

## National Report

ICA - Asia and Pacific (ICA-AP) is the voice of cooperative enterprises in the region, representing 105 member organisations from 34 countries(as on July 2019) across a variety of sectors. ICA-AP, as a regional office of the ICA, is also a co-signatory of a Framework Partnership Agreement signed between the International Cooperative Alliance and the European Commission in March 2016, which aims at strengthening the cooperative movement and its capacity to promote international development. This agreement underpins the ‘Cooperatives in Development’ programme and includes knowledge building activities at the global (harmonised) and regional (decentralised) level.

The activities planned within the framework of the programme include diverse research activities conducted at the global and regional level. The primary activities undertaken at the global level include a Legal Framework Analysis (A2.2), which is led in a coordinated way by all ICA offices. Within this framework, ICA-AP is in charge of implementing the research in the Asia and Pacific region.

The study on legal frameworks under the Legal Framework Analysis (A2.2) will evaluate jurisdictions and policy regulations according to their enablement of cooperative development. The document will present recommendations for the next steps in renewing the legal frameworks and helping to shape the policy agendas in a targeted way in the different regions and countries. It will evaluate the cooperative legal framework in place with common indicators, delivering on a scale of how ‘cooperative-friendly’ the legislation in a country is. In the same context, this report deals with the Legal Framework Analysis of India.

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India is a country with lot of diversity and so is the co-operative sector. India co-operatives are governed by the Central Act for national co-operatives and co-operatives which operate in more than one state. In case of co-operatives which have the area of operation within the state are governed by the respective co-operative societies Act and the same is listed in Annexure – I. The report is divided into 4 parts. The first part explains the evolution and growth of co-operative law, State Acts and the Multi State Act. The second part discusses the specific elements of co-operative law, degree of “co-operative friendliness”, recommendation for the improvement of the legal framework. Part Three presents the comparison of Self-Reliant Act. Finally, Part four brings out a comparison of

the State Co-operative Societies Act in 12 states viz represents the Northern, Southern, Western, Eastern and North East region.

India follows a legal regime under which a single law governs all types of co-operatives (as against multiple legislations, one for each subsector such as agriculture, consumer, credit etc., in some countries) though there are different state level and central level legislation. The changes in legislation, therefore, affect all types of co-operatives. We, therefore, trace the changes in legal regime in general and analyze them with a focus on the relationship between government and co-operatives.

## Part - I

### Evolution and Growth:

Sir Fredrick Nicholson was on special duty by the Madras Government in 1892, for the purposes of exploring the possibility of introducing a system of agricultural or other land banks. His report in two volumes (1895-97) was reviewed by the Madras Government in 1899 and the same was brought to the notice of the Government of India in 1900. Around the same time Mr H. Duperne, based on an intensive study of prevailing rural credit situation, began to experiment with village banks in the United Provinces and published a little book, "Peoples' Bank for Northern India" in 1900. This too was taken note of by the Government of India, and as a result, the question of introducing Cooperative Credit Societies into India was considered by a Committee during December 1900. This Committee opined that societies on Raiffeisen lines might prove suitable in the Indian context. However, the Report of the Famine Commission (May 1901) made a recommendation in favour of Mutual Credit Associations. The Commission then proceeded to state the principles on which they considered these credit associations should be started. The whole question was then referred to another Committee which sat at Shimla in June and July 1901 and drafted a bill and model rules based on the relevant legislation prevailing in European countries. Thereafter the Cooperative Credit Societies Act, 1904 was passed on 25th March 1904.

The preamble stated, "WHEREAS it is expedient to encourage thrift, self-help and cooperation among agriculturists, artisans and persons of limited means and for that purpose to provide for the constitution and control of cooperative credit societies". The Act was an All-India Act but it had many shortcomings which included the following;

- it provided for the formation of credit societies only and societies for production, distribution, purchase and sale etc. could not be formed under it;
- it classified societies into (i) urban; and (ii) rural, which was artificial;
- it did not provide for the formation of federal institutions;
- it did not provide for the distribution of profits by rural societies; and
- registration was not conclusive under the provisions of this Act.

With the expansion of cooperative societies, coupled with demand for organizing other types of cooperative institutions and generally to provide for all-round development and progress of the cooperative movement, the Cooperative Societies Act II of 1912 was passed. This legislation remains the basis of the cooperative legal framework in India even to this day. The two salient features of the Act are simplicity and elasticity. It conferred special privileges on and gave facilities to cooperative societies with a view to promoting their development. It has provided safeguards in respect of the property and funds of such societies. The Act of 1912 is an amalgam of many basic principles carefully chosen from different sources and it effectively overcame the limitations of the earlier legislation cited above.

Bombay Act VII of 1925, for the first time, introduced a classification of societies, according to the purpose for which they are established. Classification under the Act of 1904 was based on the residence of members while under the Act of 1912 it was based on the liability. Classification under the Bombay Act, 1925 was based on the classification adopted by French Cooperators under the leadership of Prof. Nash. It was three-fold, viz. (i) resources, (ii) producers and (iii) consumers. This was based upon three basic needs and activities of human life. But later on, in Bombay State, additions were made without reference to these principles and other States did not follow the same.

The All India Rural Credit Survey Committee (1954) observed: "Cooperation has failed but it must succeed". It suggested a state partnership in cooperative institutions but at the same time cautioned state partnership not to be for "interference and control". It is worth quoting the statement of All-India Rural Credit Survey Committee which remarked: "Cooperation is a plant held in both hands where its roots refuse to enter the soil". More than the roots of Cooperation, it stated it was the tentacles of private money lenders that prevailed. It is in this background that the Ministry of Agriculture, GOI constituted a Committee on Cooperative Law on 6th June 1956. This Committee prepared a Model Cooperative Societies Bill and also made a few other recommendations, but the bill was not enacted. In the meanwhile, the Government appointed a Working Group on the Implementation of the NDC National Cooperative Policy Resolution. The GOI had issued detailed guidelines for its implementation to the State Governments, which had also included elaborate reforms in the cooperative legislation, to make them liberal and member-oriented. In August 1959, the Indian Cooperative Union convened a 'Seminar on Cooperation'. It discussed, inter-alia, the nature of existing cooperative laws and demanded/suggested vital changes in them to make them simple and democratic.

