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## LEGAL FRAMEWORK OF COOPERATIVES IN INDIA- AN ANALYSIS

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### Abstract:

*The laws relating to co-operative societies play a vital role in the development of a co-operative movement. These laws are complementary to co-operative principles, otherwise there is no room for the growth of a movement which is truly cooperative. Both the government official and the public will take the law to be correct and understand the content and character of the movement from the law relating to it. It is necessary to exercise the law in the co-operative structures to pave way for a brighter and stable co-operative movement in India.*

The Co-operative legislation in India had its origin in the problem of rural indebtedness. The history of co-operative legislation in India evolved over the last 86 years, suggests gradual developments necessitated by the practical problems encountered by the co-operatives and the recommendations of various expert bodies which have gone into working of the co-operatives from time to time. The post-independence co-operative legislation is more comprehensive and partly restrictive in nature compared to the pre-independent legislation. The simple act of 1904 was replaced by voluminous legislations.

### The Cooperative Credit Societies Act of 1904 was followed by a number of supporting

legislations including the Cooperative Societies Act, 1912 which provided for the formation of non-credit societies and federal cooperative organisations. Provinces like Bombay, Madras, Bihar, Orissa and Bengal enacted their own cooperative laws on the lines of the 1912 Act. In 1928, the Royal Commission on Agriculture submitted a report emphasizing the importance of cooperative sector and observed that "if cooperation fails, there will fail the best hope of Rural India". In 1942, the government enacted the Multi Unit Cooperative Societies Act which was an enabling instrument for incorporation and winding up of cooperative societies. The Reserve Bank of India formed in 1934, had agriculture credit as a part of its basic mandate. By extending refinance facilities to the cooperative credit system it played an important role in spreading the cooperative movement to far corners of the country.

### I.INTRODUCTION

In a developing country like India with huge deficits in terms of quality and quantity, the State has to shoulder the primary responsibility of providing cooperative credit. Considering the low living standards of common man, incomplete and imperfect markets, and other socio political considerations it is the primary duty of the government to ensure that its citizens have easy access to cooperative credit. The need of the hour for the cooperative sector in the era of liberalized environment is to seize every opportunity available to it. Thus, the future vision of cooperative movement will have to be based on efficiency parameters relating to promotion of excellence, improvement of operational efficiency and strengthening of

financial resource base.

## NEED OF CO-OPERATIVE LEGISLATION

Co-operative legislation gives a broad perspective of co- operative structure and administration. Enactment of these legislation on co-operative came out of few circumstances. These are discussed below.

### 1. Rural People

The co-operative credit societies were mainly conceived to tackle rural indebtedness. The rural people are highly illiterate and any legislation to be effectively understood by them must be simple enough to be within the reach of the people in the country.

### 2. Organization

The cooperative is a unique form of business organization with a social purpose. It is essentially a service organization to better the condition of the members and hence the legislation must be in tune with its unique character.

### 3. Exemption

Co-operatives were thought of essentially for men of limited means. Hence some concessions and exemptions from payment of fees under other acts in force like Registration Act and the Indian Stamp Duty Act were considered essential to encourage their formation and to facilitate their working.

### 4. Role of Provincial Government

Co-operative activity falls essentially within the purview of the provincial governments from the point of view of the proximity to the field and awareness of the local conditions. Hence, the need for greater discretion to provincial governments in organizing, supervising and controlling co-operatives is considered necessary for their effective formation and efficient working.

### 5. The loophole in existing legislation

The Indian Companies Act which was mainly meant to deal with joint stock concerns, was considered undesirable for co-operatives and service oriented organizations. Further, the complicated provisions of the Companies Act was beyond the reach of the simple folk in the rural areas. It was also found difficult to incorporate the privileges and concessions, the government was considering for the co-operatives within the purview of the then existing Companies Act.

## CO-OPERATIVE TRIBUNAL

### Aims and Objectives: -

The Tribunal may call for and examine the record of any proceedings, in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Tribunal that any such decision or order should be modified annulled or reversed, the Tribunal may pass such order thereon as it may deem fit. An order passed in appeal under section 112 or in revision under sub-section (6) of this section or in review under section 115 by the Tribunal shall be final and conclusive, and shall not be called in question in any civil or revenue court. The Tribunal hearing an appeal under this Act shall exercise all the powers conferred upon an appellate court by section 97 of, and Order XLI of the first schedule to, the code of civil procedure, 1908.

