The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

A DOCTRINAL EXAMINATION OF S. 69 OF THE PARTNERSHIP ACT: INCONSISTENCIES AND THE CASE FOR REFORM

- Stuti Sharma

INTRODUCTION

Registration under the Partnership Act is voluntary. There is no penalty for failing to register.[1] An unregistered partnership is not illegal and such firms can be formed, operate, enter into contracts, own property, and conduct business lawfully. At the same time, S. 69 takes away their most basic legal ability. It denies them access to courts to enforce contractual rights.[2] In a country where most partnerships are unregistered, S. 69 operates as a denial of judicial remedies.[3] It creates legal "disabilities" that serve as indirect compulsions, effectively making an optional registration obligatory.[4]

In 2025, the Supreme Court reaffirmed that S. 69's bar is mandatory and any suit filed in violation of S. 69 is treated as being without jurisdiction.[5] The legislative intent behind S.69 was to protect third parties. However, I believe this bar is unjust and unconstitutional towards unregistered partnerships as it keeps partnership voluntary but at the same time imposes a penalty by denying access to judicial remedies.

---

[1] Harsh Nayak, How Partnership Act Ease-out Doing Business for Partnership Firm?, 1 JUS CORPUS L.J. 64 (2021).

[2] Indian Partnership Act, 1932, § 69, No. 9, Acts of Parliament, 1932 (India).

[3] The Supreme Court has repeatedly held that access to justice is part of Articles 14 and 21 of the Constitution. This includes the right to an effective, accessible, and fair adjudicatory process. S. 69 makes court access depend on registration, which is a discretionary administrative act. This appears difficult to reconcile with constitutional guarantees.

[4] Sonam Kumari, The Registration of Firm: Optional or Obligatory, 3 IND. J. INTEGRATED RES. L. 1 (2023).

[5] Sunkari Tirumala Rao v. Penki Aruna Kumari, [2025] INSC 92.

Moreover, the Court has struck down a Maharashtra amendment barring dissolution suits as violative of Articles 14 and 19(1)(g) of Indian Constitution.[6] I believe this reasoning applies strongly to S.69 as well. If denying access to dissolution remedies is unconstitutional, then a broader ban on enforcing contractual rights deserves the same treatment. I believe that courts have avoided this issue by relying on exceptions, but this only postpones a real solution. The exceptions to soften S. 69 by recognising statutory rights,[7] fraud-based[8] and arbitration suits,[9] have made the law inconsistent in their application.

The research question has two parts. First, have S.69 and judicial exceptions led to inconsistent outcomes. Second, what lessons can be drawn from the Canadian legal system that regulates partnerships without denying court access. In this paper, I argue that judicial exceptions to S. 69 have resulted in inconsistencies and aim to suggest reforms.

In Section I, I examine the legislative intent and statutory structure of S. 69. In Section II, I analyse the ambiguities and gaps within S. 69. In Section III, I trace judicial interpretation to show how courts have treated the provision as mandatory while simultaneously creating exceptions, leading to inconsistency. In Section IV, I compare Indian law with Canadian partnership law to show how structured discretion avoids such inconsistencies. In Section V, I propose adopting this model in India to address non-registration without denying enforcement of valid claims.

I. LEGISLATIVE INTENT AND STATUTORY STRUCTURE

The Special Committee, in the Report on the Partnership Bill, stated that the English model of imposing penalties for non-registration was deliberately rejected. Registration was meant to remain a matter of choice. At the same time, the Bill adopted the English approach in a limited way by denying unregistered firms and partners the right to enforce civil claims against third parties, and by preventing unregistered partners from suing even their own partners. Instead of penalties, the law relies on indirect pressure to encourage registration. These restrictions were

[6] V. Subramaniam v. Rajesh Raghuvandra Rao, (2009) 5 SCC 608. The court called the bar a crippling disability that left parties without remedy.
[7] Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) Supp (1) SCR 485.
[8] Shiv Developers v. Aksharay Developers, [2022] INSC 119.
[9] Firm Ashok Traders v. Gurumukh Das Saluja, (2004) 3 SCC 155.

