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Nexus between Non- Profit Voluntary Organisation laws and Limited Liability Partnership Laws.

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Non-Profit Organizations

The main purpose of any business organization is to earn profit. In other words, they work for self-interest. However, there are some organizations whose basic aim is to serve the society *i.e.*, they work for the benefit of the society as a whole. These organizations are called Not-for Profit Organizations. **NPOs are also referred as** (NGO) Non-Governmental Organization, (VO) Voluntary Organization, (CSO) Civil Society Organization, (CBO) Community Based Organization, (CO) Charitable Organization, (TSO) Third Sector Organization. Examples of such organisations are: schools, hospitals, charitable institutions, welfare societies, clubs, public libraries, resident welfare association, sports club etc. These are called Not-for-Profit Organisations (NPOs). These organisations provide services to their members and to the public in general. Their main source of income is membership fees, subscription, donation, grant-in aid, etc. As the money is involved in the activities of these organisations, they also maintain accounts.[1] These organisations prepare certain statements to ascertain the results in financial terms of their activities for a particular period say, one year. Not-for-profit organizations (NPOs) in India generally take three legal forms: trusts, societies, and limited (Section 8) not for-profit companies. There are no restrictions on an Indian NPO's incidental business, commercial, or economic activities, provided that the NPO is established for and primarily runs programs for the relief of poverty or distress, education, or medical relief. However, profits must be applied fully towards charitable objects. If this is not done, the NPO will lose its income tax exemption and its income will be liable to taxation at the maximum marginal rate (30 percent). Further, the NPO must maintain separate books of account for the business, commercial, or economic activities (Income Tax Act Section 10(23C)(7), Section 11(4)-(4A)). An NPO may receive income as a result of trade, commerce, or other business activity, provided that the income is derived from an activity that aims to advance an object of "general public utility," and the income does not exceed twenty percent of the total income. State and national laws limit the types of investments Indian NPOs may make. For example, Indian NPOs may not invest in shares of public or private limited companies. Furthermore, NPOs registered in India may not invest abroad. The Finance Act (2007) amended provisions of Section 13(1) (d) (iii) with retroactive effect to April 1, 1999, allowing NPOs to invest in shares of public sector companies as well as to acquire equity shares of a "depository." Investing in mutual funds is allowed, although the Foreign Contributions Regulation Act (FCRA) of 2010 bars doing so with funds from foreign sources.[2]

Under amendments to Section 11(4A) of the Income Tax Act (1961), an NPO is not taxed on income from a business that it operates that is incidental to the attainment of the objects of the NPO, provided that the entity maintains separate books and accounts with respect to the business. Furthermore, certain activities resulting in profit, such as renting out auditoriums, are not treated as income from a business.

Under the Finance Act (2008) and Finance Act (2011), institutions established for a "charitable purpose" aiming to advance "any other object of general public utility" would lose their tax exempt status if their business activity

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[1] **www.ipleader.blog**

[2] **LLP by Pramod Jain**

(i.e. any activity or services in the nature of trade, commerce, or business, for a fee, tax, or other consideration) had an aggregate value of more than INR 2.5 million (approximately $35,000). Under the Finance Act (2015), even business activity below the INR 2.5 million limit will annul an institution's "charitable purpose" tax exemption unless it meets additional requirements: a) The business activity must be undertaken in the course of actually carrying out of the "advancement of any other object of general public utility;" and (b) The aggregate receipts from such activity or activities during the previous fiscal year must not exceed twenty per cent of the total receipts of the trust or institution under such activity or activities of that same year. The Income Tax Act sets forth the types of donations that are tax-deductible (Income Tax Act Section 80G). The Act permits donors to deduct contributions to trusts, societies, and Section 8 companies. Many institutions listed under 80G are government-related; donors are entitled to a 100 percent deduction for donations to some of these government funds.[3]

