WHETHER THE REGISTRATION OF PARTNERSHIPS SHOULD BE MADE MANDATORY

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ABSTRACT

Over the course of this paper it can be realised that the registered firms (or the firms which resembled the modern-day registered firms) have been kept on a higher pedestal, right from ***Islamic Jurisprudence*** *which had the concept of the* ***Musharakah Partnership*** *to the* ***Hanse League****- an incidental coming together of cities for their mutual benefit and security, which also meant the mutual sharing of profits.*

This paper also ***compares and contrasts Registered and Unregistered Firms*** *and highlights the disadvantages which come with non-registration. Any person would rather be doing no business instead of indulging in any sort of business being conducted by an unregistered partnership, which can disappear at given point of time. It is quite difficult to trace such an organization as they leave behind no paper trail.*

The concept of ***Limited Liability Partnership*** *has also been looked into in this paper. Even while looking at a couple of case laws, it can be seen that the Courts are subtly hinting at mandatory registration.*

Hence, the paper is concluded by suggesting that a change in the Partnership Act is necessary in order to keep up with the needs of booming economy that India is.

INTRODUCTION

The topic being discussed in this paper is whether or not it should be made mandatory to get a partnership firm to be registered. The Indian Partnership Act[1] provides for an option to the partners

[1] Act IX of 1932.

of getting their firm registered. While it is not necessary to register a partnership firm as there are no penalties for non-registration, it is advisable to get the firm registered as non-registration would result in the deniance of a lot rights. Section 58 and 59 of the aforementioned act deal with the provisions with regard to the registration of a partnership firm.

Section 58[2] of the Act talks about the Application that is to be made for the Registration of a Firm. Details such as the name of the firm, the area of business of the firm etc. are to be given to the Registrar at the time of the application for registration. The information being provided must be signed by all the partners.

Section 59[3] of the Act is applicable when the Registrar is satisfied that all the conditions mentioned in the previous section have been fulfilled. After that, the Registrar records an Entry of Statement in a register called the Register of Firms. The firm registered as such shall also have to use brackets and the word (Registered) immediately after the name of the firm.

Where the principal place of business was mentioned but not the branch office, the court said that it did affect the maintainability of the suit.[4] The requirements of registration becomes satisfied only when not only the firm is registered but also when the names of all the partners are there in the Register of Firms.[5]

The Registrar then issues under his hand a certificate of registration. When the formalities prescribed by Section 58 have been compiled with, the Registrar becomes bound to register the firm. He cannot refuse it simply on the ground that the firm has still not commenced business.[6]

Registration of Firms is not compulsory, yet, due to the existence of provisions such as Section 69 of the aforementioned act, the repercussions associated with non-registration are too heavy a burden to be carried out by a firm, if it is constituted by persons of ordinary prudence. For example,

[2] Act IX of 1932 § 58.
[3] Act IX of 1932 § 59.
[4] Prayagchand Hariram v. Deota Cloth Centre, (2004) 1 Mah. L.J. 250 (Bom).
[5] *Avatar Singh, Business Law*.
[6] Registrar of Firms v. Tarun Manna, A.I.R. 2010 Cal. 79.

the risk of not being able to recover a particular sum of money owed by a third party to the unregistered firm is too great a hindrance for the firm to avoid and take a shortcut on the registration aspect.

REGISTRATION AND NON-REGISTRATION: COMPARATIVE ANALYSIS

The Partnership Act does not consist of any provision which directly calls for mandatory registration of firms, but, Section 69[7] of the Act is paid heed to, then it will be amply clear that the Non-Registration of a firm was looked down upon by the drafters of the statute. The disabilities which are associated with non-registration are so much of a hindrance that the unregistered firm construed as per this section will be quite ineffective in the ordinary conduct of its business and might even witness exponential and unprecedented instances of incurring losses due to the failure of the firm at the most basic of fronts such as the non-enforceability of a very basic right such as the disability in enforcing the provisions of a contract between the firm and any third party.

No individual from an unregistered firm can implement his rights under the association contract against either the firm or any present or past individual from it, nor can the firm sue its clients on their agreements. The firm stays subject to be sued by people outside it, and can't argue a set-off. Suits for disintegration of the firm, and the forces of authority chosen ones under the Insolvency Acts, are absolved from the disallowance.[8]

The following restrictions are put up on an unregistered firm so as to put more weight on the importance of registration and also in order to promote mandatory registration in a very subtle manner.