## The State Acts and the Multi-State Act

In 1956 India was reorganized as a federation of linguistic States with each state having a great degree of autonomy with respective state governments. The socio-economic responsibilities of governments were categorized into State List, Central List and Concurrent List that specified the controlling authority. Co-operation became a subject under State List and thus all matters related to changes in co-operative legislation came under the purview of State governments that functioned through a Ministry of Co-operation.

The legislation related to incorporation and regulation of co-operatives then underwent changes with each state taking its own course. While the States of Maharashtra and Gujarat pursued a relatively liberal legal regime with greater operational autonomy to co-operatives in matters related to business activities, appointment of staff and executives etc. most states followed a rather conservative legal regime by way of deputing government officers as CEOs to co-operatives, nominating government representatives on the Boards of co-operatives etc. Some states went to the extreme of entirely taking over the co-operatives and running them with government appointed special officers without scope for elected Board or direct participation by members.

In the meanwhile, the national government set out to put in place separate legislation facilitating incorporation of co-operatives that operate in more than one state. The Working Group on Cooperation appointed by the Administrative Reforms Commission of Government of India in 1967 suggested that a comprehensive Multi-unit Cooperative Societies Act, which should be administered by the Central Registrar in the Union Department of Cooperation, should be enacted. Followed by this, the Expert Committee on Multi-State Cooperative Societies Act constituted by the Government of India in 1971 submitted the report in 1972. Keeping in view the terms of reference, the Committee recommended - Multi-State Cooperative Societies to be categorized as national federations and others only. The discretion to determine incorporation of Multi-State Societies to vest exclusively in the CRCS and there is no delegation of power of registration to States was made.

However, it took twelve long years to enact the Multi-State Cooperative Societies Act (No.51 of 1984) in 1984. It was the first comprehensive Central enactment after Independence to govern MSCS. It was enacted in the background of long-standing aspirations, and demand of the cooperators for a liberal and democratic Cooperative Law, so that States could also be advised to amend their respective laws on the model MSCS Act. But contrary to that, it was similar to State Laws in its approach and character – restrictive and much against people’s hopes. This act underwent many changes over the years, but the fundamental character remains the same.

Economic liberalization policies introduced in the beginning of 1990s and the subsequent changes brought under the WTO regime have had their impact on the co-operative law and policy in India. There has been a reduction in the government's role in supervision and control of economic enterprises, including cooperatives. A model co-operative act was designed by the initiative of the national government and the states were asked to bring changes in state legislation accordingly. However, the response from the states to this initiative was lukewarm at best. Another initiative from the Cooperative Initiative Panel (CIP) in the middle of 90s, however, led to a significant development in some states, that of going for a dual legislation system, with a new Mutually Aided Co-operative Act being put in place along with the existing Acts. This new legislation was designed to encourage autonomous co-operatives; those who are not subject to much government control and of course do not receive government patronage. In a way, this development speaks of the typical dichotomy of the growing demand for liberating the co-operatives from state control and that of the state's approach to continue to hold control on them. The nature of amendments done to the new legislation in the last decade clearly exemplifies this fact.

## Part - II

The ICA principles are explicitly referred to in the preamble of the State Co-operative Societies Act.

The Preamble.—WHEREAS with a view to provide for the orderly development of the Co-operative sector the State, by organizing the Co-operative societies as self-governing democratic institutions, to achieve objects of equity, social justice and economic development, as envisaged in the directive principles of State Policy of the Constitution of India, it is expedient to consolidate, amend and unify the law relating to co-operative societies in the State.

The law precisely defines an apex, central and primary society in the State Co-operative Societies Act. The main legal characteristics that distinguish Co-operatives from other legal types of business are the voting right which is one member one vote. All decisions are subject to approval by the General Body. The General Body is the supreme authority. However, the Registrar of Co-operative Societies through the Act is given the power to regulate the co-operative societies.

The Co-operative Law in India does not assign the co-operatives any specific purpose. The specific purpose of each society is actually incorporated in the bylaw of the society.

Member promotion by a co-operative is undertaken through member education programmes. In India, the State Co-operative Unions are entrusted with the responsibility of member education programmes.

The members in co-operatives are obligated to do business with the co-operatives after the Constitutional Amendment Act 2011. It is obligatory to transact business and also attend the General Body meetings.

The co-operatives in India can pursue objectives other than member promotion by transacting business with members. Depositors in the co-operative bank and purchases from consumer co-operates are examples. However, they will be admitted as Nominal/ Associate members. In India, there are co-operatives started for the pursuit of community interest.

The co-operatives in India can carry out any economic activity. However, they need to take the approval of the Regulators. For instance, to undertake insurance activity they need to take the approval of Insurance Regulatory Development Authority (IRDA), for banking activities approval of the National Bank for Agriculture and Rural Development (NABARD) and Reserve Bank of India (RBI) is required.

## Registration

There is a specific register for co-operatives. Registration is compulsory for the establishment of the co-operatives. The main legal requirements for establishing a co-operative is not uniform throughout the country. However, the conditions are almost the same.

## Management

The internal structure consists of General Body, Board of Directors and Paid Executives. Non-members of co-operatives cannot be directors. There are provisions in the law to supersede the board of management they violate the regulations.

The specific provision from a particular State Co-operative Societies Act is reproduced.

Final authority in a society.-(1) Subject to the provisions of this Act, the rules and the bye-laws, the final authority of a society shall vest in the general body of its members:

Provided that nothing contained in this sub-section shall affect the exercise by the committee or any officer of a society of any power conferred on such committee or such officer by this Act or the rules or the bye-laws.

