

LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

National Report - Bangladesh

The ICA - Asia and Pacific (ICA-AP) is the voice of cooperative enterprises in the Asia Pacific region. ICA-AP, as a regional office of the ICA, is also a co-signatory of a Framework Partnership Agreement signed between the International Cooperative Alliance and the European Commission in March 2016, which aims at strengthening the cooperative movement and its capacity to promote international development. This agreement underpins the ‘Cooperatives in Development’ program and includes knowledge building activities at the global (harmonized) and regional (decentralized) level.

The activities planned within the framework of the program include diverse research activities conducted at the global and regional level. The primary activities undertaken at the global level include a Legal Framework Analysis (A2.2), which is led in a coordinated way by all ICA offices. Within this framework, ICA-AP oversees implementing the research in the Asia and Pacific region.

The study on legal frameworks under the Legal Framework Analysis (A2.2) will evaluate jurisdictions and policy regulations according to their enablement of cooperative development. The document will present recommendations for the next steps in renewing the legal frameworks and helping to shape the policy agendas in a targeted way in the different regions and countries. It will evaluate the cooperative legal framework in place with common indicators, delivering on a scale of how ‘cooperative-friendly’ the legislation in a country is. In the same context, this report deals with the Legal Framework Analysis of Bangladesh.

INTRODUCTION

This report on the legal framework analysis on the cooperative law of Bangladesh has been prepared by is the national expert appointed by the International Co-operative Alliance Asia and Pacific (ICA-AP), Mr.Morshed Mannan, an Advocate of the Bangladesh Bar Council and currently a PhD researcher on platform cooperatives at the Company Law Department of Leiden University, the Netherlands. The process of preparing the report began with the completion of a standard questionnaire for the analysis of the legal framework. The completed questionnaire was then sent to the ICA-AP for review and comment, before the process of drafting the report was initiated. The author would like to thank Barrister Khaled Hamid Chowdhury, Azhar Uddin Bhuiyan and Tarekul Islam Famik for helping him track down certain hard-to-find sources.

The legal framework analysis on cooperative legislation in Bangladesh aims to:

- (1) Trace the evolution of cooperative societies and cooperative legislation in Bangladesh over the course of the twentieth century.
- (2) Provide a general overview of the cooperative legislation of Bangladesh and its main features, including how the legal framework secures the cooperative identity and distinguishes it from other types of business organization, most notably the for-profit shareholder corporation.
- (3) Evaluate if Bangladesh's cooperative law supports or hinders the development of cooperatives.
- (4) Make recommendations as to the reform of Bangladesh's cooperative law, based on the extent to which the legal framework is not 'cooperative-friendly'.

1. The Evolution of Cooperative Societies and Cooperative Legislation in Bangladesh

1.1. The Colonial Era: The Rise and Fall of Credit Cooperatives (1904-1947)

The development of cooperatives has been a prominent part of government policy in the geographical region that comprises modern Bangladesh for over a century. Credit cooperatives were first deployed by British colonial authorities through the *Co-operative Credit Societies Act, 1904* (Act X of 1904) as a means of addressing the usurious practices of money lenders, on the back of the famines and sporadic riots that marked the late nineteenth century.¹ This Act enabled the creation of rural credit cooperatives (with unlimited liability) and urban credit cooperatives (with a choice of unlimited or limited liability),² with intermediary central banks guaranteeing the loans of the primary societies and a Bengal Provincial Co-operative Bank at the top facilitating inter-bank lending across the province.³ In effect, this meant that in contrast to the Rochdale-model of consumer cooperatives that became an archetype for cooperatives in some parts of the world, it was the Raiffeisen-model of rural credit cooperatives that became predominant in Bengal,⁴

¹ Nikolay Kamenov, 'Imperial Cooperative Experiments and Global Market Capitalism, c.1900-c.1960', *Journal of Global History*, Vol. 14, No. 2, 2019, pp. 219-237, p. 225 ("Cooperatives were not meant to displace the moneylender altogether, but to create a fairer credit market, which would thereby uplift the rural economy"); Rita Rhodes, *Empire and co-operation: how the British empire used co-operatives in development strategies, 1900-1970*, John Donald, Edinburgh, 2012; Stuart Rutheford, *The Pledge: ASA, Peasant Politics, and Microfinance in the Development of Bangladesh*, E-book ed., Oxford University Press, Oxford, 2009, Ch. 2.

² Nikolay Kamenov, 'The Place of the "Cooperative" in the Agrarian History of India, c. 1900-1970', *The Journal of Asian Studies*, Vol. 79, No. 1, 2020, pp. 103-128, p. 105.

³ Iftexhar Iqbal, 'Cooperative Credit in Colonial Bengal: An Exploration in Development and Decline, 1905-1947', *The Indian Economic and Social History Review*, Vol. 54, No. 2, 2017, pp. 221-236, pp. 224-225.

⁴ The recommendation for rules of Raiffeisen credit associations on an all-India basis was made in Indian Famine Commission, *Report*, Office of the Superintendent of Government: Calcutta, 1901, p. 98. As Kamenov notes, an important difference between the Raiffeisen-model and the model introduced in India is that the former encouraged a system where one cooperative served one village, while the Act of 1904 allowed the creation of cooperatives along class, tribe and caste lines. Kamenov, *supra* note 2, at pp. 107-108.

growing from 743 primary credit cooperative societies in 1913 to 19,915 by 1936.⁵ The Act of 1904 was later amended by *The Cooperative Societies Act, 1912* (Act No. II of 1912), so as to extend the availability of the cooperative form to other economic activities and the option for non-agricultural cooperatives to have limited liability.⁶ Sir Daniel Hamilton's benevolent patronage of a network of consumer, sales and credit cooperatives in his *zamindari* (estate of a landlord) within the Sundarbans, while being paternalistic in nature, was a much lauded example of how this legislation could enhance the cooperative movement.⁷ In the words of Nirmal, one of the characters of Amitav Ghosh's novel *The Hungry Tide*:

“[w]hat he [Sir Daniel Hamilton] wanted to do was to build a new society, a new kind of country. It would be a country run by cooperatives, he said. Here people wouldn't exploit each other and everyone would have a share in the land. S'Daniel spoke with Mahatma Gandhi, Rabindranath Thakur and many other *bujwua* nationalists. The bourgeoisie all agreed with S'Daniel that this place could be a model for all of India; it could be a new kind of country.”⁸

Indeed, there appears to be a cross-pollination of ideas between Hamilton and Tagore, as the latter created the Rural Reconstruction Institute in Sriniketan in 1922, which helped establish cooperative granaries, irrigation cooperatives, health cooperatives and cooperative banks in the region.⁹ Yet, despite this optimism about their potential and their rapid growth in Bengal up till Partition in 1947, the experiment with credit cooperatives is often considered to be a failure as it was deemed to be a movement with “weak foundations”.¹⁰ These societies were intended to encourage thrift, saving and self-help among agricultural communities and informal artisans, but they were vulnerable to endogenous and exogenous risks. Endogenous factors that are considered to have undermined the formation of cooperatives were the illiteracy of members, the sclerotic, administrative nature of the movement and opportunistic behavior by some cooperative members and managers so as to defraud other members.¹¹ Exogenous factors that jeopardized the movement included the credit crunch of the 1930s, the famine of 1943 and the partition of India itself which led to the collapse of agricultural income and the

⁵ Iqbal, *supra* note 3, at p. 224. Ali reports that between 1906-1907 and 1913-1914, there were 743 credit cooperatives in Bengal with 28,168 members. See Md. Wazed Ali, *Jute in the Agrarian History of Bengal, 1870-1914: A Study in Primary Production* (unpublished Master's thesis, University of Glasgow, 1975), p. 245.

⁶ Section 4, *The Cooperative Societies Act, 1912*.

⁷ Debojyoti Das, *Sir Daniel Hamilton's Sentinel Co-operative Society in the Sundarban Delta, Littoral Communities – Bay of Bengal*, <https://lcbb.macmillan.yale.edu/sir-daniel-hamiltons-sentinel-co-operative-society-sundarban-delta>. Hamilton clearly sought to widely expound the benefits of the cooperative movement based on the experience of his estate, as evidenced in the numerous lectures he delivered and letters he sent on the topic. See the Bengal Library Catalogue of Books registered in the Presidency of Bengal during the quarter ending the 31st March 1938, Appendix to *The Calcutta Gazette*, Thursday, September 29, 1938, pp. 65-66.

⁸ Amitav Ghosh, *The Hungry Tide*, Houghton Mifflin Harcourt, Boston, 2005, p. 45.

⁹ Sanjoy Mukherjee & Summauli Pyne, 'Cooperatives as Alternative Form of Organization for CSR effectiveness: Insights from Rabindranath Tagore', *Global Business Review*, Vol. 17, No. 6, pp. 1497-1509, p. 1502.

¹⁰ A.M.M. Shawkat Ali, *Agricultural Credit in Bangladesh (1883-1986)*, PIB Press, Dhaka, 1990, p. 9; Iqbal, *supra* note 3, at p. 222. This is not a universally held view, with Kamenov arguing that irrespective of fluctuating fortunes the cooperative movement continued to grow during the first four decades of the 20th century. Kamenov, *supra* note 2, at p. 118.

¹¹ See Iqbal, *supra* note 3, at pp. 226-227, Ali, *supra* note 5, at p. 157.

destabilization of the economy.¹² This sharp decline in agricultural income impaired the ability of members to satisfy their debts and precipitated the transfer of landholdings. Given that many of these primary cooperatives had unlimited liability, the default of these societies led to the joint and several liability of its members, with this financial toll tarnishing the reputation of cooperatives among at least a generation of farmers.¹³ It was these difficulties, along with the inadequacy of the existing legislation for the evolving demands of the movement, that precipitated the enactment of the *Bengal Co-operative Societies Act, 1940* (Bengal Act XXI of 1940) to replace the central Act of 1912. According to its Statement of Objects and Reasons, the earlier Act did not attach penalties for maladministration or non-compliance with the legislation, short of liquidating the recalcitrant cooperative society, nor did it adequately penalize those members who borrowed from the cooperative using false disclosures. In addition to addressing these shortcomings, the new Act *inter alia* introduced provisions to temper managerial entrenchment, strengthened the audit of cooperatives and tightened the requirements for disbursing loans so as to improve recovery rates and avoid the misuse of loans.¹⁴

This legislative measure was not free from criticism, with left-leaning members of the Bengal Legislative Assembly and Bengal Legislative Council opining that the Act would bureaucratize the movement by greatly enhancing the powers of an inept cooperative administration and fell short in productively using the cooperative movement for national reconstruction.¹⁵ One example of the extension of these administrative powers is section 24 of the Act of 1940, which provides that a servant of the Crown may be deputed to take over the management of the affairs of a cooperative society upon the “application of the cooperative society”. While this application may appear to express the willingness of the

¹² A.M.M. Shawkat Ali, *Agricultural Credit in Bangladesh (1883-1986)*, PIB Press, Dhaka, 1990, p. 10. Goswami notes that raw jute – the most profitable cash crop in Bengal in the 1920s – experienced a fall in price of 60% during the very first year of the Depression and this diminished price continued into the end of the decade. The price of rice also collapsed at the same time, crippling another important source of agricultural income. See Omkar Goswami, ‘Agriculture in Slump: The Peasant Economy of East and North Bengal in the 1930s’, *The Indian Economic and Social History Review*, Vol. 21, No. 3, 1984, pp. 335-364, p. 344. It is interesting to note that while there were thousands of credit cooperatives in Bengal, there were no more than 10 jute marketing & sale cooperatives in the same period, even though those few cooperatives performed reasonably well. See Iqbal, *supra* note 3, at p. 229.

¹³ Kamenov, *supra* note 2, at p. 111. This negative impression of credit cooperatives is also indicated in debates of the Bengal Legislative Council of the time, with Khan Bahadur Saiyed Muazzamuddin Hosain entering into particularly barbed exchanges with the Minister in charge of the Co-operative Credit and Rural Indebtedness Department, the Hon’ble Mr. Mukunda Behary Mullick about their growing unpopularity. See *Council Proceedings of the Bengal Legislative Council, Second Session, July 26-September 11, 1940*, Bengal Government Press, Alipore, p. 364. Similar concerns regarding the detrimental aspects of unlimited liability and involuntary liquidation of credit cooperatives was raised in the Bengal Legislative Assembly, see the motion for amendment by Satyapriya Banerjee in *Assembly Proceedings of the Bengal Legislative Assembly, Eighth Session, July 22-July 31, 1940* Bengal Government Press, Alipore, pp. 61-62.

¹⁴ *The Calcutta Gazette*, 7 July 1938, pp. 105-106.

¹⁵ See, e.g. the motions of Niharendra Dutta Mazumdar and Harendra Nath Chaudhuri in *Assembly Proceedings of the Bengal Legislative Assembly, Fourth Session, July 29-August 5, 1938*, Bengal Government Press, Alipore, pp. 140-141, 144 (“Truly a new Czar has been proposed in the shape of the Registrar”; the speech of Dr. Suresh Chandra Banerjee in *Assembly Proceedings of the Bengal Legislative Assembly, Eighth Session, July 15-July 19, 1940*, Bengal Government Press, Alipore, p. 214. These interventions also observed that the cooperative movement needed to move beyond the supply of credit to consumption, sales and production.

cooperative society to voluntarily accept official assistance, one member of the Bengal Legislative Assembly, Dr. Nalinaksha Sanyal, insinuated that these applications are coerced and led to these officials becoming “masters” of cooperative society members.¹⁶

A more charitable view of the credit cooperatives created during the colonial period is that the existence of credit cooperatives tempered the interest rates of village moneylenders and was, as such, a welcome addition to the rural commercial landscape, while the cooperative movement as a whole weathered the 1930s depression reasonably well owing to the creation of secondary and tertiary level cooperatives to pool assets.¹⁷ At the time of Partition, the parts of Bengal that went on to become East Pakistan had 26,664 credit cooperatives, but their lack of liquidity and indebtedness meant that most of these cooperatives were virtually insolvent and were liquidated over the following decade.¹⁸

1.2. The Pakistan Era: The Emergence of the Comilla Model (1947-1971)

This shrinking of credit cooperatives did not mean that cooperatives no longer had a role in official policy. Indeed, in even the First Five Year Plan (1955-1960), the importance of cooperation and self-help was acknowledged and the creation of co-operative societies was promoted in sectors ranging from (existing) agricultural credit to fisheries to animal husbandry.¹⁹ The Provincial Government of East Pakistan was also interested in encouraging housing cooperatives in cities and towns, as it viewed such a self-help strategy for urban development and construction to be more cost-effective than its own building efforts.²⁰ Cooperatives were thus seen as a decentralized strategy for (rural) development

¹⁶ The amendment motion of Dr. Nalinaksha Sanyal in *Assembly Proceedings of the Bengal Legislative Assembly, Eighth Session, July 22-July 31, 1940*, Bengal Government Press, Alipore, p. 154.

