

Facilitation of Effective Cooperative Legislation in Selected Countries of Asia :

A Study Report

V.P.Singh
Regional Consultant



International Co-operative Alliance
Regional Office for Asia and the Pacific

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Foreword

Cooperative Laws are the main instrument in the Asian countries, which influence & determine, to a great extent, the complexion of Cooperatives. They also reflect the approach and outlook of the State towards Cooperatives and the nature of relationship between the two, namely Government and the Cooperatives. Law is also an instrument of education of people, for what is incorporated in law is taken to be true. Hence Cooperative Laws, which deal primarily with peoples welfare and aspirations ought to be formulated with greater care and caution.

Cooperative Law in most countries of Asia was initiated by the colonial rulers who had found in Cooperatives a useful agency to provide relief to farmers and workers. While the colonial rulers did want to extend relief to the weaker section of the society, to overcome discontentment, they did not want cooperatives to become a ground of people's aspirations and possible development of political leadership. Thus, they gave autonomy in the operations and working of the cooperatives, ensured that the cooperative leadership were honest, sincere, efficient, commanded respect within the society, but at the same time, they also ensured that the office-bearers were politically loyal to the government. This was achieved through the agency of the Registrar of Cooperative Societies who was usually a senior, efficient bureaucrat and known as friend, philosopher and guide.

In the last four decades, all Asian countries have become free from colonial rule and along with that there have been many changes in the cooperative laws, policies towards cooperatives and application of the cooperative laws. While there has been increased commitment and support for the cooperatives by the governments, there has also been, in some cases, not only more control over the affairs of the cooperatives, but they have often been treated as government corporations, changing the basic nature of the cooperatives. Also, some new provisions have been initiated in new legislations like in the Philippines that could be of interest to many countries.

This Study of the Cooperative Laws of six countries, I believe, will be a useful material to understand the present situation of Cooperative Laws and their impact on the character and working of the cooperatives.

I appreciate the efforts put in by the Regional and National Consultants in the completion of this study.

New Delhi
January 24, 1990

G.K. Sharma
Regional Director
International Cooperative Alliance
Regional Office for Asia & the Pacific

Introduction

The ICA Regional Office, New Delhi, undertook a project on "Facilitation of Cooperative Legislation in Asia". The objectives of the project study were detailed in the Memorandum of the Canadian Cooperative Association. I was appointed the Lead Consultant and Judge Manuel F. Verzosa for Philippines, Mr. Chern Bamrungwong for Thailand, Mr. Asnawi Hassan for Indonesia, Mr. R.P.P. Rajapakse for Sri Lanka and Mr. B.D. Sharma for India were appointed as Country Consultants. I prepared a questionnaire and circulated it to the Country Consultants for giving a reply to the questionnaire in the context of the existing laws and prevailing situation in each country. The questionnaire was replied to by all the country consultants and thereafter a workshop was held at Bangkok to discuss the various aspects of the study keeping in view the replies given by the country consultants. This workshop was attended by Mr. G.K. Sharma, Regional Director, ICA Regional Office for Asia and the Pacific, New Delhi.

The countries under study are pre-dominantly agricultural in nature, but still the social, economic and political systems are quite divergent. This divergence is reflected in the cooperative laws governing the functioning of cooperative societies in these countries. In all the countries under study, although the Government plays a significant role in encouraging the cooperatives, there is a feeling amongst cooperators that the cooperative ventures will be more successful if the Government interference is reduced to the minimum. It need hardly be emphasised that the basic character of a cooperative society is its democratic functioning. Therefore, the study report has attempted to analyse the country situation and to emphasise the beneficial aspects of law prevailing in one country so as to be emulated, if possible, by other countries in the region.

I am personally indebted to the Country Consultants who spared their valuable time and gave an analytical reply to the questionnaire to enable me to prepare the report. Gratitude is also expressed to the host organisations in the countries under study who spared no effort to make this study possible. Finally, I express on my own behalf and on behalf of the Country Consultants my gratefulness to Mr. G.K. Sharma, Regional Director, ICA Regional Office for Asia and the Pacific, New Delhi.

New Delhi
25.12.1989

V.P. Singh
Regional Consultant

Background

The ICA ROA convened a Regional Consultation on Role of Governments in promoting cooperative development in Asia in June, 1988. The consultation recommended that ICA ROAP should undertake a study of cooperative laws in the region in order to delete the restrictive provisions and additions of new provisions for facilitation/cooperative development. Accordingly, this study was undertaken with the following objectives:

- i. to identify constraints to cooperative development;
- ii. to identify features which are not in accordance with cooperative principles; and
- iii. to suggest additional provisions needed for facilitation of cooperative development.

Countries covered by the study are Bangladesh, India, Indonesia, Philippines, Sri Lanka and Thailand. A comprehensive questionnaire was formulated and circulated to country consultants to prepare study reports on their country situation. Completed questionnaire was received from India, Indonesia, Philippines, Sri Lanka and Thailand. Besides, regional consultant also held discussions with the cooperative officials and Leaders in India, Indonesia, Philippines and Thailand. The country study reports were discussed in a Regional Workshop held on 17th and 18th October, 1989 in Bangkok. Based on country study reports and discussions at the Regional Workshop this study report has been prepared.

Objectives of national development vis-a-vis cooperatives

In all the countries of the region, the basic objective of national development is alleviation of poverty and to ensure economic growth with social justice and equity, cooperatives, being peoples organisations based on the principle of democratic control have been recognised as an important instrument of economic development particularly that of rural areas by the national governments, which also provide a variety of assistance to them. Thus, a dual responsibility i.e. implementation of government sponsored developmental programmes and fulfilment of the members' objectives and expectations has been assigned to cooperatives in the countries under study. In India and Indonesia, the national development plan documents specify the role of cooperatives in national development. Article 33 of the Constitution of Indonesia states as follows :

- i. "the economy shall be organised as a joint endeavor based upon principle of brotherhood;
- ii. branches of production which are important for the states and which affect the life of most people shall be controlled by the state;
- iii. land and water and natural riches contained therein shall be controlled by the state and shall be used for the maximum prosperity of the people".

Although specific mention about the status of cooperation in the Constitution of Indonesia has not been made, elucidation of Article 33 signifies that the organisation of economy based on the principle of brotherhood and joint endeavour is in conformity with the principle and philosophy of cooperation. Therefore, the direction inherent under Indonesian constitution for organisation and development of economy is towards forming the enterprises based on the principles of joint endeavour and brotherhood i.e. cooperatives. The constitution of Philippines also provides specific direc-

tions to the state for promoting cooperatives. Article XII vide its section 1, 2, and 6 mentions different aspects of obligations of the state to promote cooperatives. Section 1 mentions equitable distribution of opportunity, income and wealth, sustained increase in goods and services, expanding productivity for raising the standard of life of weaker sections sound agricultural development and agrarian reforms and protection of Filipino enterprises etc. as important objectives of national economy. With a view to achieving these goals the constitution visualizes, "private Enterprises, including corporations, cooperatives and similar collective organisations shall be encouraged". Similarly, section 2 mentions promotion of cooperative fish farming with priority and subsistence to fishermen. Section 15 of the said article XII of constitution of Philippines makes it obligatory on the states to create "an agency to promote the viability and growth of cooperatives as instruments of social justice and economic development." While Indian Constitution does not make explicit provisions about cooperatives, its Article 46 of Directive Principles of State Policy specifies that state shall take steps to promote village and cottage industries on individual or cooperatives lines. Under recent 13th amendment of Sri Lanka laws subject of cooperation except cooperative banking devolves on provincial government.

In some countries of the region, specific national policy statement on cooperatives has also been issued by the governments. For example, Government of India issued National Policy Statement on Cooperation in 1977 giving guidelines for cooperative development. In Indonesia although specific national policy statement on cooperatives has not been issued, the policy direction for cooperatives development are given in the National Development Plans which defined broad outlines of a state policy. In 5th Five Year Plan specific document of pattern cooperative cultivation and development was decreed by the Minister of Cooperation. In Philippines also national policy direction on cooperative has been incorporated in Cooperative Code of Philippines which is under consideration of parliament. Section 3 of the said code specify the declaration of the policy and section 4 specifies the objectives of the policy making it incumbent on the state to foster the creation and growth of cooperatives for increasing national productivity. In other countries under study specific national policy statements are not available. However, it is gathered that cooperation finds an important place in the documents of the national development Plans.

Constraints of cooperative development

Main constraints of cooperative development as revealed through discussions held in various countries covered under study may be classified in the following categories:

- (a) Policy constraints;
- (b) Administrative constraints;
- (c) Organisational constraints.

Policy constraints arise due to lack of clear definition of the policy on cooperative development. Although the governments of the countries covered under study have adopted some policy resolution for development of cooperatives, these resolutions are not enforceable. There is no legal obligation on the governments to implement these policies. With the result, there have been a lot of deviations in the policy and its implementation. As already stated that in these countries, a dual responsibility has been assigned to cooperatives - they are expected to fulfil the members' expectations as defined in the bye-laws and at the same time they act as implementing agency for government programmes.

Administrative constraints relate to role of department of cooperation of the government. Except in Thailand, the department of cooperation has the dual responsibility of administration and promotion of cooperatives. In actual practice administration gets precedence over the promotional role of the government. Another dimension of this constraint is that in view of assigning the responsibility of promotion and administration of cooperatives to government, extensive powers have been given to the latter. There are instances where these powers have been used without any regard to cooperative principles and philosophy; thereby inherent visualization of cooperative law to promote cooperatives in accordance with principles of cooperation is contradicted and negated.

Organisational constraints emerge due to alienation of members from the cooperative constituted by them. Involvement of members in shaping cooperative organisation for fulfilment of their common economic interests is necessary pre-condition for coop-

erative development. Although cooperative legislation of all the countries studied mentions rights and liabilities of members, it does not define that members' need/expectations are legally enforceable. As a result, the cooperative laws, as presently framed, do not function as an instrumentality to meet the aspirations and expectations of the members.

Evolution of Cooperative Law

Cooperative law in countries covered by the study has passed through various stages. As these countries were under alien rule, cooperative law in the initial stages was formulated by the then colonial governments with specific purpose of providing certain services to the farmers and also to evolve a mechanism to regulate and control the cooperative organisations.

In India first Cooperative legislation named "Cooperative Credit Societies Act 1904" was enacted for facilitating the organisation and regulation of agricultural credit cooperatives. Subsequently in 1912 this Act was repealed by another Act known as Cooperative Societies Act 1912 enacted to broad-base the scope on cooperative law. Third stage in the evolution of cooperative law begins with the constitutional reforms in 1919 when cooperation became provincial subject authorizing provincial governments to enact their own cooperative law. After independence, cooperative law was changed and amended for tailoring it to the requirements of national development programmes which visualized cooperation as an instrument of economic planning. A number of expert committees were appointed from time to time to suggest changes in cooperative law. Cooperative Law Committee of 1955 was constituted to examine and make recommendations to incorporate necessary provisions for giving effect to the concept of state partnership in cooperative development. The committee suggested a model cooperative societies Bill which provided guidelines for future cooperative law.

National Development Council, the highest policy making body of the nation, in 1958, emphasised the need for simplification of cooperative law by removing restrictive provisions therefrom. Detailed guidelines were issued by the central government to various states. Other important land-mark in the evolution of cooperative law was implementation of the recommendations of the Committee on Cooperation (1965) which made important

recommendations for incorporation of cooperative principles in cooperative law; devolution of powers of the Registrar Cooperative Societies on the federal cooperative organisations; incorporation of provisions for removing vested interests; promotion of cooperative leadership; and development of genuine type of cooperative societies. However, trends in development of cooperative law that followed subsequently present an altogether different picture. With the increased assistance of the government to cooperatives, the control of the government has also been made stronger and tighter through incorporation of provisions in cooperative law.

In very recent past the Government of India appointed an expert committee known as Committee on Cooperative Law for democratizing and professionalising the management of cooperatives. The committee has made important recommendations to democratise the cooperative movement and at the same time to ensure professional management of cooperatives, which has become most essential in the wake of their multi directional expansion.

Other countries of the Indian sub-continent also present similar trends in evolution of cooperative law. Important consideration in Sri Lanka and Bangladesh has been tailoring the cooperative law to the requirements of the government which utilizes cooperatives as its agency for development.

In Sri Lanka the first cooperative law enacted in 1911 was based on Indian Cooperative Credit Societies Act of 1904. Subsequently in 1921 the cooperative law was formulated with a wider scope allowing the organisation of other types of cooperative societies and also federal cooperative bodies. The ordinance of 1936 emphasised the registration of cooperative societies if they fulfilled general cooperative principles and it also made provision for settlement of disputes through arbitration. Amendment act of 1949 empowered the Registrar of Cooperative Societies to supersede the management committee of a cooperative institution after inspection or enquiry. In 1972 further provisions were added in the cooperative law empowering the Registrar Cooperative Societies to surcharge the officials after audit of a society. Another important trend in 1972 was enactment of Cooperative Employee Commission Act of 1972 empowering the government to establish a

Commission with powers to determine methods of recruitments, salary, scales, disciplinary proceedings of cooperative employees. The latest amendments made in cooperative law in Sri Lanka were through Cooperative Societies (Amendment) Act No. 32 of 1983 which authorized the Registrar to suspend or interdict or remove officers of a society, after inspection, enquiry or investigation.

