
UNREGISTERED PARTNERSHIPS IN INDIA: A CRITICAL ANALYSIS OF LEGAL FRAMEWORK, JUDICIAL APPROACH, AND REFORM PROPOSALS

M. Revanth Reddy, Symbiosis Law School, Hyderabad

Banoth Ashish Meera Naik, Symbiosis Law School, Hyderabad

PARTNERSHIP AND ITS SIGNIFICANCE IN BUSINESS

A partnership under the Indian Partnership Act, 1932 is defined as a business structure which involves the relationship between two individuals agreeing to share profits from a business carried on by all partners or any one acting on behalf of others. ¹This voluntary business association has been foundational to the existence of India's commercial ecosystem particularly for small and medium sized industries and service businesses like law or financial service firms. There must always be three prime elements which must mutually exist for any partnership to come into existence:

1. AN AGREEMENT

A partnership is fundamentally based on an agreement between two or more individuals, which can be either express or implied. *This agreement is not merely a formality; it is the integral element of the partnership relationship and must reflect a mutual understanding and intention to collaborate in business.* An oral or a written agreement, with a written document termed as Partnership Deed for establishing clarity regarding terms and conditions of the partnership, which stipulates rights, liabilities, ratios in profit-sharing among partners, as well as provisions for the admittance and withdrawal of partners are extremely important to avoid future civil litigation.

The partnership is born out of a contract rather than by status or blood relations. Thus, it differs from another form like a Hindu Undivided Family (HUF). The fact that this agreement is

¹ Indian Partnership Act, Section 4, No. 9 of 1932 (India).

voluntary also goes to highlight that all partners should be willing parties to the terms agreed upon in the contract.

2. DIVISION OF PROFITS OF BUSINESS

The second essential element of a partnership is the sharing of profits derived from the business. The primary motive behind forming a partnership is to conduct business with the intention of generating profits. The partnership must be established with the existence of a business entity that is operational. A "business" refers to any trade, profession, or occupation that aims at making profits. In cases where people just share rental income from property ownership and do not intend to generate profits, then no partnership exists. Partners must clearly agree on how profits or even losses will be split. While partners are required to share profits, it is critical to understand that partners are not obliged to share losses unless so agreed upon in the agreement. For example, if A and B decide to sell cotton bales together and agree to share profits equally, they enter a partnership for that business venture.

3. OPERATING THE BUSINESS

The third requirement for establishing a partnership is that the business must be actively carried out by all partners or by one or more partners acting on behalf of all. This principle stipulates that each of the partners acts as an agent and principal as far as the business is concerned. Every act performed by one of the partners with a view of furthering the business binds all partners. Hence, if one partner enters into an agreement on behalf of the firm, then all partners are held liable to that contract.² The substance of partnership lies not only in the sharing of profits but also in mutual agency. If mutual agency does not exist, or the partners cannot exercise authority over each other's property, the relationship cannot be classified as a partnership. In this regard, profit-sharing, though prima facie evidence of a partnership, *may be rebutted by demonstrating that mutual agency does not exist.*

With regards to partnerships, The Indian Partnership Act, 1932 makes a reasonable classification between registered and unregistered partnerships. In the legal sense, a registered partnership is formally recognized and have legal status. Hence, they are subject to litigation. Partners can register their firm with Registrar of Firms in the state where the firm is located. It

² Indian Partnership Act, Section 18, No. 9 of 1932 (India).

is important to note that registration can be done at any point during the firm's operation.³ The primary power that registered partnerships have is that they can file lawsuits against third parties and enforce their partnership rights arising out of their partnership agreement. On the other hand, unregistered partnerships operate without formal registration completely based on an agreement between the partners. These partnerships do not have a legal status as separate entities which ultimately leads to significant disadvantages in business operations. In this paper we are concerned with the liabilities faced by partners in unregistered firms which will be addressed in detail below.

