

**A Model  
Cooperative Societies Law  
with  
The Author's Commentary**

**P. E. WEERAMAN**



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**INTERNATIONAL COOPERATIVE ALLIANCE**  
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P. E. WEERAMAN  
Former ICA Regional Director for South-East Asia

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**INTERNATIONAL COOPERATIVE ALLIANCE**  
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## Preface

The greatest contribution that a government can make to the development of a cooperative movement is to enact legislation that would give it a legal framework and the necessary safeguards and privileges that would create an atmosphere conducive to cooperative development. This was recognised by the British within ten years of the beginning of their cooperative movement when they passed their Industrial and Provident Societies Act of 1852, the first cooperative law to be passed anywhere in the world. It provided for a Registrar who, under the statute, was a neutral. So the British Movement grew up in healthy conditions, uninhibited by the government control.

But in most of the Developing Countries, the laws make the Registrars the promoters as well as the controllers of the movement. As the movement was introduced into these countries by the enactment of cooperative societies laws and as cooperative societies were organised on the initiative of the governments, the people of these countries generally looked up to the Registrar for leadership. Calvert in his monumental work : "The Law and Principles of Cooperation" points out that in India the Registrar has been made "the foundation of the movement." So the people naturally thought that the organisation of cooperatives was the responsibility of the Registrar and that the cooperative



law expressed the cooperative method. Although many provisions in these laws contravene the Cooperative Principles even the knowledgeable cooperators do not generally question the validity of these laws for the law is normally assumed to be irrefutable. These offending provisions give the Registrar powers that infringe the rights of cooperative societies according to the *Cooperative Principles* and so militate against the development of a voluntary and autonomous movement.

As said by the late Dr. D.R. Gadgil, the foremost mentor of the Indian Cooperative Movement of his day "autonomy is important and essential for the growth of the cooperative movement. Its quality will depend upon the extent of autonomy which the people enjoy. If the Government has no faith in the people and if people cannot be given a free hand, cooperatives should not be organised and it would be better in that situation to have public sector undertakings rather than cooperatives. If people are not trusted, trustworthy people will not come up."

"We would have mistaken the casket for the gem" said Dr. Mauritz Bonow, President of the International Cooperative Alliance, speaking at New Delhi on 17th February 1971, "if we were to perpetuate an arrangement whereby the initiative and the democratic character of the cooperative movement would be impaired. In the ultimate analysis, it is the vitality of the people of a country which determines progress. Legislation, especially cooperative legislation, should provide the frame-work within which people's capacity to bring about the desired change is enhanced. If the net result of legislation is to thwart this tendency, I am afraid, we would have done more harm than good".

There can be no real cooperative development if the very law enacted to promote Cooperation is contrary to its Principles. Law that is inconsistent with these Principles will only help to develop a movement that masquerades as a Cooperative Movement. Therefore the law must be in conformity with the *Cooperative Principles*.

Six principles of Cooperation have been adopted by the International Cooperative Alliance. The first principle is that of

“Voluntary and Open Membership.” “Voluntary Membership” means that a person should apply for membership of a cooperative society voluntarily and the cooperative society is free to admit him or to refuse admission. Similarly, a member could withdraw from the society of his own accord and the society also could terminate his membership of its own free will. Both parties have the freedom to choose and the freedom to correct the choice, as Calvert has put it. Needless to say, compulsion to admit a person or to retain one in the membership of a cooperative society is a denial of this freedom. This part of the principle is often stated separately as the principle of “Voluntary Association”. The second part of this principle is “Open Membership”. This means that membership in a cooperative society is available without artificial restriction or any discrimination (social, political, racial or religious) to all who need the services of the society and can make use of them and are willing to accept the responsibilities of membership. The society has been set up to satisfy the common needs of the members, i.e. the need that are felt by the members in general. Only those who have the common need can be enrolled. The society’s membership is available to them and this without artificial restriction or any discrimination—hence, “open”. There can however be unavoidable restrictions which prevent a person from using the services of the society. Thus the society is not open to all who have this need. It is open only to those who can make use of the society’s services. This further qualification is the corollary of the absence of any unavoidable restriction.

The second principle is the Principle of “Democratic Control”. This means that (1) the supreme authority of the society is the general meeting of the members ; (2) the members have equal rights of voting and participation in the decisions of the society ; (3) the affairs of the society are administered in accordance with the democratically expressed will of the members; (4) the management is elected or appointed in a manner agreed by the members ; (5) the management is accountable to the members. The third is the Principle of “Limited Interest on Capital” *viz.* that share capital shall only receive interest, if any,

i.e. not voting power or a share of the trading surplus and even interest only at a strictly limited rate. The fourth is the principle of "Equitable Division of Surplus" viz. that the trading surplus belongs to the members and this shall be distributed in such manner as would avoid one member gaining at the expense of other persons. This may be done by distributing the divisible surplus in proportion to each person's transactions with the society so that each member gets a refund of the overpayment he has made and any refund due to a non-member is left with the society to be used for some purpose of common benefit to the community. Also, the surplus or a part of it can be allocated to the society's reserve and other funds for the development of the society's business and provision of common services.

The fifth principle is "Cooperative Education". It requires cooperative societies to make provision for the education of their members, officers and employees and of the general public in the principles and techniques of Cooperation, both economic and democratic. The sixth principle is "Cooperation among Cooperatives". This requires cooperatives to actively cooperate in every practical way with other cooperatives at local, national and international levels, having as their aim the achievement of unity of action by cooperators throughout the world.

These are the six principles of Cooperation. The principle of "Voluntary Association" recognises man's right to freedom whilst that of "Open Membership" his duty to be tolerant and helpful. The principle of "Democratic Control" recognises the equality of man and its practice makes him self-reliant and independent. The principle of "Limited Interest on Capital" recognises man's right to the fruits of his labour and denies to capital anything more than a fair wage, and the principle of "Equitable Division of Surplus" ensures that he does not exploit another's need—the cooperative attitude stated so succinctly by an early cooperator in the words: "I shall have my hand in no man's pocket and no man shall have his hand in mine."

The spirit of Cooperation is "each for all and all for each", its essence is democracy and its principal action is the elimination

of profit. A cooperative society is an association of persons for the satisfaction of their common economic needs on the basis of mutual aid and profit—elimination in accordance with the Cooperative Principles.

The Model Law presented is an attempt to draft a Cooperative Societies Act which is free of the taint of inconsistency with the Cooperative Principles.

The Model Law is based on the Cooperative Societies Ordinance appearing in the 1956 Revision of the Legislative Enactments of Sri Lanka. I have also consulted the “Model Cooperative Societies Bill” recommended by the Committee for Cooperative Law appointed by the Government of India in 1957 and the “Manual of Cooperative Law and Practice” by Surridge and Digby (1967).

This Model Law was first prepared by me and published in January 1971. It has since been revised by me with the help of Dr. R.C. Dwivedi, Director of the National Cooperative Union of India, Mr. K. S. Ponnuthurai, former Senior Assistant Commissioner of Cooperative Development of Sri Lanka and Mr. P. Sheshadri, Lecturer in Law, Osmania University, Hyderabad to all of whom I am deeply indebted for their valuable guidance.

The principal change I have made in this revision is the omission of the provision empowering the government to make Rules.

Power is given to make rules “as may be necessary for the purpose of carrying out or giving effect to the principles and provisions” of an Act. The procedure for making Rules is less cumbersome than that for passing an Act. *Ipsa facto*, the importance attached to Rules is less than to an Act. It is best to ensure that all laws relating to a people’s movement receive the same consideration of, and emanate directly from, the people’s legislature, for the spirit of a people’s movement has a greater chance of recognition by a legislature than by a government as such. And too often it happens that power is given to make Rules on matters which are as important as those provided for in the Act, and that the Rules are ultra vires of the provisions, or

contravene the principles, of an Act. A comparison of Cooperative Laws *vis-a-vis* Cooperative Principles as well as *vis-a-vis* Cooperative Rules will make a revealing study. Today many a law and rule deal with matters which according to the Cooperative Principles are those for self-regulation. These matters should be provided for in the By-laws. The difference is that the provisions of an Act are imposed on a society by the State, whereas the bylaws are self-imposed.

The power to make rules is usually provided in the law on the ground that the government should have power which is elastic enough to permit frequent changes in the provisions relating to procedural matters. There is no real difficulty in providing in the provisions of an Act itself the elasticity that is necessary in the case of laws relating to procedural matters. Such elasticity would then be more pronounced, in that power to make Orders on procedural matters would vest in an official, such as the Registrar, and the amendment of any Orders made by him would be easier than the amendment of Rules. These powers however should not relate to any matters other than procedural, such as prescribing the forms to be used in applications for registration. The elasticity required in these provisions has been kept in the Model Law. Please see e.g. Section 7(4). There is also a better prospect of safeguarding cooperative autonomy because the possibility of challenging the validity of an executive order is greater than that of a Rule.

Therefore all matters which should be within the purview of the government and are usually provided for in the Rules have been included in the Model Law. The other matters on which Rules are usually made are matters for self-regulation by the cooperatives themselves. These have been left out as their proper place is the Bylaws of cooperative societies.

It is hoped that the various governments of the Developing Countries in Asia will take action to have their Cooperative Laws so amended that the laws do not offend against Cooperative Principles.

P. E. WEERAMAN

ICA Regional Director for S-E Asia

18th July, 1973

ICA Regional Office & Education Centre,  
New Delhi.

**Part 1**

## Preliminary

**1. Short Title**

This Law may be cited as the Cooperative Societies Law.

