International Co-operative Alliance
Asia and Pacific

AUTONOMY AND INDEPENDENCE OF COOPERATIVES IN INDIA

Study conducted by

ALC India

reimagine livelihoods™

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This study was conducted for

International Co-operative Alliance
Asia and Pacific

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Acronyms and Abbreviations

ALC India	*Access Livelihoods Consulting India Limited*
APMACS	*Andhra Pradesh Mutually Aided Cooperative Societies*
BOD	*Board of Directors*
CDF	*Cooperative Development Foundation*
DCCBs	*District Central Cooperative Banks*
FAO	*Food and Agriculture Organisation*
FPO	*Farmer Producer Organisations*
GOI	*Government of India*
ICA-AP	*International Cooperative Alliance Asia and Pacific*
ILO	*International Labour Organisation*
IOC	*Investor Oriented Company*
IoT	*Internet of Things*
IYC	*International Year of Cooperatives*
KCMMF	*Kerala Cooperative Milk Marketing Federation*
KCS	*Kerala Co-operative Societies Act*
LLPs	*Limited Liability Partnerships*
MACS Act	*Mutually Aided Cooperative Societies Act*
MSCS	*Multi-State Cooperative Societies*
NDC	*National Development Council*
NGCs	*New Generation Cooperatives*
PA	*Professional Association*
PACs	*Primary Agricultural Cooperatives*
PCs	*Producer companies*
PLLP	*Professional Limited Liability Partnership*
RoC	*Registrar of Company*
SC	*Service Corporations*
TSM	*Trusted Service Manager*
UNGA	*United Nations General Assembly*
UOC	*User-oriented Co*operative

Preface to the Report

The study is a joint research project of ICA-AP and ALC India to ascertain the status of 'autonomy & independence' of cooperatives in India specifically and comparing it with the overall situation in selected countries in South East Asia. The immediate trigger to such a study has been caused by -

1) Enactment of 97th constitutional Amendment Act 2011

2) Repealing of Self-Reliant Co-operative Acts in two out of nine states (Madhya Pradesh and Odisha) in India

3) The emergence of people-centric enterprise structures and models in India especially those based on information technology applications.

The ICA Statement on the Cooperative Identity[1] (the statement) is an instrument that contains the universally accepted definition of cooperatives, values that distinguish the cooperative way of doing business, and a set of seven principles that guide cooperative enterprises in their work. The cooperative principles were reformulated during the centennial congress of the ICA in Manchester in 1995, thus making ICA the custodian of the statement.

Out of the seven principles, some of the principles like autonomy & independence (4th Principle) and concern for the community (7th Principle), were implicit within the cooperative identity.

The 4th Principle "Autonomy and Independence" states that the cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.

The ILO Co-operative Services section was established in 1920. The following is an extract from the second meeting of the ILO governing body in 1920:

"The peace treaty foresees that the ILO should not only be concerned with the conditions of work, but also with the conditions of workers. By and large, it is under the organisational form of cooperatives that this concern is best addressed for the largest part of the population. The cooperative section will not limit itself to the question of distribution, but will also research into the question of housing, leisure time of workers and the transportation of the workforce ...."

The 26th session of the International Labour Conference, held in Philadelphia, adopted Recommendation No. 70 on Social Policy in Dependent Territories, a section stressed the importance of cooperatives and the need for specific legislation applicable to all cooperatives. In 2002, Recommendation No. 193[2] was adopted on Promotion of Cooperatives with key features as Universality, Self-sufficiency, Identity, Human resources, Legal framework, Self-governance, Basic values and principles, The role of employers' organisation, The role of workers' organisation, Cooperatives not to be used to determine workers' right. The impact of the recommendation was so significant that 100 countries reviewed, revised or adopted policies, or laws dealing with cooperatives. According to Smith, ILO has influenced a number of regional organisations.

According to Smith, stated in Recommendation 193 "Cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise." This definition was later adopted by International Cooperative Alliance (ICA) in 1955.

The ICA and ILO definition of cooperatives recognizes cooperatives as an autonomous association of people united voluntarily, while the fourth principle explains that further and is reflective of the relationship of cooperatives with national/provincial governments and inter-governmental organizations, as well as the relationship between commercial lenders and others in

[1] http://ica.coop/en/whats-co-op/co-operative-identity-values-principles
[2] https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/publication/wcms_311447.pdf

the dominant position in the value chain. It has been seen that 'absolute' autonomy and independence of cooperatives is compromised in cases where public and private economic institutions assort cooperatives as part of their overall organizational structure. The threat also exists in cases where cooperative groups end up forming companies to ease business interactions with other actors, and in cases where cooperatives are a part of the production, consumption and delivery mechanism of the State. These threats are essential to the inherent authority of cooperatives to take independent business and social decisions in the interest of their members.

This study attempts to assess the Republic of India's commitment towards the 4th principle and the various actions initiated to see if the cooperatives are given sufficient autonomy respecting the values of self-reliance and self-management which the cooperatives are to stand for.

Legal Climate in India

The first successes of the modern cooperative movement that can be said to have begun in the western hemisphere in the early 19th century, did not have any legislation to support them at all. These cooperatives were pioneered by ethical and independent leadership and autonomous management & self-regulation. However, a legal and policy environment in line with the cooperative principles is one of the most important factors to define and attribute the autonomous and independent character to cooperatives in the 21st century.

Cooperatives in developing countries, especially in South Asia, proliferated with the help of legislation drafted and enforced by erstwhile colonial powers. Incidentally, the pre-independence legislation of Co-operative Societies Act of 1904 (India) formed the basis for cooperative laws in Sri Lanka, Pakistan and Bangladesh.

Today, the ICA cooperative identity statement and its various interpretative forms find presence in several cooperative legislation across the world, including the framework in India, particularly, the Mutually Aided Co-operative Societies Acts or Self-Reliant Co-operatives Acts that are currently in force in seven Indian states.

Further, the Constitutional 97th Amendment Act, 2011, mentions in Part IVa (Article 43B) that "The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies".

This warrants the need to revisit legislation and components thereof that regulate inter alia, the autonomous and independent character of cooperative structures. This study provides an opportunity to undertake a desk-based study to understand the legal stand of the states and India as a country. Such a study, it is expected, will help unravel whether the said laws and policies add in ensuring autonomy and independence of cooperatives.

The 2001 UN General Assembly Resolution 56/114 on Co-operatives in Social Development recognizes the need for governments to utilize and develop fully the potential and contribution of cooperatives for the attainment of social development goals. The document particularly identifies eradication of poverty, the generation of full and productive employment, and the enhancement of social integration as areas where cooperatives can play a definitive role of conduits and vehicles. Further, the resolution urges governments to encourage and facilitate the establishment and development of cooperatives, including taking measures aimed at enabling people living in poverty or belonging to vulnerable groups to engage on a voluntary basis in the creation and development of cooperatives and lastly, to taking appropriate measures aimed at creating a supportive and enabling environment for the development of cooperatives by, inter alia, developing an effective partnership between Governments and the cooperative movement.

The resolution 56/114 was followed by a report of the Secretary-General A/56/73-E/2001/68 on Co-operatives in Social Development, which included the UN draft Guidelines on Creating a Supportive Environment for Development of Co-operatives. This document was prepared pursuant to the request of the UNGA to the Secretary-General in order to report on the

implementation of the resolution. The process of reporting involved information of contribution of cooperatives to the social development goals from governments of UN member States, as well as their views on the guidelines itself. Finally, this report provides a set of recommendations under Part IV of the document wherein the UNGA urged governments to ensure a supportive environment in which cooperatives can participate on an equal footing with other forms of enterprise, protecting and advancing their potential of cooperatives to help members achieve their individual goals and the broader aspirations of the society at large.

Interestingly, the suggestions made by an array of governments under provision 41. C & D of Part III[3] of the Report indicate that governments did not look at their engagement with cooperatives as 'partnerships' and implicitly distinguished cooperatives from public agencies, thereby according them, the private sector status. At the same time, governments and relevant intergovernmental and non-governmental organizations submitted that governments of developing countries should guide cooperatives towards autonomy by the creation of appropriate and supportive framework structures. The revised draft guidelines clearly indicate that legislations governing cooperatives must ensure that cooperatives enjoy real equality with other types of associations and enterprises and not be discriminated against because of their special character and that laws must be consistent with the cooperative principles and values and recognize full autonomy and capacity for self-regulation of the cooperative movement. The guidelines further add that intervention of government in the internal affairs of cooperatives should be 'strictly restricted' to measures applied to other forms of business. Furthermore, the guidelines establish the responsibility of governments to formulate and carry out a policy to establish a supportive and enabling environment while avoiding any infringement on the autonomy of the cooperative movement and any diminution of its capacity for responsible self-regulation.

The scope of creation of a conducive environment for the development of cooperatives in resolution 56/114 is supported by the ILO Recommendation 193 (2002) on the promotion of Cooperatives[4] that emphasizes the need to uphold their autonomous character, as is with other private sector enterprises.

As one of its main features, the ILO Recommendation 193 that replaces Recommendation 127 recognizes that the potential of cooperatives will be reached only when they are true to their identity, principles and values, and furthermore, recommend national governments to ensure policies and legal frameworks are guided significantly, to protect and foster the autonomy of cooperatives. Recently adopted international instruments such as the Addis Ababa Action Agenda on Financing on Development[5], the New European Consensus on Development[6] document, and the Agenda 2030 on Sustainable Development recognize cooperatives as important private institutions to boost the provision of local services as well as inclusive and green business models that are seen vital to implement the global goals on development. It will be impossible to imagine cooperative action on development if the movement continues to suffer from infirmities in terms of undue intervention from the outside that affected functioning and governance on the inside.

Study Structure and Outline

This study is an attempt to examine the legal status of cooperatives both at the central as well as state level in India. An Executive Summary has been presented at the beginning of the study to summarise the reflections on the autonomy and independence of cooperatives in India and its states based on desk-based research.

The Second and Third Chapters set the background and also understanding on the key areas of exploration. The key areas of exploration are how the "autonomy and independence" principle works in action and the legal environment for cooperatives in the country. Over a

[3]https://undocs.org/A/56/73
[4]http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R193
[5]https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf
[6]http://www.consilium.europa.eu/en/press/press-releases/2017/06/07-joint-strategy-european-consensus-development/
[7]http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

period of time, the governments at both central and state level have enacted several acts that are enabling cooperatives either under the long-standing traditional acts and the new Self Reliant Acts, functional across seven states currently, starting with Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995, along with new innovative models and structures. Apart from the Cooperatives Act, a new legal form called Producer Companies has been created in the Indian Companies Act, 1956. Introduced as Part IXA with 46 sections, including unique sections numbered 581A to 581Z and 581ZA to 581ZT. The same has been adopted mutatis mutandis as Section 465 under Companies Act, 2013. The Producer Company structure follows basic tenets, "Identity" which includes definition, values and principles as prescribed by International Cooperative Alliance, 1995 but has however been created as an option for co-operators across the country to function under the ambit of the federal government. These will be set in context in the first two chapters.

The Fourth Chapter sets to understand how historically courts have interpreted and seen cooperatives over a period of time. Given the benevolent orientation that the Government of India has had on cooperatives, the courts have always held cooperatives as a mere extension of government to reaching out to marginalised communities. For long, it never recognised them as private entities which need a level playing field to compete with the companies or corporate business houses but as benevolent structures of governments whose mere existence is more important than self-reliant functioning in a viable and sustainable manner. The Supreme Court of India, in a landmark judgement on 2nd September 2011 on cooperatives, recognised them to be member-owned and managed entities. The Supreme Court has unambiguously stated:

"The cooperative, by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon the principles of equity, reason and the common good. Therefore, the basic purpose of forming a cooperative remains to promote the economic interest of its members in accordance with the well-recognised Principles of Cooperation."

The Fifth Chapter introduces the landmark Constitution (97th Amendment), Act 2011. It has taken a long effort from the co-operators and cooperatives to impress upon the Government of India to recognise cooperatives as private entities and therefore encourage every citizen to benefit out of the cooperative structure, by making it a fundamental right. The Constitution (97th Amendment) Act precisely recognised, it is the fundamental right of a citizen of India to form cooperatives and also defined cooperatives as autonomous bodies. So, while this chapter shares and admires the fact that the Government of India has finally given the due that cooperatives deserve it also presents the subsequent court battles that some independent co-operators have undertaken through the courts. Accordingly, the objections and the court's view are also documented in this chapter.

The Sixth Chapter attempts to challenge the government to seriously reflect on the current status and lack of level playing field cooperatives continue to face as against companies (all forms – both Private and Public Limited) in the country. While the Constitution (97th Amendment) Act, 2011 does commit that the State will act as an active enabler, there still exist a lot of gaps in terms of offering a level playing field.

The Seventh Chapter recognises that the spirit of co-operators is un-daunting and they continue to find avenues to cooperate and create a better world for everyone through a variety of means beyond the legal space that is given. This chapter explores the design and also pattern in the proliferation of platform cooperatives, co-creation sites (like Wikipedia) and a number of professional partnerships across the country. The future seems to indicate that the idea of cooperation will sustain more in diverse forms rather than in the narrow domains of legal realms or formal institutional structures.

The Eighth and Ninth Chapters present the conclusion and way forward for Cooperation and Cooperatives in India, keeping the legal space in view.

CHAPTER 1

EXECUTIVE SUMMARY

The existence of cooperative organisations can be traced back to the early civilizations in diverse parts of the world (China, Egypt, Greece, etc.), but it drew the attention of the society in 1844 when Rochdale Equitable Pioneers' society was formed in England comprising of 28 members ranging from Flannel weavers to shoe-makers. In 1844, 1845, 1854 the society published a series of practices which became the basis of cooperative management and later known as Rochdale Principles[8] (USDA, 2011).

Cooperative principles evolved over a period of time when the ICA was founded in 1895. ICA started refining previously laid cooperative principles and made two formal declarations of principles; first in 1937 and second in 1966. The third and final review was done in September 1995 when the 4th principle of Autonomy and Independence was introduced for the first time, which focuses on the relationship of cooperatives with national governments and international governmental organisations, between cooperatives and other commercial entities. These are intended to guide cooperative organisations at the beginning of the 21st century.

Literally, Autonomy means a state of being self-governed and independence is the state of not being dependent on another which implies a rejection of rules and regulations. But to what extent should such rejection be done? In discussions with cooperative organisations do we really need to reject the pre-defined rules or these rules need to be liberalised? Besides, answering such questions, this report throws light on the constitutional amendments that have been made in order to grant operational autonomy and independence to cooperatives, paving the path for the emergence of new forms of collective action.

Over a period of time, the governments at both central and state level have enacted several acts that are enabling cooperatives either under the long-standing traditional acts and the new Self Reliant Acts, functional across seven states. Constitutional acts like Cooperative Credit Society Act 1904, Cooperative Law 1932, 1952 and other liberal laws came into existence. To

[8]Rochdale Principles are Open membership, Democratic control, Net margins distributed according to patronage, Limited interest on stock, Political and religious neutrality, Cash trading, Membership education, No unusual risk assumption, Goods sold at regular retail price.

understand the development of the cooperatives and to make recommendations for the sustainable development of cooperatives, different committees[9] like Committee on Co-operation (1914), Royal Commission on Agriculture (1928), Agricultural Finance Sub-Committee (1945), Co-operative Planning Committee (1945), Co-operative Planning Committee (1946), Rural Banking Enquiry Committee (1949), Rural Credit Survey Committee Report (1954), Law Committee (956), National Development Council (NDC) Resolution (1958), Working Group on Cooperative Policy (1958), Mehta Committee (1959), All India Rural Credit Review Committee (1969), Banking Commission (1972), Dubhashi P.R. Committee (1972), Khusro Committee (1989), Pant Committee (1990) etc. were formed.

The judicial system of India has also upheld the cooperative principle of Autonomy and Independence. Judicial decision with respect to the case of Andhra Pradesh (A.P. Dairy Development Corporation Federation Vs. B. Narasimha Reddy and Org.); case of Kerala (Thomas K.F Vs. Kerala Cooperative Milk Marketing, Directors of Dairy Development, State of Kerala); case of Uttar Pradesh (U.P Sahkari Awas Ltd Vs. Union of India through its secretary, Ministry of Agriculture, Department of Agriculture and Cooperation, Krishi Bhawan), present a clear picture that Indian courts have always been inclined towards protecting the autonomy and independence of cooperatives. As stated by Justice P.N. Ravindran, "...the successive revisions and the magnitude is often decided by the Government, an anomaly to the very concept of the cooperative movement in the country." Both cooperatives and state should work together by respecting the full autonomy of the cooperative.

The constitutional and judicial changes have brought a level field playing for the cooperatives either registered under Companies Act 2013 or Cooperative Acts or New Generation Cooperatives (NGCs). But they differ with respect to the degree of autonomy and independence being provided as per their registration. A comparative study of Companies Act 2013, Cooperative Acts and New generation Cooperatives reveals that the organisation registered under Companies Act enjoy a greater amount of operational autonomy and independence followed by new generation cooperatives (NGC) and then the old cooperatives. Comparing the growth of PCs and Cooperatives with the level of autonomy and independence granted by the laws reveals that even with the limited autonomy, cooperative sector and PC provide direct and self-employment to about 17.80 million people in the country and play a significant role in improving the socio-economic conditions of the weaker sections of society through cooperatives in fisheries, labour, handloom sectors and women cooperatives.