### The Team

The Tribunal shall consist of a Chairman and not more than two other Members possessing such qualifications as may be prescribed, and shall be appointed by the government by notification in the official Gazette for such term as may be prescribed.

### Role of Chairman and Members

To hear the appeal of both the parties and pass the order

Powers and duties of officers and employees

### POWERS OF CIVIL COURT: -

1) In exercising the functions conferred on him by or under this Act, the Registrar, the Arbitrator or any

other person deciding a dispute under section 70 and the liquidator of a cooperative society or person entitled to audit, inspect or hold an inquiry and the Tribunal shall have all the powers of a civil court, while trying a suit under the Code of Civil procedure, 1908 (5 of 1908) in respect of the following matters, namely: -

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Proof of facts by affidavits; and
- (d) Issuing commissions for examination of witness.

2) In the case of an affidavit, the Registrar or any officer appointed by him, the arbitrator, the liquidator or the Tribunal, as the case may be, may administer the oath to the deponent. The Tribunal can call the records from the O/o the RCS of the cooperative societies. The Tribunal hearing an appeal under this Act, shall exercise all the powers conferred upon an appellate court by section 97 of, and Order XLI of the First Schedule to, the Code of Civil Procedure, 1908.

#### **The Co-operative Societies Act**

The essential provisions of the Co-operative Societies Act that were enacted in early 60's on the lines suggested by the Committee on Co-operative Law are discussed here.

##### **1. Society Registration**

According to most of the states acts, if the Registrar is satisfied that the application for registration is in accordance with the provisions of the act and rules and that the by-laws are in conformity with provision of the Acts and Rules, a society with its objective as the promotion of common economic interest of its members, may be registered. Usually a minimum membership of 10 persons is required to form a primary society. The Registrar was also empowered to refuse registration if he feels that the proposed society has no scope of attaining viability in the near future even if other conditions of registration are satisfactory.

##### **2. Membership**

Most of the new acts provided for appeal against refusal of membership by the managing committee of the society to the Registrar of co-operative societies within certain time limits.

##### **3. Conflict of settlement**

Provisions exist in all state acts for settlement of disputes concerning co-operative societies by reference to the Registrar who either decides the disputes himself or refer them to the department officer authorized by the state government in this behalf.

##### **4. Division and Amalgamation**

Many state acts have provided for amalgamation and division of societies. The new acts have also incorporated expedition, procedures of amalgamation and division to facilitate reorganization of societies for purpose of viability.

##### **5. Managing Committee**

Most of the state co-operative acts have a provision for supervision of the managing committee of a cooperative society, if it is found negligent, or acting in a manner prejudicial to the interest of the society.

##### **6. Awards and Orders**

The co-operative legislation in almost all the states provides for execution of awards, decrees and orders through the civil courts or through the revenue department as arrears of land revenues. In some states, the new acts also enable the officers of the co-operative department to recover dues under awards, decrees, orders, etc., in addition to the agency of the revenue department to the civil courts.

##### **7. State Aid**

The model bill prepared by the committee on Co-operative Law included a chapter regarding state aid to co-operative societies. Various provisions relating to the direct and indirect partnership of the state in co-operative institutions as also for the grant of loans, subsidies, guarantee, etc to co-operative institutions were included in that chapter.

### 8. Inspection and supervision

In most states, the law provides for supervision and inspection of co-operative societies by the Registrar or any other person authorized by him. Audit is the statutory responsibility of the Registrar in almost all the states.

### 9. Obligation

It is now agreed upon that co-operative societies should have the liberty to decide as to the nature of liability, limited or unlimited to be adopted by them. In the new acts passed by various states this principle has been recognized and accepted.

### 10. Government's power to nominate director

The generally accepted policy on nomination is that the government should nominate its representative on the board of directors of a co-operative society only if it has contributed to the share capital of the society or has guaranteed repayment of debentures or has made available any other financial assistance on large scale, and that such nomination should be restricted to 1/3 of the total number of members on the board of directors, or 3, or even less. The object of this policy is to ensure that societies are allowed to function autonomously and there is no undue control by government over their working.

