



Perspectives on co-operative laws in the Asia-Pacific

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General overview

- Vast regional area from Middle East to the Pacific Ocean with very different levels of development and economic/political/legal systems.
- The area covers 60% of the world's population.
- Sub regional groupings include:
 - East Asia – including China, Japan, South Korea, Mongolia (Population 1.67 billion)
 - Southeast Asia –including Indonesia, Thailand, Myanmar, Vietnam, Philippines, Malaysia (Population 668 million)
 - South Asia – including Bangladesh, Bhutan, India, Maldives, Nepal and Sri Lanka. (Population 1.96 billion)
 - Central Asia – including Kazakhstan, Kyrgyz Republic (Population 73 million)
 - Middle East - including Palestine, Jordan and Lebanon (Population 411 million)
 - Oceania – Australia, New Zealand, Fiji, PNG, Vanuatu, Kiribati (42.6million)

General overview

- Sub-regional groupings are mainly geographic, so do not necessarily have political synergies except for ASEAN.
- European influences permeate the co-operative law and differences depend on whether the countries were colonised or influenced by Anglo-American common law or Continental civil law traditions.
- Former British colonies heavily influenced by British Indian Pattern of Co-operation (BIPC) include India, Pakistan, Bangladesh, Sri Lanka, Malaysia, Singapore and the Pacific Islands with some modifications.
- Socialist countries following the USSR tradition are moving slowly to the market-based legislation but still have problems in terms of autonomy and independence of co-operatives.
- Many countries in this region have plural legal systems combining common law, civil law, customary and religious traditions.

Differences between two traditions

- Civil law tradition
 - Better accommodates collectivist approaches
 - Constitutional recognition of co-operatives e g Philippines, Indonesia
 - Co-operative law as complete code
 - Sectoral laws only– agriculture, consumer, finance, e g Japan, South Korea (till 2011)
 - Mandated indivisible reserve funds in some countries
- Common law tradition
 - Individualist approach based on property rights, freedom of contract and association
 - No constitutional recognition except some in South Asia where constitutions were developed by including certain good practices of nations across.
 - Legislation not a complete code
 - Flexible, general law (not sectoral)
 - Indivisible reserve funds not necessarily mandated by law in all countries

Historical legal issues

- Japan enacted the Industrial Co-operative Act in 1900 following Raiffeisen model, later the multi-purpose co-operatives were allowed.
- The British Empire enacted the Indian Credit Co-operative Societies Act in 1904 following Raiffeisen model but with the strong top-down elements.
- Where countries have transitioned from colonial rule to independence, a top-down tradition was inherited in many countries while a lack of economic strength and political cohesion has resulted in years of neglect of co-operative law reform. The developmental states have been common.
- Lack of autonomy from the state, noted in LFA reports on Jordan, Lebanon, Indonesia, Myanmar, Philippines, Vietnam, Bangladesh, India, Maldives, Nepal, Bhutan and Sri Lanka.

Contemporary legal issues and reforms

- Globalisation and industry rationalisation has meant that countries with state or provincial co-operative laws have had to think about multi-state or national law reform – India and Australia are examples.
- The introduction of trade liberalisation policies and removal of government protections for some agricultural sectors has resulted in competitive conditions that put co-ops at a disadvantage due to capital constraints. Reforms have included hybrid co-operative company models in India and NZ.
- International accounting and auditing regimes and prudential regulators have preferred investor-owned models in banking and finance, causing legal issues for co-operative banks, e g India.

Contemporary legal issues and reforms

- Co-operative tax advantages have been eroded in most countries due to changing tax regimes.
- New challenges for workers in increasingly casualised workforces is an opportunity for legal innovations around worker co-operatives e.g. South Korean Framework Act on Co-operatives, Japanese Workers' Co-operatives Act.
- Constitutional Amendment Act, 2011 of India, enables co-operatives to attain autonomy and independence while its implementation depends on the state legislature.

Positive law reform examples

- South Korean **Framework Act on Cooperative 2012**, enables 5 persons to establish co-operatives in almost any sector (except for financial sector that requires the public authorization). It also enables to set up social co-operatives for **social inclusion** of disadvantaged people. More than 10,000 co-operatives were set up.
- Japanese **Workers Cooperative Act 2020** gives legal recognition to workers co-operatives. It allows a small number of persons to set up a co-operative without government's approval that is required for other types of co-operatives. It also mentions the Sustainable Development Goals, a first for a Japanese co-op law.
- **Youth inclusion** by recognizing specifically, school cooperatives in Indonesia and Malaysia. Legally enabled cooperation among cooperatives among credit unions and school based savings cooperatives in the Philippines. University/campus consumer cooperatives are also recognized in many countries.
- Constitutional Amendment Act, 2011 of India, fits as a good example of law promoting **gender-equality and social inclusion** in cooperatives. Art. 243 (1) 'reserves' one seat for a person of either a member of a 'scheduled caste' or 'a scheduled tribe' and two seats for women, on the board of all cooperative societies. Article 243ZO that refers to the **right to information** - which is an enhancement or probably a good interpretation/translation of the 5th Co-operative Principle into legal rules

Recommendations

- Co-operatives need to be more autonomous and independent (4th Co-operative Principle) by creating equal partnership with governments while eliminating their dependent culture. This is why the ICA has regularly convened ministerial conferences since 1990 and adopted recommendations but the implementation thereof needs to be accelerated.
- Sub-regional experts recommend inclusion within the co-operative legislation of a 'preamble' setting out the role and functions of co-operatives in society that can help to guide the interpretation of the law and can be used, when necessary, to defend the cooperative identity, by defining coops with a reference to the ICA Statement on the Cooperative Identity and ILO R193.
- It is also noted that an adequate legal framework for co-operatives must be flexible enough to accommodate the different financing needs of different types of co-operative enterprises, without compromising the co-operative identity.
- In view of the pandemic and a trend towards digitization, co-operative law reforms that facilitate remote meetings and online decision making, but taking into account local technical competencies, levels of (digital) literacy and access to digital tools etc.