

**INDIAN
CO-OPERATIVE
LAWS**

vis-a-vis

**CO-OPERATIVE
PRINCIPLES**

P.E. WEERAMAN

R.C. DWIVEDI

P. SHESHADRI

**SECOND REVISED AND
UPDATED EDITION**

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by

P.E. WEERAMAN

INDIAN CO-OPERATIVE LAWS

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CO-OPERATIVE PRINCIPLES

Indian Co-operative Laws

vis-a-vis

Co-operative Principles

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- R.C. Dwivedi** : Former Chief Executive, National Cooperative Union of India, New Delhi.
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**SECOND REVISED AND UPDATED EDITION
WITH A COMPREHENSIVE ANALYSIS
OF COOPERATIVE RULES**

by
P.E. Weeraman



International Cooperative Alliance

Regional Office for South-East Asia
'Bonow House', 43 Friends Colony (East),
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This work is dedicated
to
the revered memory
of
JAWAHARLAL NEHRU
the greatest advocate
of
autonomy for the Indian Cooperative Movement

FOREWORD TO THE SECOND EDITION

We feel happy and privileged to bring out an updated and expanded edition of our book on “Indian Cooperative Laws vis-a-vis Cooperative Principles”, at a time when there is increasing concern on the nature, scope and content of cooperative law and its role in assisting the emergence of self-reliant, self-help cooperatives, which are member owned, member financed, member controlled and member managed.

This book was brought out in its original form some time in 1973 through the painstaking joint efforts of the three co-authors, namely, Mr. P.E. Weeraman, the then Regional Director of the ICA Regional Office, Dr. R.C. Dwivedi, the then Director of the National Cooperative Union of India, and Mr. P. Sheshadri, who was then the Lecturer in Law at the Osmania University, Hyderabad. It is to the lasting tribute of their painstaking efforts, scholarly attention to detail and their erudite interpretation of the laws of the several States in India that we record with pleasure that the book has been used in many a forum as a dependable reference book and also as a guide in removing at least some of the more abnoxious provisions of the cooperative laws which inhibited cooperative democracy. It has also had the further distinction of being cited in several cases before several judicial courts of the land.

As all cooperators know, the cooperative law by itself does not constitute the only legal framework that affects cooperative performance. Every cooperative law is accompanied by various rules and regulations which are enunciated periodically by various governments and which go into very minute detail regarding cooperative management and control. We are indeed very fortunate that Mr. Weeraman, whose commitment to the cause of cooperative development is well known, has even after his retirement from the services of the ICA, devoted quite a considerable

amount of his time to enrich the book by providing commentaries on the various cooperative rules and regulations which affect cooperatives in India. We are deeply indebted to him for this monumental task.

The present volume, therefore, contains much of the text which constituted the original volume plus additional commentaries by Mr. Weeraman on the various rules and regulations.

For reasons of economy and to bring out a volume in a manageable size, we have omitted from the present edition extracts from the various cooperative acts on which the commentaries are made. We are of the view that any one seriously interested in the details would have access to the various cooperative acts he is concerned with and thus would be able to make the cross references where necessary.

We take this opportunity to thank Mr. Weeraman for his invaluable contribution in enriching the contents of the original edition by contributing his latest commentaries on the rules and regulations and we also take this opportunity to thank him and his colleagues for the tremendous effort put in by them in bringing out the original volume which now appears in an updated and expanded form.

It is our hope that just as much as the original edition had general acceptance and also some influence in changing the course of cooperative legislation, this present edition will focus greater attention on the need for change and will accelerate change towards the desired goals of providing appropriate cooperative legislation as would strengthen and promote cooperative democracy both in India and elsewhere in the developing countries.

New Delhi
30 April 1986

R.B. Rajaguru
Regional Director



कृषि मंत्री
भारत सरकार
नई दिल्ली ।

Minister of Agriculture
Government of India,
New Delhi-110001.

7th November, 1973.

FOREWORD TO THE FIRST EDITION

I am glad that the I.C.A. Regional Office for South-East Asia, has brought out this Publication on Indian Cooperative Laws vis-a-vis Cooperative Principles, in pursuance of the Resolution on "Cooperative Legislation in Developing Countries" moved by the National Cooperative Union of India and adopted by the Congress of the I.C.A., held in 1969.

2. Mr. Weeraman and his associates have made a study in depth of the cooperative laws in India in the context of applicability of cooperative principles. This is a welcome and commendable effort in a field which has evoked considerable discussion in recent years. I am sure all those who are actively associated with the cooperative movement will find this book informative and thought provoking, though one may not be able to agree with some of the conclusions.

3. In India, one of the major objectives of the national economic policy, is the building up of a strong and viable cooperative sector, with special emphasis on the needs of the peasant, the worker and the consumer. Great reliance is placed on the cooperative movement for increasing production and productivity in agriculture, and thus help the farmers to raise their standard of living. In this context, as aptly pointed out by I.C.A. Commission on Co-operative Principles, which was presided over by the eminent Indian Cooperator, late Prof. Karve, "the accelerated rate of progress in contemporary economic evolution has reduced and is reducing still further, the time allowed to the cooperative movement to demonstrate the value of its principles and methods. The world will judge the success of Cooperation by its contribution to raising the level of human well-being as quickly as possible."

F. A. AHMED

PREFACE TO THE SECOND EDITION

The first edition of this book dealt with only the Co-operative Societies Acts of the Indian States. This edition treats their Co-operative Societies Rules as well. The Laws referred to are those that existed when the first edition was prepared in 1973. The Rules now included are those that obtained in 1976.

Chapter IX of the first edition contained a summary of the recommendations made therein. This chapter has been omitted in this edition as a measure of economy. The number of recommendations made in this edition is very much more than that in the first edition as a result of the treatment of the Rules as well.

Some of the Laws and Rules referred to here may have been amended or rescinded since 1973 and 1976 respectively. However, the tendency of Indian co-operative legislation, both substantive and subsidiary, has been generally towards non-conformity with the Co-operative Principles. So, with due apologies to any State Government that has reversed this tendency, it is assumed that the legislation examined here still exists as presented, if not in a more unco-operative form.

Shortly after the first edition was ceremonially issued by the late Shri Fakhruddin Ali Ahmed, (who was later President of India,) when, as Minister of Agriculture of the Government of India, he was in charge of co-operative development as well, his Ministry presented "Guidelines for the Reform of Co-operative Laws in the States" to a Conference of Ministers of Co-operation of the Indian States and these guidelines were adopted by that conference. Although these guidelines were not on all fours with the recommendations made in our book, some headway would have been made in the direction of enacting legislation that is not in conflict with the Co-operative Principles, if those guidelines had been followed by the State Governments as undertaken by their responsible Ministers. But,

sad to relate, far from following those guidelines, there has been retrogression in this respect in some States.

It is hoped that the co-operators of India, in particular, and of the world, in general, will be enabled through this book to get a fair understanding of the quality of the laws governing co-operative societies in India as seen when examined in the light of the Co-operative Principles. It will be seen how seriously they affect the character and independence of co-operatives, making them more adjuncts of the state machinery.

Makers of policy at the government level in respect of co-operatives will do well to make a serious study of the "Co-operatives (Developing Countries) Recommendation, No. 127 of 1966" of the I.L.O. In paragraph 4 of this Recommendation, it is pointed out that "Governments of developing countries should formulate and carry out a policy under which co-operatives receive aid and encouragement of an economic, financial, technical, legislative or other character, *without effect on their independence.*" As regards financial aid, it says in paragraph 12 that "such aid should not entail any obligations contrary to the independence or interests of co-operatives, and should be designed to encourage rather than replace the initiative and effort of the members of co-operatives." In paragraph 25, it says that "it is essential that the management and administration of a co-operative be, from the outset, the responsibility of the members and persons elected by them." Although a Recommendation is not binding on a member as a Convention is, India as a member of the I.L.O. should honour a Recommendation just as well.

A study of this book will show one the extent to which Indian co-operative legislation contravenes the principles of the co-operative movement, in spite of India being the largest democracy in the world and therefore the country most likely to provide the necessary legal climate for the proper development of this movement, the essence of whose principles is democracy;—a movement which seeks to establish economic democracy "without which political democracy will not be meaningful" and which will keep the

people continuously trained in the processes of democracy as well as keep them aware of their duties and responsibilities as citizens of a democratic state, thereby providing the conditions essential for Democracy's very survival.

India is naturally looked up to for guidance by many a country of South-East Asia. It is therefore not surprising that many an unco-operative law has been adopted by some of these countries in the wake of certain Indian co-operative laws. So the rescission of all co-operative laws that are not in accordance with the Co-operative Principles by the Indian State Governments will be a signal service not only to the people of India but also to those of her neighbours.

The diversity of the provisions of the Acts and Rules of the various Indian States in respect of a single movement with a distinct ideology of its own is sufficient justification for having uniform legislation in respect of co-operative societies throughout India. This need has been already emphasised by Shri Annasaheb P. Shinde, when he was Minister of State in charge of co-operative development in the Ministry of Agriculture of the Government of India, vide page (xvii) in the Preface to the First Edition. The need is even greater now. It is only when co-operative societies in the whole of India are governed by identical laws,—necessarily ones that are in conformity with co-operative principles, methods and practices—that the co-operators of India will think and act in common as members of a single movement and so be able to achieve “unity of action” among co-operators—the purpose of the principle of co-operation among co-operatives—throughout the country for the elimination of middleman profit-making, in particular, and the social and economic betterment of the people, in general. Moreover, such a movement, *per se* transcending all social, racial, religious and political barriers, will be a most effective unifying force for welding the teeming millions that is India into one nation. Therefore, the enactment of uniform co-operative laws in all the Indian States will be an invaluable contribution to the noble task of nation-building as well.

Due to unavoidable circumstances, this edition is being presented by me alone out of the three co-authors of the first edition as its principal author. Much preparatory work was done by the other co-authors in regard to the second edition as well. I am very grateful to them for their devoted assistance.

P.E. WEERAMAN
Principal Author
(Former Regional Director for South-East
Asia, *International Co-operative Alliance*)

Mudugamuva
Weligama
Sri Lanka

PREFACE TO THE FIRST EDITION

The study of cooperative legislation was the subject of a Resolution on "Cooperative Legislation in Developing Countries" moved by the National Cooperative Union of India and adopted by the Congress of the International Cooperative Alliance (ICA) held at Hamburg in 1969. It reads as follows :

"THE 24TH CONGRESS OF THE INTERNATIONAL COOPERATIVE ALLIANCE WELCOMES the helpful attitude of the governments in the developing countries towards the cooperative movement as well as their keenness to associate their cooperative movements with the schemes of national development; FEELS that there is scope for the co-operative laws in the developing countries to conform progressively to the principles of co-operation as recently adopted by the Alliance; and

REQUESTS the Alliance to undertake a study of the various legislative enactments, rules, and by laws regulating the co-operative movement in the developing countries and to suggest improvements therein with a view to making them more conducive to the proper and healthy development of the co-operative movement and its leadership".

This Study was undertaken by the ICA Regional Office for South-East Asia, New Delhi, in pursuance of this resolution. This book brings together the cooperative laws, legal judgements, comments in reports of commissions and committees, and important pronouncements which have a bearing on Cooperative Principles and relate to India. This contains also the comments and recommendations of the team which made this study. The laws quoted are the existing laws and for the most part the judgements etc., are those given in recent times.

It is hoped that a study of this book will help the student of cooperative affairs to understand the gravity of

the situation as far as the survival of the true Cooperative Movement is concerned.

An introduction is given to Cooperative Principles in the first chapter since a proper understanding of these principles is essential for the use of this book.

An attempt has been made to crystallize the conclusions of this Study by the presentation of a model cooperative law and a summary of the recommendations contained therein now appearing as Appendix A followed by the Author's commentary appearing as Appendix B.

The laws relating to cooperative societies play a vital role in the development of a cooperative movement. If these laws are contradictory to Cooperative Principles, there is no room for the growth of a movement which is truly cooperative. Both the government officials and the public will take the law to be correct and understand the content and character of the movement from the law 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 of only the misnamed cooperative and the true concept of cooperation will be lost and with it will fade away the true cooperative movement in spite of all its potentiality for social and economic betterment.

If any government considers that the type of society necessary for national development is the state-controlled type 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" is used to describe such non-cooperative undertakings so that the public would not be led to believe that such societies are true cooperatives. I would plead that everything good should not be called

“cooperative”; it is enough if everything cooperative is good.

The time has come for the cooperative leaders, both voluntary and governmental, to take stock of the situation. The need of this exercise exists in all the Developing Countries and most of all in India.

The official leadership has been seized with the problem as is evident from the views expressed by the Honourable Shri A.P. Shinde, Minister of State in charge of Co-operative Development in the Ministry of Agriculture of the Government of India. He said at the Conference of State Ministers of Cooperation held in New Delhi on the 24th and 25th January 1973 as follows :

“I have been particularly thinking, for some time past, of certain disquieting features, which need to be removed from the cooperative movement, at the earliest. About a month ago, I have had informal consultation in some of these matters with some prominent leaders in the cooperative movement and had solicited their view. I am referring to some of these problems today. The need for a simple and unified cooperative legislation cannot be over emphasised. The question of removing the restrictive provisions in the Cooperative Societies Acts and giving them a democratic character has been stressed in a number of Conferences including the Conference of State Chief Ministers held in 1968 at Madras. My feeling is that the steps taken so far have not produced the desired results to make the movement really democratic, with equal opportunities for all, particularly the weak and the down-trodden. There has been very little representation for the weaker sections on the committees of management even in the village-based societies. On the other hand, some of the State Governments have enacted certain legislations which might tend to weaken the democratic character of the co-operatives. I am personally in favour of as complete an autonomy in the cooperative organisations as possible in the day-to-day affairs. There should be no interference by the Government in their internal manage-

ment. Such interference might do more harm and the cooperative movement, instead of getting strength, will become weak. The endeavour should be to ensure that democracy prevails in the working of cooperative institutions and that fair and prompt elections are held through an impartial election machinery.”

Earlier Shri Shinde observed at the State Ministers Conference held on the 29th and 30th November 1971 as follows :

“It is of course, necessary to have legal provisions to provide a genuine democratic base...But the aim of building up a self-regulated, democratic and autonomous cooperative movement should never be lost sight of and nothing should be done which may impede the ultimate attainment of this aim.”

It is hoped that the task envisaged in the above pronouncements will be facilitated by this study.

It would be appropriate here to quote the words of Dr. Mauritz Bonow, President of the International Cooperative Alliance. He said on the 17th February 1971 in New Delhi :

“The developing countries, quite naturally, want to make rapid social and economic progress. As a result, in many countries plans for economic development have been drawn up. We have with us Prof. D.R. Gadgil who is the Vice-Chairman of exceedingly important Indian Planning Commission. 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 activi-

ties, 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 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. The pace of social change in a number of developing countries, including India, has quickened during the past two decades and cooperative legislation should have, among others, the function of smoothing the tensions which inevitably arise in a phase of rapid social change. Please excuse me for having enlarged somewhat on this point, but I say this in the spirit of making some constructive, if general, comments on the situation which characterises a number of developing countries".

Most of today's cooperative leaders do not give thought to the "gem" that is Cooperation, the genuine article—a voluntary and autonomous cooperative movement—because the present situation has the sanction of law. Therefore, the reform of the law is the first step indicated for the establishment of a true cooperative movement. Until the law is amended most of the voluntary cooperators will not realise that the movement is theirs and that its proper development is their own responsibility. They now think much of even the crumbs that fall from the government table. They are unmindful of the fact that democracy is the essence of Cooperation.

Indian cooperative legislation constitutes the largest volume of cooperative laws of a country and the Coopera-

tive Movement of India has the largest primary membership of all national cooperative movements in the world. For these reasons the urgency to study the position of India is greater than that in respect of any other country in the South-East Asian Region. Also the ICA thought it only but correct that this humble service should be rendered first to the country in which its Regional Office is situated as a token of its deep gratitude for all the favours conferred upon it by the Government and the Cooperative Movement of India since the opening of the Regional Office in 1960.

The Study Team which carried out this work consisted of Dr. R.C. Dwivedi, Director of the National Cooperative Union of India, Shri P. Sheshadri, Lecturer in Law at the Osmania University, Hyderabad, and myself.

The ICA is deeply indebted to the National Cooperative Union of India and the Vice-Chancellor of the Osmania University, Hyderabad, for lending to the ICA the valuable services of Dr. R.C. Dwivedi and Shri P. Sheshadri respectively.

I wish to place on record my deep gratitude to Dr. Dwivedi and Shri Sheshadri for the inestimable service they have rendered to the ICA and that with such diligence and expedition.

Similar studies of the Rules, Model Bylaws, Administrative Orders and Circulars are necessary to complete the picture. The present Study itself is by no means perfect.

If this Study prompts further studies in this direction, our work will have been amply rewarded.

P.E. WEERAMAN
ICA Regional Director for S-E Asia

9 July, 1973
ICA Regional Office & Education Centre
New Delhi

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An Introduction to Cooperative Principles

Definition of a Cooperative

“Cooperation” means in its ordinary sense “working together” from the Latin word “Cooperare”. In its special sense it means the system of people voluntarily associated working together on terms of equality to eliminate their economic exploitation by middlemen in respect of any economic need common to them, simultaneously themselves eschewing the economic exploitation of others, a method so succinctly expressed by a nineteenth century advocate of Cooperation in the words “I shall have my hand in no man’s pocket and no man shall have his hand in mine”. The object of cooperating in this way is the economic and social betterment of persons who so cooperate. To avoid their being exploited by middlemen these cooperators exploit their own economic need by means of an enterprise undertaken by them on the basis of mutual aid. This basis naturally precludes any member of the joint undertaking, the cooperative society, from gaining at the expense of any other person. For, if the members do that they would be contravening their own dharma that economic exploitation of another’s need is inequitable, and they would be doing unto others what they would not have others do unto them.

A cooperative society is thus an association of persons, or of societies, which has as its object the economic and social betterment of its members, through the satisfaction of their common non-middlemen economic needs by means of a common undertaking based upon mutual aid and profit-elimination, and which conforms to the Cooperative Principles. There are six Principles of Cooperation. The first four set out the working methods of the cooperatives and the other two state what is essential for the continued

progress of the movement. All the six principles are equally important. "They form a system and are inseparable. They support and reinforce one another. They can and should be observed in their entirety by all cooperatives if they claim to belong to the Cooperative Movement" (ICA Principles Commission).

The six Principles are briefly stated as follows:

- (i) Voluntary and open membership,
- (ii) Democratic control,
- (iii) Limited interest on capital,
- (iv) Equitable division of surplus,
- (v) Cooperative Education,
- (vi) Cooperation among cooperatives.

I shall quote each Principle as stated in the Rules of the International Cooperative Alliance at the point of explaining it.

Cooperation is a reaction against the consequences of individualism but it does not suppress the individual effort. On the contrary it evokes and encourages effort in the right direction "from competition in individualism to individuality in cooperation", in the words of Thomas Carlyle.

As stated by the ICA the cooperative system is "organised in the interests of the whole community and is based upon mutual self-help" and the cooperative movement seeks to substitute this system for the profit-making regime.

Character of a Cooperative

A cooperative institution at the primary level is an association of individuals who have similar economic needs which they seek to satisfy better through a common undertaking than they could by individual means. The cooperative has a two-fold character—it is an association of persons as well as a common undertaking. The society's rules of organisation and operation lay down the special relations of the members among themselves and those between themselves and their society as well as the economic relations of each of the members with the common undertaking.

A cooperative society has a nature *sui generis*. It is a special form of business organisation which differs considerably from any other form of business organisation. It is neither a public nor a profit-seeking organisation. Its principal action is that it eliminates economic exploitation and its essence is that it is democratically controlled by its members and members only. A normal business organisation is one where shareholders associate as contributors of capital and the organisation's purpose is to make profit for division among the shareholders on the basis of their shares. The result is the exploitation of an economic need of the public by the shareholders.

A cooperative society is a business organisation wherein persons associate not as contributors of capital but as persons having the same economic need. The share is allotted only if the person seeking membership is qualified to be admitted to the society by virtue of his having the common need. Thus the members of a cooperative associate as human beings having a common need and not as persons who have provided capital.

The common need is either that of a producer or a consumer. "Producer" and "consumer" are stated here in the broadest sense of these terms. Anyone engaged in the production of goods or articles of consumption or utilisation either as owner or as worker is a "producer" and any one who consumes or needs such goods or articles is a "consumer". A farmer, an artisan, and a labourer are a few examples of "producer". A consumer of goods, a user of transport, an occupant of a house or a patient in a hospital are a few examples of "consumer". These terms, in short, exclude middlemen—those who exploit the needs of the producers and the consumers for the purpose of making profits. The same person could be both a middleman and a consumer e.g. a trader who uses credit. As a user of credit he is entitled to be a member of a cooperative credit society, but a society of retail traders formed to obtain goods wholesale for their retailing purposes would not be a cooperative undertaking.

The Principle of Voluntary and Open Membership

The principle relating to membership is stated in the ICA Rules as follows:

“Membership of a cooperative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.”

It will be seen that membership of a cooperative society shall be

- (i) voluntary, and
- (ii) open i.e. available without the said restriction or discrimination.

Thus this principle can be sub-divided into two sub-principles namely “Voluntary Association” and “Open Membership”.

Voluntary Association

The principle that membership shall be voluntary in a cooperative society means that:

- (i) a person who joins a cooperative society should do so of his own free will, and
- (ii) the society which admits a person into its membership should likewise do so voluntarily.

The common action of Cooperation is based on “the free accord of individual wills”. Cooperation requires “both the individual effort of the cooperators and the union of their efforts, and it must bring these two factors into simultaneous and complementary action”.

All who join the society must be loyal to it “as the success of the enterprise depends on the loyalty with which each one of the members works for the achievement of the object” (Calvert). This loyalty can come only if the member has joined the society of his own free will and not under compulsion. Likewise a society should admit a person into its fold only if the existing members are in favour of such admission. Every member has the right to express his

opinion on the advisability of admitting a particular person. This means that "admission depends on popular election" (Calvert).

In the same way membership in a cooperative can be terminated by a member when he has lost interest in his society and likewise by a society when it has lost confidence in its member. The members should "be able to give effect to any alteration of opinion as to the fitness of another to perform his share, so that expulsion by popular vote must be provided for". Every member "must be given the opportunity of withdrawing, if he finds that he himself can no longer loyally work with others". "Under no other circumstances" adds Calvert, "could the motto 'each for all and all for each' be worked up to..." Therefore it is open to a member to withdraw from the society and it is open to the society to withdraw the membership of a member, provided that such action fulfils the conditions laid down in the society's by-laws as regards admission of members and the termination of membership. Both parties must have "freedom to choose with whom they will associate, and freedom to correct the choice or to withdraw" (Calvert).

Voluntary association depends on the existence of individual autonomy, for, the cooperative institution "presupposes free and responsible persons who, in full exercise of their autonomy, have voluntarily joined together".

The principle of voluntary association enjoins not only that a person who joins a cooperative should do so voluntarily in the full exercise of his autonomy, but also that having joined the cooperative, the association of each member with the cooperative continues to be of his free will and the individual autonomy of the member remains unimpaired, except to the extent to which it has been restricted by certain internal disciplines "freely accepted by him in the interests of himself and all his fellow-members" (Fauquet)). "It is a corollary of the principle of voluntary membership that the member should feel that he has a real responsibility for his society's good administration and achievements" (ICA Principles Commission).

Voluntary association also depends on there being autonomy in the society concerned. It is only then that the society can exercise its will in regard to the admission and expulsion of members. This means that the society should be democratically controlled by its members and not subject to outside authority. Thus the principle of democratic control, which is explained later, is a corollary of the principle of voluntary association.

Voluntary association implies that a person's decision to apply for membership should be "the result of his unfettered appreciation of cooperative values and consideration of his economic advantage". But, as accepted by the Principles Commission, this freedom can rarely be absolute. "It can be modified or overridden by other considerations of wider application and greater essential validity" The government may insist on all agricultural produce in a given area being sold to the local cooperative when at least 75% of the producers of the area have joined that cooperative or voted in favour of such measure. This would be necessary to prevent any group of producers from staying outside the fold and so giving a foothold to opposing interests and thereby sabotaging the efforts of the majority of the producers of that area to improve their marketing position. The management of an irrigation scheme, the spraying of pesticides, or the adoption of a new system of cropping with the prospect of much higher yields, are other examples of situations which justify the imposition of cooperation upon persons who are clearly anti-social elements. But this should be done only when such action is justifiable in the interests of the whole community. The aim of both the state and the cooperative movement, as said by Fauquet, is to "render an organised service in the interests of the whole community in place of the struggle for profit and domination". Necessary safeguards should be "adopted against the abuse of power through the extension of compulsion in circumstances where it is unnecessary or inappropriate."

There has been a violation of the principle of voluntary association that deserves serious notice. In all the States

of India any person refused membership by a cooperative can appeal to the Registrar against such refusal. This stems from the notion that the state has a right to interfere in co-operatives in the public interest. But this undermines the character of the cooperative as a voluntary and autonomous body. It would be proper for the state to close down a cooperative which acts contrary to cooperative principles. By the same token, the state should not itself disregard the cooperative principles. The cooperative way of solving this problem would be to provide to the person so refused a right of appeal to the federal body of the society concerned, by suitable by-laws in both the primary and the federal societies.

Open Membership

The principle of open membership means that:

- (i) there shall be no artificial restriction on the admission of members;
- (ii) there shall be no social, political, racial or religious discrimination against persons who wish to join, and
- (iii) membership shall be available to all persons who need and can make use of the society's services and are willing to accept the responsibilities of membership.

Artificial restriction would mean limitations imposed on the size of the membership without there being a practical need to set such limits. The existence of unavoidable restrictions to enrolling everyone who is in need of the services of the society is recognized. For example, a housing cooperative would have to limit the number of its members in relation to the extent of land available to it. That would be an unavoidable restriction. What is not allowed is the fixing of an arbitrary limit to the number of members. Also as the association is one of human-beings, there can be no discrimination between them by reason of social, political, racial or religious difference. Cooperation, in the words of the ICA is "neutral ground on which

people holding the most varied opinions and professing the most diverse creeds may meet and act in common”.

“Open Membership” is often misinterpreted to mean that cooperatives are obliged to enrol all persons who may apply for membership. But, as said by the ICA Principles Commission, “open membership has never meant that”. Those who do not have the common need or cannot make use of the society’s services cannot be enrolled even though they may be prepared to buy shares in the society.

The qualification necessary for membership in a cooperative society is two-fold. One part is that the person concerned has the common need i.e. the need that is common to the members in general and which the society seeks to satisfy. Therefore any one who has this need is entitled to join the society provided he has the other part of the qualification viz. that he is able to make use of the society’s services. This further qualification is the corollary of the non-existence of unavoidable restrictions. A person may have the common need but he may not be able to make use of the society’s services because there is no scope for this e.g. the society does not have any land to offer him for housing or he lives too far away to use the society’s shop. Thus this further restriction may be one emanating from the society or the person concerned. Thus a cooperative society seeks to bring together only those who have a common need and can also make use of the services of the society for satisfying that need.

The common bond of the members is the common need and the object of the society is the common good. Therefore the society “must be prepared to admit all who have the same need and who are ready to subscribe to the common contract” (Calvert). As said by Marshall, “The great force which drew the faithful to come past many brilliant shops to a humble store was the faith that competition should give a way to cooperation... It means that... a newcomer to the cooperative was to be welcomed because he wanted help; and not, according to the joint-stock company rule, in proportion to the capital which he contributed”.

The proper observance of the principle of “open membership” is essential for the observance of the principle of democratic control. If anybody could join a cooperative irrespective of whether he needs its services or not, it would be very simple for anti-cooperative elements to come in by the “open” door and exercise the right of democratic control to vote the cooperative itself out of existence.

A similar aberration from the principle of “open membership” is the selling of shares of cooperatives to the State making it *ipso facto* a member of the cooperative concerned. This is a violation of the principle, for, the State is not in need of the services which the society is rendering to the members to satisfy their common need. The need of the State is not the common need. Where the common need is the supply of articles required by the members the State can come in only as a supplier and where the sale of articles is the common need the State can come in only as a purchaser. Thus the needs of the State in respect of cooperatives are those of an outsider quite the same as the needs of a trader who supplies to or buys from a cooperative. Thus in each case the need of the State is quite the opposite of the common need of the members. The State can be only a middleman for the State *per se* has no human personality which can enjoy directly the services rendered by a cooperative at the primary level.

Cooperatives at the primary level are associations of persons i.e. individual human beings. A secondary cooperative would be one of which the members are primary cooperatives. Sometimes a large producer might be allowed to join a secondary cooperative. The membership of a secondary cannot consist of any category of members other than primary cooperatives and individuals. A tertiary cooperative would be one of which the members are secondary cooperatives, and so on. Thus there is no place in the cooperative fold for the State or any organisation which is not a cooperative.

The State therefore cannot become a member of a cooperative, without *ipso facto*, changing the character of the cooperative. The State buys shares in a cooperative to help

the cooperative to function better. But this very act of kindness to a cooperative “fells it low”. Also, where the State is a member of a society the state is bound by the decisions of the society as regards the administration of the society’s affairs and even cooperative policy in general. As a member of the Cooperative Movement the state cannot over-ride the decisions of the Movement relating to the Movement. Thus, State membership of cooperatives makes the State subject to the Cooperative Movement as far as cooperative matters are concerned. Academically, this is the *reductio ad absurdum* we come to. This violation of the principle of open membership by certain cooperatives, no doubt misled by the laws passed in disregard of this cooperative principle, has changed the very character of such cooperatives. They are now more like joint undertakings of the public and private sectors.

The proper observance of “open membership” will ensure that the membership is constituted of only those who are entitled to be members. This is of prime importance again because the principle of “democratic control” rests on the axiom that “what the members’ interests are in any given situation only they can finally determine”. This justification would not be valid if the membership includes persons who are not entitled to be members as they do not have the common need which the society seeks to satisfy and so would not be motivated by the same reasons as those by which the members who have the common need would be.

Thus the principle of democratic control which makes a cooperative a democratic organisation is dependent for its validity and effectiveness on the proper observance of the principle of open membership.

Having regard to the importance of the cooperative principle that membership is open only to those who need as well as can make use of the society’s services, I would state the cooperative principle on membership as follows:

“Membership of a cooperative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all

persons who, for their own non-middleman purposes, need, and can make use of, the society's services, that are rendered for satisfying a common economic need of the members, and who are willing to accept the responsibilities of membership."

The Principle of Democratic Control

The principle relating to democratic control as stated in the ICA Rules is as follows:

"Cooperative societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies shall enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration shall be conducted on a democratic basis in a suitable form." 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 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 co-operators 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."

Cooperative democracies are homogeneous. They are homogeneous "not absolutely, but in relation to the function or functions assumed by the common undertaking". A direct relationship subsists between the objects of the common undertaking and the common needs of the members which the common undertaking has to satisfy. There may be differences among the members but they arise "only in the search for the solutions best adapted to the ends pursued". Thus cooperative democracies are different from political democracies.

The democratic control of the cooperative by its members would be effective only if those who enjoy the right of democratic control are individually autonomous, as stated above. Otherwise the real control would vest in those who have control over the members as regards their social and economic relations with their society. This would vitiate the principle of democratic control, the justification of which "rests on the proposition that it is the members who know what their interests are". Therefore the principle of individual autonomy embodied in the voluntary principle is a corollary of the principle of democratic control.

As cooperatives are voluntary associations of human beings, on a basis of equality for the solution of common economic problems, rendering an organized service in the interests of the whole community, it follows that the democratic control exercised by the members would be valid and acceptable to the outside world in proportion to the degree to which it represents the will of those who have the common economic problems which the society seeks to solve. The greater the number of such persons within the society the greater the sanction there would be from the public in general for the decisions made by the general body of the cooperative. Therefore, the principle of "open membership" is as much a corollary of the principle of "democratic control" as is the principle of "voluntary association".

Democracy is the very essence of Cooperation for the reason that the cooperative would be failing in its purpose if the principle of democratic control were not observed. As said by the ICA Principles Commission, "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. Thus it is essential that the cooperative society functions according to the will of the members if the cooperative is to fulfil its primary and dominant purpose of promoting the interest of its membership.

The members enjoy rights of voting and participation in decisions affecting their societies on a democratic basis.

In primary societies, i.e. societies in which the membership consists of individuals, the members associate as human beings having a common economic need and not as contributors of capital. As said by Calvert, it is only logical that, as it is a common need that forms the union, this need should determine the status of each member within the society. As all have the same need, all are equal. Hence the rule of "one man, one vote" adopted by the Rochdale Pioneers. This is the invariable rule for voting at general meetings of primary societies. Therefore the rule that the members meet on a basis of equality is the fundamental rule in respect of all the social relations of the members within the association. It follows from this that the will of the majority shall prevail, i.e. the society shall be under the democratic control of its members. Each cooperative society is therefore a democracy.

If the administrative organs of the cooperative are to embody the democratic principle, their development "must remain anchored to certain fundamental rules and assumptions which the Cooperative Movement has accepted from its very beginnings". "The cooperative society" says the ICA Principles Commission, "being primarily an association of human beings the status of all its members should be equal and all should have equal opportunities of participating in decisions and expressing views on policy. There is no way of ensuring this save by giving each member one vote and only one. Further since the Cooperative Movement exists in order to place the common people in effective control of the mechanism of modern economic life, it must give the individual (only too often reduced to the role of a cog in that mechanism) a chance to express himself, a voice in the affairs and destinies of his cooperative and scope to exercise his judgement". His sense of responsibility for his society's good administration would not be real if his voice in its affairs is not equal to that of every other member. Accordingly there can be no exception to the rule of one member one vote in primary cooperative societies.

In societies, other than primary, i.e. federal societies—

those formed by the federation of primary societies (secondary societies) and those formed by the federation of secondary societies (tertiary societies)—*et seqq.*, “the administration shall be conducted on a democratic basis in a suitable form”. As stated by the ICA Principles Commission the secondary and tertiary organisations which are created by the cooperation of cooperative societies are themselves undoubtedly cooperative organisations, with the same obligation as the primary societies of conforming to the essential cooperative rules. The members of federal organisations have equal rights. This equality gives them the proper basis for democratic management. It is therefore consistent to apply the rule of one member, one vote to federal societies. But it would appear to work satisfactorily only in organisations where there is no great disparity in size between their affiliated societies.

“Another method which unquestionably pays proper respect to the human factor, is to base voting power upon the individual membership of (affiliated) societies”. “A variant of this system is found where voting power may be based on capital contributions which are themselves based on membership”. Another method is “to take account of the different degrees of interest displayed by the affiliated societies in their common organisation as indicated, for example, by their volume of purchases from it or of produce marketed through it.” The Commission concludes that “it does not appear, however, that these departures from the strict rule of equality of persons have yet led anywhere to a distribution of voting power radically different from that which would have been made on a membership basis, and, from a practical angle and in the light of experience, they may represent a necessary or desirable concession for the sake of unity, equality or efficiency or any combination of these”.

To my mind there is no doubt that “the strict rule of equality of persons” referred to in the foregoing paragraph is best adhered to, not by giving each affiliated society the same voting power at the secondary level, but by giving each affiliated society votes in proportion to its own in-

dividual membership. The purpose of democracy would be served best by this arrangement, for the voting power at the secondary level will reflect the strength of the individual membership at the primary level. Democracy at the base enjoins one man, one vote and so the larger the number of men the larger should be the number of votes. It would in fact be a negation of this basic right of human beings if at the secondary level a society representing even a membership of one million persons has only one vote, the same as what a society of ten would have. The secondary organisation should have votes in the tertiary in proportion to the total membership of its affiliated primary societies. Thus only will the basic cooperative rule of "one member one vote" be truly observed for at the primary level "one member one vote" means "one man, one vote" and in fact the rule is more often quoted as "one man one vote".

This proportional representation is the best arrangement for the representation of primary societies in their ideological and parliamentary bodies. What is of primary importance is the expression of the will of the cooperators themselves, the free and responsible human beings who have voluntarily joined together. Their representation in proportion to their number is the only equitable arrangement if the basic idea of cooperation as "the voluntary association of human beings on a basis of equality" is to be preserved at the parliamentary level of the movement.

The only exception that can be taken to the above argument is that there may be members at the primary level who are not really involved in their societies. Should these members also be taken into account in assessing the strength of voting power that should be given to the primary societies at meetings of the secondary societies? This question can be replied with a forthright "no". But the remedy here lies with the primary society itself. As pointed out earlier, no person should be kept in membership who is not in need of the services of the society. Generally, it is not in the interests of the society to keep such person in membership. There may be an exception in the case of one who having joined the society when he was in need of its services has

so improved his economic position through his participation in the society that he is not in need of the society's services now (as often happens in cooperative credit societies) but is so ideologically involved that he may be a great asset to the society. Persons who are not in need of the society's services should cease to be members and the committee will do well to take action to this end, periodically.

Any other method of representation at the federal levels would have the same flaw of taking non-involved members into account by reason of the fact that the latter will have a say in electing the representatives of the society to the general meeting of its federal body. The only remedy is that suggested in the foregoing paragraph.

The different degrees of interest of the affiliated societies in their federal organisation may not be assessable by the volume of their purchases from, or produce marketed through it. These volumes may only represent the transactions of a few rich consumers or large producers. The grant of recognition in proportion to purchases or sales from or through the federal organisations would indirectly give a better position to societies of richer communities whose purchases and sales could be higher, in spite of the number of people involved in them being less than that in the societies of poorer communities. However, these methods do not appear so objectionable in the case of business federations. The fact remains that proportional representation at the secondary and tertiary level, be it on the basis of the membership of primary and secondary societies respectively or of the purchases or sales made by them, is far more equitable than each member-society of a federation enjoying equal voting power, irrespective of its own membership or its involvement in the federation.

In order to prevent the larger organisations affiliated to a federal body from out-voting a much greater number of small ones there is usually a ceiling on the number of votes any member-society may have in such federal body.

Management must rest in the members themselves and there should be no external interference. "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 by-laws 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.

Often, the nomination of directors is made on the ground that the government has lent money to a society. Then, the law should provide for such nomination only when a loan has been obtained on the condition that the government would be entitled to nominate directors. There should be a voluntary acceptance of this condition. Even then there should not be more than three nominated directors. Nomination of directors and supersession of committees are indefensible when they are made without the consent of the society concerned. It would be better to liquidate a society than to impose an unwanted committee on it. It is a violation of the principle that the management is elected or appointed in a manner agreed by the members and also that it is accountable to them. The most desirable way of superseding committees whilst at the same time acting in accordance with cooperative principles would be for the federal body of the society concerned to appoint a committee superseding the society's committee provided there is provision in the by-laws of the federal body enabling

it to do this on the request of the society and provision in the by-laws of the society enabling it to make such request. Then the appointment would be in a manner agreed by the members. And such superseding committee could be made, by the same by-laws, accountable to the members of the society concerned.

The Principles Commission recognises that "government may ask that its representatives shall sit on boards of management for a time, not with a power of veto, but to make sure that the aid provided is being utilised in the way in which it was originally intended". It adds significantly:

"The important consideration is that the government representative shall not continue to sit a day longer than is necessary".

The power vested in the Registrar to veto decisions of the society is repugnant to the principle that the affairs of a cooperative society are administered by the management in accordance with the democratically expressed will of the members and that the society's supreme authority is the general meeting of the members. Even when aid is given, as pointed out by the Principles Commission, there can be no veto exercised by the government.

The imposition of by-laws on a society by the State is even more repugnant to the principle of democratic control. The by-laws are the common contract between the members and the society and the by-laws derive their moral validity from the fact that they have been voluntarily adopted by the members. The imposition of a by-law is the very negation of this concept and one cannot think of a more undemocratic act vis-a-vis a cooperative society than this. The very sanctity of the society's constitution is thereby violated.

Real cooperative development is to develop a movement that is in accordance with Cooperative Principles. The enactment of laws which are inconsistent with Cooperative Principles is therefore an undermining of the Cooperative Movement.

The least inattention to cooperative democracy will

damage it and indifference to it will be fatal to it, as said by Messrs Kerinec and Thedin.

Inattention and indifference arise mainly out of a feeling among the members that their decisions are not implemented by the society's officers or officials. It arises also when the laws of the country nullify the very principles of Co-operation—in spite of being laws made to facilitate cooperative development. Laws which vest the final decision in regard to certain financial and administrative matters in a government official and give powers to the government official to nominate directors and supersede boards of management, nay, even to impose by-laws on the cooperatives, nullifying the very principles of cooperation, the presence of government officials as the executives of the society, all these tend to create inattention and indifference to the ideal of cooperative democracy. The legal limitations imposed on cooperative democracy are understood by the common man to be correct, as the law is generally assumed to be correct. The inattention and indifference to cooperative principles shown by the law itself and by those whose function it is to be promoters and advisers of the movement, who but actually manage and control it, must surely permeate among the cooperators and even more among the public at large, in countries where the movement has been fostered by the government. This indifference all stems from the failure of the governments to recognize that fostering the cooperative movement means promoting democratic institutions based on Cooperative Principles. Whilst the principle of "Voluntary Association" recognizes man's right to freedom and that of "Open Membership" his duty to be tolerant and helpful, the principle of "Democratic Control" recognizes the equality of man and its practice makes him self-reliant and independent. In the case of cooperatives which require guidance, the guides must first understand "the deeply democratic spirit of cooperation". As said by Messrs Kerinec and Thedin, a principle has value only to the extent to which it is respected where it is applied and to the extent it is accepted and understood by the men who apply it.

I would state the principle of democratic control as follows:

The affairs of a cooperative society shall be administered, in accordance with the democratically expressed will of the members, by persons elected or appointed in a manner agreed by the members and accountable to them; and in a primary society (i.e. a society whose membership is open only to individual persons) members shall enjoy equal rights of voting and participation in decisions affecting their societies, each member having only one vote, and in a federal society (i.e. a society whose membership is open only to societies) each member-society shall enjoy the said rights provided that instead of equal voting power each member-society may enjoy votes in proportion to the number of its members or the volume of its transactions with the federal society, and provided further, that the federal society shall provide for only one of these bases of voting of its constitution.

The Principle of Limited Interest on Capital

Whilst democracy is the very essence of Cooperation the principal action of the latter is that it eliminates economic exploitation. There are two Principles designed to eliminate profit. The first of these principles is stated in the ICA Rules as follows:—

“(iii) Share capital shall only receive a strictly limited rate of interest, if any”.

The Principles Commission has said in this regard: “Cooperative rules regarding interest and the division and use of surplus are the twofold result of a firm resolve to establish and extend a more equitable division of the product of economic organisation than is commonly found in the profit-dominated business world”. Hence the principle that share capital may only receive interest, if any, i.e. share capital shall not receive anything else such as voting power or a share in the trading surplus, and that if any interest is given on share capital it shall be given only at a strictly limited rate.

A commercial undertaking employs its capital to exploit the economic needs of others, and divides the profits among the shareholders in proportion to the shares held by them. The Rochdale Pioneers recognised that capital was indispensable and also that it gave labour an added productivity. So they admitted the need to remunerate those who supplied the capital. But their idea was "labour working with capital, not labour working for capital or its possessor". They therefore rejected the claim of the owners of capital to any part of the trading surplus and admitted only their claim to interest at fair rates. As said by Prof. Gide, one time President of the ICA, "by making capital, instead of the profit taker, a mere wage (interest) earner, the cooperative system is neither more nor less than a social revolution".

It should be clear that "there is no cooperative principle which obliges interest to be paid. The principle is that, if interest is paid on share capital, the rate should be limited and fixed, on the ground that the supplier of capital is not equitably entitled to share in savings, surplus or profit, whatever the term employed to denote what remains of the value of the society's output of goods and services, after its costs, including the remuneration of labour, land and capital, have been met". (Principles Commission). As to the method of fixing the rate of interest what is required by this principle is that the rate of interest should be a legitimate rate and nothing more.

The Principle of Equitable Division of Surplus

The second principle designed to eliminate profit is stated in the ICA Rules as follows:

“(iv) The economic results, arising out of the operations of a society belong to the members of that society and shall be distributed in such manner as would avoid one member gaining at the expense of others. This may be done by decision of the members as follows:

By provision for development of the business of the cooperative;
by provision of common services; or

by distribution among the members in proportion to their transactions with the society”.

The principles of “limited interest on capital” and “equitable division of surplus” recognise man’s right to the fruits of his labour and ensure that he does not exploit another’s need.

The method of dividing the surplus is often misunderstood. As invariably happens in cooperatives of the modern world, a certain amount of trading is done with non-members. It is the sum-total of transactions that have produced the surplus. Therefore equitably the non-members too should get back what they have overpaid. There are instances of societies assigning such surplus to non-members and giving them an opportunity of using such surplus to buy shares in the society. Only shareholders are given a share of the surplus, but this does not mean that they can divide among themselves the surplus which has been derived from non-members. If members receive any part of the surplus derived from non-members the members would be making profit to that extent. But the principle feature of cooperative business is profit elimination. Therefore only the share of the surplus that is proportionate to the members’ transactions should be divided among the members. Thus the rate of rebate due to the members should be no more than the proportion that the entire divisible surplus is to the entire volume of transactions. The members are entitled to receive as patronage rebate only that percentage of their own transactions with the society. Thus automatically the rebate assignable to non-member transactions will remain with the society.

The trading surplus is “an overcharge which belongs to those from whom it has been derived and to whom it should be returned” (Calvert). However it is open to the members to decide on its disposal in one or all of the following ways:

- (i) allocating it for the development of the society’s business including its transfer to the reserve funds of the society;
- (ii) provision of common services, the most important

of which would be the education of the members, officers, employees etc. of the society and of the general public in the principles and techniques of cooperation;

- (iii) distribution among the members in proportion to their transactions with the society within the limits explained above.

The ICA Principles Commission has pointed out that because members undertake the risks of the undertaking "it is the members and no one else who are fairly entitled to share in the savings which a cooperative makes, but only in so far as these savings result from their own transactions with it. The society must itself be scrupulous in dealing with any revenue which accrues from dealings 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".

In view of the above, I would state this principle as follows:—

The economic results of a cooperative society's operations belong to the members of that society and any surplus arising out of the society's business shall be so distributed that no member shall gain at the expense of any other person and this distribution may be done in accordance with a decision of the members made in that respect by allocation for development of the business of the cooperative, provision of common services and/or distribution among the members in proportion to their transactions with the society but not exceeding the proportion of the total divisible surplus to the total transactions of the society.

The Principle of Cooperative Education

This principle is stated in the ICA Rules as follows:

"All cooperative societies shall make provision for the

education of their members, officers and employees, and of the general public, in the principles and techniques of Cooperation, both economic and democratic.”

The ICA Principles Commission placed great importance on the principle of cooperative education—the educational responsibility which the cooperative movement “alone can discharge of educating people in the ideals of cooperation and the proper methods of applying its principles in given circumstances”. The Commission called the principle of education “the principle, in fact, which makes possible the effective observance and application of the rest”. “For” said the Commission, “the principles of Cooperation are more than mere verbal formulae, more than articles in the rule book, to be literally interpreted. In the last analysis the principles embody the spirit of Cooperation, which has to be awakened and renewed in every fresh generation that takes over the work of the Movement from its predecessors. That awakening and renewal depend, more than anything, upon the care and assiduity with which each generation keeps the torch of education aflame”.

As pointed out by the ICA Principles Commission “all persons engaged in cooperation need to participate in this process of education and re-education”. They could be divided into three groups—viz. the members, the office-holders and the general public. The members are the ultimate controllers of their societies’ affairs and the officers, both the elected and the professional, have to carry out the society’s policy laid down by the members and their committee of management as well as guide the members. The members and the officers therefore require knowledge, technical skill and training in cooperative conduct and behaviour. They must know not only the special form of cooperation in which they are engaged, but also the economic and social environment in which their societies operate. The general public must be regarded as potential members, persons who must be won over by the cooperatives to their fold. Any headway which the cooperatives make brings benefit to the entire community. So it is in the interest of

the movement to keep the public informed of the benefits they derive indirectly and of what they could derive directly by joining the cooperative movement.

The Principle of Cooperation among Cooperatives

This principle is stated in the ICA Rules as follows:

“All cooperative organisations, in order to best serve the interests of their members and their communities, shall actively cooperate in every practical way with other cooperatives at local, national and international levels, having as their aim the achievement of unity of action by cooperators throughout the world.”

The cooperative movement in every developing country has a bad press and a bad word from many a politician. These are surer signs to know that cooperative lamps have begun to glow! Formerly the cooperative movement was not worth their attention. But now the capitalist press sees the potentiality of the cooperative movement to upset the capitalist apple-cart! And the politicians see that cooperative leaders can give fight to them by reason of the cooperatives being the best medium of reaching the masses. So the press tries to kill the movement whilst the politician seeks to collar the movement for his own purposes, both for removing their would-be rivals, the cooperative leaders, and for getting to the grass-roots of the people, the *hoi polloi* who can turn the scales at elections.

Besides these two sections, there is the real competition offered by big business. The cooperative movement could be the biggest of them all, if the movement were united, and internationally greater than any free trade area or economic community if the national cooperatives join with each other internationally. We already have good examples of the latter in the Scandinavian Wholesale Society, the International Cooperative Petroleum Association and the International Cooperative Alliance.

It is therefore essential for cooperatives to cooperate with one another both for the preservation of their movement and for increasing their business strength. The ideological agreement is already there. For whilst private business

can gain materially by competing with each other, cooperatives have no reason to compete, if they are true to their ideology of eschewing economic exploitation.

Aims of the Cooperative Movement

The proper application of Cooperative Principles is essential for the success of the movement, for Cooperative Principles “are those which are essential, that is absolutely indispensable, to the achievement of the Cooperative Movement’s purpose” which at the least is the creation of “a cooperative sector complementary to, but exercising an influence upon, the public and private sectors of the economy”.

Cooperators have a lofty ideal, namely, “a better and more fully human society than mankind in the mass has yet achieved”, as said by the ICA Principles Commission. The Commission goes on to say: “The world will judge the success of cooperation by its contribution to raising the level of human well-being as quickly as possible. Humanity at large is seeking, however blindly, for a major transformation from a system dominated by capital to one based on human dignity and equality. The Cooperative Movement, when true to its principles and armed with the courage of its convictions, can prove by practical demonstration that a world society is possible in which man is no longer the slave but master of economic forces. Its mission is to teach the common people by demonstration how the principles which express their neighbourly and brotherly relations in their cooperative can also inspire the mutual relations of nations”. The objectives and ideals of the movement as a whole “are no less than the attainment of a stage at which conflict, monopoly and unearned profit cease to exist”, and this can be realised only by the “unstinted and united efforts of all cooperators and cooperative institutions, large and small, national and international”.

The Commission goes on: “Cooperators the world over should profoundly appreciate that the most important aim of the cooperative movement is the promotion of the social and economic rights of the people and that the pursuit

and achievement of this high aim requires active and concerted efforts towards the realisation of world peace”.

Cooperation does not aim at mere material benefit. It aims at material and moral benefit simultaneously to achieve both the economic and the social betterment of its members. Every good cooperative society insists on honest trading and honest living. When, for example, the members of a dairy cooperative decide to reject adulterated milk, they impose upon themselves voluntarily an internal discipline. Such self-imposition of disciplines has great moral value and the adherence to such discipline also improves the material benefit obtained from the enterprise. So as said by Fauquet, by a single motion, cooperation improves man’s standards, both materially and morally.

Cooperation is in short a social revolution of a fundamental nature. By cooperating men cease to exploit one another’s needs and instead join hands to solve their common economic problems for their own social and economic betterment. It is a joint effort at self-help which is of benefit to the whole community as any headway made by the Co-operative Movement has a direct effect on production and trade in the public and private sectors as well as brings to the general public served by these sectors certain benefits which cannot be withheld any longer. The movement seeks to establish economic democracy “without which political democracy will not be meaningful”.

Cooperation is a revolution without the “R”—the trials and tribulations associated with normal revolutions because the revolution that Cooperation brings about develops by natural process when action is taken in accordance with Cooperative Principles.

The ingredients of this revolution are: (i) men desist from exploiting one another’s needs and instead cooperate for the benefit of themselves and the whole community; (ii) men associate on a basis of equality as human beings having the same economic needs and not as owners of capital with rights in proportion to the capital contributed by them and therefore men exercise power and control over their undertaking democratically; (iii) control over

the economy by capitalists and middlemen is substituted by the control of the economy by producers and consumers; (iv) capital ceases to earn profits and is reduced to the position of a wage-earner—an earner of interest limited to a rate that is deemed fair and reasonable; and (v) profit is eliminated by the arrangement that the customers as members have the right to take back the trading surplus in proportion to their participation in the transactions of the society.

As said by the Principles Commission, Cooperation aims at something beyond the promotion of the interests of the individual members who compose a cooperative. Its object is rather to promote the progress and welfare of humanity. “It is this aim” says the Principles Commission “that makes a cooperative society something different from an ordinary economic enterprise and justifies its being tested, not simply from the standpoint of its business efficiency but also from the stand point of its contribution to the moral and social values which elevate human life above the merely material and animal”.

And, I would add, every effort made to help the cooperative movement to make this contribution to the economic and social betterment of man, especially in the developing countries, brings with it a reward which money cannot buy—a sense of spiritual happiness.

In conclusion, I would quote the great Rabindranath Tagore:

“The Cooperative Principle tells us that, in the field of men’s livelihood, only when he arrives at this truth can he get rid of his poverty, and not by any external means. And the manhood of man is at length honoured by the enunciation of this principle. Cooperation is an ideal, not a mere system, and therefore it can give rise to innumerable methods of its application. It leads us into no blind alley; for at every step it communes with our spirit. And so, it seemed to me in its wake would come, not merely food, but the goddess of plenty herself, in whom all kinds of material food are established in an essential moral oneness”.

Chapter II

The Laws Relating to Cooperative Principles in General

This study of Indian Co-operative Laws in the light of Co-operative Principles has been made on the irrefutable basis that a registered co-operative society is legally bound to conform to the Co-operative Principles. As the *raison d'être* for granting a society legal recognition as a co-operative society by the act of registering it under an appropriate law is the due observance of the Co-operative Principles by such society, any legal provision which requires or enables a registered co-operative society to act contrary to these principles or which empowers the government, the Registrar or any other person to act in disregard of these principles in respect of such a society is fundamentally invalid.

We begin our study by examining the legal provisions which have a bearing on Co-operative Principles in general and are contained in the Co-operative Societies Acts and/or Co-operative Societies Rules of the various States of India. These provisions deal with the very important matters mentioned below.

1. The making of Co-operative Societies Rules.

(i) *Acts* : The following provisions in the State Acts empower the respective governments to make Rules in respect of Co-operative Societies. A large part of this subsidiary legislation relates to Co-operative Principles.

<i>Act</i>	<i>Section</i>
Andhra Pradesh	130
Assam	100
Bihar and Orissa	66
Gujarat	168

Himachal Pradesh	109
Jammu & Kashmir	124
Kerala	109
Madhya Pradesh	95
Maharashtra	165
Mysore (Karnataka)	129
Orissa	134
Punjab	85
Rajasthan	88
Tamil Nadu	119
Uttar Pradesh	130
West Bengal	140
Delhi	97

(ii) *Comments* : In the Acts of Andhra Pradesh, Assam and Gujarat, there is only a general power to make Rules for carrying out the purposes of the Act. The Acts of the other States provide power to the State Government to make Rules “to carry out the purposes of the Act” and “without prejudice to the generality” of this power they also specify the matters which may be prescribed by Rules.

There should be no need to frame Rules under the Act. All powers which should be taken by the State without violating Co-operative Principles should be included in the Act whilst all matters that come within the purview of Co-operative Societies according to Co-operative Principles should be included in the Bylaws of these societies.

The elasticity that should be provided in the law in respect of the exercise of certain powers, wherefore the power to pass subsidiary legislation has been considered necessary, can be provided in the Act itself, in the case of co-operative societies, by empowering the government or the Registrar, preferably, to prescribe certain matters by Administrative Orders published in the Gazette.

It is not advisable to provide for subsidiary legislation in the case of Co-operative Societies for the following reasons:—

1. It is evident from the Rules already made that many a government has acted ultra vires of the Act in

making Rules that give to the government powers which the relevant Act does not contemplate.

2. The procedure for passing subsidiary legislation in Parliament or Legislative Assembly is much simpler than that for passing an Act, though the Rules or Regulations are as valid and effectual as an Act. All laws proposed in respect of the Co-operative Movement deserve the fullest attention of the legislature, as is ensured by the procedure laid down for Bills.

The basic difference is that an Act or Rule is imposed by the State whilst bylaws are self-regulations made by the members. Matters which, according to Co-operative Principles, are proper for self-regulation should be provided for in the Bylaws.

(iii) *Judgement* : The High Court of Andhra Pradesh in *G. Chandrasekharan Naidu, President of A.P. State Co-operative Union vs. Registrar of Co-operative Societies, Hyderabad*, gave the following judgement:—

“A Rule which violates a statutory provision cannot be held to be valid, even supposing that the Rule has been placed before the legislature for its approval”

“it must be borne in mind that the rule-making power is conferred on the government, and such rule making power can be exercised by the government, only for carrying out the purposes of the Act.”¹

(iv) *Important Pronouncements* : (a) The Agenda Notes of the meeting of the Consultative Council of Co-operation of the Union Ministry of Agriculture held on 21 May 1973 stated as follows:

“The recent trend of some State Governments is to enlarge their powers, although time and again it was agreed that the powers of the State Governments in respect of the working of the cooperative societies should

1. Co-operative Law Journal, Vol. V, 1969-70, p. 85.

not take away the fundamental rights of these democratic institutions.”¹

(b) Jawaharlal Nehru observed in the Lok Sabha:

“Cooperative law has to be simplified—while the law has to be simplified what really requires simplification is the working of the law, even more so than the law itself.”²

(c) Shri Annasaheb P. Shinde, Minister of State in charge of Cooperative Development in the Ministry of Agriculture of the Government of India, said at the Conference of State Ministers of Co-operation held in New Delhi on the 24th and 25th January 1973:

“The need for a simple and unified cooperative legislation cannot be over-emphasized.”³

(v) *Recommendations* : Revolutionary as it may seem, it is recommended that any power which is required by the State for the proper development and promotion of the Co-operative Movement and which is not inconsistent with the character and independence of co-operative societies in general and the Co-operative Principles in particular should be provided in the Act itself, and that the provisions empowering the government to frame Rules should be deleted from the Act of every State.

II. Registration of Societies

(i) *ACTS*:

(a) *Provisions in the Acts* : The following provisions in the Acts, define the societies which may be registered as “co-operative societies”.

Andhra Pradesh Act 1954
Assam Act 1949

Section 4
Section 4

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1. Agenda Item No. 2, under the heading “Co-operative Law in States”, (p. 9), circulated with letter R. 11012/3/72 P&C dated 18 May 1973.
 2. Lok Sabha Debate, 11-4-1959, col. 11123 (vide p. 169, Special Number, 70th Plenary Session, Indian National Congress, February 1966).
 3. Proceedings, p. 1(iii).

Bihar & Orissa Act 1935	Section 7(1)
Delhi Act 1972	Section 4(i)
Gujarat Act 1961	Section 4
Himachal Pradesh Act 1968	Sections 4 & 8
Jammu & Kashmir Act 1960	Section 4
Kerala Act 1969	Section 4
Madhya Pradesh Act 1961	Sections 4 & 9
Maharashtra Act 1961	Section 4
Mysore (Karnataka) Act 1959	Section 4
Orissa Act 1962	Section 4
Punjab Act 1961	Section 4
Rajasthan Act 1953	Section 7
Tamil Nadu Act 1961	Section 4 (1)
Uttar Pradesh Act 1965	Section 4
West Bengal Act 1940	Section 11(i)

(b) *Comments on Provisions in the Acts* : A study of these provisions reveals that there are variations in the definitions of a society that may be registered as a cooperative society. For instance the Kerala Act of 1969 defines a cooperative society as one "which has as its object the promotion of the economic interests of its members or of the interests of the public in accordance with cooperative principles". Thus in Kerala a cooperative society could be one "which has as its object the promotion of the interests of the public in accordance with cooperative principles" to the exclusion of "the economic interest of its members." The wording can be construed to mean that there can be a cooperative society without members. The Bihar & Orissa Act of 1935, as well as the West Bengal Act of 1940, defines a cooperative society as one "which has as its object the promotion of the common interests of its members in accordance with cooperative principles". The wording "common interests" is not as specific as "economic interests". The addition of the word "economic" after "common" is recommended. As given in the ICA Rules a cooperative is an "association of persons, or of societies".....that "has for its object the economic and social betterment of its members". The Madhya Pradesh Act of 1961 says that a cooperative society

is “a society which has as its object the promotion of the economic interests of its members or their general welfare in accordance with cooperative principles”. This means that a society whose object is the promotion of the general welfare of the members in accordance with cooperative principles is a cooperative society. If the word “or” is replaced by “and”, the definition would be nearer the ICA definition. This Act has a wholesome provision regarding registration (section 9) viz. that the Registrar may refuse registration if the applicant society “is likely to be economically unsound or is likely to have an adverse effect upon any other society”. Under the Himachal Pradesh Act, the Registrar has to be satisfied that “the proposed society has reasonable chances of success” [section 8(i) (c)]. This too is a good provision though not so comprehensive as the other.

The Maharashtra Act of 1960 defines a cooperative society as a society “which has as its objects the promotion of the economic interests or the general welfare of its members or of the public, in accordance with Co-operative Principles”. This wording not only recognises as a co-operative society a society which does not seek to promote the economic interests of its members but also recognises as such even a society whose only object is the promotion of the general welfare of the public!

The Tamil Nadu Act of 1961 recognises as a cooperative society “a society which has its object the promotion of the economic interests of its members in accordance with co-operative principles”. The Delhi Act of 1972 has the same wording.

No proper definition of Co-operative Principles has been given in any Act. Thereby arbitrary authority has been vested in the Registrar to formulate Co-operative Principles. This will leave him open to misdirection on a matter most vital to co-operative development. It is necessary to ensure that Co-operative Principles are expressed correctly and clearly, and that they are fully understood by those who are charged with the task of promoting the Co-operative Movement and by the co-operators themselves. The inclusion

of this definition in the law will leave no ambiguity and make the recognition of Co-operative Principles the duty of all concerned. The Co-operative Principles are stated in the Rules of the International Co-operative Alliance. They are quoted in Chapter I of this book. These may be embodied in the Co-operative Societies Act of every State.

Co-operative Principles have been defined in one Act, viz. that of Uttar Pradesh (section 4), as follows:—

“Explanation—Co-operative Principles shall include

- (a) advancement of economic interest of the members in accordance with public morals, decency and the relevant directive principles of State policy enunciated in the Constitution of India;
- (b) regulation and restriction of profit motive;
- (c) promotion of thrift, mutual aid and self-help;
- (d) voluntary membership and
- (e) democratic constitution of the society.”

Commendable as this effort is to define Co-operative Principles in the law itself without leaving it to each succeeding Registrar to formulate them to the best of his knowledge—and that can be very little in the case of a person who has not had any previous experience of co-operative development work, this definition illustrates the need of defining these principles in accordance with an authoritative definition thereof. The reference to public morals and decency is supererogatory and the requirement to conform to the directives of State policy is inconsistent with co-operative autonomy. Unless a standard authoritative definition is embodied in every State's Co-operative Societies Act, there could be as many variations of this definition as the number of Indian States! We have already commented above on the varying and unsatisfactory definitions of what constitutes a co-operative society. This variation is a direct result of the lack of an authoritative definition of the Co-operative Principles. What could happen when there is no authoritative definition of these principles

can be seen from the requirement in two Acts—Himachal Pradesh (section 8) and Jammu & Kashmir Act (section 7)—that for registration purposes, the Registrar should be satisfied not only that the society's aims are in accordance with Co-operative Principles but also that they are “not inconsistent with the principles of social justice”. This additional criterion for determining the suitability of registering a society would not have appeared in the law if there had been an authoritative standard definition of Co-operative Principles. Unless there is an accepted body of principles of social justice, there would be no legal import in these words. The Registrar will be entitled to interpret them, although, by office, he would not be acceptable as the final authority in this regard. This criterion is superfluous because the very aim of Co-operation is social justice.

(c) *Judgements*: (ca) The following judgement explains the need of the law stating the Cooperative Principles for the guidance of those empowered to register societies:

In *Hari Shanker Bagla vs the State of Madhya Pradesh*, the Supreme Court said:

“The legislature cannot delegate its functions of laying down the legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control any given cases, and must provide a standard to guide officials or the body in power to executive the law.”¹

(cb) The Patna High Court has explained the basic principles of Cooperation in these words:

“The basic principles of cooperative movement, which has spread throughout the world, have been briefly stated in *Encyclopaedia Britannica*, Vol. 6, 1965 edition, as follows:

“Briefly, these principles call for democratic control, open membership, no religious or political discrimina-

1. All India Reporter 1954, p. 465.

tion, service at cost and education of the members. Members have a dual relationship to their association. They contribute its capital and are also customers or patrons."¹

(d) *Important Pronouncements on Cooperative Principles*

(da) The ICA Commission on Cooperative Principles (1966) has explained the Cooperative Principles as follows:

- “1. Membership of a cooperative society should be voluntary and available without artificial restriction or any social, political, racial or religious discrimination, to all persons who can make use of its services and are willing to accept the responsibilities of membership.
2. Cooperative societies are democratic organisations. Their affairs should be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.
3. Share capital should only receive a strictly limited rate of interest, if any.
4. Surplus or savings, if any, arising out of the operations of a society belong to the members of that society and should be distributed in such manner as would avoid one member gaining at the expense of others. This may be done by decision of the members as follows:
 - (a) By provision for development of the business of the Cooperative;
 - (b) By provision of common services; or
 - (c) By distribution among the members in proportion to their transactions with the Society.

1. Cooperative Law Journal, Vol. IV, 1968-69, p. 169.

5. All cooperative societies should make provision for the education of their members, officers and employees and of the general public, in the principles and techniques of Cooperation, both economic and democratic.
6. All cooperative organisations, in order to best serve the interests of their members and their communities should actively cooperate in every practical way with other cooperatives at local, national and international levels."

(db) The International Labour Organisation (ILO) in its Recommendation No. 127 of 1966 has recommended: "12. (1) Such laws and regulations should in any case include provisions on the following matters:

(a) a definition or description of a cooperative bringing out its essential characteristics, namely that it is an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organisation, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate."¹

(dc) The Expert Committee on Multi-State Cooperative Societies Legislation of the Government of India has observed as follows:

"These Principles which define the essential features of cooperatives should for the most part find expression in cooperative legislation."²

(dd) The Mysore Committee on Cooperation (1969) recommended amendments to Section 4 of the Mysore Cooperative Societies Act, 1959, "incorporating principles

1. I.L.O. Official Bulletin, Supplement I. Vol. XLIX No. 3 July 1966 pages 29-37.

2. Report of the Expert Committee on Multi-State Cooperative Societies Legislation, Government of India, February 1972, Chapter III, para 3.10, p. 32.

as accepted by the I.C.A., so that they would be a guide in the organisation and working of cooperative societies.”¹

(e) *Recommendations regarding provisions on registration in the Acts* : In order to bring about uniformity in the definition of a cooperative society for purposes of registration, the State cooperative laws should define a cooperative society as “a society, which has as its object the economic and social betterment of its members through the satisfaction of their common non-middleman economic needs by means of a common undertaking based upon mutual aid and profit-elimination, and which conforms to the Cooperative Principles, or union of such societies which has been established with the object of facilitating the operations of such societies.”

The Cooperative Principles should be defined, in the “Interpretation” sections of the State Acts in the words in which they have been defined in the Rules of the International Cooperative Alliance, vide Section 2 of the Model Cooperative Societies Law (Appendix A).

The law should lay down that the Registrar of Cooperative Societies shall register a society as a cooperative society if the constitution of the applicant society is in accordance with Cooperative Principles and the Society’s proposed operations are likely to promote the non-middleman economic interests of its members provided it has fulfilled all requirements pertaining to registration as laid down by the law. The law should further provide that the Registrar shall not refuse registration on any other ground.

(ii) *RULES ON REGISTRATION*

(a) *Provisions in the Rules* : The following Rules relate to the registration of cooperative societies:

Andhra Pradesh	Rules 3 & 6
Assam	Rules 5 & 6
Bihar	Rules 3 & 4
Delhi	Rules 6, 7 & 11

1. Committee constituted by the Mysore Government under the chairmanship of Shri B.L. Gowda, Deputy Minister for Co-operation.

