

Overview of Laws of Non Profit Organizations and Cooperative Societies



CA Rajkumar S Adukia

B.Com (Hons), FCA, ACS, ACWA, LLB, DIPR, DLL &LP, IFRS(UK), MBA

email id: rajkumarradukia@caaa.in

Mob: 09820061049/09323061049

To receive regular updates kindly send test email to : rajkumarfca-subscribe@yahoogroups.com & rajkumarfca+subscribe@googlegroups.com



**Non
Profit
Organizations**

NPOs are also referred as

- NPO - Not for Profit Organisation
- NGO - Non Governmental Organization
- VO - Voluntary Organization
- CSO - Civil Society Organization
- CBO - Community Based Organization
- CO - Charitable Organization
- TSO - Third Sector Organization

Non Profit Organizations (NPO)-

7

An NPO can be

1. Trusts (Public or Private Trusts)
2. Society (Regd under Societies Registration Act 1860)
3. Section 25 Companies (Under Companies Act, 1956)
4. Non Trading Corporations
5. Trade Union
6. Political Parties
7. Unincorporated Entities



Constitutional Provisions

- **Article 19(1) of the Constitution Of India**

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;
and

(f) omitted

(g) to practise any profession, or to carry on any
occupation, trade or business

Constitutional Provisions

- **Article 30(1) in The Constitution Of India 1949**

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause



TRUSTS

Definition of Trust

- A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner

Terminologies

- **Author of a Trust** - The person who reposes or declares the confidence is called the "author of the trust"
- **Trustee** - The person who accepts the confidence is called the "trustee"
- **Beneficiary** - the person for whose benefit the confidence is accepted is called the "beneficiary"

Terminologies

- **Trust Property** - the subject-matter of the trust is called "trust-property" or "trust-money":
- **Beneficial Interest** - the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property
- **Instrument of Trust** - the instrument, if any, by which the trust is declared is called the "instrument of trust":

Trusts

- Trusts may be
 - Public Trusts (excluded from the ambit of Indian Trusts Act)
 - Private Trusts (formed under the Indian Trusts Act)

Types of Trusts

- Revocable Trusts
- Irrevocable Trusts
- Intervivos Trusts
- Implied Trusts
- Testamentary Trusts
- Express Trusts
- Discretionary Trusts

Types of Trusts

- Fixed Trusts
- Hybrid Trusts
- Constructive Trusts
- Resulting Trusts
- Bare Trusts

Creation of Public Trust

- Public Trusts may be created either by inter vivos or by will
- Exempt from rule against perpetuities
- Public Trusts do not need a Formal Deed for constitution
- Public Trusts are an exception to the well laid rule that there is no valid trust unless objects are specified

There is no All India Level Act for setting up public charitable trusts.

An NGO can be created only under a Public Trust Act.

Madhya Pradesh and Rajasthan have independent state level public trust acts.

*States like **West Bengal and Bihar**, do not have any act to register a public trust.*

*In the state of **Maharashtra and Gujarat** , all organizations that are registered as 'Society' are by default also registered as **Public Trust**.*

There might be a private trust for religious purpose, but there can be no private charitable trust (CIT Vs M.Jamal Mohammed Sahib (1941) 9 ITR 375 (Mad))

Private Trusts

- Private Trusts are governed by the Indian Trusts Act, 1882
- Beneficiaries: It is not the society at large but one or two particular individuals as beneficiaries

Creation of Trusts

- A minimum of only two persons are required to form a trust which can be set up by executing a trust deed on non-judicial stamp paper worth a specified percentage of the value of the trust property, with either the charities commissioners or with the registrar of documents elsewhere.

Creation of Trusts

1. A formal registration before the Charity Commissioner / Inspector General of Registration under the respective State Public Trusts Act e.g. the Bombay Public Trusts Act, 1950, the Gujarat Public Trusts Act, the Rajasthan Public Trusts Act etc;
2. Invoking interference of civil courts to lay down schemes for governing a Trust under Sections 92 and 93 of the Civil Procedure Code;
3. Registering the Trust deed of a Public Charitable Trust under the Registration Act, 1908;

Creation of Trusts

4. Notifying an organization in the list of Charitable Trusts and Religious Endowments which are supervised by the Endowments Commissioner of the State or by a Managing Committee formed under the Charitable Endowments Act, 1890 or under other State laws on Hindu Religious and Charitable Endowments; and
5. Creating a Waqf which could be managed under the provisions of the Waqf Act, 1995.

