



Government of Bombay

Report of the
Committee on Co-operative Law
in Bombay State
1957



BOMBAY

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1957

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1. Shri G. M. LAUD (*Chairman*),
2. Shri G. H. THAKORE, M.A. (Cant.),
3. Shri R. V. KALIKAR, M.A.,
4. Shri M. P. NANDEDKAR, B.A., LL.B.,
5. Shri MALDEVJI ODEDRA, B.A., LL.B.,
6. Shri C. K. PATEL, B.A.,
Joint Registrar of Cooperative Societies, Bombay State
(Member-Secretary).

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CHAPTER I.

INTRODUCTION.

1. *Background to the appointment.*—The State Co-operative Council at its meeting held on February, 6, 1953, had appointed a Sub-Committee to consider the question of overhauling of the Bombay Co-operative Societies Act, 1925, and the Rules made thereunder in view of the rapid development of the co-operative movement and the new problems arising in the day-to-day working of the co-operative societies. This Sub-Committee of the Council, however, felt that the task could best be done by a Committee appointed by the Government and assisted by the necessary staff. The State Co-operative Council, therefore, requested the Government at its meeting held on February, 7th, 1955 to appoint a Committee for the purpose. In view of the impending reorganisation of the State, the Government postponed decision on the resolution of the Council.

2. *Appointment of the Committee.*—By its resolution, No. CSA-1456-D, dated December, 19, 1956, the Government of Bombay appointed a Committee of the following members to consider the question of amendment of the Bombay Co-operative Societies Act and Rules :—

Shri G. M. Laud (Chairman),

Shri G. H. Thakore,

Shri C. K. Patel, Joint Registrar, Co-operative Societies, Member-Secretary.

The Resolution also asked the Committee “to study the Co-operative Societies Acts which are in force in the component parts of the State, viz.—Kutch, Saurashtra, Vidarbha and Marathwada areas and to suggest a common Act for all the areas and to submit its report within one month”.

3. The Chairman, after consulting his colleagues, represented to the Government that the work of the Committee would be facilitated if the representatives of the component parts of the State were associated with its deliberations and the period for enquiry duly extended. This question was discussed by the State Co-operative Council at its meeting on January, 12, 1957. Following its recommendations, the Government of Bombay by its Resolution No. CSA-1456-D, dated February, 19, 1957, appointed the following additional members on the Committee constituted by the Government Resolution, Industries and Co-operation Department, No. CSA-1456-D, dated December, 19, 1956 :—

1. Shri R. V. Kalikar, M.A., Chairman, Vidarbha Co-operative Bank Ltd., Nagpur.

2. Shri M. P. Nandedkar, B.A., LL.B.,
3. Shri M. R. Unwala, B.A., LL.B., Chairman, Co-operative Tribunal, Rajkot Division, Bhavnagar.

4. Shri M. R. Unwala, attended the first meeting of the Committee but had to resign thereafter owing to ill health. The Government by its Resolution, No. CSA. 1456-D, dated April, 23, 1957, therefore, appointed Shri Maldevji Odedra, B.A., LL.B., Advocate, Porbandar, as a member in place of Shri M. R. Unwala.

5. *Period of enquiry.*—The Government Resolution, dated December 19, 1956, required the Committee to submit its report within a month. By its resolution, dated February, 19, 1957, the period was extended to the end of May 1957. The first meeting of the Committee was held on March, 14, 1957. As a result of the preliminary enquiry, the Committee came to the conclusion that the time period within which it was required to submit its report was inadequate and would require, to be extended upto July, 15, 1957. The Government by Resolution No. CSA. 1456-D, dated 30th May 1957, was pleased to extend the period asked for.

6. *Work of the Committee.*—The Committee held its first meeting in Bombay on March, 14, 1957, to discuss the method of conducting the enquiry. It inspected the mass of the material collected by the Department both from official and non-official sources during the past four years as well as the copies of replies made available by representative institutions in Bombay State in response to the questionnaire issued by the Committee on Co-operative Law appointed by the Union Ministry of Agriculture. The Committee, therefore, decided that the issue of a questionnaire should be dispensed with in order to expedite the enquiry. It, however, appealed to co-operators and co-operative institutions to submit their representations for changes in law which they considered necessary in the interests of societies before, and decided to follow this up by personal discussions with the representatives of different types of co-operative institutions in different regions now forming part of the Bombay State.

7. The Committee visited Nagpur, Aurangabad and Ahmedabad to discuss with the representatives of co-operative institutions in the component parts of the Bombay State, i.e., Vidarbha, Marathwada, Saurashtra and Kutch, the problems arising from the operation of the existing Co-operative laws in their regions and from the introduction of a common law for the whole of Bombay State. The Committee also had detailed discussions with leading co-operators in Maharashtra and Gujarat at Poona and Ahmedabad, respectively, and examined the Registrar of Co-operative Societies on the operation of the Bombay Co-operative Societies Act, 1925. In all it examined 36 witnesses and held 34 meetings to discuss the evidence tendered and the provisions in the Act and the Rules.

8. *Plan of the Report.*—In the following two chapters we have surveyed the growth of co-operative legislation in this country and explained our approach to the problem of improving upon the existing provisions in the Bombay Co-operative Societies Act, 1925. We have come to the conclusion that a new Act, based mainly on Act VII of 1925, but taking note of the more recent co-operative practice and the contemplated expansion of Co-operation, is necessary. We have discussed in the subsequent chapters in detail the pattern of co-operative law which, in our opinion, would meet the needs of Co-operation and have summarised the changes proposed by us in the present Act in Appendix A. One of the terms of reference relates to the Rules. We are of the view that the appropriate stage for framing the Rules will be after the passing of the new law and have, therefore, refrained from framing the draft rules. We have also made certain ancillary recommendations on matters which are closely related to the efficient administration of the Act.

CHAPTER II.

CO-OPERATIVE LEGISLATION.

9. *Background.*—Co-operative law is a comparatively recent piece of legislation, having its origin in the Industrial and Provident Societies Act of 1852, enacted in the United Kingdom. Prior to this law, co-operative societies in the United Kingdom were generally governed by the Friendly Societies Act. From these two pieces of British legislation stemmed the co-operative laws in different countries. Although in actual details, they differ from each other in view of the different conditions under which co-operative societies operate in different countries, co-operative laws are by and large a modified code of the Company Law with co-operative principles fitted therein.

10. Co-operative legislation during the past 100 years has displayed certain basic trends. Their main object is to provide the general basis for protecting the co-operative character of the institutions registered under the Act and leave the creation of the real substance to the bye-laws of each society. Secondly, it is noticed that countries with well-developed co-operative economy have sound co-operative legislation. This objective is achieved by periodically effecting amendments to the Act in order to meet the requirements of the progressive expansion of the movement. The logical corollary of this is that historically, sound legislation can only follow the natural development of the co-operative movement and can never precede the living co-operative societies. This explains the periodical changes in co-operative legislation to which India is not an exception.

11. The laws of Co-operation in Europe are the product of the constant endeavour to give legal status to co-operative practice evolved from time to time in different countries. The Bulgarian Act of 1948 emphasises that the objective of co-operation in that country is to promote the economy of the country and supply the economic and social needs of the members. The Polish Law of 1948 provides for state intervention and empowers the Ministry of Industry and Commerce to appoint, in the case of mixed associations such as Marketing and Handicrafts, a quarter of the members of the Supervisory Councils and approve the nominations of the Committee members. In Rumania, a co-operative can be registered under the law only when it is acceptable to its federal institution for the purpose of affiliation. These are some of the trends of co-operative legislation in certain totalitarian countries. The Swedish law permits large sized societies to hold branch meetings which elect delegates to form general meetings and allows voting by proxy on the basis of one member one proxy. The French law of 1948 governing co-operative societies to be reconstructed with State aid insists on strict administrative supervision by the State till they are able to

work without the State aid. In the United Kingdom the Industrial and Provident Societies Act, permits a society to convert itself into a joint stock company and a company into a society. The Greek law prescribes educational qualifications for persons before they are eligible to seek appointment or election as directors and financial supervisors and imposes a penalty of imprisonment on a person who, actuated by his own interest, hinders or prevents anybody from becoming a member of a co-operative or attempts "to compel or persuade a member to retire from the co-operative or use illicit means which may cause the dissolution of the co-operative or any other loss to it." Elsewhere ideas regarding voluntary membership, State aid, the intervention of the State and other controversial issues have undergone a radical change since the days when the Rochdale Pioneers laid down the co-operative principles and prescribed the rules of co-operative practice and Wolff elaborated them.

12. *Co-operative Credit Societies Act, 1904.*—Prior to 1904, co-operative societies in India could be registered either under the Societies' Registration Act (Act XXI of 1860) or under the Indian Companies Act of 1882. It was, however, found that the elaborate provisions in the latter Act were not wholly suitable to the formation of co-operatives. The problem of providing rural finance through co-operatives stimulated the need for a separate piece of legislation and consequently Co-operative Credit Societies Act (Act X of 1904) was passed "to encourage thrift, self-help and co-operation". This Act was largely based on the English Friendly Societies Act of 1896 and conferred corporate existence on co-operative institutions. The object of the law was, to quote the Government of India Resolution "to provide the requisite legal basis for the establishment in India of Co-operative Credit Societies". In this Act were combined the co-operative principles with the provisions of the Indian Companies Act without invoking the complexities of the latter law since the object was to encourage the formation of co-operative credit societies for simple people with simple means. Although its main object was to assist the organisation of agricultural credit on a co-operative basis, it recognised, in the words of Sir D. Ibbetson, who piloted the legislation, that "artisans, employees of smaller pay may very properly be admitted to the benefits of our legislation."

13. The main feature of this Act was that Co-operation was confined to credit only. Mr. Wolff, however, records this was a slip and "the goal which it set before it from the very beginning was a much larger one such as is now comprehensively pursued, with all forms of beneficent co-operation kept in view." It promoted the registration of co-operative societies for the encouragement of thrift, self-help and mutual aid among its members provided they were not less than 10 and they lived in the same village or town or belonged to the same class or caste. It conceived that the main business of

the society would be to raise funds by deposits from members and loans from non-members, Government and other co-operative societies, and to distribute the money thus obtained in loan to members, or with the special permission of the Registrar, to other co-operative credit societies. The organisation and control of these societies in every presidency was placed in charge of a special Government Officer called the Registrar of Co-operative Societies, who was also charged with the responsibility of auditing their accounts. The emphasis was on unlimited liability and the payment of dividends out of profits of a rural society was debarred.

14. *The Co-operative Societies Act of 1912.*--The Act of 1904 was primarily meant to encourage agricultural credit co-operatives and ruled out the possibility of the development of non-credit co-operation. It was also assumed to meet the requirements of primary credit societies only. The progress of the movement during the following 7 years, however, demonstrated that even rural credit co-operation could not make appreciable progress under the Act because of the lack of facility for higher finance. In the light of this experience, the Co-operative Societies Act of 1912 was enacted. The Act (Act II of 1912) retains simplicity and elasticity, which were the features of the earlier legislation and dealt only with bare necessities leaving the details to be worked out by the State Governments in the light of the conditions operating in each State. It marked the next stage in the development of co-operative legislation by providing facilities for the registration of financial, supervisory and other types of federal organisations and by expanding the scope of co-operation to all spheres of activities.

15. Besides authorising formation of co-operatives for purposes other than credit, which was possible under the Act of 1904 only with the special permission of the Local Government, the Act of 1912 defined in precise terms the objects for which co-operatives could be organised and shifted the division of societies from rural and urban to that on the basis of liability. It also facilitated the growth of central societies by insisting on limited liability, empowered the Local Governments to frame rules and alter the bye-laws so as to put restrictions on dividends to be declared by societies and gave the latitude to the societies with limited liability to sanction distribution of profits to their members in accordance with the principles laid down by the Local Governments. Further-more, the societies were allowed, with the permission of the Registrar to contribute from their profits, after providing for the reserve fund, an amount upto 10 per cent. of their remaining profits to any charitable purpose as defined under the Charitable Endowments Act. This enabled the movement to keep itself in close touch with local life. One significant provision in the Act was prohibition of the use of the word "co-operatives" as part of the title of any business concern other than a registered co-operative society.

16. *Bombay Co-operative Societies Act, 1925.*—Following the enactment of the Government of India Act in 1919, co-operation became a transferred subject and the Government of Bombay was the first Provincial Government to seize the initiative for enacting separate legislation on the subject. Introducing the Bill to consolidate and amend the law relating to co-operative societies in the Presidency of Bombay in the Bombay Legislative Council, the late Shri A. M. K. Dehlavi, the then Minister for Co-operation, explained: "Under the existing Act there are rules which were framed from time to time but an attempt has now been made to embody those rules in this Bill. Really speaking the Bill makes provision for three important matters. Firstly, a distinct classification of the various societies whose objects, finance and methods of working are different, has been made. Secondly, a clear cut system of winding up, liquidation and dissolution of societies on the analogy of the Indian Companies Act, 1913, has been introduced. Lastly, provision desired by a majority of co-operators in this Presidency for the summary recovery of dues in arbitration cases through the revenue authorities has been made. The opportunity has been taken also for the remodelling of some of the sections and to bring them on the basis of Co-operation in its present light". (Bombay Legislative Council Debates, Official Report, July 24, 1924, Page 345.) This Bill, in the framing of which the late Shri Janardan A. Madan, the then Registrar and the late Shri Lallubhai Shamaldas, the then Revenue member, played a prominent part, was finally passed into law on December 4, 1925. Bombay thus provided a model of co-operative legislation to other provinces and co-operation in Bombay State was well served by this Act for 23 years without any major amendment.

17. The Bombay Co-operative Societies Act (Act VII of 1925) reproduced in the main, the framework of the Act of 1912, but introduced important modifications. The Government of India Act had confined the formation of co-operatives to "agriculturists, artisans and persons of limited means." The Bombay Act threw open Co-operation to persons having common economic needs. Furthermore, it highlighted the objectives of Co-operation in the preamble by declaring that the goal was "to bring about better living, better business and better methods of production" by promoting thrift, self-help and mutual aid. The notes on clauses in the Bill underline the approach and vision of those responsible for the legislation and we might be pardoned if we use the same phraseology while detailing the main provisions.

18. The Act defined societies according to the classification approved by co-operators in this State and classified them in accordance with authoritative books on co-operative jurisprudence then available. It raised the limit of interest in accordance with a recommendation from the Bombay Central Co-operative Institute

and the needs of housing societies after taking into consideration the altered value of money. Provision was made in regard to amendment of byelaws, meetings and resolutions, which had been lacking in the old Act. The Bill also facilitated the conversion of a society into a joint-stock company when it ceased to be co-operative in spirit while continuing to remain perfectly business-like. While extending the co-operative principles to all classes of societies instead of restricting them to unlimited liability societies, it brought the provision regarding restrictions on transfer of share or interest into line with the principles generally accepted as essential to a co-operative society. For the first time, the prior charge already given to societies under Act II of 1912 was clearly defined and restrictions on transactions with non-members hitherto dealt under the Rules were incorporated. The Act limited the reward to capital, made a formal provision for a reserve fund and prohibited investment in shares of unlimited liability societies. It codified in a clearer form the principles, practice and provisions relating to contribution to reserve fund, restrictions on distribution of profits, provident fund and contribution to charitable purposes and omitted the intervention of the Collector while extending Registrar's powers in respect of enquiry. The provisions relating to liquidation were modelled on the basis of the Indian Companies Act, 1913, and care was taken to ensure that the public concessions given to a housing society were not abused. The mechanism of arbitration hitherto dealt with in the Rules was placed on the statute and, by incorporating a specific section, the provision in regard to the recovery of money due to a society was unified. The Act also clarified the liability attached to past members as well.

19. *Amendments to Bombay Co-operative Societies Act prior to 1947.*—Soon after the enactment of the Bombay Co-operative Societies Act, 1925, the co-operative movement in the Bombay State was confronted with severe economic depression and had to apply itself to the task of consolidation, rectification and rehabilitation. In the thirties, the problem of Co-operation was discussed by the Royal Commission on Agriculture, the Central Banking Enquiry Committee and the Bombay Provincial Banking Enquiry Committee. Soon after the passing of the Government of India Act, 1935, Congress Ministry assumed office in 1937 and appointed Mehta-Bhansali Committee to make recommendations with regard to the future lines of co-operative development. During the two decades following the enactment of the Bombay Act (Act VII of 1925) it was, however, amended only on five occasions and the changes were not of any very considerable importance. In 1933, Section 72-A was added in order to provide for construction of references to Co-operative Societies Act of 1912 in the enactments. In 1935, Section 33-A was amended in order to enable Government to guarantee the payment of principal and interest on debentures issued by the Land Mortgage Banks and Section 59-A was added in order to provide for the transfer of property, which could

not be sold for want of buyers. Transfer of property under section 59 of the Act was made valid by incorporating section 72-B, even when it was not attached in execution of an order. These amendments were essentially of procedural character. The only important amendments to the Act were in 1938 and 1942. The first recognised the importance of crop protection societies and the second sought to encourage salary earners' societies by permitting deductions from salaries of their members to meet the societies' claims in certain cases. In 1943, section 59-B was incorporated for the recovery of arrears due to Land Mortgage Banks.

20. *Amendments in 1948.*—The Co-operative movement received a stimulus during the war period as a result of the shortage of housing and difficulties in equitable distribution of consumers' goods and foodgrains and from the State Policy of encouraging co-operation for sustaining the tempo of economic activity. The Government of India appointed in 1944, the Agricultural Finance Sub-Committee of the Agricultural Policy Committee to deal with the problems of Agricultural Credit and the Co-operative Planning Committee to examine the question of developing the co-operative movement on a planned basis. The Government of Bombay followed up the reports of these two Committees by the appointment of Committees for enquiring into the organisation of agricultural credit, for the promotion of village industries and co-operative farming and for promoting co-operative education and training. The Government decisions on the reports of the various Committees necessitated the introduction of not less than 40 amendments to the Co-operative Societies Act in 1948.

21. The main object of the Bill which was introduced in the Bombay Legislative Assembly on February 21, 1948 by Shri V. L. Mehta, the then Minister of Co-operation, was to extend the scope of working of co-operative credit societies, especially for agriculturists and to widen the field for co-operative activities, particularly in the direction of better farming and joint farming. The first set of amendments sought to shift the emphasis from unlimited liability to limited liability in respect of agricultural co-operative credit societies, facilitate the conversion of unlimited societies into limited ones and provided mechanism for dividing a society into more than one society. It also enabled the resource societies to get a charge on the immovable property of those who sought to derive credit from these institutions and to have facilities for the recovery of their dues when defaulted. Secondly, Chapter XI, which had provided a special procedure for the formation and working of crop protection societies, was made applicable to co-operative better farming societies. To encourage them, a provision was made to ensure that the minority holders of a land in the area of operation of such a society, could be compelled to join the scheme meant for the common benefit of the area covered by the scheme. It was proposed to extend this and allied provisions to irrigation societies and societies for consolidation

of holdings. The third set of amendments was aimed at widening the scope for the operations of societies of all types. It sought to facilitate advances against movable and immovable property subject to certain restrictions and widen the scope for investment of surplus funds of societies. At the same time, the ceiling on the rate of dividend was lowered from 10 per cent. to 6½ per cent., and the provision regarding formation of societies with members belonging to one particular caste was deleted. The fourth set of amendments sought to strengthen the machinery for ensuring development and working of societies on sound lines by penalising benami transactions and vested power in the Government to proceed against delinquent managers and promoters when the offence was discovered as a result of inspection, enquiry or audit. Simultaneously it gave opportunities to societies to rectify the defects and provided for remedial action through federal institutions. For this purpose, the term "federal agency" was defined for the first time in the history of co-operative legislation in this country. "This provision", Shri Mehta said (Bombay Legislative Assembly Debates, Official Report, February 21, 1948, page 121) "is only a very modest attempt in this direction (progressive de-officialization of control over the co-operative movement) which we seek to introduce". In order to provide for the furtherance of co-operative education, the Bill made it obligatory for societies to contribute out of their profits a certain proportion to a fund to be administered by the Bombay Provincial Co-operative Institute. Another important addition related to the establishment of Co-operative Tribunal, a feature which does not figure in any of the Provincial piece of legislation, for deciding appeals relating to arbitration of disputes, etc.

22. *Recent amendments.*—Since then, the Act has been amended quite frequently in the light of the experience regarding the operation of the law. Apart from the amendments made to meet a legal contingency, very often, quite a good many amendments incorporating new sections in the Act were introduced in order to make the legislation more comprehensive. In 1949-50, the amendments were mainly confined to the detailed working of the Co-operative Tribunal and Better Farming Societies. The objects of the amendments in 1952 were to facilitate the formation of a co-operative society for providing financial accommodation to Co-operative Housing Societies and to amplify the provisions of the Act in respect of the form of assistance which the Government might extend to various types of co-operative societies. Section 17-A was added in order to provide for inheritance or acquisition of rights of members by a minor or person of unsound mind. Section 22A was incorporated in order to enable the Registrar to bring the defects disclosed in audit to the notice of a society. In the following year, Section 15-B was added in order to enable the societies to enter into partnership with another society. In 1954, provisions were made in the Act to penalise employers for their failure to pay the amount under

Section 24-A, for the review of orders by the Tribunal and for vesting in the Tribunal the same powers as were vested in the courts in certain respects. Last year, Section 46-B was added in order to enable the State Government to appoint Administrators in respect of mismanaged societies and the State Government was empowered to facilitate amalgamation of co-operative societies in public interest by adding Section 15-AA.

23. *Co-operative Societies Acts in component parts of the State.*—Our terms of reference lay down that the Committee should study the Co-operative Societies Acts, which are in force in the component parts of the State, viz., Kutch, Saurashtra, Vidarbha and Marathawada areas. The Bombay Co-operative Societies Act, 1925, was made applicable to Kutch and was adapted and applied to the State of Saurashtra. In the case of Vidarbha, which formed part of the Madhya Pradesh, the Co-operative Societies Act, 1912 (II of 1912), together with the amendments made by the Central Provinces and Berar Co-operative Societies Act, has been in force. Marathawada areas are governed by the Hyderabad Co-operative Societies Act, 1952. This Act, by and large, closely follows the Co-operative Societies Act, 1912, but it has certain provisions which were derived from the Bombay Co-operative Societies Act. In the case of both Vidarbha and Marathawada, there are certain sections, which vest certain additional powers in the Registrar, but they are not to be found in the Bombay Act. We are of the view that by and large, there is no material difference between the co-operative laws operating in the component parts of the State and the Bombay Co-operative Societies Act of 1925. We are further of the view that the Bombay Act is the most progressive piece of legislation which has kept in view the development of the co-operative movement, mostly marked in the old Bombay State. In view of this, we propose to accept the Bombay Act as the basis and make recommendations for its amendment after taking into account the view points of the representative co-operative opinion in the component parts of the Bombay State and the Co-operative laws presently applicable to these areas.

CHAPTER III.

APPROACH.

24. *Provisions in the Constitutions.*—The Preamble to the Constitution of India declares our resolution to secure to all the citizens of India,

JUSTICE Social, Economic and Political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity ;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation. The Directive Principles of State Policy *inter alia* lay down that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform to all the institutions of the national life. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breed and prohibiting the slaughter of cows and calves and other milch and draught cattle. The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the Community are so distributed as best to subserve common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These are also the objectives of co-operation. Because of this, Co-operation has been accepted by the State Government as an instrument of economic development.

25. *Second Plan.*—The Planning Commission, has, in its Report on the Second Five Year Plan, discussed the methods for achieving the objectives referred to in the preceding paragraphs. The Report emphasises that the Second Five Year Plan has to carry forward the process initiated in the First Plan period and, simultaneously, must accelerate the institutional changes needed to make the economy more dynamic and more comprehensive in terms not less of social than of economic ends. Dealing with the objectives of the Plan, it emphasises that “benefits of economic development must accrue more and more to the relatively less privileged classes of a society”. The problem is, therefore, to create a milieu in which the small man, who has so far had little opportunity of perceiving and participating in the immense possibility of growth through organised effort, is enabled to put in his best in the interests of a higher standard of life for himself and increased prosperity for the country. On

page 221 of the Report, the Commission observes "Economic development along democratic lines offers a vast field for the application of co-operation in its infinitely varying forms..... The character of economic development in India with its emphasis on social change, therefore, provides a great deal of scope for the organisation of co-operative activity. The building up of a co-operative sector, as part of the scheme of planned development is, thus, one of the central aims of national policy." Furthermore, it points out that "in areas, which offer special opportunities for its development, co-operative form of organisation has advantages, which neither the system of private enterprise nor that of State ownership can match. In particular, it offers a means of achieving results valuable to the community by drawing equally upon incentives which are social and incentives which are individual. Where it succeeds, Co-operation brings large gains to the community, but the human factors involved in it are complex and in some ways, it is much more difficult for the co-operative form of organisation to succeed than it is for a completely socialised enterprise or for an individual entrepreneur. It is, therefore, necessary to take effective measures to enable Co-operation to succeed, whenever possible, and specially in fields, which are assigned to it in the scheme of national development".

26. *Rural Credit Survey Committee.*—The Rural Credit Survey Committee was appointed by the Reserve Bank of India in August 1951 to survey the problems connected with rural credit and to make recommendations for its reorganisation. Its report was published in December 1954. On its assessment of achievements of the co-operative agency in the field of rural credit, it found that the part played by co-operative credit in rural finance was very insignificant. According to its report, Bombay leads with 8·3 per cent. as the proportion of families borrowing from their co-operatives and as for proportion of co-operative credit to total borrowings, Bombay's record is as high as 16·2 per cent. "What emerges conspicuously" says, the Committee, "is Bombay's lead in credit for short-term agricultural production (42·1 per cent. of the total borrowings as compared with 5·9 in Punjab and 1·2 in Madras). The average short-term agricultural borrowings from co-operatives amounted to Rs. 18·7 per cultivating family in Bombay, Rs. 1·2 in Punjab, 0·9 in Madras. Further, Bombay retains the lead in co-operative agricultural credit for consumption as well as for the items classed other purposes". It, however, opines that the Bombay State cannot maintain this lead unless it is able to strengthen its co-operative structure. The Committee has recommended State Partnership with co-operatives and has made a series of recommendations based mainly on the working of the agricultural co-operative credit system as re-organised in 1949. The recommendations of the Committee have generally been endorsed both by the Government of Bombay, and the co-operative movement in the State and a plan for strengthening the rural co-operation has been consequently evolved.

27. *Requisites of success.*—Apart from strengthening, the success of the co-operative movement depends on the ability of the members within its fold to give their best to the institutions. Theoretically, every member of a society is expected to be vigilant about the affairs of his institution. But the human nature, being, as it is, this expectation is not totally fulfilled. Precisely for this reason, and also to enable the co-operative institutions to have a legal entity for the purpose of conducting its affairs, in accordance with the co-operative principles and on sound business lines, a code of conduct is necessary. This has been provided by the Co-operative Societies Act and the Rules framed thereunder and the bye-laws of the society. Even then, there must be an agency to see that the Society's affairs are conducted in accordance with these provisions. Thus, the success of a co-operative organisation depends on three essentials, viz. role of its members, proper constitution of the society backed by sound co-operative legislation, and an efficient administration capable of ensuring that the provisions of the law are strictly adhered to by the society, its members and the Managing Committee they elect.

28. Our terms of reference are confined to only one aspect of these three essentials, viz : "co-operative law" and we have refrained from making any specific recommendations regarding the other two aspects of the problem. We are, however, of the view that the other two are by no means less important and, indeed, all the three are interdependent. We particularly wish to record that an efficient administration of the co-operative law is highly important for the healthy expansion of the co-operative movement and would urge the Government to examine this administrative problem against the background of the growth of the movement in this State. In the course of enquiry, it was represented to us by non-official spokesmen in the different regions that lack of prompt action in sanctioning what is right and fair, in probing into mal-practices, and in proceeding against those who do not conform to the discipline conceived by the Act, the Rules and the By-laws, was the primary cause of the inability of many co-operative institutions to attain their objectives. Audit, routine inspection, supervision and arbitration are some of the weak spots noticed in the machinery entrusted with the administration of the co-operative law. Consequently, the liquidation proceedings are also dragged on for years. We, therefore, beg to emphasise that no sound legislation can serve its purpose, unless it is administered by properly qualified and adequately trained staff of the Co-operative Department having the necessary strength. Some of the specific problems arising out of the administration of the law have been indicated in the context of the different sections. We have, however, refrained from making any specific recommendations since these fall outside our terms of reference.

29. *Expansion of the Co-operative Movement.*—We have dealt in Chapter II with the growth of Co-operative Legislation in this State

during the past 53 years. It would, however, be relevant to present a birds' eye-view of the movement during this period without taking into account the changes in the territorial jurisdiction of the State. In 1912 when the Government of India Act came into force, the number of societies in the then Bombay State was only 368 with a membership of hardly 30,000 and a working capital of about Rs. 32 lakhs. During the year 1924-25 when the Bill to consolidate and amend the law relating to Co-operative Societies in the Presidency of Bombay which included Sind was being discussed in the Bombay Legislative Council, the Presidency had 21 Central Banks, 3,377 agricultural societies, 646 non-agricultural societies, 73 unions and 9 insurance societies making a total of 4,126 societies with an aggregate membership of 3.92 lakhs and a working capital of Rs. 7.12 crores. In that year, the then Minister for Co-operation said of the legislation : " We are building up a constitution for an infant movement and let me hope it will help it to grow into manhood ". The Bombay Co-operative Societies Act, 1925, fulfilled these expectations during the following 23 years. In the intervening period, Sind was separated, a world-wide economic depression hit the movement and a world war brought fresh problems in its train, but Co-operation continued to expand both intensively and extensively. As a result, at the end of 1947-48, there were 8,990 societies—17 Central Banks, 6,328 agricultural societies, 2,510 non-agricultural societies, 131 unions and 4 insurance societies. The aggregate membership rose to 14.21 lakhs and the working capital reached Rs. 44.95 crores.

30. By 1948 Co-operation in Bombay State achieved a dynamic role which was duly recognised by the State Government. Following the report of the Co-operative Planning Committee, the Government issued a leaflet in September 1947 indicating generally the lines of action. Although it was recognised that " Co-operation being a voluntary process, the plan has perforce to be tentative ", the Government hoped that " with the requisite zeal of co-operation and the collaboration of the Co-operative Department, the results achieved will not fall short of expectation." It also issued orders that every effort should be made to accelerate the pace of the co-operative movement and to ensure immediate fortification of the agricultural borrower against relapse into irrational indebtedness and his dependence on the village moneylender, by bringing 50 per cent. of the villages and 30 per cent. of the rural population within the ambit of the re-organised primary societies within a period of seven years. Besides the amendments to the Act to which we have made a reference in paragraph 20 to Government of Bombay was the first State Government to conceive of State partnership with central financing agencies and provided effective aids to various forms of Co-operation, particularly those which till then had not received sufficient attention. A note-worthy addition to the central financing agencies was the Bombay Co-operative Housing Finance Society. In the Rural Sector,

co-operative farming and lift irrigation societies made a notable contribution towards raising the productivity of the land, while co-operative credit was able to meet the credit needs of the farmer on the basis of his cost of raising the crop. Special development of backward classes was promoted through Co-operation and the State was the pioneer in starting forest labourer's co-operatives. Marketing and processing activity received a fresh stimulant and a network of sugar co-operatives was established. An all-round expansion of co-operatives for crop protection, dairy, cattle breeding and fisheries was also in evidence. In the urban sector, credit and banking grew through self-help; but the State hastened the development of industrial housing and consumers co-operation including electricity supply. In all the fields of Co-operation, federal societies were set-up and steps were taken to organise supervision on an improved basis and to make the programme for training the personnel and educating the members more broad-based.

31. The year ended June 30, 1956 has brought to a successful end the first phase of planned expansion launched in 1948. It also saw the termination of the First Five Year Plan. The latest statistical information is available only for this year. Besides, this is the last year the data for which can be compared with those for 1947-48 because the following year changed the area of the State. The general progress of the movement is given below :—

	1947-48.	1955-56.
Number of Societies ...	8,990	19,443
Number of members (in lakhs) ...	14.21	31.61
Share Capital (Rs. in crores) ...	6.45	26.41
Reserve and Other Funds (Rs. in crores) ...	5.39	16.62
Working Capital (Rs. in crores).	44.95	139.92

In the Annual Administration Report for the year, the Registrar records that loans and advances given by the Government to societies including sarvodaya centres totalled Rs. 33 lakhs, while subsidies aggregated to Rs. 37.49 lakhs. At the same time, the total investment of the Government in the shares of the co-operative societies reached Rs. 223.63 lakhs. Between 1947-48 and 1955-56 the number of arbitration cases filed went up from 2,194 to 22,727 and the percentage of the amount involved in arbitration to the total loans rose from 2.74 to 3.89. The number of societies ordered to be

wound up rose sharply from 31 in 1947-48 to 418 in 1955-56. The statistics published by the Reserve Bank of India present the following picture of societies under liquidation :—

	1949-50	1955-56
No. of societies in liquidation at the beginning of the year.	1,138	2,096
No. of societies ordered to be wound up during the year.	80	420
No. of societies whose accounts were finally wound.	28	114
Assets realised during the year (Rs. in lakhs).	3.86	8.40
Assets at the end of the year (Rs. in lakhs).	56.63	130.23
Cost of management. Rs.	31,009	65,000

32. *Future Trends.*—The State Government has formulated its Second Five-Year Plan for the development of Co-operation at a cost of Rs. 12 crores. In the field of agricultural credit, it is intended to bring three-fourths of the agriculturists within the fold of Co-operation and to have every village served by a society. The membership of primary agricultural credit societies is expected to be doubled and the short-term loans are expected to reach Rs. 56 crores. These are to be supported by a network of marketing co-operatives so that at least 30 per cent. of the produce is sold through them. Plans for setting up processing societies have also been formulated. Some 7,000 tenements are expected to be available from the programme for expansion of co-operative housing. Programmes for the development of other types of Co-operation have also been formulated. As a result of the contemplated development, the co-operative sector is expected to assume a very significant place in the economy of the reorganised State and will be the sheet anchor of the development in the successive five-year periods. These expectations can be realised and the tax payers' money will be used to a good purpose only when the co-operative institutions are run on sound business lines in accordance with the well known co-operative principles. The larger issues involved are complex. They are clearly outside our terms of reference. But the basis for resolving them is the legal uniform. It is true that many wholesome provisions in the Bombay Co-operative Societies Act have not been used to the extent the situation demands, but that, in our opinion, cannot be a justification for the failure to make the co-operative law progressive. Co-operation is no more purely or

strictly, voluntary nor is it confined to simple people with simple means. The legal uniform must, therefore, be such as to impose discipline on the members, make them conscious of their duties, privileges and liabilities and to tone up the administration of societies. It follows that adequate penalties must be provided for those who do not conform to the law. Our proposals in the following paragraphs may have rendered the co-operative law complex, but we opine that simplicity at the cost of the desired objectives would be ruinous to Co-operation.

33. *Co-operative Legislation.*—Our inquiry has led us to the conclusion that the Bombay Co-operative Societies Act, 1925, as amended from time to time, is the only piece of legislation on the subject which has kept pace with the co-operative development and co-operative practice. We have, therefore, taken this Act, as the basis for our discussion. Considering, however, the pace of development achieved in the field of Co-operation during the past seven years and contemplated in the following five years, we have come to the conclusion that this Act itself requires to be radically improved upon. The Act of 1925 was based on the Government of India Act, II of 1912, and the Indian Companies Act, 1913. In formulating our proposals we have relied on the operation of the Act during the past decade and have derived inspiration from the Companies Act, 1956. Another point to be noted in connection with the Act of 1925 is that the amendments to it have been very frequently made during the past few years with the result that many of them have been interposed in the Act without due regard to their order of precedence. Consequently, we have felt the need for codifying the law. Since the changes suggested by us in the structure and the contents of the law are numerous, though not very radical, we recommend that the Bombay Co-operative Societies Act, 1925, be replaced by fresh legislation. The pattern of the Bill to consolidate and amend the law relating to co-operative societies in the State of Bombay is discussed in the following pages and appendix "A" indicates the changes favoured by us.

34. Relying on Wolff's maxim that central banks are not societies at all, certain co-operators have suggested to us that a simple law should be framed for primary societies and the Companies Act, after incorporating the co-operative principles, be adapted for federal institutions and major societies so that the disadvantage of one legislation serving as the yardstick for all societies, irrespective of their size and the nature of business can be overcome. We are afraid that the acceptance of the suggestion would discourage the building up of co-operative character of the institutions if they are served by the Companies Act and the co-operative structure might be disintegrated. We have, therefore, rejected the suggestion. It has also been represented to us that the facilities for converting

a society into a company and *vice-versa* should be provided since no useful purpose will be served by compelling societies which, though businesslike, have lost their co-operative character, to remain within the jurisdiction of this Act. We are aware that the Bill which resulted in the passing of the Act of 1925 had a similar provision but beg to point out that the co-operative opinion has not taken kindly to the suggestion even though its sponsors have urged that the reserves of society inherited by a company should not be divisible among the shareholders of the company in the event of its liquidation. We opine that the suggestion raises a fundamental issue of policy and this Committee is not competent to give the verdict thereon.

35. In the course of our enquiry, we were pressed by co-operators that in addition to the general framework for all types of societies, the Act should contain chapters on different types of societies on the analogy of Chapter XI in the Bombay Act. We appreciate the force of the argument but beg to point out that the various classes of societies have yet to establish conventions and build up a set of regulations for the efficient conduct of their business. Only in respect of co-operative banks, an elaborate system has been evolved on the basis of the Banking Companies Rules; but even in this field a good deal has remained to be achieved. We have, therefore, come to the conclusion that it would be more conducive to the growth of Co-operation if the Act empowered the Government to frame rules governing the methods of business of different types of societies. To this only two types of societies are an exception. Chapter XI already deals with farming societies. We propose to extend the scope of this Chapter so as to bring within its orbit lift irrigation societies and the like. Secondly we have come to the conclusion that for the proper functioning of the land mortgage banks, a separate chapter is necessary. Some of the parts of the State already have this facility under the Acts presently applicable to them and we propose to extend it to Maharashtra and Gujerat where land mortgage banking has not been sufficiently well developed.

36. Our terms of reference require us to examine the existing Rules framed under the Bombay Co-operative Societies Act and to suggest modifications. In the course of our recommendations, we have incorporated certain existing Rules in the Act itself after making suitable modifications. The remaining Rules require a radical reform and, if our recommendations are accepted it would be necessary to frame a new set of Rules. The Government's power to frame the Rules is derived from the Act, but some of the existing Rules lack the requisite authority. It is not also possible for us to anticipate the Government's reaction to our recommendations. In the circumstances explained above, we have come to the conclusion

that the drafting of the Rules may be appropriately undertaken after the Bill to amend the Act is introduced in the legislature and have, therefore, only dealt with the subject matter which can be suitably regulated by the Rules. In this context, we beg to point out that the revision of the model bye-laws and the leaflets is also overdue and suggest that all this work should be undertaken in collaboration with non-officials after the law is amended.

37. One of the problems arising from the introduction of the new legislation relates to the ability of the component parts of the Bombay State to adjust themselves to the new law. In the course of our discussions with the representatives of co-operative institutions in these areas, we made specific enquiries on this point and the unanimous opinion of the witnesses was that the transition from their respective laws to the Bombay Co-operative Societies Act, either the present one or the one recommended by us, would not cause them any difficulty. We, therefore, recommend that no time period be provided for the application of the Act to any part of the Bombay State and that the Act should be applied to the whole State simultaneously.

38. *Preamble.*—The Act of 1912 was aimed at facilitating the “formation of co-operative societies for the promotion of thrift, self-help among agriculturists, artisans and persons of limited means”. But this preamble was improved upon by the Bombay Co-operative Societies Act. The latter emphasises that mutual aid is as much important as thrift and self-help and the objectives must be “to bring about better living, better business and better methods of production”. It may be noted in this context that processing and marketing are ancillary activities of production and are absolutely essential for production in the agricultural sector. We, therefore, recommend that after “production”, “processing and disposal” should be added and the machinery to achieve the objectives should be provided. Secondly, the restrictive provisions of the Act of 1912 which confine co-operation to “persons of limited means” has been replaced by “persons with common economic needs”. In both these respects, the Bombay Act is superior to that of 1912.

39. As explained in the preceding paragraphs, the role of co-operatives has assumed a wider significance inasmuch as, whereas it is primarily to help its members it has also assumed a larger responsibility of developing national economy and promoting the objectives embodied in the Constitution. For this purpose, the State has accepted, and co-operators have conceded, the responsibility of imparting strength to co-operatives wherever necessary, by means of State assistance and partnership. In this context, we might recall the controversy during the debate in the Bombay Legislative Council in 1924 when the late Shri Dadubhai P. Desai had

proposed an amendment "to enable Government to render effective aid to co-operative societies". We are, therefore, of the view that this conception of Co-operation should be incorporated in the preamble itself. We are also of the view that "common economic needs" would be rather restrictive in scope since the term excludes other types of needs, which should be the legitimate function of co-operatives to cater to.

40. In connection with the preamble, we beg to quote definitions given by the co-operative laws in Bulgaria, Spain and Italy. The Bulgarian Act of 1948 defines a co-operative as an "economic and social organisation comprising of members having equal rights and duties, which aims by association, mutual help and work in common to promote Bulgarian economy and specially the economic and social needs of the members". It may be noted that in Bulgaria, co-operatives form part of the economic planning of the State. The Spanish Law of 1931 defines a co-operative as "an association of persons desiring to eliminate profit, having for their object, the satisfaction of some common need and achieving their social and economic betterment by means of general action on a collective basis". The Italian Constitution of 1948 (Article 45) recognises "the social functions of co-operative societies" and lays down that "the law shall favour the establishment of such societies by the most suitable means and shall secure the maintenance of their character and object by appropriate supervision".

41. These provisions define the "co-operatives" and some of the witnesses represented to us that the preamble should define what is precisely meant by Co-operation. The Act of 1904 and the subsequent legislations have scrupulously avoided to define precisely "a co-operative society". Mr. H. Calvert in "Law and Principles of Co-operation" (page 66) explains that this was intentionally done in the interest of elasticity and simplicity. The Act contains just the minimum conditions necessary to bar the entry of capitalists and promote co-operation. The preamble in the Bombay Act mentions three wholesome principles of Co-operation, viz., "thrift, self-help and mutual aid" and we are of the view that the preamble need not lay down co-operative principles elaborately and define a co-operative society.

42. The preamble to the Bombay Act refers to the consolidation and amendment of the law relating to co-operative societies in the Presidency of Bombay. Two significant changes may be mentioned in this context. Firstly, "Presidency" has been replaced by "State". Secondly, it is necessary to consolidate and amend the law relating to co-operative societies in the component parts of the Bombay State. We, therefore, recommend that proper changes be made in this context.

43. For reasons stated in the preceding paragraphs, we recommend the following preamble in place of the existing one :—

“Whereas it is expedient further to facilitate the formation, organisation, working and regulation of co-operative societies for the promotion of thrift, self-help and mutual aid amongst agriculturists and other persons with common interest and for that purpose, to provide effective State aid and partnership, wherever necessary, so as to create conditions to bring about better living, better business, better methods of production, processing and disposal and to promote the objectives of the Constitution of India, and to provide for machinery to help realise such objectives, and whereas for this purpose, it is expedient to consolidate and amend the law relating to co-operative societies in the State of Bombay including that in force in the component parts of Kutch, Saurashtra, Vidarbha and Marathwada and whereas the previous sanction of the President as required under the Article 246 of the Constitution of India has been obtained for passing of the Act; It is hereby enacted as follows :—

CHAPTER IV.

PRELIMINARY.

44. *Short title, extent and commencement.*—Sections 1 and 2 of the Act of 1925 deal with short title and extent. Section 1 dealing with the title requires two changes which are of a consequential nature. We are of the view that the Act should indicate the authority which enacts it and, therefore, recommend that the word “State” should be inserted between the words “Bombay” and “Co-operative”. We have recommended earlier that the present Act be replaced by a new one and, therefore, recommend that the figure “1925” be substituted by “1957”. Section 2 of the Act deals with its jurisdiction over the area. Under the Constitution of India, the Union has been divided into States and Territories of India. We, therefore, recommend that the word “Presidency” in Section 2 be substituted by the word “State”. The present Act does not state when it shall come into force. Since a new piece of legislation is to be introduced, we think it necessary that the Act itself should specify when it shall be brought into force. We have recommended in paragraph 37 that there is no need to treat the component parts of Bombay State differently from the parts to which the Bombay Co-operative Societies Act, 1925, is applicable at present. We, therefore, recommend that a new clause should be added stating “the Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint”. The “short title”, “extent and commencement” can be grouped under one section with each aspect dealt with in a separate sub-section. We, therefore, recommend that Sections 1 and 2 be combined with the additional clause recommended. Consequently, Section 1 should be read as under :—

SECTION 1—*Short title, extent and commencement.*—(1) This Act may be called the Bombay State Co-operative Societies Act, 1957.

(2) It extends to the whole of the State of Bombay.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

45. *Definitions.*—Section 3 of the Act deals with definitions and the Registrar’s obligation to classify the societies under one or the other head. We think it would be more appropriate to split up this Section into two—one dealing with the definitions and the other with classification of societies. In regard to definitions, the scope of the Section has been widened so as to cover additional ones in respect of those words to which any other meaning is liable to be attached or which may be interpreted in a restrictive manner. In this category fall auditor, arbitrator, dispute, liquidator and certain types of societies. In respect of the existing definitions, the modifications,

where suggested are of two types—consequential and fundamental. In the former group are included “Registrar” and “members”. In regard to the Registrar, the Madras High Court has held that Additional, Joint, Deputy or Assistant Registrars, are exclusive terms since the definition of “Registrar” does not include them. In regard to “members” we have thought it necessary also to define the scope of persons who can be considered as members. The improvements in the definitions proposed by us are in regard to a “federal society” and a “consumer society”. In the former case the bar to membership of individuals would be ideal, but in actual practice, such a rule would deny a federal society certain advantages. The amendment of the Act in 1948 prescribed that at least three-fourths of the members of such a society must be societies. Having regard to the growth of federal societies during the past decade, we have come to the conclusion that a further step towards the ideal may be taken by requiring such societies to have four-fifths members from amongst the societies. The present definition of a “consumers’ society” unwillingly denies to it the right of production and processing which has been universally recognised. We have sought to confer it. We have also conferred on the Government the right of membership of societies to which it contributes share capital.

46. As a result, and to provide for the definitions in their alphabetical order, we recommend that Section 3 of the Act of 1925 be deleted and new Section, Section 2, should be inserted as under:—

SECTION 2—Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(1) “Arbitrator” means a person appointed under this Act to decide disputes referred to him by the Registrar and includes the Registrar’s nominee or Board of nominees ;

(2) “Auditor” means a person appointed by the Registrar to audit the accounts of a society and includes a person appointed by the society in the general meeting and a full time officer appointed by the Committee to audit the accounts as a local or internal auditor, as the case may be ;

(3) “Bonus” means dividend paid to a member or non-member out of profits of a society on the basis of his contribution to the business of the society and includes dividend and patronage dividend provided it is related to the share in the business of the society ;

(4) “By-laws” means by-laws registered under this Act and for the time being in force and includes a registered amendment of such by-laws ;

(5) "Central Bank" means a co-operative bank, the objects of which include the creation of funds to be loaned to other societies and includes a banking union, District Co-operative Bank, State Co-operative Bank and Industrial Co-operative Bank ;

(6) "Co-operative Bank" means a society registered under this Act and doing the business of banking as defined in clause (b) of section 5 of the Banking Companies Act, 1949 ;

(7) "Committee" means the committee of management or other directing body to which management of the affairs of a society is entrusted ;

(8) "Company" means a company as defined in section 3 of the Companies Act, 1956, and includes a banking company ;

(9) "Dividend" means the interest paid to a member on the shares held by him in the share capital of a society out of its profits and includes bonus provided it is paid on share capital ;

(10) "Society with limited liability" means a society having the liability of its members limited by its by-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may, respectively, undertake to contribute to the assets of the society in the event of its being wound up ;

(11) "Society with unlimited liability" means a society having, subject to its by-laws, an unlimited liability of its members to contribute jointly and severally to any deficiency in the assets of the society ;

(12) "Consumers' Society" means a society formed with the object of obtaining and/or producing and processing and distributing goods to or performing other services for its members, as well as for other customers and dividing among its members and customers in a proportion prescribed by the rules or by the bye-laws of such society, the profits accruing from such supply, production, processing and distribution ;

(13) "Farming Society" means a society formed with the object of promoting development of land and better methods of cultivation and includes a better farming society, co-operative farming society, collective farming society, joint farming society, lift irrigation society and a crop protection society ;

(14) "Federal Society" means a society not less than four-fifths of the members of which are societies ;

(15) "Housing Society" means a society formed with the object of providing its members with residential accommodation ;

(16) "Marketing Society" means a society three-fourths members of which are agriculturists and their societies, and is formed with the object of marketing agricultural produce and selling requisites for agricultural production ;

(17) "Producers' Society" means a society formed with the object of producing and disposing of goods as a collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society ;

(18) "Processing Society" means a society formed with the object of producing goods by mechanical or hand process and includes an industrial society and a society for the processing of agricultural commodities ;

(19) "Resource Society" means a society formed with the object of obtaining for its members the credit, goods or services required by them ;

(20) "Dispute" means any matter capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by a society whether such claim be admitted or not ;

(21) "Firm" means a firm registered under section 59 of the Indian Partnership Act, 1932 ;

(22) "Land Mortgage Bank" means a society, the objects of which include the creation of funds to be loaned to members for a long period upon mortgage of their immovable property ;

(23) "Liquidator" means a person appointed by the Registrar under the Act to wind up the affairs of a society and includes provisional liquidator and joint liquidator ;

(24) "Member" means a person, as defined in section 3(35) of the Bombay General Clauses Act, 1904, joining in the application for the registration of a society and or a person admitted to membership after registration in accordance with this Act, the Rules and the bye-laws applicable to such society and includes the Government when it subscribes to the share capital of a society ;

(25) "Officer" means a person elected or appointed by a society according to its by-laws to any office of such society and includes a Chairman, Vice-Chairman, President, Vice-President, Managing Director, Manager, Secretary, Treasurer, Member of the Committee and any other person elected or appointed under this Act, the Rules or the by-laws to give directions in regard to the business of such society, and also includes Auditor in matters relating to his duties as an Auditor ;

(26) "Prescribed" means prescribed by the Rules ;

(27) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes an Additional, Joint, a Deputy or an Assistant Registrar ;

(28) "Rules" means Rules made under this Act ;

(29) "Working Capital" means funds at the disposal of a society inclusive of paid-up share capital, funds built out of profits and money raised by borrowing and other means ;

(30) "Society" means a co-operative society registered or deemed to be registered under this Act

(31). "Tribunal" means the Bombay State Co-operative Tribunal constituted under this Act.

CHAPTER V.

REGISTRATION.

47. In this Chapter we propose to deal with (1) Registrar, (2) Societies which may be registered, (3) registration of societies with limited and unlimited liability and without any liability, (4) conditions of registration, (5) power to exempt societies from conditions of registration, (6) application for registration, (7) power of Registrar to decide certain questions, (8) registration, (9) registration certificate, (10) classification of societies, (11) amendment of by-laws, (12) power to direct amendment of by-laws, (13) change of name and its effect, (14) change of liability of a society from limited to un-limited or vice-versa, (15) amalgamation, transfer, division and conversion of societies, (16) power of Registrar to direct amalgamation, (17) reconstruction of societies, (18) partnership and (19) cancellation of registration.

48. Chapter II of the present Act deals with most of the subjects mentioned above. We have, however, transferred sections relating to restriction on interest of member and person who cannot be member to the next chapter, since these subjects have nothing to do with registration. Sections 12 and 13 dealing with the Annual General Meeting and Special General Meeting have been transferred to the Chapter dealing with the management of the societies. On the other hand we have included a section regarding classification of societies — the provision for which has been made under Section 3 of the present Act dealing with definitions and provided for cancellation of registration and reconstruction of societies. Since conditions of registration form part of this chapter it is but proper that exemptions from conditions of registration should also be dealt with in this chapter. We have, therefore, transferred Section 66 of the present Act to this chapter. In view of the importance of ensuring that the bye-laws of a society keep pace with its growth, a provision has been made so as to empower the Registrar to direct amendments of bye-laws. We have also thought fit to revise the order of the Sections in accordance with the different stages of registration.

49. Section 4 of the Act of 1925 deals with the Registrar. Although he is constituted, in the words of Calvert, as "the very foundation of the movement", the Act does not specifically define his duties except under Sections 22, 43 and 44. A suggestion has been made that his functions and powers should be clearly defined. An attempt to define the scope and nature of the Registrar's duties and responsibilities has been made in the Co-operative Acts of certain States such as Assam, while the Acts of West Bengal and Bihar define his powers. Broadly the Registrar's functions relate to the registration, approval of by-laws, audit, supervision and inspection, control of societies including their power to lend, receive, deposit and invest funds, appointment of liquidator and the ordering of

a society's winding up. In effect his functions can be classified into (1) statutory, (2) regulatory, (3) developmental, and (4) educative. But these functions are so extensive that we are afraid, no comprehensive section can be framed for defining his functions and any attempt to do so can only add to the exclusion of his other functions. Similarly as regards powers, we are of the view that instead of lumping them together in this section it would be more convenient from the point of understanding the provisions in the law to have these powers defined under appropriate sections dealing with specific issues. We are, therefore, of the view that the appointment of Registrar should not be mixed up with his functions and powers.

50. Two other points which have been put forward in the context of this section are that there should be only one Registrar and others on whom any of the powers may be conferred should be persons to assist him and that a provision should be made for encouraging non-officials—individuals and federal societies—as helpers. In our opinion, the first point is very important inasmuch as it would not be conducive to the efficiency of the administration if the authority administering the Act is divided. It is true that industrial co-operatives in Bombay State have assumed considerable significance and it has been the State policy to encourage them by positive means. We concede that the development of industrial co-operatives requires undivided attention of a very senior officer almost of the rank of the Registrar, but we cannot think that a separate kingdom should be established within the co-operative sector unless and until a separate Act is considered desirable for these types of societies. The principle which we wish to lay down is that there is one authority to administer one Act. We, therefore, opine that there should be only one Registrar for the State and, therefore, recommend that the words “or any portion of it” occurring in the section between the words “State” and “and” should be deleted. As regards the second suggestion, we are of the view that the section does not dismiss the possibility of enlisting the non-official assistance and do not think that any specific provision is required to make it permissible.

51. We, therefore, recommend that section 4 of the present Act be retained as Section 3 of the new Act after deleting the words “or any portion of it” occurring between the words “State” and “and” and add at the end the following :—

“The person or persons so appointed to assist the Registrar and empowered to exercise any of his powers shall work under the general guidance, superintendence and control of the Registrar.”

The amended section will read as under :—

SECTION 3—*Registrar*.—The State Government may appoint a person to be Registrar of the Co-operative Societies for the State and may appoint a person or persons to assist such Registrar,

and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and empowered to exercise any of his powers shall work under the general guidance, superintendence and control of the Registrar.

52. *Societies which may be registered.*—Section 5 of the Act lays down that only societies whose object is the promotion of economic interests of its members in accordance with co-operative principles or the facilitating of operations of co-operative societies may be registered. It has been represented to us that co-operative principles should be defined and that the promotion of economic interests makes the objectives restrictive. Co-operative principles cannot be elaborately stated, but the three main principles of co-operation have been referred to already in the preamble. We, therefore, reject the suggestion for enunciating the co-operative principles under this section. As regards the second suggestion, we recognise that the promotion of general welfare is a legitimate concern of co-operatives and is as much important as the promotion of economic interests. We, therefore, recommend that the words “general welfare” be added between the words “interests” and “of”

53. Economic development on a planned basis has been an accepted policy of the country and the State and it is necessary to discourage the establishment of institutions, co-operative or otherwise, whose activities are opposed to the public policy. In the case of jointstock companies, this has already been done. Secondly, we believe that no useful purpose will be served by registering societies which are not likely to achieve their objectives because of their economic weakness or because their formation will have an adverse effect upon any other society already established or the co-operative movement as a whole. Under section 149 of the Companies Act 1956, the company is entitled to commence business only after fulfilling certain conditions. While it would not be proper to resort to such an elaborate procedure in the case of a co-operative society, preliminary precaution in the matter of registration is necessary. We, therefore, recommend that the following proviso be added after the word “Act.” :—

“Provided that no society shall be registered if in the opinion of the Registrar, it is economically unsound or it may have an adverse effect on any other society or it is opposed to or its working is likely to be in contravention of the public policy.”