Indonesia was also under alien rule till 1949 when it became independent. The history of Indonesian cooperative Law dates back to 1915 when first regulation for cooperatives was issued by the then Dutch government. The regulation was based on Netherlands Cooperative Act of 1876. Although the regulation provided a legal frame-work for organisation, management and business of all cooperatives, it also gave powers to government to control and regulate the internal autonomy of cooperatives. This regulation was replaced in 1927 by a general regulation for cooperative societies based on the provisions of 1912 Cooperative Societies Act of India and Rural Credit Laws of Philippines. It emphasised greater involvement of government in the development of cooperatives. It also provided legal rights to the local people in forming their cooperative societies and managing them under the guidance of Advisor for People Credit Affairs and the Cooperatives. In 1933 the alien government issued another General Regulation (No. 21 of 1933) which repealed the 1915 Cooperative Regulation. Consequently two types of cooperative law were prevalent in Indonesia till 1949 - 1927 regulation for native groups and 1933 cooperative regulation valid for people obeying western law. Such sort of situation created confusion and therefore in 1949 the alien government issued another regulation repealing 1927 cooperative regulation.

Year 1958 witnessed another amendment in Indonesian cooperative law making provisions for cooperative principles, objectives and the business and role of government relating to establishment of cooperatives, their administration, supervision, audit, dissolution etc. It was also provided that the government should give aid to cooperatives in the form of protection, education, subsidy, tax exemption etc. - Political Manifest of 1959 called for amending cooperative law to define the role of cooperatives so that their activities and operations become a tool to implement Indonesian economy based on socialism. Specific article and

segment in the law was added to enunciate the principles of cooperation. In 1965 the cooperative law was amended very extensively to meet the requirements of Presidential Decree which visualized integration of all social institutions including cooperatives with the objectives of Indonesian revolution. With the result government's role was very much enhanced resulting into government interference. In 1967 with the change of political situation in Indonesia the cooperative law was again amended providing novel provisions for following aspects of cooperatives:

1. Cooperative foundations;
2. Cooperative core-values;
3. Roles and Duties of members;
4. Role of Government.

Cooperative movement in Philippines has also been a government sponsored movement. To meet its objectives two special laws - (1) Agricultural Credit Association Act and (2) Cooperative Marketing Law in the sphere of agricultural credit and marketing respectively were enacted in 1915. Agricultural Credit Association Act was repealed in 1957 by Philippines Non-Agricultural Cooperative Act. Cooperative Marketing Act enacted in 1927 which provided for organisation of farmers cooperative marketing association, was repealed in 1973 by the Presidential Decree No. 175.

The above mentioned special laws were visualized under Corporation Law which did not provide for government sponsorship. General Basic Cooperative Law was enacted in 1940. However, during war of liberation from Japan these cooperatives were destroyed. Subsequently the government enacted Agricultural Credit and Cooperative Financing Act in 1952 to provide finance to farmer and marketing cooperatives. For organising non-agricultural cooperatives Philippines Non-agricultural Cooperation Act was enacted. In 1973, with the imposition of martial law, presidential decree was issued providing for general basic cooperative law and to hasten agrarian reforms and rural electrification through cooperatives. The 1986 constitution gave constitutional recognition to cooperatives as an instrument for social justice and economic development. Now, the cooperative law of Philippines is

Under revision and the amended cooperative bills are under consideration of Parliament.

In Thailand also the cooperative law has passed through various stages. First it was enacted in 1968 - known as Cooperative Law of Thailand. It was divided into two parts - one for cooperatives with limited liability and one for coops with unlimited liability. In 1978 a five year cooperative development plan was prepared: The plan also visualized thorough redrafting and amendment of Thai Cooperative Law. Accordingly, new cooperative law has been formulated, which provides for constitution, registration, organisation, supervision of cooperative societies.

Above mentioned evolutionary stages in different countries reveal the following characteristics of cooperative :

- a. Cooperatives in all these countries have been part of government sponsored programmes for development;
- b. Cooperative law has been so shaped that it gave adequate and effective say to the government to control cooperatives;
- c .Cooperative law has visualized cooperatives primarily as institutions for farmers' development; and
- C. In some countries, cooperation has been given constitutional recognition.

Cooperative law as facilitator of cooperative development

Cooperative development implies the following aspects:

- i. Organisation and registration of genuine cooperative societies functioning in accordance with principles of cooperation;
- ii .Growth and expansion of self-reliance and self-management in cooperatives; and
- iii. Effective and positive support of the government and involvement of cooperatives in implementing government sponsored development programmes.

Cooperative law in most of the countries covered under study has attempted to fructify these aspects of cooperative development by making provisions for incorporation of cooperative principles; ensuring growth of genuine cooperative societies; development and strengthening of democratic management in cooperatives; defining the role of the government; outlining the modes for strengthening financial resources of cooperatives. In the segments of the study report, that follow, attempt has been made to discuss these aspects.

Incorporation of Cooperative Principles

One of the important trends that is being noticed, of late, is growing consciousness among the countries under study to incorporate principles of cooperation in the law itself. Almost in all the countries cooperative law provides that adherence to principles of cooperation is an important condition for registration and incorporation of a cooperative society. Cooperative law of all the countries except that of Sri Lanka has incorporated principles of cooperation. However, in some of the countries, the ICA pronounced principles of cooperative have been remodelled.

Article 6 of Cooperative Law of Indonesia 1967 mentions following principles of cooperation:

- i. Voluntary and open membership;
- ii. Supreme power to general body of members;
- iii. Distribution of net surplus in proportion of services by each of members;
- iv. Limitation of interest earned on capital;
- v. Improvement in the welfare of members in particular and society in general;
- vi. Business and management of the society to be open;
- vii. Self-help, self-activity and self-sufficiency a reflection of basic principle of cooperation.

Presidential Decree No. 175 in Philippines which outlined the general cooperative law accepted ICA formulated cooperative principles i.e. open and voluntary membership, democratic control, limited interest on capital and savings belong to members as basic principles of cooperation. The new law in Philippines which is under consideration of Parliament vide Section 6 has incorporated all the universally accepted principles of cooperation enun-

ciated by ICA. The law has also given explanation and interpretation of these principles so as to avoid any ambiguity. Section 6 of Cooperation code of the Philippines include the following principles of cooperation:

- i. Open and voluntary membership;
- ii. Democratic control;
- iii. Limited interest in capital;
- iv. Equitable distribution of surplus;
- v. Cooperative education; and
- vi. Cooperation among cooperatives.

The new cooperative Law of Thailand [Section 7(2)] dealing with the registration of cooperative societies mentions the following cooperative principles:

- i. Open and voluntary membership;
- ii. Provisions of services mainly for the members of society;
- iii. Democratic control of the society;
- iv. Fair and just distribution of economic results arising out of the operations of the cooperative enterprises;
- v. Indivisibility of reserve fund;
- vi. Promotion of education in Cooperative matters; and
- vii. Cooperation among cooperatives at local, national and international levels.

In India also steps have been taken to incorporate cooperative principles. While only some of state cooperative laws have made provisions for incorporating principles of cooperation, the Multi State Cooperative Societies Act of 1984 enacted by Parliament of India has specifically/defined cooperative principles in its first schedule as follows:

- Membership of a multi-state cooperative society should be voluntary and open, without any social, political, or religious discrimination, to all persons who can make use of its services;

- ii. In a society other than that with institutional membership, individual member should enjoy equal rights of voting-one member, one vote; and
- iii. Surplus or savings, if any, arising out of the operations of the society belong to the society as a whole and no individual members has a claim to the surplus.

The surplus should be utilised for all or any of the following purposes namely;

- a. providing for development of the business of the society;
 - b. providing services for the common employment of members; and
 - c. distributing among the members in proportion to their transaction with the society.
- iv. The society should undertake education of its members, office-bearers and employers and the general public regarding the principles and practice of cooperation;
 - v. The society should actively cooperate in every practical way with other cooperative societies at local, national or international levels;
 - vi. The share capital of a society shall receive strictly limited rate of interest (that is to say dividend);
 - vii. The affairs of a society should be administered by the management in accordance with democratically expressed will of members;
 - viii. The management of the society is accountable to its own members.

From the above description it may be seen that the universally accepted principles of cooperation formulated by ICA have been incorporated with suitable modification/structuring, keeping in view the national perspective about cooperative development.

Organisation and Registration of Genuine Cooperative Societies without any Hindrance

Although cooperative laws of all the countries covered under study define a cooperative society, they do not spell out criteria for genuineness. Theoretically speaking, a genuine cooperative society is that society which follows cooperative principles in carrying out its business and activities. Articles of Basic Regulation of Cooperatives in Indonesia defines cooperative societies as follows :-

“Indonesian cooperative is a people’s economic organisation with a social character, having persons or local cooperative societies as members, forming an economic system as joint endeavour based upon the principles of brotherhood”.

The new cooperative law (Cooperative Code) in Philippines defines a cooperative society as an association of natural persons, with a common bond and who have voluntarily joined together to achieve a common social or economic end, making equitable contribution to the capital required and accepted a fair share of the activities and benefits of the undertaking in accordance with universally accepted principles of cooperation The cooperative code of Philippines also defines the cooperative basis, in the words, “Cooperative basis means the carrying on of an enterprise organised, operated and administered in accordance with the principles, methods and philosophy of cooperation”.

Cooperative laws of India, Sri Lanka and Thailand does not define a cooperative society. In these acts a cooperative society means a society registered under the law for the time being in force.

So far as registration of cooperative societies is concerned, specific provisions have been made in the cooperative law of all the countries covered under this study. In India only those cooperative societies can be registered whose main objective is to promote the

common economic interest and social development of the members through mutual aid in accordance with the cooperative principles. In some of the state cooperative laws, promotion of social betterment and public welfare along with fulfilment of common economic interests of the members has also been accepted as one of the pre-conditions for registration of a cooperative society. The Multi State Cooperative Societies Act, 1984 mentions that objects of the cooperative society should be to promote the "economic and social betterment of its members through mutual aid in accordance with the cooperative principles" Provisions on similar lines have also been made in the cooperative law of Bangladesh. Vide Section 8 of Bangladesh Cooperative Societies Ordinance, 1984, promotion of common interest of the members in accordance with the cooperative principles is a condition precedent to the registration of a cooperative society.

Sri Lankan Cooperative Law does not mention the fulfilment of common economic interest as one of the conditions for registration. The Section 4, 5 and 6 of Cooperative Law of Sri Lanka mentions the following conditions for registration :

- (a) Application by at least 10 persons;
- (b) Economic feasibility of the activities in which society purposes to encourage itself.

The new Cooperative Law of Thailand vide its section 7 read with Section 12 identifies (a) promotion of economic interest of members; and (b) prospective viability of society as two important conditions for registration.

Cooperative Code of Philippines also mentions purposes, for which societies can be organised, in detail in section 10. Satisfaction of the needs of the members is the basis for registration

The basis of registration visualized under Indonesian Cooperative Law (Article 41) is that the society should be peoples economic organisation with a social character having persons of local area and cooperative societies as members forming an economic system as a joint endeavour based upon principles of brotherhood.

In nut shell, homogeneity of economic interest and social development become the principal basis for organisation of a

genuine cooperative society. However, experience has shown that inspite of fulfilment of criteria laid down for defining the basis for registration, applications for registration/ incorporation of cooperative societies remain pending with the registering authorities for some reasons or other. This results in curbing the growth and expansion of cooperative organisations in new spheres. An objective analysis of such state of affairs reveals discretionary power of the registering authority incorporated in Cooperative Law as the principal reason for delay in registering cooperatives. There are no well defined parameters for exercising discretion by the registering authority in taking decisions about registration of a society. In view of the importance of this subject, the provisions of Law regarding registration are analyzed next.

In Bangladesh, India and Sri Lanka the authority for registration vests in Registrar while in Indonesia, Philippines and Thailand Minister for Cooperation is empowered to register a cooperative society. Cooperative Law in India, Bangladesh and Sri Lanka does not make effective provisions to curb the arbitrary exercise of discretionary power by the registering authority. Although provisions for prescribing time limit for disposal of registration applications have been made in these countries, yet the tendency to create difficulties and obstructions in the organisation and registration of new cooperative societies has not been effectively checkmated.

The new Cooperative Law of Thailand has made a good provision by imposing an obligation on registering authority to register the cooperative society if it fulfills conditions laid down in the law. Section 12(3) provides that Registrar has no alternative but to register a cooperative society if it fulfills all the prescribed conditions. However, if he thinks that the proposal requires further modification/alteration/ reconsideration of the promoters, he can refer back the same to them for taking necessary action for fulfilling all the requirements and objections raised by the Registrar. Once the members have complied with the requirements, Registrar shall have to register the society, and its bye-laws. Even if he refuses to register the society he has to convey the reasons for his refusal. In this context it will be interesting to quote section 12(3) of new Cooperative Law of Thailand. "If on the basis of the information provided to him under sub-section (2) of section 11 of this Act and sub-section (2) of this section, the Registrar is of the opinion that

the applicants for registration requires more educational and advisory work, or expected membership appears too small for satisfactory commencement of operation, or more time is necessary to raise the required capital or that more training is admissible for persons to become officers of the society, he may give directions for more educational and advisory work, or more time to raise capital, or more training as the case may

The Cooperative Code of Philippines is one step ahead of Thailand. It has made provision for deemed registration of a cooperative society, in case Registering Authority fails to take decision in a prescribed time-frame mentioned in the cooperative law. Section 18 of the code dealing with the registration is mentioned as under :

“A cooperative that has complied with the provisions of this code, and whose proposed articles of incorporation and bye-laws are not contrary thereto, shall be registered within 30 calendar days from the date of such complaints..... If the registering officer refuses to register a cooperative or its amendment, he shall state in a written order the reasons for such refusal. An appeal for reconsideration of the order of the registering officer refusing to register a cooperative within 30 days from date of receipt of such order by the secretary of the proposed cooperative shall be filed with the governing board of the authority. The governing board of the authority shall make a decision within 30 days from the date of receipt of an appeal and such decisions shall be final. If after 30 days no decision has been made, the cooperative and/or its amendments shall be automatically registered.”