Laws Governing Trusts in India

Central Legislations

- The Indian Trusts Act, 1882
- Charitable and Religious Trusts Act, 1920
- Religious Endowments Act, 1863
- Charitable Endowments Act, 1890

Laws Governing Trusts in India

State Legislations

The Madras Hindu Religious & Charitable Endowments Act, 1951

The Bombay Public Trusts Act, 1950

The Orissa Hindu Religious Endowments Act, 1939

The Bihar Hindu Religious Trusts Act, 1951



SOCIETY

The Societies Registration Act, 1860, however, is an All-India Act, with each state adopting certain modifications.

Trusts Vs Society

- Unlike trusts, a society has a more democratic set up with membership and an elected body to manage the society.
- The original members of a society can continue to remain in control as long as they are elected to the managing committee, but at the same time can opt out of the society if they wish, which trustees cannot.

Establishment of a Society

- A society can be established by seven or more individuals and registered under the Societies Registration Act, 1860
- The Income Tax Act, 1961 gives all categories of NPOS equal treatment, in terms of exempting their income u/s 11 and 12 and granting 80G certificate.

Almost all the states in India have adopted (with modifications, if any) the Central Act for creating state level authorities for registering various types of not-for-profit entities

Religious Societies

- Those engaged in pure religious and charitable work registered under
 - The Religious Endowments Act, 1863;
 - The Charitable and Religious Trusts Act, 1920;
 - The Waqf Act, 1995 and
 - Similar other State Acts

Memorandum of Association

- The Memorandum should include the names of the Society, its objectives, the names, addresses and occupations of members subscribing to it as well as the first Governing Body to be constituted on registration.
- The MOA should be accompanied by a set of Rules and Regulations – this should include details such as the procedure for enrolment and removal of members, procedure for formation of the Governing Body, conduct of meetings, election and removal of office bearers, procedure for conducting annual General Body meetings, etc.

State Societies Registration Act

The following states have carried out major amendments in the original Act

- Andhra Pradesh,
- Rajasthan,
- Tamil Nadu,
- West Bengal and
- Uttar Pradesh.

State Societies Registration Act

The amendments mainly concern the following four issues:

1. Purpose for which Societies can be formed
2. Regulatory powers with regard to change in memorandum of association, bye-laws, alienation of property and investment, amalgamation and dissolution of the Body
3. Powers with regard to submission of annual returns
4. Powers of the State Government with regard to supersession, dissolution or cancellation of registration

SECTION 25 COMPANIES

The Companies Act, 1956

- According to section 25(1)(a) and (b) of the Indian Companies Act, 1956, a section-25 company can be established 'for promoting commerce, art, science, religion, charity or any other useful object', provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members.

Registration

- Section-25 companies are registered under section-25 of The Companies Act, 1956.

Basic Instrument

- For a section-25 company, the main instrument is a Memorandum and Articles of association (no stamp paper required)

*The existing limited companies
can also be transformed to a non-
profit company under Section
25(3) of the Companies Act, 1956*

Exemption from the provisions of the Companies Act, 1956

The non-profit companies registered under this provision have been exempted from several provisions of the Companies Act by way of notification issued under Section 25(6) of the Act which inter alia covers the following:-

1. Exemptions from publication of names etc. (Section 147);
2. Liberty to hold general body meetings on public holidays or outside business hours [Section 166(2)];
3. Reduction of time length of meeting notice to fourteen days instead of twenty one days [Section 171(1)];

Exemption from the provisions of the Companies Act, 1956

4. Requirement to keep books of account of the past four years instead of eight years [Section 209(4A)];
5. Exemption from the requirement of government's permission for enhancing the number of directors (Section 259);
6. Relaxation in holding Board meetings once in six months instead of three months (Section 285) and its quorum (Section 287);

Exemption from the provisions of the Companies Act, 1956

7. Competence of the Board to decide about borrowing of money, investing of funds or granting of loans by circulation (Section 292);
8. Exemption from the requirement of intimating to the Registrar the particulars of change in the composition of the Board (Section 303);
9. Relaxation in matters regarding the amount of loan or purchase of shares that can be made by the company without the government's prior approval (Sections 370 and 372).



WAQFS

Waqfs in India

- Waqf implies the endowment of property, moveable or immovable, tangible or intangible to God by a Muslim, under the premise that the transfer will benefit the needy.

