

# LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

## National Report of Nepal

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 Nepal.

### **The brief History of Cooperative Legislation:**

In 1953, first time in Nepal’s history, Cooperative department was constituted under Planning, Development and Agriculture ministry and after that from 1956 onwards

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cooperative institution has been recognized legally under the executive order. The first parliament, elected in Nepal in 1958, adopted the Cooperative Act in 1959. This was the first legislation of cooperatives in Nepal. However, before proper enforcement of the Act, the King controlled the state power and dissolved the parliament, and political and social activity was banned. The party less *Panchyat* system of governance was introduced under the direct rule of the King.

In 1961, the Cooperative Act was amended, and a mutuality concept called *Sajha* (the word *sajha* means a mutual cooperative in Nepali Language) was initiated. *Sajha* activities have been utilized to promote *panchayat* system under the Cooperative Act. In 1963, a Cooperative Bank was established and after four years it was changed into Agriculture Development Bank, which is still operating under the same name. In 1984, the cooperative Act 1959 was replaced by *Sajha* Act.

In 1990, *Panchyat* system was abolished with the people's movement and the king had been bound to re-establish multiparty democracy in Nepal. Previous autocratic constitution was by the Constitution of the Kingdom of Nepal 1990. Elected parliament adopted the Cooperative Act 1991 which includes Cooperative Principles laid down by International Cooperative Alliance (ICA). The real cooperative movement emerged after the enforcement of Cooperative Act, 1991.

In 2003, the king again captured the political power, dissolved the parliament and tried to rule directly. In 2006, the political forces became against the king and initiated a second people's movement. The parliament was restored, and an Interim Constitution was adopted by the parliament to conduct the election of Constituent Assembly. In 2015, the Constituent Assembly adopted a new constitution of Nepal which recognized the cooperative as one of the three pillars of economy.

## **Constitutional Development and Cooperatives Act, 2017**

After proclamation of the Constitution of Nepal in 2015, the parliament adopted the Cooperative Act 2017. The development and changes in the constitution brought about changes not only in the political system but also in the cooperative system as a means for economic, social, and cultural development of the people as well as an appropriate and

effective tool for rural development. It is an inherent necessity to make changes in such laws at the appropriate time based on the changes required by the constitution. The act was made to make provisions on the formation and operation of various types of cooperative associations and societies based on the mutual support and cooperativeness for the economic and social development of the public at large.

In the same way, the Constitution of Nepal 2015 which was promulgated by the second Constituent Assembly has recognized cooperative as an important base of national economy. Article 50(3) of the Constitution stipulates that the economic objective of the state shall be to achieve sustainable economic development, while achieving rapid economic growth, by way of maximum mobilization of the available means and resources through participation and development of public, private and cooperatives, and to develop a socialism-oriented independent and prosperous economy while making the national economy independent, self-reliant and progressive in order to build an exploitation free society by abolishing economic inequality through equitable distribution of the gains.

Similarly, the Constitution under the state policy has clearly stated the enhancement of national economy through partnership and independent development of public, private and cooperative sectors. Since it was expedient and necessary to have some changes in the Cooperative Act, thereby the new act has come into effect. Now, the new Cooperative Act 2017, with cooperatives as one of the three pillars of national economy as per the vision set by the constitution, does not have any other option but to accelerate the pace of economic development.

### **Exercise of Federalism and the Cooperatives:**

An important feature of the constitution is that it has explicitly made and recognized federalism but has also provided legislative power to the local structure as well. The local level government is, thus, an independent, indestructible and autonomous sphere subject only to the provisions in the Constitution and law of the land. Having outlined some of the provisions related to the cooperatives, it falls not only within the exclusive functional jurisdictions of the federal and provincial government but also within the local level government. Therefore, such laws, including Cooperatives, are to be framed

by the Provincial and Local Levels, and must not be inconsistent with the Central Cooperatives Act 2017.

