

LEGAL ENVIRONMENT FOR CO-OPERATIVES

(Specialisation in Co-operation)

Elective - 2

V SEMESTER

B.Com.

BCM5 B11

2019 Admission onwards



UNIVERSITY OF CALICUT

School of Distance Education

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Study Material

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LEGAL ENVIRONMENT FOR CO-OPERATIVES

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Module I

CO-OPERATIVE LEGISLATION

Unlike the West, where the growth of cooperatives was a spontaneous movement, in India cooperative legislation preceded the development of cooperatives. Thus, a progressive legal framework can sensitize the constituents and sculpture shape of Co-operatives only if it is formulated and operationalised in conformity with established Co-operative values, principles and ethos. Indian cooperative law and cooperative policy have been the most influential factor in determining the direction and the pace of cooperative development.

Features

It is difficult here to enumerate all the features of Co-operative legislation. However, the broad characteristics can be discussed under the following six headings:

1. Creation

That the Co-operative is a lawful organization created by minimum number of persons belonging to the same class.

2. Legal Status

That a Co-operative acts as a legal personality, i.e., right to own property, borrow and lend money, buy and sell goods, sue and be sued, etc.

3. Organizational Framework

The law provides the broad pattern for a Co-operative organization and its working viz., what kind of a Co-operative is; how it is to be financed and controlled, how surplus or losses are to be distributed and how, if necessary, it is to be wound up.

4. Control and Assistance

The law provides as to how the State can affect control and provide assistance. The State assistance may take the form of concessions with regard to reduced taxation (stamp fees, registration fees, income tax), capital loans on easy terms, contribution to share-capital, grant of subsidy and guarantee, or the provision of trained staff, consultants and supervisors.

5. Auditing and Accounting

The law provides as to how to conduct audit and accounts of a Co-operatives in order to prevent frauds and financial irregularities especially when these are receiving various forms of State aid.

6. Maintaining the True character

The law provides as to how ban the entry of the speculators and the capitalists from availing themselves of the privileges which are not intended for them.

Important landmarks in the history of co-operative legislation in India

The Rochdale Pioneers

Co-operatives started out as small grass roots organizations in Western Europe, North America and Japan in the middle of the last century, however, it is the Rochdale Pioneers that is regarded as the prototype of the modern co-operative society and the founders of the Co-operative Movement.

In 1844 a group of 28 artisans working in the cotton mills in the town of Rochdale, in the north of England established the first modern co-operative business, the Rochdale Equitable Pioneers Society (photo). The weavers faced miserable working conditions and low wages, and they could not afford the high prices of food and household goods. They decided that by pooling their scarce resources and working together they could access basic goods at a lower price. Initially, there were only four items for sale: flour, oatmeal, sugar and butter. The Pioneers decided it was time shoppers were treated with honesty, openness and respect, that they should be able to share in the profits that their custom contributed to and that they should have a democratic

The Cooperative Movement in India

Preamble

The history of cooperatives in India is more than a hundred years old. The canvas of events is far too vast to give it the space it deserves in a Report of this nature. The following is only a brief attempt to recapture the major events that led to the cooperatives as we see them today.

Background

Even before formal cooperative structures came into being through the passing of a law, the practice of the concept of cooperation and cooperative activities were prevalent in several parts of India. Similarly, instances of pooling of resources by groups, like food grains after harvest to lend to needy members of the group before the next harvest, or collecting small contributions in cash at regular intervals to lend to members of the group viz., Chit Funds, in the erstwhile Madras Presidency, “Kuries” in Travancore, “Bhishies” in Kolhapur etc. were to be found. The “Phads” of Kolhapur where farmers impounded water by putting up bunds and agreed to ensure equitable distribution of water, as well as harvesting and transporting of produce of members to the market, and the “Lanas” which were yearly partnerships of peasants to cultivate jointly, and distribute the harvested produce in proportion to the labor and bullock power contributed by their partners, were similar instances of cooperation.

The proposal for agricultural banks was first mooted in 1858 and again in 1881 by Mr. William Wedderburn the District Judge of Ahmednagar, in consultation with Justice M.G. Ranade, but was not accepted.

The **Land Improvement Act** of 1883 and the **Agriculturists' Loans Act** of 1884 as well as other relief measures were found to be highly incommensurate in coping with the stupendous and complex problem of rural indebtedness.

In March 1892, Mr. Frederick Nicholson was placed by the Governor of Madras Presidency (for inquiring into the possibility) of introducing in this Presidency, a system of agricultural or other land banks and submitted his report in two volumes in 1895 and 1897.

In 1901 the **Famine Commission** recommended the establishment of Rural Agricultural Banks through the establishment of Mutual Credit Associations, and such steps as were taken by the Government of North Western provinces and Oudh. The underlying idea of a number of persons combining together was the voluntary creation of a new and valuable security. A strong association competent to offer guarantees and advantages of lending to groups instead of individuals were major advantages. The Commission also suggested the principles underlying Agricultural Banks.

Cooperative Credit Societies Act, 1904 - The First Incorporation

The Cooperative Societies Bill, based on the recommendations of this Committee, was enacted on 25th March, 1904. As its name suggests, the Cooperative Credit Societies Act was restricted to credit cooperatives. By 1911, there were 5,300 societies in existence with a membership of over 3 lakes. The first few cooperative societies registered in India under the 1904 Act in the first 5-6 years are as follows: Rajahauli Village Bank, Jorhat, Jorhat Cooperative Town Bank and Charigaon Village Bank, Jorhat, Assam (1904), Tirur Primary Agricultural Cooperative Bank Ltd., Tamil Nadu (1904), Agriculture Service Cooperative Society Ltd., Devgaon, Piparia, MP (1905), Bains Cooperative Thrift & Credit Society Ltd., Punjab (1905), Bilipada Service Cooperative Society Ltd., Orissa (1905), Government of India, Sectt. Cooperative Thrift & Credit Society (1905), Kanginhal Vyvasaya Seva Sahakari Bank Ltd., Karnataka (1905), Kasabe Tadvale Cooperative Multi-Purpose Society, Maharashtra (1905), Premier Urban Credit Society of Calcutta, West Bengal (1905), Chittoor Cooperative Town Bank, Andhra Pradesh (1907), Rohika Union of Cooperative Credit Societies Ltd., Bihar (1909). Under this Act, several non credit initiatives also came up such as the

Triplicane society in Madras which ran a consumer store, weaver credit cooperatives in Dharwar and Hubli, which gave credit in the form of yarn etc. However, these were registered as Urban Credit Societies.

Cooperative Societies Act, 1912

With the developments in terms of growth in the number of cooperatives, far exceeding anticipation, the Cooperative Societies Act of 1912 became a necessity and cooperatives could be organized under this Act for providing non-credit services to their members. The Act also provided for Federations of cooperatives.

With this enactment, in the credit sector, urban cooperative banks converted themselves into Central Cooperative Banks with primary cooperatives and individuals as their members. Similarly, non-credit activities were also cooperatively organized such as purchase and sales unions, marketing societies, and in the non agricultural sector, cooperatives of hand loom weavers and other artisans.

Maclagan Committee on Cooperation (1914)

The Banking Crisis and the First World War both affected the growth of cooperatives. Although member deposits in cooperatives increased sharply, the war affected the export and prices of cash crops adversely, resulting in increased over-dues of loans of primary agricultural societies. To take stock of the situation, in October, 1914 a Committee on Cooperation under Sir Edward Maclagen was appointed by the Government, in October 1914, to study the state of, and make recommendations for the future, of cooperatives. The Committee's recommendations, which are detailed in Annexure-3, are basically related to credit cooperatives. It recommended building up a strong three-tier

structure in every province with primaries at the base, the Central Cooperative Banks at the middle tier and the Provincial Cooperative Bank at the apex, basically to provide short-term and medium-term finance. Considerable emphasis was laid on ensuring the cooperative character of these institutions and training and member education, including training of the Registrar and his staff.

After the 1912 Act

The first Cooperative Housing Society, the Madras Cooperative Union in 1914, the Bombay Central Cooperative Institute in 1918 and similar institutions in Bengal, Bihar, Orissa, Punjab etc. came up. Other than consumer cooperatives and weavers cooperatives, other non-agricultural credit cooperatives generally performed well and grew in strength and operations during this period.

Government of India Act, 1919

In 1919, with the passing of the Reforms Act, Cooperation as a subject was transferred to the provinces. The Bombay Cooperative Societies Act of 1925, the first provincial Act to be passed, among others, introduced the principle of one-man one-vote.

The agricultural credit scenario

The agricultural credit scenario was a matter of concern and various committees looked into the problems of cooperative banks in various provinces. The Royal Commission on Agriculture in 1928 also reviewed the cooperative sector and among others recommended the setting up of land mortgage banks.

In both agricultural

In both agricultural and non agricultural non-credit sectors, societies were organized, but most faced difficulties in operation as a result of opposition by private marketing agencies and also the inexperience of their office bearers. This focused attention on strengthening of cooperative institutes and unions for education and training. A prominent development of this time was the setting up of the All India Association of Cooperative Institutes in 1929.

The setting up

The setting up of the Reserve Bank of India (RBI) in 1934 was a major development in the thrust for agricultural credit. The Reserve Bank of India Act, 1934 itself required the RBI to set up an Agricultural Credit Department. As cooperatives were to be channels for rural development, with the establishment of popularly elected governments in 1935, programmes were drawn up in which rural indebtedness received priority. The Mehta Committee appointed in 1937 specifically recommended reorganization of Cooperative Credit Societies as multi-purpose cooperatives.

The Second World War

The Second World War boosted the prices of agricultural commodities leading to increased returns to farmers and consequently reduction in over-dues to the cooperatives. To counter shortages of essential commodities for domestic consumption as well as raw materials, the Government resorted to procurement of commodities from producers and rationing, for which it decided to utilize the cooperatives. This provided a momentum to the growth of multi-purpose cooperatives.

The period between

The period between 1939-1945 provided a further stimulus to the growth of the Urban Cooperative Credit structure. Many societies had started banking functions and had grown in size and operations over a period of time, with substantial diversification of activities.

Multi-Unit Cooperative Societies Act, 1942

With the emergence of cooperatives having a membership from more than one state such as the Central Government sponsored salary earners credit societies, a need was felt for an enabling cooperative law for such multi-unit or multi-state cooperatives. Accordingly, the Multi-Unit Cooperative Societies Act was passed in 1942, which delegated the power of the Central Registrar of Cooperatives to the State Registrars for all practical purposes.

In 1944, the Gadgil Committee

In 1944, the Gadgil Committee recommended compulsory adjustment of debts and setting up of Agricultural Credit Corporations, wherever cooperative agencies were not strong enough.

Cooperative Planning Committee (1945)

The Cooperative Planning Committee under the chairmanship of Shri R.G. Saraiya was set up in 1945. The Committee found cooperative societies to be the most suitable medium for democratization of economic planning and examined each area of economic development.

Pre-Independence Development

In 1946, inspired by Sardar Vallabh Bhai Patel and led by Shri Morarji Desai and Shri Tribhuvan Das Patel, the milk producers of Khera District of Gujarat went on a fifteen day strike. Their refusal to supply milk forced the Bombay Government to withdraw its order granting monopoly procurement rights to Polson, a private dairy. History was made when two Primary Village Milk Producer Societies were registered in October 1946. Soon after on 14th December 1946, the Khera District Cooperative Milk Producers Milk Union known as Amul was registered.

The Registrars' Conference in 1947 recommended that the Provincial Cooperative Banks be re-organized to give greater assistance to primary societies through Central Banks. For the first time an effective linking of credit with marketing, and providing assistance by way of liberal loans and subsidies for establishment of a large number of godowns and processing plants was considered.

It would be appropriate to mention here some developments in Bombay vis-à-vis cooperatives, which had an impact on the cooperative sector. Shri Vaikunth Bhai Mehta took over as Minister, In-charge of Cooperation in the Bombay Government after which the cooperative movement in the province received a boost. A Committee on Cooperative Education and Training under the chairmanship of Sir Janardan Madan, made recommendations for cooperative education programmes and the setting up of an Education Fund. The Agricultural Credit Organization Committee, with Sir Manilal Nanavati as Chairman recommended State assistance in agricultural finance and conversion of all credit

cooperatives into multi-purpose cooperatives. It also recommended a three-tier cooperative credit banking system, and various subsidies etc.

Chief characteristics of Co-operative Movement before Independence

- 1. Official sponsorship of the movement** – The movement came as a Government policy rather than as an urge from the people. Co-operation has been “as plant held in a position with both hands by Government since its roots refuse to enter the soil.”
- 2. Largely confined to credit** – Before independence, the co-operative movement was largely a credit movement. This is evident from the fact that in 1947-48 more than 73 per cent of the co-operative societies were credit societies. Non-credit movement was largely confined to consumer co-operatives.
- 3. Development without much State Aid** – Though the co-operative movement was officially sponsored, it developed without much financial aid. The amount given in the shape of grants-in-aid or subsidies was very small. The loan given by the state to co-operative institutions formed only 1.87 per cent of the total working capital in 1947-48. The Co-operative Planning Committee has pointed out that one of the main causes of the limited progress of the co-operative movement in India has been the ‘Laissez faire’ policy of the state.
- 4. Uneven growth** – The growth of the co-operative movement was highly un-even. It was largely confined to the former Bombay State, Madras and Punjab. There were large parts of the country where there was no trace of the movement. Even within the same state the progress was not on a uniform basis.

- 5. Unplanned expansion** – The co-operative movement passed through various phases before independence but a distinctive feature of the development of the movement was its haphazard growth. There was hardly any co-ordination between its various branches. There was no link between credit and marketing or between consumers and marketing societies.

Causes of Slow Growth before Independence

The limited progress of the co-operative movement was due to the laissez faire policy of the Government and the general illiteracy of the masses. The Rural Credit Survey Committee stated, “The co-operative form of organization has to face not merely the competition but also in large degree the positive opposition of a powerful array of non-co-operative private individuals and institutions.”

The co-operative movement could not achieve much success before independence on account of the following reasons:

- (1) Lack of knowledge of co-operative principles.
- (2) Lack of careful selection of members.
- (3) Lack of effective supervision and inspection.
- (4) Lack of congenial atmosphere.
- (5) Lack of efficient management.
- (6) Lack of spontaneity.
- (7) Lack of education and inadequacy of training.
- (8) Lack of co-ordination between various co-operative institutions.

- (9) Higher overdues.
- (10) Over emphasis on honorary service.
- (11) Laissez faire policy of the state.
- (12) Movement did not take life of the individual as a whole.
- (13) Unlimited liability of societies.
- (14) Inhibiting factors within the movement.
 - (i) aligning credit to ownership of property.
 - (ii) indifference to recovery.
 - (iii) inattention to purpose of loans.
 - (iv) high rate of interest.
 - (v) mismanagement by members of managing committee.
 - (vi) inadequacy of finance provided.
- (15) Other factors:
 - (i) deficit agriculture.
 - (ii) illiteracy.
 - (iii) widespread indebtedness.
 - (iv) uneconomic holdings.
 - (v) inadequate transport and storage facilities.
 - (vi) dearth of regulated markets.
 - (vii) great price fluctuations.

Developments in the Post-Independence Era

After India attained Independence in 1947, cooperative development received a boost, with cooperatives being given a vital role in the various plans formulated by the Planning Commission.

The First Five Year Plan (1951-56), outlined in detail the vision of the cooperative movement in India and the rationale for emphasizing cooperatives and panchayats as preferred organizations for economic and political development. The Plan emphasized the adoption of the cooperative method of organization to cover all aspects of community development. It provided for setting up of urban cooperative banks, industrial cooperatives of workers, consumer cooperatives, housing cooperatives, diffusion of knowledge through cooperative training and education and recommended that every government department follow the policy of building up cooperatives.

All India Rural Credit Survey Committee (1951)

A major watershed initiative at this time was the appointment by Government of the Gorwala Committee, popularly known as the All India Rural Credit Survey Committee. The Committee was appointed in 1951 and submitted its report in 1954. It observed that large parts of the country were not covered by cooperatives and in such areas where it had been covered, a large segment of the agricultural population remained outside its membership. Even where membership did exist, the bulk of the credit requirement (75.2%) was met from other sources. The Committee recommended introducing an integrated system of rural credit, partnership of the government in the share capital of the cooperatives and also appointment of government nominees on their boards, thus participating in their management. The

Committee emphasized the importance of training. The creation of the State Bank of India was also a major recommendation. Detailed recommendations of the Committee have been presented in Annexure-3.

The Government and the elected representatives accepted the basic approach and the major recommendations of the Gorwala Committee. The Union Government acquired a major interest in the Imperial Bank which was converted into the State Bank of India. A National Cooperative Development and Warehousing Board was set up. The Reserve Bank of India Act was amended to enable it to play an active role in building up of cooperative credit institutions.

The All India Cooperative Congress, held at Patna in 1956, accepted the principle of state participation and government representation on the Board of Directors of cooperatives. It resolved that the number of such nominees should not exceed one-third of the total number of Directors or three, whichever is less and applicable even to cooperatives having government share capital in excess of 50% of total share capital. This recommendation was accepted by the Central Government.

In 1953, the Government of India and the Reserve Bank jointly constituted a **Central Committee for Cooperative Training** to establish necessary training facilities for cooperative personnel. The All India Cooperative Union and the State Cooperative Unions were entrusted with training of members and office bearers of cooperative organizations.

The Second Five-Year Plan (1956-1961), emphasized “building up a cooperative sector as part of a scheme of planned development” as being one of the central aims of National Policy. It aimed at enabling cooperatives to increasingly become the

principal basis for organization of economic activity. The Plan drew up programmes of cooperative development based on the recommendations of the All India Rural Credit Survey Committee (AIRCS). It was envisaged that every family in a village should be a member of at least one cooperative society. Linking of credit and non-credit societies to provide better services to the farmers was also targeted. State partnership with cooperative institutions at various levels, the essential basis of which was to be assistance and not interference or control, was recommended and for facilitating State partnership in cooperatives, the Plan also recommended the establishment of a National Agricultural Credit Long-term Operations Fund. The **National Cooperative Development Fund** was also established by the Central Government, during this period, to enable states to borrow for the purpose of subscribing share capital of non credit cooperative institutions in the country.

The Industrial Policy Resolution of 1956 emphasized the need for State assistance to enterprises, organized on a cooperative basis for industrial and agricultural purposes, and “to build up a large and growing cooperative sector”.

The Committee on Cooperative Law under the chairmanship of Shri S.T.Raja in 1956 recommended a Model Bill for consideration of State Governments. Another important development, at this time, which affected the cooperative sector, was the National Development Council Resolution (1958). The Resolution on Cooperative Policy stressed that cooperatives should be organized on the basis of the village community as the primary unit and that there should be close coordination between the village cooperative and the Panchayat. The Resolution also recommended that the restrictive features of existing cooperative legislation should be removed. Many State Governments amended their Acts, as a result of the recommendations of the Model Bill

Cooperative marketing and processing of agricultural produce formed an important part of the Integrated Scheme of Cooperative Development in the Second Plan. About 1900 primary marketing societies were set up and State Marketing Federations were established in all the States, as well as the National Cooperative Marketing Federation at the Centre. Marketing cooperatives along with the agricultural cooperatives played a major role in promoting the Green Revolution by providing credit and inputs to farmers as well as processing their increased outputs.

The Third Five Year Plan (1961-1969) stressed that “Cooperation should become, progressively, the principal basis of organization in branches of economic life, notably agriculture, minor irrigation, small industries and processing, marketing, distribution, rural electrification, housing and construction and provision of essential amenities for local communities. Even the medium and large industries and in transport an increasing range of activities can be undertaken on cooperative lines”.

From the mid-sixties onwards agro processing cooperatives, particularly in the sugar and spinning sector grew in number and contribution, driven primarily by the government’s policy of encouraging large scale industries in the cooperative sector and term loan assistance from financial institutions.

With the setting up of NDDB to replicate the Anand pattern of cooperatives in milk, the Indian dairy cooperative movement received a spurt. Later on NDDB also ventured into the field of edible oils

After the Indo-China war in 1962, both the Consumer Cooperative Structure and the Public Distribution System (PDS) was strengthened. The government as a matter of policy decided to give preference to consumer or other cooperatives in the allotment

of fair price shops and certain States allotted new fair price shops only to cooperatives.

With the growth of public deposits in Urban Cooperative Credit Societies, it was felt necessary to insure these under the Deposit Insurance Scheme of Reserve Bank of India. Selective provisions of the RBI Act 1934 and later Banking Regulation Act 1949 were made applicable to Cooperative Banks w.e.f. March 1, 1966 to regulate their banking business and facilitate insurance coverage of deposits. Thus, they became an integral part of the banking system of the country.

Some National Institutions which came into existence in the 1960s

The Agricultural Refinance Corporation was set up in 1962 by the Government of India to provide long-term loans to cooperatives, through Central Land Mortgage Banks.

In 1963, the **National Cooperative Development Corporation (NCDC)** was established as a statutory corporation by an Act of Parliament. The establishment of the NCDC gave a great boost to the growth of cooperative marketing and processing societies.

While on a visit to Anand in October 1964, impressed by the socio-economic transformation brought about by milk cooperatives, Shri Lal Bahadur Shastri, the then Prime Minister of India, spoke of the desirability of setting up a national level organization, the National Dairy Development Board (NDDB), to replicate the Anand pattern of cooperatives in milk throughout the country.

Several other significant organizational developments also took place during this period such as the setting up of various National Cooperative Federations and re-organization of the National

Cooperative Union of India (NCUI). In 1967, the **Vaikunth Mehta National Institute of Cooperative Management** was set up in Pune. Growth of consumer cooperatives was also an important development of this period. Simultaneously, the growth of Land Development Banks also accelerated and rural electric cooperatives and programmes for dairy, poultry, fishery and labour cooperatives were set up.

The Fourth Five Year Plan (1969-1974)

The Fourth Five Year Plan (1969-1974) gave high priority to the re-organization of cooperatives to make cooperative short-term and medium-term structure viable. It also made necessary provisions to provide cooperatives with management subsidy and share capital contribution, as well as for the rehabilitation of Central Cooperative Banks. It also emphasized the need to orient policies in favour of small cultivators.

The Mirdha Committee

The Mirdha Committee in 1965 laid down standards to determine the genuineness of cooperative societies and suggest measures to weed out non genuine societies; to review the existing cooperative laws and practices to eliminate vested interest. The recommendations of the Committee resulted in amendments in the cooperative legislation in most states, which destroyed the autonomous and democratic character of cooperatives.

The Fifth Five Year Plan (1974-1979)

The Fifth Five Year Plan (1974-1979) took note of the high level of over-dues. In its recommended strategy for cooperative development, the correction of regional imbalances and reorienting the cooperatives towards the under-privileged was to receive special attention. Based on the recommendations of an Expert

Group appointed by the Planning Commission in 1972, structural reform of the cooperative set-up was envisaged. The Plan recommended the formulation of Farmers' Services Cooperative Societies as had been envisaged by the National Commission on Agriculture and stressed the need for professional management of cooperatives.