¹⁷ Kamenov, supra note 1, at p. 227; *ibid*.

¹⁸ M. Solaiman & Azizul Huq, ‘Bangladesh’, in Jerome E. Sherry (ed.), *Small Farmer Credit: Country Surveys*, A.I.D. Spring Review of Small Farmer Credit, Vol. XVII, Washington DC: Agency for International Development, Department of State, June 1973, pp. 186-187. Husain reports a higher figure of roughly 32,000 but this does not distinguish between credit cooperatives and other forms of cooperative organization. Of these cooperatives, he notes that only 2% were solvent at the time East Pakistan was created. See A.M. Muazzam Husain, *A Model Co-operative Organization for Agricultural Development in East Pakistan* (unpublished PhD dissertation, Texas A&M University, 1964), p. 84.

¹⁹ Government of Pakistan, Planning Board, *The First Five Year Plan (1955-1960): Outline of the Plan*, Karachi, May 1956, pp. 29, 33, 35, available online at: <<https://web.archive.org/web/20121116162705/http://115.186.133.3/pcportal/five%20year%20plans/1st/1fiveyearplanCH-03editing.pdf>>. The Plan notes that the implementation of the Village Agricultural and Industrial Development Programme to increase agricultural production, schools, health centers, better water supplies and recreational facilities will mainly be done “through the initiative and energy of village people themselves, co-operating and pooling their own resources” (p. 29). As Partition had left East Pakistan without a national cooperative bank, in 1948 the East Pakistan Provincial Cooperative Bank was opened (now reconstituted as the Bangladesh Sambaya Bank Ltd.)

²⁰ This policy is mentioned in *Mohammad Mansur Rahman and Others vs. Province of East Pakistan & Ors*, 14 DLR (1962) 604, at [11]. The main support offered by the Government was through land requisitions and acquisitions for cooperative housing projects. Housing cooperatives fell out of favour within two decades, owing to its attraction of influential speculators seeking to exploit the scarcity of land in metropolitan areas like Dhaka. This reversal of policy is indicated in a Government order of 1979 specifying that applications for land requisition of private property for housing cooperatives should not be entertained. See Ministry of Local

and social capital enhancement, which could potentially realize the benefits of large-scale organization without the need for compulsion or state intervention, while also offering economic gains to members as they could perform many services for themselves instead of paying third parties.²¹ To some, this cooperative development policy has also been seen as a palliative for the stirrings of socialism taking place at the time and a demonstration of the superiority of capitalism during the Cold War,²² just as in earlier decades when it was tailored to counter anti-colonial sentiment.²³

The Comilla Kotwali *thana* (an administrative unit below sub-division and district) was home to one particularly notable instantiation of cooperative development. The ‘Comilla Model’ of rural development was launched in 1959 under the auspices of a newly-created East Pakistan Academy of Rural Development (now the Bangladesh Academy of Rural Development) with funding and technical support of the Ford Foundation and Michigan State University.²⁴ The Academy, along with providing field training for officials, sought to improve agricultural production, reduce the economic precariousness of small-scale cultivators and reduce indebtedness. Multi-purposes village cooperatives were the centerpiece of this strategy, particularly from 1961 onwards, with the creation of the Comilla Cooperative System.²⁵ This system developed bottom-up solutions to the credit, farming and infrastructural problems encountered by village communities by creating cooperatives in which villagers could save, borrow and gain access to subsidized agricultural technology. The cooperatives also provided a platform for members to express their concerns and through which rural works and irrigation projects could be aligned with their expressed needs.²⁶ What distinguished the Comilla Model from earlier cooperative experiments was the multiple purposes the cooperative served as well as its use for other initiatives, including family planning and pump irrigation. While many cooperatives were formed under this model, not all of them were successful. In an early evaluation study of

Government, Rural Development and Co-operatives, Memo No. S-XIII/IV-15/78/681(21) dated 5.7.79, discussed in *Md. Ismail & Others vs. Bangladesh & Others*, 1 BLD (1981) 407.

²¹ Hans-Hermann Münkner, ‘One Hundred Years: Co-operative Credit Societies Act in India – A Unique Experience of Legal Social Engineering’, Paper presented at the Centenary Round Table on Indian Co-operative Movement – Retrospect and Prospect, Pune, 26-27 November 2004, p. 2-3; Clarence Maloney and A.B. Sharifuddin Ahmed, *Rural Savings and Credit in Bangladesh*, University Press Limited, Dhaka, 1988, p. 194; Government of Pakistan, Planning Board, *The First Five Year Plan (1955-1960)*, Karachi, May 1956, p. 31. By focusing on self-reliance, poverty alleviation efforts and basic need fulfilment could be pursued while, somewhat deliberately, maintaining income inequality. See Fayyaz Baqir, *Poverty Alleviation and Poverty of Aid: Pakistan*, E-book ed., Taylor & Francis, Milton Park, 2018, Ch. 7; Samuel Moyn, *Not Enough: Human Rights in an Unequal World*, Harvard University Press, Cambridge MA, 2018, pp. 127-129.

²² Tariq Omar Ali, ‘Technologies of Peasant Production and Reproduction: The Post-Colonial State and Cold War Empire in Comilla, East Pakistan, 1960-70’, *South Asia: Journal of South Asian Studies*, Vol. 42, No. 3, 2019, pp. 435-451, p. 436.

²³ Iqbal, *supra* note 3, at p. 232.

²⁴ Willem van Schendel, ‘After the Limelight: Longer-term Effects of Rural Development in a Bangladesh Village’, *Bulletin of Concerned Asian Scholars*, Vol. 13, No. 4, 1981, pp. 28-34, p. 28.

²⁵ Azizur Rahman Khan, ‘The Comilla Model and the Integrated Rural Development Programme of Bangladesh: An Experiment in “Cooperative Capitalism”’, *World Development*, Vol. 7, 1979, pp. 397-422, p. 397.

²⁶ Salehuddin Ahmed, ‘Transforming Rural Communities: Comilla Model of Development’, in Samir Kumar Biswas (ed.), *Cooperatives: Present and Future Perspective*, Agrodoot, Dhaka, 2013, pp. 47-51.



45 agricultural cooperatives in 1966, the Academy was able to discern some the qualities of ‘good’ cooperatives from ‘bad’ ones. Good agricultural cooperatives “were characterized as having high morale, high attendance at meetings, regular savings, prompt repayment of loans, high rate of adoption, growth in membership” and, crucially, “able and honest” leadership.²⁷ It was often the change of attitude and behavior of cooperative leaders that led to the degeneration of cooperatives.

Other than agricultural cooperatives, the Academy also incubated a number of non-agricultural cooperatives, comprising auto drivers & rickshaw pullers, craftsmen, butchers and small-scale entrepreneurs.²⁸ The most spectacular illustration of the Model at work among such cooperatives was the Deedar Co-operative Society, a primary multi-purpose village cooperative that was initially founded by eight rickshaw pullers and a shopkeeper on 9 October 1960.²⁹ Initially, the cooperative helped members pool their savings so that the cooperative could acquire (used) rickshaws and then have members enter into hire-purchase agreements to buy the rickshaws from the cooperative through weekly installments. In this way, rickshaw pullers who would otherwise not be able to buy a rickshaw in 20 years, were able to own their rickshaws in a matter of months. Through prudent saving and popular participation, this cooperative grew to having its own brick kilns, mills, consumer goods stores, day care centers and junior high school.

Deedar and the Academy had a symbiotic relationship, under the leadership of Mohammad Yeasin and Akhtar Hameed Khan respectively. As part of the two-tier cooperative model deployed by the Academy, managers of Deedar received training in secondary, central cooperatives from the Academy, which they transmitted to other members during weekly general meetings.³⁰ The Academy served as a trustworthy institution for cooperative savings and provided the essential training and advice necessary for the successful operation of the cooperative, from managing member meetings to accounting to agricultural and vocational skills.³¹ In turn, it was through the efforts of Deedar to stimulate public participation—particularly the involvement of women members—that the Academy’s ambition of female emancipation was promoted.³²

By the end of the 1960s, the Academy, through the efforts of the Kotwali Thana Central Co-operative Association (KTCCA) Ltd., the apex organization of both the agricultural and non-agricultural cooperative federations in the area, brought 40% of the farming families of the *thana* into the fold of cooperative membership, disbursed US\$2.4 million in loans and

²⁷ Arthur F. Raper, *Rural Development in Action: The Comprehensive Experiment at Comilla, East Pakistan*, Cornell University Press, Ithaca and London, 1970, p. 89.

²⁸ *ibid*, pp. 63-64.

²⁹ Although, as Ray correctly notes, Deedar was the exception rather than the norm when it came to the Comilla cooperative system. While the managing committees of most Comilla cooperatives were dominated by farmer-trader-moneylenders, Deedar was specifically targeted towards landless members. See Jayanta Kumar Ray, *Organising Villagers for Self-Reliance: A Study of Deedar in Bangladesh*, BARD, Comilla, 1983, p. 29.

³⁰ *ibid*, p. 15.

³¹ *ibid*, pp. 5-6.

³² *ibid*, p. 21.

collected US\$400,000 in savings.³³ It not only covered all of the *thanas* in Comilla district at this time, it was decided in 1971 that the Comilla Model would be replicated across the country under an Integrated Rural Development Programme (IRDP).³⁴ The Comilla Model involving agricultural societies achieved considerable fame for increasing agricultural production and improving distribution of income. However, as one later commentator observed, the material successes attributed to it may instead have been knock-on effects from the introduction of heavily-subsidized irrigation technologies that improved rice yields and larger farmers benefiting from cooperative organization over farmers with less than 1 acre of land.³⁵ While these cooperatives were supposed to encourage thrift, the empirical evidence of the time indicates that wealthy managing committee members were able to exploit access to cheap credit to act in a spendthrift manner.³⁶ Indeed, according to Khan, the Model in general offered little to landless persons:

“The by-laws of the KSS [primary agricultural cooperatives] generally did not exclude the landless from membership. But agricultural labourers could not obtain credit (for which land had to be mortgaged). Nor did they have any use for subsidized water, fertilizer or pesticide. Thus there was no incentive for them to become members for which strict obligations had to be undertaken.”³⁷

1.3. The Bangladesh Era (1971- Present)

The independence of Bangladesh did not diminish the long-standing interest in cooperatives, but instead offered an opportunity to recalibrate the movement in new directions. In the wake of the Liberation War of 1971, cooperatives were deemed to be an important mechanism for distributing essential commodities across the country,³⁸ improving farm productivity and disbursing “quick loans on easy terms”.³⁹ Within six months of the conclusion of the Liberation War, the *Bangladesh Jatiya Samabaya Union* (National Cooperative Union) and the International Cooperative Alliance Regional Office & Education Centre for South-East Asia organized a seminar on the needs of the cooperative movement for the newly liberated country. At the time, this was seen as the first opportunity to galvanize a bottom-up, autonomous cooperative movement. The seminar, held between 19 and 30 June 1972, provided an opportunity for the movement to assess its own development and reflect on how it may be restructured for the needs of a new nation-state. The resolutions adopted at the conclusion of the seminar called for the

³³ Ali, *supra* note 22, at p. 442.

³⁴ Khan, *supra* note 25.

³⁵ *ibid*, pp. 402-403, 405-406. Similar observations were made by van Schendel, *supra* note 24, at p. 30.

³⁶ *ibid*, p. 412. See also, Harry W. Blair, ‘Rural Development, Class Structure and Bureaucracy in Bangladesh’, *World Development*, Vol. 6, No. 1, 1978, pp. 65-82 (goes into greater depth regarding the class dynamics and bureaucratic factors that ensured that the Comilla model helped large farmers more than small ones).

³⁷ *ibid*, p. 419. This was also admitted by Akhtar Hameed Khan, the Director of the Academy since its inception. See Akhtar Hameed Khan, *Rural Development in East Pakistan: Speeches by Akhtar Hameed Khan*, Michigan State University, East Lansing, Mich., 1964, p. 32.

³⁸ This was noted contemporaneously by the CIA, recorded for posterity in this recently declassified document: Central Intelligence Agency, ‘Bangladesh: Six Months of Independence’, Intelligence Memorandum No. 2047/72, 27 June 1972, p. 2.

³⁹ Bangabandhu Sheikh Mujibur Rahman Independence Day Address, 1972, Dacca Overseas Service, 1515 GMT, 26 March 1972.

establishment of a three-tier business structure, with multi-purpose primary cooperatives at the base, and a parallel two-tier promotional structure at district and national level to support the business structure.⁴⁰ In 1972, there were about 4,100 multipurpose cooperatives and the seminar encouraged these societies being used as ‘fair price’ consumer cooperatives and for the expansion of cooperatives for the rice, jute, milk, weaving and fishery sectors.⁴¹ In addition, the seminar recommended the overhaul of the inherited Co-operative Societies Act of 1940.⁴² The report of the seminar provided a Model Cooperative Societies Law to serve as a basis for undertaking such a reform, with the major proposals seeking to diminish the extensive powers of the cooperative registrar to “nominate directors, supersede committees and remove office-bearers of cooperative societies”.⁴³ The other issues covered included the financing of cooperatives, cooperative housing projects and transferring of cooperative education responsibilities to the *Bangladesh Jatiya Samabaya Union*.

