

Appendix A

A Short History of Cooperative Law and Regulation Reform in Developing Countries

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In contrast to the bottom-up evolution of cooperatives in Europe and North America, where cooperative laws generally followed and recognized the initial development of a cooperative sector, colonial administrators in many developing countries sought to promote cooperatives from the top-down. Cooperative law in many countries, beginning in India at the start of the 20th century and spreading to countries of varied colonial and ideological backgrounds, created a government bureaucracy to guide and develop, rather than merely grant legal recognition to a cooperative sector. The promotion of cooperatives was, in turn, often linked to colonial development projects; cooperative laws were introduced “as a means to increase the production and quality of crops meant for export, to drag the indigenous population into the monetary economy which would lead to easier taxation and to introduce a system of politically controlled economic activity.”¹

Cooperative Development in India

The birth of the model of state dominated cooperatives can be traced to India’s 1904 Cooperative Credit Societies Act. That Act was loosely based on 19th century British Industrial and Provident Societies Acts, which set legal requirements for cooperative formation and provided for registration through a specialized government entity known as the Registrar of Friendly Societies.² The British registrar for cooperatives functioned much the same as the registrar for companies – recording the formation of cooperatives, receiving annual accounts and reports, and investigating abuses.³ But the Indian role of the registrar went much further, serving as a promoter, regulator, and advisor to cooperatives.⁴

The goal of what became known as the “Classical British Indian” model of cooperative law was to involve the state directly in guiding the cooperative movement as a “friendly adviser.”⁵ The registrar was to offer advice, help craft by-laws, and teach cooperative principles to the develop-

1 HANS-H. MÜNKNER & A. SHAH, INT’L LABOUR OFFICE, CREATING A FAVOURABLE CLIMATE AND CONDITIONS FOR COOPERATIVE DEVELOPMENT IN AFRICA, Working Paper 7 (1993); see also HANS-H. MÜNKNER, *General Report, in* COMPARATIVE STUDY OF THE RELEVANT LAW ON COOPERATIVE SOCIETIES AND OTHER SELF-HELP ORGANIZATIONS IN AFRICA 26 (1986) (describing introduction of cooperatives “to fight against social problems such as dependence of farmers on merchants or money lenders, and to spread the value systems and norms of behaviour of the colonial master among the indigenous population (acculturation).”).

2 RITA RHODES, *Colonial Co-operatives through the eyes of their Cooperative Registrars, in* 100 YEARS CO-OPERATIVE CREDIT SOCIETIES ACT, INDIA 1904, 228 (Hans-H. Münkner ed., 2005).

3 *Id.* at 229-30.

4 MADHAV V. MADANE, *A Century of Cooperative Legislation: From State Control to Autonomy to State Partnership, in* 100 YEARS CO-OPERATIVE CREDIT SOCIETIES ACT, INDIA 1904, 55-57 (Hans-H. Münkner ed., 2005).

5 HANS-H. MÜNKNER, *The Classical British Indian Pattern of Cooperation: From State-Sponsorship to State Control, in* 100 YEARS CO-OPERATIVE CREDIT SOCIETIES ACT, INDIA 1904, 106-14 (2005).

ing societies, but lack the power to coerce and punish.⁶ Over time, the role of the registrar was to diminish as the developing cooperatives achieved economic sustainability and the capacity for self-governance.

Daniel Hamilton, a member of the Imperial Legislative Committee that drafted the 1904 law, described the active role of the colonial state in cooperative development as linked to the broader colonial ambitions of the British government. “[N]ever forget,” he explained, “it is to weld India into one and so enable her to take her rightful place in the world, that the British Government is here and the wedding hammer in the hand of the government is the Cooperative Movement.”⁷

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Contrary to the original intent of diminishing government role in cooperative development, subsequent legislative enactments responded to perceived weaknesses or slowed growth of the cooperative sector by increasing the registrar’s powers. The Bombay Cooperatives Societies Act of 1925, for example, authorized the government to participate in the cooperatives’ share capital, thus inserting the state directly into the cooperative business.⁸ The Madras Cooperative Societies Act of 1932 gave power to the registrar to supercede the managing committee of a cooperative at its discretion.⁹

The trend toward increasing state control of cooperatives continued after India gained its independence. In 1955, a government sponsored study observed that rural credit cooperatives were not meeting farmers’ needs and proposed a new model for “[s]tate partnership in cooperatives at different levels.”¹⁰ Subsequent laws provided registrars with powers to dissolve cooperatives, order the amendment of by-laws, approve loans, prescribe maximum managing committee membership, appoint or remove management, and serve as the adjudicatory body for all disputes, including disputes involving staff of the registrar.¹¹

Growth and Crisis of State-Dominated Legal Frameworks

In other countries, both within and outside of British colonial influence, similar patterns of increasing state roles in the control and management of cooperatives were followed. In British colonies, the “Classical British Indian” model of cooperative legislation was widely replicated.¹² In French colonies, cooperatives were commonly formed as parastatal organizations rather than indepen-

6 *Id.* at 113-14.