**2. Interpretation**

In this Law, unless the context otherwise requires :

“Bonus” means a portion of the trading surplus (profit) of a registered society given to a member in proportion to the volume of his transactions with the society but not exceeding the proportion of the total divisible surplus to the total transactions of the society.

“Bye-laws” means the registered bye-laws of a registered society for the time being in force and includes a registered amendment of the byelaws.

“Committee” or “Board of Directors” means the governing body of a registered society to whom the management of its affairs is entrusted under its bye-laws.

“Common need” means the need which is common to the majority of the members of a registered society.

“Cooperative Principles” mean the principles that shall be observed by cooperative societies registered under this law viz. :

- (i) Membership of a cooperative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.
- (ii) Cooperative Societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies shall enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration shall be conducted on a democratic basis in a suitable form.
- (iii) Share capital shall only receive a strictly limited rate of interest, if any.
- (iv) The economic results, arising out of the operation of a society belong to the members of that society and shall be distributed in such manner as would avoid one member gaining at the expense of others.

This may be done by decision of the members as follows :

By provision for development of the business of the cooperative ;

by provision of common services ; or

by distribution among the members in proportion to their transactions with the society.

- (v) All cooperative societies shall make provision for the education of their members, officers and employees, and of the general public, in the principles and techniques of Cooperation, both economic and democratic.
- (vi) All cooperative organisations, in order to best serve the interests of their members and their communities shall actively cooperate in every practical way with other co-operatives at local, national and international levels, having as their aim the achievement of unity of action by cooperators throughout the world.

“Dividend” or “Interest” means a share of the trading surplus of a registered society given to a member as interest on his share capital in the society.

“Federal Society” shall mean a registered cooperative society whose membership is open only to registered societies of any one category whether primary, secondary or tertiary.

“Member” means a person or registered society admitted to the membership of a registered society in accordance with society’s bye-laws and includes a person or registered society joining in the application for the registration of a society, provided he has already purchased a share in the society.

“Officer” means a person empowered under a registered society’s bye-laws to give directions in regard to the business of a society, and any person who is deemed an officer of a registered society under its bye-laws, and includes the President, Chairman, Secretary, Treasurer, a Member of Committee, a Director, and a Manager of a registered society.

“Primary Society” means a registered society whose membership is open only to individuals and whose objects do not include the object of facilitating the operations of any other registered society.

“Rebate” means bonus as defined above.

“Registered Society” means a cooperative society registered under this law or deemed to be so registered as provided hereinafter.



“Registrar” means a person appointed to be or to act for the time being as the Registrar of Cooperative Societies under this Law and includes any person upon whom any or all of the powers of the Registrar have been conferred as provided hereinafter.

“Secondary Society” means a registered society whose membership is open only to primary societies and whose main object is that of facilitating the operations of primary societies which are its members.

“Tertiary Society” means a registered society whose membership is open only to secondary societies and whose main object is that of facilitating the operations of secondary societies which are its members.

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**PART II**

## Registration

**3. Appointment of Registrar, Deputy and Assistant Registrars**

(1) There may be appointed a Registrar of Cooperative Societies for \_\_\_\_\_ or any portion thereof and such number of Deputies or Assistant Registrars as may be necessary.

(2) The Government may, by general or special order, confer on any Deputy or Assistant Registrar all or any of the powers of the Registrar under this Law and such order shall be published in accordance with the Law pertaining to publication of orders made by the Government.

**4. Societies which may be Registered**

Subject to the provisions hereinafter contained a society which has as its object the economic and social betterment of its

members through the satisfaction of their common economic needs by means of a common undertaking based upon mutual aid and profit-elimination, and which conforms to the Cooperative Principles, or a society established with the object of facilitating the operations of such a society may be registered under this Law with or without limited liability.

Provided that the liability of a secondary or tertiary society shall be limited.

#### **5. Conditions of Registration**

(1) No primary society shall be registered under this Law which does not consist of at least ten individuals each of whom is qualified for membership as provided hereinafter.

(2) No secondary or tertiary society shall be registered under this Law which does not consist of at least two registered societies each of which is qualified for membership as provided hereinafter.

(3) The word "cooperative" or its equivalent in the..... language shall form part of the name of every society registered under this Law.

(4) The word "Limited" shall be the last word in or the equivalent of that word in.....shall form part of the name of every society with limited liability registered under this Law.

#### **6. Qualifications for Membership**

(1) Only an individual having the following qualifications may be a member of a primary society :

- (a) that he has attained the age of 18 years ;
- (b) that he is resident, in occupation of land, or following a trade or occupation relevant to the society's objects within the society's areas of operations as defined in its bye-laws ; and
- (c) that he has the common need which the society seeks to satisfy and the ability to make use of the society's services rendered for its satisfaction.

(2) Only a registered primary society with objects relevant to those of a secondary society shall be qualified for membership of such secondary society and only a registered secondary society with objects relevant to those of a tertiary society shall be qualified for membership of such tertiary society.

(3) When for the purposes of this section any question arises as to age, residence, occupation of land, trade or occupation of any person in respect of his qualification for membership of a co-operative society such question shall be referred by the person concerned to the Registrar and his decision shall be final and conclusive in law.

#### **7. Application for Registration**

(1) For the purpose of registration an application shall be made to the Registrar.

(2) The application shall be signed :

- (a) in the case of a primary society by at least 10 individuals qualified to be and are members of such society ;
- (b) in the case of a secondary society by the duly authorised persons of at least two registered primary societies which are qualified to be and are members of such secondary society ; and
- (c) in the case of a tertiary society by the duly authorised persons of at least two registered secondary societies which are qualified to be and are members of such tertiary society.

(3) The application shall be accompanied by such number of copies of the proposed bye-laws of the society as the Registrar may require and the individuals or societies making such an application shall furnish such information in regard to the society as may be required by the Registrar.

(4) The Registrar may prescribe the forms to be used and the conditions to be complied with in applying for the registration of a society and the procedure in the matter of such application.

## **8. Registration**

(1) If the Registrar is satisfied that a society has complied with the provisions of this Law, and that its proposed bye-laws are not contrary to this Law and the Cooperative Principles and that the proposed undertaking of the society is likely to be viable, he may register the society and its bye-laws.

(2) On registration the society shall pay such fee as may be required by the Registrar.

(3) The Registrar may refuse to register a society only if he is not satisfied in terms of sub-section (1).

## **9. Evidence of Registration**

A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

## **10. Societies to be Bodies Corporate**

The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all things necessary for the purposes laid down in its constitution.

## **11. Bye-laws of a Society to Bind Members**

(1) The Registrar may prescribe the matters in respect of which a society shall make bye-laws and the procedure to be followed in making, altering and rescinding bye-laws, and the conditions to be satisfied prior to such making, alteration or rescission.

(2) Every bye-law of a registered society shall, upon registration, be binding upon the society and the members thereof to the same extent as if the bye-law was signed by each member of

the society and contained a covenant by each such member to observe the provisions of the bye-law.

(3) Any dispute arising out of the interpretation of a bye-law of a registered society shall be referred to the Registrar for his decision and his decision shall be final and conclusive in law.

#### **12. Power to Make Bye-laws in Restraint of Trade**

No bye-law made by a registered society shall be called in question in any court of law on the ground only that such bye-law constitutes a contract in restraint of trade.

#### **13. Power to Make Bye-laws for the Imposition of Fines on Members**

The bye-law made by any registered society may provide for the imposition of fines on the members of the society for contraventions of its bye-laws :

Provided, however, that no such fine shall be imposed on any member unless :

- (a) notice in writing of the intention to impose such fine and the reasons therefor have been given in writing to him by the society; and
- (b) he has failed to show, within a fortnight in writing, sufficient cause against the imposition of the fine.

#### **14. Amendment of the Bye-laws of a Registered Society**

(1) Any registered society may, subject to this Law, amend its bye-laws including the bye-law which declares the name of the society.

(2) No amendment of the bye-laws of a registered society shall be valid until that amendment has been registered under this Law, for which purpose copies of the amendment shall be forwarded to the Registrar.

(3) If the Registrar is satisfied that any amendment of the bye-laws is not contrary to this Law, the Cooperative Principles

or the interests of any other registered society, he shall register the amendment.

(4) An amendment which changes the name of a society shall not affect any right or obligation of the society or any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.

(5) When the Registrar registers an amendment of the bye-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(6) In this section, "amendment" includes the making of a new bye-law and the variation or rescission of a bye-law.

### **PART III**

## **Rights and Liabilities of Members**

### **15. Restriction of Membership in Societies**

Except with the sanction of the Registrar no person shall be a member of more than one registered society with unlimited liability or whose primary object is to grant loans to its members.

### **16. Contract with Society of Members who are Minors**

The minority or non-age of any person duly admitted as a member of any registered society shall not debar that person from executing any instrument or giving any acquittance necessary to be executed or given under this Law, and shall not be a ground for invalidating or avoiding any contract entered into by any such person with the society, and any such contract entered into by any such person with the society, whether as principal or as surety, shall be enforceable at law or against such person notwithstanding his minority or non-age.



**17. Restrictions on Transfer of Shares or Interest**

In the case of a society registered with unlimited liability, a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof, unless :

- (a) he has held such share or interest for not less than one year; and
- (b) the transfer is made to the society, or to a member of the society, or to a person whose application for membership has been accepted by the committee.

**18. Shares or Other Interest not Liable to Attachment or Sale**

Subject to the provisions of Section 31, the share or other interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and neither his assignee in insolvency nor a receiver duly appointed shall be entitled to, or have any claim on, such share or interest.