At around the same time as the seminar, the drafting of the Constitution of the newly-independent country was in full swing. The Constitution that was adopted on 4 November 1972 states that cooperative ownership, that is, ownership by cooperatives on behalf of their members, will be one of the forms of ownership in the Republic and thereby operate as a structure by which the people shall own or control the instruments and means of production and distribution.⁴⁴ Given that this Article is within the Part of the Constitution concerning the Fundamental Principles of State Policy, it is not judicially enforceable,⁴⁵ however Government action is supposed to be galvanized in accordance with these principles.⁴⁶ The emphasis on cooperative ownership can be seen in the continuation of the Pakistan-era IDRP, which by 1976/1977 was implemented in some 46% of *thanas* in the country⁴⁷—although they continued to struggle under the same shortcomings as before.⁴⁸ The IDRP was restructured in 1982 and brought under the Bangladesh Rural Development Board. Under the aegis of this body, the number of agricultural cooperatives grew to

⁴⁰ International Cooperative Alliance, *Report of the ICA/BJSU National Seminar on The Needs of the Cooperative Movement of Bangladesh, June 1972*, International Cooperative Alliance, New Delhi, p. 11.

⁴¹ *ibid*, pp. 28-30, 33-36, 46-47, 57.

⁴² The Act had been amended during the Pakistan period. See, for e.g. East Pakistan Act XVIII of 1964 which broadened the scope of s. 86 of the Act of 1940. This meant that a wider range of activities touching upon the business or affairs of the cooperative could be referred to the Registrar for arbitration.

⁴³ *ibid*, p. 12.

⁴⁴ Article 13(b), Constitution of the People’s Republic of Bangladesh, 1972 [‘Constitution’]. This Article on co-operative ownership is complemented by articles which confer a responsibility on the State to emancipate peasants, workers and backward sections of the population from exploitation (Article 14), promote the development of cottage industries so as to diminish the disparities between urban and rural areas (Article 16) and the right and duty to work (Article 20).

⁴⁵ Article 8(2), Constitution.

⁴⁶ *Wahab v. Secretary, Ministry of Land*, 1 MLR (1996) 338, at p. 340

⁴⁷ Khan, *supra* note 25, at p. 414. Indeed, during his Independence Day speech, Bangabandhu Sheikh Mujibur Rahman announced that over the next five years, 65,000 villages will have ‘compulsory’, multipurpose cooperatives, with each working person a member of various multipurpose cooperatives. See, Bangabandhu Sheikh Mujibur Rahman Independence Day Speech, Dacca Domestic Service at 0958 GMT, 26 March 1975.

⁴⁸ van Schendel, *supra* note 24, at p. 34.

170,000 in 2010, of which only 18,000 were active.⁴⁹ The newly-independent country undertook a number of initiatives to promote cooperatives in various sectors under successive governments but the following paragraphs will focus on briefly describing four particular types of cooperatives that achieved some prominence: worker, housing and milk cooperatives.

As early as 1972, there was a worker buyout of a cotton mill, after the High Court Division of Supreme Court of Bangladesh stayed an earlier winding up proceeding and workers agreed to pay for the buyout.⁵⁰ Over the years drawing on the socialist orientation of Bangladesh's Constitution,⁵¹ the Government has adopted the strategy of reviving ailing nationalized enterprises by encouraging buyouts by worker cooperatives and similar worker-owned and -managed companies where workers are shareholders.⁵² This had been bolstered by bilateral engagement between Bangladesh and Yugoslavia on the issue of worker self-management and cooperativism. The most notable example of this policy appeared at the turn of the century, when the Transfer of State Owned Textile Mills to Workers and Employees (Procedure and Terms and Conditions) Policy in 2000 was introduced, through which eight state-owned textile mills were bought out by their workers as part of a privatization process.⁵³ Aside from industrial worker cooperatives, professionals' cooperatives were formed in sectors ranging from weaving⁵⁴ and fishing⁵⁵ to newspaper hawking⁵⁶ and transport work. While recent statistics on this sector are scarce, one study of 'industrial' cooperatives found there to be 30,714 cooperatives registered in the country as of December 1992, inclusive of cooperatives for women, in handicrafts and in cottage industries.⁵⁷ Yet, irrespective of whether they were formed de novo or through conversion, such cooperatives have struggled to remain solvent, as a

⁴⁹ Maya Sultana, Junayed Uddin Ahmed & Yoshiharu Shiratake, 'Sustainable conditions of agriculture cooperative with a case study of dairy cooperative of Sirajgonj District in Bangladesh', *Journal of Co-operative Organization and Management*, Vol. 8, 2020, <https://doi.org/10.1016/j.jcom.2019.100105>, p. 3.

⁵⁰ See the unreported case discussed in Mohammad Zahir, *Company and Securities Laws*, 3rd ed., University Press Limited, Dhaka, 2015, pp. 246-247.

⁵¹ Mahmudul Islam, *Constitutional Law of Bangladesh*, 3rd ed., Mullick Brothers, Dhaka, 2016, p. 71; Muhammad Anisur Rahman, *People's Self-Development: Perspectives on Participatory Action Research*, University Press Limited, Dhaka, 1994, p. 3.

⁵² Article 47(1), Constitution provides scope for the Government of Bangladesh to compulsorily acquire, nationalise or requisition any property or the control or management thereof whether temporarily or permanently, amalgamate undertakings and extinguish, modify, restrict or regulate the rights of directors or the voting rights of persons owning shares without infringing fundamental rights, if it is done to give effect to any of the fundamental principles of state policy. Hence, it is possible to imagine that this power is used to further co-operative ownership of businesses.

⁵³ See the discussion of the difficulties in the transfer process in *New Luxmi Narayan Cotton Mills Limited and Another vs. The Government of Bangladesh and Others*, 2 LCLR (2013) 81; Sohel Parvez, 'Govt non-cooperation forces workers-run 2 industries closed down', *bdnews24.com*, 29 July 2005.

⁵⁴ See, *Abdus Sattar & Others vs. Abdul Gafur Sardar & Others*, 1 BLD (1981) 169.

⁵⁵ See, *Nani Gopal Barman vs. Bangladesh and Others*, 14 BLD (AD) (1994) 52.

⁵⁶ See, *S.A. Majumder Shibli and another vs. People's Republic of Bangladesh and Others*, 24 BLD (2004) 238.

⁵⁷ Md. Shamsuddin Munshi, 'Development of Industrial Cooperatives in Bangladesh', in Samir Kumar Biswas (ed.) *Cooperatives: The Golden Legacy*, Agrodoot, Dhaka, 2013, p. 268. More recent statistics provided by the Department of Cooperatives only provide a partial picture, as they only contain figures regarding some of these cooperative. For instance, there are 27,490 women's cooperatives with 966,934 members as of December 2018. See *infra* note 64.

result of a lack of access to capital, marketing facilities and management training, along with increased competition from private, capitalist competitors.⁵⁸

Housing cooperatives also enjoyed a degree of popularity in urban areas of Bangladesh from before Independence until 1979, when the Ministry of Local Government, Rural Development and Co-operatives prohibited the acquisition of private property of individuals for the benefit of housing cooperatives.⁵⁹ Initially, the Government overtly supported such cooperatives through the requisition and acquisition of land as "it was not possible for Government alone to develop the entire area of the city".⁶⁰ It was believed that housing cooperatives would not only address the housing crisis in cities and lessen congestion, but that they would build safe, sanitary housing at a lower cost than the State.⁶¹ Some of these hopes were dashed in subsequent years as allegations were raised that housing cooperatives were not being utilized for building housing for those who did not own properties in towns but instead were being established by powerful political and bureaucratic figures for self-enrichment, by speculating on scarce urban property and requiring members to obtain housing developed by them.⁶² These developments not only led to the reversal of earlier policies but also caused the High Court Division of the Supreme Court of Bangladesh to exercise closer scrutiny of claims, on a case-by-case basis, that land requisitions in favor of cooperatives were for a 'public purpose'. In spite of this, housing cooperatives are still seen as an important strategy for urban development and rehabilitating squatters and slumdweller.⁶³ As of December 2018, there are 70 housing cooperatives, with 21,290 members.⁶⁴

In comparison, dairy cooperatives have been a relative success, helping lift hundreds of thousands of people from poverty.⁶⁵ With the support of the United Nations Development Program (UNDP), the Food and Agriculture Organization (FAO) and the Danish aid agency DANIDA, the Government established the Bangladesh Cooperative Milk Producers' Union Limited in 1974 to raise income levels, support livestock development and supply hygienic

⁵⁸ *ibid*, pp. 268-271.

⁵⁹ See, Ministry of Local Government, Rural Development and Co-operatives, Memo No. S-XIII/IV-15/78/681(21) dated 5.7.79, cited in *Md. Ismail & Others vs. Bangladesh & Others*, 1 BLD (1981) 407.

⁶⁰ *Mohammad Mansur Rahman and Others vs. Province of East Pakistan & Ors*, 14 DLR (1962) 604, at para [11]. Also see, *Md. Sultan Mia v. The Secretary to the Government of East Pakistan, Finance and Revenue (Revenue) Department and Others*, Writ Petition No. 98 of 1959, decided on 11.01.1960.

⁶¹ *Mohammad Mansur Rahman and Others vs. Province of East Pakistan & Ors*, 14 DLR (1962) 604, at paras [11-12]

⁶² See *Chandi Kalbaria Das vs. Bangladesh & Others*, Writ Petition Nos. 345, 372, 374, 375 and 376 of 1981, decided on 02.03.1982, at para [12]; *Md. Ismail & Others vs. Bangladesh & Others*, 1 BLD (1981) 407, at para [15]. Note that in *Md. Ismail* while the Court considered this development and the reversal of Government policy, it did not find that the cooperative or its election committee were using their coercive power to enrich themselves [paras 24-25].

⁶³ Syed. H. Loton, 'Low-Income Communities: Facing the Problems of Adequate Housing in Bangladesh Agenda: Emerging Issues', *International Conference on Adequate & Affordable Housing for All: Research, Policy & Practice*, Centre for Urban and Community Studies, University of Toronto, Toronto, 24-27 June 2004, p. 15.

⁶⁴ Department of Cooperatives, <<http://www.coop.gov.bd/site/page/13dac756-a964-4e9f-9834-0471d9ed6aaf/>> last accessed 18 May 2020.

⁶⁵ Rehman Sobhan, *Challenging the Injustice of Poverty: Agendas for Inclusive Development in South Asia*, SAGE, New Delhi, 2010, p. 129.

milk.⁶⁶ ‘Milk Vita’, as it came to be known, was involved in all parts of the milk supply chain—from production to processing to distribution—with primary cooperatives being set up to fulfill these functions.⁶⁷ Over the years, Milk Vita has established three pasteurization plants, 32 cooling plants, and eight plants for other dairy products across the milk shed area of the country employing thousands,⁶⁸ while also providing livestock development, marketing, veterinary and feed services to its 300,000 members organized in 2306 village primary milk producers’ cooperatives.⁶⁹ Crucially, the organization supports its member in both supplying produce as well as generating consistent demand. It provides interest-free loans to its farmer-members to purchase cattle, with repayments taking place through weekly deductions from the milk price.⁷⁰ It also assures a guaranteed market for the farmer-members with milk being bought at a fixed price.⁷¹ Initially, the board of directors of the cooperative were civil servants, but since 1991, the governance of the organisation has become more independent and professionally managed. At present, two members of the board of directors are civil servants, with the others being elected from the primary milk producers’ cooperatives. At the same time, the ownership of Milk Vita is gradually being transferred to the primary cooperatives from the Government as members gradually acquire shares in the apex organization. This growing autonomy has coincided with Milk Vita becoming a profitable venture, with it starting to turn a profit from 1990-1991 and enjoying a profit of some 3 billion BDT (roughly 36 million USD) in 2011/2012.⁷² It is currently Bangladesh’s largest dairy company and supplier of dairy products.⁷³ That being said, there have been clouds on the horizon, with there being allegations regarding a drop in the quality of milk and land grabbing by corrupt officials from the cooperative, precipitating a fall in profits.⁷⁴ Given that milk production in the country cannot meet the entirety of local demand, there is still considerable room for improvement in the services and management of the 2198 primary milk cooperatives in the country.⁷⁵

In spite of the varying fortunes of cooperative societies in Bangladesh over the past century, there continues to be an active interest in promoting the use of these entities in

⁶⁶ Johnston Birchall, *Rediscovering the cooperative advantage: Poverty reduction through self-help*, ILO, Geneva, 2003, p. 35.

⁶⁷ For more information on the organizational structure of the Bangladesh Cooperative Milk Producers’ Union Limited see Ashoke Kumar Ghosh & Keshav Lall Maharjan, ‘Development of Dairy Cooperative and Its Impact on Milk Production and Household Income: A Study on Bangladesh Milk Producers’ Cooperative Union Limited’, *Journal of International Development and Cooperation*, Vol. 10, No. 2, 2004, pp. 193-208, p. 197.

⁶⁸ See <http://www.milkvita.org.bd/site/page/d405eb57-482f-4b37-b732-2cb49f4c3190/%E0%A6%95%E0%A6%BE%E0%A6%B0%E0%A6%96%E0%A6%BE%E0%A6%A8%E0%A6%BE%E0%A6%B8%E0%A6%AE%E0%A7%82%E0%A6%B9> last accessed 18 May 2020.

⁶⁹ Sultana, *supra* note 49. The authors note that the buy-in for such cooperative is low, with new members required to buy a 10 BDT share (0.12 USD) and pay a 10 BDT admission fee.

⁷⁰ *ibid*, at 6.

⁷¹ *ibid*, at 8.

⁷² Sultana et al., *supra* note 49, at p. 6; Birchall, *supra* note 66 at p. 36.

⁷³ Sultana et al., *supra* note 49.

⁷⁴ Staff Correspondent, ‘4,000 acres of Milk Vita land grabbed’, *The Daily Star*, 21 August 2019; Mizanur Rahman, Md. Saidun Nabi & Fahim Reza Shovon, ‘Now Pasteurized Milk Samples found containing lead, cadmium’, *Dhaka Tribune*, 16 July 2019.

