

## **CO-OPERATIVE LEGISLATIONS IN INDIA**

By the beginning of the 20th Century, officials of the colonial government perceived the Indian farmers' dependence on usurious moneylenders to be a major cause of their indebtedness and poverty. At that time the cooperative movement had become well established in Europe and achieved remarkable success there. Convinced that the cooperative movement offered the best means of liberating Indian farmers from the crushing burden of debt and the tyranny of moneylenders, Indian officials began to take active interest in promoting credit cooperatives in the country. Societies were organised for the first time in the closing years of the 19th Century.

### **Co-Operative Credit Societies Act, 1904**

Taking cognizance of these developments and to provide a legal basis for cooperative societies, the Edward Law Committee with Mr. Nicholson as one of the members was appointed by the Government to examine and recommend a course of action. The Cooperative Societies Bill, based on the recommendations of this Committee, was enacted on 25th March, 1904. The object of this Act, as stated in the preamble, was to encourage thrift, self help and co-operation amongst agriculturists, artisans and persons of limited means. This Act contains only 29 sections. As per section 1, this Act was extended to the whole of British India. Section 2 states the definitions of some important terms. Section 3 is concerned with the constitution of societies. As its name suggests, the Cooperative Credit Societies Act was restricted to credit cooperatives.

### **Features of the Co-Operative Credit Societies Act 1904**

1. Any 10 persons living in the same area could form a cooperative society for the encouragement of thrift and self-help among the members.
2. The chief objects of a society would be to raise funds by deposits from members, as well as loans from non-members, government and other cooperative societies and to distribute these funds as loans to members, or with the permission of the registrar, to other cooperative societies.

3. The co-operative credit societies in each province were to be under the control and administration of the Registrar of co-operative societies.
4. The accounts of the societies were to be audited by the Registrar of Co-operative Societies. 4/5th of the members of rural societies were to be agriculturists and of urban societies, non-agriculturists.
5. The rural societies were to be organized on the basis of unlimited liability, while in the case of urban societies the liability of members could be limited or unlimited.
6. In the case of rural societies dividends were not to be paid to the members and the surplus funds were to be deposited in the reserve fund. When this fund would grow beyond the limits set by the Act, a bonus might be distributed to the members.
7. No dividend would be paid to the members in the case of urban societies, until  $\frac{1}{4}$  of the profits in a year had been deposited into the reserve fund.
8. Loans could be advanced only to the members. Members could purchase shares only up to the limit fixed under the Act.
9. The credit societies were to be exempted from the payment of fees and taxes.

### **Limitations of the Co-Operative Credit Societies Act 1904**

In the beginning the Co-operative Credit Societies Act 1904 had made much progress in the formation of credit societies. But it suffered from the following drawbacks.

1. It did not give legal protection to societies formed for purposes other than credit.
2. There was no provision for the formation of a central agency such as the central banks or unions for the financing of primary societies.
3. The classification of societies into rural and urban was arbitrary and was found unsuitable.
4. There was no provision for the distribution of profit.
5. Annual audit by registrar free of cost became difficult.

## **The Co-Operative Societies Act of 1912**

With the developments in terms of growth in the number of cooperatives, far exceeding anticipation, the Cooperative Societies Act of 1912 became a necessity and cooperatives could be organized under this Act for providing non-credit services to their members. Under this Act any society creditor otherwise may be registered which has its objects, the promotion of the economic interests of its members in accordance with the co-operative principles.

The Act also provided for Federations of cooperatives. With this enactment, in the credit sector, urban cooperative banks converted themselves into Central Cooperative Banks with primary cooperatives and individuals as their members. Similarly, non-credit activities were also cooperatively organized such as purchase and sales unions, marketing societies, and in the non agricultural sector, cooperatives of hand loom weavers and other artisans.

The following are the important provisions or features of the Co-operative Societies Act 1912:

1. Any society which aimed at the promotion of the economic interests of its members could be now established and registered.
2. The liability of central societies was to be limited while that of the members of rural credit societies was to be unlimited. After carrying 1/4th of the annual profits to the reserve fund, 10 per cent of the balance could be spent for charitable purpose.
3. Local governments were permitted to use their discretion in making rules and byelaws of the societies.
4. The term 'co-operative' could not be used as a part of the title or any business concern registered under the Act unless it was already doing business under that name before commencement of the Act.
5. Shares of interest in co-operatives were exempted from attachment.
6. Co-operative societies were given priority in regard to the recovery of certain dues.
7. Other provisions of the Act of 1904 were retained as they were.