- No suit among the partners of the firm- The rights and liabilities arising out of the Act cannot be enforced against the partners of a firm whose name is not on the Register of Firms.
- No suit against any third party- This again is prohibited by the virtue of Section 69 and only the partners whose name is also explicitly mentioned on the Register can have the capacity to sue.

[7] Act IX of 1932 § 69.
[8] http://www.legalserviceindia.com/articles/rn.htm

- No right to counter claim or to claim setoff- The term setoff means an item or amount that is or may be set off against another in the settlement of accounts. It is a claim by the firm which would reduce the amount of money payable to the claimant. Such a right is not bestowed upon an unregistered firm as it is a right arising out of a contract, which in itself is unenforceable due to non-registration.
- No right to enter into arbitration proceedings- The question whether an unregistered firm can initiate arbitration proceeding was answered in a negative fashion in the case of *Jagdish Chandra Gupta Vs. Kajaria Traders (India) Limited.*[9] In this case, the arbitration proceedings were barred in spite of the existence of an explicit arbitration clause.

Hence, as stated before, any man of ordinary prudence would support the notion of getting their firm registered as it something very essential for the firm to function like a well-oiled machine and to avoid dysfunctioning due to mere non-registration. Keeping these aside, there also exist some other rights which are also enforceable even if the firm in question is not registered. Some of these rights are also a negative inhibition on the firm.

For example, even if the firm is unregistered, it cannot get away if it had committed any wrong towards a third party, as it cannot escape being sued by the third party on the mere basis of the fact that the firm did not indulge in the process of registration. The unregistered firm cannot avoid a sue by any partner for the dissolution of the firm, or for the accounts of a dissolved firm or any right to realise the property of the dissolved firm.

Any rights which the unregistered firm is entitled to are enforceable only if they are not arising out of a contract. The partners of an unregistered firm can sue each other for a suit for damages arising out some misconduct on the part of a partner or a former partner, unless and until its genesis is not carried out in a contract.

The registering of a Partnership Firm also mandates the signing of the essential Partnership Deed. The Partnership Deed also brings some rigidity to the Partnership with regard and protecting the

[9] Jagdish Chandra Gupta v. Kajaria Traders (India) Limited, 1964 A.I.R. 1882.

best interests of the business and the partners as well. Some of the essential elements of the deed are-

- Profit-Sharing Clause: This quite a fundamental clause, in no matter what kind of Partnership it is, as it lays down how will the dividends arising out of the partnership will be divided and how will the quantum of loss will be absorbed by the partners.
- Capital Contribution Clause: This clause calls for what amount of money or other capital will be invested by the partners when they are constituting the partnership firm and to what share will they be entitled to when the partnership is dissolved or the particular partner desires to exit the firm.
- Dispute Resolution Clause: In case where there arises a dispute within the partners of the firm, instead of going to the Courts and splashing mud on the name of the firm, they can go and settle their disputes through Arbitration and Mediation.
- Retirement Clause: It can also be combined with the Termination Clause and lays down the criterion which need to be fulfilled in order to attract the provisions of termination from the firm. It also lays down the age of retirement and the consequences which would follow with the termination and retirement such as the return on the share capital which they would have contributed in the first place.

Hence, it is not an absolute snatching away of rights when the firm is left unregistered. But the debris of right which is left as a virtue of non-registration are generally something which enables the protection of the third parties or partners against each other due to misconduct of the firm or its partners. Due to the existence of such stringent provisions with regard to the non-registration of firm, it is more or less mandatory to get a firm registered. Such mandatory registration is just awaiting a nominal official inclusion into the Partnership Act.

MUSHARAKAH PARTNERSHIP:
A COMPARISON WITH ISLAMIC JURISPRUDENCE

Islam is one of the most ancient religion on the face of this planet. It is the second largest religion on Earth. This blend of primitiveness with mass-following lead to the development of various concepts within the religion which resembles various modern concepts. Such resemblance is also carried out between the modern mode of association, i.e., partnership and the concept of Musharakah in Islam.

Musharakah has been defined as a classical partnership agreement. All parties involved contribute to towards the financing of a venture. The parties share profits on a pre-agreed ratio while losses are shared according to each parties equity participation. The ideology behind such a venture is that in Islam, one cannot lose what they did not contribute. Management of the venture is carried out by all, some, or just one party member.[10]

Musharakah has the basic structure of that of an enterprise, resembling the loss and profit sharing model in a joint enterprise or partnership structure in Islamic Finance. Since the concept of interest has been outlawed in Sharia Law, the concept of Musharakah acts as a sort of a loophole in the context of earning profits through lending or investing. Musharakah calls for the financer to enjoy profits on his investment by entitling him to a portion of profits earned at a predetermined rate. One can realise that Musharakah is the truest form of partnership as when there occurs an event which would lead to the organization incurring loss, all the partners would have to bear the burden of the loss together, unlike in the traditional creditor model, where the sole responsibility of the creditor is to earn profits.