seen as the strongest possible measures that could be used without adding a penal provision or unsettling settled principles of partnership law.[10]

S. 58 provides that partners "may apply" for registration with the Registrar of Firms.[11] The language is permissive. Registration is not mandatory for the existence of a partnership or day-to-day operations. S. 69(1) bars suits between partners unless two conditions are met: the firm is registered, and the suing partner is named in the Register of Firms. If either is missing, the suit fails for enforcement only for contractual rights. S.69(2) extends this bar to suits by unregistered firms against third parties. S. 69(3) creates important exceptions and allows suits for dissolution, settlement of accounts, and insolvency despite non-registration. S. 69(4) further exempts certain firms based on location and low-value claims.[12]

Moreover, when a new partner joins but does not register, the restriction falls only on that partner. If a partner leaves without giving public notice, the law keeps their liability alive to protect third parties. Responsibility is collective when the firm is unregistered, but individual when changes are not recorded. The law disables only the person who defaults.[13]

In Bharat Sarvodaya Mills v. Mohatta Brothers, the Supreme Court reiterated the legislative purpose of this provision to protect creditors and other third parties who deal with a firm. It is intended that anyone entering transactions with the firm should be able to check the register, know who the partners are and the extent of their liability. This helps third parties make informed decisions and safeguards their interests.[14]

However, I believe that this interpretation has limitations. If the object is third-party notification, then suits between partners should logically be exempt from the bar as the third-party notification objective is inapplicable when the firm is not dealing with third parties. The

[10] GOV'T OF INDIA, REPORT OF THE SPECIAL COMMITTEE ON THE PARTNERSHIP BILL ¶¶17–19 (1931). For new partners, staying unregistered carries clear risks, as recovery of dues depends largely on good faith or on dissolution. For third parties, outcomes vary based on knowledge: they may demand registration, rely on existing partners' credit, or suffer no prejudice if unaware.

[11] Indian Partnership Act, 1932, § 58, No. 9, Acts of Parliament, 1932 (India).

[12] Indian Partnership Act, 1932, § 69, No. 9, Acts of Parliament, 1932 (India).

[13] K. Ponnuswami, Registration of Firms: Some Problems, 6 J. INDIAN L. INST. 54 (1964).

[14] Bharat Sarvodaya Mills Co. Ltd. v. Mohatta Brothers, AIR 1976 SC 1703.

fact that S. 69(1) bars even inter se suits undermines the pure "creditor protection" theory and suggests that the intent was also coercion, not protection.

II. AMBIGUITIES IN S. 69

It is unclear what counts as enforcing a contractual right under S. 69. In Seth Loonkaran Sethiya v Ivan E John, the Court held that S. 69 must be strictly applied, but it did not clarify the meaning of the phrase "right arising from a contract."[15] In Haldiram Bhujiawala v Anand Kumar Deepak Kumar, the court made a partial attempt to address this ambiguity. The Court drew a distinction between contracts entered into by a firm in the course of business, which attract the bar, and contracts that merely constitute the source of title to property, which do not.[16] While this distinction acknowledges uncertainty within the provision, it does not provide a clear test for determining when a contract crosses from one category to the other. In Raptakos Brett & Co Ltd v Ganesh Property, the Court held that a suit based on a statutory right fall outside the bar.[17] This creates an additional layer of ambiguity, as many commercial disputes involve overlapping contractual and statutory elements.

Issues of standing also remain unresolved. A partner suing as a partner is barred but what about when a partner sues in a personal capacity after rights shift to the firm. It is often hard to tell in what capacity the suit is filed. The bar applies only when the plaintiff sues as a partner and seeks to enforce a contractual right. However, there is no clear guidance on how courts should distinguish between a partner suing in a personal capacity and one suing on behalf of the firm. Moreover, the impact of non-registration is also one sided. Third parties can sue unregistered firms, but such firms cannot enforce their own contracts.