(2) Notwithstanding anything contained in sub-section (1), where the area of operation of a society is not less than such area as may be prescribed, or where the society consists of not less than such number of members as may be prescribed, the society may provide by an amendment of its bye-laws for the constitution of a smaller body consisting of such number of the members of the society as may be prescribed, elected in accordance with the rules (hereinafter referred to as the representative general body) to exercise all or any of the powers of the general body as may be specified in the bye-laws except the power to conduct election of members of the committee, and any reference, by whatever form of words, in this Act to the general body or a meeting thereof shall, where a representative general body has been constituted under this subsection, have effect in respect of the powers exercisable by the representative general body as if such reference was a reference to the representative general body or a meeting thereof, as the case may be:

Provided that the representative general body shall not alter any provision in the bye-laws relating to its constitution or powers.

(3) The exercise of any power by the representative general body shall be subject to such restrictions and conditions as may be specified in the rules or the bye-laws.

Appointment of the committee—(1) The general body of a society shall [32][ “constitute a committee, for a period not exceeding [33] [five years]”] in accordance with the bye-laws and entrust the management of the affairs of the society to such committee:

Provided that, in the case of a society registered after the commencement of this Act, the persons who have signed the application to register the society may appoint a committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider necessary; but the committee appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the bye-laws:

[“Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the first committee including the president or chairman, for a period not exceeding [35] [twelve months]”]

[“Provided also that a Committee constituted prior to the commencement of the State Co-operative Societies (Amendment) Act 1999, shall be eligible to continue for a period of five years: Provided also that the above proviso is not applicable to a committee where the committee has passed a resolution before the commencement of the State Co-operative Societies (Amendment) Act, 1999, for the conduct of election thereof.”]

[(1A) Notwithstanding anything contained in the bye-laws of a society, the maximum number of members of the committee shall not exceed fifteen, in the case of primary co-operative societies., and twenty-five in the case of all other types of cooperative societies.

(1B) Notwithstanding anything contained in the bye-laws of any Federal Cooperative Society, the number of individuals in the society and the Committee thereof shall not exceed twenty-five per cent of the total number of members in the society or in the Committee, as the case may be.”].

(2)Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for appointment as, or for being, a member of a committee—

(a)if he is a member of the committee of another society of the same type; or

(b)if he is a member of the committees of two or more societies of a different type or different types:

Provided that nothing contained in this subsection shall be deemed to disqualify a person for election as, or for being, a delegate of a society

(3) Nothing contained in clause (a) of sub-section (2) shall be deemed to disqualify a member of the committee of a society for appointment as, or for being, a member of the committee of the apex or central society of the same type: Provided that no member of a committee shall be the president or chairman of more than one society of the same type.

(4)The members of a committee may be paid honorarium at such rates as may be prescribed. [

(5) The quorum for a meeting of a committee shall be a such number of members just above fifty per cent of the total number of members of that committee.”.]



Reservation for women members and members belonging to Scheduled Castes or Scheduled Tribes in the committee.—

“(1) Notwithstanding anything contained in this Acts the rules or the bye-laws, there shall be reserved in the committee of every society, one seat for a woman member and one seat for a member belonging to the Scheduled Castes or the Scheduled Tribes.”.]

(2) Nothing contained in sub-section (1) shall prevent the women members and members belonging to the Scheduled Castes or Scheduled Tribes from being elected to the non-reserved seats in the committee.”.]

[“(3) Where there is no representation of woman or of a member belonging to the Scheduled Castes or Scheduled Tribes in the committee of any apex or central society at the commencement of the State Co-operative Societies (Amendment) Act, 1999, the Government or the Registrar, respectively, may nominate a woman member or a member belonging to the Scheduled Castes or Scheduled Tribes to the committee.”] (4)

A person nominated to the committee of a society or Bank shall have all the powers of a member elected to such committee and shall hold office during the pleasure of the Government or the Registrar, as the case may be.”]

To be a member of a co-operative society a member has to take at least one share. However in India in credit societies, there is a concept of linking borrowing with share capital. This is about five per cent of the borrowings and is provided in the byelaw of society. The members need not contribute equally. The members share capital will be returned in case he discontinues the membership or the co-operative is dissolved.

### **Disposal of Net Profit**

The profits of a co-operative society are allocated as per the byelaw which is in accordance with the State Co-operative Societies Act. A co-operative society running in profit distributes dividends based on capital subscribed and not based on the transactions with the society. However, some of the co-operates give patronage rebate in proportion to the business transactions by members. The non-members are not given any dividend and patronage rebate.

The co-operative law in India followed in various states use the word dividend and distributes it based on the capital.

A co-operative cannot issue financial instrument in India. A co-operative cannot also admit “investor members”. However, in practice members join in a co-operative avail the services and after that continue as members without availing services.

The capital and assets of a co-operative in case of dissolution are transferred to the Government. The capital and residual assets are not distributed to the members.

## **Tax**

Under the provisions of the Indian Income Tax Act 1961, Co-operative Societies are liable to pay tax like individuals and other organisations. They are in general tax regime. The tax regime of co-operatives is consistent with their particular legal nature. It is not supportive of co-operative. Measures are provided in the Income Tax Act to reduce the tax burden. For instance, a general deduction under section 80 P is applicable to co-operative societies. The same is given below

## **External Control**

The co-operatives in India are subject to external control by the State as well as Regulatory authority. For instance, the co-operative banks come under the Banking Regulation Act. In India, a development took place in 1995 when the State Government of Andhra Pradesh introduced the Mutually Aided Societies Act for the societies which do not receive any assistance from the Government. After this, about 6 states adopted the Self Reliant Act. In Karnataka, there is a Self-Reliant Act and also an Apex Federation known as Karnataka State Souhrida Co-operative Federation was established exclusively for self-reliant societies. This is how self-control is promoted by the law. Self-control can replace public control and the state may delegate the power of control to representative organizations of the co-operative movement. In India, the principle of co-operation among co-operatives is not implemented in the national as well as state legislation.

## **Powers to State**

The main legal obstacle is the overriding power given to the States as per the Co-operative Societies Act. The co-operatives cannot enter into certain domains as they are prohibited by law. Co-operatives need to be given autonomy to enter into new ventures.

The best practices of co-operative legislation in India is the democratic governance and at the same time regulation by the State. The provisions under the Self Reliant Act of States are a model which can be adopted. The promotion of the co-operatives in India is a public function. There are incentives to co-operatives in the legislation on public procurement. The degree of co-operative friendliness is limited in India.