54. The section also refers to limited and unlimited liability. We propose to discuss this question in the following section and therefore, suggest that the proviso in the existing section 5 of the Act should be

deleted from that section. The amended section 5 will read as under, as a result of our recommendations :—

SECTION 4—Societies which may be registered.—A society which has as its objects the promotion of economic interests and/or general welfare of its members in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society may be registered under this Act :

“ Provided that no society shall be registered if in the opinion of the Registrar it is economically unsound or it may have an adverse effect upon any other society or it is opposed to or its working is likely to be in contravention of the public policy.”

55. *Registration with limited or unlimited liability.*—The proviso under section 5 of the present Act lays down that the liability of a society of which a member is a society shall be limited and the members of a society with unlimited liability shall be jointly and severally liable for its obligations on its liquidation. The latter is a definition of a society with unlimited liability and this has been already covered by section 2(11). It has been now an accepted policy of the State and the co-operative movement that as far as possible societies with limited liability should be encouraged in order that the financially stronger element can be brought within the fold of co-operation to strengthen it. There remains still, however, a powerful section which believes that societies of agriculturists and artisans should generally be of unlimited liability. In respect of these societies that State Government has accepted the responsibility of imparting strength through State Partnership, and in case the law provides that the liability of these societies should be unlimited there is the danger of these societies being deprived of the State Partnership. Both, on theoretical and practical grounds we have come to the conclusion that there is no need for the law to provide for any restrictive practice in the matter of liability and the question should be left to the members of societies themselves. At the same time, we recognise that it would not be proper to saddle a co-operative society with unlimited liability of the society of which it might be a member and, therefore, proviso (1) in the existing section 5 has to be retained. It is also necessary that the public should know whether the liability of a society is limited, unlimited or nil without resorting to any elaborate enquiry. In the case of societies having no share capital or unsupported by any guarantee in regard to the meeting of the liability by its members or the State, the question of limited or unlimited liability does not arise. We, therefore, recommend that a society may be registered with limited or unlimited liability or without any liability and that the name of each society should indicate the nature of liability or the absence of liability. The latter concession should be available only to co-operatives which do not earn any profit and cannot under their bye-laws pay any dividend to their members.

56. We, therefore, recommend the following new section to be amended as section 5 :—

SECTION 5—Registration of societies with limited or unlimited liability or without—liability.—A co-operative society may be registered with limited or unlimited or without any liability ;

Provided that—

(1) Unless the State Government by a general or special order otherwise directs the liability of a society of which a member is a society shall be limited ;

(2) No society shall be registered without a liability unless its object is not to do any business for profit and its by-laws provide for no payment of a dividend to its members.

57. *Conditions of registration.*—Conditions of registration are covered by section 7 of the present Act. It requires that a society must consist of at least ten persons qualified to be members and where its object is to lend funds, the members must reside in the same town or village or in the same group of villages or of the same tribes, class of occupation. Secondly, the section provides that the word “limited” shall be the last word in the name of every society with limited liability. Thirdly, the societies registered already are exempted from the conditions of registration. The societies of which the members is a society, company or firm, are exempted from these restrictive conditions. We are unable to understand the object of the provision in placing joint-stock companies and firms on par with societies. In our opinion, they should have no better privilege than that enjoyed by an individual member of a society. Section 6 of the Act presently applied to Vidarbha, makes an exception only in respect of co-operative societies.

58. As regards, the residential qualifications in respect of members of societies transacting lending business, we opine that the conditions are restrictive inasmuch as a society has to function in the same town or village or in the same group of villages. Co-operative practice in Bombay State has enabled urban banks to open branches in more than one town and many of these banks have not only been able to serve their members over a wide territory and provide surplus funds to the movement, but have also rendered services, which are comparable with those provided by scheduled banks. The Madras Committee on Co-operation appointed in 1939-40, had suggested that residential qualification is not necessary for limited liability societies. At the same time, we recognise the force in the argument that it would not be safe from the operational point of view to allow a society to draw its membership from heterogeneous elements and to extend its operations over unmanageable areas. This safeguard can, however, be provided by confining the activities of a society to a particular area of operation. What that area should be, may be determined by the society, but

it will necessarily be subject to the approval of the Registrar. Similarly, whether the membership is compact or not, should be left for determination of the Registrar and the bye-laws of a society. We, however, agree that in the case of unlimited societies the residential qualification is essential. We are further of the view that the collection of adequate capital for enabling a society to function properly, should also be a condition precedent to registration.

59. We, therefore, recommend that the existing section 7 be replaced by the following section :—

Section 6—Conditions of registration.—(1) No society other than a federal society, shall be registered under this Act unless it consists of at least ten persons, who are qualified to be the members under section 22 and who reside in the area of operation of the society ;

(2) No society with unlimited liability shall be registered unless all persons forming the society reside in the same town or village or in the same group of villages.

(3) No federal society shall be registered unless it has at least 5 societies as members.

(4) Nothing in the Bombay State Co-operative Societies Act, 1957, shall be deemed to affect the registration of any society made before the said Act, comes into force.

(5) The word "limited" or "unlimited" shall be the last word in the name of every society with limited or unlimited liability, as the case may be, registered under this Act.

60. *Power to exempt societies from conditions of registration.*—Although the preceding section lays down conditions for registration, it may be, in certain exceptional cases, that it will be desirable to have a society even though it is not in a position to conform to the conditions of registration. To overcome this difficulty, section 66 of the Act of 1925 has provided the escape clause and we recommend its retention after re-numbering it as section 7. It reads as follows :—

SECTION 7—Power to exempt societies from conditions as to registration.—Notwithstanding anything contained in this Act, the State Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

61. *Application for registration.*—Section 9 of the present Act lays down the procedure regarding application for registration. It prescribes the minimum number of signatories to the application and lays

down that the application, supported by a copy of the proposed bye-laws, will have to be forwarded to the Registrar for registration and the signatories shall furnish such information in regard to the society as the Registrar may require. The form of application for registration of a society has been prescribed under rule 2. This form does not state whether the signatories to the application have subscribed to the share capital of a society when its capital is to be raised by shares. We recommend that the form be suitably amended so as to indicate the amount of capital subscribed by each of the signatories to the application.

62. The cardinal principle laid down in this section is that there must be at least 10 signatories to the application. From the wording of section 9 (2) (b), it appears to us that the lower limit has been put in order to facilitate the registration of federal societies in respect of which the number of individual members may be less. In our opinion, there should be a minimum membership of 10 individuals for a primary society and of 5 societies in the case of federal society, and the application should, therefore, prescribe the same minimum. Though the section requires that only one copy of the proposed bye-laws is to be forwarded with the application, Rule No. 2 (2) prescribes that two additional copies will also be forwarded therewith. The actual practice is to obtain 4 copies of proposed bye-laws from promoters. We are afraid that this Rule is opposed to the existing provisions in the Act, and, is, therefore, invalid. At the same time, we concede that four copies are absolutely essential and, therefore, recommend that necessary provision be made in the Section itself. The Rule 2 (3) prescribes mode of a society being a signatory to the application, while section 9 (2) (b) refers only to a duly authorised person. We think, it would be more appropriate to include this clause in the Section itself with modifications.

63. One of the questions, which has been discussed during the past few years in this context, is whether provisional registration should be permitted. Industrial societies particularly have been experiencing difficulties in the matter of collection of share capital before the registration of a society and the question was raised by them recently before the State Co-operative Council. The Council has appointed a Committee to examine the question of provisional registration. Similar difficulties are being experienced, we are told, by Lift Irrigation societies. We are informed that the provisional registration would facilitate the collection of necessary capital and would ensure the safety of capital already collected. At the same time, it would provide for the contingency of preventing such a society from commencing its business. Besides, the question of provisional registration is also important in the larger context, inasmuch as the Registrar may register a society subject to certain amendments that he might make to the bye-laws as proposed by the

applicants. Technically, the amendments cannot be deemed to have been approved by the Registrar before they are approved by the general meeting. No general meeting of the society can be held unless the society is registered. To meet this contingency, we recommend that provisional registration should be provided, but this should not entitle the society to commence its business.

64. In the course of our enquiry, a complaint was made to us regarding the delay in the matter of registration of a society and suggestions were made that the application should be received by the Registrar through a federal society. After carefully weighing the arguments for and against the latter proposal, we have come to the conclusion that the delay in the registration of a society is a problem which has to be tackled at the administrative level and it would be dangerous to evolve a legal solution. We have further come to the conclusion that in the present stage of development of the co-operative movement, it would be risky to provide by law that the application should be forwarded through a federal society only, since the intention of avoiding the delay will not necessarily be fulfilled. In Bombay State, in respect of certain types of societies, the Registrar has, however, adopted a convention because the federal societies are strong and we have no doubt that the healthy practice would be encouraged. But we reject the proposal for a legislative device.

65. For reasons stated above, we recommend that the existing section 9 be substituted by the following, which should be numbered as section 8 in the new Act :—

SECTION 8—Application for registration.—(1) For purposes of registration, the application to register a society shall be made to the Registrar in the prescribed form and shall be accompanied by four copies of the proposed bye-laws of the society. The person by whom or on whose behalf such application is made, shall furnish such information in regard to the society, as the Registrar may require.

(2) The application shall be signed—

(a) In the case of a society other than a federal society, by at least 10 persons qualified in accordance with the requirements of section 22 and

(b) in the case of a federal society by at least five societies. No signature to the application will be valid on behalf of a society or a company, unless a member of the committee of such a society or company, is authorised by such committee by a resolution to sign the application for registration of the society and its bye-laws on its behalf and a copy of such resolution

is appended to the application. In the case of a firm subscribing to the application, no application shall be valid unless it is signed by one of the partners of such a firm.

(3) The Registrar may register a society provisionally, pending the approval of the bye-laws as amended by the Registrar and compliance with such conditions as may be laid down by the Registrar in regard to the registration, in the first general meeting. The provisional registration would not, however, entitle the society to transact any business other than that necessary for enabling the society to comply with the conditions of registration, which the Registrar may prescribe.

66. *Power of Registrar to decide certain questions.*—Section 8 of the present Act empowers the Registrar to decide certain questions affecting formation, registration or continuance of a society and the admission of person as a member, including the point as to whether a person resides in a town or a village or group of villages or belongs to a particular tribe, class or occupation or whether two or more villages can form a group. Section 7 as amended by us, refers only to area of operation and deletes “town or village or group of villages,” as well as “tribe, class or occupation”. We are also of the view that the provision is restrictive, since the Registrar's powers are confined to the determination of certain specific issues to the exclusion of others. The questions involved range from whether the society has been formed in accordance with the co-operative principles or not to whether its membership is homogenous and it can work economically and strive for attaining its objectives. The point at issue is, therefore, of providing machinery for the determination of all issues arising from registration and continuance of a society. It is obvious in our opinion that there should be only one authority to decide this issue, although, safeguards such as provision for appeal against the decision will be necessary in order to prevent the power from being arbitrarily used. The provision for appeal has been made elsewhere and here we propose to provide for conferring comprehensive powers on the Registrar. Similarly, it is necessary that the decision of the Registrar should be debarred from the jurisdiction of the Civil Court. This has been the object of the present Act and we have provided for it elsewhere. We therefore, recommend that the present section 8 be deleted and the following be substituted :—

SECTION 9—Power of Registrar to decide certain questions.—When any question arises for the purpose of formation, or registration, or continuance of a society, the question shall be decided by the Registrar and the Registrar's decision on the question as to whether a person is an agriculturist or a non-agriculturist, or whether any person resides in the same area of operation or not, shall be final.

67. *Registration.*—Section 10 lays down that “if the Registrar is satisfied that a society has complied with the provisions of this Act and the Rules and that its proposed byelaws are not contrary to this Act or to the Rules, he may register the society and its byelaws.” All that this Section requires at present is that the society must comply with the provisions of the Act and the Rules and that its byelaws are not contrary to the Act and the Rules. As stated in the preamble, adherence to the co-operative principles and the objects of the Constitution of India is equally important. Again, it is no use registering a society, which does not comply with the requirements of sound business. This Section does not compel the Registrar to communicate the reasons for refusal, but this has been provided for in the Rules. We opine that the rules cannot provide for something on which the Act is silent. Equity, however, demands that the aggrieved party should know the reasons for refusal of registration. We, therefore, recommend that this should be provided in the Act itself. The member Secretary is of the view that the word “may” has been interpreted in the Bombay High Court in several cases as “shall”. Such interpretation is liable to defeat the object of this Section. Section 9 of the Act presently applied to Vidarbha rightly adds the words “if he thinks fit”, etc., after the word “may” and he thinks that the object will be achieved by using this phraseology. The rest of us do not, however, think that the Registrar should have absolute discretion to register a society or not. However, we agree that the Registrar should be empowered to register a society after making amendments to the bye-laws which he may consider necessary.

68. We, therefore, recommend that the present Section 10 dealing with registration be deleted and the following be substituted as Section 10 :—

SECTION 10—*Registration.*—(1) If the Registrar is satisfied that a society has complied with the provisions of this Act and the Rules, that its proposed byelaws are not contrary to this Act and the Rules and to the co-operative principles and the objectives of the Constitution of India, and that in his opinion, the Society has complied with the requirements of sound business, he may register the society and its bye-laws with such modifications as he might consider necessary.

(2) Where the Registrar refuses to register a society or its bye-laws under Section 10, he shall communicate to the first signatory to the application his reasons for doing so.

69. *Registration certificate.*—Section 11 of the present Act deals with the issue of a certificate of registration and provides for its conclusive evidence that a society has been duly registered unless it is proved that the registration has been cancelled. The heading of the Section, is however, “evidence of registration”. We are inclined to

think that this nomenclature has been given in order to highlight its importance. We submit this objective is incidental. A certificate of registration is important inasmuch as it alone permits the society to function as a legal entity under the Act. We, therefore, recommend that the heading of Section 11 should read as "Registration Certificate", instead of "Evidence of registration"

70. We are also of the view that no society should be allowed to function unless it obtains this certificate. Section 11 (2) of the Companies Act prohibits associations and partnerships exceeding certain number unless they are registered in pursuance of some Indian Law. We have instances of persons, who have promoted societies and carried on business in the name of societies even before getting them registered and we strongly feel that such action should be penalised. In regard to the penalty, we beg to rely on the section referred to above in the Companies Act, but propose to deal with it in the Chapter of "Offences". In this Section the only change we recommend is that no society can commence its business without obtaining the registration certificate.

71. We, therefore, recommend that Section 11 in the present Act be numbered as Section 11 and that the heading "Evidence of Registration" be substituted by the words "Registration Certificate". This Section, as amended by us, will read as under :—

SECTION 11—Registration certificate.—(1) Where a co-operative society is registered under this Act, the Registrar shall issue a certificate of registration signed by him and the said certificate shall be a conclusive evidence that the society therein mentioned has been duly registered unless it is proved that the registration of the society has been subsequently cancelled, or that the first general meeting has not adopted the bye-law approved by the Registrar with modifications, if any.

(2) No society shall commence business unless it has obtained a certificate of registration under sub-section (1) and every member of such society carrying on business in contravention of this sub-section shall be personally liable for all liabilities incurred in such business.

72. Act VII of 1925 is unique inasmuch as it imposes an obligation on the Registrar to classify every society that is registered. It is, therefore, necessary that the classification should be precise, even though for reasons to be recorded in writing the Registrar has the power to alter the classification of any society from one head to another head or from one sub-head to another sub-head. Broadly co-operatives fall into two groups according to its two ultimate objectives. Producers' Co-operative is designed to benefit the producers only. Similarly, a consumers' co-operative is meant for

the benefit of consumers themselves. It is the end and not the means by which a society will have to be classified into one or the other group. There remains, however, a third class of societies which provides the resource. Since these societies provide resources both to producers' and consumers' co-operatives a separate classification has been apparently conferred on them. Otherwise, the ends decide the category of a society. Thus, for instance, a consumers' stores, a housing society, a medical relief society, an electric supply society and the like essentially belong to the consumers' class whereas the marketing societies are controlled by the producers' organisation. Industrial societies may be of producers or of consumers.

73. The Bombay Act has classified the societies into seven groups. There are four main groups, viz., resource societies, producers' societies, consumers' societies and general societies. This classification has been based on the practice adopted in various countries in Europe. Any society not falling within the first three groups is classed in the fourth group. These main groups have been subdivided. Housing societies have been given a separate status, but they are essentially consumers' organisations, though it is distinct from a consumers' store inasmuch as one provides its members with residential accommodation while the other supplies goods. Similarly agricultural societies and the artisan societies belong to the class of producers' societies. Farming societies have been given a separate class. But it is essentially a sub-section of the producers' organisation. It will, therefore, be desirable to decide the question of classification on the basis of the types of persons to be benefitted from the activities of the society and controlling its affairs. This point has to be examined at the administrative level and we do not think that any attempt should be made to provide a legal formula, especially when the different types of societies have been defined in paragraph 46.

74. In order to provide for classification of societies we recommend a new section, section 12, to cover the provisions in section 3 of the present Act. The new section will read as under :—

SECTION 12—Classification of societies.—(1) The Registrar shall classify all societies under one or the other head and his decision shall be final,

Provided that a society formed with the object of facilitating the operations of any one of the classes of societies shall be classified as a society of that class.

(2) The Registrar for reasons to be recorded in writing may alter the classification of any society from one head to another head or one sub-head to another sub-head.

(3) A list of all such societies, so classified, shall be published triennially in such manner as the State Government may from time to time direct.

75. *Amendment of the bye-laws of a society.*—Section 16 of the present Act deals with amendment of the bye-laws of a society and lays down that no amendment shall be valid until approved by the general body and registered under this Act. The same section also gives the discretion to the Registrar to register the amendment and directs him to issue a copy of such amendment when he registers it. Rule 6 prescribes the procedure for the general meeting to pass the amendments. Right of appeal against the Registrar's decision has been provided for in section 64. In connection with the existing section, it has been represented to us that the Registrar should merely be an authority to register the amendment of the bye-laws once he is satisfied that they are not contrary to the Act and the Rules. We are unable to share this view since the Registrar of Co-operative Societies has greater responsibilities under the Co-operative Societies Act than the Registrar of Joint-Stock Companies. The structure of the legislation historically evolved fixes the responsibility on the Registrar of ensuring that a society operates under conditions as favourable as the Registrar can make them. At the same time, justice demands that the society whose amendments are rejected by the Registrar should at least know the reasons for the refusal and should have the right of an appeal against his decision. The right of appeal has been provided, but there is no obligation on the Registrar to give the reasons for the refusal under the Act. Rule 3 prescribes that the Registrar must communicate the reason in case of refusal to register the society or its bye-laws but there is no reference to the amendment. This position requires to be rectified. It is equally important that the society should know the date on which the amendment approved by the Registrar should be effective. The section will have to be re-numbered as section 13 instead of section 16 at present.

76. We, therefore, recommend that Section 16 be numbered as section 13 and the existing section be substituted by the following:—

SECTION 13—Amendment of the bye-laws of a society.—(1) No amendment of the bye-laws of a society shall be valid until registered under this Act for which purpose a copy of the amendment passed at a General Meeting of the society in the manner prescribed shall be forwarded to the Registrar.

(2) If the Registrar is satisfied that the proposed amendment is not contrary to this Act or to the Rules or to co-operative principles and is not inconsistent with objectives of the Constitution of India, he shall, unless he refuses to register the amendments for reasons to be recorded in writing, register the amendments with or without any modifications on his own motion.

(3) When the Registrar registers an amendment of the bye-laws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered and communicate to the society the date from which the amendment shall be effective.

(4) Where the Registrar refuses to register an amendment of the bye-laws of a society, he shall communicate the order of refusal, together with the reasons therefor, to the society.

77. *Power to direct amendments of Bye-laws.*—The Bombay Co-operative Societies Act, 1925 does not deal with this subject and it has been found by experience that Registrar has been unable to have the bye-laws of societies suitably amended even when they are out of date or do not meet with the requirements of societies. Where the Managing Committee of a society is supported by the general body in its opposition to any progressive move, the Registrar is helpless. The lacuna in the present Act is probably due to the widely prevalent co-operative view and practice that co-operation is voluntary and it is the inherent right of the members to decide what type of constitution they should have for their society. This is a sound principle but in actual practice it impedes the progress of a society if the recalcitrant element in the society is able to mis-guide the majority. We find that in Assam and Bihar, powers to direct amendments have been vested in the Registrar.

78. In Madhya Pradesh, we were told, that the members of a particular society refused to have the bye-laws amended in a manner which would have developed that society very rapidly and enabled it to achieve its objectives more speedily. The Registrar had, therefore, to move the Government for amending the Act and as a result he was able to impose the amendments on that society with whose working we were highly impressed during our visit to Nagpur. The Hyderabad Co-operative Societies Act which is presently applicable to the Marathwada areas also vests similar powers in the Registrar. Apart from this practice which is prevalent in the two component parts of the State and certain other States, we have examined the question from the point of the accepted role of co-operatives in the planned economy of the country and have come to the conclusion that powers to direct amendments of bye-laws should be vested in the Registrar. In the course of our discussion with the representatives of co-operative institutions we found that the co-operative opinion was not averse to such a proposal especially in view of the conception of State Partnership provided the arbitrary use of powers was prevented. We agree with this view.

79. Section 11(4) of the Co-operative Societies Act, 1912, as applied to Madhya Pradesh after being amended by the Central Provinces and Berar Co-operative Societies (Amendment) Act, 1949,

provides that "notwithstanding anything contained in this Act (Act II of 1912) or the Rules or bye-laws made thereunder, if the Registrar considers that an amendment of the bye-laws of a registered society is necessary or desirable in the interest of such society, he may, by an order in writing to be served on the society by registered post, require the society to make the amendment within such time as may be specified in such order". Section 10 of the Hyderabad Co-operative Societies Act is more democratic in as much as it gives an opportunity at the instance of the Registrar to the society to make the amendment within a specified period and empowers the Registrar to register such amendment in case the society fails to make the amendment. Secondly, it provides that the Registrar can seize the initiative under this section only when he is satisfied that the amendment "is necessary or desirable in the interest of such society".

80. In our opinion the latter provisions should be more acceptable to the co-operative movement in the State. It needs, however, to be emphasised that the powers sought to be vested are drastic and a safeguard is desirable. This can only be provided if the Registrar is authorised to use these powers in consultation with co-operative opinion. What agency should represent the co-operative opinion for the purpose of consultation is a controversial issue. The popular view is that a financing bank should be considered best agency for consultation. Some of us, however, feel that being creditor it might be interested in a particular set of amendments and may not be able to view the amendments from the point of promoting the interest of the society whose bye-laws are to be amended. It is further argued, and we agree, that a financing agency cannot necessarily be considered competent to safeguard the interest of all types of societies. The Bombay State Co-operative Union is, therefore, the only society which can examine the proposal dispassionately and give the correct advice to the Registrar and we believe that a decision jointly arrived at by the Registrar and the Union is not likely to be resisted by society affected. We are confident that this advice will not only be in keeping with the democratic tradition of the movement but will also serve the objective of the movement itself. We wish to make it clear that the consultation means concurrence in this context and have used the latter word while drafting the section.

81. We, therefore, recommend that a new section to be numbered as Section 14 be incorporated in the Act and it should read as follows:—

SECTION 14—Power to direct amendment of bye-laws.—(1) If it appears to the Registrar that an amendment of the bye-laws of a society is necessary or desirable in the interest of such a society, he may call upon the society in the manner prescribed to make the amendment within such time as he may specify.

(2) If the society fails to make the amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard and after consulting and with the concurrence of the President of the Bombay State Co-operative Union, register such amendment and issue to the society a copy of such amendment certified by him. Such amendment shall thereupon be binding on the society and its members.

82. *Change of name.*—Section 14 of the present Act provides for the change of name of a society and its effect. It has been now accepted as a result of legal decisions that past member do not include deceased members and their estates. We, therefore, recommend that the words “or deceased members” should be inserted between the words “past members” and “and”. Secondly, the section does not make it obligatory on the Registrar to substitute the new name for the old one in the register of co-operative societies and amend the certificate of registration. We opine that a provision for this purpose is necessary. The section will have also to be re-numbered. We, therefore, recommend that the section be re-numbered as 15 and the wording in the existing section 14 be amended so as to read as under :—

SECTION 15—*Change of name.*—(1) A society may, by a resolution of a General Meeting and with the approval of the Registrar, change its name, but such change shall not affect any right or obligation of the society, or of any of its members, or past members, or deceased members and any legal proceedings pending may be continued by or against the society under its new name.

(2) Where the society changes its name, the Registrar shall, enter the new name in its place in the register of co-operative societies and shall amend the certificate of registration accordingly.

83. *Change of liability of a society from limited to unlimited or vice versa.*—Section 16(A) was inserted by the amendment of the Act in 1948 in order to permit societies to change their liability from limited to unlimited or *vice versa*. The main object of the provision as the Minister for Co-operation then explained to the Bombay Legislative Assembly was to permit societies to change over from unlimited liabilities to limited liability by going through a certain procedure. The section lays down certain conditions including (1) sufficient notice to members and to persons whose interests are affected by the change, (2) consent of every such member or person and (3) an opportunity to the member objecting to the change to withdraw his share and an assurance to the creditors to have his debt secured. For special reasons, however, the Registrar has been empowered to dispense with the notice, but we have been informed that so far this proviso has not been used by the Registrar. In the context of the future development of the co-operative movement especially in the rural sector it is an accepted

policy to encourage large-sized societies with limited or guaranteed liability in order to enable the State Government to strengthen them through State Partnership. When the section was inserted, the Minister for Co-operation had explained to the Assembly that the facilities should be there "should the general feeling be that they should switch over from unlimited to limited liability".

84. Now this is going to be encouraged as a matter of policy. We, therefore, submit that the aim of the section should be to simplify the procedure and facilitate the switch over. The Section prescribes "sufficient" notice under sub-section (2)(i). The word "sufficient" is liable to be interpreted rather loosely and a specific time period should be prescribed. In the case of amalgamation, section 15 of the present Act, requires 15 days notice to the members. We, therefore, recommend that the word "sufficient" should be substituted by the words "15 days". Secondly, there is the onus on the society to receive the assent of the members and the creditors. We are afraid that this is an inequitable burden on societies. So far as the society is concerned, its responsibility should end once it gives sufficient notice and the onus of signifying the objections should rest with the other party. We have, therefore, provided for payment in three months for meeting the objection of a creditor from the date of receipt of such objection from the creditor instead of from the date of the notice. We, therefore, recommend that the Section should provide that any member or creditor who does not signify his objection within the specified period shall be deemed to have assented to the change. This provision exists in Section 5 of the Madras Co-operative Societies Act. All that the creditors and the members are required to be assured is that the change shall not take place unless and until they have a reasonable opportunity to exercise their choice and get it satisfied. The latter has been assured by the existing clause (2) (ii) (b) (ii). We, therefore, recommend no change in this clause. As regards the proviso, we note that this has not been used so far, but at the same time we opine that it is necessary in order to meet the situation which may not be visualised at present. We, therefore, recommend its retention.

85. As a result, we recommend that the existing section 16-A be re-numbered as Section 16 and be amended as under :—

SECTION 16—Change of liability of society from limited to unlimited or from unlimited to limited.—(1) A society may, subject to the provisions of Section 13 by an amendment of its bye-laws change its liability from limited to unlimited or unlimited to limited.

(2) No such amendments shall be registered by the Registrar unless he is satisfied that—

(i) fifteen days' notice has been given to every member of a society and to any person or class of persons whose interests will, in the opinion of the Registrar, be affected by the alteration, and

(ii) that with respect to every such member or person who, in the opinion of the Registrar, is entitled to object—

(a) either his assent has been obtained to the change or deemed to have been obtained by virtue of his failure to object within fifteen days from the date of the notice,

(b) or if he signifies his objection—

(i) he is allowed to withdraw his share if he is a member, or

(ii) that his debt or claim has been discharged or has been determined or has been secured to the satisfaction of the Registrar within three months from the date of receipt of the objection, if he is a creditor :

Provided that the Registrar may in the case of any persons or class of persons, for special reasons, dispense with the notice required by this sub-section.

86. *Amalgamation, transfer, division or conversion of societies.*— Amalgamation or transfer of societies have been covered by section 15 of the present Act while section 15-A deals with division (or conversion) of societies. The procedure in both the respects should be identical and the explanation for two sections is probably to be sought in the fact that section 15 did not provide for division and the new section had to be introduced in 1948 to overcome the deficiency. In this context, the Minister for Co-operation explained to the Assembly (Bombay Legislative Assembly Debates, February 21, 1948, page 119), “a new provision is made for the splitting up of societies where such splitting up is found necessary in the opinion of the Registrar according to the circumstances of the case”. Thus for instance, in both the cases the resolutions will have to be passed by three-fourths majority. Three months’ notice has to be given to the creditors and they have the right to demand their dues. In the Madras Act also both the sections have been merged into one. We are of the view that both the sections can be suitably merged into one by prescribing the common procedure.

87. Amalgamation or division is permitted at present under the two sections “with the approval of the Registrar”. We are unable to determine whether the intention of the legislature is to provide for prior approval of the Scheme or the approval of the bye-laws. From the Minister’s statement quoted above on section 15-A, it is clear that the Registrar’s opinion as to whether splitting is necessary or not is crucial. We opine that this is equally important in the case of amalgamation and, therefore, recommend that both—in the case of amalgamation and division—the prior approval of the Registrar should be insisted. This would save the societies from the expenditure in connection with the completion of the formalities required by the law if at the end the Registrar were to reject

the scheme. The second stage is to get the scheme approved by the General Body. It is only then that the members and the creditors likely to be affected by the Scheme should have the choice to decide whether they should dissociate themselves from the scheme. The Scheme can be effective only after the amendments are approved by the Registrar, and therefore, it would be necessary to impose a condition prior to the registration of the change that the members and creditors are able to exercise their choice of withdrawing and getting claims satisfied respectively.

88. In dealing with these stages we have made no material change in the existing section but have attempted to codify the provisions properly so that the implications can be properly understood. We, therefore, recommend that the existing section 15 and section 15-A be deleted and a new section to be numbered as section 17 be inserted as under :—

SECTION 17—Amalgamation, transfer, division or conversion of societies.—(1) A society may with the prior approval of the Registrar, by a resolution passed by two-thirds majority of the members present and voting at a special general meeting, held for the purpose, decide—

- (a) to amalgamate with another society, or
- (b) to transfer its assets and liabilities in whole or in part to any other society, or
- (c) to divide itself into two or more societies, or
- (d) to convert itself into a class of society, the object of which is materially different from that under which it has been classified under the Act :

Provided that when such amalgamation or transfer of assets and liabilities or division or conversion involves a transfer of liabilities of a society to any other society, no order on the resolution shall be passed by the Registrar unless he is satisfied that—

- (a) a society, after passing such resolution, has given notice thereof in writing to all its members, creditors and such other persons whose interests are likely to be affected giving them the option, to be exercised within a month from the date of issue of such notice, of becoming a member of any of the new societies or continuing their membership in converted or amalgamated society, or demanding the payment of their share or interest or dues, as the case may be,
- (b) the assent of all the members and creditors and other persons whose interests are likely to be affected has been obtained or deemed to have been obtained by virtue of any member or creditor or any other person whose interest is likely to be affected failing to exercise his option within a period of one month from date of issue of notice, and

(c) that all claims of members and creditors and such other persons whose interests are likely to be affected, who exercise the option referred to in clause (a) within the period specified therein have been met in full.

(2) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908, the registration of the new societies in the event of division or the converted society in the event of conversion of a society, and the resolutions of the societies concerned with the amalgamation shall be sufficient conveyance to vest the assets and liabilities of the original society or societies in new societies or society.

(3) The amalgamation of societies or division or conversion of a society shall not affect any rights or obligation of the society so amalgamated, divided or converted or render defective any legal proceedings which might have been continued or commenced by or against a society which may have been amalgamated, divided or converted may be continued or commenced by the amalgamated society or the converted society or the new societies between which society may have been divided.

(4) Where any two or more societies have been amalgamated or a society has been divided or converted the registration of such societies or society shall be cancelled on the date of registration of the amalgamated society or the converted society or the new societies between which society may have been divided.

89. *Power to direct amalgamation.*—As a result of the Rural Credit Survey Committee's Report, it has been the policy of the State and the co-operative movement to encourage large-sized multi-purpose societies. Apart from that, the successful working of a society demands that it should be of an economic size. It would, therefore, be necessary to encourage the amalgamation of small sized societies into an economic unit. Section 15-AA inserted in the Act in 1956 empowers the State Government to provide for amalgamation of co-operative societies in public interest. This section requires the State Government to send a copy of the proposed order to the societies concerned and to make such modifications in the draft order as may be desirable in the light of the objections and suggestions received. This is a wholesome safeguard. But sub-section (3) only assures the members and the creditors to have "nearly" the same interest in or rights against the new society as a result of amalgamation and enables them to get compensation for the difference between their interest in or right against the original society and the ones in the amalgamated society.

90. We are afraid, this is an arbitrary provision and in no circumstances the question of determining the difference between the two interests and right should be left to the State Government or the

Registrar or any other authority which will be imposing the amalgamation. True, a similar provision exists in the Companies Act, but the analogy is not applicable since in the case of Companies, the Central Government has to make out a case that amalgamation is essential in national interest (vide section 396 of the Companies Act). A co-operative society is essentially an organisation of members and no useful purpose will be served by compelling unwilling persons to continue their membership. Similarly, it would not be fair to transfer the dues of creditors from one society to another society, without their consent. We opine that the facilities available to the members and creditors in respect of voluntary amalgamation should also be available under compulsory amalgamation which might be imposed by the State Government as a matter of policy and recommend that the section be suitably amended so as to eliminate the difference in respect of this facility between voluntary amalgamation and compulsory amalgamation. We hope that in view of the conception that the quantum of State Partnership will be to the extent required by the society, the financial difficulty for the society in meeting the necessary obligation will not arise.

91. We are also of the view that it should be left to the Registrar to decide whether it is desirable to amalgamate two societies or not and recommend that the power should be vested in the Registrar instead of in the State Government. It has been suggested to us that two societies of similar types should only be amalgamated. We do not agree with the suggestion for the reason that in a group of villages it might be desirable to amalgamate agricultural societies and small purchase and sale unions, and do not, therefore, recommend any restrictive provision. We, therefore, recommend that section 15-AA be re-numbered as section 18. The words "State Government" wherever they occur be substituted by the word "Registrar" and that clause (3) be deleted and a new clause be inserted so as to give an opportunity to the members and creditors of the societies to be amalgamated of withdrawing from the Scheme and demanding the return of their share capital, interest or other dues.

92. As a result of the above recommendations the new section 18 will read as under :—

Section 18—Power of Registrar to direct amalgamation.—
 (1) Where the Registrar is satisfied that it is essential in the public interest or necessary in order to secure the proper management of any society, that two or more societies should amalgamate, then notwithstanding anything contained in section 17 but subject to the provisions of this section, the Registrar may, by order notified in the *Official Gazette*, provide for the amalgamation of those societies into a single society with such constitution, property, rights, interests and authorities, and such liabilities, duties and obligations, as may be specified in the order.

(2) No order shall be made under this section unless—

(a) a copy of the proposed order has been sent in draft to each of the societies concerned calling upon them to furnish within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, a list of members and creditors who object to the Scheme of amalgamation and wish to withdraw from it ;

(b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period as mentioned in sub-clause (a) either from the society or from any member or class of members thereof or from any creditor or class of creditors.

(3) The order referred to in sub-section (1) may contain such consequential, incidental and supplemental provisions as may in the opinion of the Registrar be necessary to give effect to the amalgamation.

(4) Every member or creditor of each of the societies before amalgamation who has objected to the Scheme of amalgamation within the period specified shall be entitled to receive on the issue of the order of amalgamation his share or interest if he is a member and the amount in satisfaction of his dues if he is a creditor.

(5) On the issue of order under sub-section (1) provisions in section 17(2), (3) and (4) shall apply to the societies so amalgamated as if they were amalgamated under section 17 and to the society amalgamated.

93. *Reconstruction of societies.*—The working of the co-operative movement in the State as elsewhere has demonstrated that societies occasionally come to grief for one reason or another, but have a chance of survival and development after receiving the first shock. For this purpose it has been found necessary to reconstruct the society so affected. The need for reconstruction stems from the fact that the society is not in a position to meet its liabilities fully to its creditors. From this point, reconstruction necessarily involves a compromise with its creditors and members. Where all the creditors unanimously agree to a compromise proposal, no difficulty arises, but if even one creditor objects to it, the scheme falls through on legal grounds since it is impracticable to satisfy fully a dissentient creditor and thereby penalise further other creditors who lend their support to the reconstruction scheme. This is also the position in respect of members of the society. In Bombay State fortunately to our knowledge several societies have been reconstructed in spite of this handicap and no legal difficulty has arisen probably because no member or creditor tested the action

of societies and the Registrar in a Court. We, however, feel that with the expansion of the movement, the cases of reconstruction of societies are likely to occur more frequently and it is necessary that the Act should specifically provide the procedure for reconstruction.

94. Sections 391, 392 and 393 of the Companies Act prescribe the procedure in respect of Joint-Stock Companies for compromising or making arrangements with creditors and members. Section 391 lays down that "the Court on the application of the company or creditor or members or liquidator may order a meeting of the creditors or the members and if three-fourths of the creditors or members in value agree to any compromise, the Court may sanction the compromise and it shall be binding on all creditors and members and on the company." The Section also provides for an appeal against any order of the Court. Section 392 empowers the High Court making the order to supervise carrying out of the compromise and revising the compromise and giving directions in regard to any matter affecting the compromise. Section 393 prescribes the procedure for calling the meeting of creditors and members and for giving them information and explanation. Under section 517 of the Companies Act reconstruction has been facilitated in the case of a Company about to be or in the course of being wound up. Here the procedure is simple inasmuch as the support to the scheme is required from three-fourths of the creditors and members in value and a provision has been made for enabling a creditor to appeal.

95. The main points to be noted in this context are that (1) the Court is not bound to sanction the scheme because requisite members and creditors have approved it, (2) the Court has to see whether the sanctioned scheme is conducive to public interest or commercial morality, (3) and the court has to be satisfied that the scheme is practical and feasible and is fair to the parties whose interests are affected. A controversy is often raised as to whether a scheme once approved by the requisite majority, can be subsequently modified by the Court or not. The relevant section in the Companies Act, 1956 has resolved it by empowering the Court to modify the scheme. It is significant that creditors' and members' assent to a scheme modified by Court is not required. We wish to emphasise this particular aspect of the reconstruction scheme because it is very valid in respect of reconstruction of co-operative societies.

96. The Bombay Co-operative Societies Act, 1925, does not provide for reconstruction of societies, but section 42-B of the Madhya Pradesh Act as applied to Vidarbha deals with "compromise or arrangement for repayment of liability of registered societies". This section empowers the Registrar to order a meeting of creditors for the purpose of effecting a compromise or arrangement and pass an order confirming compromise or arrangement if it is approved by creditors not less than three-fourths in value of the creditors present

either in person or by proxy at the meeting. On passing of the order, the compromise shall be binding on all the creditors and on the society and, in the case of society under liquidation, on the liquidator. A proviso has, however, been added that the Registrar shall not confirm the compromise unless the creditors agreeing to it are not less than 51 per cent. in value of all creditors. We are afraid that this proviso is restrictive inasmuch as it is not fair to expect a society to compel every creditor to express his view and in fairness to the society and to its creditors the golden rule of "silence is consent" should be adopted.

97. The Section also deals elaborately with the procedure and provides for the (i) proceedings being stayed in the Civil Court pending the compromise proceedings and (ii) for abating the proceedings after the scheme is confirmed. These two provisions are very important from the point of facilitating the reconstruction of society. Section 42-C of the Madhya Pradesh Act enables the society to borrow only when it has paid to its creditors not less than two-third of the amount payable to them under the scheme and requires that the balance of the amount due to the creditors is to be paid within six months. This period, we are afraid, is again restrictive because the scheme of arrangement agreed to by the creditors might provide for a longer period. In fact the usual arrangement is for paying a fraction immediately and spreading payment of the balance over a period ranging up to five years. This Section further provides that the scheme shall cease to be in force as soon as the whole amount of the liability is paid.

98. Having considered the abovementioned points, we have come to the conclusion that the scheme of reconstruction suitable for societies has to be simple, fair to members and creditors, and practical. Secondly, the whole scheme right from the stage of calling the meeting for its approval to its execution has to be supervised by the Registrar. Thirdly, the Registrar must have the same powers under this Act as those which have been vested in the Court by the Companies Act, 1956. In the Companies Act proxy at the meeting are permitted wherever they are allowed by the constitution of the company concerned. We do not think that proxies should be permitted in the case of a society because the element of non-members among the creditors is usually insignificant. We also do not feel the necessity of adapting in its present form section 42-C from the Madhya Pradesh Act because the scheme of reconstruction has necessarily to be implemented over a longer period and the creditor cannot be expected to be paid of fully in six months. The society is entitled to apply for a loan to its financing agency so long as it is not wound up and the financing agency is capable of determining the creditworthiness of such a society before sanctioning loan and that it is obvious that a compromise ceases after the conditions imposed by it are implemented. It is also unnecessary to provide that

after the compromise has ceased to be in force, no further claim shall remain against the society or against its property in respect of which compromise has been effected.

99. In recommending the following Section-No. 19 we have relied on the Companies Act and the Madhya Pradesh Act and sought to achieve the purposes mentioned earlier.

SECTION 19—Reconstruction of societies.—(1) Where a compromise or arrangement is proposed between (a) a society and its creditors and (b) between a society and its members, the Registrar, may, on the application of the society or of any member or of any creditor of the society, or, in the case of a society which is being wound up, of the liquidator, order a meeting of the members or creditors, as the case may be, to be called, held and conducted in such manner as the Registrar directs.

(2) If a majority in number representing three-fourths of the members or three-fourths in value of the creditors, as the case may be, present and voting in person at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Registrar, be binding on all members or all the creditors, as the case may be, and also on the society, or, in the case of a society which is being wound up, on the Liquidator.

(3) When an order calling a meeting is passed under sub-section (1), the Registrar may give notice of such order to a Civil Court in which proceedings, where instituted before or after the order, in respect of any liability of the society due to a creditor to whom a copy of the order is posted are pending and on receipt of such notice the Civil Court shall stay the proceedings. If no compromise or arrangement is confirmed under sub-section (2) the Registrar shall inform the Civil Court accordingly, and the proceedings which may have been stayed shall be resumed. If compromise or arrangement is confirmed under sub-section (2) the proceedings, if any, stayed under this sub-section shall abate and no proceedings shall lie in a Civil Court in respect of any liabilities of the society to which the compromise or arrangement relates.

(4) Where the Registrar makes an order under sub-section (2) sanctioning a compromise or an arrangement in respect of a society, the Registrar shall have power to supervise the carrying out of the compromise or arrangement and to give such directions, at the time of making such order or at any time thereafter in regard to any matter and to make such modifications in the compromise or arrangement as he may consider necessary for the proper working of the compromise or arrangement.

(5) If the Registrar is satisfied that a compromise or arrangement sanctioned under sub-section (2) cannot be worked satisfactorily with or without modifications, he may either of his own motion

or on the application of the society, or, in the case of a society being wound up, on the application of the Liquidator, make an order cancelling the scheme of compromise.

100. *Partnership*.—Section 15B of the Bombay Act provides for partnership of societies. This section was inserted in 1953 and provides that any two or more societies may, with the approval of the Registrar, by resolution passed by three-fourths majority of the members of each society, enter into a contract of partnership for carrying on specific business and nothing in the Indian Partnership Act, 1932, shall apply to such contracts of partnership. The object of the Legislature in adding this section was that before the societies decide to enter into such a partnership they should receive the approval of the General Body and the Registrar. The Act nowhere provides for any contractuary relationship or partnership between the two societies and the Indian Partnership Act is not applicable to such societies under this section. To our knowledge no other procedure has been introduced for governing the partnership contemplated by this section. Shri B. D. Deshmukh stated in the Council (Bombay Legislative Council Debates, official report, April 9, 1953, page 760), on behalf of the Government that “This specific business will be governed not by provisions of the Indian Partnership Act but by the general provisions of the Contract Act as amended by the Co-operative Societies Act and the Rules made under the Act.”

101. The reason for inserting this section was that in Panchmahals district no society with the jurisdiction of the district could be given district wholesale agency for distribution and two societies, therefore, wanted to form a partnership to undertake it. We think that it would be better to give agencies to two societies each having a compact area of operation instead of providing for partnership whereunder a unified control is not possible because of the restriction of jurisdiction of each society. In the course of our enquiry we have learnt that the facility of this section has been availed of by societies to enter into partnership even though the two societies had two different objectives. Thus, for instance, a Labour Contract Society could join hands with a Bank under this section to undertake labour contracts so that one partner executed the contract and the other provided the finance. We are afraid that a partnership of this type is repugnant to sound business and should not be encouraged and the straight course would be to provide the necessary finance to such a society if it is competent to execute the contract. At the same time, to facilitate such partnership, we suggest that a simple majority should be enough. We are, therefore, of the view that this section should be amended so as to restrict

the partnership to societies having similar objects. We, therefore, recommend that section 15B be renumbered as section 20 and read as under :—

SECTION 20—Partnership.—(1) Any two or more societies with similar objectives may, with the prior approval of the Registrar, by a resolution passed by a simple majority of the members present and voting at a general meeting of each such society, enter into a contract of partnership for carrying out specific business or businesses.

(2) Nothing in the Indian Partnership Act, 1932, shall apply to such contracts of partnership and matters including disputes arising from such partnership, shall be determined under this Act.

102. *Cancellation of registration.*—There is no provision in the Bombay Act or in any of the Acts operating in the component parts of Bombay State regarding the circumstances under which the registration of a society can be cancelled. Section 49 of the Bombay Act deals with “effect of cancellation of registration” but it provides that the Registrar shall make an order cancelling the registration when the affairs of a society have been wound up. The cancellation of a society will also be necessary when it is amalgamated with another society or divided or converted into another society or when it has not commenced business. We, therefore, recommend that a new section 21 be added as under :—

SECTION 21—Cancellation of registration.—The Registrar shall make an order cancelling the registration of a society if it transfers the whole of assets and liabilities to another society or amalgamates with another society or divides itself into two or more societies under section 17, or its affairs are wound up, or it has not commenced business. The society shall be deemed to be dissolved from the date of such order and shall cease to exist as a corporate body.

CHAPTER VI.

MEMBERS AND THEIR RIGHTS AND LIABILITIES.

103. This chapter deals with (1) persons who may become members, (2) open membership, (3) nominal, associate and sympathiser members, (4) cessation of membership, (5) no rights of membership to be exercised till due payments are made, (6) voting powers of members, (7) restrictions on holding of share capital by a member, (8) restrictions on transfer of share or interest of a member, (9) transfer of share or interest on death of a member, (10) share or interest not liable to attachment, (11) rights of members to inspect books, etc., (12) borrowing by members, (13) liability of a past member or the estate of a deceased member, (14) insolvency of a member, and (15) expulsion of members. Chapter III of the Act of 1925 prescribes the rights and liabilities of members in four sections. These relate to items 5, 6, 8 and 9. Section 6-A defines a person who cannot become a member; but we have chosen to discuss about persons who may become members. We have also brought section 6 regarding restrictions on interest of member of society with limited liability and a share capital and sections 26, 27, 28, 29 and 30 lumped together in the Chapter on Privileges of Societies within the scope of this Chapter because they relate to members and not societies. Besides streamlining the existing provisions, we have thought fit to add seven new sections so as to make the scope of the chapter more comprehensive.

104. *Person who may become member.*—The only section dealing with this at present is section 6A, which was added in 1952. This section lays down that “no person shall be admitted as a member of a society unless he is a person competent to contract under section 11 of the Indian Contract Act, 1872”. In other words, an individual of the age of majority and of sound mind is eligible to be a member of the society. Suggestions were made that insolvents and offenders should be specifically debarred from membership. An undischarged insolvent is ineligible to enter into contract and, therefore, he will be subject to disability of not being entitled to the membership of a society. But we do not think any useful purpose will be served by extending the disability to insolvents and offenders. This is so particularly, because in a co-operative society, to quote the Government of India’s Resolution “Membership should be eligible for admission by election only so as to secure that mutual confidence upon which successful co-operation would depend”. Although the movement has expanded, the principle laid down in this Resolution, i.e., “the selection must still be personal and made by the society; no person can claim admission under any automatic rule” and the important principle that the new member must be accepted by the old ones or their representatives is still maintained. This is a sufficient safeguard in our opinion.

105. A point has been raised as to whether the membership should be confined to individuals only, and if so, whether an individual member can represent a joint Hindu family. On the second

point, the co-operative opinion is unanimous. But on the first point it is divided. The Courts have held that the term 'Member' is wide enough to include a joint Hindu family. The question is whether the firms and companies were eligible to become members under the Act, enacted in 1925. The definition of "Member" given in the Act, enacted in 1925 includes "a person" etc. "A person" has been defined in section 3, clause (35) of the Bombay General Clauses Act, 1904, which says that "person" includes a company or association or body of individuals, whether incorporated or not. It is significant that the Bombay Legislature deliberately added the word "person" and not "individual" which is found in Co-operative Acts of certain other States. It is, therefore, obvious that the intention of the legislature as early as in 1925, was to throw the membership of co-operative societies open to firms and companies provided they satisfied other qualifications. It is on the basis of this interpretation that several societies, especially urban banks, admitted firms and companies as members.

106. The question figured again in 1952 when the bill to amend the Act was introduced in the Bombay Legislature. The principal object of this bill was to facilitate the formation of co-operative societies, the sole object of which was to provide financial accommodation to the co-operative housing societies. For this purpose, the words "company" or "firm" were added in section 7. The then Minister for Co-operation explained that it would be desirable to enable companies and partnership to become members of the co-operative society, hence the need for changing the law in this respect. This subsequent inclusion of firms and companies has given the impression that the law sponsored their admission only in respect of the Housing Finance Society and consequently there has been a tendency on the part of the authorities to discourage the co-operatives in admitting firms and companies as members. This policy is able to be attributed to the practice in certain other States of confining the membership of societies to individuals only.

107. The main argument in support of keeping the firms and companies out of co-operation is that they are capitalistic concerns and have a profit motive and are, therefore, liable to unduly influence the working of the society to the detriment of the small members. Some of us also hold this view. But those who have opposed beg to point out that the mere combination of individuals does not make them capitalists and the combination itself is a right of every individual. As regards the profit motive, it may be pointed out that if profit motive is not a crime for an individual, it cannot be a crime for an individual, it cannot be a crime if they join as partners or combine into a company. As regards the possibility of capitalists entering the co-operative system and exploiting it, it needs be pointed out that individual capitalists can enter if they wish and if a society is willing to admit them, the mere exclusion of their companies or firms will not serve the object. Those who feel that the existing provision in the Act is liberal may be reminded that co-operative

practice in Bombay State, since the enactment of the Act in 1925, has conclusively proved that the liberal interpretation of the word "person" has been instrumental in the large-scale development of urban banks in the State, which has achieved an unique position in the country so far as this arm of the movement is concerned. This is also true in respect of housing societies. Again, if the Government, the co-operators and the legislatures had thought that firms and companies should be specifically qualified to be members of a housing society only, they should have made the provision specific to that effect. This has not been done. We are, therefore, of the view that the present practice be continued and no restriction be placed on the eligibility of firms and companies to be members of a society, especially one operating in the non-agricultural sector of Co-operation.

108. It has been represented to us that as a result of the inclusion of the words "firms or companies", other associations, such as society registered under the Societies' Registration Act and the Public Trust Act, have been excluded from the privilege of being members of co-operatives. Those of us, who interpret the word "person" in terms of the Bombay General Clauses Act, feel that it would be better to use the word "person" than to mention the type of persons and to differentiate between individuals and other persons, so that in the case of individuals, the qualifications regarding the age and of sound mind will be applicable. This does not arise in the case of an institution. We, however, suggest that this viewpoint be examined in the Legal Department. For the purpose of our recommendation regarding this section, we assume that the step taken in 1952 in regard to specifically throwing the membership open to firms and companies is correct and recommend that in that event the privilege will have to be extended to societies and associations registered under the Societies Registration Act, the Public Trust Act and other acts for the time being in force.

109. In regard to the Joint Hindu family, the legal position appears to be that a joint Hindu family can be a member of a society, unless the bye-laws of that society clearly lay down to the contrary. At the same time, the courts have held that the onus of proving that a member of a joint Hindu family joined a society in a representative capacity with the consent of all adult members of the family, though he may not have been the Karta of the family and that the debts incurred by him were for the purpose and on behalf of the family, lies on the society if it wants to proceed against the joint Hindu family properties although that member is not described in the Register of the Society. The procedure for the admission of joint Hindu family as a member may suitably be laid down by the Registrar for the guidance of the societies, though it may not form part of the rules.

110. In view of the recommendation that individuals should be eligible for membership only if they are competent to contract under section 11 of the Contract Act, there arises the difficulty relating to the position of minors. Under section 17-A, a minor or a person of unsound mind can acquire the rights of the members in certain circumstances. We think that the provision is not quite in order inasmuch as where as section 6-A says that no minor shall be a member, section 17-A makes him eligible and whereas the tenor of the law is to confer certain rights and liabilities on a member, the member admitted under section 17-A will not be subject to any liabilities. We, therefore, recommend that this section "person who may become member", should specifically provide for these contingencies. This can best be done by making minors as associate or nominal members of a society.

111. The second point relating to the minors arises from the point of promoting students' co-operatives. The organisation of school co-operatives gives the students an opportunity to promote understanding of Co-operation to teach co-operative ideas by practice, to improve their ability to work together and to translate into practice the basic principles of community and social life. This type of Co-operation has been an accepted basis for promoting the co-operative movement in Europe. Students' co-operatives have also to be encouraged in this country. At the same time, it would not be proper to allow such societies being started and run as unregistered societies, because any association not registered, will be illegal and those conducting it can be penalized under the Indian Companies Act, and under section 11 proposed by us. In order to provide for this contingency, we recommend that societies whose membership is meant primarily to benefit the minors may be registered under the Act and the bye-laws of such societies may be devised in a manner which will provide for a sufficient safeguard against the misuse of funds of such society.

112. The third point which needs to be discussed relates to the readmission of an expelled member of one society by the other, or by the same society. Expulsion of a member is an extreme penalty and the step itself is taken in exceptional circumstances and by a majority of the members at a general meeting, which hears the member liable to be expelled. Consequently the decision on expulsion is taken after a good deal of deliberation and for an offence which is severe. In that event, the penalty also must be severe. Its quantum will not be adequate unless he is deprived of the facilities of being admitted as a member of another society or of the same society for a specific period. At the same time it would be desirable to provide a safeguard against the powers being misused by the general body, by empowering the Registrar to make an exception in respect of the penalty. The Madras Rule XVIII-B lays down that no member of a society who has been expelled under

the provision of its byelaws shall be eligible for readmission as a member of that society or for admission as a member of any other society for a period of 2 years from the date of such expulsion ; provided that the Registrar may under special circumstances sanction the readmission or admission, within the said period, of any such member as a member of the same or any other society, as the case may be. We endorse this provision but propose to cover it in paragraph 146. We also think that provision should be made for the admission of a co-operative society to membership of another society and of the State Government as a member of a society.

113. A representation was made by certain witnesses to us that employees of a society should be disqualified from being members of that society on the lines of the provision in Madras and Orissa Acts. The main argument is that the interest of employees conflicts with that of the members and where employees are admitted as members, they will seek to safeguard their interest as members by using their position in the society as members and consequently discipline will not be maintained. It is further argued that an employee on becoming a member can come in closer contact with the committee and exploit the position to his advantage at the cost of other employees, and the management may be reluctant to take stringent measures against such an employee. Several other arguments of less importance have also been advanced in support of this view. We, however, find that the admission of employees as members has not operated to the detriment of any society in Bombay State so far as our enquiry shows. Furthermore, the interest of members and employees in the society are identical in certain matters inasmuch as the benefit for both can accrue from the growth of the society itself. Besides, it would not be fair to deprive a person otherwise qualified of the facilities which a society may provide simply because by accident he happens to be an employee. We, therefore, reject the suggestion.

114. As a result of the above discussion we recommend that section 22 given below be substituted after deleting the existing Section 6-A.

SECTION 22—*Person who may become member.*—No person shall be admitted as a member of a society except the following, viz.:—

- (a) An individual, who is competent to contract under section 11 of the Indian Contract Act, 1872 ;
- (b) A firm, company, association or any society registered under the Societies Registration Act or the Public Trust Act or any other Act for the time being in force ;
- (c) A society registered under this Act, and
- (d) The State Government.

Provided that the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of the students.