Development of a level playing field for cooperatives has fuelled the emergence of new forms of collective actions like Limited Liability Partnership (LLPs), Platform Collectives (Ola, Uber, Food Panda etc), Open Source and Co-creation sites (Apache, Linux etc.), where there is a greater scope for autonomous systems to interact with legal systems. These emergent collectives have provided significant autonomy and discretion like employees have the freedom of choice i.e. who they want to work with, when they want to work and how they want to work. The autonomy is also in terms of when to work and which orders to accept or reject. These emergent collectives could pave the way for the involvement of youth and women. This new paradigm i.e. conglomeration of technology with the collective action will attract youth as now-a-days youth are technology-driven and look for experiential learnings. Emerging forms of collective actions are the best ways to counter the barriers faced by women as this will encourage the women's participation in the public sphere through online based platforms which in turn will address the problem of women's double burden and triple roles. In order to ensure autonomy of cooperatives, they should be recognised as a business, not as a social service and they should be able to compete with other forms of business. This could be possible only if the State and the cooperatives strike a perfect balance on the matters relating to internal management, such as choice of business, choice of membership, choice of area of operation, framing and amendment of bylaws, conduct of elections, size, composition and term of board, staff appointments, staff service conditions, staff composition, staff discipline, wage fixation, appointment of auditors, amalgamation, division, merger, winding up, etc. Therefore, all provisions restrictive in these matters should liberalise cooperative law, and full responsibility for these should lie with the cooperatives.

[9] https://shodhganga.inflibnet.ac.in/bitstream/10603/24081/6/06_chapter%201.pdf

CHAPTER 2

INTRODUCTION TO ICA PRINCIPLE 4- AUTONOMY AND INDEPENDENCE

2.1. Preamble

The ICA-AP is the regional office of the ICA which is the global steward of the statement on the cooperative identity that comprises of a definition, values and principles of the cooperative movement. It is responsible for ensuring that the cooperative identity, principles and values are understood comprehensively and adhered to in practice as the global cooperative movement expands and enlists new members and forms.

The cooperative is an enterprise with strong ethical and value orientation. The statement on the cooperative identity, 1995[10] (as adopted by ICA) and the subsequent Constitutional amendment including the latest in 2011 help us uniformly recognise that cooperatives are autonomous associations of persons (individuals/ members) with common economic, social and cultural needs and aspirations united voluntarily through jointly owned and democratically controlled enterprise. It's critical to note that the definition clearly recognises cooperatives as associations of people and enterprises albeit owned and controlled by its members.

The seven principles and values of cooperatives as internationally accepted and adopted provide foundational guidance which when applied in day to day operations and governance of the cooperative ensures that its mission (or reason of existence) is achieved.

2.2. 4th Principle and its interpretation

The Fourth Principle, the key focus in this particular study, was introduced in 1995. It states that

[10] https://www.ica.coop/en/cooperatives/cooperative-identity

"4th Principle: Autonomy and Independence - Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy"

The critical words and phrases of the 4th Principle are -

"Cooperatives are autonomous, self-help organisations controlled by their members"

"Autonomy" here shall be interpreted as cooperatives having the freedom to act independently to govern themselves, control their own affairs, and set their own rules of operations.

The phrase "Controlled by their members" means that cooperatives cannot be considered as autonomous unless, control rests with their members in accordance with the sound open, transparent, and accountable democratic process being practised.

2.3. 4th Principle of Cooperatives and its Importance

Cooperatives were always intended to be autonomous and independent organisations, but with cooperatives in several countries being projected as state-financed, state-controlled, public-service institutions, it has become necessary for cooperatives to state the obvious about themselves - that they are autonomous, that any financial or other collaboration that they have with the government or any other external agency, is subject to their members' democratic acceptance of such collaboration, and to their organisational autonomy. The 1966 report of the ICA[11] does on occasion make allowances for government interference in membership matters. Thus, it was felt necessary to state autonomy and independence as one of the key principles. The same was incorporated as a principle in 1995.

In the context of economic liberalisation, it has become even more important for a cooperative to assert its identity, as governments tend to provide a more liberal environment for capital controlled enterprises, keeping cooperatives on a tight leach, but expecting them all the same to be competitive[12].

The principle educates the cooperators to ensure that any sort of partnership and collaborative efforts with national and international government organisations, commercial lenders, service providers, suppliers and vendors or any other enterprises should not be detrimental to the autonomy of enterprise and democratic governance of cooperatives.

Investor or capital-centric enterprise models have been predominantly advocated as a panacea for economic and social inequity that is present in the society. Humanity is yet to accept cooperatives as a viable and sustainable alternate to the capital-centric business enterprises capable of ensuring distributive justice and a dignified way to support the cause of the marginalised.

Both academic institutions (including management institutes) and governments continue to discriminate against the cooperatives through differential legal and regulatory frameworks which outweigh the preferential treatment on taxes and subsidies to cooperatives. Some of these frameworks do not really offer a level playing field against the investor-oriented and capital-centric enterprises in the market space, where the cooperatives are expected to compete with them.

Rapid globalisation post-1980's across the world and since the 1990s in India meant that wealth had started aggregating to a small percentage of individuals and financial institutions. Recent studies[13] indicate that India is home to 17% of the world population and more importantly, it is also home to the largest number of

[11] 166 Report of the ICA Commision on Cooperative Principles
[12] Quoted from Note Cooperative Principles from Rochdale (1844) to Manchester (1955) prepared internally by Cooperative Development Foundation.
[13] India Inequality Report 2018 - Widening Gap – Oxfam India

people living below the international extreme poverty line of USD 1.90 per day measure of the World Bank. Wealth held by the billionaires of India has multiplied 10 times in the last decade. Certainly, the trend indicates that the investor-oriented and capital-centric business owners, sovereign wealth funds, financial investors, investor-owned banks and other financial institutions seem to have taken substantial control over the wealth as well as resources across the world and especially in India. According to the Credit Suisse Global Wealth Report (2017), the top 10% of households held 52.9% of the total wealth of the country in 2002 which increased to 62.1% by 2012. The corresponding share of wealth held by the top 1% also increased from 15.7% to 25.7% from 2002 to 2012. These definitely indicate that the power that the financial institutions and individuals with wealth hold are substantial and significant.

It is in this context that the 4th principle is very important to be recognised and understood. Cooperatives do have the power to change the situation if only the governments and the ecosystem, in general, recognise this and offer a level playing field in an autonomous and independent environment. Nurturing such an environment for the cooperative enterprises is both the responsibility of governments as well as that of the civil society. The cooperative pioneers innovated on the enterprise model keeping the view that they no longer can expect governments to solve local problems. However, it can be solved by co-operators/communities believing in the values of self-governance, self-management and self-help that cooperative enterprises embody.

The international and legal environment in India does not seem to be all bad. The 2001 UN General Assembly Resolution 56/114 on Cooperatives in Social Development and the UN's draft Guidelines on Creating a Supportive Environment for the Development of Cooperatives together with 2002 ILO recommendation 193 on the Promotion of Cooperatives do really give hope that the world is ready to acknowledge and that there is rising awareness that cooperatives are effective enterprise models which can systematically address growing social injustice, economic inequity and environment degradation. Cooperatives have been recognised as important instruments in achieving the Sustainable Development Goals[14] adopted by member countries of the UN in September 2015. In fact, on 18th December 2009, during the 64th Session of UN General Assembly, the year 2012 was declared as the International Year for Cooperatives (IYC).

2.4. Guidelines on Protection of Cooperatives' Autonomy and Independence[15]

2.4.1. Relationship with the Government

UN's Resolution 56/114 aimed at creating a supportive environment for the development of cooperatives states that "the International Cooperative Alliance Statement on the Cooperative Identity should be taken as the base and operationalised in terms of cooperatives position in the context of the marketplace as distinctive from other forms of business enterprise."

Cooperatives have to engage with governments or legislators on legal or policy matters but that does not mean that they need to compromise on their autonomy and independence. One problem while interacting with governments is that they sees cooperative as a key policy tool for job creation, delivering services of the public sector, and poverty alleviation; this, in turn, compromises the autonomy and independence of cooperatives. When publicly owned assets are transferred to new cooperative delivery models - such extension, including the appointment of government officials to boards, should not compromise the rights and responsibilities of members enshrined in the cooperative principle. There should be a win-win and effective partnership between the states and cooperatives. The government should support cooperatives for the work they are involved in and should frame policies which make them independent.

ILO Recommendation 193 states that "Governments should introduce support measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment

[14]Cooperatives and Sustainable Development Goals – A Contribution to the Post-2015 Development Debate – Report jointly developed by ILO and ICA (https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/publication/wcms_306072.pdf)

[15]Summary of the chapter Guidance Note Pg 47 on 4th Principle of Cooperation – ICA Guidance Notes to the Cooperative Principles (https://ica.coop/sites/default/files/basic-page attachments/guidance-notes-en-221700169.pdf

promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as is possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions." At the same time, governments providing support to cooperatives shouldn't by extension confer controlling right to the government on cooperatives.

2.4.2. Regulation

Cooperatives have to operate in the external environment consisting of suppliers, buyers, third party and space where they all function i.e. the market. The complexity of effective market regulation is a problem, as was demonstrated by the global financial crisis of 2007/2008. As an alternative, self-regulation through a good governance code must be adopted by cooperatives. It must incorporate ethical values of cooperatives that are honesty, openness, social responsibility, and caring for others.

Regulation should be sound and appropriate and it can be inferred from ILO Recommendation 193 which states that cooperatives should be "treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise".

2.4.3. Agreements with Third Parties

2.4.3.1. External funding institutions – in order to compete in this competitive environment, cooperatives need to raise funds from external sources like banks, microfinance institutions, non-banking financial institutions and other funding agencies. Most of these finances push for either participatory or non-participatory Directorship in the boards of cooperatives. This definitely risks the autonomy and independence of cooperatives. This leads to loss of control over time; further capital demands result in a greater stake for such investors. Most financial institutions and investors control business enterprises through financial covenants and compliance obligations. Default in repayment or breaches of financial and compliance covenants can result in the autonomy, independence and democratic control of a cooperative by its members being restricted by the terms of such capital funding agreements. Hence, cooperatives should raise capital from external sources on such terms that do not compromise their autonomy and identity.

2.4.3.2. Suppliers and customers – A danger here arises from 'Pay and stay' arrangements, whereby major producer companies require suppliers to pay-back a percentage of the contract value in order to remain approved suppliers. Such arrangements present major challenges to cooperatives and other small producers that supply these huge, market dominant, companies. Autonomy and independence of cooperatives can be compromised if they are solely dependent on the single purchaser and/or a supplier who abruptly declares the price reduction. As a counter strategy, cooperatives should practice sound business management which must incorporate effective risk management strategies like risk mapping and risk analysis to measure the likely adverse impact and avoid foreseen risks.

2.4.4. Role of Board in Autonomy and Independence

The role of Directors of cooperatives in preserving the cooperative's autonomy and independence is very important. Weak governance and ineffective management will not be able to withstand the pressures from market, social and political fronts and still take decisions which are in the interest of members and cooperatives at large and not in favour of a section with vested interests. This becomes important for the sustainability and viability of the cooperatives. Weak governance and ineffective management will succumb to pressure or personal interest easily and compromise on the interest of cooperatives without even giving an adequate fight. Thus, the election of the right Board of Directors is key to maintaining autonomy and independence of cooperatives even where government laws and regulations are enabling and favourable.

Similarly, an inefficient management team with narrow and short-term perception can also jeopardise the plan of cooperatives for viability and suitability with inaccurate decisions for the deployment of resources and ineffective execution of plans. Weak cooperatives would lose their autonomy and independence to anyone – government agencies, buyers, sellers, financial institution or even to a politically strong section of cooperative members.

CHAPTER 3

LEGAL ENVIRONMENT IN INDIA

3.1. Preamble

Cooperatives are a form of business that can be useful for all sections of a community – the rich, the poor, women, men, the producer, and the consumer. They are of particular use to socially and economically disadvantaged communities, as they enable members with small transactions to jointly establish an enterprise which is in their control and meets their needs. The 'market', at least in its current state, finds it expensive to service small savings, small credit, small production, and marketing needs. As a result, it tends to overcharge (exploit) the small borrower, the small producer and the small consumer. Left unattended, each person wanting to have small transactions in the marketplace finds herself/himself at the receiving end. Where such persons establish an enterprise jointly owned and controlled by them to service their needs, they begin with the idea of mutual help, and soon enough their joint transactions become large enough to affect the entire local market; from thereon, the theory of cooperation expects leadership in the local market to go on to become leaders in a global market.

When India opened its economy in the early nineties to the global players, its marginalised communities (and there were millions of them), remained unorganised and unable to create for themselves a presence even in local markets. The unregistered association (and self-help groups belong to this category) is available to those currently exploited, but lack of body corporate status for the association implies that it cannot, in the normal course, enter into contracts, or hold property, or sue or get sued in its own name – and for long-term business, that can be very debilitating.

The Companies Act, 2013 specifically requires incorporation of a business carried on jointly by few shareholders (including two is a good number to start off) or by even a single person (One Person Company as an option has been introduced in the new Companies Act 2013). Only two forms of organisations, therefore, are available to large groups of Indian citizens to carry on a business - the company and the cooperative. The company form of an organisation aims at serving customers (usually larger public) and is dependent on shareholders willing to risk their capital. Disadvantaged

sections of the community do not have adequate capital, and certainly not enough to put to risk - and their reason for coming together is not to get a return on capital, but to serve their own critical financial, production, marketing, and/or consumption needs. What we are left with then is the cooperative form of organisation.

The cooperative form of organisation in India, till 1919, was regulated under the cooperative law which was a central law applicable throughout the country. Cooperative legislation then became a provincial subject with the Bombay Cooperative Societies Act of 1925 being the first provincial cooperative law. Currently, every state in India has its cooperative law for such cooperatives have members from just that state. In addition, there is the Multi-State Cooperative Societies (MSCS) Act of 2002, which applies to such cooperatives that have members drawn from more than one state.

Until the mid-nineties, cooperative laws across the country violated internationally accepted principles of cooperation[16]. While a cooperative was, by definition, an instrument in the hands of its members, for their own economic and social betterment, state cooperative laws and even the MSCS Act were drafted in a manner[17] that projected cooperatives as instruments of the government for the public good.

In 1995, the Andhra Pradesh Mutually Aided Cooperative Societies (APMACS) Act of 1995 (popularly known as MACS Act) was enacted, and for the first time, a democratically elected government moved out of the restrictive framework founded by the colonial government and created the space necessary for citizens to establish, design, define, manage, control, and dissolve their own cooperatives. The new legal framework was for those cooperatives which as did not accept or have any share capital contribution from the government[18]. It was a framework available for freshly registered cooperatives, as well as for those cooperatives under the earlier 1964 Act in the state of undivided Andhra Pradesh which wished to return its share capital to the government[19].

In many ways, the enactment of the AP MACS Act was a landmark for the Self-Reliant Cooperative Movement in India. Subsequently, nine states across the country enacted the Liberal Cooperative Societies Act offering members the opportunity to register autonomous and independent cooperative societies assuming complete responsibility of the consequences and results of cooperation. Later, two states withdrew the possibility of communities coming under the Liberal Cooperative Societies Act and therefore currently the liberal cooperative act is applicable in seven states of India.

3.2. Historical Perspective

The central cooperative laws of 1904 and 1912 were applicable across the country. With cooperative law later turning into a provincial subject, several state cooperative laws were enacted between 1932 and 1952. There is a significant difference in approach to cooperative law in post-independent India, prior to and after 1995, which saw the beginning of a new generation of cooperative legislation in this country.

3.2.1. The Cooperative Credit Societies Act of 1904

The Cooperative Credit Societies Act of 1904 was passed on the 25th of March 1904. In the words of the Act[20], it was "an Act to provide for the constitution and control of cooperative credit societies". That is, from its very inception, the cooperative law in India has been a regulatory piece of legislation.

Registration, however, was not automatic. Even if the application for registration was in order, and the Registrar "is satisfied" that the applicants "have complied with the provisions of this Act and the Rules", law provided that the Registrar "may, if he thinks fit, register the society accordingly and the society shall thereupon be a body corporate"[21].

All rural cooperatives were expected to have unlimited liability[22], except where special sanction for limited liability was accorded by the provincial government. In cooperatives with unlimited liability, each member had just one vote, whereas, in other cooperatives, voting

[16] http://www.ica-ap.coop/sites/ica-ap.coop/files/articles.pdf (9.2)
[17] Andhra Pradesh Mutually Aided Cooperative Societies Act of 1995 – Sec 9
[18] Andhra Pradesh Mutually Aided Cooperative Societies Act of 1995 – Sec 2(d)
[19] ibid. Sec 2(d)
[20] Cooperative Credit Societies Act of 1904 - Preamble (Emphasis has been added by the study team here and elsewhere.)
[21] ibid. Sec 6(2)
[22] ibid. Sec 7(a)

rights were in accordance with the bylaw provisions[23]. Cooperatives could raise deposits from members without restrictions[24], but borrowings from non-members were subject to the rules and the bylaws. That is, cooperatives could not approach lenders in the normal course for their business. The thrift and credit cooperatives were expected to be self-reliant and member-dependent for funds. However, the Rules provided for the conditions to be complied with by a cooperative applying for financial assistance from the government[25]. Rural cooperatives could not distribute profits among members till their reserves grew to such proportion of their total liabilities as prescribed in the Rules or specified in the bylaws, and till they brought down the rate of interest on loans to such rate as was prescribed or specified[26].

