



## Legal Aspects of Agribusiness in India: With Special Reference to Organisational Set-up

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### ABSTRACT

Agribusiness is the backbone of Indian economy. A successful agribusiness requires a suitable organisational set up. Hence selecting a suitable enterprise for a particular agribusiness is vital for a successful profit-oriented venture. It is essential for a prospective entrepreneur that apart from the other factors he should take into consideration before establishing an agribusiness venture, should keep in mind their legal aspect also. The knowledge of legal aspects of different kinds of agribusiness organisation will enable him to take a right decision while selecting a particular form of organisation. A suitable Agribusiness organization not only will facilitate the ease of doing agribusiness but also will help the entrepreneur to earn the desired profit.

### Introduction

Agriculture is an instrument of economic and social security. Apart from engaging half of the population, it has become crucial for achieving food security in India. Additionally, it acts as a source of raw materials for industries like textiles and food processing, and a significant contributor to exports and GDP. By creating employment, ensuring stable food supplies, and supporting allied sectors like dairy and fisheries, agribusiness drives rural development, economic growth, and contributes to foreign exchange earnings for India. Moving from the traditional concept of production and consumption, agriculture has opened an avenue for agribusiness. The objectives of agribusiness is to enhance farmer incomes and transform traditional farming into sustainable businesses by providing essential services like technology, credit, and marketing support. Further, the demand for processed

and convenience agriproducts are increasingly constantly because of urbanisation, changing life style and the habit of the people. The need for entrepreneurship development can also be viewed from another angle, as increasing population and reducing opportunities in rural and urban areas has given rise to unemployment among educated youth.

Every entrepreneur aims at starting business and building it into a successful enterprise. The entrepreneur innovates and combines resources in the form of 5MsvizMan, Material, Machine, Money and Management and brings them together to make the business venture profitable. The whole process of starting and successfully continuing an enterprise depends upon a good business plan and selecting a good business organisation or enterprise. A decision to choose a suitable organisation for agribusiness, apart from other factors requires the knowledge of the legal aspects of various forms of agribusiness organisations.

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## 2. The concept of 'Business Organisation'

A business organization is a legal and operational framework that a commercial entity uses to conduct its activities, with the primary goal of generating profit by producing and selling goods or services<sup>1</sup>. A business organization can be differentiated from an enterprise on the ground that the former is a structured entity that provides goods or services for profit, while the latter is a broader term for any project or venture, particularly one involving significant effort or risk, and can refer to a larger or more complex business or the act of undertaking such an endeavour. Liberally speaking an "enterprise" is an economic institution engaged in the production and/or distribution of goods and services to earn profits and acquire wealth<sup>2</sup>. The micro<sup>3</sup>, small<sup>4</sup> and medium<sup>5</sup> enterprises Development Act, 2006<sup>6</sup> defines an 'enterprise' as an industrial undertakings or business concern or any establishment by whichever name called, engaged in the manufacturer or production of goods, in any manner, pertaining to any industry specified in the first scheduled of Industrial (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services.<sup>7</sup> According to Black's Law Dictionary an enterprise is an organisation or venture, especially made for business purpose.

## 3. Kinds of Agribusiness Organisations

Every Agribusiness organisation adopts one form or the

1 For books on Business Organisation See generally, Gupta Parul, Legal Aspects of Business: Concepts and Applications, Vikas Publications (2019); Amit Vohra and Rachit Dhingra, Setting Up of Business, Industrial & Labour Laws for CS Executive, Bharat Law House (2024); Shveta Kalra & Neha Singhal, Business Organisation and Management, MKM Publishers Pvt.Ltd. (2024).

2 For details on Enterprise and Entrepreneurship see generally David H Holt, Entrepreneurship - New Venture Creation, Pearson Publications (2024).

3 Where the investment in plant and machinery does not exceed twenty-five lakh rupees.

4 Where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees.

5 Where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees

6 An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

7 Section 2(e).

other, of the followings:

- A. Sole Proprietorship
- B. Joint Hindu Family Business
- C. Partnership
- D. Cooperative Organisation
- E. Public Limited Company
- F. Private Limited Company

## 3. Legal Aspects of Agribusiness Organisations with their Advantages and Disadvantages

### A. Sole Proprietorship

Sole Proprietorship<sup>8</sup> is the oldest and most common form of an enterprise, where the business is owned, managed and controlled by a single individual. However, the sole proprietor while carrying out business can take the help of his/her family members. Other persons may also be appointed as assistant or manager, but legally the business and the individual are same.

#### Its silent features are:

- a. Its formation and closure do not require elaborate legal formalities. Even agreement and registration of firm is not essential. So, it is easier to form and close a sole proprietorship firm<sup>9</sup>;
- b. The ownership vests on sole proprietor who is responsible for supplying whole capital and he is only entitled for the benefits or profits and liable for losses of the firm;
- c. The liability of the proprietor in the case of losses is unlimited (extends beyond the capital invested); and
- d. The proprietor has absolute control over the firm and he takes all the business decisions. So, there is flexible operation.