RESEARCH OBJECTIVES

The primary objectives of this paper include :

- To analyze the liability of partners in unregistered firms.
- To evaluate the impact of legal restrictions on such partnerships.
- To suggest reforms based on comparative legal perspectives.

LITERATURE REVIEW

The Indian Partnership Act, 1932 has played an essential role in governing partnerships, mainly unregistered partnerships in India. The paper attempts to discuss and analyze the present literature and the existing precedents that would lead us to an understanding of the nature of an unregistered partnership and their standing in India's commercial context. Section 69 of the Partnership Act provides a clear idea surrounding unregistered partnerships in India. According to Clear Tax, 2024, we discover the online procedure requirements for registering a partnership firm. The main implications arise through Section 69 (1) and 69 (2) of the Partnership Act, placing significant restrictions upon unregistered partnerships along with their ineffectiveness in enforcing rights. The judicial attitude towards unregistered partnerships has had a long time evolution. Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd. (1964) is a landmark case which provided the initial rigid interpretation about the rights of unregistered partnerships. More recent judgments, however, have evolved into more refined interpretations. In Umesh

³ ClearTax, Partnership Registration in India Explained (26 July 2024) <https://cleartax.in/s/partnership-registration-india-explained>.

Goel v. H.P Coop. Group Housing Society Ltd. (2016), the Supreme Court had for the first time granted access to arbitration proceedings to an unregistered partnership.

The Fourth All India Census of Micro, Small & Medium Enterprises (Unregistered Sector) as produced by the DCMSME gives very vital data on the scale of unregistered business activity in India. The census reveals that about 57 percent SSI units are based in the rural areas and ten states alone account for over 75 percent of these enterprises⁵. That concentration demonstrates economic significance with big regulatory challenges for unregistered partnerships. The United Kingdom is different in its approach to partnership regulation, under the Partnership Act 1890. According to Gov.UK, in the UK, the system obliges partnerships to register with HMRC for basically tax purposes but this registration has no bearing on their basic legal rights. As pointed out in the analysis of the UK India Business Council, the key distinctions in the entry structures into each of the two markets are found here. New researches conducted by Patadiya (2024) have determined a growing trend wherein Indian companies seek other forms of alternative dispute resolution. The trend is further strengthened by the FICL and CTIL Survey, 2023, that report of theirs has underscored arbitration to be reasonably cost-effective and more flexible procedurally than the usual litigation. Judicial pronouncements of late, Supreme Court judgments have been providing ways out of these pitfalls with the unregistered partnership. Judgment in *M/s Tamil Nadu Cements Corporation Limited v. Micro and Small Enterprises Facilitation Council & Another* (2025) and *Sunkari Tirumala Rao & Ors. v. Penki Aruna Kumari* (2025) reveals a pattern of judicial appreciation for regulatory compliance in relation to business facilitation.

RESEARCH METHODOLOGY

This research study makes use of an exhaustive doctrinal research methodology in the analysis of the legal framework, judicial interpretations, and comparative perspectives surrounding unregistered partnerships in India. The main sources of information analyzed for this paper included the Indian Partnership Act of 1932, with special emphasis on Section 69 and its implications for unregistered businesses. There was thorough analysis of two landmark Supreme Court judgements concerning unregistered partnerships with emphasis on the current judicial trend. Secondary sources include a comprehensive review of academic literature based on unregistered partnerships, dispute resolution and examination of statistical data of Small Scale Industries (SSI) Sector. This paper shall present a comparative legal analysis of the

partnership laws of India and United Kingdom as well as the regularity framework governing unregistered partnerships between the two jurisdictions. The paper has employed a qualitative research approach, which has focused on interpretative analysis of legal provisions and judicial decisions. There was systematic evaluation of legal principles and their practical implications. A critical analysis of the justification for legal restrictions and formulation of reform proposals based on comparative legal analysis. This is an approach that would further allow a holistic understanding of the legal issues related to unregistered partnerships and serve as a basis for proposing workable reforms to strengthen the legal framework concerning unregistered partnerships in India. The rationale behind the legal restrictions makes for a very fertile ground of critical examination and, therefore, reform proposals could be developed that are grounded on comparative legal analysis. This will allow for a robust understanding of the legal challenges faced by unregistered partnerships and provide a basis for suggesting practical reforms to improve the legal framework surrounding unregistered partnerships in India.