Funds raised (when not in use) had to be deposited either with the Government Savings Bank, or with a banker or person acting as banker approved by the Registrar. On the death of a member, quite in line with the principle of voluntary association between a cooperative and its members, there was no question of transfer of shares – the nominee of the member received the member's share amount and other amounts due by the cooperative to the member[27]. That is, membership of heir or nominee was not automatic. The cooperative was entitled to priority in enforcing its claim over other creditors, except for the government or a landlord in respect of rent due[28].

The Registrar was required annually to audit the accounts of every cooperative, and it was a service not charged for[29]. Additionally, the rules (framed by provincial governments) could provide for charges to be paid for audit, presumably by persons other than the Registrar[30]. The Registrar, the Collector, or any person authorised by either of them, could at any time inspect[31] the books of the cooperative, even where the cooperative was fully financed by its members. The Registrar could conduct an inquiry[32] into the affairs of the cooperative, either of his/her own accord, or at the request of the Collector, or on the application of the majority of the committee members, or a section of the members.

If the establishment of a cooperative was not a matter of right for the farmer, nor was its dissolution. Members were not free to dissolve[33] their cooperative. The decision to dissolve (or not) a cooperative lay with the Registrar and he/she could take it based on an inquiry, or on the application for such dissolution by three-fourths of the members. That is, a cooperative could exist in spite of its members wishing otherwise. The liquidator[34] was to be appointed by the Registrar.

A cooperative or a "class" of cooperatives could be exempted from income tax at member or organisational level and from stamp duty through a notification in the Gazette. Such specific exemption could also be withdrawn[35].

Rules[36] were required to be made by the provincial governments to cover a wide range of subjects including admission and expulsion of members, elections, and interest rates on deposits, meetings, loan terms and conditions. Rules could also be framed requiring that any dispute touching the business of a cooperative be referred to the Registrar. Rules could be framed for any cooperative or class of cooperatives for the whole or a part of the province. The saving grace was that rules were required to be made after previous publication.

The provincial government could permit any association of more than 10 persons to be registered as a cooperative under the 1904 Act. It could also exempt[37] any cooperative from any of the provisions of the Act.

[23] ibid. Sec 13
[24] ibid. Sec 9
[25] ibid. Sec 27(2)(q)
[26] ibid. Sec 8(1)
[27] ibid. Sec 11
[28] ibid. Sec 16
[29] ibid. Sec 19
[30] ibid. Sec 21(1)
[31] ibid. Sec 21(1)
[32] ibid. Sec 27(2)(l)
[33] ibid. Sec 21(4)
[34] ibid. Sec 21(5)
[35] ibid. Sec 23
[36] ibid. Sec 24
[37] ibid. Sec 25

The foundations for at least some of the grievances that cooperative members have today were already laid in 1904 – registration was subject to the Registrar's opinion, audit (a free service), inspection, inquiry and even arbitration by the Registrar were already introduced, and members were not free to dissolve their cooperative. Where large reserves had been built, this could have been an irritant, especially as members were also not free to share the profits annually. The constituents could set up a savings and credit cooperative dealing primarily with members, for savings as well as loans, and could apply for financial assistance from the government. The Registrar's role was that of a regulator of a financial institution, whether or not the cooperative was fully self-sufficient financially.

3.2.2. The Cooperative Law of 1912

In 1912, the 1904 law was replaced. The preamble[38] of the Cooperative Societies Act of 1912 indicates two major shifts from the 1904 Act – the new Act was to "facilitate" (not control) the "formation of cooperative societies" (not just credit cooperatives)[39].

A society, which had for "its objects the promotion of the economic interests of its members in accordance with cooperative principles, or a society established with the object of promoting such a society", could be registered under the 1912 Act.[40] The 1904 Act had not made any mention of cooperative principles. Although the Rochdale Pioneers had evolved a set of cooperative principles in 1844, these were formally codified in 1937, by the International Cooperative Alliance, for use internationally. The 1912 Act did not elaborate on the principles.

Cooperatives could have individuals as members, or other cooperatives as members, or have a mix of individuals and cooperatives as members[41]. The concept of secondary cooperatives, too, was thus introduced. As in the earlier Act, if the Registrar thought it fit to register a cooperative, he could[42]. The farmers' credit cooperatives continued to be registered only with unlimited liability[43]. A new control introduced was the need to register amendments to the bylaws, and subjecting such registration of amendments to the Registrar's thinking the amendment fit for registration, even where the amendment was not contrary to the Act or the Rules.

Members were expected to exercise their rights of membership only on fulfilment of their duties and obligations to the cooperative, as required by the Rules or the bylaws. Voting rights remained as in 1904 – that is, in cooperatives, with unlimited liability, each member had one vote, whereas, in others, the bylaws decided the voting right. As secondary cooperatives had to be registered with limited liability, each member-cooperative had one vote in the secondary cooperative.

Farmers' credit cooperatives continued to be registered only with unlimited liability, and these could distribute profits among members only under a general or special order of the provincial government to this effect. Cooperatives could make a contribution for charitable purposes from out of their net profits.

The Registrar continued to have powers of inspection, inquiry, arbitration and dissolution. Audit, a free service under the 1904 Act, was no longer required by law to be a free service and took on the shape of a power exercised by the Registrar. The scope of the rules was expanded with at least one important addition being the prescription of returns to be filed with the Registrar. The provincial government was permitted to delegate the power of making rules to any authority. Given that rules could be framed even for a single cooperative, the delegated power could well have created irritations for people aspiring to join cooperatives.

Even though the preamble was softened in the 1912 Act, the older controls remained, and a few new ones were added in 1912. The aspiring cooperator could apply to set up a cooperative along with other co-operators but was not assured of registration even if the application was in order, and where registered, could still not have it dissolved even where three-fourths of the members so desired. The 29-section 1904 Act had grown to a 50-section Act by 1912.

[38] Preamble of Cooperative Societies Act, 1912
[39] ibid. Preamble
[40] ibid. Sec 4
[41] ibid. Sec 4 , Sec 6 and Sec 8
[42] ibid. Sec 9
[43] ibid. Sec 4(2)

3.2.3. The Cooperative Law of 1932

By then, cooperation had become a provincial subject. For example, the Madras Cooperative Societies Act of 1932 now guided the aspiring cooperator in Coastal and Rayalaseema regions of Andhra Pradesh. In the Telangana region of Andhra Pradesh, however, they continued to be guided by the Cooperative Credit Societies Act of 1323 Fasli (1913 AD).

Under the 1932 Act, the provision for registration no longer required the Registrar to think it "fit" to register a cooperative, and an appeal against the refusal to register was built in[44]. So too, appeal against the refusal to register an amendment to the bylaws[45] was built in, as were provisions for voluntary amalgamation and division[46] of cooperatives. That is, individuals who had joined hands could set up cooperatives; divide them, if that was appropriate; or amalgamate some if that were thought to be more useful.

The concept of a "financing bank"[47] was introduced, possibly to help capitalise some of the cooperatives, and the Registrar and the financing bank were provided with the right to requisition a general meeting[48] and in the case of the Registrar, to call one, if the requisition was ignored.

For the first time, the Act itself provided for government aid to cooperatives – in the form of shares, loans or other financial assistance[49]. Net profits became divisible among members, after setting aside a portion towards reserves[50], to the delight perhaps of members who had till then been singled out for not getting a share of the profits, till the reserves had grown to a pre-determined size.

While the powers of the Registrar to conduct audit and inquiry, to inspect, and to dissolve a cooperative continued under the new law, the financing bank, too, was provided with the power to inspect the books of accounts of a cooperative[51]. Added to the Registrar's powers were the powers of supersession of an elected committee, appointment of a "suitable person" (not necessarily a member) to manage the affairs of the cooperative for as long as 4 years in the absence of the elected committee[52], and surcharge[53] of persons in management if it "appears" that they have been involved in misappropriation, fraud, breach of trust, etc. Where earlier the Rules could provide for the Registrar to be the arbitrator in disputes, in 1932, this was incorporated in the Act itself, and disputes had to be referred to the Registrar for arbitration[54]. The Registrar was also empowered by the Act to recover dues through attachment and sale of the property and to act as a civil court for the purpose[55]. The Rules required that a cooperative, which wanted to invest any portion of its funds in immovable property, needed the prior sanction of the Registrar.

Provisions for offences and penalties were built in[56]. The power of the government to make elaborate rules (with previous publication) on a number of subjects continued, except that the right of the government to delegate such power to any authority was removed[57].

Most of the provisions of the 1932 Act very nearly resemble many of the provisions in many of the current cooperative laws in the country, although, with the passage of time, many more restrictions have been added. The Registrar was made even more powerful in 1932, while the three concessions offered to the farmer were that s/he could approach a bank for financing the cooperative, s/he could, through the general body, arrange for amalgamation/division of the cooperative, and s/he could have a share in the bulk of profits which were now divisible among members. The new provisions in relation to recovery of dues and settlement of disputes give some indication of problems that the rural cooperatives faced with regard to loan recovery.

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[44] Madras Cooperative Societies Act of 1932 – Sec 10
[45] ibid. Sec 12
[46] ibid. Sec 13
[47] ibid. Sec 2©
[48] ibid. Sec 15
[49] ibid. Sec 31
[50] ibid. Sec 35
[51] ibid. Sec 39 and Sec 40
[52] ibid. Sec 49
[53] ibid. Sec 51
[54] ibid. Sec 57 -B
[55] ibid. Sec 52 - 56
[56] ibid. Sec 55

3.2.4. The Cooperative Law of 1952

In the early fifties, cooperatives in the erstwhile Hyderabad State came to be governed by the Hyderabad Cooperative Societies Act of 1952. Law recognised formally the right of farmers in Telangana region to form non-credit cooperatives. The 1952 Hyderabad Act was similar to the 1932 Madras Act in some ways, but with the following significant differences:

a. The Registrar could compulsorily amend the bylaws of a cooperative[57].
b. Individuals could be members of only one credit cooperative at a time[58].
c. Every cooperative was required to hold its annual general meeting within 3 months of the closure of the financial year[59].
d. Members of produce marketing cooperatives could be required by the bylaws to commit to sell a certain portion of their produce only through the cooperative[60].
e. Members could still not distribute profits among themselves without building reserves to a certain quantum[61].
f. The registrar could dissolve a cooperative also on the grounds that it had not started functioning, or that it had ceased to function, or was functioning irregularly[62].
g. The "financing bank" was not mentioned in the law.

3.2.5. Cooperative Laws in Independent India till 1995

Between 1959 and 1995, cooperative laws kept building upon the framework provided by pre-Independence laws – making the Registrar the centrepiece of the legislation, and the cooperative member an object on the periphery.

Pre-Independence legislation had already vested a host of powers on the Registrar, which included:

a. right to refuse registration
b. sole right to dissolve a cooperative
c. sole right to conduct an audit, which had to be paid for
d. inquiry
e. inspection
f. supersession of elected management
g. appointment of a person to take over management
h. surcharge
i. requisitioning and calling a general meeting
j. arbitration
k. attachment and sale of properties
l. sanction of investment by a cooperative in immovable property
m. refusal to register amendments to bylaws
n. compulsory amendment of bylaws

Since independence in 1947, these powers that a Registrar had over cooperatives further increased. Added (in most states) to these powers are the powers (either of the government or the Registrar) to

a. refuse registration on the grounds that another cooperative's interests might get affected by the new registration[63]
b. refuse registration on the grounds that the cooperative might not be viable[64]
c. compulsorily divide, merge, amalgamate cooperatives[65]
d. give directions to a cooperative or cooperatives "in public interest"[66]
e. appoint supervisory staff[67]

[57] Hyderabad Cooperative Societies Act of 1952 - Sec 10
[58] ibid. Sec 16
[59] ibid. Sec 22
[60] ibid. Sec 38
[61] ibid. Sec 40
[62] ibid. Sec 53
[63] Andhra Pradesh Cooperative Societies Act of 1964 – Sec 6(4) (c)
[64] ibid. Sec 6 (4) (c)
[65] ibid. Sec 15 (A)-1
[66] ibid. Sec 4 (2)
[67] ibid. Sec 116

f. set up a common cadre of staff of cooperatives[68]

g. approve wages and staff service conditions[69]

h. nominate persons on the management committee[70]

i. conduct elections, and delay them[71]

j. classify cooperatives and deal with them en masse for the purposes of amalgamation, common cadres, service conditions, business, etc[72]

k. frame model bylaws to ensure that these were adopted at the time of registration[73]

l. compulsorily amend bylaws[74]

m. disqualify members and committee members[75]

n. compel the admission of member, and reinstatement of the expelled member[76]

o. direct a committee to suspend an employee.[77]

Even in the extraordinary cases where, in spite of the law, members managed to make a success of their cooperative, the member no longer thought of the cooperative as his/her own. The countryside was dotted by then with primary agricultural credit societies (PACS) affiliated to district central cooperative banks (DCCBs), and no other agricultural or thrift and credit cooperative was permitted registration in rural areas. The farmer was allowed to set up dairy cooperatives, and occasionally a sugar cooperative, but on the whole, was expected to work through the PAC for most economic needs. The PACS became a channel for distribution of subsidised credit. Later, it was made to act as a channel for the supply of controlled commodities, and other subsidised goods. Almost every rural adult male was enrolled as a member through the governmental machinery, and the cooperatives became wings of the government. Each time there was a change in government, elected committees of cooperatives would be shunted out, and persons of the government's or registrar's choice appointed as administrators, special officers or persons-in-charge. The farmer was clear that cooperatives were government-run corporations, in which, from time to time, members were indulged with elections.

3.3. The Cooperative Law Since 1995

3.3.1. Mutually Aided Cooperative Societies Act of 1995 – Undivided AP Model

In 1995, the Andhra Pradesh Mutually Aided Cooperative Societies Act of 1995 (popularly known as MACS Act) was enacted, and for the first time, a democratically elected government moved out of the restrictive framework founded by an alien government, and created the space necessary for citizens to establish, design, define, manage, control and dissolve their own cooperatives. The new legal framework was for such cooperatives as did not accept/have any share capital from the government[78]. It was a framework available for freshly registered cooperatives, as well as for cooperatives under the 1964 law, which wished to return to government its share capital[79].

Registration was simplified, and the monopoly of existing cooperatives was broken. More than one cooperative could exist in the same area for the same purpose. Bylaws could not be compulsorily amended. The right of the Registrar to compulsorily divide and amalgamate cooperatives was taken away, as were the rights to compulsorily amend the bylaws, to give directions, interfere in an investment of funds, interfere in employee matters, conduct elections, supersede, surcharge, audit, and interfere in membership matters. Most amendments to the bylaws needed merely to be taken on record by the Registrar, while a few needed to be registered. Rulemaking power was not included.

Instead of concentrating on the Registrar, the new law was drafted keeping the member in view. Law required

[68] ibid. Sec 116 –A (1)
[69] ibid. Sec 116 –C (1)
[70] ibid. Sec 33
[71] ibid. Sec 31 -B
[72] ibid. Sec 15 –A (1)
[73] Ibid. Sec 6 (2) and (4)
[74] ibid. Sec 16(5)
[75] ibid. Sec 21(3)
[76] Ibid. Sec 21 (AA)
[77] ibid. Sec 59
[78] Andhra Pradesh Mutually Aided Cooperative Societies Act of 1995 – Sec 2(d)
[79] ibid. Sec 2(d)

the completion of the audit, and the conduct of elections and annual general meetings in time, failing which the elected Board lost its right to continue in office. Staggered terms were introduced for the committee members, to provide continuity in decision-making. The subject matter for the bylaws was listed in the Act so that members could frame bylaws carefully and after due thought. Profit and loss were to be shared by members on an annual basis so that committees could not gloss over mismanagement or loss due to any other reason. Amalgamation, division, merger, and dissolution were now the subject matter for general bodies alone. The only restriction on investment of funds was that they could not lie in speculative investments. The provisions on offences, which had hitherto dealt only with offences committed by co-operators, now brought any violation of the law by the Registrar, too, in their ambit.

3.3.2. Self-reliant Cooperative Acts

Since 1995, the states of Bihar, Jammu & Kashmir, Madhya Pradesh, Jharkhand, Chhattisgarh, Karnataka, Orissa and Uttaranchal have introduced more liberal cooperative legislation, to enable rural and urban citizens to establish their own cooperative institutions, as defined and designed by them.

Andhra Pradesh alone has over 3400 cooperatives registered under the new cooperative law, in the past 6 years – a proof of the citizen-friendly nature of the Act.

