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Structural and Legal Transformation in Cooperatives- A Review of Producers Companies in India

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Prologue

We are living in the volatile, uncertain, complex and ambiguous (VUCA) world. We are also witnessing structural and legal transformations in the forms of business organizations. Hitherto, we were classifying the businesses as primary, secondary and tertiary sectors. Based on the area of operation we also classified businesses as rural business and urban business. However, the changing scenario in the business world narrows down the gaps. Likewise, the ownership pattern of business is also changing rapidly. Indian business laws permits sole proprietorship, partnership, private limited company, public limited company, government corporations, joint Hindu family business, Self-help groups, and the cooperatives. The cooperatives are in the hands of government machinery for more than a century. Of late, like any other business enterprises cooperatives are also wants to enjoy the freedom from the officialisation and politicalisation. Such transformations were crystallized in the form of Self-help Groups, Self-reliant Cooperatives and Producers' Companies. This is therefore, an attempt was made in this paper to highlight the *new normal* cooperative form of organization i.e., Producers' Companies in India.

Forms of Business Organization in India

As a prelude to understand the *new normal* cooperative form of organization namely Producers' Companies, it's worthwhile to know the different forms of business organizations in India. The Companies Act 1956 and the other relevant business laws are taken in to consideration to draft the following paragraphs.

For Profit Enterprises

Sole Proprietorship: A sole proprietorship is the oldest and the most common form of business. It is a one-man organization where a single individual owns, manages and controls the business.

Partnership Firm: Partnership is defined as a relation between two or more persons who have agreed to share the profits of a business carried on by all of them or any of them acting for all.

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The owners of a partnership business are individually known as the "partners" and collectively as a "firm".

Limited Liability Partnership (LLP) is a new corporate structure that combines the flexibility of a partnership and the advantages of limited liability of a company at a low compliance cost. In other words, it is an alternative corporate business vehicle that provides the benefits of limited liability of a company, but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm. Owing to flexibility in its structure and operation, it would be useful for small and medium enterprises, in general, and for the enterprises in services sector, in particular. Internationally, LLPs are the preferred vehicle of business, particularly for service industry or for activities involving professionals.

Joint Hindu Family Business: Joint Hindu Family Business is a distinct type of organization which is unique to India. Even within India its existence is restricted to only certain parts of the country. In this form of business ownership, all members of a Hindu undivided family do business jointly under the control of the head of the family who is known as the 'Karta'. The members of the family are known as 'Co-parceners'. Thus, the Joint Hindu Family firm is a business owned by co-parceners of a Hindu undivided estate.

Private Limited Company: A private limited company is a voluntary association of not less than two and not more than fifty members, whose liability is limited, the transfer of whose shares is limited to its members and who is not allowed to invite the general public to subscribe to its shares or debentures.

Public Limited Company: A public limited company is a voluntary association of members which is incorporated and, therefore has a separate legal existence and the liability of whose members is limited. A company must have a minimum of seven members but there is no limit as regards the maximum number.

Democratic Enterprises

Co-operatives' Co-operative organization is a society which has as its objectives the promotion of the interests of its members in accordance with the principles of cooperation. It is a voluntary association of twenty five or more members residing or working in the same locality, who join together on the basis of equality for the fulfillment of their economic or business interest. The basic feature which differentiates the co-operatives from other forms of business ownership is that its primary motive is service to the members rather than making profits.

Self reliant Cooperative Society means a mutually aided cooperative society registered under the Mutually Aided Cooperative Societies Acts (An Act to provide for the voluntary formation of

cooperative societies as accountable, competitive, self reliant business enterprises, based on thrift, self-help and mutual aid and owned, managed and controlled by members for their economic and social betterment and for the matters connected therewith or incidental thereto) of the respective states whose byelaws prohibit it from raising share capital from the Government.

Self Help Group is a homogeneous group of micro entrepreneurs with affinity among themselves, voluntarily formed to save whatever amount they can conveniently save out of their earnings and mutually agree to contribute to a common fund of the group from which small loans are given to the members for meeting their productive and emergent credit needs at such rate of interest, period of loan and other terms as the group may decide.

Producer Companies The administration and management of 'Producer Companies' is not in tune with general framework for companies with liabilities limited by shares/guarantees. The shareholding of a 'Producer Company' imposed restrictions on its transferability, thereby preventing the shareholders from exercising their exit options through a market determined structure. It was also not feasible to make this structure amenable to a competitive market for corporate control. If it is felt that producer companies are unable to function within the framework and liability structure of limited liability companies. The Corporate Governance regime applicable to companies could not be properly imposed on this form. Government may consider introduction of a separate Act to deal with the regulation of such 'Producer Companies'. Part IX A in the present Companies Act, which has hardly been resorted to and is more likely to create disputes of interpretation and may, therefore, be excluded from the Companies Act.