115. *Open membership*.—Although the membership of a co-operative society is selective, one of its cardinal principles is that of open membership. In Sweden, an economic society cannot refuse the right of membership to any person unless there is sufficient reason such as the evidence that the person is likely to work against the interests of the society. This is based on the view that the ultimate aim of co-operation is to extend its benefit to every eligible person and the Law must, therefore, ensure that no such person is shut out. There has been, however, a tendency among certain co-operatives in Bombay State to treat them as closed shops. This has to be discouraged by providing for a proper safeguard. In the case of consumers' societies Rule 45-A provides that no consumers' society shall, without sufficient cause refuse admission to membership to any person duly qualified and that any person aggrieved by non-admission may appeal to the President of the Federal society to which the said society is affiliated or if it is not affiliated to any federal society to the President of the Bombay Provincial Co-operative Institute and the decision of the President of such society shall be final. The All India Rural Credit Survey Committee also felt that the principle of open membership should be strictly adhered to by the societies and, therefore, recommended that a person who has been refused admission to a society should have the right to appeal to the Registrar of Co-operative Societies. A draft of the amendment to the Rule on the basis of this recommendation was published for public opinion and discussed in the State Co-operative Council where the consensus of opinion was that Rule 45-A in its present content would serve the objective which everybody had in view. We share this opinion.

116. The only point to be noted in this context is the doubt regarding the legal position of the provision in the rules. The rules are subsidiary to the Act which does not vest the power in the Registrar to decide who should be admitted as a member by a society. We, therefore, recommend that Rule 45-A be amended suitably to cover all types of societies and be incorporated in the Act itself as a section, which should be numbered as Section 23 and read as under:—

SECTION 23—*Open membership*.—(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under its byelaws.

(2) Any person aggrieved by the decision of a society refusing admission to him to its membership may appeal to the President of the federal society to which the said society is affiliated or, if

it is not affiliated to any federal society, to the President of the Bombay State Co-operative Union.

(3) The decision of the President of the federal society or of the Bombay State Co-operative Union in appeal shall be final.

117. *Nominal, associate and sympathiser members.*—The practice of nominal membership in co-operative societies was initiated in 1947 following the enactment of the Bombay Agricultural Debtors' Relief Act, as a result of which farmers whose debts were adjusted experienced difficulties in the matter of securing agricultural credit since they were unable to buy the requisite number of shares of agricultural credit societies. The Government, therefore, encouraged these societies to accept agriculturists whose debts were adjudicated, as nominal members. The enactment of the Money-lenders Act in the same year also created a shortage of credit for persons with small means who were unable to borrow money by pledging valuables. The Government, therefore, advised urban credit societies to admit such persons as nominal members so that they could be provided with the borrowing facilities. Thus the practice of admitting persons as nominal members has been extensively prevalent in the co-operative sector. In the case of marketing societies which have to deal with merchants and to whom credit has necessarily to be extended, the settlement of disputes by recourse to this Act has been found more conducive than through Civil Courts. Since this is possible only if traders are admitted as members it has been found necessary to admit them as nominal members in view of the fact that they are not entitled to be fullfledged members of such societies. In the case of societies formed for the uplift of backward tracts and backward people, such as forest labourers societies and labour contract and industrial societies and in the case of co-operative sugar factories which demand guidance of a high order which cannot be had from amongst the members, the need for securing it from outside has been felt. This has been satisfied by enabling social workers to be associate and sympathiser members.

118. Thus the practice of admitting nominal, associate and sympathiser members has been well developed. The Act refers to nominal members in certain sections but nowhere has the nominal member been defined nor his qualifications, rights and liabilities have been prescribed. Section 2 (C-1) of the Madhya Pradesh Act defines "nominal member". We are of the view that a new section should be added providing for the admission of nominal, associate and sympathiser members. Since section 24 proposed by us below takes care of societies wishing to encourage nominal members in respect of persons who are not qualified to be fullfledged members, we hope that the introduction of this section will not be

misused by societies. We, therefore, recommend the following new section as section 24 :—

SECTION 24—Nominal associate and sympathiser members.—
 (1) Notwithstanding anything contained in section 22, a society may admit any person as a nominal, associate or sympathiser member who shall have no share either in the management, profits or assets of a society and shall not be subject to any contributory liability in the case of winding up of the society.

(2) Save as provided in sub-section (1), a nominal, associate or sympathiser 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 byelaws of the society and be subject to the provisions in this Act in regard to the settlement of disputes and recovery of dues.

119. *Cessation of Membership.*—The Bombay Act does not deal with this provision though the byelaws of societies usually provide for it. In Vidarbha Rule 34-A lays down that “a member, who is not in debt and is no surety for an unpaid debt, may withdraw from the society after giving one month’s notice”. Madras Rule XVIII-A(2) provides for cessation of membership under certain contingencies such as bankruptcy and insolvency and certain types of offences. Bengal rule 13 provides for removal of a member if he ceases to be qualified under the byelaws if he is a member, or if he is expelled. More important than these provisions is the lacuna as to when the cessation of a member is effective especially when a member resigns. Shri L. S. Sastri in “Law and Practice of Co-operative Societies in India” (page 124) discussing the liability of past members comments that “the resignation of a member takes effect and the membership ceases immediately the letter of resignation reaches the society, and there is no question of the acceptance of the resignation.” In support of this view he has cited certain cases in which the Courts in Madras have held this view. We are afraid, in such a situation the societies would be put to a hardship.

120. In Bombay State the usual practice is to provide for cessation of membership in the byelaws of societies. We think, it would be better if this is provided for in the Act itself and, therefore, recommend the following section as section 25 :—

SECTION 25—Cessation of membership.—A person shall cease to be a member on resignation or transfer of the whole of his share or interest in the society to another member or on death or on removal or expulsion :

Provided that no member shall be allowed to resign from a society unless he is not in debt and is not surety for an unpaid debt and no resignation may be accepted by a society unless it

has received at least one month's notice from the member of his intention to resign. The date of resignation shall be the date on which the society accepts the resignation of the member.

121. *No rights of membership to be exercised till due payments are made.*—Section 17 of the Bombay Act provides that “no person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed by the rules or the bye-laws of such society.” We opine that this provision is wholesome and should be retained in its present form. We, therefore, recommend that section 17 in the existing Act be renumbered as section 26, which will read as under :—

SECTION 26—*No rights of membership to be exercised till due payments are made.*—No person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed by the Rules or the bye-laws of such society.

122. *Voting powers of members.*—Section 18 of the Bombay Act incorporated as early as in 1925 lays down the principle of one member one vote. In 1948 a clause was adopted clarifying that where the shares are jointly held only the person whose name stands first in the share certificate shall have the right to vote. Section 13 of the Madhya Pradesh Act, however, differentiates between the voting rights of members in respect of societies whose liability is limited by shares and where the liability is not limited by shares. In the latter case the principle of one member one vote has been laid down ; but in the case of societies limited by shares, “each member shall have as many votes as may be prescribed by bye-laws”. We are afraid, this is not in accordance with the co-operative principles. The Acts are silent as to whether an individual member can vote by proxy. In Bombay State there are certain societies whose bye-laws permit the use of proxies. In the case of co-operative societies the word “proxy” has been used in certain legislation but it really represents the exercise of voting right of a society through its authorised representative. We think that such use is not “proxy” as is understood in Law. We are of the opinion that no proxy should be allowed.

123. The principle of one member one vote has been an accepted feature of co-operative theory and practice. It recognises that co-operatives are not an association of capital but of members. In the case of mixed type of societies, however, there is a danger of individual members dominating the co-operative societies by exploiting this principle of one member one vote. Strictly speaking from

the point of view of patronage, the quantum of strength and the nature of organisation, societies should have a greater weightage than the individuals in such organisations. The Finish Law for instance, gives one member one vote but lays down that if any society has mixed membership, the society shall have more than one vote. The French Law gives voting rights in proportion to the number of members or to the business volume.

124. The question also remains as to how societies should exercise their voting powers. To suggest that each society should do so by its authorised representative is to state the obvious. In a society having, for instance, the Bombay State as the area of operation and having its Head office, in, say, Bombay, it would not be fair to expect the representatives of each society from all over the State to attend the general meetings. The French Law provides that co-operatives with large membership may have group meetings to elect delegates to general meetings and these delegates are the authorised representatives of the societies and individual members electing the delegates in the group meetings. In Germany, it is obligatory on co-operatives with more than 3,000 members to set up a delegates' meeting. Section 60 of the Bengal Co-operative Societies Act, 1940, provides for voting by delegates and Rule 25 copies the German practice for the purpose of electing delegates. Section 28 (2) of the Bihar and Orissa Co-operative Societies Act, 1935, provides that a registered society which is a member of any other registered society shall have as many votes as may be prescribed by the byelaws of such other society and may, subject to such byelaws, appoint any number of its members not exceeding the number of such votes to exercise its voting power.

125. After weighing the arguments for and against the different systems of voting and voting powers, we have come to the conclusion that the principle of one member one vote is sound and should be the basis for voting powers of members. At the same time, in respect of certain types of societies such as Consumers' Producers', Processing and Marketing where patronage is the main contributory factor to the success of the society, additional votes not exceeding two should be given to members. We accept the view-point that a differentiation ought to be made between individual members and society members in a society with mixed membership and we recommend that a society member should have two votes and individual should have one vote. When the Government subscribes to the share capital, it becomes a member. We have provided for its voting right. We further recommend that provision should be made for enabling individuals and societies to vote through their delegates elected at a meeting called for the purpose.

126. In order to give effect to these suggestions we recommend that the existing section 18 be substituted by the following section which has been numbered as section 27 :—

SECTION 27—Voting powers of members.—(1) Every member of a society shall have one vote in the affairs of the society provided that—

(a) a nominal, associate or sympathiser member shall have no vote ;

(b) where a society is a member of another society such a society shall have one additional vote ;

(c) where the State Government is a member of a society, each person nominated by the State Government on the Committee of that Society shall have one vote :

Provided further that each member may be entitled to additional votes subject to a maximum of THREE votes based on his contribution to the business of the society and exercisable in the manner specified in the byelaws. Provided further that in the case of equality of votes, the Chairman shall have a casting vote.

(2) Subject to the rules relating to voting by a delegate, every member of a society shall exercise his vote in person and no member shall be permitted to vote by proxy. A society, company, firm or any other institution entitled to vote as a member may, however, exercise its voting right through an authorised representative.

127. *Restrictions on interest of members of societies with limited liability and a share capital.*—Section 6 of the Bombay Act provides that no member shall hold more than such portion of the share capital as may be prescribed by the rules subject to a maximum of one-fifth and of Rs. 10,000. From this proviso, co-operative societies, companies and firms have been exempted and the ceiling has been raised to Rs. 20,000 in the case of housing societies. We are unable to understand the propriety of restricting the interest of an individual member and exempting Jointstock companies and firms from the restriction though we recognise the force of the law in exempting the societies. When the Act was first enacted, the ceiling of one-fifth and Rs. 3,000 had been introduced and interest in the shares of the housing societies was fixed at Rs. 10,000. The limit was raised in 1952 though the overall ceiling of one-fifth was retained and the companies and firms were also exempted from the restriction. The original idea of imposing this restriction was that a society should not be hampered in the event of the withdrawal of members holding a disproportionately large share capital. At no time it was, however, thought that members holding a large number of shares would be able to influence the societies' working since each member has one vote.

128. One of the reasons for raising the limit in 1952 was the depreciation of the value of the rupee. Since then the rupee has been depreciated further and Co-operation has extended its activity from a small sphere of providing credit for a small man with small means to the larger sphere of processing and banking. In the case of housing societies even though the limit has been raised to Rs. 20,000, in cities it may not be possible to construct a house with Rs. 20,000 contribution to the share capital. We, therefore, think that the proper safeguard would be to restrict the maximum in terms of the proportion of the total paid up capital and delete the numerical figures. We, however, find that the overall ceiling of one-fifth is too much and recommend that this should be reduced to 1/10th. A Society's liability limited by guarantee should have the same restriction. We note that societies, companies and firms have been exempted under the present Act, even in respect of this overall ceiling. As stated earlier, we do not approve of the idea of companies and firms receiving a preferential treatment compared to the individual members. The case of co-operative societies stands, however, on a different footing. Secondly, in the context of the future development of which State Partnership is an integral part we feel that the State Government should also be exempted from this restriction. We, therefore, recommend that exemption to companies and firms should be withdrawn and the same should be granted to the State Government. The marginal heading for section 6 may not be easily understood and an appropriate change therein has been suggested.

129. We recommend that the existing section 6 be renumbered as Section 28 and be amended as under:—

SECTION 28—Restriction on holding of share capital by a member.— Where the liability of a member of a society is limited by shares or guarantee no member other than a society and the State Government shall hold more than such portion of the share capital of the society subject to a maximum of one-tenth as may be prescribed by the rules and the byelaws.

130. *Restrictions on transfer of shares or interest.*—Section 19 of the Bombay Act lays down that the transfer of share or interest of a member in the capital shall be subject to (i) maximum holding, (ii) the share to be transferred was held for at least a year, (iii) transfer can be made to the society or to a member or to a person admitted as a member and with the approval of the Committee. The word "capital" in this section has not been defined by the Act and it may mean "share capital" or "working capital". But since the qualification is maximum holding, which can only refer to the share capital, the word "capital" requires to be qualified by the word "share". The condition of maximum holding in respect of the transferee also requires to be qualified. The second point we note

is that the transfer to the society itself implies that the society can buy its own shares. In the case of a joint-stock company, the acquisition of its own shares is prohibited except in the case of forfeiture. In the case of societies and their members, however, this restriction will not be conducive to their growth and the facility for returning the share capital in certain circumstances has to be provided. At the same time care has to be taken for ensuring that any large-scale withdrawal of share capital does not lead to the society's business being hampered. We, therefore, think that a proviso for this purpose is necessary. This should impose an overall ceiling on the purchase of its own shares by a society during the financial year, and leave the society to restrict the quantum still further under its bye-laws. At present the practice is to have a ceiling of 10 per cent. of the paid-up share capital and we recommend that this should be recognised by the Law. Since the shares are to be transferred to the Society against payment of cash, the mode of determining the value requires to be laid down in the Section.

131. We, therefore, recommend that section 19 of the present Act be numbered as Section 29 and be amended as under:—

SECTION 29—Restrictions on transfer of shares or interest.—

(1) The transfer or charge of the share or interest of a member in the share capital of a society shall be subject to such conditions as to maximum holding by the transferee as may be prescribed by this Act and the Rules and the bye-laws and shall be valid only after the Committee has approved such transfer.

(2) A member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless—

(a) he has held such share or interest for not less than one year ;

(b) the transfer is made to a member of the society or to a person whose application for membership has been accepted by the society.

Notwithstanding anything contained in sub-sections (1) and (2) a society may acquire the share or interest of a member in his share capital by paying for it at the value determined in the manner prescribed, provided that the member is allowed to resign or is expelled or ceases to be a member on account of being disqualified under the Act, and the Rules and the bye-laws of the Society, and that the total refund of share capital of the society in any one financial year does not exceed 10 per cent. of the paid-up capital of the society on the last day of the preceding financial year.

132. *Transfer of interest on death.*—Section 27 of the Bombay Act provides that on the death of a member, the society may transfer within one year the share or interest of the deceased member to a person or persons nominated if admitted as a member or, in the absence of a nomination, to such person as may appear to the Committee, to be the heir of the deceased, if elected as a member. Alternately it provides for payment to any of them of a sum representing the value of the share as ascertained in accordance with the Rules. Section 27 is also subject to the operation of Section 17-A, which lays down that a minor or a person of unsound mind can inherit or otherwise acquire the rights of a member, but his liability as a member shall be limited to his interest in the share of the society and unpaid dividends and loans stock bonds and interest earned thereof, which is unpaid. The person under such disability can, on his disability ceasing, declare his willingness to become a member and may, and, in the case of a housing society shall, be admitted as a member and be entitled to all the rights and liabilities of a member. The object of introducing Section 17-A is to enable a minor etc. as the heir of the deceased member to inherit the property, and to quote the then Minister of Co-operation, “some rights” in the society as a member of the society without conferring voting powers on him.

133. Section 27 refers to “share or interest”. The word “interest” should include the share in the share capital as well as other interests such as deposits. Bombay Section is wider than the similar provision in other Acts where the words “interest in the capital” have been used and we opine that the words should be retained after adding “other” before “interest”, so as to differentiate between the “interest in the share capital” and “other interests”. The facility under this section for transfer of deposits is desirable since otherwise the heirs of the members will be put to unnecessary hardships for obtaining succession certificates, etc. As regards minors and persons of unsound mind we appreciate the intention of the Legislature to confer on them certain rights of membership by virtue of inheritance. Especially in the case of housing societies, this facility is desirable in view of the shortage of the housing accommodation. But we are of the view that it would not be proper to consider them as members and withhold from them the right of membership in regard to voting and conferring on them the privilege of accepting no liability arising from membership. Since the object is only to confer certain benefits to which a nominal member should also be entitled, we recommend that minors and persons of unsound mind should be enrolled as nominal members and they should be entitled to receive as nominees the benefits arising from the share and property inherited by them. In order to ensure that these persons can become members on removal of disqualifications, the Law should also provide that it

should be automatic, provided they have the qualifications laid down in the byelaws. We may add that minors and persons of unsound mind will act through their guardians in respect of receiving the benefits. Section 27 provides that the society must transfer the share within a period of one year "from the date of such member". It is not clear what this date is. We presume it is the date of death. But in that event the society may not necessarily be aware of the date of death. We, therefore, recommend that it should be the date of intimation of death. The period of one year is also short and we feel that two years will be more reasonable.

134. With these objects in view we recommend that Section 27 and Section 17-A be deleted and the following section be inserted as Section 30 :—

SECTION 30—Transfer of interest on death of member.—(1) On the intimation of the death of a member of a society, such society may within a period of two years from the date of the intimation of death of such member, transfer the share or other interest of the deceased member to a person or persons nominated in accordance with the bye-laws of the society or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member, provided the person or persons to whom share or other interest of the deceased member is to be transferred, has been duly admitted as a member in accordance with the Act, the Rules and the bye-laws of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or other interest as ascertained in accordance with the Rules and the byelaws :

Provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made by the society within two years from the date of intimation of death of the member of the value of the share or interest of such member ascertained as aforesaid.

(2) All transfers and payments made by a society in accordance with sub-section (1) shall be valid and effectual against any demand made upon the society by any other person.

(3) Notwithstanding anything contained in sub-sections (1) and (2) and Section 24, a minor or a person of unsound mind shall be entitled as a beneficiary to inherit or otherwise acquire the share or other interest of the deceased member, but his liability in consequence of such acquisition shall be limited to his interest in the shares, the loan-stock bonds and the property of the society which he may have inherited or acquired and the dividends and the interest earned thereon. The person so inheriting or acquiring

interest shall be admitted as a nominal member and his guardian shall have the right to receive the benefits from the society on his behalf to the extent of the share or interest inherited and incur liability on behalf of such person for the benefit of such person until the disability ceases. On his disability ceasing, such nominal member shall furnish to the society a declaration of his willingness to become a member, and on receipt of such declaration, and provided such person is qualified to be a member of the society under its byelaws, such society shall admit him as a member and the person so admitted shall become entitled to all the rights and privileges of a member and become subject to liabilities like any other member of the society.

135. *Shares or interest not liable to attachment.*—Section 26 of the Bombay Act provides that subject to the charge of the society, the share or interest of a member in the capital of a society or in a loan stock bond issued by a housing society or the share or interest of a member or an employee in any Provident Fund, shall not be liable to attachment. The Madhya Pradesh Act, Section 21, restricts the provision to the share or interest in the capital only. The Section in the Bombay Act is more comprehensive in view of the fact that Section 25 lays down that the society shall have the first charge on the share or interest in the capital and deposits, etc. We propose to deal with Section 25 in the following chapter. We, however, find that in Section 26 the interest, other than that in the capital, has been confined for the purpose of Section 26, to a loan-stock issued by a housing society and Provident Fund established under Section 41. Section 41 was made for governing the Provident Fund of members at a time when the societies used the system of Thrift Fund Deposits for mobilising the savings of their members. In fact the word "Provident Fund" was then used in the context of benefits to members. We, therefore, think that the savings deposits of members should not also be liable to attachment and suggest that this should be clarified by substituting the word "savings deposit" in respect of members and "Provident Fund" in respect of employees. We may add that we propose to recommend the restriction of section 41 to Provident Fund for employees only.

136. With this aim in view we recommend that Section 26 of the Act of 1925 be renumbered as Section 31 of the new Act and should read as under :—

SECTION 31—*Share or interest not liable to attachment.*—The share or interest of a member in the capital of a society or in a loan-stock issued by a housing society or in the funds raised by a society from its members, by way of savings deposit shall not be liable to attachment or sale under any decree or order of a Court of justice in respect of any debt or liability incurred by

such member and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909 (nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest).

137. *Rights of members to see books.*—The rights of members to see books, etc., have not been prescribed by the Act. Section 21 however requires every society to keep for inspection a copy of the Act, Rules and the byelaws and a register of members. Rule 16 prescribes the fee for certified copies of documents. Both these provisions do not make a differentiation between the rights of the members and those of the public and both are treated on par. The Companies Act confers on the members the right of inspecting the register of members, the minutes of the general meeting and certain other documents, but does not entitle them to inspect the books of accounts unless the Articles of Association of a particular company provide to the contrary. Furthermore the inspection of books does not mean taking a copy of it. In the case of a co-operative society which is organised on a more homogeneous basis and whose members are entitled to take a far greater interest in the affairs of their society than the share-holders of a joint-stock company do, the facilities may be more comprehensive. During the past few years, this question has been the subject of numerous disputes between members and their societies and we consider it essential to lay down in the Act itself the rights of members in respect of inspection of books, etc.

138. Section 21 requires every society to keep open for inspection to all (a) a copy of the Act, Rules and bye-laws, and (b) a register of members. We are also of the view that the member should have access to the list of members of the Committee and the statements of annual accounts for the preceding year. In respect of decisions to which a member is a party, it is but fair that he should know how the decisions are recorded by the society. It is not the practice of all societies to have minutes of such meetings confirmed at the subsequent general meetings. We, therefore, think it appropriate to provide that the minutes of the general meetings should be open to inspection for members. The position in respect of the minutes of the meetings of the Committee stands, however, on a different footing and these have necessarily to be treated as confidential. We do not, therefore, recommend that these should be available for inspection to members. One other controversial question is how far a member should be entitled to inspect the account books. It would be unfair to keep open the account books in which transactions of all members are entered, to the members. At the same time a member should be entitled to know how his transactions with the Society are entered in the books. The British Law, therefore, restricts the rights of members to inspect the books in respect of their own accounts only and we recommend that similar facility should be available to the members under this Act.

139. We, therefore, recommend that a new Section to be numbered as Section 32 be added as under :—

SECTION 32—Rights of Members to see books, etc.—Every member of a society shall be entitled to inspect free of cost at the society's office during the office hours or any time fixed for the purpose by the society, a copy of the Act, the Rules and the bye-laws the last audited annual balance sheet and the profit and loss account, a list of the members of the Committee, a register of the members, the minutes of the general meetings and that portion of the books in which his transactions with the society have been recorded.

140. *Borrowing by Members.*—There is no section in the Bombay Act or any Acts in force in the component parts of the Bombay State, relating to restrictions on borrowings of members. Rule 45 under the Bombay Act, however, lays down the restrictions in regard to borrowing from more than one credit society. Sections 62 and 63 in the Bengal Act, however, provide that a member wishing to borrow must give full information regarding his financial position and undertake that the loan is to be used for the purpose for which it is given. As regards supply of information, we are of the opinion that the society, which lends, usually lays down the procedure for eliciting the material data for assessing the credit-worthiness of the borrower and we do not think that any provision should be made in the Act or in the Rules. It is, however, important that if co-operative credit were to be developed successfully, care must be taken to ensure that the loan is used for the purpose for which it is raised. Indeed, the success or failure of the agricultural co-operative credit depends on the ability of the movement to ensure proper use of credit. We, therefore, opine that the provision for this purpose is necessary.

141. Another practice, which has been prevalent is to borrow from more than one society. This is particularly so in the urban sector. Prior to 1952, Rule 45 had prohibited a member of a credit society other than a land mortgage bank or the central financing agency or a sale society to be a member of any other society of a similar type without the sanction of the Registrar. This rule was, however, found irksome inasmuch as it prevented even non-borrowing persons from becoming members of more than one credit society and providing strength to the movement. This rule was, therefore, amended so as to confine restrictions to borrowings from more than one credit society. We think that this provision should also be incorporated in the Act itself. The Bombay Rule provides for the removal of a member violating the Rule from any or all such societies at the instance of the Registrar. Since initiation rests with the Registrar, it is a sufficient safeguard against danger of duplicate finance and the societies affected will have the opportunity to bring such cases before the Registrar. In the case of loans, which are not

used for the purpose for which they are given, similar penalty is necessary for reasons stated earlier. Since the Registrar can be relied upon to use his discretion and penalise extreme cases, it would be safe to vest the power in him in respect of such offences. This might also prevent a society from taking any other disciplinary action against any member or denying him any credit facility under this pretext. The question such as borrowing capacity may suitably be dealt by the Rules and bye-laws.

142. We beg to recommend that a new Section to be numbered as Section 33 be added as under :—

SECTION 33—Borrowing by members.—(1) Every person, who is a member of more than one credit society other than a land mortgage bank or a central financing agency, shall make a declaration in the prescribed form that he will borrow only from one such society to be mentioned in the declaration and shall send a copy of such declaration duly attested to the societies of which he is or has become a member.

(2) A member borrowing from a society shall utilise the loan for the purpose for which it is made and shall refund, if not so utilised, the loan immediately on its recall by the society.

(3) Any member, who does not comply with the provisions in sub-sections (1) or (2), shall be liable to be removed from the membership of any or all societies upon receiving a written requisition from the Registrar to that effect.

143. *The liability of past member and the estates of deceased members.*—The liability of a past member has been defined by Section 28 of the Bombay Act, while that of the estates of deceased members has been dealt with in Section 29. Section 48(A) deals with the liability of past members and estates of deceased members in the event of liquidation. We think it would be better to merge the three sections into one. This is because there is no distinction between the liability of past members and that of the estates of deceased members and their liability for the debts during the continuance of the society or thereafter except for the fact that it continues in the event of liquidation till all the liabilities of the society are met. Strictly speaking, the liability cannot continue until all the liabilities of a society are met, because it may be that a society will not be in a position to meet all liabilities. The correct wording should be until the liquidation proceedings are terminated.

144. A point has been raised as to whether a differentiation between the individual members of a society and the societies and the State Governments as members is necessary in view of the conception of State Partnership. The objective of State Partnership is to provide the requisite strength to the society and it is on the basis of such strength

that the society incurs debts and its creditors extend the credit. It would, therefore, be unfair in our opinion to the creditors and to other members of a society if discrimination is made between one class of members and the other simply because that class happens to be one which is not likely to enjoy directly the benefits from the society. We, therefore, opine that there should be no discrimination between different classes of members and recommend that Sections 28, 29 and 48A be deleted and a new Section, to be numbered 34 be inserted, as under—

SECTION 34—*Liability of a past member or the estates of a deceased member.*—Liability of a past member or the estate of a deceased member of a society for the debts of the society, as they existed when he ceased to be a member by death or otherwise, shall continue for a period of 2 years from such date and shall continue, in the event of liquidation of the society, until the liquidation proceedings are terminated.

145. *Insolvency of member.*—Section 24 of the Act gives a prior claim to a society in respect of its dues from members subject to the claims of Government as land revenue. A suggestion has been made to us that this priority should operate on a wider scale, especially in insolvency proceedings. The suggestion assumes importance in the context of the delays in the process of recovery of dues. We find that section 92 in the Bengal Co-operative Societies Act provides for a priority of contribution assessed by a liquidator of a society. Equity, however, demands that if a society in liquidation is eligible for a priority, similar benefits should accrue to societies successfully functioning. We, therefore, recommend that a new Section to be numbered as Section 35 be added, as under :—

SECTION 35—*Insolvency of members.*—Notwithstanding anything contained in the Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act, 1920, the dues of a society from a member shall rank next to his dues to Government or to any legal authority in order of priority in insolvency proceedings against the person.

146. *Expulsion of members.*—The provision for expulsion of a member is usually made in the bye-laws. We think, that it would be better to cover this in the Act itself, since it deals with the creation of membership. The usual provision in the bye-laws is for expelling a member by passing a resolution with three-fourths majority. Certain societies provide an opportunity to the members affected to explain their conduct to the general meeting, which considers the resolution for expulsion. While we appreciate the democratic method such expulsion are not quite wholesome to the society and instances are not uncommon where a majority is swept off by sentiment and of expulsion under this procedure, we find that the after-effects of

can be manoeuvred. Furthermore, when it is the accepted policy of the State to provide co-operative credit to every creditworthy agriculturist and to discourage the credit system built up on individualistic basis, adequate safeguards against the misuse of power of expulsion are necessary. In their absence, it is very likely that innocent persons might be penalised because of the local feuds and political differences. The consequences of expulsion have been examined in paragraph 112 and we propose to provide for them here.

147. We, therefore, recommend that a new Section be added as Section No. 36 on the following lines :—

SECTION 36—*Expulsion of members.*—(1) A society may expel a member, for acting in a manner which results in financial loss to such a society, by a resolution passed by three-fourths majority at a general meeting of the members held for the purpose :

Provided that no resolution shall be valid unless the member concerned is given an opportunity to represent his case to the general body and no resolution shall be effective unless it is approved by the Registrar.

(2) No member of a society who has been expelled under subsection (1) shall be eligible for re-admission as a member of that society or for admission as a member of any other society, for a period of two years from the date of such expulsion :

Provided that the Registrar may, in special circumstances, sanction the re-admission or admission within the said period of any such member as a member of the said society or of any other society, as the case may be.

CHAPTER VII.

DUTIES, PRIVILEGES, PROPERTY AND FUNDS OF SOCIETIES.

148. In the preceding two Chapters we have examined questions relating to registration of societies and members. This Chapter deals with duties, privileges, property and funds of societies. In the following Chapter we propose to deal with management of societies separately. Consequently the provisions relating to management have been excluded from the scope of this Chapter. The subjects covered in this Chapter relate to (1) societies to be bodies corporate, (2) address of societies, (3) register of members, (4) copies of Act, etc., open for public inspection, (5) admissibility of copy of entry as evidence, (6) exemption from compulsory registration of instruments, (7) exemption from taxation, (8) State aid, (9) restrictions on borrowings, (10) restrictions on loans, (11) restrictions on transactions with non-members, (12) charge and set-off in respect of shares or interest of members, (13) prior claim of society, (14) charge on immoveable property of members borrowing loans from certain societies, (15) deduction from salary to meet society's claim in certain cases, (16) funds not to be divided, (17) appropriation of profits, (18) reserve fund, (19) restrictions on dividend, (20) contribution to educational fund of the Bombay State Co-operative Union, (21) contribution to charitable purpose, (22) investment of funds, (23) Provident Fund, (24) power to direct affiliation to a federal society, and (25) bar to civil suit.

149. Most of these subjects have been presently dealt by the Act in Chapters IV, V and VI. Some of the sections already in operation have been made more explicit. We have also attempted to introduce certain new sections in order to make the legal provisions more explicit. For instance, we have sought to define the "net profit" and prescribed the order of appropriation. With the growth of federal societies it should be possible to realise the objective visualised in 1948 when the amendments to the Act conferred certain rights on federal societies. As a further step in this direction, we have favoured a provision empowering the Registrar to direct affiliation of a society to a federal society in certain circumstances. Similarly, the provision regarding bar to civil suit has been made more comprehensive.

150. *Societies to be bodies corporate.*—Section 23 of the Bombay Act includes the words "for the purposes of its constitution". We think that it would be better to replace these words by "for which it is constituted". We, therefore, recommend that Section 23 be re-numbered as Section 37 and be amended as under :—

SECTION 37—*Societies to be bodies corporate.*—The registration of a society shall render it a body corporate by the name under which

it is registered, with perpetual succession and a common seal, and with powers to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all things necessary for the purpose for which it is constituted.

151. *Address of societies.*—Section 20 of the Act deals with the address of societies and we recommend no change in the text of this section. In view of the rearrangement of the Sections, we recommend that this section should be numbered as Section 38 and read as under :—

SECTION 38—*Address of societies.*—Every society shall have an address registered in accordance with the Rules, to which all notices and communications may be sent, and shall send notice in writing to the Registrar of any change in the said address within 30 days of such change.

152. *Register of members.*—Section 30 of the Bombay Act lays down that the register or list of members or shares kept by a society shall be *prima facie* evidence of the date at which the name of a person was entered as a member and the date at which such a person ceased to be a member. The section is apparently provided for ensuring that the register is a *prima facie* evidence regarding whether a person is a member or not. What is important is that every society must maintain a register of members. This should be a statutory obligation which the Act does not impose, except under Section 21 which lays down that every society shall keep open to inspection a register of its members among other things. Rule 14 further makes it obligatory for every society to maintain a register of members including persons nominated under Section 27. This section also makes no differentiation between “register” and “list”.

153. We are of the view that the maintenance of the register of members, should not only be a statutory obligation but the law should prescribe how it should be kept. In the case of joint-stock companies, the Companies Act prescribes not only an elaborate procedure but also requires that there should be an index of members if they exceed 50. We consider this unnecessary but we think that the register of members should give particulars regarding (a) the name, address and occupation of each member, (b) in the case of a society having a share capital, the shares held by each member, (c) the date on which each person was admitted as a member, and (d) the date on which any person ceases to be a member. In the case of societies whose bye-laws permit the members to nominate, it would also be desirable to provide that the register of members should contain the name of the nominee, if any, and the date on which his nomination was accepted by the society.

154. We, therefore, recommend that Section 30 be renumbered as Section 39 and be amended as under :—

SECTION 39—*Register of members.*—(1) Every society shall keep a register of its members and enter therein the following particulars :—

- (a) the name, address and occupation of each member,
- (b) in the case of a society having a share capital, the share held by each member,
- (c) the date on which each person was admitted as a member, and
- (d) the date on which any person ceased to be a member :

Provided that, where a society has under the Act, the Rules and the bye-laws permitted a member to transfer his share or interest on death to a person, the register shall also show the name of the person entitled to the share or interest of the member, against the member concerned and the date on which the nomination was recorded.

(2) Such register shall be *prima facie* evidence of the date on which any person was admitted as a member and of the date on which any person ceased to be a member.

155. *Copy of Act, etc., to be open for inspection.*—Section 21 of the Act, requires every society to keep open for inspection a copy of the Act, Rules and bye-laws and register of its members. We are of the view that no person who is not a member of the society should be eligible to inspect the register of its members, which is different from a list of members. The former is a privilege of members only to which we have referred in paragraphs 137-138. This section should, therefore, deal with inspection by the Public. Rule 16 provides for inspection of certain documents in the Registrar's office, by the public and the members, free of charge and for obtaining their certified copies on payment of a nominal fee. One of the items therein is audit memorandum of a society. We are of the view that the audit memorandum of a society should never be made available to the public. This memorandum covers details regarding transactions of societies and if they were to be disclosed in detail to the public, we are afraid that it would be difficult for the societies to function effectively. Even the Banking Companies Act and the Companies Act do not provide for making available to the public the audit memos excepting the Auditor's report which covers certain general aspects of the working of the institutions. Madras Section 19 provides that a society shall keep open the rules and the bye-laws to inspection, free of charge but the Madras Committee has recently recommended that the register of the members should also be available for inspection. We do not find any provision in the Rules framed

under the Madras Co-operative Societies Act, regarding the audit memorandum and other documents being made available to the public.

156. We, therefore, recommend that Section 21 be amended as under and renumbered as section 40 :—

SECTION 40—*Copy of Act, etc., to be open to inspection.*—Every society shall keep a copy of this Act and the Rules and of its bye-laws and a list of members open to inspection to the public free of charge during the office hours or any hours fixed by the society at the registered address of the society.

157. *Admissibility of copy of entry as evidence.*—Section 31 of the Bombay Act comprehensively deals with the subject matter under reference and we do not recommend any change therein except the renumbering of the section. We, therefore, recommend that Section 31 be renumbered as section 41. The section reads as under :—

SECTION 41—*Admissibility of copy of entry as evidence.*—
(1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a society shall, if duly certified in such manner as may be prescribed by the Rules, be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original entry would, if produced, have been admissible to prove such matters.

(2) In the case of such societies as the State Government by general or special order may direct no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

158. *Exemption from compulsory registration of instruments.*—Section 32 of the Bombay Act exempts societies from registration of an instrument relating to shares and debentures issued by a society, and endorsement or transfer of any such debenture. Other classes of instruments such as mortgage and sale deeds are required to be registered by societies. Representations have been made that the scope of this section should be extended to other classes of instruments which a society has at present to register under the Indian Registration Act, 1908, in the absence of exemption. This is a point falling outside our terms of reference and is a matter for being represented to the Government for its consideration. We, therefore, do not recommend the extension of the scope of exemption by this

Act since we are not aware of any Government decision on the societies' request. We, therefore, recommend no change in the text of the existing section and only recommend that Section 32 be renumbered as Section 42. The section reads as under : —

SECTION 42—Exemption from compulsory registration of instruments relating to shares and debentures of society.—Nothing in Section 17, sub-section (1), clauses (b) and (c) of the Indian Registration Act, 1908, shall apply to—

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

(2) any debenture issued by any society and not creating, declaring, assigning, limiting or extinguishing any rights, title or interest to or in immoveable 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 immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or

(3) any endorsement upon or transfer of any debenture issued by any society.

159. *Exemption from taxation.*—Section 33 of the Bombay Act dealing with this subject has a provision enabling the Central Government and the State Government to exempt societies from certain taxation. Sub-section (1) of the section has been derived from the Government of India Act of 1912 and doubts have been expressed by certain witnesses regarding the competence of a State Act to incorporate this provision. We suggest that this view point should be examined by the Government further. The second point which has been represented to us is that the existing provision is restrictive inasmuch as the State Government is prevented from exempting the societies from other types of taxation, especially on agricultural income, sales and purchases and on professions, trades and employments. We do not want to anticipate the Government's policy in regard to further exemptions nor do we recommend exemption from any specific taxation since these are matters outside our terms of reference but we feel that the section should not be restrictive and a general clause enabling the Government to give further concessions in regard to the taxation should be inserted. Liquidator's contributory orders are not stamped at present on the ground that they are executive orders in terms of section 33(2)(a). In order to clarify this position we have treated the liquidators as officers while defining in section 2 the word "Officer."

160. We, therefore, recommend that in sub-section (2)(b) the following be added "and any other tax or fee or duty or a portion

thereof, which the State Government is competent to levy", and that the section be renumbered as Section 43. This section will read as under:—

SECTION 43—Power to exempt from taxation.—(1) The Central Government, by notification in the Official Gazette, may, in the case of any society or class of societies, remit the income-tax or super-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the Society.

(2) The Government by notification in the Official Gazette may, in the case of any society or class of societies, remit :

(a) the stamp duty, with which under any law for the time being in force, instruments executed by or on behalf of a society or by an officer or member and relating to the business of the society, or any class of such instruments or awards of the Registrar or his nominee or Board of nominees under this Act are respectively chargeable, and

(b) any fee payable under the law of registration and of court fees for the time being in force and any other tax or fee or duty, or a portion thereof, which the State Government is competent to levy.

In this sub-section, "Government" in relation to stamp-duty means the Government as defined in sub-section (2) of section 9 of the Indian Stamp Act, 1899, in relation to court fees means the Government which is the appropriate Government for the purposes of the Court Fees Act, 1870, and save as aforesaid means the State Government.

161. *State aid.*—Section 33-A of the Bombay Act enables the State Government to give loans to societies, contribute towards their share capital, guarantee the payment of debentures and interest thereon and of the share capital of a society to their members and the payment of dividends thereon, and guarantee the repayment of loans given by a co-operative bank to a society. Under this section it is not open to the State Government, for instance, to meet any portion of the expenses or losses of a society even though it is a major form of State aid prevalent in this State for decades. We, therefore, think that a general clause requires to be added to provide for aid in any other form. Secondly, this aid is conditioned by the provisions in "any law for the time being in force". We are afraid that this may preclude certain types of societies, such as industrial societies, from receiving State aid where it is governed by a separate piece of legislation. Thirdly, the guarantee in order to repayment is confined to "repayment of debentures and share capital of a society and loans given by a co-operative bank." In Bombay State, thanks to the

credit built up by the Co-operative Movement, the Reserve Bank has not been insisting on the guarantee of the State Government in respect of financial accommodation for the purpose of short-term agricultural credit. In the case of medium term loans this guarantee has been given to the Reserve Bank. Similarly, the State Government has guaranteed the loans made by the Industrial Finance Corporation to the sugar co-operatives. This particular aspect of the guarantee is not presently covered.

162. Following the recommendations of the Rural Credit Survey Committee the scope of State aid has been considerably widened and State Partnership in societies has now been accepted as a sound co-operative practice, which was initiated for the first time in the Bombay State a few years ago and for which purpose this Section was amended in 1953. This section provides for State aid in forms referred to earlier subject to such conditions as the State Government may by general or special order specify in this behalf. We do not, therefore, recommend that it is necessary to elaborate in this section the conditions on which the State Partnership is to be imparted to societies. The details in that behalf can suitably form the subject matter of the Government Resolution. The procedure regarding the provision for State Partnership is at present, we understand, in the stage of discussion and will in any case, be very elaborate, and we do not think it would be proper for us to anticipate the decisions.

163. We do not, therefore, recommend any change in the existing Section 33-A beyond incorporating clause (e) to provide for guaranteeing the repayment of loans given to a society by the Reserve Bank or any other authority and clause (f) to provide for aid in any other form after deleting the words "and to such other conditions as may be provided for by any law for the time being in force" occurring between the words "behalf" and "the" in this section. We may add in this context that Section 31 of the Madras Co-operative Societies Act on the subject starts with "Notwithstanding anything contained in any other enactment". We recommend that Section 33-A be renumbered as section 44 and be read as under :—

SECTION 44—State aid.—Subject to such conditions as the State Government may, by general or special order specify in this behalf, the State Government may—

- (a) give loans to societies,
- (b) contribute towards the share capital of a society,
- (c) guarantee the payment of principal of debentures issued by a society or of interest thereon or both or the repayment of the share capital of a society to its members or the payment of dividend thereon at such rates as may be specified by the State Government,

(d) guarantee the repayment of loans given by a co-operative bank to a society,

(e) guarantee repayment of principal and payment of interest on loans and advances given by the Reserve Bank of India or the Industrial Finance Corporation of India or any other authority constituted under any law for the time being in force,

(f) provide financial assistance in any other form to a society.

164. *Restrictions on borrowings.*—Section 35 of the Bombay Act deals with this subject in so far as the acceptance by a society of deposits and loans from non-members is concerned. In this context we suggest a verbal addition of the word “specified” between the words “or” and “by”, in order to indicate that the bye-laws are specified while the rules are prescribed. We find nowhere in the Act any provision regarding borrowing from members. Rules 8 and 8-A elaborately lay down the restrictions on borrowing by societies. We do not find any reference in the Act to the authority of the State Government to frame any rule on the subject. Section 71(2)(x) empowers the Government to “regulate the manner in which funds may be raised” etc. The word “manner” denotes the mode for raising the funds and does not indicate the quantum. We, however, appreciate the wholesome effect of this particular rule on the finances of societies, and, therefore, recommend that in the section under review a provision be made in order to enable the State Government to frame the relevant rule. The Banking Companies Act, vests similar powers in the Reserve Bank. We also recommend that the words “persons who are not members” be deleted and the words “members and other persons” be substituted and that the section be renumbered as section 45. The amended section will read as under :—

SECTION 45—*Restrictions on borrowings.*—A society shall receive deposits and loans from members and other persons only to such extent and under such conditions as may be prescribed by the rules or specified by the bye-laws of the society.

165. *Restrictions on loans.*—Section 34 of the Bombay Act prohibits a society from making a loan to a non-member without the permission of the Registrar and authorises the State Government to restrict or prohibit the lending of money on the security of moveable or immoveable property by any society. Rule 9 prescribes that the shares are not to be hypothecated to a society for a loan, while Rule 11 bans loans on the surety of non-members. Rule 13 clarifies that for the purposes of the Act a loan also means and includes deposit made by one society with another society. This procedure being explained by the Rules is not quite happy.

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166. In regard to sub-section (1) we are of the view that a society should not make a loan to a non-member even with the general or special sanction of the Registrar for the reason that any dispute over such a loan will be subject to civil litigation which this Act is anxious to avoid. The case of a society borrowing from another society even though it is not a member, however, stands on a different footing inasmuch as in the chapter on Arbitration we propose to provide for bringing the disputes between two societies within the scope of that chapter. At the same time, it should not be open to one society to loan monies to another society especially when the State has developed a sufficiently strong network of financing agencies and, therefore, we opine that even in this respect special sanction, and not the general sanction of the Registrar is necessary.

167. Sub-section (2) was deleted in 1948 and sub-section (3) empowers the State Government to restrict the lending of money on the security of movable and immovable property. The original object was to impose these restrictions in respect of unlimited liability societies. The only possible object in inserting this section could have been to safeguard the interest of societies. To our knowledge, the State Government has issued no general or special order prohibiting or restricting the lending of money by a society against such type of security. We, however, recognise that proper safeguards are necessary. Thus, for instance, Rules 9 and 11 prohibiting the hypothecation of shares as a security for loans or the granting of loans against the suretyship of a non-member are wholesome. But the Rule 11 also empowers the Registrar to make an exception in the latter case. As stated earlier we do not like this power to be vested in the Registrar or in any other authority. Subject to this, we recommend that both these Rules should be incorporated in the section itself.

168. We may point out that the Banking Companies Act, 1949, prohibits a Banking Company from making loans on the security of its own shares and empowers the Reserve Bank to control advances by banking companies. In order to effectively serve the purpose of regulating the lending operations of societies on sound lines, we suggest that similar powers be vested in the Registrar. In that event it would be redundant to retain the existing sub-section (3) in section 34. While the policy of prohibiting loans to a non-member is intrinsically sound and desirable, an exception requires to be made in respect of depositors. We have already recommended in paragraph 166 that in the case of societies this exception should be subject to the special sanction of the Registrar. The case of the depositor who may be a non-member stands on a different footing inasmuch as his funds are with the society and to that extent he is a creditor of the society. At the same time by borrowing from the same society against the deposit he would become a debtor to the society. But in any case the dues from him will be less than the

dues to him from the society. In view of this and to avoid delay in providing the facility to a person who provides the funds to the society we recommend that a depositor should be entitled to borrow against the security of his deposits even though he is not a member.

169. We, therefore, recommend that section 34 be deleted and the following section numbered as section 46 be inserted :—

SECTION 46—*Restrictions on loans.*—(1) No society shall make a loan to any person other than a member or on the security of its own shares or of a non-member provided that with the 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.

(3) Where the Registrar is satisfied that it is necessary or expedient in the public interest so to do he may determine the policy in relation to loans, to be followed by societies generally or any class of societies or any society in particular, and all societies or a class of societies or the societies concerned, as the case may be, shall be bound to follow the policy so determined.

170. *Restrictions on other transactions with non-members.*—Section 36 of the Bombay Act provides that Consumers', Producers' and Housing Societies may to the extent permitted by their byelaws, trade with non-members, but the transactions of a resource society with non-members, other than those regulated by sections 34 and 35, shall be limited by the Rules that may be prescribed. The main object of this clause is to facilitate trading with non-members which is inevitable in the case of societies mentioned including marketing societies. In order that these transactions may not be intensive, section requires the byelaws of the society concerned to prescribe "the extent". Another condition is that the transactions must be in respect of "trade." So far as resource societies are concerned, the conditions in sections 34 and 35 plus the Rules will govern the transactions including trading transactions. No Rule has been framed by the Government for resource societies. Since a "resource society" has been defined as a society formed with the object of obtaining for its members the credit, goods or services required by them, and because the transactions in respect of credit have been regulated by sections 34 and 35, which we have discussed in the preceding paragraph, we opine that Rules for regulating the transactions of these societies relating to goods or services require to be prescribed.

171. The Bombay section is more democratic than the corresponding section 31 in the Madhya Pradesh Act, which empowers the Government to prescribe the Rules for such transactions inasmuch as in

respect of trading societies, the authority is left to the societies themselves. Section 3 of the Act says that a "Producers' society" includes a society formed with the object of collective disposal of the labour of the members of such society. As such, we opine that "marketing society" comes in this category. The logical sequence of this provision is that certain societies can do business with non-members. To that extent disputes and claims which are likely to arise in respect of such transactions have to be referred to arbitration. We are aware of section 23-A in the Bihar and Orissa Co-operative Societies Act, 1935, which provides that the dues of a Society from a non-member shall be a first charge on his property. This is a drastic provision since non-members are not a party to the formation or functioning of a co-operative society. Nevertheless it is necessary to provide a safeguard in the interest of societies to a limited extent. We, therefore, recommend a provision that a society will have a prior charge for its dues from a non-member on the money which may be standing to the credit of the non-member in the books of the society.

172. In view of the rearrangement of the sections, it would be necessary to substitute the figures "34" and "35" in this section by the figures "45" and "46" and renumber this section as section 47. The new section 47 is a substitute for the existing section 36 and is as follows:—

SECTION 47—Restrictions on other transactions with non-members.—Consumers', Producers' and Housing Societies may to the extent permitted by their bye-laws trade with persons who are not members, but the transactions of a Resource Society with persons other than members except as provided under section 45 and 46 shall be subject to such prohibitions and restrictions, if any, as the State Government may by rules prescribe. Such society shall have a charge upon the interest of such non-member in the society in respect of any debt due from such non-member and may set-off any sum credited or payable to a non-member in or towards payment of any such debt.

173. *Charge and set-off in respect of shares or interest of members.*—Section 25 of the Bombay Act provides that a society shall have a charge on the share or interest in the capital and on the deposits of a member or past-member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society and may set-off any sum credited or payable to a member or past member in or towards payment of any debt. From this section "deceased member" has been excluded, probably because the words "past member" were thought to cover deceased member. Since this is not the position, we think that the section should make the intention explicit. Secondly, it would appear from the wording of the section that it was meant mainly for a primary society. As a result, even if a society deposits money with a financing bank, as investment of the Reserve Fund and the Provident Fund, such a financing agency becomes entitled

under the section to set off these deposits against its dues. We are afraid that such a position would prejudice the interest of the employees of the society affected and would be unfair to the society itself which chooses to invest its Reserve Fund and Provident Fund with the financing agency instead of investing it in Trustee securities. We, therefore, recommend that investment of the Provident Fund and the Reserve Fund should be excluded from the scope of this section. The section 25 renumbered as section 48 will read as under:—

SECTION 48—*Charge and set-off in respect of share or interest of member.*—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 upon any dividend, bonus or profits payable to a member or past member or deceased member in respect of any debt due from such member or past member or deceased member to the society, and may set off any sum credited or payable to a member or past member or deceased member in or towards payment of any such debt :

Provided that no co-operative bank shall have a charge upon any sum invested with it by a society out of the Provident Fund established by it under section 59 or its Reserve Fund and no co-operative bank shall be entitled to set off any such sum towards any debts due from such society.

174. *Prior claim of a Society.*—Section 19 of the Government of India Act II of 1912 merely laid down that the society shall have a priority over other creditors subject to the prior claim of Government and landlord to enforce any outstanding demand at any time within 18 months from the date of such supply or loan. Section 24 of the Bombay Act of 1925, however, went a step further after the Bombay Legislative Council rejected a number of amendments seeking to protect expressly a *bona fide* purchaser or transferee for value. The main reason for strengthening this section in the Bombay Act was the judgment of the Calcutta High Court that the right did not affect a decree-holder. This section was further amended in 1948 by doing away partially with the protection for so called *bonafide* purchasers.

175. The section at present operating confers on the society in respect of its debt from a member or past member, the right of a prior claim, subject to that of the Government and landlord on (1) crops and agricultural produce raised in whole or in part with a loan from the society and on (2) cattle, fodder, implements, raw materials, work-shops, etc., supplied or purchased from any loan. Housing societies have been given similar prior claim in respect of rent, shares, etc., on the interest of their members in the immovable property of the society. It further lays down that the property subject to the charge shall not be transferred except as a lease for 10 years without

the previous permission of the society. The transfers made otherwise shall be void and persons transferring the property shall be convicted for a term of six months.

176. This section is very important from the point of the growth of the movement and seeks mainly to provide for a charge on movable property. A suggestion has been made that the words "lien" should be substituted for the word "charge". But the "charge" was substituted for the word "lien" following an exhaustive examination of the issue by the Maclagan Committee, Secondly the Courts have recognised in many cases that persons can hold charge over the movable property. The section under reference prescribes, however, only certain categories of movable property, and arbitrators have held that if a borrower transfers hypothecated goods, he does not come within the purview of the section. We, therefore, recommend that the scope of this section should be widened by adding sub-clause 1(a) (iii) "upon any other movable property against a security of which a loan may have been given by the society."

177. The second point to be noted relates to the priority of creditors over the Society's claims. The section provides that the Government will have priority in respect of land revenue or any money recoverable as land revenue and the landlord will have priority in respect of rent or any money recoverable as rent. The original intention of this section was to cover agricultural loans, but the scope has been widened to cover loans for other purposes as well. In the case of agriculture, following the introduction of land reforms in the State, the question of giving a priority to the landlord does not arise where the Bombay Tenancy Act has been already in force. Apart from that, where the crop is raised with the finance from a society, it is not fair that the landlord should have the first charge on the crop. Besides, the rent forms a fraction of the total value of the crop and the amount involved is very much less than the loan of the society. We, therefore, recommend that the landlord should not have priority over the society in respect of his rent. As regards the priority assigned to the Government, we concede that the interest of the public revenue must be supreme. At the same time we beg to point out that from the point of the safety of the funds of the society, it is necessary that so far as the Government dues other than land revenue are concerned, this priority should be confined to the assets created out of the loan, if any, provided by the Government. Thus, an attempt has been made to draw distinction between the Government's prior claim in respect of land revenue on agricultural goods and the one on non-agricultural goods. In our opinion this distinction is necessary in view of the fact that the State has been providing loans to the non-agricultural societies, which are also being financed by their financing agencies. We also think it necessary to exclude the charge from the jurisdiction of other laws, notably, sections 60 and 61 of the Code of Civil Procedure.

178. The third point to be noted is that sub-section (2) permits the transfer of property by way of lease for a period of 10 years. We are

afraid that the period is so long that it defeats the very purpose of this section since the claim will not be easily enforced inasmuch as buyers will be generally reluctant to acquire a property when it is subject to a lease of 10 years. We, therefore, recommend that even in respect of lease the society's permission should be necessary and the transfer of lease should be subject to the conditions that may be prescribed by the society.

179. This section has assumed importance because it is the key to the successful development of the agricultural co-operative credit system for providing crop finance. When the section was introduced in 1925, the provision was hotly debated in the Bombay Legislative Council and apprehensions were then entertained that it would ruin the farmers by disrupting agricultural marketing. The then provision was based on the view that to quote Mr. K. W. Barlee, (later Mr. Justice) from his reply to the debate in the Bombay Legislative Council (Debates, July 25, 1925 page 424), "if, under the ordinary law of the land, an individual charge-holder can follow movable property, which has passed into the hands of the *bona fide* purchaser, then the co-operative society also should have the same rights". The experience has, however, proved that the bogie of a *bona fide* purchaser and the difficulty in establishing the identity of ownership of crops have thwarted the efforts of the Legislature to make the charge of societies on crops effective. This problem has assumed national importance in view of the State's Policy to build up institutional credit and assure the farmer of his credit needs for production being satisfied fully on the basis of the use of credit as distinct from the security of property.

180. Before examining the various suggestions that we have received, we beg to record that unless and until the charge on crop is made effective, agricultural credit is not likely to be built up. No price is, therefore, high to achieve the objective, and we trust that our recommendations will be viewed against this background. It is true that the farmer is mainly responsible but we submit that the vicious system of moneylending which renders him helpless forces him to part with the crop charged to his society. This pressure from the moneylender can be resisted only if the law penalises the buyer. In a village, where three-fourths of the crop is sold, everybody knows how a farmer has financed his crop. It would, therefore, be wrong to underestimate the intelligence of the merchant and the village trader by presuming that both are ignorant of crop finance. We, therefore, submit that if he abets in the offence he should be punished adequately.

