



LAW COMMISSION OF INDIA

SEVENTH REPORT

ON

PARTNERSHIP ACT, 1932

1957

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CHAIRMAN,
LAW COMMISSION,
BOMBAY,
July 13, 1957.

Shri A. K. Sen,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Seventh Report of the Commission on the Partnership Act.

2. At the first meeting of the Law Commission held on the 17th September, 1955, the Commission decided to take up the revision of the Partnership Act and entrusted the task to a sub-committee consisting of Shri G. S. Pathak and Shri G. N. Joshi. The consideration of the subject was initiated by Shri Joshi who in consultation with Shri Pathak prepared a draft report which was circulated to all members of the Commission and their views invited thereon. The views together with the draft report were discussed at meetings of the Statute Revision Section of the Commission held on the 17th November, 28th December, 1956 and the 7th February, 1957. Important suggestions made by the Members at these meetings were accepted and a revised draft prepared by Shri Joshi in the light of the discussions was circulated to the Members of the Commission. The draft report as revised was discussed at a meeting of the Statute Revision Section of the Commission held on the 9th March, 1957 and it was left to the Chairman and Shri Joshi to finally settle the report in the light of the discussion.

3. Dr. Sen Gupta has signed the report subject to a separate note which is appended to the report.

4. The Commission wishes to acknowledge the services rendered by its Joint Secretary, Shri D. Basu in the preparation of the report.

Yours sincerely,
M. C. SETALVAD.

REPORT OF THE LAW COMMISSION ON THE PARTNERSHIP ACT

PART I—GENERAL

Prior to 1932, Chapter XI (Sections 239 to 266) of the Indian Contract Act, 1872 (Act IX of 1872) contained the law relating to partnership in India. As these provisions were not exhaustive, it was considered expedient and necessary to separate the law relating to partnership and to embody it in a separate enactment; hence, the Indian Partnership Act, 1932 (Act IX of 1932). This Act is based mainly on the English Partnership Act, 1890 (53 and 54 Vict., c. 39) which codified the common law relating to partnership. The English Partnership Act, 1890 has been the basis of the law of partnership in all countries which have adopted the English common law as the basis of their law, for example, some of the countries constituting the Commonwealth and the United States of America.

History of the legislation.

2. Before the enactment of the Indian Partnership Act, 1932, the whole subject was carefully examined by a Special Committee¹ which scrutinised the English Partnership Act and the judicial decisions in England and in India with a view to adapting the English provisions to the needs and conditions of India. Apart from minor differences necessitated by the peculiar conditions of India, the basic principles embodied in the Indian Partnership Act, 1932 are the same as those contained in the English Partnership Act, 1890 and in the Uniform Partnership Act prepared in the United States of America.² The difficulties felt and the defects disclosed in the working of the English Partnership Act from 1890 to 1931 were considered by the Special Committee¹ which drafted the Indian Partnership Bill and provisions were made in the Act so as to avoid these difficulties and defects.

3. We have examined the provisions of the Indian Partnership Act, 1932, in the light of the judicial decisions in India and in England and we find that, apart from the

Scope of the revision proposed.

¹Gazette of India, 1931, Part V, pp. 31 *et seq.*

²A model code drawn up and approved by the Conference of Commissioners on Uniform State Laws on the 14th October, 1914 and adopted in some of the States of the United States of America.

alterations which are set out hereinafter, it is not necessary to make any other radical changes. In our opinion, on the whole, the Act is comprehensive and adequate enough to meet the growing needs and requirements of Indian trade, commerce and industry and facilitates varied relationships between individuals who intend to associate themselves for the purpose of carrying on trade and commerce.

Suggestion that a firm should be recognised as a legal entity, not accepted.

4. It has been suggested to us that the fundamental principle on which the Indian Partnership Act is based, *viz.*, that a "firm" is not a legal person or a legal entity, should be replaced by the contrary principle which recognises a firm as a legal person or a legal entity, on the ground that such a change would be useful to the business and commercial community as well as to those who deal with a firm and that it would also simplify proceedings by and against a firm. This question has for a long time engaged the attention of jurists, lawyers and text-book writers in India, England and the United States of America. In England, it has been suggested that the English law of Partnership should in this respect be assimilated to that of Scotland which recognises a firm as a legal or juristic person. Lindley, in the Introduction to his book on "Partnership", regretted that a firm was not recognised as a juristic person and stated¹—

"This non-recognition of the firm was a defect in the law of Partnership; and it is to be regretted that the Partnership Act did not go further than it did in the direction of assimilating English Law to the Scotch".

However, notwithstanding a considerable body of opinion in England being in favour of the recognition of a firm as a legal person, the British Parliament has not so far accepted that principle.

5. In the United States of America, before the Uniform Partnership Act was drawn up, it was vehemently advocated that the principle recognising a firm as a legal person should be adopted as the basis of the law of partnership and at one stage the general opinion was in favour of the adoption

¹Lindley on Partnership, Eleventh Edition, 1950, p. 4.

of this principle. But ultimately, "The Theory was not accepted, as it was felt that it was in the last analysis based on an assumption which did not accord with business practice".¹

6. The difficulties which result from the non-recognition of a firm as a legal person, were carefully examined by the Special Committee² which drafted the Indian Partnership Bill and the Committee tried to meet these difficulties by appropriate modifications of some of its provisions, without altering the basic conception that a firm is not a legal entity.

7. The non-recognition of a firm as a legal person renders possible elasticity of relationship between the persons who enter into a partnership. This is a great advantage to the business community, as it facilitates the association of persons with varying means and diverse abilities to carry on business on the collective credit of all the partners. The common law theory of partnership (known in the United States of America as the "aggregate" theory), as has been worked out in the Indian Partnership Act meets the requirements and needs of the business community. Under this theory, the partners own in common the partnership property and they are joint principals in partnership transactions. The activities carried on by the partners are not regarded as being carried on by a legal personality distinct from their individual personalities. The practical difficulties which have been experienced in the administration of the law of partnership have been to a large extent overcome by the modification of the procedure applicable to a firm.