If we compare the India legislation we think the Japanese legislation could be a source of inspiration for India. The restrictive provisions in the State Co-operative Societies Act need to be removed. The system of deputation of Government Officers to man key posts in co-operatives needs to be discouraged. However, a Government Officer if has the domain knowledge and competency he may be deputed to co-operatives. The Co-operative Law as mentioned earlier is a State subject. There are wide variations in the provisions. There are certain States where the law is very liberal. However, in some States, the law is very stringent. In those states, it needs to be amended in accordance with the ICA principles. In India, the National legislation the Multi-State Co-operative Societies Act 2002 is not restrictive.

The changes in the law are required for specific sectors such as dairy, handloom, coir, fisheries, sugar. This is suggested so that the law will take into account the characteristics of that particular sector.

India has come out with a National Co-operative Policy. Further, the States of Kerala and Karnataka have come out with a State Co-operative Policy. This will help in promoting the co-operative movement.

## Part - III

### The Constitutional Amendment:

The major shift in the legal environment for co-operatives came more than two decades after the beginning of the economic liberalization process in the form of the 97<sup>th</sup> Constitutional Amendment in 2011. The subject of Constitutional Amendment was a topic of discussion right from 1996. Even today it continues to be under discussion due to litigations. In the mid part of the 90s when the idea of the constitutional amendment was discussed there was opposition from many quarters. The Cooperative Development Foundation, Hyderabad (1996) vehemently opposed the Constitutional Amendment arguing that even though many state legislations do undermine the democracy and member centrality of co-operatives, the solution is not resorting to a constitutional amendment, which is in effect undermining of power and authority of state governments.

In the meanwhile, ILO had come out with its Resolution 193 and even though the GOI was not in favour of some of its recommendations, it initiated some measures since it was mandatory. The GOI announced a New Cooperative Policy with an assurance to empower the cooperatives and make them as an alternative institutional mechanism against the market force and to protect the weak. The National Co-operative Policy announced in 2002 mentioned the following with respect to the role of State vis-à-vis Co-operatives.

- Upholds the preservation of the distinct identity of cooperatives, its values and principles by providing an appropriate environment and taking the required administrative and legislative measures.
- The regulatory role of the Government will be mainly limited to the conduct of timely elections, an audit of the cooperative societies, and measures to safeguard the interest of the members and other stakeholders in the cooperatives. There shall, however, be no interference in the management and working of the cooperatives. The Government recognizes the apolitical nature of cooperatives.

At the time of parliamentary elections in 2003, many political parties mentioned about cooperatives in their election manifesto and promised to provide greater space for co-operatives. The National Cooperative Union of India was also pursuing the idea of Constitutional Amendment. As a response to these, the national government appointed a High Powered Committee headed by Mr Shivajirao Patil which submitted its report in 2009 and recommended effecting constitutional amendments to facilitate promotion of autonomous co-operatives. The government then introduced the Constitutional (One Hundred and Eleventh Amendment Bill) in the parliament on November 30, 2009, and it was referred to the Standing Committee. After discussion by the Standing Committee on

Agriculture and considering the views of Department of Agriculture and Cooperation as well as the Department of Law, it was introduced in the Parliament and passed by the Lower House and Upper House respectively on 22<sup>nd</sup> and 28<sup>th</sup> December 2011. The amendment received the assent of the President of India on 12<sup>th</sup> January 2012 and a Gazette notification was issued on 13<sup>th</sup> January 2012. Thus the 97<sup>th</sup> amendment to Indian Constitution was officially effected. The Central Government also issued the official notification and the same came into force w.e.f. 15<sup>th</sup> February 2012 making it binding on the State Governments to amend the state co-operative legislation.

The constitutional amendments lead to the following basic changes;

1. Forming co-operatives is made part of fundamental rights for Indian citizens
2. States were mandated to create a conducive legal environment for the promotion of autonomous co-operatives
3. Co-operative membership and participatory eligibility to be determined based on members' democratic and businesses participation.
4. The quorum of the meetings, size of the Board, rights and liabilities of the members of the board etc., were specified
5. A separate Election Commission was to be set up in all states as an independent authority to hold elections for co-operatives.

States took the constitution amendment with a pinch of salt. While most states amended their co-operative legislation (though not in full conformity with the spirit of constitutional amendments) some raised objections. A Public Interest Litigation (PIL) filed before the High Court of Gujarat in 2012 was allowed by declaring that the Constitution (97th amendment Act), 2011 inserting part IXB containing Articles 243ZH to 243ZT is ultra vires the Constitution of India for not taking recourse to Article 368(2) of the Constitution providing for ratification by the majority of the State Legislatures. This order, however, will not affect other parts of the Constitution (97th amendment Act, 2011). Certain parts of the 97th Amendment were declared ultra vires the Constitution of India by the High Court of Gujarat vide its judgement dated 22/4/2013 in the matter of Shri Rajendra N. Shah V/S. Union of India and others. The Central Government has filed S.L.P. Nos.2526625267 of 2013 in the Supreme Court against the above order of the High Court of Gujarat. This case is converted to Civil Appeal No.91089109 of 2014, but the same has not been listed so far. Therefore, the MSCS Act, 2002 is not amended in keeping with the 97th amendment. In any case, the initial amendments made to state co-operative acts based on constitutional amendments posed some operational problems and in the name of getting it right, many states brought new changes and in effect diluted the spirit of a constitutional amendment.

## Producer Companies

### Background

The concept of Producer Companies was introduced in 2002 by incorporating a new Part IXA (section 581A to 581ZT) into the companies Act, 1956 (“the Act”) based on the recommendations of an expert committee led by an economist, Y. K. Alagh. Aim of the Committee was to -

- frame a legislation that would enable incorporation of cooperatives as companies and conversion of existing cooperatives into companies;
- ensuring the unique elements of cooperative business with a regulatory framework similar to that of companies.