The Sixth Five Year Plan (1979-1985)

The Sixth Five Year Plan (1979-1985) also emphasized the importance of cooperative efforts being more systematically directed towards ameliorating the economic conditions of the rural poor. The Plan recommended steps for re-organizing Primary Agricultural Credit Societies into strong and viable multi-purpose units. It also suggested strengthening the linkages between consumer and marketing cooperatives. Consolidation of the role of Cooperative Federal Organizations, strengthening development of dairy, fishery and minor irrigation cooperatives, manpower development in small and medium cooperatives were some of the planned programmes.

NABARD Act, 1981

The National Bank for Agriculture and Rural Development (NABARD) Act was passed in 1981 and NABARD was set up to provide re-finance support to Cooperative Banks and to supplement the resources of Commercial Banks and Regional Rural Banks to enhance credit flow to the agriculture and rural sector.

Multi-State Cooperative Societies Act, 1984

With the objective of introducing a comprehensive central legislation to facilitate the organization and functioning of genuine multi-state societies and to bring uniformity in their administration

and management, the MSCS Act of 1984 was enacted. The earlier Multi-Unit Cooperative Societies Act of 1942 was repealed.

The Seventh Five Year Plan (1985-1990)

The Seventh Five Year Plan (1985-1990) pointed out that while there had been all round progress in credit, poor recovery of loans and high level of overdues were matters of concern. The Plan recommended amongst others development of Primary Agricultural Credit Societies as multiple viable units; realignment of policies and procedures to expand flow of credit and ensure inputs and services particularly to weaker sections; special programmes for the North Eastern Region; strengthening of consumer cooperative movement in urban as well as rural areas and promoting professional management.

With increasing demand

With increasing demand from proponents of an autonomous cooperative movement and reforms in the Cooperative laws, the Government constituted a **Committee on Cooperative Law for Democratization and Professionalization of Management in Cooperatives** in 1985, headed by Shri K.N.Ardhanareeswaran. The Committee recommended the deletion of those legal provisions in State Cooperative Acts, which militate against the democratic character and autonomy of cooperatives, and also recommended incorporation of several provisions which could activate democratic processes for infusing professional management into cooperatives.

Similarly, in 1989

Similarly, in 1989 the **Agricultural Credit Review Committee** under the chairmanship of Prof. A.M. Khusro examined the problems of agricultural and rural credit and recommended a

major systemic improvement. The Committee recommended that the Eighth Plan should become the plan for revival of weak agricultural credit societies.

Model Cooperatives Act, 1990

In 1990, an Expert Committee, under the chairmanship of Choudhary Brahm Perkash, was appointed by the Planning Commission to make a rapid review of the broad status of the cooperative movement, suggest future directions and finalize a Model Cooperatives Act. The Committee submitted its report in 1991. Since cooperation is a State subject and each State has its own cooperative legislation covering cooperatives whose membership is confined to the State, the report of the Committee, along with a draft Model Cooperative Law, was circulated to all State Governments for their consideration and adoption at State level.

The opening up of the economy in 1990

The opening up of the economy in 1990, and the liberalized economic policies followed by the government since then, led to increasing pressures for various governments, state and central, to bring about changes that would provide cooperatives a level playing field to compete with the private sector. **The Eighth Five Year Plan (1992-1997)** laid emphasis on building up the cooperative movement as a self-managed, self-regulated and self-reliant institutional set-up, by giving it more autonomy and democratizing the movement. It also spoke of enhancing the capability of cooperatives for improving economic activity and creating employment opportunities for small farmers, labourers, artisans, scheduled castes, scheduled tribes and women and emphasized development and training of cooperative functionaries in professional management.

Parallel Cooperative Legislation

From the **Ninth Plan (1997-2002)** onwards, there has been no specific mention about cooperatives as a part of the Plan. Since Cooperation is a State subject and recognizing the difficulties in having the existing State Cooperative Acts amended on the lines of the Model Cooperatives Act, a section of cooperators and civil society initiated action to put in place Parallel Cooperative Legislation for self-reliant cooperatives. Self-reliant cooperatives are generally defined as those which have not received any assistance from the Government in the form of equity contribution, loans and guarantees. These Acts are largely based on the recommendations of the Choudhary Brahm Perkash Committee. Nine States namely AP (1995), MP (1999), Bihar (1996), J&K (1999), Orissa (2001), Karnataka (1997), Jharkhand (1996), Chhattisgarh (1999) and Uttaranchal (2003), have so far enacted Parallel Cooperative Acts which are enabling and ensure autonomous and democratic functioning of cooperatives.

Multi-State Cooperative Societies Act, 2002

The Multi-State Cooperative Societies (MSCS) Act, enacted in 1984, was modified in 2002, in keeping with the spirit of the Model Cooperatives Act. Unlike the State Laws, which remained as a parallel legislation to co-exist with the earlier laws, the MSCS Act, 2002 replaced the earlier Act of 1984.

National Cooperative Policy (2002)

In 2002, the Government of India enunciated a National Cooperative Policy. The objective of the Policy is to facilitate an all round development of cooperatives in the country. The policy promises to provide cooperatives with the necessary support, encouragement and assistance, to ensure their functioning as autonomous, self-reliant and democratically managed institutions,

accountable to their members, and making a significant contribution to the national economy.

Based on the recommendations made at a Conference of State Ministers for Cooperation, the Government of India in 2002 constituted a Ministerial Task Force to formulate a plan of action for implementation of National Cooperative Policy. The Task Force suggested that a single law instead of parallel laws should be introduced in the States. It also recommended, among others, that in order to depoliticize cooperatives, Members of Parliament or Members of Legislative Assemblies should not be allowed to hold office of any cooperative society.

The Companies Amendment Act, 2002

A Committee under the chairmanship of Dr.Y.K.Alagh recommended the amendment of the Companies Act, 1956. On the basis of the recommendations of the Committee, the Producer Companies Bill was introduced in the Parliament and became law on 6th February, 2003 as Part IXA - Producer Companies in the Companies Act, 1956. Based on the cooperative principles of mutual assistance, it provides an alternative to the institutional form that is presently available to cooperative enterprises.

NCDC Amendment Act, 2002

Recognizing the need to improve its scope of lending and to bring about changes in its funding, the NCDC Act was amended in 2002, which has enabled it to cover notified services, livestock and industrial activities and more importantly to directly fund cooperatives against suitable security.

A. Vaidyanathan Committee, 2004

Government of India constituted a committee under the Chairmanship of A.Vaidyanathan, known as Task Force on Revival of Cooperative Credit Institutions, to reviving and revitalizing the rural cooperative credit structure (CCS) and attributes high priority and urgency to it. Report of Task Force on Revival of Rural Cooperative Credit Institutions (in the Short Term Cooperative Credit Structure) was submitted in February 2005 and Report of the Task Force on Revival of Rural Cooperative Credit Institutions (in the Long Term Cooperative Credit Structure) was submitted in August 2006.

To nurse the rural cooperative credit system back to health, to ensure that the rural credit doubled over three years and that the coverage of small and marginal farmers by institutional lending was expanded substantially, the Government of India in August 2004 set up a Task Force to suggest an action plan for reviving rural cooperative credit institutions and legal measures necessary for facilitating this process. The Task Force, chaired by Prof. A. Vaidyanathan, recommended that any financial restructuring which did not address the root causes of the weaknesses of the system would not result in its sustained revival and would require legal measures. The recommendations of the Task Force in accordance with its Terms of Reference are basically confined to revival of credit cooperatives for which it suggests a financial package. The Vaidyanathan Committee has also suggested a model cooperative law that can be enacted by the State Governments. Recommendations of the Task Force are being currently implemented. The Vaidyanathan Committee has also given its report on the long-term cooperative credit structure.

Radhakrishana R, 2006

The Expert Group on Agricultural Indebtedness was set up in August 2006 under the chairmanship of Radhakrishana. The Group came out with detailed report which gave a large number of recommendations covering immediate credit measures, financial architecture, institutional architecture, risk mitigation and other measures. The Expert Group observed that as the indebtedness of farmers is largely because agriculture depends mainly on the monsoon, which ultimately affects the repaying capacity of the farmers. Second, though agricultural credit has increased manifold, most of the farmers depend fully/partly on non-institutional sources where the rates of interest are quite high and the terms and conditions often exploitive. Third, the dominance of middle-man often prevents the farmers from getting remunerating price for their produce. Fourth, the farmers do take loans for special functions or medical expenses from money-lenders which do not yield incomes and the interest rates are high leading to indebtedness.

High Powered Committee on Cooperatives, 2009

The year 2004 was the centennial year of the Indian cooperative movement. The World Order, in which cooperatives along with other business organizations are required to function, has indeed changed since the first cooperative law in India was enacted in 1904. New paradigms and changing contours and structures of the business landscape have their own inexorable logic leading to the recommendation of the

Conference of State Cooperative Ministers in December, 2004 that a High Powered Committee be constituted by the Government of India for preparing a road map for cooperatives over the coming years.

The Committee, duly constituted in 2005 has since been engaged in this task. The task has been daunting, given the vast network of cooperatives in the country and that cooperatives functioning in different sectors face diverse problems. The situation is further complicated by the fact that Cooperatives is a State subject under the Constitution of India and State cooperative laws and their implementation have vastly differed. Changes in political authority at State level have over the years at different times resulted in wholesale super session of cooperative institutions in many States vitiating their continued functioning as democratically elected cooperative institutions. The Committee has chosen to look at the common face of cooperatives as an institutional form and focused on delving into the multitudinous components of what ails cooperatives in this regard. In its search, the Committee has drawn upon the recorded wisdom of previous Committees through available literature and documents, looked at success stories, and held consultations with those who have an interface with the sector in any manner. This, it has done through the written word seeking views from various segments of intelligentsia, cooperators, cooperative institutions at all levels, national and State government officials and civil society organizations, via a questionnaire as well as through a series of meetings. Needless to say, its own deliberations have been many and deep. The Committee concluded that cooperatives have not been given due importance, despite the emphasis laid by the Planning Commission and Prime Minister Jawahar Lal Nehru on developing cooperatives as a third important sector of the economy.

The Committee's Report has been guided by its vision of Cooperative Identity, true to itself as a voluntary, autonomous and democratic entity of its members and in keeping with what is the common international acceptance. While there are many problems and challenges, which the cooperatives face and these have been

looked at in detail to the extent possible, the root causes appear to converge upon the common problem of governance, which in turn is to a major extent determined by the laws that govern cooperatives.

Conclusion

After independence, India marched ahead with central planning in order to achieve economic development. The new economic policy of globalization after eighties has reduced the dominant role of the state. The pendulum of economic growth in India is swinging from over commitment of public sector to over enthusiasm of the private sector. Expansionist economic reforms during the 1990s boosted economic growth but high level of poverty and unemployment persist in India. Despite impressive economic growth, the powerful wave of consumerism, computerization and corruption coexists in social life of India.

The post 1990 liberalization has however resulted in a major shift in policies, although the process of letting cooperatives go free of state control has been tardy and in certain cases even rescinded. The Constitutional Amendment, which is under consideration might hopefully restore to cooperatives, their essential character as institutions, voluntary and autonomous, economically democratic, egalitarian and equitable. However, it does not mean that the cooperatives have virtually become government directed, controlled and regulated enterprises, and administrative interference by the government in the day-to-day working of the cooperatives. Acting on the recommendations of the Task Force for revival of short-term rural cooperative Credit Structure in January 2006 involving financial assistance of Rs.13,596 crore. States required signing memorandum of understanding (MoU) with NABARD, committing to implement the legal, institutional and other reforms as envisaged in the revival package.

Module II

CO-OPERATIVE LEGISLATIONS IN INDIA

By the beginning of the 20th Century, officials of the colonial government perceived the Indian farmers' dependence on usurious moneylenders to be a major cause of their indebtedness and poverty. At that time the cooperative movement had become well established in Europe and achieved remarkable success there. Convinced that the cooperative movement offered the best means of liberating Indian farmers from the crushing burden of debt and the tyranny of moneylenders, Indian officials began to take active interest in promoting credit cooperatives in the country. Societies were organised for the first time in the closing years of the 19th Century.

Co-Operative Credit Societies Act, 1904

Taking cognizance of these developments and to provide a legal basis for cooperative societies, the Edward Law Committee with Mr. Nicholson as one of the members was appointed by the Government to examine and recommend a course of action. The Cooperative Societies Bill, based on the recommendations of this Committee, was enacted on 25th March, 1904. The object of this Act, as stated in the preamble, was to encourage thrift, self help and co-operation amongst agriculturists, artisans and persons of limited means. This Act contains only 29 sections. As per section 1, this Act was extended to the whole of British India. Section 2 states the definitions of some important terms. Section 3 is

concerned with the constitution of societies. As its name suggests, the Cooperative Credit Societies Act was restricted to credit cooperatives. By 1911, there were 5,300 societies in existence with a membership of over 3 lakhs.

Features of the Co-Operative Credit Societies Act 1904

1. Any 10 persons living in the same area could form a cooperative society for the encouragement of thrift and self-help among the members.
2. The chief objects of a society would be to raise funds by deposits from members, as well as loans from non-members, government and other cooperative societies and to distribute these funds as loans to members, or with the permission of the registrar, to other cooperative societies.
3. The co-operative credit societies in each province were to be under the control and administration of the Registrar of co-operative societies.
4. The accounts of the societies were to be audited by the Registrar of Co-operative Societies. 4/5th of the members of rural societies were to be agriculturists and of urban societies, non-agriculturists.
5. The rural societies were to be organized on the basis of unlimited liability, while in the case of urban societies the liability of members could be limited or unlimited.
6. In the case of rural societies dividends were not to be paid to the members and the surplus funds were to be deposited in the reserve fund. When this fund would grow beyond the limits set by the Act, a bonus might be distributed to the members.

7. No dividend would be paid to the members in the case of urban societies, until $\frac{1}{4}$ of the profits in a year had been deposited into the reserve fund.
8. Loans could be advanced only to the members. Members could purchase shares only up to the limit fixed under the Act.
9. The credit societies were to be exempted from the payment of fees and taxes.

Limitations of the Co-Operative Credit Societies Act 1904

In the beginning the Co-operative Credit Societies Act 1904 had made much progress in the formation of credit societies. But it suffered from the following drawbacks.

1. It did not give legal protection to societies formed for purposes other than credit.
2. There was no provision for the formation of a central agency such as the central banks or unions for the financing of primary societies.
3. The classification of societies into rural and urban was arbitrary and was found unsuitable.

The Co-Operative Societies Act of 1912

With the developments in terms of growth in the number of cooperatives, far exceeding anticipation, the Cooperative Societies Act of 1912 became a necessity and cooperatives could be organized under this Act for providing non-credit services to their members. Under this Act any society creditor otherwise may be registered which has its objects, the promotion of the economic interests of its members in accordance with the co-operative principles.

The Act also provided for Federations of cooperatives. With this enactment, in the credit sector, urban cooperative banks converted themselves into Central Cooperative Banks with primary cooperatives and individuals as their members. Similarly, non-credit activities were also cooperatively organized such as purchase and sales unions, marketing societies, and in the non agricultural sector, cooperatives of hand loom weavers and other artisans.

The following are the important provisions or features of the Co-operative Societies Act 1912:

1. Any society which aimed at the promotion of the economic interests of its members could be now established and registered.
2. The liability of central societies was to be limited while that of the members of rural credit societies was to be unlimited. After carrying $\frac{1}{4}$ th of the annual profits to the reserve fund, 10 per cent of the balance could be spent for charitable purpose.
3. Local governments were permitted to use their discretion in making rules and bye-laws of the societies.
4. The term 'co-operative' could not be used as a part of the title or any business concern registered under the Act unless it was already doing business under that name before commencement of the Act.
5. Shares of interest in co-operatives were exempted from attachment.
6. Co-operative societies were given priority in regard to the recovery of certain dues.
7. Other provisions of the Act of 1904 were retained as they were.

Differences between the Co-Operative Credit Societies Act 1904 and the Co-Operative Societies Act of 1912

Sl. No	Co-operative Credit Societies Act 1904	Co-operative Societies Act of 1912
1	It classified the societies into rural and urban.	It classified the societies on the basis of their liabilities into limited and unlimited.
2	It confined co-operative societies into primary credit societies only.	It provided for the first time for the registration of central societies.
3	It was silent about the utilization of profit.	It suggested that 25% of the net profit must be carried over to the reserve fund of the society.
4	No provision for organization of societies other than credit.	Provision for the registration of noncredit societies also.
5	No member could hold shares worth more than Rs.1000.	A member could hold shares worth more than Rs.1000.
6	Individual members are organizing a society.	A society can become a member of another society.
7	Audit must be done by the Registrar directly.	The audit may be conducted with the help of other persons entrusted.

8	No audit fee is charged.	Provision for charging audit fee.
9	Deposits can be received only from the members of the society.	Deposits and loans can be received even from non-members.

Multistate Co-operative Societies Act, 1984

The Multi Unit Co-operative Societies (MUCS) Act 1942 failed to meet the changing needs and requirement of newly emerging co-operative societies having area of operation in more than one State. Therefore the MSCS law was enacted by the central (federal) government in the year 1984 by repealing the MUCS legislation 1942 (Again, the Parliament in the year 2002 enacted a new MSCS Law 2002 by repealing the MSCS Act 1984. However, the new law retained substantial provisions of MSCS Act 1984). The provisions of the newly enacted MSCS Act 2002 are elaborately and extensively discussed and referred under Part-III of the questionnaire i.e., cooperative legislation. The Act received the assent of president of India on 18th August 1984.

The Objectives of this Act were to

- (i) consolidate and amend laws relating to co-operative societies with objects not confined to one state and
- (ii) serve the interest of members of co-operatives in more than one state.

This law was made applicable to all Co-operative Societies having area of operation in more than one state with objects not confined to one state and serving the interest of members of co-operatives in more than one state. It was basically a central legislation.

Model Co-Operative Societies Act 1991(Brahm Prakash Committee Model)

This committee was constituted on 20th March, 1990 under the Chairmanship of Choudhary Brahm Prakash, Ex-M.P, Former General Secretary, National Co-operative Union of India (NCUI) and Former Union Minister of Agriculture and Co-operation. It consisted of 13 other members drawn from Planning Commission, Ministry of Commerce, Law, and Justice, Government of India, State government Planning Boards, NDDDB, SAMAKHYA, etc. The committee submitted the Report on 20th May 1991. The main objective of this Act is to promote voluntary formulation and democratic functioning of co-operatives as people's institution based on self help and mutual aid to enable people to promote their economic and social betterment. The inclusion of co-operative principles and the basic ideology of co-operation are the special features of the Model Act. The procedure of registration is simplified and all artificial restrictions by way of area of operation, economic viability etc are removed. The Model Act gives no rule making power to the government. The Act also prohibits co-operatives from accepting funds from the government by way of equity. Board of directors has been made accountable for timely conduct of elections, regularly convening of meetings and timely audit.

Salient Features of Model Act 1991:

- (1) State Policy on Co-operatives and the Principles of co-operation have been explicitly incorporated in the Act itself as a guide to the remaining provisions of the Model Act to facilitate the government to conform to the basic ideology of co-operation.

- (2) Procedure for registration of new co-operative society is simplified by removing all artificial restrictions in the form of area of operation, economic viability etc., and also prescribing time limit within which the Registrar is required to take a decision failing which the society shall be deemed registered automatically.
- (3) The rule making power, hitherto, vested with the government, has been taken away from government and given to the concerned societies by allowing freedom to frame rules.
- (4) The power of Registrar has been curtailed in general and the powers on the following aspects have been removed in particular:
 - a) Supersession of the Board of Directors.
 - b) Compulsory amalgamation or division of societies.
 - c) Compulsory amendment of the bye-laws.
 - d) Veto/rescind/annual the resolution.
 - e) Issue directives
- (5) Assignment of greater responsibility to Federations: Developmental
- (6) Equity Participation from Government is prohibited completely.
- (7) Provisions for the constitution of Co-operative Tribunal has been made.
- (8) Qualification of Registrar has been prescribed as under:

- (9)** Deputation from government is prohibited.
- (10)** Conferment of Special rights on co-operatives;
- (11)** Special provision imposing disqualification on members of Board of Management Committee is incorporated.
- (12)** State Aid to Co-operatives: Government nominee is restricted to one without any voting right.
- (13)** Promotion of subsidiary organisation: For the furtherance of its objectives, it provided for promotion of subsidiary organisation under any law (including Company Law) as agreed by general body.
- (14)** Restrictions on borrowings: The borrowings should be restricted as specified in bye-laws. However, deposit and loans raised from external sources should not exceed 10 times the sum of member funds and organisations reserves less accumulated deficit.
- (15)** Restrictions on holding of equity. Holding of equity shares should not be more than one tenth of paid up equity capital, by any member;
- (16)** Term of Office: Maximum 3 years, for individual director, however, can be terminated by general body.
- (17)** Dissolution of cooperatives by:
 - a.** Members;
 - b.** By Registrar: If the co-operative (a) not commenced business within 2 years. (b) not carried on business for two consecutive years; (c) not operating with the co-operative principles and provisions of the Act.

- c. By Court: If (a) Registration is obtained by mistake or fraud.
(b) The society exists for illegal purpose, (c) The society willfully violated the provisions of the Act and (d) not operating on Co-operative basis.
- (18) Enabling provisions for the functioning and regularity of different Cooperatives is duly made i.e. the power to add separate chapter for different type of co-operatives is incorporated.

Andhra Model

Andhra Pradesh was the first state passed the new Act on the basis of the Model Act called as Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 on 4th May 1995 which is the milestone in the history of the Indian Co-operative movement.

The salient features of the Act are the following:

1. To rely on the co-operative principles of voluntary, self financing and autonomy and free from the state control.
2. To enable not less than ten individuals belonging to different families to form a company.
3. To enable the co-operative societies to regulate their functioning by framing bye-laws subject to the provisions of the Act
4. To enable the co-operative societies to mobilize their own funds.
5. To empower the co-operative societies to provide for the qualifications and disqualifications for membership.
6. To define the powers and functions of the general body.

7. To provide for proper accountability and for that purpose to conduct audit, enquiry and for the recovery of loss caused to the society by misconduct or otherwise.
8. To provided for the settlement of disputes by constituting a co-operative tribunal.
9. To define the powers and functions of a general body.
10. To make the co-operative societies responsible to conduct the elections and to regulate the process thereof.

Multi State Cooperative Societies Act 2002:

The central government is vested with the power to enact law for the cooperatives having area of operation in more than one state. Way back in 1992, when the central governments advised the state governments to change, modify or amend their bye-laws by granting more freedom and autonomy to cooperatives on the one hand and removing the excessive controls used by Registrar and government on the other hand, on the lines of model cooperatives Act recommended in the year 1991, the state governments expressed the opinion that the central government should take a lead in this regard by amending its own Multi State Cooperative Societies Act 1984. Based on this advice, the central government in the year 2002 repealed the earlier MSCS Act 1984 and in its place enacted a new MSCS Act 2002 with the objective

- a) to facilitate the voluntary formation and democratic functioning of cooperatives as peoples institutions based on self help and mutual aid;
- b) to enable them to promote their economic and social betterment; and

- c) to provide functional autonomy and freedom to cooperatives.