181. Since the onus of proving that the purchase of the crop under charge was not made *bona fide* lies on the society, a suggestion has been made that the society should notify preferably in the village Chawadi the names of the members whose crops are subject to the charge and the law should prescribe that such a notice should

be considered as a sufficient notice to the prospective buyers. We are not quite sure that the reaction of the members of societies to this proposal will not be adverse. Besides, it is not a good practice for a society to advertise its borrowers. But apart from these two considerations, for the purpose of our enquiry and recommendations, this is essentially an administrative matter which can be pursued only after creating strong public opinion in its favour.

182. The second suggestion is that the bye-laws of such societies should provide that no member borrowing from a society for financing production, shall sell his produce except to a marketing society to which the society is affiliated or, where such a society does not exist in accordance with the directions of the society. It has been further suggested that the bye-laws should specifically provide for enabling the society to direct its members to deliver the production at a stated place, on a stated day, at a stated time, and the violation of the bye-law should involve the payment of compensation by the offending member to the society. In this connection, our attention has been drawn to section 38 of the Hyderabad Co-operative Societies Act, which serves the purpose. We opine that this provision is wholesome.

183. A third suggestion has been made in order to make the charge on crop effective by providing that the charge should be continuous until the loan is repaid. The object of this suggestion is that the society can continue to have the charge on the crop for succeeding years even if the crop already charged is marketed without its knowledge. Such a provision would be wholesome both from the point of the borrower and the society because the latter can be assured of an effective security and will, therefore, be encouraged to meet the demands of its members for credit. Even if crops fail, it would be easier for a society to continue the finance for the next season on such a basis. In Bombay State the system of converting the outstandings arising from the failure of a crop into a medium-term loan and granting fresh finance for the next crop has been in operation. We opine that such a rational system can be developed only if the charge is made continuous. The proposal tends to gravitate around fixed property but the position corresponds to machinery which, when fixed to the ground, is considered as immovable property, but is otherwise movable property. The legal implications of the suggestions made may be examined further. We have, however, assumed that there is no legal difficulty and have, therefore, made the necessary recommendation.

184. The fourth suggestion which we have received, and which in our opinion is vital is that the scope of sub-section (4) be extended so as to penalise buyers who acquire the crop charged to societies. We view this recommendation with favour for two reasons. Firstly, ~~such~~ a provision should deter any merchant from buying any crop

charged to a society without its knowledge. Secondly, it would result in streamlining agricultural marketing which at present leaves much to be desired. Under the Bombay Agricultural Produce Markets Act, nobody can trade without a licence in the market and, if the recommendations of the "Expert Committee" which reported last year are accepted, even the villages can be brought within the scope of the Act. In that event it should be easier for the Government to effectively regulate buyers of agricultural produce in villages. We are of the view that if our recommendation for bringing the buyers of crop and their agents within the scope of sub-section (4) is backed up by an amendment of the Bombay Agricultural Produce Markets Act so that if a licence holder is convicted under this Act, his licence will be cancelled under that Act, the twin measures will serve the purpose very effectively.

185. Although the section primarily deals with prior claim of society on movable property, sub-clause (b) of sub-section (1) relates to the charge of housing society on the interest of members in the immovable property of such society. This proviso is wholesome and requires to be retained. Since the next section, based on Section 24AA of the present Act, deals with the charge on immovable property of agricultural societies only, we are, afraid that this particular provision cannot be fitted in that section. We have, therefore, thought fit to retain it in the section under review.

186. In the light of the above discussions, we recommend that section 24 be renumbered as section 49 and be amended as under :—

SECTION 49—*Prior claim of society.*—(1) Notwithstanding anything contained in Sections 60 and 61 of the Code of Civil Procedure, 1908, and notwithstanding any provision in any other 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—

(a) any debt or outstanding demand owing to a society by any member or past member or deceased member shall be a first charge,

(i) upon crops or other agricultural produce raised in whole or in part with or without a loan taken from the society by such member or past member or deceased member,

(ii) upon any cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture or workshops, godown or place of business, supplied to or purchased by such member or past member or deceased member in whole or in part from any loan whether in money or goods given him by the society, and

(iii) upon any movable property which may have been hypothecated, pledged or otherwise mortgaged by a member with the society and remaining in his custody ;

(b) Any outstanding demands or dues payable to a housing society by any member or past member or deceased member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society, shall be a first charge upon his interest in the immovable property of the society.

Explanation.—The prior claim of Government in respect of dues other than land revenue shall be restricted within the meaning of sub-section (1) to the assets created by a member out of the funds in respect of which the Government has a claim.

(2) No property or interest in property which is subject to a charge under sub-section (1) shall be transferred in any manner without the previous permission of the society and such transfer shall be subject to such conditions, if any, as the society may impose.

(3) Any transfer made in contravention of sub-section (2) shall be void and any member transferring any property and any person acquiring or abetting in the acquisition of, such property which is subject to a charge under sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees.

(4) Notwithstanding anything contained in sub-sections (2) and (3) a society which has as one of its objects the disposal of produce of its members, may provide in its bye-laws or may otherwise contract with its members,—

(a) that every such member shall dispose of his produce through the society, and

(b) that any member who is found guilty of a breach of the bye-laws or of any such contract shall reimburse the society for the loss determined in such manner as may be specified in the bye-laws.

187. *Charge on immovable property of members borrowing from certain societies.*—Section 24-AA deals with the charge on land and interest in land and prescribes the procedure for creating such charge. The two points made out are whether the system of declaration in the form prescribed by the Rules requires an amendment of the corresponding section of the Bombay Land Revenue Code and whether a copy of the declaration is to be sent to the Sub-Registrar. The latter procedure is followed. We do not think it necessary to make a legal provision for the purpose ; but we urge that the position of this Section *vis-a-vis* the Bombay Land Revenue Code, may be

examined. This declaration is in respect of lands and interest in lands and such other interests, as may be specified therein. Every borrower owning lands or having interest in lands as a tenant, has to make this declaration and unless he does that, he is not entitled to exercise his right as a member. This declaration can be varied with the permission of the society in favour of which the charge is created; but no member is free to alienate any part of the lands until the whole amount borrowed by him together with the interest is paid in full; but the standing crop is allowed to be alienated with the previous permission of the society. A member is free to execute a mortgage bond in favour of the State Government under the Bombay Canal Rules for the supply of water. The societies mentioned in this section are those concerned with the provisions of agricultural credit and others in respect of which the State Government issues an order.

188. The title of the section 24-AA is "charge on immovable property etc.", but the section provides for the alienation of the standing crops with the previous permission of the society. Since the facility for the alienation of the crops will defeat the purpose of the crop loan system and the provision for transfer has already been made in the preceding section, we recommend that the proviso to clause (iv) be deleted. Beyond this, we recommend no amendment of the section, which was amended in 1956, following the enactment of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955. We, therefore, recommend that Section 24-AA be renumbered as Section 50 and be amended as under :—

SECTION 50—Charge on immoveable property of members borrowing from certain societies.—Notwithstanding anything contained in this Act or in any other law for the time being in force—

(1) any person who makes an application to a society of which he is a member for a loan shall, if he owns any land or has interest in any land as a tenant, make a declaration in the form prescribed by rules. Such declaration shall state that the applicant thereby creates a charge on such land or interest specified in the declaration for the payment of the amount of the loan which the society may make to the member in pursuance of the application and for all future advances, if any, required by him, which the Society may make to him as such member subject to such maximum as may be determined by the society together with interest on such amount of the loan and advances ;

(2) any person who has borrowed a loan from a society of which he is a member before the date of coming into force of the Bombay State Co-operative Societies Act, 1957, and who owns any land shall, as soon as possible, make a declaration in the form and to the effect referred to in sub-section (1) and no such person shall, unless and until he has made such declaration, be entitled to exercise any right as a member of the society ;

(3) any person who has borrowed a loan from a society of which he is a member before the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955, or any other Act in any part of the State and has any interest in land as a tenant shall, as soon as possible, make a declaration in the form and to the effect referred to in sub-section (1) and no such person shall, unless and until he has made such declaration, be entitled to exercise any right as a member of the society ;

(4) a declaration made under sub-section (1), (2) or (3) may be varied at any time by a member with the consent of the society in favour of which such charge is created ;

(5) no member shall alienate the whole or any part of the land or interest therein specified in the declaration made under sub-section (1), (2) or (3) until the whole amount borrowed by the member together with interest thereon is paid in full :

Provided that it shall be lawful to a member to execute a mortgage bond in favour of a Mortgage Bank or the State Government in respect of such land or any part thereof under the Bombay Canal Rules made under the Irrigation Act, 1879, for the supply of water from a canal to such land or any part thereof ;

(6) any alienation made in contravention of the provisions of sub-section (5) shall be void ;

(7) subject to the prior claims of the Government in respect of land revenue or any money recoverable as land revenue and to the charge, if any, created under an award made under the Bombay Agricultural Debtors Relief Act, 1947, or any other Act in any part of the State there shall be a first charge in favour of the society on the land or interest specified in the declaration made under sub-section (1), (2) or (3) for and to the extent of the dues owing by him on account of the loan ;

(8) notwithstanding anything contained in Chapter X-A of the Bombay Land Revenue Code, 1879, the Record of Rights maintained under the said Chapter shall also include the particulars of every charge on land or interest created under a declaration under sub-section (1), (2) or (3).

Explanation.—For the purpose of this Section “society” shall mean—

(a) any resource society, the majority of the members of which are agriculturists and the primary object of which is to obtain credit for its members ; or

(b) any society or any society of the class of societies specified in this behalf by the State Government by a general or special order.

189. *Deduction from salary to meet Society's claim in certain cases.*—Section 24-A of the Bombay Act was added in 1942 and improved in 1948 and further amended in 1954, in order to provide facilities for employees' Societies to recover their dues from members out of the members' salaries and wages. In regard to the operation of this Section, two difficulties have cropped up. Firstly, the employers are under the impression that the mere intimation of the revocation of the agreement by a member is sufficient for them to discontinue the arrangement, even though sub-section (2) provides that it is to continue "so long as such debt or demand or any part of it remains unpaid". It is argued that they have no means to know whether the debt is outstanding or not and, therefore, they are entitled to presume that the intimation is preceded by the payment of the debt. We, therefore, recommend a positive provision to the effect that the employer, shall continue to deduct unless and until the Society intimates.

190. Secondly, sub-section (2) permits an employer to pay the amount so deducted to the society "within 14 days from the date on which such deduction is made". Section 5 of the Payment of Wages Act lays down the period before which employees have to be paid by their employer. The phraseology used in the Co-operative Societies Act entitles the employer to pay the deducted amount to the society within 14 days from the date on which the Payment of Wages Act requires the employers to pay wages. In other words, while the object of this section is to facilitate the working of the employees' Societies, it has unwittingly enabled the employers to use the societies' funds for a fortnight. The date of deduction is also a matter for interpretation. We have come across instances, where employees' Societies and their members have lost thousands of rupees, because some unscrupulous employers are able to take advantage of the lacuna and of inadequate penalties for the offence. We think that the liability for payment to the society should be specific and the penalty for failure to honour it should also be deterrent. We appreciate that an employer must have sufficient time to adjust the wage accounts of each member. The system adopted is that Societies send the deduction sheets usually 10 days before the date for payment of wages and salary and no employer has, to our knowledge, experienced any difficulty in that behalf. The Madhya Pradesh Act, Section 19-B provides that if the employer fails to deduct the amount or makes default in remitting it, the society shall be entitled to recover the amount from the employer as an arrear of land revenue. We consider this as a wholesome provision in addition to the provision for penalties already prescribed.

191. A plea has been made by employees' societies, that they should have a prior claim over the provident fund under this Act and a suitable provision should be made for the purpose. These are benefits primarily meant for the period of retirement from service and we do not think that societies should have a prior charge on

retirement benefits. True, where the management co-operates with a society or where the members as sureties of borrowers are vigilant, the society recovers its dues from the members as soon as they receive the retirement benefits from the employer. But we do not think that this unofficial arrangement should be recognised by law and, therefore, reject the suggestion. Sub-section (1) lays down that the agreement must specify the amount. It has been pointed out to us that a member has to execute such an agreement on each occasion when he borrows, since the amount borrowed varies. It is, therefore, suggested that the amount as may be specified in the agreement be deleted. We do not accept this suggestion on the ground that the inconvenience or hardship is not material and the agreement cannot be vague.

192. Our attention has been drawn to cases in respect of which societies have lost funds because firms which had deducted the societies' dues from the wages and salary of their employees under this section did not pay the societies for months together and later went into liquidation. We are also told that in these cases, the Society's claim was treated as an ordinary claim since upon the deduction of the amount from the wages and the payment of the balance, the employees' wages are deemed to have been paid fully. To provide for such a contingency, we recommend that the Payment of Wages Act be suitably amended to clarify the position that the wages would not be considered to have been fully paid under that Act, unless and until the amount deducted out of the wages under this Section is paid to the society. We further recommend that this section should provide that the amount deducted, but not paid, should rank on par with wages unpaid in the case of liquidation proceedings, etc., affecting employers.

193. We, therefore, recommend that Section 24-A be renumbered as Section 51 and be amended as under :—

SECTION 51—Deduction from salary to meet society's claim in certain cases.—(1) A member of a society may execute an agreement in favour of the society providing that his employer 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 by the member to the Society.

(2) On the execution of such agreement the employer shall if so required by the society by a requisition in writing and so long as the society does not intimate that the whole of such debt or demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society, as if it were a part of the salary, or wages payable on the day as required under the Payment of Wages Act.

(3) If after the receipt of a requisition, made under sub-section (2), the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting the amount deducted to the society, the society shall be entitled to recover any such amount from the employer as an arrear of land revenue and the amount so due from the employer shall rank in priority in respect of the liability of the employer equal to that of the wages in arrears.

(4) The provisions of this section shall also apply to all such agreements of the nature referred to in sub-section (1) as were in force on the date of the commencement of the Bombay State Co-operative Societies Act, 1957.

(5) Nothing contained in this section shall apply to persons employed in railways (within the meaning of the Constitution), mines and oil-fields.

194. *Funds not to be divided.*—An important principle on the basis of which co-operation works is that it is an association of members and not of capital. The members are, therefore, not entitled to receive even in the event of liquidation anything more than what they had paid to the Societies as share capital. The reward for capital or for patronage can only come out of the profits from the year's operation. Therefore, only profits can be divided and not other funds. We think a specific provision is necessary for the purpose even though Rule 26 prescribes that without the sanction of the Registrar, no part of the funds shall be divided, without meeting the entire expenditure. The correct position should be that the distribution of profits should be regulated and the division of other funds should be prohibited. In this section we propose to provide for the latter and deal with the question of profit in the following sections.

195. A point has been raised as to whether remuneration to a member for the services rendered to a society can be paid. The Madras Act provides that a member may be paid remuneration out of the funds. We are afraid, that though the intention is to pay for the services rendered, the provision as it is would enable a society to pay out of the capital to the member. The remuneration to members is of two types. Where he is an employee, he earns his remuneration as an employee and not as a member, and there is no question of paying him by dividing the funds. Where a question of honorarium to a member for working in his capacity as a member exclusively arises, it needs a closer examination. The members are expected to work for the benefit of the society and should not ordinarily accept any honorarium. At any rate, a society should not pay honorarium if it runs in a loss, because the word honorarium will have no meaning in that case. In Bombay State, particularly in the

urban sector, the system of honorarium has taken a curious form inasmuch as persons, employed elsewhere as full-timers, are able to earn much more by way of honorarium than they do as full timers. In certain societies, the honorarium itself is treated as a part of the expenditure and is not subjected to the approval of the general body, which remains in the dark about the quantum of expenditure the society has incurred on the services of its own members. We feel that this aspect of the working of the co-operative societies may have to be inquired into by the Registrar.

196. So far as the Act is concerned, we are of the view that a provision should be inserted whereunder no part of the resources of a society except the profit should be available for distribution, and do not favour to exclude even the honorarium payable to members therefrom. We, therefore, recommend that Section 52 be added as under :—

SECTION 52—*Funds not to be divided.*—No part of the resources, other than the net profit, of a society shall be distributed among its members by way of bonus or dividend, honorarium or otherwise.

197. *Appropriation of Profits.*—Section 38 of the Bombay Act places restriction on dividend. Section 39 lays down the quantum of net profit to be appropriated towards Reserve Fund. Section 39-A provides for contribution towards Educational Fund of the Bombay State Co-operative Institute. Section 40 deals with restrictions on distribution of profits and Section 42 provides for contribution to charitable purpose. Rule 22 mentions about distribution of profits as the heading, but actually provides how the profits should be calculated. Rule 23 explains that dividend includes bonus though the heading is distribution of bonus. Rule 24 provides for the payment of dividend in arrears in certain circumstances subject to a ceiling and for the creation of the Dividend Equalization Fund at the option of the society and lays down that no society shall declare a dividend at a rate exceeding that recommended by the Committee. Rule 25 amplifies Section 40 regarding the patronage dividend. Rule 26-A deals with the rate of contribution to Educational Fund. We are of the view that all these sections together with the rules should be properly codified.

198. The order for appropriation of profit should be, in our opinion, laid down in the Act itself. A society works primarily for the collective benefits of its members and, therefore, the building up of its strength must have a priority over anything else. For this purpose it is necessary that the profit available for appropriation must be arrived at after meeting fully the expenditure necessary for conducting its business and providing for other expenditure which is likely to be incurred as a result of the activity during financial year. Therefore, the definition of net profit, as distinct from gross profit or trading profit, which is to be appropriated should be specific. We, therefore,

suggest that a provision be made laying down that a society shall determine its net profit after deducting from its revenues, establishment charges, interest payable on loans and deposits, working expenses including repairs to property, rent and taxes, depreciation and audit fees and after providing for bad debts and writing off capital expenditure in whole or in part and capital losses incurred but not adjusted against any fund created out of profits. Furthermore it is necessary to lay down on the lines of existing Rule 22 that in calculating the profits of a society for the year, all accrued interest which is overdue shall be deducted from the gross profits of the year and accrued interest in the preceding year but recovered during the year shall be added.

199. As regards appropriation, the first priority should be for building up the strength of the society. From this point the creation of the Reserve Fund and other funds assumes a higher priority. Next in order stands the reward for capital by way of dividend. Once this is made, the law requires a society to contribute to the Educational Fund. After these obligations are fulfilled, a society should be able to distribute patronage dividend and donate sums out of profit to charitable purposes and appropriate the balance according to its bye-laws. We, therefore, recommend the following Section as Section 53.

SECTION 53—*Appropriation of profits.*—(1) A society earning profit shall calculate net profit by deducting from the gross profits for the year, all accrued interest which is overdue for more than six months, establishment charges, interest payable on loans and deposits, audit fees, working expenses including repairs, rent, taxes and depreciation, and after providing for or writing off bad debts and losses not adjusted against any fund created out of profit. A society may, however, add to the net profit for the year interest accrued in the preceding years but actually recovered during the year. The net profit thus arrived at, together with the amount of profit brought forward from the previous year, shall be available for appropriation.

(2) A society may appropriate its profit to Reserve Fund, any other fund, the payment of dividend to the members on their share, to the contribution to Educational Fund of the Bombay State Co-operative Union, to the payment of bonus on the basis of support received from members and non-members to its business, to payment of honorarium, and towards any other purpose as may be specified in the bye-laws. Provided that no part of the profit shall be appropriated except with the approval of the Annual General Meeting and in conformity with the Act, Rules and Bye-laws.

200. *Reserve Fund.*—Section 39 of the Bombay Act requires every society which can derive a profit to maintain a Reserve Fund and

prescribes the quantum in terms of the percentage of the net profit. Certain witnesses testified before the Committee that the percentage of contribution out of net profit to the reserve fund should be lowered in the case of societies whose reserve fund equalled the paid up capital. We have compared the provision in the Bombay Act with several other Acts and find that the provision in the Bombay Act is very reasonable. In the case of Vidarbha and Marathwada their present Acts require that such societies irrespective of their class have to carry one-fourth of their net profits to the reserve fund. The Hyderabad Act further provides that an additional one-tenth of the profits should be carried to the reserve fund where the same is not equal to the paid up capital. We, therefore, do not think that any hardship will be caused to a society by the existing provision especially in view of the fact that the members cannot get any high return for their capital. The section also provides for the mode of investment of reserve fund by stating that it can be used in business and invested, subject to the provisions of section 37, as the State Government, may direct or, with the previous sanction of the State Government, in some public purpose.

201. The provision regarding investment of the reserve fund has been the subject of controversy. The permission to use the reserve fund in the business of the Society is a privilege conferred by the Bombay Act, because it forms the ultimate security for its creditors. Other Acts have provided that it should be invested outside the business and the Standing Advisory Committee on Agricultural Credit of the Reserve Bank recommended at its fifth meeting that this fund should be invested outside the business "until such time as the fund equals the paid up capital". This was an attempt to have the best of the provisions in the Bombay Act and in other States. The question was elaborately discussed in the State Co-operative Council which felt that especially in the case of agricultural societies, it would be cruel to expect such societies to invest their reserve fund outside the business and make up the gap in the required fund by paying a high rate of interest. A similar difficulty will arise in the case of salary earners' societies. The case of banks stands, however, on a different footing and it is desirable in their case to ensure that they invest their reserve fund outside the business. We, therefore, recommend an appropriate change in the Section.

202. The mode of investment of the fund of a society has been laid down in Section 37 of the Bombay Act and we do not understand the propriety of empowering the State Government, even subject to the provisions of section 37, to direct the mode of investment of the Reserve Fund under section 39. Again, this section empowers the State Government to permit the use of the reserve fund of a society for some public purpose which is likely to promote the objects of this Act or for some purpose of Provincial or local interest. As stated earlier, the object of the reserve fund is to provide the requisite strength and impart stability to the society and the amount to be credited to this fund must easily be available. If the fund were to be

used, even with the approval of the State Government, "for some public purpose likely to promote the object of this Act," etc., we are afraid the object of creating the fund itself will be defeated. We, therefore, recommend that the provision regarding the State Government's power to approve mode of investment or the use of fund for some public purpose should be deleted.

203. In view of the above discussion we recommend that Section 39 be renumbered as Section 54 and should read as under :—

SECTION 54—Reserve fund.—(1) Every society which does or can derive profit from its transactions shall maintain a reserve fund.

(2) In the case of resource or Producers' Society at least $\frac{1}{4}$ of the net profits of the society each year shall be carried to the reserve fund and in the case of any other society at least $\frac{1}{10}$ th of the net profit of the society each year shall be carried to the reserve fund, and such reserve fund may be used in its business by a society other than a co-operative bank or may be invested in accordance with the provisions of Section 58.

204. *Restriction on dividend.*—Section 38 of the Bombay Act restricts the dividend to $6\frac{1}{2}$ per cent. For Vidarbha, Rule 40 made by the Madhya Pradesh Government under the Act of 1912 enables a society to pay a dividend of more than $6\frac{1}{2}$ per cent. with the sanction of the Registrar. In Madras the ceiling on dividend is 9 per cent. but it varies with the class of societies. A suggestion has also been made that in view of the rise in the Bank rate, the original ceiling of $7\frac{1}{2}$ per cent. should be re-introduced in Bombay. This question is not a point of law but of policy and we do not propose to make any recommendation thereon. So far as the restriction on dividend is concerned Section 40 carries two provisions, viz., in the case of a Resource Society with an unlimited liability and without shares, profits cannot be distributed without the order of the State Government. An unlimited liability society having shares has the same restriction, for the first 10 years. We presume that the word "distribution" has been used in connection with the payment of dividend and the question of paying any dividend in the case of societies with no share capital does not arise. The relevant provision is, therefore, unnecessary. Secondly, a provision has been made for the payment of dividend to the State Government on its shares. We have recommended in paragraph 114 that the State Government should be a member and, therefore, as a member, it would be entitled to the dividend. Consequently no specific provision is necessary for the purpose. It is, however, desirable to provide that no dividend shall be paid without the approval of the general meeting and that it will not exceed the quantum recommended by the Committee.

205. In the case of consumers' and producers' societies a provision has been made for distribution of a portion of the profit also to non-members to the extent and under the conditions prescribed by

the Rules or the bye-laws. It appears to us that the words 'dividend, bonus and distribution' require to be clarified. In Section 2 we have defined dividend as "the interest paid to a member on the share capital of a society out of its profits and includes bonus provided it is paid on capital." Similarly we have defined bonus as "dividend paid to a member or a non-member out of profits of a society on the basis of his contribution to the business of the society." As explained by us earlier in a co-operative organisation the remuneration for capital should be limited. The case of reward for support to the business of a society, however, stands on a different footing. The practice of paying dividend on the basis of patronage is the sheet anchor of co-operation and there is no need to impose any restriction on its quantum. We have already provided that even such distribution can only be out of profits. The section under review restricts the practice of patronage dividend to consumers' and producers' societies but since it is customary for credit societies to accept deposits of non-members it is desirable that the practice should also be extended to such societies. The same Rule applies to housing societies. In fact Rule 25, though it seems to be *ultra vires*, the Act is comprehensive and we have chosen to adopt it.

206. Rule 24 framed under the Bombay Act enables a consumers', producers', housing and farming society to pay dividend higher than $6\frac{1}{4}$ per cent. in any year if it has paid less than 4 per cent. in any of the preceding years subject to certain conditions. The underlying idea of this Rule is that a society belonging to any of these groups takes time to build up its profit earning capacity and should, therefore, have the facility of paying at least 4 per cent. dividend on an average. We unanimously agree that this facility should be conceded for 10 years following the year of such deficit between a dividend of 4 per cent. and a lower dividend paid earlier. With the exception of the Chairman, all of us are further of the view that this principle of giving a fair deal to the members of certain classes of societies should be extended to other all classes of societies. Our proposal is that if any society is unable to pay dividend at $6\frac{1}{4}$ per cent. in respect of any year, the law should enable it to make good the deficit by paying the balance of such dividend out of future profits accruable during the two years immediately succeeding the year of such deficit. In our opinion, this is a fair proposal because the reward for capital is restricted by the law to a maximum of $6\frac{1}{4}$ per cent. and the members should, therefore, be entitled to this fair reward so long as the profit permits. The Chairman of the Committee is, however, opposed to the proposal on the ground that it seeks indirectly to convert the maximum permissible dividend into a minimum one, carries with it an element of cumulative dividend, a practice which is not heard of in any other country and confers on societies other than consumers', producers', housing and farming societies a privilege far in excess of what is presently enjoyed by certain societies under the existing Rule. He is afraid that

such a facility would not be also conducive to the strengthening of the reserve fund. In our opinion, the apprehensions expressed by the Chairman are far-fetched. We, therefore, recommend subject to the dissenting note of the Chairman, that the necessary provision be made.

207. The same rule empowers a society to create a dividend equalisation fund out of its profit. But this can be done only so long as the total fund does not exceed the amount representing $6\frac{1}{2}$ per cent. of the paid up capital. We are unable to comprehend the utility of this restriction. Theoretically, if a society is able to earn profits by economising its expenditure and have a surplus after meeting all the statutory obligations, we do not see any objection to any effort to build up such fund. In actual practice it may not be easy for a society to have bumper profits in order to strengthen this fund. The object of this fund is to facilitate the payment of dividend during a lean period when abnormal economic conditions might not enable a society to secure enough profits for paying a dividend. So long as the reward for capital, subject to restrictions which the Act has imposed, is not considered undesirable, we feel, the building up of this fund without any restriction is desirable. With the foregoing modifications, we recommend that section 38 be added to the Act as section 55. The section as amended reads as under:—

SECTION 55—Restriction on dividend.—(1) No society shall pay a dividend out of its net profits to its members on its share capital at a rate exceeding $6\frac{1}{2}$ per cent. interest, and no resource society on a basis of unlimited liability in which the members hold shares, shall pay a dividend until 10 years from the date of registration of the society have elapsed. Provided that if any consumers', producers', housing or farming society is unable to pay a dividend of 4 per cent. in respect of any year, it may pay additional dividend, representing the difference between the dividend paid for that year and the dividend of 4 per cent. out of profits in future years at any time not later than 10 years immediately succeeding the year of such deficit. Provided further that if any society other than a consumers', producers', housing or farming society is unable to pay a dividend at $6\frac{1}{2}$ per cent. in respect of any year it may make good the deficit by paying an additional dividend out of profits in the two years immediately succeeding the year of such deficit.

(2) A society may credit in any year a sum not exceeding 2 per cent. on the paid up share capital to a fund called the "Dividend Equalisation Fund" and no withdrawal from such fund shall be made except for the purpose of paying the dividend, without the previous sanction of the Registrar.

(3) Notwithstanding anything contained in sub-section (1) a society classified either as consumers' or producers' or resource or housing, may pay bonus to its members and persons who are not members to the extent and subject to the conditions prescribed

by the Rules or bye-laws of such societies provided that no resource society on a basis of unlimited liability in which the members do not hold shares shall pay any bonus without the general or special order of the State Government in this behalf.

Explanation.—No society shall make any payment under sub-sections (1) and (3) or any appropriation under sub-section (2) without the sanction of the annual general meeting. The annual general meeting may reduce the dividend recommended by the committee ; but it shall not be within its powers to declare a higher dividend.

208. *Contribution to Educational Fund of the Bombay State Co-operative Union.*—Section 39-A of the Bombay Act lays down that a society paying a dividend to its members at a rate of 4 per cent. or more, has to contribute to the educational fund of the Bombay State Co-operative Union at such rate as may be prescribed. We beg to point out that the name of the Institute given in the section is the Bombay State Co-operative Institute. The Bombay Provincial Co-operative Institute has changed its name to the “Bombay State Co-operative Union”. The operation of this section is not quite satisfactory and complaints have been received by us that many societies have not been making the contribution and there is no facility available for arbitration, etc., in order to recover the Institute’s dues.

209. It appears to us that the office-bearers of many societies are not conscious of their obligations and there is a tendency to avoid payment. For arresting this trend, a drastic remedy is necessary. We, therefore, suggest that no dividend should be allowed to be paid unless this contribution is paid where a society is required to make the contribution. Secondly, we beg to recommend that the officers of the society concerned should be held personally liable for failure to pay this contribution. We think this is the only effective method of ensuring the legal responsibility of the societies to support the third arm of the co-operative movement, i.e. training, education and propaganda, through the Institute. As regards quantum, this has been prescribed by Rule 26-A and has been linked with the dividend and we do not recommend any change therein at least for the time being even though in Marathwada, it is payable under the Hyderabad Act on the basis of profit. We, therefore, recommend that section 39A be renumbered as section 56 and be read as under:—

SECTION 56—Contribution to educational fund of the Bombay State Co-operative Union.—(1) Every society which declares a dividend to its members at a rate of 4 per cent. or more, shall contribute towards the educational fund of the Bombay State Co-operative Union at such rate as may be prescribed.

(2) No society liable to contribute towards the educational fund, shall pay a dividend to its members unless the said contribution is made to the Bombay State Co-operative Union. An officer or officers wilfully failing to comply with the requirement of sub-section (1) shall be held personally liable for making good the amount to the Bombay State Co-operative Union.

210. *Contribution to charitable purpose.*—Section 42 of the Bombay Act enables a society to set aside a sum not exceeding 20 per cent. of its net profits and to use it from time to time for a charitable purpose. From the wording of the Section, for both the purposes, the Union's sanction is required and the requirements in respect of the reserve fund and the contribution to the educational fund have to be fulfilled. When the Section was first incorporated, there was a good deal of debate in the Bombay Legislative Council over the quantum and getting the approval of the Union, and the Council rightly turned down the suggestion that the approval of the Registrar should not be provided for as a safeguard. Secondly, the limit of 20 per cent. was put in the hope that societies could make their maximum contributions for such purpose. In Marathwada, the same limit is operating because the Hyderabad Act follows the Bombay Act. In Vidarbha, it is 10 per cent. In actual practice, we are not aware of any society contributing more than 10 per cent. of its profits to a charitable purpose. We, therefore, recommend that the limit should be lowered from 20 per cent. to 10 per cent. We are also of the view that co-operation should have a first claim on such contributions. We also opine that the Union's sanction is unnecessary for setting aside the sum. It should, however, be essential for utilisation only. We recommend an appropriate change.

211. The section, as amended, should be renumbered as Section 57 and should read as follows :—

SECTION 57—*Contribution to charitable purpose.*—A society may set aside a sum not exceeding 10 per cent. of its net profits, after providing for the reserve fund as prescribed in sub-section (2) of section 54 and for the educational fund, as prescribed in section 56 and utilise, with the approval of the Bombay State Co-operative Union, from time to time, the whole or part of such sum in contributing to any co-operative purpose, or to public purpose, or to a charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.

212. *Investment of funds.*—Section 37 of the Bombay Act and Rule 27 regulate the investment of funds of societies. The section permits investment or deposit of funds of societies in the Government savings bank, trustee securities, shares and instruments backed by security of any other society with limited liability, in banks approved by the Registrar and in any other mode permitted by the

Rules or the State Government. In regard to Government savings bank, we submit, the correct nomenclature should be the Postal Savings Bank. Though the Act gives priority to the postal savings bank it may be noted that this was done in 1925 when co-operative banks were not sufficiently developed. We, therefore, submit that it should be the primary duty of all co-operatives to invest or deposit their funds in their financial agencies. In sub-clause (c) "on the security" would mean advance and not investment. This is obviously meant to permit investment in the debentures or the security issued by any other society. Again, the object of the proviso in the sub-clause is to permit investment in societies with limited liability only. The cumbersome wording has been simplified by recommending the deletion of the words beginning from "Provident" to "one".

213. A suggestion has been made to us that investment in societies registered outside the State should be permitted with the approval of the Registrar since that would encourage the co-operative movement in the country and at the same time provide the safeguard against bad investment in a society. Besides, there are several societies with the country as their area of operation. We endorse this suggestion subject to safeguards. Sub-clause (c) does not categorically state that investment can only be permitted in respect of societies registered in the State but the definition given in section 3 defines society as one registered under this Act. We, therefore, recommend that the Rules should provide for this.

214. Clause (d) permits investment in any bank or person carrying on the business of banking approved for this purpose by the Registrar. In this clause "the person" referred to is by implications the indigenous banker. In 1925 when the Act was enacted probably it might have been necessary to permit the deposit of funds with indigenous bankers. The State has been well served with the co-operative banks and joint-stock banks, and we do not think that societies' funds should be allowed to be deposited with indigenous bankers over whom no law has control at present. This practice, we are afraid, would prove injurious to the movement. Since the Banking Companies Act refers to "banking companies", we recommend that the word "banking companies" should be used instead of "bank". The clause also suggests that the approval of the Registrar is to be without strings. It might, however, be desirable from the point of the safety of funds for the Registrar to impose conditions according to the status of banking company, both in regard to the quantum and mode of investment and deposit. We, therefore, recommend that after the word "Registrar" the word "on such conditions as Registrar may lay down from time to time" be added.

215. Rule 27 further elaborates the provision in section 37 by stating that funds can be invested with the previous sanction of the

Registrar in (a) shares of the Reserve Bank of India, (b) loans raised by local authorities, (c) purchase or lease of land or building, and (d) construction of buildings. The shares of the Reserve Bank of India were trustee investments and therefore fell under section 37 (b) and there was no question of getting the previous sanction of the Registrar. These shares are at present owned by the Central Government and the provision is out of date. The shares of the State Bank and of the Finance Corporations are also trustee securities and we do not see any need to provide for any such investment under the Rules.

216. As regards loans raised by the local authorities in Bombay State under the authority of the Local Authorities Loans Act, we beg to submit that it should not be necessary to get the previous sanction of the Registrar for such investment because the State Government scrutinises the application of the local authority concerned for raising the loan before it is allowed to approach the money market and we do not understand how the Registrar can term the investment in such a loan as unsafe when the State Government has approved. We, therefore, do not like the idea of providing for Registrar's approval in this respect. Besides, when any authority raises a loan in the money market, it is usually open for a week or so and we are afraid it is not administratively possible to get the Registrar's sanction, and complete the application before the subscription list is closed. The only point which remains in this connection is that the bonds of the local authority are not easily negotiable and it would be desirable to discourage this type of investment in the case of small societies. But this is a problem which can be tackled by the Registrar by issuing general instructions to the societies.

217. On the question of investment in property, we are of the view that the Registrar's previous sanction is absolutely essential and the onus of convincing the Registrar that such an investment is advantageous to the society in the conduct of its business and that such an investment would not handicap it in the matter of conducting the business should lie on the society.

218. Sub-rule (2) of Rule 27 deals with the investment of urban banks in respect of the surplus being the difference between the funds available for lending and the funds actually lent. The Rule confers the privilege on urban banks with a paid up capital of Rs. 50,000 and reserve fund of Rs. 50,000, of at least 10 years age and classified as "A" or "B" at the last statutory audit. It is not clear from the Rule whether the intention was to insist on the two standards in respect of owned funds separately. The object seems to assure that an urban bank should be of a good size. For instance, an urban bank with a paid-up share capital of Rs. 1 lakhs can be considered as safe as another one with a paid-up capital of Rs. 50,000, and reserve fund of Rs. 50,000. We, therefore, recommend that instead of two separate standards it would be better to provide for

owned capital of Rs. 1 lakh. The conditions are that the shares or debentures of a company in which investment is to be permitted has to be approved by the Bombay State Co-operative Bank's Association and that such investment is not to exceed 5 per cent. of the deposit and 15 per cent. of the surplus funds. The proportion of investment in preference and ordinary shares and debentures has been laid down at 10 per cent., 5 per cent. and 15 per cent. of the surplus funds.

219. This mode of investment in shares of joint-stock companies has been the subject of controversy at the all India level. It was debated in the Registrars' Conference in 1947. At this Conference the co-operators in Bombay State led by the then Registrar strongly defended the need for allowing the urban banks scope for such investment on the ground that only a wider scope for investment at a remunerative rate would enable them to tap deposits by successfully competing with schedule banks. The opposite view was that the surplus funds of a society must be invested within the co-operative movement. A compromise was, therefore, effected at this Conference. The view point propagated by the co-operators in the Bombay State at that time has been further strengthened by the present situation when the money market is tight and the competition between banks for attracting deposits is acute.

220. In the actual operation of this Rule the ceiling of 5 per cent. of the deposit liability or 16 per cent. of the surplus funds whichever is lower has operated as a heavy brake to achieving the objective of permitting such investment. The deposits of urban banks are by and large savings deposits. The choice of shares and debentures is made by the Association after having due regard to negotiability, stability and regular dividend paying capacity. With these conditions a little more relaxation is, in our opinion, necessary. At present most of the joint-stock banks have been paying interest on savings deposits at $2\frac{1}{2}$ per cent. If urban banks were to raise deposits at this rate and were to invest the surplus in Government security with a yield of about $2\frac{1}{2}$ per cent. after paying the tax, they will have no margin left for management of the funds. We submit that this particular difficulty requires a more sympathetic treatment if the urban banking movement in this State has to grow further. We, therefore, recommend that instead of 5 per cent. of the deposits and 15 per cent. of the surplus whichever is less, it should be whichever is higher. We do not, however, recommend any change in the ceiling on investment in preference shares, ordinary shares and debentures.

221. The problems discussed in paragraphs 215-220 have to be tackled by revising the relevant rule. From the point of the Act, the only provision desired by us is that the Registrar should be vested with powers to regulate the investment of a society or a class of

societies. Having regard to the discussion of the issues in paragraphs 212-220, we recommend that section 37 be renumbered as section 58 and be read as under :—

SECTION 58—*Investment of funds.*—(1) A society may invest or deposit its funds :—

- (a) in a Central Bank or the State Co-operative Bank ; or
- (b) in the State Bank of India ; or
- (c) in the Postal Savings Bank ; or
- (d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 ; or
- (e) in the shares or security bonds or debentures issued by any other society with limited liability ; or
- (f) in any banking company approved for this purpose by the Registrar and on such conditions as the Registrar may lay down from time to time ; or
- (g) in any other mode permitted by the Rules or by general or special order of the State Government.

(2) Notwithstanding anything contained in sub-section (1) the Registrar may order a society or a class of societies to invest funds in a particular manner or may lay down conditions regarding the mode of investment of such funds.

222. *Employees' Provident Fund.*—Section 41 of the Bombay Act deals with provident fund. It lays down that a society may establish a provident fund for members or servants in accordance with bye-laws and may contribute to such provident fund from its net profits provided the fund shall not be used in business and shall be invested in accordance with section 37 and shall not form part of the asset of the society. Originally when this section was inserted it was meant to regulate the provident fund of the members. This was because the member's savings were mobilised under the provident fund scheme, a type of recurring deposit. In 1948 this section was amplified so as to include the employees' provident fund but the consequential changes in the section were not made with the result that the contribution of a society to its employees' provident fund has been made conditional to its ability to earn net profit.

223. It has been established by the Industrial Law in this country that the provident fund is a part of remuneration, with the only difference that whereas the wages are paid every month, the provident fund, representing employees' contribution as well as the employers' is paid at the time of retirement and subject to certain conditions. Naturally, therefore, the provident fund must be a charge like the wages on the current expenditure even before the profit or loss is arrived at. Since this is an item of revenue expenditure,

we submit, it should not be linked with the net profit. We have received representations from the societies that audit objections have been taken against them because they have been treating their provident fund as items of expenditure, before arriving at the profit. As the section stands, the objection is valid. We, therefore, urge the Registrar to issue instructions to auditors not to take serious notice of the breach pending the amendment of the section.

224. As regards the section, we find that the Provident fund is of two types, one for members and other for employees. In the case of the former, it is a type of deposit and we submit that no provision in the Act is necessary for regulating the terms on which a deposit should be accepted when the Act does not lay down conditions for other types of deposits. We, therefore, recommend that the heading "Provident Fund" should be prefixed by the word "Employees'". Secondly, we recommend that the reference to net profit should be deleted and the power for governing the provident fund should be prescribed.

225. Certain rules have been framed by the Registrar in this connection; but we are afraid they are outmoded. For instance, we find that one of the rules permits a society to forfeit an employees' Provident fund for the financial loss on account of his fault. We are afraid that this is against the Provident Fund Act and the Scheme and the object of the fund itself, which is to provide money after retirement for the benefit of the family. One point remains in this connection. This arises from the operation of the Central Provident Fund Act under which all contributions to the provident fund have to be handed over to the Provident Fund Commissioner appointed by the Central Government. Such societies require to be exempted from the Rules. A provision for this purpose is necessary in the Act itself.

226. We, therefore, recommend that section 41 be renumbered as section 59 and should read as under:—

SECTION 59—*Employees' Provident Fund.*—(1) Any society may establish a provident fund for its employees into which shall be paid the contributions made by its employees and by the society. Such provident fund shall not be used in the business of the society and shall not form part of the assets of the society and shall be invested under the provision of section 58 and shall be administered in the manner prescribed.

(2) Notwithstanding anything contained in sub-section (1), a provident fund established by a society to which the Employees' Provident Fund Act, 1952, is applicable shall be governed by that Act.

227. *Power to direct affiliation to a federal society.*—The co-operative structure has been built on a federal basis and can be strengthened only when affiliating institutions impart strength to their

federal society and the latter gives the same in return to the former. It is this concept which has prompted the movement to build up the pyramid. The bill of 1948 to amend the Bombay Co-operative Societies Act had the object of achieving "progressive de-officialisation of control over the co-operative movement." Introducing the bill in the Bombay Legislative Assembly Shri V. L. Mehta, the then Minister for Co-operation said, (Bombay Legislative Assembly Debates, Official Report, February 21, 1948, page 121).

"It is only a very modest attempt in this direction which we seek to introduce through this piece of legislation that is represented by the insertion of the definition of a society called the Federal Society, and it is the desire of Government that in course of time it will be through these federal societies principally that the working of co-operative societies of all types will be governed and regulated, subject to such ultimate authority and sanction as Government reserve to themselves under this law and must reserve to themselves under any future law for the enforcement of the provisions of this Act, the Rules and the byelaws made thereunder."

228. Certain obligations have also been imposed in regard to improved working of societies on federal societies by the Act. We are, however, of the view that if Federal Societies and their affiliated societies were to be brought closer together and the movement were to be integrated, the prerequisite is that every society must be affiliated to its federal society. At present it is voluntary. We find that Section 46A of the Government of India Act, 1912, as adopted by the Government of Madhya Pradesh and presently applicable to Vidarbha empowers the State Government to direct all or any of the societies in a specified area to get themselves affiliated to a co-operative institution or a co-operative federation whose constitution and functions can also be regulated by the State Government. Though the provision for compulsory affiliation is restricted to only one type of co-operative institutions, we see in this provision a wider import inasmuch as the need for compulsory affiliation has been recognised. At the same time we beg to record that all federal societies are not sufficiently strong to impart strength to their affiliated institutions nor is their constitution sufficiently democratic and progressive. It is for this reason that we do not recommend unconditional compulsion. The effort to bring a federal society and its affiliated institutions closer must be forged in progressive stages and it is with this object that we recommend that the Registrar who is competent to decide and who knows how the steps should be taken will be the best person to exercise this discretion.

229. To achieve the abovementioned objects, we recommend that a new Section, Section 60 be added as below :—

SECTION 60—*Power to direct affiliation to a federal society.*—
The Registrar may, by general or special order, direct that all or any

of the societies situated within a specified area shall be affiliated to a Federal Society or Federal Societies in such manner and on such conditions as the Registrar may, by general or special order, determine from time to time. The constitution and functions of a Federal Society in respect of which an order of compulsory affiliation is made shall be regulated by him.

230. *Bar of jurisdiction of Courts.*—The structure of the Co-operative Law has been based on the theory that difference of opinion affecting the working of societies should not be subject to any civil litigation but should be resolved expeditiously by amicable methods and by avoiding the fine points of law while ensuring a fair decision. It is, therefore, necessary while providing the machinery under the law for this purpose that the parties to the dispute are not given additional opportunities of going to a court of law. Section 51 of the Bombay Act bars suit in a civil court in respect of matters connected with the winding up of a society. In Madras, the question was recently reviewed by the Madras Committee on Co-operation and a specific provision for barring civil suits forms an integral part of each of the several sections under its recommendations. The matters included are Registrar's power to decide certain questions, division and amalgamation of societies, amendment of byelaws, costs of inquiry and inspection and liquidation proceedings.

231. In Bombay State the legal opinion differs in the absence of a specific section as to whether the decision on particular question is beyond the jurisdiction of courts. The Bihar and Orissa Co-operative Societies Act, 1935, has a specific provision in Section 57. This provision has been amplified by the Orissa Co-operative Societies Act, 1951. Section 134 in this Act is, in our opinion, most comprehensive and we recommend that this Section be adopted as section 61 of the Act recommended by us and Section 51 of the Bombay Act of 1925 be deleted. The relevant section proposed by us will read as under :—

SECTION 61—*Bar of jurisdiction of Courts.*—(1) Save in so far as is expressly provided in this Act, no Civil, or Revenue Court shall have any jurisdiction in respect of :—

(a) the registration of a society or its bye-laws, or of any amendment of its bye-laws, or the dissolution of the committee of a society and the management of the society on dissolution thereon ; or

(b) any dispute required to be referred to the Registrar or his nominee or Board of nominees for decision ;

(c) any matter concerned with the winding up and dissolution of a society.

(2) While a society is being wound up no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.

(3) All orders, decisions or awards passed in accordance with this Act or the Rules shall be final subject to the provisions for appeal in this Act and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any court upon merits or upon any grounds whatsoever except for want of jurisdiction.

CHAPTER VIII.

MANAGEMENT OF SOCIETIES.

232. Efficient management of societies is the key to the progress of the co-operative movement and we attach considerable importance to this Chapter which deals with the provisions relating to management of societies. The Bombay Act, 1925, has no separate Chapter dealing with this aspect of the law. The various sections which should have been legitimately grouped together in this Chapter have been scattered. The final authority, subject to Act, and the Rules and the byelaws is the members of society. The provision for giving them a voice in the management has been made in Section 12 (annual general meeting) and section 13 (special general meeting). The election of the managing committee which manages the day-to-day affairs of the society is governed by the byelaws. The powers relating to the appointment of a new committee or removal of the existing members of a committee have been assumed by the State Government under Rule 48. Section 71 (2) (g) empowers the State Government to frame rules for the appointment, suspension and removal of the members of the committee and other officers and for laying down procedure at meetings of the committee and for defining the powers and duties of the committee and other officers. Last year, a new Section, Section 46 (B), was added to the Act empowering the State Government to appoint an Administrator.

233. It is true that these provisions together with the byelaws have served the purpose effectively. But we are of the view that powers such as those relating to suspension of the Committee are so drastic that they should be specified in the Act itself. The consequences of such suspension should also be dealt with by the Act itself. Besides, the minimum functions of different agencies which manage a society also require to be specified. This Chapter deals with the main aspect of management. It covers (1) final authority of a society, (2) annual general meeting, (3) special general meeting, (4) committee, its powers and functions, (5) acts of societies not to be invalidated, (6) power to appoint Government nominees, (7) suspension of committee, (8) nomination of committee, (9) appointment of an administrator, (10) appointment of managers, secretaries, etc., and (11) Registrar's powers to determine terms and conditions of employment in societies, to enforce performance of obligations, and to seize the records of a society in certain circumstances. New provisions have been favoured in respect of 1, 4, 5, 6, 10 and 11 and the scope of the existing sections regarding other heads has been amplified.

234. *Final authority of a society.*—Subject to the provisions of the Act, Rules and the byelaws, the final authority of a society is vested in the members themselves and it is but proper that the law

should recognise it. We, therefore, recommend that a new Section, Section 62 be added as under :—

SECTION 62—Final authority of a society.—Subject to the provisions in this Act and the Rules, the final authority of every society shall vest in the general body of members in General Meeting summoned in such a manner as may be specified in the byelaws :

Provided that where the bye-laws of a society provide for the election of delegates of such members, the final authority may vest in the delegates of such members elected in the prescribed manner and assembled in general meeting.

235. *Annual General Meeting.*—Section 12 of the Bombay Act dealing with the annual general meeting requires every society to hold it within three months after the date fixed to make up its account for the year, permits the Registrar to extend the period for holding such meeting by a period not exceeding three months and empowers the Registrar to disqualify any officer responsible for the default for being elected for a period extending up to three years and to fine the servant of the society. In this connection, we beg to point out that the business before the annual general meeting has not been specified, but it is left to the byelaws. We are of the view that the minimum business to be transacted at such a meeting should be indicated in the Section itself.

236. The object of the annual general meeting is to provide an opportunity to the members to know fully the state of affairs of the society in the light of the information that is made available to them. The Companies Act, 1956, has, therefore, elaborate provisions dealing with the business to be transacted at the annual general meeting, apart from the provisions relating to the period within which these meetings have to be held. Section 210 of the Companies Act requires the Board of Directors of a Company to lay before the annual meeting a balance sheet and a profit and loss account. Section 211 prescribes the form and contents of the balance sheet and the profit and loss account. Section 215 requires that the balance sheet and the profit and loss account should be authenticated on behalf of the Board of Directors and the profit and loss account and the Auditor's report should be attached thereto. Section 217 makes it obligatory for the Board of Directors to attach to the balance sheet its report and prescribes the points with which it should deal. Provision has also been made in the Companies Act, for filing the copies of the balance sheet with the Registrar of Companies and for the publication of additional information in respect of certain types of companies.

237. We concede that Co-operation is mainly meant for persons with small means and the percentage of literacy in the rural areas is still low, but submit that the primary object of the annual general meeting is to apprise the members of the precise financial position

of their society and the manner in which its business was handled during the preceding year. Unless, therefore, elaborate provisions are prescribed to ensure the disclosure of authentic information to the members, the object of the Act itself will be defeated, since the members will not be able to judge the strength of their society. Secondly, the days, when as Sir Malcolm Darling described, the officers of the society remembered the transactions until the Secretary was available to write them down in the books, are over.

238. Bombay State has made considerable advance in literacy, even in villages where the practice of submitting an elaborate report on the working of societies has been well developed. Besides, the average working capital of an agricultural credit society in Bombay State was as high as Rs. 11,553 in 1955-56 and with the accepted policy of promoting large-sized co-operatives, it should be possible for almost all co-operative societies in the State to have a qualified personnel for managing their affairs. We have, therefore, come to the conclusion that an elaborate provision in the Act on the lines of the one in the Companies Act will not be a handicap to workers in the co-operative field. On the contrary, it would enable societies to reach a better understanding with their members and would prove of great educative value to the public at large. The co-operative laws in Germany and Sweden have the same provisions as those referred to in paragraph 233. Some of the provisions which we favour have already been incorporated in the Bengal Co-operative Societies Act. In order, however, to safeguard the interests of small societies, we recognise that the form in which the accounts are to be presented and the information is to be disclosed in the annual report of the Committee, should be left to the discretion of the Registrar, who should be vested with powers for framing the necessary regulations.

239. A representation has been made to us that the period of 3 months for holding the annual general meeting is too short and this should be extended so that with the permission of the Registrar, a meeting can be held within 9 months from the date of finally making up the accounts. We are afraid, that the importance of the annual meeting will be completely lost and the objective will be defeated by permitting any further extension. Even the bigger societies have their branches confined to Bombay State and only a few have branches outside. Our enquiries show that they had been experiencing no difficulty in getting in time the required statements of accounts, from their branches. As regards others, we do not think that any society can have any genuine difficulty in conforming to the formalities within the period presently prescribed and opine that for meeting the difficulties in exceptional circumstances, the Registrar's power to extend the period of 3 months is more than adequate. We, therefore, do not recommend any change in the existing provision in Section 12 (1).

240. In regard to the presentation of accounts, the present practice is to insist on income and expenditure accounts as well as profit and loss account in the case of all societies. This duplication, in our opinion, is superfluous. In the case of societies, where business is for profits, the profit and loss account is necessary. In the case of others, the same objective can be served by the income and expenditure account. We have, therefore, deemed it necessary to differentiate between the profit and loss account and the income and expenditure account. The changes suggested by us in sub-section (2) are only consequential.

241. We, therefore, recommend that Section 12 of the Bombay Act dealing with Annual General Meeting be renumbered as Section 63 and be amended as under :—

SECTION 63—Annual General Meeting.—(1) Every society shall, within a period of three months after the date fixed for making up its accounts for the year under the Rules for the time being in force, call a general meeting of its members :

Provided that the Registrar may, by general or special order, extend the period for holding such meeting by a period not exceeding three months.

(2) At every annual general meeting of the society, the Committee of the society shall lay before the society a balance-sheet and profit and loss account for the year in the manner prescribed by the Registrar by general or specific order for class or classes of societies.

Explanation.—In the case of a society not carrying the business for profit, an income and expenditure account shall be placed before the society at the annual general meeting, instead of profit and loss account and the references to profit and loss account, profit, and loss in this Act, shall be construed in relation to such a society as references respectively to the “income and expenditure account”, “excess of income over expenditure”, and “excess of expenditure over income”.

(3) There shall be attached to every balance sheet laid before the society in a general meeting, a report by its Committee, with respect to :

(a) state of the society's affairs, (b) amounts, if any, which it proposes to carry to any reserve either in such balance sheet or any specific balance sheet, and (c) the amounts, if any, which it recommends, should be paid by way of dividends, bonus and honorarium to the honorary workers. The Committee's report shall also deal with any changes, which have occurred during the year for which the accounts are made up, in the nature of the

society's business. The Committee's report shall be signed by its Chairman or any other member authorised to sign on behalf of the Committee.

(4) At every annual general meeting, the balance-sheet, the profit and loss account the Auditor's report and the Committee's report shall, be placed for adoption and such other business will be transacted as might be laid down in the bye-laws and of which a due notice has been given.

(5) If default is made in calling a general meeting within the period or the extended period, as the case may be, as prescribed under sub-section (1) or in complying with sub-sections (2), (3) and (4), the Registrar may by order declare any officer or member of the Committee whose duty it was to call such a meeting and comply with sub-section (2), (3) and (4) and who without reasonable excuse failed to comply with sub-sections (1), (2), (3) and (4), disqualified for being elected and for being an officer or a member of the Committee for such period not exceeding 3 years, as may be specified in such an order and, if the officer is a servant of the society, fine him to an amount not exceeding one hundred rupees.

(6) Any fine imposed under sub-section (5) may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines, imposed by a Court as if such fine was imposed by a Court.

242. *Special General Meeting.*—Section 13 of the Bombay Act, 1925, prescribes the circumstances in which a special general meeting may be called. If the majority of the Committee decides, the holding of the meeting is optional. A suggestion has been made that instead of "may" the word "shall", should be used. The courts have interpreted the word "may" to mean "shall" in certain circumstances. In actual practice, when the majority of the Committee decides, it is impossible that such a special general meeting will not be held. We, therefore, reject the suggestion. It shall also be called within one month on the requisition in writing of one-fifth of the members of a society, or at the instance of the Registrar, or at the instance of an officer of a federal society to which the society has been affiliated.