Gujarat	Rule 3
Himachal Pradesh	Rules 4, 5 & 7
Jammu & Kashmir	Rule 3
Kerala	Rules 3 & 4
Madhya Pradesh	Rules 4 & 5
Maharashtra	Rules 4, 5 & 6
Karnataka (Mysore)	Rule 3
Orissa	Rules 6, 7 & 9
Punjab	Rules 3, 4, 5 & 7
Rajasthan	Rules 4, 5 & 7
Tamil Nadu	Rules 3 & 5
Uttar Pradesh	Rules 3, 4, 5, 6, 7, 8 & 9
West Bengal	Rules 7, 9 & 10

(b) *Summary of the Rules on Registration* : Generally speaking, these Rules provide that every application should be made on a prescribed form, duly signed by the applicants and submitted along with the proposed bylaws and certain other documents. They also lay down the norms required of societies to warrant their registration e.g. the bylaws should be in conformity with the law and should suitably provide for carrying out the objects of the society and it should be that the proposed society is likely to be economically sound. They empower the Registrar to ask for further information or make such inquiry as he may deem necessary. They also empower the Registrar to make alterations to the proposed bylaws provided that he has obtained the written consent of all or a majority of the applicants. The Rules also require the Registrar to record his reasons for any refusal to register a society and require him to communicate such refusal and the reasons therefor to the applicants. The Rules lay down a period of time within which the Registrar's decision to register or not shall be communicated to the applicants. These are broadly the provisions of the Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Orissa, Punjab and Tamil Nadu Rules relating to registration.

The Delhi, Maharashtra and Rajasthan Rules are somewhat different in regard to the refusal of registration. The

Registrar is required to give an opportunity to the promoters to modify the proposed bylaws before making his decision on the application. This is even more in accordance with Cooperative Principles than giving the Registrar power to make alterations to the Bylaws, though with the consent of the applicants. The Delhi Rule empowers the Registrar to refuse registration on any of the following grounds: (1) if in his opinion the name of the applicant society is undesirable or is likely to deceive or mislead the public as to its nature or identity; (2) if the aims and objects of the applicant society are similar to those of a society already functioning satisfactorily in the proposed area of operations of the applicant society; (3) if the members of the applicant society do not reside within the area of its operations; (4) if the proposed area of operations would be unmanageable in the opinion of the Registrar; (5) if the proposal for registration "is against the Principles of Cooperation"; (6) any other reason considered just and equitable by the Registrar.

The Uttar Pradesh Rule lays down, for the Registrar, detailed norms for judging the suitability of a society for registration. Besides satisfying himself that the registration proposal conforms to the requirements of the Act, the Registrar has to be satisfied that the membership of a primary society is confined to individuals who, in his opinion, are either (i) users of services or credit offered by the society, (ii) consumers of goods produced or provided by the society, (iii) producers of goods marketed by the society, (iv) workers in that society, or (v) persons who belong to more than one category of such persons depending upon the nature of the business of the society. The Registrar has also to be satisfied that the proposed society is not likely to affect adversely the general working and pattern of the cooperative movement in the State and that the name of the proposed society is not associated with the name of any individual community, caste or sect except when the name is the name of the institution or establishment for which it has been formed. The West Bengal Rules lay down that no primary society shall be registered unless

it consists of at least 15 persons above the age of 18 years and in the case of a credit society unless its members reside in the same town or village or group of villages and belong to the same class or follow the same occupation. The Rule further states that a cooperative farming society may be registered if it consists of seven or more persons above the age of 18 years and if such persons are considered capable of ensuring the successful functioning of the society. The West Bengal Rules further provide that no provincial or central society shall be registered unless it has among its members at least five cooperative societies. They also provide that the Registrar shall satisfy himself that the bylaws are in conformity with the law, are suitable for achieving the objects of the society and for ensuring the proper conduct of its business. They also provide that in every case of the Registrar refusing to register a society he shall record his reasons therefor in writing and communicate his decision to the applicants.

(c) *Comments on the Rules relating to Registration :* These Rules lay down the norms that should be observed by the Registrar in the matter of registration. They are generally speaking in conformity with the Cooperative Principles. As such, these provisions may remain in the law to guide the Registrar, but there is no reason why they should not be included in the Act itself. One modification should be made to these provisions when transferring them to the Acts, viz. the power of prescribing the procedure to be followed and the forms to be used in applying for registration should be given to the Registrar by the inclusion of a provision in the Act on the lines of Section 7(4) of the Model Cooperative Societies Law presented in Appendix-A.

(d) *Recommendation regarding Rules on Registration :* The provisions of the Rules relating to registration should be embodied in the respective Acts with provision for the Registrar to prescribe on procedural matters. Simultaneously with the transferring of the provisions of these Rules to the respective Acts these Rules should be rescinded.

III. Exemption

(i) *Acts*: The following provisions in the State Acts empower the government concerned to exempt societies from any of the provisions of the relevant Act:

Andhra Pradesh Act	Sec. 122
Assam Act	Secs. 92, 94
Bihar Act	Sec. 62
Gujarat Act	Sec. 7
Jammu & Kashmir Act	Sec. 115
Madhya Pradesh Act	Sec. 91
Maharashtra Act	Sec. 157
Tamil Nadu Act	Sec. 111
Uttar Pradesh Act	Secs. 112, 113
Delhi Act	Sec. 88

(ii) *Rules on Exemption*: The following Rules empower the government to exempt societies from any of the provisions of the Rules:

Andhra Pradesh	Rule 67
Delhi	Rule 155
Kerala	Rule 181
Rajasthan	Rule 110
Tamil Nadu	Rule 103.

(iii) *Summary of the Rules on Exemption*: The Andhra Pradesh and Rajasthan Rules provide that the government may exempt any society or any class of societies from any of the provisions of the Rules, by a general or special order, for reasons to be recorded therein.

The Delhi Rule confers a similar power on the Lt. Governor. He may direct that such provisions shall apply to such society or class of societies with such modifications and/or conditions as are specified by him in his Order. However, the Lt. Governor is not required to give reasons for granting such exemption.

The Kerala Rule is similar to the Andhra and Rajasthan Rules except that the grant of exemption may be "subject to such conditions" as the Government may deem fit to impose.

The Tamil Nadu Rule is similar to the Andhra Pradesh

and Rajasthan Rules but the explanation to the Rule states that “for the purpose of this Rule ‘society’ shall include an unregistered society”.

(iv) *Comments:* These provisions enable the government to permit societies which are not cooperative in character to enjoy the privileges of, and describe themselves as, cooperatives. No cooperative should be exempted from any legal provision which seeks to ensure the observance of Cooperative Principles, methods and practices by cooperative societies. Exempting unregistered societies from the provisions of the Rules is meaningless because they are exempt by virtue of their not being registered. Such exemption may, however, give a semblance of legal recognition to such societies, thereby indicating approval of any uncooperative business done by them as well as conveying to the general public an incorrect idea of what a cooperative is entitled to do. Thus, this “exemption” would be as harmful to the Movement as exempting registered societies from the provisions of the law. Whilst it could be argued that the provisions to exempt would enable the government to allow good cooperative societies to function unhampered by uncooperative legal provisions such as the requirement to obtain the Registrar’s approval or his power to nominate directors,—to mention but two of the obnoxious inroads into cooperative democracy—our position is that no uncooperative provision should remain on the statute book. Then, if there be power to exempt a society from the provisions of the law, such exemption would be tantamount to allowing a cooperative to be uncooperative, *ipso facto* a violation of the conditions of registration prescribed by that same law, and therefore an act of sabotage against the Movement, and that by the government—the very party committed to developing a genuine Cooperative Movement. Needless to say, there is no objection to the government taking power to exempt registered societies from any provision which is not based on the need to ensure the character and independence of cooperative societies.

(v) *Recommendation:* The legal provisions designed to ensure the character and independence of cooperative socie-

ties should not be subject to the power that may be given to the government to exempt registered societies from the provisions of the Act or the Rules.

IV. Promotion

(i) *Acts*: The following provisions require the government to promote the Co-operative Movement :

Mysore Act	Section 40
Uttar Pradesh	Section 44(i)

(ii) *Recommendation* : The Uttar Pradesh provision should be embodied in the co-operative legislation of every State with the further provision that the government shall promote the development of the Movement in accordance with the Co-operative Principles and shall on its part refrain from any act which is repugnant to Co-operative Principles or would adversely affect the character and independence of co-operative societies.

V. Bylaws

(i) All Acts have provisions validating the registered bylaws of co-operative societies, Section 11 of the Model Co-operative Societies Law, included in Appendix A of this book, may be adopted wherever necessary.

(ii) The following Rules deal with the framing of By-laws :

Andhra Pradesh	5
Assam	8
Bihar	15
Delhi	12
Gujarat	5(2)
Himachal Pradesh	9 and 146
Jammu & Kashmir	5
Kerala	5
Madhya Pradesh	6
Maharashtra	8
Mysore (Karnataka)	5
Orissa	8
Punjab	8

Rajasthan	8
Tamil Nadu	4
Uttar Pradesh	15 and 16
West Bengal	12

(iii) *Summary of the above Rules:* The Andhra Pradesh Rule provides that the bylaws of a society shall not be contrary to the provisions of the Act or the Rules and may deal with all or any of the matters specified in the Rule and with such other matters, incidental to the organisation of the society and the management of its business, as may be deemed necessary by the society. The specified matters include—(1) the name and address of the society; (2) the area of its operation; (3) the objects of the society; (4) the purpose for which its funds are applicable; (5) the payment, if any, to be made or the interest to be acquired as a condition for exercising the right of membership; (6) the nature and extent of the liability of the members for the debts contracted by the society; (7) the circumstances under which withdrawal from the membership shall be permitted; (8) the procedure to be followed in the cases of withdrawal, ineligibility or death of members; (9) the privileges, rights and liabilities of a nominal or associate member; (10) the nature and amount of the share capital, if any, of the society and where there is a share capital the maximum number of shares which a single member can hold; (11) the extent and conditions under which the society may receive deposits and raise loans; (12) the entrance and other fees and fines, if any, to be collected from members; (13) the maximum loan allowable to a member; (14) the procedure to be followed in granting loans and extensions of time for re-payment, renewing loans and recovering loans from members; (15) the conditions under which loans, extensions and renewals may be granted to members; (16) the terms on which a society may grant loans to the employees of the society or to another society; (17) the consequences of default in payment of any sum due by a member; (18) the method of appropriating payments made by members from whom money is due; (19) the maximum dividend payable on paid up share capital to members; (20) the rate of interest

payable by the society on its borrowings and by the members on loans granted to them; (21) in the case of productive and distributive societies, the procedure to be followed in purchasing and selling stores, raw material and finished products and in respect of stock taking; (22) the constitution and powers of a representative general body and the restrictions and conditions subject to which the representative general body may exercise its powers; (23) the manner of holding meetings and the right of voting at such meetings; (24) the manner of making or amending bylaws; (25) the constitution of the committee, the appointment and removal of other officers, the duties and powers of the committee and other officers, the term of office of the committee and the manner of election of the members of the committee; (26) the method of recruitment, the conditions of service and the authority competent to fix, revise or regulate the scales of pay and allowances of paid officials and servants of the society and the procedure to be followed in the disposal of disciplinary cases against them; (27) the custody and investment of funds and the manner of keeping accounts; (28) the constitution and maintenance of various funds as required by the provisions of the Act, Rules or bylaws; (29) the authorisation of an officer or officers to sign documents and to institute and defend suits and other legal proceedings on behalf of the society; (30) the services available to the members; (31) the preparation and submission of the annual statements required by the Registrar and their publication; (32) the affiliation of a society to any other society and the charges to be paid in respect of such affiliation.

The Assam, Bihar, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Madhya Pradesh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal Rules provide that every society shall make bylaws in respect of the matters specified in the Rule. Himachal Pradesh Rule 146 provides that “where it is found that any provision in the bylaws of a society is contrary to the Act and the Rules” the fact shall be brought to the notice of the society by the Registrar whilst requiring such society to amend the pro-

visions so that it would be in accordance with the provisions of the law and to do so within the time specified by him. The Rule further provides that the provisions of the offending bylaws "shall cease to operate from the date of receipt of the said notice by the society and any action under the said provisions thereafter shall be void". The Delhi and Maharashtra Rules say that a society may make bylaws for all or any of the matters specified in the Rule and the "Registrar may require" a society to make bylaws in respect of all or any of these matters. The Kerala and Orissa Rules provide that the bylaws of a society shall not be contrary to the provisions of the Act or the Rules and may deal with all or any of the matters specified in the Rule and with such other matters as are incidental to the organisation of the society and the management of its business as may be deemed necessary by the society. Item No. 29 of the matters specified in the Orissa Rule states that the bylaws of a society shall provide that should there be a conflict between the bylaws of the financing bank or apex bank to which a society is affiliated and the bylaws of the society, those of such bank shall prevail. The matters in respect of which a society shall or may make bylaws as stated in the Rules of the Andhra Pradesh State quoted above are similar to the matters mentioned in the Rules of the other States.

(iv) *Comments:* The Act, and not the Rules, should specify the matters in respect of which a society must have Bylaws. These would be matters relating to a society's co-operative character and the proper management of its affairs.

The provisions that the bylaws of society shall not contravene the Act or the Rules are unnecessary. The bylaws do not come into force until they have been registered by the Registrar. It is his duty to see that bylaws which contravene the law are not registered. Even where a subsequent law conflicts with the bylaws, it is axiomatic that the law shall prevail over the bylaw. So any bylaw which contravenes a law is *ipso facto* invalid.

However, if a bylaw is in accordance with Co-operative

Principles, methods or practices, though it is at variance with the law, it is the latter which should be amended to make the bylaw legally valid.

The Orissa Rule giving the banks a favoured position is a violation of co-operative democracy. All co-operatives should enjoy equal status in the eyes of the law. A dispute between two co-operatives should be settled by arbitration. As the law presently stands, such dispute would be liable to determination by compulsory arbitration. If the financing bank is not a co-operative society, the agreement between the bank and the society should provide for arbitration by mutual consent.

(v) *Recommendation*: The Act and not the Rules should specify the matters that must be provided for in the bylaws of a co-operative society. These matters would, *inter alia*, be the following:

- (a) the name of the society;
- (b) the registered address of the society;
- (c) the objects of the society;
- (d) the purposes to which the society's funds may be applied;
- (e) the qualifications for membership of the society;
- (f) the conditions of membership;
- (g) the mode of election to be a member;
- (h) the nature and extent of the liability of a member;
- (i) the cessation and resignation of membership and the expulsion of members;
- (j) the manner of raising funds, the value of a share and maximum holding of shares, the maximum rate of interest that may be paid on shares and the rate of interest payable on deposits; the transfer of shares or other interests of members and the refund of share capital;
- (k) the general meetings of the society and proceedings thereat, and the powers of the General Meeting;
- (l) the election of members to the Committee of Management, the suspension and removal of members of the Committee and of other officers of the society;

- (m) the authorisation of officers to sign documents on behalf of the society;
- (n) the disposal of the society's trading surplus;
- (o) the conditions on which loans may be granted, the interest chargeable thereon, the maximum amount that may be lent to a member, the purposes for which loans may be granted and the security for repayment thereof (in the case of societies whose objects include the creation of funds to be lent to their members);
- (p) the financial year of the society;
- (q) the maximum amount to which the society may be indebted to non-members;
- (r) the Reserve Fund and other funds of the society;
- (s) disputes among members and between the society and the members;
- (t) the dissolution of the society.

VI. Model Bylaws :

(i) *Rules regarding Model Bylaws:* The following Rules relate to the framing of model bylaws by the Registrar and their adoption by societies:

Andhra Pradesh	Rule 4
Delhi	Rule 14
Kerala	Rule 6
Uttar Pradesh	Rules 13 & 14

(ii) *Summary of these Rules:* The Andhra Pradesh and Kerala Rules provide that it shall be competent for the Registrar to frame model bylaws for any class or classes of societies and to suggest modifications thereto from time to time. The Rule further provides that such model bylaws "shall be adopted" by a society with such modification, if any, as may be suggested by the society and "agreed to" by the Registrar.

The Delhi Rule provides that "the Registrar shall make" model bylaws for each type of cooperative society and these may be adopted by societies with or without changes.

The Uttar Pradesh Rule 13 provides that the Registrar

may frame model bylaws for each class of societies and make such changes therein from time to time as he may consider necessary. Rule 14 provides that the model bylaws as are appropriate for a society in the opinion of the Registrar may be adopted by such society with such modification, if any, as may be considered necessary by the society having regard to its requirements.

(iii) *Comments:* The model bylaws should be regarded as guides for the framing of bylaws by societies. The adoption of any model should not be made compulsory by any law. It should be remembered that co-operative societies are independent organisations of the people. As long as their bylaws are designed to ensure the due observance of Co-operative Principles, methods and practices, such bylaws should be registered.

(iv) *Recommendation:* The provisions of the Uttar Pradesh Rule should be transferred to the respective Act. The Andhra and Kerala provisions also should be so transferred but without the provision making it compulsory for societies to adopt the model bylaws. The compulsion on the Registrar to make model bylaws as provided in the Delhi Rule is likely to affect the quality of such work. Authorising him to frame model bylaws is likely to give better results.

Every State Act should contain a provision empowering the Registrar to frame Model Bylaws for the guidance of co-operative societies under organisation as well as those already registered but without giving him any power to compel their adoption. Any such compulsion would be contrary to the Co-operative Principle of Democratic Control.

The Laws Relating to the Principle of Voluntary Association

I. Acts:

The following provisions of the State Acts relate to the Principle of Voluntary Association:

Andhra Pradesh	Secs. 19(3), 20, 23
Bihar	Sec. 61
Gujarat	Secs. 22(2), 24(1), 26, 36
Kerala	Secs. 16(3), 17, 18, 24, 89, 90
Madhya Pradesh	Secs. 19(4), 47
Maharashtra	Secs. 22, 23(1), 23(2), & (3), 29(4), 35, 35(2)
Orissa	Secs. 16(2), 17
Rajasthan	Sec. 33
Tamil Nadu	Secs. 17, 17(2)(A), 17(2)(B), 20(i)(ii)
Uttar Pradesh	Secs. 26(1), 26(3), 27(1), 27(2)
West Bengal	Sec. 59A(3)

II. Rules:

The following Rules relate to the Principle of Voluntary Association:

Assam	7
Bihar	7, 10, 11, 14
Delhi	26, 27, 28, 30, 31(a)(1), 31(a)(3), 31(b)
Gujarat	12
Himachal Pradesh	12, 13, 15, 16, 17, 22, 23
Jammu & Kashmir	8
Karnataka	7
Kerala	18, 27
Madhya Pradesh	17, 18
Maharashtra	20, 21, 28, 29
Orissa	17(1)(e), 17(3), 18, 19
Punjab	15, 17, 18

Rajasthan	17, 18, 19, 21
Tamil Nadu	19, 23, 25
Uttar Pradesh	38(1)(b), 38(1)(c), 41, 42, 43, 44(a), 56, 56(a), 56(b), 57, 58, 59, 60, 63
West Bengal	11, 13

III. *Summary of the Rules:*

The Assam Rule lays down that no person or society qualified under the bye-laws to be a member of a cooperative society shall be excluded from the membership without sufficient cause.

Bihar Rule 7 lays down that every person desiring admission to a registered society shall apply in the prescribed form and the application shall be considered by the managing committee. The decision of the managing committee shall be communicated to the applicant within a fortnight of making the decision, and where the application is rejected, with reasons therefor. A person whose application has been rejected may, within sixty days of the communication of the decision to him, appeal to the Registrar "whose decision shall be final".

Bihar Rule 10 lays down that no person, who is a member of a registered society, shall be admitted a member by another registered society of a similar type "without the sanction of the Registrar and the Registrar may issue an order directing either society to remove such person from its membership and the order of the Registrar shall be binding on them". Rule 11 provides that no member of a registered society, who has been expelled under the provisions of its bylaws, shall be eligible for re-admission to the membership of that society, or for admission to any other registered society, for a period of two years from the date of such expulsion. This Rule further lays down that the "Registrar may, after giving the registered society concerned an opportunity of being heard, in special circumstances, sanction the re-admission or admission within the said period of any such person as a member of the same society or of any other society, as the case may be". Rule 14 provides that any member may resign his membership of a registered society on giving to the managing committee

three months notice or such longer notice as may be prescribed in the bylaws, provided that there are no debts due from him to the society and that he is not a surety in respect of any debt due to the society. The Rule further provides that no member of a registered society shall be permitted to resign his membership of a society before the end of one year from the date of his admission thereto and that a member may be removed or expelled from the membership of a registered society for such cause and in accordance with such procedure as may be prescribed in the bylaws.

Delhi Rule 27 provides that a cooperative society may admit joint members provided they make a declaration in writing that the person whose name stands first in the share certificate shall have the right to vote and all the liabilities will be borne jointly and severally by them as provided in the Act, Rules and Bylaws. Rule 28 lays down that no individual, being a member of a primary cooperative society of any class, shall be a member of any other cooperative society of the same class "without the general or special permission of the Registrar", and where an individual has become a member of two cooperative societies of the same class either or both of the cooperative societies shall be bound to remove him from the membership "upon a written requisition from the Registrar to that effect".

Delhi Rule 30(2) lays down that a cooperative society shall dispose of an application for admission to the membership as early as possible and in no case later than the expiration of a period of one month from the date of receipt of the application by the society. In the event of refusal to admit a person such society shall communicate its decision together with reasons therefor to the applicant by registered post. Sub-clause (3) of the Rule provides that an appeal to the Registrar against the order of refusal to admit a member shall be made within 30 days of the date of communication of refusal. Rule 31(a) provides that in a cooperative society with unlimited liability, a member, who is not indebted to a cooperative society and is not a surety for an unpaid debt, may withdraw from the cooperative society after giving such notice to its secretary as may be laid down in

its bylaws. Rule 31(a)(3) provides that notwithstanding anything contained in the bylaws, no member of a co-operative society with limited liability shall ordinarily be permitted to withdraw his share capital, provided that where the cooperative society has created a share transfer fund out of its net profits, its managing committee may, whilst keeping in view the overall interest of the cooperative society, allow the withdrawal of share capital. The Rule further provides that such withdrawal of share capital at any time shall not exceed five per cent of the aggregate paid-up share capital of the society, excluding government contributions, as it stood on the 30th June of the preceding year. Rule 31(b) lays down that subject to the provisions of the Act, the Rules and the bylaws of a society, a member may withdraw from the society after giving three months notice to the secretary of his intention to resign his membership of the society and that no resignation of a member shall be accepted by the society unless the member has paid his dues to it, if any, in full and has also cleared his liability, if any, as surety of any other member or otherwise.

The Gujarat Rule lays down that no Seva Sahakari Mandali or Consumers' society shall without sufficient cause refuse membership to any person "duly qualified therefor" under the provisions of the Act and of the bylaws. The explanation to the Rule states that Seva Sahakari Mandali includes a multipurpose society and a primary agricultural credit society.

Himachal Pradesh Rule 12 lays down that no member of a society who has been expelled under the provisions of its bylaws shall be eligible for re-admission to that society, or for admission to any other society for a period of two years from the date of such expulsion. The Rule empowers the Registrar, in special circumstances, to sanction the re-admission or admission, within the said period, of any such member, to the same society or any other society, as the case may be. Rule 13 provides that no person being a member of a credit society, or of a society which advances loans, except a cooperative land development bank,

or financing bank, shall be a member of any other credit society or of such society "as advances loans to its members" without the general or special sanction of the Registrar. The Rule further provides that where a person has become a member of two societies, as referred to in the Rule, without the prior sanction of the Registrar, either or both of the societies shall be bound to remove him from membership "upon a written requisition from the Registrar to that effect". Rule 15 provides that a cooperative society shall dispose of an application received for admission to it as early as possible and in no case later than the expiration of a period of 30 days from the date of receipt of the application by the society, and in case of refusal to admit, such society shall communicate its decision together with reasons therefor to the applicant. The Rule further provides that if no decision has been taken and communicated to the applicant within the period specified the applicant "shall be deemed to have been refused admission to membership". The Rule further provides that an applicant, who has been refused admission or who shall be deemed to have been refused admission, shall have the right of appeal to the Registrar, whose decision in the matter shall be final. Rule 16 provides for joint membership which is identical with Delhi Rule 27. Rule 17 lays down that subject to the provisions of the Act and the Rules and the bylaws of a society, a member may withdraw from the society after giving three months notice to the secretary of the society of his intention to resign his membership of the society and that no resignation of membership shall be accepted by the society unless the member has paid in full his dues, if any, to the society and has also cleared his liability, if any, as surety of any other member or otherwise. The Rule further provides that withdrawal from membership shall also be subject to such restrictions regarding the maximum amount of share capital that can be refunded in a year as may be provided for in the Act or the Rules or the bylaws of the society. The Rule further provides that the withdrawal of shares at any time shall not exceed 5 per cent of the aggregate paid up share capital of the society excluding Government contributions, as it stood on the 30th

June of the preceding cooperative year. Rule 22 dealing with the expulsion of members provides that any member who has been persistently defaulting payment of his dues or has been failing to comply with the provisions of the bylaws, or otherwise, in connection with his dealings with the society, or has done other acts detrimental to the interest or proper working of the society, may be expelled from the society. Rule 23 dealing with the procedure of expulsion of members, lays down that when a resolution for the expulsion of a member is passed in accordance with the Rule it shall be brought to the Registrar's notice, where upon, "the Registrar may consider the resolution, and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and the member concerned. The resolution shall be effective from the date of such approval by the Registrar."

The Jammu & Kashmir Rule 8 provides that no individual, being a member of a primary cooperative credit society, shall be a member of any other such society "without the general or special sanction of the Registrar" and where an individual has become a member of two such credit societies either or both of the societies shall be bound to remove him from membership upon a written requisition from the Registrar to that effect.

Karnataka Rule 7 provides that where a person has, without the sanction of the Registrar and contrary to the law then in force, become a member of two or more primary cooperative credit societies before the commencement of the Act, either or all of such societies shall be bound to remove him from the membership upon a written requisition from the Registrar to that effect. However, before making the requisition the Registrar shall give a month's notice in writing to such person, calling upon him to select the society in which he wishes to continue as member, and consider the objections, if any, raised by him in the matter. The Rule empowers the Registrar to permit persons who are members of more than one primary cooperative credit society to continue their membership in such societies for a period to be fixed by him, but only for the purpose of dis-

charging their obligations to such societies and not for contracting fresh obligations or for serving on the committee of management of such societies.

Kerala Rule 18 lays down that a member who has acted against the interests of his society may be expelled from the society as laid down in the Act (Section 17). Rule 27 provides that a person applying for admission to the membership of any credit society (not being a Land Mortgage Bank, House Mortgage Bank or Financing (Bank) or housing society shall be so admitted "only with the previous sanction in writing of the Registrar", if on the date of such application such person is a member of any other such credit or housing society. The Rule further provides that "the Registrar may accord such sanction either in relation to any individual credit or housing society or in relation to a class of credit or housing societies". The Rule lays down that where a person becomes a member of any society in contravention of the provisions of the Rule, "such society shall remove him from the membership upon a written requisition from the Registrar".

Madhya Pradesh Rule 17 lays down that subject to the provisions of the Act and the Rules, a member may, after giving three months notice to the society and with the sanction of the committee or the general meeting of the society, as the case may be, withdraw from the membership of the society and claim the refund of the value of his share or shares, if he is not directly or indirectly indebted to the society, either as a principal debtor or as a surety; provided that such withdrawal or refund is not disallowed under the bylaws of the society or under an agreement with any other society or the State Government. The Rule further lays down that the society may withhold the refund of the value of a share or shares till the expiry of two years from the date of withdrawal from the membership. Rule 18, dealing with expulsion of members, lays down that the committee of a society may, by a resolution passed by a three-fourths majority of the members present and voting at a meeting for the purpose, expel a member on certain grounds specified in the Rule. The Rule further provides

that no such resolution shall be valid unless the member concerned has been given seven days notice either personally or by registered post, of the proposal to expel him and has been given an opportunity to represent his case to the committee. Rule 18, clause (2), provides that, notwithstanding anything contained in the Rules or the bylaws of the society, where it appears to the Registrar to be necessary or desirable in the interest of the society to expel a member from the society he may call upon such member and the society to explain within a period to be specified by him why such member should not be expelled from the society. If the member or the society fails to furnish such explanation, within the time specified, or after considering the explanation, if such is received, "the Registrar may pass an order expelling the member from the society". The Rule further provides that no member of a society, who has been expelled, shall be eligible for re-admission to the membership of the society for a period of one year from the date of such expulsion.

Maharashtra Rule 20 deals with the admission of joint members. It is similar to Delhi Rule 27. Rule 21 deals with the withdrawal of membership and provides, subject to the provisions of the Act and Rules and the bylaws of the society, that a member may withdraw from the society after giving three months' notice to the secretary of the society of his intention to resign his membership of the society and that no resignation of membership shall be accepted by the society unless the member has paid in full his dues, if any, to the society and has also cleared his liability, if any, as surety, in respect of any other member, or otherwise. The Rule further provides that the withdrawal from the membership shall also be subject to such restrictions regarding the maximum amount of share capital that can be refunded in a year "as may have been provided for in the Act, the Rules or bylaws of the society". Rule 28 lays down that any member who has been persistently defaulting in the payment of his dues or has been failing to comply with the provisions of the bylaws regarding sales of his produce through the society or other matters related to his dealings

with the society or who, in the opinion of the committee, has brought disrepute to the society or has done other acts detrimental to the interest or proper working of the society, may, in accordance with the Act (Section 35 of clause 1), be expelled from the society. Rule 29 further laying down the procedure for its expulsion of a member provides that when a resolution for expulsion of a member is passed in accordance with the Rule, it shall be brought to the Registrar's notice. "The Registrar may consider the resolution and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and the member concerned. The resolution shall be effective from the date of such approval".

Orissa Rule 17(1)(e) states that no person shall be eligible for admission to the membership of a society if he has been expelled by the society or any other society within a period of two years from the date of such expulsion provided that "the Registrar may in special circumstances, sanction the re-admission or admission of any such person within the said period, as a member to the same society, or of any other society as the case may be". Rule 17(3) states that "no society shall retain as member any of its employees or any paid employee of its financing bank, provided that this restriction may be waived by obtaining the approval of Registrar". Rule 18 provides that no person shall be a member of more than one credit society offering the same kind of credit. Where a person has become a member of two such credit societies, either or both of the societies shall be bound to remove him from membership "upon a written requisition from the Registrar to that effect". Rule 19 empowers the State Government to require societies to get affiliated to the State Cooperative Union and this it may do from time to time specifying the types of societies which should so affiliate.

Punjab Rule 15 provides that no individual, being a member of a primary cooperative society, having as one of its objects the creation of funds to be lent to its members, shall be a member of any other such cooperative society without the general or special permission of the Registrar

and where an individual has become a member of two such cooperative societies, either or both of the cooperative societies shall be bound to remove him from membership "upon a written requisition from the Registrar to that effect". The Rule further provides that no individual who is an officer of any cooperative society shall, without the general or special permission of the Registrar, be a member of any other cooperative society whose objects are similar to the objects of the society of which he is an officer, and where such an individual has become a member of another society with similar objects, either or both of the cooperative societies shall be bound to remove him from the membership 'upon a written requisition from the Registrar' to that effect. The Rule further provides that if any question arises as to whether or not two societies have similar objects, the decision of the Registrar on the point shall be final. Rule 17 lays down that a cooperative society, other than a producers' society, shall dispose of an application received for admission to its membership as early as possible and in no case later than the expiration of one month from the date of receipt of the application by the society. In case of refusal to admit a person, such society shall communicate its decision, together with reasons therefor, to the applicant. Rule 18 provides that in a cooperative society with unlimited liability, a member who is not indebted to a cooperative society and is not a surety for an unpaid debt, may withdraw from the cooperative society after giving such notice to the secretary of the society as may be laid down in the bylaws of the society. Clause (3) of the Rule lays down that no member of a cooperative society with limited liability shall ordinarily be permitted to seek withdrawal or refund of his share capital provided that where the society has created a share transfer fund out of its earned profits, its managing committee may, whilst keeping in view the overall interests of the society, allow the withdrawal of share capital; and the Rule further states that such withdrawal of share capital at any time shall not exceed five per cent of the aggregate paid-up share capital of the society, excluding Government contributions, as it stood on the 30th June of the preceding year.

Rajasthan Rule 17 provides that no individual being a member of a primary cooperative credit society shall be a member of any other such society other than a land development bank or a marketing society "without the general or special sanction of the Registrar" and where an individual has become a member of two such credit societies either or both of the societies shall be bound to remove him from membership "upon a written requisition from the Registrar to that effect". Rule 18, dealing with the procedure for expulsion of members, provides that any member of a society, who has been persistently defaulting payment of his dues or has been failing to comply with the provisions of the bylaws regarding the selling of his produce through the society or, other matters in connection with his dealings with it or who, in the opinion of the committee, has brought disrepute to the society or has done other acts detrimental to the interest or proper working of the society may, "by a resolution passed by a majority of not less than three-fourths of the members entitled to vote and are present at the general meeting held for the purpose", be expelled from the membership of such society provided that no resolution shall be valid unless the member concerned has been given an opportunity of representing his case to the general body "and no resolution shall be effective unless it is approved by the Registrar". Rule 18(3) provides that when a resolution passed in accordance with the Rule is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and, after making such enquiries as he may deem fit, give his approval and communicate the same to the society and the member concerned. "The resolution shall be effective from the date of such approval". Rule 18(5) lays down that no member of a society who has been expelled under the Rule shall be eligible for re-admission to that society or for admission to any other society for a period of one year from the date of such expulsion. However, the Registrar may, on an application by the society and in special circumstances, sanction such re-admission or admission. Rule 19 lays down that a person shall cease to be a member of a society on his resignation from the membership thereof being

accepted or on the transfer of the whole of his share or interest in the society to another person, or on his death, removal, or expulsion or on his incurring any of the disqualifications specified in the Act or the Rules. Rule 21 lays down the procedure for admission, as joint members, of minors and persons of unsound mind inheriting the share or interest of a deceased member.

Tamil Nadu Rule 19 lays down that an associate member who is a minor shall not be required to contribute to the share capital of a distributive society, but shall pay such fee for membership as may be specified in the bylaws. Rule 23 provides that where a society, which has individuals and other societies as its members, decides, with the approval of the Registrar, that the continuation of the individual members is no longer necessary for the furtherance of its objects, the society may, on the death of any individual member, by notice in writing, require his nominee, heir, or legal representative, as the case may be, to withdraw the value of the share or other interest of the deceased member in the capital of the society. "If the nominee, heir or legal representative fails to take payment of the amount within three months from the date of issue of the notice, the share or interest due to the deceased member shall forthwith be credited to a suspense account and no dividend or interest shall accrue on such share or interest from the date of such credit". Rule 25 lays down that a person applying for admission to any credit society (not being a land mortgage bank, house mortgage bank or financing bank) or housing society shall be admitted to such society only "with the previous sanction in writing of the Registrar" if on the date of such application such person is a member of any other such credit or housing society. The Rule further provides that such sanction may be accorded by the Registrar either in relation to any individual credit or housing society or in relation to a class of credit or housing societies. The Rule further provides that where a person has become a member of any society in contravention of the Rule such society shall be bound to remove him from membership upon a written requisition from the Registrar to do so.

U.P. Rule 38(1)(b) provides that the competent authority of a society shall consider an application for admission to the membership of a society and take a final decision either admitting or refusing to admit the applicant to the society. Such decision shall, except when it does not become possible for unavoidable reasons, be taken (1) in the case of nominal or associate membership, within 15 days of the receipt of the application in the society, and (2) in any other case within 30 days of the receipt of the application in the society. Further it lays down that the decision shall be communicated to the applicant within 7 days of the date of the decision. Rule 38(1)(c) provides that if the decision on an application for admission to a society is not taken and communicated to the applicant within 30 days of the receipt of the application in the case of nominal or associate membership and 60 days in the case of ordinary or sympathiser membership, the application shall be deemed to have been rejected. Rule 42 provides that no person, who is an individual and who is already a member of a primary cooperative credit society, shall, "unless permitted by the Registrar for reasons to be recorded", be a member of another primary cooperative credit society, except where such society is a cooperative bank the main business of which is to advance long term loans to its members on the mortgage of immovable property. The Rule further provides that if an individual has become a member of two credit societies in contravention of the Rule, he shall resign his membership of one of the two and on his failure to do so within 45 days of his being called upon to do so, the society of which he became a member later shall remove him from its membership. Rule 43 provides that no person shall, "unless permitted by the Registrar for reasons to be recorded", be a member of a cooperative housing society if such person is already a member of another cooperative housing society in the same town. Rule 44(a) provides that no person, who has been expelled from the membership of a cooperative society, under Rule 56(b), shall be admitted a member of that society before the elapse of a period of two years from the date on which the order of expulsion takes effect. Rule 56 provides for removal and

expulsion of members of a cooperative society. Rule 56(a) provides that a person may, in the manner laid down in the Rules, be removed from the membership of a cooperative society if he incurs any of the disqualifications mentioned in the Rule. Rule 56(b), providing for expulsion of members, states that if a person is guilty of acts and omissions mentioned in the Rule, he may be expelled. Under Rule 57 a person, who is sought to be removed or expelled, shall be called upon by the committee of management to show cause, within 10 days of the receipt of the notice, why he should not be removed or expelled from the membership of the society and it is provided in Rule 58 that, if no reply is received within the time specified or if the reply received is unsatisfactory in the opinion of the committee of management, the member may be removed or expelled by the committee of management by a resolution passed in a meeting of the committee held within 15 days of the expiry of the period of the notice, and this Rule further provides that a copy of the agenda of the meeting convened for the purpose shall also be sent to the member whose removal or expulsion is sought, and the member concerned shall have the right to state his case in person before such meeting, if he so chooses. Rule 59 provides that such resolution shall be effective only when it is carried by a majority of two-thirds of the members present and voting. Rule 60 provides that where an order requiring the removal or expulsion of a member of a cooperative society "is received from the Registrar" under the Act [Section 27(2)(a)] the committee of management shall, within 30 days of the date of receipt of the order, remove or expel the member as the case may be, in the manner laid down under Rules 57 and 58. Rule 63 provides that a member of a cooperative society shall cease to be such member on (i) his death, (ii) his removal or expulsion from the society, (iii) his withdrawal from the membership, or (iv) retirement, transfer or forfeiture of all the shares held by him.

West Bengal Rule 11 provides that no person qualified under the bylaws to be a member of a cooperative society shall be excluded from membership without sufficient

cause. The Rule further provides that no person shall be entitled to membership of any society with unlimited liability who has, at any time during the immediately preceding two years, been a member of any other society with unlimited liability; and no person who is a member of a society with unlimited liability shall be admitted to membership of any primary credit society other than a cooperative land mortgage bank. Rule 13 provides that a member of any registered society may, if he is neither in debt to the society nor a surety, withdraw from the society after giving one month's notice in writing to the secretary. The Rule further provides that a member may be removed or expelled from a registered society only for such causes and only in accordance with such procedure as may be provided in its bylaws. The Rule lays down that a member who ceases to be qualified under the bylaws may be removed by the managing committee.

IV. Comments on the Provisions of the Acts:

The Andhra Pradesh Act provides that if no communication in respect of his application is sent to an applicant within 60 days, he shall be deemed to be admitted to the society and it further provides that no society shall refuse admission "without sufficient cause". This is discussed in Section V(a) hereinafter. With regard to expulsion, the Andhra Pradesh Act provides that any order expelling a member shall not take effect unless it is approved by the Registrar.

In the Orissa Act it is provided that a society shall not refuse admission to an applicant without sufficient cause and if no communication is sent to the applicant within 30 days, the application shall be deemed to have been rejected. This Act (Section 17) provides for compulsory membership of the State Cooperative Union, in the case of societies declared by the Registrar to be liable to such affiliation. This is a serious violation of the principle of Voluntary Association. The Kerala Act in Section 89 provides that "the Government shall, by notification in the Gazette, establish a State Cooperative Union" and in Section 90, that "every cooperative society in the State shall..

within a period of six months... get itself affiliated to the State Cooperative Union" on pain of losing all "the privileges conferred on a cooperative society by or under this Act". The constitution of the Union is prescribed under the Rules made under the Act (Rules 150 to 175). Thus not only is the principle of voluntary association violated by the act of associating being made compulsory by the law, but the union itself is not a voluntary association, as it is not a body voluntarily established by its original members, but is only a statutory body. Compulsory co-operation is a contradiction in terms. Jawaharlal Nehru's words quoted under "Important Pronouncement" in this chapter are apposite to this situation. There can be no objection to bylaws of societies compelling them to join the State Cooperative Union provided these bylaws are not imposed on the societies. The adoption of such bylaws would be in accordance with the Principle of Cooperation among cooperatives. There can be no corresponding compulsory by-law, in the State Union because the bylaws of the Union would apply only to members, and not to societies outside the membership. If membership of the State Union is imposed on a society by the law or by an outside authority the Union itself will lose its representative character, and so lose the *raison d'être* for its own existence.

Under the Maharashtra Act, an order of refusal passed by a society has been made appealable to the Registrar and the Registrar has been clothed with powers to disqualify any person for being a member or to declare a person as being eligible for membership only to a limited extent. A specific power has been given to a society to expel a member for acts detrimental to the interest or proper working of the society.

Under the Gujarat Act, a society is required to communicate its decision refusing membership within 15 days from the date of decision and a provision exists for referring an appeal to the Registrar and the order of the Registrar in appeal shall be final. It also provides that a member may resign and likewise the society may also expel a member

but the approval of the Registrar is necessary to give effect to the resolution of expulsion passed by the society.

Under the Uttar Pradesh Act, the Registrar can himself remove or expel a member from a society for the reasons stated in Section 27(2).

The Kerala Act requires that a society shall take a decision with regard to the admission of a member within two months of the receipt of the application and any refusal shall be communicated within 15 days of the date of decision. It also provides for the expulsion of a member and the sanction of the Registrar is not required to give effect to the resolution of expulsion. The Kerala Act imposes restrictions on the withdrawal of membership.

Under the Madhya Pradesh Act, a decision refusing membership shall be communicated within seven days.

Under the Tamil Nadu Act every person defined in the Act "shall be eligible for admission" and in the case of any prescribed class of societies every qualified person who applies for admission "shall be admitted by the committee... provided that any member admitted ... may with the approval of the Registrar be removed from membership by the committee". In the case of societies not prescribed as above, the committee may refuse admission and any failure to reply the applicant within two months of the date of application shall be deemed a refusal. A society may expel a member only with the Registrar's approval of a resolution of expulsion passed by a two-thirds majority of the members present and voting.

Under the West Bengal Act a refusal to admit a person should be communicated to him within 15 days of the date of such decision and an appeal lies to the Registrar against such refusal.

All these provisions are contrary to the Principle of Voluntary Association for every cooperative society has the freedom at all times to choose with whom they will associate and to correct the choice.

Automatic membership and automatic refusal of membership are contrary to the Principle of Voluntary Association. The principle requires that a society shall

admit a person or refuse admission by such specific act as may be laid down in its bylaws. The powers of the Registrar to compel admission, to disqualify a person for membership, to declare a person as being eligible only to a limited extent for membership to nullify the expulsion of members and to remove or expel members *suo motu* are all violations of the Principles of Voluntary Association and Democratic Control.

V. *Comments on the Rules:*

(a) *Admission of Members:* A society has to observe the cooperative principle in this respect viz. membership shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who, for their own non-middleman purposes, need and can make use of the society's services that are rendered for satisfying a common economic need of the members and who are willing to accept the responsibilities of membership. The words "without sufficient cause" in the Andhra Pradesh Act and the Assam Rule mean the absence of such reasons as are "sufficient cause" under this Principle, viz:

- (i) the restriction is real and not artificial e.g. the society cannot serve any more persons for lack of space, equipment, land, or other reasons;
- (ii) the applicant is not in need of the services of the society or the applicant's need of a particular service from the society is not a common economic need of the members, or the purpose of his need is uncooperative e.g. to make middleman profits or facilitate economic exploitation;
- (iii) the applicant cannot use the services of the society, e.g. because the place where the services are available is too far away for him;
- (iv) the applicant is not willing to accept the responsibilities of membership.

It is left to the general body of a society to admit or refuse an application for membership, for both the associa-

tion of an individual with a society and vice versa must be voluntary.

Delhi Rule 26 violates this principle as well as that of cooperative autonomy by specifying the conditions of admission and by giving the Lt. Governor power to lay down "any other condition". Specifying the qualifications for admission to a society is a matter entirely for that society and so they should be stated in the bylaws of that society. The power given to the Lt. Governor is like adding insult to injury. A cooperative functions on the principle that the members know best what their interests are.

Orissa Rule 17(3) which prohibits a society from retaining any employee of itself or its financing bank within its membership and which gives power to the Registrar to waive the restriction is contrary to the Principle of Voluntary Association. The qualifications for membership laid down in the bylaws should suffice to keep out any person who is not entitled to membership according to the Principle of Open Membership. The provision in Punjab Rule 15 which prohibits an officer of one Cooperative Society from being a member of another cooperative society with similar objects is a violation of the Principle of Voluntary Association. It would be incorrect for a person to be a member of more than one cooperative society of unlimited liability because it undermines the value of the unlimitedness of his liability. To prevent a society from enrolling a person just because he is an officer in another society is *per se* a violation of the "freedom to choose with whom they will associate" (Calvert) and is untenable except in the case of two societies of unlimited liability. A person may be in need of consumer services in one place and agricultural services in another; and if at both places there are only multi-purpose cooperatives, which would mean they are societies with similar objects, according to this rule it would mean that for the "sin" of being an officer in one society he cannot be even a member in the other. To satisfy his needs in the other place, he must patronize the very institution of middle-man profit-making which he seeks to destroy through the cooperative movement by not only being a member of a

cooperative but also being an officer of it. To say the least, this is an absurd provision. This way does not lie the road to "the achievement of unity of action by cooperators throughout the world" as is the aim of the Cooperative Movement in the words of the International Cooperative Alliance, vide its Article 8.

(b) *Compulsory Affiliation*: Orissa Rule 19 which provides for the compulsory affiliation of cooperative societies to the State Cooperative Union is a gross violation of the Principle of Voluntary Association.

(c) *Appeal to the Registrar against any refusal of admission*: Bihar Rule 7, Delhi Rule 30(3) and Himachal Pradesh Rule 15 provide for appeal to the Registrar against a refusal to admit a person to a cooperative society. This provision, perhaps, stems from the wrong notion that a cooperative is a government adjunct, which it *de facto* is in India as a result of the incorrect legislation that obtains today in the Indian States in respect of cooperatives. A cooperative is *de jure* a private association of persons seeking to achieve social and economic betterment in accordance with the Cooperative Principles. The first Principle is, in the words of Calvert, "freedom to choose with whom they will associate and freedom to correct the choice or to withdraw". And it would be well to remember Jawaharlal Nehru's celebrated remark in this connection. Commenting the possible use of "some forceful methods", he said: "as the basic principle of a co-operative is a voluntary principle and the principle of voluntary cohesion, you knock the bottom out of it if you do that", vide page 9 of the I.C.A.'s book entitled "Co-operative Leadership in South-East Asia".

(d) *Time Limit for Admission*: Delhi Rule 30(2), Himachal Pradesh Rule 15, Punjab Rule 17, and Uttar Pradesh Rule 38 (1)(b) and (c) provide time limits within which co-operative societies should dispose of applications for admission. These provisions will have the effect of hustling societies in this regard, and so affect the voluntariness of their decisions.

(e) *Resignation of Membership*: Bihar Rule 14, Delhi

Rule 31(a) & (b), Himachal Pradesh Rule 17, Madhya Pradesh Rule 17, Maharashtra Rule 21 and West Bengal Rule 13 provide for matters that should be in the bylaws and confirm the validity of the bylaws in regard to the resignation of membership. As the bylaws acquire the force of law upon their being registered, there is no need to confirm them by Rules. The Act, and not the Rules, should provide that the bylaws of a cooperative society shall prescribe conditions relating to withdrawal from its membership. Such bylaw should be classed as an essential bylaw. The conditions themselves, however, should not be spelt out in the law. Each society should be free to lay down its own conditions. The Registrar is the appropriate authority to judge their suitability before registering such bylaw.

(f) *Expulsion of members*: The provisions of Himachal Pradesh Rule 22, Maharashtra Rule 28, and Uttar Pradesh Rules 56 to 59 should be in the bylaws of societies and not in the law as expulsion of members is a matter for self-regulation. Madhya Pradesh Rule 18 after laying down conditions to be complied with for expelling a member, all of which should be included in the bylaws and not in the law, empowers the Registrar by clause 2 to expel a member *suo motu*. This power is a gross violation of the Principle of Voluntary Association, because it is only the society that can, according to this principle, expel a member. The society must have the freedom to choose its members and the freedom to correct that choice. There can be no compulsion to admit or to expel a member. Uttar Pradesh Rule 60 is of the same tenor as Madhya Pradesh Rule 18 clause 2 and is therefore a similar contravention of the voluntary principle. Himachal Pradesh Rule 23, Maharashtra Rule 29 and Rajasthan Rule 18 requiring the Registrar's approval of any resolution to expel a member are violations of the Principles of Voluntary Association and Democratic Control. Kerala Rule 18 confirms Section 17 of the Act. This absurdity shows serious ignorance of the function of subsidiary legislation.

(g) *Re-admission to the society*: Bihar Rule 11, Himachal Pradesh Rule 12, Orissa Rule 17(1)(e), Rajasthan Rule

18(5) and Uttar Pradesh Rule 44(a) are almost identical. They provide for a two-year period of disqualification for re-admission but give the Registrar the power to sanction re-admission earlier. Re-admission is entirely a matter for self-regulation. It is the members who have a right to determine whether a person should be re-admitted or not as it is they and not the Registrar who will have to work with him. So there is no justification for giving the Registrar any power to decide whether a person should be re-admitted before the normal period of hibernation is over. Nor is there any justification for having a uniform period of expulsion imposed on the societies by a law. What appears to the Registrar to be a reasonable period of expulsion should be included in the Model Bylaws to serve as a guide to the cooperators. The societies should be free to adopt that period or any other period as may seem meet to them. The imposition of a two year period of hibernation as well as the power given to the Registrar to reduce this period are violations of the principle of voluntary association. If the Registrar is competent to decide whether a particular person should be re-admitted or not before the elapse of the normal period prescribed by the bylaws, the members are even more competent to do this and have a right to do this, unlike the Registrar, because it is their society, not the government's, and they know best what their interests are. Hence, the Cooperative Principle of Democratic Control. It is their democratic right to decide with whom they will associate. Hence, the Cooperative Principle of Voluntary Association.

(h) *Membership in more than one society:* Bihar Rule 10, Delhi Rule 28, Himachal Pradesh Rule 13, Jammu & Kashmir Rule 8, Kerala Rule 27, Karnataka Rule 7, Orissa Rule 18, Punjab Rule 15, Rajasthan Rule 17, Tamil Nadu Rule 25, Uttar Pradesh Rules 42 and 43, and West Bengal Rule 11, are provisions to prevent a person from being a member of more than one cooperative society of the same type without the permission of the Registrar. Each society should have in its bylaws a provision that would prevent its enrolling a person who is already a

member of another society of its own type with an area of membership (the area relating to the qualification for membership), which is within or coincides with or includes the area of membership of the former, provided that if a society is one of unlimited liability it should have a bylaw that would prevent it from enrolling a person who is a member of any other society of unlimited liability even if the other society's area of membership is outside the former's area of membership. As stated in paragraph (a) above, membership of more than one society of unlimited liability undermines the value of that liability. Hence it should not be allowed in the interest of the societies concerned. Except in the case of societies of unlimited liability, it should be possible for a person to join as many societies as it is necessary for him to join in order to obtain the services he is in need of, for his own non-middleman economic purposes. These needs may exist in the areas of membership of more than one society; e.g. one may cultivate agricultural lands in the areas of many agricultural co-operatives, making it necessary for him to join the agricultural cooperative of each such area. The enrolling society is the best judge, and the party most entitled to judge, whether the applicant for membership should be enrolled, despite his membership in other societies of the same type. Once again the axiom "the members know best what their interests are" applies. If a society is in need of information about an applicant's record in another society, of which he has been a member, to enable it to judge his fitness for membership, the Registrar should help with the required information which he could obtain through his field staff; but the decision whether to enrol or not should be taken by the society and not by the Registrar. The Registrar's act of giving permission would not make him responsible for any untoward result of such enrolment. So, his is power without responsibility, whereas the committee of a society would be answerable for any irresponsible decision. It would be the duty of each society's committee to see that a member is given loans only to the extent of his needs in that society's area of operations. The Act should prohibit membership in more than one society of unlimited liability.

The Registrar should have no power to make exceptions in regard to membership in any society, whether it be one of limited or unlimited liability. Such power would not only make him the *de facto* manager of the society concerned but would also be contrary to the Principle of Voluntary Association as well as that of Democratic Control.

VI. Judgements:

The Bombay High Court in the case of President, Nagarpalika Prathmic Shala Shikshak Servants Cooperative Credit Society Limited, Buldana vs. Ramchandra Damodar Umalkar observed:

“It is true while on the one hand an institution like a cooperative society should not be allowed to be exploited by influential persons to form a caucus, it is equally necessary that elements considered undesirable by an overwhelming majority of persons should not be foisted on unwilling members to destroy the homogeneity of the organisation by which the very basis of cooperative effort will be put in jeopardy”.

“...Ultimately it is for the majority of the members of the society to decide with whom they will deal and who should be associated with, if the principle of cooperation is to bear its fruitful results to the advantage of the majority of the members”.¹

In the case of Bombay Zoroastrian Cooperative Life Assurance Society vs. A.M. Katrak, it was observed:

“Some Act of the society is awaited before they are clothed with the right of membership...they have first to be admitted as members and then they shall be automatically clothed with the rights of membership.”

In the case of Umreth Urban Cooperative Bank Limited vs Chandulal Garbaddas, it was observed:

“However competent that gentleman may be, it is for the Managing Committee of the Bank to accept him, and no one has a right to impose him on others without their willingness. Some members may or may not like but a

1. Cooperative Law Journal, 1968-69, pp. 15-16

society is to be run through the majority view of its members expressed in a legitimate member....”

“It is for that body to decide whether to permit a person to become a member of their society. But once that discretion is used by them, properly or improperly, it cannot be questioned by any other body.”¹

VII. *Important Pronouncement:*

Jawaharlal Nehru opening the ICA Seminar on “Co-operative Leadership in South-East Asia” said:

“After all, the materials we work with are the human beings in India, and human beings differ from each other. And as the basic principle of a Cooperative is a *voluntary principle* and the principle of *voluntary cohesion*, this cannot be done by a *stroke of the pen* or by some *forceful methods*, because you *knock the bottom out of it* if you do that.”²

VIII. *Recommendations:*

Provisions regulating the admission, withdrawal and expulsion of members should not find any place in the Acts or Rules. Their proper place is in the Bylaws of Co-operative Societies, as these are matters for self-regulation. Therefore, the provisions mentioned above should be rescinded.

The provisions for compulsory membership of the Orissa and Kerala State Cooperative Unions should be deleted as these provisions are contrary to the Principles of Voluntary Association and Democratic Control. The provisions constituting the Kerala State Cooperative Union should be rescinded.

1. Bombay Cooperative Tribunal, Vol. VII, 1956, p. 22.

2. Cooperative Leadership in S.E. Asia, ICA Regional Office, New Delhi, p. 9.

Chapter IV

The Laws Relating to the Principle of Open Membership

I. Eligibility for Membership

The provisions in the State Acts and Rules envisage eligibility for membership in the normal as well as an abnormal way. These two ways are discussed below.

A. NORMAL ELIGIBILITY

(i) *Acts*: The following provisions of the State Acts define the persons who are eligible to be members of a cooperative:

Andhra Pradesh	Secs. 6(3), 19, 21, 43
Bihar	Sec. 8
Gujarat	Secs. 22(1), 51
Himachal Pradesh	Secs. 17, 18, 48
Jammu & Kashmir	Secs. 16, 37, 38, 48
Kerala	Secs. 16, 42, 43, 44
Madhya Pradesh	Secs. 19, 20, 45
Maharashtra	Secs. 22(1), 50, 51
Mysore	Secs. 16, 41
Orissa	Secs. 16, 41
Punjab	Secs. 15, 15A, 40
Tamil Nadu	Secs. 17(1), 44
Uttar Pradesh	Secs. 17, 44
West Bengal	Secs. 38, 59A
Delhi	Secs. 20(1), 45

(ii) *Rules*: The following Rules define the persons who are eligible to be members of a co-operative society:

<i>Act</i>	<i>Sections</i>
Andhra Pradesh	13 and 20
Delhi	27
Gujarat	11 and 13

Himachal Pradesh	16
Kerala	17
Maharashtra	20
Orissa	16
Rajasthan	14, 15 and 21
Uttar Pradesh	40, 41, 44(b) and 45

(iii) *Summary of the Rules:* Andhra Pradesh Rule 13 provides that any person who has not attained the age of majority may be admitted an associate member of any society belonging to a class of societies specified in the Rule. Andhra Rule 20 provides that if any person, who is admitted a member of a society, becomes disqualified under the Act (section 21) to continue as such, the Registrar may, on his own motion or on a representation made to him by any member of the society or its financing bank, by an order in writing, declare that such person shall cease to be a member of the society from the date of such disqualification. The Rule further provides that before passing an order the Registrar shall give such person an opportunity to state his objections, if any, and to be heard. The Registrar's decision shall be final and shall not be questioned in any court.

Delhi Rule 27 provides that a cooperative society may admit persons to be joint members provided they make a declaration in writing that the person whose name stands first in the share certificate shall have the right to vote and that all the liabilities will be borne jointly and severally by them as provided in the Act, Rules and by-laws. The Rule further provides that a cooperative society may admit minors and persons of unsound mind inheriting a share or other interest of deceased members to its membership through their legal representatives or guardians respectively, in accordance with the procedure laid down in the bylaws of the society concerned and the Rules for the admission of members.

Gujarat Rule 11 provides that a firm or a company may be admitted a member only of a society which is a federal society or an urban society or which conducts or intends to conduct an industrial undertaking. The explanation to

the Rule says an urban society means a society, the business of which mainly falls within the limits of a municipal corporation, municipality, cantonment or notified area. Rule 13 provides that a society of any class may admit any person as a nominal member. The Rule further provides that a society formed for the uplift of backward classes or scheduled tribes, a labour contract society, a forest labourers' society, a processing society or an industrial society may admit any person as an associate or sympathiser member.

Himachal Pradesh Rule 16 provides that a society may admit joint members, provided they make a declaration in writing that the person whose name stands first in the share certificate, or the members' register and in case of his death, the person mentioned next in the said certificate, or the register, as the case may be, shall have the right to vote, and all the liabilities will be borne jointly and severally by them as provided in the Act, Rules and Bylaws.

Kerala Rule 17 provides that to a society formed for the promotion of the economic interests of its members through a specified activity or a society formed exclusively for the benefit of persons engaged in any particular industry, no person other than one who is likely to be benefited directly by such action or is an actual worker in the industry, as the case may be, shall be admitted with such result that the number of such members would be in excess of the number of such members as may be permitted by the by-laws or in any case in excess of 10 per cent of the total number of members in the society.

Maharashtra Rule 20 provides for admission of joint members and the Rule is similar to the Delhi Rule.

Orissa Rule 16 provides that a Panchayat Samiti, Grama Sasan, Orissa State Khadi and Village Industries Board or any other body corporate may be admitted to a society with the prior permission of the Registrar.

Rajasthan Rule 14 provides that a firm, a company or any other body corporate constituted under any law for the time being in force, or a society registered under the Societies Registration Act 1958, Zila Parishads or Pancha-

yat Samitis constituted under the Rajasthan Panchayat Samitis and Zila Parishads Act 1959; a Panchayat constituted under the Rajasthan Panchayat Act 1953, a Public Trust registered under any law for the time being in force, a municipality constituted under the Rajasthan Municipalities Act 1959 and a Khadi Village Industries Board constituted under the Khadi and Village Industries Act 1955, may be admitted to a cooperative "with the previous sanction of the Registrar". Rule 15 provides for the admission of the following persons as nominal or associate members, namely—in the case of a financing bank, other than a Land Development Bank, a person who maintains a deposit of at least Rs. 500 in a deposit account of the Bank; and in the case of a marketing society a person who carries on business in agricultural commodities in the area of operation of the society and has dealings with it. In addition, the Rule provides that local authorities, namely the Zila Parishad and Panchayat Samiti constituted under the Rajasthan Panchayat Samitis and Zila Parishad Act 1959; and Panchayats constituted under the Rajasthan Panchayat Act 1953 may be admitted to a society as associate members. Rule 21 provides for the admission of joint members, minors and persons of unsound mind and this Rule is similar to the Delhi Rule.

Uttar Pradesh Rule 40 provides that if two or more persons have jointly inherited the share or interest in the shares of a deceased member of a society, such persons may be admitted to the ordinary membership of the society. Rule 41 provides that no individual who is an undischarged insolvent shall be a member of a cooperative society, which gives loans in cash or kind. Rule 44(b) states that no person, who is an individual, shall be admitted to the ordinary membership of an apex society or central bank (other than U.P. State Cooperative Land Development Bank and an Urban Central Bank); and to a central society which includes any other central society in its ordinary membership. Rule 45 provides that no joint stock company shall be admitted an ordinary member of an apex or central bank, other than an urban central bank, or of a primary agricultural credit society.

(iv) *Comments:* The provisions in the Acts, which provisions permit the State, firms, companies and other un-cooperative corporate bodies and any other persons as may be prescribed by or under the Rules to be members of co-operative societies, are contrary to the Principle of Open Membership.

Gujarat Rule 11, Orissa Rule 16, Kerala Rule 17, Rajasthan Rule 14 and Uttar Pradesh Rule 45 contain the same errors as those in the Acts of permitting the admission of unco-operative bodies to cooperative societies.

The Principle of Open Membership is that a cooperative society's membership is open only to those who, for their own non-middlemen purposes, need and can make use of the society's services which are rendered for satisfying a common economic need of its members. The State as well as un-cooperative bodies would normally have the need that is directly the opposite of the cooperative society's need, as explained more fully in Chapter I. Even if such a body has the same economic need as that of the society, the purpose of its need would not be a non-middleman one. Hence, it would be ineligible for membership of any co-operative society.

Admitting non-cooperative bodies to the membership of cooperative societies is surely the introduction of the Trojan Horse of anti-Cooperation into the Cooperative camp. This is not only a gross violation of the Membership Principle but also a sure way of undermining the Cooperative Movement. Apparently the law-givers have lost sight of the ideology of the Movement as well as the government's duty to foster it on the right lines and not lead it astray.

Any Rule contrary to the purposes of the Act is ultra vires of the Act, since Rules can be made only to carry out the purposes of the Act. The Act recognises only societies which observe Cooperative Principles for the purpose of registration as cooperatives. Therefore, as pointed out by us at the outset (Chapter II), laws which are contrary to the Cooperative Principles, whether they be in the Act or the Rules, are *ipso facto* ultra vires of the overriding provision

that the societies registered under the Act must conform to Cooperative Principles.

The Orissa and Rajasthan Rules permit such irregular admission only with the permission of the Registrar. Thus, he who should be the guide, philosopher and friend of the Movement is empowered to permit cooperatives to violate Cooperative Principles! And, when we know who actually exercises this power, we have to realise that what is bad enough if it is done by the Registrar at his own discretion is made worse by the fact that he can be compelled to permit cooperatives to do what is uncooperative and unhealthy for the Movement by the political powers that be. It is, unfortunately, standard today that neither the political authority nor the civil servant in ultimate charge of the well-being of the Movement is imbued with or has imbibed the true spirit of cooperation. So what they, with a little learning, prescribe has often proved harmful to the Movement. These uncooperative laws give rein to the faddist and the uninformed enthusiast as well as the unscrupulous politician. If these laws are not rescinded, we can only sigh with Cicero : *0 tempora,, 0 mores!*

Andhra Pradesh Rule 13, Rajasthan Rule 15 and Tamil Nadu Rule 19 which provide for nominal and associate membership are violations of this Principle. It does not envisage different levels of membership, i.e. with any limitation of membership rights in respect of any member or class of members. Such violation would also be a violation of the Democratic Principle that all members shall have equal or equitable rights of voting and participation in the affairs of the society. Such limitation paves the way for the development of a situation where a caucus rules over the rest of the members. The latter remain inarticulate. If such persons are denied the right to draw rebate as well, the society would be middleman in character and unco-operative on that account too.

The provisions in Delhi Rule 27 regarding minors and persons of unsound mind inheriting the interests of deceased members should be in the Act, because what affects any member of the public as such should be embodied in

substantive legislation, whilst what relates to members of cooperative societies should be in the respective bylaws.

Andhra Pradesh Rule 20 is unnecessary because a person who loses his qualification for membership would *ipso facto* cease to be a member. The disqualifications should be stated in the bylaws and not in the law. A declaration by the Registrar is unnecessary except when there is a dispute between the member and the society regarding the matter and one party refers the dispute to him. His decision will be final in law.

B. ABNORMAL ELIGIBILITY

(i) *Acts*: The following provisions of the Acts give another pattern even more alien to co-operation than that which allows unco-operative bodies to be admitted to co-operative societies. These provisions allow secondary and tertiary societies to purchase shares in their primary and secondary member societies!

Gujarat	Sections 52, 53, 54
Jammu & Kashmir	Sections 38 and 48
Kerala	Sections 43, 44, 45
Maharashtra	Sections 52 and 53
Mysore (Karnataka)	Sections 42, 43, 44
Orissa	Sections 41, 42, 43, 44
Tamil Nadu	Sections 45, 46, 47
Uttar Pradesh	Sections 44, 45, 46

(ii) *Rules*: The following Rules permit the State and the apex and secondary societies to purchase shares in cooperative societies:

Andhra Pradesh	Rule 34
Himachal Pradesh	Rule 67
Uttar Pradesh	Rules 132 and 135
West Bengal	Rule 72

(iii) *Summary of the Rules*: The Andhra Pradesh Rule provides that the Government may, subject to such terms and conditions as may be specified, subscribe directly to the share capital of a society. The Rule further provides that the Government may provide finance to an apex society for the purchase of shares in other societies. The

apex society shall constitute with such money a fund known as "Principal State Partnership Fund" which shall be utilised for the purpose of purchasing shares of other societies; and for providing finance to a central society to enable that society to purchase shares in other societies. The central society shall establish a fund known as "Subsidiary State Partnership Fund", out of the funds received from an apex society and such fund shall be utilised by the Central Cooperative Society for purchasing shares in primary societies. The Rule further provides that no shares shall be purchased in a society from the Principal State Partnership Fund or the Subsidiary State Partnership Fund "except with the previous" approval in writing of the Government".

The Himachal Pradesh Rule provides that subject to the provisions of the Act, the State Government may make a share capital contribution to a society. There is no provision pertaining to this question in the Act.

Uttar Pradesh Rule 132 provides that for the purpose of providing money under the Act [Section 44(2)(b)] the State Government may lay down such terms and conditions as it may think fit and specify the cooperative societies in which shares have to be purchased. Rule 135 provides that the State Government shall determine the quantum of State participation in the capital of a cooperative society or of cooperative societies of a particular class. The Rule lays down that ordinarily it shall not be more than fifty per cent of the subscribed share capital of the society and it may be sixty per cent or more of the subscribed share capital in the case of cooperative sugar factories, spinning and weaving mills, milk producers' societies, unions of such societies or federations of such unions and in cooperative societies engaged in setting up cold storage plants or in processing activities or such other industrial activity which, in the opinion of the State Government, requires liberal State participation in their share capital.

The West Bengal Rule provides that the "Provincial Government" may grant loans "to take shares in", or give any other financial assistance to any society for any of the purposes specified in the Rule.

(iv) *Comments:* Contribution to the share capital of a society by the State is a violation of the Principle of Open Membership because, as explained earlier, the State is not eligible to become a member of a cooperative. Even a cooperative cannot become a member of another cooperative if the former's need is not identical with the common economic need of the members of the latter. Normally a cooperative's need would be identical with the common economic need of the members of a federal society which is of the same type and at a higher level e.g. a primary society's need would be identical with the common need of other primaries of the same type which are members of a secondary society of the same type. Therefore, the primary would be entitled to join that secondary. A cooperative's need would not be the same as the common need of the members of a cooperative which is at a lower level of the federal structure. Thus an apex society cannot become a member of a central society because the apex society's need would not be the same as the common need of the primary societies which are federated into the central society. A central society similarly cannot become a member of a primary society because the central society's need would not be identical with the common need of the individual members of the primary. These provisions therefore make a mockery of cooperative membership.

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! As stated by the Principles Commission, "it is a mistake to interpret the rule of open membership in the sense that all cooperatives are obliged to enrol all persons who may apply to join them. Open membership has never meant that". The purchase of shares by federal societies in their member societies is an aberration so topsyturvy that it is obvious to anyone and needs no explanation.