It has been defined by the Majallah Al-Ahkam-i-Adliyah as:

[10] http://www.islamic-banking.com/Musharakah_sruling.aspx

"an agreement for associations on the condition that the capital and its benefit be common between two or more persons."[11]

Musharakah is a word of arabic origin and it shares common parlance with *Sharkah*, as pointed out by Maulana Taqi Usmani.[12] The term *Sharkah* points towards the word *Shirkah Al-Aqd,* which means a partnership in business affected by a mutual contract.[13]

It can be easily observed that the term Musharakah has been associated with various terms and principles which indicate that the Partnership being discussed in the Islamic Jurisprudence had the same rights and liabilities as that of a registered firm. The explicit mention of the term mutual contract is further indicative of a parallel existing between Musharakah and a Registered Partnership Firm.

This idea is propounded on the back of Section 69 of the Act. This Section, as mentioned before, mandates for the enforcement of contractual rights and obligations only when the partnership firm is registered. Hence, if parallels are drawn from the historic Musharakah and the modern day partnership, even a Musharakah would have to be registered after the enactment of this Act so as to satisfy the principles of Islam identified with any Musharakah.

[11] The Mejelle: Majallah el-Ahkam-i-Adliyyah and a complete code on Islamic Law, Lahore, 1969, p. 217.
[12] M. T. Usmani, An Introduction to Islamic Finance, Idratul Ma'arif Karachi Pakistan;, pp. 48- 49.
[13] *Id.*

LIMITED LIABILITY PARTNERSHIP

In a Limited Liability Partnership, the registration of the firm is mandatory. Section 14 of the Limited Liability Partnership Act deals with the effects which are accompanied with the Act of registration of an LLP Firm. The Section states the following:

"On registration, a limited liability partnership shall, by its name, be capable of--

a. suing and being sued;

b. acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

c. having a common seal, if it decides to have one; and

d. doing and suffering such other acts and things as bodies corporate may lawfully do and suffer."[14]

The Limited Liability Partnership is the midway point between a Private Limited Company and a Partnership Firm. The most basic and distinct feature of a Limited Liability Partnership, as the name suggests, is that the liability associated with the firm is limited only to the capital of the firm and not to the partners of the firm. A general partnership is a partnership in which the partners share equally in responsibility and liability. The primary distinction between an LLP and a general partnership is that a general partnership has no legal existence separate from the partners who constitute it, while an LLP exists as a legal entity separate from its partners.[15] In a general partnership, every partner is liable jointly along with the other partners of the firm, and also severally, for all acts of the firm done while he is a partner.[16] In an LLP, however, no partner is made liable for the actions of another partner beyond his/her share in the partnership. Further, unlike a partnership, members of an LLP are not agents of each other.[17]

[14] Act VI of 2009.
[15] LLP Act, 2008, §3(1).
[16] Indian Partnership Act, 1932, §25.
[17] *Benefits of LLP*, available at http://www.llphelpline.com/benefits-of-llp.htm (Last visited on December 26, 2011).

Such an additional protection can only be guaranteed when the firm and the partners have been duly registered. For example, if there existed an unregistered limited liability partnership, it would have been quite difficult to ascertain as to what would constitute the firm capital which would be claimable under an action brought by the third party, and what would sum up to the personal property of the partners which cannot be brought under any claim by a third party against the firm.

The registration of an LLP is also mandated by the virtue of the fact that no partner would be liable on account of the independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.

LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. Indian Partnership Act, 1932 shall not be applicable to LLPs and there shall not be any upper limit on number of partners in an LLP unlike an ordinary partnership firm where the maximum number of partners can not exceed 20, LLP Act makes a mandatory statement where one of the partners to the LLP should be an Indian.