243. Certain witnesses pointed out that the requisition of one-fifth of the members involved a danger of such meeting being called on frivolous grounds and, therefore, "1/5th" should be substituted by "1/3rd". Others pointed out that 1/5th itself was a high ceiling in the case of big societies, especially those having an extensive area of operation. As regard the first point, we feel that an effective minority should have an opportunity to acquaint the general body with its views on the fortunes of the society. This object will be defeated if the existing limit of 1/5th is raised. At the same time, we concede that this laudable object will not be achieved in the case

of major societies, in respect of which one-fifth will be too big. We, therefore, recommend that the necessary facility should be provided by the bye-laws of a society.

244. The present section compels holding of such a meeting at the instance of the Registrar and a suggestion has been made that the Auditor and an Enquiry Officer should also have similar powers. The functions of an Auditor and an Enquiry Officer are to report their findings to the Registrar and the law does not conceive of independent action being taken by any of them. True, in certain State Co-operative Laws, such a provision is found, but, we are afraid, it is redundant especially when the Auditor or the Enquiry Officer can make out a case before the Registrar and the Registrar can then demand such a special general meeting. As regards the initiative of a federal society, the danger of two federal societies demanding the meeting simultaneously apprehended in certain quarters seems to us unjustified. Even assuming theoretically that two federal societies will demand such a meeting, the officers calling such a meeting being the same, can comply with the demand by holding only one such meeting. We do not, therefore, recommend any changes in sub-clauses (2) and (3) except a nominal one i.e., substitution of the word "Committee" in place of "officer", in sub-clause (3), since the Committee of a federal society alone is competent to act and the officer is the only agency to communicate that action.

245. Though the Section provides for the holding of a special general meeting in certain circumstances, it may be that such a meeting may not be called by the Committee. It is also possible that the annual meeting itself may not be called under Section 12. We, therefore, consider it necessary to provide for such a contingency in order to ensure that the annual general meeting and the special general meeting are called. It is but natural that this power of calling meetings in such circumstances should be vested in the Registrar. We, therefore, propose to provide for this as well as for matters arising from such action. This includes the procedure for presiding over such meetings, the legality of their decisions and the payment of expenses. The penalty for failure to call a special general meeting is also necessary and we propose to provide for it.

246. We, therefore, recommend that Section 13 of the Bombay Act of 1925, be renumbered as Section 64, and should be amended as under :—

SECTION 64—Special general meeting.—(1) A special general meeting may be called at any time by a majority of the Committee—and shall be called within one month,

(i) on the requisition in writing of one-fifth of the members of the society, or of members the number of which is specified in the bye-laws for the purpose, whichever is lower, or

(ii) at the instance of the Registrar, or

(iii) in the case of a society, which is a member of a federal society, at the instance of the Committee of such Federal society.

(2) Where any officer or a member of the Committee whose duty it was to call such meeting and who, without reasonable excuse, failed to call such meeting, the Registrar may by an order declare such officer disqualified for being a member of the Committee for such period not exceeding three years as may be specified in such order, and if the officer is a servant of the society, impose a fine not exceeding one hundred rupees.

(3) If the Committee or an officer or officers of the society refuse or fail to call a meeting in accordance with the Section 63 or 64 (1) or if in the opinion of the Registrar, there be no Committee or Officer or Officers competent under the Act, Rules and bye-laws to call the meeting, or if there be a dispute regarding the competence of the Committee, officer or officers to call the meeting, the Registrar shall have the power to call the meeting himself, in such manner and at such place and time as he may direct and for considering such matters as may be specified by him. At such meeting, the Registrar may either preside himself or authorise some other person by an order in writing to preside and the Registrar or the person authorised by him to preside, shall have the power to conduct the meeting, and any resolution passed at the meeting shall be valid.

(4) The Registrar shall have the power to order that the expenditure incurred in calling the meeting under sub-section (3) shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal, or failure to convene the meeting under sections 63 and 64.

247. *Committee.*—Although the members of a society are the masters and are expected to look after their society, the day-to-day affairs have to be entrusted to a Committee appointed by them. The composition and qualifications of the Committee therefore, assume a great significance. Certain disqualifications such as default, non-payment of dues, insolvency are usually provided in the bye-laws. Certain societies have gone a step further to provide a qualification in respect of share-holding. The Greek Law lays down qualifications in respect of education and training for persons eligible to seek election to the Committee. The importance of these qualification has been brought home by the failure of several societies in this State. We, however, concede that the time has not come to copy the provisions in the Greek Law in this country. We, therefore, make no recommendations on this particular aspect of the problem of sound management; but beg to urge the Registrar

and federal institutions to use their powers and influence for ensuring that qualified and trained persons alone are elected to the Committees. Since the Act has to provide for suspension of Committee, etc., we consider it necessary to provide a section in spite of the definition of Committee given in section 2, dealing with management of a society by a committee, and its powers, functions and duties.

248. Another point which requires to be covered by the Act relates to the validity of an Act even when certain defects in the appointment of the authority are discovered later on. The absence of any specific provision is likely to encourage unnecessary litigation. The object of the Act should, however, be to prevent it. We note that the Madras Co-operative Societies Act (Section 63) and the Bengal Co-operative Societies Act (Section 131) have made the necessary provisions. We, therefore, recommend the addition of two new Sections—Section 65 dealing with the committee, its powers and functions and section 66 for validity of acts in spite of the defects discovered subsequently. The text of the Sections recommended is given below :—

SECTION 65—Committee, its powers and functions.—The management of every society shall vest in a committee constituted in accordance with this Act, the Rules and the bye-laws which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the Rules and the bye-laws.

SECTION 66—Validation of Acts.—(1) No act of a society or a committee or any officer done in good faith in pursuance of the business of the society, shall be deemed to be invalid by reason only of some defect subsequently discovered in the organisation of the society or in the constitution of the committee or in the appointment or election of the officer or on the ground that such an officer was disqualified for his office.

(2) No act done in good faith by any person appointed under this Act, the Rules and the bye-laws shall be invalid merely by reason of the fact that his appointment has been cancelled by or in consequence of any order subsequently passed under this Act, Rules and the bye-laws.

(3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of the society and his decision shall be final.

249. *Power to appoint Government nominees.*—To overcome the shortcomings arising from the position referred to in paragraph 247, Co-operation in Bombay State has developed the technique of reinforcing the management of societies by representatives nominated to the committee by the Registrar and the financing agency. This is done under the bye-laws of a society. The question of nomination

has, however, assumed considerable importance in view of the conception of State Partnership in Co-operation. The Scheme appointing Government nominees has three aspects, viz. (1) the quantum of Government Nominees, (2) their powers and privileges and (3) their liabilities. The Rural Credit Survey Committee made its recommendations in 1954. The Government has not, however, reached the final decision. In the absence of a specific direction from the State Government on this issue, we have to rely on the co-operative opinion as expressed by the State Co-operative Conference and by the Bombay State Co-operative Banks' Association, and have formulated our proposals against that background. We therefore, request Government to make appropriate changes in our recommendations if they are deemed necessary in light of the ultimate decision on the subject.

250. The Rural Credit Survey Committee was of the view that ordinarily, Government should not be allotted more than three of the seats on the directorate for nomination of its representatives, At the same time, Government should, on certain specific matters, have overriding powers, for example, the power to reverse or modify the decisions of a society and to impose a decision of its own. The matter to which these powers should be related fall broadly under two categories, viz. (1) financial policies, and (2) larger objectives of loaning policies. The Committee further suggested that detailed items under these heads should be worked out in the light of local conditions.

251. After examining these recommendations the All-India Co-operative Congress held at Patna in March 1955, decided that Government nominees should not be more than one-third of the number of members on the Board of Directors or three directors, whichever was less. The Congress further recommended that special powers of the Government should be confined only to the loan policy and to matters falling within the category of its financial policy and that Government should not interfere in the day-to-day administration of a society. It also specified the conditions subject to which this interference should be allowed. At the Sholapur Conference, similar views were expressed. The State Co-operative Council which discussed the recommendations, felt that the power of veto should be used sparingly and that too in respect of policy matters and the quantum of Government nomination should not be more than one-third of the elected members of the Committee and should not, in any case, exceed three. The Bombay State Co-operative Banks' Association, however, felt that only one nominee of Government appointed directly or through a Financing Agency would serve the purpose. On the basis of the foregoing discussions, we presume that co-operative opinion favours that the Government should nominate not more than three representatives. The principle and the method of their selection are, however, administrative matter and

we do not consider that the law should restrict the freedom of the Government in regard to the choice of their nominees. For the purpose of the Act, it would be enough to lay down that Government shall have power to appoint nominees on the Committee not exceeding three.

252. A question arises as to whether the power of veto in the Government, as recommended by the State Co-operative Council, should be vested in the Government nominees. In actual practice the presence of the Registrar's nominee and the representative of a Central financing agency at the meeting of a Committee serves as a check against the Committee going the wrong way and when these representatives are opposed to any decision, the tendency is either to postpone it or to abandon it. Theoretically, it would be wrong to presume that the interests of the society can better be safeguarded by outsiders than the representatives enjoying the confidence of the members themselves. We, therefore, opine that the power of veto should not be vested in the Government nominees and should be exercised either by the State Government or by the Registrar. This is again a matter, which should, in our opinion, be decided by Government in consultation with the representative co-operative opinion and need not be provided for in the Act itself.

253. An ancillary point arising from this is the proposal made by the Registrar that the nominated members may direct a society in writing to desist from taking action on any resolution of the managing committee or its sub-committee until it is approved by the Registrar and may appeal to the Registrar against the decision and the Registrar's decision should be final. We are, afraid, this provision is radically a departure from accepted co-operative principles. If Government nominees differ from the elected members, they are entitled to record in the minutes of the committee their dissent and, on so doing, the liability arising from the decision of the majority will rest on those who are parties to the decision. They might also inform the Government of the decision and the latter can take appropriate action. But to restrain the elected representatives will mean that the society has to be at all times at the mercy of Government nominees. In view of this, we do not think that any restrictive provision is necessary in the Act to curb the freedom of the Committee in the matter of taking a decision by a majority.

254. The other point relates to the position of the Government nominees in respect of their duties, responsibilities and liabilities. We are of the view that the difference between an elected member and a nominated member should only be confined to the source of allegiance and there should be no difference between them in regard

to their right, duties and liabilities. We, therefore, recommend that the following new section renumbered as Section 67 be added:—

SECTION 67—Power to appoint Government nominee.—Where the State Government has subscribed to the share capital of a society, directly or through another society, or has guaranteed the repayment of the principal and payment of interest on debentures issued by or loans raised by a society, the State Government shall have the right to nominate not more than three representatives on the committee of such a society in such manner as may be determined by the State Government from time to time. The members so nominated shall hold office during the pleasure of the State Government or for such period as may be specified in the order under which they are appointed and such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he is a member of the Committee duly elected.

255. *Suspension and nomination of a Committee and appointment of an Administrator.*—Section 71(2) (g) empowers the State Government to frame rules in order to provide for the appointment, suspension and removal of the members of a Committee and other officers and for the procedure at meetings of the Committee and for the powers to be exercised and the duties to be performed by the committees and other officers. Armed with this authority, the Government has framed Rule 48, dealing with powers of the State Government to appoint a new Committee or to remove any or all members of a Committee. Last year, Section 46-B was added to the Act, providing for the suspension of the Managing Committee and the appointment of the administrator. Section 46-B requires the State Government to issue show-cause notice before issuing an order of suspension and appointment of an administrator. Rule 48 does not prescribe how the members of a committee shall be removed, but insists that the new committee shall not consist of more than 9 members and it shall possess the qualifications specified in the bye-laws and can hold office for a period not exceeding 3 years, or for a period during which the member or members suspended were entitled to remain in office. It further provides that except in the case of an emergency, the State Government shall consult the Chairman of the financing agency to which the society is affiliated and give an opportunity to the committee or members of the society to show cause why such an order should not be made. The bye laws of supervising unions also empower them to suspend the managing committee of a society in consultation with the financing banks. The Bombay Provincial Co-operative Institute has suggested that these powers of suspension should be exercised by the federal societies subject to an appeal to the Registrar.

256. The position in respect of suspension or nomination of a Committee requires to be codified properly. Firstly, there must be

mismanagement of the affairs of a society. We submit that "mismanagement" should be defined by the Rules. Secondly, it is necessary to lay down the procedure for suspending the committee or any of its members. Equity demands that the society should have a notice of the intention to supersede the committee and the committee should have an opportunity to be heard by the authority concerned. Suspension of a Committee is by itself a drastic step and proper safe-guards against the misuse of the powers have to be provided for. The Bombay Act and the Rules provide that *prima facie* case has to be made out as a result of audit, inspection or inquiry or otherwise and the financing bank, representing probably the only strong federal society, should be consulted. In extraordinary circumstances, however, immediate action is necessary, even by doing away with the procedure, in order to prevent a Committee from frittering away the assets of the society. A view has been expressed that such a provision shall be *ultra vires* the Constitution and we urge the Government to examine the legal aspect of this particular provision which is in the Rules and which we consider absolutely essential for serving the objectives of such a drastic step.

257. The next question is as to who should have the power to suspend. In Bombay, the State Government has assumed this power, but in Uttar Pradesh and several other States this power has been rightly vested in the Registrar. We opine that in the interest of the Co-operative Movement and to avoid procedural delays in matters in respect of which time factor is important, this change is overdue. Though the initial order for suspension might provide for a specific period the change of circumstances might necessitate either an extension or shortening of the period of suspension and this should also be provided for.

258. Instances have come to light that the period between the suspension of a Managing Committee and the nomination of a new committee or of an administrator is the period during which there is every danger of the society's record being destroyed or misplaced or funds frittered away. There is also a time-lag between the suspension of the Committee and the nomination of a new one and during that period the society's business is hampered. We consider it important to provide in the law for meeting both these contingencies. It is also necessary to ensure that the suspended committee hands over the records and the assets of the society to its successor. In connection with the first two contingencies, the objectives will be served by providing that the charge shall be handed over to the person mentioned in the suspension order as competent to take over the charge. This person may be either an individual officer or a federal society. As regards the third contingency, section 49 of the Travencore-Cochin Act is salutary and we propose to draw on it while making a suitable recommendation.

259. A point to be noted in connection with the nomination of a Committee is that where a Committee is suspended, persons agreeing to be nominated are generally reluctant to take the office. If, therefore, the choice of such persons is to be confined to those, who possess the qualifications prescribed in the bye-laws, it might be extremely difficult to secure the right type of persons. We recommend that this restricted clause should be deleted.

260. In certain cases, it would be desirable to appoint an administrator and an advisory committee to advise him. We have also provided that the acts, etc., of the nominated committee and the administrator shall be binding on the society and the past committee elected thereafter to which the charge is given after the period of appointment expires. We, therefore, recommend that the existing Section be divided into 3 Sections, i.e., suspension of a committee (Section 68), nomination of a committee (Section 69) and appointment of an administrator (Section 70), and these should be as under :—

SECTION 68—Suspension of committee.—(1) If at any time, whether in the course of or after an enquiry held under Section 80 or inspection made under Section 81 or and if, the Registrar has reason to believe that the committee or any of its members or any officer is mismanaging or has mismanaged the affairs of a society or is negligent of the performance of the duties, imposed on it or him, as the case may be, by the Act or the Rules or the bye-laws or is otherwise acting in a manner likely to be prejudicial to the interest of the society or is otherwise not functioning properly, the Registrar may give notice to the Committee or any of its members or any officer to show cause why it should not be dissolved and any of its members or any officer should not be removed from office.

Provided that where the Registrar is satisfied that the issue of such a notice is likely to result in the frittering away of the assets of the society or in the destruction or misplacing of the record of the society, the Registrar may dispense with the issue of notice to the committee or any of its members or any officer as the case may be.

(2) If after giving such notice subject to the proviso in subsection (1) and after considering the explanation, if any, given by such person the Registrar is satisfied that the Committee or any of its members or any officer is mismanaging or has mismanaged the affairs of the society or is negligent of the performance of the duties imposed on it or him as the case may be by the Act or the Rules or the bye-laws or is otherwise acting in a manner likely to be prejudicial to the interests of the society or is otherwise not functioning properly, the Registrar may, notwithstanding anything contained in this Act or the Rules or the byelaws, dissolve

the Committee and remove all its members or remove any of its members or any officer from the office and direct the committee or any of its members or any officer to hand over the charge of the records and properties of the society to a person or persons appointed by him for holding the same in custody.

(3) If the Committee which has been dissolved under sub-section (2) or any of its members or any officer who has been removed under sub-section (2) refuse to hand over charge of the records and properties to the person authorised by the Registrar under sub-section (2), person or persons so appointed by the Registrar may apply through the Registrar to the Magistrate, within whose jurisdiction the society functions to take steps to secure the records and properties and the Magistrate may for this purpose enter and search any place where he has reason to believe that they are kept and may by warrant authorise any Police Officer, not below the rank of Sub-Inspector, to enter and search in such place or to seize such records and properties. The records and properties so secured shall be handed over to the person or persons authorised by the Registrar as the case may be.

SECTION 69—*Nomination of Committee.*—(1) Where a committee of a society has been dissolved and removed from office or any of its members or any officer has been removed from office under Section 68, the Registrar may appoint a new committee consisting of one or more members of the society or appoint a member or members of the society or officer or officers as may be considered necessary in place of the member or members or officer or officers so removed and such person or persons, as the case may be, shall hold office for a period not exceeding 2 years, as may be directed by the Registrar, from the date of his or their appointment :

Provided that the Registrar may from time to time extend such period, but the total period of the appointment including the extended period shall not exceed 3 years in the aggregate :

Provided further that the Registrar may, if he is satisfied that it is not necessary in the interest of the society to have its affairs managed by the person or persons appointed under this sub-section, cancel the order and the person or persons so appointed shall cease to hold office notwithstanding the period for which such person or persons, as the case may be, were so appointed.

(2) Person or persons so appointed under sub-section (1), shall, subject to the control of the Registrar and to such instructions as he may from time to time give, perform the duties and exercise the powers of the members of the committee or officers of the society, as the case may be, notwithstanding anything

contained in the bye-laws of the society regarding the qualifications of members for being members of the Committee.

(3) The Registrar may fix the remuneration payable to the person or persons so appointed and the amount of such remuneration and the other cost, if any, incurred in the management of the society shall be payable from the funds of the society.

(4) Where a Committee has been appointed by the Registrar under sub-section (1), the committee shall, before the expiry of the period of its appointment, arrange for the constitution of a new committee in accordance with the bye-laws of the society and shall hand over the charge of the records and properties to the new committee at the expiry of the period of its appointment. All acts done or purported to be done by the committee appointed under sub-section (1) during the period the affairs of the society were carried on by the committee shall be binding on the new committee and society.

SECTION 70—Appointment of an Administrator.—(1) Where the Registrar has suspended a committee of a society under Section 68 and is satisfied that it is desirable in the interest of the society to have its affairs managed by an administrator, the Registrar may, by an order published in the *Official Gazette*, appoint an Administrator to carry on the affairs of the society. The Administrator so appointed need not be a member of the society and shall hold office for such period not exceeding 2 years as may be specified by the Registrar :

Provided that the Registrar may from time to time extend such period, but the total period of his appointment including an extended period shall not exceed 3 years in the aggregate.

(2) The Administrator may be assisted and advised by such persons not exceeding five as may be appointed by the Registrar and shall, subject to the control of the Registrar, and to such instructions as he may from time to time give, exercise all the powers and perform all the functions of the committee of the society.

(3) The Registrar may fix the remuneration payable to the Administrator and person or persons appointed to assist and advise him and the amount of such remuneration and any expenses of the management shall be payable out of the funds of the society within such time or at such intervals as the Registrar may fix. If such remuneration or expenses are not paid out within the time or at the interval fixed, the Registrar may make an order directing the person or persons having custody of the funds of the society to pay to the Administrator such remuneration and expenses in priority to other charges, except the land revenue, the arrears of the land revenue or any sum recoverable from the society as

arrears of land revenue and he or they shall, so far as the funds to the credit of the society admit, comply with the order of the Registrar.

(4) If at any time during any period or extended period, referred to in sub-section (1) it appears to the Registrar that it is no longer necessary to continue to carry on affairs of the society as aforesaid, the Registrar may by an order direct that the management of the society shall be handed over to a duly constituted committee. Upon the election of such committee, the Administrator shall hand over all the records and properties to the committee so elected and all acts done or purported to be done by the administrator during the period the affairs of the society were carried on by them shall be binding on such Committee and the Society.

261. *Appointment of Managers, Secretaries and other Officers.*—No Act in any State vests the powers in the Government or in a federal society to appoint Managers, Secretaries and other officers to manage the affairs of a society. The West Bengal Act enables the Government to depute such an Officer at the request of the society only. In Mysore, Rules have been framed laying down the qualifications of Secretary and Managers, etc., while in Madras qualifications for officers of Central Banks have been prescribed by the Rules. In Ajmer, under the Rules, Central Banks, Mortgage Banks and societies running commission shops and engaged for the execution of awards are required to appoint their officers with the approval of the Registrar. In Bombay State, in spite of the absence of any specific provisions in the Act or the Rules or the byelaws, the Registrar is in a position to use his influence and persuade a society to tone up its administration by accepting as its Executive Officer or other officers, persons from his Department or from the State Co-operative Bank. For the purpose of this arrangement the co-operative spirit is fully demonstrated by all concerned. In the former Hyderabad State of which Marathwada was a part, the departmental officers used to be appointed as executives of major societies including central banks. In Vidarbha, the byelaws of the apex bank enable it to lend the personnel or take over the management of central banks, while the Registrar lends the services of his officers to man major non-credit societies. In the future set up of the co-operative development, the efficient working of societies will become absolutely necessary and its importance will be all the greater having regard to the fact that the State Government is to provide funds for strengthening the capital needs of societies and the financing agencies are expected to meet their credit needs in full. It is with the help of this financial strength that the societies are expected to promote "better living, better business and better methods of production" and act as effective instruments of the economic development of the Country.

262. Viewed against this background we attach considerable importance to the Executive Officers of the societies without minimising the importance of the role of honorary workers. The Rural Credit Survey Committee has recommended the creation of two cadres, one for manning the co-operative credit institutions handling rural credit and the other for non-credit societies including marketing and processing. The Expert Committee on the working of the Bombay Agricultural Produce Markets Act had also recommended the creation of a pool of officers in the Co-operative Department for meeting the requirements of the Market Committees in the matter of executive personnel. This particular aspect of the management problem has to be tackled at the administrative level so far as the detailed arrangements are concerned, but the principle has to be recognised by law so far as the societies are concerned. Similarly it is necessary to prescribe the qualifications of the personnel. Obviously no Act can prescribe the qualifications in detail and these must be relegated to the Rules.

263. So far as the Act is concerned, we are of the view that it should empower the Registrar to prescribe the qualifications for the different types of personnel required by societies and to depute persons to societies which are not in a position to secure a qualified person. In making this recommendation we do not wish to restrict the Registrar's freedom of choice. The Rural Credit Survey Committee had recommended that the pool of officers for co-operative credit societies should be created by the State Co-operative Bank while that for non-credit institutions should be administered by the State Government. The Government of Bombay has, however, favoured that both the pools should be created in the State Co-operative Bank, but no final decision has been reached on this subject. Because of this uncertainty and for reasons stated earlier we think it would be proper to leave the details about the mode of recruitment, etc., for administrative decision. The only controversial point in this context is whether the appointment of Managers, etc., should be subject to approval of the Registrar. The official viewpoint is that this should be so in the case of societies to which the State Government extends financial assistance in the shape of share capital, loan or any other form. The co-operative opinion in State is not reconciled to this viewpoint on the ground that it is the primary function of a society to know its own interest and to appoint such persons as in its opinion are competent to serve it best. We share this view.

264. In view of the above, we recommend that the law should empower the Registrar to prescribe qualifications required by the personnel and to direct a society to appoint a person of his choice only when it is unable to appoint a qualified person. The new section, section 71, suggested below provides for these two matters but

excludes from its scope the requirement of getting the Government's approval to such appointments since the principle involved cuts at the very root of Co-operation.

SECTION 71—Appointment of Managers, Secretaries and other officers.—(1) No society shall appoint a Manager, Secretary or Accountant or any other officer unless he holds the qualifications which the Registrar may prescribe from time to time for the employees or a class of employees of any society or class of society.

(2) Where the Registrar is satisfied that a society is unable to appoint a person so qualified as a Manager or Secretary or an Accountant or any other Officer, he may direct the society to appoint such person as he may consider fit for being appointed and on such terms as he may deem fit and the society shall be bound to appoint such a person.

265. *Registrar's power to determine terms of employment in societies.*—The relations between employees and employers are determined at present under the Industrial Relations Act and the Industrial Disputes Act. There are also several other laws in force affecting these relations. The Factories Act, regulates labour in factories. The Workmen's Compensation Act provides for compensation to workmen for hazardous work. The Indian Trade Unions Act seeks to safeguard and promote the legitimate interests of workers by protecting them from civil and criminal liability for their activities. The Payment of Wages Act is intended to regulate the payment of wages to certain classes of persons employed in industries. The Minimum Wages Act seeks to secure the welfare of workmen in a competitive market by fixing the minimum limit of wages. The Employees' Provident Funds Act is designed to make provident fund compulsory for employees in certain categories of industries and to provide for the administration of such funds. The Employees' State Insurance Act gives effect to the State Insurance Scheme for workers. Besides, there is the Bombay Shops and Establishments Act, and similar laws in the component parts of the State for regulating the working hours, holidays, etc., in respect of Shop Assistants.

266. With the growth of the co-operative movement the problem of the relations between societies and their employees has assumed significance. Even a society as an employer cannot object to legislative measures designed to give a fair deal to the employees consistent with its paying capacity. Although this broader aspect of the industrial problem cannot be ignored, the fact remains that societies as employers stand on a footing different from joint-stock companies and other proprietary concerns. This is firstly because in the case of societies, administrative strength is mainly provided by the members

themselves. Secondly, the societies have no profit move. Thirdly, the employees themselves can become a part of the employers by enrolling themselves as members and seize the opportunity of participating in the management and in the benefits which a society might provide for its members. Finally, it may be noted that whereas joint-stock companies and proprietary concerns are capitalistic in outlook, societies are socialistic. In regard to the paying capacity also the standards differ. A society essentially belongs to small men with small means and though there are certain exceptions, by and large, the paying capacity of societies cannot in any way be compared with that of capitalistic concerns. The Constitution of India recognises these characteristics of societies.

267. These considerations demand, in our opinion a separate treatment for societies in respect of labour laws without sacrificing the legitimate claim of the employees in the co-operative movement of a fair deal to themselves. Obviously, therefore, even societies have to conform themselves to the basic laws in the country though in doing so they might experience genuine difficulties. Thus for instance no society is, in our opinion, entitled to seek exemption from the Factories Act and the Workmen's Compensation Act, the Payment of Wages Act, the Minimum Wages Act, the Employees' Provident Fund Act, the Employment of Children Act and the Employees' State Insurance Act. In the case of Shop Act, however, certain basic difficulties are experienced by societies. Thus, for instance, a credit society has to provide working hours to suit the convenience of its members and even though the aggregate number of hours might be the same as those prescribed in the Act, the spread-over might be longer than what is permitted under the Act. Secondly, during the busy season, which lasts for about three months, the employees of co-operative banks and marketing co-operatives have to work longer. True, additional temporary staff can be engaged, but the nature of work is such that it cannot be carried out by such staff. Since the operation of the Act has proved restrictive to the growth of co-operation, we urge the Government to examine the problem. The subject matter falls outside our terms of reference and, therefore, we are unable to make any recommendation on the Shop Act.

268. The position in regard to Industrial Disputes, however, stands on a different footing and we are of the view that this is within the scope of our terms of references. The subject matter has been presently covered by Section 54 which empowers the Registrar to decide or to refer to his nominee for decision a dispute between a society and his employees. The question then is whether for resolving such disputes the Bombay Co-operative Societies Act should be applicable or the Industrial Disputes Act. Until recently the latter Act was not invoked for settling disputes between societies and their employees. In a recent case, however, the Hon. Mr. Chief Justice Chagla held that because the relevant notification making the

Act applicable to the Banking Industry did not specifically exclude co-operative banks from the operation of the Act, it was to be presumed that that Act was applicable. On this basic assumption he proceeded to decide a dispute between a co-operative bank and its employees and on the basis of his judgment, the Commissioner of Labour has proceeded with the framing of the standing orders, for co-operative banks. One of the provisions in this Act, is that every employee getting less than Rs. 300 comes within the scope of this Act and in small banks even the Manager does not get Rs. 300. As a result a society can be pitched up against its own Manager. The authorities under the Act are the Works Committee, the Conciliation Officers, Boards of Conciliation, the Courts of Enquiry, the Labour Courts, and Tribunals. In effect a society coming within the purview of the Act has to deal with all these authorities. We submit that the growth of Co-operation will be hampered by bringing it within the purview of the Industrial Disputes Act and the Industrial Relations Act and even justice to their employees may be delayed.

269. Disputes between employees and employers relate mainly to terms and conditions of employment and we concede that an impartial machinery for settling the dispute is necessary. The Acts contemplate special type of machinery. In case of societies, the Co-operative Societies Act has been specially designed to simplify the law, to save expenditure on litigation, and to place the matters relating to the working of societies beyond the jurisdiction of Courts. This has been done by vesting the powers of the Court in the Registrar and providing machinery of arbitration for the settlement of disputes. At the Bombay Act stands today, employees can refer their dispute to Registrar for arbitration under Section 54. We hope that employees will not allege that the Registrar will be partial to societies. We, therefore, recommend that disputes between societies and their employees should be resolved by the Registrar or his nominee only. The Madras Committee on Co-operation 1955-56 has also taken a similar view and recommended to the Government of Madras to exclude disputes touching the business of societies between a society and its employees from the scope of labour legislation and exempt societies from the operation of certain laws. In making this recommendation, however, we also wish to ensure that a fair deal is assured to the employees of societies and, therefore, suggest that the necessary rules for governing the terms of employment and working conditions for different classes of society should be framed by the Registrar. To serve these ends, we recommend a new Section—Section 72—as below :—

SECTION 72—Registrar's power to determine terms of employment in societies.—(1) The Registrar may from time to time frame rules governing the terms of employment and working conditions in a society or a class of societies and the society or the class of societies to which such terms of employment and of working conditions are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where dispute including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society arises between a society and its employees, the Registrar or any official appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees.

270. *Registrar's powers to enforce performance of obligations.*—Rule 17 framed under the Bombay Act empowers the Registrar to order a society to submit statements and periodical returns of receipts and disbursement on such date and in such form as he may prescribe. Rule 17-A empowers him in case of failure by society to submit any statement or maintain any account or books as prescribed, to depute an officer of the State Government to prepare the necessary statement, etc., at the expense of the society and such expense shall be recoverable from the society as recovery of funds due to Government. In this context we beg to point out that it would not be equitable to penalise a society for the fault of its office-bearers, since the real culprits are the latter. Therefore, the cost should be recovered from the officers. Both the Rules are also restrictive in their scope inasmuch as the Registrar has no power to direct a society to take action in other matters. It has been brought to our notice, for instance, that arbitration proceedings in respect of recovery of dues are not instituted in time and where the awards are obtained, they are not promptly sent for execution. The arm of the law has, therefore, to be extended.

271. We find that Section 129 of the Bengal Co-operative Societies Act, 1940, is comprehensive. It covers the failure of officers in respect of any action which a society is required to take under the Act, the Rules and the bye-laws and requires the officer guilty of negligence to pay to the assets of the society compensation. In suggesting the following section, we have taken note of the provisions in the existing Rules under the Bombay Act and the relevant section in the Bengal Act. As a result we recommend that the following new section be added:—

SECTION 73—Registrar's power to enforce performance of obligations.—(1) The Registrar may direct any society or class of societies to keep proper books of accounts with respect to all sums of money received and expended by the society and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by the society and the assets and liabilities of the society and to furnish such statements and returns as he may require from time to time and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(2) Where any society is required to take any action under this Act, the Rules or the bye-laws or to comply with the order made under sub-section (1), and such action is not taken—

(a) within the time provided in this Act, the Rules or the bye-laws, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing, the Registrar may himself or through a person authorised by him take such action at the expense of the society and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with sub-section (1), and, after giving such officer or officers an opportunity to be heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding Rs. 25 as the Registrar may think fit for each day until the Registrar's directions are carried out.

272. *Power to seize records.*—In the course of our enquiry instances were brought to our notice in support of the view that under the existing law where the officers of a society apprehend that the Registrar is likely to order an enquiry or inspection or take any other action which will ultimately result in penalising them, they attempt to destroy or misplace the records of the society in order to withhold the evidence which can result in their conviction. The opportunities for destroying the records, etc., are also provided during the period intervening between the issue of a show-cause notice and the order thereon. This unsocial activity can only be curbed if the Registrar is vested with powers to seize the records, etc. of the society. In Assam, the authorities were confronted with a similar problem and the remedy which we have proposed was prescribed under section 96 of the Assam Co-operative Societies Act. In view of the practice noticed during the past few years among such officers, we recommend the following new section:—

SECTION 74—*Registrar's power to seize records, etc.*—(1) Where the Registrar is satisfied that the books and records 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, the Registrar may issue an order directing a person duly authorised by him in writing to seize and take possession of such books and records, funds and property of the society and the officer or officers of the society responsible for the custody of such books, records, funds and property shall give delivery thereof to the person so authorised.

(2) Any Officer or Officers of such society failing to comply with the Registrar's order made under sub-section (1) shall be liable to be punished with imprisonment extending up to 6 months or with fine which may extend to Rs. 1,000 or both.

CHAPTER IX.

AUDIT, INQUIRY, INSPECTION AND SUPERVISION.

273. Audit, inspection and supervision are the methods whereby a constant check is maintained on the operations of and policies pursued by societies. Audit serves as a watch dog and is the statutory responsibility of the Registrar under the present Act. Inspection is of two types, routine and statutory. The law does not provide for routine inspection specifically but the bye-laws of federal societies provide that they are entitled to inspect the affairs periodically of the affiliated societies. The Co-operative Department also undertakes routine inspection. The Act provides for statutory inspection in certain circumstances. This statutory inspection together with enquiry, is usually a prelude to taking action against a society if its affairs are mismanaged. Supervision is undertaken both by the Department and federal societies and an elaborate structure with supervising unions at the bottom and a Board of Supervision at the apex has been built up. The position in all these respects is, however, fluid as can be noted from the number of cases of misfeasance, etc., and there is considerable scope for strengthening the machinery which is covered by this Chapter. Administrative problems are out-side our terms of reference and we have refrained from making any specific recommendations thereon but we hope that these will be examined by the Registrar since without an effective solution for them the legal provisions will not serve their purpose.

274. This Chapter seeks to cover different aspects of audit, inquiry, inspection and supervision. The subjects treated are (1) audit and audit fees, (2) powers and duties of auditors, (3) auditor's report, (4) penalty for auditors, (5) rectification of defects in accounts, (6) inquiry by the Registrar, (7) inspection of books of indebted societies, (8) costs of enquiry and inspection, (9) recovery of cost, (10) Registrar to bring defects disclosed in enquiry or inspection to notice of society, (11) power of the Registrar to recover damages against delinquent promoters, and (12) constitution of an authority to supervise the working of societies. The provisions relating to audit are presently covered by Section 22 in Chapter IV relating to duties of societies. We have amplified their scope and added two new sections to provide for Auditor's report and penalty for auditors. The scope of the sections relating to inspection and inquiry has also been amplified and a new provision has been made for facilitating the constitution of an authority to supervise the work of societies.

275. *Audit and audit fee.*—Section 22 of the Bombay Act deals with audit, its scope and powers of Auditors. The question as to whether audit should be entrusted to the Department or a professional auditor or to federal bodies has been discussed during the past 30 years at various levels, but there has been no unanimity on the solution to the problem of ensuring efficient, timely and speedy

audit. So far as the law is concerned it fixes the responsibility of statutory audit on the Registrar and has given him the discretion of auditing the accounts himself or getting them audited by persons authorised by him. For the purpose of our enquiry, therefore, the merits of the different agencies are irrelevant. We have, therefore, refrained from examining them.

276. The law requires that the accounts of a society must be audited once at least in every year. It may be that audit once in a year may not necessarily relate to the financial year of the society and may not be completed before the accounts are presented to the annual general meeting of such society. We, however, opine that the audit of accounts is so vital to the orderly working of a society that the members should be assured in the general meeting that the accounts are properly maintained and the statements show a true position. It is not possible for all societies to appoint internal or local auditors on financial grounds. But we think that a society with a working capital of 1,00,000 rupees and more should not experience any difficulty in appointing such an auditor to audit the accounts though we concede that this expenditure will be in addition to the fees payable in respect of the statutory audit. To avoid genuine hardships to societies, we propose to empower the Registrar for exempting a society or a class of societies. Until the Registrar is able to arrange for the completion of the statutory audit for the financial year of a society before the annual meeting, this supplementary audit must be considered as necessary evil. In any case, the tendency to present unaudited accounts to the annual meeting has to be curbed. We, therefore, recommend that section 22 (1) of the Bombay Act be deleted and a new section—section 75—be inserted as under :—

SECTION 75—*Audit and audit fee.*—(1) The Registrar shall by himself or by some person authorised by him in writing by general or special order in this behalf audit the accounts of every society once at least in every year and shall recover from such society such fees as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), every society having a working capital of Rs. 1,00,000 and over shall appoint an Auditor to audit its accounts for the financial year and the report of such auditor shall be placed before annual general meeting following the completion of the financial year. The Registrar may, however, for reasons stated in the order, exempt a society or a class of societies from the provision of sub-section (2).

277. *Powers and Duties of Auditors.*—Section 22 of the Bombay Act to which a reference has been made in the preceding paragraph lays down that the audit shall include an examination of overdue

debts, if any, the verification of cash balances and securities and a valuation of assets and liabilities of the society. The same section lays down that the Auditor shall have free access to the books, etc., and the Directors, Managers and other officers of the society shall furnish him all information relating to the transactions as he may require. The auditor has also been empowered to summon at the time of his audit any officer, etc., of the society for giving information and to require the production of books etc. It may be noted in this context that it is physically impossible for an auditor, howsoever highly qualified he may be, to undertake valuation of the assets and liabilities of a society. In fact there is no question of valuing the liability because the accounts, if they are correct, should disclose the precise extent of the liability. It is in respect of the valuation of the assets that there is a danger of the value being over-estimated. The auditor can no doubt use his commonsense and check the society's statement but we are afraid that auditors will be put to unnecessary trouble if they were burdened with the responsibility of valuing the assets. Even in the case of audit of Companies, the auditors rely on the certificate given by the Managing Agents and this practice has been recognised by law. We favour a similar change in the Act. Section 22(3) of the Bombay Act is more comprehensive than Companies Act. The latter restricts his right of access only to "information necessary for the purpose of his duties as Auditor" whereas the Bombay Section mentions specifically about the "books, accounts and vouchers of such society and cash balance and securities". We have, therefore, retained the provisions in section 22 (3), while proposing the following section, section 76, in place of section 22 :—

SECTION 76—Powers and duties of Auditors.—(1) The Registrar or any person appointed under section 75 to audit the accounts of a society shall have free access to the books, accounts and vouchers of such society and shall be allowed to verify its cash balances and securities and shall be entitled to require the production of any book or document relating to the affairs of the society by an officer, agent or servant or member in possession of such book, document, cash or securities and summon at the time of his audit any officer, member, agent, or servant of the society who he has reason to believe can give valuable information in regard to any transaction of the society or the management of its affairs.

(2) Every Officer, agent or servant shall furnish to the Registrar or any other person appointed to audit the accounts of a society under section 75 (1) all such information and explanation as to its transactions and working as the Registrar or such person may require. The Committee of such society shall also supply him a list of the assets together with their value certified as correct.

(3) Any officer, agent or servant failing to comply with the requirements of sub-section (2) shall be punishable with fine which may extend to Rs. 100.

(4) The auditor appointed under section 75 shall have the right to receive all notices and every communication relating to the annual general meeting of the society and to attend such meeting and to be heard thereat in respect of any part of the business with which he is concerned as an auditor.

278. *Auditor's report.*—An Auditor's report in respect of co-operative societies has been the subject of a good deal of controversy. The Acts in Bombay, Vidarbha and Marathwada do not provide for the submission of such report. Byelaws of societies, however, prescribe usually that the Auditors' report should be read at the annual meeting. In the case of societies the Auditor's report presently made is so elaborate that it contains information relating to transactions of individual members and if such a report is to be read in a general meeting, we are afraid, the repercussions will be adverse. In the case of co-operative banks particularly where like any other banking institution, secrecy regarding transactions of customers is important, the confidence will be knocked out. We, therefore, beg to draw a fine distinction between the auditor's report and the audit memorandum. The audit report should deal with the minimum requirements of law in regard to the accounts. The audit memorandum might deal exhaustively with individual transactions. The former report should be available to the members of the society, the latter should be the basis for rectifying the defects in the accounts. Section 227 of the Companies Act deals with the Auditor's report and in recommending the following section, section 77, we have drawn heavily on it.

SECTION 77—*Auditor's Report.*—(1) Auditor shall make a report to the members of the society on the accounts examined by him and on every balance-sheet and profit and loss account which are placed before the Society's general meeting during his tenure of office and the report shall state whether in his opinion and to the best of his information and according to the explanation given to him, the said accounts give the information required by this Act in the manner so required and give true and fair view, (i) in the case of the balance sheet of the state of the society's affairs as at the end of the financial year, and (ii) in the case of profit and loss account, of the profit or loss for its financial year.

(2) The Auditor's report shall also state (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit, (b) whether, in his opinion, proper books of accounts as required by the Act, Rules and the bye-laws have been kept by the society so far as it appears from the examination of those books, and (c) whether, the societies' balance sheet and profit and loss account dealt with by the report are in agreement with the books of accounts and returns.

(3) Where any of the matters referred to in sub-section (2) is answered in the negative or with a qualification, the Auditor's report shall state the reasons for the answer.

(4) The Auditor's report shall be read before the society in a general meeting and shall be open to inspection by any member of the society.

(5) In addition to the report referred to in sub-sections (1), (2), (3) and (4), the Auditor shall submit a memorandum to the Committee of the society and the Registrar in the prescribed form on the audit of the accounts of the society made by him and the said report shall give full particulars of—(a) every transaction which appears to be contrary to the Act, or the Rules or the byelaws, (b) every sum which ought to have been but has not been brought into account, (c) the amount of any deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation, (d) any money or property belonging to the society which appears to him to be bad or doubtful, and, (e) any other matter prescribed.

279. *Penalty for Auditors.*—The present Acts do not provide for penalising the auditors if they fail to discharge their duties. Auditors are considered watch-dogs and their certificate is liable to misguide the members of a society if it is not warranted by facts or if it is not warranted by facts or if it is based on inefficient audit or incorrect information. In the course of our enquiry we have come across numerous cases where the Auditor's negligence in discharging their duties has resulted in preventing the members from taking timely action against the losses to the society. True, in the case of professional auditors a complaint can be made to the Society of Chartered Accountants; but the procedure is so elaborate and cumbersome and the points of law are so fine that it is not easy to penalise an auditor for the neglect of his duties. Section 233 of the Companies Act prescribes the penalty for non-compliance by auditors with certain provisions in the Act. On the same basis, we recommend that the following new Section, Section 78 be added :—

SECTION 78—*Penalty for Auditors.*—If any report is made or any document of the society is signed or authenticated by the auditor otherwise than in conformity with requirements of section 77, the Auditor concerned who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to Rs. 1,000.

280. *Rectification of defects in Accounts.*—Section 22-A of the Bombay Act requires the Registrar to bring defects as a result of the audit to the notice of the society and to the federal society to which such a society may have been affiliated. Furthermore it empowers the Registrar to make an order directing the society or its

officers to take such action may be specified in the order to remedy the defects within a specified period. The onus of rectifying the defects should really be on the committee of the society which is responsible for the defects. From this point Section 80 in the Bengal Co-operative Societies Act is more appropriate. At the same time it is desirable that a federal society should know the defects so that it can exert its influence for the purpose of rectifying them in time. Moreover, we consider it necessary to arm the Registrar with powers to take steps to have the defects rectified where the society fails to do so and to recover the cost thereof from the officers failing to rectify the defects. We, therefore, recommend that the existing Section 22A in the Bombay Act be deleted and the following be substituted :—

SECTION 79—Rectification of defects in accounts.—(1) If the result of the audit held under Section 75 discloses any defects in the working of a society, the society shall within three months from the date of audit report, explain to the Registrar the defects or the irregularities pointed out by the auditor and take steps to rectify the defects and remedy irregularities and report to the Registrar the action taken by it thereon. The Registrar may also make an order directing the society or its officers to take such action, as may be specified, in order to remedy the defects, within the time specified therein. Where the society concerned is a member of a Federal Society such order shall be made after consulting the Federal Society.

(2) Where the society fails to rectify the defects as directed by the Registrar or to the satisfaction of the Registrar, the Registrar may himself take steps to have the defects rectified and may recover the cost thereof from the officer or officers of such society, who in his opinion, has or have failed to rectify the defects.

281. *Inquiry by Registrar.*—Although the machinery for enabling the members to secure material information regarding the affairs of their society has been provided, occasions arise when a minority of the members fails to secure the necessary information. A section was incorporated in the Act of 1912 on the lines of the then provisions of the Indian Companies Act. Calvert in his book, "The Law and Principles of Co-operation" (Page 140), explains: "This right to an enquiry is important for the maintenance of the principle of equitable association..... The idea of obligatory inspection by a higher authority is now everywhere approved. The difficulty is to get people to agree respecting the shape which such inspection is to take.....The worst method of all is that entrusting inspection to the Government, by means of inspectors to be appointed by it.....The proper authority to carry out inspection in all co-operative banks is without question a union of co-operative banks of the same order.....There can be no better solution of the question than a law making inspection compulsory but permitting

inspection by recognised unions, and placing inspection by Government officers only in reserve. To this ideal the Indian system is gradually aiming."

282. The system that has been developed since Calvert wrote is that the financial inspection of a society is done by its financing agency under its bye-laws while the Government inspection is analogous, to the investigation of affairs of companies and is, therefore, regulated by the Act. The former is of a routine nature; that latter is resorted to only when there are complaints of grave errors. In the case of the latter form of inspection, a distinction has been drawn between an inspection order at the instance of a creditor of a society, and an order on the requisition of the society, on the application of the majority of a committee and on the application of the one-third members of the society. The former has been described as inspection of books of society and the latter as inquiry by Registrar. We propose to deal with enquiry first.

283. Section 43 of the Bombay Act derived from Section 35 of the Act II of 1912 and dealing with the enquiry by the Registrar prescribes that the Registrar may hold an enquiry on his own initiative and shall hold such an enquiry on the requisition of a society duly authorised by the Rules in this behalf, on the application of a majority of the committee of the society or on the application of one-third of the members. This enquiry relates to the "constitution, working and financial conditions of a society". This is most comprehensive and we do not recommend any change. Under subsection (2) (a) a society duly authorised by rules made in this behalf to make such requisition, in respect of one of its members, such member being itself a society can requisition such an enquiry. This covers all federal societies. We are, however, of the view that this right should be conferred on a federal society only in respect of societies, which are its members and are of the same class to which the federal society belongs.

284. Sub-clause (b) confers the right on the majority of the Committee of a society to apply for an enquiry. This right is usually exercised when one Committee is replaced by another and the latter is anxious to get the affairs of the society investigated for the period for which the previous committee had functioned. In such a situation there is every danger of the power being misused especially when the Registrar has no discretion to refuse such a demand for an enquiry. That is why probably the word "majority" was used. We, however, visualise a situation where the minority in a committee might not have been satisfied with the manner in which the society's affairs are conducted by the majority and would, therefore, like the affairs to be investigated. There is no facility for this purpose except to approach the members and to enlist the support of a third of the members. We, therefore, recommend that the word "a majority" should be replaced by the words "two-fifths of the members".

285. A similar requisition can be made by the one-third of the members. This provision was in order when the societies were small but the present Act has its jurisdiction over societies ranging from a small village society to a co-operative sugar factory and the State Co-operative Bank. Besides, it is not always possible even for a good cause to get the signatures, as distinct from the support, of one-third of the members. At the same time we recognise that, in the case of a federal society, the individual members should not be allowed to take an undue advantage of the proviso. To provide for all these contingencies we recommend that in sub-clause (c) the word "one-third" should be replaced by "one-fifths or 100 whichever is less", and add an explanation that in the case of a federal society the majority from the requisitionists shall be societies which are members.

286. In respect of the requisition under (b) and (c) it is desirable to provide for adequate safeguards against the misuse of powers. These safeguards can only be in respect of the standing of the members and in regard to financial responsibilities and deposit of cost of enquiry. This is in line with the Section 84 (2) of the Bengal Co-operative Societies Act. We, therefore, recommend that the words "members" in clause (c) should be qualified by "an year's standing" and, therefore, recommend the addition of the words "of year's standing" after the word "members" and recommend a provision for requiring the requisitionists in the clauses (b) and (c) to deposit the cost of inquiry and for its forfeiture in the event of the enquiry being later found to have been demanded on frivolous grounds. These suggestions are in line with the provisions in the Industrial Societies Act and the Friendly Societies Act in the United Kingdom.

287. Section 42 in the Hyderabad Act empowers the Collector to demand an enquiry. This proviso was apparently inserted in the Hyderabad Co-operative Societies Act because the Collector or the Taluqdar happened to be closely associated with the co-operative movement in the former Hyderabad State. In Marathwada which is presently governed by the Hyderabad Act, we presume the future development of the co-operative movement will take place on the basis of the one in Maharashtra and Gujarath and we do not, therefore, think it necessary to vest these rights in the Collector.

288. Sub-section (3) requires all officers and members of a society whose affairs are investigated to furnish such information in their possession in regard to the affairs of the society as the Registrar or the person authorised by him may require. The section deals with "Inquiry" and not with "Investigation", the word which, while having the same purport has been used in the Companies Act. We, therefore, recommend that the words "in respect to which an enquiry is held" should be substituted for the words "whose affairs are investigated". This sub-section only requires the officers etc., to furnish information but the production of documents, books and

records is equally important. Section 240 of the Companies Act refers to "all books and papers of, or relating to, the company" and "all assistance in connection with investigation". The word information has also been qualified by the words "in regard to the affairs of the society". The phraseology used in the Companies Act is, in our opinion, more specific. We also opine that the scope of this sub-section should be widened since it is possible that a past member of the society or any out-sider may be in possession of valuable information, books etc. We, therefore, recommend that the words "and any other person who in the opinion of the Inquiry Officer is in possession of such information, etc.", should be added to this sub-section.

289. Sub-section (4) requires the Registrar to communicate the result of the inquiry to the society whose affairs have been investigated. We are afraid, that the mere communication of the result will not enable the society to assess the magnitude of the findings of the Inquiry Officer.....We, therefore, recommend that the report itself should be made available to the society. We are further of the view that it should also be available to the person at whose instance the inquiry was ordered and to the federal society including the central financing agency. We beg to record that on the question of inclusion of central financing agency, we are unanimous.

290. Two suggestions have been received in connection with this section. One suggestion is that the inquiry should be classed as judicial proceedings within the meaning of the Code of Criminal Procedure. We are afraid that the whole object of the section will be defeated if the inquiry is classed as a judicial enquiry. The legal complications arising from the acceptance of the suggestions are so grave that the object of the Act to create a simple and speedy machinery for overcoming the short comings in the working of a society will not be achieved. The procedure of enquiry presently followed has been accepted as valid even in courts where it has been challenged. We, therefore, reject the suggestion. The second proposal is that the inquiry officer should have powers to call a special general meeting. This suggestion has been based on the misconception that the Inquiry Officer has powers to get the defects revealed in the course of an inquiry rectified. It is true that where the Registrar himself holds an inquiry, his functions as the Registrar and as the Inquiry Officer devolve on one and the same person ; but this is an exception rather than a rule. And as Registrar he shall always be competent to convene a special general meeting for which a provision has been recommended by us in Section 64.

291. We, therefore, recommend that Section 43 be numbered as Section 80 and be amended as under :—

SECTION 80—*Inquiry by Registrar.*—(1) The Registrar may of his own motion by himself or by a person duly authorised by him in

writing in this behalf hold an inquiry into the constitution, working and financial conditions of a society.

(2) The Registrar shall hold such an inquiry as is contemplated in sub-section (1) of this Section :—

(a) on the requisition of a Federal Society in respect of a society which is its member and is of the same class as that of such Federal Society ;

(b) On the application of two-fifths of the members of the Committee of the society ;

(c) On the application of one-fifths or 100, whichever is less, of the members of a year's standing of the society.

Provided that no application under sub-clause (b) and (c) shall be valid unless the persons making the application deposit such security for cost, if any, as the Registrar may direct,

Explanation.—For the purpose of sub-clause (c) in the case of a federal society, the majority from amongst the members making the application shall be societies.

(3) (a) All officers, members and past members of the society relating to which an enquiry is held and any other person who, in the opinion of the officer holding the inquiry is in possession of information, books and papers relating to the society shall furnish such information as is in their possession and produce all books and papers relating to the society which are in their custody or power and otherwise give to the officer holding an enquiry all assistance in connection with the inquiry, which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorised by him under sub-section (1) any book or papers which it is his duty under sub-clause (a) to produce or to answer any question which is put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar, after hearing any statement which may be offered in defence, punish the offender with a fine not exceeding Rs. 500.

(4) The report of any inquiry under this section shall be communicated to the society in respect of which an enquiry is held and to the person at whose instance the inquiry was ordered and to the federal society.

292. *Inspection of books of indebted society.*—A brief reference has been made to the early ideas regarding inspection of the affairs of a society in paragraph No. 273. The trend has been to encourage inspection by recognised federal societies and to place inspection by

Government in reserve. Thus, for instance, section 82 of the Bengal Co-operative Societies Act, provides separately for routine inspection by the Registrar and the financing bank of society, while the following section deals with inspection of books of an indebted co-operative society. Section 40 of the Madras Co-operative Societies Act separately provides for the inspection of books of a society by the financing bank; but this section restricts their rights to societies indebted to them. In Bombay State, the right of inspection of an affiliated society has been assumed by financing agencies under their bye-laws. Because of this, we do not consider it necessary to provide for a separate section in the Act for permitting inspection by federal societies, but hope that the bye-laws of federal societies which have no such provision should be brought up-to-date.

293. Section 44 of the Act of 1925 gives an opportunity to the creditor of a society to protect his interest by requesting the Registrar to inspect the books of the society if he is not satisfied regarding his dues. The main object is to enable him to get the requisite information about the society. If the Registrar is satisfied that the information can be given to him by other means, he need not inspect or arrange for the inspection of the books of the society. Since the Courts have held that in certain circumstances, the word "may" will have to be interpreted as "shall", we deem it necessary to clarify in the Section that it is the Registrar's discretion before ordering an inspection at the instance of a creditor. Two conditions have to be fulfilled by the creditor who applies to the Registrar. Firstly, the applicant has to prove to the Registrar that he demanded the payment of his dues but has not received satisfaction within a reasonable period. Secondly, he has to deposit with the Registrar such sum as security for the cost of the proposed inspection as the Registrar may require. These conditions are fair and we propose no change therein. Since the inspection is ordered at the instance of a creditor who has also to deposit the cost, it is but fair that he should know the outcome of the inspection. Sub-section (2) meets this requirement. Equity demands that the society whose books are inspected should know the result of inspection. This has to be provided for.

294. We, therefore, recommend that section 44 be renumbered as section 81 and that the words "if he deems necessary" be added between the word "may", and the word "on" in the first line of sub-section (1) and the words "and the society whose books are inspected" at the end of sub-section (2). The amended section will read as under :—

SECTION 81—*Inspection of books of indebted society.*—(1) The Registrar may, if he deems necessary on the application of a creditor of a society inspect or direct some person, authorised by him by

order in writing in this behalf to inspect the books of the Society :
 Provided that :

(a) the applicant 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) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the result of any such inspection to the applicant and to the society whose books have been inspected.

295. *Costs of inquiry and inspection.*—Section 45 of the Bombay Act deals with costs of inquiry and inspection. The marginal heading is, however, “costs of inquiry”. We, therefore, recommend that the words “and inspection” be added to the marginal heading. This section is most important because it is on the determination of the costs of inquiry that the Registrar can proceed with the levy of surcharge on delinquent promoters, etc. This section authorises the Registrar to apportion the costs of enquiry and inspection between the society, the members or the creditors demanding inquiry or inspection, the officers or former officers and the members or past members of the society. Since the past members do not cover deceased members, we urge that “the estate of the deceased members” be added after the words “past members”. We beg to draw Government’s attention to a possible difficulty arising from our recommendation. Before apportioning the cost, this section requires that the party concerned must be given an opportunity of being heard. In the case of deceased members this is impossible, except to the extent that persons inheriting the estate of the deceased have an opportunity to defend. We hope a provision to give such opportunity to a representative of the deceased member would be enough.