8. It is true that merchants and lawyers have different notions respecting the nature of a firm. Commercial men and accountants are apt to look upon a firm in the light in which the lawyers look upon a corporation, i.e. as a body distinct from the members composing it. Thus, in keeping accounts 'merchants' habitually show a firm as a debtor to each partner for what he brings into the common stock and each partner is shown as a debtor to the firm for all that he takes out of this stock. But this is a business point of

¹"The Uniform Partnership Act—A reply to Mr. Crane's Criticism" by William Draper Lewis, (1915-16) 29 Harvard Law Review, p. 167.

²Gazette of India, 1931, Part V, p. 33.

view and not a legal conception. Mercantile usage relating to a firm has, however, been adopted in the law of partnership, to a certain extent. Thus, a firm, not being a legal entity, could not, either in England or in India, sue or be sued in the firm name or sue or be sued by its own partners, for one cannot sue oneself. This difficulty with regard to the law of procedure has, however, been removed both in England and in India under the pressure of considerations of commercial convenience and a firm is now allowed to sue or be sued in the firm name as if it were a corporate body. [See Rules of the English Supreme Court, Order XLVIII-A and Order XXX of our Code of Civil Procedure, 1908 (Act V of 1908)]. The law of procedure has gone to the length of allowing a firm to sue and be sued by another firm having some common partner or even to sue or be sued by any one or more of its own partners (see order XXX, rule 9 of the Code of Civil Procedure), as if a firm were an entity distinct from its partners. Again, in taking partnership accounts and administering partnership assets the law has, to some extent, adopted the mercantile view inasmuch as the liabilities of a firm are regarded as the liabilities of the partners only in case they cannot be met and discharged by the firm out of its own assets. Further, when there are joint debts due from any firm as well as separate debts due from any partner, the creditors of the firm are in the first place to satisfy their claims out of the partnership assets and if there is any surplus, then the share of each partner in such surplus is applied in payment of his separate debts, if any, or paid to him. Conversely, the separate property of a partner is applied first in payment of his separate debts and the surplus, if any, is utilised in meeting the debts of the firm (see section 49 of the Indian Partnership Act). Thus it is clear that the law, English as well as Indian, has for some specific purposes, relaxed its rigid application of the aggregate theory and given, to a limited extent, a legal personality to a firm. Nonetheless, the general concept of partnership is that a firm is not an entity or a person in law but is merely an association of persons and the firm name is only a collective name for individuals who constitute the firm or only a compendious mode of describing the persons who have agreed to carry on business in partnership. It is in this view of the matter that a firm is not entitled as such to enter into partnership with another firm or individual and the firm is not a person in the strict sense of the term. This legal position of a partnership is succinctly stated by Das C. J. in a recent decision of the

Supreme Court: *Dulichand Laxminarayan rom. Commissioner of Income-tax, Nagpur*¹ and we do not consider it necessary to alter it.

9. Upon a consideration of the judicial decisions and of the defects disclosed in the administration of the existing law relating to partnership in India, we have reached the conclusion that there are no cogent and compelling reasons to justify the alteration of the basic principle of our law of partnership and to disturb long-settled notions as regards the true nature and character of a partnership and the relations of the partners *inter se* and with the outside world. No serious inconvenience or embarrassment has been experienced by the business community by the non-recognition of a firm as a legal person, and the practical difficulties experienced in the administration of the law have, to a large extent, been eliminated.

10. It has been suggested that a provision should be made in the Act requiring a partnership agreement to be in writing, as it would have the obvious advantage of enabling the Courts to ascertain the terms of the agreement and the rights of the partners with greater certainty than at present. Since there are a large variety of partnerships in India, many of which are of a very short duration or relate to a single venture or involve only a small capital, and the existing law allows the terms of a partnership to be proved by oral evidence or even by conduct of parties, we cannot introduce a comprehensive provision requiring all partnerships to be in writing, without causing hardships to the trading community as well as serious administrative difficulties. But as the suggestion has come from a substantial section of the business community itself and as, in practice, partnership agreements are reduced to writing whenever the partnerships are substantial, we consider that the suggestion should be accepted partially.

Suggestion for requiring partnership agreements to be in writing—**partially** accepted.

11. We are of the opinion that partnerships in particular adventures or undertakings which are completed within a period of six months from their commencement should not be required to be in writing. We recommend that a contract determining the rights and duties of partners should

¹A.I.R. 1956 S.C. 354; (1952) 29 I.T.R. 535. [See also *Bhagwanji V. Alembic Chemical Works*, A.I.R. 1948 P.C. 100; I.L.R. (1948) Bom. 293; *Commissioner of I.T. v. Figgis*, A.I.R. 1953 S.C. 455; (1953) 24 I.T.R. 405.

²—1 M. of Law/67

be in writing in the case of every partnership at will and every partnership whose duration is to be for six months or more, except in cases where the capital of the partnership is less than rupees five hundred. We further recommend that in cases where the contract of partnership is required to be in writing, the partnership shall not be recognised for the enforcement of rights and obligations of the firm and its partners unless the requirement of a contract in writing is fulfilled.

Suggestion
as to com-
pulsory re-
gistration
of firms—
partially
accepted.