THE LEGAL FRAMEWORK FOR UNREGISTERED PARTNERSHIPS

Section 69 of the Indian Partnership Act defines unregistered partnerships. It also addresses the implications of non-registration for partnership firms.

Section 69(1) is extremely important because it bars legal action for and against an unregistered partnership firm. Subsection (1) states that no suit can arise out of a contract or conferred by the act in any court of behalf of any partner in an unregistered firm against the firm itself or against any alleged person to be or to have been a partner in that firm. In lucid language, if a partnership is not registered, partners do not have the option of seeking legal remedies from the court. Contractual disputes in this case, would fall on deaf ears and there is nothing the courts of justice would be able to do for the firm.⁴ Subsection (2) further prohibits claims made by the firm against third parties. An unregistered firm cannot sue a third party to enforce contractual rights hence limiting the ability of the firm to operate in commercial environments.⁵ The only exceptions under this provision which allow the partners to initiate legal action are for the dissolution of the partnership or settling the accounts among partners regardless of registration status. This ensures that critical issues regarding partnership can still be addressed

⁴ Indian Partnership Act, Section 69 (1), No. 9 of 1932 (India).

⁵ Indian Partnership Act, Section 69 (2), No. 9 of 1932 (India).

legally.

From the bare analysis of the section, we can see only one goal – *to encourage registration of partnership firms*. There are a equally if not more, aspects with respect to statutory gaps considering the implications for unregistered firms. What this overarching goal of registration does is that it creates a barrier for small businesses and startups in the commercial ecosystem, ones which lack knowledge and resources about formal registration process. An argument for this would be establishing training and learning procedures for people but delay ultimately leads to disruption between many potential partnerships. The crux remains the same – that registrations create barriers for small businesses and potential partnerships. The Supreme Court has held a similar view in this matter stating that unregistered MSME'S can still access dispute resolution mechanisms which naturally acquire a legal character under Section 18 of the MSME Act, even without prior registration under Section 8.⁶

The lack of non-registration becomes fatal for business when it comes to funding and growth. With an expansive vision in mind, an amendment to Section 69 to allow partners of unregistered firms to sue each other would be appropriate to ease the burden of registration on people. A partnership firm's primary purpose is always to generate profit. With this as the crux, there can be an exception to Section 69 which permit the recovery of dues for businesses that have gone bankrupt due to fault of one or more of the partners. The recovery of dues can be embedded as a clause within a contract allowing the partners to protect their vested interests in the business. The goal here would be to remove the mandatory character as assumed under Section 69(1) and Section 69(2) of the Partnership Act.⁷

THE JUDICIAL APPROACH

The judicial approach to unregistered partnerships has always been historically rigid in the eyes of the court. It begins with the judgement of Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd. The Supreme Court ruled that the restrictions on suits by unregistered partnership firm cannot initiate arbitration proceedings or sue for rights arising from the contract. The court hence, enforced the limitations set out by Section 69 of the Partnership Act.⁸ The judgement

⁶ M/s Tamil Nadu Cements Corporation Limited v. Micro and Small Enterprises Facilitation Council & Another, (2025) 1 SCC 91 (India).

⁷ Sunkari Tirumala Rao & Ors. v. Penki Aruna Kumari, (2025) 14 SCC 44 (India).

