

The Effect of Cooperative Law on the Autonomy of Cooperatives in South-East Asia

P.E. Weeraman

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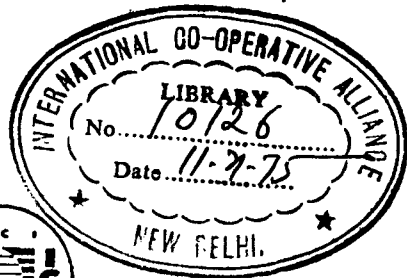
The Effect of Cooperative Law on the Autonomy
of Cooperatives in South-East Asia

BY

P. E. WEERAMAN
ICA Regional Director for South-East Asia

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The Effect of Cooperative Law on the Autonomy of Cooperatives in South-East-Asia

Autonomy is the right of self-government.

A cooperative is a voluntary and autonomous association of persons, or of societies, functioning in conformity with the Co-operative Principles, for the economic and social betterment of its members through the satisfaction of their common economic needs by means of one or more common undertakings, based upon mutual aid and profit-elimination.

The autonomy of a cooperative society arises from the freedom of association inherent in a free society. This freedom arises from the autonomy of the individual. If the individual does not enjoy autonomy he will not be free to associate with others of his own free will. Therefore individual autonomy is a corollary of the act of voluntary association. If one enjoys individual autonomy, he has the right to associate with others voluntarily and an association formed by such persons in the exercise of their individual

autonomy would enjoy collectively the autonomy of the individuals comprising it. The act of associating with others in the exercise of individual autonomy would be a voluntary act. If it is an involuntary act, it would not be an exercise of the autonomy of the individual who is associating with others but his compliance with the orders of another. And the collective body would be equally subject to the orders of the masters of those non-autonomous individuals as much as the latter would be individually. Even a law making their collective body autonomous would not really make it autonomous if the constituent members do not enjoy individual autonomy.

Therefore the act of associating should be a voluntary act based on individual autonomy if the associating persons are to be collectively also an autonomous body. Therefore the cooperative as an association of "free and responsible persons who, in full exercise of their autonomy have voluntarily joined together" has an inherent right to autonomy and therefore to manage its own affairs and to do so in accordance with its principles.

A cooperative's autonomy is expressed by, and exercised in accordance with, its Principle of Democratic Control. The cooperative should have autonomy to act in conformity with this Principle of Democracy. "Autonomy therefore is a corollary of democracy" as said by the Principles Commission.

All the laws which relate to Cooperative Democracy, *per se*, as well as all the laws which deny to cooperatives their right to take democratic decisions on matters within their sole purview in the light of the Cooperative Principles affect the autonomy of the cooperatives. Therefore all such laws come within the purview of this paper.

The laws which affect the autonomy of cooperatives are divisible into four main groups :

1. Laws to ensure the practice of Cooperative Principles.
2. Laws which contravene the Cooperative Principles.

3. Laws which deal with other matters that are within the purview of cooperative societies.
4. Laws which give powers that are necessary to the government to play its due role of promoter, guide and protector of the movement as well as that of watch-dog of the public interest.

The first category, i. e. laws to ensure the practice of Co-operative Principles, need not be in the law of the land once it is stated in the Law that the Registrar may register a society only if it "has as its object the promotion of the economic interests of its members in accordance with Cooperative Principles". To ensure uniformity in the interpretation of these principles, the Cooperative Societies Law should define these Principles in its Interpretation Section. Even if these are not defined, it would be redundant to include in a Law provisions to ensure the practice of the Cooperative Principles by a society because its registration has to be refused if the society does not have bylaws that are necessary for the achievement of its object.

The second category i. e. laws which are contrary to Co-operative Principles, should not appear in a Cooperative Law if the development of a true Cooperative Movement is intended by the Government concerned. Needless to say, the laws relating to Cooperative Societies play a vital role in cooperative development. If the laws are contradictory to Cooperative Principles there is no room for the growth of a Movement which is truly cooperative. The government officials charged with the task of developing the Movement as well as the public will take the law to be correct and understand the content and character of the Movement from the Laws relating to it. Therefore, it is essential that the law conforms to the Principles of Cooperation. Otherwise there would be a type of society which is not cooperative in character masquerading in the guise of a cooperative for the sake of passing muster. This will do irreparable damage to the cause of Cooperation. People learn more from what they see, than from books, for example is more didactic than precept. The result of this bad example would be that the younger generation will know only the

misnamed cooperative and the true concept of Cooperation will be lost and with it will fade away the true movement in spite of all its potentiality for economic and social betterment. If any government considers that the need of the hour for national development is the State-controlled type of society which observes only some of the Principles of Cooperation, there can be no more authoritative body to decide so. However, it would be in the fitness of things if a term other than "Cooperative" e. g. pre-cooperative, is used to describe such uncooperative undertakings so that the country would not be led to believe that such societies are true cooperatives and the concept of Cooperation will not be lost and with it a movement "so potentially powerful and full of social purpose" to quote the words of Mrs. Indira Gandhi, Prime Minister of India. Let such societies be identified by another name, so that credit for their success or disrepute on account of their failure will not go undeservedly to the cooperatives. I would plead that everything good should not be called "cooperative". It is enough if everything cooperative is good. Nobody can gainsay the fact that the mere economic success of an uncooperative undertaking cannot counter-balance its failure, by the very nature of its constitution, to develop self-reliance in its members, the social purpose which cooperatives alone can achieve and which alone can help in the development of a truly democratic order and a self-reliant nation.

The third category of laws, i. e. those which deal with matters that are purely within the purview of cooperative societies are those which lay down norms e. g. the number of directors and auditors there should be in a society. These are matters of opinion, and no person or body of persons can claim to know better than the members themselves "what their interests are". If this is denied to the members, the very basis of cooperative democracy is undermined. If the State forces its views on cooperatives then "you knock the bottom out of it" as Jawaharlal Nehru declared when he opened the first Seminar held by the ICA Regional Office in 1960.

The fourth category i. e. laws which give powers that are necessary to the government to play its role of promoter, guide

and protector as well as that of watch-dog of the public interest are those that relate to (a) the powers of the Registrar as regards registration, inquiry, inspection, audit etc. of societies, (b) procedural matters such as the conditions to be complied with in applying for registration etc., (c) privileges of societies such as exemption from stamp duty or income tax, (d) the powers of the Registrar to prevent the misleading of the public by prohibiting the use of the word "cooperative" by unregistered societies or to ensure that cooperatives deal mainly with members by prohibiting excessive trading with non-members.

Laws of this last category must undoubtedly remain on the Statute Book. All provisions which are necessary to make a society cooperative should be included in the bylaws and any society which does not provide them in its bylaws should be refused registration.

The picture is not complete without a reference to the Regulations or Rules, framed under the various cooperative laws, and bylaws of cooperative societies.

The regulations could be divided into the same four categories. In many a case, the Regulations give the government powers that are more extensive or vital than powers given under the Act itself, and sometimes they even appear to go beyond the purpose laid down for them, namely that "of carrying out or giving effect to the principles and provisions of the Act". There should be no need to frame Rules or Regulations under an Act. All powers which should be taken by the State without violating Cooperative Principles should be included in the Act and all matters within the purview of the societies, according to Cooperative Principles, should be included in the bylaws of societies. The procedure for passing Rules in Parliament is much simpler than that laid down for amending the provisions of an Act, though the Rules are as valid and effectual as the provisions of an Act. The elasticity necessary in certain powers under the rules can be provided in the Act just as well, by empowering under the Act the government or the Registrar to prescribe for such matters by Administrative orders, published in the Government Gazette.

All laws proposed on cooperative matters deserve to be given the fullest attention of Parliament as is ensured by the procedure laid down for Bills. It is important that a people's movement is not left open to control by regulations, except on procedural matters relating to the government's legitimate sphere of control.

In the case of bylaws too, there are powers given to the Registrar which are not given to him by the Act or the Regulations. He acquires these powers by virtue of his own act of registering the bylaws! Clearly the Registrar cannot acquire for himself powers which he does not have under the Law or under the Administrative Orders made by his Minister by virtue of powers vested in the latter, even if these powers have been willingly granted by the society concerned. Of course this legal difficulty can be overcome by the law itself empowering the Registrar to exercise powers given him by the bylaws of a society. But this way lies the road to loss of autonomy. This highlights the gravity of another power which the laws of India confer on the Registrar, the power to impose bylaws. He can compel a society to give him powers which he does not derive from the law of the land. It is doubtful whether the Registrar may exercise powers given him by bylaws which the society concerned has been compelled by the Registrar to adopt by virtue of powers given him under the law authorising him to impose bylaws on cooperatives.