C. JUDGEMENTS :

In the case of Government of Punjab ex-Servicemen Motor Transport Cooperative Society Limited, Barnala, vs.

Assistant Registrar of Cooperative Societies, Sangrur, it was laid down that “that should be the test of working on a cooperative basis that its membership is not denied to others eligible to join”.¹

D. COMMISSION REPORTS :

The Committee on Cooperation (1965) observed:

“Open membership does not mean that anybody can demand as of right, admission to any cooperative society; it only means that a society formed with certain definite objects shall keep its doors open for all people who share these objects.”²

E. IMPORTANT PRONOUNCEMENTS:

Jawaharlal Nehru, addressing the Third Indian Co-operative Congress in April 1958, observed:

“Now I want to make a confession to you, and that is that I think our government was quite wrong in accepting some of the decisions of the Rural Credit Survey Committee—not all, but some. I am sorry for it. I am responsible for it as much as anybody else. It is as much my fault as anybody else’s. The more thought I have given to it, the more I have realised that the approach of the Rural Credit Survey Committee in some respects was not a right or sound approach and they tended to push the cooperative movement in the country in the *wrong-direction*. What was this wrong direction? There was a tendency, on the part of that committee to distrust our people, if I may say so, our common people, a tendency to think that they are not competent enough, that they cannot do a job by themselves; that, therefore, government officials must come in and help, that government money should push them up. If government money comes, that money is followed by government officials. The small cooperative has not enough resources or money or competent technical personnel; therefore, you should have large cooperatives,

1. Cooperative Law Journal, 1966-67, p. 361.

2. Report of the Committee on Cooperation, 1965, p. 7.

which can be started and helped by government and so on. Now I believe that that approach, which has certainly something to say for it—it may be argued that there is some reasons behind it—was, nevertheless, a wrong approach, and it has given a wrong turn to our cooperative movement. Ever since I realised this, I have been trying to point this out; and here on this occasion I should like to say to you, who are chiefly responsible, that that approach, even though it might bring some results locally and temporarily, pushes the cooperative movement in a direction *which is not cooperative at all, which is something else, and which offends against the whole philosophy* which, I believe, has grown up round this movement. Because, if it is to be a state-sponsored movement, with government officials running it, it may do some good if the government officials are competent enough, but *it does infinite harm* in the sense that *it does not allow the people to learn how to do things for themselves, how to develop a spirit of self-reliance, self-dependence* and even to make mistakes, if they have to make mistakes”.¹

F. RECOMMENDATIONS:

The existing legal provisions which make the statutory bodies, companies and other corporate unco-operative bodies eligible for buying shares in co-operative societies and those which make federal co-operative societies eligible for buying shares in their member societies should be rescinded, as they contravene the Principle of Open Membership.

The provisions of Delhi Rule 27 regarding the admission of minors and persons of unsound mind should be in the Act.

The respective Acts may contain the provisions of the following Rules regarding joint members:

Delhi	27
Himachal Pradesh	16
Maharashtra	20
Uttar Pradesh	20 and 21

1. “Jawaharlal Nehru on Cooperation”, National Cooperative Union of India, 14th November 1971, pp 6-7.

II. Conditions for obtaining Membership

(i) *Rules*: The following rules provide for conditions to be complied with by a person seeking admission to a society:

Assam	Rule 15
Delhi	Rules 24 and 30(4)
Gujarat	Rule 14
Kerala	Rules 16 and 20
Madhya Pradesh	Rule 14
Maharashtra	Rule 19
Orissa	Rule 16(2)
Rajasthan	Rule 14
Uttar Pradesh	Rules 39, 46, 48, 49, 50 and 51
West Bengal	Rule 100

(ii) *Summary*: The Assam Rule (15) provides that no person shall exercise the rights of a member unless and until he has made such payments to the society in respect of membership or acquired such interest in the society as may be prescribed in the bylaws, subject to the conditions that (a) every applicant for admission as a member must agree to pay an application fee as may be prescribed in the bylaws provided that such fee shall not be less than eight annas or exceed two rupees; (b) every applicant for admission as a member must also agree to pay such admission fee as may be prescribed in the bylaws. Such fee shall not be less than one rupee where the applicant is an individual and five rupees where the applicant is a registered society; and (c) where the capital is to be raised by the issue of shares, each member must agree to subscribe to at least one share or the minimum number of shares prescribed in the bylaws and pay the dues on account of such share or shares, as required under the bylaws.

Delhi Rule 24 provides that no person shall be admitted a member of a cooperative society unless—(i) he has applied in writing, in the form laid down by the cooperative society or in the form specified by the Registrar, if any, for membership, (ii) his application is approved by the committee of the cooperative society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the

general body may pass, and in the case of nominal associate or sympathiser member, by an officer of the society authorised in that behalf by the committee; (iii) he has fulfilled all other conditions laid down in the Act, the rules and the bylaws; (iv) in the case of a firm, company or body corporate, a society registered under the Societies Registration Act 1960, a public trust or a local authority, the application for membership is accompanied by a resolution authorising it to apply for such membership, and the sanction of the Lt. Governor has been accorded.

Delhi Rule 30(4) lays down a period of fourteen days within which an applicant for membership of a cooperative should pay up his entrance fee and share money.

The Gujarat Rule (14) provides that subject to the provisions of the Act, no person shall exercise the rights of a member of a society unless—(i) he has paid an entrance fee as laid down in the bylaws of the society; (ii) he has subscribed for at least one share and made the payment towards the share money as laid down in the bylaws of the society; (iii) he has fulfilled all such conditions as are laid down in the bylaws of the society for exercising the rights of membership.

The Kerala Rule 16 provides that no person shall be admitted a member of a society unless—(a) he has applied in writing in the form, if any, laid down by the society, (b) his application is approved by the committee of the society, (c) he has fulfilled all other conditions laid down in the Act, Rules and bylaws, and (d) in the case of other societies or a body of persons, whether incorporated or not, and any statutory or non-statutory board approved by the Government, Committee or Corporation constituted for the development of any industry, the application for membership is accompanied by a resolution authorising it to apply for such membership. Rule 20 provides that the payment to acquire membership shall include (i) admission fee, (ii) subscription to share capital, and (iii) any other amounts required to be paid under the bylaws.

The Madhya Pradesh Rule (14) provides that no person shall be admitted a member of a society unless—(i) he has

applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership; (ii) he has purchased at least one share and paid the value thereof in full or in such instalments as may be decided by the committee or general meeting of the society, as the case may be according to the bylaws of the society; (iii) his application has been approved by the committee or the general meeting of the society, as the case may be, according to the bylaws of the society; (iv) he has fulfilled all other conditions laid down in the Act, the Rules and the bylaws.

The Maharashtra Rule (19) provides that no person shall be admitted a member of a society unless—(i) he has applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership; (ii) his application is approved by the committee of the society in pursuance of the powers conferred on it and subject to such resolution as the General Body of members may in that behalf from time to time pass, and in the case of nominal, associate or sympathiser members, by an officer of the society authorised in that behalf by the committee; (iii) he has fulfilled all other conditions laid down in the Act, the Rules and the bylaws; (iv) in the case of a firm, company or body corporate, a society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force or a local authority the application for membership is accompanied by a resolution authorising it to apply for such membership.

Orissa Rule 16(2) provides that no person shall be admitted a member of a society unless (i) he has applied in writing for membership in the form laid down by the committee, subject to the approval of the Registrar; (ii) his application is accepted by the committee of the society in pursuance of the powers conferred on it in that behalf and in the case of a nominal or associate member, by an officer of the society authorised in that behalf by the committee; (iii) he has fulfilled all other conditions laid down in the Act, Rules and the Bylaws; and (iv) in the case of a Panchayat Samiti, Grama Sasan, the Orissa Khadi and Village Industries Board or any other body corporate, the

application for membership is accompanied by a copy of the resolution of the body concerned to apply for such membership.

Rajasthan Rule 14 provides that no person shall be admitted a member of a society unless—(i) he has applied in writing for membership; (ii) his application is approved by the committee of the society, in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may, in pursuance of the powers conferred on it in that behalf from time to time, pass or he is admitted by the orders of the Registrar in pursuance of the Act [Section 19(4)], or, in the case of a nominal or associate member, by an officer of the society authorised in that behalf by the bylaws; and (iii) he has fulfilled all other conditions laid down in the Act, the Rules and the bylaws. With regard to the membership of a firm, a company, municipality or any other body constituted, the Rule further provides that such body shall not be admitted a member in any society except with the previous sanction of the Registrar and that the application for membership is accompanied by a resolution authorising it to apply for such membership.

Uttar Pradesh Rule 39 provides that where the State Warehousing Corporation, a cooperative society or a society registered under the Societies Registration Act of 1860, company or other body corporate registered or incorporated under any law for the time being in force, applies for the membership of a cooperative society, the application for membership shall be made by such person or authority as may be competent to do so under the provisions of the law or bylaws governing such body, Rule 46 provides that a nominal or an associate member shall pay only such admission fee as may be required under the bylaws of the society. The admission fee shall not be refundable nor shall it bear any interest. Rule 48 provides that every person before being admitted to the membership of a cooperative society shall sign a declaration that he will be bound by the existing bylaws of the society, and by any amendment thereof. Such declaration shall be attested by two persons. Rule 49 pro-

vides that a person who is already a member of a cooperative society by reason of his having joined in the application for the registration of the society shall, within one month of the registration of the society, be required by such society to sign the declaration referred to in Rule 48. If he fails to do so, he shall be liable for expulsion from the membership of the society. Rule 50 provides that a member of a cooperative society shall not be entitled to exercise the rights of membership unless he has signed the declaration mentioned in Rule 48 and has made such payment to the society as may be necessary in respect of membership or has acquired such interest in the society as may be required in the bylaws of the society. Rule 51 provides that no person shall be admitted as a sympathiser member of a cooperative society unless he submits an application in writing to the Secretary of the society on the form and in the manner provided for the purpose in the bylaws of the society.

(iii) *Comments:* What is required of those eligible for membership should be included in the bylaws of the societies and in the model bylaws. Making laws in this regard is a violation of the Principle of Open Membership as well as that of Democratic Control.

(iv) *Recommendations:* These Rules should be rescinded and provisions of the same tenor should be included in the bylaws of the societies but applicable only to persons or societies eligible for membership in terms of this Principle.

III. Limitation of the size of societies

(i) *Rules:* The following Rules lay down the maximum numbers of members that societies of certain types may have:—

Assam	7
Bihar	12
West Bengal	11

(ii) *Summary:* The Assam Rule provides that no registered society of unlimited liability shall have more than one hundred members, except with the approval of the Registrar, “which will not be given except for special reasons to be recorded in writing”. The Rule further provides that without

the sanction of the Registrar, no registered society with unlimited liability shall have more than 50 members at the start and that "the member (number?) may be increased by not more than 20 members a year upto the maximum prescribed above". The Rule lays down that in cases of amalgamation of societies or change of liability under the Act (Sec. 15 and Sec. 9 respectively) the restrictions and limits specified in the Rule shall not be operative.

The Bihar Rule provides that wherever the membership of a registered society is open to both individuals and registered societies, the Registrar may, from time to time, prescribe the proportion which the number of individual members shall have to the number of registered societies which are members of such society.

The West Bengal Rule provides that without the permission of the Registrar, no society with unlimited liability shall have more than five hundred members.

(iii) *Comments:* Prescribing a limit to the number of members is contrary to the principle of open membership as well as that of democratic control. Under the former, it is open to a society to enrol as many persons as are eligible for membership. Under the latter, a society's right in this respect cannot be curtailed by an outside authority. The members are the best judges of the optimum number. The optimum number is laid down in the Principle of Open Membership viz. the number that need and can use the services of the society, and conversely the number that can be served by the society, and not more. It is the society and not the State that is entitled to decide what number should be deemed the optimum number. The number must vary from society to society according to each society's scope for cooperative service. Moreover the artificial restriction of the number of members will lead to speculation in cooperative shares. It is open membership that keeps the cooperative share value at par at all times. The law should be the reverse of these rules. It should say that membership in a cooperative shall be open without any social, racial, religious or political discrimination and available without any artificial restriction to all persons who need and can use its services provided

that a society may from time to time fix the maximum number of members it may have in the light of its capacity to render efficient service. Fixing the proportion of individual members to society members of a cooperative society (vide Bihar Rule 12) is also a matter for the society concerned. The Registrar's power to determine this proportion is contrary to the Principles of Voluntary Association and Open Membership as well as the Principle of Democratic Control.

(iv) *Recommendation*: These rules should be rescinded.

IV. Restriction on Time of Admission to Societies

(i) *Rules*: The following Rules restrict the powers of the general body in regard to the admission of persons to societies:

Delhi	Rule 29
Himachal Pradesh	Rule 14
Jammu & Kashmir	Rule 9
Karnataka	Rule 8
Kerala	Rule 26
Madhya Pradesh	Rule 16
Orissa	Rule 26
Punjab	Rule 16
Rajasthan	Rule 26
Uttar Pradesh	Rule 410

(ii) *Summary*: The Delhi Rule provides that no cooperative society shall admit persons to its membership within one month prior to the date of a meeting of its general body.

The Himachal Pradesh Rule provides that no society shall admit members within 15 days prior to the date of an annual or special general meeting.

The Jammu & Kashmir and the Punjab Rules provide that no person shall be admitted to the membership of a society within 14 days prior to the date of its Annual General Meeting.

The Kerala Rule, while providing that no admission to the membership shall be made within 30 days prior to the date of issue of a notice of a general body meeting, states that a person admitted in contravention of this Rule shall

have no right to vote or exercise the rights of membership at the said general meeting or any subsequent meeting held for the purpose of electing office-bearers or committee members.

The Madhya Pradesh and Orissa Rules provide that no person shall be admitted a member of a society within thirty days prior to the date of its Annual General Meeting at which the election of the committee or office-bearers is due to take place.

The Karnataka and Rajasthan Rules provide that no admission of members shall be made within 30 days prior to the date of an Annual General Meeting.

The U.P. Rule provides that no person shall be admitted a member of a society, after the issue of the notice of an Annual General Meeting till the holding of elections in the meeting.

(iii) *Comment:* These Rules violate the Principle of Open Membership. As these are matters for self-regulation these provisions are contrary to the Principle of Democratic Control also.

(iv) *Recommendation:* These Rules should be rescinded and suitable provisions such as the above should be included in the bylaws of societies.

The Principle of Democratic Control

Democracy, as declared by the ICA, is the essence of Cooperation. Therefore, the most significant principle of Cooperation is that of "Democratic Control".

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 primary societies shall enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. The members of federal societies shall enjoy these rights provided that instead of equal voting power each member-society may enjoy votes in proportion to the number of its members or the volume of its transactions with the federal society and provided further that the federal society shall provide for only one of these bases of voting in its constitution;
- (3) the affairs of the society are administered by the management in accordance with the democratically expressed will of the members;
- (4) the management is elected or appointed in a manner agreed by the members;
- (5) the management is accountable to the members.

The laws affect this principle in respect of the above aspects and are therefore dealt with accordingly. Numbers (4) and (5) above have been dealt with together as (4).

1. THE SUPREMACY OF THE GENERAL BODY

A. PROVISIONS DECLARING THE SUPREMACY OF THE GENERAL MEETING:

(i) *Acts:* The following provisions of the State Acts relate to the vesting of the supreme authority of a co-operative society in its general body of members:

Andhra Pradesh	Sec. 30
Assam	Sec. 31(3)
Gujarat	Sec. 73
Himachal Pradesh	Sec. 31
Jammu & Kashmir	Sec. 25
Kerala	Sec. 27
Madhya Pradesh	Sec. 48
Maharashtra	Sec. 72
Orissa	Sec. 27
Punjab	Sec. 23(1)
Tamil Nadu	Sec. 26 (1)(A)
Uttar Pradesh	Sec. 28
West Bengal	Sec. 20
Delhi	Sec. 28(1)

(ii) *Rules:* The following Rules provide that the General Body of a cooperative society is its supreme authority:

Rule 54 : The Delhi Cooperative Societies Rules, 1973

Rule 25 : The Himachal Pradesh Cooperative Societies Rules, 1971

Rule 22 : The Punjab Cooperative Societies Rules, 1963.

Rule 29 : The Rajasthan Cooperative Societies Rules, 1966.

The Delhi Rule provides that the general meeting "alone" shall have power to fix the maximum credit limit of a cooperative society subject to the approval of the Registrar.

The Himachal Pradesh Rule specifies the business to be transacted by the General Body.

Though the Punjab Act vests the supreme authority of the society in the General Body (Sec. 23), the Rule subjects the general meeting's decision on the maximum credit limit to the approval of the Registrar.

The Rajasthan Cooperative Societies Rule specifies the business of the first general meeting of a society.

(iii) *Comments:* Under the above provisions the final authority in the management of the cooperatives is vested in the general body, but except in the Punjab and Delhi Acts, the vesting of ultimate administrative power in the general meeting of the members of the society has been nullified by the clause "subject to the provisions of the Act and the Rules". The Punjab and Delhi Acts clearly vest the supreme authority of the society in the general body of the society and this authority is not circumscribed. But the Punjab Rule circumscribes this. However, powers which infringe the authority of the general body are given to the State in the same acts, quite inconsistently with the vesting of supreme power in the general body. Any legal provision which restricts the autonomy of a cooperative society in regard to its administration is repugnant to the Principle of Democratic Control.

The Delhi and Punjab Rules violate the principle of "Democratic Control" by subjecting the society's decision on the Maximum Credit Limit to the Registrar's approval.

The Punjab Rule is ultra vires of the Act as well.

The provision of the Himachal Pradesh and Rajasthan Rules should be in the bylaws.

(iv) *Judgements:* In the case of Manilal Narottamdas Gandhi vs. Vivekanand Cooperative Housing Society Limited, it was observed:

"The general body represents the will of the society and unless its decision violates the principles of justice and equity, the Tribunal should not interfere solely with a view to make minor adjustments. The powers of the tribunal are not intended to interfere with the autonomy of the general body which represents the society in the matter of managing its affairs, unless the general body has acted in violation of principles of justice and equity."¹

The Bombay High Court in the case of Little Gibbs

1. Bombay Cooperative Tribunal, Vol. XII, Part II, 1960, p. 31.

Cooperative Housing Society Limited *versus* State of Maharashtra gave the following judgement:

“Apparently the Cooperative Societies under the Act are autonomous bodies. Final authority of each such Society vests in the General Body of members. The Management, however, of such Society vests in a Committee which is otherwise known as Managing Committee.”¹

The Patna High Court in the case of Shri Ram Prasad Sahni *versus* Registrar of Cooperative Societies, gave the following judgement:

“It is well settled that the ultimate control rests with the general body of the members of the cooperative society.”²

In the case of Master Papir Bai Laxmichant & Others *versus* Chellaram Lakumal Cooperative Housing Society Limited, it was observed:

“In a society, the General Meeting is the sovereign body having all powers to decide all questions relating to its management and working and unless some such ground as fraud or negation of principles of justice and equity are established, it would not be open to the Registrar or to the Tribunal to interfere with the internal management of the society.”³

(v) *Commission Reports*: The Committee on Cooperation (1965) observed:

“The supreme authority of the society is vested in the general body of members and all matters of policy, programme, management, investment of funds and distribution of profits are subject to the approval of the general body. The day-to-day management of the affairs of the society is entrusted to the elected committee, subject to the overall policy directives of the general body. By the operation of the principle of democratic control, a cooperative society thus functions as a self-governing institution.”

1. Cooperative Law Journal, Vol. VIII, October 1972, p. 232.

2. Ibid, Vol. VII, 1971-72, p. 261.

3. Ibid, Vol. I, 1965-66, pp. 134-135.

(ii) Registrar's power to convene general meetings.

(a) *Acts* : The following provisions of the State Acts empower the Registrar to call a general meeting of the members or to authorise any person on his behalf to call a meeting at such place and time as the Registrar may direct.

The relevant sections are as follows:

Andhra Pradesh	Secs. 32(1), (2), (5), (6)
Assam	Sec. 33
Gujarat	Sec. 77
Himachal Pradesh	Secs. 32, 33(1), 33(2)
Jammu & Kashmir	Sec. 27
Kerala	Sec. 30
Madhya Pradesh	Secs. 49, 50
Maharashtra	Sec. 76(1)
Mysore	Sec. 27, 28
Orissa	Sec. 30
Punjab	Sec. 25
Tamil Nadu	Sec. 26(3)(a)(v)
Uttar Pradesh	Secs. 32, 33(2)
West Bengal	Sec. 22
Delhi	Secs. 29, 30(1)

(b) *Rules*: The following Rules empower the Registrar likewise:

Andhra Pradesh Cooperative Societies Rules, 1964 Rule 23A

Bihar Cooperative Societies Rules, 1959—Rule 20

Himachal Pradesh Coop. Societies Rules, 1971—Rule 27

Kerala Coop. Societies Rules, 1969—Rule 36

Madhya Pradesh Coop. Societies Rules, 1962—Rules 34 & 35

Maharashtra Coop. Societies Rules, 1961—Rules 59 & 63

Orissa Coop. Societies Rules, 1965—Rules 32 & 35

Punjab Coop. Societies Rules, 1963—Rule 4

Rajasthan Coop. Societies Rules, 1966—Rules 29 & 31.

(c) *Summary of the Rules*: Madhya Pradesh Rule 34, Maharashtra Rule 59, Orissa Rule 32 and Rajasthan Rule

29 provide that the first general meeting of a society shall be convened by any person authorised in that behalf by the Registrar if the officers of the society/first signatory to the application for registration/organisers of the society fail to convene the general body meeting within the period stipulated for in the Rules.

The Andhra Pradesh and Himachal Pradesh Rules authorise the Registrar or any person authorised by him to call the annual general meeting of a society if the general meeting has not been called in accordance with the provisions of the Act.

The Bihar, Kerala, Madhya Pradesh (35) and Punjab Rules empower the Registrar or any person authorised by him to call a special general meeting of a society. Maharashtra Rule 63 empowers the Registrar to authorise any person subordinate to him or any officer or employee of a federal society to call the annual general meeting or a special general meeting of a society. Rajasthan Rule 31 empowers the Registrar or any person authorised by him to call the annual general meeting or a special general meeting under specified circumstances.

(d) *Comments:* This power is contrary to the Principle of Democratic Control. The Registrar should have the power to call a general meeting of a society only if a given number of members request him to do so for any particular purpose relating to the affairs of the society. He can always inspect the books of a society or inquire into the working and financial condition of a society *suo motu*.

(e) *Recommendation :* These provisions should be rescinded.

(iii) Notice of General Meetings

(a) *Rules:* The following Rules relate to the issuing of notices of general meetings to the members:

Delhi	Rules 56, 154 (2)(i)
Madhya Pradesh	Rule 34(3)
Maharashtra	Rule 60
Rajasthan	Rule 30(3)
Uttar Pradesh	Rule 96

(b) *Summary of the Rules:* Delhi Rule 56 provides that an annual general meeting of a society may be called by giving not less than 14 days notice in writing and a special general meeting by giving not less than seven days notice in writing. The Rule further provides that notwithstanding anything contained in the bylaws when a general meeting is called under the Act (Section 29) or in pursuance of the Act (Section 30), the Registrar may determine the period of notice of such meeting. Delhi Rule 154(2)(i) and Maharashtra Rule 60 provide that notice of all general body meetings shall be given to the Registrar under Delhi Rule 56, the Registrar may, of his own motion or on a reference made to him, declare the proceedings of a general meeting invalid, if he is satisfied that the meeting was held without proper notice or without notifying all the members of such meeting or that the meeting was not conducted at the appropriate place and time. Rule 154(2)(ii) says that 15 days notice should be given of general meetings and seven days notice of committee meetings or meetings of similar bodies.

The Madhya Pradesh Rule provides that unless otherwise provided in the bylaws, notice of the general meeting stating the place, date and hour of the meeting together with a statement of business to be transacted, shall be sent to every member fourteen days before the date of the meeting.

The Rajasthan Rule provides that unless otherwise provided in the Rules or the bylaws, a notice of a meeting stating the place, date and hour of the meeting together with a statement of business to be transacted at it, shall be sent to every member seven clear days before the date of the meeting in the manner provided in the Rule or the bylaws.

The U.P. Rule provides that notice of a meeting shall be given in accordance with the provisions of the Act, the Rules or the bylaws of the society.

(c) *Comments:* This is a matter for self-regulation and therefore a matter for the bylaws. The Delhi Rule stating that the Registrar shall be given notice of all general meetings is preposterous. Cooperative societies are independent organisations. They are free to hold their meetings without

Informing non-members. Therefore, this provision is contrary to the Principle of Democratic Control. The period of notice is a matter for determination by the members. It should be stated in the bylaws. To override their individual provisions in this regard by a Rule or other law is a violation of the Democratic Principle. It is also presumptuous for the Government to think that they know best what the period of notice should be. Whilst the Delhi and Madhya Pradesh Rules lay down a period of 15 and 14 days respectively, the Rajasthan Rule lays down only seven clear days and the Uttar Pradesh requirement is merely to endorse whatever has been laid down in the law or the bylaws—a meaningless provision. All this shows that it is best to leave what does not concern the government to those who have a right to deal with such matters,—in this case, the members and their guide, philosopher and friend, the Registrar. The latter invariably gets an opportunity of advising the members on matters of self-regulation when the bylaws are submitted to him for registration. The legislative body of a State or country has no right to interfere in matters that do not affect the public in general. It is axiomatic that the members know best what their interests are. The very diversity of the provisions in this regard proves that the State cannot claim to be the best judge of matters that concern a private society, which, it must be clearly understood, is the character of a cooperative society.

The Delhi provision empowering the Registrar to determine the period of the notice that should be given of a general meeting called by him under the Act should also be in the Act and not in the Rules. The power given to the Registrar by the same Rule to declare a meeting invalid is an unnecessary power because any dispute regarding a meeting is a matter which the members can refer to him as a dispute for arbitration.

(d) *Recommendation:* These Rules should be rescinded and suitable provisions should be included in the bylaws, wherever they do not exist, as well as in the model bylaws. The usual periods of notice are: one week for an ordinary general meeting; two weeks for a special general meeting;

and three weeks for the annual general meeting. But there should be no regimentation in this regard through the law.

(iv) Responsibility for Convening Meetings

(a) *Rules:* The following Rules relate to the convening of meetings of societies:

Madhya Pradesh	Rule 34(2)
Maharashtra	Rule 60
Punjab	Appendix 'B'—Part A (Rules 1, 2 and 3)
Rajasthan	Rule 30(2)
West Bengal	Rule 16

(b) *Summary:* The Madhya Pradesh Rule provides that all general meetings of a society, excepting the first annual general meeting, shall be convened by the Secretary of the society or any other officer authorised by, or under, its by-laws to convene such meetings.

The Maharashtra Rule provides that all general meetings of a society, excepting the first general meeting, shall be convened by the Secretary or any other officer authorised by or under the bylaws to convene such meetings, under intimation to the Registrar.

The Punjab Rules 1, 2 and 3 of Part A of Appendix B provide that a special general meeting of the society may be called from time to time by the Committee or by an officer of the society under the directions of the Committee. A special general meeting of a society shall be called by the committee on the receipt of a requisition for such a meeting from 1/5th of the total number of members. If, on the receipt of the requisition referred to in the Rule, the Committee fails within a reasonable time to call the special general meeting the signatories to the requisition may refer the matter to the Registrar who may, if he thinks fit, summon the special general meeting.

The Rajasthan Rule provides that all general meetings of a society shall be convened by the Secretary or any other officer authorised by, or under, the bylaws to convene such meetings, under intimation to the Registrar, who may

attend such meetings or authorise some person to attend such meetings on his behalf.

The West Bengal Rule provides that a general meeting shall be convened by the Managing Committee or under its direction by the Secretary.

(c) *Comments*: This is a matter for self-regulation. Therefore these provisions should be included in the bylaws. The Maharashtra and Rajasthan requirement to inform the Registrar of a meeting is not in accordance with Democratic Control.

(d) *Recommendation* : The Rules should be rescinded and these provisions should be included in the bylaws, except the requirement to inform the Registrar.

(v) **Quorum of Meetings of Societies**

(a) *Rules*: The following Rules relate to the quorum at meetings of societies:

Andhra Pradesh	Rule 23
Assam	Rule 24
Delhi	Rule 53
Himachal Pradesh	Rule 47
Madhya Pradesh	Rule 37
Maharashtra	Rules 60(2) & (10)
Orissa	Rule 28
Punjab	Rule 6 of Appendix 'B' Part 'A' & Part 'C' of Appendix 'B'
Rajasthan	Rules 30(4) & (12)
Uttar Pradesh	Rules 97, 100, 101 & 102
West Bengal	Rule 41

(b) *Summary* : The Andhra Pradesh Rule provides that except as otherwise expressly provided in the Rule, no general meeting or committee meeting shall be held or proceeded with unless the number of members required to form a quorum, as specified in the bylaws, is present.

The Assam Rule provides that unless otherwise provided in the bylaws, the quorum of a meeting of the general assembly shall be one-fifth of the total number of members existing as such as on the date of issue of the notice of the meeting or 100 whichever is less. The Rule further provides

that no business shall be transacted at any meeting of the general assembly unless there is a quorum at the time when the business of the meeting is due to commence. The Rule further provides that if within half an hour from the time fixed for the meeting of the general assembly a quorum is not present, the meeting shall stand adjourned ordinarily to the same day of the next week and at the same time and place but the chairman of the meeting may, however, decide to adjourn the meeting to a date not later than fourteen days or as may be provided in the bylaws of the society. The Rule further provides that in respect of a meeting of the general assembly which has been called on the requisition of members under the Act (Section 33) (1)(c), the meeting shall not be adjourned but dissolved. The Rule further provides that if, at any time during a meeting of the general assembly, the attendance of members falls below the quorum prescribed in the Rule, the chairman of the meeting, on his attention being drawn to the fact or on his own initiative, may adjourn the meeting to such date, time and place as he may think convenient, and the business to be transacted at this meeting shall be disposed of in the usual manner at the adjourned meeting even without a quorum.

The Delhi Rule provides that, notwithstanding anything contained in the bylaws, the quorum for a general meeting shall be one-third of the total number of members subsisting as such on the date of notice of the meeting subject to a minimum of 10 members. The Rule provides that no business shall be transacted at any general meeting unless there is a quorum at the time the business of the meeting is due to commence. The Rule further provides that if, within an hour from the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned ordinarily to the same day of the next week at the same time and place but if the meeting has been convened by a requisition of the member (not the Registrar) it shall stand dissolved. The Rule further provides that at the adjourned meeting, no quorum shall be necessary. If at any time during a meeting a sufficient number of members is not present to form a quorum, the chairman/president of the meeting,

on his own motion, may, or on his attention being drawn to this fact, shall, adjourn the meeting to such convenient time, date and place as he may think fit and the business to be transacted at the adjourned meeting shall be transacted in the usual manner, even "if no quorum is there present".

The Himachal Pradesh Rule provides that unless a larger proportion is provided in the bylaws, a quorum at a meeting of the managing committee shall be one-third of the total number of committee members, or three, whichever is more.

The Madhya Pradesh Rule provides that, unless otherwise provided in the bylaws of a society, the quorum of a general meeting shall be one-fifth of the total number of members on the date of notice of the meeting. The Rule further provides that no business shall be transacted at any meeting unless there is a quorum at the time when the business of the meeting is due to commence. The Rule further provides that if, within half an hour from the time appointed for the meeting, no quorum is formed, the meeting, unless otherwise stated in the notice calling the meeting, shall be adjourned by the president to such date and place as he may announce. The Rule further provides that no quorum shall be necessary at a meeting adjourned in accordance with this Rule and a meeting which has been called on the requisition of members under the Act [Sec. 50(1)] shall not be adjourned but dissolved. The Rule further provides that if at any time during the meeting a sufficient number of members is not present to form a quorum, the president of the meeting, on his attention being drawn to this fact or on his own motion, shall adjourn the meeting to such convenient date, time and place as he thinks fit and the business to be transacted at this meeting shall be disposed of in the usual manner at the adjourned meeting even if there is no quorum.

The Maharashtra Rule 60(2) provides that no general meeting shall be held or proceeded with unless the number of members required to form a quorum as specified in the bylaws is present. Rule 60(10) provides that if the general meeting cannot be held for want of a quorum, it shall be

adjourned to a later hour on the same day as may have been specified in the notice calling the meeting or to a subsequent day not earlier than seven days, and at such adjourned meeting the business on the agenda of the original meeting shall be transacted whether there is a quorum or not.

The Orissa Rule provides that the quorum for a general meeting shall be as fixed in the bylaws and no business shall be transacted at any meeting unless there is a quorum. The Rule further provides that if, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned ordinarily to the same day of the next week at the same time and place provided that— (i) no quorum shall be necessary at a meeting adjourned in accordance with this Rule, and (ii) a meeting which has been called or requisitioned under the Act [Section 30(i)] shall not be adjourned but dissolved for want of a quorum. The Rule further provides that if at any time during the meeting a sufficient number of members is not present to form a quorum, the President, on his attention being drawn to this fact, shall adjourn the meeting to such convenient date, time and place he may fix and the business to be transacted at this meeting shall be disposed of in the usual manner at the adjourned meeting even if no quorum is then present. The Rule further provides that the business to be transacted in the adjourned meeting shall be the same as in the agenda of the original meeting and no fresh notice is necessary for such adjourned meeting.

The Punjab Rule 6 (of Part A of Appendix B) provides that if, at a general meeting or special general meeting, there is no quorum within one hour of the time fixed for the meeting, it shall be adjourned and a fresh general meeting or a special general meeting as the case may be shall be reconvened after giving due notice. The Rule further provides that if at the reconvened meeting also there is no quorum within one hour of the time appointed for the meeting, then at the end of one hour the members present shall constitute the quorum. Part 'C' of Appendix 'B' provides that the quorum at a general meeting or a special general meeting shall be one-fourth of the total number of

members or 500 whichever is less. The quorum at a committee meeting shall be one-third of the total number of members of the committee.

The Rajasthan Rule 30(4) provides that, unless otherwise provided in the bylaws, the quorum of a general meeting shall be one-fifth of the total number of members subsisting as such on the date of the notice of the general meeting. The Rule further provides that no general meeting shall be held or proceeded with unless the number of members required to form a quorum is present. The Rule further provides that if within an hour from the time appointed for the meeting, no quorum is formed in the case of a meeting which has been called on the requisition of members under the Act [Section 31(1)], the meeting shall not be adjourned but dissolved. The Rule 30(12) provides that if the general meeting cannot be held for want of quorum it shall be adjourned to a later hour on the same day as may have been specified in the notice calling the meeting or to a subsequent date not earlier than seven days and not later than 15 days and at such adjourned meeting the business on the agenda of the original meeting shall be transacted whether there is a quorum or not.

U.P. Rule 97 provides that the quorum of a meeting under Section 15(4) of the Act, shall be one-third of the total number of members of the general body of all the societies concerned and where the general meeting is adjourned for want of a quorum, the adjourned meeting may be held, with the permission of the Registrar, with a reduced quorum of one-fifth only; provided that the members of the general body have been informed in writing of the fact of the reduced quorum. The Rule further provides that the quorum of a meeting under Section 16(4) of the Act shall be one-third of the total number of members of the general body and where the meeting is adjourned for want of a quorum, the adjourned meeting may be held, with the permission of the Registrar, with the reduced quorum of one-fifth only, provided that the members of the general body have been informed in writing of the fact of the reduced quorum. Rule 100 provides that no general meeting or

meeting of the committee of management shall be held or proceeded with, unless the members required to form a quorum as specified in the Act, the rules and bylaws are present. Rule 101 provides that, if within half an hour of the time appointed for the meeting, a quorum is not present, the meeting may be adjourned in accordance with the provisions of the bylaws of the society, provided that if the meeting has been called on a requisition of the members or of the delegates, and the requisite quorum is not present within an hour of the time appointed for the meeting, the meeting may be dissolved. Rule 102 provides that if a meeting, other than a meeting referred to in Rule 26 or 97, has been adjourned for want of a quorum the adjourned meeting may be held with such reduced quorum not being less than 50 per cent of the quorum laid down in the bylaws of the society.

(c) *Comments:* The fact that the members have not attended a meeting would show that they disapprove of the proposals noted in the agenda of the meeting as notified to them or at best do not care whether the proposals are adopted or not. Any step proposed should have the categorical approval of the general body. Therefore any matter decided by a general meeting which had no quorum cannot be held to be a decision of the society. The absence of a quorum means lack of interest in the society's affairs on the part of the members. Rather than adopt fresh measures to carry on the society, on the assumption that the absence of a quorum is the absence of opposition to whatever has been proposed, the absence of a quorum should be taken as an indication that the society is no longer wanted by the members. The new trend in legislation regarding cooperatives is to provide for continuing the activities of a cooperative even when it is not wanted by the member on the assumption that its services must be continued somehow. If those services are essential to the community, it is for the government or local authority concerned to render those services on its full responsibility through an arrangement of its own and not through a nominal cooperative. The provision for deciding even without a quorum leaves room

for a caucus to exploit the situation for their own ends with consequential damage to the fair name of cooperation. It is the duty of the government to wind up a cooperative society in which the members have lost interest, thereby leaving room for another cooperative society to be organised when the need of one is felt once again by the community. The existence of a nominal cooperative with artificial respiration given by the government will prevent the formation of another real cooperative when the need of one is felt by the people concerned. It will thus be seen that this provision enabling a general meeting to be held without a quorum is not in the interests of the proper development of the movement. This result is in addition to the fact that the making of a decision by a general meeting held without a quorum is a violation of the Principle of Democratic Control since such a decision is not a democratic expression of the will of the members. Therefore, these Rules which provide for violations of the said principle should be rescinded. These Rules have undoubtedly been enacted to enable the government to force the societies to adopt bylaws etc. which the government thinks the societies should have but which the members are not in favour of. In fact this Rule provides a surreptitious way of compelling cooperatives to adopt or amend bylaws. The obnoxious character of this method is less obvious than that of a Rule which provides for the compulsory adoption or amendment of bylaws, vide section 3(B) of this chapter. There should be no provision as in the U.P. Rules for enabling general meetings to be held with a reduced quorum. Nor should there be provision for the Registrar to approve of general meetings being held with reduced quorums. All these provisions are contrary to the Principle of Democratic Control.

(d) *Recommendation* : All these Rules should be rescinded.

(vi) **Place of Holding Meetings**

(a) *Rules*: The following Rule relates to the place of holding meetings of societies:

Uttar Pradesh

Rule 95

The Uttar Pradesh Rule provides that a meeting of the general body or of the Committee of Management or of the Executive Committee of a society shall be held only at the headquarters of the society.

(b) *Comment*: This is a matter for self-regulation. Therefore this provision may be included in the bylaws if the members are of the same view.

(c) *Recommendation* : This Rule should be rescinded.

(vii) **Presiding over Meetings of Societies**

(a) *Rules*: The following Rules relate to presiding at meeting of societies:

Andhra Pradesh	Rule 26
Assam	Rule 23
Himachal Pradesh	Rule 46
Kerala	Rule 36(2)
Madhya Pradesh	Rules 35 and 36
Maharashtra	Rule 60
Orissa	Rule 27
Rajasthan	Rule 30(2)
Uttar Pradesh	Rule 98
West Bengal	Rule 40

The Andhra Pradesh, Orissa and Uttar Pradesh Rules provide that every general meeting or meeting of a Committee shall be presided over by the President of the society and, in his absence, by the Vice-President and in the absence of the President and the Vice-President by a member chosen by the members for this purpose. The Andhra Pradesh and Uttar Pradesh Rules further provide that no person including the President or Vice-President of the society shall preside over a meeting when matters in which he is personally interested are to be discussed.

The Assam Rule provides that the Chairman or in his absence the Vice-Chairman of a society shall preside over the meetings of its general assembly. If both the Chairman and Vice-Chairman are absent or unwilling to preside, the members present and entitled to vote shall elect one from amongst themselves to preside over the meeting; provided,

however, that where the bylaws of a society provide for any outsider to preside over the meetings of the general assembly, such outsider if elected shall preside.

The Himachal Pradesh and West Bengal Rules provide that the Chairman shall preside over all meetings of the Managing Committee at which he is present. In the absence of the Chairman, the Vice Chairman and in the absence of both, any member elected from amongst themselves by the committee members present, shall take the chair.

The Kerala Rule, dealing with the powers of the Registrar or person authorised by him to summon a special General Body meeting, provides that the Registrar may direct as to who should preside over such meetings.

Madhya Pradesh Rule 35 is similar to the Kerala Rule.

Madhya Pradesh Rule 36 and the Maharashtra and Rajasthan Rules provide that the President of the Society or in his absence Vice-President or in the absence of both, a Member elected by the members present at the meeting shall preside over the meeting unless the bylaws specify that the Chairman of the meeting shall be elected by the meeting.

(b) *Comments:* There is no need of Rules providing for these matters. The bylaws of a society should provide for all situations. These are matters for self-regulation and therefore should not be regulated by Act or Rule. The Assam Rule, providing for an outsider to preside if the bylaws permit this, is an improper rule. It would be incorrect to register a bylaw permitting anyone but a member to preside over any meeting of the society. The making of a Rule to validate a bylaw provision which is *per se* contrary to a Cooperative Principle shows the extent to which the power to make Rules can be abused. Even a resolution of the members to elect a non-member to the chair is contrary to the Principle of Democratic Control, because the supremacy of the general body in general meeting is compromised by having a non-member in the chair. A non-member in the chair could effectively influence the decision-making process of that meeting with the result that something never wanted by the members may be decided upon. If a non-

member participates in a meeting, a decision of that meeting would not be a democratic expression of the will of the members alone and therefore such would not be a decision of the society. The Kerala Rule empowering the Registrar to decide who should preside over a meeting summoned by him or by someone authorised by him is worse than the Rule or other law which empowers him to summon such meeting. The Maharashtra and Rajasthan Rules imply that the bylaws may specify that the Chairman of a meeting shall be elected by that meeting. The President and the Vice-President have been elected expressly for, *inter alia*, the task of presiding over meeting of the society. To allow any group of members who happen to be in a majority at a meeting to elect their chairman even when the President or Vice-President is present would nullify the purpose of their election and leave room for many an untoward happening. This is contrary to accepted practice not only in cooperative societies but also in all other societies.

(c) *Recommendation* : These Rules should be rescinded.

(viii) **Transaction of Business at Meeting of Societies**

(a) *Rules* : The following Rules relate to the transaction of business at meetings of societies:

Delhi	Rule 154(2)(ii)
Himachal Pradesh	Rules 44, 48(3)
Maharashtra	Rules 59(2); and 60(8) & (9)
Rajasthan	Rule 30(10) & (11)
Uttar Pradesh	Rules 103, 108 and 111
West Bengal	Rules 38

The Delhi Rule provides that no matter shall, except with the permission or direction of the Registrar, be considered either in a meeting of a general body or committee or in a meeting of any smaller body which has been set up if the agenda of such meeting has not been circulated to all members of such body in due time as laid down in that Rule.

Himachal Pradesh Rule 44 dealing with the circulation of the agenda of a meeting convened by the society provides that any other business though not included in the agenda

may be brought up and considered with the consent of the chairman. Rule 48 deals with the convening of a special meeting and provides in clause (3) of the Rule that at such special meeting no business other than specified in the notice shall be transacted.

Maharashtra Rule 59(2) provides that at the first general meeting, the matters specified in the Rule shall be transacted by the societies. Rule 60(8) provides that if all the business in the agenda cannot be transacted on the day on which the general meeting is held, the meeting may be postponed to any other suitable day not later than 30 days from the date of the meeting as may be decided by the members present at the meeting. Rule 60(9) provides that the remaining subject or subjects on the agenda shall be taken up for consideration at the postponed meeting.

Rajasthan Rule 30(10) has the same provision as Maharashtra Rule 60(8) except that the meeting may be postponed to any other suitable date not less than seven days from the date of the meeting. Rule 30(11) has the same provision as Maharashtra Rule 60(9).

The U.P. Rule (103) provides that in a meeting the subjects shall be taken up for consideration in the order in which they have been mentioned in the agenda unless the person presiding over the meeting agrees to change the order with the concurrence of the majority of the members present. The Rule further provides that the election of an office bearer or a delegate or their co-option shall not be taken up unless specifically notified in the agenda. Rule 108 provides that if all the business in the agenda cannot be transacted on the date on which the meeting is held, the meeting may be postponed to any other date as may be decided by the members present in the meeting or as may be specified in the Rules or the bylaws of the society. Rule 111 provides that the Registrar, for reasons to be recorded, may direct the meeting of a society called at his instance to postpone the consideration of any item of the agenda. The Rule further provides that any decision of the meeting taken in contravention of such a direction of the Registrar shall be invalid and inoperative.

The West Bengal Rule, dealing with the circulation of a notice of a meeting of the managing committee along with a statement of business to be transacted at the said meeting, lays down that any urgent business though not included in the statement accompanying the notice may be brought up and considered with the consent of all the directors present at the meeting.

(b) *Comments* : Empowering the Registrar to make exceptions as done by the Delhi Rule is contrary to the Principle of Democratic Control. All the matters mentioned in these Rules are matters for self-regulation.

(c) *Recommendation* : These Rules should be rescinded.

(ix) Admission of Non-Members to Meetings

(a) *Rules*: The following Rules relate to the admission of non-members to meetings of societies:

Assam Rule	26(3)
Orissa Rule	27(3)

The Assam and Orissa Rules provides that the Chairman in his discretion may admit any person who is not a member to any meeting of the General Assembly for the purpose of giving expert advise and such person shall not be entitled to vote.

(b) *Comment*: These are good provisions but as the admission of a non-member to a meeting is a matter for self-regulation, it should be included in the bylaws.

(c) *Recommendation* : These Rules should be deleted and their provisions included in the model bylaws.

(x) Registrar's Powers to attend Meetings of Societies

(a) *Rules*: The following Rules relate to the Registrar's powers to attend meetings of societies:

Bihar	Rule 73
Maharashtra	Rule 60
Punjab	Appendix B, Part 'D'
Rajasthan	Rule 30(2)

The Bihar Rule provides that the Registrar or any person authorised by him may attend any meeting of a re-

gistered society called in accordance with the rules or the bylaws of the society and take part in the deliberations but shall not be entitled to vote.

The Maharashtra Rule deals with the convening of the meetings of a society under intimation to the Registrar and provides that the Registrar may attend such meetings or authorise some person to attend such meeting on his behalf.

Part 'D' of appendix 'B' of the Punjab Rules provides that the Registrar or his representative may attend any meeting of the committee of a society at any time but he shall not have the right to vote unless permitted under the bylaws.

The Rajasthan Rule is similar to the Maharashtra Rule.

(b) *Comments:* Empowering the Registrar to attend any meeting of a society is contrary to the Principle of Democratic Control. As recommended regarding the admission of non-members at (ix) above, the bylaws may carry a provision authorising the Chairman to admit the Registrar to any meeting for the purpose of giving expert advice and adding that he shall not have the right to vote or preside at such meeting.

The Punjab Rule implies that the bylaws may permit the Registrar to vote at meetings of the Committee. Such a bylaw would be contrary to the Principle of Democratic Control. Also, this would compromise the position of the Registrar very badly. He will be officially responsible for all errors of commission and omission made by the Committee at such meeting and he will not be accepted as a disinterested party in the event of a dispute in regard to such proceedings, for the witness will be his own judge! Nor is it legally valid for the Registrar to give himself powers by his own act of registering the bylaws.

(c) *Recommendation:* These Rules should be rescinded.

(xi) **Duty of the Chairman to Maintain Order at Meetings of Societies**

(a) *Rules:* The following Rules relate to the duty of the Chairman to maintain order at meeting of societies:

Assam	Rule 23 (ii, iii, iv)
Orissa	Rule 27(2)

The Assam Rule provides that the Chairman of a meeting of the General Assembly shall maintain order in the meeting and shall control and conduct proceedings in such a manner as may be conducive to expenditure and effective disposal of business. The Chairman of a meeting of the General Assembly may direct any member to withdraw for disorderly conduct and the member so ordered shall immediately withdraw and unless otherwise directed by the Chairman shall remain absent during the remaining period of the meeting and shall not be entitled to vote without the permission of the chairman. The Rule further provides that in the event of disorder the Chairman of the meeting may suspend the meeting and adjourn it to such a date and time as he may think fit subject to the provisions of the bylaws.

The Orissa Rule is similar to the Assam Rule.

(b) *Comments*: The first part of the Rule is without any sanction for no action could be taken against the chairman for “contravening” the law by his failing to maintain order in a meeting! The other provision should be included in the bylaws. Legislating that the chairman shall maintain order is a good example of “*reduction ad absurdum*” of the power to make Rules!

(c) *Recommendation*: The Rules should be rescinded.

(xii) Minutes and Records of Meetings of Societies

(a) *Rules*: The following Rules relate to minutes and records of the proceedings at meetings of societies:

Assam	Rule 26
Bihar	Rule 28(3)
Delhi	Rule 57
Madhya Pradesh	Rule 38
Orissa	Rule 29
Rajasthan	Rule 30(14)(i)
Uttar Pradesh	Rule 112

The Assam Rule provides that the names of the members present at a meeting of the general assembly shall be entered in the record of the proceedings of the meeting and

such record shall be made in a book kept for the purpose and signed by the chairman of the meeting after being read to, and confirmed by, the members present at that meeting or at the next meeting. The Rule further provides that a list showing the total number of members on the date of holding a meeting and the number of members present there with their names shall be attached to all such proceedings when submitted to the Registrar or the person authorised by him in this behalf for obtaining approval.

The Bihar Rule provides that the proceedings of a meeting shall be recorded in a minute book kept for the purpose and the record shall be signed by all the members of the committee present and the names of the members voting for or against any resolution relating to an item of business involving a financial transaction shall also be recorded in that book.

The Delhi, Madhya Pradesh, Orissa and Rajasthan Rules provide that every society shall cause minutes of proceedings of general meetings to be entered in a book kept for that purpose. The Rule further provides that unless the minutes are recorded and duly signed by the chairman immediately on the termination of the meeting, the minutes free from all alterations or corrections shall be drawn up and signed by the chairman of the meeting within 72 hours from the time when the meeting terminated. The Rule further provides that until the contrary is proved every general meeting of a society, in respect of the proceedings of which minutes have been so recorded, shall be deemed to have been duly called and held.

The Uttar Pradesh Rule provides that minutes of the proceedings of all meetings shall be recorded in a book kept for the purpose and the minutes shall be signed by the person presiding at the meeting as well as by the secretary of the society.

(b) *Comments:* The provision in the Assam Rule that the Registrar's approval should be obtained of all proceedings of general meeting is not only a violation of the Principle of Democratic Control but it is also an unwarranted requirement and one that makes the working of a

cooperative very difficult and dilatory. It also makes the cooperative an adjunct of the State and the Registrar its Manager. Far from developing self-reliance and self-dependence as are the moral results of good cooperative endeavour, this requirement will make the members irresponsible, because they will feel free to make any fanciful decision trusting that the Registrar will prevent the implementation of unwise decisions. They will develop into mere camp followers whereas good cooperative work will develop the members from this stage to that of being initiators of policy.

(c) *Recommendation:* These Rules should be rescinded. The recording of minutes should be provided for in the bylaws as it is a matter for self-regulation.

(xiii) Constitution of a Representative General Meeting

(a) *Rules:* The following Rules relate to the constitution of representative general meetings of cooperative societies:

Andhra Pradesh	Rule 21
Delhi	Rule 52
Himachal Pradesh	Rule 32
Kerala	Rule 34
Uttar Pradesh	Rule 84
West Bengal	Rule 25

The Andhra Pradesh Rule provides that a society with limited liability may, if its area of operation extends to one or more revenue Talukas or its membership exceeds 2,500, provide in its bylaws for the constitution of a representative general body. Where a society provides in its bylaws for the constitution of a representative general body, the society shall, with the previous approval of the Registrar, divide its members into different groups on a territorial or other basis. The bylaws of such society may specify the number or proportion of members who may be elected to represent each such group in the representative general meeting and also lay down the total strength of the representative general meeting.

The Delhi Rule 52 contains the same provisions with the difference that only a society whose area of operation

extends over the entire Union Territory of Delhi or whose membership exceeds 3,000, may constitute a representative general body.

The Himachal Pradesh Rule provides that a cooperative society with a membership of 1,000 or more shall, and if the bylaws so provide, a Cooperative Society with a membership of 500 or more, but less than 1,000 may, hold its general meeting by calling representatives of areas or sections instead of summoning all the members in person. One delegate shall be elected for every 10 members or major fraction thereof.

The Kerala Rule provides for a representative general body in societies with a membership of not less than 1,000. It also provides that the representative general body shall consist of the members of the committee of the society and the representatives of members residing in such area or belonging to such class of members as may be specified in the bylaws subject to the following conditions, viz: (a) the area or class of members shall be such that not more than 50 members reside in that area or belong to that class; (b) the total number of members of a representative general body shall not exceed 150, where the total number of members of the society does not exceed 1,500, and shall not exceed 200 representative members otherwise.

The U.P. Rule provides that a general body of a cooperative society, shall be constituted by delegates of its members in the manner laid down in the bylaws of the society; viz. (a) where the society has as its members at least 251 individuals and other persons referred to in the Act [Section 17(1)(c) to (f)]; (b) where the cooperative society has in its fold at least 51 individuals and at least one cooperative society and other persons referred to in the Act [Section 17(i) (c) to (f)]; and (c) where the cooperative society has, as its members, cooperative societies and other persons referred to in the Act [Section 17(i)(c) to (f)]. The representative body shall be constituted of all the individual members and delegates of the other members of the society (a) where the society has as its members not more than 50 individuals and, at least one cooperative society and other

persons if any referred to in the Act [Section 17 Clause (1) (c) to (f)]; and (b) where the cooperative society has as its members not more than 250 individuals, and other persons if any referred to in the Act [Section 17(1)(c) to (f)].

The West Bengal Rule provides that a cooperative society with a membership of 1,500 or more but not exceeding 3,000 may, if the bylaws so provide, and a cooperative society with a membership exceeding 30,000 shall, hold its general meeting by convening representatives of areas or sections instead of summoning all the members in person on the following basis:—(a) one delegate for every 50 members or major fraction thereof for a society with a membership of not less than 1,500 and not more than 5,000; (b) one delegate for every 100 members or major fraction thereof for a society with a membership of not less than 5001 and not more than 10,000; (c) one delegate for every 200 members or major fraction thereof for a society with a membership of 30,001 or more.

(b) *Comments*: The compulsion to have a representative general meeting is contrary to the Principle of Democratic Control. Each society should be free to adopt such constitution or not.

(c) *Recommendation*: These Rules should be rescinded and the provisions should be included in the model bylaws.

2. DEMOCRATIC RIGHTS OF VOTING AND PARTICIPATION

(i) *Acts*: The following provisions of the State Acts relate to the members' rights of voting and participation in decisions affecting their societies:—

Andhra Pradesh	Sec. 25
Assam	Sec. 17(1)
Bihar	Sec. 28(1)
Gujarat	Sec. 28
Himachal Pradesh	Sec. 20
Jammu & Kashmir	Secs. 19
Kerala	Sec. 20
Madhya Pradesh	Sec. 22(1), 23(1)

Maharashtra	Sec. 27(1)
Mysore	Sec.20
Orissa	Sec. 20
Punjab	Sec. 18
Rajasthan	Sec. 22(1)
Tamil Nadu	Sec. 21(1)
Uttar Pradesh	Sec. 20
West Bengal	Sec. 60(1)
Delhi	Sec. 23

(ii) *Rules:* The following Rules relate to the right of voting and participation in decisions affecting societies:

Assam	Rules 16 & 25
Bihar	Rules 21(7) & 73
Delhi	Rules 30 & 52(3)
Gujarat	Rule 15
Himachal Pradesh	Rules 25(2), 32(5), 36, 39(2) & 59
Jammu & Kashmir	Rule 10
Kerala	Rule 19
Madhya Pradesh	Rules 35 & 39
Maharashtra	Rules 22, 60(3)
Mysore	Rule 9
Orissa	Rule 30
Punjab	Rule 16(A)
	Appendix 'B', Part-A, Rule 7
	Appendix 'B', Part-D
Rajasthan	Rules 25, 27 & 30(5)
Tamil Nadu	Rule 20
Uttar Pradesh	Rule 105
West Bengal	Rules 20 & 25(4)

(iii) *Summary of the Rules:* Assam Rule 16 provides that except where otherwise prescribed all matters brought before a meeting of the general assembly shall be decided by a majority of votes.

Bihar Rule 21(7) provides that all questions before a general meeting shall be decided by a majority of votes and in the event of an equality of votes, the chairman of the meeting shall have a casting vote. Rule 73, while providing that the Registrar or any person authorised by him may

attend any meeting of a society, states that he may take part in the deliberations but shall not be entitled to vote.

Delhi Rule 38 provides that no member shall be eligible to vote at a meeting fixed for any election, if on the date thirtieth day prior to the date of such meeting he is a defaulter against whom a decree has been issued under the Act (Section 61). Rule 52(3) dealing with a delegate's right to vote at a meeting of a representative general body, states that each delegate shall have one vote.

The Gujarat Rule provides that each delegate, in the case of federal societies, shall have one vote in the general meeting.

Himachal Pradesh Rule 25(2) provides that every resolution at a general meeting shall be decided by a majority of votes of the members present, as laid down in the Act, and if the votes be equal, the chairman shall have a second or casting vote. Rule 32(5) provides that each delegate shall have one vote in a meeting of a representative general body of the society. Rule 36 provides that, except as provided in the Act or the Rules or the bylaws, a resolution which is put to the vote of a general meeting shall be decided by a majority of votes. The Rule further provides that a member who is a defaulter of any debt or dues directly or indirectly to the society shall be debarred from exercising the right of voting at the annual or any special general meeting including a general meeting called for electing to the Committee. Rule 39(2) provides that the members appointed by the Registrar under Rule 39(1) shall have the right to vote. Rule 59 provides that every government nominee appointed under the Act (Section 35) besides having a right to vote in a managing committee meeting shall also have the right to attend all general meetings of the society and to exercise the voting power like other members.

The Jammu & Kashmir Rule provides that in the event of any equality of votes, the chairman of a meeting of a society shall have a second or casting vote.

The Kerala Rule provides that a member shall be deemed to have exercised his right to (one) vote at an election of the committee of the society even if he only expresses his

approval of their election when only such number of persons as are to be elected have been proposed for election.

Madhya Pradesh Rule 35 provides that the Registrar or any person authorised by him, while presiding over a general meeting, shall have no vote unless he is a member of the society. In the event of an equality of votes, he shall have a casting vote except in the election of members to the committee, which shall be done by drawing lots. Rule 39 provides that every member present at a general meeting shall have one and only one vote. All resolutions which are put to the vote at a general meeting shall be decided by a majority of votes of the members present and voting, unless otherwise required under the Act, the Rules or bylaws of the society. The Rule further provides that in the case of an equality of votes, the chairman of the meeting shall have a second or casting vote.

Maharashtra Rule 22 dealing with the voting rights of individual members in a federal society provides that every society through its properly authorised representative and every delegate referred to in the Rule shall have one vote in the general meeting. Rule 60(3) provides that, unless otherwise specified in the Act, the Rules and the bylaws, resolutions shall be decided by a majority of votes of the members present and the Chairman shall have a casting vote.

The Karnataka Rule provides that in the event of an equality of votes the chairman of a meeting (of a society) shall have a second or casting vote.

The Orissa Rule is similar to Madhya Pradesh Rule 39.

Punjab Rule 16(A) provides that no member of a society shall participate in the general meeting of the society or vote in the election to the committee unless he has made all such payments to the society as are due from him. Appendix 'B', Part-A of Rule 7 provides that every resolution at a general meeting or special general meeting shall be deemed to be adopted only if it has received a majority of the votes of the members present.

Rajasthan Rule 25 provides that no member shall be eligible to vote at a meeting fixed for any election if on the thirtieth day prior to the date of such meeting he is a

defaulter against whom a decree has been issued under the Act (Section 117). Rule 27 provides that in the event of an equality of votes the chairman of a meeting of a society shall have a second or casting vote. Rule 30(5) provides that, unless otherwise specified in the Act, the Rules or the bylaws, resolutions at a general meeting shall require a majority of the votes of the members present for such to be deemed to be adopted.

The Tamil Nadu Rule provides that no member shall be eligible to vote at a meeting fixed for any election if, on the thirtieth day prior to the date of such meeting—(i) he is in default to the society of which he is a member in respect of any loan taken by him for such period as may be specified in its bylaws or in any case for a period exceeding three months; or (ii) he is a person against whom any decree, decision, award or order referred to in the Act (Section 91) has been obtained.

The Uttar Pradesh Rule provides that any matter before a meeting may be decided only by a resolution passed by a majority of the votes of the members present unless a specific majority is required under the provisions of the Act, Rules or the bylaws of the society. The Rule further provides that, in the case of an equality of votes, the person presiding over the meeting shall have a second or casting vote.

West Bengal Rule 20 provides that any resolution at a meeting may be decided by a majority of the votes of the members present and if the votes be equal the chairman shall have a second or casting vote. Rule 25(4) dealing with general meetings of delegates provides that each delegate shall have one vote."

(iv) *Comments:* The Acts provide that every member shall have one vote and that the Chairman of a meeting shall have a casting vote. Some provide that a nominal, associate or sympathiser member may be given the right to vote by the bylaws whilst the Maharashtra Act denies to the nominal and sympathiser member the right to vote as well as eligibility to be a member of the committee or a representative of the society. The West Bengal Act denies the vote to the nominal and associate members. The

Himachal Pradesh, Jammu & Kashmir, Kerala, Mysore, Orissa, Punjab, Tamil Nadu and Delhi Acts provide that where the government has nominated persons to the committee each such person shall have one vote. This provision is contrary to the principle of Democratic Control as the principle requires that voting rights shall be on a democratic basis. The Uttar Pradesh Act provides that where a cooperative society, the State Warehousing Corporation or a body corporate is a member, each delegate of such member shall have one vote and also that where the State Government or the Central Government is a member each person nominated by such member to the committee or the general body shall have one vote. It also provides for rules or bylaws to be made enabling each delegate of a group or class of members to have one vote. The Kerala Act provides however that the nominees of the government on the committee of a society shall have no vote in the election of the society's office-bearers. The Tamil Nadu Act disqualifies the nominees of the government as well as the financing bank for voting at elections. Most of the Acts allow more than one vote in the case of a federal society. The Madhya Pradesh Act provides that the voting rights in a federal society shall be so regulated that the members "which are societies" do not have less than four-fifths of the total number of votes. The reservation of votes for any type of member is not correct. In a federal society which has both societies and individuals in its membership the voting should be on the basis of one vote for each member plus additional votes for member societies on the basis of the number of each society's own members or the volume of its transactions with the federal society.

Himachal Pradesh Rule 39(2) contravenes the Principle of Democratic Control. Only members have the right to vote according to this principle. The legal power given to nominees to vote does not make them members. The power to vote stems from membership, not vice versa. Introducing "foreigners" into the cooperative fold by a law is tantamount to undermining the social cohesion of the membership. Therefore this Rule should be rescinded

forthwith. Madhya Pradesh Rule 35 on the contrary denies the Registrar the right to vote even if he is presiding over a general meeting unless he is a member of the society concerned. That prohibition is in accordance with the Democratic Principle. This Rule, however, contravenes the said principle by authorising the Registrar to preside over a meeting of a society, vide our comments under Section 1 sub-para B(vii) above. The provision in Delhi Rule 38 that each delegate to a representative general meeting shall have only one vote is correct because each delegate would count for an equal number of members in his society. The Gujarat, Maharashtra (22) and presumably the West Bengal [25(4)] Rules refer to general meetings of federal societies. Here, although strictly it is not contrary to the principle of democratic voting rights to give only one vote to a member-society, the more equitable method would be to give member-societies votes in proportion to the number of members in each such society. Then, it would be unexceptionable to give each such delegate only one vote. This question is discussed more fully in Chapter-I.

(v) *Recommendation*: These provisions should be rescinded and bylaws free of the errors mentioned above should be recommended for adoption by societies and also included in the model bylaws.

3. DEMOCRATIC ADMINISTRATION

A. Voluntary amendment of bylaws

(i) *Rules*: The following Rules provide for amendment to the bylaws of a society at the instance of the society:

Andhra Pradesh	Rule 10
Assam	Rule 10
Bihar	Rule 16
Delhi	Rule 15
Gujarat	Rule 6
Himachal Pradesh	Rule 8
Jammu & Kashmir	Rule 6
Kerala	Rule 9
Madhya Pradesh	Rule 7

Maharashtra	Rule 12
Mysore	Rule 6
Orissa	Rule 14
Punjab	Rules 9 & 10
Rajasthan	Rule 11
Tamil Nadu	Rule 7
Uttar Pradesh	Rules 27 & 28
West Bengal	Rule 14

(ii) *Summary*: The Andhra Pradesh and Assam Rules provide that every proposal forwarded to the Registrar for the registration of an amendment of the bylaws shall be signed by the President and two members of the committee and shall contain the following particulars: (a) the date of the general meeting at which the amendment was made, (b) the number of days of notice given to convene the general meeting, (c) the total number of members of the society as at the date of such meeting. The Assam Rule lays down the procedure for registration of an amendment of bylaws by the Registrar and it also requires that when the Registrar refuses to register an amendment of a bylaw he shall record in writing the reasons for his refusal and communicate his decision to the society.

The Bihar Rule provides that a registered society may, by a resolution adopted by a majority of two-thirds of its members present, at a general meeting of which due notice has been given to the members, amend its bylaws.

The Delhi, Gujarat, Himachal Pradesh, Maharashtra and Tamil Nadu Rules provide that subject to the provisions of the Rule, the bylaws of a cooperative society may be amended by passing a resolution at a meeting of its general body held for that purpose. The Rules lay down the procedure to be followed in amending the bylaws. The Delhi Rule further lays down that on receipt of a copy of the resolution and other particulars referred to in the Rule, the Registrar shall examine the amendment proposed by the society and if he is satisfied that the amendment is not contrary to the Act or the Rules and is in the interest of the cooperative society and the cooperative movement, he may register the amendment. Where the Registrar is of

the opinion that the proposed amendment may be accepted subject to any modification, he may indicate to the cooperative society such modification after explaining in writing his reasons therefor. The Himachal Pradesh Rule further lays down that the conditions to be fulfilled for amending a by-law may be altered by the State Government, by general or special order, in respect of financing banks and secondary societies.

The Jammu & Kashmir, Kerala, Karnataka, Madhya Pradesh, Orissa, Punjab and Rajasthan Rules provide that every proposal for amendment of the bylaws of a society shall be made only by a resolution passed by a two-thirds majority of the members present and voting.

The Uttar Pradesh Rule 27 provides that in every case in which the society has resolved to amend its bylaws, an application in the prescribed form (Form H) for registration of the amendment shall be made to the Registrar within 15 days from the date of the meeting on which the amendment was made (unless the Registrar, for special reasons, condones the delay). The Rule further requires certain documents specified in the Rule to be forwarded with the application. Rule 28 provides that on scrutiny of the proposal for registration of an amendment to a bylaw, if the Registrar is satisfied that the procedure laid down in the Rule has been followed, and that the amendment conforms to the requirements of the Act [Section 12(2)] and is not inconsistent with any other provisions of the bylaws of the society, and where it relates to a change of the name of the society is not such as would be misleading in respect of the objects, activities or area of operations of the society and is otherwise not against the interest of the society or the public interest, the Registrar may register the amendment.

The West Bengal Rule provides that after the bylaws have been registered the cooperative society may amend them by altering or rescinding any bylaw or by making a new bylaw. No such amendment shall be made save in accordance with a resolution passed at a general meeting, provided further that no such resolution shall be valid unless one-half of the total number of members subsisting

on the date of issue of the notice of the general meeting have attended the meeting and two-thirds of the members present at such meeting have voted in its favour. The Rule further provides that in special cases the Registrar may register such an amendment which is passed by two-thirds of the members present at the meeting though their number is less than half of the total number of members, if he is satisfied for reasons to be recorded in writing—(i) that it is impossible for the society to secure the attendance of half of the total number of members at a general meeting; (ii) that the adoption of the proposed amendment is in the interest of the society; and (iii) that such amendment is likely to meet with the approval of the general body of members. The Rule further lays down the procedure to be followed by the society in amending the bylaws.

(iii) *Comment*: These Rules are wholesome but they should be in the Act itself, because there should be no subsidiary legislation on cooperatives, as explained in Chapter II.

(iv) *Recommendation*: These Rules should be transferred to the Act.

