



### RECOMMENDATION OF THE HIGH POWERED COMMITTEE ON CO-OPERATIVES

A High Powered Committee on Cooperatives (HPCC) was constituted in 2005 by the Government of India with the following terms of reference :

To review the achievements of the cooperatives during the last one hundred years.

To identify the challenges being faced by the cooperative sector and to suggest measures to address them to enable the movement to keep pace with the changing socio-economic environment.

To suggest an appropriate policy and legislative framework and changes required in the cooperative legislation in the country with a view to ensure the democratic, autonomous and professional functioning of cooperatives and amendments to the Multi-State Cooperative Societies Act, 2002.

Any other incidental or consequential issue as deemed necessary by the committee for its consideration.

The Committee under the chairmanship of Shri Shivajirao G. Patil submitted its report in May 2009. The executive summary of the HPCC Report is of which is reproduced below.

#### **Executive Summary**

Two centuries ago when the Cooperative movement emerged, markets were dominant and unmindful of the well being of consumers. The Rochdale Pioneers demonstrated the cooperative ability not only to help survival of the people but also of indirectly forcing the market to behave. Today, although our knowledge, technology, global governance systems, availability of alternatives and a globalized production system are very different, the basic issues remain the same - markets that serve only sectarian interest, large masses remaining impoverished, capital gaining advantage over labour and a State which, seems to be increasingly supportive of a free market. In the Indian context, it is pertinent to mention that a large segment of the population (65%) continues to depend on

agriculture and agriculture related sectors of the economy. As such cooperatives are today all the more relevant in the current contexts.

Cooperatives in India came into being as a result of the Government taking cognizance of the agricultural conditions that prevailed during the latter part of the nineteenth century and the absence of institutional arrangements for finance to agriculturists, which had resulted in mounting distress and discontent. Small, local, locally worked institutions, cooperative in form, which would satisfy the postulates of proximity, security and facility for providing credit, were seen as the answer to this situation. However, subsequent events during both pre and post Independence period have led to a vast growth of cooperatives covering various sectors of the Indian economy.

The preoccupation of the government with the cooperative sector and its potential for bringing about development, right up to the nineties, resulted in an increase in the number of cooperatives and their contribution, making the Indian cooperative movement one of the largest movements of its kind in the world. Though we can claim to have the World's largest and most diverse cooperative movement, barring some exceptions our cooperatives in general are fraught with a number of problems and challenges. Apart from certain inherent weaknesses, they are constrained by the overwhelming role of the government as well as prescriptive and restrictive legislation and have been unable to retain an autonomous and democratic character.

Some of the problems and challenges that cooperatives face today are -

Inability to ensure active membership, speedy exit of non-user members, lack of member communication and awareness building measures

Serious inadequacies in governance including that related to Boards' roles and responsibilities

A general lack of recognition of cooperatives as economic institutions both amongst the policy makers and public at large

Inability to attract and retain competent professionals

Lack of efforts for capital formation particularly that concerning enhancing member equity and thus member stake

Lack of cost competitiveness arising out of issues such as over staffing, a general top-down approach in forming cooperatives including the tiered structures

Politicization and excessive role of the government chiefly arising out of the loop holes and restrictive provisions in the Cooperative Acts

In addition to the above, there is also a serious problem of a large number of cooperatives that are sick/non viable. As regards the problems specific to the credit cooperatives, the same have been dealt with in detail in the Vaidyanathan Committee Report.

### **Summary Recommendations**

The Committee has envisioned cooperatives as primarily, autonomous, economic institutions of user members. It sees them as self-reliant and self-sustaining institutions functioning in a free, fair and transparent manner in keeping with the principles and values of the cooperative movement. Summary Recommendations of the Committee are given below:

Considering the importance of a progressive and enabling legislation, which provides a level playing field for cooperatives with other corporate entities, the law enacted in each State should be amended to truly reflect the letter and spirit of the Model Cooperatives Act proposed by the Choudhary Brahm Perkash Committee Report. Even in States where a Parallel law has been enacted, considering its poor utility and problems faced, a single enabling law be enacted, which is member centric and based on cooperative principles, replacing the existing State Acts.

The laws enacted with the Model Cooperatives Act as the basis should also consider the following:

With a view to enhance member participation in cooperatives and enable them to do away with non-user members the Acts must provide for a definition of 'active member', right to vote and contest only to active members and an enabling provision for speedy exit of non-user members

In order to improve the effectiveness of Boards particularly their trusteeship role and fiduciary responsibilities, ensure accountability and professionalization of the organization, the laws should provide for clearly defined roles and responsibilities of the cooperative's board vis-a-vis that of paid executives/managers and a fair, but enforceable provision for fiduciary responsibility as provided in the Companies Act.

With a view to build in professionalism, the Acts should provide for cooption of experts/subject matter specialists, mandate that any person elected as a Director on the Board should undergo a set of prescribed training programmes within six months of being elected

Considering the need to remove all such loopholes in the law, which have contributed to the politicization of cooperatives, it is necessary that the laws also provide for rotational retirement of Board members and restriction on contribution to political and religious organizations.\*

Keeping in view the need to enable cooperatives, which have already received equity contribution from the government, the laws should also provide for repatriation of government equity and where cooperatives are unable to return the government equity, they may enter into an MoU with the cooperative agreeing to such conditions that the government may stipulate.