Important Enactments on Waqfs

- (i) Mussalman Waqf Validating Act, 1913,
- (ii) Mussalman Waqf Act 1923,
- (iii) Bengal Waqf Act 1934,
- (iv) U.P. Muslim Waqf Act, 1936,
- (v) Delhi Muslim Waqf Act, 1943,
- (vi) Bihar Waqf Act, 1947,

Important Enactments on Waqfs

- (vii) Central Waqf Act, 1954,
- (viii) U.P. Muslim Act, 1960,
- (ix) The Waqf Act, 1995.

Currently, 300000 Waqfs in India are being administered under various provisions of the Waqf Act, 1995.

This Act is applicable throughout the country except for Jammu and Kashmir and Dargah Khwaja Saheb, Ajmer.



TRADE UNIONS

Trade Union

“Trade Union means

- a combination, whether temporary or permanent,
- formed primarily for the purpose of regulating relations between workmen and employers or between workmen and workmen or
- between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.”

(Section 2 of the Trade Unions Act, 1926)

Registration

- A Trade Union can be registered under Trade Union Act, 1926
- Originally any 7 or more members of a Trade Union were eligible to apply for registration.

Minimum Requirement on Membership

A new Section 9A regarding minimum requirement about membership of a Trade Union was also inserted according to which a registered Trade Union shall at all times continue to have

- not less than ten per cent, or
- one hundred of the workmen,
- whichever is less, subject to a
- minimum of seven, engaged or employed in an establishment or industry with which it is connected as its members.