B. Compulsory Amendment of Bylaws

(i) *Acts*: The State Acts contain the following provisions empowering the Registrar to compel societies to amend their bylaws:

Andhra Pradesh	Sec. 16(5)
Assam	Sec. 14(1)
Bihar	Sec. 26
Gujarat	Sec. 14
Himachal Pradesh	Secs. 11(1) & (2)
Jammu & Kashmir	Sec. 12(A)
Kerala	Sec. 12(5) & (6)
Madhya Pradesh	Sec. 12
Maharashtra	Sec. 14
Mysore	Sec. 115
Orissa	Sec. 12(5)
Punjab	Sec. 10(A)
Rajasthan	Secs. 19(2) & (3)

Tamil Nadu	Secs. 12(1) & (2)
Uttar Pradesh	Secs. 14(1) & (2)
West Bengal	Sec. 18

(ii) *Rules:* The following Rules provide for the amendment of the bylaws of societies under the direction of the Registrar or federal/financing Society.

Andhra Pradesh	Rule 11
Assam	Rules 11 & 12
Delhi	Rule 16
Gujarat	Rule 7
Kerala	Rule 10
Madhya Pradesh	Rule 8
Maharashtra	Rule 13
Orissa	Rule 14-A
Uttar Pradesh	Rules 30 & 32
West Bengal	Rule 15

(iii) *Summary of the Rules:* The Andhra Pradesh Rule provides that where it appears to the Registrar that an amendment of the bylaws of a society is necessary, he shall indicate the reasons therefor, and issue a notice calling upon the Committee of such society to convene a general meeting to consider such amendment. The Rule provides that the notice shall specify—(a) the text of the bylaws as existing and the bylaw as proposed for amendment, or the new bylaw as proposed to be incorporated; or the existing bylaw which is proposed for deletion; and (b) the period within which each amendment should be sent to the Registrar for registration after getting it passed by the general meeting. The rule further provides that where a society files an objection to the proposed amendment, such objection shall be duly considered by the Registrar and if the Committee desires to be heard, it shall be given an opportunity of being heard and the Registrar may, after considering the representation of the society, register the amendment.

Assam Rule 11 provides that when the Registrar directs any society to amend its bylaws in accordance with the amendment drafted and forwarded to the society by him, the society shall, on receipt of such direction, proceed in the manner provided in Rule 10 to consider the making

of such amendment within two months or such longer period as may be specified in the order. When the society adopts any amendments of bylaws, action shall be taken as provided in Rule 10 for registration. The Rule further provides that in case the society proposes to file any objection, the case shall be represented before the Registrar, within 15 days of the meeting along with a copy of the proceedings of the meeting which considered the draft amendment. The Registrar, after considering the objection of the society, may—(i) withdraw the direction for amendment of the bylaw; or (ii) register the amendment. Rule 12 provides that when it appears to an affiliating society that an amendment of the bylaws of a society which is affiliated and indebted to it is necessary or desirable, it may direct such society to make the amendment, provided that such amendment shall be only in respect of the constitution of its Administrative Council and the Managing Body and the investment of funds. The affiliating society in suggesting any such amendment to the affiliated society shall, by definite resolutions of the Administrative Council or the Managing Body as the case may be, direct the society to make the amendment within a specified time. If within the period, specified by the affiliating society, the affiliated society fails to make the amendment or files an objection to such amendment, the affiliating society after considering the objections of the affiliated society, if any, may withdraw the direction for amendment or forward the amendment together with the objections if any filed by the affiliated society and affiliating society's comments thereon, to the Registrar for consideration and registration.

The Delhi Rule provides that if it appears to the Registrar that an amendment of a bylaw of a cooperative society is necessary or desirable in the interest of such cooperative society, he may call upon the cooperative society to make the amendment by serving a notice in the prescribed form to make such amendment within a period not exceeding 60 days. The Rule further provides that after the expiry of the period specified in the notice, if the society fails to make the amendment the Registrar, after giving the society an

opportunity of being heard, may register the amendment. With effect from the date of registration, the amendment is binding on the society and its members subject to appeal, if any.

The Gujarat Rule provides that for the purposes of the Act (Section 14(i)) the Registrar may call upon the society to make the amendment by serving upon it a notice in the prescribed form (Form C). Such notice shall contain a draft of the amendment proposed by the Registrar. The society thereupon shall call a special general meeting for the purpose of such amendments and if they are approved by the special general meeting, it shall be forwarded to the Registrar who shall register the amendment.

The Kerala Rule provides that the order to be issued under the Act [Section 12(iv)] shall be in the form prescribed (Form No. 5) and the notice calling for representation under the Act (Section 12 clause iv) shall be in the form prescribed (Form No. 6). The rule contains a headline "manner of calling upon societies to make or amend the bylaws".

The Madhya Pradesh Rule provides that the order of the Registrar under the Act [Section 12(i)] shall state the exact amendment with reasons therefor, which the society should make and it shall be delivered personally or sent by registered post to the address of the society.

The Maharashtra Rule provides that, subject to the provisions of the Rule, the Registrar may, by serving a notice in the form prescribed (Form E), call upon a society to make such amendment to the bylaws of the society as he considers to be necessary or desirable in its interest, within a period not exceeding two months from the date of service of notice. The notice shall state the exact amendment which the society should make. The rule further requires that for the purposes of the Act [Section 14(2)] the Registrar shall send a copy of the notice to the State Federal Society with a request to offer its comments on the amendment within such time as may be specified by him. The rule states that if the State Federal Society fails to offer its comments, the Registrar may conclude

that such society has no objection to the amendment. The rule further provides that after the expiry of the period specified in the notice and after considering the reply, if any, of the society and the views, if any, of the State Federal Society, the Registrar may, after duly considering the objections of the society, if any, to the proposed amendment, register the amendment.

The Orissa rule provides that where it appears to the Registrar that an amendment of the bylaws of a society referred to in the Act (Section 12) is necessary, he shall indicate the reasons therefor, and issue a notice calling upon the Committee of such society to convene a general meeting to consider such amendments. The notice shall specify the text of the bylaws as existing and the bylaws as proposed for amendment, or the new bylaws as proposed to be incorporated or the existing bylaws which are proposed for deletion and the period within which such amendment should be sent to the Registrar for registration after its adoption by the general meeting. The rule further provides that where a society files an objection to the proposed amendment, such objection shall be duly considered by the Registrar, and if the Committee desires to be heard, it shall be given an opportunity of being heard. The Registrar may, after considering the representation of the society, register the amendment.

The Uttar Pradesh Rule 30 provides that the Registrar as provided under the Act (Section 14) may by order in writing require a cooperative society to make an amendment to its bylaws under the following circumstances: (a) where the registered name of the society is misleading in respect of its activity, membership or area of operation or is inconsistent with the provisions of Rule 8(d); (b) where the Committee of Management of the society has itself proposed an amendment, but the same could not be considered in the general meeting due to the inability of the general body to meet for want of the required quorum; (c) where the amendment is necessary to remove any inconsistency with any provisions of the bylaws, Act, Rules or Regulations; (d) where the amendment is necessary to

avoid any defect in the constitution of the society in accordance with the provisions of the Act or the Rules; (e) where the amendment is necessary to implement any policy of the Government of India or the State Government with regard to the cooperative activity with which the society is concerned; (f) where the amendment is necessary to improve or rationalise the process of elections in cooperative societies; (g) where it is necessary to rationalise the membership or the area of operation of the society in relation to its activities; (h) where the amendment has already been adopted by other cooperative societies of the same class or category to which the society belongs; (i) where the amendment has already been proposed by the general body of the society, but the same has not been submitted to the Registrar for registration and the Registrar considers the amendment necessary in the public interest or in the interest of the society; (j) where the society is, in the opinion of the Registrar, dominated by any particular interest or suffers from group rivalries and the amendment is necessary to save the society, in the interest of its proper functioning, from such domination or rivalries. Rule 32 provides that if the society objects to make the proposed amendment, the Registrar shall consider the objections of the society and if he is satisfied that the objections of the society are correct, he may abandon further proceedings, and if he is not satisfied, he will take further action as provided under the Act [Section 14(2)].

The West Bengal rule provides that when it appears to a financing bank to be necessary or desirable in the interest of any cooperative society affiliated and indebted to it to amend the bylaws of such society in respect of the constitution of its managing committee and the investment of funds, the financing bank may, by a resolution of the managing committee, direct the society to make the amendment within such time as it may specify. If within three months or such longer time as may be specified by the financing bank from the date of receipt of such direction the society fails to make the amendment or files any objection to such amendment, the financing bank after consider-

ing the objections of the society, if any, may withdraw the direction for amendment, or forward the amendment together with the objections, if any, filed by the society and its comments thereon to the Registrar for registration.

(iv) *Comments:* The provision relating to the Registrar's power to impose bylaws on societies is contrary to the Principle of Democratic Control.

When a bylaw is imposed on a society by the Registrar, it is no longer a bylaw and it is tantamount to a rule framed by the government. Also this legal provision gives the government a way of circumventing even the procedure of tabling Rules before the legislature.

The bylaws of a society are binding on the members. By joining a society a member voluntarily accepts the conditions laid down in the bylaws. Any subsequent voluntary amendment of the bylaws is equally binding on a member. The compulsory amendment of a bylaw is contrary to the voluntary nature of the contract between the society and the member and what is introduced into the contract by a third party by compulsion or without the consent of the contracting parties cannot bind them, morally. This provision violates the very constitution of the society and is therefore the most repugnant of all the laws offending against Co-operative Principles.

Another, but surreptitious, method of getting bylaws amended has been discussed in Section 1B(v) of this Chapter.

The provisions in Assam Rule 12 and West Bengal Rule 15 empowering an "affiliating" society (i.e. a federal society) and a financing bank, respectively, to direct a member-society or an indebted affiliated society, respectively, to amend its bylaws are ultra vires of the respective Acts, as their provisions do not envisage such power for the said societies. The ultra vires use of the power to make Rules, as shown above, is enough justification of our contention in paragraph A of Chapter II that the provision for making Rules should be rescinded.

Whilst on the one hand, the power given to the Registrar to violate the very constitution of a society is most repug-

nant, on the other hand, the power given to federal societies and banks to direct their members (the cooperative societies affiliated to them) is as topsy-turvy as the power (discussed in Chapter VI) which gives federal societies the right to buy shares in their member societies. This power of direction given to federal societies including banks to direct their members overlooks the fundamental concept that it is the members who can direct their society and not vice versa. It is one thing for a federal society to provide expert advice and another to have a legal power over its members to alter their constitutions. This too is tantamount to creating a Frankenstein's monster, and the only remedy for this is for the member societies of such interfering federal societies to bring about the voluntary dissolution of such federal societies. The member societies have the legal right to do this. Every cooperative society is a voluntary organisation and no body can prevent its voluntary dissolution by its members.

If this power of compulsory amendment of bylaws is used to impose bylaws which give power to the Registrar, it would be well for the members to remember that the Registrar cannot acquire for himself, by virtue of bylaws registered by him, any power which does not accrue to him by virtue of the law of the land.

Every act should, however, lay down the matters that must be provided for in the bylaws of a cooperative society to ensure the cooperative character of a society and its economic stability. A requirement in the act that cooperative societies shall have bylaws regarding specified matters that are essential to make a society a cooperative one would not be a compulsion but an option left to those wishing to form a cooperative society to do so in conformity with cooperative standards or not form one. The enactment of a law (in an Act) making it incumbent on existing cooperative societies to make additional bylaws on matters specified in such law would not be contrary to the Principle of Democratic Control if the matters so specified are ones on which bylaws are essential to ensure a cooperative society's well being and the societies are free to decide on the contents

of these bylaws. Then the element of compulsion present in the legal requirement to have additional bylaws would stem from the very purpose of a cooperative society, viz. to work voluntarily in accordance with the Cooperative Principles for the satisfaction of the economic needs common to its members. Such a law would be in conformity with the state's duty to provide a legal atmosphere conducive to the healthy growth of genuine cooperative societies. The legal requirement would be a corollary of the legal recognition given to cooperative societies by their registration on the basis that they shall work in accordance with the Cooperative Principles for the social and economic betterment of their members. It would be contrary to the Principle of Democratic Control to lay down in the law itself what the very contents of these bylaws should be. It should be open to the societies to adopt whatever provisions they wish to have regarding the matters specified in the law provided that such provisions do not violate any Cooperative Principle.

(v) *Recommendation*: The Registrar's power to impose bylaws on a society should be rescinded as this power violates the very constitution of the society and the voluntary character of the contract between the members and the society.

C. Power to approve working rules

(i) *Rules*: The following Rules provide for the Registrar's approval of any Working Rules framed by the Managing Committee:

Assam	Rule 13
Bihar	Rule 32
Himachal Pradesh	Rule 34

The Assam Rule provides that, subject to any provision in the bylaws, the managing body of a society, by whatever name it is called, shall frame Working Rules for their own guidance regarding (a) the manner of receiving and disbursing money; (b) the mode of keeping books, accounts, securities and funds in safe custody, and (c) the terms of

service of salaried officers dealing with pay, leave, discharge and dismissal. The Rule further provides that the adoption of the Working Rules, thus framed, shall require the prior approval of the Registrar and they shall remain in force until duly modified or rescinded.

The Bihar Rule provides that subject to the Rules of business which may, from time to time, be prescribed by the State Government, the managing committee of a registered society may frame Rules for the guidance of its employees and in particular in regard to the manner of receipt and disbursement of money and the custody of books, accounts, securities and funds, and the Rules of business framed by the society "shall come into force on approval by the Registrar".

The Himachal Pradesh Rule provides that the managing committee shall, subject to the approval of the Registrar, make regulations to provide for all matters relating to the election of delegates and in particular for the manner of nomination and election of delegates and the number of delegates to be elected from each area or section in accordance with Rule 33(2).

(ii) *Comment:* The provision that rules made by the Committee for its own guidance should be approved by the Registrar offends against the principle of democratic control. These rules would relate to internal management. Subjecting internal rules to the Registrar's approval makes him responsible for any inadequacy in such rules although in fact the Registrar's power does not carry a corresponding legal responsibility. Power without responsibility is most undesirable. It is not the Registrar's function to manage societies. These Rules virtually make him the Manager. This is contrary to the principle of democratic control because the management of a cooperative society shall be appointed by the members and be accountable to them.

(iii) *Recommendation:* These Rules should be deleted. The bylaws should provide that the committee shall make working Rules for their guidance, subject to the approval of the general meeting.

D. Compulsory Division and Amalgamation of Societies

(i) *Acts*: The State Acts contain provisions clothing the Registrar with power to direct the amalgamation of societies or the division of an existing society. The relevant sections are as follows:

Andhra Pradesh	Sec. 15
Himachal Pradesh	Sec. 14
Kerala	Secs. 14(8) & (9)
Madhya Pradesh	Secs. 16(2), (3); 17(A)
Maharashtra	Secs. 17, 18, 19(1), 20
Mysore	Sec. 14A
Orissa	Sec. 14(3)(i)(ii)
Punjab	Sec. 13
Uttar Pradesh	Sec. 125, 126
West Bengal	Secs. 18A, 18B, 18C
Delhi	Sec. 16(1)

(ii) *Rules*: The following Rules provide for division or amalgamation of societies on the direction of the Registrar:

Andhra Pradesh	Rule 9
Bihar	Rules 37 & 39
Delhi	Rule 21
Kerala	Rule 14
Madhya Pradesh	Rule 11
Maharashtra	Rule 17
Rajasthan	Rule 13

(iii) *Summary of the Rules*: The Andhra Pradesh Rule provides that where, in the opinion of the Registrar, any division or amalgamation of the societies is necessary, he shall prepare a draft scheme to give effect to such division or amalgamation. The scheme shall specify in particular—
 (a) the manner in which the assets and liabilities of the society or societies proposed for division or amalgamation, as the case may be, are to be dealt with; (b) the composition and strength of the new committee or committees of the society or societies in respect of which such division or amalgamation, as the case may be, is effected and (c) the proposed bylaws of the new society or societies. The Registrar shall send a copy of the scheme to the financing

bank for its views within such time as may be specified by him.

The Rule further provides that the Registrar shall consider the views, if any, received from the financing Bank and shall issue a notice to the committee or committees of the society or societies, together with a copy of the scheme referred to in the Rule, calling upon it or them to divide or amalgamate as the case may be within thirty days from the date of receipt of the notice. If the Committee or Committees of such society or societies fail to comply with the direction of the Registrar within the period specified in the Rule, the Registrar shall issue a notice in writing to the committee members and creditors of the said society or societies to make their representations, if any, in regard to the proposal within thirty days from the date of receipt of such notice. The Registrar shall consider the representations, if any, received and make such modifications in the draft scheme as may appear to him desirable and issue a final order directing the division or amalgamation, as the case may be, and issue the necessary certificate of registration. Such certificate of registration shall have the same effect as if it was issued under the Act (Section 7) and a copy of the final order shall be notified in the Andhra Pradesh Gazette. However, before commencing any proceeding under the Rule the Registrar shall satisfy himself that no resolution passed by a society with his approval for division or amalgamation under the Act (Section 12) is pending.

Bihar Rule 39 provides that if the Registrar is satisfied, after taking into consideration the financial position of two or more societies or such other matters relating to the societies as may be proper, that it is in the interest of those societies to be amalgamated into a new society, he may, by order in writing, require the managing committee of the societies concerned to convene general meetings of the shareholders and creditors thereof within six weeks from the date of the order for the purpose of considering a proposal to amalgamate the societies into a new society. If the managing committees fail to call any such meeting for the purpose or if the decision in any such meeting is against the proposed

amalgamation or no decision is taken at any such meeting, the Registrar, may, on the expiry of six weeks from the date of his order and after satisfying himself that the interests of the creditors have been adequately safeguarded, direct that the said societies shall be amalgamated into a new society with effect from a date to be specified in the direction. The Registrar shall, with effect from the said date, register the new society and on such registration the assets and liabilities of the amalgamated societies shall vest in the new society. However, the Rule provides for an appeal against the order, within one month from the date of such order— (i) to the Registrar, if the order has been made by any officer exercising the powers of the Registrar, and (ii) to the State Government, if the order has been made by the Registrar.

The Delhi, Madhya Pradesh and Rajasthan Rules provide that before issuing any order under the Act providing for the amalgamation or division of any cooperative societies or society respectively, the Registrar shall prepare a draft scheme in respect of such amalgamation or division stating in particular the manner in which the new committee or committees of the cooperative society or societies resulting from such amalgamation or division shall be constituted and the bylaws which such cooperative society or societies shall follow. The Rule further lays down the procedure to be followed in this regard.

The Kerala Rule is similar to the Delhi Rule, except that it additionally provides that the Registrar shall send a copy of the scheme to the financing bank and Circle Cooperative Union for their views and consider the views expressed by them, if any, before the direction is issued.

The Maharashtra Rule (17) is similar to the Delhi Rule with the exception that the Registrar shall consult the federal society.

(iv) *Comments:* When groups of persons join together into a society they do so voluntarily. It is, therefore, incorrect to take away a part of this group compulsorily and form them into a separate society, or to compel this group to join another group. Such compulsion infringes the Principles of Voluntary Association and Democratic Control.

These are matters for the societies to decide of their own free will.

(v) *Commission Reports*: The Committee on Cooperative Law (1956) observed:

“Therefore, what is necessary is not a provision in the Act which will facilitate amalgamation of societies against the wishes of their members, but a provision that will facilitate such amalgamation, if the members so desire.”

The Working Group on Cooperation, Administrative Reforms Commission, 1968, observed:

“The following statutory powers given to Registrar . . . are repugnant to the voluntary and democratic character of the cooperative institutions:

- (i) Power of the Registrar to direct cooperative societies to amend their bylaws.
- (ii) Power of the Registrar to direct amalgamation or division of societies.
- (iii) Power given to Government nominees in the Board of Directors to veto majority decisions of the Board or refer the matter to the Government for final decision”.

“We strongly recommend that there should be no further delay in removing the above objectionable features from the cooperative legislations in the States where they have been included”.

“ . . . It is desirable to have a regular arrangement for consultation between the Registrar and the concerned federal organisations before the Registrar decides to take drastic action against delinquent societies . . . ”

“We . . . recommend that specific provisions should be made in all the Cooperative Societies Acts enabling the State Governments or the Registrars to confer statutory powers on federal organisations”.

“ . . . The position in sectors other than credit should be carefully reviewed and wherever the federal institutions at the regional or district levels develop adequate compe-

tence, they should be allowed to take over the task of supervising the activities of their affiliated societies....”.

The Working Group on Cooperation, Administrative Reforms Commission, 1968, further observed:

“The provisions that militate against the autonomous character of the cooperatives relate to powers given to the Registrars under the Cooperative Acts to direct amendments of the bylaws of societies and to bring about compulsory amalgamation/division of societies. In some Acts, power to veto has been given to the government nominees on the Board of Directors of Cooperatives”.

(vi) *Recommendation*: The laws providing for the compulsory amalgamation and division of societies should be rescinded as they are incompatible with the Principles of Voluntary Association and Democratic Control. The law in this regard should have only provisions to register new societies that have arisen out of voluntary amalgamation or division.

E. Voluntary Division and Amalgamation of Societies

(i) *Rules*: The following Rules relate to voluntary amalgamation and division of societies:

Andhra Pradesh	Rule 8
Bihar	Rules 37 & 38
Delhi	Rule 20
Gujarat	Rule 9
Kerala	Rule 13
Madhya Pradesh	Rule 11
Maharashtra	Rule 16
Rajasthan	Rule 12
Uttar Pradesh	Rule 37
West Bengal	Rule 8

(ii) *Summary of the Rules*: Andhra Pradesh Rule 8(1) provides that where a society has resolved to change the form or extent of its liabilities under the Act (Section 11) or transfer its assets and liabilities or to divide, amalgamate or convert under the Act (Section 12) it shall give thirty clear days notice in writing accompanied by a copy of the

resolution to all its members and creditors inviting them to exercise their option as required under the Act (Section 13). Rule 8(2) further provides that a notice shall be sent to every member and creditor of the society under certificate of posting and a copy of such notice together with a copy of the resolution shall be sent to the Registrar for his approval and Rule 8(3) provides that the Registrar shall communicate his approval or refusal within sixty days from the date of receipt by him of the copy of the resolution.

Bihar Rule 37 provides that any registered society may, at a general meeting held for the purpose and of which meeting at least seven days notice has been given to its members, resolve to divide itself into two or more registered societies. The resolution shall contain proposals for the division of the assets and liabilities of the society among the new societies into which it is proposed to divide it and may prescribe the area of operation of, and specify the members who will constitute each of the new societies. This Rule further lays down the procedure to be followed by the societies for effecting such a division. Rule 38 provides that any two or more registered societies may, at a general meeting of each society held for the purpose and of which at least seven days notice has been given to their respective members, resolve to amalgamate to form a new society. The Rule lays down the procedure to be followed in bringing about such amalgamation.

The Delhi Rule provides that every cooperative society desiring to effect amalgamation, transfer of assets and liabilities, division or conversion, shall make an application to the Registrar in that behalf giving full details about such amalgamation, transfer, division or conversion as the case may be. On receipt of the application under Rule 20 the Registrar may invite opinions from members and shareholders or creditors or from any other person who in the opinion of the Registrar is interested in the affairs of the cooperative society and may call for such further information or particulars from the cooperative society as he may deem necessary. On receipt of such application, the Registrar may, after examining the details furnished in the appli-

cation and after considering the suggestions received by him in response to his invitation and other particulars which he may call upon the society to furnish, give his approval to the amalgamation, transfer, division, or conversion as the case may be in the interest of the cooperative society. After the receipt of the approval of the Registrar the cooperative society shall convene a special general meeting by giving notice of at least 15 clear days to all its members and creditors and pass a resolution for amalgamation, transfer of assets and liabilities, division or conversion, as the case may be, by a two-thirds majority of the members present and voting at the meeting. The resolution so passed shall contain the purpose and the full scheme indicating how the proposed amalgamation, transfer or division or conversion would be useful to the cooperative society and be given effect to. The Rule further provides for the procedure to be followed in getting the amalgamated, divided or converted societies registered.

The Gujarat Rule provides that where a society proposes to amalgamate itself with another society or to transfer its assets and liabilities, in whole or in part, to any other society or to divide itself into two or more societies or to convert itself into another class of society or to change its object, it shall prepare a draft scheme in that behalf having regard to the provision of the Act [Section 17(2)] and place the same before a special general meeting of its members. If the special general meeting approves of the draft scheme with or without modifications by a resolution passed by a two thirds majority of the members present and voting at the meeting, the society shall forward a copy of the resolution and a copy of the draft scheme as approved by the special general meeting to the Registrar requesting him to accord his sanction to the proposal. If the Registrar accords his sanction to the proposal, the society shall proceed to take further steps in accordance with the Act (Section 17).

The Kerala and Maharashtra Rules provide that every society desiring to effect amalgamation, transfer of assets and liabilities, or division shall make an application to the Registrar in that behalf giving full details of such amalga-

mation, transfer, or division as the case may be. The Registrar may, after examining the details furnished in the application and other particulars which he may call for from the society, give his approval of the proposals, if it appears to him to be in the best interest of the society or societies concerned. The Rule further provides that on receipt of the approval from the Registrar the society may convene a special meeting of the general body, called for the purpose, giving 15 clear days notice and pass a resolution for amalgamation, transfer of assets and liabilities or division as the case may be by a two-thirds majority of the members present and voting at that meeting. In the case of amalgamation or division, the resolution shall include the draft bylaws proposed for adoption, and in the case of amalgamation, the draft bylaws shall also include provision for appointment of the new society's first Committee by nomination. When the resolution so passed is deemed to have taken effect under the Act [Section 14(6)], the society concerned shall report the fact to the Registrar. On receipt of such report, the Registrar shall, after satisfying himself that the procedure has been properly followed, declare that the resolution has taken effect and register the amalgamated society or the divided societies.

The Madhya Pradesh and Rajasthan Rules provide that every society desiring to effect amalgamation, transfer of assets and liabilities, division or conversion under the Act [Section 16(2)], shall frame a full scheme of reorganisation indicating how the proposed amalgamation, transfer of assets and liabilities, division or conversion would be useful to the society and how it would be given effect to. Where the scheme involves a division of a society into two or more societies, it shall contain proposals regarding the names, the areas of operation, and the draft bylaws as well as the lists of members and creditors of the new societies into which the society would be divided. Where the scheme involves conversion of the society into a class of society, the object of which is materially different from that under which it has been classified under the Act, it shall contain draft bylaws of that class of society into which the society would

be converted. After framing the scheme of reorganisation, the society shall convene a special general meeting by giving written notice of twenty-one days to all its members along with the proposed scheme of reorganisation. In the case of a society desiring amalgamation with, or transfer of the assets and liabilities in whole or in part to, any other society, the society shall send a copy of the notice and the proposed scheme to the other society also for information. The society may pass a resolution for amalgamation, transfer of assets and liabilities, division or conversion, as the case may be, by a two-thirds majority of the members present and voting at the special general meeting and shall, in the case of the amalgamation or transfer of assets and liabilities, forward a copy of such resolution to the other society. After the receipt of the resolution the other society shall convene a special general meeting by giving written notice of twenty-one days to all its members along with the scheme of reorganisation and the draft amendment to its bylaws, if any, and may pass a resolution by a two-thirds majority of the members present and voting at the special general meeting approving the scheme of reorganisation and the amendment to its bylaws, if any, and send a copy of its resolution to the society which has decided to reorganise itself. The affected society shall submit a report to the Registrar of the action taken by it in pursuance of the resolution and request him to approve the decision for amalgamation, transfer of assets and liabilities, division or conversion. The Registrar shall after satisfying himself that the procedure has been properly followed, approve the decision of the society and register the amalgamated, divided or converted society or societies.

The Uttar Pradesh Rule provides that where two or more cooperative societies propose amalgamation or merger under the Act (Section 15) or where a cooperative society proposes to divide itself under the Act (Section 16) fifteen clear days' notice of the general meeting to be called for the purpose shall be given to the Registrar by registered post or by personal delivery under acknowledgement in the prescribed form (Form 'J').

The West Bengal Rule provides that a cooperative society may by resolution passed by a majority of not less than two-thirds of the members present and voting at an annual or a special general meeting of the society—(a) transfer its assets and liabilities in whole or in part to any other cooperative society; or (b) divide itself into two or more cooperative societies. The Rule further provides that any two or more cooperative societies may by resolution passed by a majority of not less than two-thirds of the members present and voting at an annual or special general meeting of each such society amalgamate themselves and form a new cooperative society. The Rule further lays down the procedure to be followed in connection with the division or amalgamation of the societies and also with the registration of a new society or societies formed in accordance with the resolution.

(iii) *Comment*: These provisions are *per se* unexceptionable but they should form part of the substantive legislation.

(iv) *Recommendation*: These Rules should be rescinded and their provisions transferred to the respective Acts.

F. Supervision of loans to officers and their relatives.

(i) *Acts*: The following laws provide that a society should review loans given to officers or their relatives at every annual general meeting:

Jammu & Kashmir	Sec. 26-A
Maharashtra	Sec. 75(2)
Orissa	Secs. 29 (B-1), 115(8)

The Orissa Act further provides that the Registrar should be informed of any failure on the part of an officer or his near relative to repay the total demand of the society, vide Section 115(8).

(ii) *Comments*: State supervision of the granting of loans by a society to its officers and their relatives is contrary to the Principle of Democratic Control. It is the attempt of an outsider to save the members from their own management. The bylaws should provide certain safeguards against

the misuse of power by the committee. Then it would be the members themselves taking measures against the abuse of power.

(iii) *Recommendations*: The provisions in the law for the supervision of loans to office bearers and their relatives should be deleted.

G. Lending, borrowing and investment of funds

(i) GENERAL

The following State laws deal with lending, borrowing and investment of funds by cooperative societies:

	<i>Lending & Borrowing</i>	<i>Investment</i>
Andhra Pradesh	Sec. 47	Sec. 46
Assam	Secs. 42, 44	Sec. 51
Bihar	Secs. 15, 16	Sec. 19
Gujarat	Secs. 44, 45	Sec. 71
Himachal Pradesh	Secs. 58, 59	Sec. 53
Jammu & Kashmir	Secs. 54, 55	Sec. 53
Kerala	Secs. 58, 59	Sec. 57
Madhya Pradesh	Secs. 36, 37	Sec. 44
Maharashtra	Secs. 43, 44	Secs. 70, 54
Mysore	Secs. 45, 49, 52, 59, 60.	Sec. 58
Orissa	Secs. 58, 59	Secs. 45, 47
Punjab	Secs. 45, 46	Sec. 44
Rajasthan	Secs. 40, 41	Sec. 43
Tamil Nadu	Secs. 58, 59	Secs. 48, 60
Uttar Pradesh	Secs. 60, 61	Sec. 59
West Bengal	Secs. 39, 41A (lending) Sec. 32 (borrowing)	Sec. 55
Delhi	Secs. 50, 51	Sec. 49

(ii) LENDING LIMITS OF SOCIETIES

(a) *Rules*: The following Rules deal with the fixation of superior lending limits of societies:

Andhra Pradesh	Rule 41(3)
Assam	Rule 54
Himachal Pradesh	Rule 76
Kerala	Rule 56(2)
Madhya Pradesh	Rule 27
Orissa	Rule 53(2)
Punjab	Rule 39
Uttar Pradesh	Rule 192
West Bengal	Rule 77

(b) *Summary of Rules:* The Andhra Pradesh, Kerala and Orissa Rules provide that the Registrar shall have power to fix, by a special or a general order in writing, the maximum lending amount of a financing bank or a credit society (other than an agricultural credit society with unlimited liability or a land mortgage bank or a society the object of which is to grant long-term loans exclusively on the mortgage of immovable properties) in respect of short-term loans and loans repayable after one year but within three or five years as the case may be.

The Assam Rule provides that a society shall determine and fix the credit limit of its members in a manner it thinks fit, provided that—(a) in a primary non-agricultural credit society the credit limit of a member shall be determined by taking into consideration his assets, liabilities and repaying capacity; (b) in a primary agricultural credit society the credit limit shall not exceed one-half of the total value of the agricultural lands of a member which are actually under his cultivation during the period of assessing normal credit or two thirds of the total estimated net income from such lands during the period of the repayment of the loan whichever is less.

The Himachal Pradesh Rule provides that the Registrar may, from time to time, lay down the limit beyond which a society or class of societies may not advance loans to members.

The Madhya Pradesh Rule provides that the committee of a society shall determine the credit limit of a member, within the limit fixed, by a general or special order of the

Registrar, for the society or the class of societies to which it belongs.

The Punjab Rule provides that the bylaws of a society may lay down the limit beyond which a society may not advance loans to individual members, without the Registrar's prior consent.

The Uttar Pradesh Rule, provides that a society which supplies credit to its individual members, shall fix the maximum amount which may remain outstanding from any member on account of a loan. The limit so fixed shall, in the case of a cooperative society which is a borrowing member of a Central Bank, be subject to the approval of the Central Bank concerned and, in the case of other societies, it shall be subject to the approval of the Registrar by general or special order.

The West Bengal Rule provides that the managing committee of a society shall determine the normal credit limit of its members in such manner as it thinks fit: provided that (a) in a primary non-agricultural credit society, the maximum or normal credit of a member shall be determined after taking into consideration his assets, liabilities and the surplus of income over expenditure; and (b) unless otherwise directed by the Registrar, in a primary agricultural credit society—(i) the maximum credit shall not exceed one-half of the total value of the unencumbered agricultural lands of a member or three-fourths of the total estimated net income from such lands during the period of the repayment of the loan, whichever is less; and (ii) subject to (i) the normal credit of a member shall be an amount sufficient to meet the expense ordinarily incurred by him for (a) the cost of cultivation and harvesting; and (b) expenditure towards maintenance of his family during the cultivation season.

(c) *Comment:* These provisions deal with matters which are those for self-regulation. The society is the best judge of the requirements as well as the creditworthiness of its members. There is no better knowledge which the Registrar can claim to have, regarding these matters. By requiring the societies to obtain the Registrar's prior approval, the

Registrar is virtually made responsible for the success or failure of the society. This responsibility is never actually placed on him. All failures, even those due to the misjudgement of the Registrar, are placed at the door of the society. Thus power without responsibility is vested in the Registrar. Vesting this power in the Registrar makes the society less responsible minded than it would be if the society has to make its own decisions. What happens usually is that a society takes a lenient view of any matter that is subject to the Registrar's approval, feeling that the Registrar would amend the society's decision if he does not agree with it. So the society never becomes self-reliant and capable of managing its own affairs. This tutelage was imposed on the cooperatives by a colonial power which perhaps, did not really want to make the Indians truly self-reliant as that way lay the road to freedom from the British yoke. The vesting of these powers in the Registrar is contrary to the Principle of Democratic Control. The provision in the Uttar Pradesh Rule requiring the Central Bank's approval is salutary and would not be a violation of any Cooperative Principle if the provisions relating to the Central Bank's approval are included in the Central Bank's bylaws. The societies which are its members would be bound by them.

(d) *Recommendation*: These Rules should be rescinded and suitable provisions should be included in the bylaws of the Central Banks. Such provisions should not contravene any cooperative principle.

(iii) NORMS FOR LENDING TO MEMBERS

(a) *Rules*: The following Rules specify the conditions to be complied with by members in applying for loans from societies:

Assam	Rule 53
Bihar	Rule 41
Delhi	Rules 71, 72 & 76
Karnataka	Rule 27(2)
Kerala	Rule 56(4)
Maharashtra	Rule 42(8) and 43
Orissa	Rules 51, 52 & 53

Rajasthan	Rules 47 & 58
Uttar Pradesh	Rules 171, 188, 189, 190, 191, 193, 196, 197
West Bengal	Rules 73 & 74

(b) *Summary of Rules:* Delhi Rule 71 provides *inter alia* that, except with the general or special permission of the Registrar, the loan advanced to a member by a society or to a society by a financing bank, shall be subject to such conditions as may be laid down by the Registrar, with the approval of the financing bank, including the maximum amount to be advanced and the period of repayment, in regard to total advances as well as securities of different types.

Delhi Rule 71 further provides that in the matter of loans to societies by financing banks or to members by primary societies, the Registrar may lay down, with the approval of the financing bank, the procedure regarding the receipt of applications, assessing of credit needs, making of enquiries in respect of the production programmes for which such loans are required, and the final sanctioning of the loans. He may also lay down the rates of interest to be levied from year to year, the nature of enquiries that should be made for the purpose of financing different groups and the conditions that shall be observed for the proper utilization of the loans and for the sale of agricultural produce before such finance is granted. The rule further lays down that the Registrar may, by general or special order, prohibit or regulate the grant of loans by the financing bank or a cooperative society where such grant is considered to be neither in the interest of the society nor conducive to the development of the cooperative movement on sound lines.

Assam Rule 53(1) provides that every credit society of unlimited liability shall, from time to time, fix in the annual general meeting of the general body the maximum liability a member may incur. The maximum limit so fixed shall be subject to the sanction of the Registrar or some person authorised by him who may, if he thinks fit, reduce it or impose such conditions as he may think necessary. No loan

shall be granted to an individual member of a society which shall make his total debt to the society exceed the maximum amount so fixed. Rule 53(2) further provides that in any cooperative society of which the liability of the members is limited by shares, no loan shall be granted to a member exceeding ten times the amount of the share capital paid by him but not exceeding the limit provided in the bylaws or determined by the annual general meeting of the general body. It further provides that (a) a society may grant loans to its members not exceeding twenty times the amount of share capital paid by a member, where such loans are issued on mortgage or valuable security, as provided in the Act [Section 44(2)(c); (b) the Apex Bank or any other financing bank may grant loans to any affiliated cooperative land mortgage bank not exceeding twenty times the amount of share capital paid by the land mortgage bank; (c) the Apex Bank may advance loans to an affiliated society engaged in the purchase, production and disposal of goods of its members not exceeding ten times the amount of share capital paid up by such society.

Bihar Rule 41 provides that loans may be granted by a registered society to its members only to such extent and for such purposes and on such terms and conditions as are laid down in the bylaws and subject to such directions not inconsistent with the bylaws as may from time to time be issued by the Registrar. The Rule further provides that if a registered society issues a requisition on any other registered society for the realisation of the loan advanced to any member or the interest thereon, it shall be incumbent on the latter society to deduct the same from any money belonging to such member with the latter society after setting off its own dues, if any, against the member. The Rule requires that an application for a loan by a member of a registered society shall be in Form IX and shall contain a declaration to the effect that the applicant pledges his property to the society for any debt due or advance to be made to him by the society subsequent to his admission as a member thereof; provided that the State Government may exempt any class or classes of societies from this requirement.

Delhi Rule 71(3) provides that unless exempted by the general or special order of the Registrar, lending to a member by a cooperative society or to a cooperative society by a financing bank shall be subject to such conditions as may be laid down by the Registrar, with the approval of the financing bank, including the maximum amount that may be advanced, the period of repayment and the different types of securities that should be obtained.

Maharashtra Rule 43(2) provides that subject to the maximum limit specified in the bylaws, a loan to be granted to a member of a resource society and the period of its repayment shall be in accordance with the standard laid down by the Registrar in consultation with the Central Bank and the federal society. A loan in excess of the maximum amount may be granted to a member with the previous sanction of the Central Bank and the federal society to which the society is affiliated and where the amount of loan exceeds twice the maximum limit contained in the bylaws, the prior sanction of the Registrar shall also be obtained.

Karnataka Rule 27(2) provides that the total amount of loans granted by a cooperative society to the members of its Committee of Management and outstanding against them in the aggregate shall not at any time exceed 25% of the total of all loans granted by the society and outstanding against its members at any time.

Delhi Rule 72 provides that every member of a "co-operative society" applying for a loan from it shall be required to hold shares "in such manner" and in such proportion to the amount of loan applied for by him as may be specified in the bylaws of the cooperative society. The Rule further provides that subject to the maximum amount specified in the bylaws, a loan to be granted to a member of a "resource" society and the period of its repayment shall be in accordance with the standard laid down by the Registrar and a loan in excess of the maximum amount may be granted to a member only with the previous sanction of the Registrar. Rule 76 provides that no society shall make any loan to a member on a bond secured by the

suretyship of a non-member provided that the Registrar may for special reasons exempt any society, by name, from the operation of this Rule.

The last proviso of West Bengal Rule 76(A) states that the provision of the Act [Section 39(i)(a)] shall apply to the West Bengal Provincial Cooperative Bank Limited to the extent that the said society may make loans to any person other than a member on the security of such person's fixed deposit in the said society to such extent, not exceeding 75% of the total amount of such fixed deposit, as may be determined by the Registrar. Rule 78 provides that when it appears to the provincial government that the lending of money on the mortgage of immovable property by any society or class of societies should be prohibited or restricted, it shall publish an order in the Calcutta Gazette prohibiting or restricting such transactions.

Kerala Rule 56(4) and Maharashtra Rule 42(8) provide that the Registrar may, in consultation with the financing bank, by general or special order, prohibit or regulate the grant of loans by a Central Bank or society where such grant is considered to be in the interest of neither the society nor the development of the cooperative movement on sound lines.

Maharashtra Rule 43 is similar to Delhi Rule 72 with an additional provision that the Registrar shall lay down the standard, in consultation with the Central Bank and the federal society, and that a loan in excess of the maximum amount may be granted to a member with the previous sanction of the Central Bank and the federal society to which the society is affiliated. However, if the amount of the loan exceeds twice the maximum amount allowed in the bylaws the prior sanction of the Registrar shall also be necessary.

Orissa Rule 51 provides that an application to a society for a loan shall be in such form as may be required by the committee and shall state the purpose for which the loan is required. It is also provided that a member applying for a loan shall make such payment as may be specified in the bylaws and a member of a primary society applying for

a loan shall furnish a full statement of his property and debts, annual income, annual expenditure including instalment of principal and interest on prior debts; and surplus available for repayment of the loan applied for. Rule 52 provides that a member shall furnish for every loan such security as may be required under the bylaws or by the committee.

According to Orissa Rule 53, in societies where share capital is contributed by members, a loan shall be granted to a member in proportion to the share capital paid by him which shall be fixed in the bylaw, and these proportions for any society or class of societies may be increased or decreased as may be decided by the Registrar. The Rule further provides that every credit society of unlimited liability shall from time to time fix in a general meeting, the maximum liability a member may incur. The limit so fixed shall be subject to the revision of the Registrar or some person authorised by him or the financing bank who may, reduce it or impose such conditions as may be considered necessary. No loan shall be granted to any individual member of a society which grant would make his total debts to the society exceed the maximum amount so fixed. The Rule lays down that no loan shall be made by a society to any person other than a member provided that with the prior sanction of the Registrar, a society may make deposits with another society which is not a member subject to such conditions as the Registrar may specify. The Rule further provides that save with the prior sanction of the Registrar and subject to such restrictions as he may impose no financing bank shall lend money to its individual members except against fixed deposits or trustee securities. The Rule further provides that no society shall lend money to its members only on the security of immovable properties except with the previous general or special order of the Registrar or an officer specially empowered by him in this behalf.

Rajasthan Rule 47 provides that in the case of cash credit the amount of loan shall not exceed such multiple of owned funds of the borrowing society as may be laid down by the Registrar from time to time. The Rule further provides

that a loan advanced to a member by a society or to a society by a financing bank shall be subject to such conditions as may be laid down by the Registrar, including the maximum amount to be advanced and the period of repayment.

Rajasthan Rule 58 and West Bengal Rules are similar to the Orissa Rule.

The Tamil Nadu Rule is similar to the Kerala Rule.

Uttar Pradesh Rule 187 provides that save with the permission of the Registrar no cooperative society with unlimited liability shall lend money on the security of movable property. Rule 188(1) provides that no cooperative bank other than an urban bank may lend money to its individual members except that—(i) where the individual member holds a current account in the bank, he may, subject to such terms and conditions as the bank may impose, be allowed an overdraft for a period of not more than six months; provided that the amount of the overdraft so allowed shall not in any case at any time exceed Rs. 2,500/- or the monthly income of the individual member whichever be lower; (ii) where the individual member holds a fixed deposit or recurring deposit account, he may, on the security of the deposit, be allowed a loan not exceeding 90% of the amount so held. Rule 188(2) further provides that subject to such terms and conditions as it may impose, a Central Bank may lend money to any non-member depositor [Section 61(2)] on the security of his deposit; provided that the loan shall not exceed 90% of the amount held in deposit in the bank. Rule 189 provides that no cooperative society shall, except with the permission of the Registrar, lend money to a member on a bond secured by the suretyship of a non-member. Rule 190 provides that no extension of the period for which a loan has been granted by a cooperative society shall be made without the consent of the sureties. Rule 191 provides that, except with the prior permission of the Registrar, no Central Bank shall increase its rate of interest on lendings to agricultural cooperative credit societies, nor shall it charge interest from such societies at a rate exceeding 3 per cent over its average borrowing rate. Rule 193 provides that no cooperative society, other than a

Central Bank, shall charge from its members interest at a rate higher than the maximum rate that may be fixed by the Registrar from time to time. Rule 195 provides that in the case of a cooperative society of salary or wage earners, no loan shall be advanced by the society to any of its members unless the member executes an agreement in favour of the society as provided in the Act [Section 40(i)]. The Rule further provides that a cooperative society shall, within a fortnight of the advance of a loan to a member, forward a duly certified copy of the agreement, executed by the member, to the employer or the pay disbursing authority concerned for deduction under the said agreement. Rule 196 provides that no society whose primary objects do not include the grant of loans or financial accommodation to its members, shall grant a loan or sanction cash credit to any member without the special sanction of the Registrar. Rule 197 provides that no cooperative society shall give to or receive from any other cooperative society loans, advances or deposits except according to the provisions of the Act, Rules or the bylaws of the society concerned or except where prior approval of the Registrar has been obtained for such transactions by general or special order.

West Bengal Rule 76 provides that in any society in which the liability of the members is limited by shares, no loan shall be granted to a member exceeding 10 times the amount of share capital paid by him. The Rule further provides that—(a) a central cooperative land mortgage bank, the provincial bank or a central bank may grant loans to a cooperative land mortgage bank upto twenty times the amount of share capital paid up by the land mortgage bank; (b) a land mortgage bank may grant loans to its members upto twenty times the amount of share capital paid-up by a member; (c) the provincial bank may advance loans to a society engaged in the purchase of production and disposal of goods of its members not exceeding ten times the share capital paid up by such society, (cc) with the permission of the Registrar and under such conditions as he may impose, the provincial bank or any other finan-

cing bank may grant loans to its member-societies upto twenty times the amount of share capital paid up by the member-societies; (d) with the permission of the Registrar and under such conditions as he may impose, an agricultural society may grant loans to its members repayable within a period of twelve months for facilitating the production or disposal of crops, irrespective of the amount of the share capital paid up by such member; (e) with the permission of the Registrar and under such conditions as he may impose, the provincial bank or any other financial cooperative bank may grant loans to its members against the pledge or hypothecation or marketable security or goods or both upto a maximum limit of 80 per cent of the market value of such security or goods or both irrespective of the amount of share capital paid up by such members; (f) with the permission of the Registrar and under such conditions as he may impose, a cooperative society composed solely of displaced persons and recommended by the Refugee Relief and Rehabilitation Commissioner, West Bengal, may grant loans to its members irrespective of the amount of share capital paid up by such members.

(c) *Comments:* Lending to members is a matter solely for self regulation. The criteria for fixing the credit limits, the requirements for suretyship etc. should be laid down by the general body and not the Registrar. Therefore, they should be stated in the bylaws. Empowering the Registrar to lay down these standards as well as to waive such standards is a violation of the Principle of Democratic Control. Moreover any loss resulting from lending on the basis of the Registrar's waiving of a standard is not recoverable from the Registrar. Therefore, this is power without responsibility. Such power is open to abuse, especially where the Registrar is a new-comer to cooperation or one who is anxious to please his political masters, regardless of the society's interests. Therefore, such power is undesirable *per se* as well.

Such Rules provide the Registrar with power to control all the loan transactions of primary as well as secondary cooperatives, not only violating their independence but also

leaving them with no initiative, virtually making them government adjuncts. This is a gross violation of the Principle of Democratic Control.

All provisions regarding loans should appear only in the bylaws as lending is a matter for self-regulation. There is no justification for the Registrar to fix the maximum credit limit either of a society or of a member. Time was when there were only small and simple societies of small and simple folk for small and simple purposes, and loans were available only from the Government. At that stage the Registrar was a responsible adviser as he had to protect the interests of the Government in its capacity as the creditor.

The Delhi provisions empowering the Registrar to lay down the procedure, rates of interest, the nature of inquiries to be made before lending, the conditions to be observed for the proper utilization of loans and the power given him to prohibit or regulate loans are contrary to the Principle of Democratic Control.

As against the Delhi Rule 72, the Maharashtra Rule 43 is an improvement in that it requires the Registrar to consult the Central Bank and the federal society concerned when laying down standards for lending. The requirement to obtain the sanction of the Central Bank and the federal society for exceeding the credit limit is an improvement, but this is vitiated by the requirement that the Registrar's approval is necessary when the loan exceeds twice the maximum amount allowed in the bylaws. The sanctioning of a loan to a member is a matter solely for self-regulation. Therefore even the provision to obtain the sanction of the Central Bank and the federal society is a violation of the Principle of Democratic Control. The requirement should be to consult either or both but the sanctioning of a loan should be the Committee's sole responsibility. Consulting the federal society should be necessary only when the member concerned delivers his produce to the federal society. The bylaws should make it obligatory on the Committee to consult the central bank and the federal society before giving loans in excess of the credit limit laid down in

the bylaws but there should be no power given to either of these bodies or the Registrar to sanction such loans. The bylaws may allow the Committee to give such loans but only under extraordinary circumstances and only to members who have not defaulted in their repayments of previous loans and the bylaws should lay down the upper limit of such loans. Such power to exceed the bylaw limit is not found generally and should be avoided.

The provisions of Orissa Rule 51, Rajasthan Rule 58 and West Bengal Rules 73 & 74 are salutary but their proper place is in the bylaws.

(d) *Recommendation*: All these Rules should be rescinded. The provisions of the Orissa (51) Rajasthan (78) and West Bengal Rules (73 & 74) may be included in the Bylaws.

(iv) RELATIONSHIP OF LOANS TO SECURITIES

(a) *Rules*: The following Rules empower the Registrar to regulate loans to members and securities therefor in societies:—

Delhi	Rule 71
Himachal Pradesh	Rule 77
Kerala	Rule 56(4)
Maharashtra	Rule 42(8)
Punjab	Rule 40
West Bengal	Rule 76(A)

(b) *Summary of Rules*: The Delhi Rule provides that in the case of loans granted against the security of immovable or movable property, the lending society shall maintain such margin as the Registrar may, by general or special order, direct from time to time "with reference to different commodities, securities or classes of cooperative societies". It shall be lawful for a society to grant a loan without taking immovable or movable property as security therefor if the purpose for which the loan is given is considered sound and feasible and it is reasonably expected that the loan will be repaid by the borrower. The Rule provides that the Registrar may issue directions to a society to ensure that a loan for a creditworthy purpose,

as indicated in the Rule, is given by the society without causing any difficulty to the borrower on the one hand and without being detrimental to the financial interest of the society on the other.

The Himachal Pradesh and Punjab Rules provide that the Registrar may, from time to time, issue such directions as he may consider necessary, for regulating the nature and extent of security which societies or classes of societies may demand in respect of loans advanced by them.

(c) *Comments:* It is desirable that cooperatives keep a margin between loans and securities, but it should be left to the societies themselves to fix this margin in consultation with their financing banks. It is undesirable to provide for the Registrar to fix these margins. He would not be answerable for his errors of judgement. A financing bank would have an immediate concern in the well-being of its borrowing member-society and so give responsible advice. Therefore there should be a bylaw of the financing bank requiring the committee of a borrowing society to obtain the concurrence of the financing bank on such matters. Such provision would not offend against the Principle of Democratic Control as the society would be a member of the financing bank. Today this is no longer the position.

The power given under the Himachal Pradesh and Punjab Rules to the Registrar to regulate securities and the power given him by the Kerala, Maharashtra and Rajasthan Rules to regulate the grant of loans to Central Banks and societies are objectionable for the same reason. Moreover the proper party to regulate securities and loans are the lending bodies themselves. No intervention of the Registrar is justifiable or likely to be useful.

(d) *Recommendation :* These Rules should be rescinded and suitable bylaws should be adopted by the societies and banks concerned.

(v) PERIODS OF LOANS TO MEMBERS

(a) *Rules:* The following Rules prescribe the maximum period for which loans may be granted by societies to their members:

Andhra Pradesh	Rule 41
Assam	Rule 53
Himachal Pradesh	Rule 79
Karnataka	Rule 27(2)
Kerala	Rule 56
Madhya Pradesh	Rule 25
Maharashtra	Rule 43(2)
Orissa	Rule 53
Rajasthan	Rule 47
Tamil Nadu	Rule 43
Uttar Pradesh	Rules 187, 188, 189, 190, 191, 195, 196 & 197
West Bengal	Rules 74, 76, 76(A) & 78

(b) *Summary of Rules:* Andhra Pradesh Rule provides that no financing bank or credit society, other than an agricultural credit society with unlimited liability or a land mortgage bank or a society the object of which is to grant long-term loans exclusively on the mortgage of immovable properties, shall grant loans for periods exceeding three years. However, the Registrar may, as a recognition of good management, permit, by a special order in writing, any such financing bank or credit society to grant loans for periods exceeding three years but not exceeding five years for the objects specified in the Rule, which includes such other purposes "as may be specified by the Government by a general or special order". The Rule further lays down that the total amount of loans granted for periods exceeding three years shall not be more than 50 per cent of the total amount of loans permissible under the Rule for periods exceeding one year but not exceeding five years.

Assam Rule 53(2) provides that an agricultural society may grant loans to its members repayable within a period of twelve months for facilitating the production or disposal of produce, irrespective of the amount of the share capital paid up by such member, with the previous permission of the Registrar and under such conditions as he may impose.

The Himachal Pradesh Rule provides that no financing bank or credit society other than an agricultural credit society with unlimited liability, or a land development

bank, or a society the object of which is to grant long-term loans exclusively on the mortgage of immovable properties, shall grant a loan for a period exceeding five years.

The Kerala Rule has the same provision except that the period of a loan shall not exceed three years. The Rule further provides that the Registrar may, as a recognition of good management, permit, by a special order in writing, any such financing bank or credit society to grant loans for periods exceeding three years but not exceeding five years for the objects specified in the Rule. The Rule further provides that no agricultural credit society with unlimited liability shall grant loans for a period exceeding five years.

The Madhya Pradesh Rule has the same provision as the Kerala Rule. The Rule further provides that in a society where share capital is contributed by members, a loan shall be granted to a member in proportion to the share capital paid by him as may be laid down in the bylaws and the proportion for any society or class of societies may be increased or decreased as may be decided by the Registrar. The Rule lays down that except with the previous sanction of the Registrar and subject to such restrictions as he may impose, no cooperative Central Bank shall lend money to individual members.

The Orissa Rule provides that the period of repayment of a loan from a financing bank or a credit society shall be such as may be provided in the bylaws and in no case shall it exceed five years except in the case of the land development bank or a society the object of which is to grant long-term loans exclusively on the mortgage of immovable properties. The Rule provides that the instalment for repayment of a loan which is granted to a member of a primary credit society shall not be in excess of the annual surplus income of the applicant estimated by the committee under Rule [51(3)(iv)]. The Rule further provides that no extension of the period for which a loan is advanced shall be granted except on sufficient cause shown on the application of the borrower and with the consent of the sureties or guarantors and in the case of a primary society affiliated

to a financing bank such extension may be given only with the consent of the financing bank.

(c) *Comment:* All these are matters for self-regulation by the cooperatives concerned.

(d) *Recommendation:* These Rules should be rescinded forthwith.

(vi) MANNER OF RECALLING LOANS

(a) *Rules:* The following Rules lay down the manner of recalling loans:

Delhi	Rule 74
Himachal Pradesh	Rule 81
Maharashtra	Rule 46
Rajasthan	Rule 65

(b) *Summary of Rules:* The Delhi Rule provides that, notwithstanding anything contained in an agreement entered into with a borrowing member, the committee of a society shall be entitled, after giving a week's notice to such member, to recall the entire amount lent immediately, when it is satisfied that the loan given has not been applied for the purpose for which it was given or there has been a breach of any of the conditions of the grant of such loan. The Rule further states "nothing in the Rule shall be deemed to preclude the Registrar from directing the cooperative society to recall a loan of his own motion, when it is brought to his notice that the loan given by the society has been misapplied or conditions thereof have not been followed. The Registrar may make, in the matter, such enquiries as he may deem necessary and, after giving a show cause notice to the society, issue, with the prior approval of the financing bank, necessary directions to the society. The directions issued by the Registrar in this respect shall be complied with by the society".

The Himachal Pradesh, the Maharashtra and the Rajasthan Rules are similar to the Delhi Rule.

(c) *Comment:* The power of the committee to recall a loan should be provided in the bylaws of the society. It is not correct to have a Rule for this, as all the powers of

the committee should be derived from the general body. through bylaws etc. and not from the State. Under the Principle of Democratic Control, the management is appointed or elected by the members and the affairs of a society shall be administered according to the democratically expressed will of the members. So it is only the general body that can empower the Committee. Provisions regarding the powers and duties of the Committee should therefore be included in the bylaws. The power given to the Registrar to direct the recall of a loan is contrary to the Principle of Democratic Control.

(d) *Recommendation:* The Rules should be deleted and the power of the Committee regarding loans should be stated in the bylaws if it has not been stated there already.

(vii) RESTRICTION ON BORROWING

(a) *Rules:* The following Rules provide for the restriction of borrowings by societies:

Andhra Pradesh	Rule 40
Assam	Rules 47(1)(2), 48, 49 & 50
Bihar	Rule 40
Delhi	Rules 68 & 69
Gujarat	Rules 24 & 25
Himachal Pradesh	Rule 78
Jammu & Kashmir	Rule 24
Kerala	Rule 55
Maharashtra	Rules 35, 36, 37, 38, 39, 40 & 45
Karnataka	Rule 25
Orissa	Rule 49
Punjab	Rule 43
Rajasthan	Rules 45, 46, 61 & 62
Tamil Nadu	Rule 42
Uttar Pradesh	Rules 178, 179, 180, 181, 182 & 183
West Bengal	Rules 66, 67 & 68

(b) *Summary of Rules:* The Andhra Pradesh Rule provides that a society may receive deposits and raise loans from persons or institutions who are not members provided that the amount borrowed from such persons and insti-

tutions together with the amount borrowed from members does not exceed the limit fixed from time to time by the Registrar for the society or for the class of societies to which it belongs.

Assam Rule 47(1) provides that the maximum amount which a society may receive as deposits and borrow from its members and non-members shall be determined at an annual general meeting of the society and no society shall borrow beyond the maximum amount so determined and in force for the time being: provided that the Registrar or any person authorised by him may at any time, reduce the limit fixed by the general assembly. Rule 47(2) further provides that except as provided in Rule 48, no society shall incur liabilities from persons who are not members in excess of the borrowing limit fixed from time to time in a meeting of the general body subject to the approval of the Registrar. Rule 48 provides that a cooperative society with unlimited liability which is a member of an affiliating financing bank shall not take loans from any non-member without the sanction of the affiliating society and where the society is not a member of such affiliating society, without the previous sanction of the Registrar. Rule 49 provides that no society with limited liability shall, by accepting deposits or loans or in any other way, incur liabilities exceeding 15 times the sum of the paid up share capital and the reserve fund for the time being separately invested outside the business of the society. The Rule further provides that the Apex Bank or a Central Cooperative Bank for the purpose of financing its affiliated societies may incur liabilities by floating debentures, accepting deposits or in any other way to the extent of twenty times the value of paid up share capital and the reserve fund for the time being separately invested, unless relaxation is made by the Registrar by an order in writing. The rule further provides that an agricultural society or a bank financing such societies may with the permission of the Registrar or any person authorised on his behalf and under such conditions as he may impose, incur liabilities for the purpose of advancing seasonal loans to members for the production of crops and for financing

the disposal of produce, repayable within a period of 12 months irrespective of the amount of its paid up share capital or reserve fund separately invested outside the business. Rule 50 provides that cooperative societies may accept fixed deposits from members and non-members subject to such rules and regulations and for such periods as the Registrar may deem fit to impose, provided always that efficient management is ensured and that adequate fluid resources are maintained according to the standards prescribed. The Rule further provides that all cooperative societies with limited liability, other than agricultural credit societies and certain other types of societies in rural areas, may accept savings bank deposits both from members and non-members subject to rules for deposits framed by the society and approved by the Registrar. The Rule further provides that no cooperative society shall undertake current deposit account business without the sanction of the Registrar which shall not be given unless he is satisfied about the stability of the concern and its provisions for adequate fluid resources as prescribed under the Rules.

The Bihar Rule provides that a registered society may raise funds for its business by obtaining loans or deposits from the State Government, the financing bank or members or non-members or by issuing bonds or debentures or otherwise in accordance with its bylaws: provided that the acceptance of loans and deposits from members and non-members shall be subject to such conditions as to the maintenance of fluid resources and such restrictions as to the area and on such terms and conditions as to the amount and period of loans and deposits, dates of maturity and refund, rates of interest and notice of withdrawal, as may, from time to time be laid down by the Registrar.

Delhi Rule 68(1) provides that no cooperative society shall receive deposits, loans secured or unsecured, advances or overdrafts against hypothecation or pledge of goods from members or non-members, which exceed the maximum credit amount fixed from time to time in general meeting, subject to the approval of the Registrar, who may at any time reduce it. Rule 68(2) lays down the superior credit

limit, which the general meeting cannot exceed, in the case of various categories of cooperatives. The Rule further provides that the Registrar may reduce or increase the above maximum credit limit at the time of according his approval. The Rule further provides that a cooperative society which accepts deposits and loans from members alone and has no liability to any person other than the members, may receive deposits and loans from the members in excess of the limit fixed in the Rule. The cooperative society may receive deposits and loans in excess of the limit fixed in the Rule if the excess amount is deposited in a fixed deposit account with the financing bank or is invested in Government securities specified in the Indian Trust Act (Section 20) provided that the amount so deposited or invested or any part thereof is not withdrawn or otherwise utilised except for the payment of the deposits accepted in excess of the limits prescribed. Delhi Rule 69 provides that any society which is authorised under its by-laws to raise funds by the issue of debentures and bonds may, with the prior sanction of the Registrar, frame regulations regarding the maximum amount to be raised by the issue of debentures or bonds, the class or classes of debentures and bonds, the face value of each debenture or bond, the date on which debentures or bonds are to be redeemed, the rate at which interest is payable, the terms and conditions regarding transfer of debentures and bonds and other incidental matters. The Rule further provides that the total amount of debentures and bonds issued at any time together with the other liabilities incurred by the society shall not exceed the maximum amount which the society can borrow under Rule 68 and its bylaws. However, the Rule empowers the Registrar to lay down by general or special order, such additional conditions as he may deem fit, subject to which any society or class of societies may receive deposits, issue debentures or raise loans from any creditor other than the financing bank.

Gujarat Rule 24 provides that except with the previous sanction of the Registrar no society shall incur liability exceeding in total the limits specified in the Rule. Rule 24

(3)(i) however, provides that notwithstanding, anything contained in the Rule a society may incur liability in excess of the limit specified by receiving deposits or obtaining loans subject to the condition that the amount received as deposits or loans in excess of the said limit shall not be utilised in the business of the society but shall be invested in Government securities which shall be deposited in the institutions specified in the Rule. Rule 24(3)(ii) further lays down that no society shall borrow against the Government securities in which it has invested an amount allowed under the Rule. Rule 24(4) further lays down that every society with unlimited liability may, from time to time, fix in a general meeting the extent to which it may receive loans and deposits from persons other than members. The maximum so fixed shall be subject to the sanction of the Registrar, who may at any time reduce it for reasons to be communicated by him to the society in writing, and may specify a period of not less than four months, within which the society shall comply with his orders. Rule 25 provides that any society, which is authorised under its bylaws to raise funds by the issue of debentures and bonds may, with the prior sanction of the Registrar, frame regulations regarding the maximum amount to be raised by the issue of debentures and bonds, the class or classes of debentures and bonds, the face value of each debenture or bond, the dates on which the debentures or bonds are to be redeemed, the rate at which interest is payable, the terms and conditions regarding the transfer of debentures and bonds and regarding other incidental matters.

The Himachal Pradesh Rule provides that a cooperative society may receive deposits and loans from persons and institutions who are not members, provided that the amount so borrowed from such persons and institutions, together with the amount borrowed and deposits received from members, does not exceed the limit fixed from time to time by the Registrar for the society, or for the class of societies to which it belongs. The Rule further provides that notwithstanding anything contained in the Rule, a

society may receive deposits from its members exceeding the limit fixed, provided that the amount in excess of the said limit is invested outside the business of the society.

The Jammu & Kashmir Rule provides that subject to the provisions of sub-rule (2) of the Rule a cooperative society shall not receive deposits and loans, whether from members or non-members, which exceed the limit fixed from time to time by the Registrar in this behalf, for that society or for the class of societies to which it belongs. The Sub-rule (2) of the Rule provides that a cooperative society which accepts deposits and loans from members only and has no liability to any person other than the members, may receive such deposits and loans in excess of the limit prescribed in the Rule, if the excess amount is deposited in a cooperative bank to which it is affiliated or is invested in Government or other securities specified in the Indian Trust Act (Section 20). The Rule further provides that the amount so deposited or invested or any part thereof shall not be withdrawn or otherwise utilised except for the repayment of the deposits accepted in excess of the prescribed limit.

The Kerala Rule is similar to the Jammu & Kashmir Rule with the exception that the Kerala Rule refers to the limit fixed in the bylaws of that society and not to the limit prescribed by the Registrar as in the Jammu & Kashmir Rule.

The Maharashtra Rule 35 provides that no society other than those referred to in Rules 36 and 37 with limited liability shall without the previous sanction of the Registrar, incur liability exceeding in total 10 times the total amount of its paid up share capital, accumulated reserve fund and building fund minus accumulated losses. The Rule further provides that central banks, urban banks and producers' societies shall not, except with the previous sanction of the Registrar, incur liability exceeding 12 times the total of their paid up share capital, accumulated reserve fund and building fund minus accumulated losses. The Rule further provides that any society may incur liability in excess of the specified limits by receiving deposits or borrowing loans

subject to the condition that the amount received as deposits or borrowed as loans in excess of the said limit shall not be utilised in the business of the society but shall be invested in Government securities which in the case of central bank, shall be deposited with the Maharashtra State Cooperative Bank and in the case of other cooperative banks with the central bank. The rule further lays down that no society shall borrow against such securities. Rule 36 provides that except with the previous sanction of the Registrar the Maharashtra State Cooperative Bank shall not incur liability exceeding in total 15 times the total amount of its paid up share capital and all resources minus accumulated losses, actual bad debts, if any, and overdue interest: provided that the bank may incur liabilities in excess of the aforesaid limit by receiving deposits or borrowing loans subject to the condition that the amount received as deposits or borrowed as loans in excess of the said limit shall not be utilised in the business of the bank but be invested in government securities which shall be deposited with the Reserve Bank of India. The Rule further lays down that the bank shall not borrow against such securities. Rule 37 lays down that land development banks may incur liabilities not exceeding in total 20 times the total amount of their paid up share capital, accumulated reserve and building funds minus accumulated losses. Rule 38 provides that every society with unlimited liability shall, from time to time, fix in a general meeting the maximum liability which it may incur in loans and in deposits from non-members. The maximum so fixed shall be subject to the sanction of the Registrar, who may at any time reduce it, for reasons to be communicated by him to the society in writing, and may specify a period not being less than four months within which the society shall comply with his orders and that no such society shall receive any loan or deposit from a non-member which will make its liability to non-members exceed the limit sanctioned by the Registrar. Rule 39 provides that every society which has a share capital shall provide in the bylaws the maximum amount of such share capital, the number of shares into which it is divided, the class of shares, the face

value of each share of each class and the rights and liabilities attaching to each class of shares and where the full amount of the share is not payable on allotment, the amount and the number of instalments in which it is required to be paid and such other incidental matters. The Rule further provides that any society which is authorised under its bylaws to raise funds by the issue of debentures and bonds may, with the prior sanction of the Registrar, frame regulations regarding the maximum amount to be raised by the issue of debentures and bonds, the face value of each debenture or bond, the date on which the debentures or bonds are to be redeemed, the rate at which interest is payable, the terms and conditions regarding the transfer of debentures and bonds and regarding other incidental matters. The Rule further provides that the total amount of debentures and bonds issued at any time together with the other liabilities incurred by the society shall not exceed the maximum amount which the society can borrow under the provisions of the Rule 35, 36, 37 or 38, as the case may be, and its bylaws. Rule 40 provides that the Registrar may, by general or special order, lay down additional conditions as well as and the extent up to which any society or class of societies may receive deposits, issue debentures or raise loans from any person other than a central bank. Rule 45 provides that every person who is a member of more than one resource society (other than a land development bank or a central bank or a marketing society) dispensing credit shall, if he has not already done so make a declaration in the prescribed form (K) that he will borrow only from one such society to be mentioned in the declaration and shall send a copy of such declaration duly attested to all societies of which he is or has become a member. The Rule further provides that the society from which a person has borrowed may permit him to borrow from any other society of which he is a member to such extent and subject to such conditions as may be laid down by it. However, the Registrar may, for reasons to be recorded in writing, exempt any person or persons from the operation of the Rule or prohibit any person or persons from borrowing from more than one society, notwithstanding that the permission

of the society has been obtained as required under the Rule.