Kerala Co-operative Societies Act, 1969

Kerala Co-operative Societies Act 1969 (KCSA) is the law relating to the co-operative societies in Kerala State. The Act has come into force on 15th May 1969. This Act replaced the Travancore Cochin Co-operative Societies Act 1952 and the Madras Co-operative Societies Act 1932. The Act has consolidated, amended and unified the law relating to the co-operative societies in the state. As a result of this legislation all the co-operative institutions in the state are governed by the Kerala Co-operative Societies Act 1969.

The objects and intentions of this Act were to provide for the orderly development of the cooperative societies in the state of Kerala by organizing them as self governing democratic institutions, in accordance with the directive principles of the state policy as envisaged in the constitution of India.

Recent Trends and Developments

- In 1990, an Expert Committee, under the chairmanship of Choudhary Brahm Perkash.
- Nine States namely AP (1995), MP (1999), Bihar (1996), J&K (1999), Orissa (2001), Karnataka (1997), Jharkhand (1996), Chhattisgarh (1999) and Uttaranchal (2003), have so far enacted Parallel Cooperative Acts which are enabling and ensure autonomous and democratic functioning of cooperatives.
- Multi-State Cooperative Societies Act, 2002.

- Conference of State Ministers for Cooperation, the Government of India in 2002 constituted a Ministerial Task Force.
- National Cooperative Policy, 2002.
- A Committee under the chairmanship of Dr.Y.K.Alagh recommended the amendment of the Companies Act, 1956.
- The Companies Amendment Act, 2002.
- NCDC Amendment Act, 2002
- Government of India constituted a committee under the Chairmanship of A.Vaidyanathan, known as Task Force on Revival of Cooperative Credit Institutions.
- The Expert Group on Agricultural Indebtedness was set up in August 2006 under the chairmanship of R. Radhakrishana.
- The centennial year of the Indian cooperative movement [2004].
- High Powered Committee on Cooperatives, 2009.

Vaidyanathan Committee Report 2005

[Task Force on Revival of Rural Co-operative Credit Institutions]

To nurse the rural cooperative credit system back to health, to ensure that the rural credit doubled over three years and that the coverage of small and marginal farmers by institutional lending was expanded substantially, the Government of India in August 2004 set up a Task Force to suggest an action plan for reviving rural cooperative credit institutions and legal measures necessary

for facilitating this process. The Task Force, chaired by Prof. A. Vaidyanathan, recommended that any financial restructuring which did not address the root causes of the weaknesses of the system would not result in its sustained revival and would require legal measures. The recommendations of the Task Force in accordance with its Terms of Reference are basically confined to revival of credit cooperatives for which it suggests a financial package. The Vaidyanathan Committee has also suggested a model cooperative law that can be enacted by the State Governments. Recommendations of the Task Force are being currently implemented. The Vaidyanathan Committee has also given its report on the long-term cooperative credit structure.

Conditionalities relating to Reform measures [Recommendations]

(1) The Revival Package for the CCS entails assistance for financial restructuring of the cooperative societies, provided of course their State Governments agree to participate in the package. It is also imperative that the State Governments make a formal commitment to make specified changes in their legal and administrative framework, relating to the functioning of cooperative credit institutions. Although, the willingness for participating in the Revival Package will be totally optional, once exercised, the concerned State Government and the CCS units will have to accept the entire package in to. There cannot be a pick and choose method for various components of the package. The key elements of which are :

- ✓ State Governments should accept the Union Government's scheme in full, including the legal and regulatory changes, institutional reform, and their share of financial commitment.

- ✓ State Governments not in agreement now may be given two years to consider, after which participation in the Union Government's scheme may stand closed.
 - ✓ PACS, DCCBs and SCBs to also have the option to exercise options available in the scheme.
- (2) Release of funds will be linked to the progress in actually implementing the Revival Package, by taking the following steps on credit societies in their jurisdiction:
- (i) State governments retire their contribution to the share capital of such credit societies.
 - (ii) Boards of management are reconstituted to ensure that they are elected, and that they do not include any State Government nominees.
 - (iii) DCCBs and SCBs accept the fit and proper criteria (to be prescribed by the RBI) of eligibility for Board membership and for co-option of a specified number of professionals as full members with voting rights, if members with such qualifications do not get elected.
 - (iv) Professionally qualified CEOs (qualifications to be prescribed by RBI and selected candidates, to be also approved by the RBI) are appointed at cooperative banks and properly trained personnel as secretaries to PACS.
 - (v) Abolish the cadre system of all employees at all levels.
 - (vi) Ensure that CEOs and all staff of credit cooperatives (including cooperative banks) at all levels, are appointed by the cooperatives themselves and that they also decide on

their service conditions. All employees are answerable only to the Boards of the credit cooperatives.

- (vii) In all cases limit the powers of the Board to overall policy and reviewing loan decisions, leaving the CEO and his staff free to screen, appraise and decide on individual loan applications and to take such action as is necessary, to ensure prompt and full recoveries.
- (3) The Task Force also recommends that, in the interests of prudent management,
- ✓ All thrift and credit cooperatives including primaries and their federal structures be required to increase owned capital, so as to ensure a minimum CRAR of seven per cent to begin with, and to raise it to 12 per cent within another five years;
 - ✓ Encourage the Cooperative Credit Structure to set up its own system of technical support, supervision, and even deposit protection;
 - ✓ Societies to have full freedom to choose institutions from which they can borrow and in which they can deposit their funds, and also to decide on affiliating with, or abstaining from a federated structure of their choice;
 - ✓ Entrust audit to chartered accountants at all levels of CCS

The State Governments and CCS institutions should further agree to:

- ✓ The principle that assistance will be available only to viable or potentially viable societies (as prescribed by the Task Force) and that those which are defunct or non-viable should be liquidated;
 - ✓ The determination of the quantum of assistance to which individual institutions are eligible, will be based on a special audit of their accounts for the year 2003-2004, under the supervision of the implementing authority to be created for the purpose;
 - ✓ Participate in programmes to train personnel, upgrade internal accounting, reporting and control systems at different levels to better equip them for credit management.
- (4) Extensive direct or indirect interference by State Governments have been a major cause for the deterioration of the cooperative credit system. Interference in the credit cooperative system occurs through directives on deposit and lending rates, lending priorities, investment decisions, taking up non-credit activities etc. or granting interest subsidies, postponing waiver of recovery of interest on loans and repayment of loans given by cooperatives. It is, therefore, important that governments, both at the Centre and in the States, desist from these practices and adopt a firm policy to prevent these practices and introduce appropriate changes in law.
- (5) States should formally agree, through an explicit MOU with the Reserve Bank of India, to be formalised by appropriate amendments to their cooperative laws, to leave all financial regulatory functions to the designated authority under the BR Act, and to abide by their decisions in these matters.

- (6) For its part, the central regulatory authority should take steps to
- (i) Let cooperative societies in all tiers choose not to take any public (or non-voting member) deposits and thereby, be free from the purview of the BR Act; and at the same time.
 - (ii) Tighten the financial regulation, including prudential norms and procedures applicable to cooperatives accepting public deposits, by bringing the norms (relating to minimum capital, Capital adequacy, NPA, CRR-SLR) closer to, or identical with, those applicable to commercial banks; and
 - (iii) Consider linking premium rates for deposit insurance cover under DICGC, the scale and terms of refinance through NABARD (or commercial banks/RRBs) as well as access to the national payments system to the financial health of the cooperatives as well as degree of compliance with regulatory norms.
- (7) Each participating State must take credible steps to fulfill these conditions. The Task Force recognises that all these issues cannot be tackled immediately or at one stroke. The Reforms will, therefore, have to be phased. The release of assistance should, however, be linked to progress in fulfilling the agreed sequence of reforms, within a clear time frame. In specifying these, it is important to recognise that the situation (in terms of legal and administrative framework, and the nature and severity of the problems) vary widely from state to state. It is also important to recognise the fact that, there can be no “one-size-fits-all” model. The States, therefore, should have reasonable freedom to decide the pattern they want to follow to realise the basic aims of the Restructuring Programme within a reasonable period.

Main features of the Proposed Legal and Regulatory Reforms

- (1) Fulfilling the conditions of the Restructuring Programme will require drastic changes in the State laws that govern Cooperative Credit Societies and a clear undertaking by the State Governments to accept the authority of the Reserve Bank of India (RBI) in all matters concerning financial regulation of cooperative banks.
- (2) Some conditions, like retiring the State's contribution to equity and withdrawing nominees from the boards can be done by Executive Order, pending formal amendment of the existing law and through voluntary restraint. So can training and tightening of audit. The changes meant to redefine and limit the role of RCS to registration, conducting regular elections and annual general meetings, ensuring independent audit and liquidation proceedings, as well as those precluding government interference in matters relating to financial management, will call for drastic amendments to the existing law. Implementing the prudential regulation of DCCBs and SCBs can be achieved to some extent, in the meantime, through appropriate MOUs between the State Government and the RBI.
- (3) Since a new enactment is a time consuming process, the Task Force has identified and recommended specific parameters on actions that can be initiated, by participating State Governments, by means of Executive Orders issued under the extant CSA. Such an Executive Order would cover the following:
 - ✓ Ensuring full voting membership rights on all users of financial services including deposits.

- ✓ Removing State intervention in administration and financial matters.
 - ✓ Withdrawing restrictive orders, if any, on financial matters.
 - ✓ Permitting cooperatives wider access to financial institutions.
 - ✓ Permitting cooperatives registered under parallel Acts (in States applicable) to be members of cooperatives, registered under the CSA and vice versa.
 - ✓ Limiting the exercise of powers of the State Governments to supersede Boards.
 - ✓ Ensuring timely elections and audits.
 - ✓ Facilitating effective exercise of the regulatory authority of the RBI, in case of cooperative banks.
 - ✓ Exiting state equity and participation on Boards of financial cooperatives.
 - ✓ Prescribing prudential norms, including CRAR for PACS on lines suggested.
- (4) The Task Force has analysed the reasons for the opposition to amendments earlier proposed to the B R Act. It has concluded that the opposition was because of apprehension that the proposed amendments sought to bring in improvements in the governance of the banking cooperatives, by disregarding the cooperative character of the banking cooperatives, which is distinct from banking companies.

(5) The Task Force has, therefore, recommended that while professionalism is necessary in the governance and management of financial cooperatives, it needs to be done with due regard for the characteristics of the membership of the financial cooperatives. The Task Force recommends that steps be taken by the RBI to have the B R Act suitably amended to ensure the following:

- ✓ Bringing cooperative banks on par with commercial banks in terms of prudent financial regulation.
- ✓ Prescribing fit and proper criteria consistent with the membership of cooperatives for election to the Boards. To ensure professionalism in the Boards, however, three or four members with prescribed qualifications should be co-opted with voting rights in case members with prescribed qualifications do not get elected.
- ✓ Prescribing minimum qualifications for CEOs of the cooperative banks and approving their names.
- ✓ Prescribing capital adequacy norms for cooperative banks (to be implemented in a phased manner).
- ✓ Prohibiting any cooperative other than a cooperative bank from accepting public deposits from any person other than its members.
- ✓ Prohibiting any cooperative other than a cooperative bank, from using the words “bank”, “banker”, “banking”, or any other derivative of the word “bank”, in its registered name.

(6) As cooperative banks are at present, being concurrently supervised by the NABARD, the Task Force also recommends that NABARD be empowered suitably to improve the effectiveness of its supervision.

Module III

HISTORY OF COOPERATIVE LEGISLATION IN KERALA

The growth of Co-operative movement in Kerala was insignificant during pre-independent era. Only 1669 co-operatives were functioning in the state with a total working capital of Rs.92.21 lakhs. The membership and paid up share capital were Rs.2.05 and Rs. 31.79 lakhs respectively. Credit and non-credit operations during the period were also nominal. Loan disbursed during the year 1946 was Rs.10.62 lakhs only. Performance in the area of Consumer, Marketing etc. were also not remarkable when compared to the exquisite achievements during the succeeding years. A comparative statement of performance of the sector during pre and post-Independent era is shown in Annexure-I.

Before the formation of State of Kerala, Co-operatives under the area were administered by the Travancore Co-operative Societies Act V of 1112(M.E), Cochin Co-operative Societies Act XXVI of 1113(M.E) and Madras Co-operative Societies Act 1932. After the integration of Travancore and Cochin, Travancore-Cochin Co-operative Societies Act 1951 came into force with effect from 1.9.1952. After the formation of Kerala State, the Kerala Co-operative Societies Act of 1969 came into force with effect from 15.5.1969 in order to enact a uniform law on co-operation applicable throughout the State. Consequent on the introduction of Kerala Co-operative Societies Act 1969, Societies with unlimited liability ceased to exist and societies with limited liability came into existence. Thereafter Government of Kerala

passed the Kerala Co-operative (Amendment) Act 1999 which came into force with effect from 1.1.2000. Providing of membership to local body institutions, Deposit guarantee scheme in Primary Agricultural Credit Societies, Consortium Lending Scheme, Co-operative Development and Welfare Fund, Independent Election Commission, Separate Audit Wing and Vigilance Wing, and Co-operative Examination Board are the new provisions made in the Amendment Act.

THE KERALA CO-OPERATIVE SOCIETIES ACT, 1969

Kerala Co-operative Societies Act, 1969 was enacted to consolidate, amend and unify the laws relating to Co-operative Societies in the State of Kerala.

Preamble:-

The Act was passed with a view to provide for the orderly development of the Co-operative sector in the State, it is essential to organise the Co-operative Societies in accordance with Co-operative principles as self governing] democratic institutions, to achieve objects of equity, social justice and economic development, as envisaged in the directive principles of State Policy of the Constitution of India and to promote scientific and technological development, health care, market intervention and management excellence in the Cooperative Sector, it is expedient to consolidate, amend and unify the law relating to co-operative societies in the State.

It was enacted in the Nineteenth Year of the republic of India as follows:-

Short title, extent and commencement [Sec. 1]

This Act may be called the Kerala Co-operative Societies Act, 1969 and extends to the whole of the State of Kerala. It shall come into force on such date as the Government may by notification in the Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions [Sec. 2]

In this Act, unless the context otherwise requires—

- (a) “*Apex society*” means a society having the whole of the State as its area of operation and having as its members only other societies with similar objects and declared as such by the Registrar;
- (aa) “assisted society” means a co-operative society which has received the Government assistance in the form of share capital, loan, grant or any other financial assistance or any guarantee by the Government or from Boards constituted by the Government for repayment of loan, interest or deposits;
- (ab) “auditing of accounts of co-operative societies” means a close examination of financial transactions, overdue debts, if any, maintenance of books of accounts, documents and other records of a business and includes an inquiry into the affairs of the society and subsidiary institutions in order to ascertain the correctness of accounts and the extent to which its activities were

useful in promoting the economic welfare of the members in accordance with co-operative principles;

- (b) “*bye-laws*” means the registered bye-laws of a co-operative society for the time being in force;
- (c) “*circle co-operative union*” means a circle co-operative union constituted under section 88;
- (d) “*central society*” means a society having jurisdiction over one or more Revenue Districts but not the whole of the State as its area of operation; and having as its members only other societies and declared as such by the Registrar or the Government;”
 - (da) “chief executive” means any employee of a co-operative society by whatever designation called and includes an officer of the State Government or an employee of any other institution or co-operative society, who discharges the functions of a chief executive under the Act, the Rules or the bye-laws;]
- (e) “*committee*” means the governing body of a co-operative society by whatever name called, to which the management of the affairs of the society is entrusted;
 - (ea) “*Co-operative Arbitration Court*” means a court constituted under Sec.70A.]
 - (eb) “*Consortium Lending Scheme*” means the consortium Lending Scheme framed under section 57C;
 - (ec) “*Co-operative Development and Welfare Fund*” means the Cooperative Development Welfare Fund established under section 57A;

(ecc) "Cooperative Ombudsman" means the person or persons appointed under sub-section (2) of section 69A];

(eccc) "co-operative principles" means the co-operative principles listed in Schedule II appended to this Act;

(ed) "*Co-operative Service Examination Board*" means the Cooperative Service Examination Board constituted under section 80B;

(f) "*co-operative society*" or "*society*" means a co-operative society registered or deemed to be registered under this Act;

(g) "*co-operative society with limited liability*" means a society in which the liability of its members for the debts of the society in the event of its being wound up is limited by its bye-laws-

(i) to the amount, if any, unpaid on the shares respectively held by them; or

(ii) to such amount as they may, respectively undertake to contribute to the assets of the society;

(h) "*co-operative society with unlimited liability*" means a society, the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of all its obligations and to contribute to any deficit in the assets of the society:

(ha) "Deposit Guarantee Scheme" means the Deposit Guarantee Scheme framed under section 57 B;

- (hb) "Director of Co-operative Audit" means the Director of Co-operative Audit appointed under sub-section (1) of section 63 and any officer to whom all or any of the powers of the Director of Co-operative Audit may be delegated by the Government by general or special order under subsection (3) of section 63;]
- (i) "*dispute*" means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society whether such claim be admitted or not;
- (ia) "District Co-operative Bank" means a central society, the principal object of which is to raise funds to be lent to its members and individuals, with jurisdiction over one revenue district and having as its members any type of primary societies and Federal and Central societies having headquarters in such district.
- (ib) "*Federal Co-operative Society*" means a society having more than one district as its and operation and having the Government, individuals and other co-operative societies as its members;
- (j) "*financing bank*" means a co-operative society having as its members only other co-operative societies and the main object of which is to raise money and lend the same to its members;
- (k) (k) "*general body meeting*" means a meeting of the members who are entitled to vote in the affairs of the society;
- (l) "*member*" means a person joining in the application for the registration of a Co-operative society or a person admitted to

membership after such registration in accordance with this Act, the rules and the bye-laws, and includes a nominal or associate member;

(la) “miscellaneous societies” means such societies, as may be prescribed, and which accept deposits from their members only and no deposits shall be accepted from nominal or associate members, and shall undertake business activities for the welfare of its members as per the bye-laws and shall issue loans only to members:

Provided that no agricultural loans or schematic loans shall be issued to the members except the loans for welfare activities;

(m) “*nominal or associate member*” means a member who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in the bye-laws;

(n) “*officer*” means the president, vice-president, chairman, vice chairman, secretary, manager, member of committee or treasurer and includes a liquidator, administrator and any other person empowered under the rules or the bye-laws to give directions in regard to the business of a cooperative society;

(o) “*prescribed*” means prescribed by rules made under this Act;

(oa) “*prescribed period*” means the period of limitation specified in Schedule III appended to this Act;

(oaa) “*Primary Agricultural Credit Society*” means a Service Co-operative Society, a Service Cooperative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of

which is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances shall be the rate fixed by the Registrar and having its area of operation confined to a Village, Panchayath or a Municipality:

Provided that the restriction regarding the area of operation shall not apply to societies or banks in existence at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999 (1 of 2000):

Provided further that if the above principal object is not fulfilled, such societies shall lose all characteristics of a Primary Agricultural Credit Society as specified in the Act, Rules and Byelaws except the existing staff strength.

(ob) “*primary credit society*” means a society other than an apex or central society which has as its principal object the raising of funds to be lent to its members;

(oc) “*Primary Co-operative Agricultural and Rural Development Bank*” means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities:

Provided that no Primary Co-operative Agricultural and Rural Development Bank shall be registered without the bifurcation of assets and liabilities of the existing societies having the area of operation in more than one Taluk and the societies shall restrict their operation in the area of the respective society on such bifurcation.

- (od) “Primary Co-operative Society” means a society having jurisdiction over a revenue district as a whole or over any specified area within such revenue district and having individual or individuals and other Co-operative Societies as its members.
- (p) “*Registrar*” means the Registrar of Co-operative Societies appointed under sub-section (1) of section 3 and includes any person on whom all or any of the powers of the Registrar under this Act are conferred;
- (q) “*rules*” means the rules made under this Act;
- (qa) “*Scheduled Castes*” means the Scheduled Castes in the State of Kerala as specified in the Constitution (Scheduled Castes) Order, 1950;
- (qb) “*Scheduled Tribes*” means the Scheduled Tribes in the State of Kerala as specified in the Constitution (Scheduled Tribes) Order, 1950;
- (qc) “*Special Officer*” means an officer, not below the rank of an Assistant Registrar, appointed by the Registrar to take into custody the assets and liabilities of the society which secured registration without bifurcating the area of operation of an existing society and to register new societies and to constitute committees as provided in section 28 of the Act.
- (r) “*State*” means the State of Kerala;
- (ra) “*State Co-operative Agricultural and Rural Development Bank*” means an apex society having only Primary Cooperative Agricultural and Rural Development Banks as its members and functioning in accordance with the

provisions contained in the Kerala State Co-operative Agricultural and Rural Development Banks Act, 1984 (20 of 1984);

- (rb) “*State Co-operative Bank*” means an apex society having only District Co-operative Banks as its members;
 - (rc) “*State Co-operative Election Commission*” means the State Co-operative Election commission constituted under section 28B;
 - (s) “*State Co-operative Union*” means the State Co-operative Union established under section 89;
 - (t) “*Tribunal*” means the Tribunal constituted under section 81;
 - (ta) “*Urban Co-operative Bank*” means a society registered under this Act having its area of operation in the Urban areas and which undertakes banking business with the licence obtained from Reserve Bank of India;
 - (taa) “*Urban Co-operative Society*” means a co-operative society the principal object of which is to undertake non-agricultural credit activities and to raise funds to be lent to its members with its area of operation confined to a municipality or a corporation :
- Provided that the restriction regarding the area of operation shall not be applicable to the existing urban co-operative societies.
- (tb) “*Vigilance Officer*” means the Vigilance Officer appointed under section 68A;
 - (u) “*year*” means the period commencing on the first day of April of any year and ending with 30st of March of the

succeeding year or in the case of any registered society or class of registered societies, the accounts of which are made up to any other date with the previous sanction of the Registrar, the year ending with such date.

THE KERALA CO-OPERATIVE SOCIETIES RULES 1969

The following are the important definitions as per Rule 2

- (a) "Act" means the Kerala Co-Operative Societies Act 1969.
- (b) "Decree" means any order, decision or award referred to in section 70 of the Act.
- (c) "Decree holder" means any person holding a decree or legal assignees of the decree.
- (d) "Default" means the failure on the part of any person to repay the financing bank or to any other society a loan or any other amount due to it within the time fixed for the repayment or to return to the society within the time fixed the finished goods in respect of raw materials advanced or to keep any other obligation for the fulfillment of which a time limit has been specified in the bye-laws.
- (e) "Defaulter" means any co-operative society against which or any person against whom a decree has been obtained.
- (f) "Form" means a form set out in Appendix II
- (g) "Net profit" means net profit as certified by the Registrar.
- (h) "Person" includes the Government and a Co-operative Society.

- (i) "Sale Officer" means an officer of any Department empowered by the Registrar by general or special order to conduct the attachment and sale or sale without attachment of the property of defaulters, or to execute the order or decision of the Registrar in regard to the attachment and sale or sale without attachment of the property of the defaulter.
- (j) "Section" means a section of the Act.
- (k) "Working Capital" means such portion of the Reserve Fund, other funds, paid up share capital, loans and deposits received by a society and debentures issued by a society as have not been invested in buildings and other fixed assets.

