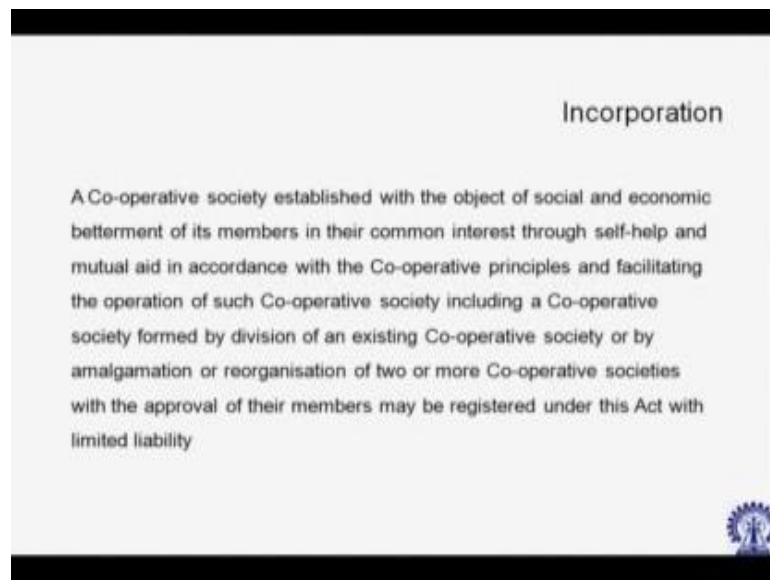


Legal Compliance for Incorporating Startup
Prof. Indrajit Dube
Department of Humanities and Social Sciences
Indian Institute of Technology, Kharagpur

Lecture - 10
How to Incorporate Co-operative

I welcome you in my tenth lecture relating to Legal Compliance for Incorporating Startup and I am in the module of incorporation of partnership, LLP and cooperatives and more specifically I will talk with you how to incorporate the cooperatives.

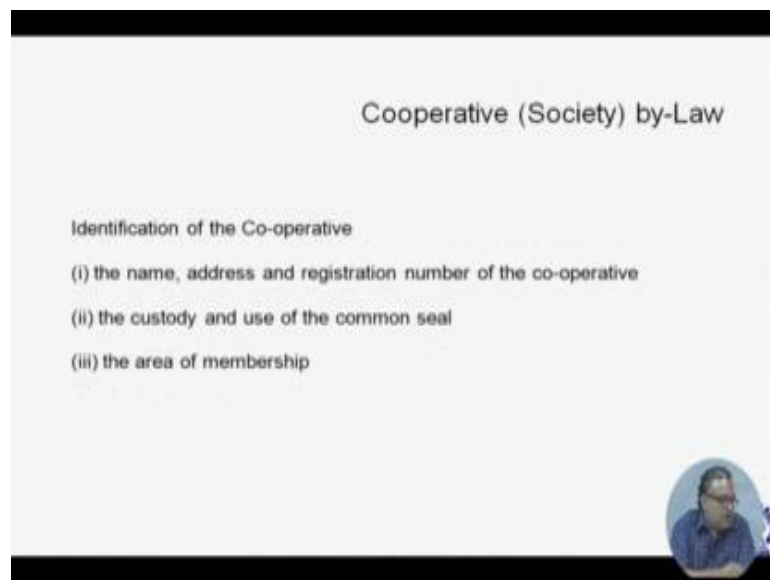
(Refer Slide Time: 00:42)



Now, in my last lecture I have talked with you the law relating to the cooperatives and then in I have mentioned that in general, the cooperatives need to be incorporated to promote some kind of a social cause. So, there should be some kind of a social and economic objective for the betterment of its member and it should other way around help the people to develop in that particular local area or whatever the way they want to do. So, if you want to incorporate startup which is relating to social innovations, or which is going to provide some kind of social infrastructure or which is going to sort out some of the issues relating to the financing social financing.

Then it is always advisable that you should go for the cooperatives. Now, as I have told you in my previous lecture that cooperatives keep you a lot of flexibility as a organizations, but as well as it keeps you firmness because it is body incorporated that means, the cooperative is itself a person, this is one of the technical legal conversation, but it means that even if the there is a change in the member or some member comes and goes, there is no change in the cooperatives. At the same time there is no change in the assets of the cooperatives and liability of the cooperatives, but you need to decide value incorporating that what kind of cooperatives you are basically promoting. Are you interested to promote limited liability cooperatives or unlimited liability cooperatives?