⁷⁵ Belal Muntasir, ‘Local Milk Industry: A Revolution in White’, *Dhaka Tribune*, 13 October 2019. For the latest figures, see *supra* note 64.

the economy, with some arguing for the use of cooperatives in rice farming⁷⁶ and by the village organizations that are part of the Bangladesh Rural Advancement Committee (BRAC)'s Rural Enterprise Project (e.g. in brick fields).⁷⁷ Beyond this, cooperative organization has been recommended for workers in the informal economy, such as waste collectors,⁷⁸ and the survivors of garment factory accidents.⁷⁹ Another promising use-case is the formation of migrant worker cooperatives, to potentially remedy recruitment malpractices, diminish the costs of migration and rehabilitate returnees.⁸⁰

As of December 2018, there are 175,310 cooperatives registered in Bangladesh, with 10,974,432 members, with a total share capital of 16,830,584,000 BDT (roughly 202 million USD) and saving deposits of 74,295,326,000 BDT (roughly 891.6 million USD).⁸¹ The following section provides an overview of the cooperative legislation of Bangladesh, using a structure derived from the questionnaire distributed by the ICA-AP. After surveying this legislative framework, sections 3 and 4 will discuss the 'friendliness' of this framework and areas in need of reform, which *inter alia* involves consideration of new sectors in which cooperatives may grow in the country.

2. General Overview of Bangladesh's current Cooperative Legislation

2.1. Legislative Framework for Cooperatives

⁷⁶ This was done through the use of a scenario planning research method among 232 surveyed households in Kurigram Sadar, characterized by extreme poverty and significant gaps in rice yields. The participants were asked to consider four different scenarios, based on previously collected data and the literature on farming in the area, to assess the benefits the farmers saw in cooperative farming. When presented with the advantages of cooperative farming, 81% of the participants expressed an interest in it, with 81% of households already engaged in some form of informal cooperation with their neighbours. Interestingly, some farmers were only interested in cooperative rice farming if there was proper government oversight of the cooperative, contrary to the international cooperative principle that cooperatives should be autonomous. Vladimir Milovanovic & Lubos Smutka, 'Cooperative rice farming within rural Bangladesh', *Journal of Co-operative Organization and Management*, Vol. 6, 2018, pp. 11-19, p. 13-16.

⁷⁷ Anjuman Ara Begum, *Role and Relevance of Co-operatives in Rural Enterprise Development in the Bangladesh Rural Advancement Committee (BRAC)*, A H Development Publishing House, Dhaka, 2013, p. 79.

⁷⁸ A recent example is the formation of the Vangari Khuddro Baboshahi Cooperative Society Limited in Kanaipur, Faridpur. The ILO, under the B-SEP project, has helped support such cooperatives in registration and capacity building (e.g. the weighing of goods). The formation of cooperatives has both helped in waste management in the area but has also improved the livelihood of the members involved. See ILO, *Promoting Entrepreneurs to Create Green Jobs*, ILO Country Office for Bangladesh, Dhaka, 2018, p. 4. Another example is that of marketing cooperatives for the production of mushrooms by women with disabilities. See ILO, *Major achievements of the*

Bangladesh Skills for Employment and Productivity (B-SEP) project, ILO Country Office for Bangladesh, Dhaka, 2017, p. 7.

⁷⁹ One example being the Oporajeo Worker Cooperative, formed by the survivors of the Rana Plaza factory disaster. Elsa Faynor, 'In Bangladesh, Rana Plaza Survivors Set Up Own Cooperative', *Multinationals Observatory: Tracking French Corporations Worldwide*, 13 September 2016.

⁸⁰ Ridwanul Hoque, *Legal Mapping of the Scope for the Establishment of a Recruitment Service Cooperative of (Domestic) Migrant Workers in Bangladesh*, ILO, Dhaka, 2015, p. 13; Md. Nurul Islam, *Strategy Paper for Re-integration of Returnee Migrants*, ILO, Dhaka, 2010, p. 5.

⁸¹ Department of Cooperatives, *supra* note 64.

“Co-operative societies” in Bangladesh are currently regulated by the Co-operative Societies Act, 2001 (most recently amended in 2013) (“the Act”) and the Co-operative Societies Rules, 2004 (“the Rules”). The Act entered into force on 15 July 2001 and repealed and replaced The Co-operative Societies Ordinance, 1984. The Rules were gazetted on 16 July 2004 and repealed and replaced The Co-operative Societies Rules, 1987. The legislation provides a framework for the registration, personality, governance, membership, auditing, dispute resolution and dissolution of a co-operative society. Alongside primary legislation, circulars issued by the Department of Cooperatives of the Government of Bangladesh and the Bangladesh Bank (including the Bangladesh Financial Intelligence Unit) provide regulatory guidance on the implementation of cooperative law (e.g. the requirements for registering a new co-operative society and compliance with anti-money laundering legislation).

In accordance with the aforementioned Fundamental Principle of State Policy concerning cooperative ownership, the Government of Bangladesh also issued a National Co-operative Policy, 2012 (published 15 May, 2014), replacing the earlier National Co-operative Policy, 1989 and National Co-operative Policy, 2003, which envisions a broader role for the cooperative movement, particularly in confronting 21st century challenges such as climate change, by contributing to the conservation of natural resources and biodiversity.

2.2. Special Laws on Particular Types of Cooperatives

Under this legislative framework, there is no distinct, special law for particular type of cooperatives. However, the Rules recognise a non-exhaustive list of 29 different types of co-operatives⁸² and within the general framework of the Act, special provisions are made for *inter alia* worker co-operatives, real property-related co-operatives and co-operative land development banks. These are either in the form of default rules which seek to accommodate the characteristics of particular types of co-operatives or in the form of additional mandatory rules, given greater risks of opportunism, moral hazard and free-rider behaviour in certain economic sectors.

For instance, the default rule is that members cannot return or sell their shares back to an issuing co-operative society, however, the exception to this rule is when the co-operative society’s by-laws require membership to be limited to salaried employees or workers.⁸³ In such cases, ensuring the homogeneity of membership necessitates co-operative societies to be able to redeem or receive issued membership shares. Similarly, it is a general rule that members of the Managing Committee cannot be salaried employees of the co-operative, the Managing Committee or of any member nor be in a profitable position in relation to the organization. Again, an exception exists for worker-, artisan-, drivers’ helper-, conductor- and employee co-operatives, in which case this general rule does not apply.⁸⁴

With respect to co-operative societies that have been formed with the intention of

⁸² Rule 3, Co-operative Societies Rules, 2004.

⁸³ Section 15(3), Co-operative Societies Act, 2001.

⁸⁴ Section 19(1)(f), Co-operative Societies Act, 2001.

organising permanent housing of members, land reclamation and land acquisition for the purpose of leasing it to members, there are restrictions on members occupying or transferring interest in said land.⁸⁵ There are also mandatory requirements within the scheme of the Act and the Rules for co-operative land development banks concerning the process of foreclosing and selling mortgaged property and limitations thereto.⁸⁶

2.3. The ICA Principles of Co-operative Identity and the Law

The Act does not explicitly mention the ICA Principles of Co-operative Identity,⁸⁷ however, one of the aims of the National Co-operative's Policy, 2012 is to make Bangladesh's co-operative movement complementary to the ICA's aims & objectives, a fundamental feature of which is to promote the co-operative difference.⁸⁸

That being said, the Act implicitly upholds most of the ICA's principles of cooperative identity in the sense that, firstly, primary co-operative societies are in principle open to all those who can make use of their services (subject to the type of co-operative concerned) and are willing to abide by the duties and tasks of membership.⁸⁹ Secondly, despite there being shares in Bangladeshi co-operatives, voting power is decoupled from said shares. Section 36(1) of the Act clearly indicates that every level of co-operative, from primary to national level, is required to use the equal voting method where each member has one vote. Thirdly, members have the opportunity to economically participate in the success of the co-operative, through both the receipt of dividends and contribution to common funds such as the reserve fund and the co-operative development fund.⁹⁰

Given that it is mandatory for every co-operative society to contribute a portion of their net profit (মুনাফা, munafa) to the Bangladesh Co-operative Academy which is used for educational and training purposes, and as it is possible for a co-operative's by-laws to specify contributions for other purposes such as sustainable development of a particular community, it is evident that principles 5 and 7 are also embodied in the Act.⁹¹ In relation to principle 6, the Act also enables the creation of a multi-tiered co-operative group structure, from primary co-operatives to national-level co-operatives, by setting out how these entities may be formed, how they inter-relate with one another, their respective competences and the authorities that have oversight over their governance. Finally, while it is possible for co-operatives to be autonomous and independent, there can be legitimate

⁸⁵ Section 42(a), Co-operative Societies Act, 2001. Disputes concerning property transfers to non-members without permission has been addressed by the Appellate Division of the Supreme Court of Bangladesh in *Baitul Aman Co-operative Housing Society Ltd. & Another vs. Mohammad Shamsur Rahman & Others*, 1 BLD AD (1981) 307. Such a sale would be invalid and would not transfer title to the buyer.

⁸⁶ Sections 59-78, Co-operative Societies Act, 2001; Rules 138-154, Co-operative Societies Rules, 2004.

⁸⁷ While the Act omits an explicit reference to the Principles, the Model Cooperative Societies Law of 1972 made reference to them, as did section 8, Co-operative Societies Ordinance, 1984.

⁸⁸ Bangladesh Extraordinary Gazette of 15 May 2014, p. 13456

⁸⁹ Sections 8(1)(a), 36-42, Co-operative Societies Act, 2001.

⁹⁰ Section 34, Co-operative Societies Act.

⁹¹ This is not to say that cooperatives inherently have a public purpose, as clarified in the *Md. Ismail and Chandi Kalbaria Das* cases, see *supra* note 62.

concerns raised about the degree of autonomy that co-operatives can enjoy once the Government of Bangladesh acquires shares in the co-operative, grants it a loan or issues a guarantee in its favour. For instance, if any of these conditions are in place, under section 21 of the Act, the Government can choose to depute a first-class government officer to help the co-operative execute its functions. (Indeed, rule 50 indicates that the Government can appoint any public official as an executive officer of a co-operative society should it think fit.) If the Government has 1/3rd or more of the shares in a co-operative and members of the Managing Committee are responsible for bringing the co-operative to the vicinity of insolvency, then the Registrar has enhanced powers to expel guilty members of the Committee or even disband the committee altogether—without calling for a special general assembly of co-operative members as would otherwise be the case.⁹² It is questionable whether powers such as these are compatible with the objective of fostering co-operatives as autonomous, independent entities.

2.4. Definition of Cooperatives

In the absence of a reference to the ICA's Principles of Co-operative Identity, the definition of cooperative under the law is a procedural one. The statutory definition of a co-operative society is limited to the procedural requirement that it be registered or deemed to be registered under the Act.⁹³ Section 10 of the Act, read with section 12 and rules 5 to 6, detail the requirements and conditions for a co-operative society to receive a registration certificate. According to experts in the field of co-operative law, the core characteristics of Bangladeshi co-operative societies align with the ICA's definition of co-operatives, in terms of being a voluntary, autonomous association of persons, serving the common needs of members and being democratically managed.⁹⁴ This also accords with Bangladesh's tripartite support for the ILO's Promotion of Cooperatives Recommendation, 2002 (No. 193) during the 90th session of the International Labour Conference, a Recommendation which espouses the co-operative principles defined by the ICA in its Statement on the Cooperative Identity in 1995.⁹⁵

Once registered, a co-operative society is recognised as being a corporate entity that can exist in perpetuity, with the capacity to acquire, hold, transfer and enter into contracts concerning property so as to carry out the co-operative's purpose as well as sue and be sued in its own name.⁹⁶ As a corollary to this, the Act also provides for strong 'entity shielding' by ensuring that the personal creditors of a cooperative member, barring the co-operative society itself under section 31, cannot attach said member's share or interest in the cooperative.⁹⁷ It is possible for a cooperative to have both limited liability and unlimited liability for its members⁹⁸—though it is common for the co-operative to opt for limited

⁹² Section 22(1), Co-operative Societies Act, 2001.

⁹³ Section 2(2), Co-operative Societies Act, 2001.

⁹⁴ Justice Siddikur Rahman Miah, *Shomobay Shomiti Aiyin*, 2001, New Warsi Book Publication, Dhaka, 2016, pp. 276-277.

⁹⁵ Paragraph 3(b) and Annex, ILO Recommendation No. 193 on the Promotion of Cooperatives, 2002.

⁹⁶ Section 14(1), Co-operative Societies Act, 2001.

⁹⁷ Section 38, Co-operative Societies Act, 2001.

⁹⁸ Rules 74, 79 & 90, Co-operative Societies Rules, 2004, as well as Form-1 appended to the Rules.

liability by default.⁹⁹ There is also delegated management in the form of a Managing Committee.¹⁰⁰

However, unlike in archetypical for-profit shareholder corporations, voting rights in co-operative societies are based on one member, one vote rather than the number of shares held by a member.¹⁰¹ While it is obligatory for every member to buy a share in the co-operative society, no individual member (i.e. a natural person) or co-operative society (i.e. a legal person) can acquire more than 20% of a co-operative society's shares.¹⁰² In the case of co-operative societies, those membership shares cannot be held in primary co-operatives. Only the Government can acquire more than 20% of a co-operative society's shares. There is also limited transferability of membership shares and,¹⁰³ unlike limited liability companies, co-operative societies cannot form branches.¹⁰⁴ The compulsory distributions of net profit towards co-operative research, training and education via a cooperative development fund,¹⁰⁵ as well as the possibility to allocate residual assets to a charity or a co-operative development objective following a co-operative society's winding up and dissolution,¹⁰⁶ also distinguishes co-operatives from other business entities. Moreover, the Rules explicitly contemplate the possibility of co-operatives receiving subsidies from the Government, which is distinct from for-profit shareholder corporations.¹⁰⁷

Bangladesh law also seeks to formally distinguish co-operative societies from other business entities. Section 3 of the Act provides that the *Companies Act, 1994* and the *Microcredit Regulatory Authority Act, 2006* are not applicable to co-operative societies (but see section 4.1 below highlighting the discrepancy between the Microcredit Regulatory Authority Act, 2006 and this section of the Act). Similarly, section 3 of the *Banking Companies Act, 1991* provides that the law concerning for-profit banking companies does not apply to co-operative banks. The limited exception to this is that the central bank of Bangladesh, the Bangladesh Bank, can order inspections and give directions to co-operative banks in the same manner as banking companies under sections 44 and 45 of the *Banking Companies Act, 1991*. Similarly, the promulgation of the *Money Laundering Prevention Act, 2012* and the *Anti-Terrorism Act, 2009* has led to the Bangladesh Financial Intelligence Unit issuing a separate circular providing instructions on how co-operative can comply said legislation.¹⁰⁸ In addition, to prevent the misuse of the 'co-operative' marque, particularly in corporate marketing, the Act allows for stiff penalties to be imposed on individuals, organizations and societies that use the term without due registration under the Act. Punishments can be up to seven years imprisonment, a one million BDT fine

⁹⁹ See both sets of Model By-Laws appended to the Co-operative Societies Rules, 2004.

