

Parallel Legislation in Cooperation with Special Reference to Madhya Pradesh and Chhattisgarh Swayatta Sahakarita Adhiniyam 1999

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On 21st March 1996 a delegation on behalf of the urban cooperative societies and Banks of the State was scheduled to meet the Chief Minister of Madhya Pradesh. The officers of the Department of Cooperation were also present at this time. The delegation put forth the demand that since the urban cooperatives were not taking any assistance from the government, there should be a separate chapter added in the existing cooperative law for ensuring greater autonomy to these cooperatives.

Soon we came to understand that Andhra Pradesh had enacted Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. It was enlightening to note that Andhra Pradesh had come to evolve a middle path towards the implementation of the Brahma Prakash Model Act. I was reminded of the heated discussions of the all India conferences about the concern of the State governments for the security of the huge money they had invested in the cooperative societies by way of share capital, loan, subsidy or government guarantee.

Madhya Pradesh found this model workable. The then Cooperative Commissioner took lot of interest in it and first constituted a committee of officers under me. It soon prepared a draft. The Government later on constituted a high level committee of experts under the chairmanship of the Cooperation Minister. The committee visited Hyderabad and Gujarat for on the spot study and had wide ranging discussions with the officials and non-officials of these states. The most important contribution in the field during these visits was available from Shri Rama Reddy, President Cooperative Development Foundation, Hyderabad and Dr. V. Kurien, the Member Cooperative Initiative Panel, Anand, Gujarat.

There was another idea operating simultaneously that instead of going for an independent parallel Act, if we opted for a separate chapter for the selected cooperatives, it would more expeditiously set the pace of progress in the sector in the state. It was however, felt soon that the over all scheme of the the Model Bill will get affected and the long ranging reforms will not be able to be introduced.

The National Cooperative Union of India was not in favour of going for a parallel legislation. In response to its one such letter, the Government Madhya Pradesh wrote,

"You may be aware that Govt of Madhya Pradesh extensively amended Madhya Pradesh Cooperative Societies Act 1960 incorporating a number of provisions and the suggestions of Model Cooperative Act as recommended by the Brahma Prakash Committee. However, it has been felt that amending the whole Act on the lines of Model Cooperative Act is not possible for a number of reasons, the most important of all being the huge investment of the State Government by way of share capital, loan or guarantee. Moreover, with the passage of time the Model Cooperative Act also requires to be remodelled and reconsidered on a number of counts. For instance, the strengthening of the federal structure at the cost of primary cooperative and the revised role of cooperatives in a liberalized economy of the day are at least two such major factors, which deserve greater attention of us all. The Govt of Madhya Pradesh has been actively in touch with developments in the field of cooperation all around in the country as well as in states like Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka and Punjab etc. The concerns expressed by International Cooperative Alliance Geneva, Cooperative Development Foundation, Hyderabad and Cooperative initiative Panel, Anand naturally have a bearing on such long drawn thought process. We have, thus, worked on a parallel Act for more than two years and have formulated a bill, which is in the process of legislation. We are sure that it is a far developed version than the Andhra Pradesh or Karnataka model and should very well suit the cooperation climate of most of the States in the country.

"The National Cooperative Union of India as an apex organization of the cooperative societies in general, however, need not have any misgivings about a parallel law enacted by some of the States in the country. The subject has been discussed time and again in various national level forums and seminars attended by a number of Ministers in charge of cooperation, Secretaries and Registrars of various States as well as the representatives of Govt of India and there has been throughout a consensus about the utility and significance of such a parallel law. It is therefore to be suggested that the NCUI should persuade Govt of India now to come out with a national policy on cooperation along with faster enactment of Model Cooperative Act so that the process of liberalization of the existing cooperative societies laws becomes faster and a better harmony is worked out for the desired growth of the movement."