In Indonesia authority for registration of a cooperative society lies with the minister or the person to whom the authority has been delegated. Article 42 of Basic Regulations for Cooperatives of Indonesia inherently visualize that the registering authority is obliged to register a cooperative society, if it fulfills the parameters and conditions stipulated in cooperative law. The time limit for registration is 6 months mentioned in Article 46. The refusal has to be conveyed in writing along with reasons within 3 months prior to the expiry of the prescribed period. The appeal lies with the minister who is obliged to take decisions within 3 months from the date of appeal. There is no provisions for deemed registration. In one of the State Cooperative Laws of the India provision has been

made to constitute registration council for check-mating the arbitrary decisions of registering authority. Further, the provisions also stipulate that registration applications should be routed through cooperative unions which are the promotional bodies of the cooperatives.

In the countries covered under study governments are obliged to promote cooperatives. In this context variety of financial assistance is given to the cooperative societies. It has also been observed that vested interests try to take advantage of the situation and promote non-genuine and pseudo cooperatives. In view of this it is necessary that the cooperative law should make provisions which would help in curbing the growth of non-genuine cooperative societies. In Indonesia specific decree of the Minister of Cooperation (Article 2 of the Ministerial Decree) has been issued specifying the pattern of organisation in rural areas. It is stated as follows :

- i. "basically there is only one form and one type of village unit cooperative;
- ii. the establishment of other cooperative societies outside the village unit cooperative in the rural areas can only be implemented with the approval of the minister of cooperatives."

Although in India such restriction has not been introduced, the common practice is that a cooperative society cannot be registered if a society with similar objective is functioning in the same area of operation. In Sri Lanka also there is no specific restriction on the promotion of various types of societies. However, emphasis varies depending on the importance and priority given by the government. For example, after introduction of multi-purpose cooperative societies other types of cooperatives were not registered. In Philippines & Thailand no such restriction exists.

Membership of Cooperative Society

Members constitute the foundation of a cooperative society. According to cooperative philosophy the membership should be open and voluntary and only users should be the members in a cooperative society. This is necessary, particularly, to ensure genuine membership of a cooperative society. Cooperative laws in the countries covered under study have made different provisions. These provisions may be classified into two categories :

- i. the provisions which give general eligibility condition for the membership of cooperative society; and
- ii. the provisions which obstruct the entry of vested interests in a cooperative organisation.

Eligibility conditions

Article 10 of Indonesian Cooperative Law lays down following eligibility condition for the membership of a cooperative society:

"any Indonesian citizen who (a) is capable of performing legal action; (b) accepts cooperative ideological foundation, core values and principles; (c) is capable and ready to do the obligations and rights as a member as mentioned in this law, the bye-law, the working rules and other cooperative regulations shall be eligible for membership of a cooperative society".

Likewise, in other countries also specific provisions have been incorporated to regulate the membership in a cooperative society, in the Cooperative Societies Acts, Rules and Bye-Laws. In India, for example, section 19 of Multi-state Cooperative Societies Act defines the eligibility conditions for the membership of a cooperative society. Important conditions stipulated in this Section are competence of an individual to enter into contract; and he should

belong to such class or classes of persons as may be permitted by the central registrar having regard to the nature and activities of a Multi-state Cooperative Society. Besides, central government, state governments, any government corporation and government company are also eligible to become member of a cooperative society. Eligibility conditions for different functional cooperative organisations are mentioned in the bye-laws of the concerned cooperative organisations. In many of the states, specific directives have been issued by the government to define the eligibility conditions for the membership in a cooperative society. In Sri Lanka, the bye-laws of different types of cooperative societies provide eligibility conditions. Similarly, in Bangladesh, the cooperative societies rules and the bye-laws of concerned cooperative organisations specify the eligibility condition of the members. Rule 10 Sub-Rule 3 of Bangladesh Cooperative Societies Rules mentions as under :-

“No person shall be eligible for the membership of a cooperative society unless such person - (a) has attained 18 years of age; (b) belongs to the same class or occupation; (c) resides in the same town, village or union; and (d) has deposited in the savings account opened with the society an amount equivalent to the paid up value of at least 1 share.

Provided that, in case of agricultural cooperative society, Krishi Samavaya Samiti; or Krishi Samavaya Samiti, such person has in his possession more than 40 decimal of cultivable land within the area of operation.....”

The Cooperative Law of Philippines vide its sections 27 and 28 define the persons who may be the members of cooperatives and kinds of membership. Section 27 mentions that any natural person, cooperative, or non-profit organisation with juridical personality shall be eligible for membership in a cooperative if the applicant meets the qualifications prescribed in the bye-laws. Section 28 defines the kinds of membership. It recognizes two types of membership, viz. regular members and associate members. While the former has fullfledged rights of membership, the latter has no right to vote and to be voted upon. The bye-laws make specific provisions about the conditions for regulating the membership.

The new cooperative law of Thailand vide its Section 37 and 38 specify the eligibility conditions for the membership. Important conditions for a membership in a cooperative are - (a) competence of the members for contract; (b) citizenship of Thailand; (c) fulfilment of conditions and requirements as defined in the bye-laws.

Summing up the provisions in cooperative law/rules of various countries covered by the study, common economic interest, eligibility to perform contractual obligation and fulfilment of terms and conditions stipulated in the bye-laws of a concerned cooperative society are the common consideration accepted in all the countries. However, in Indonesia, faith of the person in the cooperative foundation and ideology is also one of the important conditions for membership.

Restriction on entry of vested interests

Other important issues related to membership are the restriction on the entry of the vested interests or the persons whose interest are likely to conflict with the objects of the society, and the mechanism for fulfilment of membership obligations. Except in India, cooperative laws of other countries do not make any specific provisions to restrict the entry of the persons having conflicting interests with the society. For example, sub-Section 6 of section 19 of Multi-state Cooperative Societies Act make a specific provision in this regard. The same is quoted below :-

“(6) Notwithstanding anything contained in this section, the central government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any multi state cooperative society or class of multi -state cooperative societies, by general or special order published in the official gazette, declare that any person or class of persons engaged in or carrying any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified multi state cooperative societies, or class of multi state cooperative societies, so long as such person or persons is or are engaged in or carrying on that profession, business or employment, as the case may be”.

Members' loyalty

In cooperative organisations only users can become the members. Therefore, loyalty of the members is one of the important pre-conditions for the success of cooperative society. Section 25 of New Cooperative Law of Thailand makes a very specific provision to enforce the loyalty of members. The same is quoted below :-

“(1) a society which has one of its objects, the disposal of any article produced or obtained by the work or industry of its members, whether it is the produce of agriculture, animal husbandry fisheries, handicrafts, or otherwise may provide in its bye-laws or may otherwise contract with its members.

(a) that every such member should produce any such article shall dispose of the whole or any specific amount, proportion or description thereof to or through the society; and

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

Section 26 makes provision for imposition of fines upon members for any infringement of bye-laws by them. However, before imposing such fines the members are to be given an opportunity of being heard. Although such provision may appear bit hard, it is appropriate, particularly, to ensure members loyalty as done in case of Thailand.

Management of Cooperative Societies

Democratic control is the crux of management of cooperative societies visualized under the principles of cooperation. According to Mr. P.E. Weeraman, former Regional Director of ICA, democratic control means that :

- i. 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;
- ii. 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;
- iii. The affairs of the society are administered by the management in accordance with the democratically expressed majority will of the members;
- iv. The management is elected or appointed in a manner agreed by the members; and
- v. The management is accountable to the members."

With a view to analyzing the concept of democratic control in the cooperative societies and its actual concretisation, it is necessary to discuss the following aspects :

- (a) Instruments of management adopted by the cooperative society; and
- (b) Roles of various organs of management in a cooperative society via-a-vis the concept of democratic control enunciated above.

Instruments of Management : Act, Rules and Bye-Laws

Cooperative law and rules framed thereunder and bye-laws adopted by cooperative societies are the important instruments which provide guidelines and directions for implementing the concept of democratic control in the management of cooperatives. While cooperative law and rules are framed by the Government, bye-laws give a set of rules and guide points for regulating the management of cooperative organisations. Bye-laws have been defined as a self-imposed code evolved by members themselves with a view to achieving the objectives for which cooperative organisation has been set up. In view of this, responsibility to frame the bye-laws should be with the members. Any outside imposition in regard to the provisions in the bye-laws of a cooperative society will militate against the spirit of democratic control. If we analyse the situation in regard to formulation and adoption of bye-laws, the following tendencies are reflected :

- (a) In countries of Indian Sub-continent, i.e. Bangladesh, India and Sri Lanka, comprehensive cooperative society rules are also framed under the cooperative legislation in vogue;
- (b) It is observed that the subject matter of the rules is so comprehensive as to embrace in their fold a number of matters/subjects which could be included in the bye-laws. The result is the rules are used as an instrument for a remote control by the government as their enforcement lies with the government only; and
- (c) In Indonesia, Philippines and Thailand, no rules have been framed under cooperative legislation, stipulating that the aspects covering the instruments relating to the management of cooperatives should be included in the bye-laws of cooperative societies adopted by the members.

Coming to the question of formulation of bye-laws, all the cooperative laws of the countries under study provide the subject matter of bye-laws. The following table gives the information about the provisions in the cooperative laws/rules of various countries covered under study :

<i>S.No.</i>	<i>Country</i>	<i>Relevant provision in the Act</i>
1.	Bangladesh	Rule No.11 of Bangladesh Cooperative Societies Rules, 1987.
2.	Indonesia	Article 41 and Article 43, Sub-Section 2.
3.	India	Provision exists in all the State Cooperative Laws as well as Multi State Cooperative Societies Act.
4.	Philippines	Section 17 of Cooperative Code of Philippines.
5.	Sri Lanka	Rule 29 of Sri Lanka Cooperative Societies Rules.
6.	Thailand	Section 18 (Sub-Section 2) and 2nd Schedule.

So far as formulation of model bye-laws is concerned government does not have any authority under cooperative law.

However, for the guidance of the people interested in forming a cooperative society governments in some of the countries, particularly, in India, Sri Lanka and Bangladesh, the department of cooperation in the government has formulated model bye-laws which can be suitably modified according to the needs and objectives of the society by the members who adopt them. Another important issue relating to bye-laws in the context of democratic control of a cooperative society is their amendment. The cooperative laws of Bangladesh, Sri Lanka and India provide for compulsory amendments of bye-laws of the cooperative society or a class of cooperative society which the government of the land deems fit in the interest of the cooperative movement and in public interest. The section 13 of the Bangladesh Cooperative Societies Ordinance, 1984 empowers the financing bank or registrar to direct the amendments in the bye-laws of cooperative society. If the society fails to make amendment within the specified time period, registrar of cooperative society shall affect compulsory amendment of bye-laws of cooperative society. In India some of the state cooperative laws empower the government to affect compulsory amendment in the bye-laws in public interest. In Sri

Lanka also the government is empowered to affect amendment of bye-laws in the interest of the cooperative society and in national interest. In other countries covered under study viz. Indonesia, Philippines and Thailand, law does not provide any authority to the government for compulsory amendment of bye-laws.

Role of various management organs of a Co-operative

Important organs of management in a cooperative society are its general body, board of directors, and chief executive. However, Indonesian Cooperative Law of 1967 make an interesting provision vide which it also visualizes another management organ known as board of supervisors appointed by the general body. The board of supervisors is authorized to inspect the societies and make direct report to the general body. In this part of the report attempt has been made to discuss the role of these management units in a cooperative and their inter-relationship.

General body

According to the interpretation of the principle of democratic control of a cooperative society, the general body is the supreme authority in regard to the conduct of the affairs of the society. The thinking behind this interpretation of the role of the general body is, "The aim of common undertaking is to specify the needs of the members. It follows that the source and exercise of powers in respect of common undertaking must lie with those whose needs gave birth to the undertaking." cooperative laws of the all the countries incorporate provisions for defining role, powers and functions of general body.

Vesting supreme authority in general body

The cooperative laws of Bangladesh (section 15), Indonesia (article 20), Philippines (section-35), Thailand (section 49), make provision for vesting supreme authority/final authority in the general meeting of the cooperative society. However, in India and Sri Lanka different provisions regarding the authority of the general body have been incorporated.

In India while some of the state cooperative laws make provision vesting supreme authority in the general body, the Multi-state Cooperative Societies Act, 1984, which is latest, makes following provision vide section 29(2).