¹⁰⁰ Section 18, Co-operative Societies Act, 2001.

¹⁰¹ Section 36(1), Co-operative Societies Act, 2001.

¹⁰² Section 15(2), Co-operative Societies Act, 2001; Rule 11(a), Co-operative Societies Rules, 2004.

¹⁰³ Section 15(3), Co-operative Societies Act, 2001.

¹⁰⁴ Section 23A, Co-operative Societies Act, 2001.

¹⁰⁵ Rule 84(6), Co-operative Societies Rules, 2004.

¹⁰⁶ Rule 133(2)(d)-(e), Co-operative Societies Rules, 2004.

¹⁰⁷ Rule 77, Co-operative Societies Rules, 2004.

¹⁰⁸ BFIU Circular No. 17 of 07 October, 2015.

(roughly 12,000 USD) or both.¹⁰⁹ The Registrar of cooperatives has issued circulars clarifying how cooperatives formed by the Bangladesh Rural Development Board (BRDB) may be distinguished from other, autonomously formed cooperatives.¹¹⁰

2.5 Objects and Purposes of Cooperatives

The objective of co-operative societies depends on the ‘tier’ of the cooperative within the country’s cooperative architecture. Primary co-operatives are the first tier within this architecture. They are composed of at least 20 (twenty) individual members and their objective is to enhance the socio-economic condition of their members through legitimate means.¹¹¹ A central co-operative society is the second tier within this architecture. They are composed of at least 10 (ten) primary co-operative societies and their objective is to help coordinate and ensure that the activities of their member co-operatives are managed well.¹¹² The third tier consists of national co-operative societies. They are composed of at least 10 (ten) central co-operative societies and their objective is to help coordinate and ensure that the activities of their member co-operatives across the country are managed well.¹¹³ (This structure is supplemented with national co-operative unions and ‘two-level’ special co-operative societies.)

The Act and the Rules are silent as to how member-promotion is to be carried out and whether a minimum level of transactions is required per cooperative year to retain membership – beyond buying and holding a minimum of a single share. The distribution of dividends, if any, is not tied to the volume of transactions either. It is left to individual co-operative societies to determine membership conditions and duties in their by-laws.¹¹⁴ This can potentially include a minimum level of transactions with the co-operative society. The model by-laws, for example, state that a member has to buy at least one share in the co-operative per co-operative year and membership may be suspended if savings are not deposited with the co-operative for more than three successive months.¹¹⁵

Conversely, cooperatives have less freedom in terms of persons with which it can transact. Cooperatives, except for the Bangladesh Co-operative Bank, are restricted from receiving savings deposits and making loans to non-members.¹¹⁶ This restriction was only introduced in 2013, following a spate of high-profile financial scandals involving the deposits of non-members. A financing bank (অর্থ সরবরাহকারী সংস্থা, *ortho shorborahokari shongstha*), which is a cooperative formed to grant loans to other co-operative societies, may grant loans to non-

¹⁰⁹ Section 9, Co-operative Societies Act, 2001.

¹¹⁰ Cooperative Department Order No. Audit/Order-1/87-1574/1(130)-Sha of 23.12.1989.

¹¹¹ Section 8(1)(a), Co-operative Societies Act, 2001.

¹¹² Section 8(1)(b), Co-operative Societies Act, 2001.

¹¹³ Section 8(1)(c), Co-operative Societies Act, 2001.

¹¹⁴ Rules 8(1)(e)-(f), 10(1), Co-operative Societies Rules, 2004.

¹¹⁵ Clause 14, Model By-Laws for Co-operative Societies <<http://www.coop.gov.bd/site/page/c21420f9-5078-49e9-8a57-fd10e1f94376/%E0%A6%89%E0%A6%AA%E0%A6%86%E0%A6%87%E0%A6%A8>> (last accessed on 18 May 2020).

¹¹⁶ Section 26(1), Co-operative Societies Act, 2001.

member co-operative societies.¹¹⁷ Moreover, in the specific case of agricultural co-operatives that require the use of irrigable land, it is possible for the co-operative society to pay the owners of the land to use it for agricultural purposes, irrespective of whether the owners are members of the co-operative or not.¹¹⁸ However, co-operative societies can—and are encouraged to—employ an appropriate number of non-members through a competitive procedure.¹¹⁹ The General Assembly of members are required to make decisions on non-member employment matters, their salary and their service rules.¹²⁰ In addition, at the recommendation of the Managing Committee it is permissible for 5% of the co-operative society's net profit to be allocated as a bonus for non-member salaried employees.¹²¹ Non-member employees can also be deputed by the Government to serve as executive officers of the co-operative society.¹²²

2.6. The Pursuit of Objectives Other than Member Promotion

As mentioned in section 2.5, primary co-operatives in particular are generally expected to promote the interest of its members. The exception to this could be that, of the 29 types of primary co-operatives mentioned in Rule 3, it is possible to conceive of 'inclusive village development co-operative societies' to have a communitarian orientation given that its purpose is to improve the socio-economic condition of all the professions and classes in a village in a united manner through a single organization.¹²³ The other types of co-operatives, while certainly having the capacity to benefit communities, have the first and foremost purpose of promoting member interests. Beyond this, broadly speaking, organizational entities that pursue social or community interests will either register a 'society'¹²⁴ or as a non-governmental organization (NGO).¹²⁵ These are distinct from

¹¹⁷ Section 2(3), Co-operative Societies Act, 2001.

¹¹⁸ Rule 78(2), Co-operative Societies Rules, 2004.

¹¹⁹ Rule 46(3), Co-operative Societies Rules, 2004.

¹²⁰ Section 17(4)(g), Co-operative Societies Act, 2001.

¹²¹ Rule 83(3), Co-operative Societies Rules, 2004.

¹²² Section 21, Co-operative Societies Act, 2001; Rules 50-54, Co-operative Societies Rules, 2004.

¹²³ Rule 3(1)(17), Co-operative Societies Rules, 2004.

¹²⁴ Section 1 read with section 20, *Societies Registration Act, 1860*. These are the societies that can be registered under the Societies Registration Act, 1860: "Charitable societies, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works or art, collections of natural history, mechanical and philosophical inventions, instruments, or designs."

¹²⁵ Sections 2(1) and 2(10) read with section 4 of the *Foreign Donations (Voluntary Activities) Regulation Act, 2016*. The voluntary activities that NGOs may pursue are: "non-profit social, religious, cultural, economic, educational activities, healthcare, pure drinking water and sewerage system, relief and rehabilitation, agriculture and agricultural development infrastructure, public awareness, poverty alleviation, women's empowerment, democracy and good governance, human rights, secularism, activities related to the empowerment of marginal and under-privileged masses and upholding their rights, children and the adolescents, activities related to the participation of the elderly and mentally handicapped people and upholding their rights, equal rights and equal participation, environment conservation and development, climate change, natural resources, efficiency enhancement, science and information technology, vocational activities, social welfare, research activities, activities related to the development and protection of various ethnic groups, upholding right to land and development activities and any other activities which may be specified by the Government from time to time, shall also be included in it."

cooperatives and other private enterprises as they are not-for-profit organisations.

2.7. Permissible Economic Activities of a Cooperative

In general, co-operatives can engage in a broad range of economic activity.¹²⁶ If a co-operative society receives the approval of the Bangladesh Bank, it can also conduct a banking business,¹²⁷ though as indicated in the response to section 2.4, there may be a question about the banking regulations applicable to co-operatives. After all, as the ‘Destiny – 2000’ scandal highlighted, multi-purpose co-operative societies may operate very large banking businesses illegally.¹²⁸ Co-operative societies that have been registered as insurers can also be engaged in the insurance and re-insurance business.¹²⁹

However, certain forms of economic activity affect the classification of the co-operative society. Platform cooperatives are not explicitly addressed in Bangladesh law but there may be scope for organising cooperatives in the industries that have been disrupted by platform companies. Of the (non-exhaustive) 29 types of co-operative society mentioned in Rule 3, taxicab co-operatives are one category. However, as the definition of taxicab co-operative refers to professional, licensed taxi drivers, it excludes the non-licensed hobbyists that often find work through ride-hailing gig platforms. Similarly, the existence of organizations such as the ‘Bangladesh ICT Professional Co-operative Society Ltd.’ indicate that it is also possible to register co-operative societies that have the purpose of improving the socio-economic condition of ICT professionals in Bangladesh, which can potentially include Bangladesh-based remote gig workers. These are both examples of sectors in which local platform cooperatives could be organised and given the emphasis on the use of information & communication technology by co-operatives in the National Co-operative Policy, 2012, this type of co-operative has potential to grow. There is also clearly a policy-level interest in this, with the Hon’ble Prime Minister’s most recent message on National Co-operatives Day calling for cooperatives to leverage the affordances of digital technologies and e-commerce.¹³⁰ However, for a resident of Bangladesh to join a global platform co-operative may be more cumbersome given the stringent rules on outward remittances of foreign exchange from Bangladesh (for e.g. to buy shares in the foreign cooperative).¹³¹ Conversely, it would be difficult to organise a platform co-operative with

¹²⁶ Justice Siddikur Rahman Miah, *Shomobay Shomiti Aiyen*, 2001, New Warsi Book Publication, Dhaka, 2016, p. 278.

¹²⁷ Section 23B, Co-operative Societies Act, 2001.

¹²⁸ Staff Correspondent, ‘Concern over cooperative money’, *The Daily Star*, 6 April 2012, available online at: <<https://www.thedailystar.net/news-detail-229235>>. For more detail on the legal ramifications of the illegal multi-level marketing scheme operated by Destiny-2000, see *Md. Hossain and Ors. Vs. State and Ors.*, Criminal Appeals Nos. 8915 and 8916 of 2016, decided on 24 November 2016.

¹²⁹ Sections 4 and 116ff, *Insurance Act*, 2010.

¹³⁰ BSS, ‘Use Modern Technology in Cooperative Activities: PM’, *The Daily Star*, 2 November 2019.

¹³¹ It is still difficult in countries like Bangladesh to legally send money out of the country from a bank account for retail transactions (the typical exceptions for Bangladeshi nationals are for healthcare and education) or to obtain a credit card/prepaid debit card denominated in a foreign currency such as USD or EUR. Even for those who are able to acquire a foreign currency credit card, the card is capped at 300 USD per e-commerce transaction, with a 1000 USD cap per annum, along with any authorized amount leftover from foreign travel (which in turn is capped at 3000 USD per annum). Bank transfers generally require complex permissions from

global membership from Bangladesh, given the necessity of a physical presence when voting in most types of co-operatives, the general prohibition on proxy voting¹³² and the emphasis on identifying a defined geographical territory for the co-operative to operate in.¹³³

Thus, in general, the limitations on the economic activity of co-operatives are the same as any other private-sector business, in the sense that they are precluded from participating in activities that entail the exercise of public authority or are the sole preserve of the state.

2.8. The Existence of a Cooperative Register and the Requirements for Registration

There is a separate register for co-operatives in Bangladesh, which is administered by the Department of Co-operatives of the Government of Bangladesh. As discussed above, registration is an essential requirement for the establishment of co-operative societies, as a co-operative is only recognised as such following its registration. In this section, the focus will mainly be on the registration of primary co-operatives.

To register a primary co-operative, it is necessary to first identify at least 20 (twenty) persons who are willing to be members of a primary co-operative society that has the socio-economic development of its members as its purpose.¹³⁴ It is necessary to maintain this minimum number of members as the Registrar has the power to liquidate any cooperative which breaches the mandatory requirements contained in the Act, the Rules and the By-Laws, which would naturally include the minimum number of members.¹³⁵ The fact that the number of members have fallen below the minimum level required may become evident from the audit of the co-operative that is to be conducted every year, which includes an audit of the co-operative's membership register.¹³⁶ The auditor is required to bring the breach of any laws, rules or by-laws to the attention of the Registrar.¹³⁷

If a primary co-operative society is being registered, then Form – 1 appended to the Rules has to be completed. Along with the appropriate Form, the initial group of prospective members must agree on a set of by-laws, that at least twenty of them must sign and submit in triplicate (a set of model by-laws are available at the Department of Co-operative's sub-district and district level offices as well as on the website of the Department). The by-laws must indicate the geographical area covered by the co-operative society as it is not possible

retail banks and potentially the Central Bank, while credit cards typically requires having a bank account denominated in a foreign currency. The central bank recently issued a notice prohibiting the use of credit cards/convertible prepaid debit cards to buy or sell shares in foreign companies, even for those who have access to them. See Foreign Exchange Circular Letter No. 26 of 14 November 2019 on the 'Use of International Cards for Online Payments', available online at: <https://www.bb.org.bd/mediaroom/circulars/fepd/nov142019fepdl26e.pdf?fbclid=IwAR25ZUPRNNciSwd2m923p3JbjBSknpF3GkAXf83RpEnIUoggiyxJW797ECs> last accessed 18 May 2020.

¹³² Section 36(1), Co-operative Societies Act, 2001; Rule 88, Co-operative Societies Rules, 2004.

¹³³ Rule 12, Co-operative Societies Rules, 2004.

¹³⁴ Section 8(1)(a), Co-operative Societies Act, 2001.

¹³⁵ Section 53(g), Co-operative Societies Act, 2001.

¹³⁶ Section 45(h), Co-operative Societies Act, 2001.