12. It has been suggested that a provision should be made in the Partnership Act for the compulsory registration of every firm. The question of compulsory registration of a firm has engaged the attention of the Government and the Legislature for a long time as, on account of want of registration, difficulties have been experienced in the decision of questions relating to the existence, and terms of partnerships and cognate matters. The question was carefully considered by the Special Committee¹ which drafted the Indian Partnership Act, but the Committee did not recommend compulsory registration, for the following reasons—

“It has been pointed out repeatedly with much force that to require small or ephemeral joint ventures to be registered would produce little public benefit and would act as a clog to petty enterprise; and such ventures are so numerous that any small benefit to be derived from registration would be counter-balanced by the clerical labour involved..... The English precedent in so far as it makes registration compulsory and imposes a penalty for non-registration has not been followed, as it is considered that this step would be too drastic for a beginning in India, and would introduce all the difficulties connected with small and ephemeral undertakings.”

Hence, the Indian Act made registration optional but provided inducement to register. The provisions contained in the Act as regards registration and the consequences of non-registration have been commented upon unfavourably. It has been urged that it would be more satisfactory to make registration of all partnerships compulsory and that if this is done, separate registration of firms under the Income-tax Act may be dispensed with.

¹Gazette of India, 1931, Part V, p. 35.

13. Having regard to the advantages which would generally follow from the registration of firms and to the fact that the business community has already become familiar with registration, under the existing Act, we have come to the conclusion that it is time that a bold step is taken and compulsory registration of firms is introduced. At the same time we cannot overlook the hardships and the administrative difficulties which are likely to arise if the provision for compulsory registration is extended to small and ephemeral undertakings, a large number of which take place in villages and small towns. Having weighed these considerations we have reached the conclusion that the proposed provision for compulsory registration should be confined to those classes of partnerships which, we have already recommended, may be created only by agreements in writing.

14. It has been brought to our notice that under the existing law, after the firms are registered, the Registrar of Firms is not kept informed whether the registered firms continue to exist or are dissolved or have become defunct. Generally speaking, parties do not send to the Registrar the information referred to in sections 60(1), 61, 62, 63(1) and (2) of the Partnership Act unless they are compelled by litigation or other urgent necessity to do so, as the furnishing of such information is optional. In order to enable the Registrar to keep his register up-to-date as far as possible we recommend that a new provision be inserted making it obligatory on the part of every registered firm whose duration is more than three years to send to the Registrar within six months after the expiry of every three years from the date of its registration an intimation that it is functioning and has not become defunct or dissolved and providing, further, that if no intimation is received by the Registrar within the prescribed time he may, after issuing a notice, make a note in the register that the firm has ceased to exist.

15. It has further been suggested that legislation on the lines of the Registration of Business Names Act, 1916 in England should be enacted in India, either separately or as a part of the Partnership Act. We are not inclined to accept this suggestion for the same reasons which moved the Civil Justice Committee to reject it in their Report. The Committee said:

“We consider that it would be impracticable in India to insist upon the registration of business names on the analogy of the English Act of 1916. In

India the names of firms are very frequently changed. No reasonable person puts much faith in the assumption that names appearing in the styles of a firm are the names of the individual partners. The names of relatives, sometimes relatives long deceased, sometimes minors, are used because they are thought to be auspicious. There are other obvious difficulties connected with Indian names.”¹

Suggestion for introducing limited partnership—not accepted.

16. It has been suggested that partnerships with limited liability should be recognised in India either by a special enactment or as a part of the Partnership Act. A concrete suggestion made by the Iron, Steel and Hardware Merchants' Chamber of India in this respect may be noted :

“Considering the recent amendment in the Indian Companies Act, we feel that a provision should be made in the Indian Partnership Act, 1932 by which limited liability partnerships can be entered into on the lines of the Limited Partnership Act.² The Indian Companies Act has become so cumbersome that for a small business it is impossible to comply with all the provisions unless a full-time Secretary is engaged. Before the amendment was introduced in the Indian Companies Act, two or three partners used to find it convenient to register a Private Limited Company and carry on the work. Now there are so many restrictions on taking loans by the directors or shareholders even in private limited companies, that people will prefer to enter into a partnership instead of forming a limited liability company. That risk can only be minimised by introducing limited liability partnership.”

We have carefully considered this suggestion and have come to the conclusion that having regard to the conditions prevailing in India, the inherent shortcomings of limited liability partnerships, and the fact that even in England, notwithstanding legislation permitting such partnerships, not many such partnerships have been actually formed, it is neither necessary nor expedient to make provision for limited liability partnerships in India. The suggestion, if accepted, is also likely to result in rendering ineffective the provisions of the Indian Companies Act which have been recently made stricter.

¹Report of the Civil Justice Committee, p. 465.

²Edw. 7 VII, c. 24.

PART II—SECTIONS

17. We have so far dealt with questions relating to the alteration of the basic principles embodied in the Indian Partnership Act, in the light of the suggestions received from individuals and commercial bodies. We now proceed to an examination of the sections of the Act *seriatim* in order to indicate the changes which will become necessary in the light of our foregoing conclusions. We shall also indicate other changes which in our opinion, are needed by reason of judicial decisions and otherwise. These changes are embodied in the draft sections shown in the Appendix.

Examination of the provisions of the Act, indicating the changes proposed.

18. In conformity with our recommendation regarding other Acts, the word 'Indian' should be deleted from the title of the Act [sub-section (1) of section 1].

Sec. 1.

19. No alteration is needed in sections 2 and 3.

Secs. 2-3.

20. It has been suggested that the words 'in writing' should be inserted after the word 'agreed' in section 4, in order to provide that a partnership agreement must be in writing. We have already examined this suggestion in Part I and we think that our recommendations made in paragraphs 10 and 11 can be more appropriately carried out by enacting a new section instead of amending section 4.

Sec. 4.

21. In section 5, the words "or a Burmese Buddhist husband and wife carrying on business as such" should be deleted, as Burma has ceased to be a part of India.

Sec. 5.