Table 1 : Liberal State Cooperative Laws

#	Liberal State Cooperative Laws	Effective date
1	The Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995	1995
2	The Bihar Self-Supporting Cooperative Societies Act, 1996	1997
3	The Jharkhand Self-Supporting Cooperative Societies Act, 1996	1997*
4	The Jammu & Kashmir Self-Reliant Cooperatives Act, 1999	1999
5	The Madhya Pradesh Swayatta Sahakarita Adhiniyam, 1999	1999
6	The Chhattisgarh Swayatta Sahakarita Adhiniyam, 1999	1999*
7	The Karnataka Souharda Sahakari Act, 1997	2001
8	The Orissa Self-Help Cooperatives Act, 2001	2002
9	Uttaranchal Self Reliant Cooperatives Act, 2003	2003

3.3.3. Multi-State Cooperative Societies Act of 2002

The Multi-State Cooperative Societies Act (MSCS Act) of 1984, which applies to cooperatives with members from more than one state, should have been a boon to farmers wanting to organise processing and sale of agricultural produce along common agro-climatic zones, regardless of state boundaries. Unfortunately, only around 300 cooperatives have registered under the Act, the majority of which are of urban salaried persons, and most of which were deemed to be registered under it (by virtue of membership from more than one state) when the law came into force in 1984. Fortunately for the Indian farmer, this Act was amended by Parliament in 2002. Prior to the amendment, several attempts were made to further establish cooperatives as part of the state, by introducing concepts of an election authority and audit authority for cooperatives, similar to those applicable to governments, local or otherwise. Better sense prevailed and the MSCS Act, 2002 has, on the whole, respected the cooperative as a private organisation, allowing for interference/intervention by the government only in the case of cooperatives which have significant government funds. Many of the restrictive provisions of the 1984 Act have been removed, although the right to frame rules still exists. Along with greater freedom to cooperatives is included greater accountability by those at the helm of affairs. Cooperatives, as in the case of other body corporates, can now conduct their own elections and appoint their own auditors. As with other organisations, they can choose to dissolve their organisation, if they so wish. Cooperatives can also appoint their own chief executive. Voting rights in a multi-state cooperative with individuals as members is on the basis of one member, one vote. However, where cooperatives have cooperatives as members, that is, in federations, voting can be based on membership in the primary and on the business that is done by the primary with the federation. While inspection and inquiry into cooperatives can now be made by the registrar only at the request of an interested party, irritants such as needing registration of every amendment to the bylaws remain.

Even though several states have introduced parallel cooperative laws, and even though the union law, too, has been made more liberal, the pace of reform has been far too slow. Several states have resisted all effort at reform. Farmers in Gujarat, Maharashtra, Tamil Nadu, West Bengal, Punjab, and several other states continue to have few options. Under these circumstances, a new chapter on producer companies was introduced in 2002, to the Companies Act. The attempt was to draft the chapter to enable farmers and other primary producers to set up companies which resembled cooperatives as closely as possible. Where profits in companies are normally shared on the basis of shareholding, producer companies can distribute profits based on the patronage of services. Where other companies with several shareholders have to list their shares in the stock market, producer companies cannot, as they are member-oriented firms. Voting right in producer companies where individuals are members is on the basis of one member, one vote. However, where institutions are members, voting right is based on the patronage of business transacted with the federation. While it is possible for a producer company to wind up its affairs, the registrar of Companies has the right to "strike off" the name of the company, if he/she does not believe it to be based on mutual assistance among members.

Where the Multi-State Cooperative Act was amended in December of 2002, the National Policy on Cooperatives was introduced in March 2002 by the Government of India. Although a vast improvement on previous drafts of such a policy which referred to the cooperative only as a "tool" or "instrument" of the government for its policies, the new policy still refers to the cooperative being the "preferred instrument of execution of the public policy, especially in the rural area". For the first time, however, the autonomy, democratic nature, and accountability to members (as against the government/ registrar) of cooperatives have been acknowledged. Fortunately, references in the policy to the setting up of "independent authority like the State Election Commission" were disregarded when the MSCS Act was amended.

3.4. Reports of Committees

To understand the development of the cooperatives and to make recommendations for the sustainable development of cooperatives different committees[80] like Committee on Co-operation (1914), Royal Commission on Agriculture (1928), Agricultural Finance Sub-

[80] https://shodhganga.inflibnet.ac.in/bitstream/10603/24081/6/06_chapter%201.pdf

Committee (1945), Co-operative Planning Committee (1945), Co-operative Planning Committee (1946), Rural Banking Enquiry Committee (1949), Rural Credit Survey Committee Report (1954), Law Committee (1956), National Development Council (NDC) Resolution (1958), Working Group on Cooperative Policy (1958), Mehta Committee (1959), All India Rural Credit Review Committee (1969), Banking Commission (1972), Dubhashi P.R. Committee (1972), Khusro Committee (1989), Pant Committee (1990) etc. Among them, the two important committees that left a remarkable imprint in the areas of cooperative laws are Brahm Prakash Committee (1991) and Vaidyananthan A. Committee (2004).

3.4.1. Brahm Prakash Committee (1991)[81]

It was appointed to revise the existing cooperative laws for cooperative development through voluntary participation of the people. A model cooperative law was introduced by the committee in 1991 in order to make cooperatives self-reliant, autonomous and democratic. They recommended all the states to adopt the same in order to grant more powers to the members, ensure more participation, and to restrain the government intervention in the cooperatives affairs. However, most of the states were unwilling to share in costs and were reluctant to dilute the power of the states. Only nine states, i.e. Jammu & Kashmir, Uttarakhand, Orissa, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Karnataka, and Andhra Pradesh enacted the Mutually Aided Co-operative Societies Act, 1995.

Recommendations that were given by the Brahm Prakash Committee included:

a) In order to ensure governments conform to the basic ideology of cooperation and to provide a guide to the provisions of Model Cooperatives Act, the State policy on cooperatives and the principles of cooperation have been stated at the beginning of the Act.

b) All unnecessary restrictions like the area of operation and economic viability were removed and a much-simplified process of registration of cooperatives was introduced.

c) No rule which grants power to the government has been defined in the Model Cooperatives Act. Other matters relating to constitution, management, and business of the society to be conducted in accordance with its bye-laws.

d) Many internal matters which were earlier in the control of the Registrar of Cooperatives or the Government were placed directly in the hands of the cooperatives for safeguarding the operational autonomy of cooperative members. These are:

- Supersession of the Board of Director
- Compulsory amalgamation or division of societies
- Compulsory amendment of the bye-laws
- Veto/rescind/annul the resolution
- Issue directives
- The responsibility towards members like the regular conduct of elections to the Board and timely conduct of an annual audit of accounts was given to Cooperative Federations/Unions.
- The Model Act narrowed the role of Registrar and confined it to the registration and liquidation of cooperatives, to conduct election, audit and to convene general body meeting in case of default and conduct of the inquiry.
- The act prohibits cooperatives to accept funds and finances from the government as equity.
- To term cooperative as a member user organisation, special obligations have been imposed on members.
- For the proper management of the cooperatives, Board of Directors were made accountable for timely conduct of election, general body meeting and for participation therein, and timely conduct of the audit of the books of accounts.
- Government officers are not allowed to work in a cooperative.
- A provision for settling of disputes likes matters relating to the constitution, management, business of a cooperative and to take cognizance of any offence has been stated while arguing for the constitution of a Cooperative Tribunal for settlement of disputes.

[81] Report of the High Powered Committee on Cooperatives, May 2009.

3.4.2. Vaidyananthan A. Committee (2004)

GOI constituted a committee under the Chairmanship of Vaidyanathan A, known as Task Force on Revival of Co-operative Credit Institutions, to revive and revitalise the rural cooperative credit structure and attributes high priority and urgency to it.

The recommendations of the committee were as follows[82]:

a) It was recommended to pass an act similar to Andhra's in each and every state. Cooperative credit societies and banks are made free from the state control.

b) To provide financial assistance to cooperatives, to assist them to overcome the accumulated losses and to strengthen the capital base of the cooperative credit institution, special financial assistance was committed.

c) In order to ensure prudent financial management of cooperative banks, the legal framework has been changed in order to empower Reserve Bank of India to take actions in such matters.

d) It was recommended to build the capacity of personnel at all the levels of the cooperative credit system, in order to improve their efficiency.

To create a legal environment enabling cooperatives to function as autonomous and member-driven institutions, the committee also felt the need for amendments in the Banking Regulation Act, State Co-operative Societies Acts, and Mutually Aided Co-operatives Societies Act.

3.5. Operational Autonomy under Different Acts

Even though pre-independent India did not have the best of cooperative laws, the alien (non-democratic) government did not appear to be particularly threatened by cooperative leadership. The result was that the country had several well-running cooperatives, including some extraordinary cooperative banks, agricultural cooperatives, and sugar cooperatives, even if the countryside was not dotted with all manner of cooperatives. Post-independence saw every village covered by a cooperative, but the quality of cooperation steadily deteriorated, with the democratically elected law maker feeling threatened by successful cooperative leadership. It has taken nearly half a century of independence for the country to once again recognise the need for cooperative autonomy and independence.

With the passing of a liberal cooperative law in Andhra Pradesh in 1995 and, thereafter, in several other states across the country, and the amendment of the Multi-State Cooperatives Act and Companies Act in favour of cooperative enterprises, the country appears to have provided the space needed by the Indian farmer to compete effectively in an increasingly challenging world. While other Indians could establish businesses, and manage and control them, unfettered by administrative or political boundaries, the Indian farmer could not – at least not for much of the twentieth century.

In order to strengthen the autonomy of cooperative organisations, Indian Law either amended the existing acts or passed new acts as the Cooperative Societies Act was repealed many times, leading to declaration of Cooperative Society Act of 1904, 1912, 1932 etc. Analysing the provisions stated in different acts like Cooperative Society Act, Self-Reliant and Liberal Cooperative Societies Act, Multi-state Cooperative Society Act, and Producer Company under Companies Act it is clear that though a few provisions provide organisational autonomy and independence, the provisions still lack in ensuring the operational autonomy of the organisations. This study looks at specific instances.

Talking about the provisions of the Cooperative Societies Act, Section 10(1), Section 25, Section 26(1), Section 26(2), Section 32, Section 33, and Section 41(1) provide organisational autonomy and independence with respect to the right to make rules for the fulfilment of purposes of the organisation, voting right to the members, limiting depositions and loans that are to be taken from other organisations (to limit the interference of other stakeholders of the cooperative sector ecosystem in the strategic business of another society).

In the case of Self-reliant and Liberal Cooperative Societies Act, there are provisions for the education of their members, officer-bearers and employees and of the general public which makes members economically and democratically independent. The society shall not have possession of any share capital from government and shall not have received any government loans or

[82] Revival of Cooperative Credit Institutions – Recommendations of the Vaidyananthan Committee

guarantees at the time of applying for registration as a cooperative society (this provision provides autonomy by restricting the interference of government). To change liability, transfer of assets/liabilities or to amalgamate or to promote subsidiary organisation resolution shall be passed by the general body. In case the cooperative is in deficit, then the right to settle the deficit lies with the members (reflecting the democratic control of members).

The Democratic control has been given to the members, if the organisation is registered under Multi-state Cooperative Societies Act, as the decision for changing bye-laws, changing the extent of liabilities, amalgamation or transferring the assets etc. reside with the members and may be done by passing a resolution in the general body. No member of a board shall be eligible to be elected as the chairperson or president or vice-chairperson or vice-president of a multi-state cooperative society if such member is a Minister in the Central Government or a State Government. No multi-state cooperative society shall make a contribution, either in money or in kind, whether directly or indirectly, to an institution which has an object of furtherance of the interest of a political party. All these provisions have been introduced to minimise governmental interference.

All the aforementioned provisions of different acts provide organisational autonomy and independence but it is very difficult to point out the provisions which assert the operational autonomy and independence of the organisations. All the above-discussed acts i.e. Cooperative Societies Acts, Self-reliant and Liberal Cooperative Societies Act and Multi-state Cooperative Societies Act do not present the clear picture of operational autonomy and this is so because:

a) They are not capable enough to set performance standards for operational activities as in Cooperative Societies Act, according to section 52 (1), the Minister may make regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of the act. This is in conflict with the freedom for cooperatives to set their own rules and performance standards.

b) Organisations cannot determine their internal organisational structure as who will reside onboard and how the decision will be taken etc. are already specified in the acts. This disables the organisation from responding swiftly to changed circumstances and to achieve operational effectiveness and efficiency.

c) The primary funding is mainly dependent on the members' share capital, as in the case of a cooperative act or the producer companies act, an organisation can avail funds or loans from the government only to the extent that it does not violate its organisational autonomy. Hence, democracy and autonomy in financing the day to day operations of the organisation are missing and the organisation cannot decide its funding pattern like the private limited companies can. It cannot determine its own operational needs and expend funds accordingly; this hinders operational efficiency and effectiveness as well as leads to inefficient, uneconomical, and ineffective use of resources.

d) Selection and appointment of independent directors and the board composition is partially controlled by government as under MSCS Act where the Central Government or a State Government has subscribed to the share capital of a multi-state cooperative society, the Central Government or the State Government, as the case may be, or any person authorised by the Central Government or the State Government shall have right to nominate to the board[83]. The Central Government may at any time by order direct that a special audit of the multi-state cooperative society's accounts for such period or periods as may be specified in the order, if it holds 51% of the paid share capital or of the shares in such a multi-state cooperative society[84]; this can hinder the operational decisions of the organisations.

e) Organisations registered under these acts are not empowered to administer and enforce tax laws without reference to any third parties or other bodies.

Thus it can be inferred that acts are addressing the issues related to organisational autonomy but they lack in sanctioning operational autonomy related to organisational structure, funding pattern (i.e., how much funds to be raised and from whom), how to measure and set the performance standards etc.

[83]Multi-state Cooperative Societies Act (Sec 48)
[84]Multi-state Cooperative Societies Act Sec 77 (1)©

CHAPTER 4

COURTS OF INDIA AND INTERPRETATION AS PER 4TH PRINCIPLE

4.1. Preamble

Autonomy refers to the right to self-governance. A cooperative is one such voluntary autonomous association, functioning in the conformity in accordance with the conformity principles for the economic and social betterment of its member. Such autonomy is granted to cooperative through the freedom of association in a free society. Our Indian constitution's Article 19 (1) (c) (Right to form union and cooperative societies) favours the same. An individual is said to have freedom only if he is free to associate with others at his own will. In India, the cooperative movement was started by the State. Cases of recent court judgments are discussed below to understand how the Courts of India have upheld the Principles of Cooperatives in their judgments.

4.2. Key cases in the High Court (various states) and the Supreme Court and the decision taken

4.2.1 Cases of Andhra Pradesh[85]

The case was at: The Supreme Court of India

Decided On: 02.09.2011

Appellants: A.P. Dairy Development Corporation Federation

Vs.

Respondent: B. Narasimha Reddy and Ors.

Hon'ble Judges: P. Sathasivam and B.S. Chauhan, JJ.

In brief, the case is about the enactment of a new law by Andhra Pradesh State Legislature named as Andhra

[85]Sattwick, B. D. (2011). Institute of Rural Management. Network, 15(3), 2–6.

Pradesh Mutually Aided Cooperative Societies Act, 1995. The act was enacted without repealing the old law i.e. Andhra Pradesh Cooperative Societies Act 1964. The 1995 act prohibited the Registrar from interfering in the internal affairs of the cooperative. The Andhra Pradesh Mutually Aided Cooperative Societies Act 1995, which was amended in 2006, states the following:

a) All dairy cooperatives that were working as on that day under the 1995 Act would stand transferred to the 1964 Act;

b) All dairy cooperatives would be treated as if they have always been under the 1964 Act;

c) All dairy cooperatives would be treated as if they never existed under the 1995 Act; and

d) Henceforth, no dairy cooperative would be registered under the 1995 Act.

The 2006 amendment was challenged in the High Court by filing writ petitions challenging the constitutional as well as statutory validity of the appointment of persons-in-charge by executive orders. It was challenged by the dairy cooperatives and Cooperative Development Foundation (CDF). On 01-05-07, it was declared by Hon'ble Court that the 2006 amendment act provisions violate the Article 14 (Equality before law), and Article 19 (1) (c) (Right to form Association) of the constitution. The state did not accept this judgement and appealed in the Supreme Court to quash the said judgement. Supreme Court stated that cooperative by its nature is voluntary association where individuals come together for sharing the mutual benefits related to production and distribution on the principles of equity, reason, and the common good. According to Article 19(1)(c), formation of unions is a voluntary act and there is no need for impermissible statutory intervention. The Act, as stated by Hon'ble Judges, P. Sathasivam and B.S. Chauhan, JJ. in their ruling, "does not merely regulate the administration of the affairs of the Society, what it does is to alter the composition of the Society itself. This change resulted in the compositional change i.e. the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to the membership they had no say. Such an alteration was a clear example of a violation of right to form voluntary association. "Any law, by which members are introduced in the voluntary Association without any opinion being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association." Such kind of forced inclusion of a person will violate the right to form association. And according to statutory intervention, the state has no right to alter the composition of a cooperative association and in case such right is being encroached upon. If more than one statute is operating in this connection, then the state cannot force the association to get itself registered under a statute for which it has not applied. The judgment states, "The affairs of the co-operatives are to be regulated by the provisions of the 1995 Act and by the bye-laws made by the individual co-operative society. The 1995 Act provides for a multiplicity of organisations and the statutory authorities have no right to classify the co-operative societies, while under the 1964 Act, the Registrar can refuse registration because of non-viability, conflict of the area of jurisdiction or for some class of co-operative. Under the 1964 Act, it is the Registrar who has to approve the staffing pattern, service conditions, salaries etc. and his approval is required for taking someone from the Government on deputation, while under the 1995 Act, the staff is accountable only to the society. Deputation etc. is possible only if a co-operative so desires." Thus, the Act empowers cooperative bodies to take decisions related to their own interest and allows the state to oversee the regulatory part to the right extent. However, in line with the 4th Principle of International Cooperative Alliance, "Autonomy and Independence" is in the hands of members of the cooperative and the cooperative only.