The bylaws should provide for the observance of Cooperative Principles, stating them precisely if the Law does not do so, and for all matters that lie within the purview of, or are proper to, the cooperative society concerned. All bylaws giving powers to the Registrar which are not stated in the Law itself should be deleted.

It is not within the scope of this paper to discuss the effect of bylaws on cooperative autonomy.

Although Regulations come within the term "law" the present paper does not take them into account either, except in a few cases, due to the vastness of the subject. A discussion of the main cooperative laws of the fourteen countries which are included in the South-East Asian Region of the ICA is all that this paper attempts.

There are laws which affect the exercise of cooperative autonomy *per se*—they either support, vitiate or nullify the Principle of Democratic Control, which, as said earlier, expresses as well as prescribes the manner of exercising cooperative autonomy. There are other laws which affect the right of the cooperatives to decide on matters solely within their purview on the basis of their autonomy. I shall first deal with the laws affecting the Principle of Democratic Control after a brief introduction of that principle for the sake of completeness.

This principle means that—

- (a) the general meeting of the members of a cooperative is the supreme authority in regard to the conduct of the affairs of the society,
- (b) the members of a cooperative shall enjoy equal rights of voting and participation in decisions affecting their society, each member having only one vote, provided that in federal societies the members may enjoy voting power on any other democratic basis,
- (c) the affairs of a cooperative shall be administered in accordance with the democratically expressed will of the members,
- (d) the management of a cooperative shall be elected or appointed in a manner agreed by the members,
- (e) the management shall be accountable to the members.

The laws which affect this Principle are divisible into several sub-categories according to the various aspects of Democratic Control they relate to, viz.

1. the supremacy of the general body ;
2. the members' rights of voting and participation in decisions affecting their society ;
3. the democratic administration of a cooperative. This is affected by laws on the following aspects :

- (a) the Registrar's power to call a general meeting,
- (b) the compulsory amendment of bylaws,
- (c) the compulsory amalgamation and division of societies,
- (d) Registrar's control over lending, borrowing and investment of funds,
- (e) compulsory, arbitration in disputes,
- (f) government's power of veto, annulment and suspension, of society's decisions,
- (g) issue of government directives to cooperatives,
- (h) restriction on share holding,
- (i) restriction on functioning through agents,
- (j) restriction on write-off of dues,
- (k) supervision of loans to officers and their relatives.

4. the election or appointment of the management in a manner agreed by the members; and
the accountability of the management to the members.

These are affected by the laws on the following aspects :

- (a) Vesting of the management in the committee of the society,
- (b) Registrar's power to nominate committee members.
- (c) Registrar's power of supersession of the Committee.
- (d) Registrar's power to suspend or remove officer or servant.
- (e) Limitation of period of office.
- (f) Restriction on holding office in several societies.
- (g) Conduct of elections by the government.
- (h) Seats on the Committee for the weaker sections of society.
- (i) Government's power to appoint government servants to manage cooperatives.
- (j) Power to prescribe qualifications and service conditions

and constitute an authority for recruitment etc. of employees.

- (k) Power of the Registrar to post supervisory staff in societies.

I shall now briefly illustrate each case.

1. The Supremacy of the General Body

India

Fourteen Indian State Acts lay down that the final authority in the management of the cooperatives is vested in the general body, but except in two Acts, the vesting of this power has been nullified by subjecting it "to the provisions of the Act and the Rules".

Bangladesh

The Bangladesh law at the moment is yet the Bengal Cooperative Societies Act, 1940. Section 20 of this Act provides that "the final authority of every cooperative society shall vest in the general body of members in general meeting.....provided... that from the date of dissolution of the Managing Committee under Section 25 to the date of constitution of a Managing Committee under Section 21, the final authority of a cooperative society shall vest in the Provincial Government"—(the proviso has been added by East Pakistan Act XVIII of 1964, Section 8). The vesting of the final authority in the government even temporarily is a violation of the autonomy of the cooperative concerned.

Pakistan

The Pakistan Law is stated in the Cooperative Societies Act 1925 and the Cooperative Societies Rules 1927 of Sind made applicable to West Pakistan. The Act provides for the making of Rules "to provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings". But the rules do not contain any provision regarding the authority of the general body.

Nepal

The Nepal Law [Act No. 12 of 2016 (1959)] does not refer to the powers of the general body.

Sri Lanka

Rule 25 under the Sri Lanka Cooperative Societies Law (No. 5 of 1972) requires cooperatives to provide in their bylaws for general meetings and the procedure at, and the powers to be exercised by, such meetings.

New South Wales (Australia)

The New South Wales Act (1 of 1924) confers on the board of directors “the powers of the society as if they had been expressly conferred on the board by a general meeting of the society [section 84 (i)]. By implication the powers of the society are vested in the general body. The conferment of these powers by statute on the board of directors infringes the autonomy of the society for the principle is that the supreme authority of a cooperative society is its general meeting and if the law must state who the final authority of a cooperative is, it must state it in accordance with the principle (of democratic control).

Singapore

The Singapore Act and Rules are silent on the supremacy of the general body. Apparently this is left to be stated in the bylaws.

Malaysia

The Cooperative Societies Ordinance 1948 of Malaysia provides for the making of Rules to “provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings”, but no such Rule has been made.

Indonesia

The Law on the Basic Regulations for Cooperatives in (No. 12 of 1967) lays down in article 20(1) that “the supreme authority in a society shall be vested in the general members’ assembly”.

Iran

The Cooperative Societies Law of Iran, in Article 7 of Chapter II, lays down that the General Assembly is the highest organ as regards making decisions and expressing collective views by members for the management of the society's affairs".

Thailand

The Cooperative Societies Act BE 2511, (1968) of Thailand does not refer to the authority of the general meeting.

Korea

The Agricultural Cooperative Law of Korea (1969) reserves for the decision of the General Assembly of the Ri/Dong (Rural) Cooperative certain specified matters.

Japan

The Agricultural Cooperative Society Law of J~~apan~~ (No. 132 of 1947 as amended) likewise lays down items that "shall be resolved at a general meeting." (Article 44). The Consumers' Livelihood Cooperative Society Law of Japan (No. 200 of 1948 as amended) lays down in Article 43 matters that "shall be decided by a general meeting." There is a similar provision in Article 48 of the Aquatic Cooperative Association Law of Japan (No. 242 of 1948 as amended).

Philippines

Letter of Implementation No. 23 of 9th July 1973 implementing Presidential Decree No. 175 of 14th April 1973 of the Philippines, says in Regulation 31 that "the final authority in every Kilusang bayan (cooperative) shall be vested in the general assembly of the members".

Comment

Generally we may conclude that there is no serious effect on the autonomy of the cooperatives from these laws on the

supremacy of the general body except in the case of India and New South Wales.

2. Members' Rights of Voting and Participation in Decisions Affecting Their Society

India

The Indian State Acts generally provide that every member shall have one vote. Some provide that a nominal, associate or sympathiser member may be given the right to vote by the bylaws. Two acts deny the vote to the nominal members. Eight Acts provide that where the government has subscribed to the share capital of a society and by virtue of that has nominated persons to its committee each such person shall have one vote. This provision is contrary to the principle of democratic control according to which voting rights shall be on a democratic basis.

Sri Lanka

The Sri Lanka Law provides (Section 15) that a member of a primary cooperative society shall have only one vote whilst Rule 15 (2) (b) provides that each member shall have only one vote.

Malaysia

The Malaysian Law (Sec. 24) provides one vote for each member except that in a federal society a member may have such voting powers as are provided in the bylaws. This recognises the principle of allowing votes on any other democratic basis for members of societies which are not primary societies.

Singapore

The Singapore Ordinance (Sec. 24) has the same provision.

New South Wales

The New South Wales Act (Sec. 86) provides one vote for

every member and an additional vote or votes, "on the basis of the quantity or value of produce delivered to or the value of goods purchased from the society by the member during the preceding financial year, provided that where under the rules it is obligatory for the member to subscribe for shares in proportion to the use made by him of the society, any additional vote may be allotted on the basis of the shares held by the member". Additional votes are not allowed in a rural credit society, credit union or terminating building society.