Government Companies" In general, there is little justification for Government companies being provided relaxations in compliance with company law. It is even less if such companies are listed. Not only should such Government companies be able to compete in the market economy with other companies on equal terms, it would not be fair to the investors or creditors if such entities are allowed to present their performance on the basis of dissimilar parameters. 7.2 Government companies may be subject to imposition of non-commercial/commercially unviable social responsibilities. However the costs of such responsibilities should be transparently assessed and provided by the Government through the budget as a subsidy. It is not appropriate that application of the law or standards be relaxed to allow such costs to be incurred in a non-transparent manner. 7.3 There may be situations where such companies may require special treatment in activities related to the security of State. There may be an enabling provision to relax operation of Companies Act for such companies. Other companies, engaging in commercial activity should compete on the basis of transparency and level playing fields. Preferential treatment to such companies would be to the detriment to the capacity of Indian

companies to survive in a competitive market. 7.4 A Government company should be clearly defined in law. It should be one where there is a clear majority stake held by the state- i.e. Central and/or State Government(s). There is no rationale for the definition of Government Company being extended to companies set up by Government companies in course of their commercial activities.

Having discussed about the different forms of business enterprise, let us try to deliberate more on the *new normal* cooperative form of organization i.e., Producers' Companies in India.

Background and Justification for Producer Company

The Central Government has constituted a High Level Committee on November 1, 1999 to draft a legislative framework to enable formation of cooperative business as companies and to convert existing cooperative business into companies under a regulatory framework similar to that of private limited companies, under the Chairmanship of Dr. Y.K. Alagh, Economist and former Union Minister. The Committee submitted its Report to the Government (Department of Company Affairs) on March 15, 2000. On the basis of the recommendations of the Committee, the Producer Companies Bill was introduced in the Parliament and became law on 6th February, 2003 as Part IXA - Producer Companies in the Companies Act, 1956. Based on the cooperative principles of mutual assistance, it provides an alternative to the institutional form that is presently available to cooperative enterprises.

The foremost reason put forward by the committee was that, 'Rural producers are at a potential disadvantage given their generally limited assets, resources, education and access to advanced technology. In the present competitive scenario, if cooperative enterprises are to continue to serve rural producers, they require an alternative to the institutional form presently available under law'. Further, the Producers Company is to offer a statutory and regulatory framework that creates the potential for producer-owned enterprises to compete with other enterprises on a competitive footing. And also to provide for the method of formation and registration of "Producer Companies" which, inter alia carries the principles of "mutual assistance" and "Co-operation" within the more liberal regulatory framework afforded by the company law with suitable adaptation.

Salient Features of the Bill

The salient features of the Bill are:

1. To offer a statutory and regulatory framework that creates the potential for producer-owned enterprises to compete with other enterprises on a competitive footing. The Companies Act envisages and provides for various forms of Companies including private

- limited, public limited, trusteeship companies and nidhis, each with specific and appropriate provisions applicable to them.
2. To provide for the formation and registration of producer companies, which include the mutual assistance and cooperative principles within the more liberal regulatory framework, afforded by the Company Law with suitable adaptations.
 3. To provide an opportunity to cooperative institutions to voluntarily transform themselves into the new form of producer companies.
 4. Under the Bill conversion of cooperatives to producer companies is purely voluntary.
 5. Member equity may not be publicly traded, but may only be transferred, with the approval of the Producer Company's Board of Directors. Producer companies would not be vulnerable to the take over by multinationals or other companies.
 6. The conversion option by cooperative society to Producer Company can be exercised only if two-thirds of the members of the concerned society vote in favour of a resolution to that effect.
 7. The new form of company is designated as "Producer Company" to indicate that only certain categories of persons can participate in the ownership of such companies. The members of the Producer Company have necessarily to be "primary producers", that is persons engaged in an activity connected with, or relatable to, primary produce.
 8. The objects of a producer company have been defined to include, among other things, production, processing, manufacture and sale of primary produce as well as allied matters.

Objectives of Producer Company

The objectives of the Producer Company shall relate to all or any of the following matters, namely:-"

1. production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit: provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;
2. processing including preserving, drying, distilling, brewing, vinting canning and packaging of produce of its members;
3. manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
4. providing education on the mutual assistance principles to its Members and others;
5. rendering technical services, consultancy services, training research and development and all other activities for the promotion of the interests of its Members;
6. generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce;
7. insurance of producers or their primary produce;
8. promoting techniques of mutuality and mutual assistance;
9. Welfare measures or facilities for the benefit of members as may be decided by the Board.