⁸ Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd., AIR 1964 SC 1882.

inherently pointed out the operational inefficiency and the lack of legal protection for the unregistered partnerships. There is however a shift from this rigidity particularly in the Supreme Court ruling in *Umesh Goel v. H.P Coop. Group Housing Society Ltd.*⁹ The pivotal shift in this judgement can be observed in the treatment of unregistered partnerships under the Partnership Act, easing the rigidities imposed by Section 69. As discussed above, Section 69 had previously barred unregistered firms from enforcing contractual rights through way of suit or court proceedings. However, the court made one flexible distinction ruling other proceedings mentioned in Section 69 (3) of the Partnership Act to not include arbitration. This allowed partners of unregistered firms to pursue claims in arbitration despite the lack of any formal registration. This sets the rights of partners of unregistered firms at a better position than before with alternative dispute resolution as a means of redressal without any hindrance caused by registration status.

The restrictions which are imposed by Section 69 in light of the judgements of the Apex Court often result in unequitable outcomes. Every unregistered partnership cannot be said to not have legitimate claim. An unregistered partnership may face a barrier to a legitimate claim and even if they would want to seek remedy from the court they cannot because their case will be rejected on technical grounds, not on the basis of any merit. Here the loss is not only of the unregistered partnership but rather the economy as it had the potential claim relief and further generate revenue.

OPPORTUNITIES IN UNREGISTERED BUSINESSES

A study on the unregistered Small Scale Industries Sector (SSI) were estimated to be around the total size of 9,124,216 Units. In this study based on the SSI Sector, about 57 percent of the units were located in rural areas. Around 75.88 percent of the units in SSI Sector were located in the 10 states viz. Uttar Pradesh, Andhra Pradesh, West Bengal, Maharashtra, Madhya Pradesh, Tamil Nadu, Karnataka, Bihar, Rajasthan and Gujarat.¹⁰ This sheer scale of unregistered SSI's with over 9 million units suggests a substantial rise in economic activity. The concentration of these units in key states which include Uttar Pradesh and Maharashtra

⁹ *Umesh Goel v. H.P Coop. Group Housing Society Ltd.* (2016) 11 SCC 313

¹⁰ *DCMSME, Ministry of Micro, Small & Medium Enterprises, GOVT. OF INDIA, Fourth All India Census of Micro, Small & Medium Enterprises (Unregistered Sector) (2009),*
<https://dcmsme.gov.in/ssiindia/census/ch5.htm>.

indicate the widespread engagement in manufacturing and service sectors hinting at significant revenue generation, even on a small scale.

The fact that so many businesses in unregistered partnerships in the small scale industries sector operate despite the limitations of being unregistered implies a twofold situation – *either a lack of awareness combined with deliberate choice of avoiding regulatory burdens or that the perceived benefits of remaining unregistered outweigh the drawbacks for these businesses*. Lowering initial setup costs or operational flexibility still remain the key to these registering these businesses on a large scale. This points towards an untapped potential even in the case of unregistered partnerships with an ability to boost the formal economy. The opportunities in unregistered businesses often businesses in the small-scale industries sector formed or run by unregistered partnerships. This is latent economic force which has not yet been fully materialized.

COMPARATIVE STUDY WITH THE OTHER JURISDICTIONS

It becomes pertinent to have a brief analysis of have a general understanding of unregistered partnerships across other jurisdictions, as to examine the rights and liabilities in those jurisdictions. This provides us with implications for India, and where India stands in comparison with other countries.

THE UNITED KINGDOM'S LIBERAL APPROACH

The UK distinguishes itself by granting fundamental rights to partners in unregistered partnerships which is primarily governed by the Partnership Act 1890. As per the fundamental rights guaranteed, partners possess full rights without registration requirements, providing complete recognition. There are further no penalties arising out of the absence of recognition.¹¹ What the UK's legal framework essentially does is that it emphasizes on substance over form which minimizes administrative requirements. The approach works because it ensures that the rights flow directly from partnership to relationship of a legal nature irrespective of any registration status. The implications for India are threefold-

- The model serves as a benchmark for evaluating regulatory approaches to partnership rights.

¹¹ Partnership Act, 1890, 53 & 54 Vict., ch. 39 (U.K.).

- It provides a framework for understanding basic partnership principles.
- It offers a unique insight into analysing the liability of partners within unregistered entities.