### 11. Amendments of by-laws

The new acts passed by Madhya Pradesh, Maharashtra, Tamil Nadu, Orissa, Andhra Pradesh and Gujarat contain detailed provisions on the power to the Registrar for the direct amendment of by-laws. But such a provision does not exist in the acts of Punjab, Jammu and Kashmir, etc.

## REGISTRATION OF CO-OPERATIVE SOCIETIES

A society, which has as its main object, the promotion of economic interests of its members in accordance with the co-operative principles or a society established with the object of facilitating the operation of such a society may be registered under the act (section 4(1))

### A. Application for provisional registration

The application for provisional registration in form 'A' has to be signed by all the members, in case where the applicants are individuals. In case where the applicants are registered societies, the by-laws and applications must be signed by a member duly authorized on behalf of such society. The following documents have to accompany the application for provisional registration.

1. Four copies of the proposed by-laws of the society.
2. A list of persons who have come forward to organize the society, with their names and father's name addresses and share amount and entrance fee likely to be contributed by them.
3. A scheme showing the details, explaining the economic soundness of the society.
4. A copy of the resolution authorizing a member of the society to sign the application on behalf of the society in case the applicant itself is a registered body.
5. The name and address of the persons to whom correspondence regarding registration or other matter may be communicated.
6. A declaration to the effect that the information given in the enclosures are to the best of their knowledge and belief.
7. In cases where all the applicants are individuals the following must be ensured while applying for provisional registrations:
  - a. the number of applicants must not be less than ten;
  - b they must have attained the age of majority;
  - c. they must have a sound mind i.e. those who are known to be insane are not eligible;
  - d. each applicant must belong to a different family; and
  - e. all of them must attest the application and by-laws.

After receipt of the application for provisional registration of a society the Registrar must satisfy himself:

After satisfying himself that the proposed society has complied with the above requirements, he may register the society and its by-laws provisionally and direct the society to control such minimum number of members and collect such amount of share capital as feels it necessary in the interest of the

economic soundness of the society. The Registrar can also make necessary alterations in drafting by-laws of the society.

The provisional registration of the society is useful only to fulfill the directions laid down by the Registrar on the application made by the society but not to undertake any activity on behalf of the members.

#### **B. Application for final registration**

A provisionally registered Society has to satisfy the following conditions while applying for registration. These are as follows.

1. Time of provisional registration, with respect to membership, share capital etc.
2. It must convene a general body meeting to adopt the model by-laws with or without modifications.
3. The period between provisional registration and the date of receipt of the application for final registration has not exceeded one year.

Once the above conditions are satisfied the application for final registration has to be submitted in form-A along with following enclosures:

1. four copies of the proposed by-laws of the society as adopted by the general body of the society;
2. a list of names of the members with their address, occupation and the amount of their share capital;
3. a certificate in the prescribed form from the manager of the bank where the share capital is deposited;
4. a true copy of the minutes of the general body of the society including adoption of by-laws duly signed by at least a majority of the members; and
5. the name and address of the committee.

The application for final registration along with above en- closures addressed to the Registrar must be duly signed by the committee members.

After receiving the application for final registration in form (AA) the registrar has to examine it to satisfy himself. In case he decides to grant final registration to the society, he shall issue to such society, free of cost:

1. certificate of registration, and
  2. certificate copy of by-laws as approved and registered by him.
- The copy of the above should also be furnished to the financing bank.

#### **DUTIES OF A REGISTERED SOCIETY**

A registered society has following duties to discharge.

1. According to section 118 of the act, every society shall have an address registered in accordance with the rules to which notices and other communications may be sent and shall send to the Registrar notice of any change in address within thirty days of the change.
2. It is the duty of every registered society to affix a sign board describing the name of the society outside of every office or branch thereof.
3. Another duty of the society is, it shall keep a copy of the act, the rules and the by-laws, the audited annual balance sheet, the profit and loss account, a list of the members, etc. free of charge at all reasonable times in its office. Every member is permitted to inspect such portions of the books and records in which the transactions relating to him have been recorded.
4. A society shall furnish to a member on request in writing and or payment of such fee as may be fixed a copy of any of the documents or extracts of transactions relating to him with the society within thirty days from the date of payment of such fees.

#### **RIGHTS AND LIABILITIES OF MEMBERS**

The members are the key unit of a co-operative society. The criteria of eligibility for membership procedures to be followed and rights and liabilities of members of society are discussed below.