22. It has been suggested by the Bombay State Bar Association that the Act should be altered so as to make it applicable to a joint Hindu family business. This question was considered by the Special Committee which drafted the Indian Partnership Bill and the Committee rejected the suggestion on the ground that the question related to a purely domestic matter of Hindu Law and that it was unwise to complicate the provisions of the Partnership Act by introducing therein rules of law which appropriately constituted a branch of the personal law of the Hindus only. We entirely agree with the conclusion reached by the Committee and the reasons given by it. The capacity of a *Karta* of a joint Hindu family to enter into a partnership with an individual

¹Gazette of India, 1931, Part V, pp. 34-39.

or with the *Karta* of another joint Hindu family has been settled by judicial decisions and does not require any special provisions.

- Sec. 6. 23. In view of our recommendation that certain kinds of partnerships can be created only by an agreement in writing it is necessary to exclude the application of section 6 in those cases and the section will have to be amended accordingly.
- Secs. 7-8. 24. No alteration is required in sections 7 and 8.
25. We have added a new section 8A to give effect to our recommendation in paragraph 11.
- Secs. 9-11. 26. No alteration is necessary in sections 9 to 11.
- Sec. 12. 27. The existing Act says nothing about the custody of the books of the firm. The Indian Partnership Bill, as drafted by the Special Committee,¹ followed the English Act in providing that the books of a firm shall be kept at its place of business or the principal place of business, if there are more than one. But the Select Committee² rejected the clause relating to the custody of books and inserted clause (d) as it now stands, on the ground that the principal place of business might well be in an Indian State where the Act could not be directly enforced and that the principal place of business could be defined only by the partners themselves. Having regard to the fact that the Indian States have become a part of India and the fact that the Act applies to the whole of India, the first ground relied upon by the Select Committee no longer holds good. The second ground given by the Committee does not appear to be convincing. We therefore consider it desirable to redraft clause (d), incorporating the provision relating to the custody of books as suggested by the Special Committee.
- Sec. 13. 28. The official rate which is now allowed by the Courts is 4 per cent. We think, therefore, that the rate of interest in clause (d) of section 13 should also be fixed at 4 per cent. per annum and the clause be amended accordingly.
- Secs. 14-17. 29. No alteration is considered necessary in sections 14 to 17.

¹Gazette of India, 1931, Part, V, p. 40.

²*Ibid*, 1932, Part, V, p. 1.

30. No alteration is necessary in section 18. Sec. 18.

31. The Bombay State Bar Association has suggested that "subject to section 22, a partner should have implied authority as regards items (a), (c), (d) and (e) in sub-section (2) of section 19." In other words, the scope of the implied authority of a partner on behalf of the firm should, subject to section 22, be enlarged by including therein authority to—

1. Refer disputes to arbitration;
2. Compromise or relinquish any claim of the firm;
3. Withdraw a suit or proceeding filed on behalf of the firm;
4. Admit any liability in a suit or proceeding against the firm.

We are unable to accept this suggestion as the clauses limiting the implied authority of a partner in section 19(2) are based upon long experience and have given rise to no difficulties. It is not necessary to enlarge the scope of the implied authority of a partner beyond what is stated in the section, as it is open to the partners by an agreement either to enlarge or to restrict the implied authority under section 20 of the Act.

32. No alteration is necessary in sections 20 to 29. Secs. 20-29.

33. There has been some controversy as to the construction of an instrument which purports to admit a minor to a partnership without making it clear that he is admitted only to the benefits of the partnership. We think that when the major partners seek to admit into the partnership a person known to them to be a minor, it may be assumed that they intended to admit the minor only to the benefits of the partnership and that, had they known the law, they would have made that clear in the instrument of partnership. In order to remove doubts, this rule of construction, may be introduced into sub-section (1) of section 30.

34. No alteration is necessary in sections 31 and 32. Secs. 31-32.

35. Expulsion being penal in its nature, it should not be allowed to be imposed in violation of the principles of

natural justice. We recommend that at the end of sub-section (1) of section 33, appropriate words should be added providing for an opportunity to be given to the partner to give an explanation.

- Secs. 34-36. 36. No change is necessary in sections 34 to 36.
- Sec. 37. 37. In section 37, the rate of interest should be reduced from six to four per cent. per annum, in conformity with our recommendation in paragraph 28.
- Sec. 38. 38. No change is required in section 38.
- Secs. 39-43. 39. No alteration is necessary in sections 39 to 43.
- Sec. 44. 40. There is a difference of opinion between the Allahabad¹ and Madras² High Courts as to whether the right of dissolution given by section 44 could be curtailed by agreement between the partners. The Allahabad¹ High Court is of the opinion that the provision in section 44 is subject to the overall provision in section 11(1) to the effect that the mutual rights and duties of the partners may be determined by contract between them. But the Madras² High Court has pointed out that the provision in section 11(1) is itself "subject to the provisions of this Act".

We are of the opinion that the Madras view is to be preferred. The opening words "subject to the provisions of this Act" in section 11(1) mean not only that a contract, in order to be binding between the partners, must not be in contravention of any of the provisions of the Act but also that if there is any provision in the Act relating to a particular matter, such a provision will override any agreement between the partners relating to the same matter. This view, as has been pointed out in the Madras decision, is supported by various provisions of the Act itself which expressly use the words "subject to contract between the partners", wherever the Legislature intended the statutory provision to be controlled by the agreement of the parties. Sections 12 to 17 and section 42 are instances of this character. A comparison of the provisions of sections 42 and 44, *prima facie*, demonstrates that the omission of the words "subject to contract between the partners", in section 44 was deliberate and the reason is not far to seek. While under section 42, the

¹*Dropadi v. Bankeylal*, I.L.R. (1939) All. 577.

²*Venkataswami v. Venkataswami*, A.I.R. 1954 Mad. 9.

dissolution takes place by operation of law unless there is a contract to the contrary, section 44 entitles a partner to invoke the discretionary jurisdiction of the court which, as explained by the Judicial Committee in *Rehmatunnissa v. Price*,¹ is in the nature of an equitable protection from which "no man can exclude himself". In our opinion, the discretionary jurisdiction of the court under section 44 is not, and should not, be liable to be fettered by any agreement between the partners and this should be made clear by inserting the following words at the beginning of section 44—

"Notwithstanding any contract to the contrary".