296. Last year, further additions were made so that the costs which may be payable to any person authorised to hold an enquiry, and not inspection, could be compulsorily paid in the first instance from the funds of the society and then recovered and repaid to the society. The exclusion of the cost of inspection for this purpose is probably to be attributed to the fact that the Registrar is entitled to ask the creditor to deposit it. The object of this addition is to ensure that the person authorised to hold an inquiry can receive his fees, etc., promptly and need not wait till the costs are recovered. The solicitude for the inquiry Officer is fully justified since there is no case for delaying payment for the job done. The new addition, while doing justice to the Inquiry Officer, however, penalised the society for no fault on its part, and simply because it was a victim.

of circumstances which culminated in the inquiry. The ends of justice can be met only when the costs are recovered from those responsible for the affairs leading to the inquiry. If for any reason there is a delay in recovering the costs it is but fair that the bill is paid by the Government, which is responsible for the administration of the Act and the good working of societies. True, in such an event, objections might arise in the course of Government audit, but that, in our opinion, should be an additional incentive for the Registrar to hasten the recovery of the cost.

297. Our attention was drawn in this connection that the recovery of cost has been delayed in certain cases for five years and more and such a state of affairs can hardly be conducive to the achievement of the objective which this section has in view. We may point out that this section is not merely concerned with the recovery of the cost, but indirectly indicates that it is a punitive measure imposed both on grounds of equity and in the interest of the good working of societies. We have come to the conclusion that the deletion of the additions made in 1956, is absolutely necessary, and, therefore, recommend that the words beginning from "and" and ending with "society", added last year be deleted.

298. Before apportioning the costs, the Registrar is required to give a reasonable opportunity to persons liable to pay the costs of being heard and is required to state in writing his reasons on the basis of which he apportions the cost. These safeguards are fair and we do not propose any change therein. Two material points have not, however, been covered by this section although a general provision has been made against this question being taken to a Civil Court. We are of the view that a specific provision to this effect is necessary in this section, because the apportionment of cost has been a protracted affair. Secondly, there is a tendency among persons who have to pay the cost of finance their appeals at the cost of the society. The argument advanced is that the subject-matter of appeal affects the society and, therefore it is legitimate to spend the funds of the society on the appeal. We concede that where the society is a party to an appeal, it is legitimate to use its funds for the purpose, but to widen the scope would be neither equitable nor fair to other members of the society. Section 85 (2) of the Bengal Co-operative Societies Act, specifically meets the points. We recommend it to the Government. Other changes are consequential. We, therefore, recommend that section 45 be re-numbered as section 82, after adding the words "an inspection" to the marginal heading and the new section be read as under :—

SECTION 82—Costs of inquiry and inspection.—(1) Where an inquiry is held under section 80 or an inspection is made under section 81, the Registrar may apportion the costs or such part of

the costs, as he may think right, between the society, the members or creditors demanding the inquiry or inspection, the officers or former officers and the members or past members or the estate of the deceased members of the society :

Provided that :

(a) No order of apportionment of the cost shall be made under this section, unless the society or persons or the legal representative of deceased person liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard ;

(b) The Registrar shall state in writing the grounds on which the costs are apportioned.

(2) No expenditure from the funds of a society shall be incurred for the purpose of defraying any cost in support of any appeal preferred by any person other than the society against an order made under sub-section (1).

(3) The orders or awards passed by the Registrar under this Section shall not be called in question in any Civil Court.

299. *Recovery of costs.*—Section 46 of the Bombay Act provides for recovering the cost and facilitates the recovery through a Magistrate. In Madras, under Section 42 of the Madras Act, it can be recovered as if it were an arrears of land revenue. The Madhaya Pradesh Act as applied to Vidarbha follows the Bombay Act, while Hyderabad follows Madras. Representatives of the Co-operative Department have testified before us that the present provision is both adequate and effective and there is no need to provide for recovering the cost as if it were an arrears of land revenue. The Bombay Act, however, confines the jurisdiction of the Magistrate in the place where the person from whom the money is claimable “actually and voluntarily resides” and thereby throws the onus of proving that he “actually and voluntarily resides” at that place on the Registrar. This, we are afraid, is unfair and, therefore, the relevant words have to be deleted. Secondly only the movable property can be sold. We are unable to understand the object of distinguishing between movable property and immovable property for purpose of the recovery of costs. We are convinced that this relief is unwarranted and, therefore, recommend the deletion of the word “movable”. We recommend that after incorporating the above changes, Section 46 be renumbered as Section 83 and be read as under :—

SECTION 83—Recovery of cost.—Any sum awarded by way of costs under Section 82 may be recovered, on the application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable resides, or carries on business by the distress and sale of any property within the

limits of the jurisdiction of such Magistrate, belonging to such person, and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself.

300. *Registrar to bring defects disclosed in inquiry or inspection to the notice of society.*—Section 46-A was added in 1948, in order to enable the Registrar to bring defects disclosed in inquiry or inspection to the notice of the society and to give it an opportunity to rectify these defects. It also provides for drawing attention of the federal society to the defects and enables the Registrar to direct the Society or the federal society to take action for remedying the defects within a specified period. The society and the federal society has been provided with the facilities of appealing to the State Government against the Registrar's order. In this section the word "defects" has been used in relation to "the working of a society". The inquiry under Section 43 relates to "constitution, working and financial condition". Section 44, dealing with inspection is restricted to the "inspection of books." We think, it is desirable to bring "the defects" in the working of a society in line with those in "the constitution, working and financial condition of a society" and in the books of the society.

301. We are further of the view that it is not enough to issue directions to the society and its federal society for rectifying the defects. The object is to get them rectified. Therefore, a provision is necessary to get the defects rectified in cases, where both the society and its federal society fail to do so. A provision on the line of Section 78 proposed by us has, therefore, been recommended. The other changes made by us are consequential. We, therefore, recommend that Section 46-A be numbered as Section 84 and be amended as under :—

SECTION 84—*Registrar to bring defects disclosed in inquiry or inspection to notice of society.*—(1) If the result of any inquiry held under Section 80 or an inspection made under Section 81 discloses any defects in the constitution, working or financial condition or the books of a society, Registrar may bring such defects to the notice of the society and, if the society is a member of a Federal society to the notice of the Federal Society. The Registrar may also make an order directing the society or its officers or the Federal Society to take such action as may be specified in the order to remedy the defects within the time specified therein.

(2) The Federal Society or the Society concerned may appeal against an order made by the Registrar under sub-section (1) to the State Government within the time specified in the order.

(3) The State Government may, in deciding the appeal, annul, reverse, modify or confirm the order of the Registrar.

(4) Where the Society fails to rectify the defects as directed by the Registrar and where no appeal has been made to the State Government, within the time specified in the order or where on the appeal so made the State Government has not annulled, reversed or modified the order, the Registrar may himself take steps to have the defects rectified and may recover the costs from the Officer or officers of the society who, in his opinion, has or have failed to rectify the defects.

302. *Power of Registrar to assess damage against delinquent promoters, etc.*—Section 50-A of the Bombay Co-operative Societies Act deals with one of the most intricate aspects of the administration of Co-operative Law. The legal interpretation that “in the course of” does not mean “as a result of” led to the amendment of the Section in 1955. The amendment also enables the Registrar to authorise any person to examine into the conduct of such persons but restricts his choice of persons and also provides for the payment of cost. According to this Section, it must appear in the course of or as a result of an audit, inquiry or inspection or the winding up of a society that any person who has taken part in the organisation and the management of the society or any past or present Chairman, Secretary, member of the Managing Committee or Officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been found guilty of misfeasance or breach of trust in relation to the society, the Registrar may on the application of the officer conducting audit or holding inquiry or inspection or of the liquidator or of any creditor or contributory, examine into the conduct of such person and give him reasonable opportunity to submit his explanation and then make an order requiring him to repay or restore the money or property or any part thereof with interest or contribute such sum to the assets of the society by way of compensation, as the Registrar thinks just. Secondly, the Registrar may delegate powers of examining into the conduct of any such person to a person not below the rank of Deputy Registrar, Deputy Collector or a Civil Judge subject to the general or special order of the State Government. Thirdly the Registrar may provide in his order for the payment of the cost and may direct the society to pay it initially. It has been made clear that this Section will apply even though the act is one for which the offender may be criminally responsible.

303. Originally, this section was confined to the winding up of a society. The scope was extended in 1948. The present section is restrictive, because the Registrar has no initiative in these matters. Even if they are known to him, he has to resort to either a fresh audit or an inquiry or inspection of books, or in extreme cases, the winding up of the society, for which purpose an application from three-fourths of the members is necessary. We, therefore, opine that

this initiative should be vested in the Registrar. Secondly even though a *prima facie* case is made out by the Auditor, an inquiry officer or the person inspecting the books or the liquidator, the Registrar has to examine into the conduct of such person. In fact, the whole procedure of investigation has to be gone through. We think the ends of justice would be met if reasonable opportunity is given to the person, concerned to submit his explanation, instead of examining into the conduct afresh. Fourthly, only certain categories of persons are to be subjected to the surcharge and other members have been excluded. "Deceased person" also escapes from the liability. We are, therefore, of the view that these shortcomings should be rectified.

304. The Registrar can authorise only certain categories of officers to examine into the conduct of such persons to report to him. The officers must have held office not lower in the rank than that of a Deputy Registrar, a Deputy Collector or a Civil Judge. We do not think that the categories of Officers should be specified in the Act itself, for the reason that administrative difficulties will consequently arise in respect of the affairs of a village society, involving small sums under the present law, as a high Officer referred to in the Section will have to be appointed. This is neither desirable nor always feasible. In fact, we are of the view that the Registrar should have discretionary powers to appoint such a person, so that in the case of complicated cases, he can choose a person with higher qualifications, and in simple cases, involving small sums, even an Assistant Registrar can be considered competent since the final order is to be made only by the Registrar. We opine that the deletion of Section 50-A (1B) will not materially change the course of justice.

305. This section is silent on the period with the result that the Democles's sword will continue to hang indefinitely. Section 127 of the Bengal Co-operative Societies Act, specifies the period as "4 years prior to the date of such audit, inspect, inquiry or report, made in the course of the winding up of a society." Bihar has a similar provision. Section 42-D of the Co-operative Societies Act, 1912, as adopted for Vidarbha restricts the period to three years. An important argument in favour of not specifying the period in the Bombay Act is that the inquiry or inspection or audit may itself be held after a lapse of some years and the guilty person will escape the liability if the period is specified. We do not think that inefficiency in these matters should be placed at a premium and recommend that the period of 5 years should be considered fair in this respect. The section appears in the Act in Chapter VIII dealing with liquidation and arbitration. But its scope is so wide that we consider it necessary to incorporate it in this Chapter, which deals with audit, inspection and inquiry.

306. The existing section affords facilities to any creditor or contributory to make an application, but in actual practice it is not

possible for any of them to do so since the basis is audit, inquiry, inspection or the liquidator's report. Besides, the report itself should be enough and no application from the auditor, etc., should be considered necessary for the purpose of this section. We, therefore, recommend the deletion of the relevant references. The cost of the proceedings is to be recovered under this Section from the society in the first instance. Justice demands that it should be recovered from the person against whom the proceedings are instituted. If at all they are borne initially, the burden should be on the Government which institutes the proceedings and not the society which is innocent and has already suffered losses.

307. For reasons stated above, we recommend that section 50-A be renumbered as Section 85 and be read as under :—

SECTION 85—Power of Registrar to assess damages against delinquent promoters, etc.—(1) Where in the course of or as a result of an audit under Section 75 or an inquiry under Section 80 or an inspection under section 81 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the Auditor or the person authorised to make inquiry under Section 80 or the person authorised to inspect the books under Section 81, or the liquidator under Section 101 that any person who has taken any part in the organisation or management of the society or any deceased, past or present officer of the society, has, within a period of five years prior to the date of such audit, inspection, inquiry or the order for winding up of the society, misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may frame charges against such person or persons and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar may determine or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as the Registrar may determine.

(2) The Registrar after framing the charges under sub-section (1) may, by an order in writing, authorise any person, subject to general or special order of the State Government, to hear the person or the representative of the deceased person against whom the charges are framed under sub-section (1). The person so authorised shall, after giving such person reasonable opportunity to submit his explanation make to the Registrar his recommendation as to what action, if any, the Registrar should take. The Registrar after considering his recommendations, may make any order which he considers just in the circumstances and which he could have

made under sub-section (1) if he had given such person a reasonable opportunity to submit his explanation to him, and such order shall have the same effect as if it was made under sub-section (1).

(3) The Registrar, in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued and the amount so recovered shall be paid to the person authorised by him under sub-section (2).

(4) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

308. *Constitution of an authority to supervise working of societies.*—Provision for supervision of societies has not been made in the Act. Rule 29, however, deals with the levy of audit, test audit and supervision fees. We are afraid that this Rule is *ultra vires* the Act, since there is no provision in any section including Section 71, empowering the State Government to frame Rules in respect of such matters. This is, however, not to say that the Rule is not desirable. Indeed, we opine that a provision is necessary for supervision and for enabling the State Government to recover the cost of supervision, etc. At present supervision is controlled by the Registrar and a supervision fee is also levied for the purpose. Further pattern of supervision is presently in the stage of discussion on the basis of report of the Rural Credit Survey Committee. For the purpose of the law, it would be enough, in our opinion, if it provides for an authority and for financing its activities. Section 81 of the Bengal Co-operative Societies Act provides for the constitution of an authority to supervise the working of co-operatives. This section also provides for manner in which the authority should be constituted. We are of the view that it would be better to leave the details to the Rules, since the position regarding the authority may have to be reviewed from time to time. We also consider it necessary to provide for financing the activities of the authority and for enabling the Government to recoupe expenditure on audit, inspection, etc.

309. We, therefore, recommend that a new Section 86, be added as under :—

SECTION 86—*Authority to supervise working of societies.*—(1) The State Government may constitute an authority in such manner as may be prescribed and subject to such conditions as the State Government may lay down for the supervision of societies and may frame Rules for making grants to such an authority.

(2) The State Government may by general or special order require of a society or a class of societies to make contribution of such sum every year as may be fixed by the Registrar towards the

recoupment of expenditure which the State Government or any person authorised in that behalf has incurred or is likely to incur in respect of supervision.

(3) A society to which sub-section (2) is applicable shall pay to such authority such fee as may be prescribed under sub-section (2) within a reasonable time and, if it fails to pay such fees within a reasonable time, the authority may recover it as if it were an arrear of land revenue.

CHAPTER X.

DISPUTES AND ARBITRATION.

310. Prior to the enactment of the Bombay Co-operative Societies Act, 1925, the machinery for resolving disputes affecting societies was provided for under the Rules which the State Government was empowered to frame under the Act II of 1912. Calvert, in his book "Law and Principles of Co-operation" (page 180), recalls that "at first Government refused to allow the societies a special summary procedure for the recovery of their debts, in place of the slow and the expensive methods of the Courts, because it was thought that it would be mistaken kindness to confer upon societies arbitrary powers of recovery, and if, in the absence of such powers, a society cannot by means of the joint security given and its own moral authority, collect its debts, the failure is due to careless selection of members in the first instance or to lax management". In framing the Rules, however, some of the Local Governments ignored the instructions of the Government of India. The Friendly Societies Act directs that the dispute shall be decided in a manner directed by the Rules of the society and the decision so given shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction. It is this principle around which the co-operative law relating to disputes and arbitration has been woven in this country.

311. There are three stages between the existence of a dispute and its settlement. Firstly, the dispute has to be referred to an arbitrator, It is, therefore, necessary to define the scope of the dispute itself, which may be referred to the arbitrator. Secondly, the machinery for settling the dispute has to be perfected. For this purpose, it is necessary to define the arbitrator's powers and the manner in which he should proceed in order to hear the parties to the dispute. Then follows his award, which is the settlement of disputes. There are, however, two more stages, viz. an appeal against an award and the force, effect, validity and execution of the award. We propose to deal with these matters together with the ancillary problems in this Chapter.

312. *Disputes.*—Section 54 of the Bombay Act says that if any dispute touching the constitution or business of a society arises between members or past members of the society or persons claiming through a member or a past member or between members or past members or persons so claiming and any officer, agent or servant of the society, past or present, or between the society or its committee and any officer, agent, member or servant of the society, past or present, it shall be referred to the Registrar for decision by himself or his nominee. In this Section, provision has been made not only

for defining the nature of a dispute referred to him, but also for decision by himself or his nominee. The point to be noted in this context is that the scope of dispute has only been broadly defined and the provision for decision is also made in the same section. We are of the view that to avoid legal difficulty, the scope of the dispute should be adequately defined and no loophole should be left out in order to enable any party to the dispute to defeat the purpose of this Chapter. It follows from this that the question of provision for decision should be dealt with separately. This arrangement is in line with the provisions in the Bengal Co-operative Societies Act and the Orissa Co-operative Societies Act and several other State Acts.

313. Section 51 of the Madras Co-operative Societies Act is fairly comprehensive for the purpose of determining the scope of dispute. It, however, excludes "a dispute regarding disciplinary action taken by a society or its committee against a paid servant of the society". We have already recommended in paragraphs Nos. 268 and 269 that all disputes between a society and its employees should be referred to the Registrar for decision. We do not, therefore, consider it necessary to exclude this particular type of dispute from the scope of this section. Disputes generally are (a) between members, past members and persons claiming through them as well as deceased members, (b) between a section of the persons previously described and the society, its committee or any officer, agent or servant of the society, (c) between the society or its committee on the one hand and any past committee, officer, etc., and (d) between one society and the other.

314. Section 54 of the Bombay Act does not presently cover a dispute between one society and another. It is necessary to provide for a claim by a society for a debt from a member, etc., a claim by surety for dues from the principal borrower, whose loan he may have repaid and a claim by a society for any loss caused to it by a member, etc. We have excluded disputes regarding employees in view of section 71 recommended by us. Section 46 proposed by us (Section 36 of Act VII of 1925) permits transactions with non-members in certain circumstances, and if a dispute were to go to a Civil Court the society will be put to unnecessary hardship. We, therefore, propose to bring non-members within the scope of this section. On the other hand, since the question as to whether a person was a member or not has to be decided under the Act (*vide* Section 9 recommended), the question of bringing the dispute within the scope of this section does not arise. We are also anxious that no scope should be left to any party to take any dispute outside the scope of this section on any technical ground, and, therefore, propose to provide that the Registrar's decision as to whether a particular matter is a dispute or not should be final and that no other Act should operate. We have also made a provision in order to clarify the agency which can refer a dispute to the Registrar.

315. We, therefore, recommend that Section 54 be renumbered as Section 87 and be amended as under :—

SECTION 87—Dispute.—(1) Notwithstanding anything containing in any other law for the time being in force, any dispute touching the constitution, management or business of a society or the liquidation of a society shall be referred by any of the parties to the dispute or by a federal society to which the society is affiliated or by a creditor of the society to the Registrar if the parties thereto are among the following :—

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or a legal representative of any deceased officer, deceased agent or deceased servant of the society or the liquidator of the society,

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society or a society which is a member of the society,

(c) a person other than a member of the society who has been granted loan by the society or with whom the society has or had transactions under the provisions of Section 47 and any person claiming through such a person,

(d) a surety of a member, past member or a deceased member or a person other than a member who has been granted a loan by the society under Section 47, whether such a surety is or is not a member of the society,

(e) any other society or the liquidator of such a society.

(2) When any question arises whether for the purposes of sub-section (1), a matter referred to for a decision is dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

(3) No Court shall have the jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation.—(1) For the purpose of this sub-section, a dispute shall include (i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or the legal representative of the deceased member, whether such debt or demand be admitted or not ; (ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan taken, by a society and recovered from the surety owing to

the default of the principal borrower, whether such a sum or demand be admitted or not ; (iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its committee, past or present, whether such loss be admitted or not ; (iv) a refusal or failure by a member, past member or a nominee, heir or a legal representative of the deceased member to deliver the possession to a society of land, asset or any other asset resumed by it for breach of conditions of the assignment ; (v) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members.

Explanation (2).—No dispute relating to the election of the committee of a society shall be referred to the Registrar until the results of election are declared and no such dispute shall be entertained by the Registrar unless it is made within one month from the date of declaration of results of such election by a candidate at such election or any member of the society.

Explanation (3).—In the case of application under sub-section (1) of a federal society or a creditor, the Registrar shall require such parties or any party to the dispute, as he may think fit, to refer the dispute to him within such time as he may specify, and if such reference is not made within the time so specified, the dispute shall be deemed to have been referred to him under sub-section (1).

316. *Limitation.*—In regard to matters affecting societies there is considerable uncertainty about the limitation period. The Co-operative Tribunal in Bombay (Selected cases 1949-50, page 44) has held that the Indian Limitation Act is not applicable. There are, however, certain decisions of the Courts in other States which affirm that in certain circumstances that Limitation Act is applicable. The position requires to be clarified. In order to facilitate this, we consider it necessary to explain the position under the Limitation Act. In regard to recovery of loans and other calls the limitation period is three years. This applies also to the liability prior to liquidation. However, the Limitation Act (Article 120) has fixed a period of six years in the case of calls in the event of liquidation. In regard to recovery of loans, forfeiture of shares and recovery of dividend the limitation period is of three years. For Article 132 of the Act lays down that the limitation to enforce payment of money charged upon the immovable property is twelve years from the date the money sued becomes due. The money under this Article includes the value of any agricultural or other produce the right to receive which is secured by a charge upon an immovable property. In the case of equitable mortgage, Section 9 of the Transfer of Property Amendment Supplementary Act, however, prescribes a period of

60 years. In respect of compensation for doing or omitting to do an act alleged to be in pursuance of any enactment in force the period is of 90 days from the date the Act or omission takes place. Under this Act the limitation period ceases against the creditor after the winding up proceedings commence but if a debt is barred before the commencement of the winding up proceedings, it cannot be proved in liquidation. For appeals and misfeasance, limitation periods are 20 days and 3 years respectively.

317. In the preceding chapters we have not discussed the question of limitation. We, however, propose to retain in the relevant chapter the existing provision limiting the period for appeal to two months as against 20 days under Article 157 of the Indian Limitation Act. Under Section 64-IA of the Act of 1925 the appellate authority has been empowered to admit an appeal after the expiry of the limitation period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period. We propose to vest similar powers in the Registrar. In respect of election disputes we have also decided to limit the period for arbitration to 1 month. In the case of misfeasance recovery of loans, and the calls in the event of winding up the period fixed under Indian Limitation Act is, in our opinion, likely to prejudice the interest of the society because of the peculiar nature of its administrative machinery. It is also necessary to clarify the date from which the limitation period commences and the period itself in respect of certain types of disputes. Subject to certain exceptions, the Limitation Act may be made applicable.

318. We, therefore, recommend that the following new Section, Section 88 be added :—

SECTION 88—Limitation.—(1) Notwithstanding anything contained in the Indian Limitation Act, 1908, and subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under Section 87 shall—

(a) When the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society.

(b) When the dispute is between a society or its committee and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or the legal representative of a deceased officer, deceased agent or deceased servant of the society, or a member or past member or the nominee, heir or the legal representative of a deceased member and when the dispute relates to any act or omission on the part of either party to the dispute, be 6 years from the date on which the act or omission with reference to which the dispute arose, took place.

(c) When the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under Section 93 or in respect of which a nominated committee or an administrator has been appointed under Section 68 and Section 69 respectively, be 6 years from the date of the order issued under Section 93, Section 68 and Section 69 as the case may be.

(2) The period of limitation in the case of any other dispute except those mentioned in sub-section (1) which are required to be referred to the Registrar under Section 36 shall be regulated by the provisions of the Indian Limitation Act, 1908, as if the dispute were a suit and the Registrar a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2) the Registrar may admit a dispute after the expiry of the limitation period if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired.

319. *Settlement of disputes.*—In this section, we propose to deal with the machinery for settling the disputes referred to the Registrar under the previous section. The present position appears to be that when an application is received by the Registrar in respect of a dispute, he has to refer it for arbitration. To avoid frivolous complaints from being referred to arbitration and societies being put to inconvenience and expenses, we recommend that no machinery for settlement of disputes should be made available by the Registrar unless and until he is satisfied that there is a dispute. Section 54 provides the requisite machinery. Originally, it stated that the dispute shall be referred to the Registrar for decision by himself or his nominee or the Board of Arbitrators. But last year, provision for the Board of Arbitrators was deleted by amending the Section. As a result only one nominee can decide the dispute.

320. The justification for abandoning the system of Board of Arbitrators has been made on the ground that a nominee of a party to the dispute is liable to indulge in dilatory methods with the result that arbitration proceedings are unduly protected and justice is delayed. Co-operative opinion has also been unanimous on the merits of the reforms effected by the amendment of the Section last year and we do not recommend revival of the Board of Arbitrators. It has, however, been pointed out that the amended section has created another anomaly. It leaves the settlement of disputes to the discretion of a single nominee and secondly, there is a danger of such a nominee erring on a wrong side while giving the decision. In fact, our attention was drawn by some of the witnesses to the miscarriage of justice by certain nominees and allegations were also made against their *bona fides*. We opine that the Registrar is expected

to make a careful choice of persons while appointing his nominees. In spite of the best precaution, however, justice may not be assured. In complicated cases, it is customary for the High Court Judges to sit in benches of two. Similar practice has been adopted by the Revenue Tribunal. We commend this system to the Registrar since the two nominees jointly hearing a dispute and giving a decision are in a better position to arrive at a correct decision than one nominee. In matters other than complicated, however, one nominee should suffice.

321. We do not want to fetter the Registrar's discretion in these matters but wish to provide for the facility of appointing more than one nominee. We also visualise the possibility of a case in respect of which the two nominees would differ. In that case, closely following the practice in the High Court and the Tribunals, a fresh bench of three will have to be constituted. But the cases of this type would be rare since the nominees will be of the Registrar and not of the parties and would, therefore, take a dispassionate view of the disputes before them. The two points require to be clarified in connection with the machinery for settlement of disputes. The proviso to the existing Section 54 (1) (a) lays down that the Registrar may suspend the proceedings in order to facilitate the settlement of complicated questions of law in a court. Secondly, Rule 32 authorises the Registrar to withdraw the dispute from his nominee in order to decide it himself or refer it to another nominee. We propose to retain both these provisions subject to consequential changes as a result of our previous recommendations.

322. We, therefore, recommend that a new Section 89 be added as under :—

SECTION 89—Settlement of dispute.—(1) If the Registrar is satisfied that any matter referred to him is a dispute within the meaning of Section 87, the Registrar shall, subject to the Rules, decide the dispute himself or refer it for disposal to one or a board of more than one nominee to be appointed by the Registrar.

(2) Where any dispute is referred to under sub-section (1) for decision by the Registrar's nominee or a board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or board of nominees and may decide the dispute himself or refer it again to any other nominee or board of nominees appointed by him for decision:

Provided that no such dispute shall be withdrawn except on any of the following grounds :—

(i) The Registrar's nominee or board of nominees has failed to decide the dispute within two months or such further period, as may be allowed by the Registrar,

(ii) Proceedings before the Registrar's nominee are violated in consequence of corruption or misconduct on the part of the Registrar's nominee or board of nominees.

(3) Notwithstanding anything contained in Section 87 (1) and (2), the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as laid down in sub-section (1).

323. *Procedure for settlement of disputes and powers of Registrar or his nominee.*—Rule 35 framed under the Bombay Act prescribes the procedure which the Registrar or his nominee has to follow in proceedings connected with the settlement of disputes. This has been done under Section 71 (2) (4). Rule 36 lays down that no party shall be represented by a legal practitioner. According to Rule 35 the Registrar or his nominee shall record a brief note of the evidence, and has to give a decision in writing in accordance with "justice, equity and good conscience". This decision has to be given in open court, thereby meaning that the Arbitrator is a Court. It also prescribes that if any party duly summoned to attend fails to appear, the dispute may be decided *ex-parte* but no remedy has been prescribed when the party summoned fails to appear. The Tribunal has held in several cases that the procedure for hearing the dispute is not uniform and in the dispute relating to Rajwade Mandal it specifically suggested that a detailed procedure should be laid down. We think that this is overdue inasmuch as many awards have been vitiated as a result of the difficulty in following the correct procedure. In this context the relevant Rules framed by the Government of Bengal and Madras under their Acts are important. As regards power to enforce attendance, we beg to point out that as a result of the amendment of Section 58 the Registrar or any person authorised by him to settle dispute has no power to summon and enforce the attendance of witnesses. We are, therefore, of the view that a provision for this purpose is necessary.

324. The opinion regarding the appearance of legal practitioners in arbitration proceedings differs violently. One view is that the dispute being a family affair, there is no need for allowing the appearance of a legal adviser. It is also alleged that his presence would create legal complications. The appearance of legal practitioners was barred also on the basis that the societies being small could not afford legal expenses. In actual practice, however, with the growth of societies and in view of the complex issues, legal aid is considered desirable. Societies are in a position to get the best

advice by authorising a member who is a legal expert as their representatives at the hearing of the disputes. In such a case the other party which might not be a society is handicapped. The Madhya Pradesh Act in force in Vidarbha makes a happy compromise between the two extreme views. Rule 34 framed under that Act lays down that no party shall be represented by any legal practitioner except with the permission of the Registrar or Arbitrator or Arbitrators. Rule 48 framed under the Hyderabad Act operating in Marathwada gives a similar concession but the Registrar's discretion is confined to "any legal complications of importance involved in any case". The adoption of the latter rule will lead to a further complication since whether a particular matter involves "any legal complications of importance" or not can be the subject of litigation. We, therefore, favour the happy compromise achieved by the Madhya Pradesh Rules.

325. An important aspect in connection with the procedure to be followed relates to the power of the Registrar or his nominee in respect of amending the application relating to the dispute or joining a party to the dispute. In several cases this is considered necessary on grounds of equity and justice since the omission might have been technical. Suggestions have, therefore, been made that this power should be vested in the Registrar and his nominee. We feel that this is a reasonable request but have been informed by the Government that the legal opinion is that the amendment of the initial reference by the Registrar or his nominee can only be permissible under the present section with the agreement of all the parties to the dispute. In view of this we think it is necessary to make a specific provision for the purpose. At the same time we recognise that the power to amend the complaint should be restrictive. For this purpose we propose to rely, subject to necessary modifications, on Rule 10 of Order I in the first Schedule of the Civil Procedure Code and Order to govern the frame of suit.

326. To provide for the contingencies referred to in the preceding paragraphs and to bring the existing Rules on the subject matter under the Act, we recommend that a new section, number 90 be added. It reads as under :—

SECTION 90—Procedure for settlement of disputes and power of Registrar, his nominee or Board of nominees.—(1) The Registrar or his nominee or Board of nominees hearing the dispute under section 89 shall hear the dispute in the manner prescribed and shall have the power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(2) No party shall be represented at the hearing of the dispute by any legal practitioner, except with the permission of the Registrar or his nominee or Board of nominees, as the case may be.

(3) (a) If the Registrar or his nominee or board of nominees is satisfied that a person whether he be a member of the society or not has acquired any interest in the property of a person who is held a party to the dispute, he may order that the person who has acquired the interest in the property may join as a party to the dispute ; and any decision that may be passed on the reference by the Registrar or his nominee or board of nominees shall be binding on the party so joined in the same manner as if he were the original party to the dispute.

(b) Where a dispute has been instituted in the name of the wrong person or where all the defendants have not been included, the Registrar or his nominee or board of nominees may, at any stage of the hearing of the dispute, if satisfied that the mistake was *bona fide*, order any other person to be substituted or added as a plaintiff or a defendant upon such terms as he thinks just.

(c) The Registrar, his nominee or board of nominees may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Registrar, his nominee or board of nominees as the case may be, be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Registrar, his nominee or board of nominees, as the case may be, may be necessary in order to enable the Registrar, his nominee or board of nominees affectually and completely to adjudicate upon and settle all the questions involved in the dispute be added.

(d) Any person who is a party to the dispute and entitled to more than one reliefs in respect of the same cause of action may claim all or any of such reliefs ; but if he omits to claim for all such reliefs he shall not forward claim for any relief so omitted except with the leave of the Registrar, his nominee or board of nominees.

327. *Attachment before award.*—Section 55 of the Bombay Act provides for attachment before award in certain circumstances. This section was amended last year in order to extend its scope to certain contingencies arising from the existing section 50-A. It provides that when a dispute is referred to the Registrar or when a person authorised by him under section 50-A examines the conduct of any person under that section, the Registrar or his nominee or the person authorised, as the case may be, if satisfied by enquiry

or otherwise that a party to such dispute or examination is likely to dispose off or remove all the property with the intent to delay or obstruct any execution of award or order, the Registrar may direct the conditional attachment of the said property unless adequate security is furnished and such attachment shall have the same effect as if made by a competent Civil Court. This section also retains the provision for enabling the Registrar or his nominee or the person authorised to make an interlocutory order pending the decision in a dispute.

328. The amended section is a considerable improvement over the old section. There, however, appears to be certain defects in this section. Firstly, equity demands that the parties affected should be given a hearing before such an order is passed. This practice is rigorously followed; but the section has not recognised it with the result that even if it is abandoned the action is not vitiated and the aggrieved party has no remedy. We consider that this defect should be rectified. Our attention has been drawn to several cases in respect of which even though the property was attached under this section, the same was distributed rateably among the creditors, where society had no priority. Therefore, it might be necessary to have the relevant entry made in the Record of Rights. Rule 44A prescribes the procedure for the custody of property attached under section 55. We think that this rule should be suitably amended in respect of the attachment of immovable property. In connection with this section we also beg to point out that there should be two steps for attachment before award since the time factor is important. In our opinion, the objective would best be served if the conditional attachment be accompanied by a show cause notice and the demand for adequate security so that if the Registrar or his nominee is not satisfied with the explanation as a result of the issue of notice he can confirm the order. In the case of attachment of property the position of parties having rights prior to the attachment will have to be safeguarded. Similarly, it would be necessary not to bar a person holding a decree against a person whose property is attached from applying for the sale of property so attached.

329. To give effect to our proposals, section 55 requires to be amended. The section as amended will read as under :—

SECTION 91—Attachment before award.—(1) Where a dispute has been referred to the Registrar or his nominee or board of nominees under section 89 or under section 101 or where the Registrar or the person authorised by him under sub-section (2) of section 85 hears a person against whom the charges are framed under section 85(1), the Registrar or his nominee or board of nominees or the person authorised by him under section 86(2) as the case may be, if satisfied on enquiry or otherwise that a party to such

dispute or against whom proceedings are pending under section 85, with intent to delay or obstruct the execution of any award or the carrying out of any order that may be made :

(a) is about to dispose of whole or any part of his property ; or

(b) is about to remove whole or any part of his property from the jurisdiction of the Registrar may, unless adequate security is furnished, direct conditional attachment of the said property ; and such attachment shall have the same effect as if made by a competent Civil Court.

(2) Where the Registrar or his nominee or board of nominees or the person authorised by him under section 85(2) directs conditional attachment of property under sub-section (1), he shall issue a notice calling upon the person whose property is so attached to furnish security which he thinks adequate within a specified period and if the person fails to provide the security so demanded the Registrar or his nominee or board of nominees or the person authorised, as the case may be, may confirm the order and, after the decision in the dispute or the completion of the proceedings referred to in sub-section (1), may direct the disposal of the property so attached towards the claim if awarded.

(3) Attachment made under sub-sections (1) and (2) shall not affect the rights subsisting prior to the attachment of property under sub-section (1) of persons not parties to the proceedings in connection with which the attachment is made nor bar any person holding a decree against the person whose property is so attached from applying for the sale of the property under attachment in execution of such decree

330. *Decision of Registrar, his nominee and Board of Nominees.*—The Bombay Act does not provide for an award, but deals with appeals against an award. Rule 34, however, provides for the payment of expenses of arbitration. It is also a moot point whether the award made after the time fixed by the Registrar can be valid. We think it is desirable to cover these matters in a separate section. Since the existing section 54(2) (i), relevant provisions of which have been incorporated in the proposed section 89(2) (i) prescribes that the dispute has to be decided within two months or such further period as may be allowed by the Registrar, any decision not given within the specified period is likely to be invalid, the Tribunal has, however, held that so long as the case is not withdrawn, the extension of the term is implied. At any rate, the legal position needs to be clarified. Administrative difficulties may not ensure the extension of the period for hearing the dispute before the expiry of such period. On the other hand if the award is to be vitiated by the expiry of the period, the dispute will be unnecessarily prolonged, the parties will be put to unnecessary hardship and expenses and the ends of justice will be defeated. We, therefore, think that

a provision is necessary for validating such award. It is also necessary to provide for matters to be covered by the award such as the subject of the dispute, expenses of the parties and the cost of arbitration, Section 57 of the present Act bars the legality of award being questioned in any Civil or Revenue Court. We have included this section in the proposed new section.

331. As regards finality of the award, in Bombay the award is final once it is given by the Registrar or his Nominee and the machinery ceases to exist once the award is made. Under Section 51(3) of the Hyderabad Act, the award becomes final only after the Registrar's approval. This practice is in operation in Marathwada and probably owes its existence to the absence of any machinery for appeal against the award. In Bombay facilities are available for an appeal to the Tribunal. Besides, the provision for Registrar's approval would mean unnecessary delay. We, therefore, do not consider it necessary that the award should be final only after it is approved by the Registrar. The Section as amended and numbered 92 reads as under :—

SECTION 92—Decision of Registrar or his nominee or Board of Nominees.—(1) When a dispute is referred to arbitration, the Registrar or his nominee or board of nominees may, after giving reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and the fees and expenses payable to the Registrar or his nominee or board of nominees, as the case may be. Such an award shall not be invalid even though it may have been made after the expiry of the period fixed for deciding the dispute by the Registrar and shall, subject to appeal or review or revision, be binding on the parties to the dispute. The award so made shall not be liable to be called in question in any Civil or Revenue Court.

332. *Appeal against the decision of Registrar, his nominee and Board of nominees.*—The provision for appeal against the decision of the Registrar or his nominee has been made in section 56. It lays down "that any party aggrieved by the decision of the Registrar or his nominee under section 54 or an order passed under section 55 by the Registrar or his nominee or person authorised by him, may within two months appeal to the Tribunal against the decision or order". There are two provisos which relate to appeals filed before the Registrar prior to April 1948 or which could have been filed had the Tribunal been in existence. These provisions were made in 1948 when this section was introduced. We think that these provisions are now redundant and recommend their deletion. Prior to the deletion of section 54(a) the Tribunal had also the power to modify, correct or remit award made by a Board of Arbitrators. Because the proviso for Board of Arbitrators has been deleted, we are informed, this section has also been totally deleted. We are of the view

that even in respect of awards made by the Registrar or his nominee, it is necessary to invoke this section in order to ensure proper dispensation of justice. We, therefore, recommend that existing section 56 and the deleted section 54-A be combined into one.

333. The only point that remains is whether the provision for appeal should be incorporated in the Chapter on appeals, or should follow the section providing for the award. Though strictly speaking this section should go in the Chapter on appeals, we are inclined to think that for the sake of convenience it would be desirable to incorporate it in this Chapter. It has been represented to us that the Registrar's powers under the existing Section 50-A are very extensive and the parties aggrieved have no remedy against his orders except to appeal to the State Government. The procedure is judicial in nature, but the action is administrative. The emphasis on the latter has apparently resulted in the provision for appeal to the State Government. At the same time, the fact remains that innocent parties must get sufficient relief in the matter of getting justice. In the Bengal Co-operative Societies Act, the aggrieved party can appeal against the Registrar's decision in this respect to the District Judge. This procedure is, however, likely to be prolonged, cumbersome and costly. Further there is no Co-operative Tribunal constituted in Bengal under their Co-operative Act. All the members of the Committee, except the Member-Secretary, who is Joint Registrar, Co-operative Societies, Bombay State, are of the view that the issue being justifiable, should be appealable to the Tribunal. The Member-Secretary is of the view that by making the administrative order of the Registrar appealable to the Tribunal, the Registrar's action is likely to be curbed. The appointment of an Auditor, Enquiry Officer or an Officer to inspect the books, is made by the Registrar, who has also to see that the defects in the working of a society are rectified. Action under Section 50-A is only incidental to the Registrar's efforts to get the defects rectified and to see that the society is reimbursed for the loss sustained as a result of the action of the delinquent members of the Committee. Under the existing Act, a speedy and less costly machinery is also assured. We concede to the force of the argument of the Member-Secretary, but beg to point out that the possibility of the Registrar erring on the wrong side while trying to safeguard the interests of the society, cannot be totally dismissed. At any rate, the issue has to be decided after considering all the available evidence and a judicial mind cannot only take a dispassionate view of the issue, but its decision can also be accepted as one doing full justice to the aggrieved parties. As regards costs, we are of the view that by providing an appeal to the Tribunal instead of to the State Government, the cost is not likely to increase appreciably, and the aggrieved party will have the consolation that he received a fair trial. Subject to the dissent of the Member-Secretary, we, therefore, recommend that Section 56 be renumbered as Section 93 after deleting the proviso therein and after adding relevant features

of Section 54-A which have been deleted by the amendment of 1956 and should read as under :—

SECTION 93—Appeal against the decision of Registrar or his nominee or board of nominees.—(1) Any party aggrieved by any decision of the Registrar or his nominee or Board of nominees under Section 92 or an order passed under Section 91 by the Registrar or his nominee or board of nominees or the person authorised by the Registrar under section 85 (2), may, within two months from the date of the decision or order or award, appeal or apply to the Tribunal and the Tribunal may for reasons to be recorded in writing—

(i) modify the award, or

(ii) set aside the award and order that the dispute shall be referred back to the Registrar or his nominee or board of nominees or the person authorised by the Registrar under Section 85 (2) in the manner provided.

(iii) pass such orders thereon as it deem fit ;

Provided that no such order shall be made (a) after the issue of a certificate under Section 94 for the execution of the award and (b) except on any of the following grounds :—

(i) the objection to the legality of the award is apparent on the face of it ; or

(ii) the award has been vitiated in consequence of corruption or misconduct on the part of the Registrar or his nominee or board of nominees or the person authorised by the Registrar under Section 85 (2) ; or

(iii) the award is in any way perverse.

(2) In making an order under sub-section (1) that the dispute shall be referred back to the decision of the Registrar or his nominee or board of nominees or the person authorised by the Registrar under Section 85(2), the Tribunal may direct that any of the persons who made the award shall not decide the dispute or pass the order under Section 91.

(3) Where a dispute or an order under Section 91 is referred back under sub-section (1), the Registrar or his nominee or board of nominees or the person authorised under Section 85 (2), as the case may be, shall make a fresh award or give a fresh decision within such time as may be fixed by the Tribunal. If the Registrar or his nominee or board of nominees fails to make a fresh award or the person authorised fails to give a fresh decision within the time so fixed, the Registrar or his nominee or board of nominees or a person authorised by him, appointed for the purpose

shall decide the dispute or make a fresh order and the Tribunal may on the application of any of the parties to the award or decision or otherwise for reasons to be recorded in writing modify the award or pass such orders thereon as it deems just.

(4) Notwithstanding anything contained in sub-section (1) the Tribunal may admit any appeal or any application relating to an award made under Section 92 or an order made under Section 91 after the expiry of the said period of two months provided the appellants or the applicants satisfy the Tribunal that he had sufficient cause for not making the application within the said period.

334. *Mode of execution of awards and orders.*—Section 59 of the Bombay Act dealing with “money how recovered” deals with the subject matter. From the contents of this Section, it is obvious that it prescribes the mode of execution of awards and orders. We, therefore, prefer the latter wording to the existing one in respect of marginal heading. We may add that Section 60 of the Hyderabad Act presently applicable to Marathwada has “Mode of execution” as the marginal heading. This Section covers orders passed by liquidator under the existing Section 50, by the Registrar under the Section 50-A, and by the Registrar or his nominee on disputes referred to him under the existing Section 50 and 54 and every order passed in appeal under the existing Section 56, every order passed in revision under the existing Section 63-A, and every order passed by the State Government in appeal against order passed under Section 50. Such orders on a certificate signed by the Registrar or a liquidator be deemed as decree of a Civil Court and shall be executed in the same manner as the decree of the said Court or be executed as if they were for the recovery of arrears of land revenue. In the latter case an application has to be made to the Collector within 12 years from the date fixed in the order or from the date of the order and has to be supported by a certificate from the Registrar.

335. The first point to be noted in this connection is that only two channels for recovery are available. Besides the Civil Court and the Revenue Officers, in several States the recovery can be effected through the Registrar. In Madras under Section 57-A of the Madras Co-operative Societies Act, the Registrar is empowered to effect the recovery. One of the grievances of societies is that the method of recovery through the Collectorate is dilatory and the delay is unduly excessive with the result that the prospect of recovery becomes dim and the bottom is knocked out of the whole machinery built up for fixing the liability and effecting the recovery of dues of the society. The main reason for this is the shortage of Recovery Officers in the Collectorates compared to the volume of work they have to handle. True, the facility of appointing Special Recovery Officers is available, but it is not always that every society can take the advantage. This

difficulty is all the greater in the case of societies which have hardly a few awards to be executed. It may be noted that the cost of execution of award is the first charge on the money recovered and the scale of fees is adequate. We, therefore, urge the Government to assess the adequacy of the existing machinery for recovering money through the Collectorates and strengthen it, so that the distinction between Recovery Officers and Special Recovery Officers can disappear and all societies, irrespective of their size or the number of awards, they send for execution, can take advantage of this section. We, however, view the problem from a different angle. Under this Act, the Registrar has been acknowledged as the *Trimurti* and controls the legal frame-work within which societies have to function. We, therefore, submit that it is not proper that only one aspect of the legal frame-work, viz., the execution of awards and orders, should be entrusted to the Collectorate. We, therefore, commend the relevant proviso in the Madras Act to which we have referred earlier. To achieve this purpose an appropriate action might be necessary under the Land Revenue Code. We suggest to the Government to examine this aspect if our recommendation is accepted.

336. We have received certain suggestions in connection with the operation of the existing Section. A plea has been made that the Civil Court referred to in the Section should be defined. This is in our opinion, redundant. The second suggestion is that provision should be made for enabling a society in Bombay State to recover its dues from members who might have migrated to other States mainly as a result of the Reorganisation of the States. A similar provision was made under Section 57(c) in the Madras Co-operative Societies Act, when the Andhra State was created. We consider that this is unnecessary since there are only a few societies whose members have migrated and in their case the awards can be sent by the Registrar of Co-operative Societies in Bombay State to the Registrar of any other State for execution. Another suggestion is that the cost of enquiry should be recoverable under this Section. The officials of the co-operative Department are unanimous that the present method of recovering it through a Magistrate is more effective. We do not, therefore, favour any change. The fourth suggestion is that the execution of awards passed by the Registrar's nominee should not be held up till the period of appeal expires and they should be executed immediately on their delivery without impairing the rights of appeal of the aggrieved party. The main argument is that the decrees of the Civil Courts are executable as soon as they are passed. In the latter case a stay order can, however, be obtained. We are afraid that the members of a society may not be necessarily prompt to seek such a stay order from the Tribunal and the Tribunal itself being located in Bombay, the cost of moving the Tribunal will itself be heavy. We, therefore, reject this suggestion. At present applications for execution have to be made within 12 years from the date fixed in the order or the date of the order. This period is too

long and is one of the causes of lethargy on the part of the societies in sending the awards for execution. We, therefore, recommend that as a beginning towards progressive reduction of the period, the words "12" be substituted by the word "5"

337. Besides the points discussed above, certain consequential changes including those relating to the number of the sections, are necessary. We, therefore, recommend that Section 59 be deleted and a new Section — Section 94, be added as under :—

SECTION 94—*Mode of execution of awards and orders.*—Every order passed by a Liquidator under Section 101 or by the Registrar or his nominee or a board of nominees under Sections 92 or clause (1) of Section 91, or by the Registrar under Section 85, every order passed in appeal under Section 93, every order passed in revision under Section 147 and every order passed by the State Government in appeal against orders passed under Section 145 shall, if not complied with on a certificate signed by the Registrar or a Liquidator, be deemed to be a decree of a Civil Court, and shall (a) be executed in the same manner as a decree of such Court, or (b) be executed according to the Law and under the Rules for the time being in force for the recovery of arrears of land revenue, provided that an application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar, or (c) be executed by the Registrar or any persons subordinate to him empowered by the Registrar in this behalf, subject to such Rules as may be prescribed by the State Government and without prejudice to any other mode of recovery provided in this sub-section :

Provided that no application for the execution of the orders referred to herein shall be made after the expiry of 5 years from the date fixed in the order or if no such date is fixed, from the date of the order.

338. *Recovery of crop loans.*—Since 1948 the provision of crop finance on the security of crops to be raised has assumed considerable significance. The scheme itself was conceived in 1948 and it was felt at that time that the machinery for recovering such dues should act speedily. With this aim in view section 59-B of the Act of 1925 was amended so as to extend the scope of its facilities to resource societies undertaking financing of crop and seasonal finance. The original section was inserted in 1943 in order to enable the land mortgage banks to recover promptly the defaulted instalments. Thus the section, as at presently worded, is used by both land mortgage banks and resource societies. Since we propose to have a separate Chapter in the Act for land mortgage banks wherein we propose to recommend the same facilities as are available under this

Section to such banks, we recommend that the operation of this section should be confined to resource societies engaged in providing seasonal finance. The section as it is worded leaves the initiative to societies only and if the management is slack or is prompted by an ulterior motive, it may be that the facility provided by this Section will not be availed of by the society. Our attention has been drawn to this particular aspect of the operation of the Section by some of the central banks in the State. The suggestion made is that in such a contingency the department should have the authority to take action *suo moto*. Thus the Central banks can represent to the Registrar and his officers for seizing the initiative. The suggestion, in our opinion, should help all concerned to tone up the administration of primary agricultural societies and we accept it. For reasons explained above, we recommend that the Section 59-B be deleted and a new Section No. 95 be added as under :—

SECTION 95—Recovery of crop loans.—(1) Notwithstanding anything contained in Sections 87, 89 and 94 on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors' Relief Act, 1947, for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) Where the Registrar is satisfied that a resource society has failed to take action under sub-section (1) in respect of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance, the Registrar may, of his own motion, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears and such a certificate shall be deemed to have been issued as if the application was made by the society concerned.

(3) A certificate granted by the Registrar under sub-sections (1) and (2) shall be final and a conclusive proof of the arrears stated to be due therein and the same shall be recoverable according to the law for the time being in force for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by Section 140 to 144 of the Bombay Land Revenue Code, 1879, until the arrears due to the resource society together with interest and any incidental charges incurred in the recovery of such arrears are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar.

339. *Private transfer of property made after issue of certificate void against society.*—There is a time lag between issue of a certificate under the preceding section and the execution of the award.

During this period there is a danger of the person against whom the award is to be executed, transferring his property or mortgaging it with a view to defeating the purpose of the award itself. It is this contingency which has been provided for under section 59-AA of the Bombay Act. True, the public has to be protected against the possibility of being taken unawares of the existence of the issue of the certificate. Rule 49 has, therefore, been provided for the issue of proclamation to warn *bonafide* purchasers in time. The only difficulty is that there is no protection to the society against fraudulent transfer of property during the pendency of the enquiry, inspection, audit and liquidation proceedings. It is during this period that a guilty person becomes aware of the danger to his interest and can arrange for the transfer of his property long before the certificate is issued and such a transfer will be legal under the existing Act. The existing law, however, provides for attachment before award and, to that extent, precautionary measures can be taken against such a contingency. We, therefore, do not recommend any change in this section except consequential ones for renumbering the section. The new section, numbered 96, will read as under :—

SECTION 96—*Private transfer of property made after issue of certificate void against society.*—Any private transfer or delivery of, or encumbrance or charge on, property made or created after the issue of the certificate of the Registrar, Liquidator, or Assistant Registrar, as the case may, be under section 94 shall be null and void as against the society on whose application the said certificate was issued.

340. *Transfer of property which cannot be sold.*—In the process of recovery of dues of societies it may be necessary to sell a property ; but if buyers are not there, the sale becomes impossible. In rural areas particularly when a person whose property is to be sold is influential, buyers are scared with the result that the society is left with no remedy to recover its dues. The position also holds good in respect of recovery against other orders of the Registrar. To provide for such a contingency and to ensure the execution of the order, section 59-A of the Bombay Act, lays down that such a property may, with the previous consent of the Registrar, be transferred to the society which has applied for the execution of the order. It further provides that the society shall hold the property on such terms and conditions as may be agreed upon between the society and the Court or the Collector so as to protect the existing rights and encumbrances. The Collector can delegate his powers to his subordinate officers. The procedure for the transfer of property in these circumstances has been laid down in Rule 50.

341. So far as the existing section is concerned, we beg to point out that under section 92, we have recommended that the order

can be executed by the Registrar. Consequently, along with the Court and the Collector the Registrar must also have the power to direct the transfer of property. Secondly we are unable to understand the propriety of requiring "the previous consent of the Registrar" for the purpose of such a transfer when the Court or the Collector under the existing section, is satisfied that the property cannot be sold. In our opinion, the authority which puts the property to sale is in a better position to take the decision than the Registrar. We, therefore, recommend that the words "with the previous consent of the Registrar" be deleted. The section further lays down that the property can be transferred only to the society "which has applied" for the execution of the order. In certain circumstances, it may be necessary for the Registrar himself to apply for the execution of the order. In such an event it will not be open to the Court or the Collector under the existing section to transfer the property. To overcome this difficulty we recommend that the words "or on whose behalf an application has been made" be added between the word "applied" and the word "for". Under sub-section (3) the Collector can delegate his powers to the subordinate officers. Since the Registrar is to exercise in accordance with our recommendation the same powers, the sub-section will have to be amplified for the purpose. We recommend accordingly.

342. One of the major difficulties in connection with the sale of a property or the transfer of property under this section is that the party entitled to acquire the property experiences difficulty in the process of acquisition with the result that in the case of a sale, the right price of the property is not realised and in the case of transfer of property to the society under this section it becomes difficult for it to get the possession of the property. This difficulty has been experienced in other States as well. The Madras Committee on Co-operation, 1955-56, which examined this particular aspect came to the conclusion that provision for affecting delivery of possession of property requires to be made because in its absence, parties would have to go to the Civil Court for possession and would be put to unnecessary expenses and inconvenience. We agree with this view and endorse the provision recommended by it. Other changes are consequential and verbal. We, therefore, recommend that section 59-A be renumbered as section 97 and be read as under:—

SECTION 97—*Transfer of property which cannot be sold.*—
 (1) When in any execution of an order sought to be executed under section 94, any property cannot be sold for want of buyers, if such property is in occupancy of the defaulter or of some person in his behalf or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Liquidator or the Assistant Registrar, under clause (a) or (b) or (c) of section 94, the Court of the Collector or the

Registrar, as the case may be, may direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order in the manner prescribed.

(2) Where a property is transferred to the Society under sub-section (1) or where a property is sold under section 94, the Court, the Collector or the Registrar, as the case may be, may, in accordance with the Rules prescribed, place the society or the purchaser, as the case may be, in possession of the property transferred or sold, by removing, if necessary, any person bound by the decision or award.

(3) Subject to such rules as may be made in this behalf and to any rights, encumbrances, charges or equities lawfully subsisting in favour of any person such property or portion thereof shall be held under sub-section (1) by the said society on such terms and conditions as may be agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society. Subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of an Assistant or the Deputy Collector or the Assistant Registrar, powers exercisable by the Collector or the Registrar under this section.

CHAPTER XL

LIQUIDATION.

343. The Government of India Act of 1912 had provided for the bare necessities in connection with the dissolution of a society. It enabled the Registrar after an enquiry or an inspection or on an application from the members to cancel the registration of a society if he is satisfied that the Society is or ought to be dissolved. It also authorised him to cancel registration of a society if the number of its members was less than 10. The other sections provided for the consequences of cancellation such as the ceasing of a society as corporate body and the appointment of a competent person to be liquidator with certain powers and left the details to the local Governments for being prescribed under the Rules. In the bill to enact the Bombay Co-operative Societies Act, 1925, however, the Government of Bombay decided to amplify the provisions so as to bring them in conformity with the provisions in the Indian Companies Act, 1913, which was then in operation. The relevant sections in this Act deal with (1) the circumstances in which the Registrar may order the winding up of a Society, and appoint a liquidator and fix his remuneration, (2) the effect of the order on past members and estates of deceased members, (3) effect of cancellation of registration, (4) powers of Liquidator, (5) bar of suit in the winding up and dissolution matters, and (6) disposal of surplus assets.