The Mysore (Karnataka) Rule provides that no society with limited liability, other than the Karnataka State Cooperative Apex Bank, district cooperative central banks, the land mortgage cooperative societies and banks, shall, without the previous sanction of the State Government, receive deposits and loans, whether these be from members or non-members, exceeding in total 10 times the total amount of its paid up share capital, accumulated reserve fund and building fund minus accumulated losses. The Rule however provides that except with the previous sanction of the Government—(a) the Karnataka State Cooperative Apex Bank shall not receive deposits and loans from members or non-members exceeding in total 15 times the total amount of its paid up share capital, accumulated reserve fund and building fund minus accumulated losses, (b) a district cooperative central bank shall not receive deposits and loans from members or non-members exceeding in total 12 times the total amount of its paid up share capital accumulated reserve fund and building fund minus accumulated losses, (c) the Karnataka Central Cooperative Land Mortgage Bank, and other primary land mortgage societies and banks shall not receive deposits and loans from members or non-members exceeding in total 20 times the total amount of a paid up share capital accumulated reserve fund and building fund minus accumulated losses. The Rule lays down the mode of calculating the total amount of liability. The Rule however lays down that a cooperative society which accepts deposits and loans from members only and has no liability to any person other than the members, may receive such deposits and loans in excess of the limit referred to in the Rule if the excess amount is deposited in a cooperative bank to which it is affiliated or is invested in Government or other securities specified in the Indian Trust Act (Section 20); provided that the amount so deposited or invested or any part thereof is not withdrawn or otherwise utilised except for the repayment of the deposits accepted in excess of the aforesaid limit.

The Orissa Rule provides that a society shall not accept deposits and loans in excess of the limit fixed from time to time by the Registrar. The Rule states that a society with unlimited liability which is a member of the financing bank shall not borrow by way of loan or deposits from any non-member other than the State Government without the sanction of the financing bank and where the society is not a member of the financing bank without the previous sanction of the Registrar. The Rule further states that a society may accept fixed deposits from members and non-members subject to such restrictions and for such periods as the Registrar may deem fit to impose, provided always that efficient management is ensured and that adequate fluid resources are maintained according to the standard laid down by the Registrar under the Rule 50. The Rule further states that all societies with limited liability which have made adequate provision for fluid resources according to the standard laid down by the Registrar under Rule 62 may accept savings bank deposits both from members and non-members subject to additional bylaws regarding deposits framed by the society and approved by the Registrar. The Rule further states that a society may accept thrift deposits in accordance with the bylaws for the encouragement of thrift among its members. The Rule further states that no society shall undertake current or deposit account business without the sanction of the Registrar and such sanction shall not be given by the Registrar unless he is satisfied about the stability of the society and about its provision of adequate fluid resources as prescribed under the Rules. The Rule further lays down that a society which accepts deposits and loans from members only and has no liability to any person other than the members may receive such deposits and loans in excess of the limit referred to in the Rule, if the excess amount is deposited in a bank to which it is affiliated or is invested in Government or other securities specified in the Indian Trust Act (Section 20); provided that the amount so deposited or invested or any part thereof is not withdrawn or otherwise utilised except for the repayment of the deposits accepted in excess of the prescribed limit.

The Punjab Rule provides that subject to the provisions of sub-rule (2) of the Rule, a cooperative society shall not receive deposits and loans from members or non-members in excess of the limit fixed from time to time in a general meeting subject to the approval of the Registrar who may at any time reduce it. Sub-Rule (2) says that a cooperative society which accepts deposits and loans from members only and has no liability to any persons other than the members may receive such deposits and loans in excess of the limits referred to in the Rule, if the excess amount is deposited in a cooperative bank to which it is affiliated or is invested in Government securities specified in the Indian Trust Act 1882 (Section 20) provided that the amount so deposited or invested or any part thereof is not withdrawn or otherwise utilised except for the payment of the deposits accepted in excess of the prescribed limit. The Rule further lays down that no society shall accept loans or deposits from members or non-members at a rate of interest which exceeds by more than 3 per cent the interest paid on similar types of deposits, or loans by the central cooperative bank within whose area of operation the society is situated except that the Registrar may by general or special order, exempt any class of societies or any individual society from the requirements of the Rule or relax its operation in respect thereof.

The Rajasthan Rules are similar to the Maharashtra Rules.

The Tamil Nadu Rule provides that no society shall receive deposits and loans from persons who are not its members if the aggregate amount of all deposits and loans received by it from its members and others exceeds such limit as the Registrar may, from time to time, specify in this behalf in respect of that society or any class of societies to which that society belongs.

Uttar Pradesh Rule 178 provides that the limit of liability of a society shall be fixed in its annual general meeting. The limit shall not exceed 10 times its owned capital and shall be subject to the approval of (i) the central cooperative society to which the society is affiliated and indebted

or (ii) the Registrar, if the society is not affiliated to any central society: provided that where a cooperative society is affiliated and indebted to more than one central society, the approval of the central society to which the society is more or most indebted shall be necessary. However, the liability of a cooperative society may, in special circumstances, exceed the limit fixed in the Rule with the special sanction of the Registrar. Rule 179 provides that the Registrar may, from time to time, specify the manner of calculation of the liability limit of a society or a class of societies. Rule 180 provides that the Registrar may, at any time, reduce the liability limit of a society for reasons to be communicated by him to the society and may specify a period, not being less than four months, within which the society shall comply with such order of the Registrar. Rule 181 provides that a society shall not receive deposits and loans from members or non-members, exceeding its liability limit fixed in accordance with Rules 178 and 179 or reduced under Rule 180. Rule 182 provides that, except with the general or special permission of the Registrar, no society which is an ordinary member of a central bank shall contract a loan (other than acceptance of deposits) from any source other than the said bank, unless the bank has expressed its inability to finance that society. Rule 183 provides that no society other than a central bank shall receive deposits in current or savings accounts without the general or special sanction of the Registrar.

The West Bengal Rule 66 provides that the maximum amount which a society may borrow shall be determined annually at a general meeting of the society and no society shall borrow beyond the maximum amount so determined and in force for the time being; provided that the Registrar may at any time revise the limit fixed by the general meeting. The Rule further provides that except as provided in Rule 67, no society shall incur liability from persons who are not members in excess of a maximum to be fixed from time to time in a general meeting and to be approved by the Registrar. Rule 67 provides that a primary agricultural credit society which is a member of a central bank

shall not borrow by way of loans or deposits from any non-member without the sanction of the central bank and where the society is not a member of any central bank without the sanction of the Registrar. Rule 68 provides that no society with limited liability shall, by accepting deposits, or loans or in any other way, incur liabilities exceeding 10 times the sum of the paid up share capital and the reserve fund for the time being separately invested outside the business of the society. The Rule further provides that—

(a) a central bank, mortgage bank, or the provincial bank for the purpose of financing land mortgage banks or a land mortgage bank for the purpose of financing its members may incur liabilities by floating debentures accepting deposits or in any other way to the extent of 20 times the value of paid up share capital and the reserve fund for the time being separately invested, (b) with the permission of the Registrar and under such conditions as he may impose an agricultural society or a financing bank may incur liabilities, for the purpose of advancing loans to members for production of crops, and for financing the disposal of produce repayable within a period of 12 months, irrespective of the amount of its paid up share capital or reserve fund separately invested outside the business; (bb) with the permission of the Registrar and under such conditions as he may impose, the central land mortgage bank or the provincial bank or a central bank or a central or primary society may incur liabilities irrespective of the amount of its paid up share capital and reserve fund separately invested outside the business for the purpose of carrying on by itself or for the purpose of providing loans for carrying on by its members, the production, marketing and processing of any agricultural or industrial commodity, (c) with the permission of the Registrar and under such conditions as he may impose, a cooperative society may incur liabilities, by way of loan or deposits from another society repayable within a period of 12 months, irrespective of the amount of its paid up share capital and reserve fund separately invested, if such liabilities are incurred on pledge or hypothecation of marketable security or goods or both and the amount of such liabilities does not exceed 80 per cent of

the market value of such security or goods or both offered for pledge or hypothecation, (d) with the permission of the Registrar and under such conditions as he may impose, a society, composed solely of displaced persons and recommended by the Refugee Rehabilitation Commissioner, West Bengal, may incur liabilities irrespective of its paid up share capital and reserve fund separately invested.

(c) *Comment:* The Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Jammu & Kashmir, Maharashtra, Karnataka, Orissa, Rajasthan and Tamil Nadu Rules require only the Registrar's approval of a society's superior credit limit. The Assam, Delhi, Punjab, Uttar Pradesh and West Bengal Rules require the approval of a general meeting as well, and make such decision subject to the approval of the Registrar. In Uttar Pradesh the credit limit is subject to the approval of the central cooperative society to which a society is affiliated and indebted or the Registrar if the society is not so affiliated. The Assam, Maharashtra, Karnataka, Rajasthan and Uttar Pradesh Rules allow a society to incur a liability up to a given multiple of the total amount of its paid up share capital, accumulated reserve and building funds minus accumulated losses, without the Registrar's previous sanction. Allowing the societies to incur liabilities on their own even to a limited extent as in Maharashtra etc. is a step in the right direction. It is the democratic right of the general body to lay down the limit upto which their society may incur liabilities and the Managing Committee will be personally liable if they exceed this limit. The financing bank will naturally assess the creditworthiness of a society seeking to borrow money from it and also examine the economic viability of the purpose for which the money is being borrowed.

So there is no need for the intervention of the Registrar. Moreover such intervention is contrary to the Principle of Democratic Control.

The Uttar Pradesh provision, subjecting a society's superior credit limit to the approval of the central society to which it is affiliated, is contrary to the Principle of Democratic Control. It is the members of a society who know that

their needs are and not the general body or committee of another society. Thus even a federal society has no right or competence to control the affairs of its member societies. On the contrary it is the member societies, who can control the affairs of the federal society, their creature. It is they who fix the credit limit of the federal society. So the Rule provides for an arrangement which is not only contrary to the Democratic Principle but also topsyturvy.

The Assam Rule places a limit on the borrowings of even Apex and Central Banks and allows the Registrar to relax the limit. The bank which finances the Apex or Central Bank will naturally assess the creditworthiness of the latter and fix a limit. The fixing of a limit by a law and the provision for the Registrar's intervention are contrary to the Principle of Democratic Control. There are various other types of societies which are required to obtain the Registrar's approval of their borrowing limits. What is necessary is the approval of the financing bank and this is implied whenever the financing bank grants a loan? Obtaining the Registrar's approval means unnecessary delay, even if it be only once a year. It also means that a general body would approach the matter of fixing a credit limit less seriously than it would if there were no Registrar to control them. The Registrar has the final word. Rather than carefully examining whatever limit is suggested to them by the managing committee the general body would adopt the line of least resistance by adopting it leaving it to the Registrar to cut it down. Thus the result of this control by the Registrar is to make the general body irresponsible in this regard. The members will not learn to fix this limit correctly as long as the Registrar has the responsibility to monitor their decision. The Registrar's power to approve the superior limit of borrowing does not cast any responsibility on him for any untoward results of such fixation and approval. So this is power without responsibility and therefore dangerous. Quite often, the Registrar is a newcomer to cooperation and therefore his approval is not even a source of valuable guidance to the cooperatives. Many

an unsatisfactory practice has developed around this power to fix the credit limit. Also, societies have come to regard the amount of the credit limit as the hall-mark of their creditworthiness, whereas the fact of the matter is that having a credit limit or not having one has nothing to do with creditworthiness. A credit limit merely establishes the amount of credit needed for a society's purposes. The best judges of this are the societies. Likewise they are the best judges of what periods should be fixed for repayment. In sum, these provisions not only violate the Principle of Democratic Control but also tend to prevent the co-operative membership from learning to manage their own affairs.

(d) *Recommendation:* These Rules should be rescinded. The bylaws should have a provision requiring the general body to fix the superior credit limit of the society at least annually. This provision already exists in the bylaws of most societies.

(viii) LOANS AGAINST SOCIETY'S OWN SHARES

(a) *Rules:* The following Rules deal with the granting of loans by societies against their own shares:

Andhra Pradesh	Rule 41(1)
Delhi	Rule 75
Jammu & Kashmir	Rule 26
Kerala	Rule 22
Karnataka	Rule 27
Orissa	Rule 53
Punjab	Rule 41
Rajasthan	Rule 64
Tamil Nadu	Rule 24

(b) *Summary of Rules:* All these Rules provide that societies shall not grant loans or advances against the security of their own shares.

(c) *Comment:* This is a wholesome provision but one which a cooperative society should have in its bylaws. The imposition of this provision by a Rule is contrary to the Principle of Democratic Control.

(d) *Recommendation:* These Rules should be rescinded and their provisions included in the Bylaws.

(ix) RESTRICTION ON PURCHASING MOTOR VEHICLES

(a) *Rules:* The following Rule deal with the purchase of motor vehicles by societies:—

Uttar Pradesh Rule 177

(b) *Summary of Rule:* The Uttar Pradesh Rule provides that no society shall use its funds for the purchase of a motor vehicle unless (i) a resolution to this effect has been passed by the committee of management of the society and such resolution is in accordance with the prior authorisation of the general body; and (ii) the prior permission for such purchase has been obtained from the Registrar. The Rule further lays down that no such permission shall be necessary—⁽¹⁾ in the case of a society which is placed in category 'A' or 'B' in the last audit; or ⁽²⁾ in the case of a motor transport cooperative society where the motor vehicle is required for the purpose of carrying on its normal transport business.

(c) *Comment:* This Rule is a violation of the society's democratic right to manage its own affairs and hence a violation of the Principle of Democratic Control. The general body of a society may lay down such rules as may be necessary to prevent its committee of management from being extravagant.

(d) *Recommendation:* This Rule should be rescinded.

(x) RESTRICTION ON CONTRIBUTIONS FOR COOPERATIVE CONFERENCES

(a) *Rules:* The following Rules relate to the making of monetary contributions by a cooperatives for cooperative conferences:—

Andhra Pradesh Rule 63

Bihar Rule 75

(b) *Summary of Rule:* The Andhra Pradesh Rule provides that no society shall contribute any money towards meeting the expenses of any cooperative conference, unless

such conference is held under the auspices of a society which is authorised by its bylaws to undertake the holding of such conference. The Bihar Rule also provides to this effect and confers power on the Registrar to convene any conference of cooperative societies.

(c) *Comment*: This is an unwarranted restriction on the freedom of a cooperative. A cooperative should have the same freedom of association as each of its primary members and therefore the freedom to contribute towards meeting the expenses of a cooperative conference to be held in the exercise of that freedom cannot be denied irrespective of whether the body holding such conference is a society authorised by its bylaws to hold such conference or an ad hoc body. The denial of a society's democratic right to contribute funds for a cooperative conference would be a denial of its autonomy and hence a violation of the Principle of Democratic Control. Obviously, this Rule has been made out of the fear of, and to prevent, expression of public opinion, especially that of the cooperative movements.

Denying to the cooperatives the right to support a cooperative conference summoned by an ad hoc body whilst giving the Registrar power to convene any cooperative conference amounts to vicious discrimination.

(d) *Recommendation* : These Rules should be rescinded.

(xi) POWER TO REQUIRE MAINTENANCE OF FLUID RESOURCES

(a) *Rules*: The following Rules relate to the maintenance of fluid resources by cooperative societies:

Andhra Pradesh	Rule 43
Assam	Rules 50, 51 & 52
Delhi	Rule 70
Gujarat	Rule 26
Jammu & Kashmir	Rule 27
Kerala	Rule 63
Maharashtra	Rule 41
Mysore	Rule 28
Orissa	Rule 50
Punjab	Rule 44
Rajasthan	Rule 66

Tamil Nadu	Rule 45
Uttar Pradesh	Rules 184 & 185
West Bengal	Rules 69 & 70

(b) *Summary of Rules:* The Andhra Pradesh Rule lays down that every society with limited liability shall maintain fluid resources "in such form and according to such standards as may be fixed by the Registrar, from time to time, by general or special order". The Rule empowers the Registrar to relax, by special or general order, the form or the standards so fixed for a "special period" in the case of any society or class of societies.

Assam Rule 51 provides that a cooperative society, accepting loans and deposits under Rule 50 shall keep the maximum fluid resources against loans and deposits held by it according to the scale prescribed in the Rule. However, Rule 52 provides that the Registrar may, under special circumstances, by general or special order, empower any particular society or any class of societies to reduce the proportions of the fluid resources mentioned in Rule 51.

The Delhi, Gujarat and Maharashtra Rules provide that every society, which obtains any portion of its working capital by deposits, shall maintain such liquid resources, and in such form, as may be specified from time to time by the Registrar.

The Jammu & Kashmir, Punjab and Rajasthan Rules provide that every cooperative society accepting deposits and granting cash credits shall maintain fluid resources in such form and according to such standards as may be fixed by the Registrar, from time to time, by general or special order.

The Kerala Rule lays down that every society with limited liability which obtains any portion of its working capital by deposits and not coming within the purview of the Banking Regulation Act, 1949, shall maintain fluid resources in such form and according to such standards as may be fixed by "the Government", from time to time, by general or special order, and the Rule further provides that the Government may, by general or special order, "empower" the Registrar to relax the form or the standard

so fixed for a specified period, in the case of any society or class of societies.

The Orissa Rule requires every society to maintain fluid resources in such form or according to such standards as may be fixed by the Registrar, from time to time, by general or special order.

The Tamil Nadu Rule requires that every society shall maintain fluid resources in respect of such kinds of deposits and loans and in such form and according to such standard as may be specified by the Government from time to time by general or special order.

U.P. Rule 184 requires that a cooperative society governed by the Banking Regulation Act, 1959, shall maintain a minimum liquid cover as required under that Act. Rule 185 lays down that all other societies which accept loans and deposits and grant cash credit shall maintain a minimum liquid cover, according to the scale prescribed under the Rule, though the Registrar may, for reasons to be recorded, vary the percentage of liquid cover prescribed.

West Bengal Rule 69 provides that a credit society, if so required by the Registrar, shall keep a minimum liquid cover against deposits held by it according to the scale prescribed under the Rule. However, when the Reserve Fund of a society is invested in a Cooperative Bank for an indefinite period, "(e.g. when it cannot be drawn except with the permission of the Registrar)", no fluid resources need be maintained by the Bank concerned against such investment. Rule 70 provides that under special circumstances, the managing committee may, with the approval of the Registrar, decrease the proportions of the liquid cover required to be maintained by Rule 69.

While the Andhra Pradesh, Assam, Jammu & Kashmir, Mysore, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal Rules do not specify the manner of utilising the liquid resources, the Delhi, Gujarat and Maharashtra Rules provide for the utilisation of liquid resources for lending money and for the distribution of societies' assets in accordance with such standards as may be specified from time to time by the Registrar. The

Kerala Rule, providing for such utilisation and distribution, omits the clause “as may be specified from time to time by the Registrar”.

(c) *Comments*: It is important that there is uniformity in the maintenance of liquid resources. The most practical way of achieving this uniformity is for the State Co-operative Bank to lay down the norms.

(d) *Recommendation*: These Rules should be rescinded and suitable provisions should be included in the Bylaws of the respective State Cooperative Bank empowering it to lay down these norms. There should also be corresponding provisions in the Bylaws of all cooperatives which are engaged in lending money to the effect that they shall conform to the norms laid down by the State Co-operative Bank in respect of the maintenance of liquid resources.

(xii) OBJECT AND INVESTMENT OF THE RESERVE FUND

(a) *Rules*: The following Rules relate to the investment of the Reserve Fund:—

Andhra Pradesh	Rule 37
Assam	Rule 58
Bihar	Rules 44 & 48
Delhi	Rule 82
Himachal Pradesh	Rule 70
Jammu & Kashmir	Rule 22
Kerala	Rule 60
Karnataka	Rule 23
Maharashtra	Rule 54
Orissa	Rule 44
Punjab	Rule 34
Rajasthan	Rule 55
Tamil Nadu	Rule 47
Uttar Pradesh	Rules 164, 165, 166, 167, 168 & 169
West Bengal	Rule 94

(b) *Summary of Rules*: The Andhra Pradesh Rule provides that a Reserve Fund maintained by a society

shall belong to the society and is intended to meet unforeseen losses. A society shall invest or deposit its Reserve Fund in one or more of the modes mentioned in the Act, (Section 46); provided that when the Reserve Fund of a society exceeds twenty per cent of its working capital, the excess may, "with the sanction of the Registrar", be utilised in the business of the society; provided further that a society, not being a credit society, may, with the sanction of the Registrar, utilise the whole of its reserve fund in its business. The Rule further provides that when a society is prohibited by its bylaws from borrowing either from its members or from others, the whole of its reserve fund may be utilised in its business. The Rule further provides that no society whose reserve fund has been separately invested or deposited shall draw upon, pledge or otherwise employ such fund, except with the sanction of the Registrar previously obtained in writing.

The Assam Rule provides that a cooperative society may, subject to the approval of the Registrar and to such conditions as he may impose, use in its business—(i) upto one-third of its reserve fund when the owned capital is less than the borrowed capital: (ii) upto two-thirds of its reserve fund when the owned capital is equal to or exceeds the borrowed capital; and (iii) the entire reserve fund when there is no borrowed capital. The Rule further provides that a society not being a credit society may, with the special sanction of the Registrar, utilise the whole of its reserve fund in its business.

Bihar Rule 44 provides that 50 per cent of the reserve fund of a society shall be invested outside the business of the society. Rule 48 provides that subject to the provision of the Act [Section 18(2)] and the sanction of the Registrar, the reserve fund of a registered society shall be available for any of the purposes specified in the bylaws of the society.

The Delhi Rule provides that a cooperative society may, subject to the approval of the Registrar and to such conditions as he may impose, use in its business—(i) upto one-fourth of its reserve fund when the owned capital is less than the borrowed capital; (ii) upto one-half of its reserve

fund when the owned capital is equal to or exceeds the borrowed capital; and (iii) the entire reserve fund when there is no borrowed capital.

The Himachal Pradesh, the Jammu & Kashmir and the Karnataka Rules are similar to the Andhra Pradesh Rule.

The Kerala Rule provides that, notwithstanding anything contained in Rule 54, a society shall invest or deposit its reserve fund in the modes specified namely—(i) in the case of societies with an area of operation limited to one district, save the Financing Bank in the Central Cooperative Bank; (ii) in the case of all other societies in the Apex Bank; (iii) in the case of all societies in trust securities, provided that in the case of a society whose reserve fund is equal to or more than 20% of its working capital whichever is higher, the Registrar may by general or special order, permit that society to utilise that portion of the reserve fund which is in excess of its paid up share capital or a portion thereof in its business. The Rule further provides that if the utilisation of the reserve fund of a society in its business is sanctioned by the Registrar under the Rule, the financing bank concerned shall on the expiry of two months from the date of receipt of the sanction of the Registrar refund the amount to the society, without asking for any notice of withdrawal.

The Maharashtra Rule provides that a society shall, in addition to the modes specified in the Act [Section 70(a) to (d)], invest or deposit its reserve fund in any one or more of the following modes, namely—(i) in the case of primary societies, in the Central Financing Agencies; (ii) in the case of Central Cooperative Banks and Urban Banks, in the State Cooperative Bank; (iii) in debentures issued by the Apex Land Development Bank or in Government loans, or (iv) in any immovable property specified by the Registrar by a general or special order. The Rule further provides that in the case of a society whose reserve fund is equal to or more than its paid up share capital, the Registrar may, by general or special order, permit that society to invest that portion of the reserve fund which is in excess of its paid up share capital, or a portion thereof, in its busi-

ness; provided further that in the case of Central Cooperative Banks and the State Cooperative Bank, the Registrar may, by general or special order, authorise such banks to invest 50 per cent of their reserve fund in their business. The Rule further provides that no society whose reserve fund has been separately invested or deposited shall draw upon, pledge or otherwise employ such fund except with the sanction of the Registrar previously obtained in writing. In the case of a society constituted with the object of cooperative housing on a copartnership basis, the reserve fund may be utilised for expenditure on the maintenance, repair, and renewal of buildings of the society. The Rule further lays down that in the case of a processing society the reserve fund may be utilised in the acquisition, purchase or construction of lands, buildings and machinery.

The Orissa Rule provides that the reserve fund maintained by a society shall belong to the society as a whole and is intended to meet unforeseen losses. The Rule provides for investment in the following modes—(i) a credit society shall invest its reserve fund with a Central Cooperative Bank; (ii) a Central Cooperative Bank shall invest its reserve funds with the Orissa State Cooperative Bank; (iii) a Primary Land Development Bank shall invest its reserve fund with the Orissa State Land Development Bank; and (iv) any other society shall invest its reserve fund in the manner described in the Act (Section 57). The Rule further provides that the Registrar may by general or special order, permit any society or class of societies to invest the reserve fund or a portion thereof in a different manner. The Rule further lays down that no society shall draw upon, pledge or otherwise employ any part of its reserve fund except with the sanction of the Registrar previously obtained.

The Punjab Rule provides that the reserve fund of a society or class of societies may, unless the Registrar by special order otherwise directs to be invested under the Act (Section 44), be utilised in the business of the society. The Rule further provides that in exceptional circumstances and with the prior approval of the Registrar the reserve fund may be utilised in meeting losses and that no society

whose reserve fund has been separately invested or deposited shall draw upon, pledge or otherwise employ such funds except with the sanction of the Registrar previously obtained in writing.

The Rajasthan Rule provides that a society shall not invest or deposit its reserve fund except in one or more of the modes mentioned in the Act [Section 63(a) to (d)]. However, the Registrar may by general or special order permit any society or class of societies to invest the reserve fund or a portion thereof in its own business. The Rule further provides that in the case of a society constituted with the object of Cooperative Housing on a co-partnership basis the Reserve Fund may be utilised for expenditure on the maintenance, repairs and renewal of the bulidings of the society and in the case of a processing society the Reserve Fund may be utilised in the acquisition, purchase or construction of land, building and machinery. The Rule further provides that no society whose reserve fund has been separately invested or deposited shall draw upon, pledge or otherwise employ such fund, except with the sanction of the Registrar previously obtained in writing. The Rule lays down that the reserve fund of a society shall be available with the sanction of the Registrar, for being utilised for any of the purposes mentioned in the Rule, subject to the conditions that the amount drawn shall be reimbursed as directed by the Registrar, unless the Registrar dispenses with such reimbursement in special cases.

The Tamil Nadu Rule provides that a society shall not invest or deposit its reserve fund except in one or more of the modes mentioned in the Act [Section 60(a), (b), (c) & (d)], provided that when the Reserve Fund of a society exceeds 20 per cent of its working capital the excess may, with the sanction of the Registrar, be utilised in the business of the society, and a society not being a credit society may, with the sanction of the Registrar, utilise the whole of its reserve fund in its business. The Rule further provides that when a society is prohibited by its bylaws from borrowing either from its members or from others; the whole of its reserve fund may be utilised in its business. The Rule

further lays down that when the utilisation of the reserve fund of a society in its business is sanctioned by the Registrar under the Rule, the financing bank concerned shall, on the expiry of two months from the date of receipt of the sanction of the Registrar, refund the amount to the society with interest accrued thereon upto the date of refund without asking for any notice of withdrawal.

The Uttar Pradesh Rule 164 provides that the reserve fund in a society with unlimited liability may be utilised in the business of the society unless the Registrar by a special order directs it to be invested in the manner mentioned in Rule 173 in which case it shall be so invested. Rule 165 provides that the reserve fund in a society with limited liability shall be invested in one or more of the modes mentioned in Rule 173 and where the reserve fund of a society exceeds 20 per cent of its working capital, the excess may, with the sanction of the Registrar, be utilised in the business of the society. The Rule further provides that when the society is prohibited by its bylaws from borrowing either from its members or from others and has no outside liability, the Registrar may permit the society to utilise upto 75 per cent of its reserve fund in its business. Rule 166 provides that a cooperative society may, with the permission of the Registrar, invest a specified portion of its reserve fund for any one or more of the purposes mentioned in the Rule. Rule 167 provides that the reserve fund in a society may, with the sanction of the Registrar, be utilised for the purposes mentioned in the Rule. Rule 168 provides that the utilisation of the reserve fund under Rule 167 shall be subject to the condition that any amount drawn shall be reimbursed from the profits accruing in subsequent cooperative year or years as directed by the Registrar and the Registrar may, however, having regard to the special circumstances of the society, permit that the reserve fund drawn and utilised for purposes mentioned in Rule 167 may not be reimbursed wholly or partially as the Registrar may direct. Rule 169 provides that no society whose reserve fund has been separately invested or deposited in accordance with the Rule 173 shall be drawn upon, pledge or otherwise employ such fund except with the sanction of the Registrar previously obtained.

The West Bengal Rule is similar to the Delhi Rule.

(c) *Comment:* This is a matter solely within the purview of a society. It should be compulsory to have bylaws in this regard. The bylaws should provide for the investment or use of the Reserve Fund in one or more ways deemed prudent by ordinary men of business.

(d) *Recommendation:* These Rules should be rescinded. The framing of bylaws regarding the investment and use of the Reserve Fund should be made compulsory. As suggested in Chapter II, Section E(2) under the heading of "Essential Bylaws", this subject should be one of the matters regarding which cooperative societies should be required by a provision in the Act to frame suitable bylaws.

(xiii) INVESTMENT OF OTHER FUNDS

(a) *Rules:* The following Rules relate to the investment of funds other than reserve funds:—

Andhra Pradesh	Rule 39
Assam	Rule 55
Bihar	Rule 43
Delhi	Rules 80(A) & 81
Gujarat	Rules 29 & 30
Himachal Pradesh	Rule 68
Jammu & Kashmir	Rule 21
Kerala	Rule 54
Madhya Pradesh	Rule 31
Maharashtra	Rule 55
Orissa	Rule 48
Punjab	Rule 37
Rajasthan	Rule 54 & 55
Tamil Nadu	Rule 44
Uttar Pradesh	Rules 173, 174, 175, 176 & 194
West Bengal	Rule 92

(b) *Summary of Rules:* The Andhra Pradesh and Tamil Nadu Rules provide that a society may with the previous sanction of the Registrar invest the whole or any portion of its funds other than the reserve fund for the purposes speci-

fied in the Rule. It is further provided that the Registrar's sanction shall not be necessary for (a) the purchase of immovable property by a society at a sale held in execution of a decree obtained by it for the recovery of any sum due to it; or by a financing bank at a sale held in execution of a decree obtained by it for the recovery of any sum due to such society or at a sale brought about by the liquidator of a society; or (b) the purchase or lease of land or purchase, construction or reconstruction of buildings by a society whose objects according to its bylaws include such purchase, lease, construction or reconstruction.

The Assam Rule provides that a society may invest or deposit its funds—(i) with the Assam Cooperative Apex Bank Limited or (ii) in the purchase or leasing of land or buildings or (iii) in the construction of buildings, provided that the purchase of such land or the construction of such building is likely to be advantageous to the society in its working or (iv) “in any other manner permitted by the Registrar”.

The Bihar Rule provides that any fund of a society not invested in accordance with the Act (Section 19) and not required for the business of the society shall be kept in deposit with the central cooperative bank of the area or the Bihar State Cooperative Bank or in the local postal savings account.

The Delhi Rule 80(A) provides that a cooperative society may, with the sanction of the Registrar, invest its funds out of its net profits in the national defence fund or other funds of national importance. Rule 81 provides that a cooperative society may invest or deposit its funds—(a) with the financing bank; (b) in the shares of the Reserve Bank; (c) with the nationalised commercial banks; (d) with the State Bank of India; (e) “in any other manner permitted by the Registrar”.

The Gujarat Rule 29(1) provides that with the previous sanction of the Registrar any society may invest its funds or a portion thereof—(a) in the shares of the Reserve Bank of India; (b) in loans raised by the local authority in the State; (c) in the purchase or leasing of land or buildings and in the

construction of buildings. Rule 29(2) further lays down that notwithstanding anything contained in the Rule an Urban Cooperative Bank which has a paid-up share capital of not less than Rs. 50,000/- and a reserve fund of Rs. 50,000 and which has completed 10 years from the date of its registration and which is classed 'A' or 'B' in the last audit made under the Act (Section 84), may invest its surplus fund in such shares or debentures of any company registered under the Companies Act, as may be approved by the Registrar. Rule 30 provides that the investment under Rule 29 shall not at any time exceed 5 per cent of the deposit liabilities or 15% of the surplus fund of the bank whichever is less. The Rule further says that the investment in shares or debentures shall not exceed (a) in the case of preference shares, 10 per cent; (b) in the case of ordinary shares 5 per cent; (c) in the case of debentures 15 per cent of the total surplus fund. The Rule further lays down that no investment shall be made under the Rule if it is likely to affect the ordinary business of the bank.

The Himachal Pradesh Rule provides that in addition to the manner specified in the Act (Section 53), a cooperative society may invest or deposit its funds—(a) with the State Bank of India; or (b) in the shares of the Reserve Bank of India; or (c) “in any other manner permitted by the Registrar”.

The Jammu & Kashmir Rule is similar to the Andhra Pradesh Rule.

The Kerala Rule is similar to the Andhra Pradesh Rule, but it also provides that no society shall dispose of any immovable property acquired by the society without the prior sanction of the general body and of the Registrar. In the case of housing societies, the bylaws of which specifically provide for the purchase and sale of immovable property, they may dispose of those properties without the sanction of the Registrar or of the general body.

The Madhya Pradesh Rule is similar to the Andhra Pradesh Rule.

The Maharashtra Rule provides that a society may invest any of its funds (other than the reserve fund) in any

of the modes specified in the Act (Section 70) when such funds are not utilised in the business of the society. The explanation to the Rule says that a business of a society shall include any investment made by the society in immovable property with the prior sanction of the Registrar in the process of recovery of the society's normal dues or for the purpose of construction of buildings for its own use. However, the Registrar may, in the case of any society or class of societies, specify by a special or general order the maximum amounts to be invested in any class or classes of securities.

The Orissa Rule provides that the funds of a society not utilised in its business operations may be invested for the purposes specified in the Rule in addition to the purposes specified in the Act (Section 57). The Rule further lays down that it shall be an offence under the Act (Section 115) if an officer or a member of a society or of a committee thereof invests funds not utilised in the society's business otherwise than in the manner laid down under the Act (Section 57) or under the Rule (48).

The Punjab Rule provides that besides investing its funds in the manner provided in the Act (Section 44) a co-operative society may invest its funds or any portion thereof—(a) in any bonds, certificates or loans issued by the State Government or the Central Government; (b) in debentures floated by a society; (c) with the previous sanction of the Registrar; in the purchase or lease of a land or building or in the acquisition, construction or renewal of any building that may be necessary to conduct its business.

The Rajasthan Rule provides that a society may invest any of its funds (other than the reserve fund) in any of the modes specified in the Act (Section 63) when such funds are not utilised for the business of the society. The Rule further lays down that the Registrar may in the case of any society or class of societies specify by a special or general order the maximum amounts to be invested in any class or classes of securities. Rule 54(3) provides that every society, which has invested an amount which is not less

than 10% of the working capital in securities, shall be required to constitute an investment fluctuation fund. The Registrar may direct that a specified percentage of the net profits of every year shall be credited to the investment fluctuation fund. Rule 54(4) provides that a society may, with the previous sanction of the Registrar, invest the whole or any portion of its funds in the purchase or lease of land or in the acquisition, construction or renewal of any building that may be necessary to conduct its business. The amount of funds so invested shall be recovered on such terms as may be determined in each case by the Registrar. Rule 55 lays down the manner of investment of the Reserve Fund.

The Uttar Pradesh Rule 173 provides that a society may invest or deposit its funds in any one or more of the modes specified in the Rule. However, a cooperative society shall not invest more than one-fourth and even with the general or special permission of the Registrar more than half of its reserve fund in the shares of any other society. The Rule further provides that a cooperative society may, with the permission of the Registrar, purchase shares of any cooperative society of an all-India character and that the Registrar shall not refuse permission unless there be special reasons which shall be recorded, to refuse such permission. Rule 174 provides that a central or apex cooperative bank shall not invest its funds in the shares of a non-credit society except to such extent and under such conditions as the Reserve Bank of India may specify. Rule 175 provides that no society shall purchase shares in a society of unlimited liability. Rule 176 provides that a cooperative society may, with the previous sanction of the Registrar, invest the whole or any portion of its funds in the purchase or lease of land or in the purchase, construction, extension or remodelling of any building that may be necessary to conduct its business. The amount of the funds so invested shall be recouped on such terms as may be determined in each case by the Registrar. Rule 194 provides that without prejudice to the provisions of the Banking Regulation Act, and subject to such conditions and restrictions as may be imposed by the Registrar in this behalf, a cooperative society with limited

liability, may be permitted by the Registrar to invest its funds in discounting and rediscounting bills of its members and in collecting their bills and railway receipts.

The West Bengal Rule provides that in addition to the manner specified in the Act (Section 55), a society may invest or deposit its funds—(a) with the provincial bank; or (b) in the shares of the Reserve Bank of India; or (c) “in any other manner permitted by Registrar”.

(c) *Comment:* The institutions and securities in which the funds of societies may be invested should be specified in the Bylaws. The Registrar’s power in this regard is contrary to the Principle of Democratic Control. There is also the danger of the Registrar being pressurised to persuade co-operatives to invest their funds in ventures in which the government has an interest. Our comments regarding the investment of the Reserve Fund apply here too. [See preceding section 3.G.(xii)].

(d) *Recommendation:* These Rules should be rescinded. The societies should make bylaws prescribing the institutions and securities in which the funds of societies may be invested. The adoption of such bylaws should be made compulsory by the Act, as recommended in Chapter II-E(2) under the heading “Essential Bylaws”.

(xiv) GENERAL COMMENTS ON THE PROVISION RELATING TO LENDING, BORROWING AND INVESTMENT OF FUNDS

Subjecting a society’s decision in respect of borrowing, lending or investment of funds to the approval of the State or other authority is contrary to the Principle of Democratic Control. Financial management in a cooperative is a matter solely within the purview of that society.

(xv) GENERAL RECOMMENDATIONS

A society should have the power to lend, borrow and invest funds according to the provisions made in its bylaws. The statutory provisions regulating these matters should be rescinded. Instead the law should prescribe the matters regarding which cooperative societies shall make bylaws.

H. Compulsory Arbitration in Disputes

(i) *Acts*: The following sections of the State Acts provide for compulsory arbitration by the Registrar or his nominee in disputes arising in cooperatives:

Andhra Pradesh	Sec. 61
Assam	Secs. 8, 63
Bihar	Sec. 48
Gujarat	Sec. 96
Himachal Pradesh	Sec. 72
Jammu & Kashmir	Sec. 63
Kerala	Sec. 69
Madhya Pradesh	Sec. 64
Maharashtra	Secs. 11, 91, 93
Mysore	Sec. 70
Orissa	Sec. 68
Punjab	Sec. 55
Rajasthan	Sec. 61
Tamil Nadu	Sec. 73
Uttar Pradesh	Secs. 70, 71
West Bengal	Sec. 86
Delhi	Secs. 8, 60

(ii) *Rules*: The following State Rules provide for compulsory arbitration in disputes arising in cooperatives:

Andhra Pradesh	Rule 49
Assam	Rules 81 & 82
Bihar	Rule 68
Delhi	Rule 88
Gujarat	Rule 42
Himachal Pradesh	Rule 88
Jammu & Kashmir	Rule 29
Kerala	Rule 67
Madhya Pradesh	Rule 52
Maharashtra	Rule 75
Mysore	Rule 31
Orissa	Rule 71
Punjab	Rule 51
Rajasthan	Rule 75
Tamil Nadu	Rule 56

Uttar Pradesh	Rule 225
West Bengal	Rules 119 & 122

The State Rules quoted above provide for compulsory arbitration by the Registrar or his nominee in disputes arising in cooperatives. They also lay down the procedure and other details regarding the hearing of a dispute before the Registrar or his nominee.

(iii) *Comments:* Compulsory arbitration deprives the society of its right of independent action. It should be free to seek normal legal redress if it so wishes. Arbitration by mutual consent is all that is required and this would be in accordance with the Principle of Democratic Control. Therefore the provisions for compulsory arbitration should be so amended as to permit the cooperatives to seek the Registrar's arbitration if they so wish, and to make it obligatory on the Registrar to decide a dispute referred to him or refer it to an arbitrator or a panel of arbitrators for disposal.

However, compulsory arbitration may be provided for in the bylaws of a society. That would be a voluntary acceptance.

(iv) *Recommendation:* These laws should be rescinded and in their stead there should be laws providing for arbitration by mutual consent, enabling the Registrar to deal with disputes so referred to him.

I. Power of Veto, annulment, suspension of society decisions

(i) *Acts:* The State Acts empower the government nominee on a society's committee or the Registrar to suspend the operation of any resolution of the general body or of the management committee, prohibit the chairman of the meeting from doing anything in pursuance of that resolution and refer it to the government if in the opinion of such nominee or the Registrar the resolution would adversely affect the cooperative movement or is against the interests of the society. The following sections provide for this :

Andhra Pradesh	Sec. 33(3)
Punjab	Sec. 26(4)
Uttar Pradesh	Sec. 128
West Bengal	Sec. 24A

(ii) *Rules:* Kerala Rule 176 and Uttar Pradesh Rule 130 have the same provisions. As they deal with decisions of the Committee in greater detail, they are discussed in Section 4A of this Chapter.

(iii) *Summary:* In Andhra Pradesh the nominee of the government may refer to the government any resolution which he thinks is prejudicial to the interests of the government and the government's decision shall be final. Pending its decision the government may suspend the execution of any such resolution.

Under the Punjab Act, if in a cooperative society, in which the government has share capital or liability by way of guarantee exceeding fifty per cent of the working capital, "a difference of opinion in respect of any matter arises" between the nominated members and the other members of the committee, the committee shall refer the question to the government and its decision shall be final! In Uttar Pradesh, the Registrar may annul any resolution passed by the Committee or the general body or cancel any order passed by an officer of a cooperative society, if he is of the opinion that the resolution is not covered by the objects of the society or is in contravention of the Act, Rules or Bylaws. Under the West Bengal Act, the State Government can rescind any proceeding or resolution of any general or managing committee meeting of a cooperative society. The Registrar may suspend any resolution which he considers likely to adversely affect the interests of the society, its members or the cooperative movement and submit the matter to the State Government for decision. The Registrar may suspend the execution of any resolution or order of the Managing Committee or prohibit any act if he is of the opinion that such resolution, order or act "is in excess of the powers conferred by this Act or is likely to prejudice the material interest of the cooperative society or its members or the movement."

(iv) *Comments:* Under all these laws the government can reverse the decision of a cooperative society. The vesting of a power of veto in any outside authority is *per se* contrary to the Principle of Democratic Control. Under the Punjab

Act, share capital is given the power of veto. This is the very antithesis of the Principle of Limited Interest on Share Capital for in terms of this principle share capital may receive only a strictly limited interest. It cannot be given anything else such as the power of veto. Giving to share capital the power of veto is repugnant to the Principle of Democratic Control as well, for in terms of this principle the majority will shall prevail. The position is no better even when the State carries a liability as a guarantor. A guarantor is entitled to a payment for the service rendered. This provision is also contrary to the cooperative practice of not allowing any person to hold more than one-fifth of a society's shares, a practice designed to prevent capital overaweing the society. The State in spite of not being entitled to be a member, according to Cooperative Principles, becomes one and then assumes the position of a dictator. It is capitalism ruling over a cooperative, rendering the cooperative to be a democracy no more.

(v) *Judgement*: In the case of Daga Ajaba Patil *versus* Special Auditor, it was observed:

“Normally in so far as the duties and responsibilities of the managing committees are concerned, no distinction can be made between nominated and elected members of the committee....A nominated member therefore is not entitled to a separate consideration on the ground that he stands on a different footing from the other members.”¹

(vi) *Commission Reports*: The Working Group on Co-operation, Administrative Reforms Commission, 1968, recommended:

“(iii) Power given to Government nominees in the Board of Directors to veto majority decisions of the Board or refer the matter to the Government for final decision” “should be no further delay in removing the above objectionable features. . . .”²

1. Cooperative Law Journal, 1965-66, Daga Ajaba Patil & Others vs. Special Auditor, etc., p. 20.

2. The Report of the Working Group on Co-operation, Administrative Reforms Commission, 1968, Chapter 10, para 10.14.

(vii) *Recommendation*: The powers of veto, annulment and suspension of society decisions should be rescinded as they contravene the Principle of Democratic Control.

J. Power to issue directives to cooperatives

(i) *Acts*: The State laws empower the State Government or the Registrar of Cooperative Societies to issue directives to cooperatives. The relevant references are given below:

Andhra Pradesh	Sec. 22
Assam	Sec. 76
Gujarat	Sec. 160
Himachal Pradesh	Sec. 40
Madhya Pradesh	Sec. 56
Maharashtra	Secs. 79, 79A, 160B
Mysore	Sec. 54
Punjab	Sec. 26A
Tamil Nadu	Sec. 19
West Bengal	Secs. 22, 41A, 129

(ii) *Rules*: The following Rules provide for the issue of directives to cooperatives:

Delhi	Rule 77
Himachal Pradesh	Rule 152
Orissa	Rule 64
Punjab	Rule 45
West Bengal	Rule 173

The Delhi and Punjab Rules provide that the Registrar may, from time to time, issue such directives as he may consider necessary for the successful conduct of the business of a cooperative society or class of cooperative societies.

The Himachal Pradesh Rule provides that it shall be competent for the Registrar to give any directive or issue any instructions for the smooth and beneficial running of any society or class of societies and the directives or instructions so issued shall be binding on the society or class of societies. Where any society considers that any directive or instruction issued by the Registrar under the Rule is not conducive to its smooth and beneficial running, it may

appeal to the State Government against such directive or instruction within 45 days of the receipt of such directive or instruction and the decision of the State government shall be final in the matter.

The Orissa Rule empowers the Registrar to issue directions regarding the treatment of certain assets as bad as doubtful.

The West Bengal Rule provides that in deciding which officer is responsible for not carrying out directions issued by him under the law (see 129), the Registrar shall always consider the Secretary to be responsible unless there is anything in the bylaws or in any resolution of the general meeting or the Managing Committee by which that particular duty is entrusted to an officer other than the Secretary. The Rule also lays down that the Registrar may call on such person as he may hold responsible to carry out any of his directions within such time as he may specify and on the latter's failure to do so, the Registrar may take action against him under the law.

(iii) *Comments:* In the Punjab, the Registrar can issue directives to cooperatives to co-opt two persons to the committee. Such co-option shall be made from amongst scheduled castes, scheduled tribes or backward classes. In Tamil Nadu and Andhra Pradesh, the Registrar can give directives to the cooperatives, after giving reasonable notice to them, requiring them to render service to their members. In West Bengal the Registrar may require the society to carry out his directives and he may himself do it at the expense of the society. In Gujarat the officer concerned is liable to pay a fine not exceeding Rs. 10 per day, until the directives of the Registrar are carried out. All these provisions offend against the Principle of Democratic Control.

The members of a society are the best judges of what is in their interest. The administration of the affairs of a cooperative is vested in the Committee and the General Meeting. No outside authority is entitled to manage a cooperative. It is only the general body that can decide whether any of the society's assets are bad and doubtful. The officers of a society are not liable to carry out the orders of an

outside authority. They serve only their society. The Registrar may order the society as such to carry out a lawful order. Any failure to carry out an order is the failure of the society and not of any officer of that society. So the Registrar can take only the society to task for it. Charging the Secretary or other officer and not the society for any failure to carry out a lawful order would amount to excusing the party which ordered the non-compliance and taking the person who carried out his employer's order to task for doing so. The officers of a cooperative cannot have two masters. These Rules give the Registrar power to manage cooperatives and thereby violate the principle of democratic control.

(iv) *Recommendation:* The powers of the State Governments and the Registrars to issue directives to cooperatives should be rescinded as they violate the Principle of Democratic Control.

K. Power to Authorise acts not provided for in the Bylaws

(i) *Rules:* The following Rule empowers the Registrar to authorise acts not provided for in the bylaws of societies:

Kerala

Rule 180

The Kerala Rule provides that no society shall do any act which is not expressly provided for in the bylaws of such society without the previous express sanction of the Registrar therefor.

(ii) *Comment:* A society should not have the power to do with the Registrar's permission that which is not allowed by its own bylaws. All acts within the competence of a cooperative society should be provided for in the bylaws, generally or specifically.

The Registrar should not have the right to approve what is ultra vires of the society's constitution. This subjects the society's will to that of the Registrar and so impairs the society's autonomy. It also leaves room for the Registrar to get a cooperative society to do what is uncooperative or outside its purview.

(iii) *Recommendation*: This Rule is contrary to the Principle of Democratic Control and should be rescinded.

L. Restrictions on Holding of Shares

(i) *Acts*: The following sections of the State Acts restrict, or provide for the restriction of, share-holding:

Andhra Pradesh	Sec. 26
Gujarat	Sec. 29
Himachal Pradesh	Sec. 6
Jammu & Kashmir	Sec. 21
Kerala	Sec. 22
Maharashtra	Sec. 28
Mysore	Sec. 22
Orissa	Sec. 22
Punjab	Sec. 6
Delhi	Sec. 6

(ii) *Rules*: The following Rules restrict, or provide for the restriction of, share-holding:

Andhra Pradesh	Rule 15
Assam	Rule 3
Bihar	Rule 13
Delhi	Rule 69
Gujarat	Rule 16
Punjab	Rule 21
Uttar Pradesh	Rule 65

(iii) *Summary*: The Andhra Pradesh Rule provides that where the liability of a member of a society is limited by shares, no member other than a society or the Government shall hold more than 1/10th of the share capital of the society.

The Assam Rule prescribed that no member, other than a registered society, shall hold more than such portion of the share capital of the society, subject to a maximum of one-fourth, as may be prescribed by the bylaws of the society. The Rule further provides that no member, other than a society, shall have or claim any interest in the shares of the society exceeding Rs. 5,000/- in value, provided that if the society is a housing society or a wholesale society for

procurement and distribution of any article or a society of any special type a member may have or claim an interest in the shares of the society not exceeding Rs. 25,000/- in value. In such cases the Registrar shall decide whether the maximum limit of shares allowed to an individual member should be Rs. 25,000/- or less and the Registrar's decision shall be final.

The Bihar Rule provides that no member of a registered society, other than the State Government or another registered society, shall hold more than one-fifth of the share capital, or shares exceeding one thousand rupees in value, whichever is less, whether the liability of the society is limited or unlimited. However, the Registrar may relax this limit in the case of any registered society or class of registered societies.

The Delhi Rule provides that every cooperative society which has a share capital, shall state in its bylaws the maximum amount of such share capital, the number of shares into which it is divided, the classes of shares, the face value of each share of each class and the rights and liabilities attaching to each class of shares and where the full value of shares is not payable on allotment, the amount of an instalment and the number of instalments in which it is required to be paid and such other incidental matters.

The Gujarat Rule provides that no member, other than a cooperative society, or the State Government; shall hold more than one-fifth of the paid-up share capital of the society.

The Punjab Rule provides that no member, other than the Government or a cooperative society, shall hold more than one-fifth of the share-capital of a cooperative society or have or claim any interest in the shares of a society exceeding Rs. 10,000/- in value whichever is less.

The Uttar Pradesh Rule provides that in the case of a cooperative credit society of limited liability, no person, who is an individual, shall, subject to the restrictions laid down in the Act (Section 22), hold shares of a value exceeding one-tenth of the amount of the subscribed share capital of the society.

(iv) *Comments:* The usual maximum share-holding allowed to a person is one-fifth of the share capital. The Maharashtra and Mysore Acts provide for prescribing a maximum holding not exceeding one-fifth of the total share capital. The Mysore Act also provides that cooperative societies, the State Government or the State Warehousing Corporation can exceed this limit. The Himachal Pradesh Act restricts the holding of shares to a maximum of one-fifth or ten thousand rupees. The Jammu & Kashmir Act fixes a maximum of one-fifth or one thousand rupees, except in the case of a cooperative bank. Here the maximum is one-fifth or five thousand rupees. The Orissa Act fixes a limit of one-tenth of the total share capital or five thousand rupees, provided that the State Government may specify, by notification, a higher maximum for any class of societies. The Punjab Act provides for prescribing a maximum holding not exceeding one-fifth of the share capital or an interest in the shares not exceeding ten thousand rupees, whichever is less. Government and any cooperative society are excluded from this restriction. The Delhi Act has the same provision. These provisions seek to ensure the observance of a healthy cooperative practice of not allowing any member to acquire too large an interest in, and thereby too much of power and control over, the society. But this provision should be a self-imposed discipline and therefore should be embodied in the bylaws. The value of this provision is taken away by the provision that another society or the government may hold shares in excess of the maximum laid down. It is to prevent a member having too much power that this practice obtains. Leaving room for a society or the government to have such power is worse than giving this leverage to an individual. This apprehension is justified by the fact that the State has already taken undue power for itself on the strength of its share capital contribution, witness the provisions in the various Acts in respect of the powers of veto, nomination etc. dealt with elsewhere in this Chapter. The government has no right to hold shares in a cooperative as explained in Chapter-I. Fixing a limit on the amount of shares that may be held by a member is a matter for self-regulation and therefore a matter for the bylaws.

(v) *Recommendation*: The provision of a limit to shareholding should be deleted from the law. Nor should there be provision to prescribe such limit by a Rule. A limit should be stated in the bylaws of each society. No limit in excess of the generally accepted limit of one-fifth of the share capital should be included in the bylaws.

M. Power to specify conditions of functioning through agents

(i) *Acts*: The Tamil Nadu Act (Section 73E) gives power to any Central Cooperative Bank to function through the agency of any other registered society, including any cooperative bank, subject to such conditions as the Registrar may specify. The Registrar's power to specify conditions is an encroachment on the right of a cooperative society to cooperate with another cooperative society in accordance with their own decisions. Any restrictions imposed by the Reserve Bank of India on a Central Cooperative Bank as a banking institution cannot be taken exception to.

(ii) *Recommendation*: The Registrar's power to specify conditions under which a Central Cooperative Bank may function through the agency of another cooperative society should be deleted.

N. Power of the Registrar to approve write-off

(i) *Acts*: The Uttar Pradesh Act (Section 127) provides for a cooperative society writing off any bad and irrecoverable assets with the previous approval of the Registrar. The subjection to the approval of the Registrar is contrary to the Principle of Democratic Control.

(ii) *Rules*: The following Rules provide for the Registrar's approval of any write-off of any assets:—

Assam	Rule 68
Delhi	Rule 83
Himachal Pradesh	Rule 82
Kerala	Rule 62
Madhya Pradesh	Rule 28
Maharashtra	Rule 49
Orissa	Rules 64 & 65
Punjab	Rule 38

Rajasthan
West Bengal

Rule 52
Rule 108

The Assam and West Bengal Rules provide that any debt considered bad shall, if so approved by the Registrar, be written off by the annual meeting of the General Assembly, against the bad debt fund, etc.

The Rule further provides that the Registrar shall consult the financing bank before sanctioning the write-off of any debt, if the society is affiliated to a financing bank.

The Delhi Rule provides that no society shall write-off in whole or in part any debt or other sum due to it without the previous sanction of the Registrar.

The Himachal Pradesh Rule provides that no society shall write-off loans found irrecoverable and certified as bad debts, other dues, accumulated losses or any assets certified as unworkable in audit, without the previous sanction of the general body, "subject to the approval of the Registrar in writing".

The Kerala Rule provides that dues which are found irrecoverable and duly certified as such by the auditors may be written off with the approval of the general body and the sanction of the Registrar.

In Madhya Pradesh and Maharashtra a society may write-off dues only with the sanction of the General Body and the approval of the financing bank in writing. Further the society shall obtain the approval of the Registrar in writing, who may, while giving the approval, impose such conditions as to restoration of part or whole of the amount written off against the Reserve Fund, out of future projects.

The Orissa Rule 64 provides that the Registrar shall issue directions regarding the treatment of certain assets as bad and doubtful assets and Rule 65 provides that any asset considered bad and irrecoverable may be written-off by the general meeting provided, however, that the Registrar may issue directions regarding the approval of the Financing Bank.

The Punjab Rule provides that no cooperative society

shall write-off, in whole or in part, any debt or other sums due to it "without the previous sanction of the Registrar".

The Rajasthan Rule is similar to the Madhya Pradesh Rule with the exception that, "in case of societies classified as 'A' or 'B' at the time of last audit, no such permission need be taken if the bad debts are to be written off against the bad debt Fund specially created for the purpose".

(iii) *Comments:* The requirement that write-off should receive the Registrar's prior approval violates the Principle of Democratic Control. So also the legal requirement to obtain the approval of the financing bank. The latter is *per se* a very salutary requirement which would not offend against the Democratic Principle if it is made a condition of any loan at the time of granting it. It would then be a condition freely accepted by the society and therefore not a violation of its autonomy by the State.

(iv) *Recommendation:* The requirement that write-off should receive the Registrar's prior approval should be rescinded as it violates the Principle of Democratic Control.

O. Power to condone non-compliance with Rules

(i) *Rule:* Bihar Rule 76 provides that the Registrar may condone failure on the part of any society to comply with any Rule "which requires that his previous sanction should be obtained for any purpose".

(ii) *Comment:* It is a good provision but one which should appear *mutatis mutandis* in the Act itself so that it applies to any action that requires the Registrar's previous sanction. Any requirement to obtain the Registrar's prior or subsequent approval of an action is a violation of the Cooperative Principle of Democratic Control if such action is one within the society's purview. If it is not within the society's purview, such action would be *ultra vires* even if it has the Registrar's approval. If a society's act is *intra vires* ideologically but is *ultra vires* merely because the law has denied to it the full exercise of its right of democratic control, a provision such as this to enable the Registrar to validate such act is desirable. This Rule should be rescinded as it is *ultra vires* of the Act since Rules can be made only

to carry out the purposes of an Act. Therefore, the Act should contain a provision (on the lines of the section giving power to the government to exempt societies from any of the provisions of the Act) giving the Registrar power to condone any failure on the part of a society to obtain his prior approval where so required by the law, for an act which is within the society's purview.

(iii) *Recommendation*: This Rule should be rescinded and a similar provision included in the Act, in respect of any act mentioned in either the Act or the Rules and within the society's objects.

P. Inspection of accounts books, etc. of societies by members

(i) *Rules*: The following Rules relate to the inspection of account and other books of societies by their members:

Assam	Rules 43 and 44
Himachal Pradesh	Rule 60
Orissa	Rule 147
Uttar Pradesh	Rule 376

(ii) *Summary of Rules*: Assam Rule 43 provides that every society shall keep the documents specified in the Rule and allow their inspection by any member of the society. Rule 44 provides that the member of a society with unlimited liability shall have the right to see the accounts of all the borrowers of such society in the office of the society.

The Himachal Pradesh Rule provides that the register and papers mentioned in the rule shall be maintained and shall be open to inspection by any member interested in the funds except that no one other than an authorised officer of the Himachal Pradesh Government Cooperative Department shall see the deposit account of any other person without that person's consent in writing.

The Orissa Rule provides that every society shall keep the documents and registers specified in the rule open for inspection by its members free of charge at all reasonable times at its registered address.

The Uttar Pradesh Rule provides that any member of a society may, at any time, during office hours, by making an

application to the Secretary of the society and after fulfilling other conditions mentioned in the rule, either by himself or by an agent who shall be a member of the society and duly authorised in writing in this behalf, inspect the accounts and records of the society only in so far as they relate to the transactions of the member with the society.

(iii) *Comment:* These provisions relate to a matter of self-regulation. Therefore, their inclusion in the law is a violation of the Democratic Principle. They should be included as a bylaw of every society. Such bylaw should be one of the compulsory bylaws i.e. those without which the society would not be registered.

(iv) *Recommendation:* The Rules should be rescinded and similar provisions should be included in the bylaws of societies and in the Model Bylaws.

Q. Custody of books, accounts and records

(i) *Rules:* The following Rules relate to the custody of books, accounts and records:

Bihar	Rule 62
Delhi	Rule 48(i)
Himachal Pradesh	Rule 61
Orissa	Rule 40
West Bengal	Rule 61

(ii) *Summary of Rules:* The Bihar Rule provides that unless otherwise provided in its bylaws or its Rules of business approved by the Registrar, the account book, registers and records of a registered society shall be kept in the custody of the Secretary or such other officer of the paid staff of the society as the managing committee may authorise.

The Delhi Rule provides that the committee of a co-operative society shall specify which of the officers of a society shall—(a) keep the books of accounts; (b) keep other books and registers; and (c) prepare returns and statements. The Rule further provides that a person charged with the keeping of accounts shall not be in charge of cash.

The Himachal Pradesh Rule provides that the books

Bihar	Rule 63
Delhi	Rule 47
Uttar Pradesh	Rule 364(2)
West Bengal	Rule 62

(ii) *Summary:* The Bihar Rule provides that books and records of a registered society shall be preserved for, and destroyed after, such period and in such manner as may, from time to time, be prescribed by the Registrar.

The Delhi Rule provides that the books and records of a cooperative society shall be preserved as is set forth in Schedule-I of the Rules or as may from time to time be directed by the Registrar. A list of records destroyed from time to time shall be prepared and kept by the Secretary.

The Uttar Pradesh Rule provides that no cooperative society shall weed out any title deeds, deeds of agreement or contract, any vouchers, books of accounts or any other records which may be required for the purposes of audit, inspection or inquiry. Records other than those referred to in the Rule may, by a resolution of the Committee of Management of the society, be weeded out with the prior sanction of the Registrar. The Rule further provides that no such record shall be weeded out which relates to transactions or deals made within five years before the date of the passing of the resolution by the Committee of Management for weeding out records. The Rule requires that the Registrar, before giving his sanction for weeding the records shall ascertain from the Range Audit Officer concerned that no audit compliance, for the period to which the records relate, is pending.

The West Bengal Rule provides that the books and records of a society shall be preserved for such period as is set forth in the schedule or as may from time to time be directed by the Registrar.

(iii) *Comment:* This is another matter which should be left to the Registrar by a provision in the Act which empowers him to make orders on procedural matters. These procedural matters relate to the public interest as well. Therefore it is not a violation of the Principle of Democratic Control to legislate in this regard.

(iv) *Recommendation:* The Rules should be rescinded and the Registrar should be given power under the Act to make orders on all matters of a procedural nature, such as this.

T. Power of the Registrar to Direct Societies to get Accounts and Books written up/depute an officer/person to write the Accounts and Books

(i) *Rules:* The following Rules deal with the power of the Registrar to direct societies to get their accounts and books written up and also to depute an officer or authorise a person to write up the accounts and books.

Andhra Pradesh	Rule 59(3)
Bihar	Rule 58
Delhi	Rule 44
Jammu & Kashmir	Rule 43
Kerala	Rule 30
Mysore	Rule 52
Orissa	Rule 39(5)
Rajasthan	Rule 102
Tamil Nadu	Rule 14
Uttar Pradesh	Rule 365

(ii) *Summary:* The Andhra Pradesh Rule provides that the Registrar may, by order in writing, direct any society to get any or all the accounts and books, required to be kept and maintained by it under the Rule, written up to such date, in such form and within such time as he may specify, and in case of failure on the part of any society to do so, the Registrar may depute an officer subordinate to him to write up the accounts and books. The Registrar may determine the emoluments of the officer so deputed and the charges which the society concerned should pay to the Government and direct their recovery from the society.

The Bihar Rule provides that the managing committee shall prepare such statement of accounts as may from time to time be prescribed by the Registrar and submit the same to the Registrar within three months of the close of the cooperative year and also produce them before the auditor; on the failure of the managing committee to prepare the

account as prescribed, the Registrar may get the accounts prepared and assess the cost thereof and the same shall be realisable from the society.

The Delhi, Jammu & Kashmir, Kerala, Mysore, Orissa, Rajasthan & Tamil Nadu Rules have provisions to the same effect as that of the Andhra Pradesh Rule.

The Uttar Pradesh Rule in addition provides that in the case of the inability or failure on the part of a society to write up account books and registers, the Registrar may depute any person to assist the Secretary of such society to have them written up and to determine the expenses which the society concerned shall pay and the society in turn has a right to claim the amount from the person or persons whose duty it was to maintain such accounts.

(iii) *Comment*: The Registrar's power to direct a society to write up its accounts does not contravene any Co-operative Principle. The Registrar's power to get the books written up is a violation of the society's autonomy. He should have the power to do this upon the request of a society. That would not offend against the principle of democratic control. If a society fails to get its books written up and is also unwilling to allow the Registrar to get this done, the society should be liquidated.

(iv) *Recommendation*: The provisions of this Rule, amended as suggested above, should be included in the Act and not in the Rules.

U. Power of the Registrar to get Statements and other Returns of Societies written up

(i) *Rules*: The following Rules give power to the Registrar to depute persons to prepare the statements and other returns of societies:

Delhi	Rule 46(4)
Himachal Pradesh	Rule 62
Jammu & Kashmir	Rule 44(4)
Kerala	Rule 33(3)
Maharashtra	Rule 67(2)
Mysore	Rule 53(4)

Orissa	Rule 39(5)
Rajasthan	Rule 103(4)
Tamil Nadu	Rule 16(4)
Uttar Pradesh	Rule 372
West Bengal	Rule 63

(ii) *Summary:* The Delhi Rule provides that when a society fails to submit any statement or return specified in the Rule, the Registrar may depute an officer to prepare the necessary statement or return. He may also determine the emoluments of the officer so deputed and the charges which the society should pay to the Government, and he may also direct the recovery of those charges.

The Himachal Pradesh Rule provides that in the event of the failure of a society to send to the Registrar statements or returns required by the Act, the Rules or the Registrar, he may cause such statement or returns to be prepared. The Rule provides for the recovery of the cost as laid down under the law (Section 90), if it is not paid by the society.

The Jammu & Kashmir, Kerala, Mysore, Orissa, Rajasthan, Tamil Nadu, West Bengal and Uttar Pradesh Rules are similar to the Delhi Rule.

The Maharashtra Rule provides that when the society fails to submit returns and statements, the Registrar, may, after giving notice to the person or persons responsible for the submission of the same, depute an employee of the Co-operative Department or the federal society to which the society is affiliated to prepare the returns and submit them to the Registrar. The expenses incurred by the Registrar in getting this work done shall be borne by the society.

(iii) *Comment:* Our comments in the preceding section apply here too.

(iv) *Recommendation:* Our recommendation in the preceding section applies here too.

V. Use of Premises

(i) *Rules:* The following Rules impose restrictions on the use of the premises of a society:

Andhra Pradesh	Rule 62
Kerala	Rule 178
Orissa	Rule 155
Tamil Nadu	Rule 51
Uttar Pradesh	Rule 396

(ii) *Summary*: The Andhra Pradesh Rule provides that no society shall use or allow to be used, any premises or portion thereof which is intended for its business “for any purpose other than such business or other activity relating thereto”.

The Kerala Rule provides that no “society or union” shall, except with the previous sanction of the Registrar, use or allow to be used any premises, used for its business, or portion thereof, for any purpose other than such business or other cooperative activities, provided further that no such sanction shall be granted to any society for using or allowing to be used any such premises or portion thereof for political purposes.

The Orissa Rule is similar to the Andhra Pradesh Rule except that the Registrar may by special or general order relax the operation of this Rule for an individual society or for societies of a particular type.

The Tamil Nadu Rule is similar to the Kerala Rule.

The Uttar Pradesh Rule prohibits the use of premises or portion thereof which is meant for the business of a society, “for any purpose other than such business or action related to such business”.

(iii) *Comment* : These Rules violate the principle of Democratic Control as they vitiate the autonomy of co-operatives. However, these provisions would be healthy self-disciplines if they are included in the bylaws, but without any provision for making exceptions.

(iv) *Recommendation*: These Rules should be rescinded and suitable provisions included in the bylaws of co-operatives.

W. Change of name of a society

(i) *Rule*: The following Rule relates to the power of the

Registrar to require the “changed name” of a society to be such as he may direct.