41. No alteration is considered necessary in sections 45 Secs. 45-55. to 55.

42. We are of the opinion that this section should be deleted. While section 1(2) of the Act provides that the Act extends to the whole of India except the State of Jammu and Kashmir, section 56 empowers a State Government to direct, by notification, that the provisions of Chapter VII shall not apply to the State or to any part thereof. Action under the Section by a State Government may result in the provisions regarding registration of firms in the Act not applying to that State or a part thereof. All the States are, under the recent amendment of the Constitution, placed on a footing of equality and it is desirable to have a uniform law as regards the registration of firms in all the States which enjoy the same status. Whatever may have been the position in 1932, the conditions then existing are now so changed as to justify a uniform provision for all the States as regards registration of firms. Sec. 56.

43. No alteration is considered necessary in section 57. Sec. 57.

44. Our recommendations as to compulsory registration (in paragraph 13) should be embodied in a separate section, and a time-limit should also be prescribed for obtaining such registration, as shown in section 57A in the Appendix. Sec. 57A.

45. As we have prescribed a definite time-limit for registration in section 57A, it is necessary to make a reference thereto, in sub-section (1) of section 58. We also recommend that it should be provided in sub-section (2), that the authorisation of an agent shall be by a special power of attorney. Sec. 58.

¹*Rehmatunnissa v. Price*, I.L.R. (1917) 42 Bom. 380. (388).

In sub-section (3) of section 58, verbal alterations have to be made in view of the constitutional changes that have taken place since the enactment of the Act.

- Sec. 59. 46. Considering that we have recommended compulsory registration of firms, it is necessary that those who intended to deal with a firm should have knowledge whether the firm is registered under the Act. We, therefore, recommend the insertion of a provision in section 59 to the effect that a firm which is registered under the Act shall use the word "registered" after the name of the firm.
- Sec. 59-A. We have added a new section 59A to make provision for penalties for failure to use or for the improper use of the word "registered" after the name of a firm.
- Secs. 60-63. 47. No alteration is necessary in sections 60 to 63.
- Sec. 63A. 48. Our recommendations in paragraph 13 relating to intimation to the Registrar as regards the continuing existence of a firm should be incorporated in a new section.
- Secs. 64-68. 49. No alteration is necessary in sections 64 to 68.
- Sec. 69. 50. Commentators¹ have referred to the conflict of decisions on the question whether registration of a partnership is a condition precedent to the filing of a suit and whether in a case an unregistered firm files a suit the defect could be remedied by the registration of the firm after the institution of the suit. The earlier decisions which held that a suit by an unregistered firm could be maintained if there was a subsequent registration after the filing of the suit but before its disposal, have been overruled by subsequent decisions.² All the High Courts are now agreed that registration of a firm under section 59 is a condition precedent to the maintainability of the suit and that registration of a firm after the institution of the suit cannot cure the defect arising from want of registration. It has, however, been suggested

¹See, for instance, pp. 425-426 of the Indian Partnership Act by Pollock and Mulla (1950 Edition) and pages 235-236 of "The Law of Partnership in India and Pakistan" by S. T. Desai (1956 Edition).

²*Ponnuchami Gounder v. Muthusami Gounder*, I.L.R. (1942) Mad. 335; *Dwijendranath v. Govinchandra*, A. I. R. 1953 Cal. 597; *Abdul Karim v. Ramdas Narayandas*, I.L.R. (1951) Nagpur 81.

that provision should be made in the Act to the effect that if a suit is filed by a firm which is not registered, the suit should be treated as competent and maintainable, if the firm obtains registration before the decree is passed. In our opinion, it is not necessary to make such a provision as it would defeat the very object which is sought to be achieved by the provisions contained in sections 59 to 69 of the Act.

51. The existing Act is anomalous in that though it does not provide for compulsory registration of firms, it visits with serious consequences firms which do not register themselves. This has been commented upon.¹ As we have provided for compulsory registration except in regard to firms of short duration or with a small capital it is appropriate that the operation of section 69 should be restricted to partnerships which, according to our recommendations, require to be compulsorily registered under the Act. It is accordingly recommended that the words "In the case of firms required to be registered under this Act" be inserted at the commencement of section 69.

52. As section 69 is to be made applicable only to such partnerships as are required to be compulsorily registered, there is no need for a provision like that contained in sub-section (3)(a) of Section 69. Having regard to our recommendations in regard to the requirements of a writing and registration, a firm which, though required to be registered by the Act, is not registered will not be a 'firm' in the eye of law and no question of its dissolution under the Act could arise. We therefore recommend that clause (a) of sub-section (3) of section 69 be omitted.

53. In view of the proposed deletion of section 56, the second part of clause (a) of sub-section (4) of section 69, beginning with the words "or whose places....." will have to be deleted.

54. We are of the opinion that as a partnership which has not complied with the requirement of registration shall not be a partnership under the Act, it is necessary to ensure that persons who have induced third parties to deal with them on the representation that they are partners should not be entitled to take advantage of their own default. It should

¹Poelock & Mulia, Partnership Act, 1950 Ed., p. 424.

therefore be provided that such persons should be stopped as against such third persons from pleading that there is no partnership at law, by reason of their non-compliance with the statute. A sub-section to this effect has been added to section 69.

Sec. 70. 55. No alteration is necessary in section 70.

Sec. 71. 56. In sub-section (2) (b) of section 71, a reference to the new section 63A has been inserted.

Some officials concerned with the administration of the Act have suggested a modification of the Schedule referred to in this section so as to increase the fees mentioned in it. We are not, however, satisfied that an increase is necessary.