¹³⁷ Section 46(a), Co-operative Societies Act, 2001.

for more than one co-operative to be registered with the same name in the same area nor is it possible for a co-operative to work outside of its registered geographical area.¹³⁸ It must also indicate the size and composition of the Managing Committee, which will generally include 6, 9 or 12 members.¹³⁹ In addition, the founding members should prepare a proposed budget for the co-operative for the next two years.¹⁴⁰ At the time of registration, it is necessary for the co-operative society to have the statutory minimum of paid-up share capital, which varies according to the type of co-operative (see section 2.12 below). Each of the founding members must purchase at least one share in the co-operative.¹⁴¹

When submitting the requisite forms, by-laws and other documents requested by the Co-operatives Registrar, it is necessary to submit registration fees through a *treasury challan* (ট্রেজারী চালান). For indigent/proletarian, landless and poverty alleviation co-operatives, the fee is 50 (fifty) BDT and for all other primary co-operatives, the fee is 300 (three hundred) BDT.¹⁴² Once these documents and fees have been submitted to the appropriate office of the Department of Cooperatives, the application will be decided upon within 60 (sixty) days and if satisfied with the application, a registration certificate will be issued.¹⁴³ In assessing the application for registration, the Registrar will vet whether the documents are consistent and in line with the Act and the Rules, whether the by-laws are appropriate and effective in accomplishing the goals of the prospective cooperative and whether the by-laws ensure the security and stability of the cooperative. Once granted, the registration certificate is conclusive evidence of the establishment of the co-operative.¹⁴⁴ If the application is refused, the applicant(s) have the opportunity to appeal the decision. It is now possible to register co-operatives using the paper forms appended to the Rules as well as online via the website of the Department of Co-operatives.¹⁴⁵

2.9. Admission of New Members

Beyond the mandatory requirement that to be a full member of a co-operative a person must be at least 18 years of age and must purchase at least one share,¹⁴⁶ the eligibility of a person to be a member of a co-operative society is determined by its by-laws. For example, the first set of model by-laws indicate that potential members should be part of the class and sector the co-operative society belongs to and reside in the electoral area of the cooperative.¹⁴⁷ These by-laws are then implemented by the Managing Committee, which has the power to admit new members.¹⁴⁸ If a prospective member's application to be

¹³⁸ Rule 12, Co-operative Societies Rules, 2004.

¹³⁹ Rule 23, Co-operative Societies Rules, 2004.

¹⁴⁰ Rule 5(4), Co-operative Societies Rules, 2004.

¹⁴¹ Rule 11(a), Co-operative Societies Rules, 2004.

¹⁴² Rule 5(2), Co-operative Societies Rules, 2004.

¹⁴³ Section 10(2), Co-operative Societies Act, 2001.

¹⁴⁴ Section 11, Co-operative Societies Act, 2001.

¹⁴⁵ < <http://www.geeksnotechnology.com/ors/> > last accessed 18 May 2020.

¹⁴⁶ Rules 11(a)-(b), Co-operative Societies Rules, 2004.

¹⁴⁷ Section 9, Co-operative Societies Act, 2001; 1st set of Model By-Laws.

¹⁴⁸ Rule 46(1)(a), Co-operative Societies Rules, 2004.

admitted to a co-operative society is denied and he/she has a grievance about this decision, it is possible for him/her to submit this dispute to the Registrar for settlement.¹⁴⁹ However, the law does not obligate the Managing Committee to accept third parties as members.

Members are free to leave a co-operative if they so wish. It is necessary for the by-laws of a co-operative to specify how members can voluntarily (and involuntarily) exit from the co-operative and surrender their share/membership interest.¹⁵⁰ As indicated by both the model by-laws, they will usually be required to give due notice to the Managing Committee of their intent to resign, satisfy any debts that remain outstanding with the cooperative and arrange for the sale of their shares to other members of the cooperative or to a new member.

2.10. Regulation of Voting Power in Members' Meetings

Financial and voting rights in co-operative societies are decoupled. Dividends are distributed to members in proportion to the number of shares held while voting power is determined on the basis of one member, one vote.¹⁵¹ If votes are tied, then the Chairman of the co-operative society has a casting vote.¹⁵²

2.11. Cooperative Governance

The main internal organs of a co-operative society are the General Assembly of members and the Managing Committee.

The ultimate authority of every co-operative society is its General Assembly of members.¹⁵³ The General Assembly has the power to assess the co-operative's activities and the work of the Managing Committee as well as evaluate the annual budget, development plan and proposed projects of the cooperative.¹⁵⁴ The tasks of the General Assembly include:

- approving the minutes of the past annual general assembly and special general assembly;
- considering the annual report of the activities of the Managing Committee;
- reviewing and approving the cooperative's annual financial reports;
- reviewing the balance sheet and audit report,
- discussing the budget for the following year;
- conducting hearings, reviews and making decisions on grievances of members and employees as well as on membership;
- approving policies and rules relating to the appointment of non-member employees, their salaries and their service rules;
- submitting compliance letter(s) to the Registrar to accompany audit reports and

¹⁴⁹ Rule 10(3), Co-operative Societies Rules, 2004.

¹⁵⁰ Rule 8(1)(m)-(n), Co-operative Societies Rules, 2004.

¹⁵¹ Section 36(1), Co-operative Societies Act, 2001.

¹⁵² Section 36(2), Co-operative Societies Act, 2001.

¹⁵³ Section 16, Co-operative Societies Act, 2001.

¹⁵⁴ Rule 18, Co-operative Societies Rules, 2004.

- investigation reports;
- making decisions concerning the organization of the Managing Committee election, the expulsion of the entire Managing Committee, and specific members or ordinary members of the co-operative; and
- amending or re-formulating the co-operative's by-laws (section 17(4), the Act).¹⁵⁵

In addition, the General Assembly can vote on distributing dividends and employee bonuses,¹⁵⁶ the division or merger of the cooperative¹⁵⁷ as well as the voluntarily dissolution of the cooperative.¹⁵⁸ Along with the annual general assembly, special general assemblies may be called when:

- the Managing Committee deems such a meeting to be necessary;
- if one-third of the cooperative's members (if the cooperative has less than 500 members) requests it;
- if one-fifth of the cooperative's members (if the cooperative has more than 500 members) requests it;
- if the Registrar orders that such an assembly be called; or
- if the Act itself requires the calling of such an assembly.¹⁵⁹

The responsibility to manage and exercise the powers of the co-operative are entrusted to a Managing Committee. They are able to exercise all the tasks that do not fall within the purview of the General Assembly.¹⁶⁰ Bearing in mind the requirements of the Act, the Rules and the By-Laws, a Managing Committee has the power to:

- admit new members;
- withdraw, expel, suspend or fine members (with the approval of the general assembly);
- raise funds;
- invest funds;
- initiate, manage and oppose law suits on behalf of the cooperative;
- dispose of share applications and requests for loans (including determining an appropriate security); and
- form sub-committees for specific types of work.¹⁶¹

The duties and tasks of the Managing Committee include:

- granting loans;
- ensuring the accurate recording of the co-operative's assets and liabilities, income and expenditures;
- preparing an annual report and financial accounts for the annual general assembly;
- keeping the membership register up-to-date;
- assisting in inspections of the co-operative;

¹⁵⁵ Section 17(4), Co-operative Societies Act, 2001.

¹⁵⁶ Rule 83, Co-operative Societies Rules, 2004.

¹⁵⁷ Rule 7, Co-operative Societies Rules, 2004.

¹⁵⁸ Section 53(b), Co-operative Societies Act, 2001.

¹⁵⁹ Section 17(8), Co-operative Societies Act, 2001.

¹⁶⁰ Section 18(1), Co-operative Societies Act, 2001.

¹⁶¹ Rule 46, Co-operative Societies Rules, 2004.

- arranging the general assembly;
- overseeing whether loans and advances are being used properly; and
- any other duties delegated by the General Assembly.¹⁶²

In terms of accountability, the elected Chairman of the co-operative also serves as the Chairman of the Managing Committee¹⁶³ and can exercise all of the powers of the Managing Committee barring the granting of loan requests.¹⁶⁴ The members of the Managing Committee of a primary co-operative society are elected from eligible co-operative society members¹⁶⁵ and can also be appointed by the Government, should it have shares in the cooperative.¹⁶⁶ Ordinarily, it is the General Assembly that can remove or expel a member of the Managing Committee. However, following an unsatisfactory audit or investigation or a breach of the Act, the Rules or the By-Laws, if the Registrar is of the view that the average member's interest is diminished by this or the co-operative is brought to the vicinity of insolvency as a result, then they will order an appropriate hearing. If not satisfied by the Managing Committee member(s) response a special General Assembly must be convened by the Managing Committee within 30 days for the purpose of expelling the member(s). If the meeting is not convened, the Registrar can expel the concerned member(s) or disband the committee altogether (sections 22(1)-(2), the Act). The case of *Jn. Md. Saleh Ahmed Khan vs. Government of Bangladesh represented by Add'l Secretary-in-Charge, Ministry of Rural Development and Co-operative Division & Ors.*, clarified that the Registrar's power should be appropriately delegated to another official (e.g. Add'l Secretary) for it to be legal and any disqualification order issued to the Managing Committee member must follow the removal order.¹⁶⁷ A Managing Committee member who has served three consecutive terms is ineligible to stand for an election immediately following the last term.¹⁶⁸ The Appellate Division of the Supreme Court of Bangladesh was once seized with a case challenging this restriction on the continuity of board tenure on the basis that it violated a committee member's right to be treated equally and to form associations and unions under the Constitution of Bangladesh.¹⁶⁹ In *Md. Abdus Sattar vs. Bangladesh and Others*,¹⁷⁰ the Court held these allegations to be unfounded as the impugned Law was applicable to all Managing Committee members and its restrictions were reasonable. In view of this, Mustafa Kamal, J. memorably explained "While the proverb 'old is gold' has a fatal attraction, another proverb 'the old Order change yielding place to new' is equally honoured".¹⁷¹

¹⁶² Rule 47, Co-operative Societies Rules, 2004.

¹⁶³ Rule 43, Co-operative Societies Rules, 2004.

¹⁶⁴ Rule 48, Co-operative Societies Rules, 2004.

¹⁶⁵ Section 19(1), Co-operative Societies Act, 2001; Rule 24, Co-operative Societies Rules, 2004.

¹⁶⁶ Section 19(3), Co-operative Societies Act, 2001.

¹⁶⁷ 9 BLD (1989) 410. This case is relevant for interpreting the contemporary version of the law, which provides that the Registrar can issue a disqualification order for 3 years. See section 22(4), Co-operative Societies Act, 2001.

¹⁶⁸ Sections 18(3) and 18(8), Co-operative Societies Act, 2001.

¹⁶⁹ Articles 27 and 37, Constitution respectively.

¹⁷⁰ 13 BLD (AD) (1993) 103.

¹⁷¹ 13 BLD (AD) (1993) 103, at para [3].

In addition, the Act and the Rules provide for an Election Committee to be appointed to organise the elections of the Managing Committee. If the co-operative has paid-up share capital in excess of 50,000 BDT, it is the Registrar who will appoint a public official or another appropriate person to coordinate the formation of a 3-member Election Committee.¹⁷² In *Jiban Kumar Barman vs. M Abdul Hye, Chairman of the Election Committee and Others*,¹⁷³ it has been clarified that when appointed to an Election Committee, the deputed officials are not performing their functions in connection with the affairs of the Republic, but instead are performing their functions in connection with the affairs of the cooperative concerned.¹⁷⁴ This also means that writ petitions cannot be issued against the Election Committee, as they are not performing functions in connection with the affairs of the Republic or a Local Authority.¹⁷⁵ This contributes to the autonomy of the cooperative. Instead if the cooperative has paid-up share capital of less than 50,000 BDT, then the Election Committee will be formed by the Managing Committee itself.¹⁷⁶ Thus, this is not necessarily a completely separate internal organ of the co-operative but can help ensure the independence and fairness of the electoral process.

2.12. Minimum Share Capital and Member Contributions

The Act prescribes the maintenance of paid-up share capital in section 15. The Rules indicate how minimum share capital requirements differ according to the type of cooperative. For co-operative societies established for the purpose of poverty alleviation, the minimum is 3,000 BDT (36 USD) and for credit co-operative societies it is 10,000,000 BDT (12,000 USD) but for all the other forms of primary co-operative society, a minimum of 20,000 BDT (240 USD) is required.¹⁷⁷ Members do not have to contribute equally, however, except for the Government no one can have more than 20% of the subscribed capital in the co-operative.¹⁷⁸ In the event that the members of the co-operative society concerned have limited liability, then individuals members cannot have more than 5% of the shares in the co-operative.¹⁷⁹ At the time of registration, these shares have to be paid for in full, in cash, based on the face value of the shares, while at a later stage, additional shares or shares for new members have to be bought in cash at market value. In other words, the acquisition of shares cannot be linked to non-monetary contributions or transactions with the co-operative.

If a member loses their membership in a co-operative, the profit earned through share ownership has to be paid out to the former member,¹⁸⁰ minus any debts or liabilities they owe the cooperative. However, as the co-operative society cannot generally buyback the

¹⁷² Rule 26(2), Co-operative Societies Rules, 2004.

¹⁷³ 25 CLC (1996).

¹⁷⁴ 25 CLC (1996), at para [5].

¹⁷⁵ 25 CLC (1996), at para [6].

¹⁷⁶ Rule 26(3), Co-operative Societies Rules, 2004.

¹⁷⁷ Rule 5(3), Co-operative Societies Rules, 2004.

¹⁷⁸ Section 15(2), Co-operative Societies Act, 2001.

¹⁷⁹ Rule 90, Co-operative Societies Rules, 2004.