**19. Liability of Past Member and Estate of Deceased Member for Debts of Society**

A past member or the estate of a deceased member shall be liable for the debts of a registered society as they existed on the date of his ceasing to be a member for a period of two years reckoned from that date.

**20. Transfer of Interest on Death or Permanent Insanity of a Member**

(1) On the death or declaration of permanent insanity of a member, a registered society may transfer the share or other interest of the member to the persons nominated in accordance with the bye-laws of the society, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the member, or may pay to such nominee, heir or legal representative, as the case may be, a sum

representing the value of such member's share or interest, as ascertained in accordance with the byelaws :

Provided that :

- (a) In the case of a society with unlimited liability such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;
- (b) In the case of a society with limited liability; the society may transfer the share or interest of the member to such nominee, heir or legal representative, as the case may be being qualified in accordance with the bye-laws for membership of the society, or on his application within six months of the date of the death or declaration of permanent insanity to any person specified in the application who is so qualified.

(2) A registered society shall pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

(4) The Registrar may prescribe the mode in which the value of a deceased member's interest shall be ascertained, and the nomination of a person to whom such interest may be paid or transferred shall be made.

(5) The Registrar may prescribe the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall be ascertained and the nomination of any person to whom such interest may be paid or transferred shall be made.

## **21. Deposits by or on behalf of Minors**

(1) A registered society may receive deposits from or for the benefit of minors and it shall be lawful for a registered society to pay such minors the interest which may become due on such deposits. Any deposits made by a minor may, together with the interest accrued thereon, be paid to that minor; and any deposit made on behalf of a minor may, together with the interest accrued thereon, be paid to the guardian of that minor for the use of the minor.

(2) The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge of the liability of the society in respect of that money.

## **PART IV**

# Management of Registered Societies

### **22. Address of Society**

Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change of that address.

### **23. Copy of Law, Bye-laws etc. to be Open to Inspection**

Every registered society shall keep a copy of this Law and of its bye-laws and a list of its members open to inspection, free of charge, at all reasonable times at the registered address of the society.

### **24. Register of Members**

(1) Any register or list of members kept by any registered society shall be prima facie evidence of any of the following

particulars entered therein :

- (a) The date at which the name of any person was entered in such register or list as a member ;
- (b) The date at which any such person ceased to be a member.

(2) The Registrar may provide for the formation and maintenance of a register of members, and where the liability of members is limited by shares, of a register of shares.

#### **25. Proof of Entries in Books of Society and Registry**

(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be prescribed, be received in any legal proceeding, civil or criminal, as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) The Registrar shall prescribe the manner in which copies of entries in books of registered societies may be certified.

(3) No officer of any such society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1) or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the court for special reasons so directs.

(4) The Registrar shall provide for the inspection of documents and registers at his office and the fees to be paid therefor and for the issue of copies of such documents or registers.

#### **26. Final Authority in a Registered Society**

The supreme authority of a registered society shall vest in the general meeting of its members.

## **27. Securing Possession of Records Etc.**

(1) If, upon the committee of registered society being reconstituted in accordance with its bye-laws or a society being dissolved under Section 48 or 49, any or all of the members of the committee, officers or employees holding office or in service immediately prior to such reconstitution or dissolution refuse or fail to hand over the books, documents and assets of the society to the new committee or the liquidator as the case may be, the new committee or the liquidator may apply to the magistrate, within whose jurisdiction the society functions, for securing the books, documents and assets of the society.

(2) On receipt of an application under sub-section (1) the magistrate may, by a warrant, authorise any police officer, not below the rank of a sub-inspector, to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and property ; and the records and property so seized shall be handed over to the new committee or the liquidator as the case may be.

(3) If in the opinion of the Registrar, after due inquiry, any or all of the members of the committee or officers or employees holding office or in service immediately prior to such reconstitution or dissolution are responsible for any loss or damage to the books and other documents of a registered society, he may order any or all of such persons to pay to the society a sum of money, as may be determined by him, by way of compensation, each such person being served individually with a separate order in writing stating the amount due from him. The order of the Registrar under this sub-section shall be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the order had been a judgement of a civil court

**PART V**

**Privileges of Registered Societies**

**28. Act of Cooperative Societies not to be Invalidated by Certain Defects**

No act of a cooperative society or any committee or any officer shall be deemed to be invalid by reason only of the existence of any defect in the constitution of the society or the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment.

**29. Disposal of Produce to or Through a Registered Society**

(1) A registered society which has as one of its objects the disposal of any article which is the produce of agriculture or animal husbandry or any other industry, may provide in its by-laws or may contract with its members :

(a) that every such member, who produces any such

article shall dispose of the whole or of any specified amount, proportion or description thereof to or through the society ; and

- (b) that any member, who is proved or adjudged to be guilty of a breach of the bye-laws or contract, shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by its bye-laws.

(2) A contract made by a registered society under sub-section (1) shall create in favour of the society a first charge upon all articles, whether produced or about to be produced, to which the contract relates.

(3) In any legal proceedings arising out of a contract under sub-section (1), it shall not be a defence that the contract is in restraint of trade.

(4) A member of a registered society shall be deemed not to have contravened any bye-law of the society which requires him to deliver any produce to the society, if the failure to deliver such produce was due to the fact that he had, prior to becoming a member of the society, contracted to deliver the produce to some other person.

(5) Every person who applies for membership of a registered society shall, if required so to do, disclose in his application particulars of all contracts made by him for the delivery of any produce to any other person.

### **30. Creation of Charges in Favour of Registered Societies**

(1) Subject to any prior claim of the Government on the property of the debtor and to the lien or claim of a landlord in respect of rent or any money recoverable as rent and in the case of immovable property to any prior registered charge thereon :

- (a) any debt or outstanding demand payable to a registered society by any member or past member shall be a first charge on all crops or other agricultural



produce, felled timber or other forest produce, marine produce, (fresh-water and salt-water), live-stock, fodder, agricultural, industrial and fishing implements, plant, machinery, boats, tackle and nets, raw materials, stock-in-trade and generally all produce of labour and things used in connection with production raised, purchased or produced in whole or in part from any loan whether in money or in goods given him by the society ; provided that nothing herein contained shall affect the claim of any bona fide purchaser or transferee without notice ;

- (b) any outstanding demands or dues payable to a registered housing society by any member or past member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society shall be a first charge upon his interest in the immovable property of the society.

(2) No person shall transfer any property which is subject to a charge under sub-section (1) except with the previous permission in writing of the cooperative society which holds the charge.

(3) Notwithstanding anything contained in any law for the time being in force, any transfer of property made in contravention of the provisions of sub-section (2) shall be void.

### **31. Charge and Set-Off in Respect of Shares or other interests of Members**

A registered society shall have a charge upon the shares or other interests in the capital and on the deposits of a member or past member or deceased member and upon any dividend, bonus or profits payable to a member or past member or to the estate of a deceased member in respect of any debt due to the society from such member or past member or estate, and may set off any sum credited or payable to a member or past member or estate of a deceased member in or towards payment of any such debt.

### **32. Amalgamation and Transfer of Societies**

(1) Any two or more registered societies may, by a resolution passed by a three-fourths majority of the members present at a special general meeting of each such society held for the purpose, amalgamate as a single society ; provided that each member has had 15 clear days written notice of the resolution and the date of the meeting. Such an amalgamation may be effected without a dissolution, or a division of the funds, of the amalgamating societies. Such amalgamated society may apply for registration under Section 7 of this Law and the Registrar may register such society under Section 8 of this Law. The registration of such society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

(2) Any registered society may by a resolution passed in accordance with the procedure laid down in sub-section (1) transfer its assets and liabilities to any other registered society which is prepared to accept them :

Provided that when any such amalgamation or transfer of assets and liabilities involves the transfer of its liabilities by any society to any other society, it will not be made without giving three months' notice to the creditors of both or all such societies ;

Provided further that if a creditor or creditors of any of the societies concerned objects or object to such amalgamation or transfer of assets and liabilities and gives or give written notice to that effect to the society or societies concerned one month before the date fixed for such amalgamation or transfer, the amalgamation or transfer shall not be made until the dues of such creditor or creditors have been satisfied.

### **33. Division of Societies**

(1) Any registered society may, by a resolution passed by a three-fourths majority of the members present at a special general meeting of the society held for the purpose, resolve to divide itself into two or more societies, provided that each member has had 15

clear days' written notice of the resolution and the date of the meeting. The resolution (hereinafter in this section referred to as a preliminary resolution) shall contain proposals for the division of the assets and liabilities of the society among the new societies in which it is proposed to divide it and may prescribe the area of operation of, and specify the members who will constitute, each of the new societies.

(2) A copy of the preliminary resolution shall be sent to all the members and creditors of the society. A notice of the resolution shall also be given to all other persons whose interests will be affected by the division of the society.

(3) Any member of the society may, notwithstanding any bye-law to the contrary, by notice given to the society within a period of three months from his receipt of the resolution, intimate his intention not to become a member of any of the new societies.

(4) Any creditor of the society may, notwithstanding any agreement to the contrary, by notice given to the society within the said period intimate his intention to demand a return of any amount due to him.

(5) Any other person whose interest will be affected by the division may by notice given to the society object to the division unless his claim is satisfied.