Registration of Co-operative Societies

Registrar [Sec. 3]

- (1) The Government may appoint a person to be the Registrar of Cooperative Societies for the State.
- (2) The Government may by general or special order confer on any person all or any of the powers of the Registrar under this Act.

Societies which may be registered [Sec. 4]

Subject to the provisions of this Act, a cooperative society which has as its object the promotion of the economic interests of its members or of the interests of the public in accordance with cooperative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act.

Registration with limited liability only [Sec. 5]

1. A cooperative society shall be registered only with limited liability:

Provided that the sub-section will not affect the rights and liabilities of societies with unlimited liability which are in existence at the time of commencement of this Act.

2. The word 'limited' or its equivalent in any Indian language shall be the last word in the name of a society registered under this Act with limited liability.

Application for registration of cooperative societies [Sec. 6]

1. An application for the registration of a cooperative society shall be made to the Registrar in such form as may be prescribed and the applicant shall furnish to him such information about the society as he may require.
2. Every such application shall conform to the following requirements, namely:-
 - (a) the application shall be accompanied by three copies the proposed bye-laws of the society; and
 - (b) where all the applicants are individuals, the number of applicants shall not be less than twenty-five, each of such persons being a member of a different family.
 - (c) the application shall be signed by every one of the applicants who is an individual and by a person duly authorized on behalf of the Government or any society or other body of persons which is an applicant.

Registration [Sec. 7]

(1) If the Registrar is satisfied –

(a) that the application complies with the provisions of this Act and the rules;

(b) that the objects of the proposed society are in accordance with section 4;

(c) that the area of operation of the proposed society and the area of operation of another society of similar type do not overlap;

(d) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and

(e) that the proposed society complies with the requirements of sound business;

He may register the society and its bye-laws [within a period of ninety days from the date of receipt of the application.]

(2) Where the Registrar refuses to register a society, he shall communicate the order of refusal together with the reasons therefore within seven days of such order to such of the applicants as may be prescribed.

(3) An application for registration of a society shall be disposed of by the Registrar [within ninety days] from the date of receipt of the application.

(4) Where an application for registration of a society is not disposed of within the time specified in sub-sec. (3), the applicant may make a representation –

- (a) before the Registrar, if the application for registration is made to a person on whom the powers of the Registrar is conferred under sub-section (2) of Sec. 3, or
- (b) before the Government, if the application for registration is made before Registrar, and the Registrar or the Government, as the case may be, shall within sixty days from the date of receipt of such representation, issue directions, to the authority concerned, to take appropriate decision on the application for registration and the authority concerned shall comply with such directions.

Registration Certificate [Sec. 8] – Where a co-operative society is registered under this Act, the Registrar shall issue a certificate of registration signed and sealed by him, which shall be conclusive evidence that the said society is duly registered under this Act.

Affiliation to apex society [Sec. 8A]

- (1) Every Primary Co-operative Society or Central Co-operative Society may within such time and in such manner, as may be prescribed, apply for affiliation to the concerned apex society or Central Society as the case may be.
- (2) Where the apex society or central society does not, within sixty days from the date of receipt of the application for affiliation, determine whether such affiliation should be given or not, such affiliation shall be deemed to have been given to the applicant society from the date on which the said period of sixty days expires
- (3) When the apex or central society, as the case may be, rejects an application for affiliation under sub-section (1), the aggrieved society may file an appeal before the Registrar

against such rejection within thirty days from the date of receipt of the order of rejection and the Registrar shall dispose the appeal within sixty days from the date of appeal.

Co-operative Societies to be bodies corporate [Sec. 9]

The registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted.

Changes of name of society [Sec. 10]

- (1) A society may change its name by an amendment of its bye-laws and the Registrar shall enter the new name in the register of co-operative societies in the place of the former name and shall amend the certificate of registration accordingly.
- (2) The change of name of a society shall not affect any rights or obligations of the society or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the society by its former name may be continued or commenced by its new name.

Change of liability [Sec. 11]

- (1) Subject to the provisions of this Act and the rules a society may, by an amendment of its bye-laws, change the form or extent of its liability.
- (2) When a society has passed a resolution to change the form or extent of its liability it shall give thereof in writing to all its

members and creditors and notwithstanding the provisions of Sec. 24 or any bye-laws or contract to the contrary, any member or creditor shall, during a period of two months from the date of service of notice upon him, have the option of withdrawing his shares, deposits of loans, as the case may be.

- (3) Any member or creditor who does not exercise his option within the period specified in sub-section (2) shall be deemed to have given his assent to the change.
- (4) An amendment of the bye-laws of a society changing the form or extent of its liability shall not be registered or take effect until either –
 - a) the assent thereto all members and creditors has been given or deemed to have been given; or
 - b) all claims of members and creditors who exercise the option referred to in sub-section (2) within the period specified therein have been met in full.

Bye Law

Bye-laws means a set of rules governing the relationship between the society and its members and provide guidance for general administration, conduct of business etc. At the time of Registration of society, the Registrar shall approve and register the bye-laws of the society and issue to the society a copy of the registered bye-laws along with the certificate of registration. Any alteration or amendment in any of the provisions of the bye-laws shall be carried out only with the approval of the general body and sanction of the Registrar. Amendments of bye-laws shall also be registered by the Registrar.

Model Bye-laws

Rule 6 of Kerala Co-operative Societies Act states that it shall be competent to the Registrar to frame model byelaws for each class or classes of societies and to suggest modifications there to from time to time. Such model byelaws shall be adopted by a society, with such modifications, if any, as may be suggested by the society, and agreed to by the Registrar of co-operative societies.

Amendments to byelaws of a society

Section 12 and 13 and Rule 9 of the Rules under the Kerala Co-operative Societies Act, 1969 lay down the provisions and procedure for the amendment of bye-laws of a society.

The managing committee of the society shall first examine the proposed amendments to the bye-laws, approve the same and adopt necessary resolutions in that respect. After that, the proposed amendments should be placed before the general body meeting for its consideration after due notice has been given to the members in accordance with the bye-laws. In the notice for the general body the existing provisions of the bye-laws and the amendments proposed should be directly shown. Notice or intimation of the amendments proposed should be given to the members of the society either in person and obtained their full signature in token of having received the same or sent by post under certificate of posting. Otherwise the resolutions of the general body approving the amendments will not be considered valid. The resolution approving the amendments should be passed at general body by at least a two-third majority of the members present and voting.

Such resolutions shall be forwarded to the Registrar within one month of the date of the general body meeting at which the amendment was passed along with an application requesting for

the registration of amendment. The application for registration of amendments shall be signed by the secretary and two members of the committee and shall contain the following particulars –

- i)** the date of the general body meeting at which amendment was made.
- ii)** the number of days' notice given to convene the general body meeting.
- iii)** the number of days' notice required as per the bye-laws for the general body meeting.
- iv)** the total number of members of the society on the day of such meeting.
- v)** the number of members present at such meeting.
- vi)** the number of members to form the quorum for such meeting.
- vii)** the number of members who exercised their franchise at the meeting.
- viii)** the number of members who voted for the amendment.

The proposal shall also be accompanied by:-

- a)** copy of the relevant bye-laws in force with amendments proposed to be made in pursuance of the resolution, together with reasons justifying such amendments.
- b)** four copies of the text of the bye-laws as it would stand after amendment, signed by officers authorized in this behalf by the committee of the society.

Registration of amendments

The Registrar shall before registering an amendment of any bye-law consult (a) the State Co-operative Union if the proposed amendments are those of an apex or central society or (b) the Circle Co-operative Union if the bye-laws that are to be amended are those of any other society and (c) the financing bank if the society is indebted to the financing bank.

In the event of registration of the amendments, the Registrar shall forward to the society, a copy of the registered amendment together with a certificate of registration signed and sealed by him. Such certificates shall be conclusive evidence that the amendment has been duly registered.

When the Registrar refuses to register an amendment he shall communicate to the society the order of refusal together with the reason therefore within seven days of the order.

Membership

Section 2 (1) of the Act defines a member. ‘Member’ means a person joining the application for the registration of a Co-operative society or a person admitted to membership after registration in accordance with the Act, the Rules and bye-laws, and includes a nominal or associate member.

Associate or nominal member

- (1) A society may admit any individual as a nominal or associate member.
- (2) A nominal or associate member shall not be entitled to any share, in any form whatsoever, in the assets or profits of the society or to be elected to the committee of a society.

- (3) Save as provided in this section, a nominal or associate member shall have such privileges and rights of a member and be subject to such liabilities of a member, as may be specified in the bye-laws of the society.

Conditions to be complied with for membership
[Qualifications and disqualifications]

- (1) No person shall be eligible for admission as a member of a Co-operative society, if
- (a) he has not attained the age of 18 years. This is not applicable to societies for the benefit of students of any school or college.
 - (b) he is not a resident of the place or does not own or possess land within the area of operation of the society. This clause also shall not apply to societies formed for students of any school or college.
 - (c) he has applied to be adjudicated as an insolvent or he is an undischarged insolvent.
 - (d) he has been sentenced for any offence other than the offence of a political character or an offence not involving moral turpitude and a period of five years has not elapsed from the date of expiry of the sentence.
 - (e) he is a paid employee of the society or of its financing banks or of any society for which it is the financing bank. This restriction shall not apply to Co-operative Motor Transport Societies, Co-operative workshops, societies for the employees of financing banks and societies formed for the benefit of actual workers.

- (f) he has been surcharged under section 68 and a period of 3 years has not elapsed since the payment of money or restoration of property as directed in the said order of surcharge.
 - (g) he is unsound mind.
 - (h) any other Co-operative Society, the government, and anybody of persons, (if such body is approved by government) may become a member of a society.
- (2) No person shall be admitted as a member of a society unless –
- (a) he has applied in writing in the form if any laid down by the society;
 - (b) his application is approved by the committee of the society;
 - (c) he has fulfilled all other conditions laid down in the Act, Rules and Bye-laws;
 - (d) in the case of other societies or a body of persons, whether incorporated or not, and any statutory or non-statutory Board, approved by the Government, Committee or Corporation constituted for the development of any industry the application for membership shall be accompanied by a resolution authorizing it to apply for such membership.
- (3) Where a person already admitted to membership is seen to have been ineligible for membership at the time he was so admitted as a member or if he subsequently becomes ineligible for membership the Committee of the society may

remove the person from membership after giving him an opportunity for making his representation if any, and the person concerned shall thereupon cease to be a member of the society.

- (4) Where a member of a society becomes ineligible to continue as such, the Registrar may of his own motion or on a representation made to him by any member of the society or by the financing bank, by an order in writing declare that he has ceased to be a member of the society from the date of his order. The Registrar shall give such person an opportunity to state his objection, if any, to the proposed action and if the person wishes to be heard, he shall be given an opportunity to be heard before passing an order as aforesaid.

Removal and expulsion of members [Sec. 17]

- 1) Any member of a society, who has acted adversely to the interests of the society, may be expelled upon a resolution of the general body passed at a special meeting convened for the purpose by the votes of not less than two-thirds of the total number of members present and voting at the meeting.
- 2) No member shall be expelled under sub-section (1) without being given an opportunity of making his representation.
- 3) A copy of the resolution expelling a member shall be communicated to the member within a period of fifteen days from the date of passing of the resolution.

Restrictions on holding shares [Sec. 22]

In any society no member other than the Government, any statutory or non-statutory Board, Committee or Corporation approved by the Government in this behalf or any other society, shall –

- (a) hold more than such portion of the total share capital of the society, not exceeding one-fifth thereof, as may be prescribed; or
- (b) have or claim any interest in the shares of the society exceeding five thousand rupees:

Provided that the Government may, by notification in the Gazette, specify in respect of any class of societies a higher maximum than one-fifth of the share capital or a higher amount than five thousand rupees, as the case may be.

Management of Co-Operative Societies

Final authority in a society [Sec. 27]

- (1) Subject to the provisions of this Act, the rules and the bye-laws, the final authority of a society shall vest in the general body of its members: Provided that nothing contained in this sub-section shall affect the exercise by the committee or any officer of a society of any power conferred on such committee or such officer by this Act or the rules or the bye-laws.
- (2) Notwithstanding anything contained in sub-section (1), where the area of operation of a society is not less than such area as may be prescribed, or where the society consists of not less than such number of members as may be prescribed, the society may provide by an amendment of its byelaws for the

constitution of a smaller body consisting of such number of the members of the society as may be prescribed, elected in accordance with the rules (hereinafter referred to as the representative general body) to exercise all or any of the powers of the general body as may be specified in the bye-laws except the power to conduct election of members of the committee, and any reference, by whatever form of words, in this Act to the general body or a meeting thereof shall, where a representative general body has been constituted under this sub-section, have effect in respect of the powers exercisable by the representative general body as if such reference were a reference to the representative general body or a meeting thereof, as the case may be:

Provided that the representative general body shall not alter any provision in the bye-laws relating to its constitution or powers.

- (3) The exercise of any power by the representative general body shall be subject to such restrictions and conditions as may be specified in the rules or the bye-laws.

Appointment of committee [Sec. 28]

- (1) The general body of a society shall constitute a committee, for a period not exceeding five years, in accordance with the bye-laws and entrust the management of the affairs of the society to such committee:

Provided that, in the case of a society registered after the commencement of this Act, the persons who have signed the application to register the society may appoint a committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider necessary; but the committee

appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the bye-laws:

- (1A)** Notwithstanding anything contained in the bye-laws of a society, the maximum number of members of the committee shall not exceed fifteen, in the case of primary co-operative societies, and twenty-five in the case of all other types of co-operative societies.
- (1B)** Notwithstanding anything contained in the bye-laws of any Federal Co-operative Society, the number of individuals in the society and the Committee thereof shall not exceed twenty five percent of the total number of members in the society or in the Committee, as the case may be.”
- (1C)** Not withstanding anything contained in the Bye-laws of a Primary Credit Society or an Urban Co-operative Bank, one seat in the committee of each such society shall be reserved for the members having a deposit of ten thousand rupees and above.
- (2)** Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for appointment as, or for being, a member of a committee—

 - (a)** if he is member of the committee of another society of the same type; or
 - (b)** if he is member of the committees of two or more societies of a different type or different types:

Provided that nothing contained in this sub-section shall be deemed to disqualify a person for election as, or for being, a delegate of a society

- (3) Nothing contained in clause (a) of sub-section (2) shall be deemed to disqualify a member of the committee of a society for appointment as, or for being, a member of the committee of the apex or central society of the same type:

Provided that no member of a committee shall be the president or chairman of more than one society of the same type.

- (4) The members of a committee may be paid honorarium at such rates as may be prescribed.
- (5) The quorum for a meeting of a committee shall be such number of members just above fifty per cent of the total number of members of that committee.

Reservation for women members and members belonging to Scheduled Castes or Scheduled Tribes in the committee [28A]

- (1) Notwithstanding anything contained in this Acts the rules or the bye-laws, there shall be reserved in the committee of every society, one seat for a woman member and one seat for a member belonging to the Scheduled Castes or the Scheduled Tribes.
- (2) Nothing contained in sub-section (1) shall prevent the women members and members belonging to the Scheduled Castes or Scheduled Tribes from being elected to the non-reserved seats in the committee.
- (3) Where there is no representation of woman or of a member belonging to the Scheduled Castes or Scheduled

Tribes in the committee of any apex or central society at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999, the Government or the Registrar, respectively, may nominate a woman member or a member belonging to the Scheduled Castes or Scheduled Tribes to the committee.

- (4) A person nominated to the committee of a society or Bank shall have all the powers of a member elected to such committee and shall hold office during the pleasure of the Government or the Registrar, as the case may be.

State Co-operative Election Commission [28B]

- (1) Notwithstanding anything contained in this Act or in the rules the Government shall, by notification in the Gazette, constitute a State Co-operative Election Commission for the superintendence, directions and control of the conduct of elections to the committees of all credit, apex, central and federal societies in the State. The Government may, by notification in the Gazette, entrust the superintendence, directions and control of the conduct of election to the committee of any other society or any other class of societies to the State Co-operative Election Commission.
- (2) The State Co-operative Election Commission shall be an officer not below the rank of Secretary to Government appointed by the Government for a period of five years. The terms and conditions of appointment of the State Co-operative Election Commission shall be such, as may be prescribed.
- (3) The State Co-operative Election Commission shall, in consultation with the Government, designate or nominate officers and employees of the Government to assist the

Commission in the conduct of election to the committee of such society.

- (4) Subject to the provisions of this Act, the Government may, by rule, make provision with respect to all matters relating to, or in connection with elections to the committee of a society.

Board of Director's meeting

- (1) The president of a cooperative may, at any time, call a meeting of the board of directors:

provided, however, that at least four board meetings shall be held in a financial year, and the period between two consecutive board meetings shall not exceed one hundred and twenty days.

- (2) The president shall hold a special board meeting within fifteen days of the date of receipt of a requisition from:

- a) not less than one hundred members or one-tenth of the members, having the right to vote, whichever is less;
- b) at least one-third of the directors;
- c) the auditor; or
- d) the registrar.

provided that any such requisition shall contain the reasons why the meeting is felt necessary and the proposed agenda, and no subject other than the subjects included in the proposed agenda shall be discussed at the special board meeting.

- (3) The president shall cease to be president at the end of the period within which a board meeting under sub-section (1) or (2) or the articles has to be held if he/she fails to hold such board meeting within the specified period.
- (4) An individual who ceases to be president under sub-section (3) shall not be eligible to hold the office of president for a period of six years from the date of such cessation.
- (5) The quorum for a board meeting shall be as specified in the articles, but shall be more than half of the total number of directors on the board.
- (6) The procedure to convene and conduct the board meetings shall be such as specified in the articles.
- (7) If a director fails to attend three consecutive board meetings, he/she shall cease to be a director, from the date of the third board meeting.

First General Body Meeting [Rules 8]

- (1) Within three months from the date of registration of a Society the Chief Promoter thereof, shall convene the first general body meeting of all persons who had signed the application for registration of the society. Where the Chief Promoter fails to convene the meeting as aforesaid, it shall be convened by any person authorised in that behalf by the Registrar.
- (2) At the first general body meeting, the following business shall be transacted:
 - a) Election of a President for the meeting;
 - b) Admission of members and allotment of shares;

- c)* Receiving a statement of accounts and reporting all transactions entered into by the Chief Promoter;
- d)* Passing budget for the working of the society for the year, if any;
- e)* Any other matters connected with the working of the society.

Annual General Body meeting [Sec 29 (1)]

- (1) A general body meeting of a society shall be held once in a year for the purpose of:-
 - (a)* approval of the budget with reference to the programme of the activities of the society prepared by the committee for the ensuing year;
 - (b)* election, if any, in the prescribed manner of the members of the committee other than nominated members;
 - (c)* consideration of the audit report and the annual report;
 - (d)* disposal of the net profit;
 - (e)* consideration of any other matter which may be brought forward in accordance with the bye-laws, which includes amendment of bye-laws, expulsion of a member, writing off irrecoverable assets etc.
- (2) The Registrar or any other person deputed by him shall have the right to attend the committee or general body meeting of any society.

Special General Body Meeting [Sec. 30]

- (1) The committee of a society may at any time, call a special general body meeting of the society and shall call such meeting within one month after receipt of a requisition in writing from the Registrar or from such number of members or a proposition of the total number of members, as may be prescribed.
- (2) If a special general body meeting of a society is not called in accordance with the requisition referred to in sub-section (1), the Registrar or any person authorized by him in this behalf shall have power to call such meeting and that meeting shall be deemed to be a meeting called by the committee.
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Registrar or any person authorized by him in this behalf may, at any time, call a special general body meeting of the society in such manner and at such time and place within the area of its operation as he may direct and such meeting shall be deemed to be a meeting called by the committee.
- (4) Notwithstanding anything contained in the bye-laws of a society, the Registrar or any person authorized by him in this behalf may, at any time summon a meeting of the committee of the society and that meeting shall be deemed to be a meeting called in accordance with the bye-laws of the society and shall have power to transact all business which can be transacted at a meeting of the committee under the bye-laws of the society and such other business as is specially mentioned in the requisition made by the Registrar or the person authorized.

- (5) The Registrar or any other person deputed by him shall have the right to attend the committee or general body meeting of any society convened in accordance with the provisions of this section.

Minutes

The minutes of a meeting are a written record of the proceedings of the meeting. Minutes are prepared by the secretary after the meeting is over. A separate book is kept by the societies for recording the minutes. Each page of such book must be signed and the last pages of the record of each meeting must be dated and signed.

Quorum for the meetings

The quorum for a meeting of a committee of a society to which Sec. 31 (1) applies - shall be such number of persons just above 50% of total number of members of committee consisting of elected members in terms of Sec. 28 (1) and nominated members in terms of Sec. 31 (1).

At the time of deciding each resolution there should be quorum for the meeting. It is not sufficient that the meeting started with quorum and thereafter that meeting can pass any resolution. It is not stated that quorum is enough at the time of beginning of the meeting.

Quorum for meeting requirements - The word quorum denotes the number of members of any body of persons whose presence at a meeting is requisite in order that business may be validly transacted and that its act may be legal. According to the bye-laws of the society where more than one half of the members of the managing committee are present in the meeting of the committee, that meeting can take decision on any matter. Since the committee

consists of 13 members, minimum number of members whose presence is necessary to constitute the quorum is seven.

Quorum for committee – Committee consists of 7 members, absence of 3 members either by resignation or otherwise would not reduce the quorum.

Nominees of Government on committee of an apex or a central society [Sec. 31]

(1) Where the Government –

- (a)** have subscribed to the share capital of an apex or a central society; or
- (b)** have assisted indirectly in the formation or augmentation of the share capital of an apex or a central society; or
- (c)** have guaranteed the repayment of principal and payment of interest on debentures issued by an apex or a central society; or
- (d)** have guaranteed the repayment of principal and payment of interest on loans and advances to an apex or a central society;

the Government or any authority specified by them in this behalf shall have the right to nominate not more than three persons or one-third of the total number of members of the committee of such apex or central society whichever is less, to be members of the committee.

(2) A person nominated to the committee of an apex or a central society under sub-section (1) shall hold office

during the pleasure of the Government or the specified authority, as the case may be.

- (3) A person nominated to the committee of an apex or a central society under sub-section (1) shall not take part in the discussion of any no- confidence motion or vote on any such motion.
- (4) Any person who holds office as a nominated member of the committee of a society, other than an apex or a central society, at the commencement of the Kerala Co-operative Societies (Amendment) Act 1987 shall cease to hold such office at such commencement.

