

New Opportunities under Cooperative Law*

Introduction

Co-operatives are democratically self-managed organisations united for the achievement of common goal. Indian co-operative movement has its roots in Germany and Britain where similar credit organizations were successful in the nineteenth century. Since their inception, co-operative societies have significantly contributed to the economy of India. The most important sectors for co-operatives are the agricultural sector, banking and housing sectors. The Government of India recently created a new Ministry of Cooperation and also proposed to bring amendments to the existing Multi-state Co-operative Society Act which would go a long way having the privileges of limited liability, separate legal entity and the ability of members to transfer their membership, etc. Co-operative societies have also entered in the business of financing and gradually are now capable to offer full-fledged banking services perhaps at par with banks. The government has also opened the way forward for the Multi-state Co-operative Societies. However, procedural difficulties are required to be streamlined taking into consideration the consent of state governments for operation of Multi-state co-operative laws.

Seven Principles of Co-operative Development

- 1. Unconstrained and Open Membership:** Co-operative societies are free and unconstrained organizations for such individuals, who are able to utilize its services and agrees to accept the responsibilities of membership without any gender, social, ethnic, political and religious discrimination.
- 2. Democratic control of the members:** Co-operative societies are democratic organization, controlled by its members who actively participate in the maintenance of its policy determination and decisions. The members of primary co-operative society have equal voting rights (One member - one vote) and the co-operative society is also constituted in democratic manner.
- 3. Economic Participation of Members:** Members contribute in the capital of their societies and control it in a democratic manner. At least one part of the capital is public property of the co-operative society. A member usually gets limited retribution, if any, against the capital contributed as the condition of membership. Members allocate surpluses for any of the following purposes, to establish possible reserve for the development of their society, some part of which would be indivisible, to give the benefits to the members of the society, in the proportion of their contributions and to support other activities approved by the members.

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4. **Autonomy and Independence:** Co-operative societies are autonomous and self-dependent organizations that is controlled by its members. If they make contract with other organizations including the Government or make arrangements of capital from external sources, they do so to ensure the democratic control by their members and to maintain the autonomy of their co-operative society.
5. **Education, Training and Information:** Co-operative society provides education and training to its members, elected representatives, managers and employees, so that they could effectively contribute in the development of their co-operative society, as well as provide the information on nature and benefits of co-operation to general public.
6. **Co-operation in co-operative societies:** Co-operative societies effectively serve its members through working at local, regional, national and international levels.
7. **Care for Community:** Co-operative societies work for steady development of its community, through the policies approved by its members.

Development of Regulatory Framework

The development of co-operative laws started in early 19th Century. Initially the Government of India Act, 1919 brought the laws, during that period, the Co-operative Societies turned into a transferred subject and many provinces began to enact their own Co-operative Societies Act. Later by the Government of India Act, 1935, these Co-operative Societies turned to be a State subject matter. Further, in 1945 the Co-operative Planning Committee declared that the Village Primary Credit Societies should have the coverage of those activities effecting the daily life and business of the agriculturists, artisans etc. and thus, functioning as the Multi-purpose Societies (MPCSS).

Constitution (Ninety-seventh Amendment) Act, 2011 made momentous changes in co-operative laws. It added a whole new part IXB to the Constitution empowering the legislature to make laws on this subject. It also added Article 43B to the Directive Principles of State Policy in the Constitution of India which provides that the State shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. However, this amendment was challenged before the Supreme Court in the case of Union of India Vs Rajendra N shah & Anr. Decided on 20th July, 2021 on the grounds that Part IXB is *non est* for want of ratification by half of the States under the proviso to Article 368(2). In this case, the court held that, ratification not having been effected required under the provisions of Article 368(2), the Amendment with respect to Multi-state co-operative societies is *non est*.

Few, existing legislations for co-operatives include Co-operative Societies Act, 1912, Maharashtra Co-operative Societies Act, 1960, Societies Registration Act, 1860, Multi-State Co-operative Societies Act, 2002, Co-operative Societies Model Bye-Laws.

The co-operative sector has done remarkable developments. Thus, the provision for improvised corporate version of co-operative societies have been added under section 581A to 581ZT of the Companies Act, 1956 and these sections have recently been repealed and notified under 378A to 378ZU of the Companies Act, 2013 with effective from 11th February, 2021.