Power conferred to the provincial and local government under the schedule 6 and 8 in the Constitution, states that such authority may have right to develop procedures regarding formation of a thematic or multipurpose cooperative and its operation within its jurisdiction not inconsistent with the Federal Laws. However, such provincial and local bodies do not have any legislative rights to frame or regulate any laws including registration of Cooperative Federation and confederation.

Section 150 of the Cooperative Act has set up some interim provisions in order to make a situation convenient in implementing the Federalism. According to the Section, if the Local levels wish to undertake any work regarding regulation and incorporation of a Cooperative within its own jurisdiction, same having been stipulated in the Act shall be subject to the decision to be made by the Municipal Assembly or Village Assembly. A meeting of the local executive shall prescribe an authority to get such a cooperative registered and the local level may also exercise all powers including registration too. In terms of a cooperative that has covered more than one local jurisdiction, an act of registering the cooperative shall be made in a place as prescribed by the Provincial Executive. The Act has further stated that a power regarding regulation has been conferred to such an agency which is entitled to registration.

Admittedly, it can be said that the Act has begun to devolve the power by realizing the spirit of the Federalism. However, the provincial and local governments should take this issue into account while exercising the powers to be conferred. The Government of Nepal has also envisaged a model Cooperative Act at the local level, but it would be more convenient to make the provisions appropriate by the Local and Provincial levels regarding the regulation and incorporation of the Cooperatives as mentioned in the Section 150 of the Act rather than to exercise a model as envisaged. In addition, it would also help maintain uniformity regarding development and extension of the Cooperatives if such powers are regulated and exercised by the Provincial and Local levels.

There is only one umbrella Cooperative Act 2017 in force at the Federal level. There is some Cooperative Act adopted by the Provincial Parliament and Local Legislative Authorities. These all legislations only focus on the general mutual cooperative only. None of the Cooperative Laws has come in to force to cover sectoral cooperatives.

However, under the Cooperative Act 2017, there are separate chapters on Cooperative Bank and Saving and Credit cooperatives.

## **Working area of Cooperatives vis-a-vis Constitutional Provisions**

The question was raised during the framing of the Act that working area of a Cooperative is required to be kept limited and would not operate apparently beyond a ward or a local level. The preliminary draft had also been drafted based on it. The experts who are found to have believed in the traditional cooperatives had extensively advocated for making it happen. The issues whatever they raised would have been included if the provisions stipulated in the constitution had been overlooked. But the Constitution of Nepal, for the first time, has acknowledged the cooperatives to be a pillar of the finance sector and has included it into the working area of the three tiers i.e. federal, provincial and local levels due to which it was impossible to concentrate the cooperative institutions only in the local levels since the Constitution has given equal value and national economy needs to be enhanced through equal participation and independent development of the public, private and cooperative sectors.

The Act has limited the working area of a savings and credit cooperative within the few wards in case of the Metropolitan city and Sub-Metropolitan City, whereas the working area for municipality and Village level covers entire territory. However, it may be expanded following the extension of business. Besides, the Act has remained silent in other cooperatives, but such provisions may be made through bylaws in this regard. The working area of the prevalent cooperative has been managed based on the effects of the transactions. As mentioned in the Act, it has not given any space to such unconstitutional provisions limiting its working area to a local level or a Ward for two years.

Similarly, the provisions have already been made that working area in terms of hydropower, health, communication, agriculture; refinement of forest products shall not be limited geographically, and these are open for more than one local level or more than one province. Besides, the act has further guaranteed that any cooperative which is active in other local level may extend its working area elsewhere. The legal structure has come up with furthering the scope of a Cooperative to local level or it may expand its working area up to a provincial level or throughout the country which has, to some extent, tried to make the provisions steady with the constitution.