A very pertinent question which needs to be answered after the discussion above is that the concept of a registered partnership firm should be rendered useless after the inception of a Limited Liability Partnership. The reality is far from it as there exist various phenomena which still hold a Registered Partnership over a LLP in some regards. For example, a Partnership Firm is not required to file its annual accounts with the Registrar of the Firms unlike a Limited Liability Partnership or even a Company. Another advantage that a Partnership can boast of having over an LLP is that a Partnership is much more easier to start than a LLP. A Partnership can be initiated even without registration and can have a more relaxed atmosphere during the early stages of the Partnership. But in a LLP, the legal framework has to be upheld and kept in the highest regard from the get go.

Martin Luther King, Jr has said that *"Nothing in all the world is more dangerous than sincere ignorance and conscientious stupidity."* For instance, let A be an ordinary man. He wants to conduct business with a mining company. Company X and Company Y are two such companies

which would fulfil the requirements put forth by A. On one hand, Company X is actually a Partnership Firm registered under the Partnership Act or for that matter, it can even be an LLP. And on the other hand the other entity, Company Y is an unregistered firm.

A is a man of ordinary prudence and would look after his own best interest following the norms established by logic and basic human intellect. Therefore, in the ordinary course of nature, he would do business with Company X as it would be a more secure option rather than risking his hard earned money by conducting business with Company Y, an entity which has no official record of existence with the government. Associating with such a partnership would be somewhat similar as it is a sincere ignorance of rights which would be available otherwise to A in case of the other party being a registered firm. Any business done with Y could massively backfire as it would be very difficult to prove the existence of such a firm or any of the wrongdoings done by it.

Not only does the act of registration vests all these advantages on the partners of the firm, but moreover, it also adds an onus with regard to the accountability of the partnership in the eye of the public. An LLP is viewed by the public as an accountable and efficient business model due its mandatory responsibility of engaging with its consumer base and avoiding it on the mere ground of non-registration. On the other hand, the general notion that the public has developed is to associate a partnership, essentially a non-registered one, as something which would have kept the consumers in the dark. The entire aforementioned argument is based on the ground that there must be some very shady reason, which is kept behind the curtain by the Partnership Firm, so as to not to enjoy the perks which come as +1 basis with the registration of the firm. The public is smart enough to draw parallels between sacrificing the rights of a registered firm and that of the escapade from certain cases of liabilities due to non-registration. Such an act would most definitely plant seeds of suspicion within the minds of an ordinary man as this can be directly interpreted as a naive attempt by the firm in protecting itself from some sort of almost pertinent liability which is set to arise and would lead to action taken by the consumers attributed to the partnership firm.

HISTORY OF PARTNERSHIPS: WITH SPECIAL EMPHASIS ON THE HANSEATIC LEAGUE

Hanseatic League, also called Hansa, German Hanse, organization founded by north German towns and German merchant communities abroad to protect their mutual trading interests. The league dominated commercial activity in northern Europe from the 13th to the 15th century. (*Hanse* was a medieval German word for “guild,” or “association,” derived from a Gothic word for “troop,” or “company.”)

Once upon a time there was a northern, medieval phenomenon as much the subject of universal myth and curiosity as that of the enchantress city-republics flourishing down south: the Hanseatic League of the mid-13th to 16th centuries. “The Hansa“ (old German for “associations“) as it was known, began as a treaty between Lübeck and Hamburg “to clear the road of pirates and robbers between the Elbe and the Trave“ [a river in northern Germany with its delta at the Baltic sea]. It gradually increased to add Cologne and Bremen, later expanding to Gdansk, Riga and Novgorod, finally incorporating Bruges, Brunswick, and many satellite-cities throughout Scandinavia.[18]

The league came into being when those various associations coalesced, a process encouraged by the natural interdependence of trade in these regions and largely initiated and controlled by those towns, notably Lübeck, which had a central position and a vital interest in trade between the Baltic and northwestern Europe.[19]

Hansa societies worked to acquire special trade privileges for their members. For example, the merchants of the Cologne Hansa contrived to convince Henry II of England to grant them (1157) special trading privileges and market rights which freed them from all London tolls and allowed them to trade at fairs throughout England. The "Queen of the Hansa," Lübeck, where traders trans-

[18] https://mises.org/wire/hanseatic-league-empire-commerce
[19] https://www.britannica.com/topic/Hanseatic-League

shipped goods between the North Sea and the Baltic, gained the Imperial privilege of becoming an Imperial city in 1227, the only such city east of the River Elbe.

The Hanseatic League was envisioned as a trading partnership which would work on the modern day principles of partnership, i.e., working coherently and investing mutually so as to enjoy mutual gains and share losses lessening the burden each individual would have had otherwise.
Even in such an organization, the partners would have known about the presence and position of other partners. All the activities of the partners would be governed and regulated by a set of rules and regulations, be it the entry and exit of partners or the collective decision which the league would have taken.