Bihar

Rule 19

(ii) *Summary*: The Bihar Rule provides that the registered name of a society shall not be changed except by an amendment of its bylaws and the Registrar may require the changed name to be such as he may direct.

(iii) *Comment* : This is contrary to the Principle of Democratic Control. A society has the right to change its name as it pleases provided it conforms to the legal requirement of having the word “cooperatives” included in such name. The bylaw relating to the name of the society must be amended to contain the new name and duly registered. The Registrar may refuse to register an improper amendment.

(iv) *Recommendation* : This Rule should be deleted.

X. Power of the Registrar to Approve Society’s Partnership

(i) *Rule*: The following Rule relates to the power of the Registrar to approve a society’s partnership.

Uttar Pradesh

Rule 397

(ii) *Summary*: The Uttar Pradesh Rule provides that no society shall, except with the prior approval of the Registrar, enter into partnership with any person. The terms of partnership require the approval of the Registrar before the execution of the deed of partnership. The Rule requires that a copy of the partnership deed as executed shall be filed with the Registrar.

(iii) *Comment*: The requirement that the Registrar’s prior approval shall be obtained is a violation of the Principle of Democratic Control. Partnerships between cooperatives and uncooperative concerns cannot but result in the promotion of uncooperative trading and therefore would be contrary to the aim of the Cooperative Movement viz. “to substitute for the profit-making regime a cooperative system of production and trade” as stated in the Rules of the ICA. Therefore there should be a law to prevent such partnerships.

(iv) *Recommendation* : This Rule should be deleted. The Act should prohibit partnerships between cooperatives and uncooperative undertakings.

Y. Interest of Officers and Employees in Contracts

(i) *Rules*: The following Rules prohibit officers and employees from having interests in contracts and certain other transactions :

Andhra Pradesh	Rule 31
Delhi	Rule 61
Gujarat	Rule 35
Himachal Pradesh	Rule 57
Jammu & Kashmir	Rule 18
Karnataka	Rule 19
Kerala	Rule 50
Madhya Pradesh	Rule 46
Maharashtra	Rule 57
Punjab	Rule 29
Rajasthan	Rule 42
Uttar Pradesh	Rule 116

(ii) *Summary* : The Andhra Pradesh Rule provides that no officer or employee of a society shall have an interest directly or indirectly: (a) in any contract made with the society; or (b) in any sale or purchase made by the society privately or in any auction; or (c) in any contract or transaction of the society, other than an investment or borrowing, involving financial interest.

No officer or employee of a society shall purchase, directly or indirectly, any property of a member of the society which has been taken over and put on sale for the recovery of his dues to the society. The Delhi Rule is similar to the Andhra Pradesh Rule with a proviso that such restrictions will not include investment made in or loan taken from the society or the provision of residential accommodation by the society to any paid employee of the society. The Gujarat Rule is similar to the Delhi Rule except that it provides for the continued operation of the restriction for two years after the cessation of employment.

The Himachal Pradesh Rule is similar to the Delhi Rule. The Jammu & Kashmir is similar to the Delhi Rule except that it does not provide a prohibition after the cessation of employment. The Kerala, Madhya Pradesh, Maharashtra, Karnataka and Rajasthan Rules are identical with the Jammu and Kashmir Rule. The U.P. Rule does not allow such transactions, "except as permitted by the bylaws of the society".

The Punjab Rule is similar to the Delhi Rule except that it provides that no officer shall have interest.....".... "without prior permission in writing of the Registrar".

(iii) *Comment*: These are salutary provisions, but as this is a matter for self-regulation these provisions should be included in the bylaws and not in the Rules or Acts. Authorising an officer to have such interests with the Registrar's prior approval is not only a violation of the society's autonomy but also a relegation of managerial power to the Registrar, not to speak of the presumption that the Registrar knows what is good for the society better than the general body of members. As pointed out in Chapter I, the justification of the principle of democratic control "rests on the proposition that it is the members who know what their interests are".

(iv) *Recommendation*: The Rules should be deleted and suitable bylaws should be adopted by the societies.

4. THE MANAGEMENT IS ELECTED OR APPOINTED IN A MANNER AGREED BY THE MEMBERS AND IS ACCOUNTABLE TO THEM

4.A. Management to vest in Committee:

(i) *Acts*: The following sections of the State Acts provide that the power of management of a society shall vest in a committee. In the case of Assam, the Act provides for an Administrative Council as well in the case of societies which have wide areas of operation.

Andhra Pradesh	Sec. 31
Assam	Sec. 34
Bihar & Orissa	Sec. 14(2)

Himachal Pradesh	Sec. 34
Kerala	Sec. 28
Orissa	Sec. 28(1)
Rajasthan	Sec. 28
Tamil Nadu	Sec. 27(1)
Uttar Pradesh	Sec. 29

The Andhra Pradesh, Assam, Kerala and Tamil Nadu Acts provide that a committee of management of a society shall be constituted in accordance with its bylaws. The Assam Act provides for a "managing body" in which the management of a society shall vest as well as "committees". It also provides for the management to vest in an Administrative Council where such is necessary "for administrative convenience necessitated by reasons such as wide area of operation". The Bihar and Orissa Act provides that "the management shall be vested in a managing committee constituted in accordance with the rules". The Himachal Pradesh Act provides for a managing committee constituted in accordance with the rules and the bylaws. The Orissa Act provides for the management to vest in a "Committee" constituted in accordance with the rules and the society's bylaws. It further provides that the committee of a society which is assisted by the State or Central Government in a specified form shall consist of not less than five and not more than eleven members. In the case of a Central Society and an Apex Society the maximum number shall be fifteen and twenty-one respectively. In the case of a Regional Marketing Society the Committee shall not include more than three representatives of the individual members and the rest shall be representatives of member societies. In the case of Primary Agricultural Credit Societies and Service Societies "at least one-third of the members of the Committee shall be persons owing not more than three standard acres of land or persons who are landless cultivators". The Rajasthan Act provides for a Managing Committee constituted in accordance with the rules and bylaws. The Uttar Pradesh Act has the identical provisions and certain additions. The term of the elected members of the Committee shall be as may be provided in the

rules or the bylaws. If the society fails to elect members to the committee the Registrar may himself nominate persons as are qualified for election to the committee and call a general meeting within six months for electing a committee.

(ii) *Rules:* The following Rules relate to the power of the Registrar/other officer/nominee/Government to refuse, approve, rescind, modify, the decisions of the managing committee.

Assam	Rule 39
Delhi	Rule 154(iii)
Himachal Pradesh	Rule 53
Kerala	Rules 37(2), (3) & 176
Orissa	Rule 36(5)
Uttar Pradesh	Rule 130
West Bengal	Rule 49

(iii) *Summary of the Rules:* The Assam and Himachal Pradesh Rules provide that in the event of any difference of opinion between the Executive Officer and the Administrative Council or Managing Committee of the society, with regard to any matter concerning its management, not expressly covered by the Act, the Rules, the bylaws or conditions laid down by the State Government, the Executive Officer may refer the matter to the Registrar, whose decision shall be final.

The Delhi Rule provides that “should a difference of opinion in respect of any matter arise between a nominated member of the committee and other members thereof, the opinion of the nominated member shall be recorded in the minutes of the proceedings of the meeting in the words of the nominated member and the proceedings shall also be signed by the nominated member. The Chairman shall, as soon as possible, make a reference to the Lt. Governor and if no reference is made within seven days of the date of the meeting, the Registrar may, on receipt of a report from a nominated member, make a reference to the Lt. Governor for getting his decision, which shall be final on the issue on which difference of opinion was so recorded”.

The Kerala Rule 37(3) lays down that when the Registrar or any other officer, exercising the powers of the Registrar, is on the Committee either as a nominated or as an ex-officio member of any society, no resolution or decision taken by that society at a meeting in which such officer or officers in their capacity as members of the Committee participate, shall be deemed to carry with it the sanction of the Registrar. The Rule further lays down that the Registrar's or any other officer's presence at such committee meetings in the above capacity shall not preclude the Registrar or other officers from examining such resolutions or decisions, in the exercise of the powers conferred on him by the Act or Rules and in passing orders either according or refusing sanction or approval. Rule 176 lays down that notwithstanding anything contained in the bylaws of a society, it shall be competent for the Registrar to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is ultra-vires of the objects of the society, or is against the provisions of the Act, Rules, Bylaws or of any direction or instructions issued by the Department, or is calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society.

The Orissa Rule states that the bylaws of a society, in which shares have been subscribed or liability, by way of guarantee of borrowings that total upto over 50% of the working capital of the society, has been undertaken by the Government, shall provide that if a difference of opinion in respect of any matter arises between the nominated members of the Committee and other members thereof, "the matter may be referred by the committee to the Government whose decision thereon shall be final and shall be acted upon as if the same were a decision taken by the Committee".

The U.P. Rule provides that when the Secretary of a cooperative society is of the opinion that a resolution passed by the Committee of Management, or the General Body of the society, or any order passed by an officer of a cooperative society is not covered by the objects of the society,

or is in contravention of the provisions of the Act, the Rules or the bylaws of the society and that in case the implementation of such resolution or order is not stayed, the order of annulment of the resolution or cancellation of the order which may eventually be made by the Registrar under the Act (Section 128) will become infructuous, the Secretary shall forthwith move the Chairman of the society in writing to refer the matter to the Registrar for his decision. The Rule further provides that if the Chairman fails within three days of the receipt of the Secretary's request, to make the reference to the Registrar or to direct, in writing, the Secretary to make such reference, the Secretary may himself refer the matter to the Registrar for decision. The Rule further provides that pending reference to and receipt of the decision of the Registrar, the Secretary may withhold the implementation of the resolution or the order, as the case may be, where the Secretary is satisfied for reasons to be recorded, that such a course is necessary in the interest of the society. The Rule further provides that the Registrar shall, as soon as may be, but not later than thirty days after the receipt of the reference under the Rule, examine the matter and if he decides that the resolution or order referred to him by the Secretary—(a) is not contrary to the provisions of the Act (Section 128), he shall direct the resolution or order to become operative and the Secretary shall comply; (b) is contrary to the provisions of the Act (Section 128), he shall direct the Secretary to continue to withhold implementation of the resolution or the order, as the case may be, pending action under the Act (Section 128) and the Secretary shall act accordingly. The Rule provides that when no intimation of the decision taken by the Registrar has been received by the Secretary within thirty-five days of the date on which the reference was made, the Secretary shall not further withhold the implementation of the resolution or the order, as the case may be.

The West Bengal Rule is similar to the Assam and Himachal Pradesh Rules.

(iv) *Comments:* The provision vesting the management in a committee need exist only in the Bylaws.

The power given in the Assam, Himachal Pradesh and Uttar Pradesh Rules to the Executive Officer or Secretary of a society to refer any matter over which he does not agree with the managing committee to the Registrar makes such officer virtually un-amenable to his lawful superiors viz. the Managing Committee. It also makes the Registrar the *de facto* managing committee of the society. The law that the management of a society shall vest in the Managing Committee, a fundamental ingredient of the Principle of Democratic Control, is thus nullified. Therefore, this power is a gross violation of the Principle of Democratic Control.

The requirement in the Bihar Rule to refer to the Registrar a general body's decision to fine a member over twenty-five rupees makes a farce of cooperative democracy.

The Delhi requirement that any difference of opinion between a nominated committee member and the other members of the committee should be referred to the Lt. Governor for decision is another inroad into cooperative democracy. It makes a person who has no cooperative standing in the committee (the nominated member) and the State Government the final decision-makers.

The Kerala Rule exposes the farce that is enacted by the nomination of government officers, even the Registrar, to the managing committee of a cooperative. The nominated *ex-officio* member takes no responsibility for his actions in the committee. He can as Registrar over-rule his own approval given as a committee member. He, although a member of the Committee, is not bound by the decision of his committee. According to the Principle of Democratic Control it is only the general body that can over-rule a decision of the Committee. But here a member of the committee can over-rule such decision in another capacity. One who can over-rule a committee decision should not sit on the committee. If he disagrees with a committee's decision and is not prepared to defend it on the principle of collective responsibility, he should resign from the committee. In short, such official participation in a committee's deliberations has no material or moral value. The nomination of an outsider to the committee of a cooperative is a gross

violation of the Principle of Democratic Control. This rule brings out into the open the true character of nominated persons. They are responsible only to their nominators. Cooperative democracy cannot function without committee solidarity. Therefore the uncooperative species called nominated members must be withdrawn from the cooperative-scene.

Empowering the Registrar to rescind any resolution of any meeting is another violation of the Principle of Democratic Control. The Orissa Rule leaves it to the committee to refer any difference of opinion to the Government. Such reference would be a violation of the Principle of Democratic Control. The Managing Committee's only superior is the general body and it is to the general body that such difference should be referred.

(v) *Recommendation*: These laws should all be rescinded for one or more of the reasons given above. A provision that the power of management shall vest in the Committee should be included in the bylaws of every cooperative society.

4.B. Notice of Committee Meetings

(i) *Rules*: The following Rules relate to the issue of notices of committee meetings:

Bihar	Rule 28(2)
Delhi	Rule 65(3)
Himachal Pradesh	Rule 44
Orissa	Rules 36(2) & (3)
West Bengal	Rule 38

(ii) *Summary*: The Bihar Rule deals with the procedure to be observed at committee meetings and provides that a notice specifying the time, place and agenda of each meeting shall be circulated among the members. The Delhi Rule provides that notice of every meeting of the committee shall be given to every member in writing. The Himachal Pradesh Rule provides that such notice shall be sent, under certificate of posting by the President or under his direction by the Secretary in writing or in such manner "as the Regis-

trar may prescribe” in respect of any society or class of societies, not less than three clear days, or such other periods as may be provided in the bylaws, before the date of the meeting.

The Orissa Rule has the same provision but adds that in case of an urgency the committee members may meet with the consent of all the members at any time they choose. It also provides that where there is not sufficient time to convene a meeting in an emergency, business may be transacted by circulation of papers. The West Bengal Rule says that notice of a meeting of the managing committee shall be given in writing, or in such manner as the Registrar may permit in respect of any society or class of societies, not less than seven days, or such other period as may be provided in the bylaws, before the date of the meeting. The Rule further says that any urgent business, though not included in the notified agenda may be considered at a committee meeting with the consent of all the members of the committee.

(iii) *Comments:* These Rules contain wholesome provisions except the power given to the Registrar to prescribe the manner of giving notice (vide Himachal Pradesh & West Bengal Rules).

(iv) *Recommendation:* These Rules contain wholesome provisions except the power given to the Registrar to prescribe the manner of giving notice (vide Himachal Pradesh & West Bengal rules). The wholesome provisions of these Rules should be included in the Acts and these Rules should be rescinded.

4.C. Duties of the Managing Committee

(i) *Rules:* The following Rules lay down the duties of the Managing Committee/Administrative Council:

Assam	Rule 36
Bihar	Rule 29
Delhi	Rule 65
Gujarat	Rule 34
Himachal Pradesh	Rule 50
Orissa	Rule 34

Uttar Pradesh	Rule 113
West Bengal	Rule 44

(ii) *Summary:* The Assam Rule provides that the Administrative Council or the Managing Committee shall observe in all their transactions the provisions of the Act, Rules, bylaws and the directions of the Registrar and shall cause the following duties to be performed: (I) to manage the affairs of the society; (II) to receive and disburse money; (III) maintenance of true accounts of money received and expended and of assets and liabilities; (IV) to prepare for submission to the annual meeting—(a) an annual report on the working of the society; (b) an annual statement of accounts; (V) to prepare the statement of accounts required for audit; (VI) to prepare and submit all statements and returns required by the Registrar; (VII) to enter accounts regularly in the proper registers; (VIII) to maintain a register of members; (IX) to facilitate the inspection of books and records by the inspecting officers; (X) to hold meetings of the General Assembly; (XI) to convene the annual meeting of the General Assembly in due time; (XII) to watch that the loans are applied to the purposes for which they are advanced and that they are repaid punctually; (XIII) to examine and take prompt action in all cases of arrears and defaults in respect of repayment of loans; (XIV) to examine the stock register and to verify the actual stocks; (XV) to supervise and to examine the work of the sub-committees and the office-bearers; and (XVI) to perform such other duties as may be entrusted by the General Assembly.

The Bihar Rule provides that the Managing Committee shall perform all such duties as are conferred or imposed on it by the Rules or the bylaws of the society or by a resolution passed at a general meeting.

The Delhi Rule provides that the Committee of a Co-operative Society shall discharge all duties as may be specified in its bylaws by means of resolutions passed at its meetings and that no resolution shall be passed by circulation of papers.

The Gujarat Rule provides for the duties of the Managing Committee in relation to matters specified in the Rules.

The performance of these duties is not subject to the Act, the Rules or the orders of the Registrar as has been provided in the Assam Rules.

The Himachal Pradesh and the Orissa Rules are similar to the Assam Rule except that there is no provision for directions by the Registrar.

The Uttar Pradesh Rule provides that the Committee of Management of a society shall have such duties as may, subject to the provisions of the Act and the Rules, be laid down in the bylaws of the society.

(iii) *Comment* : These are provisions which must be included in the bylaws. The provision for direction by the Registrar is contrary to the Principle of Democratic Control and should be deleted.

(iv) *Recommendation*: These Rules should be deleted and their provisions should be included in the bylaws except the power of direction given to the Registrar in the Assam Rule.

4.D. Powers of the Managing Committee

(i) *Rules* : The following Rules confer powers on the Managing Committee/Administrative Council:

Assam	Rule 35
Bihar	Rules 29 & 35
Delhi	Rule 65
Gujarat	Rule 33
Orissa	Rule 33
West Bengal	Rule 43
Himachal Pradesh	Rule 49
Uttar Pradesh	Rule 113

(ii) *Summary*: The Assam Rule provides that the Administrative Council or the Managing Committee shall exercise all or any of the powers as may be provided in the bylaws viz.—(i) to admit new members and to suspend, fine, remove or expel an existing member; (ii) to raise funds; (iii) to invest funds; (iv) to appoint salaried or non-salaried officers for the proper conduct of the business, on such terms of remuneration, security, etc. and with such power

and authority including the power to enter into contracts on behalf of the society as the Committee may deem fit and to define their duties; (v) to dismiss, suspend or punish officers mentioned above; (vi) to institute, defend or compromise legal proceedings; (vii) to dispose of applications for loans and to determine the security to be taken; (viii) to appoint sub-committees as may be deemed necessary from time to time; (ix) to delegate, with or without conditions, any of the power exercisable by the Administrative Council or the Managing Committee to any office-bearer or to any committee formed for a special purpose.

Bihar Rule 29 provides that the Managing Committee shall exercise and perform all such powers and duties as are conferred or imposed on it by the Rules or the bylaws of the society or by a resolution passed at a general meeting.

Bihar Rule 35 provides that where the bylaws of a society empower the managing committee to impose a fine on a member, the fine shall not exceed Rs. 25/- and its recovery shall be subject to confirmation by the general meeting. The Rule further provides that if in the opinion of the Managing Committee, the circumstances of a case justify the imposition of a fine exceeding twenty-five rupees, it shall report the case to the general meeting and if the general meeting decides to impose a fine exceeding twenty-five rupees, its decision shall be forwarded to the Registrar who may confirm, reduce, or remit the fine.

The Delhi Rule provides that the Committee of a cooperative society shall exercise all the powers of the society, and discharge all such duties as may be specified in the society's bylaws, and in resolutions passed at Committee meetings. The Rule further provides that no resolution shall be passed by circulation.

The Gujarat, Orissa and West Bengal Rules are similar to the Assam Rule.

The Himachal Pradesh Rule provides for the exercise of powers by the managing committee as laid down in the bylaws of the society, in relation to matters specified in the Rules, but subjects the power to the provisions of the Act,

the Rules made thereunder and such general or special orders as the Registrar may issue from time to time.

The Uttar Pradesh Rule provides that the Committee of Management shall have such powers and duties as may, subject to the provisions of the Act and the Rules, be laid down in the bylaws of the society.

(iii) *Comment:* These Rules are unnecessary. The Acts provide that the bylaws, upon their registration become binding on all concerned and thereby provide the necessary legal sanction for the powers of the Managing Committee. Subjecting the Committee's powers to the general or special orders of the Registrar, as in the Himachal Pradesh Rule, is a violation of the Principle of Democratic Control. This power makes the Registrar the *de facto* manager of the society.

(iv) *Recommendation:* These Rules should be rescinded.

4.E. Constitution and Strength of Committees of Financing Bank.

(i) *Rules:* The following Rules relate to the constitution and strength of the Committees of Financing Banks:

Andhra Pradesh	Rule 27(1) (2) (3) (4)
Delhi	Rule 64
Tamil Nadu	Rule 34

(ii) *Summary:* Andhra Pradesh Rule 27(1) provides that the proportion of individual members to society members on the Committee of a Financing Bank, the proportion of individual members who shall hold fixed deposits to the total number of individual members, and the maximum strength of the Committee shall be fixed by the Registrar in consultation with the Committee of the Bank. The percentage that individual members who hold fixed deposits shall be of the total number of individual members shall be fixed at not less than 25. Rule 27(2) further provides that an individual member shall not be eligible for appointment as a member of the Committee of a financing bank unless he holds such number of shares in the bank or has invested in such bank in fixed deposits free of encumbrances such

minimum amount, as may be fixed by the Registrar, from time to time, in consultation with the Committee of such bank. Rule 27(3) further provides that if the required number of individual members holding fixed deposits is not elected to the Committee of a financing bank, the Registrar may, from among the individual members holding fixed deposits in such bank free of encumbrances to the value of the minimum amount fixed by the Registrar under the Rule, nominate the required number of such members to the Committee. Any seat on the Committee of such bank reserved for individual members holding fixed deposits which has not been filled either by election or nomination shall be kept in abeyance. Rule 27(4) further provides that any person, who has been appointed an individual member of the Committee of a financing bank by virtue of the fixed deposits held by him in such bank, shall cease to hold office as such, if the amount of the fixed deposits held by him free of encumbrances in such bank falls short of the minimum fixed by the Registrar under the rule and shall not be eligible for appointment under the class of members until the amount of the fixed deposits so held by him in such bank reaches such minimum.

The Delhi Rule provides that notwithstanding anything contained in the bylaws of the financing bank, the maximum strength of the committee of the financing bank shall be fixed by the Registrar. The Registrar shall also be competent to fix the proportion of the representation of various classes of societies in the committee of the financing bank, and the proportion of individual members to society members on the committee and also prescribe the qualifications, relating to the holding of shares and deposits in the financing bank, that an individual should have, for election to its Committee. The Rule further provides that no defaulter society shall be eligible for representation on the committee of the financing bank.

The Tamil Nadu Rule provides that the proportion of individual members to society members on the committee of the financing bank shall not exceed the ratio of 1:3. Subject to this limit, the Registrar may, at his discretion,

prescribe the specific proportion for each individual society.

(iii) *Comment:* These are matters for self-regulation. Therefore they should be dealt with in the bylaws of the banks. It is contrary to the Principle of Democratic Control for the state to lay down these norms.

(iv) *Recommendation:* These Rules should be rescinded and their provisions should be embodied in the bylaws of the cooperative banks but without the provisions giving powers to the Registrar.

4.F. Payment of Honoraria

(i) *Rules:* The following Rules relate to the payment of honoraria to members/members of committee/administrators/honorary manager/chairman/vice-chairman/other persons:

Assam	Rule 63
Bihar	Rule 31
Gujarat	Rule 28
Himachal Pradesh	Rule 75
Jammu & Kashmir	Rule 15
Kerala	Rules 40 and 49
Karnataka	Rule 15
Rajasthan	Rule 37
Tamil Nadu	Rule 41
U.P.	Rules 122, 123, 382 and 383
West Bengal	Rule 52

(ii) *Summary:* The Assam Rule provides that a co-operative society may set apart not more than 30 per cent of its net profits as provided in the bylaws for the payment of bonus or remuneration to its members, office-bearers,

salaried officers, employees or other helpers if such payment is recommended by the managing body and approved by the general assembly.

The Bihar Rule provides that a registered society may, with the approval of the Registrar, pay an honorarium or out of pocket expenses to a member for a service rendered

to the society and any amount paid on this behalf shall be debited to the head "Establishment charge".

The Gujarat Rule provides that honorarium to be paid under the Act [Section 65(2)] shall not exceed 5 per cent of the net profits or Rs. 1,000/- in a year whichever is less.

The Himachal Pradesh Rule provides that no honorarium shall be paid by the society unless a resolution sanctioning the same has been passed by the managing committee and approved by the general meeting of the society and the Registrar, and the honorarium to be paid shall not exceed 5 per cent of net profits or Rs. 1000 in a year whichever is less.

The Jammu & Kashmir, Karnataka and Rajasthan Rules provide that the remuneration payable to a committee or administrators appointed under the Act (Section 29) shall be such as the Registrar may, from time to time, determine and the amount of such remuneration and the other costs, if any, in relation to the management of the cooperative society by the committee or the administrators, shall be payable from the society.

The Kerala Rule 40 provides that the committee or administrator or administrators appointed under the Act (Sections 32 and 33) shall be eligible for remuneration at the rates fixed by the Registrar and the expenses thereof shall be borne by the society or societies concerned. Rule 49 provides that a society may pay remuneration or honorarium to the members of the committee based on the extent of business done by such members with the society or on the value of services rendered by such members to the society or on such other basis as may be laid down in the bylaws of the society for the purpose and with the approval of the Registrar.

The Tamil Nadu Rule provides that the members of one society attending the general meeting of another society may be paid a daily allowance by their society but they shall not be given any sitting fees. The members of the committee may be paid by the society a daily allowance or sitting fees for attending the meetings of the committee. The members of the committee proceeding on tour on the

business of the society may be paid a daily allowance in respect of such tours by the society. If a member of the committee or general body is detained at the headquarters of the society, for a period not exceeding seven days in order to attend a meeting of the general body or committee of another society, that other society shall pay a daily allowance to that member "for the number of days he is so detained". The Rule provides that the daily allowance claimed shall be limited to the travelling allowance admissible for the journey. The Rule empowers the Registrar to specify the maximum rates of allowances or sitting fees for any society or class of societies and provides that each society may fix the rate in its own bylaws with reference to its financial resources.

The Uttar Pradesh Rules 122 and 123 are similar to the Karnataka Rule. Rule 382 provides that the honorary manager shall not charge or accept any regular remuneration for the service rendered by him to the society, but may be entitled to an honorarium as may be paid to the officers of the society under the provisions of the Act, the rules or the bylaws of the society. Rule 383 provides that no honorarium shall be paid to the chairman, vice-chairman or any other member of the committee of management of a society.

The West Bengal Rule provides that when the Registrar orders the managing committee of a society to be dissolved and makes an appointment under the Act (Section 26), he shall fix the remuneration if any, to be paid to the person or persons appointed to manage the affairs of the society and unless otherwise directed by the government the remuneration of any person so appointed shall be defrayed out of the funds of the society.

(iii) *Comments:* The provision in the Kerala Rule for the payment of remuneration or honorarium to committee members "on the extent of business done by such members with the society" is not a cooperative practice. These Rules deal with matters that are solely within the purview of the cooperatives concerned. Therefore they should be provided for in the bylaws. The imposition of Rules in

this regard is a violation of the Principle of Democratic Control. Subjecting the decision of societies to the Registrar's approval is another violation of the same principle.

(iv) *Recommendation*: These Rules should be rescinded and suitable provisions should be included in the bylaws.

4.G. Duties of Executive Officers, Secretaries, Office Bearers, Employees, Honorary Organisers and Honorary Managers

(i) *Rules*: The following Rules prescribe the duties of executive officers, secretaries, office bearers, employees, honorary organisers, and honorary managers:

Assam	Rule 38
Delhi	Rule 48(2)
Himachal Pradesh	Rule 52
Karnataka	Rule 18
Kerala	Rules 47, 146 and 173
Orissa	Rules 37 and 41
Uttar Pradesh	Rules 381 and 382

(ii) *Summary*: The Assam Rule provides that unless otherwise directed by the administrative council or the managing body as the case may be the executive officer shall perform the duties specified in the Rule.

The Delhi Rule provides that if the committee of a society has not specified the officers who should be in charge of the duties specified in the Rule, notwithstanding anything contained in the bylaws of the society, the following officers shall be responsible for performing the duties indicated against each, namely—(a) treasurer: “he shall keep or cause to be kept all the books of accounts and vouchers and shall prepare or cause to be prepared the annual profit and loss account, receipt and disbursement account and the balance sheet. Whosoever may be writing these books of accounts, they shall always be deemed to be in his custody, possession, power and control. He shall be responsible for their safe delivery to his successor after making a list of documents handed and taken over”; (b) secretary: “he shall keep or cause to be kept all other re-

cords of the society and shall be responsible for preparation and submission of various returns to the Registrar. Whosoever may be keeping these records, these shall always be deemed to be in his custody, possession, power and control. He shall be responsible for handing over the charge of these records to his successor under proper charge report to be signed by the relieving and the relieved officers”; (c) cash: “cash balance in hand shall always remain in the hands of the President”.

The Himachal Pradesh Rule is similar to the Assam Rule.

The Kerala Rule 47 provides that it shall be the duty of the paid secretary/manager of every society to maintain and keep in proper form all the accounts, registers, other records and the seal of the society under his safe custody and he shall be personally responsible for their safety. He shall also be the custodian of cash, securities and all other properties of the society subject to the overall control of the President. If there is no paid secretary/manager, it shall be the duty of the president to arrange to maintain the accounts and registers in proper form and to keep the cash balances and other assets including bonds and securities under safe custody. He will also act as the treasurer of the society in cases where there are no specific provisions in the bylaws to elect or appoint a treasurer. Where there are other arrangements for the cash balance to be in the custody of the secretary and the cashier under the double lock system, the responsibility to account for the cash balance to the committee shall be that of the Secretary. The Rule further provides that the President and Secretary, Manager or President alone, where there is no paid secretary/manager, shall be bound to produce the records, cash balances and other assets before the officers of the Department and other persons authorised by the Registrar by general or special order, for verification, inspection, audit or inquiry. The Rule further lays down that notwithstanding anything contained in the Rule, the committee of the society shall primarily be responsible for the maintenance and safety of all accounts, records, cash and other

assets of the society. It shall be the duty of the committee to see that the officers concerned discharge their functions and perform their duties as laid down in these Rules and the bylaws. Rule 146 dealing with the duties and powers of the office-bearers of circle cooperative unions provide that the chairman of the union shall have a general control over the affairs of the union. The secretary shall be responsible for the day-to-day-working of the union and the staff of the union shall be under his control. He shall have custody of cash and assets and manage the funds of the union. It shall be his duty to cause proper accounts to be maintained and audited. He shall initiate action on all matters referred to the union and take further action subject to the decision of the members of the union. He shall be the officer to sue and be sued on behalf of the union. He may also incur expenditure within the budget allotment. Rule 173 deals with the powers of the chairman and secretary of the union states that subject to such resolution as the managing committee may from time to time pass, the chairman and secretary shall have the powers mentioned in the rule.

The Karnataka Rule provides that no employee shall, except when generally or specially empowered or permitted by the managing committee, communicate directly or indirectly to any other person or institution or to the press any information which has come into his possession in the course of his official duties or which has been prepared and collected by him in the course of such duties whether from official sources or otherwise. The Rule further provides that no employee shall have pecuniary transactions with individuals or institutions with whom he comes in contact in the course of his official duty or accept directly or indirectly either on his own behalf or on behalf of any other person any gift, gratuity or reward from any person with whom he may have to deal in his official capacity provided that this Rule shall not apply to borrowings by an employee on the security of his deposits, savings, insurance policy or other documents from other institutions. The Rule further provides that no employee of the society shall canvass or

otherwise use his influence in any election of members to the managing committee or other offices of the society.

The Orissa Rule 37 says that the Secretary shall be the officer to sue or to be sued on behalf of the society and all bonds in favour of the society shall be in the name of the secretary. Rule 41 states that the committee shall specify which of the officers of the society shall—(a) keep books of accounts, (b) keep custody of cash and stores, (c) keep other books and registers, (d) prepare returns and statements. The Rule further provides that a “person charged with the keeping of accounts shall not be in charge of cash except under a special or general order of the Registrar”.

The U.P. Rule (381) provides that where a person is appointed honorary manager of a society, he shall perform all the duties and functions of the manager as specified in the bylaws of the society or laid down by the general body or the committee of management of the society. He shall work under the control and superintendence of the secretary of the society. Rule 382 provides that the honorary manager shall not charge or accept any regular remuneration for the services rendered by him to the society. Such honorary manager shall not be a member of the committee of management nor shall be deemed to be in the service of the society.

(iii) *Comment*: These Rules relate to matters of self-regulation. Therefore they should be provided for in the bylaws and not in the law. These Rules and the power given to the Registrar under them are contrary to the Principle of Democratic Control.

(iv) *Recommendation* : These Rules should be rescinded.

4.H. Appointment of Paid Secretaries

(i) *Rules*: The following Rules relate to the appointment of paid secretaries of cooperatives:

Andhra Pradesh	Rule 29
Karnataka	Rule 18-B
Orissa	Rule 37
Tamil Nadu	Rule 84
Uttar Pradesh	Rules 124, 125, 127, 128 & 129

(ii) *Summary*: The Andhra Pradesh Rule provides that every financing bank, every credit society with limited liability and a working capital of not less than Rs. 1 lakh (one hundred thousand rupees), and every mortgage bank which has loans outstanding from its members to the extent of not less than Rs. 4 lakhs shall appoint a paid secretary. The Rule further provides that the paid secretary of such cooperative shall be disqualified from being a member of the committee of that cooperative and further provides that a mortgage bank which has appointed a paid secretary shall not dispense with his service even though the loans outstanding from its members fall below the limit specified in the Rule except with the sanction of the Registrar.

The Karnataka Rule provides that every cooperative society whose area of operation extends beyond a district, every District Cooperative Central Bank, every Marketing Society, every Consumer Society, every Processing Society and every Land Mortgage Bank shall appoint a paid secretary approved by the Registrar. The Rule further provides that the services of such a secretary shall not be dispensed with, without the previous sanction of the Registrar.

The Orissa Rule provides that every society having a working capital of more than Rs. 1 lakh shall have a paid secretary unless otherwise permitted by the Registrar.

The Tamil Nadu Rule is similar to the Andhra Pradesh Rule with the additional provision that this Rule is extended so as to cover the Housing Cooperatives also.

The Uttar Pradesh Rule 124 provides that the appointment of the Secretary of a cooperative society shall be subject to the prior approval of the Registrar and also to the provisions of the law (Sec. 120), the regulations framed under the Act (Section 121 or 122) and Rule 125. A cooperative society "shall submit to the Registrar the entire records relating to the selection and shall also give reasons for selecting a particular candidate", while submitting the proposal for appointment of any person to be its secretary for the approval of the Registrar. This Rule further provides that if the Registrar considers the person proposed for

appointment to be unsuitable, the Registrar shall state his objections to the society, on receipt of which, the society shall, in the light of the Registrar's objections, reconsider the matter and suggest out of the applicants another person who is considered as most suitable and in doing so the society shall also mention two more persons, who in the opinion of the society, are fit to be appointed secretary. The Rule provides that the Registrar may approve for appointment the candidate described as most suitable by the society and if he considers such candidate to be unsuitable, he may approve one of the other two candidates and intimate his approval to the society with reasons. When the number of applicants does not exceed one or two, the Registrar may require the society to notify the vacancy again or he may approve the candidate selected by the society, as he may consider proper. Rule 127 provides that pending the appointment of a secretary as permitted by the Rules the committee of management of a society may, subject to the provisions of the Act (Section 20) and the regulations framed under the Act (Section 121 or 122), appoint any suitable person to officiate as secretary, for a period of six months or until the appointment of a secretary under the rules, if it happens earlier. Rule 128 enables the committee of management of a cooperative society to appoint, subject to Rules 124 and 125, one or more persons to assist the secretary, if such appointment is necessitated by the work load being so heavy that the secretary alone is unable to perform the functions and discharge his duties efficiently and the society is able to bear the financial burden involved in such appointment. The person or persons so appointed to assist the secretary shall work under the over-all control, guidance and supervision of the secretary.

(iii) *Comment:* These Rules violate the Principle of Democratic Control. The appointment of a secretary is a matter solely within the purview of a cooperative. The principle is that the management is elected or appointed in a manner agreed by the members and is accountable to them. Subjecting such appointment to the approval of the Registrar is a violation of this principle. It is also undesir-

able for two reasons. Firstly, it is the members who know best what is good for them, and secondly, as the Registrar is not responsible for the lapses of a secretary appointed with his approval, the Registrar is given power without responsibility—a position which cannot be too strongly condemned.

(iv) *Recommendation*: These Rules should be rescinded.

4.I. Power of Nomination to Committees

(i) *Acts*: The following sections of the State Acts empower the State to nominate persons to Committees (boards of directors) of cooperatives:

Andhra Pradesh	Sec. 33
Gujarat	Sec. 80
Himachal Pradesh	Sec. 35(1)
Jammu & Kashmir	Sec. 28
Kerala	Sec. 31
Madhya Pradesh	Sec. 52(1)
Mysore	Sec. 29
Orissa	Sec. 31(1)
Punjab	Secs. 26(1D), 26(2), 26(3)
Rajasthan	Secs. 33, 35, 36
Tamil Nadu	Secs. 27(1) & (2), 27(6), 110
Uttar Pradesh	Secs. 34, 34(2)
West Bengal	Sec. 23A
Delhi	Sec. 31(9)A

(ii) *Rules*: The following Rules provide for the nomination or appointment of members of Managing Committees or Directors by the State Government or the Registrar.

Andhra Pradesh	Rule 34(14) (a) to (d)
Assam	Rule 29(i) (ii) (iii)
Bihar	Rule 22(3)
Himachal Pradesh	Rules 38 & 39 (1)(2)(3) & (4)
Kerala	Rules 37(4) & 38(5)
Rajasthan	Rule 34(1) & (4)
West Bengal	Rule 32

(iii) *Summary of the Rules*: The Andhra Pradesh Rule

provides that where the Government has contributed directly to the share capital of an apex society, the bylaws of such society "shall" provide for three State nominees on the Committee of such society and where the Government has contributed directly to the share capital of a Central Society, the bylaws of such society, "shall" provide for two State nominees on the Committee of such society. The Rule further provides that where an apex society has contributed to the share capital of a central society, the bylaws of such central society, "shall" provide for two nominees of the apex society to the committee of such central society, and where a central society has subscribed to the share capital of any other society the bylaws of such society shall provide for one nominee of the central society to the committees of such other society. The Rule further lays down that such nominees shall ordinarily be—in the case of an apex society—(a) an official of the Finance Department; (b) the Registrar; and (c) one other official or non-official; in the case of a central society—(a) the Deputy Registrar having administrative control over such society; and (b) one other official or non-official; and in the case of any other society in which a central society has purchased shares, a non-official cooperator.

The Assam Rule 29(i) provides that, in order to safeguard and represent appropriate interests in a Cooperative Society, the Registrar shall have power to appoint all or a fraction of such number of members of the administrative council or managing committee as is provided for in the bylaws or appoint to that body additional members provided that their number shall not exceed one half of the number of its elected members. The Rule 29(ii) further states that the members so appointed may or may not be members of the society, and Rule 29(iii) provides that if any vacancy occurs in the office of such an appointed member the vacancy shall be filled by appointment.

The Bihar Rule provides that where the bylaws of a registered society so provide, the Registrar may nominate all the members of the Managing Committee on such terms and conditions as may be prescribed in the bylaws.

The Himachal Pradesh Rule 38 provides that the Managing Committee shall include members appointed by the Registrar under Rule 39, nominees of the Government under the Act (Section 35) and nominees of other cooperative societies as provided in the bylaws, and the Managing Committee of a society shall have not less than five nor more than 21 members including the government nominees, as may be provided for in the bylaws. Rule 39 provides that notwithstanding any limits prescribed in the bylaws in order to represent appropriate interests, the Registrar shall have power to appoint an additional number of members to the Managing Committee, not exceeding one-third of the number of elected members. Rule 39(3) provides that the Managing Committee members appointed under the Rule may or may not be the members of the society but should have all the qualifications prescribed for membership of a cooperative society and a Managing Committee and Rule 39(4) provides that if a vacancy occurs in the office of an appointed member, the vacancy shall be filled by appointment made by the Registrar and not by cooperation.

The Kerala Rule provides that the appointment of nominees of Government under the Act (Section 31) shall be made, in the case of apex societies by the government and in the case of other societies by the Registrar. Rule 37(4) further provides that in order to represent appropriate interests the Registrar shall have power to appoint, if he thinks it necessary, two persons to serve on the committee of "any" society. Rule 38(5) provides that in the case of nominated members the vacancies shall be filled by fresh nominations subject to the provisions of Rule 37.

The Rajasthan Rule 34(1) provides that subject to the conditions contained in the Act (Sections 33 and 36) the committee of a society shall be constituted in the manner provided for in the bylaws and where the bylaws so provide, the Government or the Registrar may nominate all or any of the members of the committee for such period as may be specified in the bylaws. Rule 34(4) further provides that the Registrar or any other authority competent to register a society other than a financial bank shall be the specified

authority to make such nominations on behalf of the Government under the Act (Section 35).

The West Bengal Rule provides that in order to represent an appropriate interest the Registrar shall have power to appoint an additional number of directors to the managing committee not exceeding one-half of the number of elected directors, and the directors, so appointed under the Rule, may or may not be members of the society. The Rule further provides that if a vacancy occurs in the office of an appointed director the vacancy shall be filled by appointment.

(iv) *Comments:* Under the Punjab Act [Section 26(2) (a)] where the government has subscribed to the share capital or guaranteed the debentures of a society, the government can nominate up to one-third of the total number of members of the committee. Where the government has subscribed share capital to the extent of two million rupees (twenty lakhs) it may appoint one of its nominees to be the Chairman of the committee and nominate another person, in addition to those nominated as above, to the committee and appoint him to be the Managing Director. No person other than a member of the Indian Administrative Service, Punjab Civil Service (Executive Branch), or an Additional, Joint or Deputy Registrar of Cooperative Societies may be appointed to be Managing Director. The terms and conditions of service of the Chairman and Managing Director appointed by the government shall be determined by the government! This is commented on under Section 4.5 of this Chapter. Under this Act a member co-opted as directed by the government shall *inter alia* be subject to the same liabilities as those to which the elected members of the committee are subject. This is the only silver lining in the dark cloud.

Under the Uttar Pradesh Act: Where the government has become a shareholder or “has assisted indirectly in the formation or augmentation of the share capital” or has guaranteed loans or advances to a society, the State Government has the right to nominate two persons to the committee, one of whom shall be a government servant. If the

State Government has subscribed sixty per cent of the share capital it can nominate up to two-thirds of the total number of committee members, and also nominate a person to be Chairman of the committee and the State Government shall have this right for five years unless the State Government's share capital is reduced to less than fifty per cent of the total share capital.

Under the West Bengal Act: Where the State Government has subscribed to the share capital, or assisted indirectly in the formation or augmentation of the capital or guaranteed the debentures or loan of a society, it can nominate three or one-third of the total number of members of the committee.

Under the Delhi Act where the Central Government has subscribed to the share capital of a society it can nominate three or one-third of the total number of committee members. Where the Industrial Finance Corporation, the State Finance Corporation or any other financing institution has provided finance to the society such institution can nominate one person to the committee.

In Tamil Nadu, where the bylaws so provide, the government can nominate all or any of the members of the committee for the period specified in the bylaws. The Tamil Nadu Act also provides for the government or financing bank, if they have shares, to nominate three or one-third of the total committee. The Kerala Act gives the government, where it has subscribed share capital or assisted indirectly in respect of share capital or guaranteed debentures or loans, the right to nominate one-third of the total number of committee members. A person so nominated shall not take part in any no-confidence motion. This is a healthy admission that the government nominees does not really belong to the cooperative. The Andhra Pradesh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Mysore and Orissa Acts have similar provisions for nominating one-third to the total committee. Gujarat like the Punjab has a wholesome addition that any such nominated member shall have *inter alia* all liabilities as if he were a duly elected member of the committee.

The power given to the State to nominate one-third of the committee and appoint the Managing Director and the Chairman by virtue of having subscribed to the share capital contravenes the principle that share capital shall only receive interest as well as the principle that members shall have only democratic rights. The power taken by the government to nominate the committee members virtually in proportion to its shares in a society, e.g. the provision of U.P. Act stated above, has the danger of inducing the State to take shares and also to refrain from retiring share capital in order to enjoy this power. The Delhi Act's provision of the power of nomination to institutions which finance a cooperative makes matters worse by introducing yet another "foreigner" into the cooperative fold. Tamil Nadu recognizes the right of the society to decide about nomination by providing this power to the government only where the bylaws give this power to the government. The adoption of such a bylaw by a society would, however, be a contravention of the Principle of Democratic Control. Many a Rule cited above gives this power of nomination on the basis of powers given to the Registrar in the Bylaws. But as pointed in Section 3B(iv) of this chapter (regarding the compulsory amendment of Bylaws) the Registrar cannot acquire for himself any power by virtue of the Bylaws.

The statutory power given by the Tamil Nadu Act to a financing bank to take shares in a cooperative and to nominate three or one-third of the total number of committee members would enable a cooperative bank to do this. Giving a federal society the power to nominate persons to the committees of its member-societies is a sure way of undermining the cohesion of the movement. The validity of the cooperative movement's federal set-up rests on the fact that the primary society member, the individual, is the ultimate decision-maker. The members of a primary elect the committee of the primary society and primary societies in turn elect the committees of the secondary and the secondaries elect the committees of the tertiary. Empowering those federal societies to nominate persons to the committees of the very societies which elected the federal com-

mittees, makes such federal society a Frankenstein's monster to its members. The existence of a statutory right of a cooperative bank to nominate persons to the committee of a borrower society is *per se* a violation of the autonomy of the borrower society. The purchase by the bank of shares in the borrowing society, is a topsy turvy arrangement as shown in Chapter IV. Any cooperative bank that resorts to this statutory authority to impose itself upon its own member would be guilty of taking a step in the direction of disintegrating the movement for such imposition would snap the bonds of understanding and loyalty between the two. It is open to a member society to invite its federal society to nominate persons to its committee to provide the expertise which the member society may require. This should be on the basis of bylaws permitting this, duly adopted by the federal and member societies concerned. That would be a voluntary act on both sides, with mutual benefit. But a statutory right of the federal society to nominate persons to the committees of its member societies spells the disintegration of the movement from within. Nomination of persons by an outside authority to the committee of a cooperative society without the latter's consent is a gross violation of the Principle of Democratic Control. This question has been dealt with more comprehensively in Chapter I.

(v) *Commission Reports*: The Review Committee appointed by the National Cooperative Union of India recommended that:

'In order to inject higher level expertise into Boards of Directors of the State and National level Federations, there should be provision for co-option of a limited number of professionally qualified persons on them (Boards) on the basis of prescribed criteria".¹

The Committee on Cooperation (1965) observed:

"This practice of nomination has been going on for a long time but it cannot be said that it has been success-

1. Report of the Review Committee (1969), National Coop. Union of India, p. 1

ful always. We received a number of complaints that the nominated persons did not contribute anything to the proper functioning of the societies on whose committees of management they served; many of them did not even attend the meetings regularly. Some of the most unsuccessful societies to which our attention was drawn had a majority of nominated directors and even had some senior officer as the Chairman".¹

(vi) *Important Pronouncements:* The Hon. Shri Annasaheb P. Shinde, Union Minister of State for Agriculture said:

"... The exercise of the powers of nomination has caused harm to the cooperative movement; in this context, the healthy principle followed by the cooperatively advanced States of Gujarat and Maharashtra not to exercise these powers of nomination should be emulated by other States also".²

Mr. K.D. Malaviya, President of the Third Cooperative Congress, held in April 1958, observed:

"The Britishers have gone but the legacy of their methods still binds us. Instead of making the movement free from official control, such control is being intensified today. With the strait-jacket methods of control and administration of the movement, with government nominees and government managers in cooperatives, how can we expect to call forth popular initiative and enterprise in cooperative institutions? How can we expect the plant of cooperation to become vigorous, if the very essence of cooperation is nipped in the bud?"³

(vii) *Recommendation:* The provisions empowering the State and financing bodies to nominate persons to the committee of management of a cooperative society should be deleted.

1. The Report of the Committee on Cooperation, p. 36.

2. Proceedings and Agenda Notes of the Conference of the Registrars of Coop. Societies & State Ministers of Cooperation, Sept. 18 & 19 and Oct. 23 & 24, 1970, p. 275

3. Report of the Third Cooperative Congress, pp. 24-25

4.J. Power of Supersession

(i) *Acts*: The State Acts give power to the Registrar to supersede the committee of a cooperative society and to appoint an officer/administrator or body of persons, to manage the affairs of the society. The relevant provisions are as follows:

Andhra Pradesh	Secs. 32(7), 34
Assam	Sec. 36, 37
Bihar	Sec. 41
Gujarat	Sec. 81
Himachal Pradesh	Sec. 37
Jammu & Kashmir	Sec. 29
Kerala	Sec. 32
Madhya Pradesh	Sec. 53(1)
Maharashtra	Sec. 78
Mysore	Sec. 30
Orissa	Sec. 32
Punjab	Sec. 27
Rajasthan	Sec. 51
Tamil Nadu	Sec. 72
Uttar Pradesh	Sec. 35
West Bengal	Sec. 25
Delhi	Sec. 32

(ii) *Rules*: The following Rules provide for the suspension and/or supersession of a managing committee/administrative council:

Assam	Rules 41 & 42
Delhi	Rule 66
Himachal Pradesh	Rule 55
Kerala	Rule 172
Maharashtra	Rule 64
Rajasthan	Rule 38
West Bengal	Rules 51 & 52

(iii) *Summary of the Rules*: The Assam Rule 41 provides that where the administrative council or the managing committee of a society, after receipt of a notice, fails to carry out the direction of the Registrar issued under the Act (Section 36) or forwards its reasons for not doing so, the

Registrar after due consideration of the reasons given, may by an order in writing dissolve the administrative council or the managing committee. The Rule further provides that where, as an emergency measure, the Registrar considers it necessary to suspend forthwith the administrative council, managing committee or other body, he may do so and appoint a person or persons to be in full control of the suspended body until a new body has been elected or action has been taken in accordance with the law (Section 37). The Registrar shall fix the date and time by which the person or persons appointed shall take over the charge of the society from the suspended body and also prescribe the conditions under which they will work. Rule 42 provides that "when the Registrar orders the administrative council, managing or any other body, as the case may be, of a society to be dissolved and appoints a person or persons" under the Act (Section 37) he shall fix the date and time by which the charge of the society shall be taken over from the dissolved body, the condition under which work shall be carried on, the security, if any, to be furnished by those appointed and the date by which a new administrative council, managing committee or other body as the case may be is to be elected.

The Delhi Rule provides the procedure to be followed when supersession of a committee is contemplated under the Act (Section 32).

The Himachal Pradesh Rule provides that when the Registrar orders the removal of the managing committee of a society and makes an appointment of a person or persons to manage the affairs of the society under the Act (Section 37) he may fix the date by which a new managing committee is to be constituted; and the security to be furnished by the person or persons to be appointed.

The Kerala Rule dealing with the removal of the members of the managing committee of the Kerala State Co-operative Union provides that if the Government is satisfied that the managing committee of the Kerala State Co-operative Union persistently makes default or is negligent in the performance of the duties imposed on it by the

Act or Rules or commits any act which is prejudicial to the interest of the Union or wilfully disobeys or fails to comply with any lawful order or direction issued under the Act or Rules, the Government, after giving the committee an opportunity to state its objections, if any, may, by order in writing, remove the members of the committee and appoint an officer of the cooperative department or a committee of three members to manage the Union's affairs. The Rule further provides that the Government may also direct the Registrar to constitute a new managing committee within a period of three months.

The Maharashtra Rule provides that, notwithstanding anything contained in the bylaws of a society but subject to the provisions of the Act (Section 78) the Registrar may, by an order with reasons therefor published in the Official Gazette, remove the Committee of a society and appoint a new committee in its place, consisting of three or more members of the society to manage the affairs of the society, or appoint one or more administrators who need not be members of the society, to manage the affairs of the society. The Rule however requires that before making any order, the Registrar shall consult the federal society to which the society is affiliated and give an opportunity to the committee to show cause within 15 days from the date of issue of notice why such an order should not be made.

The Rajasthan Rule provides that, notwithstanding anything contained in the bylaws of the society but subject to the provisions of the Act (Section 36), the Registrar may, by an order, remove the committee and appoint an administrator who shall be a Government servant, to manage the affairs of the society. The Rule requires that before making an order under the Rule, the Registrar shall consult the financing bank to which the society is affiliated and give an opportunity to the committee concerned to show cause within 15 days from the date of issue of notice, why such an order shall not be made.

The West Bengal Rule 51 provides that when the society fails to carry out the direction of the Registrar issued under the Act (Section 25) and forwards its reasons for the same,

the Registrar after due consideration of the reasons shown, may, by an order in writing, dissolve the managing committee. Rule 52 provides that when the Registrar orders the managing committee of a society to be dissolved and makes an appointment under the Act (Section 26) he shall fix the date by which a new managing committee is to be constituted and the security to be furnished by the person or persons concerned.

(iv) *Comments:* The Punjab Act provides for suspending the elected committee even before the supersession proceedings are over, if the Registrar thinks it necessary to do this, in the interest of the cooperative society.

Section 35 of the Uttar Pradesh Act provides that the Registrar should consult the general body before the society is superseded but this provision is made ineffective when it states that the Registrar may dispense with this requirement if he considers it not feasible to call the general body.

The West Bengal Cooperative Societies Bill as adopted by the legislature in May 1973 provides that the committee of management 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 Registrar or the State Government shall not be questioned in any civil court or High Court. Such provisions are repugnant to the Principle of Democratic Control. The Bill is quoted here to show the trend of thinking on the part of government.

The power of the Registrar to dissolve the elected Board of Management and to appoint a person or persons to manage the affairs of a society is contrary to the Principle of Democratic Control. The justification given by the government for having this provision is that the affairs of a society, which in the opinion of the Registrar are not properly managed, could be rectified by a more competent committee, available only outside the membership, and the management could then be 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 is

not so hopeless as to warrant the dissolution of the society. Then it is in the fitness of things that the federal society comes to the rescue of such a society. The society should ask its federal society's help in such circumstances. If the society concerned is a multipurpose primary society which is affiliated to more than one secondary society, perhaps the promotional secondary society may be the best society to step into the breach or if one particular secondary society is more closely connected with that primary, then that federal society would be the best choice. If the general body of such a society is not willing to make this request then it is obviously a society which cannot make good even after rectification. The power of the Registrar to supersede the committee of a society with a committee nominated by him has too often been used to nominate persons who are of political value to the government in power. Thus very often the remedy has proved worse than the disease.

The Delhi provisions should be in the Act, if at all. The Assam and Himachal Pradesh Rules imply that supersession should not obtain for long, whilst the provision in the Kerala Rule that the Government may direct the Registrar to constitute a new managing committee within three months is more definite and a clear recognition of the right of a cooperative to have an elected committee of management.

This power of supersession is one of the most obnoxious violations of cooperative principles to be found in the law pertaining to cooperative societies.

(v) *Judgements*: The High Court of Mysore in W.P. 307/1961 said:

“It is clear from the scheme and purpose of the Act that the management of the affairs of the society should be entrusted only to a committee of members who are generally elected from amongst the members of the society”.

(vi) *Recommendation*: The provisions relating to supersession should be rescinded as they contravene the Principle of Democratic Control. It is desirable to empower the

federal body to take over the management of a member-society on the request of the latter. The necessary provisions should be included in the bylaws of the member-society as well as in those of the federal society. Under no circumstances should the management of a cooperative be entrusted to an outside authority.

4.K. Limitation of Period of Office

(i) *Acts*: The legislation in most of the States has limited the period during which a member may hold office in a society. This limitation applies only to members holding office by election. The relevant references are given below:

Andhra Pradesh	Sec. 21C, 31(2)(a)
Jammu & Kashmir	Sec. 25A
Kerala	Sec. 28(1)
Madhya Pradesh	Sec. 48A(3)
Maharashtra	Sec. 73A
Orissa	Sec. 28(4)
Punjab	Sec. 26(1B)
Tamil Nadu	Sec. 27(3)(b)
Delhi	Sec. 31(3)

(ii) *Rules*: The following Rules relate to the term of office of members of committees:

Andhra Pradesh	Rule 25
Assam	Rules 27 & 28
Bihar	Rule 22(2)
Delhi	Rule 62
Himachal Pradesh	Rule 38(3)
Karnataka	Rule 13(3)
Kerala	Rules 39 & 44(m)
Madhya Pradesh	Rules 43(2)(3)&49
Rajasthan	Rules 34(2)&(3)
Uttar Pradesh	Rules 446, 447 & 448
West Bengal	Rules 29(2), 30(1) & 31(1)

(iii) *Summary of the Rules*: The Andhra Pradesh Rule provides that the bylaws of every society shall provide either that the term of office of all the members of its committees shall expire on the same date and at such yearly

intervals as may be specified, or that a certain proportion of the members of its committee shall retire in each year on such date as may be specified. In the former case, all the members of the committee, including those elected to casual vacancies shall vacate office on the date specified, irrespective of the date on which they were elected members of the committee. In the latter case, the members due for retirement in each year, including those elected in their places to casual vacancies, shall vacate office on the date specified.

The Assam Rule 27 provides that the directors of a primary society other than a non-agricultural credit society shall retire annually from office but shall be eligible for re-election, provided that except with the previous permission of the Registrar which should only be given in exceptional cases, no member shall hold office for more than 4 years in succession or having already held office for four years be re-elected within a shorter interval than two years from the date on which he ceased to be a director. Rule 28 provides that at the first annual meeting of the general assembly of a non-agricultural credit society held after the commencement of these rules, the entire body of directors shall retire.

The Bihar Rule provides that the members of the managing committee and the office bearers shall be deemed to have taken charge immediately after their election and shall hold office till the next election.

The Delhi Rule provides that without prejudice to the provisions of the Act [Section 31(3)], the bylaws of every society shall provide that the term of office of all the members of its committee shall expire on the same date or that a certain proportion of the members of its committee shall retire in each year. In the former case all the members of the committee including those selected to casual vacancies, whether representing societies or individuals, shall vacate their respective offices the same day their successors are elected irrespective of the date on which they were elected as members of the committee. In the latter case the members of the committee due for retirement in each year, including those elected in their places to casual vacancies,

shall vacate office on the date specified in that year provided that if their successors have not been elected they shall continue to hold office till their successors are elected.

The Himachal Pradesh Rule provides that the members of the committee shall continue in office for such period as may be specified in the bylaws or until another committee is constituted but no one shall hold the office of President or Vice President continuously for more than four years. A person who holds office of President or Vice President for four years continuously shall not hold such office for at least 2 years after the completion of such term.

The Kerala Rule 39 provides that the bylaws of every society shall state the term of its committee and the date on which the term shall expire. All the members of the committee (including those elected to casual vacancies) whether representing societies or individuals shall vacate their office on the date specified irrespective of the date on which they were elected to be members of the committee. If no such date is specified in the bylaws, the date of expiry shall be 30th June of the year in which the term expires. The Rule further provides that the election of all the members of the committee referred to in the Rule shall be held on or before the expiry of the term of office of the committee members. If for any reason the election is not held, the Registrar may extend the term to a date before which the election should, in his opinion, be held. Kerala Rule 44(m) provides that no person shall be eligible for being appointed or elected as a member of the committee of any society if he after having served continuously as a committee member for a period of two terms does not obtain previous exemption from the Registrar to stand for election before the expiry of two years.

The Madhya Pradesh Rule 43(2) provides that the members of the committee shall continue in office for such period as may be specified in the bylaws or until another committee is constituted. Rule 43(3) provides that a casual vacancy in the office of an elected member shall be filled by co-option by the remaining members of the committee. The member so co-opted shall hold office till the next annual

general meeting, when the vacancy shall be filled by election. Rule 49 provides that a person nominated to the committee of a society under the Act [Section 52(2)] shall hold office till such nomination is withdrawn. Rajasthan Rule 34(2) & (3) have provisions similar to those of Madhya Pradesh Rule 43(2) & (3).

The Karnataka Rule provides that the election of the members of the committee shall be held on or before the date specified in the bylaws for the expiry of the term of office of the members. If no such date is specified in the bylaws the term of office of the members of the committee shall be deemed to expire at the time of the annual general meeting and the election of the new members shall be held at such annual general meeting; provided that the committee whose term of office is deemed to so expire, shall continue in office till the new committee is elected and shall thereafter hand over their charge to such new committee.

The Uttar Pradesh Rule 446 provides that a nominated member of a committee of management shall hold office during the pleasure of the authority which nominated him. Rule 447 provides that a co-opted member of the committee of management shall—(i) if co-opted in pursuance of the bylaws of the society, hold office for the period provided in the bylaws; (ii) if co-opted under sub-rule (b) of Rule 421, hold office till the completion of the term of the other members of the committee of managements; (iii) if co-opted under Rule 450, hold office for the unexpired term of the person whose vacancy has been filled by such co-optation. Rule 448 provides that an ex-officio member, (if any) of the committee of management of a society shall continue on the committee of management for as long as he holds the office by virtue of which he was appointed or nominated to be such members. Uttar Pradesh Rule 449 provides that no person shall be eligible to be elected or co-opted as a member of the committee of management of a society after he has held such office in the society during two consecutive terms, whether full or part. However, the Rule further provides that a member who has remained out of office (i.e. he does not remain a member of the committee

of management of a society) continuously for at least three full cooperative years, shall again become eligible for election or co-optation as a member of the committee of management of that society.

The West Bengal Rule provides that the directors appointed under Rule 29 shall hold office till directors are elected by members at a general meeting.

The West Bengal Rule 30(1) provides that the directors of a primary society other than a non-agricultural credit society shall retire annually from office and shall be eligible for re-election; provided that no director who has held office for three or more consecutive years shall be eligible for re-election for two years from the date of his retirement without the previous permission of the Registrar. Rule 31(1) provides that at the first annual general meeting of a provincial or central or a primary non-agricultural credit society held after the commencement of these rules, the whole body of directors shall retire and shall be eligible for re-election; provided that no director who has held office for three or more consecutive years shall be eligible for re-election for two years from the date of his retirement, without the previous permission of the Registrar.

(iv) *Comments*: The Andhra Pradesh Act provides that a person shall not be eligible for holding office for a third term consecutively. The Jammu & Kashmir Act provides that no person shall hold office for a consecutive period of more than three years and that any person who has held office for three years shall not be eligible for re-election or re-appointment as an officer until a period of three years has elapsed from the date of vacating his office previously. The Madhya Pradesh Act provides that no person shall be Chairman/President/Honorary Secretary for more than two consecutive terms or for a continuous period of seven years, whichever is less, and that no person shall be re-appointed or re-elected to any such office till a period equal to one full term has expired. The Maharashtra Act provides that the Chairman, President and any other officer declared by the State Government to be subject to this law shall not hold office in any society, belonging to any one of three categories

mentioned in the Act, for a consecutive period of more than six years and no such person shall be eligible for re-election until a period of three years has elapsed after the expiry of the first period of six years. The Orissa Act provides that no individual shall be eligible to become a committee member or President of any society assisted by the State, apex society or Cooperative Bank if he has completed two consecutive terms as a member of the Committee or has held office for a total period of nine years. But these limitations shall not apply to societies registered prior to the amendment which contains this provision and to person nominated by the State Government to the Committee of any society. The Punjab Act provides that the term of office of a Committee shall be three years. No person who has served on a Committee for a consecutive period of six years shall be eligible for re-election unless a period of three years has elapsed. The Tamil Nadu Act provides that the term of office of a committee member, whether elected or nominated, shall be three years. No member of a Committee which has been superseded shall be eligible for election or appointment to the Committee for a period of three years from the date of expiry of the period of supersession. The Delhi Act provides that the term of office of the elected members of the Committee shall not exceed three years and provides that the president, vice-president, chairman, vice-chairman, managing director, secretary, joint secretary or treasurer shall not hold office if he has held office on that committee during two consecutive terms. Such person is not barred from being a member of another committee.

It will be seen that the Orissa and Delhi Acts prevent a person from being re-elected to office if he has held office consecutively for two terms. In other States, re-election is allowed after a hibernation of three years or one term. In the Tamil Nadu Act there is no restriction on re-election to office. Only the term of office of the committee is limited to three years.

Statutory restriction with regard to a member's right to hold office in a cooperative offends against the Principle of Democratic Control since it restricts the general body's

right to elect persons of their choice to manage the affairs of their society. Also, these restrictions are discriminatory against cooperatives, as such restrictions do not exist in regard to other elected bodies, including the legislature. These restrictions are unfair for the same reasons as could be adduced against imposing similar limitations on the periods of office of members of the legislature.

The bylaws should contain suitable provisions regarding the term of office of the members of the committee. Such provisions in the bylaws would not be contrary to the Democratic Principle because they would then be self-imposed disciplines and not impositions from outside the little democracy that is a cooperative society.

(v) *Commission Reports*: The Committee on Cooperation (1965) observed:

“We do not favour imposing statutory restriction regarding the number of terms that a person may hold office in the committee of management, or the number of societies in which office may be held simultaneously by a person. The general body of each society must be the final authority to decide such things. It would, however, be a welcome step if some convention is gradually evolved in this direction from within the movement”.¹

The Working Group on Cooperation of the Administrative Reforms Commission, 1968, observed:

“... The imposition of statutory restrictions will mean curbing the democratic pattern of the cooperative institutions in electing their office-bearers. ...”

“... Lasting remedy against vested interests in cooperatives will lie in the transformation of the power structure within society. We, therefore, recommend that bodies like NCUI and the State Cooperative Unions which spearhead the movement should themselves take concrete and convincing steps with great despatch to facilitate a more frequent change in their office-bearers.”²

1. “Report of the Committee on Cooperation, 1956, p. 58.

2. Report of the Working Group on Cooperation, Administrative Reforms Commission, pp. 354-355.

The Committee on Cooperation (1965) observed:

“...Many successful cooperatives have been built up by the hard work of a few dedicated people. Moreover, even if sometimes lack of frequent changes in the personnel of the managing committee impedes the growth of leadership the remedy does not lie in making legal or administrative provisions to prevent re-election. This should rather be left to the normal operation of democratic forces and the general body of each society should be the ultimate judge. If the general body wishes to keep the same man or set of men at the helm of affairs for a number of years, we should not try to prevent this by intervention from outside. Such intervention would militate against the principle of autonomy which is essential to democratic growth.”

“...If the general body of a society evolves a convention to limit the tenure of office by a person, it will be a welcome step but no restrictions need be imposed from outside”.¹

(vi) *Important Pronouncement*: Mr. M.B. Shah, Deputy Minister, Gujarat, observed:

“...With regard to restrictions on office-bearers, I would submit that it should be better to set up healthy conventions rather than to impose restrictions. I think we should allow some time to set up certain conventions so that office-bearers may hold office in two or three organisations for four or five years. It may not be necessary to immediately rush for some legislation for this purpose. Legislation may be necessary if the cooperative leaders and workers in particular States do not accept discipline. It is the cooperative discipline that matters much and it should be done in a voluntary way. After all, Cooperative movement is a voluntary movement and it is a democratic movement. It thrives because of its democratic character”.²

1. Report of the Committee on Cooperation, 1965, pp. 27-28.

2. Conference of the Chief Ministers and State Ministers of Cooperation, Madras, 12th June 1968, pp. 44-45 (proceedings)

(vii) *Recommendation*: The legal provisions limiting the period of office should be rescinded as they contravene the Principle of Democratic control. They are both unco-operative and discriminatory. It should be left to the co-operative societies to adopt healthy conventions in this regard.

4.L. Restrictions on holding office in several societies

(i) *Acts*: There are statutory restrictions with regard to the maximum number of societies in which a person may hold office. The State Acts which contain these provisions are as follows:

Andhra Pradesh	Sec. 21A(2)(a)
Jammu & Kashmir	Sec. 25A, B, C, D
Kerala	Sec. 28(2)
Madhya Pradesh	Sec. 48A
Maharashtra	Sec. 73A
Orissa	Sec. 28(4)
Punjab	Sec. 26B
Tamil Nadu	Sec. 28(3)
Delhi	Sec. 31(5)

(ii) *Rules*: The following Rules provide restrictions on holding office in a cooperative society:

Andhra Pradesh	Rule 24(d)
Jammu & Kashmir	Rule 16(c)
Uttar Pradesh	Rule 449
West Bengal	Rules 30(1) and 31(1)

(iii) *Summary of the Rules*: The Andhra Pradesh Rule provides that subject to the provisions of the Act [Section 21A(2)] a person shall be disqualified for election as, or for being, a member of the committee of any society if he is a member of the committees of two apex or two central societies or of the committees of one apex society and one central society.