It was later on 23-23 September 2001 in the Fourteenth Cooperative Congress of India, convened by the National Cooperative Union of India that I had the opportunity to present my paper on the subject. As of today, it is an acknowledged truth that the state governments have both the options, i.e. they can amend their existing acts or they can go for a parallel legislation.

The two laws on one subject for all time to come cannot be a permanent solution. The Referential Bill 2000 had provided that the registration of cooperatives in future should take place only with the new law. Some state governments have been trying to arrange automatic conversion in the new act ensuring that the cooperatives are registered in the new one alone. The Government of Madya Pradesh agrees in principle that in course of time the cooperatives shall be refunding the assistance they have received and the two acts shall be merging into one substantially.

In a meeting of Cooperation Ministers convened by the Union Minister for Agriculture and Cooperation Shri Ajit Singh, in New Delhi, on 8th August 2002, the Case for a Parallel Act was one of the agenda items which now lays down the policy of the centre as follows-

‘ (i) As is already known that in the pursuance of the Model Cooperatives Act as suggested by the Ch.Brahm Perakash Committee, some states viz. A.P., M.P., Bihar, J&K and Karnataka and recently Orissa have enacted parallel cooperative Acts for the self-reliant and mutually aided cooperative societies. The idea behind the parallel Acts is to provide for a separate law to ensure full autonomy to the cooperatives which do not have any government assistance in the form of equity/shareholding, grants, loans or guarantees. So far, about 9000 societies have been registered under the Parallel Acts.

(ii) It is observed that the vast majority of the cooperatives still continue to be governed by the main Acts providing for govt. support and control in the management and administration of these societies required for execution of the public policies. It is however felt that the cooperative reforms should pervade the entire cooperative sector. In fact, the objective of the cooperative reforms is to enable the entire cooperative movement to be the real people’s movement. It is informed that in some states like AP and Bihar, the Parallel Acts are becoming quite popular and more and more societies are coming forward for registration under the Parallel Acts. This reinforces the need to have liberalized

Cooperative Act on the pattern of the Multi-State Cooperative Societies Act, 2002.

The Madhya Pradesh Swayatta Sahkarita Act being a very recent one, court rulings are not available at present about its provisions. One landmark decision of Andhra Pradesh High court in the Corresponding provision of conversion has been duly made use of. It is a soul-searching exercise, in fact, since it goes much deeper into the making of this law and its prospects in the emerging new scenario of Co-operatives of the 21st Century.

The necessity of a parallel Act may be disputed as there are only eight other states (Andhra, Bihar, Jharkhand, Jammu and Kashmir, Karnataka, Chhatisgarh and Orissa) who have gone for such legislation. Many other states even after constituting expert groups in this direction are rethinking to amend their existing laws only.

Model Cooperative Act 1990- In the background of this move lie the recommendation of the Planning Commission circulated through Model Act 1990 prepared by Chaudhary Brahm Praksh Committee. This Model Act was proposed for adoption by all State Governments (including Government of India) so that the interference of Governments and the Registrar got reduced and the cooperatives could function on the basis of cooperative principles. It contained 50 sections in all. On an analysis at that time it was felt by Government of Madhya Pradesh that about 12 Sections could well be adopted but most of the provisions required to be suitably amended. The greatest of all hindrances was the huge financial stake of the Government in the form of share capital, loans, guarantee and subsidies. The Government's concern for the security of this investment continued to result in the shape of governmental control as well as Registrar's interference till Andhra Pradesh in 1995 found a via media in the form of Andhra Pradesh Mutually Aided Cooperative Societies Act 1995. This parallel legislation of the state promised to ensure due freedom to the cooperatives who either have not received assistance from the Government or have paid it back or at least entered into a memorandum of understanding for such return on the stipulated terms. The Andhra model naturally proved to be a workable model for other state governments and the Bihar and Jammu Kashmir governments promptly borrowed the pattern.

