

CO-OPERATIVE LEGISLATION IN GLOBAL & INDIAN CONTEXT

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Abstract

This paper commences with the role of cooperative law in a global context. It gives a brief history of cooperative laws in India. It further explains the institutional framework of different cooperatives and the reform of the Cooperative Acts. The paper evaluates cooperative legislation by reviewing the prevailing regulatory landscape, which includes provisions of cooperative laws related to the acts of cooperative societies—traditional, liberal, and multi-state ones. The paper concludes with issues and concerns about the efficacy of legal provisions in promoting cooperatives, using technology for registration, managing business in cooperatives, and ensuring strategic partnerships with other community-based organisations in the context of recent changes in the economy.

Keywords: Co-operative law, Strategic Partnership and Co-operative societies.

Role of Cooperative Law in a Global Context

Laws, or acts, are well-defined guidelines on how to act and how not to act in the respective fields. These guidelines set the boundary for any course of action. Cooperative laws or acts catalysed cooperative development and its anticipated outcomes and impacts. Historically, the roots of comprehensive cooperative laws were sown by the theory of commons of the German law

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historian Otto von Gierke, who created the concept of a common and cooperative German law (Das Deutsche Genossenschaftsrecht), which was different from the individualistic Roman law. The German cooperative law of 1873 proved instrumental in developing cooperatives, particularly financial cooperatives, in Germany, which led to the formation of an international alliance of cooperatives with the participation of consumer, banking, and worker cooperatives in 1895.

In the United Nations (UN) General Assembly resolution of December 19th, 2001, "*Cooperatives in Social Development*," and in the UN guidelines, it was proposed to create an ecosystem for cooperative development. The International Labour Organisation's (ILO) recommendation 127 (1966) works only for developing countries. In 2002, the ILO promoted cooperative recommendations worldwide for all types of cooperatives. Later, these recommendations become the first International Labour Standard in the cooperative sector, part of public international law. It was envisaged that all member countries should apply these and modify existing regulations accordingly. It was also suggested that regulators and policymakers should organise stakeholder (like cooperative organisations, worker unions, and employer unions) consultations for any relative policy formulation.

In November 2013, the apex international cooperative organisation, the International Cooperatives Alliance (ICA), reconstituted a Committee on Cooperative Law to give independent advice on cooperative law to the ICA. The Committee includes a chairperson and two legal experts from each ICA region (Africa, Asia Pacific, Europe, and the Americas). The Cooperative Law Committee (CLC) studied all sources of laws, like statutes and bylaws of different cooperatives, decisions of the courts, and national and international laws. In cooperative law, CLC includes all related laws that facilitate cooperative enterprise and its functioning.

The cooperative law can be defined as the organisational law of various cooperative entities, viz., 'cooperative societies', 'cooperative unions', 'cooperative federations', or simply 'cooperatives' depending on their

jurisdiction. Cooperatives can also be impelled by the provisions and laws on land, labor, property the various taxes, and those related to banking.

In the United Kingdom, some cooperative-like entities existed before the Rochdale Society. In 1844, with new rules and regulations, the Rochdale Pioneers formed a society and initiated a modern cooperative movement in Lancashire, England. ICA was constituted in 1895 and articulates cooperative values and principles. Further modifications came in 1937, 1966, and finally, in 1995, an international statement came out. It was adopted by ILO R. 193 and made a part of international law.

Some countries, like Finland, allow the law to establish a cooperative with only one member as the company. However, it does not happen in reality. Finland remains a robust ecosystem for cooperatives. Cooperatives are member-owned, member-controlled, and member-benefitted enterprises. Cooperative law allows cooperatives to specify requirements in their bylaws that maintain the status of their respective members. It works as a safeguard for the cooperative spirit. Moreover, strong cooperative policies complement the legislation and regulations, and pioneering cooperative legislation specific to sectors and themes has been enacted in cooperatively advanced economies. A key example is the Marcora Law of Italy, which facilitates worker buy-outs, and Belgium, which recently re-empowered the National Cooperative Council, set up by legislation in 1955, to certify genuine cooperatives, which are enterprises that religiously follow the cooperative values and principles. This move in Belgium has already shown results, where several non-cooperatives registered as cooperatives are revising their statutes. For example, the big four accounting firms are registered as cooperatives in Belgium and will have to revise their status before 2024 to comply with the new law.

Cooperative law gained an international dimension when the International Labour Organisation's Cooperative Unit was formed in 1920, and the first-ever Director General of the ILO was a board member of ICA. It is important to note here that there were two Indians at the inception of the of the Congress of the ICA in 1895. Mr. Krishna Iyer was a student of the Agricultural College in

Madras, and the other was Dadabhoy Naoroji, the first-ever non-British MP to win an election in England. Mr. Iyer rose during the Congress to appreciate the work of cooperative banks in Germany and pleaded with the imperial government to bring credit cooperatives to India and help farmers. Mr. Henry Wolff, the first president of ICA, was also the adviser on cooperatives for the Imperial Government. One might infer that the fusion of their thoughts and bodies during the inception of the ICA facilitated the beginning of cooperative legislation in India in 1904.