(Refer Slide Time: 02:49)



Now, in this particular lecture I am going to talk more about how to find the by-laws, but before that let me tell you, there is a certain procedure which is prescribed by the state legislation which provide the governing laws relating to the cooperatives and you need to file the designated form which is prescribed in that specific state legislation. I am not going to name those particular forms because it is going to vary according to the state.

So, you need to find out that which the forms you need to fill up are, but what is the most important thing is that after filling up all the forms and requirement, you need to create a by-laws. Now, one thing I like to draw your attention that incorporating the cooperatives

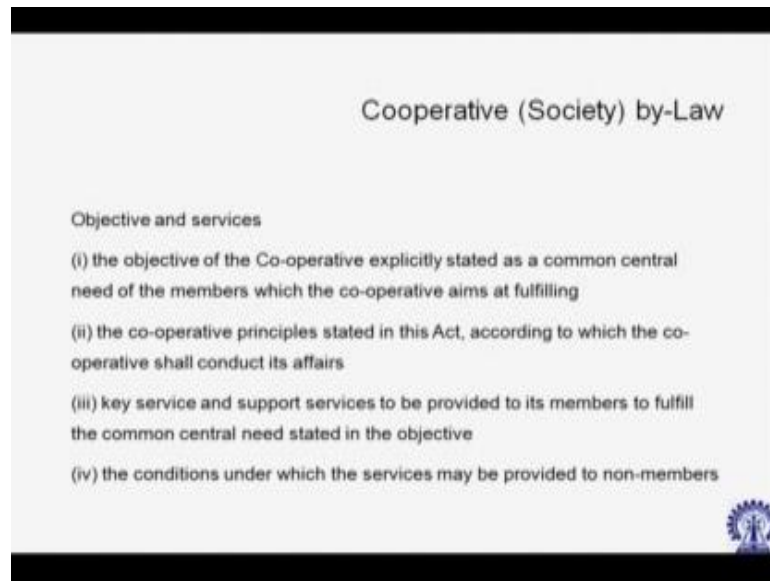
are little less costly than incorporating the other form like even LLP also because this state, like to promote this particular cooperatives and state promote this cooperatives for a different reason like it can be for the social help, or maybe self help group or maybe some of the social cause or for some reasons.

So, what the state did, they kept the compliance cost quite minimum compared to other form of business organization. So, if you have a less capital, but you have a great idea and if you cannot have a expertise to go for a lot of compliance then these particular organization is good for your startup.

Now, you need to identify the cooperatives and while you are identifying the cooperatives, you have to give a name, address, registration number of the cooperatives through which the people can identify a particular cooperatives. So, you have to have this particular provision made into your by-laws and then you need to custody and use of the common seal that means, which is going to give this particular common seal. The moment you are putting the common seal it indicates that the cooperatives given the consent for the particular transaction.

Now, please remember the cooperatives as an artificial body, already legal person whatever have talk with you cannot give the consent by it is own. So, there will be some group of people who are going to give the consent on behalf of the cooperatives and that particular group of person might be, you have the directors or maybe the board of directors authorized, the CEO of that particular cooperative, managing director of the cooperatives to put the consent. So, there should be some kind of a designation created or some people will be designated to hold this particular seal because the moment you are putting the seal, it indicates that the cooperatives are given the consent to these particular action. Then you need to talk about the area of members like cooperatives might be limited to achieve geographical location and then you can define that the members, you should come only from this particular geographical location.

(Refer Slide Time: 06:11)



Next important thing is that talking about the objective and services. This particular cooperatives is going to provide and in that particular process you need to talk about the common central need of the member, whose the cooperatives aim to fulfill that means, to some how you need to define the objectives of the cooperatives, but these particular object is much more flexible than that of companies objective or the objective which you have provided in LLP or Limited Liability Partnership. So, you need to have brought definition, one of the good issues in case of the cooperatives is that the ultra vires concept which is very stringent in case of the companies, are not stringent in case of the cooperatives.