Supersession of committee [Sec. 32]

- (1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance, and Anticorruption Bureau of the Government or the Vigilance Officer or otherwise, is satisfied that the committee of any society,-
 - (a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the society; or
 - (b) wilfully disobeys or fails to comply with any lawful order or direction issued under this Act or the rules; or
 - (c) makes any payment contrary to this Act or the rules or the byelaws or causes any loss or damage to the assets of the society, by breach of trust or wilful negligence; or

- (d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice, he may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and, appoint a new committee consisting of not more than three members of the society in its place or appoint not more than three administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding six months, as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so however that the aggregate period does not exceed one year.
- (e) Every member of the committee superseded under this section shall from the date of order of such supersession stand disqualified to contest in the election to or to be nominated to the committee of any society or to be appointed as an administrator in any society for two consecutive terms.
- (2) The Registrar shall consult the financing bank and circle co-operative union or State Co-operative Union, as the case may be, before passing an order under sub-section (1).
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases, the period of supersession shall generally be for six months and in case a new committee cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period

of supersession the period may be extended for a further period not exceeding six months—

- (a) in the case of a Co-operative society only after consulting the circle co-operative union concerned; and
 - (b) in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union.
- (4) The committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give have power to exercise all or any of the powers and functions, of the committee or of any officer of the society and take all such action as may be required in the interests of the society.
- (5) The committee or administrator or administrators shall, before the expiry of its or his or their terms of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.
- (6) Every order made by the Registrar under sub-section (1) shall be communicated to the circle co-operative union.

Securing possession of records, etc. [Sec. 34]

- (1) If the committee of a society is reconstituted at a general meeting of the society or the committee of a society is removed by the Registrar under section 32 or a new committee or administrator or administrators is or are appointed under section 33 or if the society is ordered to be wound up under section 71 and the outgoing members of the committee refuse to hand over charge of the records and property of the society to the new committee or administrator or administrators or the liquidator, as the case may be, or if an

outgoing president or secretary who is the custodian of the records and property of a society refuses to hand over charge of the records and property of the society to his successor, the new committee or administrator or administrators or the liquidator, or the president or secretary may with the previous sanction of the Registrar apply to the Magistrate within whose jurisdiction the society functions, for securing the records and properties of the society.

- (2) On receipt of an application under sub-section (1), the Magistrate may, by a warrant, authorize any Police Officer, not below the rank of Sub-Inspector, to enter and search any place where the records and the property of the society are kept or are believed to be kept and to seize such records and property, and the records and property so seized shall be handed over to the new committee or administrator or administrators or the liquidator or the president or secretary, as the case may be.
- (3) Where the Registrar or any other officer not below the rank of Assistant Registrar of Co-operative Societies authorized by him in this behalf in the course of audit, inspection, inquiry or supervision is of opinion that there is room to suspect gross negligence of duties, misappropriation or misuse of funds of the society or irregularity in recording proceedings or keeping accounts or books or is satisfied that the records, registers or the account books of a society are likely to be tampered with or destroyed and the funds and property of a society are likely to be misappropriated or misapplied, he shall have power to take possession of any or all of the books, registers, securities or documents, cash in hand or account-books of the society and remove such seized records and property and to deal with them in any manner as may be directed by the Registrar.

The Registrar or other officer seizing the records and property of a society under sub-section (3) shall prepare an inventory of the records and property seized in duplicate with his signature and require the officer, employee or member of the society from whose custody the records and property are seized to affix his signature in witness thereof and, if such officer or employee or member refuses to sign, then the Registrar or other officer seizing the records and property shall cause two or more persons to sign the inventory as witnesses to the correctness thereof. A copy of the inventory prepared under this section shall be delivered to the officer, employee or member of the society from whose custody the records and property were seized.

Privileges of co-operatives

➤ First charge of society on certain assets [Sec. 35]

- (1) Notwithstanding anything contained in an law for the time being in force, but subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, any debt or outstanding demand owing to a society by any member or past member or deceased member shall be a first charge –
 - (a) upon the crops or other agricultural produce of such member for the raising of which the loan was taken from the Society by such member; and
 - (b) upon any cattle, fodder for cattle, agricultural or industrial implements, or machinery, or raw materials for manufacture, supplied, or purchased in whole or in part out of any loan given, by the Society, or on any article manufactured from raw materials so supplied or purchased.

- (2) No person shall transfer any property which is subject to a charge under sub-section (1) except with the previous permission in writing of the society which holds the charge.
 - (3) Notwithstanding anything contained in any law for the time being in force, any transfer of property made in contravention of the provisions of sub-section (2) shall be void.
 - (4) The charge created under sub-section (1) shall be available as against any claim of the Government arising from any loan granted by them after the grant of the loan by the society.
- **Charge on land owned or held by members borrowing loans from certain societies (Sec. 36)**

Notwithstanding anything contained in this Act or any other law for the time being in force,-

- (i) a member who makes an application for a loan to a society of which the majority of the members are agriculturists shall, if he owns any land or holds any land as a tenant entitled to fixity of tenure, make a declaration in the prescribed form, which shall state that the applicant thereby creates a charge on the land owned by him or on his interest in the land held by him as tenant and specified therein, for the payment of the amount of the loan which the society may make to the member on the application and future loans, if any, that may be made to him, from time to time, by the society together with interest on such loan or loans;
- (ii) a declaration made under clause (i) may be varied or cancelled at any time by the member, with the previous written permission of the society in favour of which such charge has been created;

- (iii) no member shall alienate the whole or any part of the land or his interest in the land specified in the declaration made under clause (i) or varied under clause (ii) until the whole amount borrowed by the member together with interest thereon is paid to the society in full;
- (iv) any alienation made in contravention of clause (iii) shall be null and void;
- (v) subject to the claims of the Government in respect of basic tax or any money recoverable as land revenue and to the claims of the Government or the Land Mortgage Bank in respect of any money payable under a mortgage in favour of the Government or the Land Mortgage Bank and to the prior claims of any person in whose favour alienation of the land or interest in land specified in the declaration made under clause (i) or varied under clause (ii) has been effected and duly registered, before the date of the grant of the loan by the society, there shall be a first charge in favour of the society on such land or interest for and to the extent of the dues owing by him on account of the loan;
- (vi) a declaration made under clause (i) or any variation or cancellation thereof under clause (ii) or any release under the third proviso to clause (iii) shall be sent by the society, by registered post, to the Sub Registrar having jurisdiction over the area in which the land is situate, and the sub registrar shall register such declaration or variation or cancellation or release and issue a copy thereof to the society.
- (vii) Any declaration made under clause (i) or any variation or cancellation thereof under clause (ii) or any release under

the third proviso to clause (iii), which has not been registered under clause (vi) shall be null and void.

Explanation.-In this section-

- (a) “Basic tax” means the tax imposed under the provisions of the Kerala Land Tax Act, 1961 (13 of 1961);
- (b) “Land Mortgage Bank” means the Kerala Co-operative Central Land Mortgage Bank, Limited, or a primary mortgage bank as defined in the Kerala Co-operative Land Mortgage Banks Act, 1960 (1 of 1960)

➤ **Charge on movable or immovable property of borrower by creating Gehan [Sec. 36 A]**

Notwithstanding anything contained in any other provisions of this Act, charge on movable or immovable property of a borrower in favour of the State Co-operative Bank or a District Co-operative Bank or a Primary Agricultural Credit Society or a Primary Housing Society may be created by Gehan in respect of which the provisions of sections 10 to 15 (both inclusive) of the Kerala State Co-operative Agricultural and Rural Development Banks Act, 1984 (20 of 1984), as amended from time to time, shall apply with the modification of substituting the words “State Co-operative Bank or District Co-operative Banks”, “Primary Agricultural Credit Society or Primary Housing Society”, “Society” and “said Bank or Society”, respectively, for the words “Agricultural and Rural Development Bank”, “primary bank”, “bank” and “said banks” occurring in the said sections.

Explanation.-For the purposes of this section, Gehan means a special charge on movable or immovable property, in favour of the State Co-operative Bank or a District Co-operative Bank or a Primary Agricultural Credit Society or a Primary Housing

Society by a mere declaration in writing by the borrower, for securing the payment of money advanced or to be advanced by way of loan, which will have all the characteristics of a valid mortgage.

➤ **Deduction from salary to meet society's claim in certain cases [Sec. 37]**

- (1) Notwithstanding anything contained in any law for the time being in force, a member of a society may execute an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.
- (2) On the execution of such an agreement, the employer or the officer disbursing the salary or wages of any such member as is referred to in subsection (1) shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction.

➤ **Charges and set-off in respect of shares or interest of members in the capital of a society [Sec.38]**

A society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member or deceased member and on any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in respect of any debt or outstanding demand owing to the society

and may set-off any sum credited or payable to a member, past member or the estate of a deceased member in or towards payment of any such debt or outstanding demand:

Provided that no financing bank to which a society is affiliated shall have a charge upon any sum invested in the financing bank as reserve fund by the society if the bank is not the sole creditor of the society, or be entitled to set-off any such sum credited or payable to the society towards any debt due from such society.

➤ **Shares or interest or reserve fund not liable to attachment [Sec. 39]**

- (1) Subject to the provisions of section 38, the share or interest of a member in the capital of a society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by him and a receiver under any law relating to in-solvency shall not be entitled to, or have any claim on, such share or interest.
- (2) The reserve fund of a society invested by such society in accordance with the provisions of section 57 shall not be liable to attachment under any decree or order of a court in respect of any debt or liability incurred by the society.

➤ **Exemption from certain taxes, fees and duties [Sec. 40]**

- (1) The Government may, by notification in the Gazette, remit in respect of any class of societies –
 - a) the stamp duty chargeable under the Kerala Stamp Act, 1959 (17 of 1959), in respect of any instrument executed by or on behalf of a society or by an officer or member thereof and relating to the business of such society, or any class of such instruments or in respect of any award or

order made under the Act, in cases where, but for such remission the society, officer or member, as the case may be, would be liable to pay such stamp duty;

b) any fee payable under any law for the time being in force relating to the registration of documents or court fees.

(2) The Government may, by notification in the Gazette exempt any class of societies from taxes on—

a) agricultural income;

b) sale or purchase of goods; and

c) professions, trades, callings and employments.

➤ **Exemption from compulsory registration of instruments [Sec. 41]**

Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (Central Act 16 of 1908), or sections 54 and 59 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), shall apply to—

(a) any instrument relating to shares in a society, notwithstanding that the assets of the society consist in whole or in part of immovable property; or

(b) any debentures issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest

therein to trustees upon trust for the benefit of the holders of such debentures; or

- (c) any endorsement upon or transfer of any debenture issued by any such society.

State Aid to Co-Operative Societies

Direct partnership of Government in societies [Sec. 42]

- (1) The Government may subscribe directly to the share capital of a society with limited liability.
- (2) Notwithstanding any agreement to the contrary, the Government shall not be entitled to a dividend on the shares of any such society at a rate higher than that at which such dividend is payable to any other share-holder of the society.

Indirect partnership of Government in societies [Sec. 43]

The Government may provide moneys to a society for the purchase of shares in other societies with limited liability.

Principal State Partnership Fund [Sec. 44]

- (1) An apex society which is provided with moneys by the Government under section 43 shall, with such moneys, establish a fund to be called the “Principal State Partnership Fund”.
- (2) An apex society shall utilize the Principal State Partnership Fund for the purpose of—
 - (a) directly purchasing shares in order societies with limited liability; or

- (b) providing moneys to a central society to enable that society to purchase shares in order societies with limited liability (hereinafter in this Chapter referred to as primary societies); or
- (c) making payments to the Government in accordance with the provisions of this Chapter, and for no other purpose

Subsidiary State Partnership Fund [Sec. 45]

- (1) A central society which is provided with moneys by an apex society from the Principal State Partnership Fund shall, with such moneys, establish a fund to be called the ‘Subsidiary State Partnership Fund’.
- (2) A central society shall utilize the Subsidiary State Partnership Fund for the purpose of-
 - (a) purchasing shares in primary societies; or
 - (b) making payments to the apex society in accordance with the provisions of this Chapter and for no other purpose.

Approval of Government for purchase of shares [Sec. 46]

No shares in a society shall be purchased from the moneys in the Principal State Partnership Fund or the Subsidiary State Partnership Fund except with the previous approval in writing of the Government.

Liability to be limited in respect of certain shares [Sec. 47]

Where any shares in a society are purchased by—

- (a) the Government; or

- (b) the apex society or a central society from the Principal State Partnership Fund or the Subsidiary State Partnership Fund, as the case may be, the liability in respect of such shares shall, in the event of the society being wound up, be limited to the amount paid in respect of such shares.

Restrictions on amount of dividend [Sec. 48]

An apex society which has purchased shares in other societies from the moneys in the Principal State Partnership Fund and a central society which has purchased shares in primary societies from the moneys in the Subsidiary State Partnership Fund shall be entitled only to such dividend on the said shares as is declared by the society concerned and is payable to other share-holders of that society.

Indemnity of apex and central societies [Sec. 49]

- (1) If a society in which shares are purchased from the moneys in the Principal State Partnership Fund is wound up or is dissolved, the Government shall not have any claim against the apex society which purchased the shares in respect of any loss arising from such purchase; but the Government shall be entitled to any moneys received by the apex society in liquidation proceedings or on dissolution, as the case may be.
- (2) If a society in which shares are purchased from the money in the Subsidiary State Partnership Fund is wound up or is dissolved neither the Government nor the apex society shall have any claim against the central society which purchased the shares in respect of any loss arising from such purchase; but the apex society shall be entitled to any moneys received by the central society in liquidation proceedings or on dissolution, as the case may be, and

such moneys shall be credited to the Principal State Partnership Fund.

Disposal of share capital and dividend, etc. [Sec. 50]

- (1) All moneys received by an apex society in respect of shares of other societies purchased from moneys in the Principal State Partnership Fund on redemption of such share or by way of dividends or otherwise shall be credited to that Fund.
- (2) All moneys received by a central society in respect of shares of primary societies purchased from the moneys in the Subsidiary State Partnership Fund on redemption of such shares or by way of dividends or otherwise, shall in the first instance be credited to that fund and then transferred to the apex society which shall credit them to the Principal State Partnership Fund.
- (3) All moneys referred to in sub-section (1) or sub-section (2) shall, notwithstanding that the shares stand in the name of the apex society or in the central society, as the case may be, be paid to the Government.
- (4) Save as provided in sub-section (3), the Government shall not be entitled to any other return on the moneys provided by it to an apex society under section 43.
- (5) Any amount to the credit of the Principal State Partnership Fund or the Subsidiary State Partnership Fund and the investments thereof shall not form part of the assets or liabilities of the apex society or central society, as the case may be. The balance sheet of any such society shall separately show the amounts to the credit of the Principal

State Partnership Fund or the Subsidiary State Partnership Fund or the investments thereof, as the case may be.

Disposal of Principal State Partnership Fund and Subsidiary State Partnership Fund on winding up of apex or central society [Sec. 51]

- (1) If an apex society which has established a Principal State Partnership Fund is wound up or is dissolved, all moneys to the credit of, or payable to, that fund shall be paid to the Government.
- (2) If a central society which has established a Subsidiary State Partnership Fund is wound up or is dissolved, all moneys to the credit of, or payable to, that fund shall be credited or paid, as the case may be, to the Principal State Partnership Fund from which it received moneys under clause (b) of sub-section (2) of section 44.

Agreement by Government and apex societies [Sec. 52]

Subject to the foregoing provisions of this Chapter,-

- (a) the Government may enter into an agreement with an apex society setting out the terms and conditions on which it shall provide moneys to the apex society for the purpose specified in section 43;
- (b) an apex society may, with the previous approval of the Government, enter into an agreement with a central society, setting out the terms and conditions on which it shall provide moneys to that society from the Principal State Partnership Fund for the purpose specified in clause (b) of sub-section (2) of section 44.

Other forms of State aid to societies [Sec. 53]

Notwithstanding anything contained in any law for the time being in force, the Government may-

- (a) give loans or make advances to societies;
- (b) guarantee the repayment of principal and payment of interest on debentures issued by a society;
- (c) guarantee the repayment of share capital of a society and dividends thereon at such rates as may be specified by the Government.
- (d) guarantee the repayment of principal and payment of interest on loans and advances to a society;
- (e) guarantee the repayment of deposits received by the society and payment of interest on such deposits; and
- (f) give financial assistance in any other form, including subsidies, to any society.

Provisions of sections 43 to 52 to over-ride other laws [Sec. 54]

The provisions of sections 43 to 52 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Properties and Funds of Co-Operative Societies

Funds not to be divided [Sec. 55]

No part of the funds other than the net profits of a society shall be paid by way of bonus or dividend or otherwise distributed among its members:

Provided that a member may be paid such remuneration, allowances or honoraria and on such scale as may be laid down by the bye-laws for any services rendered by him to the society.

Disposal of net profit [Sec. 56]

- (1) A society shall, out of its net profits in any year,
 - (a) transfer an amount not being less than fifteen per cent of the net profits to the reserve fund; and
 - (b) credit such portion of the net profits, not exceeding five per cent, as may be prescribed, to the Co-operative Education Fund referred to in clause (xix) of sub-section (2) of section 109.
 - (c) pay, in the case of a Central Society, including a District Cooperative Bank, dividend to its members, on their paid up share capital such rate not exceeding twenty per cent.
- (2) The balance of the net profits may be utilized for all or any of the following purposes, namely:-
 - (a) payment of dividends to members on their paid-up share capital at such rate not exceeding twenty per cent as may be prescribed;
 - (b) payment of bonus to members on the amount or volume of business done by them with the society, to the extent and the manner specified in the bye-laws;
 - (c) constitution of, or contributions to, such special funds as may be specified in the bye-laws;
 - (d) donations of amounts not exceeding ten per cent of the net profits for any charitable purpose as defined in

section 2 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890); and

- (e) payment of bonus to employees of the society to the extent and in the manner specified in the bye-laws or in the Payment of Bonus Act, 1965 (Central Act 21 of 1965, as the case may be.

Investment of Funds [Sec. 57]

A society may invest or deposit its funds—

- (a) in Government Savings Bank; or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (Central Act 2 of 1882); or
- (c) in the shares or securities of any other society approved for the purpose by the Registrar by general or special order; or
- (d) in any bank approved for the purpose by the Registrar; or
- (e) in any other prescribed manner.

The Co-operative Development and Welfare Fund [Sec. 57A]

- (1) The Government may, by notification in the Gazette, frame a scheme to be called the Co-operative Welfare and Development Scheme for the establishment of a Fund under this Act and there shall be established, as soon as may be after the framing of the scheme, a Fund to be called the Co-operative Development and Welfare Fund, in accordance with the provisions of this Act and the scheme.

- (2) A society may contribute to the Fund at such rates, as may be specified in the scheme.
- (3) There shall be credited to the fund,
 - (a) the contribution to be paid by the society under sub-section (2); and
 - (b) any other amount which, under the provisions of the scheme shall be credited to the Fund.
- (4) Subject to the provisions of this Act and the scheme, the Co-operative Development and Welfare Fund shall be utilized for payment of grant or loans to societies for the following purposes namely:-
 - for the purpose of safeguarding the interests of the societies against any loss or damage to their assets and properties, despite reasonable precautions to prevent such loss or damage;
 - for utilizing for the developmental activities of the societies; and
 - for any other purpose, as may be specified in the scheme.
- (5) Subject to the provisions of this Act the scheme may provide for the following matters, namely:
 - the time and manner in which contribution shall be made to the Fund by the societies;
 - the rate of contribution;
 - the administration of the Fund;

- the purposes for which the Fund may be utilized for developmental activities of the societies;
- the conditions under which the Fund may be expended for payment of reliefs to the societies;
- the manner in which the accounts of the Fund shall be kept; and
- any other matter which is to be provided for in the scheme or which may be necessary or proper for the purpose of implementing the scheme.

Deposit Guarantee Scheme [Sec. 57B]

- (1) The Government may, by notification in the Gazette, frame a scheme to be called “the Deposit Guarantee Scheme” specifying the purpose of the scheme and shall be administered in such manner, as may be specified therein.
- (2) A society may contribute to the Deposit Guarantee Scheme at such rates as may be provided in the said scheme.

Consortium Lending Scheme [Sec. 57C]

- (1) The Government may, by notification in the Gazette, frame a scheme to be called the “Consortium Lending Scheme” for the purpose of providing loans for infrastructure development, to societies, local authorities, development authorities or similar institutions, on government guarantee subject to such terms and conditions, as may be specified in the said scheme.

- (2) A society may contribute to the Consortium Lending Scheme, at such rates, as may be specified in the scheme.

Restriction on borrowings [Sec. 58]

A society shall receive deposits and loans only to such extent and under such conditions as may be prescribed or as may be specified in the bye-laws.

Restrictions on loans [Sec. 59]

- (1) A society shall not make a loan to any person or a society other than a member: “Provided that District Co-operative Bank may make loan to its nominal or associate members: Provided further that, with the general or special sanction of the Registrar a society may make loans to another society.”
- (2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

Restrictions on other transactions with non-members [Sec. 60]

Save as is provided in sections 58 and 59, the transactions of a society with persons other than members shall be subjected to such restrictions, if any, as may be prescribed.

Provident Fund [Sec. 61]

- (1) A society shall establish a contributory provident fund for the benefit of its employees, to which shall be credited all contributions made by the employees and the society in accordance with the rules or the Employees Provident

Funds Act, 1952 (Central Act 19 of 1952) whichever is more beneficial.

(2) “A provident fund, whether contributory or not,” established by a society under sub-section (1)

- (a) shall not be used in the business of the society;
- (b) shall not form part of the assets of the society;
- (c) shall not be liable to attachment or be subject to any other process of any court or other authority;
- (d) shall be deposited in the financing bank of the area

Gratuity [Sec. 62]

The employees of a society shall be entitled to gratuity at such rates and on such conditions as prescribed.

Inquiry [Sec. 65]

(1) The Registrar may hold an enquiry by himself or by a person authorized by him by order in writing, into the constitution, working and financial condition of the society, if he is satisfied that it is necessary so to do. An inquiry of the nature referred to in sub-section (1) shall be held on the application of –

- a) on his own motion; or
- b) on an inquiry report of the Vigilance Officer appointed under Sec. 68A; or
- c) on a report of the Director of Co-operative Audit appointed under Sec. 63; or

- d)* on an application by the majority of the members of the committee of the society, or by not less than one third of the quorum for the general body meeting, whichever is less; or
 - e)* on an application by the apex society or financing bank of which such society is a member; or
 - f)* on an application of a society to which the society concerned is affiliated
- (2) The Registrar or the person authorized by him under sub-section (1) shall, for the purpose of an inquiry under this section have the following powers, namely:-
 - a)* he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of the society and may summon any person in possession of, or responsible for the custody of any such books, accounts, documents, securities, cash or other properties, to produce the same at any place at the headquarters of the society or any branch thereof;
 - b)* he may summon any person who, he had reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath; and
 - c)* *(i)* he may, notwithstanding any rule or bye law specifying the period of notice for a general body meeting of the society himself call a general body meeting or require the president or secretary of the society to call a general body meeting at such time and place at the headquarters of the

society or any branch thereof, to determine such matters as may be directed by him;

(ii) any meeting called under sub-clause (i) shall have all the powers of a general body meeting called under the bye-laws of the society.