With that in mind, we can draw a table to highlight the major differences that exist between the Indian and UK Model.

Feature	UK	India
<i>Access to Legal Remedies</i>	Complete	Significantly Restricted
<i>Business Operation Freedom</i>	Unrestricted	Moderate to heavy restrictions.
<i>Partner Protection Level</i>	Highest	Limited

COMPARATIVE DISADVANTAGES IN BOTH JURISDICTIONS; IMPLICATIONS FOR INDIA

In India, significant limitations exist for unregistered partnerships, which involve the restrictions in suing third parties, impeding legal recourse. There is the difficulty for resolving partner disputes due to limited access to courts. These are issues which penetrate every business. In comparison to this, while the UK does offer significant protection, this protection is not unlimited. Partnerships in the UK must register for self-assessment with HM Revenue and Customs (HMRC), with the 'nominated partner' responsible for managing the partnership's tax returns.¹² However, this registration is primarily for tax administration. Unlike the Indian system, failure to register for tax purposes *doesn't automatically strip the partnership of its fundamental rights to enforce contracts, sue or be sued, or access the courts*. The UK's tax registration serves primarily for revenue collection and does not create the same operational barriers as India's registration requirements. The crucial distinction lies in the fact that in the UK, the *lack of registration does not create a legal disability that prevents the partnership from*

¹² Gov.UK, *Register the partnership*, <https://www.gov.uk/set-up-business-partnership/register-partnership-with-hmrc>

*functioning or protecting its interests.*¹³ In India, the absence of registration ultimately restricts a partnership's ability to enforce the rights thereby reducing operational efficiency. The UK's "better" position is about the nature and consequences of non-registration, not the complete absence of any registration requirement. The UK prioritizes the fundamental rights and operational capacity of partnerships, even if they're unregistered, while ensuring tax compliance through a separate registration process. India's model, on the other hand, uses registration as a gateway to fundamental legal rights and operational capabilities.

SUGGESTED REFORMS

The liabilities for unregistered partnerships have been discussed in detail along with contrast to partnerships in the United Kingdom. Through a detailed analysis of Section 69 of the partnership act and the judicial trend reflecting the rigidity of the Supreme Court as to unregistered partnerships ***there are three primary solutions to address the problems*** faced by sheer amount of unregistered partnership firms in India which makes allows them to operate freely and generate profit and employability, while retaining rights among the partners in case of legal conflict. ***There are also two secondary solutions*** which are suggested but under this classification they assume lesser priority than the primary solutions. The primary solutions which can be implemented include – a) reformation of section 69 b) alternative dispute resolution as a mechanism to address legal conflicts in unregistered partnership firms, c) creation of a tax relief mechanism for unregistered partnerships.

A) REFORMATION OF SECTION 69

Section 69 of the partnership act creates disabilities for unregistered firms by preventing them from suing third parties to enforce contracts. This becomes a major impediment for businesses which may not have the resources or awareness to register. The solution would be to amend Section 69 to include an exemption for unregistered firms meeting a specific criterion who can enforce their legal remedies in the court. This criteria for the purposes of implementation must rely on the profit generated by the firm. Annual turnover must be criteria for meeting this specific exemption. If a firm's annual turnover is less than 10 lakh they have the ambit for coming *These firms would be allowed to file suits to recover debts or enforce contracts, even*

¹³ UK India Business Council, *Market Entry Structures*, <https://www.ukibc.com/india-guide/how-india/market-entry-structures/>

if they are unregistered. It also becomes extremely essential to define “small partnerships” in this context. Firms with an annual turnover of less than 10 lakh will fall under this ambit as per the proposed amendment.