“Subject to the provisions of this act, rules and bye-laws the ultimate authority of a multi-state cooperative society shall vest in the general body of its members.”

Provided that nothing contained in this sub-section shall affect the exercise by the board or any officer of a multi-state cooperative society of any power conferred on such board or such officer by this act or rules or the bye- laws.”

The above provision indicates that although ultimate authority vests in the general body of a cooperative society, it does not affect the powers and roles of other management organs defined in the cooperative law. The wordings of this law negate the concept of ultimate authority/supreme authority of a general body and sounds contrary to the principle of democratic control.

In Sri Lanka bye-law No. 32 of multi-purpose cooperative societies says that supreme authority of the society lies with the general meeting consisting of delegates of branch committees and the Board of directors elected under the bye-laws. Thus, Sri Lankan cooperative law does not provide for vesting supreme authority of a cooperative society in its general body.

Functions of general body

The important powers and functions of the general body are as follows:

1. *Bangladesh (Section 16 of the Cooperative Ordinance, 1984)*
 - a. Consideration of audit reports;
 - b. Approval of the budget of the society for next year;
 - c. Consider the annual statement of accounts; and
 - d. Considering any other matter which may be brought forward in accordance with the bye-laws.

2. *India (Section 30 of Multi-state Coop Societies Act, 1984)*

- (a) Consideration of the audit report and annual reports;
- (b) Disposal of net profit;
- (c) Approval of the programme of activities for ensuing year;
- (d) Amendment of bye-laws; and
- (e) Election of the members of board of directors.

3. *Indonesia (Article 21)*

- a. Formulation and amendment of bye-laws;
- b. General policy and the implementation of the decision of higher level cooperative society;
- c. Election/dismissal of the board of directors, board of supervisors and board of advisors; and
- d. Annual work plan and budget approval and ratification of the balance sheet and the policy of the board of directors in the organisational and business field.

4. *Philippines (Section 35)*

- a. Adopt, elect and/or appoint the officers, directors in committee members of cooperative provided in the bye-laws and remove them for cause as provided bye-laws after due process;
- b. Approve the goals and objectives of the operational plan of cooperative;
- c. Act upon the management report of board of directors and other reports by the various committees; and
- d. Exercise such powers conferred upon it by this code.

5. *Sri Lanka (Bye-law 32 of MPCCS)*

- a. Approval of statements of accounts, balance sheet and audit reports;

- b. Elect board of directors;
- c. Decide the disposal of profits;
- d. Determination of maximum credit limit;
- e. Preparation and adoption of bye-laws; and
- f. Appeals on admission of membership.

6. Thailand (Section 54)

- a. Auditors reports, reports of board of directors;
- b. Approval of financial statements and annual business plan;
- c. Distribution of profits; surplus;
- d. Formulation and adoption of bye-laws;
- e. Election of board of directors;
- f. Appeals on membership;
- g. Maximum borrowing limits; and
- h. Hearing and deciding upon complaints brought by members agreed by a decision of board of directors.

Special general meeting

Cooperative laws under study also incorporate provision of special general meeting for enabling the members and registrar of cooperative societies to convene the general body meeting to discuss specific problems, or issues affecting the society of the members. This provision has been made to exercise a check on delinquent management. The Bangladesh Cooperative Societies' Ordinance vide its section 16(4) specify two situations for convening the special general meeting - (a) on the requisition in writing of 1/3rd of members of any cooperative society having not more than 500 members or of 1/5th of the members of any other society; or (b) at the instance of registrar who is authorized to convene such meeting of general body upon failure of management committee to call such meeting on requisition of the members or at the instance of registrar. Provision on similar lines exists in cooperative laws in India also. For example section 31 of multi-state cooperative

Societies Act of 1984 authorizes the chief executive to convene the special general meeting on the direction of the board; requisition from the registrar and requisition from a prescribed number of members. In case chief executive fails to convene the special general meeting, central registrar or any other person authorized by him shall have power to convene special general meeting. Indonesian cooperative law also authorizes an official to have the authority to organise members meeting in an extraordinary situation when board of directors is unable or is unwilling to convene the meeting; or where there is no board of directors or in any emergency situation.

Cooperative Code of Philippines vide its section 36(2) also provides for convening a special general meeting in case Board fails to call a regular or special meeting. Rule 18 of Cooperative Rules of Sri Lanka authorizes the registrar; or any other person authorized by him to summon a special general meeting either on the requisition of prescribed number of members; or to discuss a very urgent issue with the members of the society.

New cooperative law of Thailand vide section 55 stipulates convening of extra ordinary general meeting under two circumstances - (a) on requisition of prescribed number of members stating the objects of the meeting; (b) on receipt of supervisory committee report stating the objects of the meeting. If the board of directors fails to convene such meetings either the members; or the supervisory committee has power to convene the special/extraordinary general meeting. The Thai cooperative law does not give any power to the registrar of cooperative societies for convening special general meeting of the society.

Board of directors/managing committee

Board of directors (also named as managing committee or committee of management) is constituted by the general body through the process of election. While the general body reflects the aspiration and expectations of the members, the task of the board of directors is to give them a concrete shape and get them implemented. Thus the board of directors becomes the most crucial organ of management of a cooperative society. Cooperative laws of the countries covered under study make provisions for the constitution, powers and functions of the board of directors.

The Cooperative Societies Ordinance, 1984 of Bangladesh vide section 18 makes provisions for constitution of managing committee through direct election in the general meeting. The term of the committee is two years and after the expiry of the term it will stand dissolved. If the managing committee is not reconstituted before the expiry of the term, the affairs of the society will be conducted by a person appointed by the registrar who shall convene special general meeting to hold elections of the committee.

Indian cooperative law also incorporates provision for constitution of the board of directors through election. The term of the board is generally three years. Section 32 of the Multi-state Cooperative Societies Act makes it obligatory on the cooperative society to have a board of directors consisting of such persons as may be provided for under the bye-laws. Another important feature of the board of directors in India is representation of government and employees on the board.

Articles 21 and 22 of Indonesian Cooperative Law deals with the constitution of the board of directors through election. The term of the board stipulated in the law is 5 years. However some interesting features in relation to management of cooperatives are:

- i. Election of board of supervisors and board of advisors in addition to the board of directors: These bodies are directly responsible to the general body. While board of supervisors is elected from amongst the members of the general body, the board of advisors consist of experts who may be outside the membership of the society. The board of advisors has only advisory role.
- ii. If the general body fails to elect the whole members of the board, general body has authority to appoint one or more non-members as required but not exceeding one third of the total number of the board members.
- iii. Before occupying their position, the board members are required to take an oath or pledge.

Cooperative Code of Philippines vide section 38 specifies the following characteristic features of the constitution of the board:

- i. Constitution through election at a general meeting;
- ii. Membership of the board shall not be less than five and more than fifteen;
- iii. Term of the board will be four years;
- iv. No director can continue to be the board member for more than 4 consecutive terms; and
- v. Interim vacancy in the board can be filled by the board of directors in a special meeting called by the purpose.

In Sri Lanka and Thailand also the general body elects the board of directors. However, the New Cooperative Law of Thailand (section 61) also makes provision for retirement of one third members every year. The term of office of the board of directors is regulated by the bye-laws.

Powers and Functions of Board of Directors

As regards the incorporation of provisions for powers, functions and responsibilities of board of directors different provisions exist in the countries covered by the study. In India, Indonesia and Thailand cooperative law itself defines the powers and responsibilities of the board of directors. The Multi-state Cooperative Societies Act, 1984 in India vide section 42 mentions following powers and functions of the board:

1. The board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.
2. Without prejudice to the generality of the foregoing power, such power shall include the power:
 - a. to admit members;
 - b. to interpret the organisational objectives and set up specific goals to be achieved towards these objectives;
 - c. to make periodic appraisal of operations;
 - d. to appoint a chief executive and such other employees of the society (out of the list of persons referred to in section 50) as are not required to be appointed by the chief executive;

- e. to make provisions for regulating the appointment of employees of the multi-state cooperative society and the scales of pay, allowances and other conditions of service of, including disciplinary action against, such employees;
- f. to approve annual and supplementary budget;
- g. to acquire or dispose of immovable property;
- h. to raise funds;
- i. to sanction loans to the members; and
- j. to take such other measures or to do such other acts as may be prescribed or required under this Act.

In Indonesia powers, duties and responsibilities of the board of directors are regulated according to the provisions in article 23, 24 and 25 of regulation relating to cooperatives. These duties include leading the organisation and its business in accordance with the decisions of the members meeting; appointment of officers; convening of members meeting; taking care of members' needs in accordance with Article 13 and furnishing necessary information to the members. Vide article 24 the board has authority to carry out actions and to make efforts in the interest and benefit of the cooperative societies in accordance with the cooperative societies and decisions of the members' meeting.

The new cooperative law of Thailand also defines specifically functions of board of directors. The same is quoted below:-

1. The board of directors shall be responsible for the conduct and management of the affairs and business of the society and, subject to any restrictions contained in the bye-laws or in any resolution taken at a general meeting of members, the board of directors may exercise all the powers required to ensure the full and proper administration and management of the affairs, business and property of the society, except those powers reserved to the general meeting of members. The board of directors shall have the legal and juridical representation of the society before all competent authorities and in all dealings with this parties. Provided that, subject to the provisions of this act and to the bye-laws of the society, the board of directors may delegate to any one or more of its members any of its powers or functions under this act.

Provided further that all cheques and bills of exchange shall be signed by one of the members of the board of directors and by the secretary or the manager of the society.

2. Without limiting the generality of the provisions of sub-section (1) of this Section, the functions of the board of directors shall include the following powers and duties:
 - a. to consider and approve or, subject to the provisions of section 37 of this act, reject applications for membership of the society;
 - b. to open and operate banking accounts;
 - c. to appoint sub-committees;
 - d. to keep members informed of the progress of the society, to encourage interest and a sense of ownership on the part of the members and to carry out educative work among the members with respect to principles and practices of cooperation and the objects of the society;
 - e. to prepare and present to the annual general meeting of the society a proposal for the distribution of any net surplus accrued during the preceding financial year in accordance with the provisions of this act and the bye-laws of the society;
 - f. to prepare a work plan and policy guidelines/or the conduct of the business of the society during the following financial year;
 - g. to make a report to the annual general meeting on the work of the board of directors during the preceding financial year and containing such recommendations as they deem necessary to maintain or improve the services provided by the society to its members;
 - h. to take immediate action to correct mistakes, errors or malpractices which are disclosed in the reports of the supervisory committee, the auditor or the registrar.

In Bangladesh, Philippines and Sri Lanka, the cooperative law and rules make enabling provisions providing guidelines with regard to powers, functions and duties of managing Committee. The Cooperative Societies Ordinance, 1984 of Bangladesh makes

enabling provision vide its section 18(6) which says that managing committee shall exercise such powers and such functions as are specified in this ordinance or as may be prescribed by rules or bye-laws. The Cooperative Societies Rules, 1987 of Bangladesh vide rule No.48 and rule No.49 defines powers and duties of managing committee. The rule 48 specifies the following powers vested in the managing committee of a cooperative society:

- (a) admission of new members;
- (b) raising and investment of funds;
- (c) appointment of employees;
- (d) disposal of application of shares;
- (e) application of shares; application for loans; and
- (f) appoint staff and duties.

Rule No.49 defines the duties of the managing committee which include the following:

- (a) to take care of all the financial matters such as receiving and disbursement of money, maintenance of accounts of money receipts, assets and liabilities;
- (b) to prepare and submit to the general body, annual report and financial statements;and
- (c) to convene annual general meeting; and to maintain all the records.

Cooperative Code of Philippines makes enabling provision vide its section 39 to define powers of the board of directors authorizing them to exercise all such powers of cooperatives as are not reserved for the general assembly in this code from the bye-law. Similarly, in Sri Lanka also powers, functions and responsibilities of the board of directors are defined in the bye-laws.

From the foregoing discussions it is revealed that in some countries the powers of the board are part and parcel of the law itself, while in some law provides enabling guidelines for defining the powers of the board in the bye-laws. The essence of the principle of democratic control is that the affairs of the society should be conducted in accordance with the democratically ex-

pressed will of the members. Since board of directors is the creature of general body, i.e. the membership of a cooperative society, they are expected to function within the parameters and according to the expectations of the members. The will and expectations of the members are reflected in the bye-laws which are framed by the members themselves. Therefore, it seems appropriate that powers, functions and duties of the board of directors/managing committee should be provided in the bye-laws of a cooperative society instead of cooperative law and rules etc.

Chief Executive

Chief executive is the most important link in the management of cooperatives. It is he who translates the ideas and policy formulated by the general body and the board of directors into action. He is appointed by the board and is responsible for the administration of cooperative organisation; and, therefore, on his efficiency depends the efficiency of the entire institution.

Cooperative laws of various countries covered by this study make provisions for the appointment, role and responsibilities of chief executive.