- (3) When an inquiry is made under this section, the Registrar may communicate the result of the inquiry to the financing bank, if any, to the society to which such society is affiliated and the circle co-operative union.
- (4) When an inquiry made under this section reveals only minor defects which in the opinion of the Registrar, can be remedied by the society, he shall communicate the result of the inquiry to the society and the society, if any, to which that society is affiliated. He shall also direct the society or its officers to take such action within the time specified therein to rectify the defects disclosed in such inquiry.
- (5) The enquiry under this section shall be completed within a period of six month.
- (6) If the Registrar, on completion of the enquiry finds that, there is major defect in the constitution or working or financial condition of the society, he may initiate action in accordance with the provisions of Sec. 32.

Supervision and Inspection [Sec. 66]

- (1) The Registrar shall supervise or cause to be supervised by a person authorized by him by general or special order in writing in this behalf, the working of every society as frequently as he may consider necessary. The supervision

under this sub-section may include an inspection of the books of the society.

- (2) The Registrar may, on his own motion, or on the application of a creditor of a society, inspect or direct any person authorized by him by order in writing in this behalf to inspect the books of the society:

Provided that no such inspection shall be made on the application of a creditor unless the applicant—

- a)* satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
 - b)* deposits with the Registrar such a sum as security for the costs of the proposed inspection as the Registrar may require.
- (3) Where the inspection under sub-section (2) is made on the application of the creditor, the Registrar shall communicate the result of such inspection to such creditor.
- (4) The Registrar or any person authorized by the Registrar under sub-section (1) or sub-section (2) shall at all reasonable times have free access to the books, records and accounts of the society and may summon any person in possession of or responsible for the custody of any such books, records and accounts, to produce the same for inspection at any place at the headquarters of the society or any branch thereof. It shall be the duty of every officer and employee of the society to assist in such supervision or inspection and to furnish any information that may be required for the purpose.

- (5) The Registrar or the person authorized by him under sub-section (1) or sub-section (2) may, by order in writing, direct the society or its officers to take such action as may be specified in such order within the time that may be mentioned in such order.
- (6) The circle co-operative union shall have the power to direct that a non-official member thereof shall be present at an inspection under sub-section (2).
- (7) A financing bank shall have the right to inspect the books of any registered society which is affiliated to it, through its officers.
- (8) An officer of a financing bank inspecting the books of a society shall at all reasonable time have free access to the books, accounts, documents, securities, cash and other properties belonging to the society and may call for such information, statements and returns as may be necessary to ascertain the financial condition of the society and the safety of the sums lent to it by the financial bank.
- (9) An officer referred to in sub-section (8) shall also have power to summon any person in possession of or responsible for the custody of any books, accounts, documents, securities, cash and other properties referred to in that sub-section to produce the same for inspection or verification at any place at the headquarters of the society or any branch thereof.
- (10) The financing bank may also report to the Registrar about the action to be taken against the society as a result of the inspection by its officers.

Surcharge [Sec. 68]

- 1) If in the course of an audit, inquiry, inspection or the winding up of a society, it is found that any person, who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act and the rules or the bye-laws, or has caused any *deficiency in the assets* of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society or has destroyed or caused the destruction of the records, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorized by him by an order in writing in this behalf, to inquire into the conduct of such person.
- 2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, by order in writing, require him to repay or restore the money or other property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable.
- 3) Where the money, property, interest, cost or compensation is not repaid or restored as per sub-section (2), the Registrar shall take urgent steps to recover such amounts from the concerned persons as arrears of public revenue due on land as specified in section 79 of the Act.

Vigilance Officer [Sec. 68A]

- (1) The Government shall appoint an officer, not below the rank of Deputy Inspector General of Police, as Vigilance Officer with powers to enquire into and investigate the cases of misappropriation, corruption and any other major irregularities in the society as may be referred to him by the Registrar.
- (2) The Vigilance Officer shall conduct the inquiry and investigation in such manner, as may be prescribed.
- (3) The Vigilance Officer shall be under the administrative control of the Registrar of Co-operative Societies.

Settlement of Disputes

❖ Disputes to be decided by Co-operative Arbitration Court and Registrar [Sec. 69]

- (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-
 - a) among members, past members and persons claiming through members, past members and deceased members; or
 - b) between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or
 - c) between the society or its committee and any past committee any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs

or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

- d)* between the society and any other society; or
- e)* between a society and the members of a society affiliated to it ; or
- f)* between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or
- g)* between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or
- h)* between the society and a creditor of the society, such dispute shall be referred to the Co-operative Arbitration Court constituted under section 70A in the case of nonmonetary disputes and to the Registrar, in the case of monetary disputes; and the Arbitration Court or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:-

- a)* a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal

representatives of a deceased member, whether such debt or demand be admitted or not;

b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

c) any dispute arising in connection with the election of the Board of management or any officer of the society;
Explanation:- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election, shall be deemed to be a dispute arising in connection with the election;

d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of section 80, including their promotion and *inter se seniority*.

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election.

❖ Co-operative Ombudsman [Sec. 69 A]

(1) The Government may, by notification in the official Gazette, frame a scheme to be called the "Kerala Co-operative Ombudsman Scheme" with the object of enabling redressal of complaints relating to deficiency in banking or other services rendered by co-operative societies dealing with banking business.

- (2) The Government may appoint one or more persons as Ombudsman or Ombudsmen to carry out the functions entrusted to them by or under the scheme.
- (3) The term of office of the Ombudsman or Ombudsmen, as the case may be, shall be three years from the date of their entering office or sixty five years, whichever is earlier.
- (4) The Ombudsman or Ombudsmen so appointed under sub-section (2) shall be a person or persons having experience and expertise in banking or co-operative field and shall have a degree in management or law.
- (5) The functions, powers, duties etc. of the Ombudsman shall be such, as may be specified in the scheme.
- (6) The Ombudsman shall be under the control of the Government.

❖ **Award on disputes [Sec. 70]**

- (1) The Co-operative Arbitration Court on receipt of reference of a dispute under sub-section (1) of section 69, shall pass an award in accordance with the provisions of this Act and the rules and the bye-laws made thereunder and such award shall, subject to the provisions of section 82 , be final.
- (2) The Co-operative Arbitration Court may, pending award of dispute referred to it under section 69, make such interlocutory orders as it may deem necessary in the interest of justice.
- (3) The Co-operative Arbitration Court shall have the same powers as are vested in a civil court under the Code of Civil

Procedure, 1908 (Central Act 5 of 1908), while trying a suit in respect of the following matters, namely:-

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
 - (ii) the discovery and production of any document or other material object producible as evidence;
 - (iii) the reception of evidence on affidavits;
 - (iv) issuing of any commission for the examination of any witness; and
 - (v) any other matter which may be prescribed.
- (4) The Registrar may, on receipt of the reference of a dispute under sub-section (1) of section 69,
- (a) elect to decide the dispute himself; or
 - (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or
 - (c) refer it for disposal to an arbitrator appointed by the Registrar:
- Provided that a transfer under clause (b) or a reference under clause (c) shall not be made to a person equal or superior to him in rank.
- (5) The Registrar may withdraw any reference transferred under clause (b) of sub-section (4) or referred under clause (c) of that sub-section and he may elect to decide the dispute himself or transfer it to any other person under clause (b) of sub-

section (4) or refer it to any other arbitrator under clause (c) of that sub-section.

- (6) The Registrar or the person invested with powers in this behalf shall, decide the dispute or the arbitrator shall pass an award, in accordance with the provisions of this Act and the rules and the bye-laws and such decision or award shall, subject to the provisions of section 82, be final. Pending decision or award, the Registrar, such person or the arbitrator, as the case may be, may make such interlocutory orders as he may deem necessary in the interest of justice.

❖ **Co-operative Arbitration Courts [Sec. 70A]**

- (1) The Government shall constitute such number of Co-operative Arbitration Courts as are necessary to exercise the powers and discharge the functions conferred on it under this Act.
- (2) The qualifications, term salary and allowances and other conditions of service of the person to be appointed as the Co-operative Arbitration court shall be such as may be decided by the Government from time to time.
- (3) The Government shall make rules for regulating the procedure and disposal of business of the Co-operative Arbitration Court.
- (4) The Registrar or the Government shall lend the service of such number of officers and employees as may be necessary to assist the Co-operative Arbitration Court.
- (5) The officers and employees referred to in sub-section (4) shall continue to be Government servants for all purposes and their

terms and conditions of service shall continue to be the same as applicable to them under the Government.

❖ **Provisions as to pending proceedings [Sec. 70B]**

On the constitution of Co-operative Arbitration Court, every dispute pending before the Registrar or any person invested with the power to dispose of the dispute by the Government or the arbitrator appointed by the Registrar, in respect of non-monitory disputes, relating to the local area of jurisdiction of the Arbitration Court, shall be transferred to such Arbitration Court and the Court shall dispose of the same as if it were a dispute referred to it under section 69.

Liquidation and its formalities

Winding up of Societies [Sec. 71]

- (1) If the Registrar, after an inquiry has been held under Section 65 or an inspection has been made under Sec. 66 or an receipt of an application made by not less than three-fourths of the members of a society, is of opinion that the society ought to be wound up, he may, after giving the society an opportunity of making its representation and in consultation with the financing bank to which the society is affiliated and the Circle Co-operative Union, by order in writing direct it to be wound up.
- (2) The Registrar may of his own motion by order in writing, direct the winding up of a society.
 - a) Where it is a condition of the registration of the society that the society shall consist of at least twenty-five members and the number of members has been reduced to less than twenty-five; or

- b)* Where the society has not commenced working within six months of registration, unless extension of time is granted by the Registrar, or has ceased to work; or
- c)* Where the number of actual workers falls below the prescribed limit in the case of a society formed exclusively for the benefit of persons engaged in a particular industry or occupation.
- d)* If a proposal for revitalization of a society, in respect of which an order under sub-section (2) has been passed, is received by the Registrar within a period of one year from the date of such order, the Registrar may cancel the same and allow the society to continue to exist.

Liquidator [Sec. 72]

Section 72 of the Act deals with the appointment of the liquidator for winding up of the society.

- (1) Where the Registrar has made an order under Sec. 71 for the winding up of a society, he shall appoint a liquidator for the purpose and may fix his remuneration.
- (2) The liquidator shall, on appointment take into his custody or under his control all the property, effects and actionable claims to which the society, is or appears to be entitled and shall take such steps as he may deem necessary or expedient to prevent loss or deterioration of, or damage to, such property, effects and claims.
- (3) Where an appeal is preferred under Sec. 83 (appeal to the government) against an order of winding up of a society made under Sec. 71 such order shall not operate thereafter until it is confirmed in appeal;

- (4) Where an order of winding up of a society is set aside in appeal, the property, effects and actionable claims of the society shall re-vest in the society.

Powers of Liquidator [Sec. 73]

- (1) Subject to any rules made in this behalf, the whole of the assets of a society in respect of which an order of winding up has been made shall vest in the liquidator appointed under Sec. 72 from the date on which the order takes effect and the liquidator shall have power to realize such assets by sale or otherwise.
- (2) The liquidator shall also have power, subject to the control of the Registrar:-
- a) to institute and defend suits and other legal proceedings on behalf of the society by the name of his office;
 - b) to determine from time to time the contribution including debts due to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to be assets of the society;
 - c) to investigate all claims against the society and subject to the provisions of this Act, to decide questions of priority arising between claimants;
 - d) to pay claims against the society including interest upto the date of a winding up according to their respective priorities, if any, in full or rateably, as the assets of the society may permit; the surplus, if any, remaining after payment of the claims being applied in payment of interest

from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;

- e)* to determine whether persons and in what proportions the costs of the liquidation are to be borne;
 - f)* to determine whether any person is a member, past member or nominee of a deceased member;
 - g)* to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for the winding up of the affairs of the society;
 - h)* to carry on the business of the society so far as may be necessary for the beneficial winding up of the same;
 - i)* to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the society may be rendered liable; and
 - j)* to make any compromise with the debtor of society and give a complete discharge in respect of any liability.
- (2A)** The liquidator shall complete the winding up proceedings within a period of three years from the date of his appointment under sub-section (1) of Sec. 72.
- (3)** Where the affairs of a society have been wound up, the liquidator shall make a report to the Registrar and deposit the records of the society in such place as the Registrar may direct.

Procedure to be adopted by liquidators [Rules 69]

Where the liquidator has been appointed under sub-section (1) of Sec. 72 the following procedure shall be adopted:

- (1) The appointment of the liquidator shall be notified by the Registrar in the official gazette.
- (2) The liquidator shall publish by such means as he may think proper a notice requiring all claims against the society, the winding up of which is ordered, to be submitted to him within two months of publication of such notice. All liabilities recorded in the books of a society shall be deemed to have been submitted to him.
- (3) The liquidator shall settle the assets and liabilities of the society as it stood on the date on which the order for winding up was made. He shall then proceed to determine the contribution to be made by each of its members, past members or by the estates of nominees, heirs or legal representatives of deceased members or by the officers or former officers to the assets of the society. He may, if necessary issue subsidiary orders against any member or members regarding such contributions.
- (4) The liquidator shall submit to the Registrar a quarterly report in such form as the Registrar may specify, stating the progress made in the winding up of the society.
- (5) The liquidator may, with the previous sanction of the Registrar, empower any person by general or special order to make collection and to grant valid receipts on this behalf.
- (6) All funds in the charge of the liquidator shall be deposited in the post office savings bank or in a Financing Bank or in any

other Bank as may be approved by the Registrar and shall stand in the name of the liquidator.

- (7) The Registrar shall pay for the remuneration, if any to the liquidator or the charges to be paid to the Government to meet the cost of liquidation. Such charge shall be included in the cost of liquidation which shall be payable out of the assets of the society in priority to all other claims.
- (8) The liquidator shall have power to call for meetings of members of the society under winding up from time to time.
- (9) At the conclusion of the winding up proceedings, a general meeting of the members of the society shall be called. At such meeting, the liquidator shall summarise his proceedings and report what sum, if any, remains in his possession after meeting all the liabilities of the society as determined under the rules and suggest how the surplus, if any, should be utilized.
- (10) If any liability remains undischarged by the liquidator for any reason, the amounts undischarged may be deposited in a financing bank for meeting such claims. If the amount is not claimed even after the expiry of three years such amount may be ordered to be credited to the bad debts reserve of the financing bank.

Disposal of records of a society ordered to be wound up [Rules 70]

All the books and records of a society, the affairs of which have been wound up, shall be retained by the liquidator in his office for a period of three years from the date of the report referred to in sub-section (3) of Sec. 73. On the expiry of the said period of

three years, the books and records may be destroyed by the liquidator on taking orders, to that effect, from the Registrar.

Execution of Awards, Decrees, Orders and Decisions

Enforcement of charge [Sec. 75]

Notwithstanding anything contained in Chapter IX or any other law for the time being in force, but without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered by the Registrar in this behalf, may; on the application of a society, by order in writing, direct the payment of any debt or outstanding demand due to the society by any member or past member or deceased member, by sale of the property or any interest therein, which is subject to a charge under sub-section (1) of section 35:

Provided that no order shall be made under this section, unless the member, past member or the nominee, heir or legal representative of the deceased member, has been served with a notice of the application and has failed to pay the debt or outstanding demand within thirty days from the date of such service.

Execution of orders, etc. [Sec. 76]

Every order made under sub-section (2) 68 or under section 75, every decision or award made under section 70, every order made by the liquidator under section 73 and every order made by the Tribunal under section 82, section 84, section 85 or section 86 and every order made under section 83, shall , if not carried out,-

- (a) on a certificate signed by the Registrar or any person authorised by him in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court; or

- (b) where the order is for the recovery of money, be executed according to the law and under this rules for the time being in force for the recovery of arrears of public revenue due on land:

Provided that any application for such recovery shall be made-

- i. to the Collector and shall be accompanied by a certificate signed by the Registrar or by any person authorized by him in this behalf;
 - ii. within twelve years from the date fixed in the order, decision or award and if no such date is fixed, within twelve years from the date of the order, decision or award, as the case may be; or
- (c) be executed by the Registrar or any other person subordinate to him empowered by the Registrar in this behalf, by the attachment and sale or sale without attachment of any property of the person or a society against whom the order, decision or award has been obtained or passed.

Registrar or person empowered by him to be a civil court for certain purposes [Sec. 77]

The Registrar or any person empowered by him in this behalf shall be deemed, when exercising any power under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property, or when passing any orders on any application made to him for such recovery, to be a civil court for the purpose of Article 136 of the Schedule to the Limitation Act, 1963 (Central Act 36 of 1963).

Attachment of property before award or order [Sec. 78]

If the Registrar is satisfied on an application, report, inquiry or otherwise that any person with intent to delay or obstruct the enforcement of any order, decision or award that may be made against him under the provisions of this Act-

- (a) is about to dispose of the whole or any part of his property;
or
- (b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar, the arbitrator or the liquidator, as the case may be, he may, unless adequate security is furnished, by order in writing, direct the attachment of the said property, and such attachment shall have the same effect as if made by a competent civil court.

Recovery of sums due to Government [Sec. 79]

- (1) All sums due from a society or from an officer or member or past member or deceased member of a society as such to the government, including any costs awarded to the Government under any provision of this Act, may, on a certificate issued by the Registrar in this behalf, be recovered in the same manner as arrears of public revenue due on land.
- (2) Sums due from a society to the Government and recoverable under sub-section (1) may be recovered first, from the property of the society and secondly, in the case of a society the liability of the members of which is limited, from the members, past members or the estates of deceased members, subject to the limit of their liability, and in the case of other societies, from the members, past members or the estates of the deceased members;

Provided that the liability of past members and estates of deceased members shall in all cases be subject to the provisions of section 26.

Officers, etc. of co-operative societies [Sec. 80]

- (1) The Government shall classify the societies in the State according to their type and financial position.
- (2) The Government shall, in consultation with the State Co-operative Union, fix or alter the number and designation of the officer and servants of the different classes of societies specified in sub-section (1).
- (3) The Government shall, in consultation with the State Co-operative Union, make rules [either prospectively or retrospectively] regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of societies specified in sub-section (1).

(3A) Notwithstanding anything contained in this Act or the rules made or orders issued thereunder or in the bye-laws of any society relating to the recruitment and conditions of service of officers and servants of societies, all appointments of officers and servants of the societies mentioned in the Scheduled for which direct recruitment is resorted to shall be made from a select list of candidates furnished by the Kerala Public Service Commission.

(3B) All appointments made by direct recruitment to the societies referred to in subsection (3A) on or after the 25th day of April, 1995 and before the date of publication of the Kerala Co-operative Societies (Amendment)

Ordinance, 1995 (Ordinance No. 10 of 1995) shall be invalid.

- (4) Notwithstanding anything contained in sub-section (1) of sub-section (2), ten per cent of the posts of employees of every society shall be reserved for appointment from persons belonging to the Scheduled Castes and Scheduled Tribes where the method of appointment to such posts is by direct recruitment.

Appeals, Revision and Review

Tribunal [Sec. 81]

- (1) The Government shall constitute a single member Tribunal to exercise the powers and discharge the functions conferred on the Tribunal under this Act.
- (2) A person shall not be qualified for appointment as a member of the Tribunal unless he is or has been holding the post of a District Judge in the State.
- (3) The term, salary and allowances and other conditions for service of the member shall be such as may be decided by Government from time to time.
- (4) The Government shall make rules for regulating the procedure and disposal of the business of the Tribunal.

Provisions as to certain pending Proceeding [Sec. 81A]

Every proceeding pending before the Tribunal immediately before the commencement of this Act shall stand transferred to and will be decided by the Tribunal constituted under this Act:

Provided that all such proceedings relating to orders passed by the Registrar under sections 32 and 33 of the Act, shall be sent to the Government for their decision.

Explanation - ‘Proceeding’ includes any appeal, revision, petition or application for review.”

Appeals to Tribunal [Sec. 82]

- (1) Any person aggrieved by –
 - (a) an award of the Co-operative Arbitration Court under sub-section (1) of section 70; or
 - (b) an order of the Registrar made under clause (ii) of sub-section (8) or clause (ii) of subsection (9) of section 14; or
 - (c) any decision of the Registrar made under sub-section (6) of section 70; or
 - (d) any decision under sub-section (6) of section 70 of the person invested with powers in that behalf by the Government; or
 - (e) any award of the arbitrator under sub-section (6) of section 70, may, within sixty days from the date of such decision or award, as the case may be, appeal to the Tribunal and the Tribunal may pass such orders on the appeal, as it may deem fit.
- (2) An order passed by the Tribunal under sub-section (1) shall be final.

Appeals to other authorities [Sec. 83]

- (1) An appeal shall lie under this section against –
 - (a) an order of the Registrar made under sub-section (2) of section 7 refusing to register a society; or

- (b) an order of the Registrar made under sub-sections (4) and (6) of section 12 refusing to register an amendment of the bye-laws of a society; or
 - (c) a decision of a society refusing to admit any personas as a member of the society or expelling any member of the society; or
 - (d) an order made by the Registrar under section 67 apportioning the cost of inquiry held under section 65 or an inspection made under section 66; or
 - (e) an order of surcharge made by the Registrar under section 68; or
 - (f) an order made by the Registrar under section 71 directing the winding up of a society; or
 - (g) any order made by the liquidator of a society in exercise of the powers conferred on him by section 73; or
 - (h) any order made under section 76; or
 - (i) an order for attachment of any property made by the Registrar under section 78; or
 - (j) any order made by any person exercising all or any of the powers of the Registrar.
- (2) An appeal under sub-section (1) shall be made within sixty days from the date of the order or decision,
 - (a) If the order or decision was made by the Registrar, to the Government; and
 - (b) in order cases, the Registrar, and the Government or the Registrar, as the case may be, may pass such order on the appeal as they or he may think fit.

Revision by Tribunal [Sec. 84]

The Tribunal may call for and examine the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or revised, the

Tribunal may pass such order thereon as it may deem fit:

Provided that the Tribunal shall not take any action under this section if

- (a) the time for appeal against the decision or order has not expired; or
- (b) the decision or order has been made the subject-matter of an appeal;

Provided further that no order shall be made under this section unless notice has been given to all interested parties and they have been given a reasonable opportunity of being heard.

Review of orders by Tribunal [Sec. 85]

- (1) The Tribunal may, either on the application of the Registrar or on the application of any party interest, review its own order in any case and pass in reference there to such order as it think fit:

Provided that no such application shall be entertained unless the Tribunal is satisfied that there has been a discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made or

that there has been some mistake or error apparent on the face of the record or that there is any other sufficient reason for reviewing its order;

Provided further that no such order shall be made under this sub-section unless notice has been given to all interested parties and they have been given a reasonable opportunity of being heard.

- (2) An application for review under sub-section (1) by any party shall be made within ninety days from the date of communication of the order of the Tribunal.

Interlocutory orders by Tribunal [Sec. 86]

Where an appeals made to the Tribunal under section 82 or where the Tribunal calls for the record of a case under section 84, it may, in order to prevent the ends of justice being defeated, make such interlocutory order pending the decision of the appeal or revision as it may deem fit.