#### The advantages of a sole proprietorship have been summarised as follows:

- i. Ease of formation and closure;

8 For books on Sole Proprietorship see generally Gupta CB & Khanka SS, Entrepreneurship & Small Business Management. Sultan Chand and Son's.

9 The owner may be required to obtain a license from the local administration.

- ii. Flexible operation;
- iii. Owner alone enjoys the profit; and
- iv. Suitable for small scale business.

- i. Continuity of existence;
- ii. Ease of formation; and
- iii. Limited Managerial skills.

**The disadvantages of a sole proprietorship have been summarised as follows:**

- i. Unlimited liability
- ii. Limited capital
- iii. Lack of continuity
- iv. Limited Managerial Skills

**The disadvantages of a sole proprietorship have been summarised as follows**

- i. Unlimited liability of Karta; and
- ii. Limited capital.

**B. Joint Hindu Family Business**

It refers to a business which is owned by the member<sup>10</sup> of a joint Hindu family<sup>11</sup>. This form of enterprise exists under Hindu law and governed by the Hindu Succession Act, 1986. The ownership vests in the head of the family who is known as “Karta”<sup>12</sup>. The business is owned only by male members of the Hindu joint family called “co-partners”.

**Its salient features are:**

- a. Membership is created by birth but not out of contract;
- b. Only three successive generations in the male line constitutes the membership of this organization;
- c. Registration is not necessary;
- d. Management vests in ‘Karta’, whose authority is unquestioned in managing the joint Hindu family business;
- e. The Karta has unlimited liability while the liability of the other members are limited to the value of their individual interests in the joint family; and
- f. It has a perpetual life.

**C. Partnership**

Partnership<sup>13</sup> is defined as relation between two or more persons who have agreed to share profits of a business carried on by all of them or any of them acting for all<sup>14</sup>. Partnership is controlled and regulated under the Partnership Act, 1932.

**Its salient features are:**

- a. The formation is free from cumbersome legal formalities;
- b. Registration<sup>15</sup> is not compulsory; however, if the firm is not registered then a partner cannot file a suit either against the firm or any other partner for enforcing his rights arising out of contract. Similarly, an unregistered firm can neither file a suit against any third party nor against any partner<sup>16</sup>;
- c. The minimum number of partners must be two, while the maximum number can be 20 (for banking business 10);
- d. The rights of ownership and control are jointly held by the partners<sup>17</sup>;
- e. Liability of the partners is unlimited;
- f. No partner can transfer his/her interest in the firm to any person<sup>18</sup>; and
- g. The firm comes to an end on retirement, lunacy,

**The advantages of a sole proprietorship have been summarised as follows:**

<sup>10</sup> In *SBI v. Ghamandi*, 1969 SC 1330, it was held that the Joint Hindu Family Business does not arise out of contract between members, but it comes into existence by operation of law.

<sup>11</sup> For Joint Hindu Family Business see generally Pawan K. Jain. *Hindu Undivided Family (Formation, Management & Taxation)*, Bharat Law House; see also Paras Diwan, *Modern Hindu Law*, Allahabad Law agency (2002).

<sup>12</sup> The ‘Karta’ is the senior-most member, typically the eldest male, of a Hindu Undivided Family (HUF) who acts as the manager and has the sole decision-making authority over the family business, a role that can also be held by an eldest female member. The Karta holds unlimited liability for business debts and has the power to manage and bind the family to contracts, but other members have limited liability.

<sup>13</sup> For details on Partnership see generally Avtar Singh, *Law of Partnership (Principles, Practice and Taxation)* along with *Limited Liability Partnership*, Eastern Book Company (2012); S. Chand, *Business Law*, S. Chand and Company Ltd.; M.C. Shukla, *A Manual of Mercantile Law*, S. Chand and Company Ltd.

<sup>14</sup> Section 4 of the Partnership Act, 1932. Persons who have entered into partnership with one another are called individually “partners” and collectively “a firm”, and the name under which their business is carried on is called the “firm name”.

<sup>15</sup> Sec. 58 of the Partnership Act, 1932.

<sup>16</sup> Sec. 69 of the Partnership Act, 1932.

<sup>17</sup> Sec. 13 of the Partnership Act, 1932.

<sup>18</sup> Sec. 29 of the Partnership Act, 1932.

bankruptcy or death of any partner.

e. Liability of every member is limited.

### **The advantages of a Partnership have been summarised as follows:**

- i. Ease of formation;
- ii. Greater capital pool;
- iii. Risk shared by partners; and
- iv. Pooling of managerial skills.

### **The disadvantages of a Partnership have been summarised as follows:**

- i. Unlimited liability;
- ii. Non transferability of interest; and
- iii. Limited duration.