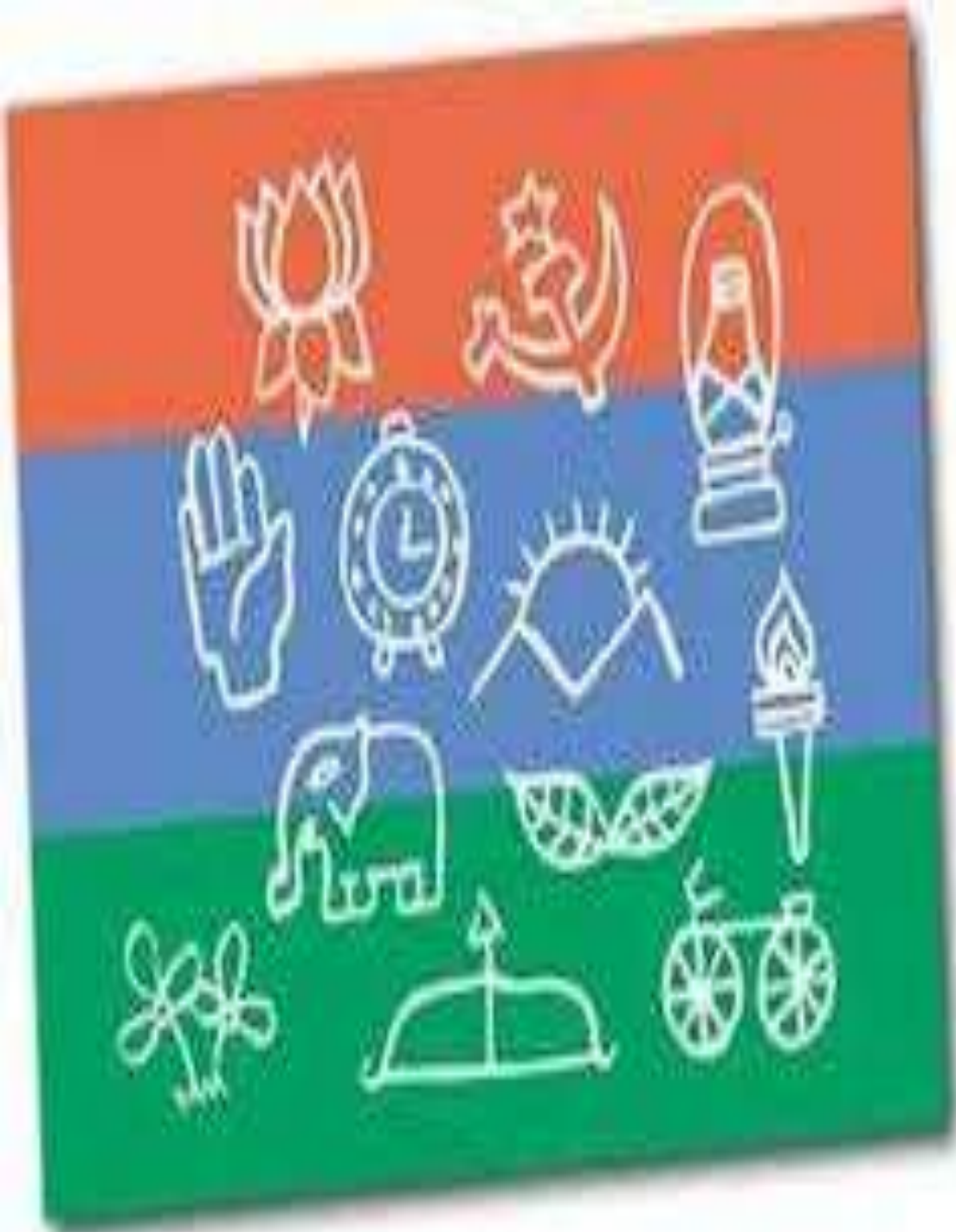
Proportion of Office Bearers

In terms of Section 22 of the Trade Unions Act inserted in 2001,

- not less than half of the total number of office bearers of every registered Trade Union in an unorganized sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected

Proportion of Office Bearers

- In other cases, all office bearers of a registered Trade Union, except not more than one third of the total number of the office bearers or five, whichever is less, shall be persons actually engaged in the establishment with which the Trade Union is connected.



POLITICAL PARTIES

What is a Political Party?

- A **political party** is a political organization
- That typically seeks to influence government policy,
- Usually by nominating their own candidates and trying to seat them in political office.

Relevant Legislations

- The Representation of the People Act, 1951
- Registration of political parties under section 29A of the Representation of the People Act, 1951
- The draft of the “Political Parties (Registration and Regulation of Affairs, etc) Act, 2011 is under consideration



NON TRADING COMPANIES

Non Trading Companies

- **Maharashtra** - Non-trading Corporations Act, Bombay 1959
- **West Bengal** - The West Bengal Non-Trading Corporations Act, 1965
- **Kerala** - The Kerala Non-trading Companies Act, 1961



UNINCORPORATED ENTITIES

Unincorporated Entities

- Ganesh Mandal
- Navratri Mandal



CHARITABLE INSTITUTIONS AND TAX LAWS

Charitable Institutions and Tax Laws

- The Income Tax Act, 1961 is a Union legislation, which applies to all voluntary organisations (Trust, Society or Company) uniformly throughout India.
- Any voluntary (non-profit) organisation engaged in a charitable work can claim tax exemptions and other benefits under the Income Tax Act, 1961 subject to the conditions and restrictions contained therein.

Tax Laws

- Sections 11 to 13 provide for the assessment of Trusts that are wholly for charitable or religious purposes.
- Section 11 provides that income from property held for charitable or religious purposes shall not be included in the total income of the Trust etc. if the income is applied as per the provisions of the Act.

Utilisation

- The non-profit organisation must utilize 85% of its income in any financial year, on the objects of the organisation.
- Section 11 also provides that income of the Trust etc.
 - in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the Trust or institution shall not be treated as income of the Trust etc.

Voluntary Contributions

- Section 12 provides that
 - voluntary contributions
 - received by a Trust/Institution
 - created wholly for charitable or religious purposes
 - shall be deemed to be income derived from property held under Trust and
 - shall not be included in the income of the Trust as provided in Section 11

Applicability of Sections 11 & 12

- Section 12A (1) (aa) importantly provides that
 - the provisions of Section 11 and Section 12
 - are applicable to the income of any Trust or Institution
 - only if the Trust has made an application for registration of the Trust or Institution in the prescribed form and manner
 - to the Commissioner and
 - such Trust or Institution is registered under Section 12AA.

Authority for Grant of Registration

- Under Section 12AA, the authority for grant/ rejection of the registration is the Commissioner of Income-tax.

Documents for Registration

- i. Copy of the instrument by which the Institution has been created;
- ii. Other documents in support of the above.
- iii. Copies of accounts of the Institution since its inception or for the last three years whichever is less.

Section 35 of IT Act

To encourage expenditure on scientific research, Section 35 of the Income Tax Act provides for

- Weighted deductions to a tax payer to the extent of 125 per cent of the sum paid by him
- to an approved scientific research association, approved university, college, company doing research or other institution to be used for scientific research subject to certain specified conditions.