Varied nature of provisions exist in cooperative laws under study about the concept and definition of chief executive. The Bangladesh Cooperative Societies Rules, 1987 accords the chief executive of a cooperative society status of principal officer. His designation may be chief executive officer, executive officer, managing director, general manager, secretary. Multi-state Cooperative Societies Act, 1984 in India defines chief executive as a chief executive appointed under section 44 which makes it obligatory on every cooperative society to have a full time paid chief executive to be appointed by the board. Article 23(2) of Indonesian cooperative law stipulate the appointment of chief executive who is named as manager. In Philippines, chief executive is the President who must come from among the directors. He is both chairman and chief executive. The Cooperative Code of Philippines recognizes president as chief executive officer of the cooperative society vide section 52. In Sri Lanka, chief executive is appointed and defined under the bye-laws. The new Cooperative Law of Thailand vide section 69 makes provision for appointment of paid manager. Thus, two types of chief executives are contem-

plated in the cooperative law - (a) chief executive as the full time paid employee of the society appointed by the board of directors; and (b) elected president of a cooperative society as chief executive of the organisation.

Appointment of chief executive

In all the cooperative laws power to appoint a chief executive vests in the board of directors/managing committee. Either a chief executive can be taken on deputation/secondment from the department of cooperation of the government or some other organisation or the board of management/managing committee of a cooperative society may appoint chief executive through process of direct recruitment. But in India different provisions exist. For national level cooperative federations and the multi-state cooperative societies, the cooperative law provides for constitution of a panel authority under the chairmanship of Secretary of Cooperation in the Government of India to make selection/recruitment for the post of chief executive and senior level officers. In some of the state cooperative laws, the state government is empowered to appoint chief executive for a prescribed type of cooperative society.

Powers and responsibilities of chief executive

As regards the powers and responsibilities of the chief executive, while in Sri Lanka these powers are enumerated in the bye-laws, in other countries they are enumerated in the cooperative laws and rules in addition to bye-laws. In Bangladesh, rule 53 defines the duties of chief executive as follows:

- (a) receive all moneys on behalf of the cooperative society and issue receipts other than receipts likely to create fresh obligations on the part of the society in effectual discharge of the money stated to have been received therein;
- (b) pay all costs of management and working expenses out of the funds of the cooperative society, for example, salaries of the staff, travelling and other contingent expenses, to be incurred in the working of the society;

- (c) deposit or invest all moneys received on behalf of the cooperative society and securities and other effects as specified in rule 99;
- (d) maintain proper and accurate records and account of the working of the cooperative society;
- (e) call meetings of the managing committee as may be necessary for the proper conduct of business;
- (f) place from time to time before such of its members or the managing committee statements of receipts and disbursements of money for examination and approval; and
- (g) shall be responsible for the day-to-day business transaction of the cooperative society or the cooperative bank and also for financial property of all such transactions.

The Multi-state Cooperative Societies Act of India makes provision for powers and function of chief executive vide section 45. According to this section, the chief executive, apart from exercising the powers relating to day-to-day and office management is also authorized to convene the meeting of various management organs and for making appointments to the posts as per the rules framed by the board. Besides, chief executive is also expected to assist the board in formulation of policy, objectives and planning of a cooperative society. Cooperative law of Indonesia vide article 23 para 2 defines powers, functions, duties and responsibilities of chief executive in the field of planning, personnel management, business, financial and inventory management, controlling and reporting. However, details of his powers and functions are given in the bye-laws of cooperative society.

In Philippines chairman/president is the chief executive of the cooperative, therefore, he is the official and legal representative of a cooperative and has powers to supervise, direct and implement decisions of the board and the policies chalked out by the general assembly. He reports to the board. The cooperative code of Philippines further recognizes the post of the general manager who is the chief operating officer to manage the day-to-day operations of the cooperative society. He reports to the president/ chairman of a cooperative society.

Earlier law of Thailand made provisions for formulation of regulations and rules to define the powers of chief executive.

Based on this necessary provisions were made in the bye-laws of the cooperative societies. However, new law vide section 69 defines the duty of the manager. It says that the detailed duties of the manager will be specified in the bye-laws which, among others, will include the following items in his duty chart:

- (a) management of the business and property of the society;
- (b) implementation of the decisions of the board of directors;
- (c) be regularly present in the society; and
- (d) maintain the record of transactions conducted by the society.

Besides, the duties of the secretary or treasurer can be suitably modified or altered by the board of directors.

Role of office bearers

Almost all the cooperative laws define the officers/office bearers involved in the management of cooperatives. Cooperative law of Bangladesh defines officer of the society as a chairman, vice-chairman, secretary, joint secretary, assistant secretary, manager, treasurer, member of a managing committee, auditor elected from among the members and any other person empowered under the rules or bye-laws to give directions in regard to business of the society. While the manager is a paid employee, the other officers are generally elected from amongst the members of the board of directors. Provision on similar lines exist in cooperative laws in India and Sri Lanka. Cooperative law of Indonesia does not define the officers of a cooperative society as done under Indian and Bangladesh cooperative laws. However, the bye-laws of cooperative societies in Indonesia recognizes chairman, vice-chairman and chief executive as important officers of a cooperative society. Cooperative Code of Philippines vide its section 42 recognizes chairman and vice-chairman or officers of cooperatives to be elected from amongst the members of the board. The old cooperative law of Thailand of 1967 also does not define the officers of the society. But in new law provision exists on the lines of Indian and Bangladesh cooperative law.

For powers, duties and responsibilities of elected office bearers of a cooperative society, two types of provisions have been

incorporated. In Bangladesh, the cooperative societies rules define the powers and duties of the chairman vide rule No.50 which states, "unless otherwise provided in the ordinance, rules or the bye-laws, the chairman or the vice-chairman, in the absence of the chairman, shall, for the transaction of business of a cooperative society in case of urgency exercise all powers and performance of duties required to be exercised and performed under the ordinance, the rules or the bye-laws by the managing committee except the power of sanctioning loans.

Provided that the chairman shall not act in opposition to or in contravention of any order given or decision taken by the managing committee at a meeting."

Rule 51 makes it obligatory on the chairman to place all his orders and acts done by him for confirmation before the managing committee meeting. A minute study of this provision would reveal that while the rules (rule 50) vests authority in the chairman who acts as the head of the organisation, bye-laws define his duties and powers specifically.

In India provisions differ from state to state. Although the term "officers" has been clearly defined in the definition clause of Cooperative Societies Act, duties and powers of office bearers are specified in the bye-laws of a cooperative society. The Multi-state Cooperative Societies Act of 1984 has narrowed down/abridged powers of office bearers to a great extent. It simply mentions that chairman is authorized to preside over the meetings of the board only. In Indonesia powers and duties of chairman and other office bearers are defined in the bye-laws of a cooperative society. In Philippines president/chairman is the chief executive officer of a cooperative society. Therefore, he is the head of the organisation. The new cooperative law of Thailand vide section 66 sub-section 1 defines the powers of the chairman, subject to the provisions in the bye-laws. Section 67, 68 defines the duties of secretary and treasurer respectively. While secretary has all administrative powers for implementing the decision of the general meeting and the board of directors, treasurer is responsible to take care of financial transactions of the society. However, if manager is appointed, the board of directors may rationalise the duties of the secretary and treasurer suitably.

Functional sub-committees

Enabling provisions exist in cooperative law and rules to make provisions in the bye-laws for creation of functional sub-committees by the board of directors. Indian cooperative law, particularly, Multi-state Cooperative Societies Act of 1984, however, specifies that no cooperative society shall constitute more than two functional committees, in addition to executive committee. Cooperative law of Indonesia and Thailand provide for constitution of board of supervisors and board of advisors from amongst the members of the general body of a cooperative society.

Inter-relationship among various organs of management in a cooperative

It is commonly accepted premise that functional relationship among various organs of cooperative management should be so shaped and designed that it relates to institutional harmony and efficiency. With the growing diversification of cooperative activity and expansion of its institutional coverage traditional concept of honorary management in the cooperative where elected chairman/secretary assumed the responsibility of an executive to implement various decisions taken at the general body meeting and board of directors, has undergone drastic change. In present times, important premises based on which the relationship among various rungs of management in a cooperative society have to be worked out are as follows :

- (a) It should be based on the principle of democratic control, meaning thereby that the voice of the representatives of the members in decisions taking process in a cooperative society will be supreme;
- (b) Duties, responsibilities and powers among various management organs should be well defined/demarcated;
- (c) Since cooperatives are business enterprises, the system should relate to professionalisation dealing with various managerial issues for bringing about efficiency in cooperatives.

Analyzing the provisions of cooperative law in above context we find that of all the countries covered by this study, India and

Thailand are the countries where cooperative law has attempted to demarcate the powers and functions of various organs of the cooperative management. While specific provision has been made in regard to the powers and functions of general body, Board of directors and the chief executive, such provisions have not been made for office-bearers of a cooperative society. Other side of the picture is new cooperative law of Thailand where specific provision for defining the powers of all the management organs, i.e. general body, board of directors, chief executive, chairman, secretary and treasurer have been made. In other countries the bye-laws define the powers and functions of the management bodies.

Another important implication of Indian pattern is that in such pattern possibility of a clash between the chief executive and elected chairman cannot be ruled out. In the context of the principle of democratic control also, this pattern is contrary and contradictory of cooperative ideology. Chairman/president is elected by the board and, therefore, he becomes the representative of the members themselves. Chief executive who is an employee of a cooperative society cannot claim to be representative of a cooperative. Therefore, he should function under the supervisory control of the chairman/president, so that there is no disharmony and conflict in the day-to-day working of the cooperative society.

Elections

Holding timely elections and ensuring objective electoral process is necessary to ensure democratic functioning of cooperative institutions. Although cooperative laws of all the countries provide for holding of elections of cooperatives, in some countries elections have not been held for years together due to certain extra cooperative considerations. Two types of provisions in regard to elections in cooperatives exist in the countries under study - (i) provision empowering the government/registrars of cooperative societies to conduct elections and (ii) provisions empowering the management of cooperatives to complete the electoral process. In Bangladesh section 18(2) and rules 15 to 37 specify the authority and electoral procedure. According to rules, the managing committee is empowered to frame the regulations regarding elections. Rule 16 authorizes the managing committee to appoint an election committee before 30 days of date of elections. Indian cooperative law vests authority in the government/registrars of cooperative Societies to conduct elections. Procedure is provided in the cooperative societies Rules of all the states. For multi-state cooperative societies while central registrar holds elections of national level cooperative societies, for other multi-state cooperative societies, elections are conducted by the society itself according to prescribed rules. In Indonesia the competent authority to conduct elections is the members meeting as prescribed in article 21 of Regulations for Cooperatives. Cooperative law of Philippines provide that the general body shall elect a committee to hold elections in subsequent meeting of general body. In Sri Lanka the board/ managing committee holds elections. New Cooperative Law of Thailand authorizes general body to complete the electoral process.

Other important issues relating to electoral process in cooperatives of these countries are maintenance of time schedule and objectivity, and settlement of election disputes. Cooperative law in almost all the countries is silent about ensuring timely elections

and objectivity in electoral process. So far as settlement of election disputes is concerned, power vests in the government/registrars except in case of Philippines, where committee on elections has authority to settle election disputes.

Personnel Management Policies

Basically, cooperatives are business organisations, therefore, employees/personnel in a cooperative society occupy a very significant place in the affairs of the society. Without efficient employees, cooperative organisations cannot flourish and acquire a desired level of the competitive strength which is so important to sustain any system in modern competitive market economy.

Provisions in cooperative laws relating to personnel management have been made on following lines :

- (a) Provisions to prescribe minimum number of paid staff and also their qualifications;
- (b) Provisions for secondment of government servant to the cooperative society either on the request of the latter or by the government under certain circumstances;
- (c) Formulation of service conditions, personnel/management policies and practices by the board of directors subject to the approval of the government;
- (d) Formulation of personnel management policies practices and service conditions by the board of directors;
- (e) Creation of centralized cadre authority at appropriate level (either at the level of federation or at the government level) for recruiting the personnel of constituent unit; and
- (f) Creation of cooperative service commission/employees commission as done in Sri Lanka or in some states in India.

Study of the above provisions relating to personnel management policies shows that in the countries of Indian sub-continent, namely, India and Sri Lanka cooperative law makes a specific provision governing the personnel management. In some of the states of India the service regulations cannot be operative unless

approved by the registrar of cooperative societies. Similarly, cooperative laws in some states also provide for constitution of centralized cadre authority.

Concept of employees commission/cooperative service commission is based on the thinking that such system may ensure objective and impartial recruitment. This thinking can be said to militate against cooperative ideology. Even in the private sector enterprise is totally free to formulate its own personnel management policies, keeping in view the national laws relating to welfare and security of employees, etc. In other countries of this region, namely, Philippines, Indonesia and Thailand cooperative organisation itself is free to have its own personnel management policies.

Closely linked with this aspect is recruitment and selection of subordinate officers and other staff by the chief executive. Some of the protagonists of the professionalisation of management of cooperatives hold the view that while officer level or key management position should be filled in by the board of directors, for other staff the power may be given to chief executive within the parameters evolved by the board.