Secs. 72-73. 57. No change is suggested in sections 72 and 73.

Sec. 74. 58. There is a conflict of decisions between the Calcutta, Lahore and Patna¹ High Courts, on the one hand, and the Madras, Bombay, Nagpur and Allahabad High Courts², on the other, on the question whether section 69 bars suits even in cases where the cause of action arose before the commencement of the Act.³

One view⁴ is that section 69 does not prevail over section 74(b) and that a suit filed by a firm to enforce rights which had accrued before the commencement of the Act would be maintained in spite of non-registration of the firm as the rights had already accrued and they are not taken away expressly by the Act. The other view⁵ is that the provisions of section 74 of the Act are intended to apply to substantive rights and not to matters of procedure, and that section 69 being a procedural provision must be considered as retrospective in its operation. Consequently, the procedure laid down in section 69 must be complied with in the case

¹*Surendra Nath v. Manohar De*, (1935) I.L.R. 62 Cal. 213; *Firm Krishen Lal v. Abdul Ghafur*, A.I.R. 1935 Lah. 893; *Shah-zadkhan v. Darbar Babu Kuppi*, I.L.R. (1936) 15 Pat. 810.

²*Syed Ibrahim Sahih v. Gurulinga Iyer*, I.L.R. (1939) Mad. 980; *Ramappa v. Babu Sidappa*, I.L.R. (1939) Bom. 104; *Ram-gopal v. Nei Ram*, A.I.R. 1941, All. 178; *Syed Fakir Hussain v. Chandra Bai*, A.I.R. 1940 Nag. 367.

³Section 69 of the Act came into force on the 1st October, 1933.

of every suit filed after the commencement of the Act, whether it is based on a cause of action which arose before or after the commencement of the Act.

As a long time has elapsed since the Partnership Act 1932 came into force, this question would have had no practical importance now, but for the fact that the Partnership Act, 1932, has been extended to what were Part B States only in 1951, by the Part B States (Laws) Act, 1951 (III of 1951). The question as to the retrospective operation of section 69 is, accordingly, bound to arise in these territories and some provision has to be made to remove uncertainty in the law. In our opinion, the proper view is to give retrospective operation to section 69, and to achieve that object we recommend the insertion of a new sub-section in section 74.

59. In order to give a concrete shape to our proposals, we have, in the Appendix, put them into the shape of draft amendments to the relevant sections of the Act. The Appendix is not, however, to be treated as a draft Amendment Bill.

M. C. SETALVAD

(Chairman)

M. C. CHAGLA,

K. N. WANCHOO,

P. SATYANARAYANA RAO,

N. C. SEN GUPTA*,

V. K. T. CHARI,

D. NARASA RAJU,

S. M. SIKRI,

G. S. PATHAK,

G. N. JOSHI,

N. A. PALKHIVALA.

(Members)

K. SRINIVASAN,

DURGA DAS BASU,

Joint Secretaries.

BOMBAY:

The 13th July, 1957.

*Dr. Sen Gupta has signed the Report, subject to the note appended at the end.

APPENDIX

Proposals shown in the form of draft amendments to the existing Act.

Changes made in the text of the existing sections have been shown in italics wherever possible.

Section 1.

In sub-section (1) of section 1, the word "Indian" shall be omitted.

Section 5.

In section 5, the words "or a Burmese Buddhist husband and wife carrying on business as such" shall be omitted.

Section 6.

In section 6, the words "Except in cases in which a contract of partnership is required to be in writing" shall be added before the words "In determining whether a group of persons is or is not a firm....."

Section 8A.

After section 8, the following section shall be inserted:

"CHAPTER II-A.

FORMATION OF A PARTNERSHIP

Section 8A.

(1) Every contract of partnership shall except in cases where the partnership is to be for a term of less than six months be in writing :

Provided that nothing in the foregoing sub-section shall apply to the following cases, namely:—

(a) where, irrespective of the duration of the partnership, the capital of the partnership is less than five hundred rupees;

(b) where, irrespective of the capital of the partnership, the partnership is in particular adventures or undertakings which are completed within a period of six months from the commencement of the partnership.

(2) When a contract of partnership is required to be in writing, any variation of such contract shall also be in writing."

Section 12.

In section 12, for clause (d), the following clause shall be substituted, namely:—

“The books of the firm shall be kept at the place of business of the firm (or) the principal place of business (if there is more than one such place) and every partner has a right to have access to and to inspect and copy any of the books of the firms.”

Section 13.

In clause (d) of section 13, for the words “six per cent. per annum”, the words “four per cent. per annum” shall be substituted.

Section 30.

In sub-section (1) of section 30, the following shall be inserted at the end, namely:—

“Explanation : When by the terms of an instrument of partnership a person is a partner in a firm and such person is known to the other parties to the instrument to be a minor, such person shall be deemed to have only been admitted to the benefits of the partnership.”

Section 33.

In sub-section (1) of section 33, the following shall be inserted at the end, namely:—

“and after giving the partner a reasonable opportunity of showing cause why he should not be expelled”.

Section 37.

In section 37, for the words “six per cent. per annum,” the words “four per cent. per annum” shall be substituted.

Section 44.

In section 44, for the words “At the suit of a partner, the court may” the words “Notwithstanding any contract to the contrary, the court may, at the suit of a partner” shall be substituted.

Section 56.

Section 56 shall be omitted.

Section 57A. (New).

After section 57, the following section shall be inserted, namely:—

“57A. Registration of firms.

- (1) *Every firm in respect of which the contract between the partners determining their mutual rights and duties is required by this Act to be in writing shall be registered in accordance with this Act.*
- (2) *Except as otherwise provided by sub-section (3), every firm required to be registered under sub-section (1) shall be registered within one year from the commencement of the partnership.*
- (3) *Every firm required to be registered as aforesaid and carrying on business at the commencement of the Indian Partnership (Amendment) Act, shall, if it has not been already registered, be registered within six months from the commencement of the said Act.*
- (4) *The Registrar may register a firm after the expiry of the period specified in sub-section (2) or sub-section (3), as the case may be, if he is satisfied that there was sufficient cause for not presenting the application for registration within that period.”*

Section 58.