344. Since these provisions were incorporated in the Act, the Companies Act has been consolidated and the Co-operative Movement has also grown both in size of individual societies and collectively and the problem arising from the winding up of societies have also been complex. We have, therefore, come to the conclusion that provisions relating to liquidation and incidental matters should be codified and brought in line with the provisions of the Companies Act, 1956. One of the major complaints is that liquidation proceedings are prolonged for years and there is no proper check on them. To the extent the Law should and can overcome the difficulties, we have recommended the necessary measures such as a provision for appointing a liquidator for an interim period, audit of liquidator's accounts and his reports, as well as for withdrawal of a winding up order and termination of liquidation proceedings. The liquidator's title has, therefore, also been dealt with. But in our opinion, the solution can be effective if the provisions in the law are reinforced by decisions involving administrative policies. Although this aspect is not within our purview, we wonder whether the time has not come for exploring the possibility of appointing official liquidators under the control of Registrar. It may also be possible to appoint federal societies as Joint Liquidators. We are emphatic that no individual from amongst the non-officials should be appointed.

345. *Winding up.*—Sections 47 and 48 of the Bombay Act deal with the circumstances in which a society can be ordered to be wound up by the Registrar. These Sections have been derived from the Act II of 1912. A question has been raised as to whether the Registrar is competent to issue an order for the winding up of a society without giving an opportunity to the society to explain its conduct. In a recent case the State Government, on an appeal from a society, annulled the order of the Registrar on the ground that the society was not given an opportunity to be heard. This is a decision based on equity and justice, and in conformity with the view taken by the Courts that no person, individual or institution, can be adjudged without being heard. At the same time, there is one danger in providing such an opportunity inasmuch as the office-bearers of the society concerned get an intimation in advance of the Registrar's intention and, if they wish, can take steps to destroy the records or evidence on the basis of which the Liquidator can take steps against them for the recovery of the society's dues. We are of the view that the Law must provide for giving an opportunity to the society to be heard and, at the same time, take care to ensure that the office-bearers do not take undue advantage of this opportunity. We, therefore, recommend that the Registrar should first issue an interim order for the winding up of a society and confirm it, if he is not satisfied with the explanation of the society. During the period the interim order is in force the liquidator will be, under the proposal made by us, in charge of the affairs of the society, but will not proceed with the winding up of the society. He will assume the latter functions only after the order is confirmed and will hand-over the affairs of the society to the Committee if the interim order is vacated.

346. The second point is whether a copy of the order should be sent to the financing bank and any other federal society. In other States, a similar provision exists. In Bombay State, the Registrar, by convention sends such a copy to the financing bank. The reform introduced in the Co-operative Societies Act in 1948 was specifically aimed at the "de-officialisation" of the Movement. From this point, the law should have logically provided for enabling a federal society to get a copy of the order in respect of its affiliated society especially when it has already thrown the obligation on Federal societies of getting certain defects in affiliated societies rectified. We are divided over the right of a federal society to such an order. Some of us feel that it is unnecessary; others think it is absolutely necessary, since a federal society has a vital interest in the affairs of its affiliated societies. The convention has struck a happy compromise. We have, therefore, unanimously come to the conclusion that no provision is necessary either for conferring or denying the right to a Federal Society and have, therefore, no recommendation to make on the subject.

347. The Law is silent as to who should receive the order on behalf of the society. We think that this is a matter which can be best provided for in the Rules along with the procedure for the issue of such an order. It is also necessary to clarify when the order is effective. We find that a relevant provision has been made in the Hyderabad Co-operative Societies Act, which is presently applicable to Marathwada. As regards, the circumstances which can culminate in the issue of an order, we beg to point out that the Registrar is not at present permitted to issue such an order on the basis of the Auditor's report with the result that he (Registrar) has to order a fresh enquiry or inspection of books before passing such an order. This duplication of work is unnecessary and we have deemed it necessary to include the auditor's report as also the basis for issuing the order. Section 48 of the Bombay Act refers to only one condition of registration being not fulfilled. As a result, a society which may fulfil only that particular condition laid down in the section will be allowed to function even if it may violate other conditions of registration. We, therefore, think that it is necessary to widen the scope of this proviso, so that the controversy over the basis of his order can be completely set at rest.

348. In view of the above changes, we recommend that existing Sections 47 and 48 be deleted and new Section 98 be incorporated as under :—

SECTION 98—*Winding up.*—(1) If the Registrar,

(a) after an enquiry has been held under Section 80 or an inspection has been made under Section 81 or on the report of the Auditor auditing the accounts of the society ; or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a Special General Meeting called for the purpose ; or

(c) of his own motion in the case of a society which—

(i) has not commenced working ; or

(ii) has ceased working ; or

(iii) possesses shares or members' deposits not exceeding Rs. 500 ; or

(iv) has ceased to comply with any condition as to registration and management in this Act or the Rules or the byelaws.

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under sub-section 1(a) and sub-section 1(c)(iv) shall be communicated, in the prescribed manner to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society to be heard, may issue a fresh order, which shall be called a final order vacating or confirming the interim order.

349. *Appointment of Liquidator.*—In this section we propose to provide for the appointment of a liquidator and the fixation of his remuneration as well as for his functions during the period for which the interim order is in force and for the period during which the society has an opportunity to appeal to the State Government, and get its decision. His main functions for this period are to hold in safe custody the records and account books of the society, and to continue the business of the society so far as is necessary during the interim period. We beg to point out that section 441 of the Companies Act states that the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition of the winding up. We, therefore, recommend that a new section, section 99, be added as under:—

SECTION 99—*Appointment of Liquidator.*—(1) When an interim order is passed under section 98(1) for the winding up of a society, the Registrar may, in accordance with the Rules, appoint a person to be provisional Liquidator of the society and fix his remuneration.

(2) On issue of the interim order, the Officers of the society shall hand over to the provisional Liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled and of all books, records and other documents pertaining to the business thereof and shall have no access to any of them.

(3) When a final order is passed under section 98(2) confirming the interim order, the Registrar may appoint in the manner prescribed, the person appointed under sub-section (1) or any other person as Liquidator of the society. Upon the appointment of the Liquidator, the officers of the society shall vacate their office, and while the winding up order remain in force, the general body of the society shall not exercise any powers.

(4) The person appointed under sub-section (1) as provisional Liquidator or as Liquidator under sub-section (3) shall subject to the general control of the Registrar, exercise all or any of the powers mentioned in section 101. The Registrar may remove such person and appoint another in his place without assigning any reason.

(5) The whole of the assets of the society shall, on the appointment of provisional Liquidator under sub-section (1) or Liquidator under sub-section (3), vest in such provisional Liquidator or Liquidator as the case may be and notwithstanding anything contained in any Law for the time being in force, if any landed property is held by a provisional Liquidator or Liquidator, as the case may be, on behalf of the society, the title over the land shall be complete as soon as the mutation of the name of his office is effected and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.

(6) In the event of the interim order being vacated, the person appointed as provisional liquidator shall hand over the property, effects and actionable claims and books, records and other documents of the society to the officers who had delivered the same to him. The acts done and the proceedings taken by the provisional liquidator shall be binding on the society and such proceedings shall, after the interim order has been cancelled under section 98(2), be continued by the officers of the society.

350. *Appeal against the order.*—Section 64 provides for appeal against the order of liquidation. It also covers other types of appeal. In this section, nothing has been mentioned as to who is competent to file an appeal. We are of the view that besides officers of the society, members, who have stake in it should also be entitled to appeal on payment of cost of hearing the appeal. We, therefore, recommend a separate section which should be numbered as section 100 and read as under:—

SECTION 100—*Appeal against the order of winding up.*—The Committee or any member of the society ordered to be wound up may within 2 months from the date of the issue of the order made under section 98 appeal to the State Government, if the order is made by the Registrar or to the Registrar if the order is made by any person on whom the powers of the Registrar are conferred, provided that no appeal shall lie against an order, issued under sub-section 1(c), (i), (ii), (iii) of section 98 :

Provided that no appeal shall be against an order passed by the Registrar on appeal.

Explanation.—No application under this section shall be entertained from a member unless it is accompanied by such sum as security for the cost of hearing the appeal as may be prescribed.

351. *Powers of liquidator.*—Once the liquidator has been appointed, it is necessary to provide for his powers. This has been done in Sections 50 and 58 of the Bombay Act. His powers at present include (a) payment to creditors and compromise with them, (b) compromise in respect of claims on the society and all questions affecting its winding up, (c) determination of the contribution to be made by members, (d) instituting and defending legal proceedings, (e) issue of requisitions for recovery of dues and contribution to the assets of the society, (f) referring disputes to arbitration, and (g) enforcing the attendance of witnesses, etc. It is not clear from the section whether he has to obtain prior sanction of the Registrar for exercising any of the powers. We have provided in the supervision section that he shall be subject to the control of the Registrar, and we are of the view that safeguard is adequate. But if a provision is to be made for the prior sanction of the Registrar in respect of such and every action, we are afraid, the liquidator will not be able to function effectively or efficiently. As regards powers, it is necessary

specifically to provide that he is competent to determine dues of members or a past member, since some Civil Courts in Madras have held that the Liquidator has no such power under the present Act. We think it also necessary to provide for enabling him to apply for the enforcement of the order to any Civil Court, having legal jurisdiction and also to the Registrar who, under our recommendations, is also empowered to effect recovery. It is also necessary to incorporate clause (1) as a provision so that he can do all acts and execute all documents necessary to such winding up.

352. We have made recommendations under section 98 for 2 orders and there is a provision for appeal as well. A question has been raised as to when the liquidator can take steps to liquidate the affairs of the society. The Co-operative opinion differs in this subject. One view is that unless an appeal is disposed of or the period of appeal expires, the order is not strictly effective and, therefore, the liquidator should not take any steps to liquidate the society. This view is fair, because in the event of an appeal being upheld, the society is put to unnecessary trouble and suffers in prestige. The other view is that the appeal may be upheld only on technical grounds since no Registrar would pass the order unless he is satisfied that there is a *prima facie* case for the winding up of a society. In actual practice, the liquidator will take some time to study the records, etc., and is not therefore, likely to be in a position to take any effective steps for winding up until he is in possession of all facts. The issue of notices to creditors can however wait till the expiry of the period for appeal. In drafting the section, however, we do not wish to restrict the freedom of the liquidator because in specific cases, the authority hearing the appeal or the Registrar competent to issue the final order can restrain the liquidator from proceeding with the winding up of the society. We have also taken precaution of drawing a distinction between a provisional liquidator and a liquidator in section 98.

353. We therefore, recommend that section 50 be renumbered as section 101 and be read as under:—

SECTION 101—*Powers of liquidator.*—The liquidator appointed under Section 99 shall have powers, subject to the Rules and the general control of the Registrar (a) to institute and defend any suit and other legal proceedings, civil or criminal on behalf of the society in the name of his office; (b) to carry on business of the society so far as may be necessary for the beneficial winding up of the same; (c) to sell the immovable and movable property and actionable claim of the society by a public auction or private contract with power to transfer whole or part thereof to any person or body incorporate or sell the same in parcels; (d) to raise on the security of the assets of the society any money required; (e) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising out

of such claims, and to pay any class or classes of creditors in full or rateably according to the amount of such debts, the surplus, if any being applied in payment of interest from the date of liquidation at a rate to be approved by the Registrar, but not exceeding the contract rate; (f) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the society may be rendered liable; (g) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt, or claim and give a complete discharge in respect thereof; (h) to determine from time to time, after giving an opportunity to answer the claim, the contribution to be made or remaining to be made by the members or past members or by the estate, nominees, heirs or legal representatives of deceased members or by any officer, past officer or the estate or nominees, heirs or legal representatives of deceased officer to the assets of the society, such contribution being inclusive of debts due from such members or officers; (i) to issue requisitions under section 94; (j) to get disputes referred to the Registrar for decision by himself or his nominee or board of nominees; (k) to determine by what person and in what proportion the cost of the liquidation shall be borne; (l) to fix the time or times within which the creditor shall prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved, (m) to summon and enforce the attendance of witnesses and to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the society by the same means and in the same manner as is provided in the case of a Civil Court under the code of Civil Procedure, 1908; (n) to do all acts and to execute in the name and on behalf of the society all deeds, receipts and other documents as may be necessary to such winding up :

Provided that no liquidator shall determine the contribution, debt or dues to be recovered from a member or a past member or the representative of a deceased member unless opportunity has been given to such member or past member or to such representative to answer the claim.

354. *Withdrawal of final order.*—We have already provided in Section 99 for the effect of an interim order being vacated. In the case of the final order there are two contingencies. Firstly

equity demands that the person passing the order should also have the power to cancel it. Secondly the appellant authority has the right to rescind the order. We have provided for the appeal in Section 100. In either cases the effect of the final order being cancelled has got to be provided for in the Act. To meet these contingencies we propose a new section. The object of it is to lay down who can cancel the order, and after it is cancelled, what the Liquidator should do. In Bombay an order once issued cannot be cancelled and once an appeal is dismissed there is no remedy for the restoration of the society even though it might be desirable in certain circumstances, such as reconstruction, in the course of winding up proceedings. Our attention has been particularly drawn to the difficulty experienced by the members of a large-sized employees society which came to grief and was, therefore, ordered to be wound up but which the members are now anxious to reconstruct by putting in fresh capital. It is also necessary to provide as has been done under Section 99, that the acts of the liquidator should be binding on the society even after the liquidator hands over the charge and such proceedings should be continued by the society. Otherwise action taken in the interest of the society is not likely to be pursued. We, therefore, recommend that a new Section, Section 102, be added as under :—

SECTION 102—*Withdrawal of final order.*—The State Government or the Registrar, in an appeal under Section 100 and the Registrar of his own motion at any time may cancel the final order for the winding up of a society where the State Government or the Registrar in appeal or the Registrar of his own motion is of the opinion that the society should continue to exist. On the cancellation of the final order, the liquidator shall arrange for the constitution of a new Committee in accordance with the bye-laws of the society, if the Registrar so directs, or where the Registrar nominates a Committee, to the nominated committee and shall hand over to such committee the charge of the society. The acts done and the proceedings taken by the liquidator while the winding up order remained in force shall be binding on the society and such proceedings shall, after the winding up order has been cancelled, be continued by the Committee and officers of the society.

355. *Effect of order to wind up.*—After the final order for winding up is issued, three things follow. Firstly, though the status and powers of the society continue until it is dissolved, business is restricted to the extent of its beneficial winding up. Secondly, the liquidator shall proceed with the liquidation of the society and thirdly suits are stayed on winding up order. The last provision is in line with a similar provision in the Companies Act. We find that the Bihar and Orissa Co-operative Societies Act, 1935, provides for it

in Section 57. We have also provided for barring the Court from questioning the title of a Liquidator to the landed property. We, therefore, recommend a new Section 103 as under :—

SECTION 103—*Effect of order of winding up.*—(1) After the expiry of the period for appeal against the order made under Section 98 (1) or where the appeal has been dismissed, the order for winding up shall be effective and shall operate in favour of all the creditors and of all the contributories of the society as if it had been made on the joint petition of creditors and contributories. When a winding up order becomes effective the liquidator shall proceed to realise the assets of the society by sale or otherwise and no dispute shall be commenced or, if pending at the date of the winding up order, shall be proceeded with, against the society, except by leave of the Registrar and subject to such terms as the Registrar may impose. The Registrar may, of his own motion, however, entertain or dispose of any dispute by or against the society.

356. *Bar of suit in winding up and dissolution matters.*—This subject has been dealt with adequately by Section 51 of the Bombay Act. The only contingency is when the winding up order is cancelled under section 102. Once the order is cancelled, it is obvious that the provision in this section should cease to operate but it would be unfair to the Liquidator if he were to be subjected to Court proceedings or otherwise for his actions. We, therefore, recommend a suitable addition to Section 51 which, after being renumbered as Section 104, will read as under :—

SECTION 104—*Bar of suit in winding up and dissolution matters.*—Save in so far as is expressly provided in this Act, no Civil Court shall take cognisance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society or the liquidator except by leave of the Registrar and subject to such terms as he may impose :

Provided that where the winding up order is cancelled the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned but they shall continue to apply to the person who acted as Liquidator.

357. *Audit of Liquidator's accounts.*—The present position in respect of the Liquidator's work in Bombay State is most unsatisfactory. In many cases liquidation proceedings are dragged on for a number of years and though the Rules require that the Liquidator has to submit quarterly reports it is not always that this is done. The worst thing is that the members of the society in liquidation do not know

how the work of liquidation has been proceeding. Often times, the money belonging to the society in liquidation is not deposited in the Bank. To overcome the legal difficulties which do not take note of administrative problems, we propose that the law should impose certain obligation on the Liquidator on the lines of those in the Companies Act. These are the maintenance of account books in the prescribed form and getting them audited and circulated for the information of the members. We propose on the lines of Section 462 of the Companies Act, to empower the Registrar to dispense with the compliance of any of the provisions of the Section which we recommend below :—

SECTION 105—*Audit of Liquidator's account.*—(1) The Liquidator shall, at such times as may be prescribed but not less than twice each year during his tenure of office, present to the Registrar an account in the prescribed form of his receipts and payments as Liquidator. The Registrar shall cause the accounts to be audited in such manner as he thinks fit and for the purpose of the audit, the Liquidator shall furnish the Registrar with such vouchers and information as he or the person appointed by him may require.

(2) The Liquidator shall cause a summary of audited accounts to be prepared and shall send a copy of such summary to every contributory :

Provided that the Registrar may in the case of any winding up proceedings exempt the Liquidator from compliance with sub-section (2).

(3) The Liquidator shall pay such fees as the Registrar may direct for the audit of the accounts and books kept by him in the manner prescribed.

(4) The Liquidator shall be held liable for any irregularities which might be discovered in the course or as a result of audit in respect of transactions subsequent to his taking over the affairs of the society and may be proceeded against as if it were an offence under section 85.

358. *Liquidator's report.*—Rule 38 provides for the Liquidator's report in regard to the progress of the winding up proceedings. This report is required to be submitted every quarter. As mentioned in the preceding paragraph we are of the view that the members of the society should know how the Liquidator has been functioning. We concede that in either case a quarterly report need not be submitted to the members though the Registrar may need it when the proceedings are spread over a number of years but we are definitely of the view that the members should know at least once in six months about the state of affairs. On the lines of Section 455 of the Companies Act, we recommend the following new section, as Section 106.

SECTION 106—Liquidator's report.—(1) The Liquidator shall, as soon as practicable, but not later than six months from the date of the order made under Section 99, submit a preliminary report to the Registrar, (a) as to the estimated amounts of assets and liabilities, giving separately under the heading of assets, particulars of (i) cash and negotiable securities, (ii) debts due from contributories, (iii) debts due to the society and securities, if any, available in respect thereof, (iv) movable and immovable properties belonging to the society, and (v) the liability of members, past members, deceased members, and officers, past officers and deceased officers; (b) the causes of the failure of the society, and (c) where, in his opinion, action is necessary as to any matter relating to the promotion, formation or failure of the society, or the conduct of the business thereof.

(2) The Liquidator shall submit a half-yearly progress report to the Registrar, in such form as the Registrar may require.

(3) The report of the Liquidator under sub-section (2) to the Registrar shall be available for inspection to the members of the society in the office of the Liquidator during office hours.

Explanation.—For the purpose of sub-section (3) the office of the Liquidator shall be the office where the books of the society are kept and if there is no office, the residence of the Liquidator shall be considered as the said office of the Liquidator.

359. *Termination of liquidation proceedings.*—In the existing Act there is no provision governing the manner in which the Liquidation proceedings are to be terminated. The only reference is in Section 52 which deals with disposal of surplus assets and in Rule 38(9) which prescribes that the Liquidator shall summarise his proceedings, etc., before the general meeting. There is no period prescribed within which the liquidation has to be terminated. In certain States a period has been prescribed and this ranges upto three years on the commonsense view that the changes of recovery have to be ruled out after that period. The laws in certain States, however, permit the Registrar to extend the period. In Madras, the Committee, 1955-56 has proposed that after three years, the registration of the society may be cancelled but the process of winding up should be continued after cancellation. We are doubtful whether such provision will be legal since the society, in the process of winding up, has at least a legal existence but once its registration is cancelled, it totally disappears and the Liquidator cannot have any existence. We, therefore, opine that the liquidation proceedings should ordinarily be terminated within three years from the date of issue of order and, after providing for certain contingencies, compulsorily terminated at the end of seven years.

360. The second point to be noted is that the liquidation proceedings should be terminated only after the Liquidator submits his final

report to the Registrar and the said report is placed before the general meeting of the members of the society called for recording it and not for adopting it. We propose to provide for this by adding the following Section, as Section 107.

SECTION 107—Termination of liquidation proceedings.—(1) Where the order for winding up a society has not been withdrawn under Section 102, the winding up proceedings of the society shall be closed within three years from the date of the order of the winding up unless the period is extended by the Registrar :

Provided that the Registrar shall not grant any extension for a period exceeding one year at a time but four years in all and shall, immediately after the expiry of seven years from the date of the order for winding up of the society, deem that the liquidation proceedings have terminated and pass an order terminating the liquidation proceedings.

Explanation.—In the case of a society, which is under liquidation at the commencement of this Act, order for the winding up of the society shall be deemed for the purpose of this Section to have been passed on the date on which this Act comes into operation.

(2) Notwithstanding anything contained in sub-section (1), the Registrar shall terminate the liquidation proceedings on receipt of the final report from the Liquidator. The final report of the Liquidator shall state that the liquidation proceedings of the society have been closed and how the winding up has been conducted and the property of and claims of the society have been disposed of, and shall include a statement showing a summary of the account of the winding up including the cost of liquidation, the amount, if any, standing to the credit of the society in liquidation after paying off its liabilities including the share or interest of members and suggest how the surplus should be utilised.

(3) The Registrar, on receipt of the final report from the Liquidator, shall direct the Liquidator to convene a general meeting of the members of the society for recording his final report.

361. *Effect of cancellation of Registration.*—Section 49 of Bombay Act deals with the effect of cancellation of registration. This section provides for the cancellation of societies in respect of which a Liquidator may not have been appointed. We cannot visualise a society without a fund once it is registered. It may be, however, that in certain societies such as those, which have not commenced business, the quantum of funds may be negligible. We submit that once the society is registered, its liquidation should be under the supervision of the Registrar and, therefore, the appointment of Liquidator, may be for a day, is necessary. We have, therefore, ruled out already the possibility in Section 99 of no Liquidator being appointed for any

society ordered to be wound up. Section 49 of the Act of 1925 only provides for the cancellation of a society but it is silent on how the records, etc., in the possession of the Liquidators should be disposed of and how the society's affairs should be a closed book to its members and other persons. The existing section also misconstrues that the appointment of the Liquidator or the confirmation in appeal of order for winding up is by itself such at which the registration should be cancelled. This we submit needs to be clarified. We, therefore, recommend that Section 49 be renumbered as Section 108 and be amended as under :—

SECTION 108—*Effect of cancellation of registration.*—(1) On the termination of winding up proceedings as provided in Section 107 the Registrar shall make an order cancelling the registration of the society and the society shall be deemed to be dissolved and shall cease to be a body corporate by the name under which it was registered from the date of such order.

(2) All books, registers and accounts belonging to the society and all books, accounts and papers relating to its liquidation proceedings which are in possession of the Liquidator shall be delivered by the Liquidator to the Registrar or to such person as the Registrar may direct and no person will have any claim for inspection or otherwise on any of them.

362. *Disposal of surplus assets.*—Section 52 of the Bombay Act prescribes the manner in which surplus assets of a society whose affairs are wound up should be disposed of. Firstly, this section emphasises that the members will not be entitled to the surplus. Secondly, it says that it will be divided in accordance with the provisions in the byelaws or, in the alternative, in a manner prescribed in the section. A senior co-operator had represented to the Special Committee of the State Co-operative Council which had been appointed to examine the Act “the priority to an object of public utility over local or communal interest has created a suspicion among the rural people”. Our enquiry shows that this is far from correct. At the same time we are of the view that the words “public utility” are so wide that any object can be covered. It is not fair that such a wide object should have a prior claim on the surplus. According to equity and justice, the Co-operative Movement has a moral claim over such a surplus. The local interest has also to be safeguarded. A balance has, therefore, to be struck. In our opinion, the first claim should be of a society which is likely to be created on the ashes of the old one whose surplus is to be disposed of. If this is not possible within three years, then the surplus should be used for an object of public utility in the area of operation of the society to which the surplus belongs. The next claim should be that of a federal society having a similar object and of the Bombay State Co-operative Union, and finally a charitable purpose should have a claim over the surplus.

363. We are informed that in the absence of any specific period for the utilisation of the surplus, large funds of societies which, went into liquidation have been lying idle with the Registrar and we think that this surplus should be utilised for the benefit of the movement. In order, however, to prevent the accumulation of such funds in future, we think it necessary to provide for a time period at the appropriate stage. The original object of Section 52 of the Bombay Act was, to quote Shri J. A. Madan, the then Registrar, that "the general meeting of a society has got to decide in what way the surplus funds are to be disposed of and that decision has to be approved by the Registrar" : (Bombay Legislative Council Debates—official Report, July 25, 1925, page 477). This is probably one of the causes of the surplus being not utilised. In actual practice, the Registrar has the discretion. We have sought to confine the recommendation of the members in regard to their choice of an object of public utility and local interest, laid down priorities and have, subject to these two reservations, given the discretion to the Registrar. Accordingly, we recommend that Section 52 be renumbered as Section 109 and be read as under :—

SECTION 109.—Disposal of surplus assets.—The surplus assets, as shown in the final report of the liquidator of a society which has been wound up, shall not be divided amongst its members but shall be devoted to any object or objects, provided in the byelaws of the society if they specify that such a surplus shall be utilised for the particular purpose. Where the society has no such byelaws, the surplus shall vest in the Registrar who shall hold it in trust and shall transfer it to the reserve fund of a new society registered with the similar object and serving more or less an area which the society to which the surplus belonged was serving :

Provided that where no such society exists or is registered within three years of the cancellation of the society whose surplus is vested in the Registrar, the Registrar may distribute the surplus in the manner he thinks best among any or all of the following :—

(a) an object of public utility and of local interest, as may be recommended by the members in general meeting held under Section 107 (3) ;

(b) a federal society with similar objects to which the cancelled society was eligible for affiliation or, where no federal society exists to the Bombay State Co-operative Union ; and

(c) any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

364. *Surplus assets of housing society.*—Before winding up this chapter, it is necessary to examine the provisions in regard to the surplus assets of housing societies in the Act of 1925. Section 53 requires the appointment of three joint liquidators, one nominated by

the Registrar, one by the society and one by the Bombay Central Co-operative Institute. If any of the latter two fails to nominate its representative in 30 days, the remaining liquidators or the sole liquidator can function. In the definition of liquidator given in section 2, we have not excluded the possibility of joint liquidators being appointed. The second part of the Section deals with their power to continue the working of the society, reconstruct it or sell the property and dispose of the surplus assets. Section 101 recommended by us fully covers all these powers of the Joint Liquidators. We find from the notes on Clauses in the Bill of 1924 that "this provision is required in order to ensure that public concessions given to a housing society shall not be abused for private profiteering and to secure the tenant members of the society against any possible injury to their claims following upon the mismanagement by a committee or in other ways". We beg to point out that this is also the object of Section 101 recommended by us. A point may be raised as to whether the appointment of three liquidators should be left to the discretion of the Registrar. We answer this in the affirmative because they are to function subject to his control and directions. In other societies where joint Liquidators function, there is no statutory provision. We do not, therefore, understand why it should be so in the case of a housing society. We have built up a sound convention as a result of the operation of Section 53 of the Act of 1925 during the past 32 years and are confident that the deletion of the section will not mean any departure from the existing practice, which is sound. For reasons explained, we have come to the conclusion that there will be no harm in deleting Section 53 which smacks of conferring a special privilege on housing societies but which is not so in actual practice. Therefore, we recommend the deletion of Section 53.

CHAPTER XII.

FARMING SOCIETIES.

365. The history of this chapter dates back to 1922 when a Government Committee recommended that the protection of crops from wild animals would be facilitated by fencing. To cut down the cost of fencing it was thought necessary that the area should be sufficiently large. For this purpose, and in order to bring in unwilling farmers, it recommended that legislation should provide that if the majority of the owners were willing to foot the bill of fencing and maintenance and if the Government was satisfied with the utility of the project, the remaining land-owners should be compelled to contribute to the cost. Thus the original object of this chapter was to provide special facilities for crop protection societies. In 1944 the State Government decided to experiment with Co-operative Farming. Following recommendation of the Co-operative Planning Committee two years later, Co-operative opinion was mobilised in favour of compulsory membership in respect of societies connected with consolidation of holdings, irrigation and co-operative farming, and a bill was introduced in 1948 to expand the scope of this Chapter to better farming societies, societies for consolidation of holdings, irrigation societies, land reclamation societies, fencing societies, land improvement societies, etc. Shri V. L. Mehta, the then Minister of Co-operation who piloted the bill explained that "it is Government's ardent desire and wish to see that progress in the direction of what we may call agricultural organisation of these types is not impeded by the recalcitrance of a minority" (Bombay Legislative Assembly Debates, Official Report, February 21, 1948, page 120).

366. At present various types of societies associated with agricultural production and organisation of the agricultural industry are classified under different sub-heads with the result that legal complications have arisen in matters, relating to the operation of Bombay Tenancy and Agricultural Lands Act, 1948. This Act refers in various sections to only Co-operative Farming Societies, which it defines as "a society registered as such under the Bombay Co-operative Societies Act, 1925. To our knowledge, societies in the group are classified according to their sub-groups and they are not registered "as such". As a result disputes have arisen over the benefits conferred by the Tenancy Act on societies within the fold of Co-operative Farming. We, therefore, beg to recommend that the main classification for any of these societies should be farming societies and the sub-head might be a particular sub-class of societies. To facilitate this classification it is necessary to include all types of societies falling within the group though their nomenclatures are different on account of their distinctive features. The present Act defines a "farming society" as a society formed with the object of

promoting development of land and better methods of cultivation, etc. Among the means mentioned are improved seed, irrigation, bunding, tractor ploughing and soil conservation. Consolidation of holdings, land reclamation, land improvement and fencing are also the accepted means to promote better farming. A further distinction has been drawn between a better farming society and co-operative farming society. Where cultivation is done by individual members of a society the society is described as better farming society. Where it is done collectively or jointly, the society is known as a co-operative farming society. A co-operative farming society described as such may be of any of the three types. A co-operative joint farming society which pools land of its members, who work jointly and receive wages for daily labour and which produces and disposes of the produce collectively though the ownership of each member in his holding is recognised. Where a co-operative farming society divides its land and leases plots into individual members for cultivation, it is called co-operative tenant farming society, but where the lands are cultivated jointly by all the members and the principle of collectivisation is extended to distribution and benefits, the society is described as a co-operative collective society. In the case of co-operative collective farming society, the essential feature is that the land belongs to the society. Societies are also classified according to the means they adopt for promoting better farming as has been stated earlier.

367. In all these societies the key to success is a sufficiently compact area. For this purpose, it is necessary to provide for an element of compulsion for membership, the principle underlying which was recognised over three decades ago. Since then Co-operative practice has adopted itself to the changing economic conditions. Under the scheme for reorganisation of agricultural credit, the principle of open membership has been advocated. We have already provided under Section 22 for open membership with facilities to persons not admitted in a society as a member to appeal to the higher authorities. The corollary of this provisions should be that where the majority in a particular area opines that co-operative effort is desirable in a particular direction, the minority should not impede that effort. This is all the more important because the benefits are likely to be reaped by the minority without shouldering the responsibilities and which are the features of a co-operative organisation. We, therefore, consider that this chapter is necessary.

368. Chapter XI of the Act of 1925 deals with application of this chapter, definitions, constitutions of the board, appointment of an Enquiry Officer, procedure, etc. We are of the view that many of the provisions in this chapter are such as to fall legitimately within the scope of the Rules. The constitution of the board, the machinery for enquiry, preliminary procedure, publication of the scheme, enquiry by the enquiry officer and report of the enquiry officer are

matters which can safely be relegated to the Rules after incorporating the bare principles in this Chapter. In our opinion, three things have to be provided for under the Law. These relate to the scheme and the registration of a society, the effect of the scheme and registration and powers of the society after registration as regards the financing of the scheme, and recovery of dues. It is also necessary to empower the Government to exempt a society from the provisions of Chapter IX in the Act. With these objects in view we recommend that sections in the existing chapter be deleted and the following sections be substituted.

369. *Scope of the Chapter.*—As stated above the object of this chapter is to cover different types of societies which are connected with the organisation of the agricultural industry by different means. It may be that certain types of societies will have been excluded unwittingly from the comprehensive definition of a farming society. To overcome this difficulty and to confer the benefits of this chapter on such societies, we recommend that the proviso in Section 64-B of the Act of 1925 be retained. The section, numbering 110, will read as under :—

SECTION 110—*Application of this Chapter.*—This Chapter shall apply to farming societies including better farming societies, tenant farming societies, joint farming societies, collective farming societies and societies for consolidation of holdings, land reclamation and improvement, crop protection, irrigation, and for providing embankment facilities :

Provided that the State Government may, by general or special order published in the Official Gazette direct that the provisions of this Chapter shall also apply to any other class of societies and thereupon they shall apply as if such societies are farming societies.

370. *Registration.*—The procedure preliminary to the registration has been laid down in Section 64-C, 64-D, 64-E, 64-F, 64-H, 64-I, 64-J, 64-K and 64-L. We recommend that all these Sections should be transferred to Rules. The point to be noted in connection with the registration is that a society should be registered after its scheme becomes final in publication, and when those affected by the scheme can assume certain rights and liabilities in the society as mentioned in the scheme and the area of operation is determined. We, therefore, recommend that Section 64-G relating to registration and 64-L about sanction of the scheme in the present Act be merged into the following new Section to be read as Section 111 :—

SECTION 111—*Registration.*—(1) If the Registrar is satisfied that the conditions of registration as laid down in Section 6 of this Act have been fulfilled and that the scheme proposed by the society

is economically sound and has been sanctioned by the State Government after due enquiry in the manner prescribed, the Registrar shall register the society.

(2) Notwithstanding anything contained in sub-section (1), no farming society shall be registered unless 66 per cent. of the owners and/or tenants in possession of or having interest as tenants in not less than 75 per cent in aggregate of the land proposed to be included in the area of operation of the proposed society have given their consent to the making of the scheme.

371. *Effect of registration.*—The effect of registration of a farming society is that, the society assumes the powers to enforce the scheme within its area of operation. To enforce this scheme, it is necessary that the society should have powers to execute the work and recover the expenses from persons within that area who are likely to be benefitted from the scheme. Under Section 64-O a contribution towards the cost of the scheme can be recovered from members as well as those who may have refused to become members and the owners of the land affected by the scheme shall be primarily liable for the payment of the contribution. In view of the operation of the Bombay Tenancy and Agricultural Lands Act, tenants having interest in the land will also have to be embraced. We, therefore, propose to merge three Section 64-M, 64-N and 64-O, into one Section which, numbered 112 will read as follows :—

SECTION 112—*Effect of registration.*—(1) On the registration of a farming society, all the owners of and tenants having interest in lands included in the area of operation of the society, whether they are members of the society or not, shall have such rights and shall be subject to such liabilities as are conferred or imposed on them under the byelaws of the society.

(2) The society registered under section 111 may execute any work and undertake such other functions as may be laid down in its byelaws and may recover expenditure thereon from all the owners of and tenants having interest in lands included in its area of operation whether they are members of the society or not, on the basis of contribution leviable at a rate specified in the byelaws or in the general meeting or in any manner prescribed in the Rules or specified in the scheme.

372. *Dues of farming societies and their recovery.*—Section 64-P of the Bombay Act deals with dues of farming societies. It lays down that subject to the provisions of Section 24, the dues by members or past members shall be the first charge upon their interest in the crops. From the members, deceased members have been excluded. Again, because the contributions, etc., will be due from non-members as well, it is necessary to provide for the charge on their interest. As regards recovery of arrears, Section 64-Q lays down that these are recoverable on the application of the society, by the Collector as the arrears of land revenue. The latter proviso is in accordance with the provisions in section 59 of the present Act. In

recommending Section 94 in place of the existing Section 59, we have visualised that the Registrar should also have the power to execute the awards. For the purpose of recovery of arrears we are of the view that it would be enough to lay down that the provision in Section 94 can be invoked. With these objects in view we recommend that Section 64-P and 64-Q in the Act of 1925 be deleted and the following new Section 113 be substituted.

SECTION 113—Dues of Farming Societies and their recovery.—

(1) Subject to the provisions in Section 49, any outstanding demands or dues payable to a farming society by any person, whether he is a member or not, in respect of any other rights or amounts payable by him to such society shall be a first charge upon his interest in the crops or other agricultural produce on the land included in the area of operation of such society and of which he is an owner or in which he has interest as a tenant.

(2) Any sum due to a society under sub-section (1) shall, on the application being made by such society for recovery be recoverable as if it were dues to be recovered under section 94.

373. *Exemptions.*—Since the Chapter covers farming societies, it is possible that a particular type of farming society may find it inconvenient to function under this Chapter or any of the provisions in this chapter. Section 64-R(1) of the present Act vests the power in the State Government to exempt a farming society from any of the provisions in the Chapter. Sub-section (2) brings within the scope of this Chapter farming societies registered under Section 10 prior to the date on which the Bombay Co-operative Societies (Amendment) Act, 1949, came into force. This proviso has to be brought upto date since we have recommended in paragraph 33 that the present Act should be replaced by a fresh legislation. The clause will also have to be extended to other component parts of the State. To incorporate these changes we recommend that Section 64-R in the present Act be renumbered as Section 114 and be amended as under :—

SECTION 114—Power to exempt farming societies from provisions of Chapter IX.—(1) Notwithstanding anything contained in Section 110, the State Government may, by general or special order to be published in the *Official Gazette*, exempt any farming society or class of such societies from any or all of the provisions of Chapter IX.

(2) Any farming society in respect of which a certificate of registration has been issued by the Registrar under Section 10 of the Bombay Co-operative Societies Act, 1925, or any other Co-operative Societies Act applicable to societies in any of the component parts of Bombay State, before this Act comes into force, shall be deemed to have been validly registered under this Act, notwithstanding that any of the provisions of Chapter IX as to registration have not been complied with.

CHAPTER XIII.

LAND MORTGAGE BANKS.

374. *Brief history.*—The search for an agency to provide long-term credit for agriculturists for financing their capital expenditure on land was initiated as early as 60 years ago. In Bombay State a limited effort was made by the Bombay State Co-operative Bank, and, following the appointment of a Committee at the Gujerat Division Conference in 1923, plans were formulated for setting up district land mortgage banks. Ten years after this, the Government of Bombay appointed a Committee to examine the question of development of land mortgage banking in the State. As a result of a resolution passed in the Bombay Legislative Council in 1935, empowering the Government to guarantee the principal and interest of debentures upto Rs. 50 lakhs for enabling the land mortgage banks in the State to raise the resources, the Bombay Provincial Co-operative Land Mortgage Bank was started. This was followed by a net-work of primary land mortgage banks in the districts and where these did not exist, the Provincial Land Mortgage Bank either directly handled the business of mortgage banking or entrusted it to district co-operative banks on an agency basis. In Saurashtra, a central land mortgage bank was started in 1951 under the Bombay Co-operative Societies Act, 1925, as adapted and applied to the Saurashtra State. This bank received a stimulus from the tenancy reforms initiated under the Saurashtra Land Reforms Act. In Madhya Pradesh, the State Co-operative Bank had a separate department for handling land mortgage banking and the Vidarbha Co-operative Bank has inherited its share in this Department. In Hyderabad, the Hyderabad Co-operative Land Mortgage Bank functioned.

375. On June 30, 1956 the Bombay Provincial Co-operative Land Mortgage Bank had a working capital of approximately Rs. 170 lakhs. Twelve primary land mortgage banks functioned in Maharashtra and Gujerath and their working capital was approximately Rs. 116 lakhs. In addition, the Central Co-operative Bank of Sholapur and Ahmedabad, functioned as agents of the Bombay Provincial Co-operative Land Mortgage Bank. The Saurashtra Co-operative Land Mortgage Bank had 57 branches and a working capital of Rs. 346 lakhs. In Vidarbha 9 primary land mortgage banks with working capital of Rs. 33 lakhs operated, while the Land Mortgage Department of the Vidarbha Central Co-operative Bank functioned as the apex for the districts in Vidarbha now forming part of Bombay State. In Marathwada four primary land mortgage Banks functioned but their aggregate working capital was only Rs. 36,000.

376. *Legislation.*—Legislation governing the land mortgage banks in country, has not followed a uniform pattern. Only a few States have any special legislation on this subject. Separate Acts exist

in Madras, Andhra, Travancore-Cochin and Madhya Pradesh. The Central Provinces Co-operative Land Mortgage Banks Act, 1937, is applicable to the Land Mortgage Department of the Vidarbha Co-operative Bank. In Maharashtra and Gujerath of Bombay State, the Bombay Co-operative Societies Act is applicable and there is no special legislation. Under this Act the only material section exclusively restricted to land mortgage banks is section 59-B which relates to recovery of money due to land mortgage banks. It provides for a summary procedure. In 1948 by an amendment of the section the facilities available under this section were extended to resource societies, providing seasonal crop finance. The banks have also been exempted from the operation of section 6(b) which relates to maximum holding of share capital, section 19 which relates to restriction on transfer of share or interest and proviso to section 27 which relates to transfer of interest on death of a member. The component parts have their own Land Mortgage Banks Act.

377. *Reorganisation of Land Mortgage Banks.*—The Rural Credit Survey Committee appointed by the Reserve Bank of India recommended that “along with encouragement of productive loans should go the discouragement not necessary of all non-productive loans, but certainly of non-productive loans of low priority” and added “if the policies of operations of the Central Land Mortgage Bank are to be oriented to increase agricultural production, it is necessary to keep in mind three needs, (1) co-ordination of credit with planned agricultural development, (2) assessment of technical soundness of the Project in respect of which credit has been asked for, and (3) verification of the actual utilisation of credit”. In regard to difficulties, it stated that land mortgage banks could not, under their existing rules, lend more than a per cent. of the existing value of the land and since lands could not be sufficiently valuable before the improvements were affected, it recommended Government guarantee for a specific period to cover the difference between the two values. In connection with the dealings arising from the investigation of title, it recommended that the State Government should take steps to amend the relative laws and primary land mortgage banks should provide guarantees to the State Land Mortgage Bank till the dispute regarding the title was settled and thought that this could be done if the Government provided a guarantee fund to the primary units. These and other recommendations of the Rural Credit Survey Committee are at present in the stage of implementation in the Bombay State.

378. *Impact of other Laws.*—In the initial stage of the development of the Bombay Provincial Co-operative Land Mortgage Bank, redemption of the debt was the prime objective for borrowing long-term loans. The Bombay Agricultural Debtors Relief Act, 1947, assigned a definite place to the land mortgage banks in the old Bombay State. But subsequently, the paucity of legitimate banking business

and the necessity for providing finance to housing societies prompted the Provincial Land Mortgage Bank to extend its activities to housing finance. Far reaching repercussions of the legislation were, however, noticed as a result of the enactment of the Bombay Tenancy and Agricultural Lands Act, 1948, which sought to eliminate intermediaries between the Government and the cultivator. This Act was amended in 1956. As a result, the tenancy rights have been created. ceilings on land holdings have been prescribed and on April 1, 1957, every tenant has been deemed to have purchased from his landlord, free of all encumbrances, the land held by him subject to certain conditions. The tenant, if he is a permanent one, has to pay the purchase price in a lump sum ; but if he is not a permanent tenant, he can pay the purchase price in 12 annual instalments. If a tenant is in arrears of 4 instalments, the Tribunal may allow further time but otherwise the purchase becomes ineffective and the land lord becomes entitled to recover the rent of the land from the tenant as if the land has not been purchased. Where a purchase becomes ineffective, the land may be surrendered to the landlord or may be sold to a co-operative farming society, agricultural labourers, landless persons and small holders. The purchase price, in this case, is also payable in six annual instalments. These and other provisions have created an uncertainty regarding the safety of advances made and to be made by the land mortgage banks in the Bombay State.

379. We propose to examine this aspect in a greater detail later on. In doing so, we have, however, assumed that the tenancy legislation in the component parts of Bombay State will be uniform and have not, therefore, examined the problems arising from tenancy laws presently applicable to the component parts and their impact on mortgage banking in these areas. In case our assumption proves wrong, appropriate changes in the provisions in this Chapter might be necessary. We urge the Government to consider our recommendation in this Chapter against this background and beg to draw its attention to the recommendations of the Rural Credit Survey Committee that State Governments should review their tenure and tenancy laws and take steps to eliminate such features in these laws as, without being essential to policy, are hindrances to the development of a simple and effective system of land mortgage banking.

380. *Pattern of legal framework.*—Land mortgage banks in Maharashtra, Gujārat and Saurashtra are presently registered under the Bombay Act and there is a school of thought which feels that these banks should be governed under a separate Act of the type in force in certain States, notably Madras. We find that the basic constitution of these banks is co-operative and, to that extent, they must be governed by the Co-operative Societies Act. Even in Madras, which has a separate Act, the Land Mortgage Banks Act, such banks are registered under the Madras Co-operative Societies Act. The only point that remains, relates to special features of their working. We

recognise the importance of these features for which legal provisions are necessary and opine that a Separate Chapter in the Bombay Co-operative Societies Act can do full justice to the requirements of land mortgage banks in this State. We beg to point out that in Mysore, West Bengal and Orissa there are special chapters on this subject in the Co-operative Societies Act itself. We have, therefore, to recommend that there is no need for a separate Land Mortgage Banks Act and the special aspects of the working of land mortgage banks can be effectively dealt with in a separate chapter.

381. The Madras Land Mortgage Banks Act, 1934, is comprehensive so far as land mortgage banks are concerned. This Act empowers the Central Land Mortgage Bank to issue debentures, provides for the appointment of a trustee to safeguard the interest of debenture-holders and for the guarantee from the State Government, clarifies that a mortgage in favour of a primary land mortgage bank is automatically vested in the Central Land Mortgage Bank, empowers the Registrar to sell the produce of the mortgaged land to recover the arrears of a land mortgage bank and enables the land mortgage bank to close the mortgage and sell the mortgaged property without the interventions of the Court. These basic features of the Act are to be found in Chapter XI of the Bengal Co-operative Societies Act, 1940, and this Chapter is supplemented by Sections 34, 35, 36 and 37 relating to the issue of debentures. The Orissa Co-operative Societies Act, 1951, also makes special provisions for land mortgage banks. The Legislation in Orissa takes full note of the laws effecting land mortgage banks in different States, and is, in our opinion, basically sound. We may, however, add that the Legislation in Orissa is based on the fact that the Central Bank is not supported by primary land mortgage banks, and, therefore, combines in itself the functions of a Land Mortgage Bank and primary land mortgage banks. The pattern that has been developed in Bombay State and which is likely to be developed in future is that there is a State Land Mortgage Bank at the apex level and primary land mortgage banks in the district, the latter being supplemented by the agency of the Provincial Land Mortgage Bank in districts where primary land mortgage banks do not exist.

382. Having regard to the requirements of Bombay State to the future development of land mortgage business in this State, we have come to the conclusion that the following provisions are required for the successful working of land mortgage banks :—

- (1) application of the Chapter, definition, etc. ;
- (2) appointment, powers and functions of Trustee ;
- (3) issue of debentures ;
- (4) Government guarantee to debenture holders and any other guarantee ;
- (5) vesting of assets in trustee ;
- (6) prior charge of bank ;
- (7) mortgages executed in favour of primary land mortgage banks vested in the State Land Mortgage Bank ;
- (8) mortgages not to be question ;
- (9) mortgages executed by manager of joint

Hindu family; (10) right of land mortgage bank to pay a prior debt; (11) restrictions on lease by a mortgager; (12) power of land mortgage banks to receive money and to give discharge; (13) power of land mortgage banks where property is destroyed; (14) distraint; (15) power of sale of property and power of trustee to direct sale; (16) right of mortgage banks to buy; (17) application to set aside sale; (18) confirmation of sale; (19) appointment of a receiver; (20) distribution of sale proceeds; (21) certificate to purchaser; (22) delivery of property; (23) title of buyers; (24) exemption of officers from personal appearance for registration of mortgage; (25) service of notice; (26) officers of banks not to bid at sales; and construction of references to Acts; (27) jurisdiction of the Transfer of Property Act.

383. In the above list we have covered (a) the scope of banks, (b) the means for raising long-term funds for long-term lending, (c) the relations between the State Land Mortgage Bank and the primary land mortgage banks, (d) priority of mortgage, impact of the Land Reform Legislation, and restrictions on the freedom of the mortgagor, (e) methods of recovering the dues and the consequences arising therefrom and (f) powers to make Rules. Certain aspects of the working of land mortgage banks such as the authority acting on behalf of a society, appointment of sale officers and receivers and the relation between primary land mortgage banks and the State Mortgage Bank can be suitably covered by byelaws. The general frame-work has been provided by the Co-operative Societies Act and Rules framed thereunder. In submitting our recommendations regarding the provisions in the Chapter below, we have, therefore, decided to avoid duplication.

384. *Application of this Chapter.*—The provisions embracing special features of land mortgage banks embodied in this Chapter can be applicable only to land mortgage banks. It is, therefore, necessary to define land mortgage banks and extend the application of this Chapter to them. In doing so, we have to take note of the land mortgage Department of the Vidarbha Central Co-operative Bank and the Saurashtra Co-operative Bank. The principal 'one State Mortgage Bank' has been accepted; but both the banks will have to be recognised as apex during the transitional period. We, therefore, recommend that Section 115 be incorporated as under :

SECTION 115—*Application of this Chapter.*—(1) This Chapter shall apply to land mortgage banks and any other bank permitted to function as such under this Act.

(2) In this Act unless there is repugnant in the subject or context, "State Mortgage Bank" means "the Bombay State Co-operative Land Mortgage Bank, Limited" and includes the Saurashtra Central Co-operative Land Mortgage Bank, Limited, and the

Vidarbha Co-operative Bank, Limited, and "mortgage bank" means a primary co-operative land mortgage bank registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, and admitted as a member of the State Mortgage Bank and includes the State Mortgage Bank where it functions as a mortgage bank and any other co-operative bank permitted under this Act to function as a mortgage bank.

335. *Appointment, powers and functions of Trustee.*—Business of land mortgage banks is to lend funds for a long-term. Consequently, they have to raise funds also on a long-term basis. Since the main device for raising long-term funds is the issue of debentures, the necessary provision is inevitable. These debentures are issued against the security of assets. Therefore, it is necessary to provide for the appointment of a Trustee. The debentures both in respect of principal and interest thereon, are guaranteed by the State Government and a pattern has already been evolved in this respect whereunder the State Government appoints the Registrar as Trustee. At the same time the possibility of appointing any other Officer as a Trustee cannot be ruled out. The powers and functions of the Trustee are mainly incorporated in the instrument of Trust executed between the Bank and the Trustee and are partly provided for in this chapter. The Instruments of Trust can also be modified from time to time by mutual agreement. To cover all these provisions relating to the Trustee we recommend the following Section 116 :—

SECTION 116—*Appointment, powers and functions of Trustee.*—

(1) The Registrar, or where the State Government appoints any other person in this behalf, such person, shall be the Trustee for the purpose of securing the fulfilment of the obligations of the State Land Mortgage Bank to the holders of debentures issued by the State Mortgage Bank.

(2) The Trustee appointed under Sub-section (1) shall be a corporation sole, by the name of the Trustee for the debentures in respect of which he is appointed, and, as such, shall have the perpetual succession and a common seal and in his corporate name shall sue and be sued.

(3) Powers and functions of the Trustee shall be governed by the provisions of this Act and Instrument of Trust executed between the State Mortgage Bank and the Trustee as modified from time to time by mutual agreement between the State Mortgage Bank and the Trustee.

336. *Issue of Debentures.*—The issue of debentures can only be made by the State Mortgage Bank when the debentures are guaranteed by the State Government. The procedure is to get the terms of issue approved by the State Government. Since the debenture

holders have also to approve the issue, an approval of the Trustee representing them is required. The terms on which the issue is made require to be broadly specified. In the main, the period after which they will be redeemed, the quantum of amount to be raised, and the method of redemption are the three important points arising from the issue of debentures. It is also desirable to vest the power of calling back any of the debentures at any time in the State Mortgage Bank for their redemption. In that event the period of notice has to be provided for. As regards the duration of the debentures, the loan period is important. Since it is usually 12 years, the minimum period for debentures should in our opinion, be 10 years. On the other hand, the Bank might like to take advantage of the favourable conditions in the money market at any time. Therefore, the maximum period has to be sufficiently long. In our opinion it would be safe to place the ceiling at 30 years. Finally, a provision is necessary for restricting the issue to a maximum equal to the assets of the Bank in order to safeguard the interests of debenture holders. To cover these points we recommend Section 117 as below :—

SECTION 117—Issue of Debentures.—(1) With the previous sanction of the State Government and the Trustee, the State Mortgage Bank may for the purpose of investment in land mortgage business and for no other purpose, issue debentures of such denominations for such periods and at such rates of interests as it may deem expedient on the security of the mortgages and other assets of the land mortgage business.

(2) Every debenture may contain a term fixing a period not less than 10 years and not exceeding 30 years from the date of issue during which period it may be redeemable by reserving to the State Mortgage Bank the right to call it at any time in advance of the date fixed for redemption after giving to the holder of the debenture not less than 3 months' notice in writing.

(3) The total amount due on debentures issued by the State Mortgage Bank and outstanding at any time shall not exceed the aggregate of the amounts due on the mortgages, the value of other assets transferred or deemed to have been transferred under Section 120 by the mortgage banks to the State Mortgage Bank and subsisting at such time and the amounts paid under the mortgage aforesaid and remaining in the hands of the State Mortgage Bank of the Trustee at that time.

387. *Guarantee by Government.*—The issue of debentures can be a success only if it is a trustee security and has, therefore, to be guaranteed by the State Government. In securing the response from the public also the State guarantee is necessary. This guarantee is in respect of the principal of and interest on debentures. The quantum of this guarantee may, however, be increased or reduced. In the former case it is to the benefit of the debenture holders but

where the quantum is reduced it violates the conditions on the basis of which debentures were taken up by debenture holders. This would be unfair and a safe-guard is necessary. The precise procedure for varying the terms of the guarantee has, therefore, to be laid down.

388. In the context of the future development, the State Government might provide for other guarantees as well. Thus for instance the Rural Credit Survey Committee has recommended that the State Government should provide guarantee to cover the difference between the value before and after improvement of land so that long-term credit can be provided more liberally for financing land improvement. Thus guarantee is for a limited period only and will automatically cease after the land improvement is effected.

389. To cover both the contingencies we recommend Section 118 as follows :—

SECTION 118—*Guarantee by State Government.*—(1) The principal of and interest on, the debentures issued under Section 117 shall carry the guarantee of the State Government to such maximum amount as may be fixed by the State Government and subject to such conditions as the State Government may think fit to impose.

(2) The State Government may, after consulting the State Legislature, increase the maximum amount of any guarantee given under sub-section (1).

(3) The State Government may, after consulting the State Mortgage Bank and the trustee, by notification in the Official Gazette and by notice, of not less than 14 days in such of the principal newspapers in the State and of other States in India as the State Government may select in this behalf, discontinue the guarantee given under sub-section (1) or restrict the maximum amount thereof or modify the conditions subject to which it is given with effect from a specified date, not being earlier than six months from the date of the publication of the notification in the Official Gazette. Provided that the withdrawal, restriction or modification of any guarantee under sub-section (3) shall not in any way affect the guarantee carried by any debentures issued prior to the date of which such withdrawal, restriction or modification takes effect.

(4) Every notification and notice referred to in sub-section (3) shall where the maximum amount of guarantee is to be restricted, or the conditions subject to which the guarantee is given are to be modified, set forth, with sufficient clearness, the scope and effect of the restriction or modification as the case may be.

(5) The State Government may also guarantee to the State Mortgage Bank for a specified period the repayment of loan to the extent of the excess where the loan given by the State Mortgage Bank or a mortgage Bank to member for the development of any and is in excess of the amount of the loan to which such member

would be entitled on the basis of the value of the land as determined in accordance with the principle of valuation approved by the Registrar.

390. *Vesting of property in trustee and debenture holders' charge on assets.*—The debentures are issued on the security of the assets of the borrowing institution. For this purpose a floating charge is created on the assets which are vested in the trustee. To cover these points we recommend a new Section No. 119 as follows:—

SECTION 119—*Vesting of property in trustee and debenture holders' charge on assets.*—Upon the issue of debentures under the provisions of sub-section (1) of section 117 the mortgage and assets referred to in sub-section (3) of section 117 held by the State Mortgage Bank shall vest in the trustee and the holders of debentures shall have a floating charge on all such mortgages and assets and on the amount paid under such mortgages and remaining in the hands of the State Mortgage Bank or of the trustee.