Powers of revision of Registrar and Government [Sec. 87]

- (1) The Registrar may of his own motion or on application call for and examine the record of any officer subordinate to him not being an officer exercising the powers of the Registrar, and the Government may of their own motion or on application call for and examine the record of the Registrar including any officer exercising the powers of the Registrar, in respect of any proceeding, not being a proceeding in respect of which an appeal to the Tribunal is provided by section 82, to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality of propriety of any decision passed or order made thereon, and if, in any case it appears to the Registrar or the Government that any such decision or order should be

modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly:

Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within three months from the date on which the proceeding, decision or order to which the application relates was communicated to the applicant.

- (2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity or making his representation.
- (3) The Registrar or the Government, as the case may be, may suspend the execution of any decision or order pending the exercise of his or their power under sub-section (1) in respect thereof.
- (4) The Registrar or the Government may award costs in proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit.

Offences and Penalties

Offences [Sec. 94]

- (1) No person other than a society shall trade or carry on business under any name or title or which the word ‘co-operative’ or its equivalent in any Indian language is part without the sanction of the Government.
- (2) Any person carrying on any trade or business in contravention of sub-section (1) shall be punishable with fine which may extend to two thousand rupees.

- (3) Any member or past member or the nominee, heir or legal representative of a deceased member of a society who contravenes the provisions of section 35 by disposing of any property in respect of which the society is entitled to have a first charge under that section or does any other act to the prejudice of such claim, shall be punishable with fine which may extend to two thousand rupees.
- (4) The committee of a society or an officer or member thereof wilfully making a false return or furnishing false information or failing to produce cash balance on demand or failing to make the records available for audit, inquiry or inspection, or any person wilfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this act or wilfully not furnishing any information required from him by a person authorised in this behalf under the provisions of this Act, shall be punishable with fine which may extend to five thousand rupees.
- (5) Any employer or officer who, without sufficient cause,
 - (a) fails to deduct any amount as required by sub-section (2) of section 37; or
 - (b) fails to pay to a society the amount deducted by him under that sub-section within a period of seven days from the date on which such deduction is made, shall be punishable with fine which may extend to five thousand rupees.
- (6) If any person collecting the share money for a society in formation does not deposit the same in the State Co-operative Bank, a Central Co-operative Bank, a Postal

Savings bank or in any other bank approved by the Registrar within fourteen days of its receipt, he shall be punishable with fine which may extend to five thousand rupees.

- (7) If any person collecting the share money for a society in formation makes use of the funds so raised for conducting any trade or business in the name of the society to be registered or otherwise, he shall be punishable with fine which may extend to five thousand rupees.
- (8) If any officer or member of a society misappropriates or unauthorisedly or illegally keeps any money belonging to that society he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both.
- (9) The provisions of this section shall be without prejudice to any action that may be taken against the offenders under any other law for the time being in force.

Cognizance of offences [Sec. 95]

No court inferior to that of a Magistrate of the first class shall try any offence under this Act and no prosecution shall be instituted under this Act without the previous sanction of the Registrar:

Module IV

ADMINISTRATIVE SET-UP OF CO-OPERATIVE DEPARTMENT IN KERALA

The Department of Co-operation is headed by the Registrar of Co-operative Societies. At the Headquarters, the Registrar of Co-operative societies is assisted by *four Additional Registrars* of co-operative societies, *two Joint Registrars*, one Law Officer and one finance officer and a Research Officer. One Additional Registrar of co-operative societies is in charge of Credit wing and the second Additional Registrar looks after Consumer wing, and the third Additional Registrar is in charge of General administration and matters in respect of Circle Co-operative unions and publicity, and the fourth Additional Registrar is in charge of co-operative Information Bureau and Integrated Co-operative Development Project (ICDP) respectively.

Out of the two *Joint Registrars* in Head Office, one Joint Registrar is in charge of matters relating to the *Marketing and Processing Co-operative Societies* and other Joint Registrar is in charge looks into the matter pertaining to *Scheduled Caste and Scheduled Tribe Co-operative Societies* in the State. The Law officer and Finance Officer who are on deputation from the secretariat advise the Registrar of Co-operative societies on matters relating to legal aspects and finance matters respectively.

Besides the above officers, *7 Deputy Registrars* of Co-operative societies, *13 Assistant Registrars* of Co-operative Societies, one Research officer from Economics and Statistics Department, One Editor Cum-Press Relation officer and one PA

to Registrar of co-operative societies are working at the head quarters.

One Deputy Registrar of Co-operative Societies is working as intermediately officer of the ICDP Section in the headquarters.

In head office there were 24 sections. They are:-

1. Establishment-A (EA)
2. Establishment-B (EB)
3. Accounts
4. IT Division
5. Fin A
6. Fin B
7. Employees Matters of Co-operative Institutions (EM)
8. Marketing and processing- I
9. Marketing and processing –II
10. H V/M T
11. Consumer (CS)
12. Inspection Cell
13. General
14. Vigilance
15. Publication and Training (PT)

16. Scheduled Caste/Tribes (SCT)

17. Credit Long Term (CLT)

18. Credit general (CG)

19. Credit banking (CB)

20. Credit primaries (CP)

21. Integrated co-operative development Project (I C D P)

22. Planning & Monitoring (P&M)

23. Statistics (ST).

24. Co-operative Information Bureau

- ✓ A Co-operative Information Bureau is functioning at the head office and a monthly publication *Sahakarana Veedhi* is published regularly by the Bureau. The Editor cum Press Relation Officer leads the Bureau.
- ✓ The Statistical Wing is manned by the staff from the Department of Economics and Statistics.
- ✓ A directorate of co-operative audit is constituted which is headed by director of Co-operative Audit who is an IAS/IAAS officer. The director is assisted by one Additional Director, one Joint Director, One Deputy Director, One Assistant Director and Seven Auditors of Co-Operative societies. The Directorate is engaged with audit of all co-operative institutions in the state.
- ✓ A Co-Operative vigilance office is constituted to investigate all cases of misappropriation, corruption and major irregularities in Co-Operative societies. It is headed by DIG

of Police assisted by three DYSPs, three C.I.s and police constables. It has three zonal offices at Alleppy, Thrissur and Kannur. The Office of Co-Operative Vigilance Officer is in charge of a Joint Registrar of Co-Operative Societies.

- ✓ In the district there are two wings, i.e., General and Audit. One Joint Registrar (General) and one Joint Director (Audit) are headed the above two wings respectively. At Taluk level one Assistant Registrar of Co-operative Societies for General Administration and one Assistant Director of Co-operative Societies, for audit of Co-operative Societies is functioning.
- ✓ One Assistant Registrar of Co-operative Societies is working as ***Liaison Officer*** attached to the Joint Registrar (General) Ernakulam, to liaison the work with the Advocate General in respect of O.P s filed before the Hon. High Court of Kerala.
- ✓ Services of 9 Deputy Registrars of Co-operative Societies and 23 Co-operative Inspectors are rendered to the State Co-Operative Union for working as Principals and Lecturers respectively in the 9 Co-operative Training Centers run by State Co-operative union on free services.
- ✓ A vigilance wing is functioning in the Department and 1 Deputy Registrars all over the state look after/conducts Inspections in the Co-operative Societies. A part from this an inspection cell headed by two Deputy Registrar constituted for Inspection mainly in Apex, central and Urban Banks.
- ✓ A Co-operative Tribunal is also functioning as an appellate authority on the awards issued by the Departmental Arbitrators. The Tribunal is appointed from the judicial service and should be a judge not below the rank of District and Session judge.

- ✓ Government vide GO (P) 1/03dt. 02.01.03 had constituted Co-operative Arbitration Court headed by one presiding officer to hear and dispose all Non-Monetary disputes in the state.
- ✓ A Co-operative Election commission constituted vide G.O (Ms) 109/01/co-op DT. 9.11.01 comprising of the following staff is functioning at the Head quarters at Thiruvananthapuram for conducting election in the credit co-operative societies in the state.

Delegation of Powers

- **Registrar of Co-operative Societies** – The registrar is empowered with the right to exercise all of the powers as provided in the Kerala Co-operative societies Act, 1969 and the Rules thereon. 3 The main powers are registration of co-operative societies, amendment of byelaws of co-operative societies, conduct of elections in societies, providing state aid to co-operatives, audit of co-operatives, arbitration, execution, liquidation and inspection, supervision of co-operatives. The Registrar, with the assistance of Additional Registrars, Joint Registrar, Deputy Registrars, Assistant Registrars and other subordinates perform all these functions in the cases of societies having area of operation beyond one district. In other cases, Joint Registrars' in the districts and Assistant Registrar's at the circles level have been delegated with all or some of the powers of the Registrar. Besides above, Registrar has both administrative and financial powers within the Department.
- **Joint Registrars (General)** in the districts are delegated with all the powers of Registrar mentioned in para 2.1 above, within the districts.

- **Joint Registrars** (Audit) in the districts are delegated with the powers of Registrar mentioned in para 2.1 above within the districts.
- **Assistant Registrars** in the circles are delegated with all the powers of the Registrar mentioned in para 2.1 above within the circles, provided under Sections 29(2), 30,63,64,65,66,67,69,70,75 and 76 of the Act.
- **Co-operative Inspectors** working in the circle offices are under the immediate control of Assistant Registrars (General), who are authorised to conduct inspection and inquiry under Section 65 and 66 of the Act, to dispose off arbitration cases and to work as Sale Officers. They will be appointed as returning officers to conduct election to committees of societies, to act as part time administrators of societies etc.
- The co-operative auditors working in the circle offices are under the immediate control of Assistant Registrars (Audit). They will be appointed as auditors of cooperative societies.
- Clerks, Confidential Assistants, Typists and Peons are working in this department as common category and do the work as specified in the manual of office procedure.

Audit [Sec. 63]

- (1) The Registrar shall audit or cause to be audited by a person authorized by him by general or special order in writing in this behalf, the accounts of every society at least, once in each year.
- (2) The audit shall include an examination of overdue debts, if any, the verification of the cash balance and securities and a

valuation of the assets and liabilities of the society concerned and such other audit matters, as may be prescribed.

- (3) For the purpose of audit, the Director of Co-operative Audit or the person authorized by him under section 63 shall have the following powers, namely:-
- a) he shall, at all reasonable times, have access to all the books, accounts, documents, papers and all other relevant records, securities, cash and other properties belonging to, or in the custody or control of the society;
 - b) he may summon any person in possession of, or responsible for the custody, of any such books, accounts, documents, papers, other records, securities, cash or other properties, to produce the same at any place at the headquarters of the society or any branch thereof or, where there is no working office for a society, at the office of the Director of Co-operative Audit or at the office of any of his subordinate officers, as maybe specified by him; and
 - c) such other powers as may be prescribed.
- (4) Every person who is or has been, at any time, an officer or employee of the society and every member and past member of the society, who is in possession of any information and records in regard to the transactions and working of the society, shall furnish such information in regard to the transactions and working of the society, as the Director or the person authorised by the Government under sub-section (3) of section 63 may require.
- (5) The financial statement and other details required for the completion of audit shall be prepared by the society, within

three months from the date of completion of the year and the fact shall be reported to the Director of Co-operative Audit or to the person authorized by him in this behalf.

- (6) The audit shall be commenced within one month from the date of receipt of the report under sub-section (4) by the Director of Co-operative Audit or the person authorised by him, as the case may be, and shall be completed within a period of nine months.
- (7) The amount of fee for the audit of accounts of society for each year shall be such, as may be fixed by the Director of Co-operative Audit, in accordance with the rules made in this behalf.
- (8) The fee shall be paid by the society concerned within thirty days of intimation thereof and in case of non-payment of the fee within the period it shall be recoverable in the manner specified in section 79.
- (9) The procedure for payment of the fee shall be such, as may be prescribed.
- (10) If the result of the audit held under section 63 discloses any defects in the working of a society, the Director of Co-operative Audit may bring such defects to the notice of the society and if the society is affiliated to another society, also to the notice of that other society.
- (11) If the result of the audit held under section 63 discloses any serious defect in the working of the society, the Director of Co-operative Audit or the person authorized by him shall communicate the same forthwith to the Registrar for immediate further action.

- (12) The Director of Co-operative Audit may, by order in writing, direct the society or its officers to take such action, as may be specified in the order, within the time mentioned therein to rectify the defects disclosed in the audit, under intimation to the Registrar.

Audit Report [Rule 64 B]

- (1) The auditor shall submit an audit memorandum in the form specified by the Director of Co-operative Audit on the accounts examined by him and on the balance sheet and final accounts as on the date for the period up to which the accounts have been audited and shall state whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give all the information required by the Act and give a true and fair view:—
- (i) in the case of the balance sheets of the state of society's affairs as at the end of the year or any other subsequent date to which the accounts are made up and examined by him; and
 - (ii) in the case of the profit and loss account of the profit or loss for the year or the period covered by the audit, as the case may be.
- (2) The **audit memorandum** shall state:-
- (a) whether the Auditor had obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purpose of his audit;
 - (b) whether in his opinion, proper books of accounts, as required by the Act, these rules and the bye-laws of the

society have been kept and regularly maintained by the society so far as it appear from the examination of these books; and

- (c) whether the balance sheet and the final accounts, examined by him are in agreement with the books of accounts and returns of the society.
- (3) Where any of the matters referred to in sub-rule (2) are answered in the negative or with a qualification, the person who does the audit shall specify the reasons for the answers in the audit memorandum.
- (4) The audit memorandum shall also contain schedules with full particulars of:—
- (i) all transactions which appear to be contrary to the provisions of the Act, the rules or the bye-laws of the societies;
 - (ii) all sums which ought to have been, but have not been brought into account, by the society;
 - (iii) any material impropriety or irregularity in the expenditure or in the realisation of moneys due to the society;
 - (iv) any money or property belonging to the society which appears to the auditor to be bad or doubtful debt;
 - (v) an audit classification statement prepared in accordance with instructions issued by the Registrar from time to time; and
 - (vi) any other matters specified by the Registrar on this behalf.

- (5) Within three months from the date of receipt of the audit report the Director of Co-operative Audit shall issue the audit certificate and a copy of the audit memorandum specified in sub-rule (1) duly signed by him. While communicating the audit memorandum, the Director of Co-operative Audit may modify or expunge any portion thereof which appears to him to be objectionable or not justified by facts.
- (6) The society shall publish or exhibit in the Notice Board of the society:—
- (i) the copy of audit certificate;
 - (ii) the statement showing the receipts and disbursements for the year;
 - (iii) the profit and loss account; and
 - (iv) the balance sheet in the manner specified by the Director of Co-operative Audit and shall also keep them open for inspection by any member of the society. The summary of the audit memorandum shall also be read out at the general body meeting of the society.
- (7) The Director of Co-operative Audit shall have powers to issue directions to the societies to prepare and submit any other statements and schedules and call for any details which are necessary for the conduct and completion of audit.
- (8) The Director of Co-operative Audit shall be an officer on deputation from the Indian Audit and Accounts Service not below the rank of Deputy Accountant General or an officer from Indian Administrative Service.

Qualifications of an Auditor [Rule 64 A]

Auditor means an officer under the Director of Co-operative Audit, possessing graduation or post graduation and a Higher Diploma in Co-operation or Junior Diploma in Co-operation or Higher Diploma in Co-operation and Management or Higher Diploma in Co-operation and Business Management awarded by the Board of Examinations of State Co-operative Union or National Council for Co-operative Training (NCCT), New Delhi or Graduation or Post Graduation in Commerce with specialization in Co-operation or Diploma in Co-operative Audit or B.Sc. (Cooperation and Banking) Degree of Kerala Agricultural University.

The academic qualification stated above is not applicable to the existing employees of Co-operative Department who has experience in audit or inspection of co-operative societies as on the date of this notification and who has completed the period of probation successfully and who has a working knowledge in Malayalam language:

- (i) A Chartered Accountant means Chartered Accountant, defined in the Chartered Accountants Act, 1949 (Central Act No. XXXVIII of 1949) who have a fair knowledge of the functioning of the co-operation and shall have an experience of at least two years in auditing and the Chartered Accountants shall have working knowledge in Malayalam Language;
- (ii) Auditing firm means a firm of more than one Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, who or which shall have a fair knowledge of the functioning of the co-operation and shall have an experience of at least two years in auditing

of which the auditing firm would like to be included in the panel and Chartered Accountants shall have working knowledge in Malayalam Language;

- (iii) An officer who had retired from the service of the department of Co-operation as Auditor or Inspector of Co-operative Societies or an officer who had acquired the educational qualifications and working experience of minimum five years in Co-operative Audit shall be appointed as Auditor. Provided he had not elapsed the period of five years from the date of superannuation: Provided that the retired auditors shall be appointed for audit only in case there is no auditor left in the panel approved by the Director of Co-operative Audit and for that purpose the Director of Co-operative Audit shall approve a panel of retired auditors, separately every year.
- (iv) The general body meeting of society/societies shall appoint departmental auditor under the control of Director of Co-operative Audit from among the panel prepared by him and apply to the Director of Co-operative Audit to render the services of the Auditor/Auditors exclusively for the society/bank or for a group of societies by remitting the required audit cost as per the provisions of Kerala Service Rules:
- (v) It has been made obligatory for an auditor to submit the report within 30 days from the date of completion of the audit of the society even though no statutory penalty has been laid down, in the Act that the defaulting auditor shall not be entitled to avail the exemption provided in section 106 of the Act.

Levy of Audit Fees [Rule 65]

The Audit fee shall be calculated at the rate of 50 paise for every 100 rupees or part thereof, on the working capital, the value of sales or on the gross income, as the case may be, provided that the maximum audit fee payable by the society shall not exceed Rs. 100,000.

Every co-operative society shall pay to Government within one month of receipt of the annual audit certificate and audit fee calculated on the working capital as on the last day of the Co-operative year to which the audit relates or on the total sales during the year or on the gross income during the year, as the case may be, as shown below:-

Type of society	Audit fees to be Calculated
1. Credit societies (Excepting Primary Co-operative Agricultural and Rural Developmental Banks, Housing Societies and House Mortgage Banks)	On working capital
2. Primary Co-operative Agricultural and Rural Developmental Banks, Housing Societies and House Mortgage Banks	On the aggregate of loans issued and that recovered during the year under audit
3. Societies having credit and non-credit activities	On working capital or on sale proceeds of goods whichever is higher

4. Societies dealing in goods (excepting Coir Societies)	On sale proceeds
5. Coir Co-operative Societies	On proceeds of Coir sold as owners as well as on the commission realized on goods sold as agents.
6. Transport Societies	On hire charges collected and sale proceeds of articles.
7. Other Societies	On gross income

If any doubt arises as to which of the categories, a particular co-operative society is to be included for the purpose of calculation of audit fees, the matter shall be decided by the Director of Co-operative Audit.

Exemption [Rule 65 (3)]

The following classes of societies are exempted from the payment of audit fees –

- (a) All co-operative societies of which all or a majority of the members are belonging to Scheduled Caste or Scheduled Tribes.
- (b) All Farming Societies.
- (c) All Social Welfare Societies.
- (d) An society or group of societies which has its accounts audited as its own expense by an officer appointed by Director of Co-operative Audit.

- (e) Any society for the 1ST year of audit, irrespective of the date of commencement of business.
- (f) Any Weavers' Society or Coir Co-operative Society or Primary Society formed for the benefit of fisherman until it has completed the sixth Co-operative year after its commencement of business.
- (g) Any credit society the working capital of which does not exceed Rs. 2000 and any other society the sales of gross income of which does not exceed Rs. 10000/-.
- Vanitha Co-operative Societies need pay only half of the rate of audit fees chargeable [3A].

Audit programme

Since the auditor is required to complete the audit within the time allotted for it, it is absolutely necessary that he should prepare an audit programme detailing the items of work to be carried out and distributing the work amongst his assistants. The audit programme in order to be effective has to be based on a standard model, which would contain all the usual items. The auditor may then adopt the standard programme after making suitable additions and modifications therein to take account of the efficacy or otherwise of the system of internal control as revealed by his review of the accounting procedures and of the peculiarities of the activities undertaken.

The audit programmes will not only record the exact details of the work to be performed by the auditor and his assistants, but will also have columns for the initials of the persons performing each part as and when they complete it. The auditors even though single-handed, should also prepare audit programme before commencement of their audits. It has to be

noted that every auditor, irrespective of his professional status or academic qualifications, is required to have very clear ideas as to the exact nature and extent of the work to be executed by him.

Without framing the audit programme, the auditor will be groping in the dark with no clear ideas as to what has been done and how he has carried out his work so that he may be able to prove that he has carried out his work logically and efficiently and has applied due skill and diligence. Audit programme will also guard against possible omissions and ensure thorough and systematic checking thus helping to avoid waste of time and energy resulting from haphazard and unsystematic checking. The auditor will also be able to complete the audit within the time allotted to it. It is, therefore, needless to point out that even when the Auditor works single-handed, he must prepare his audit programme.

Vouching

The term “vouching” is used to describe the examination of a document or a series of documents for the purpose of verifying a transaction which is recorded in the book and in appropriate cases ensuring that the system of internal control relating to the transaction has been duly followed. Vouching is the very essence of auditing and the whole success of an audit depends upon this intelligence and thoroughness with which this part of audit work is carried out. It has, however, to be understood that vouching does not mean merely comparing receipts and vouchers with the cashbook. During the course of vouching, the auditor has to examine a whole set of documents such as receipts, vouchers, bills, invoices, statements of accounts, minutes of meetings and such other documents on the basis of which the entries in the cashbook and other books of prime entry have been made. A careful comparison of the entries in the cashbook, journal and

other books of prime entry with the supporting documents would ensure:-

➤ **As regards receipt:-**

- (i) that all moneys due to or receivable by the business have been duly brought into account and there has been no impropriety or irregularity in the realisation of moneys due to the business.
- (ii) All moneys received by the business have been properly accounted for and credited to their proper heads of account.

➤ **As regards payment:-**

- (iii) that all payments made and liabilities incurred are regular, properly authorised and payable out of the funds of the business and have been shown under correct heads of accounts distinguishing between revenue and capital expenditure and in particular that the expenditure incurred and liabilities contracted were necessary and incidental to the business of the society.
- (iv) No fraudulent or unauthorised payments have been debited which reduce the cash balance of the and
- (v) The daily closing balances have been correctly extracted and carried forward.

Audit classifications

At the conclusion of his audit, the auditor is required to award an audit classification to the society. The auditors put all societies in one or other of the following classes.

Audit classification	Remarks
A	Excellent
B	Satisfactory
C	Poor
D	Very bad

Audit is the only method by which Government and the public can judge the position and achievements of the society and the *audit class indicates the degree of success in achieving the objects* for which the society has been organized and also its present position. **Audit must be conducted according to established audit practices and the instructions issued by the Registrar and the audit classification awarded after a careful examination of the extent of fulfillment of the various criteria prescribed for the purpose**, since a wrong classification will not only affect the working of the society and its credit, but will also mislead members and creditors of the society and also the general public as well as the wrong audit classification at higher side also mislead the creditors, depositors, members and Government. So far, the Registrar has laid down specific criteria and maximum marks under each criteria, for the purpose of determining the classification to be awarded in case of the following types of the societies: -

- (i) Agricultural credit, multi-purpose and service societies.
- (ii) Marketing societies.
- (iii) Consumers' societies.
- (iv) Forest labourers' societies.