So, in case of the cooperatives it is more flexible in nature. Now, you need to talk about the principle as stated in the act. According to that cooperative should conduct, appear and if you remember in the last lecture I have talked about the principles; principles are generally that the cooperatives has to promote for the social help, cooperative should promote the social objective. So, must support or it should promote the objective of the members or the community where the members belong.

Then key service and support which this particular cooperative wants to provide the condition under which the services may be provided to the non-member also, you can

provide the provision relating to that. Then the important thing is that the capital in the fund because if you want to carry out the business, then you should have an adequate provision relating to getting the fund, how to raise the capital and how to utilize the fund?

(Refer Slide Time: 08:15)



You can decide on the nature and amount of the share capital, if any cooperative and the manner in which that the capital can be raised and what of the type of instrument these particular cooperative can issue. So, you might talk about the equity and if you are talking about the equity what are the nature of the equity, do you want to create a class within the equity? All these particular thing or what is the face value of this particular equity? Will you like to add a premium, if you wanted to subscribe the equity later on? So, all these particular issue you can add with this thing.

Now, you can talk about the maximum capital a single member can subscribe because as I told you even the law also limits that you cannot subscribe more than more one-twelfth, one-fifth of the total capital or even sometimes they might prescribe even the lesser limit than that. So, in the by-laws you can specify further you can lesser limit because you cannot exceed if there is something which has been provided in the law or whatever the

provision has been provided you can put it down, but you can keep different kind of the limit into this particular thing.

Then you can talk about the nature and extent of liability of the member for the debt contracted by the cooperative. So, what are the kinds of debt they can take? What are the policies of lending the money or what are the policies of borrowing the money? You can detail out in this particular thing. Then the source or and the type of the extent of the funding to be raised by the cooperative that you can talk about and most of the cases as I said that you cannot go for issuing of the shares into the primary market, as a public listed company can do, but in case of the cooperatives you can add a new member and the new member can bring the subscription.

At the same time you can go for different designated state institutions, who can give you the money for carrying the business. In fact, you will find the terms of lending the money. In case of the cooperatives is much easier and compared to other organization or there can be some kind of dedicated institution created by the state or by the central government to fund these cooperatives and excessive those particular fund is easier than other organization.

(Refer Slide Time: 11:02)



Cooperative (Society) by-Law

Capital and funds

- (vii) the extent and conditions under which deposits, loans, debentures and other fund may be mobilized
- (viii) conditions and purposes for which state aid and aid from financial institutions may be sought for and obtained
- (ix) the constitution of various funds, reserves and their purposes
- (x) the manner of disposal of surplus and bad debt
- (xi) mode of investment
- (xii) custody of funds

Now, you have to talk about the extent and the condition under which the deposits, loans, debentures and the other fund may be mobilized. So, the cooperatives can take all, these particular thing, they can raise the deposits, they can raise the loan, they can issue the debentures.

I believe you are about the of this particular thing these are basically the credit instrument and deposits are whatever we are mentioning here, these are basically term deposit; term deposit means it is different from the demand deposit; demand deposit means whatever we are habituated in case of the bank that means, you can go to the bank, even if have a fixed deposit you can any point of time liquidate, but when you are talking about the deposit in case of the cooperatives in that term deposit that means, before the term or before completion of the term you cannot liquidate this particular deposit at the same time there can be debenture kind of a instrument, which are the bonds, which this particular cooperative can issue and they can have terms and condition of issuing these particular debentures.

So, debentures can have a fixed rate of interest and it can also have; after which these particular debenture will be redeemed by these cooperatives. The condition and the purpose for which state aid and aid for financial institution may sought or for the obtained and as I told that in general, the state facilitated lot to the cooperatives relating to financing or raising the fund beyond the member whatever the contribution member made in the cooperatives.