Sec 35AC of the IT Act

Section 35 AC of the Income Tax Act also provides for deductions to be allowed to

- a tax payer in respect of expenditure on eligible projects or schemes from the business incomes of the assessee
- where the assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution
- approved by the National Committee for carrying out any eligible project or scheme.

Section 35CCA of the IT Act

- Section 35 CCA of the Income Tax Act also provides for deductions to be allowed in respect of expenditure for carrying out rural development programmes from the business incomes of assesseees.

80G of the IT Act

- Donors (individuals, associations, companies, etc) are entitled for a deduction of 50% of donations made to the registered charitable organisations enjoying tax exemption status under Section 80G of the Income Tax Act.

To Sum Up

- First is getting the exemption approved by the prescribed authority under Section 10(23C) of the Income Tax Act.
- Second is the process of getting registered as a charitable institution under Sections 12A and 12AA (in order to claim benefits under Sections 11 and 12).
- Third is getting 80G exemption certificate status.
- And fourth is claiming deductions under Sections 35, 35 AC, and 35 CCA.

Provisions under DTC Bill, 2010

- **Governing Sections** - Sections 90 to 103, 314(169), Schedules – First, Seventh and Sixteenth
- **Nomenclature** used for Trust is NPO
- **Applicability of Sections** - Does not apply to religious organisations and to partly charitable / religious organisations
- **“Charitable Activities”** – Defined under Sec 103, the definition is exhaustive
- **Registration** of Public Charitable Trusts / institutions already registered – Sec 98 requires no further action
- There are 8 conditions are registration that is prescribed

Provisions under DTC Bill, 2010

- **Method of Accounting** – Cash basis. Section 25 Companies on Accrual basis
- **Computation of Tax** - Public trust - If income not exempted - Basic exemption limit of Rs. 1 lakh. Excess amount taxed @ 15% - If exemption forfeited due to contravention under the Act - 30% of the total income
- **Application of funds** for the benefit of interested persons – Sec 97
- **Deduction of contribution / donation** (in the hands of the donor) – 100%/50%
- **Taxability on cessation or disqualification as NPO** - Liable to tax @ 30% of net worth (results in double taxation)

COOPERATIVE SOCIETIES



What is a Cooperative Society?

- Co-operative society is a voluntary association of persons who work together to promote their economic interest.
- It works on the principle of self-help as well as mutual help.
- The main objective is to provide support to the members.

Constitutional Provisions

Cooperative Societies Act is a Central Act. However, 'Cooperative Societies' is a State Subject (Entry 32 of List II of Seventh Schedule to Constitution, i.e. State List).

3 Categories of Cooperative Societies

- State Cooperative Societies
- Multistate Cooperative Societies
- Producer companies Part IXA section 581A to 581ZT of companies Act 1956 (Deemed Cooperatives)

What is a Multi State Cooperative Society?

“Multi-state cooperative society” means a society registered or deemed to be registered under this Act and includes a national cooperative society and a Federal cooperative. (Sec.3(p) of The Multi-State Cooperative Societies Act, 2002)



Rochdale Principles

- The **Rochdale Principles** are a set of ideals for the operation of cooperatives.
- They were first set out by the Rochdale Society of Equitable Pioneers in Rochdale, England, in 1844,

The Cooperative Principles

- **1st Principle:** Voluntary and Open Membership
- **2nd Principle:** Democratic Member Control
- **3rd Principle:** Member Economic Participation
- **4th Principle:** Autonomy and Independence

The Cooperative Principles

- **5th Principle:** Education, Training and Information
- **6th Principle:** Co-operation among Co-operatives
- **7th Principle:** Concern for Community

Laws regulating Cooperative Societies in India

- Cooperative Societies Act, 1912 (a Central Act based on which State Acts are enacted
- State Cooperative Societies Acts of individual states;
- Multi-State Cooperative Societies Act, 2002 for the multi-state Cooperative societies with Area of operation in more than one State.
- Companies Act, 1956 (for producer companies)

State Legislations governing Co-operative societies are:

1. Delhi Co-operative Societies Act, 2003 & Delhi Co-operative Societies Rules, 2007
2. Himachal Pradesh Cooperative Societies Act, 1968
3. The Punjab Co-operative Societies Act, 1961
4. Haryana Co-operative Societies Act, 1984
5. The Jammu and Kashmir Co-operative Societies Act, 1960
6. The Sikkim Co-operative Societies Act, 1978