GENERAL LEGAL FORMS

The right of all citizens to form associations or unions is guaranteed by Article 19(1)(c) of the Constitution of India. There are three pertinent legal forms of not-for-profit organizations (NPOs) under Indian law: trusts, societies, and Section 8 companies. Cooperatives and trade unions are mutual benefit organizations, and as such, are not discussed in this Note. Many state and central government agencies have regulatory authority over these not-for-profit entities. For example, all NPOs are required to file annual tax returns and audited account statements with agencies at both the state and national levels. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for Section 8 companies). At the national or federal level, the regulatory bodies include the Income Tax Department and Ministry of Home Affairs (only for NPOs receiving foreign contributions). [4]

Constitutional Provisions

Article 19(1) of the Constitution Of India

(1) All citizens shall have the right
(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions**;**
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; and
(f) omitted
(g) to practise any profession, or to carry on any occupation, trade or business.

Article 30(1) in The Constitution Of India 1949

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause

TRUSTS

Public charitable trusts may be established for a number of purposes, including poverty relief, education, medical relief, the provision of facilities for recreation, and any other objective of general public utility. Indian public

[3] **NPO Lifecycle**
[4] NPO Lifecycle by Sussan Kenny

trusts are generally irrevocable. No national law governs public charitable trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts. Members of an uncertain and fluctuating class—meaning that any member of the general public or a class or section of the public could be a potential beneficiary. In determining whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public. There is no central law governing public charitable trusts, although most states have a "Public Trusts Act." Typically, a public charitable trust must register with the office of the Charity Commissioner having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust) in order to be eligible to apply for tax-exemption. Trusts may be established for the following purposes:

- Relief of poverty or distress;
- Education;
- Medical relief; Provision of facilities for recreation or other leisure-time occupations (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit; and
- The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship. While some states permit a trust to have a single or sole trustee, certain states require at least three trustees to register a public charitable trust. In general, Indian citizens serve as trustees, although there is no specific prohibition against non-natural legal persons or foreigners serving in this capacity. Legal title of the property of a public charitable trust vests in the trustees. Trustees of a public charitable trust may not, however, in any way use trust property or their position for their own interest or private advantage. Trustees are bound to protect the interests of the trust's beneficiaries, and may not enter into agreements in which they may have a personal interest that conflicts or that may conflict with the interests of the beneficiaries of the trust. Trustees may not delegate any of their duties, functions, or powers to a co-trustee or any other person, though they may delegate ministerial acts. In essence, trustees may not delegate authority with respect to duties requiring the exercise of discretion. Trustees of religious or charitable trusts are charged with discharging their duties with the degree of care that an ordinarily prudent person would exercise with respect to his personal property. Public charitable trusts are highly regulated in some states, however. For instance, in Maharashtra and Gujarat, purchases or sales of immovable property by a trust or taking a loan must be approved in advance by the Charity Commissioner. Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the objects of a trust, the doctrine of ***cypres*****,** meaning "as near as possible," may be applied to change the purposes of the trust.

SOCIETIES

Societies are membership organizations that may be registered for charitable purposes. They are usually managed by a governing council or a managing committee and are regulated by the Societies Registration Act which has been modified and adopted by various states. Unlike trusts, societies may be dissolved. Societies are governed by the Societies Registration Act (1860), which is a national-level Act. Many states have variants of the Act.
Societies are similar in character to trusts, although there are a few essential differences, including that a minimum of seven members are required to form a society. The members must register the society with the relevant state Registrar of Societies to be eligible for tax-exempt status. A registration application includes the society's memorandum of association and rules and regulations. In general, Indian citizens serve as members of the managing committee or governing council of societies, although there is no prohibition in the Societies Registration Act against non-natural (legal) persons or foreigners serving in this capacity.
According to Section 20 of the Societies Registration Act, the types of societies that may be registered under the Act include, but are not limited to, the following:

- Charitable societies;
- Societies established for the promotion of science, literature, education, or the fine arts; and
- Public art museums and galleries, and certain other types of museums.