In a ceremony organised by Cooperative Development Foundation Hyderabad, Shri LC Jain, one of the three members of the Cooperative Initiative Panel, Anand, Gujarat (the other two members being Dr V Kurien and Shri Mohan Dharia) released Referential Bill: 1997. This was a further

developed version of the AP Macs Act of 1995. This model took into account other latest development in the field and the Andhra experience did contribute to it a lot.

Madhya Pradesh Government had constituted a committee in the chairmanship of the Cooperative Minister of the State which after exhaustive consultation with co-operators, experts and after paying visits to Andhra and Gujarat states prepared its own draft which has become the basis of this legislation.

One point, which goes in favour of the parallel legislation, is the fact that the Model Act of 1990 can perhaps not meet the requirements of the present times. The trend at that time was to strengthen the federal cooperatives for taking all the care of the primary cooperatives as it was proposed to entrust them with the tasks of audit and election along with supervision. Autonomy at present is the keynote of every cooperative whether, primary or secondary. If the federal cooperatives were to replace the Registrar then many more problems were bound to be there. Secondly, the context of the globalisation of the market economy was not present in 1990. Thus the model of 1990 could not well serve the purpose.

It will not perhaps be out of place to mention that most of the State Governments, including Madhya Pradesh, have in the meantime amended their existing Cooperative Acts to conform to the provisions suggested by the Model Act 1990 and they may well be looking forward to integrate the two.

The title -The Act is named 'Swayatta Sahakarita Adhiniyam' in Hindi and even while translating it into English or any other language it will remain unaltered. Swayatta literally means autonomous. Autonomy being the backbone of the present cooperatives, the framers of this Act adopted this very term. This appeared to them as a better substitute for self-reliant or self-supporting as the other ingredient of democracy automatically gets incorporated in it.

It is important to note in this context that in the Multi State Cooperative Societies Act passed by the Parliament now on the recommendation of the Parliamentary Standing Committee on Agriculture & Cooperation regarding amendments to it, the word 'autonomy' has been incorporated in the Preamble itself.

For the English term 'cooperative' Sahkarita is the substitute. As a matter of fact, cooperative or Sahkarita are adjectives, but traditionally they have now come to be used as noun. Moreover, the word cooperative or Sahkarita conveniently places the new generation cooperatives into a distinct category altogether.

After the reorganisation of the erstwhile Madhya Pradesh into two States with effect from 1-11-2000, the jurisdiction also got extended to the newly formed Chhatisgarh state for two years.

Common need

The cooperative is a need-based organisation. This should in fact be the connecting thread among various individuals. The objectives of the cooperative should clearly imbibe the common need to be identifiable for organisation and the perpetuation of it.

Cooperative

A cooperative is distinct from the cooperative society according to this definition. Evidently, this definition takes care of the important ingredient of a cooperative being voluntary, need based and democratically controlled organisation.

Core services

Core service should always be in consonance with common need defined in clause. The principle that cooperative has to be fully need based is further reinforced here. Some byelaws may even in this manner provide members to incur disqualification if they fail to contribute or avail core services of a cooperative.

Potential member - It is important to note that not only the need-based service concerns the member but the larger concerns of the society at large have also been attended to. Cooperatives thus have not to confine themselves for the growth and development of the chosen few, but indeed universalise their approach by opening gates for the prospective members in timely recognition of their needs.

Suitable provisions endow Swayatta Sahkarita Adhiniyam the character of a supplementary rather than a parallel Act as such. There are a number of provisions to be applicable mutatis mutandis in it. This is also suggestive of a mind-set of the framers that the two could be well-integrated one day.

Registrar and other officers

Generally speaking, he creates, he nourishes and he destroys a cooperative. In his own eyes, too, he is a friend, philosopher and guide.

The present co-operators, the critics and the new generation leaders no longer agree with this concept.