Cooperative Economy in India

India's cooperative economy plays a major role, particularly in the rural economy, with 98% coverage of the countryside and membership of about 290 million people, and global cooperative powerhouses such as Brands AMUL, IFFCO, Saraswat Bank, SEWA Federation, etc. 20% are credit cooperatives, and the remaining are non-credit cooperatives, which are engaged in diverse activities and sectors like agriculture, forestry, dairy, fisheries, construction, tourism, transport, service, multipurpose, and so on. Worker-owned cooperatives such as India Coffee House flourished pre-globalisation and are now left wanting an enabling environment to retain their past glory. Cooperatives in India are known to ensure sustainable livelihoods and income for farmers, women, and the poor and work towards empowering the marginalised sections of society in both formal and informal economies.

The cooperative legal framework, including the 2002 National Policy on Cooperatives, has remained quite forward-looking, primarily because of a strong will by the states and union-level governments to develop cooperatives. However, the biggest problem plaguing cooperatives in the country has been excessive politicisation and intervention by political parties in setting up and managing cooperatives. The worse issue is that this tendency is now normalised, which is completely against the fourth cooperative principle of autonomy and independence.

Cooperative Legislation in India

Historical Background

In the past, to protect poor rural farmers from money lenders, credit cooperatives were promoted. The model is based on the Raiffeisen cooperative bank model. In 1903, the first credit cooperative society was established and registered under the Friendly Societies Act of the British Government. The Cooperative Credit Societies Act of India (1904), which was an all-India Act, was introduced and was modelled on the English Friendly Societies Act (1896). The 1904 Act only provided for the formation of credit societies and not production, distribution, or other activities cooperatives could take up. There was no provision for setting up federal institutions. The Cooperative Societies Act II of 1912 was passed to cater to the need for organizing other types of cooperative societies. It forms the basic structure for cooperative legislation in India. Cooperation was introduced as a state subject in 1919. The first state government to pass its own act was the "Bombay Provincial Cooperative Societies Act" in 1925. The provincial governments of Madras and Bengal also enacted their own laws to govern cooperative societies, and these acts widened the scope of the movement.

The "All India Cooperative Institutes Association" was established in 1929 as the national apex organisation for cooperatives in India. In 1961, it was renamed the National Co-operative Union of India (NCUI). State partnership in cooperative institutions was suggested by the All India Rural Credit Survey Committee (1954), as it observed that "*cooperation has failed but it must succeed.*" The central government placed a lot of focus on cooperatives in India's mixed-economy model, where cooperatives were recognised as the principal agency for democratic economic planning until the Eighth Five-Year Plan (1962–1991). Since 1962, the Registrar of Cooperatives has been the custodian of cooperatives.

In 1942, the Central Government passed the Multi-Unit Cooperative Societies Act to remove the duplication of provisions of different acts for some

cooperative societies that commenced their operations in other states. The regulation of the affairs of a society was to be according to the provisions of the Cooperative Societies Act of that state where the cooperative society had its principal business. Many different cooperative laws govern multi-unit cooperative societies that may have the same objects, thereby creating confusion. In different sectors in different states, numerous national-level cooperative societies were set up. Due to these scenarios, the national government passed self-contained, comprehensive central legislation, i.e., the *“Multi-State Cooperative Societies Act 1984.”*

Various initiatives were taken to bring autonomy and independence to the cooperative movement during the mid-1990s. To encourage autonomous cooperatives that were not subject to government control or received government patronage, the Mutually Aided Societies Act of 1995 was introduced. First, Andhra Pradesh adopted it. In 2002, the central government formulated the National Cooperative Policy. The policy empowers cooperatives with the oversight function of the government to ensure fair elections, audits, and security of the interests of members. Some states, viz., Karnataka and Kerala, also created their own state cooperative policy to encourage cooperative movement autonomy.

In 2002, the Central Government introduced the concept of a producer company. It allows the creation of legal business entities by its primary stakeholders. It can enable them to have better access to national and international markets so that they are encouraged to form a cooperative economic enterprise or convert an existing cooperative enterprise into a private company. This was made part of the Indian Companies Act 1956, later amended in 2013.

In 2018, the Yuva Sahkar Scheme (youth cooperative scheme) was launched by the NCDC to encourage young entrepreneurs, where youth can avail of financial assistance for up to 80% of the project's cost. In 2020, the banking regulation amendment bill was passed in Parliament. The bill indicated that only the cooperative banks are under the Reserve Bank of India (RBI), not the

PACS. This would protect depositors and ensure Coop Bank's transparency and accountability. Thus, the main laws relevant to cooperatives in India are the Cooperative Societies Act 2012, the Multi-State Cooperatives Act 2002, and the Mutually Aided Cooperative Act 1995.