## **Role of Cooperative in the development of nation**

The Constitution has made a policy to enhance national economy through participation of the public, private and cooperative sectors and to promote the cooperative sector and mobilize it in national development to the maximum extent. The cooperative has been accepted to be a basis of the economy thereby it is equally important to analyze on how the cooperative is mobilized to develop a nation at a time of making such legal provisions as per the spirit of the constitution. Following this, the cooperative shall function in all sectors except as prohibited by the laws. Based on that, the Act has made a provision that it may also invest not only in a small or micro project but also in a larger project as well. Its possible expansion, subject to its ability and capacity, may also play very significant role in making changes in the overall economic growth of the nation.

Moreover, the Act has further provisioned that a specialized cooperative federation may be opened or operated in a joint collaboration of 25 thematic or multipurpose cooperative institutions in case of necessity to invest at a larger scale to the infrastructure development projects such as hydropower, fertilizer, residential house, transport, fruits refinement, herbal products, sugar industry, hospital, academic institutions, technical school, lab etc. It has further created a situation to operate the larger projects by establishing a specialized cooperative through the savings they have had. In addition to this, a clear provision has been made in the Act that a license may be obtained to operate an industry, a business, or a project in the name of a cooperative. The Act has tried its best to make the circumstances favorable to operate such activities in the name of a cooperative itself or by way of establishing a specialized cooperative, earlier it was possible only either by acquiring the shares of a company already established or by incorporating a new company.

Likewise, thematic district, provincial or central cooperative federations are also entitled to investing into their substance focused projects. It has been also conferred to district, provincial cooperative federation or national thematic cooperative federation or confederation too. It can be easily said that the Act has made a way open to mobilize the capital of cooperatives to the overall development of the nation and betterment of its members.

## **Provisions made in the Act in terms of principles of Cooperatives:**

Section 23 of the Act states that the cooperative institutions should get registered or operated based on the universal value, norms and principles of the cooperative. Furthermore, the Act has stated that such basis required for operating a cooperative subject to the value, norms and principles needs to be fulfilled prior to registering a cooperative. The compliance of these core principles shall be made by incorporating it into the bylaws. In fact, ICA Principles of cooperative identity implicitly referred to in the Cooperative Act 2017, Section 2 (Pa) of the Act as follows:

1. Voluntary and Open Membership.
2. Democratic Member Control
3. Members' Economic Participation
4. Autonomy and Independence
5. Education, Training, and Information.
6. Cooperation Among Cooperatives
7. Concern for Community and principles as determined by the International cooperative movement.

No cooperative shall be registered that fails to commit to follow the universal cooperative principles. This provision has been mentioned in various places in the Act like, board of directors should follow the cooperative principle while running the business of the cooperatives, yearly report should be submitted to the Ministry by the Registrar on various issues including whether cooperatives have followed the cooperative principles or not.

### **Definition cooperatives and its legal personality:**

The Cooperative Act 2017 does not precisely define the word cooperative. Usually cooperative should follow the cooperative principles. Its activities should confine in local community for mutual benefit of the members.

Based on the legal system, cooperatives are identified separately compared to other business organizations. There are many ways to differentiate between cooperatives and business organizations like a company. The company law provides the mechanism of controlling it by the strength of shareholding, whereas in cooperatives it is controlled by number of members. Irrespective of the amount invested, “one member one vote” is applicable in a cooperative.

Company may work for the profit, but in cooperative, it should work for mutual economic benefit of the members.

Cooperatives should have open and voluntary membership. But in a company, the ownership is not open and voluntary.

There is difference in terms of taxation as well. Normally, Company should pay 25% and more corporate tax but in cooperative, taxable profit is taxed at the maximum rate of 10 percent.

Business organizations are registered as a profitmaking organization, but cooperatives are registered as non-profit making organization. These are the main characteristics that distinguish cooperatives from other types of business organizations.

All cooperatives should register in the defined authority, and after registration, they should mention "Cooperative Limited" at end of its name. Once, the cooperative is registered, it has separate legal personality under the Section 17 of the Act.