For section 58, the following section shall be substituted, namely:—

“58. Application for registration.

- (1) The registration of a firm may subject to section 57A be effected at any time *within the period prescribed by sub-sections (2) and (3) of section 57A* by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a copy of the instrument of partnership and a statement in the prescribed form and accompanied by the prescribed fee, stating—
 - (a) the firm's name,
 - (b) the place or principal place of business of the firm,
 - (c) the names of any other places where the firm carries on the business,
 - (d) the date when each partner joined the firm,
 - (e) the names in full and permanent addresses of the partners,
 - (f) the duration of the firm.

- (2) *Each partner or his agent duly authorised by a special power of attorney in this behalf shall sign and verify the statement in the manner prescribed.*
- (3) *A firm's name shall not contain any of the following words, namely:—*
- “Bharat”, “India”, “Indian Republic”, “President of India”, or words expressing or implying the sanction, approval or patronage of Government, except when the Union Government or the State Government signifies its consent to the use of such words as part of the firm's name by order in writing”.*

Section 59.

Section 59 shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

- “(2) A firm which is registered under sub-section (1) shall use the word “registered” immediately after its name.”*

Section 63A (New).

(3) If any firm fails to comply with the provisions of sub-section (2) every one of its partners shall be punishable with a fine which may extend to rupees ten for every day of such non-compliance unless he proves that he had no knowledge of such non-compliance or that he exercised due diligence to prevent such non-compliance.

(4) Every person who trades or carries on business under any name with the word “Registered” or any abbreviation thereof added to it shall, unless the trade or business is that of a firm of that name which has been registered under sub-section (1) be punishable with a fine which may extend to rupees fifty for every day of such use.

After section 63, the following section shall be inserted, namely:---

“63A. Intimation to the Registrar of the continuing existence of the firm.

- (1) Every registered firm which has been in existence for a period of three years shall send to the Registrar, within six months from the expiry of every period of three years after the registration of the firm, an intimation (in the prescribed form), stating that the firm is continuing and also containing, as on the date of the intimation, the particulars referred to in clauses (a) to (f) of sub-section (1) of section 58.*

- (2) *On receipt of such intimation the Registrar shall make a record of such intimation in the entry relating to the firm in the Register of Firms and shall file the intimation along with the statement relating to the firm filed under section 59.*
- (3) *The Registrar may accept the intimation referred to in sub-section (1) after the expiry of the period specified therein, if he is satisfied that there was sufficient cause for not sending the intimation within that period.*
- (4) *If a registered firm makes default in sending intimation under sub-section (1), the Registrar shall send a notice to the firm of his intention to treat the firm as defunct, and if no intimation in accordance with that sub-section is received by the Registrar within a month after the notice is served on the firm, the firm shall be treated as defunct and the Registrar may make a note in the Register of Firms that the firm has ceased to exist.*
- (5) *On the making of such a note the firm shall from the date thereof be deemed to be a firm not registered under this Act."*

Section 69.

(a) At the beginning of section 69, the following words be inserted—

"In the case of firms required to be registered under this Act";

(b) in sub-section (3), clause (a) shall be omitted ;

(c) in clause (a) of sub-section (4), the words and figures "or whose place of business in the said territories are situated in areas to which, by notification under section 56, this Chapter does not apply" shall be omitted.

(d) After sub-section (4), a new sub-section (5) shall be inserted as follows :—

"Nothing in section 11 or this section shall entitle persons who have induced third parties to have dealings with them on the representation that they are partners, to plead as against such third parties that there was no partnership in law between them."

Section 71.

In clause (b) of sub-section (2) of section 71, for the words "62 and 63", the words "62, 63 and section 63A" shall be substituted.

Section 74.

Section 74 shall be renumbered as sub-section (1) thereof, and after sub-section (1) so renumbered, the following sub-section shall be inserted, namely:—

“(2) Notwithstanding anything contained in sub-section (1)(d), the provisions of sub-sections (1) and (2) of section 69 shall apply to all suits instituted in the territories which immediately before the 1st day of November, 1956, formed part of any Part B State (other than the State of Jammu and Kashmir), even if the cause of action with respect to the said suits had arisen before the date on which this Act had been extended to Part B States by the Part B States (Laws) Act, 1951 (Act III of 1951).”

NOTE BY DR. N. C. SEN GUPTA

I regret to have to disagree with the opinion of the majority on a few points.

The proposed Section 11 and Section 57-A are large innovations. I feel that the necessity, utility, and above all, their practicability have not been duly considered.

The majority report at page 4 recognises the hardship to the people as well as the serious administrative difficulties involved in a written contract being compulsory for a partnership. What overriding public advantage is to be derived from it is not however so clear.

It cannot be denied that it would be advantageous to the partners themselves to have the terms reduced to writing and it is true that it would give relief to Courts in determining the exact terms of the contract when the matter comes to Court. But it must be remembered that unlike Memoranda and Articles of Association of Companies, a Partnership Agreement is a purely private agreement between the partners and its terms do not bind any stranger dealing with them. No public interest is likely to be served by enforcing such a writing instead of leaving it to partners to decide the question on consideration of their convenience and advantage.

The principal consideration which, according to the report, weighed with my colleagues seems to have been that the suggestion has come from a substantial section of the business community.

I have not seen the suggestions from the business community and am not aware what reasons have been put forward by them for it. It is the reasons we have to consider and not their bare opinions. And, I greatly doubt that those who have made it voice the opinion or reflect the feelings of the huge mass of traders of the entire country.