India's National Cooperative Legal Framework

Constitutionally, cooperatives are a state subject in India, i.e., they come under the jurisdiction of the state government. Only the multi-state cooperatives come under the Union list, as there are some societies whose area of operation is in more than one state. For example, along the border of Karnataka and Maharashtra, there are sugar mills procuring cane from both states.

The Central Act governs national cooperatives and cooperatives operating in more than one state. If the cooperative is working in a single state, then the state-specific cooperative societies act applies.

Under the 97th Constitution Amendment Act 2011, India upholds the right to form cooperatives as a fundamental right of every citizen by including it as a right to freedom under Article 19(1). Article 43(B) inserted a new Directive Principle of State Policy (DDPSP) on the promotion of cooperative societies.

This gives tremendous energy to the movement and the legislature to explore the best ways to create an enabling legal and policy environment for cooperatives. Furthermore, the Constitution has also nominated co-operators to the membership of legislative councils.

In several countries, there is sector-specific legislation related to cooperatives. However, in India, *a single law applies to various types of cooperatives*. Therefore, whenever the state or central legislation changes, all respective cooperatives may be affected. Thus, in the 29 states, respective cooperatives are governed and regulated through their state laws. The state government regulates all concerns of the cooperative within the state. Regarding the state-

co-operative relationship in India, it is based on mutual interest, where cooperatives serve as government agents for the disbursal of credit to food under PDS or any service sponsored by the government, and cooperatives for their survival need financial support and patronage business. However, this, in turn, led to control and political interference.

Financial Cooperatives: In India, a three-tier short-term credit system through cooperatives ensured credit linkages in agriculture and allied sectors in rural areas. The lowest tier of the short-term cooperative credit structure is Primary Agricultural Credit Societies (PACS), which are outside the jurisdiction of the Banking Regulation Act 1949 and facilitate credit at the village level. At the district level, Central Cooperative Banks (351DCCBs) and at the state level, State Cooperative Banks (34StCBs) are registered under the State Cooperative Societies Act and controlled by RBI, facilitating credit to the farmers. Under Section 35 of the Banking Regulation Act, delegates powers to the National Bank for Agricultural and Rural Development (NABARD) for assessing the state and central cooperative banks. There were 97,006 rural co-operative banks in March 2020, including both state cooperative banks at the state level, DCCBs at the district level, and PACs, i.e., primary agricultural credit societies, at the village level. To deal with duality of control over cooperative banks, the legislative steps undertaken through the Banking Regulation (Amendment) Act, 2020 undertook legislative measures that brought various functions of cooperative banks related to governance, audit, amalgamation, and winding up under the Reserve Bank of India.

The Primary Cooperative Banks (PCBs), also known as Urban Cooperative Banks (1534UCBs), fulfil the financial requirements in urban and semi-urban areas. If the PCBs/UCBs are working only in a state that is registered under the State Cooperative Societies Act, otherwise, they are registered under the Multi-State Cooperative Societies Act 2002 if they operate in more than one state. Recently, in the Lok Sabha on December 7th, 2022, there was the introduction of the Multi-State Co-operative Societies (Amendment) Bill, 2022, aiming at revamping the act that was enacted 20 years ago, i.e., the Multi-State Co-operative Societies Act 2002. Under the amended bill, the Co-operative

Election Authority will be set up by the national government for conducting elections rather than the existing board. It also includes the appointment of one or more cooperative ombudsmen for the redressal of complaints; the merging of existing societies with multistate cooperative societies; and establishing the Co-operative Rehabilitation, Reconstruction, and Development Fund for the revival of sick multi-state cooperative societies.

Present Status of Cooperatives in India

Presently, in India, there are 9 lakh cooperatives out of the 30 lakh cooperatives globally, and 90% of the Indian population is linked to cooperatives in some way. (TOI Dec 30,2022) PACs are very important for the growth of the rural economy as they cover around 70% of country farmers, comprising approximately 13 crore farmers as members of PACs. Twenty-one cooperative federations are working at the national level, 361 at the state level, and 2572 at the district level. These cooperative federations are working in almost all areas of the economy. In the Budget 2023, there has been the initiation of computerising all the operational PACS in the country at a cost of Rs 2516 crores throughout the country. This would lead to more efficiency, transparency, and more effective financial inclusion.

