

“LEGAL ISSUES IN CO- OPERATIVES”

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ABSTRACT

A cooperative ("coop") is an autonomous association of people who voluntarily cooperate for their mutual social, economic, and cultural benefit. Cooperatives include non-profit community organizations and businesses that are owned and managed by the people who use their services (a consumer cooperative) or by the people who work there (a worker cooperative) or by the people who live there (a housing cooperative), hybrids such as worker cooperatives that are also consumer cooperatives or credit unions, multi-stakeholder cooperatives such as those that bring together civil society and local actors to deliver community needs, and second and third tier cooperatives whose members are other cooperatives.

Cooperatives should be treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise and social organization. Governments should introduce support measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions. Governments should facilitate access of cooperatives to support services in order to strengthen them, their business viability and their capacity to create employment and income.

KEYWORDS: Co-Operatives, Legislation, Self Help, RBI Guidelines, Tax Payers, RTGS System

INTRODUCTION

A balanced society necessitates the existence of strong public and private sectors, as well as a strong cooperative, mutual and the other social and non-governmental sector. It is in this context that Governments should provide a supportive policy and legal framework consistent with the nature and function of cooperatives and guided by the cooperative values and principles, which would:

- establish an institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible;
- promote policies aimed at allowing the creation of appropriate reserves, part of which at least could be indivisible, and solidarity funds within cooperatives;
- provide for the adoption of measures for the oversight of cooperatives, on terms appropriate to their nature and functions, which respect their autonomy, and are in accordance with national law and practice, and which are no less favourable than those applicable to other forms of enterprise and social organization;
- facilitate the membership of cooperatives in cooperative structures responding to the needs of cooperative members; and

- encourage the development of cooperatives as autonomous and self-managed enterprises, particularly in areas where cooperatives have an important role to play or provide services that are not otherwise provided.
- Cooperatives should be treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise and social organization. Governments should introduce support measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions.

Special consideration should be given to increasing women's participation in the cooperative movement at all levels, particularly at management and leadership levels.

OBJECTIVES OF THE STUDY

- To know the social relevance of co operatives
- To analyze the role of co operatives in the economic development of the nation
- To know the legal issues faced by the co operatives.

METHODOLOGY

This study is based on the analysis of legal issues faced by the co operatives with the help of secondary data.

Secondary Data: The secondary sources of Data are co operation books, reports published in news papers, internet (websites) etc.

EXTRACT FROM THE STATEMENT ON THE COOPERATIVE IDENTITY, ADOPTED BY THE GENERAL ASSEMBLY OF THE INTERNATIONAL CO-OPERATIVE ALLIANCE IN 1995

The cooperative principles are guidelines by which cooperatives put their values into practice.

- Voluntary and open membership
- Cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.
- Democratic member control
- Cooperatives 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 cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organized in a democratic manner.
- Member economic participation
- Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative.

- Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.
- Autonomy and independence
- Cooperatives 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 cooperative autonomy.
- Education, training and information
- Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of cooperation.
- Cooperation among cooperatives
- Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.
- Concern for community
- Cooperatives work for the sustainable development of their communities through policies approved by their members.
- Co-operatives contribute significantly to economic and social development in virtually all countries. The second part of the 20th century saw co-operative laws to either support or to hinder this development. That is why governments have been revising their co-operative laws over the past one and a half decades with a view to bringing them in line with the universally recognised co-operative values and principles, whilst responding to the challenges of an ever harsher competition amongst businesses at all levels.

LEGAL ISSUES FACED BY CO OPERATIVES

Several commercial banks have failed in the past. The cooperative banks are not immune to the failures either. Thirteen cooperative banks did collapse in the country during 2012-13. But a deposit insurance scheme endorsed by Reserve Bank of India has ensured a limited compensation to those who lost their money. But only urban cooperative banks, district cooperative banks and State cooperative banks come under the existing scheme.

It is in this context that the Kerala State Department of Cooperation has introduced a credit guarantee scheme for deposits in the primary agricultural credit societies functioning under the cooperative sector across the State. The primary societies do not come under the Banking Regulation Act and hence the credit guarantee scheme being operated under RBI guidance has not been applicable to them.