Bangladesh, Pakistan

The Bangladesh Law (Sec. 60) allows only one vote, and so does the law of Pakistan (Sec. 18).

Indonesia

The Indonesian Law (Article 20) provides for only one vote to a member and allows bylaws of "secondary societies and other societies of which the members are cooperative societies" to provide for voting "in proportion to the amount of members".

Nepal

Nepal provides for one vote in the case of societies of unlimited liability "irrespective of the number of shares or interest in the capital", whilst "members of a society having limited liability shall exercise their right to vote as prescribed in bylaws" (Section. 9).

Iran

The Iran Law (Ch. II, Article 7) provides that "each member, irrespective of the number of shares possessed by him, shall only be entitled to one vote at the General Assembly". It also allows (Article 9) "Cooperative societies with extensive scope of operation and/or considerable volume of membership", to have representative general meetings composed of representatives "elected by members in various operational zones of the society in proportion to the number of members in the respective zone

and/or a combination of the numbers of members and the total transactions in the same zone, in such a manner as shall be specified in the Statutes" (bylaws).

Thailand

The Thailand Act lays down in Section 78 that each member-society of a Federation shall have one vote.

Korea

The Agricultural Cooperative Law of the Republic of Korea lays down in Article 28 that each member shall have "one right to vote and to elect."

Japan

The Agricultural Cooperative Society Law of Japan provides each member with "one voting right to elect the officers and representative members" but adds that a federation of agricultural cooperatives may, however, "give two or more voting rights and election rights to each member.....according to the number of the members in the said agricultural cooperatives" or "where the said cooperative members are federations of agricultural cooperatives, according to the number of the members of the said agricultural cooperatives composing directly or indirectly, the said federation of agricultural cooperatives. The Consumers' Livelihood Cooperative Society Law of Japan lays down in Article 4 that "members, shall in spite of the number of shares held by them, enjoy equal right to make decisions and to vote" and in Article 17 (1) that "each member of a cooperative society shall be entitled to only one vote for decisions and for election, regardless of the number of shares held: provided, however, in case of the Federation of Cooperative Societies, different stipulations may be provided in its bylaws in accordance with the number of members of the society". The Aquatic Cooperative Association Law of Japan says (in Article 21) that "each member of any Association shall be entitled to only one voting right and one election right of officers". It also provides in the second paragraph of the same article that "the number of members to be

represented by a proxy shall be increased from one (in the present Law) to two, and in case of an association whose members exceed 1,000 persons, from two to three.”

Philippines

The Cooperative Law of the Philippines does not refer to the voting rights of members and apparently leaves this matter to the bylaws, a model for which is to be prescribed by the Bureau of Cooperative Development.

Summary

India, Sri Lanka, Bangladesh, Pakistan, Nepal and Thailand provide for only one vote whilst Malaysia, Singapore, New South Wales, Iran, Japan and Indonesia provide for additional votes in the federal societies on the basis of membership or volume of transactions of the member-societies. The Republic of Korea and the Philippines leave the matter to the bylaws.

Comment

We may generally conclude that the Cooperative Laws do not affect the autonomy of the Cooperatives in regard to the rights of voting and participation of the members.

3. The Democratic Administration of a Cooperative

There are various laws affecting the right of a cooperative to manage its affairs according to the democratically expressed will of its members.

3(a) The Registrar's Power to Call a General Meeting

India

Fifteen Indian State Acts empower the Registrar to call a general body meeting or to authorise any person on his behalf to call a meeting at such time and place as he may direct. If there is no quorum the meeting may be adjourned and those present on the second day shall constitute the quorum.

Sri Lanka

Under the Sri Lanka law [Rule 15(4)] the Registrar “may at any time summon a special general meeting of any registered society in such manner and at such time and place as the Registrar or person authorised by him may direct”. In Sri Lanka there is no second attempt to get a quorum for the rule says that “the number of members present in person or by proxy at such meeting shall form the quorum (unless such number is less than three) and such meeting shall have all the powers of a meeting duly convened according to the bylaws of the society”. The Registrar or person authorised by him may be present at any general meeting or any meeting of the Committee of a society. He only does not have the right to vote at such meeting (Rule 45).

Bangladesh

The Bangladesh law (Section 22) lays down that a special general meeting shall be called at the instance of the Registrar. It also provides in the same section that the Registrar or any person authorised by him “may call a general meeting...at any time and shall call such a meeting upon failure of the society to call a meeting on a requisition by the members or at the instance of the Registrar.”

Pakistan

The Pakistan law (Section 13) lays down that a society shall call a special general meeting within one month at the instance of the Registrar.

Nepal

The Nepal law (Rule 21) empowers “the Registrar or the person specially or ordinarily authorised by him” to call “an emergency meeting” and to “fix the time and place”. It also provides that three shall be the quorum of such a meeting.

Singapore

The Singapore law (Rule 11) empowers the Registrar or

any person authorised by him to “summon at any time a special general meeting of the society in such manner and at such time and place as he may direct”, and to “specify what matters shall be discussed by the meeting”. If there is no quorum at such meeting, the Registrar may proceed to summon a further general meeting and at such meeting “any number present shall be deemed to form the quorum”. The silver lining in the dark cloud is that “not less than fifteen days’ notice shall be given of any general meeting summoned under this rule”.

Malaysia

The Malaysian law [Rule 11(i)] has the same provision. Under section 11 of the Act the Registrar has the right to attend any meeting of a society and take part in the business of such meeting.

Indonesia

The Indonesian law (article 38) empowers the Administrator “in extraordinary cases...to summon a general members’ meeting to fix the agenda and to participate in the deliberations.” Further, “the Administrator may at any time attend and take part in the deliberations of the meeting of the Board of Management and the General members’ assembly.”

New South Wales

The New South Wales Act (Section 118) requires the Registrar to call a special general meeting and hold an inquiry into the affairs of a society, on the application of a majority of the board or of not less than one third of the members of that society. The applicants shall give such security for the expenses of the meeting or inquiry as the Registrar directs. “The Registrar may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting and shall give such notice to members of the holding of such meeting as he deems fit.” The meeting shall appoint its own Chairman. “The Registrar or any person nominated by him may attend and address any such meeting”.

Iran

The Iran law (article 26) empowers the Ministry of Cooperation and Rural Affairs or the Ministry of Labour and Social Affairs to summon general meeting "through the Board of Directors" and if the Board "refrains from calling the general assembly" the Ministry concerned "may directly call the meeting of the General Assembly for the purpose or purposes intended".

Philippines

Under the Philippines law no specific power has been taken by the government to summon a general meeting of a society.

Thailand

The Thailand Act (section 28) lays down that "if the Registrar of Cooperative Societies gives notice in writing to call an extraordinary general meeting" the Committee of Management shall call such meeting "without delay". "The Registrar or person assigned by the Registrar" is empowered to call an extraordinary general meeting if the Committee of Management fails to call one when the members "petition for an extraordinary general meeting". The meeting shall be called within a period which the Registrar "thinks reasonable".

Republic of Korea

The Agricultural Cooperative Law of Korea does not provide for the government to call a general meeting.

Japan

The Agricultural Cooperative Law of Japan (Section 41-2) empowers the government to call a general meeting when "there is a fear of causing damage resulting from the delay in business due to the lack of officers...in order that the officers may be elected or nominated" at such meeting.

Comment

The power of the Registrar to call a general meeting of a cooperative vitiates its autonomy. The Registrar should have power to summon the members of a society to an inquiry, inspection or audit held by him or a person authorised by him. The taking of decisions by the society on the findings of such inquiry, inspection or audit should be the society's responsibility. The presence of the Registrar at their meetings will undermine the value of any remedial measures taken by the members on the findings of the Registrar.

3(b) The Compulsory Amendment of Bylaws

India

Sixteen Indian State Acts empower the Registrar "to call upon a society to amend its bylaws as appears to him to be necessary or desirable in the interest of the society...within such time as he may specify" and "if the society fails to make the amendment within the time so specified the Registrar...may register the amendment" and "the bylaws as amended shall be binding on the society and its members" (Gujarat Act, Section 14).