Meaning of Producer Company:

A producer company is basically a body corporate registered as Producer Company under Companies Act, 1956 and shall carry on or relate to any of following activities classified broadly:-

- (a) production, harvesting, processing, procurement, grading, pooling, handling, marketing, selling, export of \*primary produce of the Members or import of goods or services for their benefit :
- (b) rendering technical services, consultancy services, training, education, research and development and all other activities for the promotion of the interests of its Members;
- (c) generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce;
- (d) promoting mutual assistance, welfare measures, financial services, insurance of producers or their primary produce;

\*Primary produce has been defined as a produce of farmers arising from agriculture including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products: produce of persons engaged in hand-loom, handicraft and other cottage industries: by - products of such products; and products arising out of ancillary industries.

### Salient Provisions of Companies Act relating to Producer Companies

#### Incorporation

Any of the following combination of producers can incorporate a producer company:

- ten or more producers (individuals); or
- two or more producer institutions; or
- combination of the above two (10+2).

#### Registration

(a) In a Producer Company, only persons engaged in an activity connected with, or related to, primary produce can participate in the ownership. The members have

necessarily to be primary producers. (b) These companies shall be termed as “Companies with Limited Liability” and the liability of the members will be limited to the amount, if any, unpaid on the shares. (c) The name of the company shall end with the words "Producer Company Limited" (d) On registration, the producer company shall become as if it is a private limited company for the purpose of application of law and administration of the company (however it shall comply with the specific provisions of part IXA). (e) The maximum number of 50 members is not applicable to these companies.

### Share Capital and Voting Rights

(i) The share capital of a Producer Company shall consist of equity shares only. (ii) Members' equity cannot be publicly traded but only transferred. (iii) Voting when membership is • only of individuals then voting rights shall be based on a single vote for every member. • only of producer institutions then voting rights on the basis of their participation. • combination of both individuals and producer institutions then voting rights shall be based on a single vote for every member.

### Management

- Every producer company is to have at least five and not more than 15 directors.
- A full time chief executive should be appointed by the board and shall be entrusted with substantial powers of management as the board may determine.

### Reserves

- Every producer company has to maintain a general reserve in every financial year and in case there are not sufficient funds in any year for such transfer, the shortfall has to be made up by members' contribution in proportion to their \*patronage in the business.

### Members' Benefit

- Members will initially receive only such value for the produce or products pooled and supplied as the directors may determine. The withheld amount may be disbursed later either in cash or in kind or by allotment of equity shares.
- Members will be eligible to receive bonus shares.
- There is a provision for the distribution of patronage bonus (akin to dividend) after the annual accounts are approved — patronage bonus means payment out of surplus income to members in proportion to their respective patronage (not shareholding).

## Dispute Resolution

Dispute relating to producers companies are to be settled by conciliation or arbitration under the Arbitration and Conciliation Act, 1996 as if the parties to the dispute have consented in writing to such procedure.

## Audit & Internal Audit Requirements

Producer Companies shall carry out an internal audit of its accounts, at regular intervals in accordance with its articles of association and such an audit shall be carried on by a Chartered Accountant. In addition to the internal audit, the auditor shall make an annual audit report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by the Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by the Act in the manner so required and give a true and fair view.

## Tax Benefits

Indian economy is basically an agrarian economy. More than two-thirds of the Indian population depends upon agriculture for their livelihood. The Indian Income Tax Act, 1961 (“the IT Act”) specifically exempts tax on agricultural income under section 10(1). However, the exemption for such agricultural income shall sometimes vary depending upon the kind of agricultural activity carried on. It is to be noted that though the IT Act does not per-se give any special benefits or exemptions to Producer Companies as such, but depending upon the kind of agricultural activity it carries on, certain tax benefits can be availed. For instance, if green tea leaves are grown and sold directly without any further processing, the income derived from such an activity is considered as agricultural income under the IT Act and such income is 100 % tax free, but if the green tea leaves are further processed and tea is manufactured only 60% of the income derived from such an activity is considered as agricultural income and the tax exemption can be availed only on the said 60% of such income. Thus, it is clear that the tax exemption to a producer company depends upon the activity it carries on.



Differences between a Producer Cooperative and Producer Company:

Features	Producer Cooperative	Producer Company
<b>Registration</b>	Cooperative Societies Act	Companies Act
<b>Membership</b>	Open only to individuals and cooperatives	Only those who participate in the activity
<b>Relationship with other corporates/ business houses /NGOs</b>	It can have contractual or transaction based relations.	Producers and corporate entity can together float a producer company and thus can become members of the Company
<b>Voting Rights</b>	One person, one vote, but Government and RCS holds veto powers	One person one vote. Those not having transactions with company can't vote
<b>Role of Registering authority</b>	Significant	Minimal
<b>Shares</b>	Not tradable	Not tradable but transferable
<b>Reserves</b>	Created if there are profits	Mandatory to create every year
<b>Dispute Settlement</b>	Through Cooperative mechanism	By Arbitration

The option of inter –state co-operative societies to become producer companies

A producer company under section 581ZS of the companies Act, 1956 can convert itself into a co-operative society by making an application, after such conversion has been approved by the company in a resolution with a two-third majority.

To conclude, it is to be noted that “all the limitations, restrictions and provision of the Act, other than those specified in Part IXA, applicable to a private limited company, shall, as far as may be , apply to a producer company, as if it is a private limited company under the Act in so far as they are not in conflict with the provisions of this Part. In other words, a producer company is a hybrid between a private limited company and a co-operative society.

## THE POLITICAL ECONOMY OF LEGAL REGIME

The relationship between State and co-operative sector in independent India has moved from that of promotion and patronage to control and regimentation and then to a political partnership of parties in power and co-operative leaders. The governments have created a huge bureaucratic set up to handle the large co-operative sector, which now ensures that the governments continue to have their say on co-operatives, for the bureaucracy can survive only with the status quo.

Professor JG Craig (1992) had aptly described the problem confronting the Indian cooperative movement. He believed that the root cause of failure of co-operatives was the way the organizations were built and managed i.e. on the basis of a bureaucratic paradigm rather than one, more compatible with the logic of cooperation. He held that cooperating groups are rational and objective only within their own framework of rationality. He, therefore, opined that it is not possible to impose external objectivity on the group because the logic of cooperation is that it is the perspective from within the group that should dominate.