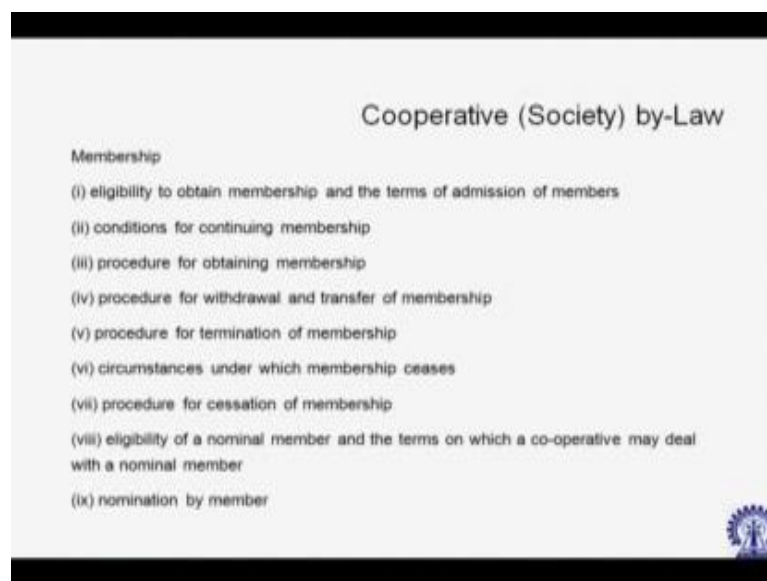
Now, there can be a constitution of the various fund and the reserves and I have talk with you relating to reserves in my last lecture and this particular. Reserve can be for specific purposes and or you can keep it just reserves open. So, whenever is required you can use this particular reserve for the development or the growth of the cooperatives, or may be starting a new venture or may be rewarding your members to certain extent or you can use it even for the purpose of purpose of starting a new venture on new subsidiary of that particular cooperatives.

If there is a surplus then you should have specific provision in the by-laws relate how to handle that particular surplus or distribute that particular surplus or at the same time, if

you accumulate the bad loan or your accumulating the non performing asset then in that case you should know, how to handle these or what we should do with this bad loan or the non performing asset.

So, further more you can talk about the mode of investment and you can also talk about custody of the funds, if the funds is not here and if you have raised that particular fund, or if you have got this particular fund because of appreciation of the assets or some premium which you have get for the time of issuing of this, there can be a different source through which you have this particular fund and in that case you can talk about the custody of these fund.

(Refer Slide Time: 14:39)

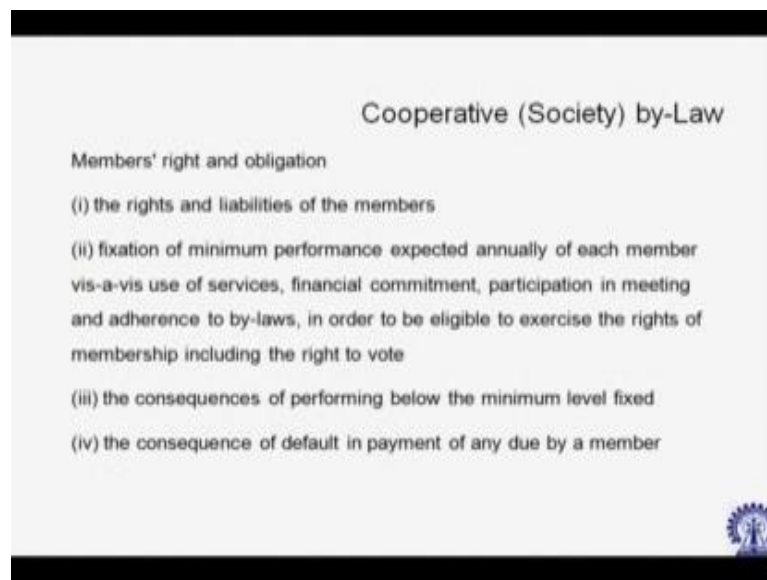


Now, you can make an adequate provision relating to the membership because membership is the central to any cooperatives and you should have a provision which is quite convenient to the members because if it is not convenient to the member then in that case possibly that cooperatives are no good for purpose of an organization. So, you can talk about the eligibility of member condition for continuing the membership, how to obtain the membership?

Then withdrawal and transfer of the membership, then you talk about the termination, then you can take inwards talk in what circumstances the membership can be ceased like the person can be insolvent or person can be convicted for the moral turpitude that means, he has convicted for under certain criminal case in under the IPC or some other kind of financial offenses. Then in that case his membership can be removed, but whenever you are talking about this particular membership, please remember to check the eligibility which has been prescribed by the act and you can add additional criteria with that particular eligibility, but whatever has been specified you cannot downgrade that particular eligibility.