Bangladesh

The Bangladesh law (section 18) empowers a financing bank to request a debtor society to make an amendment to the latter's bylaws, as appears to the bank to be necessary and desirable in the interest of the society, within a time specified by the bank, and if the society fails to do so, the bank may request the Registrar to make the amendment and if the Registrar is satisfied "that amendment is not contrary to the provisions of the Act or the rules", he may Register the amendment and "such amendment shall thereupon be binding upon the society and its members". The Registrar too may of his own motion register "an amendment of the bylaws of a cooperative society" if it appears "necessary or desirable in the interest of such society." The supposition that banks and Registrars know more what is in

interests of the members than the members themselves is unacceptable. The justification of the principle of democratic control "rests on the proposition that it is the members who know what their interests are".

Nepal

The background paper on Nepal says that a recent amendment to Section 29 of the Nepal Act confers on the Registrar the powers to repeal current and promulgate new bylaws. He can also direct a society to amend its bylaws for changing its area of operations and functions, constitution of its board and "in cases when a cooperative refuses to fall in line with the general accepted policies laid down by the government".

Sri Lanka

The Sri Lanka Law [Rule 28(3)] makes the amendment of a bylaw "previously approved by the Registrar" easier of adoption in that the majority required for such is only a majority of two-thirds of the members present at a general meeting, whereas an amendment which has not been approved earlier by the Registrar requires a three-fourths majority of a meeting attended by not less than one-half of the members of a society of unlimited liability or a clear majority of the total number of members of a society of limited liability. There is no provision for compulsory amendment.

Singapore

The Singapore Law (Rule 9) makes the approval of the Registrar necessary for voting by proxy and also for reducing the majority required for the adoption of an amendment. Normally a majority at a general meeting attended by "not less than half of the members of the society" is required. The Registrar can allow any non-agricultural society to pass an amendment by a two-thirds majority provided at least one-quarter of the membership or one hundred members, whichever is less, is present. There is no provision for compulsory amendment.

Malaysia

The Malaysian law is similar to this.

New South Wales

The New South Wales law provides that the Registrar may refer an application for alteration of a bylaw to the Advisory Council and he “shall refuse to register the alteration... if that Council is of opinion that the alteration would not or is not designed or intended to serve equitably the interests of the members of the society”. Thus far from imposing bylaws on cooperatives even the refusal to register is dependent on the recommendation of an Advisory Council. [Section 83(4A)].

Comment

Only the Acts of India and Bangladesh have provision for the compulsory amendment of Bylaws. The imposition of bylaws on a cooperative society is a violation of its autonomy, nay of its very constitution, violating the voluntary contract between the members and the society. What is introduced into this contract compulsorily cannot bind the members morally. As said by Fauquet “the efficacy of compulsion is limited and ..it is exactly where compulsion fails that cooperation succeeds and introduces, in addition, human and moral values”. Every cooperative is a little democracy of its own and the violation of its constitution by the State is the greatest blow that could be given to the autonomy of the cooperative.

3(c) The Compulsory Amalgamation and Division of Cooperatives

India

Eleven Indian State Acts empower the Registrar to direct the amalgamation or division of cooperative societies.

Sri Lanka

The Sri Lanka Law [Cooperative Societies (Special Provisions) Act No. 35 of 1970] says in section 2 that “when, for the

interest ...
purpose of reorganising the cooperative movement, the Registrar thinks it necessary...he may by Order published in the Gazette amalgamate one or more societies...with any other society”.

Nepal

Rule 19A (sub rule 5) provides that the Registrar can direct a society or societies to divide or amalgamate or reorganise if the societies are unwieldy, too big or too small for becoming economically viable.

Comment

Compulsory amalgamation and division are violations of the constitution of each cooperative involved in the process. Cooperatives are voluntary associations. It is incorrect to compel a group of persons, who have voluntarily joined together, to join another group or to take away a part of the former group compulsorily and form them into a separate society. Such compulsion violates the autonomy of the cooperative concerned and the voluntary contract between the members and the society. The members cannot be forced to be members of a society which they never joined.

3 (d) The Registrar's Control Over Lending, Borrowing and Investment of Funds.

India

All the Indian State Acts require the societies to obtain the Registrar's approval for lending, borrowing or investing funds.

Bangladesh :

The Bangladesh law regulates the receipt of non-member deposits and loans.

Pakistan

The Pakistan law prohibits a society from lending to non-members and an unlimited liability society from lending money

on the security of moveable property except with the permission of the Registrar. The Provincial Government may prohibit or restrict the lending of money on the mortgage of immoveable property. A society may receive deposits and loans from non-members only to the extent and under the conditions prescribed by the rules or bylaws. A society may invest funds only in the institutions prescribed in the Act or in any mode permitted by the rules.

Nepal

The Nepal Act requires the societies to decide the amount of deposits or loans that may be received from private individuals within the meaning of the Registrar's circulars in this connection.

Sri Lanka

The Sri Lanka law prohibits societies from lending money to non-members except that with the Registrar's consent a society may lend money to another society. It also prohibits loans on moveable property other than agricultural produce, except with the permission of the Registrar. A society may receive loans and deposits from non-members only to the extent and under the conditions prescribed by the rules or bylaws. A society's funds may be invested only in approved securities or bank approved by the Registrar.

Singapore

The Singapore law has the same provisions and an additional one empowering the Minister to prohibit or restrict the lending of money on a mortgage of any immovable property.

Malaysia

The Malaysian law is similar to Singapore's.

New South Wales

The New South Wales law permits a society to raise money on loan deposit where it is authorised by its rules (by laws) "in such manner as the society may think fit".

Republic of Korea

The Agricultural Cooperative Law of Korea empowers the Minister to order a cooperative or the federation to take corrective action within a prescribed period or to take necessary administrative measures against the personnel concerned, and if the order is not obeyed to order the suspension of the whole or part of the business of the cooperative concerned. (Article 169)

Japan

The Consumers Livelihood Cooperative Society Law of Japan empowers the administration authorities to order a society to take appropriate corrective action "on matters disclosed in an investigation" (Article. 95). The Aquatic Cooperative Association Law (article 124) empowers the administrative authorities to "take an appropriate corrective action" on matters disclosed in a report or inspection. The Agricultural Cooperative Society Law of Japan in Article 94-2.2 empowers the administrative authorities to "give any necessary instructions on the business or account of a central union" in order to secure the sound management of its business.

Comment

Directives to correct a society's defects in management are not violations of a society's autonomy, as the management is already under obligation to manage the society's affairs properly and the administrative order is only an effort to make the management do what is already laid down in the society's bylaws. Any directive to do what is not required of the management by the bylaws of the society or the law of the land would be a violation of the autonomy of the cooperative.

3(h). Restriction on Holding of Shares

India

Ten Indian Acts restrict the holding of shares. The general prohibition is to hold more than one-fifth of the total share

capital or specified amounts, but the State government or the State warehousing corporation can exceed these limits.

Bangladesh

The Bangladesh law restricts the shareholding to one-fifth the share capital or five thousand rupees. (section 67).

Pakistan

The Pakistan law restricts the share-holding to one-fifth the share capital or ten thousand rupees except that in a housing society a member may have share capital to the amount of twenty-thousand rupees. A society which is a member of a society can hold any amount of shares.

Sri Lanka

Sri Lanka has the same one-fifth (Rule 12) restriction except for member-societies.

Nepal, Singapore & Malaysia

Nepal, Singapore and Malaysia have the same restriction.

New South Wales

New South Wales has the same restriction but allows a member of a company which has been registered as a cooperative to hold shares up to one half if the member held them at the time when the company was registered as a cooperative.

Iran

The Iran law (article 11) fixes a maximum limit of one seventh of the total share capital.

Indonesia etc.

The laws of Indonesia, Thailand, the Philippines, the Agricultural Cooperative Law of the Republic of Korea, the Agricultural Cooperative Society Law of Japan, and the Aquatic Coope-

rative Association Law of Japan do not have a restriction on share-holding. Perhaps this restriction is in its proper place, the bylaws. The Consumers' Livelihood Cooperative Society Law of Japan lays down in article 16 a maximum of one-fourth of the total number of shares.

Comment

These provisions relate to a healthy cooperative practice, not a principle, that no member should acquire too large an interest and thereby too much of influence over the society. But this should be a self-imposed discipline and therefore it should be embodied in the bylaws. The laws which prescribe this practice but make exceptions in favour of the state and corporations do a disservice rather than a service to the movement, for such exceptions in favour of institutions or organisations which are not really qualified for membership of cooperatives gives to the outsiders the influence that the society seeks to prevent its own members from acquiring. Leaving room for this to another society or the state etc. is worse than giving this leverage to an individual member. There would be no room for these exceptions if this matter is left to be provided for in the bylaws only, which are the proper place for laying down this restriction.

