

**SPEECHES
ON
COOPERATION**

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**The Role
of
Law in
Cooperative
Development**

P. E. WEERAMAN



International Cooperative Alliance
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Role of Law in Cooperative Development

*Key-note address delivered by Mr. P.E. Weeraman,
ICA Regional Director for South-East Asia,
at the Seminar on "Cooperative Law and Procedures"
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The Role of Law in Cooperative Development

I feel highly honoured to be your Chief Guest today, at this Seminar on "Cooperative Law and Procedures." It is very gratifying to me as a professional cooperator of some seniority and experience to see that India's national institution for cooperative training and study is giving serious thought to what is in my opinion the crucial problem of the hour for almost all the cooperative movements of Asia.

I have heard from very good authority that the revered Vaikunth Mehta, after whom this Institute has been named, attached the greatest importance to the autonomy of the cooperatives and regarded governmental authority over cooperatives only as a means of rendering service to the cooperatives and not as an absolute right of the State, qualifying the independence of the Cooperative Movement, and that when he became Minister of Finance and Cooperation in the Government of Bombay Presidency, he called on the



State Cooperatives Union along with his officials thereby emphasizing the superior position of the cooperative organisation vis-a-vis even the highest official of the State in respect of Cooperation, the Minister himself.

Vaikunth Mehta by his action of accepting the combined charge of Finance and Cooperation indicated to all governments the proper Ministry for the Cooperative portfolio. He apparently attached the highest importance to the matter of assigning the subject of Cooperative Development to a Ministry. The Minister who is assigned this task must be one who knows the pulse of the people and has their confidence. At the same time he must be one who is also in control of finance, for this is the real obstacle to the proper functioning of any government department of cooperative development. He must also be in a position to take an objective view of the needs as well as the rights of the Cooperative Movement, especially in respect of the role of the Cooperative Movement in the implementation of schemes of national development. Any Minister who is responsible for the development of a particular aspect of the economy will make the movement give extra weightage to that aspect and he will not see the extraordinary position of the Cooperative Movement, viz., that it is capable of implementing the development schemes of other Ministries as well. Therefore, assigning the subject of Cooperation to one out of several development Ministries will result in the lop-sided develop-

ment of the Cooperative Movement. Furthermore, the development of the Cooperative Movement is itself a matter that needs an objective approach. No Minister who is responsible for other facets of development can be expected to take an objective view of Cooperative Development. The temptation to exploit the strength of the Cooperative Movement at the grass-roots level for such Minister's more immediate needs would be too strong to resist, and this he would naturally do by making the movement his agent and not his master. It is only a Minister who has no other facet of development in his charge who would realise the need to develop the Cooperative Movement on proper lines and save it from exploitation for short-term purposes, realising that such exploitation would hinder the attainment of the long-term objectives of the Cooperative Movement. It is only a Minister whose sole charge of development is that of developing the Cooperative Movement who will see the value of educating the people through the practice of true cooperation to become initiators of policy rather than be the mere agents of the policy-makers. Having cooperatives as agents is cheaper for a government than functioning through agents drawn from the private sector and much cheaper than functioning through its own servants. When a cooperative becomes the agent of the government, the members who banded themselves together into a cooperative to appear in strength before the powers that they lose the very platform they have built for themselves, for now their society is the agent of the government, and when

they appear before it for transacting business, they are before the arm of the government and no longer before their own agent. Once again they have to fend for themselves. But the most important consideration is that support from initiators of policy at the grass-roots level is far more valuable to any government than dependent compliance by agents for any government is weakest at the village level and this is where a true cooperative would be strongest. Therefore, support at the village level from cooperatives which join hands with the State as independent and willing partners in the great task of national development will, in the long run, be of lasting benefit to a nation, for this would be a case of economic democracy buttressing political democracy. As stated by the 1969 ICA Congress Resolution on Contemporary Cooperative Democracy, "political democracy is indispensable to the development of Cooperation and reciprocally the free development of cooperative ideas and activities is indispensable to economic democracy without which political democracy remains incomplete."

This brings me to the very heart of the question you propose to study in your seminar. Is the Cooperative Law of our several Asian countries designed to ensure the growth of an independent cooperative movement that can establish this economic democracy?