7 Quoted in AKE EDEN, *Oriental Economic Thoughts and Cooperative Development on the Pre-Colonial Indian Subcontinent*, in 100 YEARS CO-OPERATIVE CREDIT SOCIETIES ACT, INDIA 1904, 22 (Hans-H. Münkner ed., 2005).

8 MADHAV V. MADANE, *A Century of Cooperative Legislation: From State Control to Autonomy to State Partnership*, in 100 YEARS CO-OPERATIVE CREDIT SOCIETIES ACT, INDIA 1904, 62 (Hans-H. Münkner ed., 2005).

9 *Id.* at 62.

10 *Id.* at 65.

11 *Id.* at 66-69.

12 HANS-H. MÜNKNER & A. SHAH, INT’L LABOUR OFFICE, *Creating a Favourable Climate and Conditions for Cooperative Development in Africa*, 9-13 (1993); cf. KRISHAN TAIMNI, INT’L LABOUR OFFICE, *CREATING A FAVOURABLE CLIMATE AND CONDITIONS FOR COOPERATIVE DEVELOPMENT IN ASIA* (1994) (discussing implementation of the Classical British Indian model in Asian countries).

The Rochdale Principles for Cooperative Enterprises

1 Open membership.

The cooperative allowed everyone to join and for the newest member to pay the same entrance fee as the oldest member.

2 Democratic control (*one person one vote*).

Voting was to be based on the Chartism principle of one person one vote, regardless of the number of shares controlled by each person.

3 Distribution of surplus in proportion to trade.

In order to reward loyalty and return the majority of profits to the consumer members, surplus was divided according to trade with the cooperative rather than ownership interests.

4 Payment of limited interest on capital.

By paying a set, rather than speculative, interest rate on capital invested, the Society was able to use the additional surplus to provide better wages and working conditions, and to further reward usage. Shares in the cooperative were maintained at par value, rather than decided in the market.

5 Political and religious neutrality.

The Rochdale Society added this principle in response to the experience of some politically motivated cooperatives which were frequently boycotted by consumer groups protesting their controversial stances.

6 Cash trading.

One of the major failures of previous cooperatives had been extending credit to members, which required raising prices to cover losses.

7 Promoting education.

After the registrar allowed cooperatives to set aside monies for education, this principle was added. Whereas, before, cooperatives had illegally set aside money for education.

The rules governing Rochdale Society practices later became known as the Rochdale Principles, which were used to form other consumer cooperatives around England and elsewhere.

dent businesses.¹³ And in socialist or former Soviet countries, cooperatives were made arms of the party and state responsible for implementing central planning decrees.¹⁴

Similar to the history in India, many indigenous governments in the post-independence period amended their laws and regulations to increase the role of governments over cooperatives.¹⁵ By the 1960s and 1970s, common elements of the legal and institutional frameworks in eastern block and post-colonial countries included:

- Cooperative departments with powers to appoint and remove cooperative management officials and to approve basic business decisions;
- Cooperative employees treated as employees of the state;
- Legal restrictions on cooperatives to access courts, make contracts, or assume debt without obtaining permission of the government;
- Restrictions of cooperatives to certain lines of business, often excluding them from profitable sectors, such as export agricultural markets;
- Restrictions on forming federations to provide necessary services, including insurance, education, and auditing assistance;
- Subsuming of cooperatives by formal political party structures; and
- Mandatory membership in cooperatives for farmers or other workers in certain sectors or residents of specific areas.

In addition to crippling cooperatives economically, heavy state restrictions on business practices led cooperatives in many countries to acquire the stigma of being a state-dominated enterprise. Membership enrollment and involvement in many cooperatives dwindled. State subsidies became increasingly necessary to sustain enterprises, stressing state budgets.

In the 1980s, structural adjustment programs dictated by the International Monetary Fund and the World Bank began targeting government expenditures generally, and expenditures on cooperatives in particular. In many countries, when subsidies were decreased or cut off, cooperative businesses failed.

The Development of Principles of Cooperation

The rapid spread of cooperative enterprise in Europe and North America in the mid to late 1800s has been credited in part to the formulation and dissemination of principles of cooperation by the British Rochdale Society of Equitable Pioneers and the German Raiffeisen savings and credit cooperative. The principles published by the Rochdale Society in the 1840s through the 1860s have been particularly influential.