3(i), 3(j) & 3(k)—Restrictions on functioning through agents, restrictions on the write-off of dues, and the supervision of loans to officers and their relatives are so obviously matters for the bylaws that I shall not tire my audience by elaborating on these laws.

- 4. The election or appointment of the management in a manner agreed by the members and the management's accountability to the members.**

This aspect of cooperative democracy has been subjected to legislation relating to the following matters :

4 (a) Vesting of the Management in the Committee

India

Nine Indian State Acts lay down that the power of management of a cooperative shall vest in the committee. One act lays down the minimum and maximum numbers of committee members. The laws lay down that the Committee shall exercise powers and perform duties conferred or imposed respectively by the Act, the Rules and the Bylaws.

Bangladesh

The Bangladesh law (section 23) is identical.

Pakistan

The Pakistan Law (Rule 52) says that the business of a society shall be managed by the committee subject to the Act, the Rules and the Bylaws.

New South Wales

The New South Wales Act says that the business and operations of a society shall be managed and controlled by a board of directors and for that purpose the board shall have and may exercise the powers of the society as if they had been expressly conferred on the board by the general meeting of the society. The powers of the board are subject to any restrictions imposed on it by the Act or by the rules of the society. However my comments under "the supremacy of the general body" are valid. Section 84(6) empowers the Registrar to refuse registration of a rule (bylaw) relating to the manner of electing directors unless he approves of the manner specified in the rule. Under Section 88 (2A) the total amount payable by way of fees to directors shall not exceed the amount fixed by the Advisory Council constituted under the Act.

Iran

The Iran law says that the affairs of a cooperative society

are administered by a Board of Directors "by virtue of the statutes" i.e. bylaws.

Indonesia

The Indonesia law (Article 23) says that the Board of Directors shall conduct the administration and management of the business of the society, act for the society and be responsible to it for the performance of its duties, and represent the society within and outside the court.

The Philippines

The Philippines law says that a cooperative (Kilusang bayan) shall be managed by a board of directors of not less than five nor more than fifteen directors for a term fixed in the bylaws but not exceeding two years. The officials of the Department and the Bureau may serve as members of the board with the permission of the Secretary of the Department.

Republic of Korea

The Agricultural Cooperative Law of the Republic of Korea says that "a cooperative shall have a Board of Directors" (Article 45). The National Agricultural Cooperative Federation has an Administration Board composed of three delegates of the Ministry of Agriculture and Fishery, Ministry of Finance and the Bank of Korea, and five members elected by the meeting of Representatives.

Japan

The Agricultural Cooperative Society Law of Japan (Article 30) says that "a cooperative shall have officers who act as directors and auditors, respectively". The number of directors shall be five or more, and the number of auditors two or more. The Aquatic and Consumers laws of Japan have the same provisions.

Comment

The Committee should be subject to the bylaws only and

the bylaws in turn should require the Committee to act in accordance with the bylaws, the Act and the Rules. There is no need to have a provision in the act or the Rules vesting the management in the Committee. The bylaws are enough to bind the Committee.

4 (b). Registrar's Power to Nominate Committee Members

India

Thirteen Indian State Acts empower the State to nominate persons to be members of the Committee or Board of Directors of a cooperative. This right has been based on the contribution of share capital or the guarantee of debentures by the government. The usual number of nominees is one-third of the total number. One State Act allows the government to nominate two-thirds of the total number of members of the Committee when the State Government has subscribed sixty per cent of the share capital and also nominate the Chairman of the Committee. Under one Act a financing bank can nominate three or one-third of the committee of a cooperative in which it has taken shares. The taking of shares in cooperatives by the state is a violation of the Principle of Open Membership, as a cooperative is open only to those who need its services. The state does not have a human personality and, therefore, can at best be only a middleman and so is not eligible to membership in a primary society.

Membership in federal societies is open only to cooperative societies. So the state is not eligible to membership in cooperatives. A financing bank is a federal society. The right given such bank to buy shares in its member-society and to nominate directors is a topsy-turvy arrangement. A bank cannot buy shares in its constituent societies because it does not have the common need of the members of the constituent societies. If a financing bank buys shares in a primary society it comes down to the level of the members of that primary and as it does not have the common need of the members of the primary it is not entitled to become a member of the primary by buying shares in it. "Membership of federal societies in societies which are their own

members is like a railway train joining the passenger queue which is waiting to get into the road bus to reach that very train.”

Sri Lanka

The Sri Lanka Law (Rule 17) provides that “where financial assistance is granted by the Government to a registered society on condition that one or more members of the Committee (including the president, secretary, or treasurer) of that society shall be nominated by the Registrar, such nomination or nominations shall be made by the Registrar notwithstanding anything to the contrary in the bylaws of that society”.

Nepal

Rule 22 under the Nepal Act provides that if the government has subscribed more than fifty per cent of the shares of a society, half the number of members including the Chairman shall be nominated by the government, and their period of office and other conditions shall be fixed by the government.

New South Wales

In New South Wales, the Governor may appoint a person to be a director of any society to which a loan has been given on the guarantee of the Colonial Treasurer, or a building society, or a community settlement society with which the Colonial Treasurer has entered into an agreement, or a building society which has executed a mortgage, to the Rural Bank of New South Wales in consideration of an agreement by the bank to make loans to the society.

Iran

The Iran law (article 40) empowers the Ministry to appoint persons from among the members to be members of the Board of Directors temporarily when vacancies occur in the Board reducing the number of directors less than the minimum number specified in the statutes (bylaws), until the general assembly meets to fill the vacancies.

Thailand

Under the Thailand Act (Section 49) if the Registrar after an enquiry, inspection or audit "dismisses only some members of the committee, he shall appoint cooperative members to be committee members in their place" to hold office for the remainder of the term of office of the dismissed members.

Republic of Korea

The President of the National Agricultural Cooperative Federation of the Republic of Korea is "appointed by the President (of the Republic) on the request of the competent Minister (Article 149) with the recommendation of the Administration Board"...provided that the request is "made with the concurrence of the Minister of Finance".

Japan

The Agricultural Society Law of Japan (Article 41-2) empowers the administrative authorities upon the request of the members or other interested persons to nominate temporary directors or to convene a general meeting to elect or nominate directors. The Agricultural Society Law (Article 28) requires societies to include, in their articles of incorporation, provision for the "nomination of officers". Apparently this means appointment of officers by the society.

Comment

The committee represents the entire membership and its members sit on it as representatives of the entire general body and so all committee members have to be elected by the general body. No single member has a right to nominate a representative of his own to serve on the committee. Therefore, nomination of committee members by the state or other shareholders is a violation of the principle of democratic control. Moreover the allocation of seats on the committee to a member on account of the shares held by him is a violation of the principle of limited interest on capital. This principle is that "share capital shall

only receive a strictly limited rate of interest, if any". Cooperation denies to capital anything else. The denial of power and profits to capital is one of the significant contributions made by the cooperative movement to the process of social change. As said by Professor Charles Gide, a President of the ICA in the early years of this century, the reduction of capital to the position of a wage-earner (interest earner) and no more is a social revolution in itself. The nomination of directors would be justifiable only if it is done to help the society to resolve temporary situations of difficulty such as those provided for in the laws of Iran and Japan.

4(c) The Registrar's Power to Supersede the Committee

India

All the Indian State Acts provide the Registrar with power to supersede the Committee of a society and to appoint an officer/administrator or body of persons to manage the affairs of the society. One Act provides for suspending the Committee even before the supersession proceedings are over, if the Registrar thinks it necessary to do this, in the interest of the society. In one State the Registrar need not consult the general body before the Committee is superseded if he thinks it not feasible to call the general body. Another Act provides that the committee may be superseded without giving any notice and an administrator may be appointed to manage the affairs of the society and that such act of the government shall not be questioned in any civil or High Court.

Bangladesh

The Bangladesh law (Section 25) provides that the Registrar may after an audit or inspection direct that a special general meeting be held to dissolve and reconstitute the Committee and if this is not done within the time determined, and as directed, by him, the Registrar may dissolve the committee and appoint a person or a managing committee to manage the affairs of the cooperative for such period as the Provincial Government may

think fit. Where the Provincial Government has contributed more than half the share capital of the society or where the share capital paid up by the government is equal to half the borrowed capital or where the government has lent, advanced or guaranteed half the borrowed capital, the Registrar may dissolve the managing committee without giving an opportunity to the general body to elect another committee.