Cooperative legislation is now 118 years old. The first cooperative law in the world was the Indus-

trial and Provident Societies Act of 1852 passed by the British Parliament providing for the registration and regulation of cooperative societies. In the hundred years that followed almost 5,000 different laws, orders and decrees relating to the cooperative movement were created in the different countries of the world, according to Dr. Valko in his recent book entitled, "Cooperative Law in Asia."

The number of statutory provisions kept step with the progressive evolution of cooperation. Just as the first law was enacted to meet the needs of cooperative societies that were already in existence, special legislation did not precede a problem but was enacted to meet the needs of a practical situation. Thus the development of cooperative law was an integral part of the evolution of cooperative societies. The history of cooperative law cannot be separated from that of the practical movement. Therefore, it is as important to understand the special legal status of cooperatives as it is to understand their economic construction.

Cooperative law spells State control of cooperative societies. The reasons for this state control, the extent to which there should be state control, the nature of the relationship that should exist between governments and cooperative movements, and the relationship between public and cooperative enterprise, are some of the matters that should be kept in mind when assessing the merits of a cooperative law.

Each of these subjects merits detailed discussion but I shall not attempt it here. Suffice it, here, to say that the ILO General Conference of 1966 recommended that there should be legislation specifically concerned with the establishment and functioning of co-operatives and with the protection of their right to operate on not less than equal terms with other forms of enterprise ; that the legislation should include certain provisions, including procedure for establishment and registration, together with the bye-laws, and for dissolution; and that it should also include conditions of membership, methods of administration, protection of the name "Cooperative" and machinery for the external audit and guidance of cooperatives and for the enforcement of legislation. The one strain running through this and other recommendations of the ILO Conference is the insistence on the independence of cooperators and cooperatives. As mentioned by SurrIDGE and Digby, "the cooperative society and the law governing its duties and privileges, rights and liabilities for its members, property and funds, its audit, inspection and dissolution, are not the creation of well-meaning theorists but the result of years of work by cooperators and organisers, and of lessons learnt the hard way." They continue : "More than even its (Cooperation's) material gains the moral gains can only be obtained through the getting-together of people who have interests in common..... all subject to one and the same law, the cooperative societies law." "Governments all over the world recognise cooperatives not as an end in themselves but

as a means of helping people to grow and mature, to improve their living, and to strengthen their freedom and independence" as said by Herbert Waters. He goes on to say : "Thus the government's role is that of a catalyst, coordinator, arbiter and watch-dog to help the cooperatives achieve the lofty goals the people have set for themselves. The end product is not accumulation of earning but bringing the great number of neglected and forgotten people together to become a genuine force in the nation's economic development."

The cooperative laws of various countries have basic similarities but also important differences as cultures differ, says Dr. Valko. Without considering the development of cooperatives, a comparative study of cooperative laws would be abstract and unreal. The system of cooperatives and how they operate should be examined if one is to understand the real position.

Although, as remarked by the Committee on Co-operative Law (1957) of the Government of India, "In the ultimate analysis it is not the law that matter as much as the man behind it," Cooperative law is not superfluous. Cooperative law is necessary :

- (i) to lay down the fundamental conditions which must be observed by cooperatives if they are to remain true to their character;
- (ii) to give such societies a corporate existence without resort to the elaborate provisions laid down for companies;

- (iii) to confer special privileges and facilities upon cooperatives in order to encourage their formation and assist their operations;
- (iv) to take precautions to prevent speculators and capitalists from availing themselves of privileges which are not intended for them;
- (v) to enable cooperative societies to function freely and fully; and
- (vi) to enable the State to be promoter, guide, coordinator, arbiter and watch-dog of the movement, especially where the State has initiated action for the development of Co-operation, as is the case in Asia.

The Cooperative Laws we have today in India, Ceylon and in most other countries within the British Commonwealth are a heritage of colonial rule. The British knew what they were doing in introducing Co-operation to these countries. They had seen the power and influence that an independent Cooperative Movement could acquire vis-a-vis the State. The Cooperative Movement of Denmark had done yeoman service to the movement for the establishment of a constitutional monarchy in that country. The Cooperative Movement in Great Britain was a force to reckon with and the International Cooperative Alliance had been formed in 1895. Signs of national awakening and revolt against foreign domination

were becoming apparent in India. So the British Government offered Cooperation but it was only a palliative for they were careful to ensure that the Co-operative Movement should go thus far and no further, for it could have become a source of great strength to the movement for liberation.