Benefits of registration as Multi State Co-operative Societies

The Government of India recently created a new Ministry of Cooperation and also proposed to bring amendments to the existing Multi-state Co-operative Society Act, 2002 which would go in a long way having the privileges of limited liability, separate legal entity and the ability of members to transfer their membership, etc. This Ministry is responsible to provide a separate administrative, legal and policy framework for strengthening the co-operative movement in country. It aims to deepen co-operatives as a true people-based movement reaching up to the grassroots and develop a co-operative based economic model where each member works with a spirit of responsibility. The principal activities of the Ministry include streamlining processes for 'Ease of doing Business' for co-operatives and enabling development of Multi-State Co-operative Societies. It lays emphasis on strengthening, bringing transparency, modernization, computerization, creating competitive co-operatives, working constantly to meet the challenge of accessibility to development for every underprivileged in rural areas and on connecting every village with co-operatives, making every village prosperous with the mantra of "Sahakar se Samridhi" and through this making the country prosperous.

The ministry has implemented the schemes such as Central Sector Integrated Scheme on Agricultural Cooperation (CSISAC) and Assistance to Co-operative Education and Training Programme.

Success Stories

1. **IFFCO:** Indian Farmers Fertiliser Cooperative Limited: Indian Farmers Fertiliser Cooperative Limited (IFFCO) is one of the largest cooperatives in the world and the world's biggest fertiliser cooperative. IFFCO is registered under the Multi State Cooperative Societies Act, 2002, and has over 40,000 member cooperatives. IFFCO is a cooperative society that engages in production and distribution of chemical fertilisers and marketing of agriculture related products. Almost 70% of all fertilisers consumed in India was distributed by cooperatives in the 1960s.
2. **AMUL:** Amul was founded in 1946 as Kaira District cooperative Milk Producers Union Limited (KDCMPUL) in a village called Anand, Gujarat to get rid of middlemen and their exploitative trade practices. Angered by unfair trade practices followed by local traders, the farmers under the leadership of Tribhuvandas Patel and advice of Sardar Vallabhbhai Patel formed their own cooperative societies. In June 1948, the pasteurization of milk began, which meant that a large amount of milk could be stored for longer without perishing. This changed life for the entire community raising their income as well as other district unions formed, and all these functioned separately but under one brand name of Amul. In 1955, KDCMPUL and other district cooperatives were merged to form one larger state cooperative, namely 'Gujarat Co-operative Milk Marketing Federation Ltd' (GCOMMFL) and the brand of Amul was adopted by GCOMMFL.
3. **Sittilingi Organic Farmers Association (SOFA):** Sittilingi Organic Farmers Association (SOFA) was formed in 2004 with four tribal farmers which grew to 57 in 2008. SOFA registered as a cooperative society in 2008 with objectives to train tribal farmers in organic farming and to help them market their crops. At present, the society has about 15,000 people out of which 4,000 are farmers among these 4000 farmers 500 are into organic farming. Ragi, bajra, little millet, foxtail and pearl millet are grown here on 1,200 acres of land in and around Sittilingi. Cotton, turmeric, sugarcane, groundnut, and

vegetables are also grown here. The association maintains a record of the crops raised by its members, and based on market demand, advises them accordingly.

Co-operative Societies and Banking System

The Banks may be categorized in two categories i.e. urban co-operative banks and rural co-operative credit institutions. Some co-operative banks are even scheduled banks, while others are nonscheduled banks. Banks that are included in the second schedule of the Reserve Bank of India Act, 1934 are referred to as scheduled banks. Reserve Bank of India (RBI) governs urban co-operative banks, the National Bank for Agriculture and Rural Development (NABARD) oversees rural co-operative banks.

The Banking Regulation Act, 1949 empowers the RBI with various statutory powers to control and monitor the co-operative banks. Section 21 of the Banking Regulation Act, 1949 empowers RBI to give directions regarding control of advances. Section 35A of the Act empowers RBI to give directions and take action to prevent any conduct detrimental to the interests of the depositors or prejudicial to the interests of the banking company and ensure better governance and control. Further, Section 35(6) of the Act provides the powers exercisable by the Reserve Bank under this section in relation to regional rural banks may be exercised by the NABARD in relation to the regional rural banks. Accordingly, NABARD is empowered by Section 35(6) of the Banking Regulation Act of 1949 to inspect Regional Rural Banks (RRB), as well as to perform periodic inspections of state co-operative institutions.