All these aforementioned aspects are enunciated by the provision of registration in the Act. These aspects are what gave a sense of rigidity and definitiveness to the Hanseatic League. The provision of the trade partners being brought in together and made aware as to how will they themselves, and other partners as well, will function can be seen as a direct implication of entering the name of a partner into the Register of Firms by the Registrar. Much like the provision in the Partnership Act, the partners in the league had to attend the board meeting of the league, which was represented by the Diet. The presence of water and trade routes were bare minimum qualification for a city to be a part of Hanseatic League, which can be parallely viewed with the grounds a person must satisfy in order to be a partner of firm, per se, being of sound mind and not being anywhere near insolvency.

Apart from the Hanseatic League, the instances of registered partnership firms who had their genesis from a contract have been aplenty. Throughout the ancient Hindu texts of Smritis etc., there have been mentions of partnerships similar to that as mentioned in the Act. Though these texts had more of a moralistic approach towards the concept of partnership, for example, they called for the fact that a partner should be true and faithful to the other partners, it all boiled down to the same thought process which dictates to make the registration of a partnership firm mandatory.[20]

[20] *Rama Jois, Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System*.

A nearby examination of commerce in Medieval Europe demonstrates that various huge credit based exchanges were not bearing interest. Henceforth, sober mindedness and good judgment required a reasonable pay for the danger of loaning cash, and a pay for the cost of loaning cash without utilizing it for other productive purposes. Keeping in mind the end goal to dodge the usury laws enacted by the Church, different types of reward were made, specifically through the boundless type of association called *'commenda'*, famous with Italian vendor bankers.[21] Florentine trader banks were certain to make a positive profit for their advances, however this would be before considering dissolvability dangers.

In the Middle East, the *'Qirad'* and *'Mudarabas'* organizations created when exchange with the Levant, in particular the Ottoman Empire and the Muslim Near East, prospered and when early exchanging organizations, contracts, bills of trade and universal exchange mechanisms were established. After the fall of the Roman Empire, the Levant exchange resuscitated in the tenth to eleventh hundreds of years in Byzantine Italy. The eastern and western Mediterranean shaped piece of a solitary business human progress in the Middle Ages, and the two locales were monetarily related through exchange.

The shadow of a Partnership has been cast upon the world throughout the turn of time and has been something so fundamental to the basic social character of the human race, i.e., the tendency of the human being to interact and associate with other humans around him or her in order to form homogenous and coherent community, which facilitate the survival of the race in the long run, much like the partners come together with their varied amount of investments so that they could mutually earn profits and sustain themselves and their organization in the long run.

[21] Jean Favier, Gold & Spices: The Rise of Commerce in the Middle Ages, Holmes & Meier Pub; 1st US edition, July 1998

CASE LAWS WITH REGARD TO REGISTRATION

The Maharashtra State Legislative Assembly enacted a State Amendment to Section 69 of the Partnership Act. It introduced a new sub-section 2(A) which read as:

"No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realize the property of a dissolved firm shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm:

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realize the property of a dissolved firm."

Till the introduction of sub-section (2A), a partner in a firm could file a suit for dissolution of an unregistered partnership firm, or for accounts of the dissolved firm, or to recover the properties of the dissolved firm. With the coming into force of the sub-section in 1985, a partner in an unregistered partnership firm in Maharashtra could not file even those types of suits. The question regarding the constitutionality of the sub-section was referred to the Bombay High Court, which upheld the section. An appeal was preferred against this judgment before the Supreme Court.[22]

The Supreme Court (Markandey Katju and G.S. Singhvi JJ.) struck down the impugned sub-section (2A) as violative of Articles 14, 19(1)(g) and 300A of the Constitution. The Court reasoned that not allowing a partner to file a suit for accounts and recovery of property essentially deprived a partner of an unregistered firm of his right to property in the firm without any compensation. Therefore, the sub-section was in violation of Article 300A of the Constitution ("No person shall be deprived of his property save by authority of law"). Following a line of precedents, it was held that "law" contemplated in Article 300A cannot include a law which is arbitrary in nature. Additionally, the stringency of the law meant that it violated Articles 14 and 19 as well.[23]