III. RELAXATIONS AND INCONSISTENCIES

The vague drafting of S. 69 has left judges with excessive discretion, resulting in inconsistent outcomes across jurisdictions.[18] These gaps have the potential of leading to unjust outcomes.

---

[15] Seth Loonkaran Sethiya v. Ivan E. John, (1977) 1 SCC 379 (SC). This was reiterated in Sunkari Tirumala Rao v. Penki Aruna Kumari, [2025] INSC 92, where the Court enforced the statutory bar while leaving unresolved which categories of contractual claims are excluded.

[16] Haldiram Bhujiawala v. Anand Kumar Deepak Kumar, (2000) 3 SCC 250 (SC).

[17] Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) Supp (1) SCR 485.

[18] Shagun Singhal, Section 69(2) of the Partnership Act: High Time for a Definitive Interpretation, HN LUCCELS (Oct. 5, 2020), https://hnluccells.in/section-69-partnership-act-definitive-interpretation.

A. STATUTORY RIGHTS

The bar does not apply to rights conferred by statute. In Haldiram Bhujiawala v Anand Kumar Deepak Kumar, the Supreme Court clarified that under S. 69(2), an unregistered partnership firm is barred only from enforcing rights that originate in a contract. Where the cause of action arises under a separate statute, the bar does not apply.[19] This firmly limited S. 69(2) to contractual claims and rejected a broader interpretation that would deny all remedies to unregistered firms.

This reasoning was later extended in Afsal Baker v Maya Printers. The Court distinguished between two types of claims arising from the same commercial transaction. Recovery of dues under a sales contract was held to be barred under S. 69(2), since it directly enforced a contractual right. However, proceedings based on dishonour of cheques under the Negotiable Instruments Act, 1881 were permitted.[20] The mere fact that the cheque was issued in the course of a contractual relationship did not convert the statutory claim into a contractual one.

The Delhi High Court reaffirmed this and emphasised that once a statute independently creates obligations and remedies, the Partnership Act cannot be used to defeat those rights.[21] More recently, the Delhi High Court in Amit Kumar Basau v Sales Tax Officer extended this to tax law. The Court stressed that procedural provisions should not operate to defeat substantive justice, especially where public law remedies and statutory entitlements are involved.[22] The 178th Report Law Commission of India endorsed this approach. The Commission recommended adding an Explanation to S. 69 to clarify that the phrase “a right arising from a contract” refers only to contracts made in the course of business.[23]

---

[19] Haldiram Bhujiawala v. Anand Kumar Deepak Kumar, (2000) 3 SCC 250 (SC). This is because statutory rights exist independently of the partnership agreement and do not depend on the firm's registration status for their enforceability.

[20] Afsal Baker v. Maya Printers, 2016 SCC OnLine Ker 29914 (Ker HC).

[21] Hindustan Infrastructure Construction Corp. Ltd. v. R.S. Woods International Ltd., 2018 SCC OnLine Del 12960 (Del HC), holding that liability arising from dishonour of a cheque is statutory in nature and therefore falls outside the scope of § 69(2).

[22] Amit Kumar Basau v. Sales Tax Officer, W.P.(C) No. 15327 of 2025 (Del. HC, Oct. 2025). The Court observed that § 69 only imposes an embargo on enforcing rights arising from contract and cannot be used to extinguish statutory rights altogether under the CGST Act.

[23] LAW COMM'N OF INDIA, 178TH REPORT, RECOMMENDATIONS FOR AMENDING VARIOUS ENACTMENTS, BOTH CIVIL AND CRIMINAL (2001).

The resulting position from these developments is uneven. In modern commercial transactions, modern commercial disputes rarely involve purely contractual rights. They involve statutory obligations layered onto contractual relationships. If the purpose of S. 69 is to discipline unregistered firms, it cannot do so selectively. A rule that disables enforcement only when claims are framed contractually but allows enforcement when the same transaction attracts statutory liability is redundant.