So, you need to check in the current act whatever the eligibility has been provided. Now, then it need to talk about the nomination by the members. If you think that where the member should come only through the nomination and they cannot come just by the open application then you should mention the same.

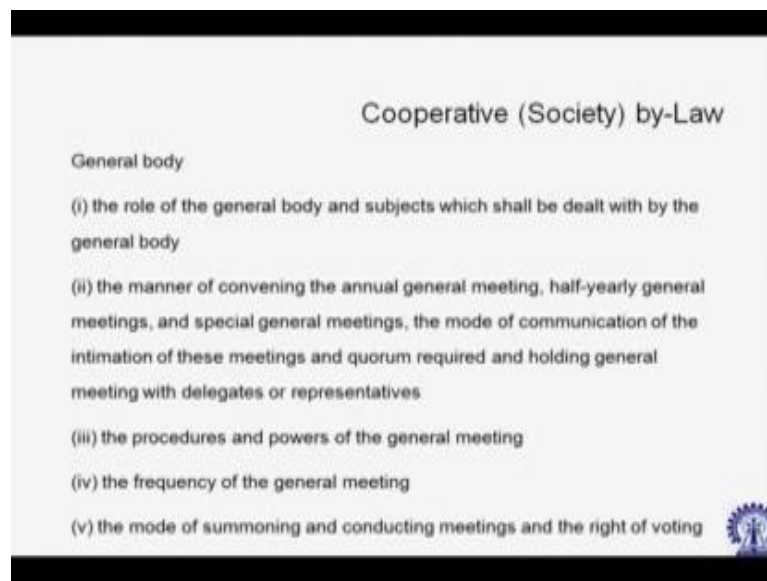
(Refer Slide Time: 16:29)



Now, the next important thing is member's rights and obligations and then in you need to talk about the rights and liabilities of the member. Then you need to talk about minimum performance expected annually of the each member vis-a-vis use of the service financial commitment participation in the meeting adherence by the law an eligibility to excise

these particular thing. So, what basically you need to talk in case of the cooperative and you cannot have a sleeping member, you need to have active member and that particular number even though not participating in day today work of the cooperative, but he is acting in the policy framing looking into looking and monitoring the financial issues of the cooperatives.

(Refer Slide Time: 17:56)



Now, there can be a consequence of performing the below minimum level fixed that means, if you find that well a particular member is not for a meeting, that particular member is not fulfilled the commitment relating to his capital contribution or any other thing which you have prescribed, then in that case you might even suggest that this particular member will be owned and after some point of time even his members in maybe ceased.

Now, there can be consequence for default of payment. Now, as I have told to you that the general body is a heart of any cooperatives because in my last lecture also I have talked with you that what are the matter general body can handle with and you have seen that all the matter can be handled by the general meeting and then I have said that residuary power actually left with the general meeting. So, if there is board of directors

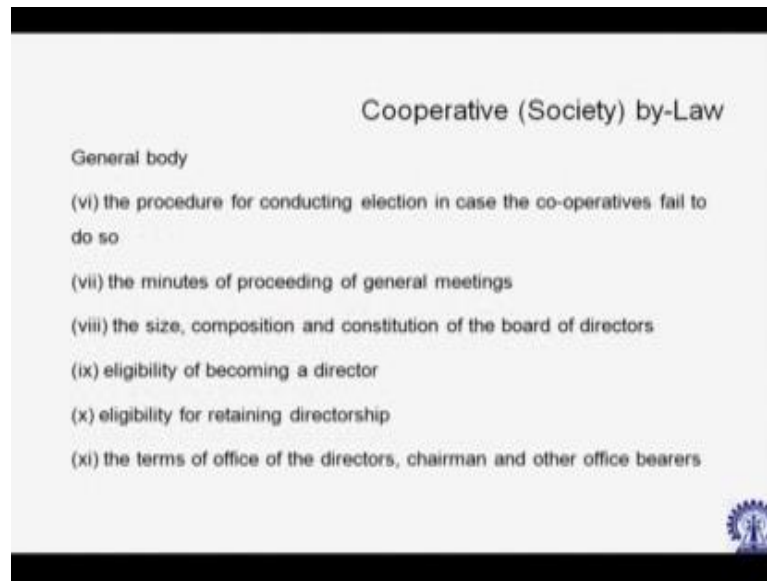
in that particular cooperatives then board of directors are basically delegated power is delegated to the board of director by this particular general body.