Various co-operative banks including Saraswat Co-operative Bank, Cosmos Co-operative Bank, Shamrao Vithal Co-operative Bank (SVC Bank), Abhyudaya Co-operative Bank Ltd are enjoying a pleasant growth in Banking Industry. Co-operative banks are moving towards adopting initiatives to make their banking websites smartphone-compatible and user friendly & upgrading strategies regarding mobile banking. In today's digital world, co-operative banks need to choose the right IT partner who is agile and opens doors to multiple solutions to drive innovation & growth.

Role of Company Secretaries

A Company Secretary being an expert in Corporate Laws may offer variety of Statutory and Non-statutory services to co-operatives.

1. A CS may offer the services for registration of co-operative societies.
2. He can act as the Secretary of the Co-operative Societies.
3. He can oversee and ensure that Co-operative Societies including various Co-operative Banks are in compliance with the laws applicable thereto.
4. He can offer services for Conversion of UCBs into Small Finance Banks (SFBs) – RBI's Scheme for Voluntary Transition.

Role of CS for Producer Companies under the Companies Act, 2013

The relevant regulatory provisions relating to Producer Companies (hybrid form of co-operative society) with benefits of limited liability company which could be incorporated under the provisions of the Companies Act 2013. The provisions related to producer companies under the Companies Act, 2013 are same as erstwhile Companies Act, 1956. According to the Companies Act, 2013 a co-operative society shall become a body corporate as if it is a private limited company to which all the provisions contained in the Companies Act

pertaining to Producer Company apply. A Company Secretary may ensure various compliances which may include as under:

<i>Applicable Section</i>	<i>Type of Compliance</i>	<i>Details</i>
378F(a)	Name of Producer Company	The memorandum of association of every Producer Company shall state the name of the company with "Producer Company Limited" as the last words of the name of such Company
378P	Number of Directors	Minimum Directors: 5 (Five) Maximum Directors: 15(Fifteen)
	Election of Directors	The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company. However, in the case of an inter-State co-operative society which has been registered as a Producer Company in which at least five directors hold office as such on the date of registration of such company, the period is "three hundred and sixty-five days".
378W	Appointment of Chief Executive Officer	Ensuring that the appointment of CEO is in accordance with the Companies Act, 2013.
378H for MOA & 378I for AOA	Alteration of Memorandum of Association (MOA) and Articles of Association (AOA)	<ul style="list-style-type: none"> - Alteration in MOA may be done by passing of Special Resolution. - Amended copy of MOA with Special Resolution should be filed to ROC within 30 Days of adoption of resolution. - Amendment of AOA shall be proposed by not less than 2/3rd of the elected directors or by not less than 1/3rd of the Members of the Company, and should be adopted by the Members by a special resolution - Amended copy of AOA with Special Resolution should be filed to ROC within 15 Days of adoption of resolution.
378V	Conduct of Board Meetings	Ensuring the timelines are complied with and all necessary matters are approved.

378S 378Y 1378ZA	Conduct of Annual general meetings	Ensuring the compliances relating to organizing Annual General Meetings of the Company
378ZA [4(d)]	Board Report	Preparation of Board Report
Various sections	Filing	Ensure that all necessary forms such as AOC-4, MGT-7, DPT 3, BEN 2, DIR3 KYC, MSME-1, ADT-1 etc. have been filled with Registrar of Companies with in the timelines.

Conclusion

The co-operatives societies have significantly contributed to the country's economic development and prosperity. After the 97th amendment to the Constitution of India, establishing co-operative societies became a fundamental right of an Indian citizen under article 19 of the Constitution of India. The co-operative movements from its beginning have proved to be a vehicle to support agriculturists, and gradually they are recognized as an integral part of the banking set-up. The reformation in the legislative and regulatory framework may craft a favorable and promising environment for the co-operatives. Professionals like Company Secretaries can manage the regulatory compliance requirements for the co-operatives in a better manner. In addition to the compliance part of Co-operative Societies be it in Agricultural Co-operative Society or Banking Co-operative, a Company Secretaries can contribute to the overall development of the co-operatives by its immense knowledge of co-operative Laws.

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