B. THE ARBITRATION EXCEPTION

The statutory bar on "suits in any Court" does not extend to arbitral proceedings.[24] This interpretation creates a parallel enforcement route for unregistered partnership firms, allowing them to bypass S. 69.

There was earlier judicial resistance to this view. In Jagdish Chandra Gupta v Kajaria Traders (India) Ltd, the Supreme Court held that applications seeking reference to arbitration were barred under S. 69(3), reasoning that the right to arbitrate flows from the partnership contract itself.[25]

Later, the foundation of this exception was laid in Dattatray N Sawant v Nitida A Mehta. The dispute involved an unregistered partnership whose deed contained a compulsory arbitration clause. When disputes arose, the court held that S. 69 did not bar arbitration.[26] In M s Umesh Goel v Himachal Pradesh Cooperative Group Housing Society Ltd, the Supreme Court reiterated that S. 69 does not apply to arbitral proceedings and permitted counterclaims by unregistered firms.[27]

---

[24] Kumar Bhaskar, Arbitration Proceedings by Unregistered Partnership Firms, SCC TIMES (Oct. 26, 2022), https://www.scconline.com/blog/post/2022/10/26/arbitration-proceedings-by-unregistered-partnership-firms/.

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

[26] Dattatray N. Sawant v. Nitida A. Mehta, 2015 SCC OnLine Bom 1366. In its reasoning, first, the Court relied on a strict textual reading of § 69, which bars only a "suit in any Court." It treated both terms as technical. A suit refers to a civil proceeding before a judicial body exercising state authority. Arbitration, in contrast, is a private and consensual dispute resolution process conducted before an arbitral tribunal. Since an arbitral tribunal is not a court, arbitration falls outside the scope of § 69. Second, the Court examined the scheme of the Arbitration and Conciliation Act, 1996, particularly § 5. This non obstante clause was interpreted to give primacy to the arbitration framework unless the underlying contract was void. Because § 69 does not invalidate partnership agreements but only restricts enforcement through courts, it could not operate as a bar to arbitration. Finally, the Court relied on policy considerations. Arbitration advances efficiency, party autonomy, and speedy resolution of commercial disputes. Preventing arbitration solely due to non-registration would undermine these objectives.

[27] M/s Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Ltd., (2016) 11 SCC 31.

However, the arbitration exception creates a gap. An unregistered firm barred from suing in court for breach of contract can recover the same amount by invoking arbitration. Once an award is rendered, it can be enforced through court execution under S. 36 of the Arbitration Act. In substance, S. 69 is fully bypassed. If enforcement of the same contractual right is barred in court but fully permitted through arbitration, S. 69 ceases to serve its function.

C. STRUCTURAL ASYMMETRY

Third parties remain free to sue an unregistered firm. An unregistered partnership cannot sue its partners for breach of the partnership agreement, nor can it sue third parties for breach of contracts. Enforcement therefore flows in only one direction. Counterparties then are incentivised to breach. For example, a supplier operating as an unregistered partnership may deliver goods on credit. A buyer may accept delivery and then refuse payment, as the supplier is barred from suing under S. 69(2). If the supplier raises objections, the buyer can still bring counterclaims for defects or set off amounts, which remain fully maintainable. The supplier's primary claim is barred, while the buyer's claims proceed. The result is a risk-free breach that unjustly enriches the counterparty.

These problems are compounded by uncertainty regarding subsequent registration. Courts have given inconsistent signals on whether registration after a dispute arises cures the bar for earlier causes of action.

Moreover, courts have taken different and sometimes conflicting approaches to interpreting S. 69. S. 69(2) requires that a firm be registered and that the "persons suing" be shown in the Register of Firms before the firm can sue a third party on a contract. The Punjab High Court adopted a strict view. It held that "persons suing" means all partners at the time the suit is filed. As a result, if even one partner who joined later is not entered in the Register, the suit must fail.[28] The Patna High Court took a narrower approach. It held that the suit is maintainable if the firm is registered and the partners who actually file the suit are registered, even if other partners are not.[29] While the Patna high court was correct in this interpretation. However, it was wrong to suggest that only