The institution of Registrar has been under constant attack from many quarters. His over interference in the working of cooperatives is stated to be the main cause of the cooperatives not succeeding on the expected lines. The negative role of the authority apart, too much dependence of the cooperatives on the Registrar deprived them from their endeavour of even standing on their feet. It has been even suggested that this institution is just not necessary and the case of registering a society could be well taken care of by a functional Registrar.

The Model Cooperative Societies Act purposefully provided for the 'Registration offices' instead of 'Registrar.' It, however, laid down that the person to be appointed, as Registrar should have a minimum five years' working experience in the field of cooperatives.

Swayatta Sahkarita has borrowed the relevant provision from the existing Cooperative Societies Act 1960. It has been expected from the age-old institution to live unto the revised role and to take a lead for the new generation cooperatives to grow.

Registration of Cooperative

In the substituted proviso inserted vide The Madhya Pradesh Act No 24 of 2001, published in the Madhya Pradesh gazette (Extraordinary) dated the 17 October 2001, word subsidy has been deleted. The original proviso read, " Provided that where the Central Government or State Government have given share capital, loan or Government guarantee to a cooperative society intending to convert itself into a swayatta cooperative under this Act, the cooperative society shall, before applying for under this Act, return such share capital loan, or guarantee to such Government, and such Government shall accept such returned share capital, loan or guarantee or grant as the case may be". .

It has not been provided in this Act for cooperative societies to enter into an agreement for the repayment of Government liability in a phased manner and get converted as swayatta sahkarita as provided in the laws of some States. There have been apprehensions of cooperatives taking benefit of the new Act in spite of Government's financial involvement in them.

Education and Training

The importance of education and training is well recognised in the age-old cooperative structures. There are cooperative Unions either with a federal or decentralised system everywhere for cooperative societies registered under the existing laws. The existing laws also provide for a compulsory contribution by these societies to the unions. It has, however, come to be experienced of late that the paucity of funds apart, the cooperative unions are neither able nor equipped to meet the growing need of the advanced education and training.

Cooperatives have been thus required to take care of this necessity themselves and attend to the need of the existing as well as potential individuals likely to be seeking membership. Conceptually also, the education and training is the responsibility of a cooperative.

Voting rights

An argument often forwarded is this that, since other forms of business provide for voting rights and profit distribution in proportion to the shares held by each person, cooperative should give voting rights and distribute surplus in proportion to the use by each member of the services of the cooperative. A cooperative also believes in distributing the surplus based on an analysis of how the surplus was created and giving equal decision-making rights to all share-holders. It has been therefore suggested in various models that while the cooperatives are not expected to distribute to the members, the surplus created out of use of services, by non-member, they do distribute the rest of the surplus to each member in proportion to the member's use of service because the surplus was created out of the use of services. The Referential Act's model therefore forwarded the provision of minimum service availability made mandatory and also link up voting rights at least in secondary cooperative to it. The M.P. model does follow a yearlong membership necessary for voting rights, but other concepts are still being debated. They are therefore not incorporated.

Elections

It has been traditionally the institution of Registrar, which is responsible for holding the elections of cooperatives. The elections have now come to be held on uniform basis at one stretch and more often than not they get delayed and postponed indefinitely. Other voluntary organisations such as a society, a trust, a trade union, a political party, a company, a club or any other association registered under any law, (including unregistered ones) do not have their elections conducted by any outside agency. This issue came to be discussed at length in the conference of the Cooperative Ministers, held in New Delhi on 18-5-2001. In response to the proposal of having an

independent agency for the conduct of cooperative elections, barring a few states, most of the states were opposed to this idea. It was reported that Kerala had issued a notification for appointing an authority to hold 'free and fair' elections of the cooperatives. The issue has been in discussion and demand for long in Madhya Pradesh. The Government has been in touch with the State Election commission with a request to agree to hold elections of cooperative societies along with panchayats and other local bodies. The commission got this matter examined legally and advised the government that it can take over this function only when there is a constitutional amendment made for this purpose. The Chief Minister of Madhya Pradesh accordingly wrote in March 2000 to the Prime Minister of India to initiate the action accordingly. With a view to incorporate this idea in the draft National Policy of Cooperatives, efforts are on in building a consensus in this direction. But it still remains to be assessed if this step can be treated to be a progressive one or not.