Since then, while innumerable voices spoke for the autonomy and freedom of cooperatives, cooperatives entered into larger and deeper partnerships with governments. This more evidenced in the case of agricultural co-operatives. For instance, when the dual legislation system was adopted in some states, agricultural co-operatives were not given an option to shift to new legislation while other types of co-operatives were allowed such conversion. Similarly, some state governments started paying the member subscriptions on behalf of farmers seeking to become members. As a result, most cooperatives became agencies of the state and were used as instruments for developmental functions of the state and to offer relief supplies of goods and services to the people at large. In other words, the operations of cooperatives were not based on the needs and aspirations of its members but those of governments.

To the extent that the needs and aspirations of governments converged with those of its members, cooperatives were generally viewed as success stories. In all the other cases, there were conflicting views about whether cooperation had indeed taken root. Beginning with Pandit Nehru's famous remarks in 1958, "Now I want to make a confession to you. I think our government was not quite right in accepting some of the

decisions of the rural credit survey committee. I am sorry for it...” a number of groups and committees stated in subsequent years that cooperative legislation should be simplified and both government officials and politicians should cease to have any significant role in cooperatives. Such recommendations were made by the Working Group on Cooperative Policy (1959), Committee on Cooperative Administration (1963), Mirdha Committee on Cooperation (1965), Committee on Cooperative Law (1987), Committee on Model Cooperative Law (1991). The Convention of Parliamentarians' Forum for Development of Cooperative Movement (1998) called for expeditious amendment in Cooperative Law. The National Cooperative Union of India has been pleading with the Government of India and the State Governments for a long time to democratize the cooperative laws. Though the Government of India has already accepted the recommendations of Ch. Brahm Perakash Committee on Model Cooperative Law in principle, none of the State Acts nor the Multi-State Cooperative Societies Act has been amended on the lines of the Model Cooperative Law.

Several Indian organizations termed "cooperatives" are not cooperatives by any stretch of the imagination even if the law recognizes them as such. They are government owned, government-controlled enterprises, which work against and/or are formed in contravention of most or all of the universally accepted principles of cooperation. Samakhya's paper explained what cooperators seek, illustrated why there is a distinct need to derecognize a whole set of organizations that are wrongly defined as cooperatives, highlighted the different interest groups that would like status quo in government control and administration of cooperatives and ended with a set of strategies to liberate the cooperative movement. These strategies included seeking a Constitutional amendment whereby the Constitution commits itself to the self-reliant and democratic nature of cooperatives, registration of cooperatives under other laws, use of courts and the formation of cooperative associations that can work outside the purview of cooperative law.

The situation now seems to be that of mutuality of interest on the part of State and the co-operative sector. Governments want co-operatives to serve as their agents –

to dispense credit, to distribute goods under PDS and to deliver any state-sponsored service that the state may seek to do from time to time. The co-operatives need government money and patronage businesses for the ease of survival. The co-operative leaders (?) need government-co-operative mutual dependence, for the benefit of finding political shelters. These forces have ensured that despite changes in the legal regime, the situation on the ground remains the same. It is more politics and less economics in the dynamics of the state-co-operative relationship in India.

#### Part - IV Comparison of the Self-Reliant Acts

A perusal of the provisions of the Self-Reliant Act reveals that there are many similarities in their provisions. They can be broadly grouped into two categories, one covering the States of Bihar, Andhra Pradesh and Jharkhand while the other comprising the States of Chhattisgarh, Uttaranchal, Madhya Pradesh, Karnataka and Jammu & Kashmir. Orissa has not been included in either of categories since the Odisha Self Help Cooperatives Act has been withdrawn by the Legislature.

The following Table 1 compares the provisions of both groups in relation to Principles, Registration, Appointment of Registrar, Promotion of Subsidiary, Creation of New Organization, Audit, Settlement of Disputes, Dissolution, Accountability, Membership and Union and Federation.

<b>Group A</b> [Bihar, Andra Pradesh and Jharkhand ]	<b>Group B</b> [Chhattisgarh, Uttaranchal, Madhya, Pradesh, Karnataka and Jammu & Kashmir]
<b>Principles of Cooperation</b>	
The Principles of cooperation are stated as a separate chapter in these Acts	In these Acts it is mentioned under a separate section and given in Schedule “A”
<b>Registration Provisions</b>	
Under the Registration the provisions which are mentioned are Organizations which may be registered, Application for	The provisions which are included in these Acts are Registrar and other officers which mentions about other

registration, Cooperative Society to be a body corporate, Display of name and Appointment of Registrar these are different in as compared with Group B	officers provision too which cannot be traced in Acts of Group A, Registration of co-operative conversion of cooperative society into cooperative is also not stated in group A, Cooperative to be body corporate is mentioned very briefly and not elaborative as in Act of Group A.
<b>Appointment of Registrar</b>	
The Appointment of Registrar is mentioned in detailed under a separate sub section in the Act. There is no provision of appointment of other officers in these Acts.	The Acts mentions about Appointment of Registrar as well as of other officers and provides details about how the appointments are done.
<b>Promotion and Subsidiary</b>	
<p>The provisions mentioned under this section includes Any Cooperative Society may, by a resolution passed at general meeting by a majority of members present having voting right, promote one or more subsidiary organizations for the furtherance of its stated objectives, and such organization or organizations may be registered under any law for the time being in force, as agreed to by the general body.</p> <p>(2) The annual reports and accounts of any such subsidiary organization shall be placed before are general meeting of the promotion Cooperative Society every year.</p> <p>(3) Any subsidiary organization created under sub-section (1) shall exist only as long as general body of the Cooperative Society deems its existence necessary.</p>	There is no such provision in these Acts
<b>Creation of New Organization</b>	
The creation of new organization can be done where the collaboration between a Cooperative Society and any other	No Provision has been mentioned for Creation of New Organization in these Acts.