The governance of societies also differs from that of trusts: Societies are usually managed by a governing council or managing committee which is periodically elected by a general body of members, whereas trusts are governed by their trustees.
Both individuals and institutions may be members of a society. The managing committee, which is usually elected by the membership, governs the day-to-day affairs of the society. Members of the general body of the society have voting rights and can demand the submission of accounts and the annual report of the society for inspection. Members of the managing committee may hold office for such period of time as may be specified in the bylaws of the society. Unlike trusts, societies may be dissolved. Dissolution must be approved by at least three-fifths of the society's members. Upon dissolution, and after settlement of all debts and liabilities, the funds and property of the society may not be distributed among the members of the society. Rather, the remaining funds and property must be given or transferred to some other society, preferably one with similar objects as the dissolved entity.

SECTION 8 COMPANIES ACT

The Indian Companies Act (2013), which principally governs for-profit entities, permits certain companies to obtain not-for-profit status as "Section 8 companies." [5] A Section 8 company may be formed for the purpose of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any such other purpose. A Section 8 company must apply its profits, if any, or other income to the promotion of its objects, and should not pay any dividend to its members. The company may be incorporated with or without share capital.
At least two members are required to incorporate a private company and then seek license as a non-profit company under Section 8 of the Indian Companies Act 2013. The founders or promoters of a Section 8 company must submit application materials to the Registrar of Companies. The application must include copies of the memorandum and articles of association of the proposed company, as well as a number of other documents, including a statement of assets and a brief description of the work proposed to be done upon registration. The Indian Companies Act (2013) provides in Article 8 that a limited, not-for-profit company ("Section 8 company") must direct any profits towards the realization of the company's objectives and prohibits the payment of any dividend to its members.
In all cases, the Income Tax Act specifically provides that a not-for-profit entity will lose its tax exempt status if the author, founder, or any trustee or his/her relative derives any personal benefit. The Income Tax Act further provides that any remuneration paid to a Board Member "must not be in excess of what may be reasonably paid for such services" (Income Tax Act Sections 13(2) (c) and 13(3) (cc)). [5]

PUBLIC BENEFIT STATUS

To be eligible for tax exemption under the Income Tax Act (1961), a not-for-profit entity must be organized for religious or charitable purposes. Charitable purposes include relief of the poor, education, yoga, medical relief, the advancement of any other object of general public utility, preservation of environment (including watersheds, forests and wildlife), and preservation of monuments or places or objects of artistic or historic interest.
Public charitable trusts, by definition, must be created for the benefit of the public. Societies may be registered for charitable purposes, among other purposes. Section 8 companies are formed for the limited purposes of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any such other object.

PROPRIETARY INTEREST

For a public charitable trust, the trustees hold trust assets on the trust's behalf. Thus, although trustees have legal title to the trust's assets, they hold these assets for the beneficiaries of the trust, and do not have a proprietary interest in the assets. Members of the managing committee or governing council of a society or Section 8 company also hold the assets of a society or Section 8 company (Societies Registration Act Section 5), but do not have a proprietary interest in the assets either.

[5] **Company Law by GK Kapoor.**

DISSOLUTION

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the trust's objectives, the doctrine of *cypres*, meaning "as near as possible," may be applied to change the objectives of the trust. Under certain circumstances a trust can also be officially de-registered or declared as inoperative, defunct or moribund.

Societies and Section 8 companies may be dissolved. Upon dissolution and after settlement of all debts and liabilities, the funds and property of the society or company may not be distributed among the members (Societies Registration Act Section 14). [8] Instead, the remaining funds and property must be given or transferred to some other society or Section 8 company, preferably one with similar objectives (Societies Registration Act Section 14).

Limited Liability Partnership

A limited liability partnership (LLP) is a formal partnership between at least two business partners. Each business partner is provided with limited liability, which means they aren't fully responsible for the business' debts or liabilities. Partners in an LLP aren't liable for the negligent acts or malpractice of a single partner, each partner is accountable for their own negligence. Hence it can be said that, LLP means a body corporate and a legal entity separate from its partners. It has perpetual succession. While the LLP will be a separate legal entity, liable to the full extent of its assets, the liability of partners would be limited to their agreed contribution. For a long time, a need has been felt to provide for a business format that would combine the flexibility of a Partnership firm firm and the advantages of Limited Liability of a Private Limited Company at a low compliance cost. The limitations of the partnership firms and the rigidity of the companies has led to the birth of what we call it as Limited Liability Partnership (LLP).The Limited Liability Partnership format is an alternative corporate business vehicle that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm. This format would be quite useful for small and medium enterprises in general and for the enterprises in the services sector in particular.