The Government of Rajasthan did, in the meantime amend its Act and made State Election Commission responsible for holding the Elections of the Cooperatives in the State. It has however, subsequently constituted an 'Authority' for the purpose after amending the law again.

The above analysis pertains to the state of the cooperative societies covered by the original Act. As regards the cooperatives of the parallel legislation, the present incorporation should demonstrate in time to come the efficacy for the purpose.

Fund Raising

Model cooperative Act suggested deposits to be raised from members in all ways. External sources covered debentures, deposits, loans, grants, which are not to exceed ten times of the sum of member funds and organizational reserves less accumulated deficit. The cooperative could also borrow from government as per MOU with a condition to nominate one director on the board.

Referential Act suggested a cooperative to be able to borrow from institutions including government ensuring that its autonomy shall not be affected that way as propounded in cooperative principle number 4. The issue was debated at length in Madhya Pradesh. The technical question raised was to fix up this responsibility on some authority, as, it was argued, the cooperative alone cannot decide issues affecting outside agencies as well. Therefore it does not incorporate the provision for taking assistance from the government.

Conversion of Banks into Cooperatives

Banks, especially urban cooperative banks, have been pressing hard the government that the condition of the previous sanctions of Reserve Bank or the Nabard at least for the conversion purposes should not be necessary. The matter was taken up with the Nabard and Reserve Bank also. Since the Banks have been complaining about their proposals pending for long for the concurrence, the amendment has been made with a view to expedite the conversion. It is, however, expected that the Banks seeking conversions shall necessarily comply and fulfil the requirement of the Reserve Bank or the Nabard, as the case may be, for licensing as well as other regulatory purposes of the Banking Regulation Act 1949 (10 of 1949). As regards the response of the RBI on the matter, RBI has expressed its opinion that unless there are some provisions relating to faster action in case of financial irregularity, RBI at present is constrained not to consider any proposal of conversion.

Views and Opinions on Madhya Pradesh Swayatta Sahakarita Adhiniyam 1999

Times of India, Ahmedabad - Cooperative Initiative Panel urges states to adopt M.P. Model which seems to be in acknowledgement of the appreciation the M.P. Model has been receiving. According to CIP sources the Madhya Pradesh Law is one step ahead of the Mutually Aided Cooperative Societies Act of Andhra Pradesh, which was the first state to take the initiative to free cooperatives from government interference.

Dr. V Kurien, Member from Cooperative Initiative Panel, Anand wrote: "I am happy to know that the new law for the self reliant cooperatives has come into force in Madhya Pradesh. This should no doubt be the turning point for the cooperatives of the State and perhaps a guiding light for other states to emulate."

Shri Mohan Dharia, CIP Panel Member congratulated the State Government in following words: "We are sure that the Madhya Pradesh self-reliant Co-operative Act will help in strengthening Co-operative movement in your state and also in the country, based on Chaudhary Brahma Prakash Model Act. I am happy that the Act passed by your state, has given due recognition to the recommendations of the Chaudhary Brahma Prakash Committee which were approved by the Planning Commission while I was its Deputy Chairman."

DR. S.S.SISODIA, PRESIDENT, NATIONAL COOPERATIVE UNION OF INDIA, said:

"The cooperatives which are self reliant mainly constitute the credit cooperatives i.e. the urban cooperative banks and cooperative credit societies. Since the new Act is intended for all self reliant cooperatives, the needs of the credit cooperatives i.e. cooperative banks and credit societies should be particularly kept in mind."

Shri Rama Reddy, President Cooperative Development FoundationHyderabad, said: "It is the most liberal cooperative law in the country and will become a model for others to follow".