State Legislations governing Co-operative societies are:

7. The Maharashtra Co-operative Societies Act, 1960
8. The Gujarat Co-Operative Societies Act, 1962
9. Kerala Co-operative Societies Act, 1969
10. Karnataka Co-operative Societies Act, 1959
11. The Meghalaya Co-operative Societies Act, 1976
12. Tamil Nadu cooperative Societies Act, 1983
13. Assam Cooperative Societies Act, 1949

Producer Companies Part IXA of Companies Act 1956

- Section 581A to 581ZT
- 12 chapters
- They may also be called as **Deemed Cooperative Societies**, given that they follow the 7 basic principles of Cooperative Societies

Basic provisions of the Co-operative Societies Act

- Registration of Co-operative Societies
- Rights of the members
- Privileges of the Societies
- Property and Funds of the Society
- Management of the Society
- Audit, Inquiry and Inspection
- Disputes
- Liquidation of Societies
- Offences and Penalties
- Appeals, Reviews and Revision

Types of Co-operative Societies

- Consumers' Co-operative Society
- Producers' Co-operative Society
- Co-operative Marketing Society
- Co-operative Credit Society
- Co-operative Farming Society
- Housing Co-operative Society

Characteristics of Cooperative Society

- Open membership
- Voluntary Association
- State control
- Sources of Finance
- Management
- Service motive
- Separate Legal Entity
- Distribution of Surplus
- Self-help through mutual cooperation

The Delhi Co-operative Societies Act, 2003 and The Delhi Co-operative Societies Rules, 2007

- There are 142 sections under XIV Chapters with One Schedule in the Act, 2003.
- There are 170 rules under XIV chapters with schedules and forms in the Rules, 2007.

Types of Societies that can be registered

1. Thrift and Credit Co-operative Societies.
2. Urban Co-operative Banks
3. Producers co-operative society
4. Industrial Co-operative Societies
5. Labour & Construction Co-operative Societies
6. Motor Transport Co-operative Societies
7. Consumer Co-operative Societies

Types of Societies that can be registered

8. Marketing Co-operative Societies
9. Co-operative Union
10. Multi purpose Co-operative Society
11. Group Housing/House Building Societies
12. Security Services Co-operative Societies
13. Co-operative Societies formed by professionals in the areas like IT, Education Art & Culture, Insurance, Women Empowerment etc.

Restriction on registration of co-operative societies (Sec.5)

- No co-operative society can be registered under the Act unless it has at least 15 members who are qualified to be members and who reside in the area of operation of the co-operative society.

Time schedule for approval of new Cooperative Societies

The time schedules for disposal of various applications/references received from societies are detailed below:-

- Approval of proposal for registration of a new Co-operative Society - 30 days
- Amendment in bye laws - 60 days
- Maximum credit limit of the Society - 90 days
- Approval of registration and enrollment of members in Housing/ Group Housing Society - 60 days
- Other (Miscellaneous matters) - 60 days

Arbitration

- The provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996). Sec 84(5) of the Multistate Cooperative Societies Act, 2002

Audit of Accounts of a Co-operative Society

- Section 60 and Rule 79, 80 & 81 deals with the procedure for audit of a co-operative society.
- Audit shall include technical, special, concurrent and re-audit.

Other Laws governing the Conduct of NPOs and Cooperative Societies

- Foreign Contribution Regulation, Act
- Prevention of Money Laundering Act
- Taxations
- Service Tax
- Foreign Exchange Management Act
- Information Technology Act, 2000
- Corporate Governance
- Intellectual Property Rights Law

About the Author

- *CA. Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. He is the senior partner of Adukia & Associates.*
- *In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labor Laws and IPR.*
- *Mr. Adukia, a rank holder from Bombay University completed the Chartered Accountancy examination with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983.*
- *He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development.*

About the Author

- *He has been coordinating with various Professional Institutions, Associations, Universities, University Grants Commission and other Educational Institutions.*
- *Authored more than 50 books on a vast range of topics including Internal Audit, Bank Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, IFRS, LLP, Labour Laws, Real estate, ERM, Inbound and Outbound Investments, Green Audit etc.*
- *The author can be reached at rajcumarradukia@caaa.in
Mob – 09820061049 / 09323061049*
- *For more details log on to www.caaa.in*

THANK YOU