The Jammu & Kashmir Rule provides that no person other than the State Government "should" be a member of the committee of more than two apex or central societies.

(iv) *Comments:* The Andhra Pradesh Act provides that a person cannot be a member of more than two societies which are classified as apex or central societies or of more than one apex and one central society. The Kerala Act provides that a person cannot be a committee member of a society if he is a committee member of another society of the same type or if he is a committee member of two or more societies of a different type or types. The Jammu & Kashmir Act has the same provision. It is not understood how a person could be a committee member of more than two societies of different types when the restriction would apply the moment he has become a committee member of two societies of different types. It is also not understood how a person could be a committee member of two or more societies of "a different type", i.e. both societies being of the same type, when there is a restriction on a person being a committee member of another society of the same type. The Madhya Pradesh Act provides that no person shall at the same time hold a "specified" office of more than one apex and one central society and be an officer of more than five societies. The Maharashtra Act provides that the chairman, president and any other officer declared by the State Government to be subject to this law shall not hold office in more than one society belonging to any of three specified types of societies. The Orissa Act has a similar provision. The Punjab Act provides that no individual shall be a committee member of more than two primary societies, and of more than one central and one apex society. But these restrictions do not apply to nominated members. The Tamil Nadu Act provides that no person shall be a member of the committees of more than five registered societies except societies which are classified as apex and central societies. In these cases no person shall be a committee member of more than two apex societies or two central societies at the same time. But none of these restrictions shall apply to a member nominated to the committee by the government or the Registrar. The Delhi Act provides that a person shall not hold office on the committee of more than one society.

The restriction on the number of societies in which a

person may hold office violates the Principle of Democratic Control as the general body should be free to elect any member to serve on the society's committee.

These Rules too contravene the Principle of Democratic Control. The societies should be free to make their own provisions regarding the holding of office.

(v) *Commission Reports*: Please see the observations of the Committee on Cooperation (1965) quoted in Section 4 K entitled "Limitation of period of office" of this Chapter.

(vi) *Recommendation*: The provisions limiting the number of societies in which a person may hold office should be rescinded as such provisions violate the Principle of Democratic Control. It should be left to the cooperative societies to adopt healthy conventions in this regard.

4.M. Other Disqualifications for Membership of Committee

(i) *Acts*: The following Acts lay down certain other disqualifications for membership of a committee of a cooperative society:

Andhra Pradesh	Sec. 21A
Tamil Nadu	Sec. 28(1)

(ii) *Rules*: The following Rules also lay down other disqualifications for membership of a Committee:

Andhra Pradesh	Rule 24
Assam	Rule 31
Bihar	Rule 23
Delhi	Rule 59
Gujarat	Rule 32
Himachal Pradesh	Rule 41
Jammu & Kashmir	Rule 16
Karnataka	Rule 16
Kerala	Rule 44
Madhya Pradesh	Rule 44
Maharashtra	Rule 58
Punjab	Rule 25
Rajasthan	Rule 36
Uttar Pradesh	Rule 453
West Bengal	Rule 35

(iii) *Summary:* These disqualifications include:

- (a) being a near relative of a paid employee of the society,
- (b) being in default in the payment of an amount due in cash or kind to the society or any other society,
- (c) being a delegate of a defunct or defaulting society,
- (d) having an award or order pending recovery,
- (e) having an interest in a subsisting contract with the society,
- (f) being of unsound mind, a deaf-mute or leper,
- (g) being a legal practitioner appearing on behalf of or against the society,
- (h) carrying on business of such kind as the Registrar may declare to be a business which is in conflict with the objects or the interests of the society,
- (i) being an insolvent as adjudged by a competent court,
- (j) being one who has been punished with imprisonment for an offence involving moral turpitude,
- (k) not being a member,
- (l) being engaged in any private business, trade or profession of any description which is carried on by the society,
- (m) being a paid employee of the society or any other cooperative society,
- (n) being already a member of the committee of any other society of the same type,
- (o) being under twenty-one years of age.

(iv) *Comments:* There are many more disqualifications mentioned in the Rules than those given above [of which (a) to (h) are from the Acts and the rest from the Rules] as examples. Laying down disqualifications for membership of the Committee by legislation violates the Principle of Democratic Control. These qualifications should be stated in the Bylaws of societies as specifying them is a matter for self-regulation.

Self-dependence is one of the foremost moral aims of the cooperative movement. This will be undermined by legislation of this type. It is axiomatic that the members know best what their interests are. They must therefore have the freedom to act according to their thinking. They must, like all independent persons and countries, have the freedom even to make mistakes, as once pointed out by Jawaharlal Nehru, vide "Important Pronouncement" in Chapter IV. That way lies the road to self-dependence and self-reliance. So the words "of such kind as the Registrar may declare to be a business" should be deleted from (h) of (iii) above. These disqualifications should be included in Model Bylaws as well.

(v) *Recommendation*: The dealing with provisions for disqualifications for committee membership should be deleted from the law. They may be embodied in the bylaws of societies.

4.N. Power to suspend or remove Officer or Servant.

(i) *Acts*: The following Acts give power to the Registrar to suspend or remove an officer or servant of a cooperative society:

Andhra Pradesh	Sec. 59
Punjab	Sec. 27
Uttar Pradesh	Sec. 38
Tamil Nadu	Sec. 70

(ii) *Rules*: The following Rules relate to the suspension and removal of office bearers/members of the committee/officers or servants of a society:

Assam	Rules 33 & 102
Bihar	Rules 33 & 34
Delhi	Rule 154(3)
Himachal Pradesh	Rules 43, 51 & 56
Maharashtra	Rule 64(c)
Mysore	Rules 16(2) & 18(10)
Rajasthan	Rules 38(1)(b), 38(2), 38(5) & 41(4) to 41(7)
Tamil Nadu	Rule 40
West Bengal	Rules 13(3), 37 & 47

(iii) *Summary of the Rules:* The Assam Rule 33 provides that the Secretary or Treasurer of a society or any other office-bearer may be removed from office by a resolution of a meeting of the General Assembly specially convened for the purpose. It also provides that unless otherwise provided in the bylaws or in the terms of appointment, any officer of a society appointed by the administrative council or the managing body may be removed from his office by the said council or body. Rule 102 lays down that when the Registrar holds an enquiry under the Act (Section 71), he shall record the proceedings against any member, officer, employee, past or present of the society concerned showing the charges against him and the Registrar shall record his reasons, after observing the procedure laid down in the Rule.

According to Bihar Rule 33, the suspension, removal or dismissal of a paid employee in any registered society shall be subject to such conditions as may, from time to time, be determined by the Registrar by general or special order. The order of the Registrar is appealable at the instance of an "aggrieved society" to the State Government and its decision shall be final. Rule 34 provides that when a Government servant is deputed to a society as managing director, executive officer or manager or an officer of similar position, he shall have power to suspend, remove or dismiss any paid employee, subject to the general direction of the managing committee.

The Delhi Rule provides that in a society in which shares have been subscribed by the Government, the Registrar may, after such enquiry as he may deem fit and after giving the person concerned a reasonable opportunity of showing cause, remove any member of the committee who has been guilty of any act or omission resulting in financial loss to the society.

Himachal Pradesh Rule 43 provides that the elected chairman of a society or any other officer elected under Rule 38, may be removed from office by a resolution of a general meeting specially convened for the purpose and the managing committee may, with the approval of the Registrar, remove any committee member who fails to attend

four consecutive meetings of the committee without the previous permission of the chairman, obtained by him in writing. The Rule further provides that unless otherwise provided in the bylaws or in the terms of his appointment and subject to the Act (Section 72), any officer of the society appointed by the Managing Committee may be removed from his office by the managing committee, subject to the approval of the Registrar. Rule 51 provides that a Government servant deputed to the service of a cooperative society under the Act (Section 36) shall be in charge of the business of the society, exercise powers in certain matters and in particular have control over the staff of the society with power to fine, suspend or dismiss any member thereof, but the power of dismissal shall be exercised with the prior concurrence of the Managing Committee. Rule 56 provides that the Registrar may, if in his opinion there is prima facie evidence against a paid officer or servant and the suspension of such officer or servant is necessary in the interest of the society, direct the committee of the society pending investigation and disposal of the matter, to place such paid officer or servant under suspension from such date and for such period, as may be specified by him. On receipt of such direction, the Committee of the society shall place such employee under suspension forthwith, notwithstanding any provision to the contrary in the bylaws and if the committee of the society fails to do so, the Registrar may make an order placing such employee under suspension. This provision also lays down that such employee may be reinstated only with the approval of the Registrar.

The Maharashtra Rule provides that the Registrar may by an order, with reasons therefor, published in the Official Gazette, remove any member of the committee of a society and appoint in his place such other person as he may deem fit. The Rule requires that the Registrar shall consult the federal society to which the society concerned is affiliated and give an opportunity to the committee or member concerned to show cause, before the order is issued.

Karnataka Rule 16(2) provides that the Registrar shall order the removal of a committee member, if such member

is disqualified for reasons given in Rule 16. The Registrar may, in certain cases, disqualify a member, after hearing him and the committee, for serving on the committee or holding any office in the society for a period not exceeding three years.

Karnataka Rule 18(10) provides that any member of the establishment may, for good and sufficient cause, be punished. The managing committee or the person authorised by such committee shall be the authority competent to suspend or dismiss an employee of the society.

Rajasthan Rule 38(i)(b) provides that notwithstanding anything contained in the bylaws of a society, the Registrar may "remove any member of the committee of a society and get the vacancy filled up for the remainder of the term of the outgoing member according to the bylaws". Rule 38(5) lays down that the chairman or any officer of a society may be removed from office by a resolution of a general meeting specially convened for the purpose. Rule 41(4) provides that when it is brought to the notice of the Registrar during the course of an audit or inspection that a paid officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence in relation to the society, he may direct the committee of the society to place such employee under suspension. Rule 41(6) provides that the suspended employee shall not be reinstated except with the previous sanction of the Registrar. Rule 41(7) provides that if the society fails to comply with the direction of the Registrar he may make an order placing such employee under suspension.

The Tamil Nadu Rule empowers the Registrar to direct the removal of a member of the committee from such membership if such member is disqualified for continuing as a member in terms of the Act [Section 28(1) to (4) or (5)].

The West Bengal Rule 13(3) provides that a member who ceases to be qualified under the bylaws may be removed by the managing committee. Rule 37 lays down that the chairman of a society or any officer elected under Rule 28(3) may be removed from his office by a resolution of a general

meeting specially convened for the purpose. The Managing Committee may remove any director who fails to attend six consecutive meetings of the committee without the previous permission of the chairman. The Rule further provides that unless otherwise provided in the bylaws or in the terms of his appointment any officer of a society appointed by the Managing Committee may be removed from his office by the Managing Committee. Rule 47, dealing with the powers of a Government servant, when deputed to the service of a cooperative society, as its Executive Officer, states that he shall exercise control over the staff of the society with power to fine, suspend or dismiss any member thereof, provided that the power of dismissal shall be exercised with the prior concurrence of the Managing Committee.

(iv) *Comments:* The Andhra Pradesh and Tamil Nadu Acts provide power to the Registrar to suspend an officer or servant of a society where it appears necessary to do so in the course of an audit or inquiry. The Uttar Pradesh Act provides this power to the Registrar only in regard to an officer. There is no reference to an audit or inquiry. Here the Registrar can form his opinion independently of an audit or inquiry. The Punjab Act provides for the removal or suspension of a committee member by the Registrar as in the case of Uttar Pradesh.

This is a violation of the principle that it is only the society that can appoint, suspend or discontinue its officers or servants. This assumption of management powers by the State is contrary to the Principle of Democratic Control. Such assumption of managerial responsibilities by the State can only retard the development of self-reliance among the members of cooperatives. The members will always expect the Registrar to pull their chestnuts out of the fire, and become apathetic about the society's affairs in the expectation that the Registrar will do the needful. This provision casts this responsibility on the State, and so undermines cooperative effort.

Provisions for the removal of an officer by the general body are in accordance with the principle of democratic control, but these provisions should appear only in the

bylaws. Providing for this through the Act or the Rules is a contravention of the Principle of Democratic Control.

The Registrar's power to determine the conditions under which an employee may be dismissed is contrary to the Principle of Democratic Control. Government servants working on deputation as officers of societies should not have powers which other officers of such societies do not have. The employment of government servants on deputation is itself unwholesome as pointed out by a former Minister, vide Section 4(v) of this Chapter. When they are given special powers, the societies in which they work tend to become more of government adjuncts than otherwise.

Giving powers to officers of cooperatives through Rules made under the Act is contrary to the Principle of Democratic Control. The powers of a society's officers can be laid down only by the society because such officers are accountable only to the members. Therefore their powers and duties should be stated in the bylaws and working rules of a society, and not in the Act or Rules. The Registrar's power to remove a committee member is another serious contravention of the Principle of Democratic Control. It is only the general body in General Meeting that could do this; for, a committee member is elected by the general body.

The removal of a committee member by the committee itself is undemocratic, for, committee members are elected by the general body and as equals; and even the President is only *primus inter pares* (first among equals). Therefore, a body of such persons cannot have the right to sit in judgement over one of themselves. Their only judge is the authority who elected them, namely, the general meeting. A provision that such removal shall be subject to the approval of the Registrar is contrary to the Principle of Democratic Control. Thereby the supremacy of the general body is vitiated. Likewise, the Managing Committee should have the power to remove an officer without the Registrar's approval, a provision subjecting such removal to the Registrar's approval is contrary to the Principle of Demo-

cratic Control. The Registrar's power to dictate to the Managing Committee on matters of internal discipline not only violates the Principle of Democratic Control but also makes the Registrar the *de facto* manager of the cooperative societies thereby undermining their character altogether, and, to boot, without carrying any legal responsibility for any misdirections on his part, in the exercise of those powers. Power without responsibility is the very antithesis of Democratic Control.

(v) *Recommendation:* The provisions empowering the Registrar to suspend or remove officers and servants should be rescinded. Suitable provisions that are in accordance with cooperative democracy should be included in the bylaws of the societies which do not have such provisions in their bylaws, and also in the Model Bylaws.

4.O. Seats for Weaker Sections

(i) *Acts:* The cooperative legislation of a few States provides for the reservation of seats on the Committees of cooperatives for "the weaker sections". The provisions are as follows:

Maharashtra	Sec. 73B
Orissa	Sec. 28 (2)(c)
Punjab	Sec. 26A
Delhi	Sec. 31(6)

(ii) *Comments:* The Maharashtra Act provides that the State Government may direct a cooperative society to have two seats on the committee, one for the members who belong to the scheduled castes or scheduled tribes or to the *jatis* (castes) declared to be *vimukti jatis* by the State Government and the other for the weaker sections of the members who have been granted loans from the society not exceeding rupees two hundred during the year immediately preceding. The Orissa Act provides that in the case of primary agricultural credit societies and service societies at least one-third of the members of the committee shall be persons owning not more than three standard acres of land or persons who are landless cultivators. The Punjab and Delhi Acts provide for two seats on the committee, one for

the members who belong to the scheduled castes and the other for the economically weaker sections of the members, who as landowners or tenants or as both do not hold more than a specific area of agricultural land as prescribed under the Rules or who fulfil other prescribed conditions.

Legal compulsion to reserve seats on the committee for a particular group of the membership is not in conformity with the Principle of Democratic Control. According to this principle the society is free to adopt such practice or not. A provision made in the bylaws to this effect would not violate this principle as it would then be a discipline freely accepted by the members.

(iii) *Commission Reports*: The All India Cooperative Policy Makers' Conference held in Delhi in March 1973 resolved as follows:

“The Conference is of the opinion that cooperatives should reach and serve the last man in the society and weaker sections should be given due care and attention. The Conference directs the movement to reorient their policies and working pattern so that the members of weaker sections of society are encouraged to avail themselves of the services of cooperatives. There should be adequate representation of weaker sections on the Board of Management and larger amounts should be earmarked for lending to them”.¹

(iv) *Recommendation*: The provisions for the representation of the weaker sections of the membership on the Committee should be deleted from the law. Their proper place is the bylaws.

4.P. Conduct of Elections by the Government

(i) *Acts*: Certain State laws provide that the elections of committee members of specified societies shall be conducted by the State:

1. Resolutions of the All India Cooperative Policy Makers' Conference, March 1973, p. 15.

Andhra Pradesh	Sec. 31(3)(a)(b)
Jammu & Kashmir	Sec. 16A
Maharashtra	Sec. 73G
Orissa	Sec. 28A(1)(2)
Delhi	Sec. 31(1)

(ii) *Rules:* The following Rules provide that the elections of Committee members etc. shall be conducted by the State:

Andhra Pradesh	Rule 22
Bihar	Rule 22(1)
Delhi	Schedule II(21)
Himachal Pradesh	Appendix A. Rule 1(d)
Kerala	Rule 35(2)
Karnataka	Rule 14(b)(1)(2)
Punjab	Appendix C, Part-I Rule 1(b) and Rule 4
Rajasthan	Rules 32(23) and 33(10)
Tamil Nadu	Rules 29(23) and 30(16)
Uttar Pradesh	Rules 414 and 429(a)

(iii) *Summary of the Acts:* In Andhra Pradesh an officer of the Cooperative Department shall be the election officer and in Jammu & Kashmir the Deputy Commissioner of the District. In Maharashtra the elections are to be conducted under the direction of the Collector in the case of societies of six sizes, ranging from societies operating in the whole State to those operating in one or more talukas.

In Orissa the election of the President and the members of the committee shall be held by election officers appointed by the Registrar. In Delhi the elections of the committee members of prescribed societies shall be held by gazetted officers appointed by the Lieutenant Governor. In Uttar Pradesh the elections are to be conducted by the Election Commission of the State. This has been laid down by an ordinance.

(iv) *Summary of the Rules:* The Andhra Pradesh Rule provides that notwithstanding anything contained in the Rules, the election of the members of the committee of a society specified in the Rule shall be conducted by an election

officer in the manner indicated in sub-rules (2) to (7) of the Rule. The Rule mentions that any officer of the cooperative department, not below the rank of Deputy Registrar, authorised by the Registrar in this behalf, shall be the election officer in respect of societies specified in the Rule. With regard to certain other societies mentioned in Clause (1)(b) of the Rule, it provides that any cooperative Sub-Registrar or Senior Inspector of Cooperative Societies, authorised in this behalf by the Deputy Registrar, having jurisdiction over the area, shall be the election officer. Rule 22(1)(c) provides that notwithstanding anything contained in the Rule, where the Government so considers it necessary, it may authorise the Deputy Registrar of Cooperative Societies to be the election officer in respect of any society. Rule 22-C provides that as soon as the members of the committee have been elected, the election officer shall, notwithstanding anything in the bylaws of the society specifying the period of notice, convene a meeting of the newly elected members of the committee for the purpose of the election of the President, Vice-President, Treasurer, Secretary and other office-bearers of the society by whatever names they are called and the members of the executive committee, if any.

The Bihar Rule provides that, subject to nomination by the Registrar of such number of members to the managing committee and in such manner as may be prescribed by him, the managing committee of a society including its office bearers shall be elected by vote from among the members of the society at the annual general meeting held in accordance with the bylaws.

The Delhi Rule [Schedule II(21)] provides that the Registrar may, in respect of any society, either on his own motion or on an application from such society, appoint any person as election officer to conduct the election, if in his opinion such a course is necessary for the proper conduct of the election.

The Himachal Pradesh Rule defines "Returning Officer" as the Registrar, Joint Registrar, Deputy Registrar or Assistant Registrar (by whatever name called), of Coopera-

tive Societies and shall include the person authorised by the Registrar in this behalf by a general or special order.

The Kerala Rule 35(2) provides that the general body convened under the Rule shall fix the date, time and place for the conduct of the election of the new committee and “shall” also request the Registrar for appointment of a Returning Officer for the conduct of the election. The Rule further provides that the Returning Officer so appointed shall take necessary steps for the conduct of the election.

The Karnataka Rule 14(b)(1) provides for the conduct of elections to the committee of management of—(i) every cooperative society whose area of operation extends to one or more districts (ii) every marketing society (iii) every society undertaking processing of agricultural produce (iv) every land mortgage bank and (v) any other society or class of societies which may be notified by government in this behalf. The Registrar shall by notification appoint a Returning Officer not below the rank of a Gazetted Officer immediately after the close of the cooperative year in respect of such societies. Rule 14(b)(2) provides that such Returning Officer shall hold and conduct the elections in the manner prescribed in the Rule.

The Punjab Rule [Appendix-C, Part-I, Rule 1(b)] defines “Returning Officer” as the Registrar or any person authorised by him in his behalf by a special or general order. Rule 4 provides that the manager shall draw up a detailed programme of elections and send the same to the Registrar for approval and for the appointment of a Returning Officer for conducting the election.

The Rajasthan Rule 32(23) provides that the Registrar may, in respect of any society, either on his own motion or on an application from such society, appoint any person to be an election officer to conduct the election if, in his opinion, such a course is necessary for the proper conduct of the election. Where an election officer is so appointed, all references to the chairman, presiding officer or the committee as the case may be, occurring in the rule shall be construed as references to the election officer.

The Tamil Nadu Rules 29(23) and 30(16) are similar to the Rajasthan Rules.

The Uttar Pradesh Rule 414 provides that for the purpose of elections in the societies specified in the Rule, the District Magistrate of the district where the headquarters of the society is situated, shall on the request of the Registrar appoint a Gazetted Officer (not being an officer of the department which is concerned with the supervision and administration of the society concerned) to be an election officer.

The Rule provides that it shall be the duty of the election officer to hold and conduct elections properly in the manner laid down in the Act, Rules and the bylaws of the society. Rule 429(a) provides for the election of office bearers of the society and states that a meeting to elect these office bearers shall be presided over by the election officer.

(v) *Comments*: The constitution of an independent authority under the law to conduct elections in cooperatives is an infringement of the Principle of Democratic Control. The election of the officers of a society is a purely internal matter entirely within the purview of the society concerned. It is the very negation of autonomy that a cooperative is not allowed to conduct its own elections.

(vi) *Commission Report*: The Committee on Cooperation (1965) observed:

“Holding of elections to the committee of management is the function of the general body meeting. Meetings of the general body must, therefore, be held regularly both for considering the accounts of the society and also for holding elections. This will be a check against growth or continuance of vested interests. The committee members must be answerable for not holding the general meeting in due time and penalty for non-compliance should be provided in the cooperative law”.

“We do not consider it necessary to set up a separate election machinery for conducting elections to cooperative institutions nor do we think this function should be taken over by the cooperative department.

Cooperative institutions should continue to conduct their own elections as they have been doing in the past. The federal bodies, however, should keep watchful eyes over their constituents and should depute observers to watch election proceedings in the constituent societies. Any irregularities coming to the notice of the observer should be promptly reported to the federal body and to the Registrar. If an election dispute comes to the Registrar, due note should be taken of the contents of the observer's report before the Registrar comes to a decision".¹

(vii) *Recommendation*: The provisions for the conduct of elections by the government should be rescinded. Where necessary the federal societies should have bylaws providing for conducting the elections of their member-societies and a corresponding provision should be included in the bylaws of the latter.

4.Q. Constitution or Recognition of Federal Authority for Supervising the working of Societies.

(i) *Acts*: The following Acts provide for the State Government to constitute or recognise one or more cooperative federal authorities for the supervision of societies:

Maharashtra	Sec. 90
Uttar Pradesh	Sec. 123

(ii) *Comments*: The provision is for the State Government to constitute or recognise 'cooperative federal authorities', presumably the secondary and tertiary/apex bodies of the movement. The concept of federal cooperatives supervising their member societies is wholesome. It is much better than the government doing this, from a cooperative point of view. But such arrangement should be made voluntarily by the societies concerned and not under compulsion by any law. Such compulsion would be contrary to the Democratic Principle. Therefore these provisions should be included in the bylaws of the respective federal and member societies of their own free will. There is provision in the

1. Report of the Committee on Cooperation, 1965, p. 59.

Maharashtra Act to collect any fees due to the federal authority on this account as arrears of land revenue. The association of dues from one cooperative to another with arrears of land revenue is not desirable.

(iii) *Recommendation*: The provisions for constituting or recognising federal societies as supervisory bodies should be rescinded. The inclusion of such provisions in the by laws of the societies concerned would be very desirable.

4.R. Power to Post Supervisory Staff in Societies

(i) *Act*: There is provision in the Andhra Pradesh Act (Section 116) for the Registrar to post persons in societies for supervising their working. The posting of Registrar's staff in societies is contrary to the Principle of Democratic Control. According to this principle the management is elected or appointed by the members and accountable to them. The powers of Audit, Inspection and Inquiry vested in the Registrar are adequate for his role as guide, philosopher and friend. The presence of a permanent supervisor will hinder the growth of self-reliance in the society and also make the committee feel complacent about the work of the employees, depending too much on the supervision done by the Registrar's officer.

(ii) *Recommendation*: The provisions empowering the Registrar to post his own supervisory staff in societies should be rescinded. Such provision is repugnant to the Principle of Democratic Control.

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

(i) *Acts*: The following provisions of the State Acts empower the Registrar to prescribe the qualifications and service conditions of the staff of cooperative societies:

Gujarat	Sec. 76
Kerala	Sec. 80
Madhya Pradesh	Secs. 54, 55
Maharashtra	Sec. 74

Punjab	Sec. 26(2B)
Uttar Pradesh	Secs. 120, 121, 122

(ii) *Rules:* The following Rules relate to the appointment of persons, who are related to the members of the committee or Board of Directors; to be officers or servants in cooperatives:

Andhra Pradesh	Rule 28(4)
Delhi	Rule 50(3)
Punjab	Rule 46

The following Rules empower the Registrar to prescribe the qualifications and service conditions of the staff of co-operative societies:

Andhra Pradesh	Rule 28
Bihar	Rule 33
Delhi	Rules 49 & 50
Himachal Pradesh	Rule 56
Jammu & Kashmir	Rule 17
Karnataka	Rules 17 & 18
Orissa	Rule 38
Punjab	Rule 28
Rajasthan	Rule 41
Tamil Nadu	Rule 85
West Bengal	Rules 54 & 55

(iii) *Summary of the Acts:* The Gujarat Act empowers the State to prescribe qualifications and service conditions relating to the posts of manager, secretary, accountant and other officers or employees of a society except an officer not in receipt of any remuneration. The Kerala Act requires the Government to make, in consultation with the State Cooperative Union, rules regulating the qualifications, remuneration, allowances and other conditions of service of officers and servants of cooperative societies, after classifying the societies according to their types and financial condition. The Madhya Pradesh Act provides that no society shall appoint a paid officer who does not have the qualifications prescribed by the government. The apex and central societies shall maintain cadres as required of them by the State Government, and the Registrar may determine

the service conditions of the members of these cadres. The State Government may specify the class of societies which shall employ officers from such cadres. The Registrar may frame rules governing the terms of employment and working conditions in societies. The Maharashtra Act empowers the government to prescribe qualifications for the posts of manager, secretary, accountant or any other officer. The Punjab Act empowers the government to determine the terms and conditions of service and remuneration of the Managing Director and the Chairman appointed by the government by virtue of its having contributed two million rupees of share capital to the society. The Uttar Pradesh Act prohibits a society from appointing any person to be a paid secretary, manager, accountant or any other officer who does not possess the qualifications and furnish the security, if any, specified by the Registrar. The Registrar may also frame rules to regulate the emoluments and other service conditions including the disciplinary control of the employees in a cooperative society. The State Government may also constitute an authority or authorities for the recruitment, training and disciplinary control of the employees of cooperative societies. Under this provision a cooperative service commission has been constituted to recruit employees for the cooperative societies for the whole state, taking away the right of societies to recruit their own staff thus undermining the autonomy of the co-operatives.

(iv) *Summary of the Rules:* The Andhra Pradesh Rule provides that no society shall appoint to be its paid officer or servant in any category of service any person who is related to any Director or Committee Member of a financing bank to which the society is affiliated except "with the prior approval of the Registrar"

The Delhi Rule provides that except with the previous approval of the Registrar, no relative of any member of the committee or the secretary or the treasurer of a cooperative society or a member of the committee of the financing bank to which the society is indebted shall be appointed to its paid staff.

The Punjab Rule provides that in a producers' cooperative society no relative of any Committee Member or any other officer of the cooperative society shall be appointed to any office in the cooperative society, except with the previous sanction of the Registrar.

The Andhra Pradesh Rule provides that no society shall appoint any person as its paid officer or servant in any category of service, unless he possesses the qualifications and furnishes security as specified by the Registrar, from time to time, for such category of service in the society or for the class of societies to which it belongs. The Rule further provides that no society shall retain in service any paid officer or servant, if he does not acquire the qualifications or furnish the security so specified within such time as the Registrar may direct. The Registrar may, for special reasons, relax in respect of any paid officer or servant the conditions regarding qualifications or security.

The Bihar Rule provides that the appointment of a paid employee in any registered society shall be subject to "such conditions as to qualifications, designation, scale of pay and travelling allowances, furnishing of security, compulsory contribution to provident fund, grant of leave, leave salary, increment, transfer, punishment, suspension, removal or dismissal as may, from time to time, be determined by the Registrar by general or special order". The Rule further provides for an appeal to the State Government against any order of the Registrar by a Society within 60 days of the receipt of such order and that the "decision of the State Government thereon shall be final".

The Delhi Rule 49 provides that every cooperative society shall, from time to time, determine at a meeting of the committee the minimum members of paid staff required for its business and the committee shall prescribe their qualifications, experience and the emoluments. The committee shall also be competent to appoint, dismiss or remove any paid staff. The Rule further provides that the minimum paid staff, which a cooperative bank or any society with a working capital or annual transactions of Rs. 5/- lakhs or over shall have, shall consist of (1) one Secretary or Manager (2) one

Accountant, and (3) one Cashier. Delhi. Rule 50 provides that in regard to the societies specified therein, 'the appointment of paid staff shall be subject to such directions as the Registrar may from time to time issue pertaining to their technical and educational qualifications, their minimum number, pay and allowances and the security deposit'. The Rule further provides that such societies as are specified under Rule 50 shall not appoint any person to be a paid officer or servant in any category of service, unless he possesses the qualifications prescribed by the Registrar and the society shall not retain in service any paid officer or servant, if he does not acquire the qualifications within such time as the Registrar may direct. The Registrar may, for special reasons, relax, in respect of any paid officer or servant or a class of officer or servants, the provisions of the Rule "in regard to qualifications etc."

The Himachal Pradesh Rule provides that notwithstanding anything contained in the bylaws of a society, no cooperative society shall appoint any person to be its paid officer or employee in any category of service unless he possesses the qualifications and furnishes the security, "if so specified by the Registrar", from time to time, for such category of service in the society, or for the class of society to which it belongs. The Rule requires that the conditions of service of the employees of societies shall be specified by the Registrar. The Rule also requires that no Cooperative Society shall retain in service any paid officer or employee, if he does not acquire the qualifications or furnish the security so prescribed within such time as the Registrar may direct. The Rule further provides that no cooperative society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees five hundred "without the previous permission of the Registrar". The Registrar has been empowered to relax, in respect of any paid officer or employee, the provision regarding the qualifications or the security, for special reasons to be recorded in writing. The Rule explains that the promotion of an employee to a higher post shall be deemed to be an "appointment".

The Jammu & Kashmir Rule is similar to the Andhra Pradesh Rule.

The Karnataka Rule 17 provides that subject to the budget allotment sanctioned by the general body, the managing committee shall prescribe from time to time the strength of the establishment of the society and the scale of pay admissible to each member thereof "with the prior approval of the Registrar"; and that no person shall be eligible for appointment to a post mentioned in the Rule, unless he possesses the qualification specified for the post. The Rule adds that in relation to persons employed by a society before the coming into force of the Rule, such persons shall not be required to acquire the qualification prescribed. Further the qualifications prescribed shall not apply to persons employed in certain categories of cooperative societies specified in the Rule. The Rule further provides that no appointment by direct recruitment shall be made except by calling for applications from eligible candidates by notifying the posts, "except in the case of appointment of an officer whose services have been lent by the Government". Rule 18 provides that no person whose age exceeds 30 shall be appointed to any post in a society, "except with the previous permission of the Registrar and this restriction shall not apply to a Government servant whose services are lent to the society" or to a person already in service, if his age at the time he entered such service was in accordance with the Rules then in force. Rule 18(2), while fixing the retirement age of employees of cooperative societies at 55, provides that "with the previous approval of the Registrar" a retired employee may be re-employed for a period not exceeding five years, if his services are "specially" required in the interests of the society. The Rule further deals with leave, gratuity, service register, service conduct of employees and provides for an appeal by an employee who has been punished to the general body of the society.

The Orissa Rule provides that the Registrar may lay down the qualifications that should be possessed by members of the paid staff of societies, according to their different categories, and that no society shall appoint or retain

in service any person as its paid officer or servant in any category of service without obtaining from him security in such form and according to such standard as the Registrar may fix for such category or service in the society or for the class of societies to which it belongs. The Rule empowers the Registrar to exempt any society or class of societies or category of service in any society or class of society from the provisions of the Rule or to relax in respect of any paid officer or servant the provisions of the Rule in regard to the form or the standard of security which he should furnish.

The Punjab Rule provides that qualifications and conditions of service subject to which any person may be employed by a society or a society of a particular class shall be such as may be "determined by the Registrar", from time to time and when the Registrar is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax the provisions of this rule with respect to any cooperative society or class of cooperative societies to such extent, as he may consider proper.

The Rajasthan Rule is similar to the Himachal Pradesh Rule, except that it does not call for the Registrar's approval in regard to the employment of persons whose emoluments exceed five hundred rupees and also it does not make many reference to cases of promotion.

The Tamil Nadu Rule is similar to the Andhra Pradesh Rule.

The West Bengal Rule 54 provides that a cooperative society shall from time to time determine at a meeting of its managing committee the minimum number of paid staff required for its business and shall employ such staff. The Rule further lays down that a Central Bank or any other society with working capital or annual transactions of rupees five lakhs or over shall have a paid staff of at least (i) one Secretary, (2) one Accountant; and (3) one Cashier. Rule 55 provides that the "Registrar may prescribe the qualifications" to be possessed by any member of the paid staff of any cooperative society.

(v) *Comments:* These provisions are an infringement of the Principle of Democratic Control. Under this principle

it is the management's right in administering the affairs of the society to prescribe the qualifications and service conditions of the staff.

(vi) *Recommendations:* The provisions for prescribing the qualifications and service conditions of the staff of co-operative societies should be rescinded as they are repugnant to the Democratic Principle of Cooperation. The terms and conditions of service of the staff of a cooperative should be stated in Working Rules adopted by the general body under the society's bylaws and the bylaws should provide for the adoption and amendment of these Working Rules by a stipulated majority of the members. Where there is a common cadre of employees under a federal society, this society should prescribe the qualifications and service conditions of the staff of its member societies. The Bylaws of the federal society and its members should have the necessary provisions.

The Registrar should have no right to control the election or appointment of the management not only because it would be contrary to the principle of democratic control but also because such exercise of power without responsibility will do no good to the society. The development of self-reliance in the members and their capacity to manage their own affairs are cardinal objectives of the cooperative method. These Rules will defeat these social objectives and make the cooperatives mere adjuncts of the state machinery.

These Rules should be rescinded forthwith.

4.T. Power to Constitute a Common Cadre of Employees.

(i) *Acts:* The following Acts provide for the constitution of common cadres of employees of cooperative societies:

Andhra Pradesh	Sec. 116A
Madhya Pradesh	Secs. 54(2), 54(3)
Punjab	Sec. 84A

(ii) *Summary:* The Andhra Pradesh Act empowers the Registrar to constitute or authorise one or more federal societies to exercise the power of appointment, transfer and

disciplinary action in respect of employees of societies of any class as may be specified by him, and the Registrar has the power to require the affiliated societies to contribute the necessary funds, and the power to enforce the payment of such contributions. The Madhya Pradesh Act empowers the State Government to require apex and central societies to maintain cadres of employees as required by the government. The Punjab Act empowers an apex society on its own or when required by the Registrar to constitute a common cadre of all or specified classes of employees in the service of that society or of the central societies, which are members of the apex society, or of the primary societies, which are members of the apex society or central societies. The apex society is empowered to make rules regarding the recruitment and the service conditions of such employees with the prior approval of the Registrar.

(iii) *Comments:* These powers violate the Principle of Democratic Control. The federal societies should not derive their authority from the government. If they act on governmental authority vis-a-vis their members, that way lies the disintegration of the movement. Such action by a federal society would violate the autonomy of its members. Any federal society acting on authority derived from outside its membership to control its members would *ipso facto* lose its moral right to be a member of the Cooperative Movement. The constitution of a common cadre by a federal society on the authority of its member-societies would be a very wholesome development.

(iv) *Recommendation:* The provisions for the State to constitute common cadres of employees of cooperatives should be rescinded. Provisions should be made in the by-laws of primary and secondary societies and their federal societies to enable the latter to set up cadres of employees for their member societies.

4.U. Power to Appoint Government Servants to Manage Cooperatives.

(i) *Acts:* The following State Acts provide power to the

Registrar to appoint government servants to manage the affairs of cooperative societies:

Himachal Pradesh	Sec. 36
Punjab	Sec. 26(2)(a)
West Bengal	Sec. 24

(ii) *Rules*: The following Rules provide for the secondment of Government servants to manage the affairs of co-operatives:

Assam	Rule 37
Bihar	Rule 34
Himachal Pradesh	Rule 51
West Bengal	Rule 47

(iii) *Summary of the Rules*: The Assam Rule provides that a government servant when deputed to the service of a cooperative society by the State Government under the Act (Section 35) shall be called the “executive officer” of the society. He shall be under the general control of the administrative council, or the managing body of the society as the case may be, subject to any condition to the contrary that the state government may in any particular case think fit to impose, and shall exercise the following powers in the conduct of the business of the society; namely (1) to have full control over the staff of the society with power to punish, suspend or dismiss any member thereof; provided that the power of dismissal shall be exercised with the previous concurrence of the administrative council or the managing committee, as the case may be; and (2) to institute, defend or compromise legal proceedings.

The Bihar Rule states that when a government officer is deputed to a registered society, either as managing director, executive officer or office manager or in a similar position, he shall be in general control of the administration of the society, with powers in relation to matters specified in the Rule, “subject to the general direction of the managing committee”.

The Himachal Pradesh and West Bengal Rules are similar to the Assam Rule.

(iv) *Comments*: The Punjab Act provides for the appoint-

ment by the State Government of the Chairman and the Managing Director of a society in which the government has shares to the value of rupees twenty lakhs (two million) and the law reserves the post of Managing Director for members of the Indian Administrative Service, Punjab Civil Service and the Cooperative Department.

The Himachal Pradesh Act provides for the State Government to depute a government servant to the service of a society on the application of that society, for the purpose of managing its affairs. This is a better law than the Punjab law quoted earlier, to the extent that the Himachal Pradesh law recognises the autonomy of the society. A society would be blameworthy if it makes such an application, as the charter of the society will change under the management of a government servant. The ultimate loyalty of every government servant even while on deputation should, and normally would, remain with the government. Therefore he cannot take any independent decision. Thereby the autonomy of the cooperative will be jeopardised. The presence of a government servant in a position of authority such as that of a manager or managing director would make the general membership feel that the society is a government agency.

The West Bengal Act provides for the deputation of a government servant, on the application of a society, to the service of the society. The West Bengal Cooperative Societies Bill No. 31 of 1973 has added the words "or on the recommendation of the Registrar" after the words "on the application of the society". The provision for deputing a government servant on the recommendation of the Registrar nullifies the value of the provision for acting upon the application of a society. A society would be blameworthy if it applies for the services of a government servant. A society must build up its own managerial personnel. If it depends on government to supply the required managerial expertise, the society will never have experienced staff of its own, and the society will continue to be criticised as lacking managerial skills.

The power to appoint government servants to manage cooperatives makes the government servant have a vested

interest in the cooperative movement! A member of the public service would normally welcome the opportunity to serve on "deputation" which bring with it power and pelf which mortals cannot resist and the Registrar who has the power to distribute this "largess" also becomes vulnerable to the charge. So the law which leads the public servant "into temptation" should be rescinded. Otherwise "the cooperatives will never have top executives of their own, from whose experience the cooperatives will profit in course of time". What is more, the cooperatives "will continue to be the training ground of government administrators whilst the cooperatives themselves remain where they were, dependent as ever on the government for the supply of the managerial personnel required by them. The deputation of government officers to cooperatives decreases their value as people's organisations".

The appointment of a society's officers and the assignment of powers and duties to them are matters within the purview of the society's committee of management subject only to review by its general body. The usurpation of these powers of the Committee by the State is a violation of the Principle of Democratic Control.

(v) *Important Pronouncements*: The Hon. Shri Fakhruddin Ali Ahmed, then Minister for Agriculture, Government of India, opening the ICA Seminar on "Personnel Management in Cooperatives", held in September, 1971 said:

"I must however frankly admit that the cooperative movement to succeed must build up on its own resources and ability to train up its own persons. The policy of deputations which has been frowned at in other public sector undertakings is still less worthy and reasonable in the cooperative sector. Firstly such people in many cases are not likely to be imbued with the cooperative ideal. They would be able to play the Government machinery against the Cooperatives and, with no personal stakes in the movement, they are likely to distort its functioning and image. In any case, it would be necessary—until the cooperative cadre is separately built

up—to allow the cooperative leadership to have full control over its employees and the present half-way house is doing good to no one.”¹

The All India Cooperative Policy Makers’ Conference held in March 1973 resolved as follows:

“Conference deplores the tendency on the part of the Government to provide for government servants in managerial and other positions in cooperative organisations. This has created a strong vested interest of the government department in the management of cooperative societies. This practice must be discontinued immediately.”²

(vi) *Recommendation:* The provisions enabling the appointment of government servants to manage cooperatives should be rescinded.

5. IMPORTANT PRONOUNCEMENTS ON COOPERATIVE DEMOCRACY IN GENERAL

(i) *The National Development Council of India* resolved in 1958 as follows: Resolution—

“Many of the existing procedures impede the development of cooperation as a popular movement in which small groups and communities can function freely and organise their work and activities along cooperative lines without excessive official interference and red-tape. The restrictive features of the existing cooperative legislation should be removed. . . .”

(ii) *Fakhruddin Ali Ahmed*, then Union Minister for Agriculture, observed:

“While in a developing economy, state assistance will be necessary for strengthening the cooperative movement as also enlarging its scope of activities, there is, however, no alternative to making the cooperatives

1. *Ibid.*, p. 17, May 1972.

2. Resolutions of the All India Coop. Policy Makers Conference, March 1973, p. 6.

self-regulated and self-dependent organisations for enabling them to achieve the above goal in the shortest possible time, and arousing the consciousness of the people in general in favour of cooperation and educating the members, office-bearers and leaders of the cooperative movement.”¹

(iii) *Hon. Shri Annasaheb P. Shinde*, then Union Minister of State for Agriculture observed:

“It is of course, necessary to have legal provisions to provide a genuine democratic base... But the aim of building up a self-regulated democratic and autonomous cooperative movement should never be lost sight of and nothing should be done which may impede the ultimate attainment of this aim”.²

(iv) *Hon. Shri C. Subramaniam*, then Union Minister for Planning, Science & Technology, observed:

“We are all politicians. We belong to various political parties and are prepared to exploit any institution for our political purposes... How to use cooperation for promoting party interests? If this is the attitude, particularly in a democratic set-up, the conditions will become fluid and very difficult. If only one party is to be in power all through, it may not matter. If the party in power or the party likely to come into power wants to exploit this movement for political benefit, the process starts with those in charge of cooperative movement seeking to put their men in power. In this process, there would not be any stability at all. From time to time the purges will take place. These purges will lead to the ruin of the cooperative movement.”³

(v) *Hon. Shri Annasaheb P. Shinde*, then Union Minister of State for Agriculture, observed:

“The need for a simple and unified cooperative legis-

1. Proceedings of the Conference of the State Ministers of Cooperation, New Delhi, 29th & 30th Nov. 1971, pp. 59-60.

2. Ibid, p.69.

3. Proceedings of the Conf. of State Ministers of Cooperation, N. Delhi, 29th & 30th Nov. 1971, p. 79.

lation cannot be overemphasized... On the other hand, some of the State Governments have enacted certain legislations which might tend to weaken the democratic character of the cooperatives. I am personally in favour of as complete an autonomy in the cooperative organisations as possible in the day-to-day affairs. There should be no interference by the government in their internal management. Such interference might do more harm and the cooperative movement, instead of getting strength, will become weak. The endeavour should be to ensure that democracy prevails in the working of cooperative institutions and that fair and prompt elections are held through an impartial election machinery.”¹

(vi) *Jawaharlal Nehru*: said in the Lok Sabha on April 12, 1959:

“The essence of the Cooperative Movement is in its non-official, self-dependent and self-reliant character, making for close contact and mutual obligation among the members... The principles, as I described, 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... We are quite convinced that 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 in from the government, they will never become self-reliant.”

(vii) *Jawaharlal Nehru* in his Message to the Conference of the State Ministers of Cooperation on 28th July 1959 said:

“It must be remembered that the essence of cooperation is its voluntary character. There can be no imposed co-operation.”³

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1. Proceedings of the Conference of the State Ministers of Cooperation, New Delhi, 24 & 25 January 1973, p. 1 (iii) & (iv).
 2. “Jawaharlal Nehru on Cooperation”, NCUI, pp. 47-50.
 3. *Ibid*, p. 68.

(viii) *Jawaharlal Nehru* in his Message on the occasion of All India Cooperative Week 1959 said:

“As the very name implies, cooperation is a voluntary effort. Introduction of compulsion takes away from real cooperative character of it.”¹

(ix) *Jawaharlal Nehru* in his Opening Address to the ICA Seminar on “Cooperative Leadership in South-East Asia” in November 1960 said:

“Our whole mental approach was for a constitution and a living structure of society to be built up on this approach and these principles of cooperation. . . .and as the basic principle of a cooperative is a voluntary principle and the principle of voluntary cohesion, this cannot be done by a stroke of the pen or by some forceful methods, because you knock the bottom out of it if you do that.”²

(x) *Jawaharlal Nehru* speaking at the Annual Conference of the State Ministers of Cooperation, in October 1961, said:

“This work was taken up as a definite activity—non-governmental activity—of course, helped by government no doubt to some extent, although the British Government in India did not help it often enough or try to control it; and 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. It is really a way of life, and a way of life which is certainly not a capitalist way of life and which is not hundred per cent socialist though it is much nearer socialism than the other.”³

1. “Jawaharlal Nehru on Cooperation”, NCUI, p. 69.

2. Ibid, p. 80.

3. Ibid, pp. 81-83.

CHAPTER VI

The Laws Relating to the Principles of Profit-Elimination

This chapter deals with the two principles that ensure the elimination of profit viz. “limited interest on share capital” and “equitable division of surplus”.

I. The Principle of Limited Interest on Share Capital

(i) *Acts*: The following provisions of the State Acts relate to the rate of interest payable on share capital:

Andhra Pradesh	Sec. 45(2) (a)
Assam	Sec. 54
Bihar	Sec. 21
Gujarat	Secs. 57, 68
Himachal Pradesh	Sec. 55
Jammu & Kashmir	Sec. 52(2) (a)
Kerala	Sec. 48, 56 (2) (a)
Madhya Pradesh	Sec. 43(1)(3)
Maharashtra	Sec. 67
Mysore	Secs. 47, 57(1), 57(A)
Orissa	Sec. 56(2)(a)
Punjab	Sec. 41
Rajasthan	Sec. 44
Tamil Nadu	Sec. 62
Uttar Pradesh	Secs. 49, 58(2) (a) & (3)
Delhi	Sec. 46

(ii) *Rules*: The following Rules relate to the rate of interest payable on share capital:

Andhra Pradesh	Rule 36 (3) (a)
Assam	Rules 61 and 66
Himachal Pradesh	Rules 71 and 72
Karnataka	Rules 22(2), 24(1)
Kerala	Rule 61
Madhya Pradesh	Rule 30

Maharashtra	Rules 50(2), 52(1), (2) and (4)
Orissa	Rule 46
Punjab	Rule 35
Rajasthan	Rule 68(3)
Tamil Nadu	Rules 46(3), 48(2)
Uttar Pradesh	Rules 147, 148, 151, 153, 158 and 160
West Bengal	Rules 95(1), (2) and (3)

(iii) *Summary*: The Assam Act permits the payment of a "fixed interest on share capital if so provided in the by-laws". Paying a fixed rate of interest on share capital is not a good cooperative practice, as there is no compulsion to pay interest on share capital, as will be noted from the words "if any" in the principle as explained in Chapter I. The Kerala Act has laid down an upper limit of ten per cent! The Madhya Pradesh Act has fixed the upper limit at six and one-fourth per cent, provided that the Registrar may, for any class of societies, "relax such rate to an amount not exceeding nine per cent". And in the case of joint farming societies the State Government may relax such rate "to any amount exceeding nine per cent" (Perhaps the word "even" should be inserted before "exceeding".) The Maharashtra Act fixes an upper limit of nine per cent. Under the Mysore Act the State can prescribe the manner in which the net profits may be determined and it can prescribe "different rules" for "different classes of societies". The State can prescribe the upper limit of the dividend payable on share capital. The Orissa Act lays down a maximum of nine per cent as "dividend" on share capital. The rebate on patronage is called "bonus" in the Orissa Act whilst in the Rajasthan Act payment "to a member for any specific service rendered by him to the society" is called "bonus".

The Tamil Nadu Act provides for the Rules to specify the rate of dividend on shares. It does not recognise the Bylaws for this purpose. The Uttar Pradesh Act fixes a maximum of nine per cent as dividend on share capital. The Registrar may on the request of a cooperative society "enhance the percentage of dividend". This would be a

gross violation of the Principle of Limited Interest. If the law lays down a rate it should be in accordance with the Cooperative Principle of Limited Interest. Here even the maximum fixed for normal cases is itself too high. Under the other Act the precise rate is to be defined in the Rules or the Bylaws.

The term "dividend" has been used in these Rules to denote interest on shares.

The Andhra Pradesh Rule empowers societies "with shares and unlimited liability" to pay interest at a rate not exceeding six and a quarter per cent per annum on the paid-up share capital. While the Andhra Pradesh State Cooperative Bank may pay interest not exceeding 9% p.a. on paid up share capital, any other financing bank or any other society with limited liability may pay interest to its members, excluding preference shareholders, at a rate not exceeding $6\frac{1}{4}$ % per annum on such share capital.

The Assam Rule provides that after making the required allocation to the Reserve Fund, the remaining net profits may be distributed according to the provisions of the bylaws of a society and interest may be paid not exceeding $12\frac{1}{2}$ % on the paid-up shares, unless otherwise permitted by the Registrar in writing.

The Delhi Rule provides that no interest shall be declared on paid-up share capital except out of the net profit after deducting the contribution to the Reserve Fund, and no society shall pay a dividend in excess of 10% per annum on paid-up share capital, as may be approved by the general body and it shall be paid within three months of such approval. Rule 79(2), however, empowers the Registrar to direct, by a general or special order, that a cooperative society shall not pay dividend or shall pay dividend at a reduced rate.

The Himachal Pradesh Rule (71) lays down that, save as may be directed by the Registrar, no distribution of profits shall be made. Rule 72 provides that interest upto a maximum of 6% per annum on the amount of paid-up share capital may be declared by societies. However, the previous sanction of the Registrar is needed "for societies

with shares and unlimited liability” for declaring dividend, provided that dividend shall be paid only at a rate recommended by the Managing Committee and approved by the general meeting, the latter having the power to reduce the rate recommended but no power to increase it. Further, the Rule empowers the Registrar to direct that a society shall not pay dividend or shall pay dividend at a reduced rate “so long as it received loans and deposits from non-members”.

Karnataka Rule 22(2) provides that, except with the special sanction of the Government, no cooperative society shall pay its shareholders a dividend, exceeding $6\frac{1}{4}\%$ in any year, on the paid-up share capital in the name of each shareholder, including bonus, if any, paid on shares. Rule 24 (1), which deals with the funds of a society on its winding up, provides that “no dividend shall, however, be paid on share capital, if the bylaws of the society do not provide for payment of dividend”.

In Kerala, there are no rules dealing with payment of dividend, except Rule 61 which, *inter alia*, lays down that on the winding up of a society, dividend may be paid “upon such share capital at a rate not exceeding 10% per annum for any period for which no dividend has been paid”. It is further provided “no dividend shall, however, be paid on share capital if the bylaws of the society do not provide for payment of dividend”.

Madhya Pradesh Rule does not specify the payment of dividend, but makes a reference to the rate of dividend declared by a society in order to determine the calculable basis for contribution to the Madhya Pradesh State Co-operative Union or any other institution under Section 43(2) of the Act.

Maharashtra Rule 52 provides that a society may create out of its net profits funds to be called “Bonus Equalisation Fund” and “Dividend Equalisation Fund”. If specifically authorised by the Registrar, the funds so created shall be utilised “in accordance with the provision of the bylaws of the society only for payment of bonus or dividend, as the case may be”. However, no society shall declare a

dividend at a rate exceeding that recommended by its committee. Rule 50(2) provides that no bonus on shares shall be paid over and above the dividend.

The Orissa Rule permits the societies to pay dividend only when it is recommended by the Managing Committee and approved by the general body and the latter could reduce the rate of dividend, "but shall have no power to increase the same".

The Punjab Rule provides that in no cooperative society shall the dividend exceed 10% per annum of paid-up share capital. Societies with unlimited liability are prohibited from paying "dividend or bonus until a period of five years has elapsed from the date of registration". When a claim due from a society to a depositor or lender "remains unsatisfied", such society shall not pay dividend. The Rule empowers the Registrar to direct that a society shall not pay dividend or shall pay dividend at a reduced rate, "so long as it received loans and deposits from non-members".

The Rajasthan Rule provides that the net profits of a society, as declared by the Registrar, shall be appropriated among other things, for payment of dividend at a rate not exceeding 10% per annum on the paid-up value of each share, provided that the government may by special or general order, permit any society or class of societies to pay dividend exceeding 10%.

The Tamil Nadu Rule 46(3) provides that the net profits of any society in respect of any cooperative year shall be appropriated in the manner set forth in the Act (Section 62). It also lays down that the dividend on shares to members shall not exceed 6% on the paid-up value of each share, but the government may by order permit any society or class of societies to pay dividend at a rate exceeding 6%. Tamil Nadu Rule 48(2) is similar to Karnataka Rule 24(1) regarding the payment of dividend on the winding up of a society.

U.P. Rule 147 provides that cooperative societies with unlimited liability may pay dividend on the share of a member or past member in respect of a cooperative year, "only after the expiry of ten years from the date of receipt of the first instalment of such share". However, societies

with limited liability may start paying dividend from the first year of working. The eligibility of a share to earn dividend is that it should be held at least for six months "at the close of cooperative year for which profits are being distributed" (Rule 148). If the shares are held for a period of less than a year and more than six months, they will earn dividend only for a period of six months. Rule 151 forbids societies from paying dividend to their members as long as any claim due from the society to any creditor is pending satisfaction. Rule 158 lays down that a cooperative society, making a request for approval of payment of an enhanced dividend under the Act [Section 58(3)], may be required to submit for the approval of the Registrar the entire profit distribution proposal for the cooperative year in question and he may in his discretion accept or reject or accept with modifications the request made by the society.

The West Bengal Rule provides that a cooperative society may declare dividend upto a maximum of 9% per annum on the amount paid-up on shares. However, the previous sanction of the Registrar is needed for payment of dividend by a society "with shares and unlimited liability". It is also stipulated that dividend can be paid only when it is recommended by the Managing Committee and approved by the general body with a condition that the general body may reduce the dividend rate recommended "but shall have no power to increase the same".

There are no Rules in Bihar and Gujarat providing for payment of dividend on paid-up share capital or distribution of profits. In Jammu & Kashmir there are no Rules dealing with distribution of profits. However, Rule 5, which deals with the matters on which societies shall make bylaws, provides *inter alia* for "the disposal of net profits".

(iv) *Comments*: The above laws restrict the rate of interest payable on share-capital. These rates vary from 6 to 9 per cent. The rate of 6 to 9 per cent is higher than is expected by the principle that "share capital shall only receive a strictly limited rate of interest, if any".

Statutory regulation of the payment of dividend and rebate interferes with the right of a society to pay dividend

and rebate according to the democratically expressed will of its members. The maximum rate of dividend should be laid down in each society's bylaws and the rate should be a strictly limited rate in accordance with the Principle quoted above. Share capital shall not receive anything else, as explained in Chapter I and in Chapter V paragraphs (3) (g) and 4(b).

The provisions which provide for excessive rates of interest on shares, such as the Assam, Delhi and West Bengal Rules, violate the Principle of Limited Interest. The Rules which empower the Registrar to allow even higher rates of interest than those laid down in the Rules, violate the Principle of Limited Interest as well as the Principle of Democratic Control. A society's decision on a matter of internal administration should not be subject to an outside authority's approval. The law should only seek to ensure the observance of Cooperative Principles by societies registered as cooperatives and not provide for the violation of those very Principles with the Registrar's approval. What is uncooperative cannot be made cooperative by any body's approval and the Registrar should be the last person to approve any violation of Cooperative Principles.

(v) *Recommendation*: These provisions in the Acts and Rules should be rescinded and appropriate provisions should be included in the bylaws of the societies to ensure the due observance of the principle stated above as their proper place is the bylaws.

II. The Principle of Equitable Division of the Surplus

(i) *Acts*: The following State Acts relate to the division of the surplus.

Andhra Pradesh	Secs. 44, 45(2) (b)
Assam	Sec. 54
Bihar & Orissa	Sec. 20
Gujarat	Secs. 65, 66, 67, 68
Himachal Pradesh	Secs. 56, 57
Jammu & Kashmir	Secs. 52(2) (b)
Kerala	Sec. 56(2)(b)
Madhya Pradesh	Secs. 43(1), 43(2) (b)

Maharashtra	Sec. 67
Mysore	Sec. 57(3)
Orissa	Sec. 56(2) (b)
Punjab	Sec. 41
Rajasthan	Sec. 44
Tamil Nadu	Sec. 62
Uttar Pradesh	Sec. 58(2)(b), 58(3)
Delhi	Sec. 46

(ii) *Rules:* The following Rules relate to the division of the surplus:

Andhra Pradesh	Rules 36 and 64
Assam	Rules 59, 60, 61, 62, 63, 64, 65
Bihar	Rules 47, 49
Delhi	Rules 79(4), 80 A
Himachal Pradesh	Rules 71, 72, 73, 74
Jammu & Kashmir	Rules 5, 20
Karnataka	Rules 5, 21
Kerala	Rule 53
Maharashtra	Rules 50, 51
Orissa	Rules 45, 46
Punjab	Rules 34, 35, 36
Rajasthan	Rules 67, 68, 69
Tamil Nadu	Rule 46
Uttar Pradesh	Rule 137
West Bengal	Rules 5 and 95(4)

(iii) *Summary of the Rules:* The Andhra Pradesh Rule 36 provides that no society shall utilise the net profits until an audit survey has been made by the Chief Auditor or any person authorised by him on his behalf, and the amount of the net profits has been arrived at. The Rule lays down the manner in which the net profits may be utilised viz.—
 (a) allocation to Reserve Fund, Audit Fund, and Education;
 (b) Payment of dividend on share capital and (c) Contribution to a Common Good Fund. In addition, Rule 64 provides that a society other than a credit society may out of its net profits, subject to a maximum of 25% of such profits, pay remuneration to its members, with the approval of the Registrar, on the basis of the extent of business done by the members with the society or the value of the services

rendered by members to the society or on such other basis as may be specified in its bylaws. The Rule further provides that a cooperative motor transport society shall not pay bonus to its member-employees in any year of an amount exceeding three months wages or salary. The Rule further provides that it shall be competent for a cooperative motor transport society, after having distributed bonus in a year, to transfer any balance, that may remain out of the net profits allocated for this purpose, to a "Bonus Equalisation Fund" constituted in the manner specified in the bylaws of the society.

Assam Rule 59 provides that after the proportion required by Rule 56(i) has been carried to the reserve fund from the profits of a year, every cooperative society shall, in the manner prescribed, contribute an amount, not exceeding 6¼% of the year's net profits, for cooperative education and for the other purposes prescribed in the Rule, and such amount shall be credited to a fund to be called "The Cooperative Development Fund".

Rule 61 provides for payment of dividend and for contributing to the Dividend Equalisation Fund. The Rule provides that, except for the purpose of paying a dividend, no withdrawals from the 'Dividend Equalisation Fund' shall be made without the previous written sanction of the Registrar. Rule 62 provides that a society may set apart a certain percentage of its net profits as provided in the bylaws for the payment of patronage dividend or rebate to its members in proportion to the money value of the business transacted by them during the year with the society as buyers, sellers, wage-earning producers, or otherwise, if such payment is recommended by the Managing Body and approved by the General Assembly. The Rule further provides that where patronage dividend is allowed to be paid in advance under the Act [Section 54(2)] the total amount of such patronage dividend shall not exceed the limit provided in the bylaws. Rule 63 provides that a society may set apart not more than 30% of its net profits as provided in the bylaws, for the payment of bonus or remuneration to its members, office bearers, salaried officers,

employees or other helpers, if such payment is recommended by the Managing Body and approved by the General Assembly. Rule 64 provides that all societies, other than societies with unlimited liability and without shares, shall be required to make adequate provisions for bad and doubtful assets, if any assets are declared to be bad or doubtful, as prescribed in the Act [Section 54.2(b)]. The Rule further provides that, unless such provision has been made or any exemption has been granted by the Registrar on the recommendation of the Audit Officer, no society shall pay any dividend, bonus, remuneration, patronage dividend or rebate. Rule 65 provides that a society may credit a portion of the profits to a separate fund for the purpose of constructing buildings required for conducting its business and such fund shall be called "Building Fund". The amount of such fund, when not used for the purpose for which it has been created, may be utilised in the business or be invested or deposited in any bank approved by the Registrar.

Bihar Rule 47 provides that at least 10% of the net profits of a Cooperative Insurance Society and a Farming Society and at least 5% of the net profits of a Thrift and Savings Society shall each year be carried to a Reserve Fund. Rule 49 provides that any society may, after the amount, required by the Act [Section 18(i)] or Rule (47), as the case may be, has been carried to the Reserve Fund, contribute any sum not exceeding 10% of its net profits to a "Bad and Doubtful Debts Fund". The Rule further provides that the Registrar may permit a society by a general or special order to contribute a larger percentage of the net profits to such Fund.

Delhi Rule 79(4) provides that after the distribution of dividend under the Rule, any distribution of profits permitted under the Act (Section 46) shall be made in accordance with the bylaws of the society. Such distribution shall be in proportion to the wages earned by each member in the case of a producers' society, and to the amount of goods purchased by each member, or, where it is so provided in the bylaws, by each member or customer, in the case of a consumers' society. It shall also be in proportion to the amount of rent paid by each member in the case of a Housing Society,

or in proportion to the goods obtained or sold through the society by each member, or to the loans borrowed from the deposits made with the society by each member. Rule 80A provides that a society may with the sanction of the Registrar invest money out of its net profits in the National Defence Fund or other funds of national importance.

The Himachal Pradesh Rule 71 provides that, save as may be directed by the Registrar, no distribution of profits shall be made in the case of a society with unlimited liability, and, save as provided in this rule, no part of the funds of a society shall be divided by way of dividend or loans or otherwise among its members. The rule provides that after the proportion required by the Act [Section 57(2)] and the Rule (69) has been carried to the Reserve Fund and the Co-operative Education Fund from the net profits of a year, the balance of such profits together with undistributed profits of past years, if any, may, to such extent and under such conditions as are laid down in the Rules, be distributed, as dividend among the members or paid as bonus or remuneration to a member or employee for any specific service rendered to the society. Rule 72 relates to the payment of dividend and bonus. The Rule provides that subject to the provision of any law for the time being in force on the subject, a society may set apart not more than 10% of its net profits for the payment of bonus to its salaried officers or employees, if such payment is recommended by the Managing Committee and approved by the general meeting and the Registrar. The Rule further provides that in the case of a salaried officer or an employee the amount of bonus shall not exceed two months' salary in any year. Rule 73 provides that after the proportion required by the Act [Section 57(2)] and the Rule (69) has been carried to the Reserve Fund and the Co-operative Education Fund, the society may contribute not more than 10% of such balance for any charitable purpose as defined in the "Charitable Endowments Act 1890" (Section 2). The Rule provides that the Fund so constituted shall be utilised by the society only with the prior sanction of the Registrar. Rule 74 provides that subject to the provisions of any law for the time being

in force, a society may establish a Provident Fund for its employees and, after there has been carried to the Reserve Fund and the Cooperative Education Fund the necessary proportion of the net profits in any year, may make a contribution not exceeding ten per cent of the remaining net profits to it.

The Jammu & Kashmir Rule 20 provides that any profits not appropriated in the manner specified in the Act, the Rules and the Bylaws shall forthwith be credited by a society to its Reserve Fund. Rule 5 provides, inter alia, for the incorporation of provisions for the disposal of net profits in the bylaws of a society. (Item 'N')

The Kerala Rule provides for the appropriation of net profits, as declared by the Registrar in respect of any cooperative year under the Act (Section 56), subject to the conditions that (1) not less than 15 per cent of the net profits shall be carried to the Reserve Fund and (2) every society shall set apart a sum, calculated at the rates prescribed in Rule 53(2) (9), out of its net profits, to the Cooperative Education Fund.

The Maharashtra Rule (50) provides for the appropriation of the net profits for the education and enlightenment of the members of a society and also for contribution to any cooperative or charitable purpose including relief to the poor, education, medical relief and advancement of any other general public utility provided that the expenditure on such items does not exceed 10% of the net profits. The Rule further provides that nothing shall, however, prohibit the society from giving bonus as contemplated in the Act (Section 2). Rule 51 deals with the determination of net profits.

The Karnataka Rules are similar to the Jammu & Kashmir Rules.

The Orissa Rules provides for the allocation of the net profits (a) to the cooperative education fund at a rate specified in the Rule (R. 45): and (b) for payment of dividend and bonus (R. 46).

Punjab Rule 34 provides for making an allocation to the Reserve Fund, Rule 35 relates with making payment of

dividend or bonus and Rule 36 deals with making a contribution to the Education Fund out of the net profit.

Rajasthan Rule 67 provides for the manner of calculating the net profits. The net profits thus arrived at, together with the amount of profits brought forward from the previous year, shall be available for appropriation. Rule 68 deals with the distribution of net profits and provides that the net profits of any society as declared by the Registrar in respect of any cooperative year shall be appropriated in the manner prescribed in the Act (Section 62). The Rule further provides that a society may pay, in accordance with the bylaws, bonus to its members, based on the extent of business done by those members with it, or on the value of services rendered by such members to the society subject to a maximum of 25% of the net profits. Rule 69 requires a society to create Bonus Equalisation and Dividend Equalisation Funds which shall be utilised for the purpose of paying dividend for bonus with the Registrar's specific authorisation.

The Tamil Nadu Rule provides for appropriation of profits in the manner set forth in the Act (Section 62) and in accordance with the conditions specified in the Rule (Rule 46). The Rule further provides that a society other than a Credit Society may pay, in accordance with its bylaws, bonus to its members based on the extent of business done by those members with it or on the value of the services rendered by such members subject to a maximum of 25% of the net profits.

Uttar Pradesh Rule 137 provides that without prejudice to the provisions of Rule 91 "no part of the net profits shall be appropriated except with the approval of the annual general meeting". (Rule 91 deals with the consideration of the accounts of the society by the annual general meeting.)

West Bengal Rule 5 specifies the manner of calculating "Net profits" Rule 95(4) provides that a society may set apart not more than 6 % of its profits for the payment of bonus to its members, salaried officers or employees, if such payment is recommended by the Managing Committee and approved by the general meeting.

(iv) *Comments:* The usual pattern laid down regarding the division of the surplus is that twenty-five per cent of the net profits of any cooperative financial year should be transferred to the Reserve Fund, provided that when the total amount so transferred becomes equal to the amount of the share capital, the amount to be transferred to the reserve from the annual net profits may be reduced to a sum, not less than ten per cent of the net profits. In some Acts there is a compulsory provision that societies shall contribute a prescribed portion of the profits to the "Co-operative Education Fund" and in some to the Education Fund of the State Cooperative Union. (The compulsion by the State to make this payment is contrary to the Principle of Democratic Control. Such requirement would be of great value if it is laid down in the bylaws. It would then be a self-regulation in implementation of the Principle of Cooperative Education. In the Madhya Pradesh Act, there is a provision [Section 27(2) (b)] whereby an amount prescribed by the Registrar shall be paid out of net profits "to the Madhya Pradesh Cooperative Union and to such other institutions or units as may be specified by the Registrar". This compulsion also is an infringement of the Principle of Democratic Control. Such provision may be included in the bylaws. Then it would be a self-regulation to implement the Principle of Cooperation among Cooperatives. The balance of the net profits may be used for (a) payment of dividend on share capital; (b) payment of rebate in proportion to the volume of transactions of each member with the society; (c) constituting, or contributing to, special funds specified in the bylaws; (d) payment of bonus to employees and remuneration to members for services rendered by them; (e) donation of moneys, not exceeding ten per cent, for any charitable purpose.