Therefore, the Law was devised to make the Registrar the leader of the Movement whilst in the United Kingdom, the Registrar was a neutral. Calvert called him "the foundation of the Movement." Cooperative Societies had to obtain the prior approval of the Registrar for almost every important act. They could not and still cannot borrow, lend or even write-off dues without the Registrar's approval. So how can leadership grow? If the ultimate responsibility for a matter is someone else's the Committee of a society would naturally be somewhat indifferent in its approach to such matter. So it is the Registrar who really manages. But this managership is veiled, and so the blame for failure is laid at the door of the co-operators. Indifference must inevitably follow when the management is subject to final decisions made by officials without responsibility therefor, the latter being placed *de jure* on the cooperative society concerned. All this indifference stems from undue power being vested in the State to control cooperatives through laws ostensibly made for their guidance and protection. The law must be reformed to give both power and responsibility to the co-operators. Until then no government can blame the Cooperative Move-

ments of these recently liberated countries for lack of leadership. But far from realising that the cooperative laws imposed by alien rulers must be removed and the cooperative movement given the climate and the conditions in which it can grow to full stature, the tendency in some countries of the South-East Asia region has been to make the restrictions on cooperatives and their control by the State more stringent than the British would ever have dreamt of. Today in these countries the real management of the cooperatives lies in the hands of government officials more than ever before. Powers of supersession and removal introduced into the law originally for the purpose of having machinery to correct particular situations which are not so bad as to warrant the liquidation of the society concerned have been often used for political ends so that the remedy has proved worse than the disease. I am of course speaking generally and not with reference to any particular country.

Another development of great concern to the Movement is the attempt now being made at regimentation of cooperators through the law. Disciplines voluntarily accepted by the membership and imposed on themselves by themselves through their own bye-laws is one thing. For a government to lay down internal disciplines from above is another. Responsibility will not grow with dictation from the top. Self-discipline will result in both material and moral benefit. Regimentation from outside will

demoralise its subject and lead it to failure. Often a government says that it will withdraw when the movement has the necessary leadership. But the fact is that the movement will never have this leadership until government withdraws from its position of control and hands over the reins to the cooperators and leaves them to fend for themselves. Naturally this handing over cannot be done by a stroke of the pen. A period of, say, twenty years should be fixed for a gradual withdrawal and effective steps should be taken to this end. There will be ample leadership forthcoming when there is scope for real leadership. Until there is a demand there will be no supply.

In my view, it is wrong to wait until the people ask for this withdrawal. Registrar's Rule was imposed by the government from above without any request from the people. Therefore, there is no need to wait for a popular demand to withdraw this Rule. Registrar's Rule has *ipso facto* to prevent the growth of a strong public opinion among the cooperators. Most of today's cooperators both professional and voluntary do not give their minds to the question of having the genuine article, a voluntary and autonomous cooperative movement, because the present situation has the sanction of law, and what is in the law is taken to be correct. Most if not all understand the character of the movement from the legal provisions made in its behalf. Therefore, the reform of the law is the first step indicated in the withdrawal of the government from its present position of controller

and manager to its proper role of promoter, guide and protector. Untill the law is amended, most of the voluntary cooperators will not realise that it is their movement and that its proper development is their own responsibility. They now think much of even the crumbs that fall from the government table.

So, ladies and gentlemen, the question of "Cooperative Law and Procedures" lies at the root of Cooperative Development. As long as the pitch remains queered for the voluntary cooperators, no amount of training and cooperative education will be of avail in the great task that lies before us of developing a true cooperative movement that can be an effective collaborator with the government in its own great tasks of national development and nation-building.

I have attempted to share with you some of my own thinking. What I have expressed are my own views and not those of the ICA. Therefore, I shall feel personally obliged if you will subject them to frank discussion. My purpose would be achieved if professional cooperators of your high standing design to give some thought to the matters mentioned by me.

You, distinguished participants, have before you for discussion the crux of the cooperative problem and I trust that your high intellectual calibre matched by your moral strength will enable you to arrive at mature conclusions which will serve as guide-lines to the policy-makers of all countries which have inherited Cooperation as a legacy of colonial rule. □

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