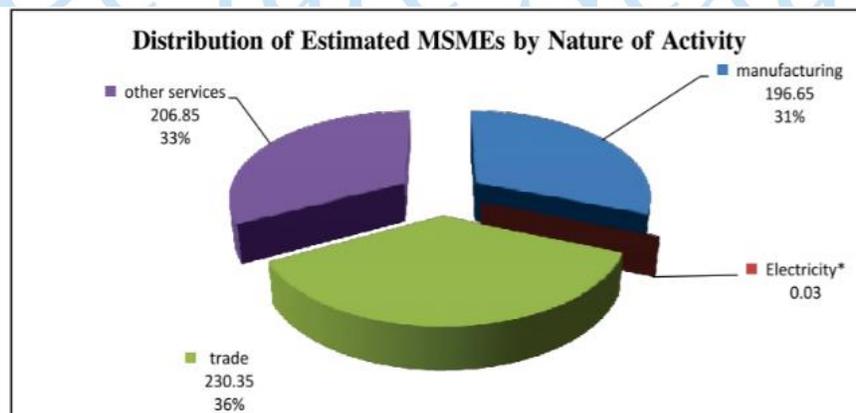
The sector wise review of classification of LLPS as on 31<sup>st</sup> March, 2020 reveal that Business Service sector account for the maximum percentage of LLPs followed by Trading Manufacturing and Real Estate & Renting and for Companies it's again Business Services which is then followed by Manufacturing.

Thus, the major difference between the two business forms lies in the manufacturing and Trading Sectors. LLPs have a higher percentage in Trading whereas Companies in Manufacturing. If you compare this with Chart 5 given below it can be seen that MSMEs to have a higher percentage in the Trade sector over Manufacture thus representing an overlap with LLP's sector wise statistics. This shows that the LLP's popularity and interest amongst the small enterprises is growing with time.



## De Jure Nexus

**Chart 5: Sector wise MSMEs**



*\*Non-captive electricity generation and transmission*

### Conclusion

This paper has attempted to provide a detailed review of the Limited Liability Partnership concept and ideology. By tracing its evolutionary origins to the passage of the LLP Act, it has introduced a variety of improvements in order to be inducted into the Indian scenario by the implementation of the LLP Act, 2008.

It can be concluded that features that enhance the ease of doing business, such as no minimum capital requirement, separate legal identity, and, most importantly, limited liability, make the LLP form of business more advantageous than incorporations, especially for India's large number of small businesses. This is the reason most of the struggling incorporations too are opting for converting to LLPs lately making it the safest bet for investors (local and foreign<sup>47</sup>). However, this paper argues that with a hybrid form of business it is only pragmatic and realistic to believe that all the perks available to one form will not be at the disposal of merged form making it inevitable for some advantages of one form to be sacrificed to fill the gap that exists between a company and a partnership. But all in all, LLPs have served the entrepreneurs and the business owners of the country well. This can certainly be improved fine a certain amount of fine-tuning the LLP Act requires to mitigate some limitations that have been discussed in this paper.

### **Suggestions**

Since, LLP is still a very new concept there exist some loopholes in the form of ambiguities that exist in the LLP Act for which the following are the suggestions that have been made: -

- a) The Finance Act, 2009, should be amended to provide a pass-through provision that exempts any tax and duty due on the transfer of assets from one form of business to an LLP in the case of conversion, just as it does with other types of businesses.
- b) The public needs a better understanding of the definition of limited liability partnerships (LLPs) so that they can make informed decisions on whether to use this arrangement and how to assess its functionality.
- c) There should be some type of set cap/limitation to the number of partners an LLP can comprise of since the liability of all these partners are limited. This will avoid any lack of coordination and conflicts that may arise in the future.
- d) There is a requirement of more provisions in order to regulate the winding up and dissolutions of LLPs.
- e) Daily checks should be performed to ensure that LLP owners are not exploiting their benefits. For such purposes, an inspecting body can be created.

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<sup>47</sup> Foreign Direct Investment in Limited Liability Partnerships,  
[http://www.llponline.in/foreign\\_investment\\_in\\_llp.php](http://www.llponline.in/foreign_investment_in_llp.php) (December 23, 2011).

- f) A clause for the LLPs' conversion back to sole proprietorships should be drafted. The position of tax liability should be made clearer after a conversion of an enterprise to LLP takes place.
- g) Exemption from Capital gains taxation should also be provided under Section 47<sup>48</sup>.
- h) The role of the Foreign Exchange Management Act of 1999 in relation to foreign partners' investment in an LLP should be explained in order to give these foreign investors more confidence.



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<sup>48</sup> §47, Income Tax Act (1961).