The only persons who would be interested in the writing or benefit by it are the partners. But they may have their own difficulties, considering probably the innumerable partnership businesses which are carried on in remote villages of this vast country and we cannot hope to assess the difficulties or solve them by an *ex-cathedra* opinion.

That it would cause hardship to myriads of existing partnership is recognised. It is not so clearly visible why they should have a writing, nevertheless. The hardship would be particularly on old existing firms who have been carrying on for years without a deed.

A very pertinent question to ask would be what would happen if there is no writing. The result would be to make it impossible under Section 91 of the Evidence Act to prove a partnership. Now, suppose two persons are carrying on a business as partners, and their books clearly show how they have been sharing profits for years. This provision would enable the partner who is bossing the show to deny the partnership and make it impossible for the other partners to prove the partnership in the absence of a deed. This provision would therefore be of real benefit to fraudulent partners to defeat the rights of a partner. As was found, in the case of the Statute of Frauds, the statute could be used to perpetrate a fraud without the benefit of the equitable principle which enabled English Courts to get round the Statute in such cases.

I shall presently deal with the "hardships and administrative difficulties" referred to in the report, only to be brushed aside.

SECTION 57-A

The proposals not only make a writing compulsory, they also make registration compulsory under Clause 57-A.

Here again the first question to ask is what would happen if the firm is not registered. The proper logical conclusion would be to say, as it has been said in respect of companies by Section 11 of the Companies Act that trading by such firms would be illegal and forbidden under penalties. My colleagues realise the impossibility of such a provision and leave the consequences virtually as they are under Section 69 of the existing Act, though my colleagues are of the opinion, contrary to decided cases, that subsequent registration after suit should not get over the bar in Section 69, because as they point out at page 12, an unregistered firm whose registration is compulsory, is not a firm in the eye of law.

It is pertinent to note that the proposals nowhere provide that an unregistered firm is not a firm at all in the eye of law. The difficulties of such a view would appear on examination. If it is not a firm, what is it?

Section 4 of the Partnership Act which has not been sought to be altered gives definitions of 'Partnership' and 'firm' which would certainly include a business of this character, even though unregistered.

There is no law even in these proposals which forbids joint trading by two or more persons. Such trading will lawfully go on. What are such businesses if not a firm according to the definition of Section 4?

It will be remembered that not only joint businesses of this nature but also joint family businesses exist in any number. It is not proposed to touch them. If joint family business as also other joint ventures can go on without registration, what reason of public interest is there in requiring partnerships to be registered?

The considerations of administrative difficulties in insisting on writing and registration have been referred to in the report but we are asked, nevertheless, to take this bold step having regard to the advantages which have not however been elucidated.

As I have indicated, in connection with the requirements of writing, there is no advantage to the public in making the registration compulsory. For whatever is contained in the Partnership Deed is a matter between the partners only which does not bind any one except the partners. Further, a partnership, unlike a Company, makes the partners jointly and severally liable,—so that any person dealing with the firm is amply protected if only he takes the ordinary care of ascertaining beforehand who are the partners. In the Companies Act not only registration, but numerous other things are necessary,—reports are to be filed from time to time which give the public an exact idea as far as possible of the assets and the solvency of the company. That is a matter of great importance. Because the liability of the company is limited to the value of the shares. The same reason does not exist in the case of partnership. As I have pointed out before, the compulsory registration might, on the other hand, become an instrument of fraud. Considering that the existing partnerships are also required to be registered within a limited time, it would put a serious pressure upon the existing partners and enable a fraudulent partner to deny his obligation arising out of the contract of partnership by a plea simply that the partnership has not been registered. I do not visualise any other benefit to the public from this clause.

No doubt one might say that registration of every contractual legal relation between the persons is desirable so that they should be placed on an absolutely unchallengeable footing. But that is obviously a counsel of perfection.

On the other hand, the administrative difficulties recognised by the Report are that there are not merely ephemeral partnerships but fairly substantial partnerships spread all over the length and

breadth of the country in remote villages which have been carrying on without registration. To require all of them to be registered would place an impossible burden on the thousands of business undertakings in the villages.

The administrative difficulties are enormous. At present the only thing mentioned in the Partnership Act is that it may be registered. It is obvious that mere registration does not carry us very far, unless returns are made keeping the Registers up to date not only in respect of the matters which the Report provides but also in respect of other matters. It must be remembered that at present, at any rate in West Bengal, partnerships are registered by the Registrar of Joint Stock Companies who has his office in Calcutta and there is no sort of agency in the Mufassil. To make registration of village partnerships compulsory, there must be at least one full-fledged registration office in each district if not in smaller areas and there must also be provisions such as we have in the Registration Act for the copies of the registers and partnership deeds to be sent to other registration offices. A huge lot of paper work will have to be done. The Registrar of Partnerships would become a different official from the present Registrar. One can visualise the vast amount of expenditure and the enormous staff which will be required for the purpose of an efficient organisation for compulsory registration of Partnership initially and for the registration of other reports and other things in the course of years. The expenditure of public fund upon this must necessarily be enormous and the organisation will take time. In the absence of any public benefit from incurring this expenditure and complexity, I cannot agree that compulsory registration of partnership should be introduced now. In my opinion, therefore, the amendments sought in Sections 11 and 57-A of the Draft as well as the consequential provisions in Sections 58, 59, 63 (a) and 69, except the addition suggested after sub-section (4) of Section 69, should be omitted.

With regard to Section 59, sub-section (2), also I consider this amendment superfluous. In the case of companies the use of the word 'Limited' and now the word 'Private' is necessary in order to give the persons dealing with the companies the exact idea of the status of the company which is material, because the liability of the company is limited to the capital and does not extend to the members personally. There is not the same necessity for the use of the word 'registered' beyond encumbering the business name of the firm.

N. C. SEN GUPTA.