The Rochdale Society was founded by 28 flannel weavers in 1844 as a consumer cooperative. The original members of the Rochdale Society each subscribed £1 to buy goods in bulk to be sold

13 *Id.* at 10-11.

14 INT'L LABOUR OFFICE, COOP. BRANCH, CREATING A FAVOURABLE CLIMATE AND CONDITIONS FOR COOPERATIVE DEVELOPMENT IN CENTRAL AND EASTERN EUROPE, 17-18 (1996).

15 See JOHN JOSEPH OGOLA, *Structural Changes in Cooperative Movements and Consequences for Cooperative Legislation in Different Countries in Africa*, Background Paper No. 1, INT'L LABOUR OFFICE COLLOQUIUM ON STRUCTURAL CHANGES IN COOPERATIVE MOVEMENTS AND CONSEQUENCES FOR COOPERATIVE LEGISLATION IN DIFFERENT REGIONS OF THE WORLD (Ashish Shah ed., 1993) ("[N]early all African governments, after independence, resorted to a series of legislative and administrative measures which have effectively put African Cooperatives under government control, and reduced them to a level where their directors and managers have less power than those possessed by managers of parastatals.").

ILO Recommendation 127 (1966), Part III. A. Legislation

10. All appropriate measures, including the consultation of existing cooperatives, should be taken:
 - a. to detect and eliminate provisions contained in laws and regulations which may have the effect of unduly restricting the development of cooperatives through discrimination, for instance in regard to taxation or the allocation of licenses and quotas, or through failure to take account of the special character of cooperatives or of the particular rules of operation of cooperatives;
 - b. to avoid the inclusion of such provisions in future laws and regulations;
 - c. to adapt fiscal laws and regulations to the special conditions of cooperatives.
11. There should be laws or regulations specifically concerned with the establishment and functioning of cooperatives, and with the protection of their right to operate on not less than equal terms with other forms of enterprise. These laws or regulations should preferably be applicable to all categories of cooperatives.
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 organization, 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;
 - b. a description of the objects of a cooperative, and procedures for its establishment and registration, the amendment of its statutes and its dissolution;
 - c. the conditions of membership, such as the maximum amount of each share and, where appropriate, the proportion of the share due at the moment of subscription and the time allowed for full payment, as well as the rights and duties of members, which would be laid down in greater detail in the by-laws of cooperatives;
 - d. methods of administration, management and internal audit and procedures for the establishment and functioning of competent organs;
 - e. the protection of the name "cooperative";
 - f. machinery for the external audit and guidance of cooperatives and for the enforcement of the laws and regulations.
 2. The procedures provided for in such laws or regulations, in particular the procedures for registration, should be as simple and practical as possible, so as not to hinder the creation and development of cooperatives.
13. Laws and regulations concerning cooperatives should authorise cooperatives to federate.

to members at no profit. As the Society developed, it increased its margins and sold goods at normal retail prices, with the profits shared among the members on a *pro rata* basis according to the amount spent on purchases during the year. The rules governing Rochdale Society practices later became known as the Rochdale Principles, which were used to form other consumer cooperatives around England and elsewhere.¹⁶

Variations on the Rochdale Principles were used by national and international cooperative movements around the world, including by the Patrons of Husbandry (the Grange) in the United States in 1876¹⁷ and the International Cooperative Alliance (ICA) in 1937.¹⁸ The initial cooperative development efforts of colonial governments were often based on the Rochdale Principles in form. But their efforts to cast the state as the official leader of the movement challenged the principle that cooperatives are subject to democratic control of their members.

In 1995, ICA adopted a new Statement on Cooperative Identity that applies equally to all cooperatives, and highlights the need to recognize all cooperatives as autonomous businesses, independent from governments.

In 1966, ICA distinguished between principles applicable to “fully developed” cooperatives and cooperatives at the “beginning of their development.”¹⁹ For fully developed cooperatives, ICA explained that “democracy in the management of cooperative organizations necessarily implies autonomy in the sense of independence of external control.” But in the “newly-developing countries,” ICA concluded that “people who are just beginning to learn cooperation are not always sufficiently well equipped by themselves to manage their societies successfully.”²⁰ Thus, the report concluded that governments in developing countries may “insist” that “proper technical advice is being taken,” including by “ask[ing] that its representatives shall sit on boards of management for a time.”²¹

In the same year, the International Labour Organization (ILO) adopted Recommendation 127 concerning the role of cooperatives in the economic and social development of developing countries.²² Although the Recommendation provides a positive set of principles for legal reform, the section on “Administrative Aid” endorsed imbuing cooperative supervisory authorities “for an initial period only,” with the kinds of powers to appoint cooperative staff and “give guidance and advice” that were then being used to dominate cooperatives in many developing countries.