10. any other activity, ancillary or incidental to any of the activities referred to in clauses (1) to (9) or other activities which may
11. Promote the principles of mutuality and mutual assistance amongst the Members in any other manner; financing of procurement, processing, marketing or other activities specified in clauses (1) to (11) which include extending of credit facilities or any other financial services to its Members.

Cooperative Principles and Producer Companies

Here an attempt has been made to compare the International Cooperative Alliance Statement on Cooperative Identity Statement 1995 with special reference to its seven principles and the practices of Producers Companies. This effort is with an intention of highlighting the fact that the producers Companies are no way different from cooperatives.

Table 1: Cooperative Principles and Producer Companies

Sl. No	Cooperative Principles	Relevant Practices of Producer Companies
1	Voluntary and Open Membership: Co-operatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, and social, racial, political or religious discrimination.	The membership shall be voluntary and available to all eligible persons who can participate or avail of the facilities or services of the producer company and are willing to accept the duties of the membership
2	Democratic Member Control: Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (<i>one member, one vote</i>) and co-operatives at other levels are also organized in a democratic manner.	<ul style="list-style-type: none"> • Each member shall...have only a single vote irrespective of the shareholding. • The company shall be administered by a board consisting of persons elected or appointed (professionals) as directors and the board shall be accountable to the members
3	Member Economic Participation; Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive <i>limited compensation, if any, on capital subscribed as a condition of membership</i> . Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which	<ul style="list-style-type: none"> • Save as provided in this part, there shall be limited return on share capital. • The surplus arising out of the operations of the producer company shall be distributed in an equitable manner by: <ul style="list-style-type: none"> ○ Provided for the development of business of the company ○ Providing for common facilities and ○ Distributing amongst the members as may be admissible in proportion to their respective participation in

	at least would be indivisible; benefiting members <i>in proportion to their transactions with the co-operative</i> ; and supporting other activities approved by the membership	business
4	Autonomy and Independence ; Co-operatives are autonomous, self-help organizations controlled by their members. If they enter into agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.	<i>The main reason for the formation of Producer Company is to ensure autonomy and independence</i>
5	Education, Training and Information ; Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.	Provision shall be made for the education of members, employees and others on principle of mutuality and techniques of mutual assistance
6	Co-operation among Co-operatives ; Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.	The company shall actively cooperate with other producer companies (and other organizations following similar principles) at local national or international level so as to best serve the interest of its members and the communities it purport to serve.
7	Concern for Community ; Co-operatives work for the sustainable development of their communities through policies approved by their members.	Needs to be evolved

Source:

- <http://ica.coop/en/what-co-op/co-operative-identity-values-principles>
- Articles of Association of ESAF Swasraya Producer Company Limited

However there are some core differences between cooperatives and producers companies. The following table depicts those differences.

Table 2: Major Differences between Cooperatives and Producers Companies

Sl. No	Parameter	Cooperatives	Producer Companies
1	Governed by the Act and rules	Cooperative Societies Act and Rules	Producer Company Act 2002
2	Area of Operation	Restricted	Entire Union of India

3	Management	Conventional	Professional
4	Interface with government	Highly patronized to the extent of interference	Limited to statutory requirements
5	Extent of Autonomy	Limited in "real world scenario"	Fully autonomous, self ruled within provisions of Act
6	Privileges	Many to the extent of making dependent	Equivalent to Coops with sense of competitiveness

Source: http://www.asaindia.org/PDFs/MPC_II.pdf

A Case Study of Devnadi Valley Agriculture Producer Company Ltd

Devnadi Valley Agriculture Producer Company Ltd. is the brainchild of YuvaMitra (NGO), which has been successful in mobilizing the farmer community and promoting a producer company. It was for the farmers, by the farmers and of the farmers. Currently the company has around 1000 farmers as members under which has started an Agri Mall. Devnadi Valley Agriculture Producer Company is a platform to enable farmers to increase their bargaining power and bring them on a competitive footing with other agriculture related entities.

Vision of DVAPCL

"Develop sustainable integrated model for the farmers through Producer Company platform that will equip them for crop and water management, introduce new techniques, and market avenues"

Missions of DVAPCL

1. To provide farmers agri inputs at one stop shop with a proper knowledge to enhance yield with a proper crop and water management.
2. To introduce new techniques as well as to promote farmers to do farming with new technology and provide support.
3. To market the output produced by farmers collectively to get good returns for their output.

