

Cooperative Legal Framework-Situation in India



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Cooperative Law In India

- India is a federal constitutional republic governed under a parliamentary system consisting of **29 states** and 7 union territories;
- Each state and union territory has its own Cooperative Societies Act which is applicable to those Cooperatives whose area of operation is confined to territorial limits of state/union territory;
- Union Govt, has enacted Multi State Co-operative Societies(MSCS) Act which is applicable to those cooperatives whose area of operation is extended to more than one state/union territory;

Why Constitution Amendment

- i. In the constitution of India under division of power between states and center, cooperative is in the state list;
- ii. Power to legislate, amend and rescind cooperative Act is with states/union territories w. r. t. state act and that with union Govt. w. r. t. MSCS Act;
- iii. India being multiparty democracy, ruling party in states and centre belong to different political parties;
- iv. It is generally observed that when there is a change in ruling party of the state, State Act is amended to remove existing Board and facilitate to install new Board favorable to ruling party;
- v. Hence constitution amendment with a view to bring stability and uniformity in the democratic character of co-operative.

The Constitution(Ninety Seventh Amendment) Act,2011-Salient features

1. Fundamental Right

Act gives fundamental right to form cooperative societies with the amendment in Article 19(C) of the constitution of India;

2. Incorporation of Autonomous and democratic co-operative societies

It says that legislature may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principle of voluntary formation, democratic member-control, member-economic participation and autonomous functioning;

3. Number and terms of members of board and its office bearer

I. **Number of directors**--Act provides that the board shall consist of such number of directors as may be provided by law; provided that the maximum number of Directors of a cooperative society shall not exceed twenty one.

II. **Reservation of seat for SC/ST and Woman**-- One seat shall be reserved for the Scheduled Caste or the Scheduled Tribe and two seats for women on board of every co-operative society consisting of individuals as members and having members from such class or category;

The Constitution(Ninety Seventh Amendment) Act,2011-Salient features

III. **Terms of office**--The term of office of elected members of the board and its office bearers shall be five years from the date of election and term of office bearers shall be coterminous with the term of the board.

IV. Co-option

There is provision for co-option of two members of the board having experience in the field of banking, management, finance or specialization in any other field relating to the objects and activities undertaken by the co-operative society but these members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to eligible to be elected as office bearer of the board. The functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors;

4. Election of members of board

The election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board;

The Constitution(Ninety Seventh Amendment) Act,2011-Salient features

5. Election Authority

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may be provided in the Act. Law may, provide for the procedure and guidelines for the conduct of such elections;

6. Supersession and suspension of board and interim management

No board shall be superseded or kept under suspension for period exceeding six months provided that the board may be superseded or kept under suspension in case of its persistent default; or of negligence in the performance of its duties; or the board has committed any act prejudicial to the interest of the cooperative society or its members; or there is stalemate in the constitution or function of the board; Or the election authority has failed to conduct election in accordance with the provisions of the Act.

The board of any such co-operative society shall not be suspended or kept under suspension where there is no Govt. shareholding or loan or financial assistance or any guarantee by the Govt. In case of supersession of a board , the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period as prescribed.

The Constitution(Ninety Seventh Amendment) Act,2011-

Salient features

7. Audit of accounts of co-operative societies

Act provides for the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year. It also provides for prescribing minimum qualification and experience of auditors and auditing firms that shall be eligible for auditing accounts of the co-operative societies. Every co-operative society shall cause to be audited by an auditors or auditing firms appointed by the general body of the co-operative society provided that such auditors or audit firms shall be appointed from a panel approved by Govt. or an authority authorized by Govt. in this behalf. The accounts of every co-operative society shall be audited within six months of the close of financial year to which such account relate. The audit report of accounts of an apex co-operative society shall be laid before the legislature in the manner, as may be provided by law.

8. Convening of general body meeting-

Annual General Body meeting of every co-operative society shall be convened within a period of six months of close of the financial year to transact the business as may be provided in such law.

The Constitution(Ninety Seventh Amendment)

Act,2011-Salient features

9. Right of a member to get information

Provision for access to every member of a co-operative society to the books, information and accounts of the co-operative society kept in regular transaction of its business with such member. Provision to ensure the participation of members in the management of the co-operative society providing minimum requirement of attending meetings by the members and utilizing the minimum level of services as may be provided in such law. Provide for co-operative education and training for its members.

10. Filing of returns

Every co-operative society shall file returns, within six months of the close of every financial year, to the authority designated by the Govt. including, namely:- **(a)** annual report of its activities; **(b)** its audited statement of accounts; **(c)** plan for surplus disposal as approved by the General Body; **(d)** list of amendments to the bye-laws; **(e)** declaration regarding date of holding general body meeting and conduct of elections when due and **(f)** any other information required by the Registrar in pursuance of any provisions of the Act.

11. Offences and Penalties-

A law shall include the commission of the following act or omission as offences, namely:-

(a) a co-operative society or an officer or member thereof willfully makes a false return or furnishes false information, or any person willfully not furnishes any information required from him by a person authorized in this behalf under the provisions of the Act;

The Constitution(Ninety Seventh Amendment) Act,2011-Salient features

- (b) any person willfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of the Act;
- (c) any employer who, without sufficient cause, fails to pay to a co-operative society amount deducted by him from its employee within a period of fourteen days from the date on which such deduction is made;
- (d) any officer or custodian who willfully fails to handover custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society of which he is an officer or custodian, to an authorized person; and
- (e) whoever, before, during or after the election of members of the board or office bearers, adopts any corrupt practice.

States were expected to amend their state Acts within a period of one year from date of this Act in consonance with these provisions failing which this will be in force after this period. A number of states amended their Act also but in the meanwhile, Honorable High Court of Gujarat has struck down this Act on some technical ground. Union Govt. has filed appeal in the Honorable Supreme Court of India which is pending decision.

Thank You