[28] Dr. V.S. Bahl v. S.L. Kapur & Co., (Punjab High Court, Nov. 17, 1954).
[29] Chaman Lal v. Firm New India Traders (Mica Merchants), AIR 1962 Pat 25.

registered partners benefit from or are bound by the decree. A decree passed in the firm's name is a joint decree, binding and benefiting all partners, regardless of registration status.[30]

D. DISSOLUTION AND ACCOUNTS EXCEPTION

S. 69(3) creates limited exceptions to the general bar and aims to soften the harsh consequences of non-registration. These exceptions permit suits for dissolution of the firm, settlement of accounts of a dissolved firm, and realisation of the property of a dissolved firm.

In practice, courts have treated this sub-section as a mechanism only for winding up the firm, not for resolving wrongdoing within the partnership. In Sunkari Tirumala Rao v Penki Aruna Kumari, the dispute involved an unregistered real estate partnership where partners had contributed capital but later disagreed over monetary entitlements. One partner sought recovery of money and enforcement of partnership obligations. The Court held that S. 69(3) permits only dissolution related relief. The Court clarified that S. 69(3) is concerned only with unwinding the firm and distributing existing assets and does not authorise courts to impose new liabilities arising from contractual breaches during the partnership's subsistence.[31]

This interpretation exposes a gap. Where one partner misappropriates funds, violates an obligation, or causes losses through misconduct, the remaining partners are left with limited options. They may dissolve the firm and seek accounts, but the accounting exercise merely reflects missing assets or depleted capital. It does not compel the defaulting partner to restore what was wrongfully taken or compensate for losses caused by breach. As a result, losses are effectively shared among honest partners, while the wrongdoer escapes personal liability.

In Seth Loonkaran Sethiya v Ivan E John, the Court drew a strict distinction between permissible accounting adjustments and impermissible breach remedies. While courts may determine what assets and liabilities exist at the time of dissolution, they cannot award damages or enforce contractual rights arising before dissolution.[32] Even where breach allegations are closely connected to the dissolution, they remain barred if they amount to enforcement of

[30] K. Ponnuswami, Registration of Firms: Some Problems, 6 J. INDIAN L. INST. 54 (1964).
[31] Sunkari Tirumala Rao v. Penki Aruna Kumari, [2025] INSC 92.
[32] Seth Loonkaran Sethiya v. Ivan E. John, (1977) 1 SCC 379 (SC).

contractual obligations. The problem is compounded by the fact that S. 69(3) operates only after dissolution. Breaches committed during the active life of the partnership cannot be addressed when they occur. Partners must either tolerate misconduct or dissolve the firm prematurely to access this limited remedy.

Collectively, these relaxations produce outcomes that are inconsistent. The same transaction can produce radically different results depending on how a claim is characterised. A breach of the partnership agreement is barred if pursued directly, yet the same conduct becomes enforceable when reframed as trademark infringement or cheque dishonour under a special statute. A contractual right is unenforceable in court but fully enforceable through arbitration if the agreement contains such a clause. Even within dissolution proceedings, relief is fragmented: dissolution and accounting are permitted, while damages for the very breaches that necessitated dissolution remain barred. This demands a need for reform.

IV. COMPARATIVE ANALYSIS WITH CANADA

Unlike India's S. 69, Canadian law separates substantive partnership rights from administrative registration obligations. Indian Partnership Act, 1932 combines three functions into one framework: defining partnership rights and duties, creating a registration mechanism, and using registration as a gatekeeping device for enforcement through S. 69. Canada divides these functions. Substantive rights and liabilities are governed by provincial Partnerships Acts, while registration and public notice are addressed under Business Names Acts. Enforcement rights flow from the partnership relationship itself, not from administrative compliance.