Those cooperative bodies taking deposits are required to set apart a small sum for the guarantee fund now. It is as low as Re1. per Rs.1,000, but many of the coop bodies resisted the move, a top official of the Registrar of Cooperative

Societies said. Under the scheme, a maximum of Rs. 1.5 lakh would be paid to the depositor in case the cooperative body collapses. About 1,500 coop bodies receiving deposits have to abide by the new norm to ensure security of the deposits.

The new guarantee scheme is being launched after several cooperative banks in the country faced insolvency issues in recent years. Maharashtra Cooperative Bank, one of the biggest, collapsed two years ago, said K.V.Radhakrishnan, former Joint Registrar of Cooperative Societies. Over 70 cooperative banks in Kerala are insured with Deposit Insurance and Credit Guarantee Corporation, a wholly owned subsidiary of RBI.

A lion's share of the deposits, roughly about Rs.60,000 crore, have been mobilised by the primary banks which cater to the primary financial needs of the small, medium, and marginal farmers as well as traders and others at the grassroots-level.

Kerala will thus perhaps be the only State to be hard hit by the guidelines and may not be able to mobilise the support of others to mount pressure on the Centre for an exemption from the regulator bank.

Banking sources told *The Hindu* here that the capital adequacy norm would force the banks to leave huge amounts idle and that would affect the functioning of the banks which were doing brisk business at present.

Considering the surge in demand for financial support at affordable rates, the reserve funds can be disbursed among small and marginal farmers and traders.

The directive to enhance the capital adequacy rates progressively would virtually spell doom on the cooperative banking sector, sources said.

A move to seek legal recourse to the crisis that is bound to arise is unlikely to yield a positive outcome. For, in spite of the unique strengths of the cooperative movement in Kerala, the RBI has already clarified that one State alone cannot be exempted from the guidelines drawn up for the entire banking sector.

In addition to the deadline for capital adequacy, the RBI had insisted that the cooperative banks should adopt core banking system, be part of the special business process for retail payments set up by the National Payments Corporation of India, and Real Time Gross Settlement system by September 30. Crossing the first hurdle itself would be quite challenging for the cooperatives, the sources said.

The Hon. Kerala High Court in the Case of M.V. Rajendran V. ITO 260 ITR 442 Ker. HC in Operating Part of the Order Have with Respect to Applicability of Section 269SS Have Opined as Under

If co-operative banks and co-operative societies are allowed to maintain deposits beyond the scrutiny of the Income-tax Department, then the **societies will become safe havens for hoarding black-money in the country which is opposed to public policy.** Besides this, the statutory authorities vested with the responsibility to levy tax on income will be prevented from achieving their objective and that will defeat the very purpose of the Income-tax Act. The Supreme Court of India will upholding section 269SS of the Income-tax Act in the case of Asst. Director of Inspection (Investigation)v. Kumari A. B. Shanthi [2002] 255 ITR 258 held as follows (headnote) :

“The object of introducing section 299SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he makes some false entries, he shall not escape by giving false explanation for the same. During search and seizure, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his

records to suit the plea of the taxpayer. The main object of section 269SS was to curb this menace of making false entries in the account books and later giving an explanation for the same.”

IMPLEMENTATION OF PUBLIC POLICIES FOR THE PROMOTION OF COOPERATIVES

Member States should adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles set out and revise such legislation and regulations when appropriate.

Governments should consult cooperative organizations, as well as the employers' and workers' organizations concerned, in the formulation and revision of legislation, policies and regulations applicable to cooperatives.

Governments should facilitate access of cooperatives to support services in order to strengthen them, their business viability and their capacity to create employment and income. These services should include, wherever possible:

- human resource development programmes;
- research and management consultancy services;
- access to finance and investment;
- accountancy and audit services;
- management information services;
- information and public relations services;
- consultancy services on technology and innovation;
- legal and taxation services;
- support services for marketing; and
- other support services where appropriate.

Governments should facilitate the establishment of these support services. Cooperatives and their organizations should be encouraged to participate in the organization and management of these services and, wherever feasible and appropriate, to finance them.