### **D. Co-operative Organization**

It is a voluntary association of ten or more members for mutual benefit and its aims are accomplished through self-help and collective effort. Co-operatives differ from any other forms of business organization in the sense that its primary motive is service to the members rather than making profits<sup>19</sup>. It is controlled and regulated under the Co-operative Societies Act, 1912. Co-operative societies may be classified into following categories:

- Consumers' co-operative
- Producers' cooperative
- Cooperative marketing societies
- Cooperative credit societies
- Co-operative farming societies
- Cooperative housing societies.

### **Its salient features are:**

- a. It is a voluntary organization (free to join or leave);
- b. Minimum number of members is 10, but no upper limit;
- c. Registration is compulsory with the Registrar of co-operatives societies;
- d. It is a body corporate independent of its members; and

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19 A cooperative society has much in common with Partnership. Yet there are differences between the two types of organisations. In a partnership mutual benefit is restricted to partners only, but in a cooperative society it extends to its members as also the public.

### **The advantages of a Co-operative Organization have been summarised as follows:**

- i. Ease of formation;
- ii. Greater amount of capital;
- iii. Continuity of existence; and
- iv. Limited liability.

### **The disadvantages of a Co-operative Organization have been summarised as follows:**

- i. Inefficient management; and
- ii. Limited capital in comparison to company.

### **E. Public Limited Company**

In a practical way, a company<sup>20</sup> means a company of certain persons registered under the Companies Act. It is a voluntary association of members which is incorporated. It is controlled and regulated under the Indian Companies Act, 2013. The Act of 2013, which has superseded the Companies Act, 1956, deals with the Separate legal existence, Formation of a company, powers and responsibilities of the directors and managers, raising of capital, holding company meetings, maintenance of audit of company accounts, powers of inspection and investigation of company affairs, reconstruction and amalgamation and winding up of a company etc.

### **Its salient features are:**

- a. Separate legal existence<sup>21</sup>;
- b. Minimum seven members but there is no upper limit;
- c. Compulsory registration<sup>22</sup>;
- d. Capital is constituted by the sale of its shares;
- e. Shares are freely transferable;

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20 For books on company law see generally, KS Anantharaman, Lectures on Company Law and MRTP, Wadhwa and Company, Nagpur, 1998; Avtar Singh, Company Law, Eastern Book Company, Lucknow, 2001.

21 Section 9 of the Indian Companies Act, 2013.

22 To obtain the registration of a company an application has to be filed with the registrar of companies. The application must be accompanied by the following documents :

- (a) Memorandum of Association;
- (b) Article of Association (If necessary); and
- (c) The agreement, if any.

- f. Limited liability;
- g. Ownership is separate from management; and
- h. All activities are strictly governed by laws, rules and regulation.

**The advantages of a Public Limited Company have been summarised as follows:**

- Continuity of existence;
- Greater capital pool;
- Efficient and democratic management; and
- Limited liability.

**The disadvantages of a Public Limited Company have been summarised as follows:**

- Cumbersome legal procedure
- Strict regulation
- Undemocratic control
- Lengthy procedure
- Conflict of interest
- Monopolistic tendency
- Scope for directors for personal profit

**F. Private Limited Company**

A Private Limited Company is a voluntary association of not less than two and not more than 200 members. It is a very suitable device for carrying on the business of family and small-scale concerns. Formation and regulation are dealt under the Indian Companies Act, 2013.

**Its salient features are:**

- a. Compulsory registration but less cumbersome to organize in comparison to public limited Company for following reasons:
  - No need to file prospectus<sup>23</sup> with the registrar;
  - No need to obtain certificate of commencement of business;
  - No need to hold statutory meeting;
- b. Liability of members is limited;
- c. Shares are not freely transferable between members;
- d. Independent legal existence; and

23 Section 2(70) of the Indian Companies Act, 2013: “prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

- e. Legal personality.

**The advantages of a Private Limited Company have been summarised as follows:**

- Continuity of existence;
- Greater capital pool;
- Less cumbersome to organize;
- Limited liability.

**The disadvantages of a Private Limited Company have been summarised as follows:**

- Shares are not freely transferable;
- General public cannot be allowed to subscribe to its shares;
- Lengthy procedure;
- Undemocratic control;
- Delayed action;
- Conflict of interest; and
- Monopolistic tendencies.

**5. Concluding Observation**

The success and growth of a business organisation in general and an agribusiness organisation in particular depend largely on the choice of a suitable form of organization. The aforesaid discussion may enable a prospective entrepreneur to choose the most suitable form of organization for his business venture. The selection of a suitable form of enterprise should be done after analysing the following factors, namely: nature of business, mode of operation, financial requirements, nature of control, nature of liability, stability and legal necessities etc. At the same time, the other factors such as location of enterprise, market position, production analysis and government policy should also to be taken into consideration.

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