So, you need to carefully, the power of the general body because some of the power is already given by the statute itself and if you wanted to give some more power or if you want to set further standard into in the general bodies activity then in that case you need to define accordingly. So, you need to talk about the role of the general meeting and the subject which by default general meeting is going to handle and you can add this particular subject matter in addition, whatever has been prescribed in the statute.

Now, you can talk about the procedure relating to the conveying of the general meeting, you can talk about the procedure and the power of the general meeting, how it can be conducted. You can talk about the frequency of the general meeting and as I have told you in my last lecture that in some of the law they talk about the frequency and even they mentioned that which are the month these general body need to meet and hold the meeting.

So, you can if it is not mentioned in the statute, you can do that in these particular by-law itself and you can talk about the mode of summoning and conducting the meeting and the right to vote or how to cast the vote in the general body meeting.

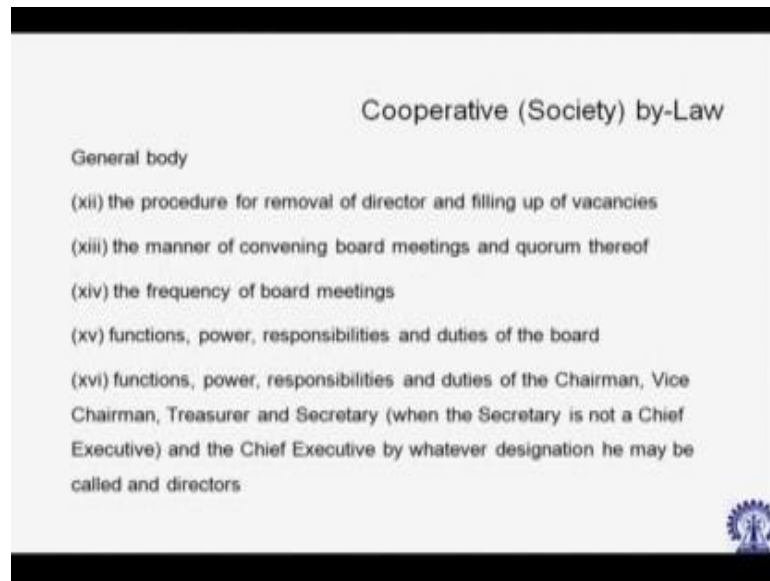
(Refer Slide Time: 19:59)



Then you can talk about the procedure of conducting the election, in case of cooperative fail to do. So, what will happen and in that circumstances if the general meeting is not been called by the management; existing management. Then who has a right to call this particular general meeting? Then how to record the minutes of the proceeding of general meeting? How it need to be distributed amongst all the member of the general meeting? So, what are the disclosure measures you are going to adopt relating to transmission of the annual report and audit, the account to all the general body meeting you can have the procedure provided in the by-laws.

You can further decide about the size of the board, how many people can sit in the board, and how these particular people can be elected in the board and how many days they can continue in their office? Can they be re-elected or is it needs to have a fresh election every year or every couple of years duration.

(Refer Slide Time: 21:21)