<p>organization or organizations requires the creation of a new organization, the new organization may be registered as a company or a public society, as appropriate for the fulfillment of the objective with which it was created.</p>	
<p><b>Audit and Special Audit Provisions</b></p>	
<p>The Acts does not include the details of who the Auditor should be and how he can be nominated. There is a separate provision for special audit in these acts</p>	<p>Detailed description of Auditor and his responsibilities is provided under the Audit Section. No provision of Special audit.</p>
<p><b>Settlement of Disputes</b></p>	
<p>Under this section the provisions cover points like Constitution of Cooperative Tribunals, Settlement of disputes, Power of the Tribunal to order recovery which provided detailed description of how disputes are settled.</p>	<p>In these Acts Disputes and Constitution of Arbitration Council is explained briefly and no other provisions are given.</p>
<p><b>Dissolution</b></p>	
<p>The provision of dissolution excludes the points like Disposal of surplus assets of liquidated cooperatives, Bar of suits or legal proceedings and Dissolution by Registrar which are mentioned in Acts of Group B.</p>	<p>In this section the points like Disposal of surplus assets of liquidated cooperatives, Bar of suits or legal proceedings and Dissolution by Registrar are elaborated and explained in detail. The provision also mentions about the rights and powers of liquidator.</p>
<p><b>Membership</b></p>	
<p>The Provision related to membership are mentioned briefly under management section which includes the information on who can become a member what are the rules of becoming a member and other official requirements very briefly and not in a detailed form.</p>	<p>The provision of Membership is given as a separate chapter which includes details about eligibility for becoming a member, disqualification of member, admission of member, details about withdrawal of membership, termination of membership and other related aspects.</p>

<b>Accountability</b>	
There is no provision of Accountability in these Acts.	Mentioned as a separate Provision in Act which includes the rules for filling the returns with Registrar, rules of how the enquiry can be done, procedure for the audit and maintenance of accounts and records to the date.
<b>Union and Federation</b>	
Mentioned as a provision in Act which provides details about roles and responsibilities of the Union and Cooperative Federation.	There is no such Provision for this section in the Act.

An analysis of Table.1 reveals that the Acts differ from each other in respect of Principles, Registration, Appointment of Registrar, Promotion of Subsidiary, Creation of New Organization, Audit, Settlement of Disputes, Dissolution, Accountability, Membership and Union and Federation. It is observed that the Provision in the Acts of Group B i.e. Chhattisgarh, Uttaranchal, Madhya Pradesh, Karnataka and Jammu & Kashmir is more detailed and elaborative than the Acts in Group A i.e. Bihar, Andhra Pradesh and Jharkhand. The major difference is that the Acts in Group B mentions about Accountability of the Members and Staff and their roles to fulfil the accountability principle as well the Membership details are provided in depth by giving details of each section. These two features are not found in the Acts of Group A. The Acts in Group A differ from Acts in Group B in terms of Promotion of Subsidiary and Creation of New Organization and have a provision on the same which cannot be found in Acts of Group B.

The Constitutional Amendment Act of 2011 was enacted to give autonomy to the Cooperatives and put an end to Government interventions. In the light of the Constitution Amendment Act, a debate has started as to whether the Self Reliant Act is required even after the introduction of the Constitution Amendment Act 2011. There are two views in this regard - One favoring the continuance of the Self Reliant Act stating that the Constitution Amendment Act does not have any legal validity and once again, the State Governments have made a lot of amendments to their respective State Cooperative Societies Act. Another view is that there is no need to have two Acts for the same type of Institution i.e. Cooperatives. In this context, it is interesting to note that the Odisha Self Help Cooperative Act 2001 was repealed by the Government of Odisha through the "Odisha Self Help Cooperatives (Repeal) Act 2013". The North Odisha Farmers and Multi-Purpose Cooperative Ltd., Balasore, filed a writ petition challenging the constitutional validity of the Act violating Articles 14 and 19 (1)(c) of the



Constitution by compelling the existing Cooperative Societies to be registered under the Original 1962 Act. Odisha High Court, Cuttack, granted a stay to the "Odisha Self Help Cooperatives (Repeal) Act 2013". However, in the final judgment passed by the Hon'ble High Court of Cuttack, the stay was vacated and the Court dismissed the writ petition stating that - "The 2001 Act has been repealed and 1962 Act has been made applicable to all societies covered by the Repeal Act. Moreover, repeal is on account of legislative policy of retaining one legislation which has been amended in 2012 to be brought in conformity with 97th Amendment to the Constitution in 2011, thereby safeguarding principles of Democracy and professional management. In A.P. Dairy's case (Supra), the earlier Andhra Act had not been amended to be made consistent with the 97th Constitutional Amendment nor was the later Act repealed. Applicability of earlier State Act was not by way of transitional provisions. In view of the above, we are unable to hold that the Repeal Act suffers from any infirmity. Though the Cooperative Societies Act has been amended in some States based on Constitution Amendment Act 2011, the expected benefits have not percolated at the grass root level. This is mainly because of the litigation as well as the indifferent attitude of various State Governments to regiment the functioning of the Cooperatives. Cooperation being a State subject has again fallen prey to the whims and fancies of the Government. The advantages of features in the constitution amendment such as member participation in business transactions, conducting elections by an independent authority, imparting educational training and member participation in management have not been implemented in true spirit. Thus, there is a need on the part of the State Governments to restructure the Law in such a manner that the Cooperatives function as an independent and autonomous institution. However, the States of Andhra Pradesh, Bihar, Jharkhand, Chhattisgarh, Uttaranchal, Madhya Pradesh, Karnataka and Jammu & Kashmir are continuing with Self Reliant Act.

## A Comparison of provisions under Co-operative Societies Act and Rules in select States

### I. Registration of Co-operative Societies

Procedure for registration of Co-operative Societies of the above said States are same except for the minimum number of persons.

Under the Kerala Co-operative Societies Act and Rules and Tamil Nadu Co-operative Societies Act and Rules the minimum number of individual is 25. In the case of Rajasthan, it is 15, Madhya Pradesh it is 20, Jammu & Kashmir for Primary Credit Societies it is 100 and non-credit Societies it is 50. Other States like Gujarat, Maharashtra, Orissa, West Bengal, Tripura, Utter Pradesh, Sikkim, Karnataka it is 10.