The problems faced by state-dominated cooperatives through the 1970s and 1980s prompted a reexamination of the state role in cooperative development.²³ In 1995, ICA adopted a new State-

16 David Thompson, *Cooperative Principles Then and Now*, 53 *COOPERATIVE GROCER* (July-Aug. 1994), available at www.cooperativegrocer.coop/articles/index.php?id=158.

17 JAMES R. BAARDA, *COOPERATIVE PRINCIPLES AND STATUTES: LEGAL DESCRIPTIONS OF UNIQUE ENTERPRISES*, U. S. Dep’t of Agric., AGRIC. COOP. SERV. RESEARCH REP. No. 54 (1986).

18 See INT’L CO-OP. INFO. CTR., *PRINCIPLES*, available at www.wisc.edu/uwcc/ctic/def-hist/gen-info/.

19 INT’L COOP. INFO. CTR., *Report of the ICA Commission on Co-operative Principles (1966)*, available at www.wisc.edu/uwcc/ctic/def-hist/gen-info/Report-of-the-ICA-Commission-on-Co-opera1/index.html.

20 *Id.* (explaining that “it must be recognised that, in co-operatives which are themselves at the beginning of their development, their democratic organs also are very probably underdeveloped and, likewise, the capacity of their members for carrying out democratic procedures efficiently and for submitting readily to democratic discipline.”).

21 *Id.*

22 INT’L LABOUR OFFICE, *RECOMMENDATION 127: THE ROLE OF COOPERATIVES IN THE ECONOMIC AND SOCIAL DEVELOPMENT IN DEVELOPING COUNTRIES* (1996).

23 See ALFRED HANEL, *STATE-SPONSORED COOPERATIVES AND SELF-RELIANCE: SOME ASPECTS OF THE REORGANIZATION OF OFFICIALIZED COOPERATIVE STRUCTURES WITH REGARD TO AFRICA* (1989); HANS-H. MÜNKNER, *African Co-operatives and the State in the 1990s*, in *YEARBOOK OF COOP. ENTER.* (1992); INT’L LABOUR OFFICE, *THE RELATIONSHIP BETWEEN THE STATE AND COOPERATIVES IN COOPERATIVE LEGISLATION: REPORT OF A COLLOQUIUM HELD AT GENEVA, 14-15 Dec. 1993* (1994); SANJEEV CHOPRA, CTR. FOR CO-OPS. & RURAL DEV., *CO-OPERATIVES: FROM CONTROLS TO A REGULATORY FRAMEWORK: POLICIES FOR THE SAARC REGION* (Book World 1999).

ICA Statement on Cooperative Identity (1996)

DEFINITION: *A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.*

VALUES: *Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.*

PRINCIPLES: *The co-operative principles are guidelines by which co-operatives put their values into practice.*

- 1 Voluntary and Open Membership:** Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.
- 2 Democratic Member Control:** Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote), and co-operatives at other levels are also organised in a democratic manner.
- 3 Member Economic Participation:** Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.
- 4 Autonomy and Independence:** Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.
- 5 Education, Training, and Information:** Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public—particularly young people and opinion leaders—about the nature and benefits of co-operation.
- 6 Co-operation Among Co-operatives:** Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.
- 7 Concern for Community:** Co-operatives work for the sustainable development of their communities through policies approved by their members.

ment on Cooperative Identity that applies equally to all cooperatives, and highlights the need to recognize all cooperatives as autonomous businesses, independent from governments.²⁴ Soon thereafter the ILO initiated a multi-year process to reconsider Recommendation 127, resulting in the adoption of Recommendation 193 in 2002. Recommendation 193 eliminates the previous endorsement of administrative intervention in cooperative affairs and adopts ICA's Statement on Cooperative Identity as applying to all cooperatives.²⁵

Today, there is a new consensus among cooperative movements and development practitioners that rejects separate standards for laws for cooperatives in developing countries and strongly endorses the autonomy of all cooperatives from government control.²⁶ CLARITY evolves out of this new consensus and aims to push its ideals into implementation.

²⁴ INT'L COOP. ALLIANCE, STATEMENT ON COOPERATIVE IDENTITY (1996).

²⁵ INT'L LABOUR OFFICE, RECOMMENDATION 193: RECOMMENDATION CONCERNING THE PROMOTION OF COOPERATIVES (2002).

²⁶ See INT'L COOP. ALLIANCE, CO-OPERATIVE VALUES IN A CHANGING WORLD (1992) (recognizing that in many developing countries "there have been problems in establishing the correct relationship with the State in order to operate effectively as a co-operative."); UNITED NATIONS: STATUS AND ROLE OF COOPERATIVES IN THE LIGHT OF NEW ECONOMIC AND SOCIAL TRENDS, REPORT OF THE SECRETARY-GENERAL, A/54/57 (Dec. 23, 1998).