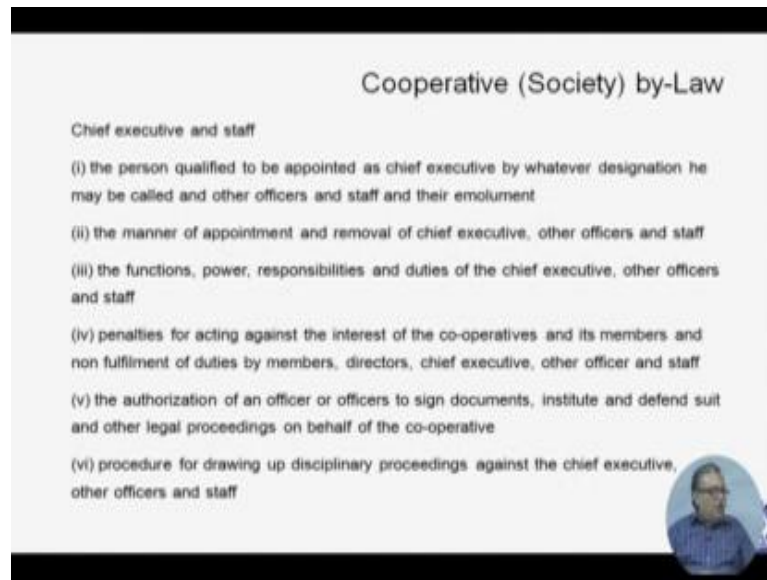


So, you will need to talk about this particular thing. Please remember, most of the cases you will find this is basically specified by the parent law and now, these there is lot of talks is going on relating to that. Even people are talking about appointing the independent directors in cooperatives, but there the particular concept is yet to be take proper in India, but may be tomorrow that kind of situation might come because please remember, in India there are many large cooperatives are there and who basically provide a lot of service to the entire countries economy. I believe you are aware of the fact the largest cooperative which India have which is known by everybody is a more.

So, they do the innovations, they do lot of business, they add into the market value and all these thing. So, in those particular circumstances, you need to have an expertise. You need to have proper management and people are talking and making an amendment to this particular thing. So, then again you have to talk about the quorum, you have to talk about the frequency of the meeting, you have to talk about the power function and duties of the board of directors, you can also talk about if the directors fail to discharge their duty or observe the skill, we say supposed to do under the law then what kind of penalties you can impose on them are you going to decapacited them to be a member of this particular board. So, far now you can also talk about, what are the responsibilities or the duties of the chairman, vice chairman, treasurer, secretary and so or if there is a chief

executive officer, how they will be appointed and what are the powers and duty they should discharge?

(Refer Slide Time: 23:24)

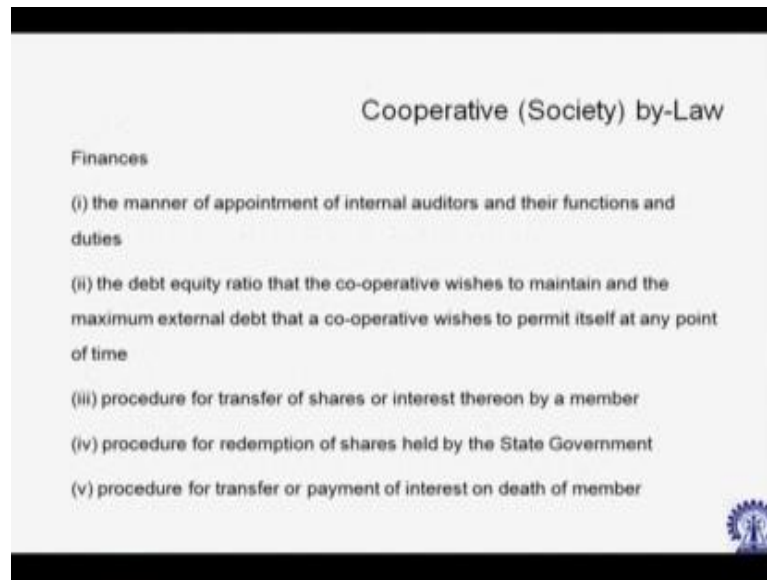


Now, if there is a chief executive and the staffs that means, who are going to discharge more of executive function or day today function. Then in that case, you can talk about the qualification and how he can be appointed and how if he is not able to discharge the function, what is the removal procedure then power function and responsibility which he need to discharge then the penalties for acting against the interest of the cooperatives. You need to talk about then you need to talk about authorization of the officer officers for signing the document because if you remember, I have started with somebody has to keep the common seal.

So, here you need to do make this particular provision that who is going to keep this particular common seal and who is going to create these particular common seal because if you are entering into a contract outside with outsider then in that case, you need to put your common seal there. So, you can detail out this particular thing and if there is any legal proceedings which has been instituted by you are your instituting a legal proceeding against others in the court of law or in administration or mediation or

wherever it is, then in that case it is better to designate a person who is going to look after those particular issues.