The Lok Sabha passed the **Limited Liability Partnership** Bill on 13 December 2008 thereafter it received the assent of the President on 7 January 2009 and thereby it has received legal status as Limited Liability Partnership Act, 2008. In India, businesses mainly operate as companies, sole proprietorship and partnership. The introduction of LLP has provided a platform to small and medium enterprises and professional firms of company secretaries, chartered accountants, advocates etc. to conduct their business/profession efficiently which would, in turn, increase their global competitiveness. Limited Liability Partnerships have gotten quite popular in the last few years. With the growth of the Indian economy, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and the statute based governance structure of the limited liability company on the other hand, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.

The Limited Liability Partnership is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Limited Liability Partnership **is** a partnership formed and registered under the said Act. A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. A limited liability partnership shall have perpetual succession. Any change in the partners of a limited liability partnership shall not affect its existence, rights or liabilities of the limited liability partnership.Limited Liability Partnership agreement is a written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to such partnership, and partner in relation to limited liability partnership, as any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement. Proper books of account are to be maintained by the LLP relating to its affairs for each year and for filing of an Annual Statement of Accounts and Solvency in form 8 with the Registrar in such form and manner as may be prescribed.

The accounts of the LLPs shall be audited as provided by the rules which are made by the Government. Every LLP shall be required to file with the Registrar an annual return duly authenticated in Form 11 every year. Incorporation document, names of partners and changes, if any. Statement of Account and Solvency and Annual Return filed by each LLP with the Registrar shall be available for inspection in the office of the Registrar by the public. [6]

Salient features of Limited Liability Partnership Act, 2008:

Hybrid form of organisation:

An LLP is a hybrid form of organisation having features of a partnership firm under the Partnership Act, 1932 and a company under the Companies Act, 1956 / 2013. However, the
Indian Partnership Act, 1932 shall not be applicable to LLPs. The LLP's are administered by the Registrar of Companies.

Separate legal entity:

The LLP shall be a body corporate and a legal entity separate from its partners. Hence, it would be liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP. No partner would be liable on account of the independent or unauthorised actions of other partners or their misconduct. The liabilities of the LLP and its partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.

Perpetual Succession:

Since, LLP is a body corporate and a legal entity separate from its partners, It has perpetual succession. Thus, an LLP is capable, in its own name, of acquiring, owning, holding, disposing of property, whether movable, immovable, tangible or intangible. It can sue and can be sued, and is capable of doing and suffering other acts as a body corporate may do or suffer.

Number of partners:

LLP must have at least two individuals as Designated Partners. At least one of the Designated Partners must be resident in India. A body corporate partner of the LLP may nominate an individual as a Designated Partner. There is no limit on the maximum number of partners.

Rights and duties of partners:

Rights and duties of partners of an LLP and mutual rights and duties between an LLP and its partners are governed by the LLP Agreement between the partners or between the LLP and its partners.

Books of Account of an LLP:

The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government. All filings under the LLP Act to be done electronically. Similarly, the Registrar may furnish information or provide copies and extracts certifying the same by affixing digital signature.

[6] **LLP by Pramod Jain.**

Conversion in to LLP:

A partnership under the Partnership Act, 1932 may be converted into an LLP. A private company or an unlisted public company may also be converted into an LLP provided there is no 'security interest' subsisting on the date of application for conversion.

Winding up of LLP:

Winding up of the LLP may be either voluntary or by the Tribunal to be established under the **Companies Act, 1956**. Till the Tribunal is established, the power in this regard has been given to the High Court; **Changes in LLP:**

The compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the act.