We can take the example of a small tailor business, operating as an unregistered partnership. Hypothetically if the partnership is owed ₹10,000 by a customer over a period of a year, they will struggle to recover this debt through legal means. With the proposed amendment, they can file a suit in the lower civil court to recover the amount even without any registration. The amendment protects vulnerable small businesses. The creation of a streamlined and centralised digital repository for small businesses on which they can upload their contracts, invoices and other business documentation is integral to phase out the amendment. This would allow the unregistered firms to easily verify their business relationships in case of disputes. The digitally archived business records can be further used in court as evidence if needed.

INTRODUCTION OF GRACE PERIOD FOR FIRMS NOT UNDER THE CRITERIA

The proposed exemption under Section 69 would apply only to unregistered firms with an annual turnover of ₹10 lakh or less. However, a pertinent question arises: what happens to unregistered firms with an annual turnover exceeding ₹10 lakh? Will they still be permitted to file a suit in court? The solution lies in granting a **grace period** for these firms. Specifically, unregistered firms that fall outside the turnover threshold should be given a **90-day window** from the date of the cause of action to officially register their firm. Once registered, they would then be allowed to proceed with filing a suit in court. To illustrate this, consider the example of an unregistered partnership involved in craft production that discovers a supplier has breached a contract. In this case, the firm would be given a 90-day period to register and then proceed to file a suit against the supplier for breach of contract. This grace period ensures that even firms with a turnover above ₹10 lakh, which might otherwise face restrictions, have a reasonable opportunity to comply with registration requirements and enforce their legal rights.

B) THE MECHANISM OF ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution is another means through which disputes can be resolved by unregistered partnership firms. ADR is preferred over general civil litigation because it is

relatively less expensive.¹⁴ Alternative Dispute Resolution also has varying heads under its wing. It is mainly divided into arbitration, mediation and negotiation. Arbitration and Mediation are the two primary modes of ADR in India. A survey on dispute resolution as an alternative to court proceedings in the Indian legal community suggests that people prefer arbitration due to the lack of enforceability of mediation or conciliation rulings. Uncooperative parties can intentionally prolong proceedings thereby increasing the costs of mediation and conciliation.¹⁵ Arbitration could hence, serve as a better method for resolving disputes for those unregistered firms which do not possess the financial capacity to bear the heavy cost of civil litigation. It could also be used to resolve disputes between the unregistered firm and a customer involved in buying a product or a service with the firm. For eg. if a dispute arises between an unregistered firm and a customer, mediation can help reach a mutually acceptable settlement. In most cases however when there is a dispute between the members of the partnership firm or between the firm and another party which is involved in business with the firm, arbitration will be more effective as it has a binding nature.

C) CREATION OF A TAX RELIEF MECHANISM FOR UNREGISTERED PARTNERSHIP FIRMS

Unregistered Partnerships cannot claim tax relief under the Income Tax Act. However unregistered firms can be given a Conditional Tax Relief Status (CTRS) accessible to unregistered partnerships if they meet certain criteria. The criteria for the same will consist of the following –

- Partners in the unregistered partnerships must submit a declaration to the Income Tax department that they are operating as an unregistered partnership. The basic details which include the partnership deed, names partners, nature of business and income details must be submitted via a portal run by the government under the Ministry of Commerce.
- The partnership must have a clear operational track record for at least a year to claim tax benefits. It must also involve a certification process where a third party auditor or chartered accountant

¹⁴ Patadiya Uday Bhupendrabhai, *An Analytical Study On Current Trends And Effectiveness Of A.D.R. In India*, 9 Int'l J. Novel Res. & Dev. 673 (2024).

¹⁵ Federation of Indian Corporate Lawyers [FICL] & Centre for Trade and Investment Law [CTIL], *Survey of Dispute Resolution in India, 2023: Growth and Future of Alternate Dispute Resolution in India* (2023).

verifies the financial health of the partnership which can serve as a measure to ensure that the business isn't fraudulent.

It is upon the fulfilment of the above criteria that unregistered partnerships must be allowed to claim deductions under the Income Tax Act, similar to any registered partnership. Business related expenses involving salaries, rent, depreciation should be allowed to be deducted if they are substantiated by invoices or financial records.