(Refer Slide Time: 24:47)




Now, you need to talk about the finance. When you are talking about the finance is more about how you are maintaining the accounting standard? What is the auditing procedure which you are required to follow? How you are going to transfer the share or interested in the shares? What are the procedure you should follow relating to the term redemption of the shares? Then what are the procedure you should follow relating to payment of the interest and if the person is deceased then in that case, how you are going to dispose his interest in that particular thing particular in shares.

(Refer Slide Time: 25:19)

Cooperative (Society) by-Law

Finances

- (vii) guidelines for granting loans, determination of normal and maximum credit of members and maximum loan admissible to a member in case of a co-operative;
- (viii) purpose for which loans may be granted;
- (ix) extension of period of repayment and renewal of loans;




Then you need to talk about granting guidelines relating to granting of the loans. You are required to talk about the purpose for which the loan can be given and for that means; there should be detail out relating to the policies of financial activities of the company.

(Refer Slide Time: 25:48)

Cooperative (Society) by-Law

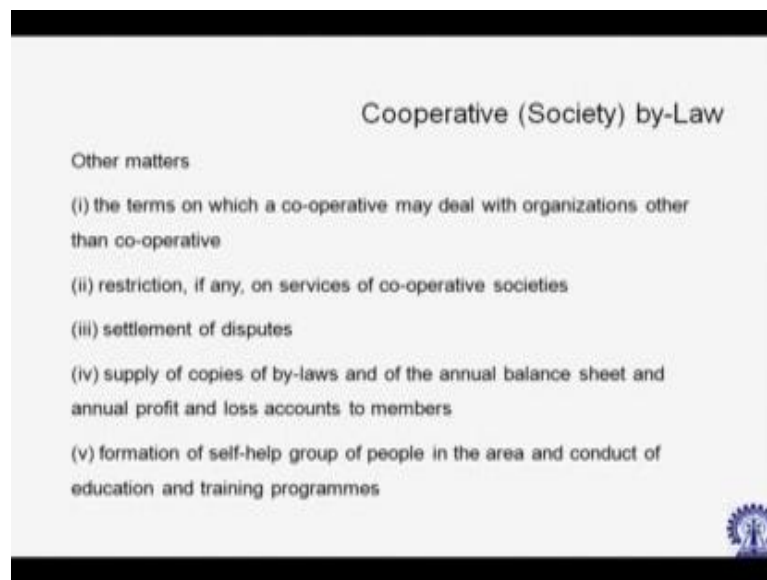
Finances

- (x) the terms on which a co-operative may associate with other co-operative;
- (xi) the rights, if any, which the co-operative may confer on any co-operative, and federal co-operative of which it is a member and circumstances under which such rights may be exercised;
- (xii) the procedure for appointing and changing representative to other co-operative and federal co-operative;
- (xiii) mode of keeping the accounts of the co-operative.



Then you can further talk about the rights If the cooperatives may confer on any other cooperatives or federal of the cooperatives, which of it is member on the circumstances sign that particular right and all these particular staff, then you can talk about mode of keeping the account in that particular cooperatives and you can also talk about what are the standard you are going to follow as standard practice within your organizations or even if you wanted to talk about the internal auditing, if you wanted to talk about the periodical auditing, if you want to talk about the external auditing then you can specify the procedure to that.

(Refer Slide Time: 26:37)



Now, there is other matter which is important to mention into the by-laws. It is relating to terms with which the cooperatives may deal with the organization other than the cooperatives. You can talk about the restrictions, if any on the service of the cooperative society then you can further talk about the dispute settlement mechanism within the organization and outside the organizations which can be sorted out even without going to the court or administration.

So, you can have some kind of procedure in place or somebody can be given a charge to look after this particular issue then you can talk about the copies of the by-laws and annual balance sheet and the annual profit and loss account. How you are going to

distribute to the members or how you are going to put it into public domain and then if you wanted to have educational or trading program for your people into that cooperatives. Please remember, again I am talking about the cooperatives has a objective for a social development.

So, in those particular circumstances this is not for profit making vehicle as we understand in case of the company, but cooperatives more you can make the profit, but it is more for doing self help. It is more for doing social innovation; it is more for addressing the social problem. So, you should organize, you should develop the by-laws around this particular philosophy.

Thank you.