### **Objective and function of Cooperatives:**

The main objective of primary and cooperative federations is it to achieve economic, social and cultural prosperity of members associated with it and confine in its area of work. To achieve the objective, primary and cooperative federation should have following function:

- a. Should follow the cooperative values and principles
- b. To protect member and marketing it for promotion of business
- c. To provide education, training, and information and to create good governance within the primary and cooperative federation.
- d. To promote the mutual cooperative between primary and cooperative federation.
- e. To maintain the quality standards of service and production, economic liability and risk management.
- f. To implement the internal control system within the organization.
- g. To follow the direction of the Ministry, Registrar, provincial or local government if any,
- h. To work as mentioned in the statute of cooperative.

Function of Cooperative confederation shall be as follows:



- a. Should follow and mobilize the members to follow the cooperative values and principles
- b. To take leadership to promote the interest of members.
- c. To coordinate and cooperate between government institutions for promotion of cooperatives.
- d. To study, research to promote professionalism of business of cooperatives.
- e. Provide and cause to provide education, training and information to it members
- f. To promote cooperation between primary and cooperative federation.
- g. To promote the international relation, cooperation as well as involve in international cooperative movement.
- h. To create good governance in the cooperatives.
- i. To work as mentioned in the statute of cooperatives.

Normally, cooperatives should oblige to transact with its members. However, in case of production and service, it may not be confined within the members. Cooperative may send its product in to the market, likewise, transportation or health cooperative may provide its service to anyone.

### **Process of registration of Cooperative:**

Every cooperative should register as per cooperative Act. Minimum 30 Nepali citizens may mutually organize and register thematic or multipurpose cooperatives. However, workers, youth of similar skill-based cooperative may be established by minimum 15 Nepali citizens. In case of saving and credit cooperatives at least 100 Nepali citizens of ward of same metropolitan and sub-metropolitan city and other local authority may establish. Only one member of the family may be counted incase more than one family member is involved for the registration of a primary cooperative.

In accordance with the Act, a cooperative is established only for the promotion of mutual benefit of the members of the cooperative and there is no provision to register a social cooperative of charitable nature in Nepal. However, the cooperative Act provides room for corporate social responsibilities.

The new Cooperative Act does not mention any provision regarding cooperatives established by the Government or non-members. However, some of the cooperatives are

established by the Government by investing 51% or more, under the Cooperative Act 1959 such as Sajha Transport, Sajha Publication, Sajha Health Service, which are allowed to operate.

Similarly, federal government of Nepal, or provincial government or local government or community-based schools or local clubs or nongovernment organizations having no profit motive may be the member of cooperative by obtaining minimum one share of cooperative.

Because of Constitutional provisions, the Cooperative Act does not make any exclusion to run any category of business. However, government of Nepal may notify some of the activities to be carried out only by the government enterprises, such as security printings, production of weapon or accessories etc are some of the examples. Similarly, different acts have reserved some of the business to be carried out only by the company. For example, foreign employment service business or outsourcing of workers services may be carried out only by a Company.

Besides some exceptions, cooperatives are free to carry out all economic activities as a saving and credit cooperatives, manufacturing or other thematic or multipurpose cooperatives. Section 9 of the Act also provides right to establish specialized cooperatives federation that may be created by the cooperatives themselves to carry out big projects like hydropower, chemical fertilizer factory, housing projects, hospitals, colleges etc.

### **Establishment, membership and governance of cooperative**

No cooperative may be established or operated without obtaining permission from the prescribed authority. Under the Federal level, Cooperative Registrar office is established to register and monitor. Provincial or Local authority may fix separate office under its jurisdiction to register the cooperative.

Every cooperative should register as per the cooperative Act. Minimum 15 to 100 Nepali citizens required to establish a cooperative as mentioned above. The Act is silent in case number of the members fall below the required number.

Besides the minimum number, following should fulfill before registration of Cooperative:

1. Proposed bylaws or statute of Cooperative
2. Feasibility study report of cooperative

3. Number of Members and their commitment to accept number of shares and amount
4. Citizenship certificate and another document as prescribed by the Rule (Rule is not adopted under this Act)

The Act clearly permits free exit to its members. However, membership may not be terminated without clearing his/her liability or loan with the cooperative.