Objectives of DVAPCL

1. Establishing direct Linkages between Consumer & Farmer.
2. Establishing assured market & price for the crop by adopting multiple marketing channels.
3. Increasing Productivity & Production through quality and balanced use of inputs.
4. Bring about changes in the conventional farming techniques & upgrade to new innovative methods for optimum utilization of resources to bridge the "Demand-Supply" gap.

Product/ Service of DVAPCL

- Devnadi Agri Mall- Input shop
- Devnadi Vegetable Express- Direct Marketing of Vegetables
- Advisory Services- Agril.Expert Guidance

DevnadiAgri Mall

DevnadiAgri Mall is the input shop for the farmers, which supplies all types of inputs i.e. pesticides, fertilizers, seeds, hardware, drip irrigation system tools, tractors, and other farm equipment to the farmers. This is the one stop shop to the member farmers. This Shop is named as mall because all the requirements regarding farming and agriculture are provided at the shop. The objectives of the Agri Mall are as follows:

- To provide a good quality products at a reasonable cost.
- To make available and suggest branded and good quality products to farmers.
- To provide technical support and guidance regarding technological advancement in agricultural sector.

Devnadi Vegetable Express

The vegetable produced by farmers are supplied directly to the customers in various residential societies in Nasik city. This is the initiative undertaken by the producer company with the help of ATMA (Agricultural Technology Management Agency), Agricultural Department; Nasik, and YuvaMitra. The fresh vegetables are supplied to the customers within 3 hours of harvesting. This vegetable chain runs throughout a week, which supplies vegetables to 20 residential societies in Nasik. This helped farmers as they are getting 20% higher rate than the current rate as well as earning income everyday as the supply continues throughout the week. Even the customers are getting at 10-20% lesser rates than the market rates.

Advisory Service

The company provides field support to famers for the proper crop management as well as water management, which help farmers to increase crop yield. The agronomist of the company regularly visits the farms as per the demands of farmer members. This field support help farmers to manage pesticides, fertilizers and water effectively and efficiently.

Advertising Policies

DVAPCL has created a brand image among consumers. DVAPCL advertises through various Medias, which include:

- a) Newspaper(Sakal and Agrowon Newspaper Media)
- b) Pamphlets
- c) Exhibition(Kisan and Government Agricultural Exhibitions)
- d) Internet(www.yuvmitra.com)

The following SWOC matrix depicts the strengths, weakness, opportunities and challenges of DVAPCL.

WEAKNESS

- 1 Company's immediate competitors (Agro Service centers, Village Co-operative Societies, Buying and selling groups and Vegetable Traders like Farm First) have a superior access to distribution channels for their products.
- 2 Company is facing problems in packaging and handling of perishable products.
- 3 Company is not getting local Government support because of political influence.
- 4 Company has lacks skilled and professional workers.
- 5 Company did not have proper storage structure.

STRENGTHS

- 1 Having agricultural background of members, company understand how to penetrate market by getting comparative advantage of providing fresh vegetables.
- 2 Company have locational advantage, because Company have chosen national high way as Agri mall area, which is a business hub where the purchasing power of the farmers is high in comparison to other areas. Most of the farmers never mind paying a little high price to go for quality products.
- 3 Company's pricing is also one of the best where company offer variety of inputs in one plate with different brands.
- 4 Company having vegetables cultivation locally which also decreases the raw material cost.

SWOC

OPPORTUNITIES

- 1 Company is moving into a new attractive market segment, which constitutes of fresh vegetables at the doorstep with very affordable price.
- 2 Company has opportunity in forming the Self-help group of Vegetable farmers.
- 3 Company has opportunity in liberalizing their function by promoting export orientation activities.

- 1 Dependence on the Agri farms nearby Lownarwad and Wadgaon villages for procuring raw materials.
- 2 No readymade distribution channel available- Company needs to choose their channel keeping in mind their margins. Hence company need to be careful in handling the entire supply chain.
- 3 Company is facing erratic price fluctuation of the inputs.

Epilogue

It's a known fact that the cooperative form of organization is the best business enterprise to save the depressed and suppressed mass of the world. Due to over politicization and officialization the cooperative movement in India failed terribly to protect the uniqueness of cooperatives. Many reforms and revitalization programmes suggested by many committees and commissions failed to strengthen the cooperative movement. The development interventionists have taken many initiatives to find solutions for the maladies of cooperatives in the country. But, all those attempts were failed to bring out the desired changes in the movement. At last as usual, people like Y.K. Alakh came up with an idea of forming producer companies in the western model. That model now works well and really serves as a cooperative model for the promotion of producers' welfare and to share the maximum out of what consumers pays to the products. The producer companies are also free from the clutches of government and operate as a real autonomous and independent organization.

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