Pakistan

Although the Pakistan Act does not contemplate it, Rule 48 framed under the Act empowers the Registrar to "supersede the committee of a society for a period to be specified in such order" and the period may be extended from time to time. The Registrar may appoint a person or persons not exceeding nine to exercise the powers and perform the duties of the committee during the period of supersession. The Registrar has to give the society an opportunity of showing cause why the order should not be made before making such order.

Sri Lanka

The Sri Lanka Law (Section 48) empowers the Registrar, after hearing the Committee and the general body, to dissolve the Committee and appoint a person or persons to manage and administer the affairs of the society for a period not exceeding four years.

Nepal

Section 18A, according to the background paper on Nepal, empowers the Registrar to supersede the Committee of Management, to remove the member or members of the Committee or suspend the Committee of management "if the Committee takes wrong decisions or otherwise mismanages the affairs of the society and there is no internal remedy available".

New South Wales

The New South Wales law (Section 88B) empowers the cooperative building advisory committee to dismiss a director or

secretary of a building society, which has obtained a loan guaranteed by the Colonial Treasurer or entered into an agreement with him or executed a mortgage in favour of the Rural Bank of New South Wales, after consideration of a report of an inquiry held by a person appointed by the Minister.

The New South Wales Act provides in Section 91A that Part IX of the Companies Act, 1961, shall, *mutatis mutandis*, apply to a cooperative society as regards "Official Management". Section 199, of the Companies Act, 1961, of New South Wales, provides that the directors of a company may, upon a resolution of the directors "that the company is unable to pay its debts". and shall, "where the company is so requested in writing by a creditor of the company who has a judgement against the company unsatisfied to the extent of not less than five hundred dollars", hold a meeting of its creditors for the purpose of placing the company under official management and appointing an official manager of the company". Under Section 202, the creditors may resolve that "the company is unable to pay its debts" and proceed to determine that the company shall be placed under official management for such period...not exceeding two years ..and appoint a person named in the resolution... to be the official manager of the company during the period of the official management and determine the amount of salary or remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this part".

Under Section 202A, the creditors ..may determine that a committee of management be appointed for the purposes of this part"—a committee consisting "of five natural persons, of whom three shall be appointed by the creditors of the company by special resolution and two shall be appointed by the members of the company at a general meeting of the company". The official management may be extended for a further period not exceeding twelve months (Section 203C). The committee of management "shall assist and advise the official manager on any matters relating to the management of the company on which he requests their advice and assistance" (Section 214).

The provisions are more acceptable than provisions giving powers of supersession to the government. Only the creditors of a society can bring about official management against a society's wishes. This leaves no room for political interference.

Malaysia

The Malaysian Law (Section 37A) empowers the Registrar after an inquiry or inspection to suspend or dissolve the committee of a society.

Singapore

The background paper submitted by the Singapore Co-operative Union says that the Registrar has the power to "suspend or dissolve the Committee of Management".

Thailand

Section 47 of the Thailand Act empowers the Registrar to dismiss the entire committee and section 48 empowers him to appoint an Interim Committee of Management to hold office for not more than one hundred and eighty days.

Comment

The power of the Registrar to dissolve an elected committee is contrary to the Principle of Democratic Control. The justification given by a government for having this provision would be that the affairs of a society could be rectified by a more competent committee, available only outside the elected committee, and the management handed back to the society to start afresh on a clean slate. Such an effort should be made only when a society has a reasonable chance of making good and the position therefore does not warrant its dissolution. Then the society should ask the help of its federal body. If the society fails to ask this help or is unwilling to have a committee nominated by the federal body, obviously the society cannot make good even after rectification, and the proper course would be

dissolution. The power of the Registrar to supersede a committee has too often led to the nomination of persons who are not cooperatively oriented or are not selected for their known services to the movement. Very often the remedy has proved worse than the disease.

4(d) Registrar's Power to Suspend or Remove Officer or Servant

India

Four Indian State Acts empower the Registrar to suspend or remove an officer or servant of a cooperative society.

Sri Lanka

Rule 41 under the Sri Lanka Law empowers the Registrar to remove from office an officer or employee who is unable to discharge his duties efficiently.

Nepal

Rule 39 under the Nepal Act empowers the Registrar, according to the background paper on Nepal, to expel a member or an employee "for acts detrimental to the proper working of the society."

Malaysia

Section 37A(6) of the Malaysian Law empowers the Registrar to remove any member of the committee or any employee of the society.

New South Wales

The New South Wales Act (Section 88B) empowers the Minister to appoint a person to hold an inquiry into the working of a building society which has an agreement with the Colonial Treasurer or the Rural Bank of New South Wales and require him to report his findings to the cooperative building advisory committee. This committee may direct the director or secretary of that society to vacate office by a given date and the office of such person shall become vacant as from that date.

Thailand

The Thailand Act (Section 47) empowers the Registrar to dismiss the entire committee or any committee member after an inquiry or investigation.

The Philippines

The Philippine law (Regulation 34) lays down that an elected officer, director or committee member may be removed by an annual or special general meeting. This is a categorical expression of the principle of democratic control as it affects the question of electing or appointing the management.

Comment

The assumption of management powers by the state is a denial of the autonomy of the cooperative. Such assumption of managerial responsibilities by the state can only retard the development of self-reliance among the members of cooperatives. The members will become apathetic about the society's affairs expecting the Registrar to do the needful always. This provision casts this responsibility on the state and so undermines cooperative management.

4(e) Limitation of Period of Office

India

Nine Indian State Acts limit the period during which a member may hold office in a society. The limitation applies only to elective office. The periods of office allowed vary from state to state. Two consecutive terms, three years and six years consecutively are the variants.

Indonesia

The Indonesian Law limits the term of office of the Board of Directors of a society to five years. There is no restriction on the period during which a person may hold office consecutively.

Japan

The Agricultural Cooperative Society Law of Japan limits the term of office of the officers of a society to three years. There is no restriction on holding office for consecutive periods (article 31). The Aquatic Cooperative Association Law has the same provision (article 35). The Consumers Livelihood Cooperative Society Law (article 30) provides that "the term of office of officers shall be two years, provided, however, the bylaws may provide for terms of office not exceeding three years".

Comment

The term of office should be provided in the bylaws only. It is incorrect for the state to regiment cooperative societies. As voluntary and autonomous bodies they should be left to adopt their own standards. It is even more incorrect to debar persons from holding office consecutively for as long as the general body likes them to do so. Cooperatives are little democracies, and they should be treated as the training-grounds of the larger democracy they belong to. If a legislator may be re-elected again and again to represent the people as long as the latter like him to do so, there can be no reason why the cooperatives should not have the same right to re-elect men of their choice to office. Men with experience are indispensable to the success of a society. Therefore it would be a tragedy to force societies to switch over from their tried leaders to tyros, just because the state does not share their views. If the purpose is to prevent certain people from ruling the roast, the same objection would hold good for the elected legislators. If the electors know what their interests are, the cooperators also know what their interests are. This compulsion will not lead them to self-reliance. If the bylaws of a society provide for limitations, with room for exceptions to be made by the general meeting whenever it feels the need of retaining the same leaders, such limitations freely adopted by the members would be internal disciplines of great moral value. Compulsion by the state to adhere to fixed patterns will be a gross violation of a society's autonomy. The majority will of the members must prevail in a cooperative democracy.

4 (f) Restriction on Holding Office in Several Societies

India

Nine Indian Acts lay down restrictions on a person holding office in several societies. Two societies is the maximum generally favoured; five in one case, provided they are not federal societies—if so, only two. But none of these restrictions apply to members nominated by the government. *Mirabile dictu!*

Comment

The general body should be free to elect any member to hold office. Any restriction on this in the law would not be in keeping with the autonomy of the society. Regimentation by the state is a violation of this autonomy.

4 (g) Conduct of Elections by the Government

Five Indian State Acts provide for the election of committee members in certain societies to be conducted by the State.

Comment

The constitution of an independent authority under the law to conduct elections in cooperatives is an infringement of the autonomy of the cooperatives. Like all other autonomous bodies, the cooperatives should have the right to conduct their elections. And like in all other cases of elections in autonomous bodies, any person who has a grievance will have his usual legal remedy.

4 (h) Compulsory Seats for Weaker Sections

Laws providing seats on the Committee to the weaker sections of society are another category of laws violating cooperative autonomy. These provisions would be very desirable if they are in the bylaws.