Heavy penalties have been provided in case of non-compliance of provisions of the LLP Act. [7]

Partners in LLP :

Any individual or a body corporate may become a partner in an LLP provided the said person is of sound mind, is not insolvent, and has not applied for adjudication for insolvency.
A LLP shall consist of at least two partners and there is no restriction on the maximum number of partners.

The Act provides that in a situation where the number of partners is reduced to one and such LLP carries on business with such sole partner for more than six months and then such partner, if having knowledge of such a situation, shall be liable personally for the obligations of the LLP.

The LLP act has made provisions that a LLP shall have at least two designated partners who shall be individuals and at least one of them shall be resident in India. [8]

The responsibilities and liabilities of the designated partner are as provided:

Responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the said Act; and liable to all penalties imposed on the LLP for any contravention of those provisions.

The LLP Act has provided for a 30 days period for filling up of a vacancy of a designated partner. If no designated partner is appointed, or if at any time there is only one designated partner, each partner of the LLP shall be deemed to be a designated partner.

If the LLP fails to appoint designated partners, then the LLP and its every partner shall be punishable with fine The Act provides that any agreement, made before the incorporation of the LLP, between the partners who subscribe their names to the incorporation document may impose obligations on LLP, if ratified by all the partners after its incorporation.

Extent and Limitation of Liability of Partners:

Every partner of an LLP for the purpose of its business is an agent of the LLP but is not an agent of other partners.

Obligations of LLP are solely its obligations and liabilities of LLP are to be met out of properties of LLP. LLP is not bound by anything done by a partner in dealing with another person if the partner had no authority to do the act on behalf of the LLP and the person either knows that the partner had no authority; or did not know or did not believe him to be a partner of the LLP.

[7] **LLP by Pramod Jain**.
[8] **Yourarticlelibrary.com**

It, further, provides that an obligation of the LLP, whether arising out of contract or otherwise shall be solely the obligation of the LLP.

The LLP receiving the credit is liable to the extent of the credit received or any financial benefit derived thereon.

If an LLP or any of its partners act with the intent to defraud creditors of the LLP or any other person or for any fraudulent purpose, then the liability of the LLP and the concerned partners is unlimited.

However, where the fraudulent act is carried out by a partner, the LLP is not liable if it is established by the LLP that the act was without the knowledge or authority of the LLP.
Where the business is carried out with fraudulent intent or for fraudulent purpose, every person who was knowingly a party is punishable with imprisonment and fine.

Also the LLP, its partners and designated partners or employees conducting its affairs in a fraudulent manner are liable to pay compensation.

After a partner's death, the business is continued in the same LLP, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death. [9]

Contribution by the partners:

The contribution may consist of money, tangible or intangible property, or any other benefits such as promissory notes, contracts for services performed or to be performed.

The obligation of a partner to contribute money or property to a LLP shall be as per the LLP agreement. [10]

Assignment and transfer of partnership rights:

The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part. The transfer of any rights by any partner would not by itself cause the disassociation of the partner or a dissolution and winding of an LLP. The transfer of rights would not entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP. [11]

Conclusion

There is no nexus between NPOs and LLPs, however they both are the branches of the different trees having same roots. NPOs are guided by different rules and laws and LLPs are ruled by different set of laws. Both are important in today's furious changing nature of business and society. Laws Applicable on NPOs are Constitution of India, Income Tax Act (1961), Public Trusts Acts of various states, Societies Registration Act (1860) Indian Companies Act (2013), Foreign Contribution Regulation Act (2010) etc.
Regulatory framework of LLPs in India are LLP Act 2008, Ministry if Corporate affairs, Income Tax Act, 1961
A Firm, private company or a nun listed public company can be converted into LLP as per the provisions contained in schedule II, III, IV respectively. The winding up of the LLP may be under Insolvency and Bankruptcy Code, 016 or voluntary or by the tribunal. The central government may apply any provisions of the Companies Act on LLP by notification in Official Gazette. Income Tax Act, 1961 shall be applicable for the taxation of LLP. [12]

[9] **LLP by Pramod Jain**
[10] **Law of Partnership by Avtar Singh**
[11] **Law of Partnership by Avtar Singh**.

[12] **LLP Pramod Jain**