Curbing Bad Management

To correct/rectify the bad/delinquent management of a cooperative society is another important aspect of democratic management of cooperatives. All the cooperative laws make provision to exercise check on or to rectify the situation wherein loss may occur due to negligence or deliberate attempt of individuals or the board as a whole. The law also contains provision to punish the guilty. Following types of provisions have been incorporated in cooperative laws of the country covered under study :

- (a) General steps through audit, inspection, and supervision on a continuous basis by the government have been suggested in all the cooperative laws;
- (b) Cooperative laws in Indian sub-continent empower the government to audit the accounts of cooperative society. But in some countries of the region, it is the general body which is empowered to appoint auditor on the recommendations of the board of directors. For example, the Cooperative Code of Philippines makes very interesting provision for ensuring independent audit of cooperative organisations. Section 81 which deals with annual audit provides as follows :

"Section 81 Annual Audit - Cooperative under this code shall be subject to an annual audit by an auditor who satisfies all of the following qualification:

- (a) he is independent of the cooperative being audited and of the subsidiary of cooperative; and
- (b) he is a member of any recognised professional accounting organisation or cooperative auditors' association with similar qualification."

It has been observed and experienced that where responsibilities for audit of cooperatives have been given to the government or registrar cooperative societies, audit has been pending

for years. Many a time audit is also used as a tool for harboring the interests of the government. In view of its provisions the Cooperative Code of Philippines, definitely is an improvement over the system of audit prevalent in the countries where registrar is empowered to audit the cooperatives.

Internal checks evolved by the cooperatives

In Indonesia and Thailand cooperative law itself makes provisions to constitute board of supervisors and board of advisors and supervisory committees consisting of both members and experts to ensure efficient working of cooperatives. Article 27, 28, 29 and 30 of Indonesia makes provision regarding constitution, duties, and authorities of the board of supervisors. It will be interesting to reproduce them here:

Article - 27

- i. the members of board supervisors shall be elected out of and by the members in a members meeting;
- ii. the position as a member of the board of supervisors cannot be served concurrently with position as a board of director; and
- iii. provisions concerning the board of directors mentioned in article 22, except paragraph 3 are valid for the board of supervisors as well.

Article - 28

Board of supervisors shall have the following duties:

- i. to inspect all the aspects of cooperative life, including the organisation, business and implementation of the policies made by the board of directors; and
- ii. to make written reports on the out puts of inspection.

Article - 29

At any time, the board of supervisors shall have the authority:

- i. to investigate all the assets of the cooperative society along with their documents and correctness of book keeping entries and to collect all necessary information from anybody.

- i. Board of supervisors shall be obliged to keep all the result of their inspection secret towards third parties; and
- ii. The board of supervisors shall be responsible to the members' meeting."

The new cooperative law of Thailand vide sections 71, 72, 73 and 74 defines the constitution, meetings, powers and duties and liabilities of members of supervisory committee. The membership of supervisory committee is not less than three or not more than fifteen members. The supervisory committee is elected at an annual general meeting and no members of the board of directors can be the member of the supervisory committee. Generally the membership of the supervisory committee is chosen from persons having expertise in accounting, auditing, and financial procedure. The supervisory committee elects its own chairman and appoints one of its members as Secretary. It is expected to meet at least once in every two months. Liability of members of supervisory committee is very grave. They are jointly and severally liable for any losses sustained due to their failure to keep information secret or through any act which is contrary to the provisions of cooperative law, rules, bye-laws or directions of general body meeting. Important function of supervisory committee is to supervise the actions of the board of directors and of the officers and employees of the society and to exercise check and control on all the financial matters and to approve loans to members of the board of directors. This committee is also authorized to require the board of directors to summon an extra-ordinary general meeting. The committee is accountable to general body only.

The provisions on the above lines help the cooperative society to have its own mechanism to exercise check on bad management in a cooperative.

Supersession, dissolution of a management committee of a cooperative society

The cooperative laws of Bangladesh, India and Sri Lanka authorise the government to supersede the elected board of management of cooperative society. If through an audit, inspection, enquiry, government finds that the management of a coop-

erative society is not functioning properly, it can supersede the elected board after giving them an opportunity of being heard and appoint administrator. In India provisions have also been made to enforce automatic supersession of the board of management of cooperative credit institutions if the recovery of cooperative loans is less than 60 per cent.

In Indonesia there is no provision of supersession of the elected board of management of cooperatives. However, in case of strong evidence of the fact that the functioning of the society has been detrimental to the interest of the members and the social ethics, government may ask the management to vacate their seats and if it fails to do so, government may remove it and constitute another board of directors through election.

In Philippines also there is no provision of supersession of the board of directors. However, in case of government grant recipient cooperative society, if some contractual agreement has been made, recourse to supersession can be taken.

Objective of the supersession is to stabilise the working and management of cooperatives and to restore efficient elected board of management. Therefore, the principal role of administrator visualized in cooperative law is to stabilise the functioning of the cooperative society during the period of supersession and ensure the installation of elected board.

De-politicisation of the cooperatives

Of late it has been observed in some countries that cooperatives are being used for political gains. In view of this steps have been taken to ban politicians from holding the office of the cooperative society. In some of the states of India members of parliament, provincial legislative Assemblies, local bodies like municipalities and zilla parishads have been debarred from becoming members of the elected board of directors of cooperative society. In Indonesia also basic regulations for cooperatives prohibit the politicalisation of the working of cooperatives. It prohibits use of cooperatives for political gains. In Sri Lanka no provision has been incorporated in cooperative law. However, through a ministerial directive members of parliament are debarred from holding office in cooperative society. In other countries of the region there is no provision to ban the politicians to hold office in cooperative society.

Role of Federations

Cooperative is a system based on the concept of federalism, visualizing the organisation of cooperative societies at different levels i.e. primary, secondary, state and national level, yet integrated with each other to make the whole system. In view of this, it is necessary that cooperative law and rules should provide for the role of cooperative federations. Further, the principle of 'cooperation among cooperatives' also pre-supposes well defined roles for cooperative institutions at different levels. Cooperative laws of the countries, except that of Indonesia, Philippines and Thailand do not make specific provisions for the role of cooperative federations.

Article 15(3) of basic regulation for cooperatives in Indonesia makes following provisions:

“a higher level cooperative society is obliged to and has the authority to provide guidance and supervision to the lower level cooperative societies.”

In the memorandum of elucidation Indonesian cooperative law further states:

“.....the higher level cooperative society is obliged and is authorized to give guidance and to carry out inspection of lower level cooperative societies; this provision is made to secure and maintain the healthy growth of the lower level cooperative societies. This obligation and authority shall be stated in the bye-laws of the higher level cooperative societies.”.

Cooperative code of Philippines (section 25) also specifies the role of cooperative federations. It will be quite educative to reproduce this section here:-

“Primary and/or secondary cooperatives may join or federate into higher level organisations to enhance the

potential for growth of cooperatives as a sector. Under the principle of democratic control and cooperation among cooperatives, primary cooperatives have the right to affiliate with secondary cooperative organisations and secondary cooperative organisations with tertiary cooperative organisation on their own choice.....”

The section further specifies that these federations may be organised at provincial, regional or national levels according to the type of business carried on.

Primary purpose of these federations is to carry on cooperative enterprises as specified under section 10 of the code and the secondary purposes include assistance and encouragement to member societies to encourage efficiency and economy in the conduct of their business and to facilitate the implementation of their operational systems. Besides, the federation may also enter into joint ventures with national or international cooperatives of other countries for the benefit of Philippines cooperatives. They are also expected to coordinate and facilitate the activities of their interest through publications and mass media.”

Section 95 of new Cooperative Law of Thailand makes provisions for setting up of national cooperative federations by primary and/or secondary societies of every type. Section 96 incorporates provisions for defining the objects and the pattern management of National Agricultural Cooperative Federation.

Such provisions will definitely help in ensuring spontaneous growth of cooperative movement from primary to national level and would curb the negative tendency of the registering authority to incorporate new cooperative federations.

Role of Representative/Spokesman Organisation i.e. Cooperative Unions

Cooperation is an ideology. Therefore, steps are required to nourish and strengthen its ideology by creating conducive public opinion and enlightened membership. Further, there is also need for proper representation of the interest of the cooperative movement at the level of the government for ensuring formulation of appropriate policies for cooperative development. Cooperative law, therefore, is expected to make provisions for defining the role of representative/spokesman organisation. In all countries covered under study, cooperative unions at secondary and national level have been set up. Their names are mentioned below:

<i>Country</i>	<i>Name of the Cooperative</i>
1. Bangladesh	Bangladesh Jatiya Samabaya Union.
2. India	National Cooperative Union of India
3. Indonesia	Dewan Koperasi Indonesia (DEKOPIN).
4. Philippines	Cooperative Union of Philippines.
5. Sri Lanka	National Cooperative Council of Sri Lanka.
6. Thailand	Cooperative League of Thailand.

Only cooperative laws of Indonesia, Philippines and Thailand make provisions for defining role of national level cooperative organisations. In Indonesia, Article 18 of basic regulations for cooperative makes following enabling provisions:

- "i. for the sake of accomplishing economic objectives, however, cooperative societies of various types can establish a cooperative society with different types;

- ii). to strive for accomplishment of the ideals, objectives and interest of the whole Indonesian cooperatives, a single cooperative body shall be established by the cooperative movement;
- iii. the ministry shall legalize the body mentioned in paragraph 5 above a legal entity;
- iv. the body mentioned in paragraph 3 may not carry out economic activities directly."

In Philippines also earlier Presidential Decree No. 175 provided for organisation of an apex national cooperative organisation (cooperative unions) as the national, regional, provincial and city levels to act as spokesman of cooperative movement locally and abroad. The cooperative code of Philippines has also made specific provision for constituting the cooperative unions and for defining their purposes which included representation of all cooperatives locally and abroad; promotion of cooperative principles and practices; acquiring; analyzing and disseminating information of all types of cooperatives; sponsoring and conducting of research studies and publication thereof; developing cooperative movement in their jurisdiction; administering cooperative education and training fund.

Similarly specific section (section 94) has been added in a new cooperative law of Thailand to define the organisational and operational aspects of Cooperative League of Thailand which is an apex body of all cooperatives.

Cooperative Law and Self-reliance

There are three aspects of self reliance in a cooperative organisation :-

- (a) self regulation;
- (b) strong financial base; and
- (c) responsive leadership.

Aspect of self regulation has been discussed in earlier parts of the study report. Here self reliance in terms of financial resources and leadership development will be discussed. Cooperative laws of the countries covered under study do not make provisions about self reliance as such. However they give directions regarding importance of viability and importance of resource build up. Regulations relating to net profits and its appropriation specifically provide the areas for which profits may be allocated. Reserve fund has the first charge on the net profits of a cooperative society. Reserve fund is indivisible and is the foundation of financial strength of cooperative organisations.

In the countries where the government provides assistance in the share capital of a cooperative society e.g. India, provision is made for share capital redemption fund. Besides, all the countries have created following types of funds out of the resources of a cooperative society:

- i. Reserve fund
- ii. Share capital redemption fund
- iii. Dividend equalization fund
- iv. Business development fund
- v. Price fluctuation fund
- vi. Cooperative education fund.

The Indonesian cooperative law also provides for building up financial resources of a cooperative society through basic savings and obligatory saving of members. Further cooperative laws of the countries covered by study also prescribe the mode of investment and agencies and institutions in which funds can be invested for ensuring safety of funds and better returns thereon.

Leadership development is yet another important aspect of self reliance in a cooperative. Although law does not specify the leadership development, provision for cooperative education fund helps in building up leadership and managerial resources. Needless to emphasise that principal aims of cooperative education fund is to provide the cooperative society necessary resources for leadership development and for building up managerial resources through the process of cooperative education and training.

Role of Government

The government has been playing an important role in promoting and expanding cooperative movement in all the countries covered under study. Specific provisions have been made in cooperative law to enable the government to support, guide and control the cooperatives. The role of government is three dimensional - Firstly, it facilitates development of cooperatives by giving variety of assistance and it also uses cooperative as agency for implementing various developmental programmes. Secondly, it also participates in the management of cooperatives not only for safe-guarding the financial assistance it has given, but also to help the management of cooperatives in taking judicious decisions. Thirdly, government being the administrator of cooperative law is also saddled with the responsibility of preserving and protecting cooperative values by curbing delinquent management.

Cooperative Societies Ordinance of Bangladesh vide section 28 and 33 defines the para-meters of government aid and involvement of government in the management of cooperatives. In India also such enabling provisions have been made. For example section 59 of Multi-state Cooperative societies Act, 1984 makes provision for government aid to multi-state cooperative societies. The section may be quoted as under:

“Notwithstanding anything contained in any law for time being in force, the central government or a state government, may with a view to promoting cooperative movement:

- (a) Subscribe to the share capital of multi-state cooperative society;
- (b) Give loans or make advances to a multi-state cooperative society;
- (c) Guarantee the repayment of principal and payment of interest on debentures issued by a multi-state cooperative society;

- (d) Guarantee the repayment of share capital of multi-state cooperative society and dividend thereon at such rates as may be specified by the central government; or state government;
- (e) Guarantee the member and payment of interest on loans advances to a multi-state cooperative society;
- (f) Give financial assistance in any other forms, including subsidies, to any multi-state cooperative society.”.

Indonesian Cooperative law, vide article 37 places obligation on the government to promote and develop cooperative movement. It states as under :

“The government is obliged to render the guidance, supervision, protection and facilities to the cooperative societies and to enable them to implement article 33 of 1945 constitution with its elucidation.”