All these laws deal with matters that come solely within the purview of the cooperatives. Therefore, provisions regarding the distribution of the surplus should be made in the bylaws of societies and nowhere else. Laying down norms for this in the law is contrary to the Principle of Equitable Division of the Surplus as well as that of Democratic Control.

(v) *Recommendation*: These provisions should be rescinded and appropriate provisions included in the bylaws of societies as their proper place is the bylaws.

III. Trade with Non-Members

(i) *Acts*: Another matter which relates to the elimination of profit is a society's trade with non-members. The following sections of the State Acts provide that a society's transactions with non-members shall be subject to such restrictions as may be prescribed:

Andhra Pradesh	Sec. 48
Bihar	Sec. 17
Gujarat	Sec. 46
Himachal Pradesh	Sec. 60
Jammu & Kashmir	Sec. 56
Kerala	Sec. 60
Madhya Pradesh	Sec. 38
Maharashtra	Sec. 45
Mysore	Sec. 61
Orissa	Sec. 60
Punjab	Sec. 47
Rajasthan	Sec. 42
Uttar Pradesh	Sec. 62
West Bengal	Sec. 40
Delhi	Sec. 52

(ii) *Rules*: The following Rules prescribe the said restrictions:

Andhra Pradesh	Rule 42
Delhi	Rule 71(4)
Himachal Pradesh	Rule 80
Jammu & Kashmir	Rule 25
Karnataka	Rule 26
Kerala	Rule 57
Madhya Pradesh	Rule 29
Maharashtra	Rule 47
Orissa	Rule 55
Rajasthan	Rule 68 (4)(i)
Tamil Nadu	Rule 49
Uttar Pradesh	Rules 198 and 200

(iii) *Summary of the Rules:* The Andhra Pradesh, Jammu & Kashmir, Kerala and Madhya Pradesh Rules provide that no society shall enter into transactions with non-members, unless the bylaws of the society permit such transactions and the previous sanction of the Registrar has been obtained by the society therefor.

The Delhi Rule provides that no society shall have transactions “on credit” or “sanction trade credit to non-members” except in accordance with the general directions that may be issued by the Registrar.

The Himachal Pradesh and the Maharashtra Rules empower the Registrar to issue directions for regulating or restricting transactions with non-members, on the application of a member of a society or *suo motu*, when it “appears” to the Registrar that it is necessary to do so in the interest of the working of any society and provided further that the Registrar shall give an opportunity to the society concerned of being heard before the issue of such directions.

The Karnataka Rule provides that no cooperative society shall enter into any “credit transaction with a person other than a member”, except with the general or special sanction of the Government, provided the bylaws of the society permit such transactions.

The Orissa Rule permits transactions with non-members, if the bylaws provide for such transactions and subject to the condition that the transactions are “on a strictly ready money basis”.

The Tamil Nadu Rule provides the “no distributive society shall sell its good to persons other than members without the previous sanction of the Registrar”.

Uttar Pradesh Rule 200 provides that no transaction shall be entered into with non-members, except as permitted under the bylaws or under a general or special order of the Registrar. However, Rule 198 provides that a cooperative society “whose object is to purchase or lend produce goods” for sale to its members shall not sell goods to non-members, except as prescribed by the Registrar.

(iv) *Comments*: The basis of Cooperation is mutual aid for the elimination of middleman profit-making. Therefore trading with non-members which results in middleman profit to the cooperative concerned is violation of the very basis of Cooperation. However, as explained in Chapter I, the very success of the Cooperative Movement in an area may leave no other distributor of foodstuffs etc. available to those who are unable to buy a share in a cooperative. Therefore, it should be open to a cooperative to trade with such non-members. The State should have power to allow a society to trade with non-members but this should be allowed only to the minimum extent necessary. Normally the extent of non-members' transactions with the society should not exceed 25 per cent of the entire volume of transactions of the society concerned.

(v) *Judgements*: The High Court of Madras in the case of D.R. Kuppaji Rao versus Extension Officer (Cooperation) observed:

“Cooperation functions on democratic principles which does not seek to achieve its objectives by exploiting others or by doing injury to others. It is not only an economic movement but is also an educative, moral and social movement. Mutual understanding and goodwill among the members is the very foundation for the successful implementation of the philosophy of cooperation. Competition is negation of the concept of cooperation.”¹

(vi) *Recommendations* : There should be a statutory prohibition on societies from trading with non-members over and above a limit to be fixed by the Registrar with corresponding power to the Registrar to permit societies to trade with non-members upto an amount not exceeding 25 per cent of the turnover of the society concerned. This power is recommended to be given to the Registrar by legislation as the matter relates to persons outside the fold of a society and also to enable him to prevent any society from evading the tax regulations. Any profit made by

1. Cooperative Law Journal, April 1972, p. 72.

trading with non-members may be taxed, for that is middleman profit as distinct from a cooperative's surplus by trading with its members, for the latter constitutes an underpayment to, or an over-recovery from, the members and therefore really belongs to them. Any balance left out of profits made from non-members should be devoted to some common-good purpose beyond the society's membership. The use of the trading surplus derived from non-members should also be regulated by legislation as the interests of the non-members concerned (they being members of the public outside the society's pale) should be the concern of the State.

CHAPTER VII

The Laws Relating to the Principle of Cooperative Education

(i) *Acts*: The following provisions in the State Acts have a bearing on the Principle of Cooperative Education:

Andhra Pradesh	Sec. 45(1) (b)
Guirarat	Secs. 66(2), 69
Himachal Pradesh	Sec. 54, 56(2)
Jammu & Kashmir	Sec. 52(3)
Kerala	Sec. 56(1)(b)
Maharashtra	Sec. 68(1)
Mysore	Sec. 57(4A)
Orissa	Sec. 56(3)
Punjab	Sec. 42, 43
Rajasthan	Sec. 45
Tamil Nadu	Sec. 62
Uttar Pradesh	Sec. 58(1)
West Bengal	Sec. 58(A)
Delhi	Sec. 48

(ii) *Rules*: The following provisions in the Rules have a bearing on the Principle of Cooperative Education:

Andhra Pradesh	Rule 36(c) (1)
Assam	Rules 59(1) & 59(5) (9a)
Delhi	Rule 80
Gujarat	Rule 31
Himachal Pradesh	Rule 69
Jammu & Kashmir	Rule 19
Karnataka	Rule 20
Kerala	Rule 53
Maharashtra	Rule 53
Orissa	Rule 45
Punjab	Rule 36
Rajasthan	Rule 53
Tamil Nadu	Rules 46(6) (i) (ii) (iii) (iv) & (v)

Uttar Pradesh Rules 138, 139, 140, 141, 142,
143 & 144

(iii) *Summary of the Rules:* The Andhra Pradesh Rule requires that every society shall credit 1% of its annual net profits to the "Cooperative Education Fund" subject to certain maxima, provided that societies working at a profit of Rs. 100/- or less need not make any contribution to the Fund. The Rule further provides that the Andhra Pradesh State Cooperative Union shall "frame" regulations with the "approval" of the Registrar for the utilisation and administration of the Fund.

Assam Rule 59(1) provides that every society shall contribute an amount not exceeding $16\frac{1}{4}\%$ of the year's net profit for cooperative education and other purposes and this amount is required to be credited to "The Cooperative Development Fund". Under Rule 59(5) (a) the Fund may be utilised, among other purposes, for educating the members of cooperative societies in "cooperative principles and practices".

The Delhi Rule provides that every society shall credit a sum calculated at 2% of its net profits subject to a maximum of Rs. 2,500/- every year as contribution to the Cooperative Education Fund to be administered by the Registrar, who may frame regulations for the utilisation and administration of the Fund.

The Gujarat Rule provides that every society which pays a dividend to its members at a rate of 3% or more shall contribute to the "Education Fund of the Gujarat State Cooperative Union" at a rate varying from 1% to 2% of the net profits of the year, depending upon the rate of dividend paid to its members. There is no Rule regarding the administration and utilisation of the Fund.

The Himachal Pradesh Rule provides that every society shall contribute to the "Cooperative Education Fund" at the rate of Rs. 10 or 3% of the net profits of the year, whichever is more. The prior permission of the Registrar is needed for contributing in excess of 3% up to 5% of the net profits of a year and no part of the "Education Fund"

shall be utilised till the permission of the Registrar is obtained or regulations are approved by him. The Fund is to be administered by the Himachal Pradesh State Co-operative Union or any other authorised agency, which shall “prepare” regulations for the administration and utilisation of the Fund with the approval of the Registrar.

The Jammu & Kashmir Rule requires that every society shall contribute such amount, not exceeding 5% of its annual net profits as may be directed by the Registrar from time to time, to the “Cooperative Education Fund”, to be administered by the State Cooperative Union, or if there is no such union, by a Committee appointed by the Registrar. The State Cooperative Union or Committee shall “prepare” regulations with the “approval” of the Registrar for the utilisation and administration of the Fund.

The Karnataka Rule provides for the constitution of a “Cooperative Education Fund” and requires every society to allocate such percentage of its annual net profits as may be specified “in its bylaws” to the “Cooperative Education Fund” as its contribution. This Fund shall be administered by the State Cooperative Union, or if there is no such Union by a Committee appointed by the Registrar. The State Cooperative Union or if there is no such Union, the Committee appointed by the Registrar shall make regulations with the approval of the Registrar for the utilisation and administration of the Fund.

The Kerala Rule provides for a contribution of 1% to 3½% of the net profits of a society to the “Cooperative Education Fund”, subject to a maximum of Rs. 10,000. It is further provided that no part of this Fund shall be spent by the Kerala State Cooperative Union, except in accordance with the regulations of the Union and the general directions that may be issued by the Registrar or the Government from time to time. The Fund shall be maintained, utilised and administered by the Kerala State Cooperative Union. These regulations shall be framed by the Union and approved by the Government.

The Maharashtra Rule provides for a contribution by every society to the “Education Fund of the State Federa-

tion Society”, notified by the State Government, at a rate of 1% to 2½% of the annual net profits depending upon the rate of dividend on shares paid to its members. However, the societies which have a net profit of Rs. 200 or less, shall not be required to contribute to this Fund. There is no rule regarding the administration and utilisation of the Fund.

The Orissa Rule provides that every society shall contribute 2½% to 4% of the net profits depending upon the amount of its net profits to the “Cooperative Education Fund” created under the Act [Section 56(3)] and this “shall vest” in the State Cooperative Union [Section 56(3)]. There is no Rule regarding the administration and utilisation of the Fund.

The Punjab Rule provides that every society shall contribute such amount, not exceeding 2% of its annual net profits, as may be decided by the Registrar from time to time, to the “Cooperative Education Fund”. This is to be administered by the State Cooperative Union, which shall “prepare” regulations with the “approval” of the Registrar for the utilisation and administration of the Fund.

The Rajasthan Rule provides that every society shall make contributions to the “Cooperative Education Fund” at a rate of 1% of the annual net profits. The Fund is to be administered by the State Cooperative Union, which shall “prepare” regulations with the “approval” of the Registrar for the utilisation and administration of the Fund. The Rule further provides that no part of the Fund shall be utilised by the State Cooperative Union till the previous permission of the Registrar has been obtained or regulations as aforesaid have been approved by him.

The Tamil Nadu Rule provides that every society shall set apart a sum calculated at 2% of its net profits subject to a maximum of Rs. 2,500 for contribution to the “Cooperative Education Fund”. Whilst saying that the Fund shall be maintained and administered by the Tamil Nadu Cooperative Union and shall be utilised for the furtherance of cooperative education, including propaganda as contemplated in the bylaws of the said Union, the Rule

provides that no part of the Cooperative Education Fund shall be spent by the said Union except in accordance with the bylaws of the Union and the general directions that may be issued by the Registrar from time to time. The Rule empowers the Registrar to constitute a Committee consisting of not more than five members, of whom two shall be members of the Committee of the Tamil Nadu State Cooperative Union, for the administration of the Fund.

Uttar Pradesh Rule 138 provides that every society shall, out of its net profits, contribute money to the Cooperative Education Fund at a rate not less than 1% of its net profits and where the amount to be contributed exceeds Rs. 2,500 in any particular cooperative year, it shall be open to the society to contribute or not to contribute such amount as is in excess of Rs. 2,500. According to Rule 140, the Uttar Pradesh Cooperative Union shall prepare regulations for the administration of the Cooperative Education Fund and matters connected therewith, and these regulations shall be subject to the approval of the Registrar. Rule 139 provides that the Cooperative Education Fund shall be administered by the U.P. Cooperative Union in accordance with the regulations framed under Rule 140 and on the recommendations of a sub-committee consisting of representatives of apex level institutions, the Director of Industries, the Cane Commissioner, the State Government and the Registrar. Rule 144 provides that the utilisation of the Fund shall, as far as possible, be uniformly spread over all the quarters of a co-operative year.

(iv) *Comments:* The ownership of the Co-operative Education Fund is not specified in the Rules except in the case of Gujarat and Maharashtra. With the exception of Orissa, ownership is not specified even in the Acts. Where the ownership is vested in the Union, such vesting should be provided in the Bylaws and not in the Acts or Rules.

The Tamil Nadu Rule provides for the maintenance and administration of the Fund by the Union but its utilisation has to be in accordance with the bylaws as well as the general directions of the Registrar. The provision for utilizing the Fund in accordance with, inter alia, the by-

laws of the State Union, suggests the vesting of the Fund in the Union.

The Delhi Rule provides for the administration of the Fund by the Registrar. The Andhra Pradesh, Punjab, Kerala, Rajasthan, Mysore (Karnataka), Himachal Pradesh and Jammu & Kashmir Rules provide for the administration and utilisation of the Fund by the respective State Unions subject to the approval of the Registrar. The Uttar Pradesh Rule vests the administration of the Fund in the State Co-operative Union subject to regulations approved by the Registrar but its utilisation is specified in the Rules.

It has to be assumed that the ownership of the Fund vests in the authority of body entrusted with the administration of the Fund of the body whose bylaws have to be conformed to in utilizing the Fund. Therefore, where a State Union is authorized to administer or utilise the Fund, it is the bylaws of that State *Union* that should express this and not the Act or Rules. Any provision subjecting such Union's decision to the approval of the Registrar would be a violation of the principle of Democratic Control as the administration of the Funds of a cooperative is a matter for self-regulation.

These provisions require cooperative societies to contribute to the Education Fund of the respective State Cooperative Union, federal society or other cooperative society as notified by the government.

The amount to be contributed by each society to the Education Fund is not defined in the Acts. It is left to be prescribed by the Rules.

The amount payable by a member-society as its contribution to the Fund should be laid down in the bylaws of the Union and not in the Act or Rules, as it is a matter for self-regulation.

The Assam, Bihar and Madhya Pradesh Acts have no provisions relating to an Education Fund. The Rajasthan Act fixes an upper limit of ten per cent of the divisible net profits for grants to "any public educational or cooperative purpose". Both "educational purpose" and "Cooperative Purpose" includes a cooperative educational purpose. The

Rule framed under this provision has been summarised in section (iii). The Himachal Pradesh, Jammu & Kashmir, Kerala, Punjab and Delhi Acts provide for a contribution not exceeding five per cent of the net profits to the Cooperative Education Fund. The Maharashtra Act requires every society to contribute annually to "the education fund of the State Federal society...at such rate as may be prescribed and different rates may be prescribed for different societies or classes of societies depending on their financial condition" provided that no society shall be required to contribute more than Rs. 25,000 in any year. The Maharashtra Rule summarised at (iii) has been framed under this power. The Mysore Act lays down an upper limit of one and half per cent of the net profits. This is payable to the Cooperative Education Fund of a State federal society notified by the State Government and no dividend shall be paid on share capital unless the contribution is made to the federal society concerned. The Tamil Nadu Act lays down an upper limit of two per cent. The West Bengal Act fixes an upper limit of five per cent of the divisible surplus or one and a half per cent of the "gross earnings" or five thousand rupees, whichever is lowest "for cooperative education or for such other cooperative purpose as may be prescribed". The Andhra and Uttar Pradesh Acts refer to "the Cooperative Education Fund" to be established under the Rules. They do not fix a rate or an upper limit for the contribution. The respective Rules have been summarised in (iii) above. The Gujarat Act provides for a "contribution to the educational fund of such federal cooperative society as the State Government may specify as the Gujarat State Cooperative Union". The provision to specify a federal society as the State Union is similar to the Mysore provision to notify (announce) the State federal society to whose Education Fund the contribution is payable. The amount of the contribution is not specified. The Gujarat Rule is summarised in sub-section (iii) above. An officer wilfully failing to make this contribution "shall be personally liable for making good the amount to the Gujarat State Cooperative Union". The Orissa Act provides for "a cooperative education fund which shall vest in the State Cooperative Union", and the

payment of "such portion of profits as may be prescribed to the Cooperative Education Fund". The respective Rule has been summarised in sub-section (iii) above.

A common feature of all the Acts in this regard is that the utilisation of the education fund is subject either to the prior approval of the Registrar or to such Rules as may be made for the purpose.

The collection of funds, by virtue of provisions in the law, by cooperative societies from their own affiliates is a negation of the Cooperative Principle of Democratic Control in that such payment should be made in accordance with the democratically expressed will of the members and not under compulsion by an outside authority. Such legal requirement deprives the societies of their right to decide for themselves whether they would contribute to this fund or not. It also leaves no room for the development of loyalty for the federal society or the cause of cooperation. The proper place for such requirement is the constitution of each union concerned. The inclusion of a bylaw in a Union's constitution requiring member-societies to make a contribution to the Education Fund of that Union would be a voluntary act on the part of the member-societies and hence in accordance with the Principle of Democratic Control. Compulsory cooperation is a contradiction in terms. Compulsion renders the development of loyalty and self-imposed discipline unnecessary and instead creates resentment among the membership, retarding the growth of loyalty and self-discipline. Loyalty and self-discipline are essential to cooperative success and are corollaries of autonomy. Even a small contribution made voluntarily would be of great moral and cooperative value whereas not even the most massive contribution made under compulsion would have this effect. Compulsion in fact does untold damage to loyalty and self-discipline and destroys the very possibility of their development. Resentment, apathy and disloyalty develop instead, undermining the development of a movement. Cooperative societies should be educated on the need to support cooperative education and persuaded to adopt bylaws for themselves as well as for their federal society to ensure a regular contri-

bution for cooperative education. Compulsion also develops indifference on the part of the State Union, which receives the contribution, to the requirements of the contributors. The Union would not be as responsive to their wants as it would be if the money came to it voluntarily from its member societies. Thus, a payment which could be of such great cooperative value to both the giver and the receiver is now made the cause of resentment on the part of the former and indifference on the part of the latter.

The Multi-unit Cooperative Societies Act (1942) which governs societies operating in more than one State makes no provision for an education levy. This is as it should be.

(v) *Judgements*: There are no legal judgements relating to this principle.

(vi) *Commission Reports*: The *Conference of Registrars and Ministers of Cooperation* held at Bombay in 1965 observed::

“Greater emphasis should be laid on programmes of cooperative education and training of the members for which adequate provision should be made in the State Plans”.¹

The *Study Team on Cooperative Education* (1961) observed:..

“A society which has formally grasped the main principles, and acts on its knowledge will be truly cooperative and the fact that it is managed on cooperative lines will constitute the most important factor in its financial position”.²

The *All-India Rural Credit Review Committee* (1969) observed:.. .

“Cooperative leadership at all levels has also to be educated on the need from the point of view of efficient operation for a clear demarcation of the respective responsibilities between the elected board of manage-

1. Proceedings of the Conference held at Bombay from 29-10-1965 to 4-11-1965, p. 275.

2. Report of the study Team, Volume I, p. 41.

ment and the paid executives and other managerial personnel and the related need for the latter to be given a degree of autonomy to take various individual decisions in conformity with the broad policies laid down by the board".¹

The *Committee on Cooperation* (1965) observed:—

“The strength of the cooperative movement depends on the existence of a vast and enlightened membership and without promotion of education an enlightened membership does not become a reality. In fact, without promotion of education, the general body of members which is the supreme authority for a society cannot be a vital force and self-government in cooperative institutions ceases to be a reality”.²

The *International Labour Organisation* at its 50th Session held at Geneva in 1966 adopted Recommendation No. 127 which, inter alia, states:—

“15. Appropriate instruction on the subject should be given not only in cooperative schools, colleges and other specialised centres but also in educational institutions such as:

- (a) universities and centres of higher education;
- (b) teachers' training colleges;
- (c) agricultural schools and other vocational educational establishments and workers' education centres;
- (d) secondary schools;
- (e) primary schools.

“16. (1) With a view to promoting practical experience in cooperative principles and methods the formation and operation of student cooperatives in schools and colleges should be encouraged.

(2) Similarly, workers' organisations and craftsmen's associations should be encouraged and helped in

1. Report of the Committee, Chapter 32, para 11, p. 939.

2. Report of the Committee on Cooperation, 1965, pp. 8-9.

the implementation of plans for the promotion of cooperatives.

17. Steps should be taken, in the first place at the local level, to familiarise the adult population with the principles, methods and possibilities of cooperatives.

18. Full use should be made of such media of instruction as text books, lectures, seminars, study and discussion groups, mobile instructors, guided tours of cooperative undertakings, the press, films, radio and television and other media of mass communication. These should be adapted to the particular conditions of each country.

19. (1) Provision should be made both for appropriate technical training and for training in cooperative principles and methods of persons who will be—and, where necessary, of persons who are—office-bearers or members of the staffs of cooperatives, as well as of their advisers and publicists.

(2) Where existing facilities are inadequate, specialised colleges or schools should be established to provide such training, which should be given by specialised teachers or leaders of the cooperative movement with teaching materials adapted to the requirements of the country: if such specialised institutions cannot be established, special courses on cooperation should be given either by correspondence or in such establishments as schools of accountancy, schools of administration and schools of commerce.

(3) The use of special programmes of practical training should be one of the means of contributing to the education and basic and further training of members of cooperatives; these programmes should take into account local cultural conditions; and the need to disseminate literacy and knowledge of elementary arithmetic.”¹

The *Working Group on Cooperation*, Administrative Reforms Commission (1968) observed:—

1. Report of the ICA/BJSU National Seminar, 1972, pp. 105-107.

“As a first step towards self-reliance, we would suggest that the financial responsibility for the member education programme should be taken over by the movement itself. The resources for this programme should be found from the education fund to be raised by contributions from cooperatives”.¹

(vii) *Important Pronouncements:* At the Conference of the State Ministers of Cooperation held at New Delhi (1973), Mr. Fakhruddin Ali Ahmed, Union Minister for Agriculture, observed:—

“A comprehensive scheme of cooperative training and education is the very foundation on which the success of the cooperative movement rests. . . . The movement will have to take steps for mobilising resources for the programme from within”.²

Jawaharlal Nehru opening the ICA Seminar on “Co-operative Leadership” at New Delhi in 1960, observed:—

“Therefore the whole future of India really depends on the success of this approach of ours to these vast numbers, hundreds of millions of people. With that naturally come processes of training, etc. We cannot just ask them to cooperate. Therefore, we have to train them in a very big way—educate them and give them some special training.”³

(viii) *Recommendations:* The legal provisions relating to contribution and collection of funds for cooperative education should be deleted; and the State Cooperative Unions should adopt bylaws which require their member societies to contribute to the education funds of the State Unions.

As all cooperative societies should make provision for cooperative education, a system of primary societies collecting funds for this from their members, and federal

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1. Report of the Working Group on Cooperation, Administrative Reforms Commission (1968), Chapter XI, para 11.70.
 2. Proceedings of the Conference, 24-25 January 1973, p. i(xviii).
 3. “Cooperative Leadership in South-East Asia, ICA Regional Office, New Delhi, 1963, p. 8.

societies in turn doing so, would be the best way of finding money for this all important matter. Then the State Union and all intermediate federal bodies will be receptive to the needs of the movement in respect of cooperative education and at least in this respect the movement will be autonomous. If the movement depends upon state support for even the teaching of Cooperation, there is little prospect of there ever being a voluntary and autonomous cooperative movement throughout the country. However it has to be remembered that the ideal situation cannot be obtained by a mere stroke of the pen.

CHAPTER VIII

The Laws Relating to the Principle of Cooperation among Cooperatives

(i) *Acts*: There is no provision, which refers to the Principle of Cooperation among Cooperatives, in any Act. The legal provisions recognising federal societies have a bearing on this principle.

(ii) *Rules*: There is no Rule, which refers to the Principle of Cooperation among Cooperatives. The Rules recognising federal societies and those requiring cooperative societies to contribute funds to the State Cooperative Unions and the National Cooperative Union of India have a bearing on this principle. They are:—

Andhra Pradesh	Rule 36(c)(iv)
Jammu & Kashmir	Rule 19
Karnataka	Rule 20(3)
Kerala	Rule 53(e)
Rajasthan	Rule 53(2)
Uttar Pradesh	Rule 143(1)

The Andhra Pradesh Rule provides that the Andhra Pradesh State Cooperative Union shall frame regulations with the approval of the Registrar for the utilisation and administration of the Cooperative Education Fund and such regulations may, among other things, provide “for making any contribution to the National Cooperative Union of India”.

The Jammu & Kashmir, the Karnataka, the Kerala, the Rajasthan and the Uttar Pradesh Rules mentioned above provide to the same effect, but with some variations in naming the authority competent to frame the regulations.

(iii) *Comments*: Every federation and union is an example of the implementation of this principle. The compulsory membership of certain societies in the Orissa State

Cooperative Union is repugnant to the Principle of Voluntary Association as well as to this principle, as cooperation among cooperatives must be voluntary. This matter has been referred to in Section V(b) of Chapter III. The compulsion to pay a prescribed amount out of net profits to the Madhya Pradesh Cooperative Union, vide Chapter VI, is, as stated there, repugnant to the democratic principle. If this payment is made voluntarily it would be an implementation of the Principle of Cooperation among Cooperatives.

(iv) *Judgements* : There are no legal judgements relating to this principle.

(v) *Commission Reports*: The Report of the Working Group on Cooperation, Administrative Reforms Commission (1968), observed:—

“Inter-relationship between Constituent Units 11.68 - It is of utmost importance that the higher tier organisations in the federal structure establish close and intimate contact with the constituent units. It is also necessary that the federal organisations in various fields develop mutual contacts. The replies received from some of the State Cooperative Unions to our questionnaire indicate that some of them do not know much about the national cooperative organisations excepting National Cooperative Union of India. The central banks, state cooperative banks and the federal organisations in other fields do not evince much interest even in the working of the state and district cooperative unions which are entrusted with the responsibility for cooperative education and training. There have even been cases where, within the same structure, conflicts have arisen between the different units at various levels in conducting different business operations. We would like to suggest that regular arrangements should be evolved for constant consultations between the constituent units and also for common meetings between the higher level organisations in various fields. These meetings should be conducted at regular intervals. The State Coopera-

tive Unions should keep a watch and take the initiative in this matter”.¹

(vi) *Important Pronouncement* : Prof. D.R. Gadgil, Vice-Chairman, Planning Commission, observed:—

“.....currently the cooperative movement depended on some help from the government. This was because the movement was not properly developed. If the cooperative movement was properly developed and there was proper coordination and integration of the cooperative bodies in various spheres such as finance, marketing, industrial etc. as also at various levels from village to apex society and above, there would not be much of the need for state assistance. The cooperative movement would become self-reliant”.²

1. Report of the Working Group on Cooperation, Administrative Reforms Commission, 1968, Chapter 11, para 11.68.

2. Financial Express, 26th August 1967.

A Model Cooperative Societies Law

Part 1 : Preliminary

1. Short Title

This Law may be cited as the Cooperative Societies Law.

2. Interpretation

In this Law, unless the context otherwise requires:

“Bonus” means a portion of the trading surplus (profit) of a registered society given to a member in proportion to the volume of his transactions with the society but not exceeding the proportion of the total divisible surplus to the total transactions of the society.

“Bye-laws” means the registered bye-laws of a registered society for the time being in force and includes a registered amendment of the byelaws.

“Committee” or “Board of Directors” means the governing body of a registered society to whom the management of its affairs is entrusted under its bye-laws.

“Common need” means the need which is common to the majority of the members of a registered society.

“Cooperative Principles” mean the principles that shall be observed by cooperative societies registered under this law *viz.*:

- (i) Membership of a cooperative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.
- (ii) Cooperative Societies are democratic organisations. Their affairs shall be administered by persons elected

or appointed in a manner agreed by the members and accountable to them. Members of primary societies shall enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration shall be conducted on a democratic basis in a suitable form.

- (iii) Share capital shall only receive a strictly limited rate of interest, if any.
- (iv) The economic results, arising out of the operation of a society belong to the members of that society and shall be distributed in such manner as would avoid one member gaining at the expense of others.

This may be done by decision of the members as follows;

By provision for development of the business of the cooperative;

by provision of common services; or

by distribution among the members in proportion to their transactions with the society.

- (v) All cooperative societies shall make provision for the education of their members, officers and employees, and of the general public, in the principles and techniques of Cooperation, both economic and democratic.
- (vi) All cooperative organisations, in order to best serve the interests of their members and their communities shall actively cooperate in every practical way with other cooperatives at local, national and international levels, having as their aim the achievement of unity of action by cooperators throughout the world.

“Dividend” or “Interest” means a share of the trading surplus of a registered society given to a member as interest on his share capital in the society.

“Federal Society” shall mean a registered cooperative

society whose membership is open only to registered societies of any one category whether primary, secondary or tertiary.

“Member” means a person or registered society admitted to the membership of a registered society in accordance with society’s bye-laws and includes a person or registered society joining in the application for the registration of a society, provided he has already purchased a share in the society.

“Officer” means a person empowered under a registered society’s bye-laws to give directions in regard to the business of a society, and any person who is deemed an officer of a registered society under its bye-laws, and includes the President, Chairman, Secretary, Treasurer, a Member of Committee, a Director, and a Manager of a registered society.

“Primary Society” means a registered society whose membership is open only to individuals and whose objects do not include the object of facilitating the operations of any other registered society.

“Rebate” means bonus as defined above.

“Registered Society” means a cooperative society registered under this law or deemed to be so registered as provided hereinafter.

“Registrar” means a person appointed to be or to act for the time being as the Registrar of Cooperative Societies under this Law and includes any person upon whom any or all of the powers of the Registrar have been conferred as provided hereinafter.

“Secondary Society” means a registered society whose membership is open only to primary societies and whose main object is that of facilitating the operations of primary societies which are its members.

“Tertiary Society” means a registered society whose membership is open only to secondary societies and whose main object is that of facilitating the operations of secondary societies which are its members.

Part II : Registration

3. Appointment of Registrar, Deputy and Assistant Registrars

(1) There may be appointed a Registrar of Cooperative Societies for———or any portion thereof and such number of Deputies or Assistant Registrars as may be necessary.

(2) The Government may, by general or special order, confer on any Deputy or Assistant Registrar all or any of the powers of the Registrar under this Law and such order shall be published in accordance with the Law pertaining to publication of orders made by the Government.

4. Societies which may be Registered

Subject to the provisions hereinafter contained a society which has as its object the economic and social betterment of its members through the satisfaction of their common economic needs by means of a common undertaking based upon mutual aid and profit-elimination, and which conforms to the Cooperative Principles, or a society established with the object of facilitating the operations of such a society may be registered under this Law with or without limited liability.

Provided that the liability of a secondary or tertiary society shall be limited.

5. Conditions of Registration

(1) No primary society shall be registered under this Law which does not consist of at least ten individuals each of whom is qualified for membership as provided hereinafter.

(2) No secondary or tertiary society shall be registered under this Law which does not consist of at least two registered societies each of which is qualified for membership as provided hereinafter.

(3) The word “cooperative” or its equivalent in the . . . language shall form part of the name of every society registered under this Law.

(4) The word “Limited” shall be the last word in or the equivalent of that word in shall form part of the name

of every society with limited liability registered under this Law.

6. Qualifications for Membership

(1) Only an individual having the following qualifications may be a member of a primary society:

- (a) that he has attained the age of 18 years;
- (b) that he is resident, in occupation of land, or following a trade or occupation relevant to the society's objects within the society's areas of operations as defined in its bye-laws; and
- (c) that he has the common need which the society seeks to satisfy and the ability to make use of the society's services rendered for its satisfaction.

(2) Only a registered primary society with objects relevant to those of a secondary society shall be qualified for membership of such secondary society and only a registered secondary society with objects relevant to those of a tertiary society shall be qualified for membership of such tertiary society.

(3) When for the purposes of this section any question arises as to age, residence, occupation of land, trade or occupation of any person in respect of his qualification for membership of a cooperative society such question shall be referred by the person concerned to the Registrar and his decision shall be final and conclusive in law.

7. Application for Registration

(1) For the purpose of registration an application shall be made to the Registrar.

- (2) The application shall be signed:
 - (a) in the case of a primary society by at least 10 individuals qualified to be and are members of such society;
 - (b) in the case of a secondary society by the duly authorised persons of at least two registered primary societies which are qualified to be and are members of such secondary society; and

- (c) in the case of a tertiary society by the duly authorised persons of at least two registered secondary societies which are qualified to be and are members of such tertiary society.

(3) The application shall be accompanied by such number of copies of the proposed bye-laws of the society as the Registrar may require and the individuals or societies making such an application shall furnish such information in regard to the society as may be required by the Registrar.

(4) The Registrar may prescribe the forms to be used and the conditions to be complied with in applying for the registration of a society and the procedure in the matter of such application.

8. Registration

(1) If the Registrar is satisfied that a society has complied with the provisions of this Law, and that its proposed bye-laws are not contrary to this Law and the Cooperative Principles and that the proposed undertaking of the society is likely to be viable, he may register the society and its bye-laws.

(2) On registration the society shall pay such fee as may be required by the Registrar.

(3) The Registrar may refuse to register a society only if he is not satisfied in terms of sub-section (1).

9. Evidence of Registration

A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

10. Societies to be Bodies Corporate

The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend

suits and other legal proceedings, and to do all things necessary for the purposes laid down in its constitution.

11. Bye-laws of a Society to Bind Members

(1) The Registrar may prescribe the matters in respect of which a society shall make bye-laws and the procedure to be followed in making, altering and rescinding bye-laws, and the conditions to be satisfied prior to such making, alteration or rescission.

(2) Every bye-law of a registered society shall, upon registration, be binding upon the society and the members thereof to the same extent as if the bye-law was signed by each member of the society and contained a covenant by each such member to observe the provisions of the bye-law.

(3) Any dispute arising out of the interpretation of a bye-law of a registered society shall be referred to the Registrar for his decision and his decision shall be final and conclusive in law.

12. Power to Make Bye-laws in Restraint of Trade

No bye-law made by a registered society shall be called in question in any court of law on the ground only that such bye-law constitutes a contract in restraint of trade.

13. Power to Make Bye-laws for the Imposition of Fines on Members

The bye-law made by any registered society may provide for the imposition of fines on the members of the society for contraventions of its bye-laws:

Provided, however, that no such fine shall be imposed on any member unless:

- (a) notice in writing of the intention to impose such fine and the reasons therefor have been given in writing to him by the society; and
- (b) he has failed to show, within a fortnight in writing, sufficient cause against the imposition of the fine.

14. Amendment of the Bye-laws of a Registered Society

(1) Any registered society may, subject to this Law, amend its bye-laws including the bye-law which declares the name of the society.

(2) No amendment of the bye-laws of a registered society shall be valid until that amendment has been registered under this Law, for which purpose copies of the amendment shall be forwarded to the Registrar.

(3) If the Registrar is satisfied that any amendment of the bye-laws is not contrary to this Law, the Cooperative Principles or the interests of any other registered society, he shall register the amendment.

(4) An amendment which changes the name of a society shall not affect any right or obligation of the society or any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.

(5) When the Registrar registers an amendment of the bye-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(6) In this section, "amendment" includes the making of a new bye-law and the variation or rescission of a bye-law.

Part III : Rights and Liabilities of Members

15. Restrictions of Membership in Societies

Except with the sanction of the Registrar no person shall be a member of more than one registered society with unlimited liability or whose primary object is to grant loans to its members.

16. Contract with Society of Members who are Minors

The minority or non-age of any person duly admitted as a member of any registered society shall not debar that person from executing any instrument or giving any acquittance necessary to be executed or given under this Law

and shall not be a ground for invalidating or avoiding any, contract entered into by any such person with the society, and any such contract entered into by any such person with the society, whether as principal or as surety, shall be enforceable at law or against such person notwithstanding his minority or non-age.

17. Restrictions on Transfer of Shares or Interest

In the case of a society registered with unlimited liability, a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof, unless

- (a) he has held such share or interest for not less than one year; and
- (b) the transfer is made to the society, or to a member of the society, or to a person whose application for membership has been accepted by the committee.

18. Shares or Other Interest not Liable to Attachment or Sale

Subject to the provisions of Section 31, the share or other interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and neither his assignee in insolvency nor a receiver duly appointed shall be entitled to, or have any claim on, such share or interest.

19. Liability of Past Member and Estate of Deceased Member for Debts of Society

A past member or the estate of a deceased member shall be liable for the debts of a registered society as they existed on the date of his ceasing to be a member for a period of two years reckoned from that date.

20. Transfer of Interest on Death or Permanent Insanity of a Member

(1) On the death or declaration of permanent insanity of a member, a registered society may transfer the share or

other interest of the member to the persons nominated in accordance with the bye-laws of the society, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the member, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the byelaws:

Provided that:

- (a) In the case of a society with unlimited liability such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;
- (b) In the case of a society with limited liability; the society may transfer the share or interest of the member to such nominee, heir or legal representative, as the case may be being qualified in accordance with the bye-laws for membership of the society, or on his application within six months of the date of the death or declaration of permanent insanity to any person specified in the application who is so qualified.

(2) A registered society shall pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

(4) The Registrar may prescribe the mode in which the value of a deceased member's interest shall be ascertained, and the nomination of a person to whom such interest may be paid or transferred shall be made.

(5) The Registrar may prescribe the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall be ascertained and the nomination of any

person to whom such interest may be paid or transferred shall be made.

21. Deposits by or on behalf of Minors

(1) A registered society may receive deposits from or for the benefit of minors and it shall be lawful for a registered society to pay such minors the interest which may become due on such deposits. Any deposits made by a minor may, together with the interest accrued thereon, be paid to that minor; and any deposit made on behalf of a minor may, together with the interest accrued thereon, be paid to the guardian of that minor for the use of the minor.

(2) The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge of the liability of the society in respect of that money.

Part IV : Management of Registered Society

22. Address of Society

Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change of that address.

23. Copy of Law, Bye-laws etc. to be Open to Inspection

Every registered society shall keep a copy of this Law and of its by-laws and a list of its members open to inspection, free of charge, at all reasonable times at the registered address of the society.

24. Register of Members

(1) Any register or list of members kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein:

- (a) The date at which the name of any person was entered in such register or list as a member
- (b) The date at which any such person ceased to be a member.

(2) The Registrar may provide for the formation and maintenance of a register of members, and where the liability of members is limited by shares, of a register of shares.

25. Proof of Entries in Books of Society and Registry

(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be prescribed, be received in any legal proceeding, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) The Registrar shall prescribe the manner in which copies of entries in books of registered societies may be certified.

(3) No officer of any such society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1) or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the court for special reasons so directs.

(4) The Registrar shall provide for the inspection of documents and registers at his office and the fees to be paid therefor and for the issue of copies of such documents or registers.

26. Final Authority in a Registered Society

The supreme authority of a registered society shall vest in the general meeting of its members.

27. Securing Possession of Records Etc.

(1) If, upon the committee of registered society being reconstituted in accordance with its bye-laws or a society being dissolved under Section 48 or 49, any or all of the members of the committee, officers or employees holding office or in service immediately prior to such reconstitution or dissolution refuse or fail to hand over the books, docu-

ments and assets of the society to the new committee or the liquidator as the case may be, the new committee or the liquidator may apply to the magistrate, within whose jurisdiction the society functions, for securing the books, documents and assets of the society.

(2) On receipt of an application under sub-section (1) the magistrate may, by a warrant, authorise any police officer, not below the rank of a sub-inspector, to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and property; and the records and property so seized shall be handed over to the new committee or the liquidator as the case may be.

(3) If in the opinion of the Registrar, after due inquiry, any or all of the members of the committee or officers or employees holding office or in service immediately prior to such reconstitution or dissolution are responsible for any loss or damage to the books and other documents of a registered society, he may order any or all of such persons to pay to the society a sum of money, as may be determined by him, by way of compensation, each such person being served individually with a separate order in writing stating the amount due from him. The order of the Registrar under this sub-section shall be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the order had been a judgement of a civil court.

Part V : Privileges of Registered Societies

28. Act of Cooperative Societies not to be Invalidated by Certain Defects

No act of a cooperative society or any committee or any officer shall be deemed to be invalid by reason only of the existence of any defect in the constitution of the society or the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment.

29. Disposal of Produce to or Through a Registered Society

(1) A registered society which has as one of its objects the disposal of any article which is the produce of agriculture or animal husbandry or any other industry, may provide in its bye-laws or may contract with its members:

- (a) that every such member, who produces any such article shall dispose of the whole or of any specified amount, proportion or description thereof to or through the society; and
- (b) that any member, who is proved or adjudged to be guilty of a breach of the bye-laws or contract, shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by its bye-laws.

(2) A contract made by a registered society under sub-section (1) shall create in favour of the society a first charge upon all articles, whether produced or about to be produced, to which the contract relates.

(3) In any legal proceedings arising out of a contract under sub-section (1), it shall not be a defence that the contract is in restraint of trade.

(4) A member of a registered society shall be deemed not to have contravened any bye-law of the society which requires him to deliver any produce to the society, if the failure to deliver such produce was due to the fact that he had, prior to becoming a member of the society, contracted to delivery the produce to some other person.

(5) Every person who applies for membership of a registered society shall, if required so to do, disclose in his application particulars of all contracts made by him for the delivery of any produce to any other person.

30. Creation of Charges in favour of Registered Societies

(1) Subject to any prior claim of the Government on the property of the debtor and to the lien or claim of a landlord in respect of rent or any money recoverable as rent and in the case of immovable property to any prior registered charge thereon:

- (a) any debt or outstanding demand payable to a registered society by any member or past member shall be a first charge on all crops or other agricultural produce, felled timber or other forest produce, marine produce, (fresh-water and salt-water), live-stock, fodder, agricultural, industrial and fishing implements, plant, machinery, boats, tackle and nets, raw materials, stock-in-trade and generally all produce of labour and things used in connection with production raised, purchased or produced in whole or in part from any loan whether in money or in goods given him by the society; provided that nothing herein contained shall affect the claim of any *bona fide* purchaser or transferee without notice;
- (b) any outstanding demands or dues payable to a registered housing society by any member or past member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society shall be a first charge upon his interest in the immovable property of the society.

(2) No person shall transfer any property which is subject to a charge under sub-section (1) except with the previous permission in writing of the cooperative society which holds the charge.

(3) Notwithstanding anything contained in any law for the time being in force, any transfer of property made in contravention of the provisions of sub-section (2) shall be void.

31. Charge and Set-Off in Respect of Shares or other interests of Members

A registered society shall have a charge upon the shares or other interests in the capital and on the deposits of a member or past member or deceased member and upon any dividend, bonus or profit payable to a member or past member or to the estate of a deceased member in respect of any debt due to the society from such member or past member or estate, and may set off any sum credited or

payable to a member or past member or estate of a deceased member in or towards payment of any such debt.

32. Amalgamation and Transfer of Societies

(1) Any two or more registered societies may, by a resolution passed by a three-fourths majority of the members present at a special general meeting of each such society held for the purpose, amalgamate as a single society; provided that each member has had 15 clear days written notice of the resolution and the date of the meeting. Such an amalgamation may be effected without a dissolution, or a division of the funds, of the amalgamating societies. Such amalgamated society may apply for registration under Section 7 of this Law and the Registrar may register such society under Section 8 of this Law. The registration of such society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

(2) Any registered society may by a resolution passed in accordance with the procedure laid down in sub-section (1) transfer its assets and liabilities to any other registered society which is prepared to accept them:

Provided that when any such amalgamation or transfer of assets and liabilities involves the transfer of its liabilities by any society to any other society, it will not be made without giving three month's notice to the creditors of both or all such societies;

Provided further that if a creditor or creditors of any of the societies concerned objects or object to such amalgamation or transfer of assets and liabilities and gives or give written notice to that effect to the society or societies concerned one month before the date fixed for such amalgamation or transfer, the amalgamation or transfer shall not be made until the dues of such creditor or creditors have been satisfied.

33. Division of Societies

(1) Any registered society may, by a resolution passed by a three-fourths majority of the members present at a

special general meeting of the society held for the purpose, resolve to divide itself into two or more societies, provided that each member has had 15 clear days' written notice of the resolution and the date of the meeting. The resolution (hereinafter in this section referred to as a preliminary resolution) shall contain proposals for the division of the assets and liabilities of the society among the new societies in which it is proposed to divide it and may prescribe the area of operation of, and specify the members who will constitute, each of the new societies.

(2) A copy of the preliminary resolution shall be sent to all the members and creditors of the society. A notice of the resolution shall also be given to all other persons whose interests will be affected by the division of the society.

(3) Any member of the society may, notwithstanding any bye-law to the contrary, by notice given to the society within a period of three months from his receipt of the resolution, intimate his intention not to become a member of any of the new societies.

(4) Any creditor of the society may, notwithstanding any agreement to the contrary, by notice given to the society within the said period intimate his intention to demand a return of any amount due to him.

(5) Any other person whose interest will be affected by the division may by notice given to the society object to the division unless his claim is satisfied.

(6) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of the society and of the notice by other persons given under sub-section (2), another special general meeting of the society, of which at least 15 clear days' notice shall be given to its members, shall be convened for considering the preliminary resolution and the intentions and objections made under sub-sections (3), (4) and (5) if any. If, at such meeting the preliminary resolution is confirmed by a resolution passed by a majority of not less than two-thirds of the members present, either without changes or with such changes as in the opinion of the Registrar are not material, he may, subject to the provisions of sub-section (9) and

Section 7, register the new societies and the bye-laws thereof. On such registration, the registration of the old society shall be deemed to have been cancelled and the society shall be deemed to be dissolved from the date of such cancellation.

(7) The opinion of the Registrar as to whether the changes made in the preliminary resolution are or are not material shall be final and no appeal shall lie therefrom.

(8) At the special general meeting referred to in sub-section (6) provision shall be made by another resolution for

- (i) repayment of the share capital of all the members who have given notice under sub-section (3);
- (ii) satisfaction of the claims of all the creditors who have given notice under sub-section (4);
- (iii) satisfaction of the claims of such of the other persons who have given notice under sub-section (5) as the Registrar decides or securing their claims in such manner as the Registrar directs;

Provided that no member or creditor or other person shall be entitled to such repayment of satisfaction until the preliminary resolution is confirmed as provided in sub-section (6).

(9) If within such time as the Registrar considers reasonable the share capital of the members referred to in sub-section (8) is not repaid or the claims of the creditors referred to in that sub-section are not satisfied, or the claims of the other persons are not satisfied or secured as provided in clause (iii) of sub-section (8), the Registrar may refuse to register the new societies.

(10) The Registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society in the new societies in the manner specified in the preliminary resolution as confirmed under sub-section (6).

34. Conversion of Company into a Cooperative Society

(1) A company registered under the Companies Acts

may, by a special resolution, determine to convert itself into a registered society.

(2) A resolution for the conversion of a company into a registered society shall be accompanied by a copy of the bye-laws of the society therein referred to, and shall appoint seven persons, members of the company, who, together with the secretary shall sign the bye-laws, and who may either be authorised to accept any alterations made by the Registrar therein, without further consulting the company, or may be required to lay all such alterations before the company in general meeting for acceptance as the resolution may direct.

(3) With the bye-laws a copy of the special resolution for conversion of the company into a registered society shall be sent to the Registrar, who shall thereupon proceed to deal with the resolution as if it were an application for registration under Section 7 of this Law.

(4) A copy of the resolution for the conversion of the company into a registered society under the seal of the company, together with the certificate of registration issued by the Registrar, shall be sent for registration to the office of the Registrar of Companies, and upon the registration of such resolution and certificate, the conversion shall take effect.

(5) Upon the conversion of a company into a registered society the registration of the company under the Companies Act shall become void, and shall be cancelled by the Registrar of Companies; but the registration of a company as a cooperative society shall not affect any right or claim for the time being subsisting in favour of or against the company, or any penalty for the time being incurred by such company, and, for the purpose of enforcing any such right, claim, or penalty, the society may sue, or be sued, and proceed, or be proceeded against, in the same manner as if the company had not been registered as a cooperative society. And every such right or claim, and the liability to such penalty, shall have priority as against the property of such society over all other rights or claims against or liabilities of the cooperative society and every right or claim in

favour of the company shall become due to the cooperative society.

Part VI : Property and Funds of Registered Societies

35. Acquisition of Lands and Buildings

(1) A registered society may acquire and hold lands or buildings for any purpose connected with its objects.

(2) No part of the funds of a registered society shall be used for the acquisition of lands, buildings, plant or machinery without the previous approval of the general meeting of the society or as otherwise laid down in its bye-laws.

(3) A registered society may sell, transfer, gift or otherwise dispose of lands, buildings, plant or machinery held by it only with the prior approval of the general meeting of the society.

36. Loans Made by a Registered Society

(1) A registered society shall not, except as provided in Section 39, make any loan to any person other than a member:

Provided that, with the consent of the Registrar, a registered society may make loans to another registered society.

(2) Except with the permission of the Registrar, a registered society, shall not lend money on the security of any movable property other than produce or goods in which the society is authorised to deal.

(3) The Registrar may, by general or special order, prohibit or restrict the lending of money on mortgage of any description of immovable property by any registered society.

37. Debentures and Financial Assistance

(1) The Registrar may regulate the manner in which a registered society may raise funds by the issue of debentures.

(2) The Registrar may prescribe the conditions to be observed by a registered society in applying for financial assistance from the Government.

38. Restrictions on other Transactions with Non-Members

Save as provided in Sections 36 and 37, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions as may be prescribed by the Registrar.

39. Investment of Funds

A registered society may invest or deposit its funds:

- (a) in the Post Office Savings Bank, or with any bank or person carrying on the business of banking approved for this purpose by the Registrar, or
- (b) in any securities issued or guaranteed by the Government, or
- (c) with any other registered society approved for this purpose by the Registrar, or
- (d) in any other mode approved by the Registrar.

40. Division of Funds and Disposal of Trading Surplus

No part of the funds other than the net trading surplus of a registered society shall be paid by way of bonus or dividend or otherwise distributed among its members:

Provided that a member may be paid remuneration on such scale as may be laid down by the bye-laws for any services rendered by him to the society.

Provided further that, in the case of a society with unlimited liability, no distribution of profits shall be made without the general or special order of the Registrar.

41. Employees' Provident Fund

(1) A cooperative society may establish a Contributory Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the bye-laws of the society.

(2) A Contributory Provident Fund established by a registered society under sub-section (1):

- (a) shall not be used in the business of the society,
- (b) shall not form part of the assets of the society; and
- (c) shall not be liable to attachment or be subject to any other process of any court or other authority.

Part VII : Audit, Inspection and Inquiry

42. Audit

(1) Every registered society shall submit to the Registrar once at least in every year a statement of accounts and a balance sheet audited by a person or society authorised for the purpose by the Registrar by general or special order in writing.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the registered society.

(3) The Registrar and every person appointed to audit the accounts of a registered society shall have power when necessary:

- (a) to summon at the time of this audit any or all officers, agents, servants and members, past and present, of the society who he has reason to believe can give material information in regard to any transactions of the society or the management of its affairs; or
- (b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to the society, by the officer, agent, servant or member believed or deemed by the Registrar or the auditor to be in possession of such book, document, cash or security.

(4) The Registrar shall have power to prescribe the charges payable to the auditor for the audit of the accounts of a registered society.

43. Power of Registrar to Inspect Society's Books Etc.

(1) The Registrar, or any person authorised by general or special order in writing of the Registrar shall at all times have access to all the books, accounts; papers and securities, of a registered society, and shall be entitled to inspect the cash in hand and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

(2) The Registrar and every person authorised by him to audit the accounts of a registered society shall be deemed to be public servants within the meaning of the Penal Code.

44. Inspection and Inquiry

(1) The Registrar may of his own motion, and shall on the application of a majority of the committee, or of not less than one-third of the members of a registered society, hold an inquiry or direct some persons authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society; and all officers, agents, servants and members of the society, past and present, shall furnish such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorised by him require.

(2) The Registrar shall, on the application of a creditor of the registered society, inspect or direct some person authorised by him in writing in this behalf to inspect the books of the society, if the applicant:

- (a) proves that an ascertained sum of money is then due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
- (b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any such inquiry or inspection to the society into whose affairs enquiry has been held and to the creditor or whose application such inspection has been made.

(4) Where an inquiry is held under sub-section (1) or an inspection is made under sub-section (2), the Registrar may apportion the costs or such part of the costs, as he may think right, between the registered society, the members demanding an inquiry, the officers or former officers of the society and the creditor, if any, on whose application the inspection has been made.

(5) Any sum awarded by way of costs against any society or person under this section may be recovered, on application to a magistrate's court having jurisdiction in the place where the registered office of the society is situated or the person resides or carries on business for the time being, in like manner as a fine imposed by the court.

45. Registrar may Require Bank to Produce any Information Etc.

Notwithstanding anything in any other written law, the Registrar may, where he considers it necessary to do so, require any bank:

- (a) to furnish any information regarding the transactions of any registered society with the bank;
- (b) to produce a copy showing the account of the society with the bank from the ledger kept by the bank, or
- (c) to produce any cheques paid to the credit of the society or endorsed by the society.

46. Communication of Defect in the Working of Registered Societies

(1) If any audit, inquiry or inspection made under this Law discloses any defects in the working of a registered society, the Registrar may bring such defects to the notice of the society and if the society is affiliated to another registered society also to the notice of that other society.

(2) The Registrar may make an order directing the society or its officers to take such action as may be specified in the order within the time mentioned therein to remedy the defects disclosed in the audit, inquiry or inspection.

47. Returns to be made by Societies

The Registrar may prescribe the returns to be submitted by registered societies to the Registrar, and the persons by whom and the form in which the same are to be made.

Part VIII : Dissolution

48. Dissolution

(1) If the Registrar, or a Deputy or Assistant Registrar on whom the powers of the Registrar in terms of Section 44 have been conferred under Section 3(2), holds an inquiry or makes an inspection under Section 44, or on receipt of an application made by three-fourths of the members of a registered society, and is of opinion that the society ought to be dissolved, he may make an order cancelling the registration of the society.

(2) Any member of a registered society may, within two months from the date of an order under sub-section (1), appeal from such order to the Minister, who may, within three months of the date of such appeal, confirm the order or uphold the appeal. If the Minister confirms such order it shall take effect on the date of the Minister's order confirming the order of the Registrar, Deputy or Assistant Registrar under sub-section (1), and this date shall be the date of dissolution; and if the appeal is upheld the said order shall stand revoked with effect from the date of the Minister's order upholding the appeal:

Provided that if no order is made by the Minister on such appeal within three months of the date of the appeal, the order under sub-section (1) shall take effect on the date of the expiry of the said three months, and this date shall be the date of dissolution.

(3) Where no appeal is presented within two months

from the making of an order cancelling the registration of a society, the order shall take effect on the date of the expiry of that period and this date shall be the date of dissolution.

(4) No registered society shall be wound up save by an order of the Registrar.

49. Cancellation of Registration of Society due to Lack of Membership

The Registrar may, by order in writing, cancel the registration of any registered society other than a society which includes among its members one or more registered societies, if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten. Every such order shall take effect on the date thereof.

50. Effect of Cancellation of Registration

Where the registration of a registered society is cancelled by an order under Section 48, or under Section 49, the society shall cease to exist as a corporate body from the date of dissolution.

Provided that any privileges conferred on the society by or under this Law shall be deemed to be vested in any liquidator appointed for that society by the Registrar.

51. Liquidation after Cancellation of Registration of Society

(1) Where the registration of a society is cancelled under Section 48 or 49 the Registrar shall appoint one or more persons to be, subject to his direction and control, the liquidator or liquidators of the society.

(2) Where the Registrar, Deputy or Assistant Registrar makes an order cancelling the registration of a society under Section 48(1), he may order the committee, officers and employees of the society to hand over the books, documents and assets of the society immediately to the liquidator appointed under sub-section (1) for their safe custody and protection until the date of revocation under Section 42(2) of the order cancelling the registration or the date of dissolution of the society.

(3) Where any order made under sub-section (2) is not complied with the liquidator may apply to the magistrate, within whose jurisdiction the society functions, for securing the books, documents and assets of the society.

52. Liquidator's Powers

(1) A liquidator appointed under Section 51 above shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under Section 53, have power with effect from the date of dissolution to:

- (a) take possession of the books, documents and assets of the society immediately upon the cancellation of the registration of a registered society and hold them in his custody provided that if the order of cancellation is revoked he shall hand them back immediately to the officer or officers from whom he received them;
- (b) carry on the business of the society so far as may be necessary for winding it up beneficially; provided that nothing herein contained shall entitle the liquidator of a credit society to issue any loan;
- (c) call such general meetings of members as may be necessary for the proper conduct of the liquidation;
- (d) determine from time to time the contribution to be made by members and past members or by the estates of deceased members of the society to its assets;
- (e) sell the property of the society;
- (f) appoint a day by proclamation or notice by which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved such claims;
- (g) decide any question of priority which arises between creditors;
- (h) refer disputes to arbitration under Section 59 and defend suits and other legal proceedings on behalf of the society by his name or office:

- (i) decide by what persons and in what proportions the costs of liquidation are to be borne;
- (j) give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding-up the society;
- (k) compromise any claims by or against the society provided the sanction of the Registrar has first been obtained; and
- (l) arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar;

and all decisions and directions under this sub-section shall be deemed to be orders for the purposes of Sections 54 and 58.

(2) Subject to such directions as may be given by the Registrar in this behalf, any liquidator appointed under this Law shall, in so far as such powers are necessary for carrying out the purposes of this Section, have power to summon and enforce the attendance of parties and witnesses and to compel the production of documents by the same means and (so far as may be) in the manner as is provided in the case of a civil court.

53. Power of Registrar to control Liquidation

A liquidator shall exercise his powers subject to the control and revision of the Registrar, who may:

- (a) rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) remove a liquidator from office;
- (c) call for all books, documents and assets of the society;
- (d) by order in writing limit the powers of a liquidator under Section 52;
- (e) require accounts to be rendered to him by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;

- (g) make an order for the remuneration of the liquidators;
- (h) direct the liquidator in respect of matters relating to the summoning and enforcing the attendance of parties and witnesses and compelling the production of documents for the purposes of Section 52(2);
- (i) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the award of the arbitrator;
- (j) prescribe the procedure to be followed by a liquidator;
- (k) prescribe the cases in which appeals shall lie from the orders of a liquidator.

54. Enforcement of Order

(1) The award of an arbitrator on any matter referred to him under Section 53 shall be binding upon the parties and shall be enforceable in like manner as an order made by the Registrar under that Section.

(2) An order made by a liquidator by the Registrar under Section 52 or 53 shall be enforced by any civil court having jurisdiction over the place where registered office of the society is or was situated in like manner as a decree of that court.

55. Limitation of the Jurisdiction of the Civil Court

Save in so far as is hereinbefore expressly provided, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a registered society under this Law.

56. Closure of Liquidation

(1) In the liquidation of a society whose registration has been cancelled, the funds, including the reserve fund, shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, provided the bye-laws of the

society permit, to the payment of a dividend at a rate not exceeding six per cent per annum for any period for which no disposal of trading surplus was made.

(2) When the liquidation of a society has been closed and any creditor of that society has not claimed or received what is due to him under the scheme of distribution, notice of the closing of the liquidation shall be published in the Gazette; and, all claims against the funds of the society liquidated shall be prescribed when twelve months have elapsed from the date of the publication of the Gazette notice.

(3) Any surplus remaining after the application of the funds to the purposes specified in sub-section (1) and the payment of any claims for which an action is instituted under sub-section (2) shall be paid to the federal society to which the liquidated society was federated.

Part IX : Surcharge and Attachment

57. Powers of Registrar to Surcharge Officers Etc. of a Registered Society

(1) Where in the course of an audit under Section 42, or an inquiry or inspection under Section 44 or the winding up of a society whose registration has been cancelled it appears that any person who has taken part in the organisation or management of such society or any past or present officer of the society has misapplied or retained or becomes liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society the Registrar may examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just. Such order shall be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the order had been a judgement of a civil court.

(2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

58. Attachment of Property

Where the Registrar is satisfied that any person with intent to defraud or delay the execution of any order or award which may be made against him under Sections 27, 52, 53, 57 or 59 is about to dispose of the whole or any part of his property to the detriment of the society's interests, the Registrar may, unless adequate security is furnished, order the conditional attachment of such property and such attachment shall have the same effect as if made by a competent court.

Part X : Disputes

59. Settlements of Disputes

(1) If any dispute regarding the affairs of a registered society arises:

- (a) among members, past members and person claiming through members, past members and deceased members; or
- (b) between a member, past member or persons claiming through a member, past member or deceased member, and the society, its committee, or any officer of the society; or
- (c) between the society or its committee and any officer of the society; or
- (d) between the society and any other registered society; such dispute may be referred to the Registrar for decision by the parties by mutual consent.

A claim by a registered society for any debt or demand due to it from a member past member or the nominee, heir or legal representative of a deceased member, whether admitted or not, shall be deemed to be a dispute touching the business of the society within the meaning of this subsection.

(2) The Registrar may, on receipt of a reference under sub-section (1):

- (a) decide the dispute himself and make an award, or
- (b) refer it for disposal to an arbitrator or arbitrators.

(3) Any party aggrieved by the award of the arbitrator or arbitrators may appeal therefrom to the Registrar within such period as may be prescribed by him.

(4) An award of the Registrar under sub-section (2) or in appeal under sub-section (3) shall be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the decision had been a judgement of a civil court.

(5) The award of the arbitrator or arbitrators under sub-section (2) shall, if no appeal is preferred to the Registrar under sub-section (3), or if any such appeal is abandoned or withdrawn, be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the award had been a judgement of a civil court.

(6) The Government may prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or duly appointed arbitrator or arbitrators.

(7) The Government may prescribe the forms to be used, the fees to be paid, the procedure to be observed and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this law.

Part XI : Miscellaneous

60. Recovery of Sums Due to Government

All sums due from a registered society or from an officer or member or past member of a registered society as such to the government may be recovered in the manner provided for the recovery of debts due to the government under the law for the time being in force.

61. Power to Exempt from Stamp Duty and Registration Fee

(1) The Government by notification in the Gazette may, in the case of any registered society or class of registered societies, remit:

- (a) the stamp duty with which, under any law for the time being in force, instruments executed by, on behalf of or in favour of a registered society, or by an officer or member, and relating to the business of such society, or any class of such instruments are respectively chargeable; or
- (b) any fee payable under the law of registration for the time being in force.

(2) A notification exempting any registered society from the fees referred to in paragraph (b) of sub-section (1) may provide for the withdrawal of such exemption.

62. Prohibition of the word "Cooperative"

(1) No person other than a registered society shall trade or carry on business under any name or title of which the word "Cooperative" is part without the sanction of the Registrar. Provided that nothing in this Section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the commencement of this Law.

(2) Any person who contravenes the provisions of this Section shall be guilty of an offence and shall be liable on summary conviction to a fine and not exceeding.....and in the case of a continuing offence to a further fine not exceeding.....for each day during which the offence continues.

63. Company Law Not to Apply

The provisions of the Company Law shall not apply to societies registered under this Law.

64. Savings for Existing Societies

(1) Any society registered or deemed to be registered under any enactment repealed by this Law, shall be deemed

to be registered under this Law, and the bye-laws of such society shall, so far as they are not inconsistent with the express provision of this Law, continue in force until altered or rescinded.

(2) All appointments and orders made, notifications and notices issued, and suits and other proceedings instituted or deemed to have been made, issued or instituted under any enactment repealed by this Law, shall so far as may be deemed to have been made, issued and instituted under this Law.

65. Punishment for Fraud or Misappropriation

If any person obtains possession by false representation or imposition of any property of a society, or having the same in his possession withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the bye-laws of the society, and authorised by this Law, he shall on the complaint of the society any member authorised therefor by the committee thereof, the Registrar, Deputy Registrar or Assistant Registrar, be liable, on summary conviction by a court, to a fine not exceedingwith costs, and to be ordered to deliver up all such property or to repay all moneys applied improperly, and in default of such delivery or repayment or of the payment of such fine to be imprisoned for any period not exceeding three months, but nothing in this Section shall prevent any such person, from being proceeded against for an indictable offence if not previously convicted of the same offence under this Law.

66. Penalty for Non-Compliance with Law

Where any person:

- (a) fails to give any notice, send any returns or documents or do or allow to be done any act or thing which is required by this Law;
- (b) wilfully refuses or omits to do any act or to furnish information required for the purposes of this Law by the Registrar or other authorised person;

- (c) wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Law;
- (d) does anything forbidden by this Law;
- (e) wilfully furnishes false or insufficient information or returns;

such person unless he is proved to have been ignorant of or to have attempted to prevent the commission of the offence shall be liable to a fine not exceeding . . . and every such offence if continued shall constitute a new offence in every week through which the default continues.

67. Cognizance of Offences

No court inferior to that of a Magistrate of the first class shall try any offence under this Law.

68. Indemnity

No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority in respect of anything in good faith done or purporting to have been done under this Law.

69. Repeal

The Cooperative Societies Law, 19 . . . is hereby repealed.

APPENDIX-B

The Author's Commentary on "A Model Cooperative Societies Law"*

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 of the 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."

A Cooperative Law that is inconsistent with the Co-

*Presented by Mr. P.E. Weeraman to the Seminar on "Cooperative Law and Development" held in Accra, Ghana, under the auspices of the Ghana Cooperative Council Ltd., 18-30 July 1976.

operative 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.

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.

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 move-

ment. 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.

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.

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.

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 answerable 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 responsibility 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 mismanagement 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.

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.

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 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”.**

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, on 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.

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 byelaws, 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.

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. *Ipsa 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 Bye-laws. The difference is that the provisions of an Act are imposed on a society by the State, whereas the bye-laws are self-imposed. So all self-regulatory matters should be left out of the law and provided for in the Bye-laws. The Registrar can prescribe these matters for inclusion in the Bye-laws (Section 11 of the Model).

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 byelaws of cooperative societies.

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 character 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 education 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."

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 Co-operative 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, bye-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 cooperative development.

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 see, 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

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 bye-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 Co-operative 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 reformulated 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" more-over 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 needs 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 "Co-operative 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 "Co-operative 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.

Government 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 have given 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 compu-

sory 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.

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.

THE INTERNATIONAL COOPERATIVE ALLIANCE

is one of the oldest of non-governmental international organisations. It is a world-wide confederation of cooperative organisations of all types. Founded by the International Cooperative Congress held in London in 1895, it now has affiliates in 72 countries, serving over 500 million members at the primary level. It is the only international organisation entirely and exclusively dedicated to the promotion of cooperation in all parts of the world.

Besides the Head Office of the ICA, which is in Geneva, there are three regional offices, viz., the Regional Office for South-East Asia, New Delhi, India; the Regional Office for East and Central Africa, Moshi, Tanzania and the Regional Office for West Africa, Abidjan, Ivory Coast. The Regional Office in New Delhi was started in 1960, the office in Moshi in 1968, and the West African Regional Office in 1981.

The main tasks of the Regional Office are to develop the general activities of the Alliance in the Region, to act as a link between the ICA and its affiliated national movements, to represent the Alliance in its consultative relations with the regional establishments of the United Nations and other international organisations, to promote economic relations amongst member-movements, including trading across national boundaries, to organise and conduct technical assistance, to conduct courses, seminars and conferences, surveys and research, to bring out publications on cooperative and allied subjects and to support and supplement the educational activities of national cooperative movements. The Regional Office and Education Centre now operates on behalf of 17 countries, i.e. Afghanistan, Australia, Bangladesh, China, India, Indonesia, Iran, Japan, Republic of Korea, Democratic Republic of Korea, Malaysia, Nepal, Pakistan, Philippines, Singapore, Sri Lanka and Thailand.

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