The Ontario Partnerships Act governs partner agency, liability, and fiduciary duties without imposing any registration-based bar on enforcement. S. 6 establishes that every partner is an agent of the firm, binding the partnership through acts done in the ordinary course of business.[33] The statute assumes that partnerships, whether registered or not, have full legal capacity to sue and be sued. In Backman v. Canada, the Supreme Court of Canada held that partnership status arises from factual elements such as mutual consent, profit-sharing, and

[33] Partnerships Act, R.S.O. 1990, c. P.5, § 6 (Can.).

joint business activity, not from registration. Registration may evidence a partnership, but it does not constitute it.[34]

The same approach governs fiduciary duties. S.s 28 to 30 of the Ontario Act codify duties to render accounts, account for benefits, and disgorge profits from competing businesses. These duties are enforceable regardless of registration.[35] In Rochwerg v. Truster, the Ontario Court of Appeal held that fiduciary obligations arise from the nature of the partnership relationship and are enforceable even in unregistered partnerships. Denying enforcement based on administrative status would undermine the trust and confidence essential to partnership law.[36] This stands in contrast to Indian law, where S. 69(1) bars unregistered partners from suing even for breach of fiduciary duty.

Registration in Canada is addressed separately under the Ontario Business Names Act. Registration is required only when a partnership operates under an assumed name, and the requirement serves a notice function. Crucially, non-registration does not invalidate contracts or deny substantive rights. S. 7 replaces absolute bars with a procedural leave requirement. A court must grant leave if three conditions are met: the failure to register was inadvertent, the public was not deceived or misled, and the applicant has cured the non-compliance by the time of approaching the court.[37] Across provinces, the same principles prevail. No Canadian jurisdiction imposes an enforcement bar comparable to S. 69.

V. PROPOSED REFORM

The first proposed reform is that a partnership or its partners should not be prevented from filing or continuing a suit only because the firm is not registered. Both registered and unregistered partnerships should have the same basic right to enforce contracts, statutory rights, and rights under the Partnership Act.

At the same time, instead of blocking enforcement altogether, the law should give courts procedural tools to deal with the failure to register. Courts should not be allowed to dismiss

---

[34] Backman v. Canada, 2001 SCC 10 (Can.).
[35] Partnerships Act, R.S.O. 1990, c. P.5, §§ 28–30 (Can.).
[36] Rochwerg v. Truster, 2002 CanLII 41715 (Ont. C.A.).
[37] Business Names Act, R.S.O. 1990, c. B.17, § 7 (Can.).

a case only on the ground of non-registration without first giving the plaintiff a chance to seek permission to continue. The court may ask the firm to complete registration within a fixed time, impose reasonable costs or fines based on the seriousness of the lapse, and dismiss the suit only if the firm continues to ignore these directions and dismissal would not result in clear injustice.

To ensure that this discretion is not arbitrarily exercised, there should be a clear test for courts to follow. Judges should be required to look at factors such as whether the failure to register was accidental or intentional, whether anyone was misled by the non-registration, whether the defect was corrected quickly, the nature and size of the dispute, the hardship that would result from denying enforcement, and the conduct of the defendant as well. This structured approach is similar to the Canadian model and helps balance fairness with accountability.

VI. CONCLUSION

This paper argues that although registration under the Partnership Act is formally voluntary, Section 69 effectively turns non-registration into a serious disability by preventing unregistered firms from enforcing contractual rights in court. At the same time, such firms remain fully open to being sued by third parties. Courts have repeatedly treated Section 69 as mandatory, yet they have also allowed several exceptions to soften its harsh effects. These include allowing enforcement of statutory rights, permitting arbitration proceedings, and recognising suits for dissolution and accounts. These judicial responses reflect clear discomfort with an absolute bar on enforcement. However, they have produced an uneven and incoherent legal position.

The comparative analysis with Canadian partnership law shows a balanced approach. Canadian law separates substantive partnership rights from registration requirements and addresses non-compliance through structured judicial discretion rather than rigid enforcement bars. In light of this, I suggest the need for India to move towards a system of qualified access like the Canadian model. I suggest that courts be given structured discretion to address nonregistration, for example through costs, fines, without completely denying enforcement of otherwise valid claims. Replacing the rigid bar with a framework of structured discretion would reduce inconsistency.