Cooperative Code of Philippines also makes provision for providing variety of governmental assistance such as promotional, educational, training, audit services, technical and financial assistance. But this assistance by the government is provided only on request by cooperatives. Government on its own does not impose its assistance on cooperatives. In Sri Lanka although law is not explicit about the types of financial assistance available from the government to cooperatives, in practice, government provides financial, technical, legal and managerial assistance to cooperatives. In Thailand also there is no clear provision for providing assistance to cooperatives. However, section 5 provides for creation of cooperative promotion department which has responsibility for propagating cooperative ideas and to promote formation of cooperative societies.

The multi-faceted government aid to the cooperatives has resulted into vast expansion of cooperative activity. But the country reports from India. Indonesia and Sri Lanka reveal that government assistance has also resulted into growing dependence of cooperatives on the government and loss of their autonomous functioning on account of government interference. In this context, important issue is the inter-relationship between government assistance and its participation in the management of cooperative assistance. In Indonesia and Thailand the law does not provide any representation to the government on the

management of a cooperative society. In Philippines also representation is not provided to the government except in case where cooperative organisation is recipient of financial assistance and where such representation is mutually agreed upon under a contract. In other countries namely Bangladesh, India and Sri Lanka cooperative law empowers the government to send its nominees on the board of management of cooperatives. Section 28 of Cooperative Societies Ordinance, 1984 empowers the government and the registrar to nominate members on the board. It also mentions that in the cooperative societies where government has subscribed more than 50% of the paid up share capital or where more than 50% loans have been guaranteed by the government, the government in case of a national society and registrar in other case is empowered to nominate 1/3rd members of the managing committee. In India, the common provision in cooperative laws of all the States is to empower the government to nominate at least 1/3rd members of the board or three directors whichever is less. In some of the states, number of the government nominees is linked with the quantum of the share capital subscribed by the government.

Section 41 of the Multi-state Cooperative Societies Act in India provides for nominee of central government or state government on the Board. The number of directors are specified in the bye-laws of a cooperative society. Rule 31 mentions that central government or the state government shall have the right to nominate on the board such number of persons not exceeding three or one third of the total number of board members whichever is less on the board of management of a cooperative society. However, bye-laws of a cooperative society may prescribe excess number of government nominees on the board of directors of that particular cooperative society.

In some countries, government have set up parastatal organisations for promotion of cooperatives, through provision of financial and other assistance, formulation and implementation the projects in different spheres of co-operation. These parastatal organisations also guide and direct the pattern of management and functioning of cooperatives whom they assist. For example Bangladesh Rural Development Board directs the growth and development of cooperative societies in rural areas. In India specified institution like National Cooperative Development Cor-

poration, National Dairy Development Board have been set up to take care of cooperative development for specified activities. Although specific provisions in the cooperative law about the role of such organisations have not been made, their relationship with beneficiary cooperatives is governed under the grant-in-aid terms and conditions and contractual arrangements agreed between the two.

Equally important is role of government in utilization of cooperatives to implement certain policies and programmes of the government. Cooperative laws practically in all the countries under study make enabling provisions to authorise the government for directing the course of development of cooperatives. In Indonesia article 37 defines the role of government in cooperative development. Philippines has enacted a separate act to promote the growth and development of cooperatives and for creating cooperative development commission to coordinate and rationalise all government policies and agencies supporting cooperatives and appropriate funds. In countries of Indian sub-continent the government can issue directive in public interest or in interest of cooperative development.

Such provisions may also often militate against the autonomy and philosophy of cooperative organisation. With a view to avoid such situation the Cooperative Code of Philippines has made specific provision vide section 1 - "Declaration of Policy" that the government assistance to cooperatives shall be free from any strings that might in any manner infringe upon the objectives and character of cooperatives. Further, state shall maintain the policy of non-interference in the management and operation of cooperatives except as otherwise provided in the act. However, such sort of explicit provision regarding the role of government and its assistance for cooperative development vis-a-vis its participation in the management of cooperatives is not provided in the cooperative laws of other countries under study.

Settlement of Disputes

Cooperatives are people organisations. Therefore disputes arising in a cooperative are expected to be settled through mutual consultations and discussions. However, cooperative laws of all the countries make specific provision for settlement of disputes. In Bangladesh, India and Sri Lanka and Thailand registrar cooperative societies is empowered to settle the disputes as per the prescribed norms and parameters contained in cooperative law and rules. Indonesian cooperative law authorizes minister of cooperatives to empower head of the provincial office of the department of cooperation; head of the district office of the department of cooperatives to settle the disputes of cooperatives. Philippines has adopted a system for settlement of disputes through the general assembly or otherwise by a conciliation/mediation/arbitration panel comprising of at least three disinterested persons, preferably officers of umbrella cooperative organisation. If this steps fails the matter may be settled in a court of competent jurisdiction. Appeal against the decisions of the registrar or dispute settling authority lies with the government or a higher forum provided by Law e.g. the cooperative tribunal or cooperative appellate court, in India.

Administration of Cooperative Law

Three models of administration of cooperative law are prevalent in the countries under study:-

- i. Countries of Indian sub-continent has an administrative model which combines the developmental, promotional, administrative and executive functions in one single department known as department of cooperation headed by the registrar. This model was evolved for ensuring a coordinated approach for development and administration of cooperatives. However, in due course of time this model showed its weakness. The registrar of cooperative societies who was contemplated as friend, philosopher and guide turned out to be more an administrator than a development agent for cooperatives.
- ii. Another model has been evolved in Thailand where three distinct departments - for registration and administration; for promotion and development; and for auditing have been created.
- iii. Third model is being evolved in Philippines by creating a cooperative development commission where the interests of the government, cooperative movement and allied agencies will be represented.

The second model is based on the thinking that administration and development are two separate activities; and, therefore, specific and independent departments in the government for the purpose should be created. Third model for administration of cooperative law contemplates creation of a novel agency namely Cooperative Development Commission to take care of developmental aspects of cooperatives. The commission would be a parastatal body to be governed by a board of commissioners consisting of a chairman and six regular members. Chairman and regular members shall be appointed by the President of Philippines from among the nominees of cooperative movement. Be-

sides, there will be four ex-officio members from departments of agriculture, transportation and communication; electrification administration; and sugar regulatory administration. The commission is being vested with full authority to promulgate rules and regulations to govern the promotion, organisation, registration, regulation and supervision of all types of cooperatives. Besides, the commission is also responsible for formulation and adoption of plans and programmes on cooperative development and their implementation. By creating such agency (Cooperative Development Commission) an attempt is being made to create an autonomous and independent authority for the administration of cooperatives and the law governing them.

Conclusions and Recommendations

Evolutionary features

Analysis of evolution of cooperative law in the countries covered by the study reveals the following characteristic features:-

- (a) Cooperatives in all these countries have been part of government sponsored programmes for development;
- (b) A dual responsibility i.e. implementation of government sponsored developmental programmes and fulfilment of members' objectives and expectations has been assigned to cooperatives. In view of this government is actively involved in promoting and administering the cooperatives. Cooperative law has been so evolved that it gave adequate and effective power to the government to control cooperatives;
- (c) Cooperative law visualizes cooperatives primarily as institutions for farmers' development;
- (d) With a view to enabling the government to support cooperatives, cooperation has been given a constitutional recognition in some of the countries.

Approach to cooperative law

Cooperatives are peoples organisations and also economic enterprises. In view of this, legal framework should be such as would ensure maximum participation of the members of cooperatives and at the same time efficiency in their working to build up their competitive strength in the socio-economic set up of the country. Besides, cooperative law should also nurture and strengthen cooperative ideology both within the individual organisation as well as organisational structure as a whole. Keeping in view the following norms/considerations for framing, amending/adopting cooperative law may be considered:-

- (a) The law should incorporate the basic philosophy of cooperation enunciated by the International Cooperative Alliance.
- (b) It should also provide for incorporation of principles of cooperation and unobstructed internal autonomy of the working of the cooperatives.
- (c) Since cooperatives have to compete with other sectors of economy, they have to be equipped with adequate support and flexibility to adapt their operational and business policies with the needs of the competition in the market. The law should therefore ensure that there is no interference from any external agency in the business operations and management of a cooperative organisation.
- (d) The government in the countries covered under the study is committed to promote and develop cooperative. It has substantial stake in the equity and funds of cooperative organisations. In view of this, the law should also recognize the role of the government for the development of cooperatives. The government should be clothed with adequate power to safeguard its interest without impairing the autonomy of cooperative organisation.

Constitutional status to cooperation

In some countries namely Indonesia and Philippines, the national constitution has defined the status of cooperation placing an obligation on the state to develop and strengthen cooperation as an instrument of economic development. While such provision is definitely in the interest of cooperative growth and is insulator against the wavering policies of the government regarding cooperative development, care has to be taken that in the name of constitutional obligation, government does not take control of cooperatives by relegating the members into background who are the actual owners of cooperatives.

Model of cooperative law

With the growing diversification and enlargement of business operations of cooperatives, it is felt that law should be properly attuned to meet the emerging needs of diversification and expansion of cooperatives. In this context there may be possibility for

framing two sets of cooperative legislation; one dealing with cooperative ideology, incorporation, management and administration of cooperative society and other dealing with operational aspects of different sectors of the cooperatives. However, this should be examined keeping in view the level of the growth and diversification pattern of cooperatives in the country.

Formulation of cooperative societies rules.

Cooperative societies rules are to be framed to prescribe the procedural and practical steps for implementing provisions in cooperative legislation. In majority of the countries cooperative law makes an enabling provision empowering government to frame the rules under cooperative law. But it is observed that through the mechanism of cooperative rules government takes more and more powers in its hands relating to the subjects which could be brought into the fold of bye-laws which are termed as self-imposed discipline evolved by the members themselves. It is, therefore, recommended that the rules under the cooperative societies act should define only procedural aspects for effective implementation of provisions of law. All the aspects relating to the management and working of cooperative institutions should be incorporated in bye-laws of the society.

Incorporation of principles of cooperation in cooperative law.

The study reveals that principles of cooperation have been incorporated in cooperative law of all the countries except Bangladesh and Sri Lanka. It also reveals that universally accepted principles of cooperation formulated by ICA have been incorporated by suitably modifying/structuring them keeping in view the national perspective about cooperative development. Registration clause in cooperative laws of all the countries mention that only such cooperative societies will be registered which function in accordance with the principles of cooperation. Therefore, it is necessary that principles of cooperation should be incorporated in restructuring of cooperative laws. With regard to the modification and restructuring of cooperative principles, there is a need to adopt pragmatic approach in view of the variations in the socio-economic conditions of the countries.

Promotion of viable and genuine cooperative societies.

A genuine and viable cooperative society is the one which adopts cooperative principles in carrying out its business and activities and is economically viable unit. In other words it should consist of genuine members with homogenous economic interests and should have capacity in due course of time to generate enough surplus for meeting cost of establishment and generating capital formation. The provision regarding organisation and registration of cooperative societies in all the cooperative laws visualize these considerations as basis for registration. However, these provisions leave much scope for arbitrary interpretation of the terms 'genuineness and viability'. Power to register a cooperative society is discretionary with the registering authority. It has been experienced in many countries, that inspite of fulfilment of criteria of genuineness, registration proposals have been pending with the registering authorities for years and thereby adversely affecting the growth and expansion of cooperatives. With a view to obviating difficulties created on account of arbitrary use of discretionary power by the registering authority, new cooperative law of Thailand has made a good provision which makes it obligatory on the registrar to register a cooperative society if it fulfilled all the prescribed conditions. However, if registrar felt that there was need to modify the registration proposals or some more work was required to educate the promoters, he could refer back the proposal to the promoters. In order to ensure timely registration of genuine and viable cooperative societies without any obstruction, the following provisions are recommended to be incorporated in cooperative law:-

- (a) Maximum time limit for disposal of registration application should not be more than 3 months. If no objection is received from the registrar, the society should be deemed to have been registered.
- (b) If society fulfilled all the criteria laid down in the act and rules regarding genuineness and viability, registrar shall have to register a cooperative society.
- (c) With a view to ensuring that society becomes viable, provision for provisional registration for prescribing a period (pre-

cooperative stage) may be incorporated in cooperative law. The final registration certificate should be issued only after the society has successfully completed the pre-cooperative stage.

Membership of a cooperative society

Open and voluntary membership is one of the principles of cooperation. Based on this principle cooperative laws under study have prescribed common economic interest and eligibility to perform contractual obligations as the common considerations to grant membership of a cooperative. However there are two equally important aspects of membership -

- (a) Criteria for defining genuine membership; and
- (b) Members' loyalty towards their cooperative organisation.

Except in India, cooperative laws of other countries do not make any specific provision to restrict the entry of persons having conflicting interest with the society. Similarly for members' loyalty also only Thai cooperative law has made specific provisions vide section 25 to enforce the loyalty of members through the execution of members' contract with the society to make use of the services. Provision has also been made to impose fines on members for any infringement of bye-laws or any disloyalty. It is recommended that although there should not be any obstruction in open and voluntary membership of a cooperative society, adequate safeguards should be provided in the law to insulate the cooperative society from the entry of non-genuine members and also for enforcing members loyalty. Provision on the pattern of new Thai cooperative law would be worth-trial in other countries also.

