

India Legal Framework Analysis: Key Highlights

This one-pager aims to provide a brief overview of the most notable features of India's national cooperative legal framework, based on the work of national legal expert and ICA member input. The national government had enacted a legislation facilitating the incorporation of co-operatives that operate in more than one state titled the Multi-State Cooperative Societies Act (MSCS Act - No.51 of 1984) in the year 1984. India also has 29 state laws for that specifically govern and regulate cooperatives within its respective 29 States. This is because in 1956, when 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.

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.

Cooperative Friendliness: The cooperative legal environment of India is '*only limitedly cooperative friendly*' to cooperative development. 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. The situation that exists now is that of mutuality of interest on the part of State and the co-operative sector where 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 and 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.

Key recommendations for improvement: A few key recommendations are given below:

- The Government of India needs to have a separate Ministry for Co-operation instead of acting as an adjunct of the Department of Agriculture and Farmers welfare and nomenclature of the Registrar ie Department(s) of co-operation should be changed to Co-operative Promotion and Regulation Department (CPRD).



- The model bylaw has become mandatory bylaw in practice. Hence while approving the bylaws, the Registrar of Co-operative Societies needs to look into the provisions of the Co-operative Societies Act only.
- The organisational structure and staff remuneration are according to the directive of the Registrar of Co-operative Societies in most of the states. Co-operative being an autonomous and independent organisation the structure and staff remuneration needs to be decided by the concerned co-operative. The Government may give certain guidelines so as to ensure that the financial stability of the society is not affected.
- The co-operatives should have discretion over their expenditure and investments. Law should not mandate expenditures on specific functions or require Government approval of basic business decisions. This is subject to general auditing requirements.
- The distribution of surplus of the co-operative should be according to the patronage of the co-operative rather than capital subscribed.
- There are a lot of variations in the co-operative societies Act of various states. There is a need to adopt the features that provide enabling provisions in the State Co-operative Societies Act. However, this does not mean that a uniform law across the country should be framed since Co-operation is a state subject and there are a lot of regional variations.

Conclusions: India needs a favorable legal environment that ensures autonomy as well as accountability. Co-operation in India is a state subject and there are a lot of variations in the State Co-operative Societies Act of different states. Therefore reform would be a tedious legislative process which would have to happen at the State level. In certain states, the law is very liberal whereas in some states it is very rigid. It is in this context the Government of India introduced the 97th constitutional amendment Act in 2011. However, it could not be implemented, as the litigation is pending in the Supreme Court of India. There are a few states which introduced the Self-reliant Act applicable to the societies which do not receive government assistance. Historically the Co-operatives in India were registered through the Act and the Co-operative Movement was not spontaneous. This is precisely the reason why the law is prescriptive in nature and does not play the role of a facilitator.