(6) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of the society and of the notice by other persons given under sub-section (2), another special general meeting of the society, of which at least 15 clear days' notice shall be given to its members, shall be convened for considering the preliminary resolution and the intentions and objections made under sub-sections (3), (4) and (5) if any. If, at such meeting the preliminary resolution is confirmed by a resolution passed by a majority of not less than two-thirds of the members present, either without changes or with such changes as in the opinion of the Registrar are not material, he may, subject to the provisions of sub-section (9) and Section 7, register the new societies and the bye-laws thereof. On such registration,

the registration of the old society shall be deemed to have been cancelled and the society shall be deemed to be dissolved from the date of such cancellation.

(7) The opinion of the Registrar as to whether the changes made in the preliminary resolution are or are not material shall be final and no appeal shall lie therefrom.

(8) At the special general meeting referred to in sub-section (6) provision shall be made by another resolution for

- (i) repayment of the share capital of all the members who have given notice under sub-section (3);
- (ii) satisfaction of the claims of all the creditors who have given notice under sub-section (4);
- (iii) satisfaction of the claims of such of the other persons who have given notice under sub-section (5) as the Registrar decides or securing their claims in such manner as the Registrar directs;

Provided that no member or creditor or other person shall be entitled to such repayment of satisfaction until the preliminary resolution is confirmed as provided in sub-section (6).

(9) If within such time as the Registrar considers reasonable the share capital of the members referred to in sub-section (8) is not repaid or the claims of the creditors referred to in that sub-section are not satisfied, or the claims of the other persons are not satisfied or secured as provided in clause (iii) of sub-section (8), the Registrar may refuse to register the new societies.

(10) The Registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society in the new societies in the manner specified in the preliminary resolution as confirmed under sub-section (6).

#### **34. Conversion of Company into a Cooperative Society**

(1) A company registered under the Companies Acts may, by a special resolution, determine to convert itself into a registered society.

(2) A resolution for the conversion of a company into a registered society shall be accompanied by a copy of the bye-laws of the society therein referred to, and shall appoint seven persons, members of the company, who, together with the secretary shall sign the bye-laws, and who may either be authorised to accept any alterations made by the Registrar therein, without further consulting the company, or may be required to lay all such alterations before the company in general meeting for acceptance as the resolution may direct.

(3) With the bye-laws a copy of the special resolution for conversion of the company into a registered society shall be sent to the Registrar, who shall thereupon proceed to deal with the resolution as if it were an application for registration under Section 7 of this Law.

(4) A copy of the resolution for the conversion of the company into a registered society under the seal of the company, together with the certificate of registration issued by the Registrar, shall be sent for registration to the office of the Registrar of Companies, and upon the registration of such resolution and certificate, the conversion shall take effect.

(5) Upon the conversion of a company into a registered society the registration of the company under the Companies Act shall become void, and shall be cancelled by the Registrar of Companies ; but the registration of a company as a cooperative society shall not affect any right or claim for the time being subsisting in favour of or against the company, or any penalty for the time being incurred by such company, and, for the purpose of enforcing any such right, claim, or penalty, the society may sue, or be sued, and proceed, or be proceeded against, in the same manner as if the company had not been registered as a cooperative society. And every such right or claim, and the liability to such penalty, shall have priority as against the property of such society over all other rights or claims against or liabilities of the cooperative society and every right or claim in favour of the company shall become due to the cooperative society.

**PART VI**

## **Property and Funds of Registered Societies**

**35. Acquisition of Lands and Buildings**

(1) A registered society may acquire and hold lands or buildings for any purpose connected with its objects.

(2) No part of the funds of a registered society shall be used for the acquisition of lands, buildings, plant or machinery without the previous approval of the general meeting of the society or as otherwise laid down in its bye-laws.

(3) A registered society may sell, transfer, gift or otherwise dispose of lands, buildings, plant or machinery held by it only with the prior approval of the general meeting of the society.

**36. Loans Made by a Registered Society**

(1) A registered society shall not, except as provided in Section 39, make any loan to any person other than a member :

Provided that, with the consent of the Registrar, a registered society may make loans to another registered society.

(2) Except with the permission of the Registrar, a registered society shall not lend money on the security of any movable property other than produce or goods in which the society is authorised to deal.

(3) The Registrar may, by general or special order, prohibit or restrict the lending of money on mortgage of any description of immovable property by any registered society.

### **37. Debentures and Financial Assistance**

(1) The Registrar may regulate the manner in which a registered society may raise funds by the issue of debentures.

(2) The Registrar may prescribe the conditions to be observed by a registered society in applying for financial assistance from the Government.

### **38. Restrictions on other Transactions with Non-Members**

Save as provided in Sections 36 and 37, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions as may be prescribed by the Registrar.

### **39. Investment of Funds**

A registered society may invest or deposit its funds :

- (a) in the Post Office Savings Bank, or with any bank or person carrying on the business of banking approved for this purpose by the Registrar, or
- (b) in any securities issued or guaranteed by the Government, or
- (c) with any other registered society approved for this purpose by the Registrar, or
- (d) in any other mode approved by the Registrar.

#### **40. Division of Funds and Disposal of Trading Surplus**

No part of the funds other than the net trading surplus of a registered society shall be paid by way of bonus or dividend or otherwise distributed among its members :

Provided that a member may be paid remuneration on such scale as may be laid down by the bye-laws for any services rendered by him to the society

Provided further that, in the case of a society with unlimited liability, no distribution of profits shall be made without the general or special order of the Registrar.

#### **41. Employees' Provident Fund**

(1) A cooperative society may establish a Contributory Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the bye-laws of the society.

(2) A Contributory Provident Fund established by a registered society under sub-section (1) ;

- (a) shall not be used in the business of the society,
- (b) shall not form part of the assets of the society, and
- (c) shall not be liable to attachment or be subject to any other process of any court or other authority.



## **PART VII**

# **Audit, Inspection and Inquiry**

### **42. Audit**

(1) Every registered society shall submit to the Registrar once at least in every year a statement of accounts and a balance sheet audited by a person or society authorised for the purpose by the Registrar by general or special order in writing.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the registered society.

(3) The Registrar and every person appointed to audit the accounts of a registered society shall have power when necessary :

- (a) to summon at the time of this audit any or all officers, agents, servants and members, past and present, of

the society who he has reason to believe can give material information in regard to any transactions of the society or the management of its affairs ; or

- (b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to the society, by the officer, agent, servant or member believed or deemed by the Registrar or the auditor to be in possession of such book, document, cash or security.

(4) The Registrar shall have power to prescribe the charges payable to the auditor for the audit of the accounts of a registered society.

#### **43. Power of Registrar to Inspect Society's Books Etc.**

(1) The Registrar, or any person authorised by general or special order in writing of the Registrar shall at all times have access to all the books, accounts; papers and securities, of a registered society, and shall be entitled to inspect the cash in hand and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

(2) The Registrar and every person authorised by him to audit the accounts of a registered society shall be deemed to be public servants within the meaning of the Penal Code.

#### **44. Inspection and Inquiry**

(1) The Registrar may of his own motion, and shall on the application of a majority of the committee, or of not less than one-third of the members of a registered society, hold an inquiry or direct some persons authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society; and all officers, agents, servants and members of the society, past and present, shall furnish such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorised by him require.

(2) The Registrar shall, on the application of a creditor of the registered society, inspect or direct some person authorised by him in writing in this behalf to inspect the books of the society, if the applicant :

- (a) proves that an ascertained sum of money is then due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time ; and
- (b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any such inquiry or inspection to the society into whose affairs inquiry has been held and to the creditor on whose application such inspection has been made.

(4) Where an inquiry is held under sub-section (1) or an inspection is made under sub-section (2), the Registrar may apportion the costs or such part of the costs, as he may think right, between the registered society, the members demanding an inquiry, the officers or former officers of the society and the creditor, if any, on whose application the inspection has been made.

(5) Any sum awarded by way of costs against any society or person under this section may be recovered, on application to a magistrate's court having jurisdiction in the place where the registered office of the society is situated or the person resides or carries on business for the time being, in like manner as a fine imposed by the court.

#### **45. Registrar may Require Bank to Produce any Information Etc.**

Notwithstanding anything in any other written law, the Registrar may, where he considers it necessary to do so, require any bank :

- (a) to furnish any information regarding the transactions of any registered society with the bank;

- (b) to produce a copy showing the account of the society with the bank from the ledger kept by the bank, or
- (c) to produce any cheques paid to the credit of the society or endorsed by the society.

**46. Communication of Defect in the Working of Registered Societies**

(1) If any audit, inquiry or inspection made under this Law discloses any defects in the working of a registered society, the Registrar may bring such defects to the notice of the society and if the society is affiliated to another registered society also to the notice of that other society.

(2) The Registrar may make an order directing the society or its officers to take such action as may be specified in the order within the time mentioned therein to remedy the defects disclosed in the audit, inquiry or inspection.

**47. Returns to be made by Societies**

The Registrar may prescribe the returns to be submitted by registered societies to the Registrar, and the persons by whom and the form in which the same are to be made.

## PART VIII

# Dissolution

### 48. Dissolution

(1) If the Registrar, or a Deputy or Assistant Registrar on whom the powers of the Registrar in terms of Section 44 have been conferred under Section 3 (2), holds an inquiry or makes an inspection under Section 44, or on receipt of an application made by three-fourths of the members of a registered society, and is of opinion that the society ought to be dissolved, he may make an order cancelling the registration of the society.