¹⁸⁰ Section 41, Co-operative Societies Act, 2001.

distributed shares in a co-operative,¹⁸¹ the value of the share itself can only be obtained by transferring the share to an existing member or to a new member. Instead, if the cooperative is liquidated, then the liquidator has the power to distribute the residual assets of the liquidated estate once all the debts have been met, in accordance with the wishes of the members,¹⁸² which can be a proportionate return of the subscribed capital as well as a dividend distributed in proportion to the shares held (capped at 6.25%).¹⁸³ It should be noted that the employees of a co-operative can also redeem the value of any shares they have in the co-operative if they are transferred away from the area in which the co-operative operates or if their appointment is terminated, on the condition that they have satisfied any debts they owe to the cooperative.¹⁸⁴

2.13. Profit Allocation of Cooperatives

Section 34(1) of the Act specifies how the profits of the cooperative are to be invested and distributed. It states that in every cooperative year, the net profit of the co-operative has to be allocated and settled in the following manner:

- A minimum of 15% to a reserve fund;
- In the case of financial cooperatives or cooperative land development banks, 10% to a fund to protect the cooperative from non-performing loans/bad debts;
- 3% as a subscription to the co-operative development fund;
- Up to 10% to any other objectives specified in the by-laws;
- The remaining profit can be distributed as dividends among the members.

As such, patronage refunds are not distinguished by the Act or the Rules from share dividends but can potentially be included within the by-laws, in addition to requirements for transactions with the co-operative.

2.14. Issuance of Financial Instruments by Cooperatives and other Forms of Financing

A cooperative society may, with the permission of the Registrar and by complying with the applicable rules and procedure, issue debt instruments for financing purposes.¹⁸⁵ This is in addition to the mandatory share purchase and membership fees paid by every member, investment of members' deposits in government saving certificates and government-backed securities, saving in (and interest from) other cooperatives and, with the approval of the general assembly, investment in company shares, debentures and other securities.¹⁸⁶ With the approval of the General Assembly, it is also possible for the co-operative to obtain a loan from its members.¹⁸⁷ If it so wishes, the Government can also extend financial assistance to the co-operative or become a member of a cooperative.¹⁸⁸ In

¹⁸¹ Section 15(3), Co-operative Societies Act, 2001.

¹⁸² Section 55(2)(i), Co-operative Societies Act, 2001.

¹⁸³ Rules 133(2)(b)-(c), Co-operative Societies Rules, 2004.

¹⁸⁴ Rule 91, Co-operative Societies Rules, 2004.

¹⁸⁵ Section 27, Co-operative Societies Act, 2001; Rule 69, Co-operative Societies Rules, 2004.

¹⁸⁶ Section 33, Co-operative Societies Act, 2001; Rule 80, Co-operative Societies Rules, 2004.

¹⁸⁷ Rule 65, Co-operative Societies Rules, 2004.

¹⁸⁸ Section 26A, Co-operative Societies Act, 2001.

the case of cooperative banks, the central bank of Bangladesh, the Bangladesh Bank, also has funds to make short term, medium term and long term loans to co-operative banks and apex co-operative banks.¹⁸⁹

The Act and the Rules do not explicitly recognise a separate class of ‘investor member’, however in the case where the by-laws do not specify a minimum level of transactions (e.g. minimum monthly saving deposits, minimum hours of work) with the cooperative, it is possible for ordinary members to effectively act as investor-members.

2.15. Capital Distribution upon the Dissolution of a Cooperative

In the event of the dissolution of a co-operative society, the audit fees, costs, charges and expenses incurred during the winding-up—including the remuneration of the liquidator—is payable in priority to all other claims.¹⁹⁰ After the liabilities of the co-operative are paid off, the assets, if any, may be distributed by the liquidator for the following purposes subject to the approval of the Registrar.

In order of priority, the assets can be distributed for:-

- Proportional refund to members of any contributions realised from them in addition to their own personal debts;
- Pro rata refund of share capital;
- Pro rata payment of dividend on the shares, if any, at a rate not exceeding 6.25% per cent per annum for the period of liquidation;
- Contribution to any charitable purpose defined in section 2 of the *Charitable Endowments Act, 1890*;
- Utilisation for any purpose connected with the development of the cooperative movement.¹⁹¹

2.16. Extent of Self-Control and External Control of Cooperatives

Although autonomy and independence is an ostensible requirement for the formation and governance of co-operative, as mentioned in section 2.3, there is a significant degree of external control over cooperatives. This external control right belongs primarily to the Registrar of the Department of Co-operatives and their delegated representatives across the country, down to the *upazilla* (উপজেলা, sub-district) level.¹⁹² The Department is attached to the Ministry of Local Government, Rural Development & Co-operatives and the officers and employees of the Department are public servants whose service rules are set by the

¹⁸⁹ Articles 60(1), 61 & 62, Bangladesh Bank Order, 1972

¹⁹⁰ Rule 133(1), Co-operative Societies Rules, 2004.

¹⁹¹ Rule 133(2), Co-operative Societies Rules, 2004.

¹⁹² This delegation happens under section Co-operative Societies Act, 2001. It is important there is an Order indicating this delegation of authority as otherwise their acts may be deemed illegal and without legal authority. See, e.g. the case *Syed Wahid Iqbal vs. Bangladesh, represented by the Secretary and Others*, 65 DLR (AD) (2013) 308 where a district cooperative officer’s authority to appoint a 3-member EC was challenged for lacking authority delegated from the Registrar.

Government.¹⁹³

The Registrar has a wide range of powers and responsibilities, indicative of the extent of external control over co-operatives in Bangladesh, including:

- Registering co-operatives;
- Approving amendments to the by-laws of co-operatives;¹⁹⁴
- Extending the date on which annual general assemblies are to be held,¹⁹⁵ warning co-operatives if their assemblies fail to achieve the necessary quorum over two successive years and ordering the arrangement of a Special General Assembly;¹⁹⁶
- Forming an ad-hoc Managing Committee if the Managing Committee of the co-operative society fails to arrange an election at the appropriate time;¹⁹⁷
- In certain circumstances, expelling member(s) and disqualifying them from being elected to the Managing Committee for three years;¹⁹⁸
- Granting permission to sell assets that are valued at more than BDT 500,000;¹⁹⁹
- Ordering the audit of co-operatives financial statements, records and assets²⁰⁰ as well as any investigations that may be required as a result or requested;²⁰¹
- Resolving internal disputes among members of the co-operative society through referrals to arbitration.²⁰² The powers of the arbitrators are limited by the fact that

¹⁹³ Section 6(3), Co-operative Societies Act, 2001.

¹⁹⁴ Section 13, Co-operative Societies Act, 2001.

¹⁹⁵ Section 17(3), Co-operative Societies Act, 2001.

¹⁹⁶ Sections 17(7) & 17(9), Co-operative Societies Act, 2001.

¹⁹⁷ Section 18(5), Co-operative Societies Act, 2001. It is crucial that the ad-hoc committee act within its terms of reference and organize an election expeditiously as the case of *Muhammad Zakir Hussain vs. Bangladesh and Others*, 21 BLD (2001) 568 emphasizes that the continuous extension of the tenure of an ad-hoc committee would be viewed as being mindless and callous, given that it is no substitute for an elected Managing Committee [at para 10].

¹⁹⁸ Section 22, Co-operative Societies Act, 2001.

¹⁹⁹ Rule 46, Co-operative Societies Rules, 2004.

²⁰⁰ Section 43, Co-operative Societies Act, 2001.

²⁰¹ Section 49, Co-operative Societies Act, 2001. In *Md. Rafiqul Alam, M.D. Dhaka Mercantile Co-operative Bank Ltd. Vs. The State*, 24 BLD (2004) 632, the Court explained that disputes such as the misappropriation of funds cannot be resolved through a criminal court but must go through the dispute resolution and adjudication process for such matters contained in the Act.

²⁰² Section 50(1), Co-operative Societies Act, 2001. This is perhaps the most litigated provision in cooperative law, with there being a multitude of cases considering which matters are reserved for arbitration and which matters may be litigated in court. On this issue, see, e.g. *M/s. Globe Metal Industries Sramik Union Multipurpose Co-operative Society Ltd. Vs. Ashraf Ali and Others*, 16 BLD (1996) 585; *Globe Mantle Industries Sramik Union Multipurpose Co-operative Society Ltd. Vs. Ashraf Ali and Others*, Writ Petition No. 4345 of 1996, decided on 08.06.2000; *Abdul Malek vs. District Co-operative Officer, Cox's Bazar and Others*, 50 DLR 426, 18 BLD (1998) 277. From the case law, it is apparent that disciplinary proceedings brought against the employee of a cooperative are to be referred to arbitration and not litigated, see *Mr. Md. Giasuddin vs. Bangladesh and Others*, 17 BLD (1997) 538, at [8]. In the past, there were unresolved questions about whether the registrar's power to order the arbitration of disputes extended to election disputes. The legislator sought to resolve this in section 50(1) by explicitly acknowledging that disputes seeking to cancel the nomination of candidates or challenging the election results can be brought by members or candidates respectively. Aside from elections, there were several other cases that concerned the ouster of civil courts in disputes touching upon the business or affairs of the cooperative due to s. 133, Co-operative Societies Ordinance, 1984 (e.g. recovery of immovable property, dissolution of managing committee). Sections 133(1)-(2) have been transposed, almost verbatim into section 52(7)-(8), Co-operative Societies Act, 2001. Those matters are explicitly excepted from

- they cannot pass interim awards;²⁰³
- Punishing members of the Managing Committee or the co-operative if they are found to be guilty of offences specified in section 83 of the Act;²⁰⁴
- Ordering the winding up and dissolution of co-operative societies as per the conditions of section 53 of the Act, as well as appoint a liquidator to carry out the winding up.²⁰⁵ After receiving the final report of the liquidator, the Registrar can strike off the co-operative's registration;²⁰⁶

As can be seen, there is more emphasis on public control than self-control via representative organizations of the co-operative movement.

2.17. Implementation of the cooperation among cooperatives principle in national law

As indicated in section 2.5, the cooperative legal framework facilitates the formation of secondary and tertiary level co-operatives (i.e. central co-operative society and national co-operative societies respectively) as well as representative co-operative organisations. The representative co-operative organisations are national co-operative unions and 'two-level' special co-operative societies. A national co-operative union is a co-operative society whose membership consists of primary co-operatives (regardless of the breadth of their

the jurisdiction of civil courts and must be referred to arbitration. Beyond those matters explicitly outside of the civil court's jurisdiction, both the Co-operative Societies Ordinance, 1984 and the Co-operative Societies Act, 2001 allowed appeals on some grounds. In *Shan Hosiery vs. Bangladesh Jatiya Shamabaya Shilpa Samity Ltd. And Others*, 31 CLC (2002), the Court held that a dispute to recover a security deposit would not be an arbitrable dispute. In *Abdus Sattar & Others vs. Abdul Gafur Sardar & Others*, 1 BLD (1981) 169, it was explained that even with the existence of an ouster clause, where a law has not been followed or a fundamental principle of judicial procedure has not been observed, a court will still have jurisdiction. The Court in *M. Zakarja and Ors. Vs. Begum Nahar Ferdoushi and Ors.*, Civil Revision No. 718 of 2010, decided on 12.12.2010 held that challenging the cancellation of a registered sale deed would not be barred either as it does not fall within the scope of section 50, Co-operative Societies Act, 2001. Non-member employees of cooperatives can also access labor courts, as such courts are not civil courts unless they are adjudicating an industrial dispute. See *Bangladesh Fishermen's Co-operative Society Ltd. Vs. The Chairman, Labour Court, Chittagong and Md. Bashir Ahmed*, Writ Petition No. 252 of 1973, decided on 28.03.1974. While section 134(5), Co-operative Societies Ordinance, 1984 allowed for the appeal to District Judges from decisions made by appellate officers, section 52(1), Co-operative Societies Act, 2001 narrows the scope somewhat by giving a District Court the jurisdiction to hear appeals on clear errors of law committed by an arbitrator or appellate officer that would lead to injustice and the District Judge is only allowed to take into account factual considerations on the basis of the material presented to it and so far as it helps address the legal question(s).

²⁰³ This is made clear in *Giasuddin (Md.) vs. Secretary-in-Charge, Eastern Co-operative Jute Society Limited and Others*, Writ Petition No. 1522 of 1992, decided on 25.06.1997 and *Mr. Md. Giasuddin vs. Bangladesh and Others*, 17 BLD (1997) 538. While these decisions were made based on earlier legislation, the present Act and Rules do not provide for interim awards either.

²⁰⁴ Rule 159, Co-operative Societies Rules, 2004, prescribes the procedure for conducting an enquiry into such offences and if the allegation is proven, allows the Registrar or a person authorized by the Registrar to file a criminal petition. In *M Fransis P Rojario alias Babu vs. State*, 38 CLC (2009), the Court discussed the special procedure for investigating and disposing of criminal complaints within the Act and the Rules, which deprives an individual complainant of the ability to directly initiate criminal proceedings by bypassing the Registrar or his authorized person (section 86, Co-operative Societies Act, 2001).

²⁰⁵ Section 54, Co-operative Societies Act, 2001.

²⁰⁶ Section 58, Co-operative Societies Act, 2001.

geographic coverage), central co-operative societies and national co-operative societies.²⁰⁷ Two-level special co-operative societies refer to central co-operative societies formed by 10 or more village-based primary co-operatives at the upazilla level.²⁰⁸

The National Co-operatives Policy, 2012 also mentions the strengthening of the co-operative network at village, union, upazilla and জেলা (zila, district) level as one of its aims.²⁰⁹ While there is no compulsory requirement to form such organisations under the law, the BRDB is active in uniting village primary co-operatives into Upazilla Central Co-operative Associations and subsequently connecting them to national-level organisations. 88, 744 primary cooperative societies were formed by the BRDB and 693 central cooperatives were formed with their support. Once such secondary-level and tertiary-level co-operative societies are formed, they could become responsible for any bad debts owed by a member-primary cooperative at the time of its winding up.²¹⁰

2.18. Specific Tax Regime for Cooperatives

Co-operative societies are subject to a specific tax regime, which can be considered to be supportive of certain types of co-operatives. The *Income Tax Ordinance, 1984* provides that the entire income of a co-operative is exempt from income tax if it is engaged in providing agricultural or rural credit, in processing and marketing the agricultural produce of its members, in purchasing agricultural implements, seeds, livestock or other articles intended for agricultural use by its members, or in a cottage industry.²¹¹ In addition, the income derived from the lease of warehouses for the purpose of storage, processing or marketing of commodities that belong to, or are meant for sale to, a cooperative's members are also exempted. This tax exemption does not apply to cooperatives that are in the insurance business,²¹² whose profit and gains are taxed under paragraph 8 of the Fourth Schedule of the *Income Tax Ordinance*. All other types of cooperatives are subject to a corporate income tax rate of 15%, which is less than the rate applicable to publicly-traded and non-listed companies.