The membership shall be open and voluntary. To be a member of the cooperative, any eligible citizen may apply an application to the cooperative and denial of which may be challenged before the registrar.

The executive body of the cooperative may terminate the membership of any member incase he/she does not attend the annual general meeting of cooperative for three consecutive times or violates the provision of Rule or by laws or do not have capacity to be the member of cooperatives.

Section 136 of the Cooperative Act 2017 clearly mentioned that one member one vote principle is applied irrespective of capital investment without any exceptions.

Based on Cooperative Act there is some essential system of governance. Annual general meeting is an apex body of the Cooperative. Only members of the cooperative may join in the annual general meeting. Non-member cannot be appointed on the board of directors of a cooperative. Board of Directors and Account Supervising Committee should be elected by the AGM or special General Meeting. Bylaws is free to create other structures or committees if necessary.

Based on Section 43 of the Act, duties of the Board of Directors and administrators are as follows:

- a. Cooperative must operate as per cooperative values and principles.
- b. Do or cause to do Economic and Administrative activities
- c. Call the Preliminary, Annual and Special General Assembly.
- d. Implement or cause to implement the decision of General Assembly.
- e. Do submit polity, planning, budget or annual activities in general assembly.
- f. Provide and cancel the membership of cooperative.
- g. Transfer the ownership of share and cancellation of shares
- h. Obtain the membership of cooperative federation.
- i. Prepare and submit bylaws and internal procedural guidelines in general assembly.

- j. Promote or cause to promote and protect the business of cooperatives within the territorial jurisdiction and limit the area of work for establishment of cooperative.
- k. Other duties as prescribed by the Rule (However, Rule is not adopted by cabinet yet - as of May,2019)

## Cooperative financial structure

Based on section 63(4) of the Cooperative Act, cooperatives are free to fix its share capital by mentioning it in its bylaws. However, section 63 (4) says that value of per unit share will be NRs one hundred. Similarly, the Act categorically mentions that the members are free to obtain the number of shares according to their wish, but not exceeding more than 20 percent of share capital. However, the restriction is not applicable to the government where it is a member of a cooperative.

A cooperative bank should follow the instruction of Nepal Rastra Bank (the Central Bank of Nepal) during fixation of share capital of the cooperative Bank. Section 53 of the Act explicitly mentions that minimum capital of cooperative Bank shall be as prescribed. The share capital of the bank may be changed by obtaining approval from Nepal Rastra Bank.

In case of termination or voluntary termination of membership, the members should return its share to the cooperative and cooperative should pay back the amount invested. The cooperative may have the right to deduct receivables amount form the person concerned before returning invested amount.

The Act is explicit about profit allocation and establishment of different reserve funds. Section 71.2 of the Act provides that a maximum of 18 % of the paid up value of the shares may be distributed among the members as dividend in accordance with its bylaws.

Section 67 of the Act states that there shall be a fund in each cooperative comprising of the following amounts:

- a. Amount received from sale of shares
- b. Amount received as savings
- c. Amount received as loan
- d. Grant from Nepal Government
- e. Grant and support amount received from foreign or International Organization after receiving approval from the ministry of finance

- f. Earning from business activities.
- g. Entrance fee paid by Members

Similarly, section 68 mentions that there should be one Reserve fund which is not divisible. Following amount shall be sent to the Reserve fund:

- a. Minimum 25% of net profit of every fiscal year
- b. Capital grant received from any organization
- c. Amount received from selling of fixed assets
- d. Amount received from other sources

Section 69 mentions about Patronage Fund. At least 25% of profit after deduction of amount from the profit to the reserve fund should be allocated to this patronage fund. This fund is meant for paying to utilize the return benefits to its members based on the annual volume of the transactions held between the cooperative and the member. It is not treated as dividend.