(2) Any member of a registered society may, within two months from the date of an order under sub-section (1), appeal from such order to the Minister, who may, within three months of the date of such appeal, confirm the order or uphold the appeal. If the Minister confirms such order it shall take effect on the date of the Minister's order confirming the order of the Registrar,

Deputy or Assistant Registrar under sub-section (1), and this date shall be the date of dissolution; and if the appeal is upheld the said order shall stand revoked with effect from the date of the Minister's order upholding the appeal :

Provided that if no order is made by the Minister on such appeal within three months of the date of the appeal, the order under sub-section (1) shall take effect on the date of the expiry of the said three months, and this date shall be the date of dissolution.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the date of the expiry of that period and this date shall be the date of dissolution.

(4) No registered society shall be wound up save by an order of the Registrar

#### **49. Cancellation of Registration of Society due to Lack of Membership**

The Registrar may, by order in writing, cancel the registration of any registered society other than a society which includes among its members one or more registered societies, if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten. Every such order shall take effect on the date thereof.

#### **50. Effect of Cancellation of Registration**

Where the registration of a registered society is cancelled by an order under Section 48, or under Section 49, the society shall cease to exist as a corporate body from the date of dissolution.

Provided that any privileges conferred on the society by or under this Law shall be deemed to be vested in any liquidator appointed for that society by the Registrar.

#### **51. Liquidation after Cancellation of Registration of Society**

(1) Where the registration of a society is cancelled under

Section 48 or 49 the Registrar shall appoint one or more persons to be, subject to his direction and control, the liquidator or liquidators of the society.

(2) Where the Registrar, Deputy or Assistant Registrar makes an order cancelling the registration of a society under Section 48(1), he may order the committee, officers and employees of the society to hand over the books, documents and assets of the society immediately to the liquidator appointed under sub-section (1) for their safe custody and protection until the date of revocation under Section 48(2) of the order cancelling the registration or the date of dissolution of the society.

(3) Where any order made under sub-section (2) is not complied with the liquidator may apply to the magistrate, within whose jurisdiction the society functions, for securing the books, documents and assets of the society.

#### **52. Liquidator's Powers**

(1) A liquidator appointed under Section 51 above shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under Section 53, have power with effect from the date of dissolution to :

- (a) take possession of the books, documents and assets of the society immediately upon the cancellation of the registration of a registered society and hold them in his custody provided that if the order of cancellation is revoked he shall hand them back immediately to the officer or officers from whom he received them;
- (b) carry on the business of the society so far as may be necessary for winding it up beneficially : provided that nothing herein contained shall entitle the liquidator of a credit society to issue any loan;
- (c) call such general meetings of members as may be necessary for the proper conduct of the liquidation ;
- (d) determine from time to time the contribution to be made by members and past members or by the

estates of deceased members of the society to its assets ;

- (e) sell the property of the society;
- (f) appoint a day by proclamation or notice by which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved such claims ;
- (g) decide any question of priority which arises between creditors ;
- (h) refer disputes to arbitration under Section 59 and defend suits and other legal proceedings on behalf of the society by his name or office ;
- (i) decide by what persons and in what proportions the costs of liquidation are to be borne ;
- (j) give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding-up the society;
- (k) compromise any claims by or against the society provided the sanction of the Registrar has first been obtained ; and
- (l) arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar ;

and all decisions and directions under this sub-section shall be deemed to be orders for the purposes of Sections 54 and 58.

(2) Subject to such directions as may be given by the Registrar in this behalf, any liquidator appointed under this Law shall, in so far as such powers are necessary for carrying out the purposes of this Section, have power to summon and enforce the attendance of parties and witnesses and to compel the production of documents by the same means and (so far as may be) in the manner as is provided in the case of a civil court.



**53. Power of Registrar to control Liquidation**

A liquidator shall exercise his powers subject to the control and revision of the Registrar, who may :

- (a) rescind or vary any order made by a liquidator and make whatever new order is required ;
- (b) remove a liquidator from office ;
- (c) call for all books, documents and assets of the society ;
- (d) by order in writing limit the powers of a liquidator under Section 52 ;
- (e) require accounts to be rendered to him by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society ;
- (g) make an order for the remuneration of the liquidators ;
- (h) direct the liquidator in respect of matters relating to the summoning and enforcing the attendance of parties and witnesses and compelling the production of documents for the purposes of Section 52(2);
- (i) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the award of the arbitrator ;
- (j) prescribe the procedure to be followed by a liquidator ;
- (k) prescribe the cases in which appeals shall lie from the orders of a liquidator.

**54. Enforcement of Order**

(1) The award of an arbitrator on any matter referred to him under Section 53 shall be binding upon the parties and shall be enforceable in like manner as an order made by the Registrar under that Section.

(2) An order made by a liquidator by the Registrar under Section 52 or 53 shall be enforced by any civil court having

jurisdiction over the place where registered office of the society is or was situated in like manner as a decree of that court.

**55. Limitation of the Jurisdiction of the Civil Court**

Save in so far as is hereinbefore expressly provided, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a registered society under this Law.

**56. Closure of Liquidation**

(1) In the liquidation of a society whose registration has been cancelled, the funds, including the reserve fund, shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, provided the bye-laws of the society permit, to the payment of a dividend at a rate not exceeding six per cent per annum for any period for which no disposal of trading surplus was made.

(2) When the liquidation of a society has been closed and any creditor of that society has not claimed or received what is due to him under the scheme of distribution, notice of the closing of the liquidation shall be published in the Gazette; and, all claims against the funds of the society liquidated shall be proscribed when twelve months have elapsed from the date of the publication of the Gazette notice.

(3) Any surplus remaining after the application of the funds to the purposes specified in sub-section (1) and the payment of any claims for which an action is instituted under sub-section (2) shall be paid to the federal society to which the liquidated society was federated.

## **PART IX**

# Surcharge and Attachment

### **57. Powers of Registrar to Surcharge Officers Etc. of a Registered Society**

(1) Where in the course of an audit under Section 42, or an inquiry or inspection under Section 44 or the winding up of a society whose registration has been cancelled it appears that any person who has taken part in the organisation or management of such society or any past or present officer of the society has misapplied or retained or becomes liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society the Registrar may examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty

or breach of trust as the Registrar thinks just. Such order shall be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the order had been a judgement of a civil court.

(2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

#### **58. Attachment of Property**

Where the Registrar is satisfied that any person with intent to defraud or delay the execution of any order or award which may be made against him under Sections 27, 52, 53, 57 or 59 is about to dispose of the whole or any part of his property to the detriment of the society's interests, the Registrar may, unless adequate security is furnished, order the conditional attachment of such property, and such attachment shall have the same effect as if made by a competent court.

**PART X**

## Disputes

**59. Settlements of Disputes**

(1) If any dispute regarding the affairs of a registered society arises t

- (a) among members, past members and person claiming through members, past members and deceased members; or
- (b) between a member, past member or persons claiming through a member, past member or deceased member, and the society, its committee, or any officer of the society; or
- (c) between the society or its committee and any officer of the society; or
- (d) between the society and any other registered society;

such dispute may be referred to the Registrar for decision by the parties by mutual consent.

A claim by a registered society for any debt or demand due to it from a member past member or the nominee, heir or legal representative of a deceased member, whether admitted or not, shall be deemed to be a dispute touching the business of the society within the meaning of this sub-section.

(2) The Registrar may, on receipt of a reference under sub-section (1) :

- (a) decide the dispute himself and make an award, or
- (b) refer it for disposal to an arbitrator or arbitrators.

(3) Any party aggrieved by the award of the arbitrator or arbitrators may appeal therefrom to the Registrar within such period as may be prescribed by him.

(4) An award of the Registrar under sub-section (2) or in appeal under sub-section (3) shall be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the decision had been a judgement of a civil court.

(5) The award of the arbitrator or arbitrators under sub-section (2) shall, if no appeal is preferred to the Registrar under sub-section (3), or if any such appeal is abandoned or withdrawn, be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the award had been a judgement of a civil court.

(6) The Government may prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or duly appointed arbitrator or arbitrators.

(7) The Government may prescribe the forms to be used, the fees to be paid, the procedure to be observed and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this Law.

## **PART XI**

# Miscellaneous

### **60. Recovery of Sums Due to Government**

All sums due from a registered society or from an officer or member or past member of a registered society as such to the government may be recovered in the manner provided for the recovery of debts due to the government under the law for the time being in force.

### **61. Power to Exempt From Stamp Duty and Registration Fee**

(1) The Government by notification in the Gazette may, in the case of any registered society or class of registered societies, remit :

- (a) the stamp duty with which, under any law for the time being in force, instruments executed by, on behalf of or in favour of a registered society, or by

an officer or member, and relating to the business of such society, or any class of such instruments are respectively chargeable ; or

(b) any fee payable under the law of registration for the time being in force.

(2) A notification exempting any registered society from the fees referred to in paragraph (b) of sub-section (1) may provide for the withdrawal of such exemption.

#### **62. Prohibition of the word "Cooperative"**

(1) No person other than a registered society shall trade or carry on business under any name or title of which the word "Cooperative" is part without the sanction of the Registrar. Provided that nothing in this Section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the commencement of this Law.

(2) Any person who contravenes the provisions of this Section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding . . . . and in the case of a continuing offence to a further fine not exceeding . . . . . for each day during which the offence continues.

#### **63. Company Law Not to Apply**

The provisions of the Company Law shall not apply to societies registered under this Law.

#### **64. Savings for Existing Societies**

(1) Any society registered or deemed to be registered under any enactment repealed by this Law, shall be deemed to be registered under this Law, and the bye-laws of such society shall, so far as they are not inconsistent with the express provision of this Law, continue in force until altered or rescinded.