**A. Eligibility of membership**

The following persons are eligible for admission to membership in a co-operative society.

1. An individual who has attained the majority and is of sound mind; and who belongs to the class of person, if any, for whom the society is formed as per its laws.
2. A society registered or deemed to be registered under the act.
3. The government
4. Any firm, company or other corporate body or any society registered under the Societies Registration Act.
5. Any statutory body constituted for the purpose of development of a particular industry.

**B. Right of membership**

The right of members are contained in the different section of the act, in the rules framed under this act and in the by-laws.

1. Right to register a society
2. Right of admission as a member
3. Right to withdraw shares, deposits etc.
4. Right to nomination
5. Right to services
6. Right to receive dividend
7. Right to vote
8. Right to elect committee member
9. Right to inspect books and records
10. Right to create a charge
11. Right to requisition of special general body meeting
12. Right to requisition inquiry
13. Right to prefer an appeal
14. Right to request for winding up the society
15. Right to notice

**NATURE AND PROCEDURE FOR SETTling DISPUTES**

1. If any disputes regarding the affairs of a registered society arises;

-among members, past members or persons claiming through members, or  
-between member, past member or person claiming through a member, deceased member, and the society or its committee, or any officer of the society,  
-between society or its committee and any officer of the society, or  
-between the society and any other registered society, then such dispute may be referred to the registrar for decision by the parties by mutual consent.

A claim by a registered society for any debt or demand due to or from a member, past member or the nominated, heir or legal representative of a deceased member, whether admitted or not, shall be deemed to be a dispute the business of the society within the meaning of this sub-section.

2. The Registrar may, on receipt of a reference under sub-section (1)
  - a. decide the dispute himself and make an award, or
  - b. refer it for disposal to an arbitrator/ arbitrators.
3. Any party aggrieved by the award of the arbitrator/arbitrators may appeal there from to the Registrar.
4. An award of the Registrar under sub-section (2) or an appeal made under sub-section (3) shall be final and shall not be called in question in any civil court and be enforced in the same manner as if the decision had been judgment of a civil court.
5. The award of the arbitrary or arbitrators under sub-section (2) shall, if no appeal is referred to the registrar under sub-section (3), or if any such appeal is abandoned or withdrawn, be final and not be called



in question in any civil court and shall be enforced in the same manner as if tile award had been a judgment of a civil court.

6. The government may prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or duly appointed arbitrator or arbitrators.

7. The government may prescribe the forms to be used, the fees to be paid, the procedure to be observed and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this law.

#### CONCLUSION.

The modern co-operative legislation is intended to serve as a broad legal framework within which the co-operatives have to grow and function. It is necessary in this connection to emphasize that this framework will be effective and useful only if the various laws are administered in a proper manner. In framing the co-operative laws the main consideration has been to ensure that it serves as an effective instrument of development of co-operation and thereby enables the co-operative societies to undertake their increasing role in the development of the country. Several suggestions are to be undertaken viz. are:

1. A borderless system of economic activity is coming into being. Big multinational companies will take full advantage of the borderless world, without hindrance of national boundaries to undertake large scale economic activities, which will dominate the world market. Such a new economic scenario, presented a threat to cooperative movement's ability to survive.

2. Since the government now has withdrawn support, due to changed economic priorities, many cooperatives encounter difficulties in generating their own resources and have to completely reorganize themselves to survive and succeed in a competitive environment, without depending on any state support.

3. At present, there are about 207 national and 8 international organizations, which are the backbone of ICA and there are about 754 million individuals spread over 90 countries of Asia, Africa, Europe and America, who are members of ICA. With such a huge and diversified structure around the world, one cannot question the ability of the cooperatives to survive and succeed, but what needs to be deliberated upon is, the new direction towards which cooperative movement should move with firm determination.

4. Internal and structural weaknesses of cooperative institutions, combined with lack of proper policy support have neutralized their positive impact and resulted partly in the mismanagement, inefficiency and corruption in the financing of cooperatives. This has necessitated the need for a clear – cut policy on co-operatives, to enable sustained development and growth of healthy and self-reliant cooperatives. Keeping in view the challenges ahead, cooperatives have to reorient their strategies, in the changed economic environment of our economy. Some of the strategies to reorient and renew their development thrust in the new environment.

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