Section 70 of the Cooperative Act has provided for one Cooperative Promotion Fund to develop the infrastructure, for training and education, marketing of products of cooperative as well as monitoring the provincial, district and primary level cooperative federation or thematic federations.

All cooperative should allocate 0.5% of its profit after deduction of at least 25% of its profit to the reserve fund and should send it to the cooperative promotion fund operated under the Ministry of Cooperative. Ministry shall allocate the fund to Cooperative Confederation, Central Thematic Cooperative Federation and other federations as mentioned in the Rule. However, Rule is not made till date and thus the fund is unused. Besides that, as per the bylaw of cooperatives, it may create other funds as it deems it necessary.

In addition to that, central saving and credit sectoral cooperative may establish a Stabilizing Fund to protect saving and credit cooperatives form the various risk that may arise.

A cooperative may issue financial instrument to its members. None transacting member of the cooperative have equal right with other members except to get benefit from patronage fund.

There is no provision in the Act which provides room to convert a cooperative into a business organization like company. However, two or more cooperatives may merge and create a new cooperative and capital and assets belonging to existing cooperative shall be transferred to the new cooperative.

In the case dissolution of a cooperative, Section 91 of the Act clearly states that after liquidation, capital and assets shall be utilized to pay its all liabilities and residual assets shall be utilized as prescribed by the Rule. However, there are some standard practices established in Nepal. Based on practice, residual assets should go to the government and it will not be distributed amongst the members.

The cooperatives shall be subject to the specific tax regime as per the Cooperative Act and Income Tax Act as well. Section 141 of the Cooperative Act clearly mentioned that there is no tax imposed on reserve fund, secured capital fund and cooperative development fund established under the Act. This provision is also recognized and addressed by recently amended Clause 2 of Annex 1 of Income Tax Act 2000. However, amount received by the member form patronage fund shall be subject to the income tax as applicable in general.

As per section 141 of Cooperative Act, Financial Cooperatives (cooperative having objective to operate financial transaction) established in the Metropolitan, Sub Metropolitan and municipality should pay tax of 10%, 7% and 5 % respectively. There will be no tax to the financial cooperative established under villages level. The newly amended Income Tax act also provides more concession to the cooperatives. 75% tax concession to the cooperative established in Sub-metropolitan and municipality and 50 % tax concession to the cooperative established in Metropolitan city.

### **Cooperative external control**

Cooperative should be controlled by the public authority based on the nature of business of the cooperatives. Most of the cooperatives are not controlled because they can do their business after establishment. Agriculture cooperative, saving and credit cooperatives etc are some examples. However, in case of hospital cooperative, it should obtain approval from ministry of Health. In case of hydropower cooperative, approval from the ministry of Energy and water resources is necessary. Similarly, incase cooperative violates consumer protection law, other public authority will initiate action against cooperative like other business organization.

## Cooperation among cooperatives

The Cooperative Act 2017 allowed formation of a cooperative, by other cooperatives. Based on the provision of the Act, various levels of secondary cooperatives may be established. These are:

1. District thematic (sectoral) cooperative federation may be established by at least 11 primary cooperatives having similar objective.
2. District Cooperative Federation may be established by 15 primary or district thematic cooperative federation.
3. Provincial thematic cooperative may be established by district thematic cooperative federation of five districts.
4. Provincial Cooperative federation may be established by provincial thematic cooperative and district cooperative federations.
5. Central thematic (sectoral) cooperative federation may be established by district thematic or provincial thematic cooperative federation
6. Confederation of Cooperative may be established by more than half of district thematic cooperative federations, district cooperative federations, provincial thematic cooperative federations, provincial cooperative federations and central thematic cooperative federations.

The Act recognized Confederation of Nepalese Cooperative as a representative organization of the cooperative movement.

Moreover, the act has further provisioned that a specialized cooperative federation could be opened or operated in a collaboration of 25 thematic or multipurpose cooperative institutions. Such cooperative may be established to invest in a larger scale to the infrastructure development projects such as hydropower, fertilizer, residential house, transport, fruits refinement, herbal products, sugar industry, hospital, academic institutions, technical school, lab etc.