On "Autonomy and Independence," the Hon'ble judges said, "Principles of co-operation as incorporated in Section 3 and given effect to in the other provisions of the 1995 Act permit better democratic functioning of the society than under the Act of 1964. Whereas the 1995 Act provides for State regulation to the barest minimum, the 1964 Act provides for extensive State control and regulation of cooperative societies which are inconsistent with the national policy with regard to cooperative societies evolved in consultation..."

Therefore, if the State enforces its will on cooperatives, it is violative and against the national model law recommended by the Planning Commission of India. Legislation has the right to amend or repeal any Act but it cannot enforce the cooperative members to operate or act according to the direction of the state. This would be violative of the basic Principle of Cooperation when it compels a cooperative registered under the 1995 Act to work under the 1964 Act. Thus, in this valued opinion of the Apex Court, the Act would be a vitiated act not only

by non-application of mind but also by irrelevant and extraneous considerations.

4.2.2 Case of Kerala

The case was at: The High Court of Kerala

Decided On: 01-09-11

Appellants: Thomas K.F.

Vs.

1) Kerala Cooperative Milk Marketing
2) Director of Dairy Development
3) State of Kerala

Hon'ble Judges: Justice P. N. Ravindran

KCMMF (Kerala Cooperative Milk Marketing Federation) Ltd. was registered under Kerala Co-operative Societies Act 1969 (KCS) on 21-02-1980. It is the apex society of three Regional Cooperative Milk Producer Unions in the Kerala state. It has given affiliation to about 2800 Primary Dairy Cooperative Societies with 800,000 dairy farmers. The Board of Directors (BOD) is responsible for the overall control of the cooperative as well as administrative management.

Because of economic reasons, it reduced the procurement of milk by affiliated RCMP unions in the year 2009. On 16-11-09, the BOD of the cooperative constituted a committee headed by Dr. N. R. Unnithan, who found "The actual cost of production is far in excess of the procurement price (Rs. 18.63) fixed for cow milk (Fat 3.5% and SNF 8.5%)" and asked to increase the selling price of milk at least by Rs. 5 per litre. On the basis of the findings of the report, the BOD appealed before the government to take an appropriate decision. It was held as unofficial but government replied. The Board after considering various aspects at length resolved to increase the SP (selling price) of milk by Rs. 5/- per litre with effect from 11-05-11. This act of BOD was resented by the Registrar of Dairy Cooperatives (Director of Dairy Development, also known as Registrar) on the ground of non-approval of the government.

This situation led to the filing of a petition at the Kerala High court by the cooperative on the basis that the Registrar or government don't have authority to interfere with the decision taken by the Cooperative. On the other hand, the contention made by the state was that the Cooperative can only recommend an increase in support price but it can be increased only with concurrence/ approval of the government. The state further added that the Registrar is empowered to intervene in the decision taken by the cooperative and in accordance with the legislative, the government is competent enough to enact a law relating to price control under Entry 34 of List III of VII schedule to the constitution. It is competent enough to issue executive instruction under Article 162 of the constitution to regulate the selling price of milk. This leads to the question of whether cooperative needs prior approval of the government to increase the selling price of milk. Cooperative was formed as a tripartite entered into between State government, National Dairy Development Board, and Indian Dairy Corporation. It is an inter alia agreement specifying that states undertake "not to take any action to restrict the power of the cooperative institution to act in accordance with sound economic and financial practices, to fix their price of product etc. "The bye-laws of the Cooperative empower the Board to decide the pricing structure for dairy and allied products." Additionally, the court said, "In the instant case, the Dairy farmers in Kerala, unfortunately, were denied both - their legitimate right to fix the price to and adopt appropriate marketing strategies to realize the price. The net result is that the milk producer, who belongs to the poorest of the poor in the community is forced to sell his/her produce suffering a loss of around eight rupees per litre of milk compared to the actual cost he/she incurs."

Rule 180 of KCS specifies that no society shall act in a way which is not expressly stated in the bye-laws of such society without previous express sanction of the Registrar. The bye-laws which empower the board to make a decision on the procurement/sale for dairy products shall not make any specification related to the previous sanction of the registrar. As election to the legislative assembly had been notified, the Cooperative decided to seek the concurrence of EC and not the approval of the government.

Rule 170 grants power to the Registrar to revoke a resolution of a cooperative if it finds it ultra vires to the objects of cooperatives. The court said, "The interval between the successive revisions and the magnitude is often decided by the Government, an anomaly to the very concept of the cooperative movement in the country." The court in another place has said, "In my opinion, the Government or the Registrar of Dairy Cooperative cannot regulate and control the working of a society in the exercise of the power conferred on them under the proviso to section 9 of the Act without taking into account the adverse economic impact that any regulatory measure adopted by the Government or

Registrar of Dairy Co-operatives will have on the members of the society which in instant case is the Federation and consequently on the members of the Primary Dairy Cooperative Societies, approximately 800,000 in number." As per section 9 of the Act, the government and Registrar can regulate the working of cooperatives. Other sections like 66, 66A of the act are in line with section 9 of the Act. It was found that about 800,000 dairy farmers are not able to realize even the actual cost of production given the existing price and the state has never enacted anything for this. As held by the apex court, an un-announced law cannot govern the rights of parties. Therefore, the Hon'ble Court on 01-09-11 was pleased to quash the order and declare that the state government and the Registrar have no right to interfere with the decision taken by the cooperative to increase the selling price of milk.

4.2.3 Case of Uttar Pradesh[86]

The case was at: The High Court of Uttar Pradesh

Decided On: 26.05.2009

Appellants: Uttar Pradesh Sahkari Awas Limited

Vs.

1) Union of India through its secretary, Ministry of Agriculture, Department of Agriculture and Cooperation, Krishi Bhawan
2) Deputy Director, National Cooperative Housing Federation of India
3) National Cooperative Housing Federation of India through its Managing Director
4) Central Registrar of Cooperative Societies, Department of Agriculture and Cooperation
5) Registrar, Uttar Pradesh Cooperative Housing Societies/Housing Commissioner, Uttar Pradesh Housing and Development Board
6) Mudit Verma, son of Late Shri. D. S. Verma

Hon'ble Judges: Hon. Ashok Bhushan J. and Hon. R.A. Singh J.

The petitioner was an apex cooperative society under the UP Cooperative Society Act 1965 and its area of operation was all-over the Uttar Pradesh state. As a result of U.P. state Reorganisation Act 2000 which was enforced with effect from 9.11.2000, the state of Uttaranchal was created from the state of U.P. The area of operation of petitioner society thus fell in both states. The petitioner society was deemed to be registered as the Multi-State Co-operative Society under section 95 of the MSCS Act of 1984. The writ petition was filed in the Lucknow bench of this court in which order was passed on 14.9.2004, directing the Central Registrar to look into the matter and decide the controversy pending before him. The contention was that the petitioner society still continues to be the apex society under the U.P. Cooperative Societies Act 1965. The Registrar passed the order holding that the provisions for cancellation of registration of Multi-State Cooperative Society have not been complied with and the society still continues as Multi-State Cooperative Society, as per the provisions of MSCS Act 2002.

Divisional Bench of Lucknow in writ petition no. 5171 of 2002, decided that the apex society which was registered under the U.P. Cooperative Act still be governed by the provision of U.P. Cooperative Societies Act 1965 and the provision of Multi-State Cooperative Society has no application. On 22.5.2009, the writ petition was dismissed and the decision was as follows:

"We have considered the submission and perused the record. In view laid down by Apex Court in the judgement of Naresh Shankar Srivastava Vs. State of U.P. & others decided on 5.5.2009, there is no merit in the writ petition. Thus, the petitioner's society has rightly been deemed to be Multi-State Co-operative Society and orders impugned are fully in accordance with the law declared by Apex Court."

In a landmark judgment on 2nd September 2011 for Civil Appeal 2188, 2189 – 2212 and 4588 of 2008, the Supreme Court of India endorsed the Definition of Cooperative and the Principles of Cooperation and says protection under Articles 14 & 19(1)© of the Constitution is available to Cooperatives.

It is a watershed in the history of jurisprudential interpretation of cooperative law in India (1904-2011). The Supreme Court makes a significant move from its earlier stand that stated:

"Cooperatives are created by statute and they are controlled by statute and so, there can be no objection to statutory interference on the ground of contravention of citizens' right of freedom of association."

In its latest judgment, the Supreme Court has unambiguously stated:

"The cooperative, by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of

[86]Writ Petition No. 6814 (M/B) of 2005, In the High Court of Judicature of Uttar Pradesh, Lucknow Bench, Lucknow.

wealth upon the principles of equity, reason and the common good. Therefore, the basic purpose of forming a cooperative remains to promote the economic interest of its members in accordance with the well-recognised Principles of Cooperation."

So too, while Article 19(1)© of the Constitution of India assures citizens the right to freedom of association, a 1985 Supreme Court Judgment (Daman Singh vs State of Punjab) held that cooperatives were creatures of the statute and of the state, and Article 19(1)(c) was not available to them. Article 19(1)(g) which gives citizens the right to carry on trade and business too was not available to them if they chose the cooperative form of organisation, the judgment ruled. The underlying argument was that cooperatives were not voluntary associations of their members - they were involuntary creatures established by the state. Subsequent court judgments across the country suggested that if citizens found the cooperative laws so appalling, they could choose not to register as cooperatives. The 1985 judgment resulted in influencing several subsequent judgments, and co-operators were unable to get cooperatives defined correctly as enterprises that were agents of their members, serving member interests.

4.3. The overall inclination of courts towards cooperative autonomy

The aforementioned cases present a clear picture that Indian courts have always been inclined towards protecting the autonomy and independence of cooperatives.

Cooperatives always aspire for economic justice in times of crisis. Hence, the autonomy of cooperative should not only be merely for the sake of compliance with cooperative ideology but more because cooperatives will not bear fruit until cooperatives are able to strike a perfect balance with external influences.

As stated in guidance notes of International Cooperative Alliance, (2015) supportive environment for the cooperative urges: " the State and cooperatives to strike a successful and effective partnership. While too much State control is bad, no State involvement can be equally unhelpful and short-sighted. In general:

- The government should not support cooperatives just because they are cooperatives, but because of what they do and how well they do it, alongside other businesses and enterprises, on a competitive basis.
- Cooperatives should not be used as an instrument of the State and must be able to act autonomously.
- Policies should move cooperatives away from dependency on the State; Cooperatives should not be promoted as instruments of government policies or technical aid programs, as conduits for subsided loans or scarce commodities, as forums for political indoctrination of the people, as a means to formalise the informal economy or as agents for helping the poor. Experience shows that Cooperatives contribute best to society when they are true to their values and principles".

As stated by Justice P.N. Ravindran, "...the successive revisions and the magnitude is often decided by the Government, an anomaly to the very concept of the cooperative movement in the country." Both cooperative and state should work together by respecting the full autonomy of the cooperative.

CHAPTER 5

IMPLICATIONS OF THE 97TH CONSTITUTIONAL AMENDMENT OF INDIA AND COOPERATIVE ACTS

5.1. Preamble

To make India, especially rural India, progress and to encourage economic activities of cooperatives, the Constitution (Ninety Seventh Amendment) Act 2011 was enacted. The focus of the amendment was to ensure the autonomous and democratic functioning of the cooperatives besides making the management accountable to the members and other stakeholders.

The 97th amendment has brought the following major changes to the constitution:

a) In Part III of the constitution, after words "or unions" the words "Cooperative Societies" was added.
b) In Part IV a new Article 43B was inserted.
c) After Part IXA of the constitution, a Part IXB was inserted to accommodate state vs centre role.

The 97th amendment has brought many changes in the constitution which have implied rights and obligations on the cooperatives and has made them adhere to principle four i.e. autonomy and independence of cooperative. To make it obligatory for the states to ensure cooperatives' autonomy, this amendment binds the state government to facilitate the voluntary formation, independent decision-making and democratic control and functioning of the cooperatives. It also ensures the regularity of elections under the supervision of autonomous authorities, the five-year term for functionaries and independent audit.

5.1.1. Part III Amendment

a) In Article 19 (c) of Part III of the constitution after words "or unions" the word "Cooperative Societies" was added. According to this

amendment, the right to form cooperatives is a fundamental right. As stated in the constitution of India,

b) "Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4 [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause".

5.1.2. Part IV Amendment

In Part IV after article 43A, article 43B was inserted which says: "The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies".

5.1.3. Part IX Amendment

After Part IXA, Part IXB was inserted. It talks about the cooperative societies outlining the definitions, incorporation, number and term of members of board and office bearers, election of members of board, suppression and suspension of board and interim management, audits of accounts, convening of general body meetings, right of members to get information, returns, offences and penalties, application to multi-state cooperative societies and union territories and continuance of existing laws. The major implications of this insertion are:

a) Cooperative Societies incorporation, regulation, and winding up should be based on the principles of voluntary formation, democratic member control, member economic participation and autonomous functioning.

b) The maximum number of directors of a Cooperative Society shall not exceed 21 members.

c) 2 seats for women and 1 seat for ST/SC should be reserved in each cooperative.

d) Elected board members and office bearers should be for a tenure of five years from the date of the election.

e) If less than half of the term of the board remains to be completed and if there is a vacancy, the board can nominate from the same members in respect of vacancy arisen.

f) Besides 21 members of the board, only 2 experts experienced in the respective field can be co-opted in addition but co-opted members have no right to vote and cannot become the office bearers.

g) Besides 21 directors, functional directors shall also be members of the board.

h) The election should be held before the expiry of the term of the previous board and newly elected members shall assume office immediately.

i) The Banking Regulation Act, 1949, shall govern the cooperative banks.

j) Maximum tenure during which board of directors of a Cooperative Society could be kept under supersession or suspension is six months.

k) There should be an independent professional audit.

l) The audit should be done within 6 months of the closing of the financial year and auditors shall be appointed by the general body from a government approved panel.

m) Within 6 months of the close of the financial year, every cooperative society shall file specified returns to the authority.

n) Every member of cooperative societies shall have the right of information.

o) State governments are empowered to obtain periodic reports of activities and accounts of Cooperative Societies.

p) If there are any offences relating to co-operative societies, then it shall be penalised.

5.2. Incorporation of 97th Amendment by State Governments

After the announcement of the 97th amendment, states were asked to ensure their State Cooperative Acts were in accordance with 97th amendment within one year ending 28th February 2013. Few states acted accordingly and made changes in their state acts whereas few state governments issued ordinances in conformity with the constitutional amendment. However, the Hon'ble High Court of Gujarat passed its order on 22-04-2013 declaring the Constitution [97th amendment] Act, 2011 as ultra vires of the Constitution of India in a writ Petition (PIL) no. 166 of 2012. The verdict states that, "We, therefore, allow this Public Interest Litigation by declaring that the Constitution [97th amendment] Act, 2011 inserting part IXB containing Articles 243ZH to 243ZT is ultra vires the Constitution of India for not taking recourse to Article

368(2) of the Constitution providing for ratification by the majority of the State Legislatures".

The constitutional amendment act 2011 was incorporated by many states like Bihar, Gujarat, Haryana, Karnataka, Kerala, Maharashtra etc. To understand how states have incorporated these amendments, a comparative study of state cooperative acts of few states, namely Bihar, Gujarat, Karnataka, Maharashtra and Kerala was done, discussing the provisions of member participation, education and training, the supersession of board, and election authority.

Figure : Liberal States Laws

5.2.1. Member Participation

In order to make a cooperative function successfully, there is a need for the members' participation in the business transaction as well as in decision making. The provisions relating to member participation under the State Cooperative Societies Acts are discussed below.

a) **Bihar** – A member of the Cooperative Society can vote at the election of board members only if the minimum attendance criteria as required in the meetings convened for participation in management of the Society and availing of minimum requisite services of the Society as may be prescribed by the rules or the Byelaws of the Society made under this Act is being fulfilled [Section 27 (1)].

b) **Gujarat** – Within five consecutive years, each and every member should attend at least two general body meetings and should make use of the minimum level of services as prescribed in the bye-laws (Section 28A).

If any member does not attend two general body meetings and does not utilise a minimum level of services as prescribed in the bye-laws then he shall be liable to be removed by the Registrar as the member of the society.

c) **Karnataka** – Every member of a cooperative society should contribute to the management of the society by attending three out of five last annual general meetings. He should also avail and utilise minimum services or facilities offered by the societies as prescribed in the bye-laws (Section 27A). A member who fails to do so shall be restrained from voting for a period of three years.

d) **Kerala** – The Article 243ZO which talks about member participation in cooperatives is given to effect by the insertion of a new section 16A. according to this section, no member shall be eligible to be a member of a cooperative society if he – a) is not using the services of the society for two consecutive years or using the services below the minimum level as may be prescribed in the rules or the bye-laws and (b) has not attended three consecutive general meetings of the society and such absence has not been condoned by the members in the general meeting. If any member is disqualified on the basis of aforementioned grounds, then the IT Management Committee can remove him after giving such member a reasonable opportunity to defend himself. Once such member is removed, he shall not be re-admitted for the tenure of one year.

The criteria under which the general body of the society can expel a member is expanded and incorporate the cases involving a failure by a member to comply with the provisions stated in the bye-laws. Provisions also state that shares of such a member shall be forfeited and he will be banned from re-admission as a member for a period of one year from the date of his expulsion (Section 17). In case the Management Committee does not act clearly or take a decision in case of removing member incurring the above disqualifications due

to some local compulsion, Section 19A is inserted which has a provision for denial of voting rights to such members. Members who are not fulfilling the minimum participation conditions as stated in Section 16A, their names will not be included in the voter's list and shall not be eligible to participate in the general body meetings.

e) **Maharashtra** – It shall be the duty of every member of a society – a) to attend at least one general body meeting within a consecutive period of five years, (b) to utilise minimum level of services at least once in a period of five consecutive years as specified in the bye-laws of the society [Section 26 (2)].