## **THE KERALA CO-OPERATIVE SOCIETIES ACT, 1969**

Kerala Co-operative Societies Act, 1969 was enacted to consolidate, amend and unify the laws relating to Co-operative Societies in the State of Kerala.

### **Preamble:**

The Act was passed with a view to provide for the orderly development of the Co-operative sector in the State, it is essential to organize the Co-operative Societies in accordance with Co-operative principles 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 and to promote scientific and technological development, health care, market intervention and management excellence in the Cooperative Sector, it is expedient to consolidate, amend and unify the law relating to cooperative societies in the State.

### **Special Features**

#### **1.Cooperative union**

Section 88 deals with circle cooperative union & Section 89 deals with state cooperative union.

#### **2.Cooperative Tribunal**

Section 81 deals with a special provision for the establishment of cooperative tribunal. This is mean for hearing appeals against orders, awards or decisions of the registrar or arbitrator.

#### **3.Appointment &service conditions**

Section 80 deals with the qualification, salary&service condition etc. of the employees.

#### **4.Penal provision**

For dealing with incidence of corruption, malpractices, misuse of powers etc. in a cooperative institution a new penal provision known as “Surcharge” under section 68 is included in the Act.

## **5.Check on bogus societies**

Under section 62(b), is a check against the organizing of bogus societies.

## **6.Limited liability**

Provisions of the 1969 Act insists that societies shall be registered in the state only with limited liability.

## **Multistate Co-operative Societies Act, 1984**

The Multi Unit Co-operative Societies (MUCS) Act 1942 failed to meet the changing needs and requirement of newly emerging co-operative societies having area of operation in more than one State. Therefore the MSCS law was enacted by the central (federal) government in the year 1984 by repealing the MUCS legislation 1942 (Again, the Parliament in the year 2002 enacted a new MSCS Law 2002 by repealing the MSCS Act 1984. However, the new law retained substantial provisions of MSCS Act 1984). The provisions of the newly enacted MSCS Act 2002 are elaborately and extensively discussed and referred under PartIII of the questionnaire i.e., cooperative legislation. The Act received the assent of president of India on 18th August 1984.

The Objectives of this Act were to

- (i) consolidate and amend laws relating to co-operative societies with objects not confined to one state and
- (ii) serve the interest of members of co-operatives in more than one state.

This law was made applicable to all Co-operative Societies having area of operation in more than one state with objects not confined to one state and serving the interest of members of co-operatives in more than one state. It was basically a central legislation

## **Model Co-Operative Societies Act 1991(Brahm Prakash Committee Model)**

This committee was constituted on 20th March, 1990 under the Chairmanship of Choudhary Brahm Prakash, Ex-M.P, Former General Secretary, National Co-operative Union of India (NCUI) and Former Union Minister of Agriculture and Co-operation. It consisted of 13 other members drawn from

Planning Commission, Ministry of Commerce, Law, and Justice, Government of India, State government Planning Boards, NDDDB, SAMAKHYA, etc. The committee submitted the Report on 20th May 1991. The main objective of this Act is to promote voluntary formulation and democratic functioning of co-operatives as people's institution based on self help and mutual aid to enable people to promote their economic and social betterment. The inclusion of co-operative principles and the basic ideology of cooperation are the special features of the Model Act. The procedure of registration is simplified and all artificial restrictions by way of area of operation, economic viability etc are removed. The Model Act gives no rule making power to the government. The Act also prohibits co-operatives from accepting funds from the government by way of equity. Board of directors has been made accountable for timely conduct of elections, regularly convening of meetings and timely audit.