4 (i) Government's Power to Appoint Government Servants to Manage Cooperatives.

India

Three Indian State Acts empower the Registrar to appoint

government servants to manage the affairs of cooperative societies. One Act gives the government the right to appoint to posts of Chairman and Managing Director if the State has two million rupees worth of shares in a society. This is a violation of the principle that share capital shall only receive interest, if any. One Act provides for the deputation of a government servant on the recommendation of the Registrar. The other Act gives this power only on the application of a society.

Bangladesh

The Bangladesh law also gives this power to the Registrar on the application of a society.

Pakistan

Section 24 of the Pakistan law empowers the Registrar to depute a servant of Pakistan to a cooperative to manage its affairs.

Comment

The power to appoint government servants to manage co-operatives even without an application therefor by the society to the government is a violation of cooperative autonomy. It is not desirable either, for two reasons—the society remains without managerial expertise of its own, and the government servant acquires a vested interest in the cooperatives.

4 (j) Power to Prescribe Qualifications and Service Conditions and Constitute an Authority for Recruitment etc. of Employees.

India

Six Indian State Acts empower the Registrar to prescribe the qualifications and service conditions of the staff of cooperative societies.

Sri Lanka

Sri Lanka has by a special law entitled “Cooperative Employees Commission Act, No. 12 of 1972” set up a Commission to

determine all matters relating to methods of recruitment and conditions of employment of employees of cooperative societies, the principles to be followed by such societies in making appointments and promotions, etc. etc.

Comment

This power infringes the autonomy of the cooperatives. It is the management's right to prescribe the qualifications and service conditions of the staff. The proper arrangement would be to set up cadres of employees under a federal society with the federal society doing what is now thought to be the government's duty. The bylaws of the federal society and its member societies should authorise this set-up.

4 (k) Power of the Registrar to Post Supervisory Staff in Societies

This is another category of laws violating cooperative autonomy.

5. Laws Affecting Cooperative Autonomy in the Practice of the Principle of Voluntary Association

As stated at the beginning individual autonomy is a prerequisite of cooperative autonomy and this individual autonomy is a corollary of the principle of Voluntary Association. The principle of Voluntary Association means that both the individual who joins a society as well as the collection of individuals constituting the society permanently enjoy the right of freedom to choose with whom they will associate and freedom to correct the choice at any time. Thus not only the member but the society also has the right to choose, and the right to change its mind. The right of the society to refuse admission to a person as well as to expel a member are inalienable ingredients of the autonomy of the cooperatives. There are however several laws which deny this right to the cooperative as may be seen from the following.

India

Eleven Indian State Acts have provisions relating to this

Principle. These laws generally provide that no society shall refuse admission without sufficient cause and any refusal is in many cases made appealable to the Registrar. One law empowers the Registrar to disqualify a person for being a member or to declare a person as being eligible for membership only to a limited extent. Under one law every person "shall be eligible for admission". Some of these laws also lay down that any order of a society expelling a member shall not take effect unless it is approved by the Registrar. One Act also empowers the Registrar to remove or expel a member. In two Acts membership of the state cooperative union is made compulsory.

Pakistan

Rule 45 A of the Pakistan law empowers the Registrar to expel a member who is a persistent defaulter or who does any act prejudicial to the interests of the society.

Sri Lanka

The Sri Lanka Law (section 60) gives any person refused membership the right of appeal to the Registrar and his decision "on such appeal shall be final and binding on the society".

Nepal

Rule 39 of Nepal empowers the Registrar to remove a member "found unfit or negligent, inefficient or unsatisfactory in the discharge of his duties as a result of an inquiry instituted or decisions made thereby".

Iran

The Iran Law (Article 6) lays down that "the abandonment of membership by any member of the cooperative society shall be arbitrary and not be prevented" and that "provision may be made in the statutes (bylaws) for re-acceptance of a member having once abandoned his membership".

Thailand

The Thailand Act in Section 11 (2) recognises the principle

of voluntary association on the part of the member but in section 18 it lays down that persons who apply for membership "shall be deemed to be members upon payment of their shares in accordance with the rules (bylaws)".

Indonesia

The Indonesian Law in Article 6 defines the Principle as "voluntary membership and open to all Indonesian citizens", and in Article 11 lays down that "membership of the society may be obtained or terminated upon fulfilling the requirements as stipulated in the Bylaw". This is in perfect accord with the Principle of Voluntary Association. However a Presidential Decree "regulates the deduction and separation of 0.42 per cent from all the wages of government officials and members of the armed forces and this money "is to be used as working capital of the cooperatives of Civil Servants and of the Cooperatives of Members of the armed forces".

The Philippines

Section 3 of the Presidential Decree No. 175 of the Philippines lays down that "Membership in a cooperative should be voluntary.....".

Republic of Korea

The Agricultural Cooperative Law of Korea lays down in Article 30 that "No cooperative shall refuse admittance of a person eligible for membership without justifiable reasons nor shall any unfavourable condition, not imposed upon other members, be attached to such admittance". In Article 31 it says that "a member may terminate his membership at the end of every fiscal year by giving a minimum of 60 days prior notice" and in Article 32 that "a member shall automatically cease to be a member" upon (1) disqualification for membership as determined by the Board of Directors (2) death (3) bankruptcy and (4) incompetence. Article 33 of the law says that "expulsion may be exercised against any member by a resolution of a general assembly" for (1) failure to utilize the cooperative for more than one year

(2) failure to comply with obligations such as payment of "investment, sharing in expenses, or any other obligation to the cooperative" and (3) any action prohibited by the Articles of Incorporation. Article 130 says that "Gun" and "Special" cooperatives shall be the member cooperatives of the federation".

Japan

The Agricultural Cooperative Society Law of Japan lays down in article 21 that any member may withdraw from the cooperative at the end of the business year, and "any member shall withdraw from membership" upon disqualification for membership, death or dissolution, expulsion from membership". Expulsion may be effected by a resolution of a general meeting for certain reasons. The Aquatic Association Law (Articles 26 and 27) and the Consumers' Society Law (Articles 19 and 20) have substantially the same provisions. The period of notice necessary under the Consumer Law is ninety days as against sixty days in the other two.

Comment

The requirements to obtain the Registrar's approval of a refusal to admit or an expulsion from membership are violations of the autonomy of the cooperative. The reasons for expulsion should be in the bylaws and not in the law of the land. Compulsion on societies to join federal cooperatives is a violation of the autonomy of the cooperatives. It is the legitimate right of a cooperative to act according to its principles. Every cooperative is a voluntary association. This means that it has the freedom at all times to choose with whom they will associate and to correct the choice.

The constitutions of one State Union in India (Kerala), the Cooperative League of Thailand and the National Agricultural Cooperative Federation of the Republic of Korea are laid down in the law of the land and not in bylaws of their own. Therefore these organisations are not voluntary associations nor do they have the democratic right to change their constitutions. They are therefore not strictly cooperative in character.

6. Law Affecting Cooperative Autonomy in Respect of Methods and Practices

There are various laws which seek to regiment cooperative societies. These laws strictly speaking violate the autonomy of the cooperative, but they are not included in the category of laws violating the Principle of Democratic Control, as they do not deny autonomy completely in regard to the respective matters. For instance, the laws of Japan say that any association shall have a minimum of five directors and two auditors ; that the officers shall be elected by secret ballot ; that the term of office of officers shall be one year and that the articles of incorporation may provide for terms not exceeding three years ; that a person shall not be concurrently a director as well as an auditor ; that no person who operates or engages in business of a nature competitive with the cooperative shall be appointed director, auditor, councillor or chief accountant ; similarly that at least one general meeting shall be convened in each year and that on the failure of the directors to do this, any one of the auditors may convene a general meeting. In Indonesia the term of office of the Board shall not exceed five years.

In most countries there are laws prescribing various details of this nature. Undoubtedly these rules are necessary but the patterns need not be rigid. They all seek to establish healthy practices. But the existence of variations shows that such details are best left to be worked out by the members themselves. All that the cooperative law should say on matters of practice and method is that the bylaws of a society shall provide for these matters.

The response from the membership will be far better if the members feel that these laws are of their own making and that the adoption of healthy methods and practices is their responsibility. Such disciplines when imposed from above constitute regimentation which never evokes enthusiasm and loyalty whereas when the same disciplines are adopted by the members themselves and are embodied in rules or bylaws of their own making they become

self-imposed disciplines of great moral value, resulting in the improvement of standards, both materially and morally.

