The Author's Commentary

on

"A Model Cooperative Societies Law"

by

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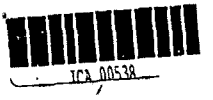
It would be supererogatory for me to say, here, why the true cooperative form of organisation should be preferred to any other form of organisation. Suffice it to say that true cooperation not only eliminates capitalistic economic exploitation but also helps to develop self-reliance and a capacity for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



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

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

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

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

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

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

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

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

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

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

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

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

> "When one is concerned with overall social and economic development, it is perhaps inevitable that in one's enthusiasm to achieve 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 democratic character of the cooperative movement would be impaired.* **In the ultimate analysis, it is the vitality of the people of a country which determines progress.** Legislation, especially cooperative legislation, should provide the framework within which people's capacity to bring about the desired change is enhanced. **If the net result of legislation is to thwart this tendency, I am afraid, we would have done more harm than good."**

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

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

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

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

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

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

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

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

In page 332 the Survey says quite correctly that :

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

And then the Survey makes a most appropriate suggestion viz :

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

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

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

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

and urging:

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

a) Provisions on the powers of government to compulsorily amend, either by alteration, substitution or addition, by-laws of cooperatives ;

b) Provisions on the powers of government to appoint and/or replace committees/staff for management of cooperatives ;

c) Provisions on the powers of government to suspend,

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

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

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

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

Part II

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

(a) *Interpretation* (*Section 2*) :

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

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

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

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

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

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

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

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

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

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

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

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

Governments often lay down rules on matters that should

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

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

The principle of Democratic Control means that :

(1) the general meeting of the members of a cooperative society is the supreme authority in regard to the conduct of the affairs of the society;

(2) the members of a primary society shall enjoy equal rights of voting and participation in decisions affecting their society, each member having only one vote, and the members of a federal society shall enjoy these rights provided that they may enjoy voting power on any other democratic basis;

(3) the affairs of the society are administered by the management in accordance with the democratically expressed majority will of the members;

(4) the management is elected or appointed in a manner agreed by the members; and

(5) the management is accountable to the members.

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

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

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

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

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

The surplus remaining after all claims have been met is to be paid to the federal society to which the liquidated society was federated. This is a departure from the usual arrangement of the Registrar keeping the surplus for any future society operating in the same area as that of the liquidated society. Such a society may never be formed. Moreover it is but right that the cooperators keep their own surpluses.

(h) *Disputes* (*Section 59*)

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

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