### **Salient Features of Model Act 1991:**

- (1) State Policy on Co-operatives and the Principles of co-operation have been explicitly incorporated in the Act itself as a guide to the remaining provisions of the Model Act to facilitate the government to conform to the basic ideology of co-operation.
- (2) Procedure for registration of new co-operative society is simplified by removing all artificial restrictions in the form of area of operation, economic viability etc., and also prescribing time limit within which the Registrar is required to take a decision failing which the society shall be deemed registered automatically.
- (3) The rule making power, hitherto, vested with the government, has been taken away from government and given to the concerned societies by allowing freedom to frame rules.
- (4) The power of Registrar has been curtailed in general and the powers on the following aspects have been removed in particular:
  - a) Supersession of the Board of Directors.
  - b) Compulsory amalgamation or division of societies.

- c) Compulsory amendment of the bye-laws.
  - d) Veto/rescind/annual the resolution.
  - e) Issue directives
- (5) Assignment of greater responsibility to Federations: Developmental
  - (6) Equity Participation from Government is prohibited completely.
  - (7) Provisions for the constitution of Co-operative Tribunal has been made.
  - (8) Qualification of Registrar has been prescribed as under:
  - (9) Deputation from government is prohibited.
  - (10) Conferment of Special rights on co-operatives;
  - (11) Special provision imposing disqualification on members of Board of Management Committee is incorporated.
  - (12) State Aid to Co-operatives: Government nominee is restricted to one without any voting right.
  - (13) Promotion of subsidiary organisation: For the furtherance of its objectives, it provided for promotion of subsidiary organisation under any law (including Company Law) as agreed by general body.
  - (14) Restrictions on borrowings : The borrowings should be restricted as specified in byelaws. However, deposit and loans raised from external sources should not exceed 10 times the sum of member funds and organisations reserves less accumulated deficit.
  - (15) Restrictions on holding of equity. Holding of equity shares should not be more than one tenth of paid up equity capital, by any member;
  - (16) Term of Office : Maximum 3 years, for individual director, however, can be terminated by general body.
  - (17) Dissolution of cooperatives by:

**a. Members;**

**b. By Registrar:** If the co-operative (a) not commenced business within 2 years. (b) not carried on business for two consecutive years; (c) not operating with the cooperative principles and provisions of the Act.

**c. By Court :** If (a) Registration is obtained by mistake or fraud. (b) The society exists for illegal purpose, (c) The society willfully violated the provisions of the Act and (d) not operating on Co-operative basis.

(18)Enabling provisions for the functioning and regularity of different Cooperatives is duly made i.e. the power to add separate chapter for different type of co-operatives is incorporated.

### **Multi State Cooperative Societies Act 2002:**

The central government is vested with the power to enact law for the cooperatives having area of operation in more than one state. Way back in 1992, when the central governments advised the state governments to change, modify or amend their bye-laws by granting more freedom and autonomy to cooperatives on the one hand and removing the excessive controls used by Registrar and government on the other hand, on the lines of model cooperatives Act recommended in the year 1991, the state governments expressed the opinion that the central government should take a lead in this regard by amending its own Multi State Cooperative Societies Act 1984. Based on this advice, the central government in the year 2002 repealed the earlier MSCS Act 1984 and in its place enacted a new MSCS Act 2002 with the objective

- a) to facilitate the voluntary formation and democratic functioning of cooperatives as peoples institutions based on self help and mutual aid;
- b) to enable them to promote their economic and social betterment; and
- c) to provide functional autonomy and freedom to cooperatives



## **Andhra Pradesh mutually aided cooperative societies act 1995**

Andhra Pradesh was the first state passed the new Act on the basis of the Model Act called as Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 on 4th May 1995 which is the milestone in the history of the Indian Co-operative movement.

### **The salient features of the Act are the following:**

1. To rely on the co-operative principles of voluntary, self financing and autonomy and free from the state control.
2. To enable not less than ten individuals belonging to different families to form a company.
3. To enable the co-operative societies to regulate their functioning by framing byelaws subject to the provisions of the Act
4. To enable the co-operative societies to mobilize their own funds.
5. To empower the co-operative societies to provide for the qualifications and disqualifications for membership.
6. To define the powers and functions of the general body.
7. To provide for proper accountability and for that purpose to conduct audit, enquiry and for the recovery of loss caused to the society by misconduct or otherwise.
8. To provided for the settlement of disputes by constituting a co-operative tribunal.
9. To define the powers and functions of a general body.
10. To make the co-operative societies responsible to conduct the elections and to regulate the process thereof.