Summing-up

It will be seen that there is an element of interference with the autonomy of cooperatives in all the countries I have dealt with and that in some countries the interference is inordinate with the result that the cooperatives have been reduced to the position of state adjuncts. This has arisen from the failure to appreciate the fact that every form of popular organisation which is necessary in the eyes of the Government for economic development should not be called "cooperative" and also from the fact that it is more convenient for a government to avail itself of the cooperative law and the federative system inherent in the cooperative form of organisation than to set up a new pattern of organisation.

As the Cooperative Movements in most of these countries have developed on the initiative of their governments, and as the government officials charged with cooperative development are therefore their *de facto* leaders whatever a government suggests is normally adopted by the cooperative movement. So many a scheme which is *per se* desirable though not cooperative in character is implemented through cooperatives already existing or ad hoc cooperatives formed for the purpose. And thus, societies engaged in uncooperative enterprises pass muster as cooperatives.

No government is interested in the development of a Co-operative Movement for true cooperation's intrinsic capacity slowly but surely to develop self-reliance and so make the people really fitted for political democracy. Governments naturally are in a hurry to get quick economic results, and they see in the federative system of the cooperatives a most convenient medium for the implementation of schemes in which popular participation is necessary. The exploitation of the system for un-cooperative ventures is not resented by the population in general, because what obtains in the name of a cooperative movement is so controlled by the government that in the eyes of the general public, cooperatives are but state undertakings managed, financed, and protected

by the State, and their members are like the passengers of a train who use it when they need it but whose business is not to run the train! The cooperative train is in the hands of the State, in most countries of the region but with notable exceptions.

Those who accept the need of differentiating between true cooperatives and "transitional forms intermediate between public action and cooperative action" (Fauquet) have either resorted to other forms of organisation or quite correctly called these transitional forms by the term "pre-cooperatives" as in the recent Presidential Decree No. 175 of the Philippines enacting a cooperative law, to which I have already made numerous references. The Philippine law has laid down the first four Principles of Cooperation and thereby ensured the continuity of the concept of Cooperation. The Indonesian Law recognises the true concept. Article 37 of the Law on the Basic Regulations for Cooperatives in Indonesia says that "it shall be competent for the Government to render guidance, inspection, protection and facilities in favour of the cooperatives and enable the cooperative movement in the materialisation of the requirements of Article 33 of the Constitution and its explanatory memorandum" and article 38 says that "without curtailing the rights and duties of the cooperatives and without effect on their independence, the Government shall promulgate regulations to formulate and carry out a policy on developing, guidance, rendering facilities, protection and inspection of all activities of the Cooperatives". Earlier in Article 8 it is laid down that the Cooperatives in Indonesia "may enter into cooperation with the Public and Private Sector" and that the "above mentioned cooperation shall be organised and directed without any violation of the Cooperative basic principles" which too have been laid down in Article 6.

An examination of the various aspects of democratic control vis-a-vis the cooperative laws cited by me above will show that in some countries the position of cooperative autonomy is satisfactory. We cannot however go by the law alone. The laws *per se* may be good but the situation in practice may be otherwise. On the contrary we can see in countries like Japan that the *de facto* autonomy is even more satisfactory than the *de jure*,

and that the movement can get all the independence it desires to have.

The ILO Recommendation No. 127 of 1966 entitled "Co-operatives (Developing Countries) Recommendation" says that "governments should formulate and carry out a policy under which cooperatives receive aid and encouragementwithout effect on their independence" and "such aid should not entail any obligations contrary to the independence or interests of cooperatives and should be designed to encourage rather than replace the initiative and effort of the members". The inroads into cooperative democracy illustrated in this paper would have been ended or avoided if the Recommendation had been taken seriously by the governments concerned.

Prof. Lazlo Valko in the Chapter on "Cooperatives and the State" in his "Essays on Modern Cooperation" says "practical experience shows that state administration, after a certain time, will retard the growth of cooperatives. It will slowly eliminate the internal energy of self-determination. Such administration will be petrified into a rigid state bureaucracy which will nullify the latent sources of economic potentiality that can develop only in free cooperatives."

Democracy is the very essence of Cooperation for the reason that, as said by the ICA Principles Commission of 1966, "the primary and dominant purpose of a cooperative society is to promote the interest of the membership....And what constitutes the interest of the membership is best determined by the members themselves." As said by Messrs Kerinec and Thedin, in their joint paper on Cooperative Democracy presented to the ICA Congress of 1969 which reiterated that democracy is the essence of Cooperation "the least inattention to it will be fatal to it." Thus it is essential that a Cooperative society is in full legal possession of its autonomy.

As said by Jawaharlal Nehru "the essence of the Cooperative Movement is its non-official, self-dependent and self-reliant character.... The principles...were that there should be social

cohesion, and that these societies should not be official-ridden, although officials may certainly help. They should, as far as possible, not be financed in the shape of share capital etc. by the state ..the official character of cooperatives should cease and the cooperatives should be free to make mistakes, if they want to.....we do not want the cooperatives to start on the wrong foot. If all help flows from the government, they will never become self-reliant.” As said again by him on another occasion: “it must be remembered that the essence of cooperation is its voluntary character. There can be no imposed cooperation,” and again: “as the very name implies, cooperation is a voluntary effort. Introduction of compulsion takes away from the real cooperative character of it...” And addressing State Ministers of Cooperation he said, “Nothing can be more fatal than governmental control, which is the embrace of death and I want to emphasize that because there is no doubt about it...I will repeat, I will go on repeating. I dislike the association of government in cooperation except as an agency helping in funds etc.”

And Dr. Maurtiz Bonow, the President of the International Cooperative Alliance, said in New Delhi in February 1971, at the celebration of the Tenth Anniversary of the ICA Regional Office and Education Centre for South-East Asia:

“When one is concerned with overall social and economic development, it is perhaps inevitable that in one’s enthusiasm to achieve the desired rate of economic growth voluntary organisations like the cooperatives are brought within the framework of economic plans. I am aware that this situation sometimes gives rise to problems. When financial assistance is extended by the State it is inevitable that some control would result. Such funds come from the national exchequer and the government is responsible to the people through the Parliament to ensure that the funds are duly accounted for. I am aware that a number of new and very significant activities, not the least in the field of cooperative credit, have been generated as a result of this approach. However, it is, I think, absolutely essential that the

long-term objective of making the cooperative movement an independent and autonomous one is kept constantly in mind. We would have mistaken the casket for the gem if we were to perpetuate an arrangement whereby the initiative and the democratic character of the cooperative movement would be impaired. In the ultimate analysis, it is the vitality of the people of country which determines progress. Legislation, especially cooperative legislation should provide the framework within which people's capacity to bring about the desired change is enhanced. If the net result of legislation is to thwart this tendency, I am afraid, we would have done more harm than good."

Remedial Measures

It will thus be seen that the autonomy of the cooperatives is a must not merely for the sake of compliance with cooperative ideology but more because cooperative action will not bear full fruit until the cooperatives are free, as so convincingly expressed by Professor Valko and Dr. Bonow in their statements quoted above. Both the governments and the movements concerned must therefore work to this end, the full autonomy of the cooperatives, if they are in right earnest as regards true cooperative development.

It is suggested that the withdrawal of the government from the position of manager and controller to its rightful role of guide, philosopher and friend should be effected gradually. In the transitional period I would suggest that a Cooperative Development Council be set up composed of representatives of the government as well as the movement with a non-official as chairman to direct the gradual phasing of the process of de-officialisation. After the process is completed the government should set up an advisory council as they have in New South Wales and Queensland in Australia to guide the government and act as the liaison between the government and the movement. The president of this Council should be a voluntary cooperator of high standing.

The process of de-officialisation may be started by classi-

ifying the societies into four grades as follows :

- A = Very good
- B = Good
- C = Satisfactory
- D = Bad

The norms for this categorisation could be worked out taking into account the degrees of member-involvement, the position of overdue loans, the ratio of member and non-member use of the society's services, the cooperative knowledge of the members, the profit and loss position etc. etc.

The societies classified as A, B and C should be allowed to function without the nomination of directors of government servants functioning as managers of those societies. Societies which continue to be in D class consecutively for three years should be dissolved.

International agencies and the ICA could render assistance to the movements for the purpose of working out programmes for the achievement of autonomy by the cooperatives.



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APPENDIX

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