New Ministry of Cooperatives in India: After the first Union Cabinet minister for Cooperation and Panchayati Raj, Mr. Surendra Kumar Dey, in 1953, India has now been blessed in July 2021 with the first dedicated Ministry for Cooperation. The Government of India creates a separate ministry through a separate administrative, legal, and policy framework with the vision of "*Sahkar se Samriddhi (prosperity through cooperatives)* ". It will facilitate and strengthen cooperative societies in the country. In line with the UN guidelines for 2001, a cabinet minister has been appointed to take care of this ministry. Union Home Minister and Minister for Cooperation, Government of India, Mr. Amit Shah, who himself was chairperson of a cooperative bank in Ahmedabad in his politically formative years, said that the cooperative sector would turn India into a \$5 trillion economy (ANI).

To summarise, in 1904, the first Cooperative Societies Act was enacted. The All India Cooperative Societies Act 1912 broadened the scope of the act, leading to the establishment of cooperatives for non-credit activities and the setting up of central and apex societies. Cooperation was transferred to the state governments, which passed their own legislation for cooperatives in the period 1925–32. In the year 1942, the Multi-Unit Cooperative Societies Act was passed. In 1984, it was later modified and given the new name, Multi-State Cooperative Societies Act, for the setting up of cooperatives at the national level and those operating in more than one state. Presently, cooperatives are governed by two main pieces of legislation: The Cooperative Societies Act 2012 and the Multi-State Cooperatives Act 2002.

Issues & Concerns

It is important to analyse whether national legislation supports or hampers cooperative development. A study by ICA evaluated the cooperative friendliness of the legislation and the need to make the legislation more favourable to cooperatives.

The model bylaws of cooperatives are mandatory, and the Registrar of Cooperative Societies follows them. This is significant as the first and perhaps the only opportunity that co-operators get to decide how their cooperative functions are at the stage of developing bye-laws. Most of the battle is lost at this stage by Indian co-operators if they blindly follow the model bylaw prescribed by the state. There are variations in the cooperative societies acts of different states. However, these features make it easy to adopt the act in the state.

More recently, two significant developments warrant acknowledgment in this section. The *first* is the creation of the Union Ministry of Cooperation, with the charge given to political figures in the country. This move can be said to be in line with the 2001 UN Guidelines on the creation of supportive systems for cooperative development, wherein in Paragraph 24, the UN guides that "the most effective organisational location for the responsible entity would be

within a department already charged with broad strategic and coordinating functions, such as the office of a prime minister or president, or that responsible for economic management of development planning." The Union ministry in India is poised to develop the movement in this decade of implementing the Sustainable Development Goals and the economic aspirations of the country, which wishes to increase the Indian economy to the tune of 5 trillion USD.

The *second* development is with regard to the 97th Amendment Act, 2011, parts of which were struck down by the honourable Supreme Court in 2021. It is felt the Supreme Court did not consider Art. 253 of the Constitution of India, which grants the Parliament the authority to pass any law necessary to implement any treaty, agreement, or convention with a country or countries, as well as any decision made at an international conference, association, or other body in India. The Promotion of Cooperatives Recommendation (No. 193) of the ILO is one such agreement that the Union of India duly submitted to Parliament. The 2021 judgement, which struck down part of the 97 Amendment Act on the basis of the Union encroaching on the powers of the States, might have had a different result had the Supreme Court considered the ILO recommendation.

The Union Ministry of Cooperation is striving to facilitate an enabling environment for cooperatives through pragmatic legislation and policy, and it is hoped that the legal framework will usher in a climate of cooperation aimed at the common citizen of India and strategically target areas that were exposed during the COVID-19 pandemic, such as inclusive health, insurance, decent jobs, and humane treatment of interstate migrant workers.

Conclusion

A legal ecosystem in India ensures the autonomy of cooperative societies and, at the same time, makes them accountable. Every state has its own cooperative society. However, there are not several common points, but some states have very liberal and some have very rigid laws. In 2011, the Government of India introduced the 97th Constitutional Amendment Act, which rationalised various aspects. The 97th amendment of the Indian Constitution (2012) recognised the

formation of cooperatives as a fundamental right of Indian citizens. It insists state governments rationalise the existing laws and provide a conducive legal ecosystem for autonomous cooperatives. This amendment has not been fully implemented yet, as some state governments have cited difficulties in its operation. Recently, in 2021, the Supreme Court of India struck down parts of this Constitutional Amendment affecting the exclusive authority of states over cooperatives. The Multi-State Cooperative Societies Act's provisions were not struck down. The new cooperative ministry prioritised the nation-wide cooperative strategy so the producers have access to modern technologies and affordable institutional sources of finance. There should be efficacy of legal provisions in promoting cooperatives, using technology for registration and managing business in cooperatives, and ensuring strategic partnerships with other community-based organisations. Cooperatives have always signified viable solutions, even in cases of market failure. The urgent need is for the newly refocused political and economic attention on cooperatives to transform into a fundamentally people-based movement. It ensures prosperity through people's participation, leading to inclusive development and sustainable growth.

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