## Degree of “cooperative friendliness” of the national legislation

The existing federal Cooperative Act 2017 is largely cooperative friendly. The Act was made in consultation with the cooperative federation and confederation. However, there are many suggestions made by the cooperative movement which have not been

incorporated even in this youngest Act relating to cooperatives. The main achievement is that the movement has been recognized by the constitution and Act also recognized it as one of the three pillars of national economy. Realizing the need of the promotion of cooperative, Chapter 13 of the Cooperative Act provides following concession and benefits to the cooperatives.

- a. Except in the case of transfer of immovable assets, no deeds, to which one of the parties is a cooperative, require registration with the Govt. agency
- b. There is no registration fee imposed to the cooperative in case it required to purchase land or develop infrastructure to establish its own office building, however such provision is not applicable incase cooperative starts housing business
- c. There are no fees imposed in case of loan deed prepared by the cooperative.
- d. No income tax imposed on reserve fund and patronage fund, and there is heavy concession to the cooperatives in comparison to other business organization.
- e. Government of Nepal may provide other incentives by notification in Nepal gazette in terms of custom duty, excise duty and Value Added Tax. (Some of the Cooperatives are already benefitted with such facilities).
- f. Government may provide grant to the cooperatives in case of the work of cooperative confined in priority area fixed by the federal, provincial and local government. There are many cooperatives also receiving such grant by different levels of government.
- g. Cooperatives are empowered to send letter to the authority to stop the transfer of movable or immovable property, if so, the authority should act accordingly.

There were only 830 cooperatives in the country before 1992, however, after the cooperative movement, number of cooperatives has been increased tremendously and now number of cooperatives has reached to 34512. It shows that the legal frameworks are supportive to the movement. Thus, we thought that based on the legal framework, degree of cooperative friendliness may be termed as "quite cooperative friendly".

## **Recommendations for the improvement of the national legal framework**

There are number of issues need to be changed. Cooperatives have advocated it during the time of parliament debate as well. These are:



- a. **Remove complexities of registration:** The Act has brought out a few complexities in course of registering a cooperative. It was not needed to limit the saving and credit cooperative within ward of Metropolitan City and Sub-Metropolitan City even if other cooperatives have been authorized to work upto the local level. For instance, few wards (7, 16, and 31) within Kathmandu Metropolitan City couldn't be an appropriate measurement and population of ward no. 23 and 24 have been found to be overlooked. Likewise, the provision in terms of the directive to be given by a registrar to reduce the working area of the prevalent cooperative is not so practical.
- b. **Increased ratio of transaction may create problem:** There may be some obstructions to some cooperatives having savings and credit transactions more than 30% as these will have to change its transactions within three years not undertaking the saving and credit to be the main transaction. If any cooperative having more than 30% of saving and credit activity, should limit its area of work within ward of the local territory may create problem for the expansions of cooperatives.
- c. **Double Regulation to the cooperative Bank:** Double regulatory provision has been maintained for the cooperative banks. Some problems might appear after both the cooperative department and Nepal Rastra Bank regulate them as per the act.
- d. **Administrative Control:** Administrative control of the act is a very feeble part which needs to be revised. It has given extensive power to the registrar including registration, regulation, area expansion and action taking. It is likely that giving an extensive power to an authority makes him corrupt and unrestrained. Thus, it is important to make necessary changes towards control-oriented provisions against the self-rule of the cooperatives.
- e. **Punitive Provision:** Some punitive provisions have been enshrined to help control wrong practices in the cooperative business to a large extent. Imposition of fine for failure to submit information: A fine up to three hundred thousand rupees shall be imposed, by order of the Registrar, on any Federation which fails to submit a report. If such a person who has once been punished with fine is held to have again carried on trade and business in violation of that Section shall be imposed with double fine and the transaction of a cooperative shall be barred until three months, the provision of freezing the property and accounts till three months has hampered the independency and self-regulation of the cooperative. However, the penalty and unnecessary fine being charged for doing an act unknowingly to the cooperative institutions established in the remote areas is likely to discourage the cooperatives to continue transactions.