Governments should recognize the role of cooperatives and their organizations by developing appropriate instruments aimed at creating and strengthening cooperatives at national and local levels.

Governments should, where appropriate, adopt measures to facilitate the access of cooperatives to investment finance and credit. Such measures should notably:

- allow loans and other financial facilities to be offered;
- simplify administrative procedures, remedy any inadequate level of cooperative assets, and reduce the cost of loan transactions;
- facilitate an autonomous system of finance for cooperatives, including savings and credit, banking and insurance cooperatives; and

- include special provisions for disadvantaged groups.
- For the promotion of the cooperative movement, governments should encourage conditions favouring the development of technical, commercial and financial linkages among all forms of cooperatives so as to facilitate an exchange of experience and the sharing of risks and benefits.

Slow Pace of Growth in Co-operatives

Despite its rapid growth, the overall progress of Co-operative Movement during the last 100 years is not very impressive. Some of the principal road-blocks have been the following:

Government Interference: The Co-operative Movement in India was initiated in 1904 under the auspices of British government. Right from the beginning the govt has adopted an attitude of patronizing the Movement. Co-operative institutions were treated as being a part and parcel of the government administrative set up. The govt interference thus became an essential element in the working of these institutions.

As a result people's enthusiasm for the Movement did not grow. After attainment of Independence in 1947 some healthy changes in the attitude of the govt did take place. It was not given proper importance that it deserved in any Plan. Even today quite often co-operative societies are imposed upon the people. Though this increases in the membership of co-operatives, the spirit of co-operation cannot flower fully. Neither it grew according to any plan nor did it become a people's Movement. It just grew very slowly and that too haphazardly. It turned out to be a State-driven institution.

Mismanagement and Manipulation: The essence of the Co-operative Movement is that it gives the farmers the status of shareholders and assures them agricultural, educational and other facilities. Co-operative institutions are small institutions owned by a small number of members. A hugely large memberships turns out to be mismanaged unless some secure methods are employed to manage such co-operatives. Over the years, this truly democratic idea got corrupted and farmers with larger holdings grew more powerful thereby altering the power structure of the co-operatives. In the elections to the governing bodies money became such a powerful tool that the top posts of chairman and vice-chairman usually went to the richest farmers even though the majority of members were farmers with small or medium-sized holdings.

Co-operatives do not enjoy level-playing field vis-à-vis private retail chains in the country. It is well-known that business houses cannot be run on bureaucratic lines.

Board members need to learn to take quick, appropriate and member-cum-customer friendly decisions. Traditional type of business of co-operatives must be conducted by competent and professionally-qualified personnel.

Lack of Awareness: People are not well informed about the objectives of the Movement, rules and regulations of co-operative institutions. Unfortunately, no special efforts have been made in this direction. People look upon these institutions as means for obtaining facilities and concessions from the govt. Lack of education, dirty local politics, caste-ridden elections to the offices of co-operative societies, bureaucratic attitudes of the govt officers at the lower rank are some of the hurdles in spreading the correct information about the Co-operative Movement and in educating the members about its true character and vital role in the society. It has been observed that a large number of members are not aware of the existence of byelaws, their rights and duties and the roles of office-bearers and management staff of the co-operative. Studies have shown that almost 90-92% of members of PACS in Uttar Pradesh have never seen copies of the byelaws of

their own co-operatives.

Inadequate Role of Promotional Institutions: To create awareness among co-operative members and general public, the promotional institutions like the National Co-operative Union of India and the state Co-operative Unions/Federations must take a stronger lead to implement member education programmes. Field studies have shown that the educational instructors and field projects are getting ineffective due to:

- [i] lack of programming for them;
- [ii] lack of funds; [iii] inadequate supply of support material; and,
- [iv] lack of trainers training programmes.

At present 40 field projects do not have any funds to carry out field activities, nor do they have any support material and work programmes. Also, much of the responsibility rests with the co-operatives themselves. They need to allocate some funds for the education and orientation of their members. The scope of central-level co-operative education fund needs to be revisited so that interested co-operative institutions and specialized agencies are able to generate training and educational materials.

