

Business Regulatory Framework in India in the Context of Cooperative Legislations

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ABSTRACT

Like all other economies of the world, it is also recognized in India that business plays an important role in economic growth and development of the country. Government plays an important role in developing and maintaining an environment conducive for enhancing productivity and competitiveness of business enterprises. The role of government is thus, multi-pronged-as articulator, enabler, facilitator, regulator, gap filler and buffer. For assuming such role government is required to develop policy frameworks, pass legislations, enact rules and monitor complaints with these. The scope of business regulations is vast. It covers all the legislations, by-laws, rules, policies, procedures. Talking about business as a whole, there is much difficulty in tracing the status of all business regulations in the light of various amendments made in the original regulations. Therefore this study focused on business regulatory frame work in India in the context of co-operative legislations.

1. Introduction

The Indian Co-operative Legislation today is rated as a model for all those countries where agriculture is the predominant occupation of the citizenry. Prior to 1904, co-operative societies in India were not allowed to be registered and organized under the Indian Companies Act. The era of co-operative legislation in India commenced with the enactment of Co-operative Societies Act, 1904. Through the appointment of registrars and through vigorous propaganda, the Government attempted to popularize the movement in rural areas. Within a short period, the Government realized some of the shortcomings of the 1904 Act and, therefore, passed a more comprehensive Act, known as Co-operative Societies Act of 1912 which provided for the formation of Co-operative societies other than credit. The Government of India in 1919 passed an Act to make co-operation a provincial or state subject. The Act gave scope for retaining or modifying the provisions of the 1912 Act. Thereafter, States like Bombay and Madras enacted their own legislation on co-operation. In 1942, the Central Government enacted the Multi-State Co-operative Societies Act. This Act provided for the incorporation, regulation and winding up of co-operative societies.

The latest development in the area of co-operative movement in the country has been the setting up of a high level committee by the planning commission of India for making a reappraisal of the existing co-operative set-up. One of the significant recommendations of the committee relates to the formulation of a Model Co-operative Societies Act. The recommendation has also received approval of the central government and has been circulated to all the State Governments. The New Model Act envisages autonomy to the co-operative societies and frees them from the state control. The basic aim of this formulation is to improve the working of the societies eliminate delay in decision making. It is significant to point out here that the recommendations of the high level committee regarding formulation of Model Act have been emulated by the Andhra Pradesh government which has enacted the new Andhra Pradesh Mutually Aided Co-operative Societies Act 1995. The Central government have enacted the

New Model Act which is known as Multi State Co-operative Societies Act, 2002 in to law so that co-operative institutions get chance to grow independently which is not only essential but desirable in the liberalized economy. Surprisingly, even in case of latest Multi State Co-operative Societies Act (2002), the principles have just been appended in the First Schedule and thus, relegated to the second position. This is possibly one of the reasons that there is always a controversy and mismatches between the principles vis-à-vis the established law. Hence, there is urgent need for recognition of Co-operative Principles in the Act itself.

2. Laws relating to co-operative societies

The rising numerical strength of co-operative institutions and variety of their operations call for a careful and better understanding in the Co-operative Societies Act and also of "Related Laws" applicable in their working and dealings. The awareness of the members, office bearers, officers, agents and servants of co-operative societies with regard to the legal rights and obligations, necessitates a closer examination with reference to the provisions of not only the Co-operative Societies Act, but also of "Related Laws". The working of a co-operative societies and the applications of the special law enacted for the purpose, are to a considerable extent, dependent up on the provision of several other laws. For example, a co-operative society while lending money or supplying goods or arranging sale of goods produced by its members establishes contractual relationship not only with members, but also with outsiders and the respective rights and obligations of the parties are governed by the provisions of the Contract Act, Sale of Goods Act and Transfer of Properties Act. Similarly, the registration or a person delegated with his powers is considered to be a Civil Court for summoning and enforcing the attendance of witnesses, for discovery, for proof of facts by affidavits and for issue of commission while deciding disputes, though the Indian Evidence Act, Indian Arbitration Act and the Indian Limitation Act are not required to follow, but basic principles of the said enactments are required to be followed.

In the course of business, money and properties of the co-operatives are being embezzled and records are tampered with to conceal such crimes. The provisions of Indian Penal Code relating to such crimes are directly attracted and the study of such provisions becomes necessary in order to deal with such offences expeditiously and effectively. There are also enactments like Income Tax Act, which provides certain exemptions, but they are nowhere indicated in the Co-operative societies Act. Ignorance of such provisions by those who are associated with the working of co-operative institutions might deprive such institutions of getting these exemptions and privileges.

The employment of workers in certain type of industrial and labour contract co-operative societies attracts the application of the provisions of various industrial and labour laws. The reliefs of benefit the workers are entitle to get under the terms of contract of employment and as a measure of social justice are nowhere provided in the Co-operative Societies Acts. On the other hand, adjudication of disputes between co-operative societies and its workers is excluded from the jurisdiction of the Registrar.