(2) All appointments and orders made, notifications and notices issued, and suits and other proceedings instituted or



deemed to have been made, issued or instituted under any enactment repealed by this Law, shall, so far as may be deemed to have been made, issued and instituted under this Law.

**65. Punishment for Fraud or Misappropriation**

If any person obtains possession by false representation or imposition of any property of a society, or having the same in his possession withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the bye-laws of the society, and authorised by this Law, he shall on the complaint of the society, any member authorised therefor by the committee thereof, the Registrar, Deputy Registrar or Assistant Registrar, be liable, on summary conviction by a court, to a fine not exceeding... ..with costs, and to be ordered to deliver up all such property or to repay all moneys applied improperly, and in default of such delivery or repayment or of the payment of such fine to be imprisoned for any period not exceeding three months, but nothing in this Section shall prevent any such person, from being proceeded against for an indictable offence if not previously convicted of the same offence under this Law

**66. Penalty for Non-Compliance with Law**

Where any person :

- (a) fails to give any notice, send any returns or documents or do or allow to be done any act or thing which is required by this Law;
- (b) wilfully refuses or omits to do any act or to furnish information required for the purposes of this Law by the Registrar or other authorised person ;
- (c) wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Law ;
- (d) does anything forbidden by this Law;
- (e) wilfully furnishes false or insufficient information or returns ;

such person unless he is proved to have been ignorant of or to have attempted to prevent the commission of the offence shall be liable to a fine not exceeding.....and every such offence if continued shall constitute a new offence in every week through which the default continues.

**67. Cognizance of Offences**

No court inferior to that of a Magistrate of the first class shall try any offence under this Law.

**68. Indemnity**

No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority in respect of anything in good faith done or purporting to have been done under this Law.

**69. Repeal**

The.....Cooperative Societies Law, 19 .....is hereby repealed.

The Author's Commentary  
on  
"A Model Cooperative Societies Law"\*

It would be supererogatory for me to say, here, why the true cooperative form of organisation should be preferred to any other form of organisation. Suffice it to say that true cooperation not only eliminates capitalistic economic exploitation but also helps to develop self-reliance and a capacity for self-management among the people as well as train them in the processes of democracy. Political democracy would not be meaningful to a people without self-reliance, a capacity for self-management and a training in democratic procedure. And without political democracy there can be no social justice. No social order however just can last unless people learn how to maintain it and this they can do only if they learn to employ only democratic methods for solving their problems and to abide by democratic decisions. This is precisely what true Cooperation inculcates in a people. Therefore true Cooperation is of *sine qua non* importance to those Developing Countries which have a democratic form of government. In this connection I can do no better than quote from the now famous Recommendation No. 127 of the

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\*Presented to the Seminar on "Cooperative Law and Development" held in Accra, Ghana, under the auspices of the Ghana Cooperative Council Ltd., 18-30 July, 1976.

International Labour Organisation cited as the Cooperative (Developing Countries) Recommendation, 1966. In paragraph 2 of this Recommendation, it is stated that "the establishment and growth of cooperatives should be regarded as one of the important instruments for economic, social and cultural development as well as human advancement in developing countries."

2. A Cooperative Law that is inconsistent with the Cooperative Principles can only help to develop institutions which are far from being cooperative. Therefore there can be no real cooperative development if the very law enacted to promote Cooperation is contrary to its Principles. Thus we must accept the position that a law for promoting the development of Cooperatives must be in conformity with the Cooperative Principles.

3. The Model Cooperative Societies Law has been compiled by me on the basis that there should be a separate law for cooperative societies providing for their corporate existence in conformity with the Cooperative Principles as stated in the Rules of the International Cooperative Alliance. The Model therefore does not contain any of the deviations that have been considered necessary by many a government, from the Principles laid down by the ICA. A method or set-up which is not in accordance with the Cooperative Principles is not a cooperative method or set-up by these standards, however desirable such method or set-up may be. Everything that is good should not be called by the term "Cooperative". Any other good method or set-up should be identified appropriately rather than pass muster under the cooperative banner. Otherwise, due to the varying degrees of controls favoured by the governments of various Developing Countries in respect of cooperatives, the true concept of Cooperation will be gradually lost to the world and with it will fade away the real Cooperative Movement in spite of its great potentiality for economic and social development.

4. The Model Law provides for the legal recognition of cooperative societies and therefore lays down the fundamental character of cooperatives and the principles they must conform to if they are to remain true to their character. It also provides

for the conferment of special privileges and facilities upon cooperatives in order to encourage their formation and assist their operations. It gives full freedom to cooperative societies to function freely and fully provided they conform to the Cooperative Principles and the requirements laid down by the State in the discharge of its duty of protecting the interests of society in general. The model law also provides for the federative structure of the movement. The strength of the movement lies in the societies being federated. This makes the cooperative movement capable of satisfying the economic needs of its individual members at all levels of the economy. Hence the need to provide for a federative structure.

5. The Model Law also enables the State to be guide, arbiter and watch-dog of the movement. This is necessary where the initiative for cooperative development has come from the State as is the case in almost all Developing Countries. But care has been taken to see that the powers given to the State do not violate the Cooperative Principles.

6. The important character of the Model is that it deviates from the established pattern of cooperative laws obtaining in countries with a colonial past in that the Registrar is not made the *de facto* director of the movement. This was the case under colonial rule in most Developing Countries. Whilst the British themselves had a law which made the Registrar only a neutral, they gave their colonial territories laws whereby he held the reins. One can see the reason for an imperialist power doing this. But there could be no justification for an independent country to thwart any capacity for self-management by reserving ultimate managerial power to the Registrar.

7. The vesting of ultimate power in the Registrar in respect of important matters of management in a cooperative society results in the managing committee becoming indifferent in its approach and acting without a full sense of responsibility in regard to matters that come up for their decision, in view of the fact that the final say is with the Registrar. Thus, committee members become apathetic and irresponsible, although answer-

able in law, whilst the Registrar becomes the *de facto* director of the organisation. Moreover, the laws which vest the Registrar with powers of fixing the maximum credit limit, writing-off dues, nominating directors, approving appointments, superseding committees, even vetoing decisions, compelling the admission of persons to the membership, cancelling the expulsion of members, etc. etc., do not make him answerable to any one for his actions or for any losses sustained by the society by complying with his decisions. Thus he wields power without responsibility whilst the managing committee remains answerable but without real power. And today in most of the Developing Countries the Registrars are called upon to exercise these powers, not at their discretion as provided in the law, but according to the wishes of their Ministers. This results in these powers being exercised with a political bias and so the so-called remedies for mis-management prove worse than the disease. Even if the position be not so bad, there is no justification for giving managerial power in respect of a cooperative to the Registrar for thereby the society loses the essence of its cooperative character viz., democratic control. The society virtually comes under the administration of the State. And see what Prof. Lazlo Valko has to say on this situation in the chapter on "Cooperatives and the State" in his "Essays on Modern Cooperation". He says: "Practical experience shows that state administrations, after a certain time, will retard the growth of cooperatives. It will slowly eliminate the internal energy of self-determination. Such administration will be petrified into a rigid state bureaucracy which will nullify the latent sources of economic potentiality that can develop only in free cooperatives". Far from realizing this, certain Developing Countries have, after independence, increased the powers of the government in respect of cooperatives, leaving little room for the development of self-reliance and democratic management within the cooperative movement.

8. In almost all the countries where laws contravening Cooperative Principles have been enacted, the cooperatives have increasingly become but mere adjuncts of the State. The closer the State's grip, the more estranged the people are from these

societies, so much so that the members of cooperatives in many countries are similar to the passengers of a train who use it for their *ad hoc* purposes but who have nothing to do with its running.

9. The oft repeated excuse given for these uncooperative laws is that the State must have these powers of control as long as State funds are involved in cooperative development. The reply to this was given by Dr. Mauritz Bonow, former President of the International Cooperative Alliance. Speaking at New Delhi in 1971, he said :

“When one is concerned with overall social and economic development, it is perhaps inevitable that in one’s enthusiasm to achieve desired rate of economic growth, voluntary organisations like the cooperatives are brought within the framework of economic plans. I am aware that this situation sometimes gives rise to problems. When financial assistance is extended by the State it is inevitable that some control would result. Such funds come from the national exchequer and the government is responsible to the people through the Parliament to ensure that the funds are duly accounted for. I am aware that a number of new and very significant activities, not the least in the field of cooperative credit, have been generated as a result of this approach. However, it is, I think, absolutely essential that the long-term objective of making the cooperative movement an independent and autonomous one is kept constantly in mind. *We would have mistaken the casket for the gem if we were to perpetuate an arrangement whereby the initiative and democratic character of the cooperative movement would be impaired.* In the ultimate analysis, it is the vitality of the people of a country which determines progress. Legislation, especially cooperative legislation, should provide the framework within which people’s capacity to bring about the desired change is enhanced. **If the net result of legislation is to thwart this tendency, I am afraid, we would have done more harm than good”.**

10. As regards the role of the State in cooperative development, governments cannot get better advice than what is contained in the ILO Recommendation mentioned above. The gist of this long recommendation, which contains 36 paragraphs running into about ten pages, is contained in paragraph 4 which says: "Governments of developing countries should formulate and carry out a policy under which cooperatives receive aid and encouragement, on an economic, financial, technical, legislative or other character, **without effect on their independence.**" Then, again, in paragraph 20, regarding financial aid, the Recommendation says: "**Such aid should not entail any obligations contrary to the independence or interests of cooperatives, and should be designed to encourage rather than replace the initiative and effort of the members of cooperatives.**" The several inroads into cooperative democracy illustrated in my paper entitled, "The Effect of Cooperative Law on the Autonomy of Cooperatives in South-East Asia" would have been ended or avoided if the recommendation had been taken seriously enough by the governments concerned.