Restricted Coverage: The Co-operative Movement has also suffered on account of two important limitations on its working. One is that the size of these societies has been very small. Most of these societies are confined to a few members and their operations extended to only one or two villages. As a result their resources remain limited, which make it impossible for them to expand their means and extend their areas of operations. Two, most of the societies have been single purpose societies. Such societies are unable to assess a total view of the persons seeking help, nor can they analyze and solve problems by themselves. The help these societies render thus can not be adequate. By assessing the persons and the problems only from one angle, these societies neither help properly the person nor make an optimal use of their resources. Under these circumstances it has not been possible for these societies to make much progress.

Functional Weakness: The Co-operative Movement has suffered from inadequacy of trained personnel. Lack of trained personnel has been caused by two major factors: [i] there has been a lack of appropriate institutions for training of personnel; [ii] unsatisfactory working of co-operative institutions qualified and experienced personnel did not feel attracted or motivated. The functioning of the co- operative societies, too suffer from several weakness. Some of these are, not being careful of the need of credit-seekers or their repaying capacity at the time of granting loans, making no adequate provision for repayment of loans, unsatisfactory accounts keeping, factional politics in the management, lack of co-ordination among various divisions of the co-operative structure, too much dependence on outside sources of finance, lack of and untimely auditing and inspection.

Thus there are several pitfalls. Poor infrastructure, lack of quality management, over-dependence on government, dormant membership, non-conduct of elections, lack of strong human resources policy, neglect of professionalism, etc. are the limiting factors. Indian co-operatives are also unable to evolve strong communication and public relations strategies which can promote the concept of co-operation among the masses.

Misconceived Concentration of Power: Although cooperatives are democratic business institutions, yet the distribution and exercise of power at the Board level is a matter of concern. In general, the principal task of the Chairman of the Board is to conduct the meeting and assist in formulating logical business proposals and take appropriate decisions.

The chief executive of the cooperative is given the task of implementation of such decisions. In many cases it has been found that the Chairman, due to self-interest, assumes both roles as leader of the organisation as well as that of the executor of the decisions taken. They become executives reducing the chief executive/managing director to execute the orders from the Chairman. Such a situation generates manipulation and serves self-interest.

In a large number of small cooperatives, Chairmen are the bosses and the managers are mere clerks. To insulate the cooperative from such a situation, a careful study of byelaws is of great relevance where the rights and duties of chairmen and managers are clearly defined. It becomes necessary for cooperative enterprises to develop a proper chart of duties.

Co-Operation in a vast Country like India is of great Significance because

- It is an organization for the poor who wish to solve their problems collectively;
- It is an institution of mutual help and sharing;
- It softens the class conflicts and reduces the social cleavages;
- It reduces the bureaucratic evils and follies of political factions;
- It overcomes the constraints of agricultural development;
- It creates conducive environment for small and cottage industries.

Measures should be adopted to promote the potential of cooperatives in all countries, irrespective of their level of development, in order to assist them and their membership to:

- create and develop income-generating activities and sustainable decent employment;
- develop human resource capacities and knowledge of the values, advantages and benefits of the cooperative movement through education and training;
- develop their business potential, including entrepreneurial and managerial capacities;
- strengthen their competitiveness as well as gain access to markets and to institutional finance;
- increase savings and investment;
- improve social and economic well-being, taking into account the need to eliminate all forms of discrimination;
- contribute to sustainable human development; and
- establish and expand a viable and dynamic distinctive sector of the economy, which includes cooperatives, that responds to the social and economic needs of the community.

The adoption of special measures should be encouraged to enable cooperatives, as enterprises and organizations inspired by solidarity, to respond to their members' needs and the needs of society, including those of disadvantaged groups in order to achieve their social inclusion.

CONCLUSIONS

Co operative legislation provides legal entity to co operative societies and organizations. Mere law does not serve the purpose of controlling the activities of all types of societies since there exist various kinds of cooperative dealing in varied activities. So it requires a Bye law for every society. The Bye Laws govern the relationship between the society and its members and provide guidance for general administration and conduct of business which are framed within the general legal framework of the country. For the promotion of the cooperative movement, governments should encourage conditions favouring the development of technical, commercial and financial linkages among all forms of cooperatives so as to facilitate an exchange of experience and the sharing of risks and benefits.

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