Any member who does not act as per the provisions stated above i.e. attending at least one general body meeting out of five consecutive years and utilising the minimum level of services as prescribed in the bye-laws will be considered as a non-active member. However, this shall not apply to a member whose absence has been condoned by the general body of society.

5.2.2. Education and Training

The Constitution Amendment Act, 2011 has made it mandatory to provide for education and training of members.

a) **Bihar** – Every member of the Cooperative Society shall have the right to get Cooperative education and cooperative related training according to the rules or Bye-laws made under any provisions of this Act [Section 27 (4)].

b) **Gujarat** – To make the cooperative members capable enough to manage the affairs of the society effectively, the State Government is empowered to impart education and training to the members of the cooperative societies. (Section 28B).

c) **Karnataka** – The educational fund that is available with the cooperatives shall be utilised for promoting cooperative movement in the state as well as for providing education to the cooperative members such as directors, cooperators, training to the employees of the cooperative societies. Within thirty days from the date of commencement of the annual general meeting, every cooperative shall pay its contribution to the Karnataka State Cooperative Federation. Funds received from cooperative society towards cooperative education, grants received from the government of India or donations if any made by any person shall be credited to the cooperative education fund. This fund shall be maintained and administered by the Karnataka State Cooperative Federation Limited for such programmes as may be prescribed (Section 57A).

d) **Kerala** – Before the introduction of the Constitution Amendment Act 2011, the Kerala State Government had made it obligatory that the employees need to undergo training and after that only they will get a promotion.

e) **Maharashtra**[87] – (1) Every society shall organise cooperative education and training for the members, officers and employees through such state federal societies or the State Apex Training Institutes, as the State Government may by notification in the Official Gazette, specify. Such education and training shall (i) ensure the effective and active participation of the members in the management of the society. (ii) groom talented employees for a leadership position (iii) develop professional skills through cooperative education and training (2) Every member of the committee, whether elected or co-opted, shall undergo such cooperative education and training for such period and at such intervals as may be prescribed. (3) Every society shall contribute annually towards the education and training fund of the State federal societies or State Apex Training Institutes, notified under sub-section (1) at such rates as may be

[87] Maharashtra Act No. XVI of 2013.

prescribed, and different rates may be prescribed for different societies or classes of societies. A new section 24A is added in respect to cooperative education and training, dropping the Section 68 pertaining to contribution to education fund and the State federal society. This helps to bring in more State Federal Societies or State Apex training institutes in the field of education and training, besides the societies themselves.

5.2.3. Supersession of board

The Constitution Amendment Act has ensured that the provision of supersession of the Board of Management is not misused.

a) **Bihar** – In case where the State Government has made a contribution to the share capital or has provided a loan or guarantee against any loans for a period not exceeding six months, then the Registrar can supersede the board of the cooperative society if in his opinion, the board is: (i) tenaciously making defaults or (ii) negligent about the performance of its duties as required by this act or bye-laws or (iii) has engaged any conduct against the interest of the cooperative society or its members or (iv) if the functioning of the board or the constitution is in gridlock, (s)he may, after giving opportunity to the Board/Managing Committee to state its objection, if any, by order with reasons in writing. In case the cooperative society is indulging in banking business, then the maximum period of supersession shall be one year and in such a cooperative society, the board shall be dissolved only after consultation with the Reserve Bank of India.

b) **Gujarat** – if the Managing Committee of a society has the Registrar as its members, the State Government, and in case if a Managing Committee of a society does not have Registrar as its members, the Registrar is of the opinion that (i) the committee continuously makes default or (ii) the committee is negligent about the duties imposed under this Act or the bye-laws or (iii) the committee has acted detrimental against the interest of the society or its members; or (iv) the functioning of the committee or the constitution is in gridlock or (v) the authority which has been assigned the work of regular conduct of elections of the Managing Committee has failed to conduct elections in accordance with the provisions of this Act. [Section 81 (1)].

c) **Karnataka** – A new provision was introduced which replaced Section 30 of the Principal Act. According to the new proviso, the Government (Registrar) shall not have powers to supersede the boards where the government has not subscribed to the cooperative's shares or has not financed cooperative. Even in case supersession has been done, it shall not exceed a period of six months and elections should be held mandatorily within that period.

d) **Kerala** – In accordance with the Article 243ZL, changes have been made to Section 32 (supersession of Committee), which outlines about limiting the scope of the section to only Committees of assisted societies (except the societies covered under the Banking Regulation (BR) Act) and restricting the period of supersession to 6 months from the present up to one year. If the committee comes under the purview of the BR Act, then maximum period of supersession will be one year.

e) **Maharashtra** – if, as per the Registrar, the committee or its members has acted in such a way which is detrimental or prejudicial to the interest of the society and its members or if the State Cooperative Election Authority has failed to conduct on time the elections conforming the provisions of this Act or where committee or any member refuses to discharge his/her duties and the business of the society has come to a standstill, or if any financial irregularities have been found, or if there is lack of quorum or where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such committee stands disqualified by or under this Act for being a member of the committee, the Registrar may after giving a fair opportunity to the committee or the member to defend themselves, and after consultation with the federal society to which the society is affiliated comes to a conclusion that the charges that have been mentioned in the notice are true, and the administration of the society cannot be carried out in accordance with the provisions of this Act, or bye-laws, he may pass the order stating reasons, therefore (i) supersede the committee and (ii) appoint a committee consisting of three or more members of the society otherwise than the members of the committee so superseded, in its

place or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society for a period not exceeding six months. (Section-78A.)

5.2.4. Election authority

The Constitution Amendment Act provided for an independent election authority.

a) **Bihar** – The Bihar State Election Authority was empowered to conduct the elections in 2008 and this provision was there even before the amendment in 2013.

b) **Gujarat** – The election of the Committee and of the office bearers of the societies other than the specified societies as referred to in section 74C shall be conducted by such authority as the State Government may, by notification in the Official Gazette, notify. [Section 74cc]

c) **Karnataka** – Election of the board members or election of the office bearers of the cooperative society, including even a casual vacancy, will be subject to the superintendence, direction and control of the Cooperative Election Commission, Section 39A (Co-operative Election Commission). (1) The State Government shall constitute a Cooperative Election Commission comprising of a cooperative election commissioner and a secretary through a notification in the Official Gazette. (2) Direction, control for the preparation of electoral rolls as well as the conduct of all elections of the cooperative societies in the state shall be vested with the superintendence. (3) The Governor shall appoint a person who is or has been an officer of the rank of Principal Secretary or Secretary to the State Government to be cooperative election commissioner on the recommendation of the Chief Minister and such cooperative election commissioner shall hold office for a term of five years. (4) The appointment of a person who has been an officer of the rank of additional registrar of cooperative society who is secretary of the cooperative election commission shall be appointed by the State Government. [Section 39AA(1) to (2) (3) (4)].

d) **Kerala** – The State Government shall constitute a Cooperative Election Commission comprising of a cooperative election commissioner and a secretary through a notification in the official gazette. Besides, Cooperative Election Commission shall superintend, direct and control the preparation of electoral rolls and conduct all elections to cooperative societies including election to the President/Vice President and Representative General Body. The State Cooperative Election Commission shall comprise of not more than three members and one among them shall be State Chief Cooperative Election Commissioner and others shall be Commissioners.

e) **Maharashtra** – The State Cooperative Election Authority as may be constituted by the State Government shall have the authority of direction, control, superintendence and conduct of all elections to a society. Election of the board members or the election of office bearers of the cooperative society, including even a casual vacancy, shall be held as per the procedures prescribed [Section 73 CB(1)]. The State Cooperative Election Authority shall consist of a State Cooperative Election Commissioner, who has held the post, not below the rank of Secretary to the State Government. The Governor shall be responsible for the appointment of the State Cooperative Election Commissioner who shall hold the office for a period of three years and he may be re-appointed for a further period of two years. The office of the State Cooperative Election Authority shall be a place as may be notified by the State Government [Section 73CB (2)]. The State Government shall appoint on deputation, any person holding a post not below the rank of Additional Registrar, as a Secretary to the State Cooperative Election Authority [Section 73 CB (3)].

5.2.5. Election of board

a) **Andhra Pradesh** – Election or removal of directors is dealt with by the general body of the cooperative society. Hence, the ultimate authority of the cooperative society shall vest in its general body.

b) **Karnataka** – The election of a board shall be conducted before the expiry of the term of the board, so as to ensure that the newly elected members of the board assume office immediately on the expiry of the term of office of the members of the outgoing board. The board of a cooperative society may exercise all such powers and perform all such duties as may be necessary or expedient for

the purpose of carrying out its functions under the Act, the rules and the bye-laws.

c) **Kerala** – The Government shall by notification in the Gazette, constitute a State Cooperative Election Commission for the superintendence, direction and control of the preparation of the electoral rolls and for the conduct of all elections to cooperative societies including election to the president/ vice president and representative general body.

5.2.6. Audit and Inspection

a) **Bihar** – The Registrar shall audit or cause to be audited by some person (hereinafter referred to as the auditor) authorized by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year. Every officer or member of the society shall furnish such information in regard to the transactions and working of the society as the Registrar or the auditor require. The audit under sub-section (1) shall be conducted according to the rules, and shall include an examination of overdue debts (if any), the verification of the cash balance and a securities evaluation of the assets and liabilities of the society. The auditor shall submit a report on such examination, verification and valuation.

The Registrar may from time to time inspect a registered society himself or cause it to be inspected by some person authorised by him in this behalf by general or special order.

b) **Andhra Pradesh** – A cooperative society may get its accounts audited by a chartered accountant within the meaning of the Chartered Accountants Act, 1949, or by any other auditor from the office of the Registrar. The general body of a cooperative society shall appoint an auditor by a resolution which will be valid only until the close of the next succeeding annual general body meeting.

c) **Karnataka** – Every Cooperative society shall get its accounts audited at least once in a year before the first of September following the close of the cooperative year by an auditor or an auditing firm appointed by the general body of the cooperative society from a panel of auditors or auditing firms approved by the Director of cooperative audit; provided that the Director of cooperative audit shall be the authority competent to prepare and maintain a list of auditors and auditing firms who satisfy the prescribed qualification and experience for undertaking the audit of accounts of cooperative societies in the state. Provided further that the director of the cooperative audit shall communicate a panel of auditors and auditing firms, not exceeding ten, to every cooperative society within thirty days from the close of the cooperative year. The general body of every cooperative society shall at its general meeting appoint an auditor or an auditing firm to audit the accounts of the society for the cooperative year in which the general meeting is held.

The Auditor or Auditing firm shall conduct and complete the audit of accounts as provided for in this Act, or the rules and send copies of the audit report and communicate the results of audit to the cooperative society, the Registrar, the Director of cooperative audit and to the financing bank or credit agency, and if the society is affiliated to any other cooperative society, to such cooperative society, as early as possible but within the first day of September every year.

d) **Kerala** – It is the responsibility of the management committee to convene general body meeting or special general body meeting in order to appoint auditors or auditing firms within the stipulated time from among the panel approved by the director of cooperative audit, failing which, the members of the management committee shall cease to hold their office. It shall be the duty of the management committee to ensure an audit of the accounts of every society at least once in every year. The procedure to be adopted in auditing the accounts of different types of cooperative societies should be in the manner specified in the audit manual approved by Director of Cooperative Audit or guidelines, directions as may be issued, from time to time, by the Registrar, the National Bank for Agricultural and Rural Development or Reserve Bank of India as the case may be.

e) **Maharashtra** – Every society shall, appoint an auditor or auditing firm from a panel approved by the State Government in this behalf in its annual general body meeting having such minimum qualifications and experience as laid down in section 81, for the current financial year and shall also file in the form of return to the Registrar, the

name of the auditor appointed and his written consent for auditing the accounts of the society within a period of thirty days from the date of the annual general body meeting : Provided that, the same auditor shall not be appointed for more than three consecutive years by the annual general body meeting of the same society.

5.3. Comparative Study of Liberal Laws States and Rest of the States

The 9 states who have adopted parallel laws have contributed to the development of cooperatives to some extent by providing autonomy to members as compared to the rest of the states which did not adopt the parallel laws.

Table 2 : Comparative Analysis of Liberal Laws States Vs. Rest of the States

S.No.	Liberal Laws States	Rest of the States
1	Board of directors is fully responsible for being accountable to members.	The control is, for the major part, in the hand of the government.
2	These cooperatives have the right to frame their own bye-laws.	Bye-laws are framed in consultation with the registrar who is appointed by the state government.
3	The cooperatives can raise equity from members as well as other funds from any sources.	The government holds the equity of the cooperative.
4	The cooperatives have the right to appoint staff and fix their wages accordingly.	Appointment of staff, whether managerial level or operation level, is controlled by the government.
5	Freedom to appoint auditors.	The appointment is done through registrar.
6	Freedom to conduct an election.	The freedom to conduct an election is not available.
7	These cooperatives have the right to wind up.	Lacks such freedom.

The states which have amended the existing cooperative laws as per 97th constitutional amendment act have got autonomy to some extent with respect to participation of members, education and training, supersession of board, election authority, election of board, audit and inspection etc. but visualizing the laws through bird's eye projects the lack of operational autonomy.

Bihar

For the registration of the society, the State Government may appoint a person to be Registrar of Cooperative Societies for the State of any portion of it and may appoint persons to assist such Registrar. No part of the funds of a registered society shall be divided by law or dividend or otherwise among its members: provided that after the amount required by sub-section (6) of section 18 or by any rule has been carried to the reserve fund, the balance of the net profits, if any, together with any available profits of past years, may be distributed as dividend among members or paid as bonus or remuneration to a member for any specific service rendered to the society or used for the common benefit or members to such extent and under such conditions as may be prescribed by the rules or bye-law. The primary funding is mainly dependent on the members' share capital and as in the case of cooperative act or producer companies act, the organisation can avail funds or loans from government only to the extent that it does not violate its organisational autonomy. Hence democracy and autonomy in financing the day to day operations of the organisation are lacking and the organisation cannot decide its funding pattern, unlike the private limited companies.

Maharashtra

A cooperative organisation cannot determine its internal organisational structure as who will reside onboard and how decision will be taken etc. are already specified in the acts. This constrains the organisation from responding swiftly to changed circumstances and to achieve operational effectiveness and efficiency. The Committee may co-opt "expert directors" relating to the objects and activities undertaken by the society : Provided that the number of expert directors shall not exceed two, which shall be in addition to the maximum number of members of the committee as specified in the first proviso of sub-section (1): Provided further that, the committee may, in case of the committee having not more than seventeen members, nominate a person as a functional director; and in case of the committees having more than seventeen members and not more than twenty-one members may nominate such number of functional directors, not exceeding two: provided also that, in respect of the society having contribution of the Government towards its share capital, the members of the committee shall include two officers of the Government nominated by the State Government, which shall be in addition to the number of members specified in the first proviso to sub-section (1).

Kerala

The chief executive has been defined as an employee of a cooperative society by whatever designation and includes an officer of the State Government or an employee of any other institutions or cooperative society who discharge the functions of chief executive under the Act, the Rules or the Bye-laws. The appointment of government official clearly indicates that the operational control in the hand of state government.

Though the constitutional laws have granted autonomy and independence to the state cooperatives, yet there is a need to redefine the existing laws in order to expand the operational autonomy of cooperatives so that they enjoy the same operational freedom as corporate bodies.

CHAPTER 6

LEVEL PLAYING FIELD FOR COOPERATIVES

6.1. Preamble

The fourth principle, i.e. autonomy and independence of cooperatives, has coerced central and states government to either amend the existing laws on cooperative by making insertion or pass a new act incorporating the fourth principle. These changes have brought about a level field playing for the cooperatives either registered under Companies Act 2013 or Cooperative Acts or New Generation Cooperatives (NGCs). But they differ with respect to the degree of autonomy and independence being provided as per their registration.

6.1.1. Companies Act 2013

The Companies Act 2013 (the "Companies Act") was enacted at the end of August 2013. The Companies Bill was passed by the Lok Sabha (the Lower House of the Parliament of India) on 18 December 2012 and in the Rajya Sabha (the Upper House of the Parliament of India) on 8 August 2013. It received Presidential Assent on 29th August 2013, thereby passing into law the Companies Act 2013. It has 470 clauses divided into 29 chapters. The new Companies Act replaced the old Companies Act 1956, which although amended approximately 25 times was still considered to be out of date and inadequate compared to the legislation regulating companies in many other countries. Since the introduction of the Companies Bill in 2009, it took four years to implement the Companies Act. But all of the provisions mentioned in that bill do not come in the force immediately as a number of them require rules and regulations for their implementation to be drafted by the Indian Government.

6.1.2. Cooperative Act

The first cooperative societies act passed by the Indian government was the Cooperative Credit Societies Act of 1904. Later on, this act was repealed and the shortcomings of this act were remedied by the

enactment of the Cooperative Society Act 1912 that recognized the formation of non-credit societies and the central cooperative organization.