11. The Model Law is an attempt to draft a Cooperative Law that is free of the taint of inconsistency with the Cooperative Principles. Thus it has no provisions for nomination of directors, supersession of committees or removal of employees by the Registrar, veto of society decisions, compulsory amendment of byelaws, intervention in matters of admission or expulsion of members, and many other violations of the Cooperative Principles, to be found in plenty in the Cooperative Laws of Developing Countries. The justification for omitting these provisions is already given in the authoritative pronouncements quoted above.

12. In the Model, I have omitted provisions for making Rules under the Law. Many provisions which violate Cooperative Principles have come into the laws of these countries through the Rules and Regulations made under the substantive law. Power is given to make rules "as may be necessary for the purpose of carrying out or giving effect to the principles and provisions" of an Act. The procedure for making Rules is less cumbersome than that for passing an Act. The Rules are only



tabled in Parliament. *Ipsa facto*, the importance attached to rules is less than that to an Act. Therefore they are rarely debated upon. It is best to ensure that all laws relating to a people's movement receive the same consideration of, and emanate directly from the people's legislature, for the spirit of a people's movement has a greater chance of recognition by a legislature than by a government as such. And too often it happens that power is given to make Rules on matters which are as important as those provided for in the Act, and that the Rules are *ultra vires* of the provisions, or contravene the principles of an Act. A comparison of Cooperative Laws vis-a-vis Cooperative Principles as well as vis-a-vis Cooperative Rules will make a revealing study. Today many a law and rule deal with matters, which, according to the Cooperative Principles, are those for self-regulation. Therefore, these matters should be provided for in the Bye-laws. The difference is that the provisions of an Act are imposed on a society by the State, whereas the bye-laws are self-imposed. So all self-regulatory matters should be left out of the law and provided for in the Bye-laws. The Registrar can prescribe these matters for inclusion in the Bye-laws (Section 11 of the Model).

13. The power to make rules is usually provided in the law on the ground that the government should have power which is elastic enough to permit frequent changes in the provisions relating to procedural matters. There is no real difficulty in providing in the provisions of an Act itself the elasticity that is necessary in the case of laws relating to procedural matters. The Registrar could be given power to make the necessary Orders. Such elasticity would then be more pronounced, in that power to make Orders on procedural matters would vest in an official, such as the Registrar, and the amendment of any Orders made by him would be easier than the amendment of Rules. These powers however should not relate to any matters other than procedural, such as prescribing the forms to be used in applying for registration. The elasticity required in these provisions has been kept in the Model Law. Please see e.g. Section 7(4). This procedure also creates a better prospect of safeguarding cooperative autonomy because the possibility of challenging the validity of

an executive order is greater than that of a Rule. Therefore all matters, which should be within the purview of the legislature and are usually provided for in the Rules, have been included in the Model Law. The other matters on which Rules are usually made are matters for self-regulation by the cooperatives themselves. These have been left out as their proper place is the byelaws of cooperative societies.

14. The following extract from the "Economic and Social Survey of Asia and the Pacific, 1975" is of great relevance to the question of drafting a good Cooperative Law. At pages 330-331 it says :

"If cooperatives are to be initially established under government tutelage, rather than arise from the expressed needs and desires of the people who should benefit from them, it is difficult to maintain the pretence that they are either democratic or truly cooperative. On the other hand, if their democratic character were abandoned as a false pretence, cooperatives merely would be seen as administrative arms of the central government and, in the absence of broad rural reforms, purposely inequitable instruments of local control."

In page 332 the Survey says quite correctly that :

"the role of the government must be restricted to that of the slow and arduous process of education and of making certain that a legal environment and an effective enforcement authority exist to render the cooperative a legally viable and administratively sound entity. Its acceptance must be allowed to develop, in many cases only gradually, and its economic viability should be established through the making of mistakes rather than the illusion of continuous successes."

And then the Survey makes a most appropriate suggestion viz :

"If, during an intervening period, "welfarism" or simply a vehicle for the rapid and efficient flow of goods and

services to rural areas is wanted, the organisation designed to provide them should be called something other than a cooperative. Cooperatives can stand on their own, once there exists an interested peasantry which can clearly benefit from them and a conducive legal environment to assure their success; they will not be fostered by spurious promises or when imposed from above."

15. In this connection, it would be appropriate to mention here that the Asian Top-Level Cooperative Leaders' Conference of 1973 adopted a resolution urging :

"that in the interest of fostering a healthy legislative climate conducive to the continued growth of the Cooperative Movement and its leadership, as and when cooperatives progressively develop their own capabilities, a policy programme of gradual phasing out of government involvement be drawn up, based solely on the need, if any, for governments to look into the affairs of the cooperatives".

and urging :

"the Governments of the countries in the Region to reconsider, within the context of the internationally accepted Cooperative Principles, and within the socio-economic framework of their respective countries, the following areas in their respective cooperative laws in order that, consistent with the capacity and effectiveness of cooperatives as vehicles for social and economic development, the voluntary, autonomous and democratic character of cooperative enterprise is nurtured and preserved, viz.,

- a) Provisions on the powers of government to compulsorily amend, either by alteration, substitution or addition, bye-laws of cooperatives;
- b) Provisions on the powers of government to appoint and/or replace committees/staff for management of cooperatives ;
- c) Provisions on the powers of government to suspend,

alter or modify, or veto, decisions of the general membership; and

- d) Provisions on the powers of government controlling/restricting investment activities in accordance with the objectives of the society.

This is a recognition of the unsatisfactoriness of the present cooperative laws and a healthy attitude towards true cooperative development.

16. One way of correcting the present unsatisfactory position as regards the observance of the democratic principle seems to be for the law to provide for Pre-cooperatives as well as Cooperatives. Both types should seek to eliminate middleman profit making. Whilst the law for pre-cooperatives may permit the government to exercise powers which contravene the Cooperative Principle of Democratic Management and Autonomy, the law relating to Cooperatives should not give the government any powers that vitiate the cooperative character of cooperatives. Pre-cooperatives should be so fostered that they would in due course qualify to be registered as Cooperatives. The Model Law, however, has not provided for pre-cooperatives.

## **Part II**

17. I shall now make a few necessary comments on the provisions of the Model Law.

### *(a) Interpretation (Section 2)*

I have included in this Section an interpretation of the words "Cooperative Principles." The Registrar is empowered in almost all Cooperative Laws to register a society if he is satisfied that its proposed bye-laws are not contrary to the Cooperative Principles. But it is only rarely that these principles have been defined. Even where they have been defined, they have not been defined adequately. Therefore I have defined these principles in the Interpretation Section. The definition given is that stated in the Rules of the International Cooperative Alliance, 1972. It is

necessary to define these Principles without leaving it to every Registrar to come to his own conclusions about them. The definition cannot be merely a reference to the Rules of the ICA of a particular date or a general reference such as "as stated in the Rules of the International Cooperative Alliance." In the former case a particular set of Rules of the ICA will have to be preserved and in the latter, the law will change as and when the relevant Rule is modified by the ICA. Stating the ICA Rule in the law is therefore the best way of adopting the ICA's definition.

(b) *Societies which may be Registered (Section 4)*

A study of the laws of many countries, and even of States in one country, reveals that there are many variations in their definitions of the term "cooperative society". Therefore I have given here a definition which is close to the definition contained in the Rules of the ICA. The ICA definition is as follows :

"Any association of persons, or of societies irrespective of its legal constitution, shall be recognised as a Cooperative Society provided that it has for its object the economic and social betterment of its members by means of the exploitation of an enterprise based upon mutual aid, and that it conforms to the Cooperative Principles as established by the Rochdale Pioneers and as reformulated by the 23rd Congress of the I.C.A."

I have varied it by substituting the words "through the satisfaction of their common economic needs by means of a common undertaking," for the words "by means of the exploitation of an enterprise" and added the words "and profit elimination" after the words "mutual aid" and omitted the reference to the Rochdale Pioneers and the 23rd Congress of the I.C.A. The satisfaction of the common need of the members through their common undertaking, thereby eliminating middleman profit-making, is the economic purpose of Cooperation. Hence the substitution and addition of these words. "Exploitation" moreover has a derogatory meaning and this is the more common one in countries with a colonial past. I have felt that it would be

better to add the words "and profit-elimination." Of course, "profit" here means profit accruing from an exploited party, outside the society's membership,—if there be a party whose need is exploited by the society for making profit; and the society would then be functioning as a middleman. Such profit-making would be abhorrent to the idea of profit-elimination by Cooperation, so succinctly expressed in the words of an early cooperator: "I shall have my hand in no man's pocket and no man shall have his hand in mine." The principle of eliminating middleman profit is fundamental to Cooperation. Therefore there should be no room for a cooperative to engage itself in an enterprise which would be of mutual aid to its members but whose need of that aid arises from a purpose of capitalistic exploitation. For example, a society of capitalistic entrepreneurs formed to render a service to satisfy a common need of theirs would not be a cooperative society if that service itself is obtained for the exploitation of the economic needs of a third party outside the pale of the society's membership. Such a society would be aiding its members in capitalistic exploitation and therefore would be a commercial undertaking and not a cooperative society, although the society could be defined as one of mutual aid to the members, in view of the provision to return to them the profits of their undertaking. The point is that the members of a society should be either the consumers or the producers in respect of the article (s) supplied or sold by the society to, or on behalf of, the members and not merely the owners of capital if such society is to be classed as a cooperative. Therefore a cooperative society's common undertaking should be based upon mutual aid as well as profit-elimination. No cooperative society should assist its members to have their hands in other men's pockets. No definition can really meet the case in point. The spirit of profit-elimination has to be imbibed rather than learnt from definition.