3. “Cooperative Friendliness” of Bangladesh’s Legal Framework

3.1. Precise Legal Barriers to the Development of Cooperatives

Broadly speaking, reports and investigations into the management of co-operatives indicate that the primary problem that bedevils the development of co-operatives is the inadequate implementation of existing co-operative laws.²¹³ Nevertheless, the

²⁰⁷ Section 8(1)(d), Co-operative Societies Act, 2001.

²⁰⁸ Section 8(1)(f), Co-operative Societies Act, 2001.

²⁰⁹ Bangladesh Extraordinary Gazette of 15 May 2014, p. 13455.

²¹⁰ Section 55(2)(l), Co-operative Societies Act, 2001.

²¹¹ Section 47(1)(b), Income Tax Ordinance, 1984.

²¹² Section 47(2), Income Tax Ordinance, 1984.

²¹³ Muhammad Hossain & Nihar Ranjan Ray, ‘Shomobay Shomiti Bebosthapon: Shushoner Challenge o Uttoroner Upay’ [in Bangla], *Transparency International Bangladesh*, 19 June 2014, available online: <

complexities and inefficiencies inherent in registering and auditing co-operatives may act as a deterrent to their formation.

It may be argued that the income tax regime was even more favourable to co-operative societies before 2015, prior to the passage of the *Finance Act, 2015*. Before 1 July 2015, the Income Tax Ordinance, 1984 provided that cooperatives were exempt from the payment of income tax (including any additional tax, excess profit tax, penalty, interest, fee or other charges), with respect to income derived from transactions with members that involve the “sale of goods, the lending of money or the lease of buildings and land which is for the personal use of such members, or where such member is a firm or an association of persons, for the personal use of the partners or members thereof”. This distinction between surplus and profit is no longer maintained. At the time, to encourage cooperatives to invest in other cooperatives in line with ICA co-operative principle 6, interest and dividends derived from investments in other co-operative societies were also exempt from income tax. This income is now subject to income tax and can be seen to be detrimental to cooperation among cooperatives.

There are certain provisions within the cooperative legislation which may also be seen to be oppressive for its members and thereby discourage the use of the co-operative form. For instance, section 29(a) of the Act provides that if any debt is owed by any current, former or expelled member of a co-operative, that debt may be enforced against him/her or upon his/her death, against his/her nominee or heirs (if any) at any time irrespective of any contrary provision under the Limitation Act, 1908. This is a holdover from section 46, Bengal Co-operative Societies Act, 1940 and as observed by Satyapriya Banerjee MLA this was entirely novel as it did not exist in the Act of 1912. Instead, it appears to have been inspired by the provincial cooperative legislation of Bihar and Orissa. This provision was criticized prior to the enactment of the Act of 1940 as well, with Satyapriya Banerjee contending that it is not right in principle to keep a liability against a member indefinitely pending throughout his life in the manner contemplated” by this section.²¹⁴

The extent of external control by a Government department also merits reflection. While the misuse of the co-operative form—particularly in the financial and banking sectors—necessitates closer scrutiny from the state and law enforcement, there are certain functions currently performed by the Registrar or his/her appointee that could be performed by representatives of the co-operative movement or within the co-operative itself. An example of this is the resolution of disputes concerning the termination of Managing Committee members. Empowering and facilitating co-operative societies to resolve most disputes internally, among the cooperative members, would strengthen their autonomy and self-sufficiency. The same could be said about the requirement for a co-operative’s annual audit to be conducted by a representative of the Department of Co-operatives, instead of an independent chartered accountancy firm. At the same time, there

https://www.ti-bangladesh.org/beta3/images/2014/es_ds_Cooperative_study_14_bn.pdf> last accessed 18 May 2020.

²¹⁴ See *Assembly Proceedings of the Bengal Legislative Assembly, Eighth Session, July 22-July 31, 1940*, Bengal Government Press, Alipore, pp. 180-181.

is a need to properly enforce the broad range of powers the Registrar enjoys, such as ensuring that by-laws are in compliance with the Act and the Rules and enforcing section 26(1) of the Act which prohibits co-operatives from receiving deposits from non-members.

Finally, in the consultant's view, the requirement to specify a geographic area for the operation of a cooperative, for members to be personally present when votes are held and to be unable to appoint proxies restricts the possible uses of the co-operative form. This appears to be particularly the case when we consider new economic sectors and industries such as internet-based freelance work for globally-dispersed clients.

3.2. Best Practices of National Cooperative Legislation

As discussed in this report, cooperatives have long been an integral part of Bangladesh's national rural development strategy and cooperative ownership is even featured in the country's Constitution. In line with ILO Recommendation No. 193 of 2002 concerning the Promotion of Cooperatives, the legislation promotes the development of cooperatives by allowing, for instance, the Government of Bangladesh to furnish financial assistance, subsidies or loans to co-operative societies. As mentioned in section 2.14 and 2.18, there are also a number of funds operated by the central bank that help finance co-operative banks and income tax exemptions for certain types of co-operative. While several of the features of the general cooperative law framework may appear in other jurisdictions, these forms of supplementary support may be noteworthy. In addition, cooperatives receive particular attention from the Government, given that there is a Ministry which has the development of cooperatives within its specific remit. While there has been a National Cooperative Day since Independence, in 2011, the Government also introduced a 'National Cooperative Award' which recognizes the 10 best cooperatives in the country.²¹⁵ Cooperatives are nominated and selected based on their financial performance, compliance with the law, business model development, internal management and social contributions.²¹⁶ The successful cooperatives receive an 18-carat gold medal weighing 10 grams and a certificate.²¹⁷ While other countries may wish to adopt a different reward and have a more varied selection panel, the public recognition of cooperatives is a policy worth emulating.

There may also be lessons to be learned from the vulnerabilities of Bangladesh's co-operative legal framework, particularly exposed by the Destiny 2000 scandal, and how the legislator has sought to remedy these weaknesses by e.g. not permitting non-members to submit deposits to co-operative societies.

²¹⁵ The awards are given by category: (1) agricultural cooperative, (2) savings and credit cooperative, (3) milk cooperative, (4) women's cooperative, (5) multipurpose cooperative, (6) fishing cooperative, (7) Freedom Fighters' cooperative, (8) Landless Cooperative, (9) Youth, Weaving or other Professional Cooperative, (10) Workers' Cooperative.

²¹⁶ Clauses 8-9, National Cooperative Award Policy, 2011.

²¹⁷ Clause 4, National Cooperative Award Policy, 2011.

3.3. Degree of Cooperative Friendliness of National Legislation

In view of the above, it can be seen the legislation is quite cooperative friendly but there is scope to modernize the legislation and to improve the implementation of existing legislation.

3.4. Inspiration from Foreign Legislation for National Legislation

While being mindful of the risks of legal transplantation and the distinct co-operative legal systems that have emerged across the globe, Bangladesh could draw inspiration from the experience of South Korea and France, among others, in improving its legal framework for co-operative societies. Since 2012, South Korea has been experiencing a renewed interest in co-operatives, which can at least partially be attributed to its new Framework Act on Co-operatives, which have lowered the threshold and complexity of forming and governing certain types of co-operatives. It also introduced the social co-operative form that was absent from the earlier framework. This Framework Act has facilitated the growth of cooperatives as business actors within the knowledge economy through e.g. the establishment of ICT freelance workers' co-operatives. Given the growth of the knowledge economy and online outsourcing in Bangladesh, lessons can be learned from the Framework Act to modernize Bangladesh's Cooperative Societies Act, 2001 (e.g. reducing the minimum number of members of a primary co-operative).

As discussed in section 1.3, academic studies and reports by think tanks have commented on the propensity of co-operatives in Bangladesh to become inactive within a few years of operation. While the amended Act attempts to address this particular problem through winding up, a mechanism for avoiding inert co-operatives *ex ante* could be to introduce an organisation akin to the *association de prefiguration* in France, which is a legal entity that can convert into a co-operative form (e.g. a SCIC, *Société Coopérative d'Intérêt Collectif*) following the super-majority or unanimous vote of its members once they have gained experience in running a co-operative business. This would give prospective co-operative members substantive experience in running such a business before its registration.²¹⁸

4. Recommendations to Reform Bangladesh's Legislative Framework

4.1. Changes Needed to Make National Legislation Better for Cooperative Development

In addition to the recommendations made in sections 3.1 and 3.4, following the most recent amendments of the Act, it may be argued that certain improvements could still be made to the legislation itself. It would be desirable for the Act to explicitly integrate the ICA's statement on the Co-operative Identity into the Act so as to emphasise the cooperative

²¹⁸ This is distinct from a provision that existed in Rule 7, Co-operative Societies Rules of 1942, which required cooperatives to undergo a probation period of 6 months prior to being registered. As shown in cases like *Chandi Kalabaria Das*, *supra* note 62 cooperatives under probation could not legally requisition land as it was not "legally born" [para 13]. This contrasts with an association de prefiguration which is a legal entity in its own right.

difference, clarify what a (prohibited) ‘branch’ of a co-operative society is and to insert penalties for providing false or misleading information to register a cooperative. As a large category of disputes are to be resolved under the authority of the Registrar—instead of a Court—it would be beneficial if the arbitrator could issue interim orders, as is the case under Article 21, *Arbitration Act, 2001*. In keeping with corporate governance practices, including in Bangladesh, the Managing Committee should strive to have an equitable representation of women where possible. While there is a statutory provision for a co-operative development fund for training & education purposes, to ensure its effective usage, there should be accountability towards representative organizations of cooperatives (not just the Government) and incentives provided to members to undertake training.

Furthermore, there are currently inconsistencies between the Co-operative Societies Act, 2001 (as amended) and other laws, rules and regulations. For instance, section 3 of the Act provides that the *Microcredit Regulatory Authority Act, 2006* is not applicable to co-operative societies, which is in direct conflict with section 2(21) of the Microcredit Regulatory Authority Act, 2006 which explicitly includes registered cooperatives in its definition of ‘micro credit organization’. This leads to the question whether co-operative societies have to, for example, mandatorily obtain a certificate from the Microcredit Regulatory Authority to run micro credit programs, as required by section 15(1) of the Microcredit Regulatory Act, 2006, or not. While, in practice, micro credit co-operatives seek to comply with relevant micro credit rules (or are expected to), it would be preferable for this inconsistency to be addressed.

Finally, it would also be appropriate for the Rules to be amended, given the 2013 amendment of the Act, with particular regard to the penalties for accepting non-member deposits and granting non-members loans.

4.2. General or Specific Changes to make National Legislation more Cooperative Friendly

While several modifications could be suggested, three of the most important are:

- **Greater autonomy for cooperative organizations, independent of the Registrar:** Roughly 81% of agricultural cooperatives in Bangladesh are formed by the Government,²¹⁹ and while there may be some merit in astute supervision, to ensure that cooperatives can be truly self-reliant and act in solidarity with other cooperatives, it is necessary for them to become more autonomous. This could be through assigning a more substantial role for representative organisations of the co-operative movement in promoting, registering and overseeing co-operatives, in sync with the Registrar. Alternatively, as it stands, there are a large number of issues that fall within the rule-making power of the Executive Branch of Government. This could be reduced somewhat by having a greater number of issues covered by the by-laws of a co-operative society. To do this efficaciously, a greater number of model by-laws will need to be produced, tailored to the needs of different types of

²¹⁹ Sultana et al., *supra* note 49 at p. 2.

cooperatives.²²⁰ The power of the Registrar could also be tempered by granting greater powers to the General Assembly, with members being able to go to Court in certain circumstances without getting permission from the Registrar.²²¹

- **Education and Training:** The training provided to co-operative members should be tailored to the evolving needs of co-operatives, across sectors and geographic locations. As discussed in preceding sections, studies show that a greater emphasis needs to be placed in training members in the basics of auditing and accounting co-operative financial documents. Given the extensive role of public bodies in overseeing co-operatives, it is also essential for co-operative members to be informed about the *Public-Interest Information Disclosure Act (Provide Protection), 2011* so that they are aware of the protections they enjoy under the law if they publicly disclose credible information about malpractices.
- **Income Taxation Exemption:** The distinction between co-operative surplus, earned through (non-monetary) transactions with members, and co-operative profit should be re-instituted and the former should be tax exempt.

4.3. Changes Regarding Specific Sectors or Types of Cooperatives

In general, the various types of cooperatives require model by-laws and auditing guidance that takes into account the particularities of their economic sector. Clearly, the by-laws provided for a credit & savings co-operative would not be equally suitable for an industrial co-operative. These by-laws could, for instance, indicate the minimum number of transactions (e.g. hours worked per month) required for membership and introduce patronage refunds.

Under the National Co-operative Policy, 2012, the Government sets out a vision for cooperatives whereby such societies contribute to preserving natural resources and biodiversity, reducing income inequality and promoting gender equality. It is evident that the rationale for this policy is motivated by a desire to make co-operative societies more public-oriented.²²² To accommodate this, a type of social cooperative could be developed which can serve both members and non-members (subject to certain conditions) and still be distinct from non-profit societies, NGOs, etc. (See South Korea example in section 3.4.) Furthermore, given that shop owners' and apartment owners' co-operatives envision the possibility of shop owners or apartment owners living abroad while still remaining part of the co-operative society, in the digital age of work, the law should be amended to allow for this in other types of co-ops as well.²²³ This, along with amendments to rules concerning physical presence and proxy voting, could help facilitate the creation of freelancer and platform workers' co-operative societies that can contribute to e-commerce.

On a more general note, the robustness of a jurisdiction's co-operative legal framework is contingent on the adherence of a given jurisdiction to the rule of law and the strength of

²²⁰ Hossain and Ray, *supra* note 213 at p. 11

²²¹ *ibid.*

²²² Bangladesh Extraordinary Gazette of 15 May 2014, p. 13454.

²²³ Rule 88, Co-operative Societies Rules, 2004.

public institutions that are meant to support the co-operative movement. If they are lacking in some way then the co-operative legal framework will not be able to function, no matter how well designed.

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