- (v) Co-operative Sugar Factories.
- (vi) Co-operative spinning mills.
- (vii) Apex and primary land development banks.
- (viii) District Central Cooperative Bank
- (ix) Urban Cooperative Banks.
- (x) Urban Credit Societies.
- (xi) Salary Earners cooperative Societies.

Broad principles

From the above table, it can be understood the audit classification is awarded based on the working of the society. There are other societies, where the Registrar has not issued circular but the auditor has to give the audit classification. The broad principles for awarding audit classification to different types of societies, where specific instructions have not been issued, are as under: -

- (1) Co-operative vitality.
- (2) Administrative Efficiency
- (3) Operational Efficiency.
- (4) Financial stability.
- (5) Staff.
- (6) Internal control.
- (7) Accounts and Records.
- (8) Rectification of audit objections.

State and Role of State in the Development of Co-operative Movement in India

Co-operation is a form of organization, in which persons voluntarily associate together on a basis of equality for the promotion of their economic interests. From this it follows that the persons who come together should have a common economic aim, should pool their resources and should make self-help effective by mutual aid and by strengthening the bonds of moral solidarity between them. To be really successful, the movement must not only be voluntary but also popular and broad based. It must also, to the maximum possible extent, be organized and run by the people themselves. It is on this basis that the movement has been organized in most democratic countries in the West. In many countries, the State has given considerable assistance in various ways, but the initiative has remained with the people.

In a country like India where a majority of the people are poor, many co-operative organizations must necessarily consist of persons with limited means, and these cannot be expected to get on their feet unless a minimum amount of resources is placed at their disposal. It was for this reason that State entered into partnership with co-operatives and started providing loans and subsidies. If the mere provision of share capital, loans and subsidies could yield the result, they should have been evident by now, considering the enormous assistance poured out by the Reserve Bank. On the contrary massive aid provided by the State to the co-operative movement has brought about a number of unhealthy trends in the movement. Large number of co-operative institutions have developed in the country which are co-operative in name but not in fact. It has been often stated that this growing menace of spurious brand of co-operation in India has multiplied in number and in dimensions on account of several concessions

and monetary advantages over other forms of business organization.

The paternal approach of the State and officials has thrown in obscurity and background the necessary attitude for joint action and brought on the forefront what has been described as predominantly financial attitudes. The overwhelming preponderance of State aid has been one of built-in handicaps in the resources of the movement. This open-handed credit policy of the Bank has been largely responsible for making the co-operative institutions complacent and even negligent to the important task of building up owned funds and deposits which are the corner stones of any sound banking business.

From the above observations the conclusion would not be unwarranted that large-scale Government doles have undermined the very spirit of self reliance and have thereby improved the basic character of the co-operative movement. It cannot, of course be denied that a properly and judiciously administered programme of State aid may invigorate the infant co-operatives. At the same time the apprehension that these large-scale doles might give birth to dubious co-operatives is not unfounded. The case with which money can be obtained under the guise of "sahakarita" has been one of the most important factors with some promoters of co-operative societies.

De-officialisation of the co-operative movement

The official co-operators widely acclaimed that without State aid the co-operative movement would not have reached present level and if the State patronage is withdrawn, the movement will not be able to survive long. It has been lately argued by non-official co-operators that on the whole Registrar has shed his original role of a 'friend, philosopher and guide' of the societies; he has become

the Inspector General of Co-operative Police in charge of erring and suspect bands of non-official co-operators.

At the **Fourth and Fifth Indian Co-operative Congress** held in 1963 and 1967 respectively it was stoutly stated that official control was impairing the growth of the co-operative leadership and that it should be done away without delay. The late Prime Minister Nehru also desired that co-operative movement should be free from Government control and deprecated the dependence of the co-operative movement on officialdom.

Dr. Eleanor M. Hough who made a special study of the co-operative movement in India. He writes, "It is hardly debatable that there have been fewer failures of co-operative societies in India due to over-direction than have been due to too slack a guiding rein for new societies or those with a low credit rating." Specifically, he mentioned:-

- ✓ the inadequacy of the education of officers and members of societies in co-operative principles;
- ✓ failure to insist on practices in conformity with these;
- ✓ incompetent or slack supervision;
- ✓ too infrequent audit and lack of follow-up on audit findings;
- ✓ the ineptitude of members;
- ✓ the inadequacy of credit available;
- ✓ failure to detect in time malpractices of committee members or misappropriation or misuse of funds; and
- ✓ the want of expert guidance for societies of other types than credit.

The **Co-operative Planning Committee**, it may be recalled, attributed the main cause of the failure of the Co-operative movement to the *Laissez-faire* policy of the State and not to the acts of commission on the part of the officials of the State.

The co-operative movement, as is well-known is based on the concept of "**mutual help and self help.**" Nobody should, therefore, ordinarily dispute the claims of the non-official co-operators that the co-operative movement is a people's movement and be managed by the people themselves. The leadership of co-operative movement in one of the States, of which the writer has made a special study, is predominantly in the hands of rival class blocks consisting of ex-jagirdars, politicians as well as militant farmers. The way these politicians and other vested interests have been moulding the movement to serve their respective class interests ought to be a matter of serious concern to the champions of **de-officialization**.

The way towards a happy solution in all such cases of official interference does not lie in quarrelling with the official concerned, but in approaching the entire question in a more constructive and co-operative manner. The solution to the ills of the Co-operative movement in most of the States lies not in the hasty de-officialisation as has been made out by some non-official co-operators, but in simplifying the rules and procedures and avoiding redtapism, inefficiency and slackness on the one hand and eliminating unfair dealings and vested interests on the other. What is urgently needed is not '**de-officialisation**', but '**de-politicisation**' of the co-operative movement.

Reconstructing co-operative administration

Based on personal discussions with a number of senior functionaries at the helm of Cooperative affairs, seasoned leaders,

trainers and academicians, following four possible options emerge regarding revamping of Co-operative administrative machinery:

- (a) The Indian Federal Structure, of late, is losing its weight as the successive ruling Governments on one flimsy pretext or the other, have been encroaching upon the subjects in the State List to Concurrent List.
- (b) At a juncture when on the one hand, the Governments are facing financial crunch and almost all the Committees/Commissions including the latest Central Pay Commission and Expenditure Reforms Commission have been advocating downsizing and right-sizing the Government machinery, it is high time that the State Governments alone are adjudged as the most befitting agencies to frame Cooperative policies, plans, programmes and projects and ensure their judicious implementation.
- (c) For the upliftment of the co-operative sector for the rural poor can be well taken care of by invoking provisions of Article 263, a Central Council of Co-operation on the analogy of Central Council of Health, is set-up. Such a Council consisting of representatives both from Union Government and State Governments would be a platform to discuss, debate and review Co-operative policies from time to time, arrive at some consensus, and advise the State Governments accordingly.
- (d) The main cause for slow progress is that the responsibility for administration of Cooperatives is not only dispersed, but also creates a lot of difficulty in co-ordination and execution. In certain cases, the Ministries fail to receive expert guidance from the central machinery. Even various

Co-operative Congresses and A.R.C. observed that there should be a full-fledged Ministry and given responsibility relating to Cooperatives of all kinds.

- (e) Hence, if we really want to bring about modernization and social change, there is a dire need to upgrade the status of present Co-operation Division to atleast an independent department of co-operation if not a full-fledged Ministry so that a unified administrative agency can engage its attention in formulation and execution of plans, research, training, evaluation and review of progress as also dealing with international agencies and attending to parliamentary work relating to Co-operatives.
- (f) The functional Ministries constitute professionally equipped Co-operation Cells to function as liaison with Co-operative Division. The Co-operative Division would act mainly as a "Nodal Agency", in the ultimate analysis, functional Ministries alone would be primarily responsible for bringing innovative measures for Co-operative development and growth. Moreover, the often quoted criticism that Co-operatives in various allied areas are 'orphans', would also be negated.
- (g) The New Millennium urges upon Co-operative Sector in its Centenary year (2004, November 16) to revitalize and compete with the market forces on an equal footing, by re-designing its Vision, Mission, Goals and Objectives in such a manner that these turn out to be more member-driven and member-caring. For this, whole of the Cooperative machinery would have to reconstructed and re-visited facilitating a conducive environment for Good Governance.

Module V

THE BANKING REGULATION ACT, 1949

(AS APPLICABLE TO COOPERATIVE SOCIETIES)

Objectives of the Banking Regulation Act broadly are:

- (i) to safeguard the interest of depositors;
- (ii) to develop banking institutions on sound lines; and
- (iii) to attune the monetary and credit system to the larger interests and priorities of the nation.

The Act was originally in force from 16 March 1949 as the Banking Companies Act, 1949. It was amended and renamed as Banking Regulation Act, 1949 and extended to the cooperative banks from 1 March 1966 as the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies) [B R Act, 1949 (AACS)].

Section 5 (cci) - Some Definitions A cooperative bank is

- a State Cooperative Bank,
- a Central Cooperative Bank or
- a Primary Cooperative Bank Section

Section 5 (ccv) - A Primary Cooperative Bank is:

- a Cooperative Society (other than a Primary Agricultural Cooperative Society);
- primarily in banking business;
- with capital and reserves of not less than Rs.1 lakh; &
- whose byelaws do not permit admission of any other society as a member.

Section 5 (b) Banking is the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise.

A cooperative society which accepts deposits from the public i.e., members and nonmembers and utilizes these for lending will be deemed to be transacting banking business.

Secured Loan is:

- a loan made on the security of assets, the market value of which is not at any time less than the amount of such loan.

Section 6 Business

The businesses a bank may carry on are summarised into three categories:

- (a) Main business i.e., Banking i.e., borrowing, taking or lending money, dealing in Bills of Exchange, Bills of lading and Debentures, issuing letters of credit, buying/selling foreign exchange, acquiring or underwriting stocks.

- (b) Allied business: Acting as agent/trustee/administrator, carrying on guarantee business, providing safe custody.
- (c) Dealing in property is restricted to (i) property coming in satisfaction of claims or as security and (ii) property necessary for its own sake.

Section 9

A bank is prohibited from doing any business other than those mentioned in Section 6. Section 8 specifically prohibits a bank from engaging in trading. However, banks, as agents, have supplied registers, articles or have financed hire purchase. What is important is that the purchases should be carried out purely on indent basis; bank must have no ownership of the article and it should not involve bank's own funds.

Immovable property, howsoever acquired, shall, except such as is required for its own use, be disposed of within 7 years. Reserve Bank of India (RBI) may extend the period if it is in the interest of the depositors.

Section 11 Minimum capital

The value of paid up capital and reserves should not be less than Rs.1 lakh. Value is the real value or exchangeable value and decision of RBI on valuation is final.

Section 14 and 14A prohibit creation of floating charge on unpaid capital or any property of the bank unless RBI certifies that it is not detrimental to the depositors' interest. A floating charge attaches assets in conditions varying from time to time until the charge crystallizes, when it will be a specific charge. The above Sections ensure that future assets are not earmarked to preferred creditors, but are available to all.

Section 18 Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR)

(1) Every Co-operative Bank, not being a State Co-operative Bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), (hereinafter referred to as a Scheduled State Co-operative Bank), shall maintain in India by way of cash reserve with itself of balance in a current account with the Reserve Bank or the State Co-operative Bank of the State concerned or by way of net balance in current accounts, or, in case of a primary Co-operative Bank, with the Central Co-operative Bank of the district concerned, or in one or more of the aforesaid ways, a sum equivalent to at least three per cent. of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held on alternative Fridays during a month with particulars of its demand and time liabilities in India on such Friday or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881) at the close of business on the preceding working day.

Explanation.—In this section and in Sec. 24—

(a) 'liabilities in India' shall not include—

- (i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the Co-operative Bank;
- (ii) any advance taken from a State Government, the Reserve Bank, the Development Bank, the Exim Bank, the Reconstruction Bank, the National Housing Bank, the National Bank, the Small Industries Bank or from the National Co-operative Development Corporation established under Sec. 3 of the National Co-operative

Development Corporation Act, 1962 (26 of 1962), by the Co-operative Bank;

- (iii) in the case of a State or Central Co-operative Bank, also any deposit of money with it representing the reserve fund or any part thereof maintained with it by any other co-operative society within its area of operation, and in the case of a Central Co-operative Bank, also an advance taken by it from the State Co-operative Bank of the State concerned;
- (iv) in the case of a primary Co-operative Bank, also any advance taken by it from the State Co-operative Bank of the State concerned or the Central Co-operative Bank of the district concerned;
- (v) in the case of any Co-operative Bank, which has granted an advance against any balance maintained with it, such balance to the extent of the amount outstanding in respect of such advance, and
- (vi) in the case of any Co-operative Bank, the amount of any advance or other credit arrangement drawn and availed of against approved securities;
- (b) fortnight shall mean the period from Saturday to the second following Friday, both days inclusive;
- (c) net balance in current accounts shall in relation to a Co-operative Bank, mean the excess, if any, of the aggregate of the credit balances in current account maintained by that Co-operative Bank with the State Bank of India or a subsidiary bank or a corresponding new bank, over the aggregate of the credit balances in current accounts held by the said banks with such Co-operative Bank;

- (d) for the purpose of computation of liabilities, the aggregate of the liabilities of a Co-operative Bank to the State Bank of India, a subsidiary bank, a corresponding new bank, a Regional Rural Bank, a banking company, or any other financial institution notified by the Central Government in this behalf shall be reduced by the aggregate of the liabilities of all such banks and institutions to the Co-operative Bank;
- (e) any cash with a Co-operative Bank or any balance held by a Co-operative Bank with another bank, shall not, to the extent such cash or such balances represent the balance in, or investment of, agricultural credit Stabilisation Fund of such Co-operative Bank, be deemed to be cash maintained in India.

(2) The Reserve Bank may, for the purposes of this section and Sec. 24, specify from time to time, with reference to any transaction or class of transactions, that such transaction or transactions shall be regarded as liability in India of a Co-operative Bank, and if any question arises as to whether any transaction or class of transactions shall be regarded for the purposes of this section and Sec. 24, as liability in India of a Co-operative Bank, the decision of the Reserve Bank thereon shall be final."

Sec. 19. Restriction on holding shares in other co-operative societies.—

No Co-operative Bank shall hold shares in any other co-operative society except to such extent and subject to such conditions as the Reserve Bank may specify in that behalf:

Provided that nothing contained in this section shall apply to—

- (i) shares acquired through funds provided by the State Government for that purpose;
- (ii) in the case of a Central Co-operative Bank, the holding of shares in the State Co-operative Bank to which it is affiliated;
- (iii) in the case of a primary Co-operative Bank, the holding of shares in the Central Co-operative Bank of the State in which it is registered.

Section 20 Restriction on loans and advances

No cooperative bank shall:

- (a) make loans on the security of its own shares;
- (b) grant unsecured loans to any Director or to firms / individuals / companies in which a Director is interested or is a guarantor.

The term "Director" includes, near relatives of the Director. The restrictions do not apply to loans against Govt. supply bills, bona fide commercial bills and trust receipts or to advances granted with RBI approval. Rule 5 provides that a monthly return be submitted to RBI in form II.

Section 20A Restriction on remitting debts

A cooperative bank shall not, except with RBI's approval, remit debts due by Directors, past or present, or by others in whom/in which a Director is interested or is a guarantor.

Section 21 RBI's power to control advances

RBI, in the public interest or in the interest of depositors, may determine policy in relation to advances of banks, or a bank in particular, and all banks or the concerned bank shall be bound to follow the policy.

RBI may also give directions to:

- (a) purpose;
- (b) margin;
- (c) maximum amount;
- (d) rate of interest; and
- (e) other terms and conditions on which advances or other financial accommodation may be given.

The RBI has been issuing directives for controlling the advances against sensitive commodities, such as food grains, sugar, to avoid hoarding of essential commodities. In addition to these powers regarding advances, RBI can issue directions under Section 35A regarding all aspects of functions of UCBs.

Section 22 Licensing

No UCB shall carry on banking business unless it holds a license issued by RBI. Before granting a license, RBI needs to be satisfied, by an inspection or otherwise, that the following conditions are fulfilled:

- (a) that the bank will be in a position to pay its present or future depositors;

- (b) that the affairs of the bank are not being conducted in a manner detrimental to the interest of depositors.
- (c) that the general character of the proposed management will not be prejudicial to the public interest or the interest of its depositors
- (d) that the Bank has adequate capital structure and earning prospects,
- (e) that the public interest will be served.

The RBI may cancel a license if the bank fails to comply / fulfill any of the conditions referred to above. A bank aggrieved by the decision of RBI may, within 30 days, appeal to the Central Govt. whose decision will be final.

Section 23 Opening of new offices

No bank shall open new place of business or change the location of existing place of business without obtaining prior permission of RBI. Before granting permission, RBI may need to be satisfied by an inspection under Section 35 or otherwise as to:

- (a) financial condition and history of the bank;
- (b) general character of its management;
- (c) adequacy of its capital structure;
- (d) earning prospects; and
- (e) that public interest would be served.

The restriction does not apply to the opening of a temporary place of business in the same city or village for a period not exceeding one month on special occasions like exhibition or mela. Every

UCB is required to submit to RBI a quarterly return showing Offices opened and closed in Form – VI.

Section 27 Returns

Every UCB shall, before the close of succeeding month, submit to RBI a return showing assets and liabilities in India as at the close of business on the last Friday of every month in Form IX.

RBI may direct a bank to furnish it with such statement and information relating to the business and affairs of the bank as may be considered necessary.

Section 29 & 31 Accounts and Balance sheet

Every UCB shall prepare Balance Sheet (BS) and Profit & Loss (P & L) Account as on the last working day of the year in the prescribed form. The Principal Officer and three Directors should sign the BS and P & L Account. The accounts and BS, together with auditor's report, should be published in a local newspaper and three copies thereof submitted to RBI within six months from the end of the year.

Banks with deposits of less than Rs.20 lakhs may only display the accounts in every office of the bank instead of publishing in newspaper.

Section 35 Inspection

RBI may on its own, and on a direction from the Govt. of India, inspect, through its officers, any UCB and its books and accounts. RBI shall supply to the bank a copy of its report.

It shall be the duty of every Director, officer or employee of the UCB to produce to any officer making inspection all such books, accounts and other documents in his custody or power and to

furnish to him any statement and information relating to the Bank within such time as the said Officer may specify.

Section 35A RBI directions

RBI may

- (a) in the public interest;
- (b) in the interest of banking policy; or
- (c) to prevent affairs detrimental to the interest of depositors;
or
- (d) to secure proper management of the business of the bank
issue directions and an UCB shall be bound to comply.

Section 36 Further powers of RBI

RBI may

- (a) caution or prohibit a bank against any transaction;
- (b) give assistance of loan;
- (c) In order to ensure reorganization or expansion of cooperative credit on sound lines.
 - (i) depute its officers to watch the proceedings of the Board meeting and the officers shall be heard.
 - (ii) appoint one or more of its officers to observe the manner in which affairs of the UCB or its branches are being conducted.

Section 45 Suspension of Business:

RBI may apply to the Central Government for issuing an Order of moratorium in respect of any UCB, where it feels that there is a good reason to do so.

Section 45ZA Nomination

- (1) Where a deposit is held by an UCB, all the depositor/s together may nominate, in the prescribed manner, one person to whom (in case of minor, to whose guardian), the amount may be returned by the bank, in the event of death of the sole depositor or the death of all the depositors. Payment by the bank in accordance with this provision shall constitute a full discharge to the UCB of its liability. In the case of a joint deposit account, the nominee's right arises only after the death of all the depositors.
- (2) Any person leaving any article in Safe Custody may nominate, in the prescribed manner, one person to whom, in the event of death, the article may be returned. The UCB shall, before returning any article under this Section to the Nominee (to the guardian, if the nominee is a minor) prepare (as laid down by RBI) an inventory of the said articles which shall be signed by such nominee (or guardian). Nomination facilities in respect of Safe Custody articles are available only in case of the sole depositors.
- (3)
 - i) An individual who is a sole hirer of a locker may nominate one person.
 - ii) Where such locker is hired by two or more individuals jointly and the locker is to be operated jointly by two or more hirers, such hirers may nominate one or more persons to whom, in the event of the death of such joint hirer or

joint heirs, the UCB may give, jointly with the surviving joint hirer or joint hirers, access to the locker. The bank, before permitting the removal of contents of any locker shall prepare (as laid down by RBI) an inventory of the contents of the locker, which shall be signed jointly by the nominee and the survivor/s. On the removal of the contents of any locker jointly by the nominee and the survivor/s, the liability of the Bank in relation to the contents of the locker shall stand discharged.

Nomination facility is intended only for individuals, and hence, is not available for sole proprietorship concerns, officials etc. Nominee should also be an individual. The Cooperative Bank (Nomination) Rules 1985 have been framed and the form prescribed.

Section 46 Penalties:

Section 46 provides for penalties in case of:

- (a) false statement/data furnished in any return, balance sheet etc., or for the purpose of any provisions of this Act (3 years imprisonment and fine).
- (b) failure to produce books of accounts, documents etc. for inspection. (A fine up to Rs.2, 000 for each failure + Rs.100 for every day the failure continues).
- (c) Deposits received in contravention of Sec. 35(4) (A fine up to twice the amount of deposit received).
- (d) Contravention or non-compliance with the provisions of the Act, Rule, order or direction made under the Act. (A fine up to Rs.50, 000@ for each failure or twice the

amount involved in such contravention or default + Rs.2500/-@ for every day the failure continues).

(e) Sec. 47A raises these to Rs.5, 00,000 + Rs.25, 000 per day.

Impact of Co-operative Law on co-operative management

International Cooperative Alliance (ICA) had requested all nations to bring necessary changes in their co-operative laws in such a manner that ensure democratic management and autonomy of co-operative societies. International Labour Organization had also suggested that Governments should provide a supportive policy and legal framework guided by the cooperative values and principles.

Co-operative management is based on the co-operative principle of "Democratic Member Control". The day to day affairs are administered by democratically elected Board of Directors. "One man one vote" is the principle followed in elections as well as decision making in primary co-operative societies. Other co-operative societies adopt suitable voting pattern in such a way that ensures the democratic character in the management.

Co-operative principle of "Autonomy and Independence" is also followed in the management of co-operative societies. This principle envisages that co-operatives are autonomous, self-help organisations controlled by their members. Government of India has by the enactment of 97th Constitution (Amendment) Act of 2012 inserted Article 43B in the Constitution of India which states that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. Article 243ZL inserted by the same states that legislature of a State may, by law, make provisions with respect to the incorporation,

regulation and winding up of co-operative societies based on principles of voluntary formation, democratic member control, member economic participation and autonomous functioning.

The State legislatures of all states have amended the Co-operative Laws prevailing in the states in line with the provisions of the Constitutional Amendment Act. Kerala Co-operative Societies Act 1969 was also amended in 2013 incorporating Co-operative Principles i.e., (1) Voluntary and Open Membership, (2) Democratic Member Control, (3) Member Economic Participation, (4) Autonomy and Independence, (5) Education, Training and Information, (6) Co-operation among Co-operatives, (7) Concern for Community as Schedule II of the Act and several changes were brought into the provisions on management of co-operative societies in Kerala.