6.1.3. New Generation Cooperative Laws

The phrase New Generation Co-operatives (NGC) is the term that has been applied to 50 or so cooperatives that have emerged in North Dakota and Minnesota in the last four to five years. These cooperatives are termed NGCs for at least three reasons:

a) They are the model laws of the newest generation of cooperatives; earlier generations emerged in the 1920s and then again in the 1940s;

b) They represent a departure from the earlier objective which was basically focusing on commodity marketing. The shift was towards value-added processing.

c) NGCs accept a predetermined amount of products from their members and hence these cooperatives are deviating from acting as clearinghouses for the product from its members. In fact, a "two way" contract exists between the members and the cooperative that requires the member to deliver a certain amount of product to the cooperative and requires the cooperative to take delivery of this product.

NGCs work on the two policies that are delivery rights and restricted membership. They have different membership and financial structure and this is so because the focus of NGCs is on processing. In order to raise capital and to allocate the right of delivery among potential members, shares are sold in the cooperative. Each share entitles a member to deliver one unit of farm product (e.g., one bushel of durum) to the cooperative. The price of each share is determined on the basis of the total amount of capital that cooperative wishes to raise and then dividing it by the number of the units of farm product that can be absorbed by the processing facility.

The New Generation Cooperative Laws adopted by the states have the following in common:

1. Most of them address the issue related to registration. They state that registration cannot be refused on grounds other than non-compliance of the requirements for registration; compulsory re-organisation of cooperatives is not foreseen, and compulsory amendment of bylaws is not provided for; conduct of elections, appointment of staff, investment of funds in the business of the cooperative, appointment of auditor, and liquidation are the business of the cooperative. Supersession of elected committees is not provided for, but inquiry and inspection have been provided for, by the registrar. The latter (inquiry and inspection) without the powers of supersession and surcharge are less likely to be misused.
2. Few of the states have made an alteration in the principles but most of them have incorporated the internationally accepted principles of cooperation, either in the body of the Act or as a schedule.
3. In reference to the rule making power by the government, most states have not incorporated this rule and this is so because such kind of power is often used to violate the intent of the Act and used to undermine cooperative autonomy in the past.
4. Most of them are enabling laws and not regulatory laws and thus making the cooperative subject to other regulatory laws, such as labour laws, crime related laws, tax laws, etc.
5. Under this law, most of the states have asked cooperatives under the old act to shift to the new act, either by returning government share capital or loan and relinquishing government guarantee or by entering into a memorandum of understanding with the government in this regard.
6. Most project the cooperative as a business enterprise owned and controlled by active members. Bylaws of the cooperatives are expected to define the rights and obligations of members, including minimum levels of transactions with the cooperative, and participation in meetings by each member. Members may exercise their rights, including the right to vote, only on fulfilment of obligations.
7. An audit should be done up to date. After the closure of the financial year, audited reports of the previous year should be presented before the general body. If it is not done, then elected directors lose their right to continue in office. It focuses on the higher level of accountability from directors where auditors have to report on the performance of the directors and transaction within the cooperative.
8. Bye-laws define the core need of members for which the cooperative was formed as well as the core services that each member must use if they wish to remain cooperative members.
9. Most permit the cooperative to raise deposits, loans, grants from external sources, even as they require the raising of share capital only from members.

10. Sharing of profit/loss among members is on the basis of the proportion to their transactions with cooperatives. Laws provide for the payment of interest, if any, on share capital.

6.2. Comparative Study

A comparative study of Companies Act 2013, Cooperative Acts, and New Generation Cooperatives presents a better picture of a level playing field for cooperatives with a differentiated degree of autonomy and independence.

a) **Regulations** – Under Companies Act, subscribers to the memorandum and all other persons, as may from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act. A Society registered under Cooperative Acts or new generation cooperative can make rules for the fulfilment of purposes for which society is established in consultation with board members who are elected by the members of the society. In case of Companies Act right and freedom to frame rules and regulation get divided among all the body corporate who subscribe from time to time but in case of the Cooperative Act and New Generation Cooperative (NGCs), autonomy and right to control the organisational affairs is in the hand of members.

b) **Voting rights** – Every member of a company limited by shares and holding equity therein, shall have a right to vote on every resolution placed before the company. His voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company. In the case of the Cooperative Act, one member has one vote but RoC and government have veto power which restrains the autonomy of cooperative. NGCs more frequently allow a variable amount of voting power for members based on stock owned. Hence in case of Companies Act and NGCs, members hold the right to vote and make strategic decisions whereas under the Cooperative Act right is being shared and controlled to some extent by government.

c) **Member stake** – Articles of association of companies can provide for linking shares and delivery rights. Cooperative member stake in the organisation is not linked with the number of shares held by the members.

d) **Professionals on board** – Professionals can be co-opted on board in case of Companies Act but in case of Cooperative Act professionals on board are not provided.

e) **Transferability of Shares** – A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor. Cooperative member shall not in any event transfer any share held by him/her or his/her interest in the capital of the society or any part thereof unless the transfer or charge is made to the society.

f) **Relation with other entities** – The company can operate pan India and besides having transactional relationships with other entities, it can form joint ventures and alliances. But cooperative has an only transaction-based relationship with other entities to the extent that it shall not risk its autonomy and independence.

g) **Role of Government** – Company registered under Companies Act has very minimal level of interference by the government but in cooperative the role of government is significant as the minister may make regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of the act and veto power rests with government.

h) **Creation of Reserve** – Organisation registered under Companies Act has to mandatorily create reserves whereas under the Cooperative Act, every registered society which does or can derive profit from its transactions shall maintain a reserve fund.

I) **Profit-sharing** – The profit-sharing of the organisation registered under the Companies Act is based on the number of shares being subscribed. Under Cooperative Act, no registered society shall pay a dividend or bonus or distribute any part of its accumulated funds before the balance sheet has been certified by an auditor approved by the Registrar and dividend on capital is limited. In NGCs, earnings are returned to members in proportion to how much they've used the cooperative.

j) **External Fund** – Companies registered under the Companies Act have many available options for raising the funds from external sources. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the regulations or rules. In NGCs, financing is only done by the members' equity infusion.

k) **Liability** – Members of the organisation registered under the Companies Act have limited liability. Liability of the members of a registered society is limited by shares, no member, other than a registered society, shall hold more than such portion of share capital OF the society, subject to a maximum twenty per cent, as may be prescribed by the rules. The delivery obligations and delivery rights are coupled together for the members of NGCs. This delivery obligation is coupled to the total supply of product that will be needed by the NGC in its value-adding processing and marketing. NGC members are expected to deliver the amount specified in their delivery rights. If extenuating circumstances prevent sufficient production, NGC members or their agent usually purchase the contracted amount elsewhere, possibly from other members, or a penalty is imposed.

l) **Dispute settlement** – Under the Companies Act, a dispute among members is settled through arbitration whereas dispute of the organisation registered under Cooperative Act is settled through the co-op system i.e. dispute shall be referred to the Registrar. A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, shall be deemed to be a dispute touching the business of the society within the meaning of this subsection.

6.3. Comparative Analysis – Ease of business – operational autonomy

From the perspective of operational autonomy, a comparative analysis of all above-mentioned acts was done to understand the differentiated ease of business operation that is being granted under these acts. The analysis reflects that ease of doing business is more profound in the organisations registered under the Companies Act followed by New Generation Cooperative Laws and Cooperative Act.

Table 3 : Ease of Business under Three Acts

S.No.	Basis	Companies Act	Cooperative Act	New Generation Cooperative Laws
1	Recruitment/ HR	Professional onboard can be co-opted. Companies registered under this act can easily recruit human resource as per the requirement.	Power for the appointment rests with the government	Professional onboard can be co-opted
2	Operational Area	Organisation registered under the Companies Act can operate throughout India.	Organisation registered as cooperative can operate only in the respective state.	Throughout India
3	Member / Non-member	Subscribers to the memorandum and all other persons, as may from time to time, become members of the company. Articles of association can provide for linking shares and delivery rights.	No person other than a registered society shall be a member of a registered society unless (s)he has attained the age of sixteen years and there exists between their self and the other members of the society some common bond of occupation or association or of residence in a defined neighbourhood, community or district. No linkages with no. of shares held.	Restricted membership. Articles of association can provide for linking shares and delivery rights

6.4. Growth of enterprises under three categories

Producer companies (PC) registered under Companies Act 2013 are an emerging form of collective enterprise and are being exemplified as NGCs. This section presents the growth of PCs and cooperatives with respect to India over a period of time to understand their market share and employability.

Status of PCs in India

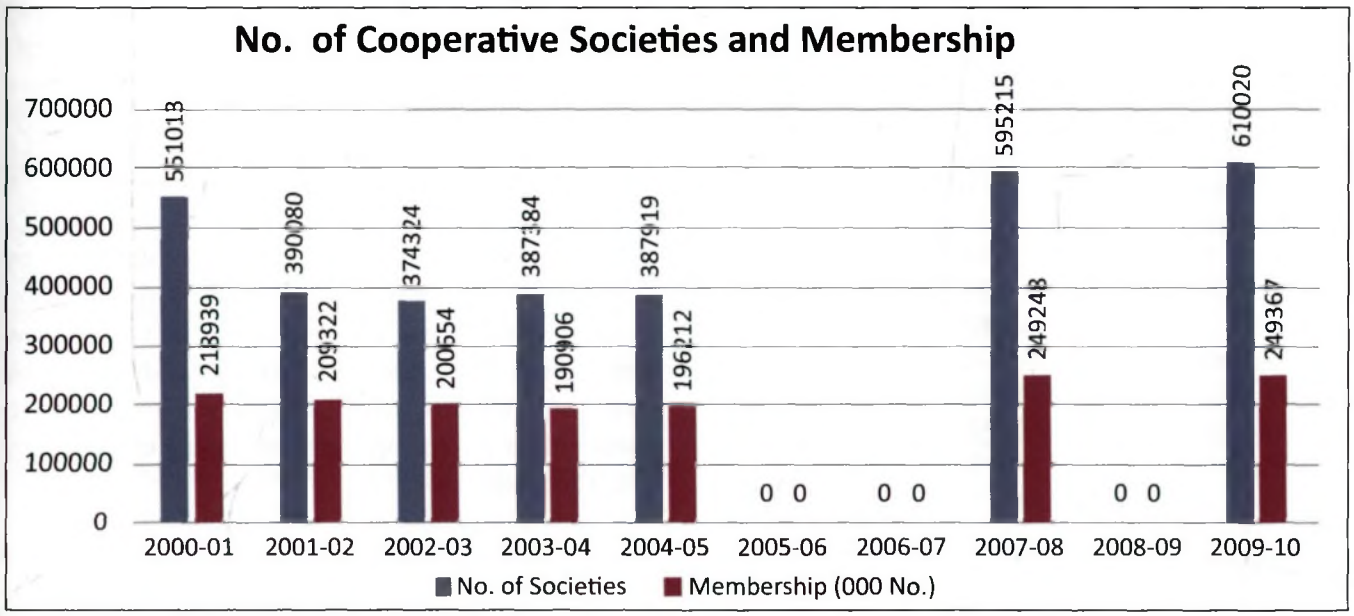
There are 156 PCs in India across states, promoting agencies, crops and products and types of primary producers as of January 2011. 60% were more than two-year old by the end of 2011. In India too, like in Sri Lanka, the first set of PCs were promoted and supported by a state government (Madhya Pradesh) under a World Bank (WB) poverty reduction project since 2005. In the case of PCs in MP, the state government which was also the promoting body provided a one-time grant of Rs. 25 lakh to each PC as a fixed deposit revolving fund for obtaining bank loan against it, and also another annual grant of maximum Rs. 7 lakh per year for 5 years for administrative and other expenses in the manner of 100% in first year, 85% in second year (Rs. 5,90,000), 70% in third year (Rs. 4,90,000), 55% in fourth year (Rs. 3,85,000) and 40% in 5th year (Rs. 2,80000). Further, interest subsidy up to a limit of Rs. two lakh was provided on any term loan taken by the PC and a grant of up to 75% of the cost up to a maximum of Rs. 2 lakh was given for any certification expenses like Food Products Order (FPO), Global Good Agricultural Practices (Global gap) etc. (NABCONS, 2011). The membership/ shareholding of PCs in India ranges from individual producers to informal self-help groups and individual producers, registered SHGs and individual members, and only institutional members.

Status of Cooperatives

The evolution of cooperatives and collectives can be phased out in two eras i.e. pre-independence era and post-independence era. Both the eras present the different pace of evolution in terms of adoption and amendments related to rules, regulation and policies but the cause of evolution always being as distress and exploitation faced by marginalised or weaker section of the society. In the pre-independence era, the policy of the Government, by and large, was of laissez-faire towards the cooperatives but after independence in the year 1947, the advent of planned economic development ushered in a new era for the cooperatives.

The cooperative movement in our country has witnessed substantial growth in many diverse areas of the economy. With a network of about 6.10 lakh[88] cooperative societies and a membership of about 249.20 million[89], a spur in the number of cooperatives and membership can be seen even now.

Figure 2 : Cooperatives and Memberships



[88]Press Information Bureau: speech coverage of Shri Radha Mohan (10th July 2015)
[89]https://data.gov.in/catalog/number-and-membership-all-types-co-operative-societies-0

Besides making a contribution to the economy, cooperative sector is also providing employment to the large population. According to Cooperative and Employment Second Global Report 2017 , cooperatives engage 279.4 million people throughout the world, which is 29.3 million more than in the 2014 Global Report.

Table 4 : Cooperatives and Employment

	No. of Cooperatives (In Lakhs)	Employees (In Lakhs)	Worker – Members (In Lakhs)	Producer – Members (In Lakhs)	Total Employment (In lakhs)
Europe	2.21	47.10	15.54	91.57	154.22
Africa	3.75	19.39	0.37	204.10	223.87
Asia	21.5	74.26	85.73	2192.47	2352.47
America	1.81	18.96	9.82	32.37	61.16
Oceania	0.02	0.75	0	1.47	2.22
Grand Total	29.37	160.48	111.48	2521.99	2793.96

Comparing the growth of PCs and Cooperatives with the level of autonomy and independence granted by the laws reveals that even with the limited autonomy, cooperative sector and PC provide direct and self-employment to about 17.80 million people in the country and playing a significant role in improving the socio-economic conditions of the weaker sections of society through cooperatives in fisheries, labour, handloom sectors and women cooperatives. The legal limitation has not forbidden their growth in terms of membership and operation but these legal limitations fail to recognise a cooperative as a user-owned, user-controlled and user-sensitive autonomous, democratic business enterprise, whose success/failure is the business of members.

The organisation registered under Companies Act enjoy a greater amount of operational autonomy and independence followed by new generation cooperatives (NGC) and then the old cooperatives. The limitation of autonomy for NGCs are because of the few problems related to the concept and practice which have been pointed out by various critics. These are:

a) preferred shares provision compromises the principle of user ownership, though it protects the user control principle;

b) in practice, member control may operate by the control of delivery rights rather than by the one member-one vote principle;

c) it is more suited for large growers who can afford a large upfront investment in processing/ marketing;

d) they are more like closely held companies; and

e) have the potential danger to turn into an investor-oriented company (IOC) instead of a user-oriented cooperative (UOC).

Resolving the issues related to the concept and practices of the New Generation Cooperative Laws would grant a greater degree of autonomy and independence to the cooperatives which would in turn fuel the growth of PCs and cooperatives and would make a contribution by providing direct and self-employment to about million people. Hence, there is a possibility of framing New Generation Cooperative Laws as Model Acts by tweaking the already existing laws under which cooperatives would enjoy greater degree of autonomy and independence.

CHAPTER 7

EMERGING FORMS OF COLLECTIVE ACTION

7.1. Preamble

Technology, in general, and IoT, in particular, will affect every aspect of life at a very fast pace and the cooperative sector is also not untouched by these effects. Recent trends have shown a shift in the forms of collective actions which leads to the emergence of new forms of collective action like limited liability partnership (LLP) for professional services, platform collectives and open source and co-creation sites online.

7.2. Limited Liability Partnership (LLPs) for Professional Services

LLP, an alternative business, owns the characteristics of a private company as well as a conventional partnership. It grants limited liability to its partners and internal agreement is made flexible through an agreeme/nt between the partners. These characteristics provide a more structured business form to entrepreneurs and businessmen in comparison to the sole proprietorship or conventional partnership. Such a kind of partnership provides flexibility in the way business is being operated or controlled, compared to a company which is subject to strict compliance requirements under the Companies Act 1965 in most of its affairs. It offers simple and flexible procedures in terms of its formation, maintenance, and termination while simultaneously has the necessary dynamics and appeal to be able to compete domestically and internationally.

Talking about autonomy and independence in the case of LLPs, an emerging form of collective action, there is a greater degree of operational and management independence. For example in the US, the legal independence for an autonomous entity arises under Limited Liability Company because such law extremely flexible. Some relative steps to create autonomous LLC are:

a) an individual member creates a member-managed LLC, filing the appropriate paperwork with the state;

b) The individual enters into an operating agreement governing the conduct of LLC;

c) The operating agreement specifies that LLC will take actions as determined by an autonomous system, specifying terms or conditions as appropriate to achieve the autonomous system's goal;

d) The individual transfers ownership of any relevant physical apparatus of the autonomous system to the LLC;

e) The sole member withdraws from LLC, leaving LLC without any members. The result is potentially a perpetual LLC — a new legal person — that requires no ongoing intervention from any pre-existing legal person in order to maintain its status[90].