A further way of legislating against the misuse of cooperative services for purposes of making middleman profit is to add the words "provided that these services are not obtained for purposes of making middleman profit", after the word "services" in clause (i) of the definition of "Cooperative Principles" in Section 2 (Interpretation).

(c) *Societies to be Bodies Corporate (Section 10)*

The primary purpose of a Cooperative Law is to give legal personality to societies that work in accordance with the Cooperative Principles. Such societies become bodies corporate upon registration. The Registrar is empowered to register only societies whose object is the social and economic betterment of their members in conformity with the Cooperative Principles and whose bylaws are not contrary to the Cooperative Principles, vide Sections 4 and 8 of the Model Law. The registration of a society whose object is not that stated in Section 4 or which society does not conform to the Cooperative Principles as required in Section 4 or whose bylaws are contrary to the Law or the Cooperative Principles vide Section 8, would be *ultra vires* and therefore null and void. As the Cooperative Principles are defined in the Law itself there would be no room for the Registrar to give another interpretation to the words "Cooperative Principles". There would have been room for misdirecting himself in regard to the meaning of these words if there were no interpretation in the Law itself. The bylaws of many a cooperative have provisions which are contrary to the Cooperative Principles e.g. provisions empowering the Registrar to nominate persons to be directors of cooperatives. The registration of a society having such a bylaw would be null and void under the Model Law. Any subsequent amendment to a bylaw should also be in conformity with the Law and the Cooperative Principles, vide Section 14 (3). Thus, Sections 8 and 14 would prevent cooperatives from having bylaws which are contrary to the Cooperative Principles.

(d) *Bylaws of a Society to bind Members (Section 11)*

As said by the Principles Commission of the ICA (1966) "the primary and dominant purpose of a cooperative society is to promote the interest of its membership. What the members' interests are in any given situation only they can finally determine." Therefore the right of management must vest in the members alone. "Autonomy is therefore a corollary of democracy" as said by the Principles Commission.

Government often lay down rules on matters that should

be dealt with by the members themselves. To legislate to ensure the observance of cooperative principles is one thing but to lay down internal disciplines by law is another. Even provisions which are *per se* healthy for a cooperative society's internal management become regimentation when they are laid down from above. When they are adopted by the members of their own free will, as their bylaws or working rules, they become internal disciplines of great moral value. Such internal disciplines result in material benefit as well, and so, "by a single motion cooperation raises the people's standards materially as well as morally. If it failed in its moral task, it would also fail in its economic one." (Fauquet). When internal disciplines are laid down by the law of the land or any outside authority, they offend against the autonomy of the members and of the society. As has been pointed out, this autonomy is a corollary of cooperative democracy. The power given to the Registrar to prescribe matters on which bylaws should be made is to ensure that the essential self-regulations are made by a cooperative society for imposing on itself the necessary cooperative disciplines to ensure its working on cooperative lines and no other. Such power would not entitle the Registrar to ask the society to frame bylaws which give him certain powers. Not only would such request be amoral but such bylaws would be *ultra vires* because the Registrar, as such, can derive powers only from the State.

(e) *Final Authority in a Registered Society (Section 26)*

The principle of Democratic Control means that .

- (1) the general meeting of the members of a cooperative society is the supreme authority in regard to the conduct of the affairs of the society ;
- (2) the members of a primary society shall enjoy equal rights of voting and participation in decisions affecting their society, each member having only one vote, and the members of a federal society shall enjoy these rights provided that they may enjoy voting power on any other democratic basis ;



- (3) the affairs of the society are administered by the management in accordance with the democratically expressed majority will of the members ;
- (4) the management is elected or appointed in a manner agreed by the members ; and
- (5) the management is accountable to the members.

The supreme authority of a society vests in the general meeting of its members. The aim of the common undertaking is to satisfy the needs of the members. It follows that the source and exercise of power in respect of the common undertaking must lie with those whose needs gave birth to the undertaking. Thus Cooperation establishes the sovereignty of the individual person by locating "the origin and exercise of power at the very origin of needs : man then remains his own master, and the organisation is his servant" (Fauquet). The members must therefore remain in ultimate control of their undertaking. Hence the unequivocal acceptance by the 24th ICA Congress (Hamburg, 1969) of the submission, made by Messrs Kerinec (France) and Thedin (Sweden) in their joint paper, that 'democracy is the very essence of Cooperation.' This was echoed by Mr. Klimov of the USSR in the words "if this essence ceases to exist, Cooperation dies or is degenerated" and re-echoed by Prof. Lambert of Belgium. He said "it is not many years, I think, since the majority of practising cooperators and theoreticians of Cooperation would have affirmed that the dividend was the essence of Cooperation. Here we see a most welcome change of perspective since it is obvious that democracy is the principle which best distinguishes us from any other economic and social system and that at the same time this principle offers the greatest hope for the future".

As said by Messrs Kerinec and Thedin, "Cooperation is not merely a means of attaining limited economic goals, it is not merely a type of economic undertaking or democratic organisation soundly rooted in everyday life and the common needs of its members, it is also a vision of the future. We refer to it because

this vision of the future is intimately bound up with the vitality of cooperative democracy”.

(f) *Restrictions on other transactions with non-members*  
(Section 38)

A cooperative society is an association for the satisfaction of the common economic needs of its members on the basis of mutual aid and profit-elimination. Therefore its dealings should be exclusively with its members. However, it could happen that a minority of non-members may have to be served on grounds of compassion, if they have no other means of obtaining their requirements. It may be the result of the success of that very cooperative that there is no other place which could meet the requirements of the non-members. Normally such non-members should be enrolled as members before a society trades with them. But it could be that some of these non-members are too poor to buy shares in the cooperative. Such non-members may be served by the cooperative. The percentage of non-members in the entire clientele of a cooperative should however be very small. Care should also be taken to see that the profits made by trading with non-members—and that would be real profit—are not distributed among the members. The Principles Commission says: “The society must itself be scrupulous in dealing with any revenue which accrues from dealing with non-members using its regular services: if it is not reserved for individual non-members as an inducement to them to apply for membership, then it should be devoted to some purpose of common benefit, preferably for the wider community beyond the society’s membership. In no case should it be added to the savings distributed to members, otherwise they would participate in profits in a manner that Cooperation expressly abjures.”

(g) *Closure of Liquidation* (Section 56)

The surplus remaining after all claims have been met is to be paid to the federal society to which the liquidated society was federated. This is a departure from the usual arrangement of the Registrar keeping the surplus for any future society operating in

the same area as that of the liquidated society. Such a society may never be formed. Moreover it is but right that the co-operators keep their own surpluses.

(h) *Disputes (Section 59)*

The usual provision in a Cooperative Law is for compulsory arbitration. But I have provided for arbitration on a reference made by mutual consent. Compulsory arbitration by the Registrar or his nominees is not in keeping with the democratic character of Cooperation. This type of arbitration was introduced into the Developing Countries solely as a measure of assistance to the co-operators and cooperatives of the early days of cooperative development, when cooperatives were small and simple societies to meet the small and simple needs of small and simple people. Such societies and people could ill-afford the luxury of resolving their disputes in the law courts. But they would be tempted that way. Hence the compulsion. The position is different today. These disputes relate to large sums of money and are such as would be adjudicated upon by law courts of high standing. It is obviously unfair to refer them to laymen. There is no justification in depriving cooperatives, their members or employees of the right which all citizens have of seeking justice from the Courts of Law.

18. This Model Law has been drafted in the hope that it will serve as a starting-point for those who wish to re-draft their cooperative laws so that these would be in conformity with the Principles of Cooperation. Real cooperative development cannot take place if the law governing cooperatives violates the principles and ideals of Cooperation.

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### **INTERNATIONAL COOPERATIVE ALLIANCE**

Regional Office & Education Centre for South-East Asia  
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# ***The International Cooperative Alliance***

is one of the oldest of non-governmental international organisations. It is a world-wide confederation of cooperative organisations of all types. Founded by the International Cooperative Congress held in London in 1895, it now has affiliates in 66 countries, serving over 326 million members at the primary level. It is the only international organisation entirely and exclusively dedicated to the promotion of cooperation in all parts of the world.

Besides the Head Office of the ICA, which is in London, there are two regional offices, viz., the Regional Office & Education Centre for South-East Asia, New Delhi, India, and the Regional Office for East and Central Africa, Moshi, Tanzania. The Regional Office in New Delhi was started in 1960 and the office in Moshi in 1968.

The main tasks of the Regional Office and Education Centre for South-East Asia are to develop the general activities of the Alliance in the Region, to act as a link between the ICA and its affiliated national movements, to represent the Alliance in its consultative relations with the regional establishments of the United Nations and other international organisations, to promote economic relations amongst member-movements, including trading across national boundaries, to organise and conduct technical assistance, to conduct courses, seminars and conferences, surveys and research, to bring out publications on cooperative and allied subjects and to support and supplement the educational activities of national cooperative movements. The Regional Office and Education Centre now operates on behalf of 14 countries, i.e. Australia, India, Indonesia, Iran, Japan, Republic of Korea, Malaysia, Philippines, Singapore, Sri Lanka and Thailand.

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