- f. **Appellate provision against the punishment:** The provision of making an appeal before the secretary against the punishment ordered by the registrar seems inappropriate. The provisions should have been made to advance the cooperative through the principle of self-regulation not by the punishment. Thus, necessary amendment, reforms are required in this regard to make it carry out functions in an effective and productive manner.
- g. **Regulation of interest:** The provision that has made the 6 percent spread over rate between saving and lending by saving and credit cooperative seems fine. However, the Act also mentioned about reference interest rate may be fixed by the committee, that is entirely inappropriate.
- h. **Framing the Rule:** There is a provision in the Act that the internal procedure shall be passed by the Annual General Meeting. If this provision is found to be appropriate under the democratic control, it is not possible to call general meeting to change the internal procedure in each subject. At this point, this provision is found to be contrary to other laws. Section 2(J) of the Labour Act clearly states that the Labour Act is applicable in the cooperative institutions. The wrangling provision regarding framing an employee bylaw that is required to be passed by the board of directors has also been mentioned in the Act. Following this, it is necessary to frame a regulation that might incorporate a provision to delegate the power to the board of directors by the annual general meeting.
- i. **Quorum in annual general meeting (AGM):** The provision regarding the presence of 51 percent of the total ordinary membership of the general assembly seems not practical to the cooperatives having larger and nationwide membership. Only the cooperatives that have more than two thousand members shall convene the AGM in a representative manner. In contrast, the conditions prescribed to do so are not practical too. The Act remains silent as to how to solve a problem if the AGM doesn't take place due to lack of quorum. Eventually, it is necessary to make required changes to have the AGM consisting of a majority of the Board of Directors in case AGM could not take place due to lack of quorum.
- j. **Registration of social cooperative:** The Act only recognizes mutual cooperatives but not recognized social cooperative. Thus, we need to change the Cooperative Act introducing social cooperative as well.

In fact, not only above-mentioned provision, there are 36 different laws need to amend which are contradictory with the Cooperative Act to make national law more cooperative

friendly. Such as Education Act, Insurance Act etc need to change. Thus, regular efforts are essential in the days to come.

### **Conclusions:**

To sum up, the cooperative movement has entered a new stage along with the commencement of the Cooperative Act 2017. Yet, despite having some shortcomings, many provisions to strengthen the cooperative movements have been elaborated since it is assumed that it helps develop a feeling of mutual help, cooperation, democracy, unity, brotherhood and equality which ultimately brings sustainable development to economy and prosperity in the society. Now, an opportunity has come up to increase the capacity of the cooperative sector in an effective, productive and competitive manner to enhance the economic capacity of the members not only based on its numbers. In such a context, cooperative can be the best economic means to uplift the economic standards of the people of the lower income class living in rural and urban areas.

It has been the right opportunity to enhance and strengthen the economic status of the country to contribute to the development of the country in a collaboration with cooperative federation or a specialized cooperative. The current challenges of the cooperative movements is to make appropriate changes subject to the spirit of the new law, to make the procedures set up as per the previous law conducive and to establish the cooperative making it to be an integral part of the national economy as per the norms and spirit of the new law. The cooperative movement can face such challenges successfully to move ahead along with entering a new stage.

### **Reference Materials**

1. Constitution of Nepal, 2015
2. Interim Constitution of Nepal, 2007
3. Constitution of the Kingdom of Nepal, 1990
4. Cooperative Institutions Act, 2016 B.S.
5. The Sajha Act 1984
6. Cooperatives Act, 1990
7. Cooperative Act, 2017
8. Cooperative, published by Department of Cooperative, GoN, 2017
9. Cooperative Principle and Implementation, Keshav Badal, 11<sup>th</sup> Edition, 2019

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