### II. Bye-law Amendment

Procedures for amendment of bye-laws of Co-operative Societies are same in all Co-operative Societies Act and Rules.

### III. Membership

Under Kerala Co-operative Societies Act and Karnataka Souharda Sahakari Act only individuals are admitted as A Class Members. In other States like Tamil Nadu, Gujarat, Rajasthan, Maharashtra, Orissa, West Bengal, Tripura etc. the Co-operative Societies Act permits individuals, trust, firms and Companies to become members in a Co-operative Society.

### IV. Election to Managing Committee

Based on the principle “Democratic set up”, the administration of Co-operative Societies is vested in the elected body. As per all State Co-operative Societies Act, the term of office of the Managing Committee is 5 years from the date of election. The maximum number of Managing Committee members is limited 15 in case of Primary Societies. In Kerala it is 15 in case of Primary Societies and 21 in case of Central and Apex Company societies. In the Managing committees seats are reserved for SC/ST, Woman etc. In Kerala in the Managing Committee of Primary Credit Societies one seat is reserved for depositors who having deposit of rupees not less than Rs.10000/-. In Kerala, West Bengal, Karnataka, the Government shall constitute a State Co-operative Election Commission for conducting election to the managing committee. In Kerala under Section 28 B of the Act, the Government shall nominate three persons as Election Commissioners. In other State Acts the Registrar of Co-operative Societies is responsible to conduct election of Managing committee of Co-operative Societies.

#### V. Annual General Body, Special General Body and Half year General Body

In all Co-operative Societies Act, all Co-operative Societies shall convene an Annual General Body Meeting of members in every year and Special General Body meeting as it is necessary. However as per West Bengal Co-operative Societies Act there is a provision for convening a half year General Body Meeting of Members also.

#### VI. Nomination to Managing Committee by Government

Under Kerala Co-operative Societies Act, Government shall nominate persons in the Board of Central and Apex Co-operative Societies. Act of Tamil Nadu, Gujarat, Rajasthan, Madhya Pradesh, Orissa, West Bengal, Tripura, Utter Pradesh, Sikkim, there are provisions that the Government shall nominate persons in the Managing Committee of Co-operative Societies. In the Maharashtra State Act and Jammu and Kashmir Co-operative Societies Act, there is no provision that the Government shall nominate to the Board.

#### VII. Supersession

There are provisions in all Co-operative Societies Act to supersede the elected managing Committee.

#### VIII. Government Aid

All State Co-operative Societies Act provides provision for obtaining financial assistance from Government.

#### IX. Disposal of Profit

All Acts provide provisions for appropriation of profit.

#### X. Audit of Accounts

As per the Co-operative Societies Act of various States it is statutory to conduct audit of annual accounts every year.

#### XI. Inquiry, Inspection and supervision

There are provisions in the State Co-operative Societies Act for Inquiry, Inspection and Supervision in the affairs of the Society by the Registrar of Co-operative Societies.

#### XII. Surcharge

There are provisions for recovering the financial loss caused by the managing committee member or staff member in all Co-operative Societies Act.

#### XIII. Vigilance Officer

Under Section 68A of the Kerala Co-operative Societies Act, the Government shall appoint a DIG and subordinate staff for inquiring misappropriations fraud, maladministration, forgery etc. occurred in a Co-operative Society. The vigilance Officer is under the administrative control of the Registrar. In other State Act there are no provision regarding the appointment of a Vigilance Officer.

#### XIV. Arbitration, Execution, Liquidation

In all State Co-operative Societies Act there are provisions for Arbitration for selling monetary disputes and provision for winding up of Co-operative Societies.

#### XV. Employee Matters

In Kerala Co-operative Societies Act and Rules there are elaborate provision for the service conditions like, appointment, probation, promotion, leave punishment, salaries and allowance etc. for employees. In other State Act there is no elaborate service rules.

#### XVI. Recruitment Board

In Kerala there is a Co-operative Service Examination Board and in Tamilnadu there is a recruitment agency for the selection of staff in Co-operative Societies. In other States there is no such agency for the selection of employees.

#### XVII. Co-operative Tribunal

In States like Kerala, Tamil Nadu, Gujarat, Rajasthan, Maharashtra, Madhya Pradesh there are Co-operative Tribunal Act as an appellate Authority. In other States there is no such institution.

In Kerala Co-operative Societies Act there are provisions for the Constitution of Welfare Fund Board, Risk Fund Board, Deposit Guarantee Fund Board, Co-operative Arbitration Court, Co-operative Ombudsman etc. but in other State Act no such provisions are found.

1. Andra Pradesh State Co-operative Societies Act
2. Arunachal Pradesh State Co-operative Societies Act
3. Assam State Co-operative Societies Act
4. Bihar State Co-operative Societies Act
5. Chattisgarh State Co-operative Societies Act
6. Goa State Co-operative Societies Act
7. Gujarat State Co-operative Societies Act
8. Haryana State Co-operative Societies Act
9. Himachal Pradesh State Co-operative Societies Act
10. Jammu & Kashmir State Co-operative Societies Act
11. Jharkhand State Co-operative Societies Act
12. Karnataka State Co-operative Societies Act
13. Kerala State Co-operative Societies Act
14. Madhya Pradesh State Co-operative Societies Act
15. Maharashtra State Co-operative Societies Act
16. Manipur State Co-operative Societies Act
17. Meghalaya State Co-operative Societies Act
18. Mizoram State Co-operative Societies Act
19. Nagaland State Co-operative Societies Act
20. Odisha State Co-operative Societies Act
21. Punjab State Co-operative Societies Act
22. Rajasthan State Co-operative Societies Act
23. Sikkim State Co-operative Societies Act
24. Tamil Nadu State Co-operative Societies Act
25. Telangana State Co-operative Societies Act
26. Tripura State Co-operative Societies Act
27. Uttar Pradesh State Co-operative Societies Act
28. Uttarakhand State Co-operative Societies Act
29. West Bengal State Co-operative Societies Act