In order to enhance competitiveness, the laws should enable cooperatives to decide their Organizational structure and staffing including recruitment policies, service conditions and remuneration, undertake measures such as formation of joint ventures, partnerships, subsidiaries and strategic alliances with cooperatives and other corporate and operate without any imposed area restrictions and have flexibility in business decisions, mobilizing funds and allocation of surplus.

State Governments should put in place a policy framework for facilitating the functioning of cooperatives with free and fair means, in no less equal terms with any other organization engaged in economic activities.

States should refrain from deputing officers to occupy key positions in cooperatives except on an explicit request from a cooperative and ensure that the officers if deputed to hold key positions are given a minimum tenure of three years.

The utility of various tiers of the cooperative structure be examined in each case and actions be taken for de-layering wherever the structures are not found to be cost effective.

Cooperatives should undertake member awareness and education programmes on a continuing basis in order to sensitize members regarding their rights, responsibilities/obligations in respect of the organization to which they belong and make special efforts to facilitate women and youth participation in cooperatives.

A scheme of Central Government and State Government budgetary provision for soft loans to farmers for share capital participation should be considered seriously.

Retained earnings in cooperatives are the most important form of collective capital. However if a substantial portion of retained earnings is taken away in the form of income tax, the rate of accretion to the reserves becomes that much slower affecting the health of the cooperative and its growth. Full income tax exemption is therefore recommended for all cooperative societies. This will be a major incentive for the cooperatives to strengthen their capital base.

The share of Cooperative Banks in rural credit has been steadily declining and is around 18%. Cooperative Banks presently depend for their activities on their own funds which are very limited and refinance from NABARD. Since adequate

refinance through NABARD cannot be relied upon and many of the Cooperative Banks are weak and unable to raise funds from the market, there is a strong need for an alternative organizational set up to mobilize funds and to bridge the systematic gap in the cooperative credit and banking structure.

Cooperatives in various countries have adopted different strategies to augment their equity. The system of tapping share capital from non-members through different classes of shares or special purpose vehicles is also found. Depending upon the business of the cooperative, financial instruments need to be developed for raising capital.

### **Amendment to the Constitution**

The Committee endorses the view that only through certain amendments in the Constitution it will be possible to ensure that the State cooperative laws provide for enabling the autonomous functioning of the cooperatives. The Committee reviewed the Constitution Amendment Bill (106th Amendment Bill 2006) and recommends that some more changes as given below be effected in order to be responsive to the needs of the cooperatives.

1. Apprehending that introducing new Part IX B after Part IX A of the Constitution as the Bill proposes, along with Panchayati Raj Institutions (PRI) and Municipalities, would imply that cooperatives are a part of governance, the insertion of this part may be considered at any other appropriate place in the Constitution to ensure that this construal is dispelled.

2. Insertion of “the word “cooperative societies” after the word “associations” in sub-clause (c) of clause (1) of Article 19 and a definition of cooperatives {new sub-clause (h)} “to form and run Cooperatives based on principles of voluntary, democratic member control, member economic participation and autonomous functioning.”

3. Number and term of members of Board of Directors and its office bearers (***Following additions are recommended under this Head***) (243. ZJ) - Only elected members of the Board of Directors shall be eligible to vote in election and to be elected as Chairman or Vice Chairman or President or Vice President of the Board.

Candidates who have lost in elections to the Board shall not be co-opted on the Board either on casual vacancy or otherwise.

4. **Election of members of Board** (243. ZK) - The Bill recommends that functions relating to, and the conduct of all elections to the cooperative societies, shall vest in the General Body of a cooperative society. As it may not be possible to hold meetings of General Body frequently, the Committee recommends that these functions shall vest in the Board of a cooperative society.

**5. Supersession of Board of Directors (243.ZL)** - The Bill provides that no Board of a cooperative society shall be superseded, where there is no Government shareholding of loan or financial assistance or any guarantee by the Government.

Since this would imply that the Boards of cooperatives even where there is a minor government shareholding of financial assistance or any guarantee by the government can be superseded, the Committee has suggested that no supersession of the Board of Directors should be allowed in any case where government share holding is less than 51%.

### **Amendment to the Multi-State Cooperative Societies Act, 2002**

The Committee took note of the fact that while the MSCS Act, 2002 has been in operation for the last six years there is a need to make the Act more comprehensive to mitigate practical problems being faced by the Multi-State Cooperative Societies due to certain provisions of the Act. Some important recommendations of the Committee are:

The internationally accepted definition of Cooperative Society reflecting its voluntary, autonomous and democratic nature may be introduced in the Act.

To ensure that the cooperatives are user owned and user controlled, a concept of “active member” may be introduced in the Act and accordingly, a definition of active member be included. The Act should provide that only active members shall have the right to vote/contest elections.

A fair, but enforceable provision for fiduciary responsibility as provided in the Companies Act should be introduced. It should be mandatory for the directors on cooperative boards also to disclose certain information in order to avoid conflict of interests. A provision be also made for cooption of experts on the Board.

Provisions may be introduced putting restriction on contribution to political and religious organizations.\*

Provisions for raising of capital through issue of non voting shares and IPO may be included

Deletion of Rule making powers.