In UK, in the case of LLPs, there is a greater scope for autonomous systems to interact with legal system. The autonomy is due to the independence of the members to organise its affairs through their membership agreement like there is no need for separate board of directors from members and hence, members are free to structure governance arrangements as per their desire[91]. Deference to the autonomy of the members of an LLP also finds expression in the lack of any requirement for LLP membership agreements to be publicly registered and disclosed (unlike the constitutional "articles of association" of companies[92]) or indeed, any requirement that membership agreements be written down. LLP agreements are, in essence, treated like contracts and are construed in accordance with normal rules of contractual interpretation.

7.3. Platform Collectives

In the literature of economics, business strategy, management and information system, the concept of 'platform' has emerged recently. The commonality across all the aforementioned branches is that platforms have modular architectures in which core independent modules are being used and reused across multiple products and services (Baldwin & Woodard 2009; Boudreau 2006; Tilson, Lyytinen & Sorensen 2010).

Today's world is signified by technological innovation, artificial intelligence, (humanoid) robotization, and digitalisation. Even the cooperative sphere is not untouched by this and to meet this emerging trend, collective action is emerging as a platform collective where action/work in the platform economy is often referred to as crowd work (as tasks are outsourced to a 'crowd' of workers available through an app or website). This has led to the development of the collaborative economy, an economy where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. In such a kind of economy, there is involvement of three categories of actors: (i) service providers who share assets, resources, time and/or skills – these can be private individuals offering services on an occasional basis ('peers') or service providers acting in their professional capacity ("professional services providers"); (ii) users of these services; and (iii) intermediaries that connect – via an online platform – providers with users and that facilitate transactions between them ('collaborative platforms'). It can be done for profit as well as with a non-profit motive and whenever any transaction happens, it does not lead to the change in the ownership.

Few examples of platform-based collective actions are:

a) Mobile payment platform – Mobile payment has been on the agenda for years. But only a few mobile handset-based or contactless card-based payment solutions have been able to reach to the mass market. This emerging trend has created various opportunities for market players like telecom operators, banks, credit card providers, payment providers and actors like Google (Ondrus & Lyytinen 2011) and all want to dominate the advanced mobile payment market. Customers always look for trusted service manager (TSM) where there won't be any issues related to authentication, authorization and account-settlement (Gaur & Ondrus 2012). Not only banks have to provide accounting and settlement of payment but instead, it is also the duty of telecom operators to provide secure connections and equip phones with NFC SIM-cards. The mobile payment

[90] https://law.stanford.edu/wp-content/uploads/2017/11/19-1-4-bayern-final_0.pdf
[91] Limited Liability Partnership Act, c.12, 5 (1) (U.K)
[92] Companies Act 2006, c.46, 18 (2) (U.K)

that has shadowed the mass market is a collaboration between multiple telecom operators and banks (Au & Kauffman 2008). This mobile payment concept is one of the examples of emerging platform collectives where different user groups (i.e. consumers, merchants, payment service providers) come on a platform which serves as a (technical) basis to offer various services (i.e. payment, loyalty schemes and proximity marketing) connect to each other.

b) The political campaign which is transforming from professional lobbyists relying heavily on the relationship between advocacy elites and politicians, to net-roots who are more likely to be in a networked community of online political activists.

c) Drivers collective – Now taxi services operate on platforms like Ola, Uber, Meru etc. and all these platforms act as aggregators of taxi services. They are on-demand taxi services that enable people to book a cab with a smartphone. The Ola/Uber kind of platforms act as a facilitator and assist customers in cab-booking services. These platforms do not own any of the cabs but act as a facilitator and serve the customer in booking their cabs through the app. Only those drivers with valid permits duly authorized and verified by transport authorities can sign up with these platforms and they could be either self-employed or work for an operator who owns multiple cars.

d) Food delivery services – Appraising the power resources of digital platform workers, it comes as no surprise that food delivery services are able to exercise their workplace bargaining power through direct action. Platforms like Zomato, Foodpanda, Swiggy represent disruptive innovation by becoming aggregators of restaurants. These platforms facilitate placing orders for food from selected restaurants. It is a collective action of restaurants provider to serve their customers hassle-free.

e) Hotels – Platforms like Trivago, Make My trip etc. are acting as aggregators of hotels, airlines etc. and helping the customers to plan their travel trip.

Platform-based collective actions have bridged the gap of service providers and customers but on the other hand, there are few ramifications of such disruptive innovation. The consequences of this entangled with an individual as well as all other interconnected collectives. It can threaten workers' exercise of fundamental collective rights, including freedom of association, the right to collective bargaining, and access to information and consultation machinery. It has been found that the challenges faced by platform-based collective workers are higher as a comparison to the workers working in the traditional setting sphere and this is because of the number of specific features that platforms' business models have.

a) Rejection, opacity and non-payment of work – Most of the crowd workers had an opinion and complain that their work can be unfairly rejected, as a consequence of which they are not fairly remunerated. The reasons for unfair rejections can be poorly designed tasks, unclear instruction, technical errors or dishonesty. Such rejections not only lead to the remuneration loss but also affect workers' ability to obtain new tasks or even lead to their being deactivated (in essence, fired) from the platform automatically when a certain threshold of rejections is reached.

b) Lack of communication, responsiveness and representation – Since it is a platform collective, hence, mostly there is poor or missing communication between provider, seeker and the platform owner. It is not easy to find correct contact information which leads to slow, unsatisfactory or missing responses and thus communication between providers and seekers is more difficult.

c) Content of work and skill mismatch – The tasks on the platforms are short and frequently repetitive and are distributed across a large pool of crowd workers. Micro tasks require human cognition. While it is possible that in the future some tasks might be automated, other tasks are unlikely to be, as they require human input. Such a situation sometimes leads to the mismatch of work to be accomplished with the required skill sets.

d) There is an absence of a defined workplace or regularity in the work patterns and which make it difficult for organisers to connect with individuals. As a result, collective efforts can be logistically difficult and legally fraught: the fragmentation of work in the platform economy is a serious challenge.

The platform-based economy has provided significant autonomy and discretion. Employees have freedom to choice i.e. who they want to work with, when they want to work and how they want to work with. The autonomy is also in terms of when one to work and which orders to accept or reject which constitute autonomy over minutes decision[93]. According to Wood, Graham & Llehdonvirta, (2019), for remote workers the level of discretion is far from minute. The freedom is also in terms of connectivity with multiple clients from diverse industries, sectors and countries. Online labour platforms provided workers with opportunities to carry out work they were unfamiliar with and provided access to experiences that they would not otherwise have been able to realise. Another form of autonomy is discretion over place of work i.e. to work from home, enabling workers to avoid what would otherwise have been long, uncomfortable and costly commutes on poor quality public transport. But this system has ramification i.e. it triggers social isolation: the loneliness of working without inter-personal contact. Idle time can be utilised effectively like during daily commute while waiting for a doctor's appointment. Despite, autonomy in the platform-based economy is in shadow of algorithm management.

7.4. Open source and co-creation sites online

Open source and co-creation online sites are one of the emerging collective businesses. It is defining innovative paradigm and describes how customers and end-users could be involved as active participants in the design and development of personalized products, services and experiences (Prahalad & Ramaswamy, 2004; Payne, Storbacka, & Frow, 2008). The involvement of the different players is via a technological platform through the internet which enables the customers to use their knowledge, experience and skills in affecting the nature of existing, modified or entirely new market offerings in accordance with their own preferences, needs and contexts (Sawhney, Gianmario & Prandelli, 2005).

The concept of open-source works on four principles that are freedom to run, freedom to study how work is happening, freedom to redistribute for helping others, and freedom to distribute the own modified version. The definition of co-creation is focused on experience and dialogue and should incorporate the following characteristics:

a) The joint creation of value by the company and the customer

b) Allowing the customer to co-construct the service experience to suit her context

c) Joint problem definition and problem-solving

d) Creating an experience environment in which consumers can have active dialogue and co-construct personalized experiences; product may be the same (e.g., Lego Mindstorms) but customers can construct different experiences.

e) Experience of one

f) Continuous dialogue

g) Innovating experience environments for new co-creation experiences (Prahalad & Ramaswamy, 2004)

This form of co-creation paradigm is centralising customers and with the support of their customers, they are capable of creating new products. For example, most successful computer applications like Apache, Linux, and Firefox are open source projects that are managed by self-organizing communities of volunteer programmers. This movement has led to tremendous growth. If we talk about the gaming world then most of the computer games have been modified by the players themselves rather than the manufacturers (Jeppesen and Molin 2003). Such openness is attracting customers and they are preferring to get actively involved in the creation and modification of traditionally manufactured products. For instance, over 120,000 individuals around the world served as voluntary members of Boeing's World Design Team and contributed ideas and input regarding the design of its new 787 Dreamliner airplane[94]. Likewise, Arduino, an Italian microcontroller manufacturer provides open access to its software and schematics and actively encourages its customers to tinker with its product design[95].

[93]Shapiro A (2017) Between autonomy and control: strategies of arbitrage in the 'ondemand' economy. New Media and Society. Epub ahed of print 10 November. DOI: 10.1177/1461444817738236

[94]www.newairplane.com

[95](www.arduino.cc).

7.5. Non-involvement of Women and Youth

How do we engage young people in cooperatives? How do we increase youth participation? What support can we give to young co-operators? These aren't new questions but have been a constant since the start of the cooperative movement, asked and asked again as the youth they once applied to grew up and put the same queries to the next generation.

While cooperative businesses are seen as fair and honest, 2011 research by Co-operatives UK found that over 40% of people think of them as old fashioned. This perception is rooted in two factors. Firstly, youth think that co-ops have been slow to embrace technology, both on small and large scales. Co-operative Food stores only introduced self-service checkouts in 2012 – four years after they were a regular feature of local branches of larger supermarket chains. And smaller, eco-conscious co-ops will often not prioritise communication through websites or social media due to time or budget constraints, lack of training, or belief that it would not benefit their members and/or customers.

Secondly, few of the individuals forming the public face of cooperatives could be categorised as 'youth' – despite the fact that many were involved in cooperative from a relatively young age. Group chair Ursula Lidbetter, for example, was a cooperative graduate trainee aged 21, while the Phone Co-op's Vivian Woodell got involved in his local co-op supermarket in Oxford, also in his early 20s.

Besides decreased youth participation in cooperative, women participation is also very less. Many authors have analysed the factors that act as a constraint for women's participation. These factors are:

1. Socio-cultural barriers: - one of the perception of the society is that men are designated to perform in public sphere whereas women are associated with domestic sphere which confines them to performing household chores like childcare, cooking, fuel and water collection, family care etc. and they are discouraged to participate in the public sphere and thereby in producer organization.
2. Women's double burden and triple roles: - Women have to perform reproductive, productive and community work and according to FAO, (2011, 2015) it was stated that 85-90% of their time is engrossed in reproductive work (like cooking, childcare, fuel water collection etc.) which does not make any contribution to GDP. They also have to work outside to add up to the household income and also have to perform community work too. All this work goes particularly unrecognised. This multiplicity of the roles, as well as the high opportunity cost, reduce the women's time to participate.

3. Access to assets and resources, rules of entry and requirement: - According to (FAO, 2011), women have less control over land, income, and extension services which prohibits women's bargaining power as well as their participation in cooperative where membership criteria is related to land ownership and cash requirement for payment of membership fee.
4. Legal, policy and institutional environment: - The operating environment of the cooperative is affected by legal environment, institutional environment and policy which act as barriers for women's participation in producer organization. Report of Food and Agriculture, 2010 states the fact that limited access to land because of customary law hinders women's participation as access to and control over land is one of the membership criteria of the cooperative organisations.
5. Conduct, time and location of meetings: - lengthy meetings with lack of decisive action act as a demotivating factor for women as they have different affairs to complete. Timing and location of the meetings fixed by the organization are mostly unsatisfactory for the women member which prohibit their active participation.

The answer to engage or increase the participation of youth and women in the cooperative is the emergence of new forms of collective action like platform collectives, open-source and co-creation site etc. This new paradigm i.e. conglomeration of technology with the collective action will attract youth as now-a-days youth are basically technology-driven and look for experiential learnings. An emerging form of collective will give opportunities to youth to do the unfamiliar work providing access to experience. Emerging forms of collective actions are the best ways to counter the barriers faced by women as this will encourage the women's participation in the public sphere through online based platform which in turn will address the problem of women's double burden and triple roles. This will provide operational autonomy with respect to when to work, where to work and how to work. There will be freedom to choose the clients as per the discretion.

Hence, with women contributing to 18% of the Indian Economy2 and youth able to contribute to about 8% by 2019-20 fiscal year3, emerging forms of collectives have become an effective method to empower women and youth. With technology advancing at a rapid scale, youth are proving to be adaptable to and trainable in the latest technologies and methods to participate in cooperatives.

CHAPTER 8

CONCLUSION & WAY FORWARD

From the establishment of Pax Britannica in 1858 to the emergence of the concept of New Generation Cooperatives, the cooperative laws have evolved over a period of time. The motif of evolution of the cooperative laws is to recognise a cooperative as a user-owned, user-controlled and user-sensitive autonomous, democratic business enterprise. In order to attain the autonomy of cooperative organisations, Indian Law either amended the existing acts or passed new acts as the Cooperative Societies Act was repealed many times, leading to declaration of Cooperative Society Act of 1904, 1912, 1932 etc. Analysing the provisions stated in different acts like Cooperative Society Act, Self-Reliant and Liberal Cooperative Societies Act, Multi-state Cooperative Society Act, and Producer Company under Companies Act. It is clear that though a few provisions provide organisational autonomy and independence, the provisions lack in asserting operational autonomy to the organisations. Here, operational autonomy refers to the autonomy to set performance standards, to determine internal organisational structure, primary funding, enforcement of tax laws, operation areas, members and non-members stake, HR appointment and removal decision etc.

The Supreme Court and High Courts have always given their verdict in favour of making cooperatives more liberal and autonomous. As stated by Justice P.N.Ravindran, "...the successive revisions and the magnitude is often decided by the Government, an anomaly to the very concept of the cooperative movement in the country." Cooperative and state, both should work together by respecting full autonomy of the cooperative if they are earnest about cooperative development. The autonomy of cooperative is a must not merely for the sake of compliance with cooperative ideology but more because cooperative action will not bear fruit until cooperative is free from external

influence and in order to achieve this, State and cooperative needs to strike a perfect balance.

The prerequisite for the success of any enterprise depends on the balanced autonomy and independence that its owner has, whether it is in terms of deciding the business activities (s)he wishes to take up, location of the business, deciding management structure, focusing on suitable human resource to take up the responsibilities, for how long and on what terms, freedom to acquire infrastructure and other necessary resources like collaboration and partnership structure, to decide from whom and what kind of services (s)he will need, freedom in auditor's appointment and freedom to revisit the past decisions without any dependency on third parties in order to make the requisite changes in decisions from time to time.

However, in the existing legal environment of cooperative, which admittedly has improved over the period of time, reveals that on every one of these counts, cooperatives are still severely restricted in the country. It must be noted that in all these areas, even before the new economic policy was adopted, companies were already, by and large, free. That is, even earlier, cooperatives were given a less than equal treatment, kept under unreasonable control. With the new decontrols for companies, cooperatives have an even more unfriendly environment to compete in. The only reasonable restrictions on an enterprise surely are those without which the functioning of the enterprise would damage the larger policy of any government to provide equal opportunity for all and to promote equitability.

The cooperative is always treated as the child of the state where the state plays a major role in the functioning of a cooperative. Driven by this belief, cooperative laws were framed across the country. Rather cooperative laws should be such that they grant autonomy and independence to the cooperative owners as corporate owners and cooperatives should be recognized as the part of members and not the states and they are not part of governance structures, but business organisation. Hence, there is a need for liberalization in the cooperative laws and a balanced approach between State and cooperatives.

For cooperative autonomy to be meaningful:

a) Cooperatives should be recognised as businesses, not as social service organisations; as member-controlled, not government-controlled enterprises; as member-sensitive, not public-sensitive organisations; as private, not public bodies.

b) Cooperatives should be able to compete with other forms of business, but not with their hands tied behind their backs, while other forms of business have the basic freedom necessary to conduct their affairs. Cooperative law should permit the freedom allowed to companies, especially on matters relating to their internal management, such as in choice of business, choice of membership, choice of area of operation, framing and amendment of bylaws, conduct of elections, size, composition and term of board, staff appointments, staff service conditions, staff composition, staff discipline, wage fixation, appointment of auditors, amalgamation, division, merger, winding up, etc. Therefore, all provisions restrictive in these matters should liberalise cooperative law, and full responsibility for these should lie with the cooperatives.

c) Cooperative law should define the concept of cooperation contained hitherto in the internationally recognised principles of cooperation, and now contained in the statement of cooperative identity, (also internationally accepted), which includes a definition of what a cooperative is, the values that a cooperative is expected to subscribe to, and the principles that a cooperative is expected to practise.

d) Cooperative law should contain only that which the law should contain, leaving to bylaws what bylaws should contain.

e) Similarly, cooperative law should contain matters specific to cooperatives, leaving to general or other specific laws such aspects as ought to apply to all citizens individually or acting as a body corporate. Therefore, criminal law should apply to cooperatives as to all others - so, too, laws relating to child labour, pollution, civil matters, etc.

f) Most important of all, in keeping with the requirements of the Constitution of India, cooperative law may place on cooperative formation only such restrictions as are reasonable and in the interests of the sovereignty and integrity of India or public order or morality. Any restriction in law on the formation of cooperatives, for reasons other than these, is not tenable.

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