[22] https://indiacorplaw.in/2009/03/partnerships-and-effects-of-non.html

[23] *V. Subramanium v. R. Rao (Civil Appeal 7438/2000; MANU/SC/0417/2009)*

The relevant part of the judgement read as *"The effect of the Amendment is that a partnership firm is allowed to come into existence and function without registration but it cannot go out of existence (with certain exceptions). This can result into a situation where in case of disputes amongst the partners the relationship of partnership cannot be put an end to by approaching a court of law. A dishonest partner, if in control of the business, or if simply stronger, can successfully deprive the other partner of his dues from the partnership. It could result in extreme hardship and injustice. Might would be right. An aggrieved partner is left without any remedy whatsoever…the restrictions placed (by the impugned section) are arbitrary and of excessive nature and go beyond what is in the public interest. Hence the restrictions cannot be regarded as reasonable."*[24]

The scope of the sub-section 69(1) was examined by the Bombay High Court in *S.H. Patel v. Husseinbhai Mohd*.,[25] a case where the action was between two former partners to enforce an agreement restraining the outgoing partner from carrying on in some area any business similar to that of the firm and the court had to examine whether such suit was maintainable the firm being unregistered.

Reliance was placed by the defendant upon an earlier decision of the Bombay High Court In that case the plaintiff and defendant had been partners with equal shares. On dissolution, the accounts were made up and the defendant paid the plaintiff Rs 600 on account of income tax, which it was, estimated the firm would be liable to pay. Subsequently an assessment of Rs 3400 was made, which the plaintiff paid and sued the defendant for half the amount minus Rs 600 already paid. The firm was not registered and the plea of absence of registration was upheld as the plaintiff's cause of action was the original contract of partnership and not any new agreement to pay half the money. The right which the plaintiff seeks to enforce is not the right vested in, or acquired by, him as a partner, but a right acquired by him under a distinct subsequent agreement. This agreement does not in any way regulate the rights of partners as such, i.e., it does not in any way regulate their actual rights and obligations as partners, but is, on the contrary, .a new and independent right furnishing an entirely different cause of action.

[24] Id.
[25] A.I.R. 1937 Bom. 225.

It appears that when sub-section (3) draws in the provisions of sub-sections (1) and (2), it draws in the whole of those provisions including the reference to proceeding in court, and when it says that the provisions of the earlier two sub-sections shall apply 'also' to a claim of set-off or other proceeding, it seems to make it abundantly clear that the proceedings it is contemplating are of the same class as those in sub-sections (1) and (2).The Supreme Court has now by its decision in *Jagdish Chandra Gupta v Kajaria Traders (India) Ltd*[26] settled the controversy in favor of the view that arbitration proceedings would also fall within the sweep of the words "other proceedings". The facts were: A clause in a deed of partnership provided that in case of any dispute between the partners; the matter would be referred to arbitration. A dispute having arisen, one partner appointed an arbitrator to which the other partner gave no response. An action was then commenced to enforce the arbitration clause of the agreement.

[26] Supra Note 9.

CONCLUSION

In this Paper, there has been an elaborate comparison between a Registered Partnership Firm and an Unregistered Partnership Firm, which highlights the disadvantages which are associated with non-registration. The concept of an Limited Liability Partnership was also looked into, rendering the stand further against the Unregistered Partnership Firms.

Over the course of this paper it can be realised that the registered firms (or the firms which resembled the modern-day registered firms) have been kept on a higher pedestal throughout history, right from Islamic Jurisprudence which had the concept of the Musharakah Partnership to the Hanse League- an incidental coming together of cities for their mutual benefit and security, which also meant the mutual sharing of profits.

Any person of sane mind would rather be doing no business instead of indulging in any sort of business being conducted by an unregistered partnership, which is no less than a ghost as it can disappear at given point of time. It is quite difficult to trace such an organization as they leave behind no paper trail, leave alone an entry on the Register of the Firms.

Even while looking at a couple of case laws, it can be seen that the Courts are subtly hinting at mandatory registration but at the same time, they are unwilling to impose it on the people with an iron clad fist. Therefore, the non-mandatory nature of registration of a firm only results in creation of inefficient and powerless partnership firms, which can prove to be a huge hindrance on the path of India in becoming a present age economical force to be reckoned with.

Hence, all the effort put into to prove that a registered firm is mutually beneficial for everyone, all of it will be up to no avail if no changes are suggested to change the existing structure. Instead of putting a detrimental effect with regard to non-registration of a firm by the virtue of Section 69 of the Act, the statute should be amended so as the registration of every firm is made mandatory.