Management of cooperative societies

Keeping in view the philosophy of cooperation and nature of business, management of cooperatives should be democratic and professionalised in its character. The study has analyzed the following aspects of management in cooperatives:-

- i. Instruments of management adopted by the cooperative society particularly with regard to their internal management i.e. bye-laws;

- ii. Roles of and Inter-relationships among various organs of management;
- iii. Personnel management policies in a cooperative;
- iv. Development of cooperative leadership; and
- v. Checking bad/delinquent management.

Bye-laws

Bye-laws reflect the self imposed discipline evolved by the members for managing the affairs of a cooperative society. Although cooperative laws of the countries under study provide for formulation and adoption of bye-laws by members themselves, in some countries particularly in India, Sri Lanka and Bangladesh, the department of cooperation in the government has formulated model Bye-laws. In these countries cooperatives law also makes provision for empowering the government to affect compulsory amendment of bye-laws of a cooperative society or a class of cooperative society which government of a land should deem fit in the interest of the cooperative and public. Such provisions are contrary to the ideology of cooperation and therefore should not find place in cooperative law. The promoters and the members should have full freedom to formulate and adopt their own bye-laws. The role of the government should be limited to examination of the bye-laws in relation to the existing laws, principles and ideology of cooperation.

Role of various organs of cooperative management:

Study has analyzed role of various organs of cooperative management, namely general body; board of directors; chief executive; and functional sub-committees.

General body

According to principle of democratic control the supreme authority should vest in the general body. In Bangladesh, Indonesia, Philippines, and Thailand explicit provisions have been made for vesting supreme authority/final authority in the general meeting. But In India while some of the states have made provisions

for recognizing general body as supreme authority, in Multi-state Cooperative Societies Act the supreme authority of general body is conditioned by the provisions in act, rules and bye-law; and powers, functions and duties of other organs of management namely board of directors and chief executives are excluded from the purview of the general body. Since, general body consists of entire membership of a cooperative society, it should have full control over other organs of management and its jurisdiction should not be circumscribed.

Special general meeting

The cooperative law also provides for convening special general meeting to meet any exigency or to deal with the matter of urgent and emergent nature. Such provision is felt necessary in the interest of the cooperative movement and also in the interest of cooperative society.

Board of directors and office bearers

Board of directors is constituted by the general body through the process of election. Board in turn elects office bearers viz. chairman, vice-chairman, secretary, treasurer as the case may be. The board is responsible for planning and execution of policies and programmes of cooperative societies through the chief executive. In some countries, particularly in India, Indonesia and Thailand powers and responsibilities and functions of board of directors have been defined in the cooperative laws. In Bangladesh, Philippines and Sri Lanka, the cooperative law and rules make enabling provisions for providing guidelines with regard to the powers, functions and responsibilities of the board of directors to be defined in the bye-laws. In the context of cooperative ideology, it would be appropriate, if the powers, functions and responsibilities of the board of directors are defined in the bye-laws and the cooperative societies act may provide guidelines. Similar approach may also be adopted for defining the powers and functions and responsibilities of office bearers elected by the board of directors.

The term of directors in some countries is three years and in some it is five years. But in India the term of office bearers is restricted by imposing a condition that no officer/ office bearer of

cooperative society should hold office for more than two consecutive term or certain prescribed maximum period. Such provision is against democratic functioning and principles and needs to be deleted.

Election

Timely completion of elections is a very important element in the democratic management of cooperatives. Two types of provisions have been incorporated in the cooperative laws - (a) provisions empowering the government/registrar cooperative societies to conduct elections; and (b) provisions empowering the management of cooperatives to complete the electoral process.

Although the basic responsibility to conduct the elections should be that of management of cooperative societies, nature and functioning of the mechanism for conducting elections will depend on nature and type of a cooperative society. In smaller size cooperative societies, the management itself can easily conduct the elections of the managing committee. But in large size and bigger societies whose area of operation may be entire country or whose membership may be very large, it would be facilitating if election mechanism independent of cooperative society is created within the cooperative law. This would ensure objectivity in holding elections.

The cooperative laws under study also reveal that there is no provision prompting the management for ensuring timely elections. However, in Bangladesh cooperative societies ordinance provides that if the managing committee is not re-constituted before the expiry of its term, the registrar shall appoint a person to conduct the affairs of the society and the persons so appointed shall convene special general meeting to hold elections of the committee. Such provisions may act as workable deterrent against the tendency to stall/ postpone elections.

Chief executive

Chief executive, though paid employee of a cooperative society, is the most important link in the management of cooperatives, since responsibility to implement the policies and programmes

rests with him. The cooperative laws under study make varied nature of provisions about the concept and definition of chief executives. However, all the laws visualize appointment of chief executive by the board of directors/managing committee. India is the only country where an authority outside the cooperative movement has been visualized for preparing panel for making appointment to the post of chief executive. Such provision is negation of the autonomy of a cooperative organisation. Therefore, it is recommended that cooperative law should not be made as medium to take away the legitimate power and authority of the board of directors and delegate it to an outside body.

In the name of professionalisation of cooperative management, there has been a tendency on the part of the governments to demarcate the powers, functions and responsibilities of chief executive in the cooperative law itself. This is also not appropriate in the context of autonomy and harmonious functioning of a cooperative organisation. Therefore, it is recommended that the powers, responsibilities and functions of chief executive should be incorporated in the bye-laws only and not in cooperative law/rules.

Functional sub-committees

With a view to ensuring efficiency and promptness in the working of cooperatives, the functional sub-committees are set up by the board of directors. In some countries viz India, the cooperative law (Multi-state Cooperative Societies Act, 1984) prohibits the constitution of more than two functional sub-committees in addition to executive committee. This is contradictory to the principles of cooperation. The board should have full authority to constitute its sub-committees as it deem fit keeping in view the requirements of a cooperative organisation.

Inter-relationship among various organs of the management

The principal criteria for defining the inter-relationship among various organs of the management should be democratization and professionalisation of cooperative management. Keeping this in view, the following guidelines for defining inter-relationship among various organs of management are recommended:

- (a) The law should define the concept of various organs of the management;
- (b) The supreme authority of a cooperative society should vest in the general body and law should define powers, and authority of general body. So far as other management units are concerned, their powers, functions and responsibilities should be defined in the bye-laws. This is very much essential to maintain harmonious functioning in a cooperative society;
- (c) Jurisdiction of different organs of management should be well demarcated in the bye-laws so as to avoid any conflict and ambiguity.
- (d) Chief executive should not be an independent entity. He should function under overall supervision and control of the elected president/chairman of a cooperative society who in turn should be answerable to the board. Since chief executive is the head of professional team, he should be allowed to manage the business of the society without any interference from the elected President/office bearers. In view of this, chief executive should be made ex-officio member of board of directors;
- (e) The cooperative society should enjoy total autonomy for evolving its own personnel management policies in regard to different types of personnel employed by it. There should not be any outside agency directing/controlling the personnel management policies in cooperatives. Cooperative law should make enabling provision for making it obligatory on cooperative societies to have codified personnel management policies and service conditions of employees;
- (f) While power to appoint chief executive and senior officers should vest into the board of directors or the executive committee, chief executive should enjoy authority to appoint subordinate staff in a cooperative society.

Curbing the bad management

The cooperative laws under study have made provisions for outlining ways and means to curb bad management in a cooperative society. These provisions include audit, inspection and supervision of the affairs of the cooperative society by the government; internal check evolved by the cooperatives themselves;

supersession/dissolution of board of directors. In Thailand and Indonesia the cooperative law provides to constitute board of supervisors and board of advisers consisting of both members and experts. Board of supervisors is elected out of and by the members in a general body meeting and they are entitled to exercise check on the board of directors regarding business and implementation of the policies. The board of supervisors are responsible to the general body only. Such provisions may prove quite effective in keeping the board of director in a proper track and in curbing the delinquency or misuse of powers by the board of directors. Similarly, board of advisers is constituted by the general body to elicit the guidance of experienced persons and experts for efficient functioning of a cooperative society. Similar provision may also be incorporated in cooperative laws of other countries.

Supersession of management

Another important step which is contemplated in cooperative law to curb delinquent management is supersession/ dissolution of elected board of directors/managing committee. Cooperative Laws of Bangladesh, India and Sri Lanka authorise the government to supersede the elected board of management, cooperative laws of other countries under study do not make such provision. In India provision has also been made to enforce automatic supersession of board of management of credit institutions if the recovery of cooperative loans is less than 60%. This is a negation of principles of cooperation. Instrument of supersession, though important for curbing delinquent management, should be so visualized that it does not jeopardize the autonomy and democratic content of cooperative management. The following may be the important guidelines for superseding the doard of management to be incorporated in cooperative law:

- (a) The decision of the registrar or the authorized person should be based on the objective analysis, reasons and facts;
- (b) Affected management of cooperative should be given opportunity of being heard before the enforcement of order for supersession; and
- (c) Objective of the supersession should be to stabilise the working and management of cooperatives and to restore

elected board of management. Therefore, supersession should be only for a limited period not exceeding six months and it should be made obligatory on the administrator appointed during the period of supersession to restore elected board of management at the earliest.

De-politicisation of cooperatives

It is observed that in some countries, cooperatives are politically misused. Therefore, it is essential that cooperative law should provide some mechanism to insulate cooperatives from political interference and misuse.

Developing leadership in cooperatives

Efficiency of a cooperative organisation depends on enlightened and responsive membership and their elected representatives. While the cooperative laws have made provisions for arrangements for cooperative education of their members and leaders, it does not provide any enabling mechanism which would ensure leadership development in a continuous manner. It is also observed that some times cooperative leaders, for their narrow gains create hurdles in the growth of genuine cooperatives and they do not allow fresh blood to enter in the leadership stream. A provision in cooperative law for making it obligatory on every cooperative society to form a code of conduct for the leadership of cooperatives i.e. members of the board of directors and office bearers will go a long way in ensuring healthy growth and development of cooperative leadership.

Cooperative law and self-reliance

Issue of self-reliance has three aspects : (a) self- regulation; (b) strong financial base; and (c) responsive leadership.

Analysis of cooperative laws covered by this study reveals that there is no specific provision that will motivate the cooperative organisation to build up their own financial resources, notwithstanding the provision for creating different types of funds out of the earnings of cooperative society.

Role of federal organisation

Cooperation is a system based on the concept of federalism - visualizing the organisation of cooperative societies at primary, secondary, state and national level integrated with each other organizationally and operationally. Such system can be successful only if the principle of cooperation among cooperatives is followed and adopted by all constituents of the federal structure in toto. Cooperative law of Indonesia, Philippines and Thailand make specific provision for the role and responsibilities of federal cooperative organisation to support its constituent units and vice-versa. Similar provision may be considered for incorporation in cooperative laws of other countries also.

Role of representative/spokesmen organisation i.e. cooperative unions

For strengthening ideology of cooperation there is a need to evolve effective institutional support for the purpose. Cooperative laws of Indonesia, Philippines and Thailand have incorporated specific provisions for defining the role and functions of cooperative unions. It is recommended that provisions on similar lines should also be incorporated in the cooperative laws of other countries. This will enhance the status and place of national cooperative unions which have been created basically for nourishing cooperative ideology.

Role of government

Study notes that government has been playing an important role in promoting and expanding cooperative movement in the countries covered under the study. Substantial financial resources have been invested by the government in cooperative development programmes. Therefore, importance of the role of government in cooperatives cannot be minimized. However, it is felt that in the name of safeguarding its interest and that of cooperatives, government has clothed itself with more and more powers which have adversely affected the democratic and autonomous character of cooperative functioning. It is recommended that the following should be the important aspects of the role of the government in cooperatives:

- (a) Cooperative development;
- (b) Preservation and protection of cooperative values;
- (c) Ensuring timely elections if cooperatives failed to do so;
- (d) Ensuring efficient and autonomous functioning of cooperatives.

The provisions in cooperative law defining the role of government should be based on these considerations.

In some countries covered by study, particularly, Indonesia and Philippines cooperative law specifically defines the obligation of the government to promote and support cooperatives. It would be appropriate, if provisions on similar lines could be incorporated in cooperative laws of other countries also.

Settlement of disputes

In cooperative law of all the countries, disputes in cooperatives are settled by the registrar of cooperative societies or the person authorized by him, with the exception of Philippines, where law provides for settlement of disputes by the general body or otherwise by a conciliation/mediation/ arbitration panel comprising of at least three disinterested persons preferably officers of umbrella cooperative organisation. Provisions on the lines of Philippines cooperative law is definitely democratic in its content and is in line with the mutuality aspect of cooperative organisation.

The cooperative laws should also provide for appeal against the decisions of the registrar or the management of cooperatives. In some countries, minister or the government has got power to hear appeal. In India cooperative law has made provision to set up cooperative tribunal which seems to be an appropriate system to ensure objectivity in settling disputes in the cooperative society.

Administration of cooperative law

There are three models evolved for administration of cooperative law - model which combines developmental, promotional, administrative and executive functions in one single department headed by the registrar; another model where developmental and promotional aspects have been separated by creating three

distinct departments - department for registration and administration headed by the registrar; department of cooperative promotion and development headed by director-general and department of audit headed by chief auditor. Third model is prevalent in Philippines where specific law is being enacted to create a cooperative development commission, a statutory autonomous body which will be responsible for promotion, development and regulation of cooperatives.

While recommending a model for administration of cooperative laws, administrative system of the country as well as policies and programmes of cooperative development adopted by the governments should be kept in view.