Co-operators working in Co-operative Banking Institutions must study the enactments, namely, Bankers Book Evidence Act, Banking Regulation Act and Negotiable Instruments Act.

A co-operator working in co-operative institutions, therefore, should not only have knowledge of the Co-operative Societies Act, but also the knowledge of Related Laws which are applicable to co-operative institutions.

3. Major Challenges

1. Vast Scope of Business Regulations

- There are vast numbers of regulations that are in existence, and there prevails difficulty in tracing the amendments made in the original legislations on the one hand and the notifications/circulars constantly getting issued to give shape to the legislations by different departments of the Union and State governments on the other hand.
- It was also found that the business regulations are getting administered by all the three tiers of government at the Union, State and Local levels. Many of these regulations have been uploaded on the websites of the respective departments and dedicated web portals have been created by the Union and State government departments for the purpose of investment promotion and business facilitation. But such web portals are not adequately linked with one another.

2. Issues related to Coordination and Coherence

- Despite that a number of State governments have established Single Window Systems (SWS) or One-Stop-Shops (OSS) on the lines of the initiatives undertaken in many other countries of the world, there is multiplicity of authorities when it comes to administering various business regulations. From the

efficiency point of view of businesses, there should be single points of interactions between business and government. But the reality is far from this principle and in practice; businesses are required to spend valuable resources in interacting with the multiple points of governments located at Union, State and Local levels.

- Apart from the challenges related to coordination and coherence among the three tiers of government, there are challenges of similar nature within each level which means that the different departments falling at each level are not able to facilitate the requirements of businesses in a coherent way. Each department has been vested with specific responsibilities as per the „Government of India (Allocation of Business) Rules 1961 and accordingly the businesses are required to deal with different departments during their various stages of business broadly divided into three Categories: start-up, operations, and closure.

3. Unmeasured Burden of Business Regulations

- India has burdensome regulations that act as obstacles to business development in the country.

4. Inherent Limitations with Regulatory Framework of India

- Regulations in India lack “Sunset Clauses” which means that once a regulation has come into effect, it will remain in the statute books till it is not formally repealed. With the „Sunset Clause” in place, the regulations will cease to remain functional unless there are fresh actions for its continuance. As a result of the absence of “Sunset Clauses”, many archaic regulations that had been enacted during the pre-independence times by the British Raj, still continue to exist. Though there have been specific actions as a result of the recommendations of various departmental committees, empowered committees, reform commissions etc. to repeal such regulations, but the scope of such actions has been limited in nature.
- Regulations in India lack „Periodic Review Clauses” which means that there are no „regulatory review” requirements embedded into these. Once a regulation has come into effect, it is not necessary that it has to be reviewed. Though, regulations, in general, keep getting reviewed in the light of the complaints or/and feedback received from the target groups of the particular regulations, such review is not systematic or comprehensive in scope. Such reviews are not of structured nature and are without any concrete methodology of consulting the stakeholders. Also, the terms of such reviews are very loosely defined and the exercise is not predictable enough.
- Regulatory Framework of India lacks “Regulatory Impact Analysis (RIA)”. RIA has been globally acknowledged as a promising tool to analyze the need and relevance of existing as well as new regulations on the basis of specific criteria, developed though a

consultative process, and matching with the context of the particular country.

4. Possibilities to overcome challenges

1. Mapping of Business Regulations

- There is an urgent need to map what all constitutes „business regulations“ at pan-India level. At present, there is no authoritative account of the type and number of business regulations that exist in the country. Once such mapping is undertaken, it will serve as a baseline for all future attempts at enhancing the quality of business regulatory framework.

2. Business Regulatory Burdens Measurements

- Such exercise has not been undertaken in India so far but there are well documented global precedents on this.

3. Taking Stock of Existing Recommendations

- There is a need to undertake a comprehensive analysis of various efforts undertaken by the government and non-government actors for addressing the problems with existing business regulatory framework. Such efforts have resulted into a plethora of recommendations that are generally confined to the produced documents. A dedicated single repository has to be created for all such documents.
- The consolidated recommendations than have to be classified into such categories that could address specific regulations classified through the

mentioned mapping exercise. Such exercise will do justice to the existing recommendations and will be followed up with an enquiry over the extent to which such recommendations have been taken up or not taken up by the respective public authorities and departments.

- It is expected that once a systematic consolidation and classification of all the existing recommendations has been done, it will enable the future efforts to be guided by far reaching levels of coherence. Also, this will reduce duplication by communicating what has already been done and what are the gaps and the emerging areas that require new enquiry.

5. Conclusion

- It was also found that the business regulations are getting administered by all the three tiers of government at the Union, State and Local levels. Apart from the challenges related to coordination and coherence among the three tiers of government, there are challenges of similar nature within each level which means that the different departments falling at each level are not able to facilitate the requirements of businesses in a coherent way. Each department has been vested with specific responsibilities as per the „Government of India (Allocation of Business) Rules 1961 and accordingly the businesses are required to deal with different departments during their various stages of business broadly divided into three Categories: start-up, operations, and closure.

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