391. *Priority of mortgage over certain claims.*—Mortgages can be an adequate security only when the money lent can be recovered together with interest by realising the security. For this purpose, it is necessary to ensure that the security is first class. The Government makes loans under the Land Improvement Loans Act, 1883, and the Agriculturists Loans Act, 1884. It also lends money to individual agriculturists and their societies in various other forms. Loans made, before credit thus available, by mortgage banks have obviously to be secured by the first charge on the land; and it would be unfair to give the Government dues a precedence over the loans of mortgage banks where the Government lends money to supplement the finance made available by mortgage banks. To safeguard the interest of mortgage banks, section 98 has been incorporated in the Bengal Co-operative Societies Act, 1940, and a similar provision has been made in the relevant laws of other States.

392. In Bombay State further complications have arisen as a result of the operation of the Bombay Tenancy and Agricultural Lands Act, 1948. The implications of this Act *vis-a-vis* land mortgage banks have been explained in paragraph 378. The position as it appears to us under this Act is that in respect of bulk of the lands in the State, the interest of the tenant in land is a new type of asset available as security. True, a tenant can become the owner of the land by paying the purchase price in 12 annual instalments; but if he fails, the land can be sold by the Collector and the new buyer has the freedom to pay the purchase price in six annual instalments. In effect the ownership of land becomes an uncertain factor in determining the security for the loan. At the same time, land improvement schemes cannot be delayed or postponed because of these difficulties and mortgage banks cannot afford even in

their own interest to curtail their lending operations. We are of the view that both in the context of the agricultural development of the State and the interest of mortgage banks a solution is required. We think it necessary to emphasise that the purpose will be served by providing that the loan of mortgage banks shall carry the security of the interest of the tenant who borrows as well as his interest in the land as an owner and that the future sale of the land should be subject to the mortgage. In effect the mortgage will follow the land and the change in its ownership. In this context we beg to invite the attention of the Government to Section 118 of the Bengal Co-operative Societies Act, which takes full note of the land reforms in West Bengal. To cover these points we recommend the following Section No. 120.

SECTION 120—Priority of mortgage.—(1) A mortgage executed in favour of a mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884 or under any other Law for the time being in force, granted after the execution of the mortgage.

(2) Notwithstanding anything contained in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other Law for the time being in force, where a mortgage is in respect of land in which a tenant has an interest the mortgage may be against the security of such interest and the rights of the mortgagee shall not be affected by the failure of the tenant to comply with the requirements of that Act and the sale of the land and tenant's interest therein under the said Act shall be subject to the prior charge of the mortgage bank.

393. *Mortgages executed in favour of mortgage banks to stand vested in State Mortgage Bank.*—The pattern of development of mortgage banking visualised is that the State Mortgage Bank provides the funds to the primary land mortgage banks for enabling them to lend to their members. In effect the primary units borrow funds from the Apex by pledging the security against which they advance funds. In the process of execution of mortgages and their transfer to the State Mortgage Bank a considerable delay is involved and, occasionally, such mortgages may not be transferred. To avoid resultant legal difficulties it is necessary to provide for automatic transfer. We, therefore, recommend Section 121 as below :—

SECTION 121—Mortgages executed in favour of mortgage bank to stand vested in State Mortgage Bank.—The mortgages executed in favour of, and all other assets transferred to, a mortgage bank, by the members thereof shall, with effect from the date of such execution or transfer be deemed to have been transferred by such mortgage bank to the State Mortgage Bank and shall vest in the trustee.

394. *Mortgages not to be questioned in insolvency of mortgagors.*—In any insolvency proceedings unnecessary litigation is involved as a result of the title of the mortgage being questioned on the grounds

that it was not executed in good faith. A safeguard has been provided in almost all laws affecting the land mortgage banks. Section 97 of the Bengal Co-operative Societies Act clinches the issue and we commend this section as Section 122 which reads as under :—

SECTION 122—Mortgages not to be questioned in insolvency of mortgagors.—(1) Notwithstanding anything contained in the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, a mortgage executed in favour of a mortgage bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the Bank a preference over other creditors of the mortgagor.

395. *Right of mortgage banks to pay prior debts of mortgagors.*—A land mortgage bank would like to have a clean security and may, therefore, choose to repay any debts which may be a prior charge on the land to be taken in mortgage for advancing loans. Since the lending business of land mortgage banks partly serves the objectives of the public policy, it is legitimate that certain special privileges should be conferred on mortgage banks. In the absence of facilities to repay such debts, mortgage banks will be handicapped in implementing a lending programme for financing land improvement schemes, etc., on a planned basis. Once the right of paying the debt is conceded a provision for ensuring that the interest will cease if such amount is not accepted by a lender is necessary in order that the lender may not evade the payment. At the same time in the event of a dispute over the amount, his rights should not be prejudiced. For this purpose the necessary safeguard has to be provided. These points have been incorporated in the following section :—

SECTION 123—Right of mortgage bank to pay prior debts of mortgagor.—(1) Where a mortgage is executed in favour of a mortgage bank for payment of prior debts of the mortgagor, the mortgage bank shall, notwithstanding anything contained in the Transfer of Property Act, 1882, by a notice in writing require any person to whom any such debt is due to receive payment of such debt or part thereof from the bank at its registered office within such period as may be specified in the notice.

(2) Where any such person fails to accept such notice or to receive such payments, such debts or part thereof as the case may be shall cease to carry interest from the expiry of the period specified in the notice :

Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the mortgage bank towards the debt, but such receipt shall not prejudice the right, if any, of such person to recover the balance claimed by him.

396. *Mortgages executed by manager of joint Hindu family.*—The onus of proving that money was borrowed by manager of a joint Hindu family for the benefit of that family lies at present on the lender. Under the Hindu Succession Act it is obligatory to obtain the permission of a competent Court by the guardian of a minor wishing to mortgage property held in the name of a minor. Where a minor has a coparcenary right or interest in the joint family property there is no need for obtaining such a permission but with the death of the Hindu owner of property, the minor being one of the successors stands to obtain a separate right immediately after such a death. In such a situation complications arise. Most of the agricultural lands belong to joint Hindu families and if a land mortgage bank were to collect evidence for the purpose of proving that the funds were borrowed by a manager of such a family for the benefit of that family, the borrower may not be able to get long-term funds in time for enabling him to undertake land improvement, etc. We are, therefore, of the view that so far as lending of land mortgage banks is concerned an exception has to be made. For this purpose the following section is recommended.

SECTION 124—*Mortgages executed by managers of Joint Hindu families.*—(1) Where a mortgage is executed in favour of a mortgage bank either before or after the commencement of this Act and is called in question on the ground that it was executed by Manager of a joint Hindu family for a purpose not binding on the members, whether major or minor, thereof, the burden of proving the same shall, notwithstanding any law to the contrary, lie on the party raising it.

(2) Mortgages in respect of loans by mortgage bank or the State Mortgage Bank for the improvement of agricultural land or of the methods of cultivation or for financing any other means to raise productivity of the land, or for the purchase of land, shall not be called in question and shall be binding on every member of such joint Hindu family notwithstanding any law to the contrary

397. *Restrictions on lease.*—Most of the laws relating to mortgage banks have a provision restricting the right of the mortgagor to transfer or mortgage or lease the property for a period exceeding five years. This is a salutary provision. Section 24(2) of the Bombay Act of 1925 provides that no property or interest in property, which is subject to a charge under sub-section (1) shall be transferred in any manner except by way of lease for a term not exceeding 10 years without the previous permission of the society. In amending that section we have recommended that no transfer or lease should be allowed without the previous permission of the society and subject to such conditions as it may impose. We opine that a similar condition is necessary in respect of a security available to mortgage banks. It is necessary to safeguard the interest of the State Mortgage Bank where a Primary Land Mortgage Bank gives

the permission and also that of debenture holders. We wish to provide that a primary land mortgage bank can give such permission only with the approval of the State Mortgage Bank and where the lender concerns it should apprise the trustee of the position. We, therefore, recommend the following section :—

SECTION 125—Restrictions on lease.—(1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other enactment for the time being in force, no mortgagor of property mortgaged to a mortgage bank shall be entitled, after the execution of the mortgage, without the previous permission of the bank which may be subject to such conditions as the bank may impose, to transfer or mortgage his equity of redemption or lease such property ;

Provided that no mortgage bank shall be competent to give its approval without the previous sanction of the State Mortgage Bank.

(2) Where the State Mortgage Bank accords its consent under sub-section (1) it shall send an intimation thereof to the trustee appointed under section 116.

398. *Power of mortgage bank to receive money and give discharge.*—Although the mortgage is vested in the State Mortgage Bank and ultimately in the trustee the dealings with the mortgagor are handled by mortgage banks. This facility is the crux of the arrangement for linking a State Mortgage Bank with the ultimate borrower. It follows from this that mortgage banks must have power to receive money and give a valid discharge. At the same time the State Mortgage Bank and the Trustee require to have power to give any other direction where a primary bank is not amenable to its discipline. The necessary provision has been made by us in Section No. 126 recommended below :—

SECTION 126—Power of mortgage bank to receive money and give discharge.—Notwithstanding anything contained in section 121 all moneys due under the mortgage shall, unless otherwise directed by the State Mortgage Bank or trustee and communicated to the mortgagor be payable by the mortgagor to the mortgage bank and such payments shall be as valid as if the mortgage had not been so transferred ; and the mortgage bank shall in the absence of any specific direction to the contrary issued by the State Mortgage Bank or trustee and communicated to the Bank as such be entitled to sue on the mortgage or take any other proceeding for the recovery of the money due under the mortgage.

399. *Power of mortgage bank where mortgaged property is destroyed or security becomes insufficient.*—Long-term funds are provided by land mortgage banks mainly for land improvement

schemes. There is a possibility of any of those schemes being turned a failure. In that event the security becomes insufficient because the loan was granted on the assumption that the completion of this scheme would improve the repaying capacity of the farmer. The Orissa Act and similar Acts in other States confer on a Mortgage banks the right of calling back its dues in such an event. This provision is necessary because the loan is for a fixed period and the bank is not entitled to call it back so long as the instalments are regularly paid. We, therefore, commend Section 95 of the Orissa Act and recommend the following section :—

SECTION 127—Power of Mortgage Bank where mortgaged property is destroyed or security becomes insufficient.—Where any property mortgaged to a mortgage bank is wholly or partially destroyed or the security is rendered insufficient for any other reason and the mortgagor, having been given a reasonable opportunity by the bank of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the bank, has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the bank shall be entitled to take action against the mortgagor under Section 128 or Section 129 for the recovery thereof.

Explanation.—A security shall be deemed insufficient within the meaning of this section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the Rules or the bye-laws of the mortgage bank.

400. *Power of distraint.*—In Bombay State, as elsewhere the fields for agricultural credit are fairly well demarcated. Short term agricultural credit is handled by agricultural credit societies, central co-operative banks and the State Co-operative Bank which have crop as the main security and the land as a supplementary security. In the case of land mortgage banks advancing long-term funds, the main security is land and the supplementary one is the crop. In the circumstances, we are afraid the demand of land mortgage banks for having a prior charge over the crops notwithstanding the operation of Section 24 of the Bombay Co-operative Societies Act is untenable. In fact the provision of distraint in respect of crops for the benefit of the land mortgage banks will have to be made after protecting the interest of the short-term agricultural co-operative structure. Another suggestion that has been made is that the law should lay down that “the distraint should not be excessive”. In our opinion this is unnecessary because once distraint proceedings are instituted the other creditors of the mortgagors will also step in the shoes and, therefore, no useful purpose will be served by providing that the distraint shall not be excessive and then circumventing it by adding an escape clause that “any mistake, defect

or irregularity in this respect shall not involve a distraint or sale made under this Act". As regards the procedure, Section 59-B of the Act of 1925 adequately provides for a summary procedure. Since Section 95 recommended by us has been restricted to resource societies it is necessary to provide here for the application of that section to land mortgage banks as well. The bank will also have to be safeguarded against the default in payment of land revenue and other Government dues since the Government has a prior charge. We, therefore, recommend the following section as Section No. 128.

SECTION 128—Power to distraint.—(1) If any sum due as an instalment or part of an instalment payable under a mortgage executed in favour of a mortgage bank or the State Mortgage Bank has remained unpaid for more than one month from the date on which it fell due or if on default being made by the mortgagor in payment of land revenue or any other Government dues in respect of land mortgaged by him, the mortgage bank or the State Mortgage Bank has paid the same according to the Government demand, the mortgage bank or the State Mortgage Bank may, in addition to any other remedy available to the mortgage bank, apply to the Registrar for the recovery of such sum by distraint and sale of the produce of the mortgaged land including the standing crops thereon and on its furnishing the statement of accounts in respect of arrears, the Registrar may, after making such enquiries as he deems fit, grant certificate for the recovery of the amount stated therein to be due as arrears. A certificate so granted by the Registrar shall have the effect of the certificate issued under Section 95 and the arrears stated to be due therein shall be recoverable in the same manner as is prescribed under Section 95 (3).

401. *Sale of mortgaged property.*—In effecting the sale of a mortgaged property two safeguards require to be provided. Firstly the mortgagor and his associates must be given a reasonable opportunity to pay. Secondly, the bank should be satisfied that the default was not caused by any genuine difficulty. As a result of these preliminaries, if a strong action is warranted, it is but equitable that dilatory methods in matter of effecting the sale should be avoided. This is only possible if the provisions in the Transfer of Property Act are circumvented and the jurisdiction of the court is barred. Occasions might also arise where a primary land mortgage bank might not take appropriate action where it is necessary owing to local interest or for other reasons. In that event the State Mortgage Bank should have the power to direct the primary unit to take action. A contingency has also to be visualised whereunder even the State Mortgage Bank might not take action and in that event the trustee will have to intervene. Appropriate provisions have been made in the following Section No. 129 which reads as under :—

SECTION 129—Sale of mortgaged property.—(1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the

Trustees and Mortgages Powers Act, 1886, the mortgage bank or any person authorised by it in this behalf shall, in case of default of payment of the mortgaged money or any part thereof, have power, in addition to any other remedy available to the bank, to bring the mortgaged property to sale by public auction in the village in which the mortgaged property is situated or at the nearest place of public resort without the intervention of the Court :

Provided that no action shall be taken under sub-section (1) and no such power shall be exercised unless and until (a) the mortgage bank has been previously authorised to exercise the power conferred under sub-section (1) after hearing the objections, if any, of the mortgagor or mortgagors, (b) notice in writing requiring payment of such mortgaged money or part thereof has been served upon

(i) the mortgagor or each of the mortgagors ;

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same so far as known to the bank ;

(iii) any surety for the payment of the mortgaged debt or any part thereof, and

(iv) any creditor of the mortgagor who has in a suit for administration of his estate obtained a decree for sale of mortgaged property ; and

(a) default has been made in payment of such mortgaged money or part thereof for three months after service of the notice.

(2) If the mortgage bank fails to take action against a defaulter under Section 127, Section 128, or under this section, the State Mortgage Bank may direct the mortgage bank to take appropriate action and where no action is taken either by the State Mortgage Bank or the mortgage bank, the trustee may take such action. If such action is taken by the trustee, the provisions of this Chapter and of any Rules prescribed shall apply in respect thereto as if all references to the mortgage bank in the said provision were reference to the trustee.

402. *Right of mortgage bank to buy.*—Acts and chapters dealing with land mortgage banks in other States have a separate Section conferring the right to buy land in certain circumstances on such banks. In the Bombay Act of 1925, a similar right has been conferred under Section 59-A on all societies. In Section 97 recommended by us we have retained this provision. Since land mortgage banks in Bombay State are governed by the Co-operative Societies Act, normally no separate Section would have been necessary. But practically the whole of the business of the land mortgage banks is on the security of land and sales of mortgaged land are likely to be more frequent. In such an event, if any mortgage bank were to exercise

the right of buying such land because no purchaser comes forth to pay a reasonable price, the bank will be holding quite a sizeable land. Sections 5 and 6 of the Bombay Tenancy and Agricultural Lands Act, 1948, as modified up to March, 31st 1956, however, impose a ceiling on the maximum holding and economic holding. We are afraid that mortgage banks will have to be exempted from these sections. In the case of agricultural co-operative credit societies in respect of which Section 97 is applicable we have not provided the exemption because we opine that such holding in their case will be temporary. In the case of land mortgage bank, however, the position being different a specific exemption is desirable. We, therefore, recommend the following section No. 130 in this chapter.

SECTION 130—Right of mortgage bank to buy mortgaged property.—

(1) Notwithstanding anything contained in any law for the time being in force, it shall be lawful for a mortgage bank or the State Mortgage Bank to purchase any mortgaged property sold under this Chapter, and in accordance with Section 97 of this Act and the property so purchased may be disposed off by such bank by sale within such period as may be fixed by the Trustee.

(2) Nothing in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other law for the time being in force, fixing a maximum limit of agricultural holding shall apply to the acquisition of land by a mortgage bank or the State Mortgage Bank under sub-section (1).

403. *Application to set aside sale.*—Legislation in certain States has provided for giving a fresh opportunity to the mortgagor for setting aside the sale. Section 105 of the Bengal Co-operative Societies Act and Section 16 of the Central Provinces Co-operative Land Mortgage Banks Act, 1937, presently applicable to Vidarbha, for instance, provide that where a mortgaged land has been sold, the mortgagor can apply to the bank to have the sale set aside upon his depositing with the bank the amounts specified in the proclamation of the sale together with interest and costs and for payment to the purchaser as compensation a sum equal to 5 per cent. In Section 129, we have given three month's time to the mortgagor to pay the dues and we do not think that any further opportunity should be given to him. The sale is effected after giving him a reasonable opportunity and if he has failed to seize it, no useful purpose will be served by providing the facility to apply for setting aside the sale. Apart from disrupting the steps taken to effect the sale, the labour involved is considerable and once a purchaser is scared, the bank may not in future be assured of getting the same purchase price. The other point is about the sale officer. Similar laws provide that the Government may appoint them. We opine that this is an administrative arrangement and may add that in Section 129 (1) we have laid down that the sale must be by public auction. We, therefore, do not recommend any of the two provisions.

404. *Confirmation of sale.*—The confirmation of sale is important because the ultimate lender, i.e., the State mortgage Bank has to be satisfied that the sale has resulted in realising a fair price for the security. The trustee also is interested in this because he is the custodian of the assets on behalf of the debenture-holders. We are, therefore, of the view that the sale shall not be complete unless it is approved by the State Mortgage Bank and confirmed by the Registrar. We have drawn a distinction between the trustee and the Registrar because of the different roles and the possibility that the Registrar might not be the trustee. The former has to look to the interest of debenture-holders only, the latter is the custodian of the interests of all including the bank, its members and creditors. The State Government should, however, have a right of pre-emption. We, therefore, recommend the following section.

SECTION 131—*Application to set aside sale.*—(1) On effecting the sale by a mortgage bank under Section 129, the Bank shall, in the prescribed manner, submit to the State Mortgage Bank and the Registrar a report setting forth the manner in which the sale has been effected and the result of the sale and the State Mortgage Bank, with the approval of the Registrar, confirm the sale or cancel it.

(2) Where the sale is effected by the State Mortgage Bank under section 129, the State Mortgage Bank shall in the prescribed manner, submit to the Registrar a report setting forth the manner in which the sale has been effected, and the result of the sale, and the Registrar may confirm or cancel the sale.

(3) Where the trustee has effected the sale under section 129 (2), he shall, in the prescribed manner, submit to the Registrar a report setting forth the manner in which the sale was effected and the result of the sale and the Registrar may confirm or cancel the sale.

(4) Where an order is passed by the Registrar under subsections (1), (2) and (3) confirming a sale, the sale shall thereupon become absolute.

Explanation.—The Registrar shall not confirm a sale if the State Government informs him that it claims to take the property at the sum last bid and deposits the full amount of the last bid. On so doing, the property shall be sold to the State Government.

405. *Disposal of sale proceeds.*—Two things follow after the sale is confirmed. Firstly the sale proceeds are received and secondly the purchaser gets a title to the land. We propose to deal with the latter aspect in the next paragraph. So far as the disposal of sale proceeds is concerned, certain priorities have to be fixed. Section 107 of the Bengal Act and section 19 of the Central Province Co-operative Land Mortgage Act, direct that the sale proceeds shall firstly be applied to meet cost and expenses incurred in connection with the sale, secondly towards meeting the interest due on

account of the mortgage and thirdly, towards the payment of the principal and if any, residue remains it should be paid to the mortgagor. This method of distribution is equitable to all. Facility for an appeal against mode of distribution should, however, be available to dissatisfied persons. We, therefore, recommend the following section :—

SECTION 132—*Disposal of sale proceeds.*—(1) The proceeds of every sale effected under section 129 and confirmed under section 131 shall be applied first in payment of all costs, charges, and expenses incurred in connection with the sale or attempted sales, secondly in payment of any or all interest due on account of the mortgage in consequence whereof the mortgaged property was sold and thirdly, in payment of the principal due on account of the mortgage including cost and charges incidental to the recovery. If there remains any residue from the proceeds of sale, the same shall be paid to the person proving himself interested in the property sold or if there are more such persons than one, then to such persons upon their joint receipt or according to their respective interest therein as may be determined by the mortgage bank.

(2) Notwithstanding anything contained in sub-section (1) no residue shall be disposed of until 30 days have elapsed from the communication of the decision to pay the residues, to all the persons concerned and all payments of such residue may thereafter shall be valid and effectual against any demand relating thereto made upon the mortgage bank by the mortgagor or by any other person.

(3) Any person dissatisfied with the decision of the mortgage bank in regard to the distribution of such residue may, within 30 days from the communication to him of such decision under sub-section (2), institute a suit in a Court to establish the right he claims to such residue and on receipt of the intimation within the said period of 30 days of such suit being filed, the mortgage bank shall not proceed with the distribution of the residue until the suit is decided and shall distribute the same thereafter in accordance with the decision of the Court thereon.

406. *Certificate to purchaser, delivery of property and title of purchaser.*—Following the receipt of the sale proceeds three steps will have to be taken by the bank in the interest of the purchaser. In this context, who beg to emphasise that no purchaser will buy a land in the event of sale unless the title to the land is clear and its possession can easily be had. The necessary provision is required to assure him that this is possible. These aspects have been covered in the following section recommended by us :—

SECTION 133—*Certificate to purchaser, delivery of property and title of purchaser.*—(1) Where a sale of a mortgaged property has

become absolute under section 131 and the sale proceeds have been received in full by the mortgage bank, the mortgage bank shall grant a certificate to the purchaser in the prescribed form specifying the property sold, the sale price, the date of its sale, the name of the person who at the time of the sale is declared to be the purchaser and the date on which the sale became absolute and upon the production of such certificate the Sub-Registrar, appointed under the Indian Registration Act, 1908, within the limits of whose jurisdiction, the whole or any part of the property comprising such certificate is situated shall enter the contents of such copy in his register relating to immovable property.

(2) (a) Where the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or some person claiming under a title created by the mortgagor subsequent to mortgage in favour of the State Mortgage Bank or the mortgage bank and a certificate in respect thereof has been granted under sub-section (1), the Court shall, on the application of the purchaser order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(b) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under sub-section (1), the Court shall, on the application of the purchaser and after notice to such tenants or other persons, order the delivery to be made by affixing copy of the certificate of sale in conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the right, title and interest of the mortgagor have been transferred to the purchaser.

(3) Where any property is sold in the exercise or purported exercise of a power of sale under section 129, the title of the purchaser shall not be questioned on the ground that the circumstances required for authorising the sale had not arisen or due notice of the sale was not given or the power of sale was otherwise improperly or irregularly exercised :

Provided that any person who has suffered any damage by an unauthorised, improper or irregular exercise of any such power shall have a remedy in damages against the mortgage bank and the State Mortgage Bank.

407. *Exemption of officers of mortgage bank from personal appearance before registering officers.*—Under the Indian Registration Act, parties to the registration of a document have to appear before registering officers. The need for exempting the officers of the mortgage banks has stemmed from the fact that the number of mortgages to be registered is large and the jurisdiction of mortgages

is widely scattered. A simple procedure of registration is also necessary. With these objectives in view, we recommend the following section as section 134 :—

SECTION 134—*Exemption of officers of mortgage bank from personal appearance before the registering officers.*—(1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for any officer of a mortgage bank or the State Mortgage Bank to appear in person or by agent at any registered office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

(2) Where any instrument is so executed, the Registering Officer to whom such instrument is presented for registration may, if he thinks fit, refer to such officer for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

408. *Service of notice.*—This is a formal provision to clarify the method of serving notice. Sections 102 and 103 of the Transfer of Property Act and of the Rules made under section 104 of the Act are material in connection with the service or tender of notice. Application of these sections requires, in our opinion, to be specified. We recommend that the section be read as under :—

SECTION 135—*Service of notice.*—(1) Whenever under the provisions of this Chapter a notice is required to be given to any person in writing it shall be sufficient to send such notice by registered post.

(2) The provisions of sections 102 and 103 of the Transfer of Property Act, 1882, and of any rules made under section 104, thereof, for carrying out the purpose of the sections, shall apply so far as may be in respect of all notices to be served under this Chapter.

409. *Officers of banks not to bid at sales.*—To ensure impartiality in effecting the sale of a mortgaged property, it is necessary that no person having anything to do with the sale of property, should have any interest in the sale. The relevant provision is found in the Bengal and other Acts. This objective is sought to be achieved by recommending the following section :—

SECTION 136—*Officers of banks not to bid at Sales.*—At any sale of movable or immovable property, held under the provisions of this Chapter, no officer or employee of a mortgage bank or the State Mortgage Bank, except on behalf of the bank of which he is an officer or an employee, and no person having any duty to perform in connection with such sale shall either directly or indirectly bid for, or acquire or attempt to acquire any interest in such property.

410. *Construction of references to other Acts.*—At present, the Hyderabad Land Mortgage Banks Act, the Central Provinces Co-operative Land Mortgage Banks Act and the Saurashtra Co-operative Land Mortgage Banks Act are applicable respectively to Marathwada, Vidarbha and Saurashtra. A provision on the lines of section 72-A in the Bombay Act of 1925, is, therefore, necessary so far as this Chapter is concerned. We, therefore, recommend the following section :—

SECTION 137—*Construction of references to other Acts.*—All references to the Hyderabad Land Mortgage Banks Act, 1349F, the Central Provinces Co-operative Land Mortgage Banks Act, 1937 and the Saurashtra Co-operative Land Mortgage Banks Act, or to any other Act, Central or State, occurring in any enactment made by any authority in India and for the time being in force in Bombay State shall, in the application, to the said State, of any such enactment, be read and construed as references to this Chapter and anything done or any proceeding commenced in pursuance of any such enactment on or after the date on which this Chapter shall have come into operation shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Hyderabad Land Mortgage Banks Act, 1349F, the Central Provinces Co-operative Land Mortgage Banks Act, 1937, and the Saurashtra Co-operative Land Mortgage Banks Act or any other Act, Central or State, for the time being in force in the areas comprising the Bombay State as on November 1st, 1956, or thereafter, had been the reference to this Chapter and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Chapter.

CHAPTER XIV.

OFFENCES AND PENALTIES.

411. In the preceding chapters we have dealt with the provisions which in our opinion require to be incorporated in the new Act. It is also necessary to lay down that all those concerned in the management of societies, should strictly conform to the provisions embodied in the Act, Rules and the bye-laws and any failure to do so should be considered an offence. Unless this is done there will be no respect for the law, a risk may not be taken with the full knowledge of its consequences and the administration of societies is not likely to be toned up. It is, however, not enough to list the offences. For achieving the purpose in view, any law has to provide for penalties which will discourage the people from committing offences. When the co-operative movement was initiated in 1904, the farmers of the co-operative law felt that a movement voluntarily sponsored had to be encouraged and, therefore, gave a certain amount of latitude to honorary workers in respect of any inadvertant breach of the law. By 1924, however, the danger of not listing the offences under the Act and providing penalties for them become sufficiently apparent and the Bill to consolidate and amend the law relating to co-operative societies in the Presidency of Bombay published in the *Bombay Government Gazette*, dated May 21st, 1924, had three sections listing the offences and providing penalties for it. By an amendment of the Act in 1925 these sections were assigned a separate Chapter.

412. The offences listed in Bombay Act of 1925 are (1) default by a society, officer or member in giving notice, sending returns, etc., (2) wilful negligence or default by a society etc., to do any act or furnish information required by the Registrar, (3) wilful furnishing of false information, (4) disobedience of summons etc., (5) binami loans, (6) failure to pay amount under section 24-A, and (7) wrong use of the word "co-operative". Penalties under the Chapter have been specifically provided in respect of binami loans and employer's failure to pay the amount under section 24-A, while other offences are punishable with a fine of Rs. 50. The only changes made since the Act was enacted in 1925 are in respect of offences relating to binami loans and an employer's failure to pay to a society its dues deducted from the wages of his employees under section 25-A. The two sections were incorporated respectively in 1948 and 1954. On the other hand, the number of offences committed each year by workers in the movement has been rapidly growing and the nature of such offences has also become complex. We are informed that not less than 800 cases are presently under investigation. The second point to be noted in this connection is that it is not always possible to prove such offences and secure conviction of an offender. We have, therefore, come to the conclusion that in the context of the orderly working of co-operative societies and having regard to the large stake which the public revenue is going to have in the finance

of the movement, this chapter should be sufficiently comprehensive to cover all types of offences and provide penalties which would be sufficient to deter others to commit similar offences. In making a plea for this, we beg to state that the fear that the so called honorary workers will be scared and the co-operative movement will consequently be poorer in personnel is unwarranted. At any rate, we strongly feel that nothing will be lost by the movement if it is deprived of dishonest workers. In fact, the failure to use even the existing provisions in the Act limited though they are, fully and effectively is one of the causes of the failure of a portion of societies every year.

413. The Indian Companies Act, 1913, was replaced last year by the Companies Act, 1956 which deals with the subject matter under discussion so far as companies are concerned. In piloting the Bill the Finance Minister explained in Lok Sabha that the proposed legislation sought to bring "a new discipline" to the conduct of company management in this country. We opine that this "new discipline" is equally important for the conduct of management of societies. From this point the provisions in the Companies Act regarding offences and penalties should be considered significant. Many of the provisions are not obviously applicable to societies by virtue of their constitution and we do not propose to list them here. The material provisions in the Companies Act which are relevant to our enquiry are the offences and penalties listed below :—

- (1) membership of an un-registered company—fine Rs. 1,000 ;
- (2) omitting to file returns—fine Rs. 500 ;
- (3) filing of untrue statements—2 year's imprisonment and/or fine of Rs. 5,000 ;
- (4) violation of provision relating to investments—fine of Rs. 5,000 for offenders.
- (5) share money not deposited in bank—fine Rs. 5,000 for each promoter ;
- (6) impersonation of a shareholder—1 year's imprisonment ;
- (7) commencing business before registration—Rs. 500 a day for each person responsible ;
- (8) failure to hold annual general meeting—Rs. 50 for each Director ;
- (9) failure to submit annual accounts in time and Director's report—imprisonment of 6 months and Rs. 1,000 fine for each person responsible ;
- (10) improper issue of balance sheet, etc.—Rs. 500 for every officer ;
- (11) default in disclosing payment to a company—6 months' imprisonment and/or fine of Rs. 2,000 per every officer ;

(12) non-compliance with Auditor's appointment—fine Rs. 500 for every officer ;

(13) non-compliance of Auditor with the requirements of law—fine of Rs. 1,000 ;

(14) wrongly obtaining or withholding the company's property—fine of Rs. 1,000 for every officer and employee ;

(15) failure to disclose or deliver books and obtaining credit by false representation—2 to 5 years' imprisonment ;

(16) falsification of accounts—7 years' imprisonment ;

(17) giving credit to wrong persons (binami transactions)—2 years' imprisonment ; and

(18) failure to keep proper accounts—one year's imprisonment.

414. In certain sections previously recommended we have provided that a society sustaining losses should receive compensation from those responsible therefor. The penalties proposed in this Chapter are in addition to those by way of compensation to societies. In determining the quantum of penalty, we have been influenced by the stake of the people and the public revenues in the co-operative movement, the experience of the past 53 years, the nature and extent of offences, the progress of literacy and education and the fall in the value of the rupee since the law prescribed the quantum of fines. Under section 11 (2) we have laid down that no society shall be formed unless it is registered and every member of such a society shall be personally liable for liabilities incurred in any business prior to registration. Since this technique has been well developed in certain parts of the State, we recommend that every member of a society formed in contravention of the provisions of section 11 (2) should be fined upto Rs. 500. A similar penalty is desirable in respect of persons carrying on business under any name of which the word "co-operation" forms part. The amount of maximum fine proposed in only one-tenth of that provided in the Companies Act. In section 73, we have empowered the Registrar to enforce the performance of obligation in respect of keeping of proper books and furnishing statements and returns and to take initiative in these matters if the society fails. The same section empowers the Registrar to realise the expenses from the officers concerned. We are of the view that the society, its officer or member whose duty is to comply should also be fined for failing to comply with this section and recommend that the maximum fine should be Rs. 500. Since the societies to be covered vary in size and equipment we, however, wish to draw a distinction between a small society and a big one and accept the distinction made in section 60 (a) of the present Act. The provision recommended will thus be applicable to officers and members of societies with a working capital of Rs. 50,000 or more. The wilful negligence or refusal has, however, to be viewed very seriously

irrespective of the size of a society and the offender in our opinion, should be punishable with a month's imprisonment and/or fine of Rs. 500. The filing of untrue statements and the failure to maintain proper accounts are, however, more serious offences and the ends of justice can only be met by providing for rigorous imprisonment. The Companies Act provides for two year's imprisonment and/or a fine of Rs. 5,000 and we think one year's imprisonment and/or a fine of Rs. 2,000 should be sufficiently deterrent. Section 60(c) of the Act of 1925 lists these offences but the fine is only of Rs. 50 which is totally inadequate having regard to the nature of the offence.

415. Section 58 proposed by us (Section 37 of the present Act) deals with the manner in which the funds of a society should be invested. The compliance with this section is necessary from the point of safety of funds of society. The Companies Act provides for a fine of Rs. 5,000 for non-compliance. We recommend that the fine for this purpose should be Rs. 500. Before an application is made for registration of a society, it is customary for the promoters to collect the share capital from the prospective members. The safety of the money thus raised requires to be assured so that when the society is registered the share money can be handed over to that society, or, where the registration is refused, the money can be refunded. No Rule has been provided at present for this purpose. The general practice is, however, to deposit such money in a co-operative bank preferably a central co-operative bank or in a postal savings bank. At the same time quite a good many instances have come to our notice in respect of which the share money is retained by the chief promoter and his associates and the societies consequently come to grief. We are of the view that a Rule for the purpose is necessary and the violation of the Rule should be punishable. The Companies Act prescribes a fine of Rs. 5,000 for every promoter. Considering the size of an average society in the State, we are inclined to think that a fine of Rs. 500 should be a sufficient deterrent. The offence becomes more serious if such funds are used in the business of a society prior to its registration. In this case, we opine that no option of fine should be provided and an imprisonment of one year should be prescribed.

416. In a society the chances of impersonation are slender because the members are known to each other and we do not propose to deal with this particular offence. Section 63 and 64 deal with annual general meeting and special general meeting. In both the sections we have provided for penalties for the failure of an officer to convene the meeting, and we do not recommend any separate provision in this chapter. But Section 63(2), (3) and (4) deal with the submission of the committee's report, balance sheet and profit and loss account and the Auditor's report to the general meeting. The failure to comply with these three sub-sections requires also to be treated as an

offence for which we have not provided in the relevant sections. The Companies Act provides a penalty of six months' imprisonment and/or a fine of Rs. 1,000 to Rs. 2,000. Since the requirements have been incorporated in the Act for the first time we are inclined to deal with the offence rather leniently and recommend that a penalty of a fine of Rs. 250 should be sufficient. We have prescribed penalty for an Auditor failing to discharge his duties in section 78 and, therefore, consider any provision relating to that in this Chapter unnecessary.

417. As regards binami transaction, section 60-A of the present Act provides for a penalty of Rs. 500. Judged by the growth of such offences, we are afraid that the penalty provided in the Act has indirectly served as an encouragement to the offenders and if the trend is to be arrested, imprisonment is the only remedy. In the Companies Act, an imprisonment of 2 years has been provided for and we think that instead of a fine Rs. 500, provided in the present Act VII of 1925, the punishment of 2 years' imprisonment deserves to be awarded for such offenders. Falsification of accounts, destruction of records, etc. are grave offences and judged by the said experience in connection with the enquiry proceedings, we opine that a very serious view should be taken of this grave offence. The Companies Act prescribes a penalty of 7 years' imprisonment. We are, tempted to recommend the same quantum of imprisonment, but have desisted from doing so only because of the wide variation of the resources of societies registered under this Act and the equipment at their disposal. At the same time there can be no excuse for condoning such an offence. We, therefore, recommend a punishment of 3 years' imprisonment.

418. It is not unusual for officers and employees of certain societies to wrongfully obtain or withhold the society's property including books of accounts and records. Under Sections 69 and 70 we have recommended the appointment of nominated committees and administrators respectively, Section 75 deals with auditors, Sections 80 and 81 provide for inquiry and inspection officers, Section 90 relates to Registrar's nominee, while in Section 99 the appointment of a liquidator has been provided for. All these persons require information and assistance from officers of a society. Under the by-laws of a society the old committee may go and a new one may be elected. In these cases as well as in certain other circumstances it is obligatory on officers and other persons to hand over the custody of books, records etc., to their successors. The tendency is, however, to withhold the books. Similarly, inquiry officers, liquidators, etc., need co-operation and assistance of such persons in getting the relevant information; but this is refused. All this in our opinion, should be treated as an offence and punishable with a fine extending upto Rs. 500.

419. Two kinds of offences peculiar to the working of co-operative societies remain to be dealt with. These are (a) wilful failure to give effect to any decision, award or order passed under this Act, and (b) fraudulent disposal of property on which the society has a prior claim or from which it can realise its dues. During the past 5 years, from a variety of reasons there has been a growing tendency among officers of certain societies to refuse to give effect to any decision, award or order passed under this Act. This tendency is noticeable particularly among the educated class. Much of the trouble in housing societies in Bombay State has stemmed from the absence of any provision penalising this recalcitrant element disobeying orders, etc. validly issued under this Act. We, therefore, recommend that offenders should be subjected to a punishment of six month's imprisonment and/or a fine of Rs. 500. Fraudulent disposal of property on which the society has a prior claim is also an offence which has been growing. Under Section 24 of the existing Act (Section 48 of the proposed Act) the offenders are punishable with imprisonment for a term which may extend to six months or with a fine which may extend to Rs. 500. It may be noted that this section is primarily applicable to agriculturists and we do not see any reason why penalty prescribed in this section should not be applicable to an offence of a similar nature. We therefore, recommend that fraudulent disposal of property on which a society has a prior claim should be punishable by imprisonment of six months and/or a fine of Rs. 1,000. The same penalty should be awarded where the intention is to defraud a society by fraudulent disposal of property which is liable to be attached for any liability of a society even when it has no prior claim. We have also included the provisions in section 60-B and 61 in the present Act with suitable modifications.

420. To give effect to the above recommendations we propose that the following sections be inserted in this Chapter in place of the existing ones :—

SECTION 138—Prohibition of the use of the word "Co-operative".—

(1) No person, other than a society registered under this Act and a person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation, shall, without the sanction of the State Government, function, trade or carry on business under any name or title of which the word "co-operative" or its equivalent in any Indian language forms part.

(2) Every person who is a member of a society formed in contravention of Section 11(2) of this Act and every person contravening the provisions of sub-section (1) shall be punishable with a fine which may extend to Rs. 500.

SECTION 139—*Offences*.—It shall be an offence under this Act, if (a) a committee of a society with a working capital of Rs. 50,000 or more or an officer or a member thereof fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything, which the committee, officer or member is by this Act required to give, send, do or allow to be done or comply with orders made under Section 73 ; or

(b) a committee of a society or an officer or member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorised by him in writing in this behalf ; or

(c) a committee of a society or an officer or member thereof wilfully makes a false return or furnishes false information or fails to maintain proper accounts ; or

(d) a committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by Section 58 ; or

(e) any person collecting share money for a society in formation does not deposit the same in the State Co-operative Bank or a central co-operative bank or an urban co-operative bank or a postal savings bank ; or

(f) a person collecting the share money for a society in formation makes use of the funds so raised for conducting any business or trading in the name of a society to be registered or provisionally registered ; or otherwise ; or

(g) a committee of a society or an officer or member thereof fails to comply with the provisions under Section 63 (2), (3) and (4) ; or

(h) any officer of a society wilfully recommends or sanctions for his own personal use or benefit or for the use or benefit of a person in whom he is interested, loan in the name of any other person ; or

(i) an officer or member destroys, mutilates, alters, falsifies or secretes or is privy to the destruction, mutilation, alteration, falsification or secreting of any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the society ; or

(j) an officer or member who is in possession of information, books and records, fails to furnish such information or produce books and papers or give assistance to a person appointed or authorised by the Registrar under Sections 69, 70, 75, 80, 81, 90 and 99 ; or

(k) an officer fails to hand over the custody of books, records, cash, security and other property belonging to the society of which he is an officer, to a person appointed under Sections 69, 70 and 99 ;

(l) an officer or a member wilfully fails to comply with any decision, award or order passed under Section 89 ; or

(m) a member fraudulently disposes of property over which the society has a prior claim or a member or officer or employee or any person disposes of his property by sale, transfer, mortgage, gift or otherwise, with the fraudulent intention of evading the dues of the society; or

(n) any employer and every director, manager, secretary or other officer or agent acting on behalf of such employer who, without sufficient cause, fails to comply with section 51 (2); or

(o) an officer or member of a society or any person does any act or omission declared by the Rules to be an offence.

Explanation.—For the purpose of this section an officer or a member referred to in the section shall include past-officer and past member as the case may be.

SECTION 140—*Penalties for offences.*—Every Society, officer or past officer or member or past member or an employee or past employee of a society or any other person found guilty of an offence referred to in Section 139 shall be liable to be punished—

(a) With fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in Section 139 (a); or

(b) with imprisonment for a term which may extend to one month or with fine not exceeding five hundred rupees or with both provided that he is convicted of an offence referred to in Section 139 (b); or

(c) with imprisonment for a term which may extend to one year or with fine not exceeding rupees two thousand or both provided that he is convicted of an offence referred to in Section 139 (c); or

(d) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139 (d); or

(e) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139 (e); or

(f) with imprisonment for a term which may extend to one year provided that he is convicted of an offence referred to in Section 139 (f); or

(g) with fine not exceeding two hundred and fifty rupees provided that he is convicted of an offence referred to in Section 139 (g); or

(h) with imprisonment for a term which may extend to two years provided that he is convicted of an offence referred to in Section 139 (h); or

(i) with imprisonment for a term which may extend to three years provided that he is convicted of an offence referred to in Section 139 (i); or

(j) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139 (j) ; or

(k) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139 (k) ; or

(l) with imprisonment for a term which may extend to six months or with fine not exceeding five hundred rupees or both provided that he is convicted of an offence referred to in Section 139 (l) ; or

(m) with imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or both provided that he is convicted of an offence referred to in Section 139 (m) ; or

(n) with imprisonment for a term which may extend to one month or with fine not exceeding five thousand rupees or with both provided that he is convicted of an offence referred to in Section 139 (n) ; or

(o) with fine not exceeding two hundred and fifty rupees provided that he is convicted of an offence referred to in Section 139 (o).

SECTION 141—*Cognizance of offences.*—(1) No court inferior to that of a Presidency Magistrate or Magistrate of the First Class shall try any offence under this Act.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898—

(a) every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognizable ;

(b) it shall be lawful for a Presidency Magistrate or a Magistrate of the First Class to pass a sentence of fine exceeding one thousand rupees on any person convicted of an offence under Section 139 (n).

(3) No prosecution under this Act shall be lodged except with the previous sanction of the State Government in the case of an offence under Section 139 (n) and of the Registrar in the case of any other offence under this Act. Such sanction shall not be given except after hearing the party concerned by an officer authorised in this behalf by the State Government by a general or special order.

CHAPTER XV.

APPEALS AND REVISION.

421. On matters arising from the provision in law decisions have to be taken by appropriate authority and, in fairness to aggrieved parties, the legislature has recognised their right of appeal. Another principle that has been accepted is that an authority giving a decision should also have the power to review it. These principles of equity and justice have been recognised by jurists while framing Co-operative Legislation. In the case of Co-operative Societies subjects falling within the scope of this chapter are listed below :—

(1) Refusal to register a society; (2) refusal to register an amendment; (3) order directing amendment of bye-laws; (4) decisions regarding amalgamation, division and reconstruction of a society; (5) order directing amalgamation of a society; (6) order for compensation payable to a society; (7) refusal to admit a member; (8) expulsion of members; (9) order directing affiliation of society to a federal society; (10) order suspending a committee; (11) order nominating a committee; (12) order appointing an administrator, (13) order for enforcement of performance of obligations; (14) order for inspection and enquiry; (15) cost of inspection and inquiry; (16) surcharge; (17) decisions in dispute; (18) attachment before award; (19) winding up of a society; (20) decisions of a liquidator; (21) orders or decisions as per the rules, and (22) demand for repayment of loan in case of improper use.

422. In all States except Bombay there are only two appellate authorities, i.e., the Registrar and the State Government. In Bombay State, the Government took the initiative in the matter of setting up an independent judicial machinery with appellate and revisional powers by incorporating in 1948 Section 63-A in the Bombay Co-operative Societies Act, 1925. The importance of the Tribunal has now been recognised by almost all States. The point at issue is in what manner the jurisdiction of different authorities be distributed over matters relating to the subjects referred to in the preceding paragraph. Before examining this question, we beg to record that we have already provided for appeal separately in Section 93 dealing with the decisions of the Registrar or his nominee on disputes and applications for attachment before award. We have also provided for appeal in Section 100 against Registrar's order to wind up a society. In Section 23 we have provided facilities for any person not admitted as member by a society to appeal to a federal society to which that society has been affiliated or, in the absence of such society, to the president of the Bombay State Co-operative Union.

423. A suggestion was made that the Registrar's orders under Sections 80 and 81 recommended by us (Sections 43 and 44 of the present Act, 1925) should also be subject to appeal to the Tribunal. We

are unable to accept the suggestion because time is the essential element in ordering and completing an enquiry and inspection and the object will be defeated by providing an opportunity to a party to appeal. We, therefore, reject the suggestion.

424. In regard to the remaining subjects, we find that these may be broadly divided into two categories viz: matters of policy and matters of law and fact. Where a subject falls within the first category, it is but proper that the appellate authority should rest with the administration. Naturally, therefore, appeals on such matters should be decided by the Registrar or the Joint Registrar where a decision is taken by a subordinate officer of the Co-operative Department and the State Government should hear appeals against decisions of the Registrar and the Joint Registrar, otherwise than in appeal. The subjects falling within the sphere of policy in our opinion are (1) registration of a society, (2) amendment of bye-laws, (3) Registrar's orders directing amendment of bye-laws, (4) amalgamation, division and conversion of societies, (5) order directing amalgamation, (6) suspension of a committee and nomination of a new one, (7) appointment of an administrator, (8) order directing affiliation to a federal society, (9) orders and decisions of liquidator. We, therefore, recommend that these matters should be governed by the existing Section 64 in Bombay Act of 1925. Expulsion of a member is also a matter in respect of which no legal issues are involved. The basis for expulsion is the action of a member and we opine that the Registrar and the State Government are competent to decide whether that action is detrimental to interest of a society or not.

425. The subjects which remain to be examined are (1) cost of enquiry and inspection, (2) surcharge, (3) enforcement or performance of obligation, (4) order for compensation payable to a society, and (5) order or decision based on the Rules. Under Section 64 of the present Act of 1925, the Registrar's orders regarding cost of enquiry and inspection and surcharge are appealable to the Registrar where his subordinate officer has given the orders and to the State Government where the Registrar himself has issued the orders. This provision for appeal is not controversial. Those who opine that the Registrar is the proper authority to fix on the basis of an inquiry, inspection, audit, etc., the responsibility of loss etc., to a society, believe that it can be judiciously fixed and the surcharge can be speedily recovered if the appellate authority is not such as to take an ultra legalistic view of the matter. The other view point is that persons between whom the cost of inquiry and inspection is distributed and on whom the surcharge is imposed are not only forced to shoulder financial burden but also subjected to indignities with the result that their prestige in the society is lowered. It is, therefore, argued that such persons before having been adjudicated as guilty, should have adequate facilities to prove their innocence

if they innocent. It is further argued that the Registrar who has to safeguard the interest of a society is not the person likely to take a judicial view of the subject-matter.

426. Co-operative laws in most States confer the power of appeal on the Registrar and the State Government. The fourth schedule under Section 134 of the Bengal Co-operative Societies Act, however, provides that an order made in respect of apportioning the cost of enquiry and inspection and surcharge can be appealed against by any aggrieved party to the District Judge. We have weighed the pros and cons of the two extremes and have come to the conclusion that these orders should be appealable to the Tribunal. For the same reason we recommend that any order directing a person to compensate a society for loss should also be appealable to the Tribunal. Section 73 deals with enforcement of performance of obligations. We opine that appeal against such orders should lie with the Tribunal since questions of legality of orders might be involved. Similarly, orders or decisions based on Rules should be appealable to the Tribunal because the issues involved will necessarily be the authority of the Registrar and his officers to issue such orders and even the validity of a Rule may be challenged. Since it is not unlikely that the validity of certain existing Rules can be questioned, we are afraid, the State Government responsible for framing the Rules will not be in a position to take a dispassionate view on the merits of such a case.

427. We are satisfied that the provisions in the Bombay Co-operative Societies Act, 1925, and the regulations framed by the Co-operative Tribunal relating to its constitution, jurisdiction, etc., have been found to be generally adequate. We are, however, informed that although certain powers are conferred on the Tribunal by the regulations 10 to 15 of the Tribunal, the Tribunal in practice follows certain provisions in Order 41 of the Civil Procedure Code. Again, we find that facilities are not available at present in respect of cross-objections as have been provided for in Rule 22 of Order 41 of the Civil Procedure Code. This results in multiplying the appeals. In adapting the relevant Rule in Order 41 certain adjustments will also be necessary since the Rule in the Order requires one month's time, from the date of service of notice or the date fixed for hearing the appeal, for filing such objections. In the case of the Tribunal the notice for hearing an appeal is short though there is sufficient time lag between the registration of an appeal and the date of hearing. Section 63A(4) of the Act of 1925 provides that subject to the previous sanction of the State Government, the Tribunal shall frame regulations, etc. We do not think it necessary to change this sub-section and, therefore, recommend to the Government to pursue question of reviewing the regulations framed by the Tribunal for regulating its procedure and disposal of its business.

428. The second point to be noted in connection with the working of the Tribunal is the delay in the disposal of appeals. As a result of our recommendations in paragraph 426 and the reorganisation of States, we think that the volume of appeals to be heard by the Tribunal will rise appreciably. The present strength of the Tribunal is three and a bench of two has to be necessarily constituted. The Tribunal's headquarters are in Bombay, but it is expected to visit different parts of the State in order to avoid inconvenience to the parties. In the latter event the records also have to be transferred from Bombay. Taking all these factors into account, we are inclined to think that two benches would expedite the disposal of appeals and save the parties from inconvenience, hardship and additional expenditure. We accordingly recommend that the number of members of the Tribunal be increased to four.

429. With the modifications suggested above, we recommend that Chapter X of the Bombay Act of 1925 be deleted and the following sections be inserted in Chapter XV of the Act proposed by us:—

SECTION 142—*Bombay State Co-operative Tribunal.*—(1) The State Government shall constitute a Tribunal, called the Bombay State Co-operative Tribunal, to exercise the functions conferred on the Tribunal by or under this Act.

(2) The Tribunal shall consist of not more than four members possessing such qualifications as may be prescribed.

(3) Where the Tribunal consists of more than one member, any two members of the Tribunal shall form the quorum for the disposal of its business.

(4) Any vacancy in the membership of the Tribunal shall be filled by the State Government.

(5) Subject to the previous sanction of the State Government, the Tribunal shall frame regulations consistent with the provisions of this Act and Rules made thereunder, for regulating its procedure and the disposal of its business.

(6) The regulations made under sub-section (4) shall be published in the Official Gazette.

(7) 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. If in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit.

(8) Where an appeal is made to the Tribunal under section 93, it may, in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision of the appeal as may appear to it to be just and convenient or such orders as may

be necessary for the ends of justice or to prevent the abuse of the process of the Tribunal.

(9) An order passed in appeal, or in revision under sub-section (7) or in review under section 143 by the Tribunal shall be final and conclusive and shall not be liable to be called in question in any civil or revenue court.

Explanation.—The Tribunal hearing an appeal under section 93 shall exercise all the powers conferred upon an appellate court by section 97 and order 41 of the Civil Procedure Code.

SECTION 143—*Review of orders of Tribunal.*—(1) The Tribunal may, either on the application of the Registrar or on the application of any party interested, review its own order in any case and pass in reference thereto such order as it thinks fit.

Provided that no such application made by the applicant 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 for any other sufficient reason :

Provided further that no such order shall be varied or revised unless notice has been given to the parties interested to appear and be heard in support of such order.

(2) An application for review under sub-section (1) by any party shall be made within 90 days from the date of the communication of the order of the Tribunal.

SECTION 144—*Tribunal to have powers of civil court.*—(1) In exercising the functions conferred on it by or under this Act, the Tribunal shall have the same powers as are vested in Courts in respect of—

(a) proof of facts by affidavits ;

(b) summoning and enforcing the attendance of any person and examining him on oath ;

(c) compelling the production of documents ; and

(d) issuing commissions for the examination of witnesses.

(2) In the case of any such affidavit, any officer appointed by the Tribunal in this behalf may administer the oath to the deponent.

SECTION 145—*Appeal.*—(1) An appeal against an order or decision under sections 10, 13, 14, 17, 18, 19, 36, 60, 68, 69, 70, 98 and 101 shall lie—

(a) if made or sanctioned or approved by the Registrar or the Joint Registrar on whom powers of the Registrar are conferred, to the State Government ;

(b) if made or sanctioned by any person other than the Registrar or the Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

(2) An appeal against an order or decision under sections 73, 82, 85 and any order passed by the Registrar for paying compensation to a society and any other order for which an appeal to the Tribunal has been provided under this Act shall lie with the Tribunal.

(3) An appeal under sub-sections (1) and (2) shall be filed within two months of the date of communication of the order or decision.

(4) Save as provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act, and every such order, decision or award shall be final and where the appeal has been provided for, any order passed on appeal shall be final and no appeal shall lie against it.

SECTION 146—*Extension of period of limitation by appellate authority in certain cases.*—In all cases in which it is provided under this Act that an appeal may be filed against any decision or order within a specified period, the appellate authority may admit an appeal after the expiry of such period, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

SECTION 147—*Power of State Government and the Registrar to call for proceedings of subordinate officers and to pass orders thereon.*—The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them except those referred to in sub-section (7) of section 142 for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case, it shall appear to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may pass such order thereon as to it or he may deem fit.

CHAPTER XVI.

MISCELLANEOUS.

430. This Chapter deals with residual matters in connection with the Bombay State Co-operative Societies Act, which we have proposed. Chapter XII in the Bombay Act of 1925, on the same subject provides for (1) recovery of sums due to Government, (2) power to exempt societies from conditions as to registration, (3) power to exempt societies from provisions of Act, (4) Indian Companies Act not to apply, (5) Branches, etc., of societies, outside the Presidency, (6) Notice necessary in suits, (7) Rules, (8) Saving of existing societies, (9) Construction of references to Co-operative Societies Act, 1912, in enactments, (10) Validity of transfer made under section 59(2) of Bombay VII of 1925, and (11) Repeal. Section 7 of the Act, which we have proposed covers section 66 in the present Act relating to power to exempt societies from conditions as to registration. Except in respect of Rules we do not propose to make any changes other than consequential ones arising from our recommendations embodied in the preceding chapters. We, however, opine that the present Chapter does not provide for two important items, i.e., (1) Registrar, etc., to be public servant, and (2) indemnity for acts done in good faith. In our opinion these matters are of vital importance both in the context of the administration of the co-operative Law and in the interest of efficient working of Co-operative societies because no individual would take personal risks while launching a particular policy or pursuing a particular line of action which is to his knowledge within the four corners of the law. We have also indicated certain changes in section 71 relating to powers of the State Government to make Rules in conformity with our approach explained in Chapter III and our subsequent recommendation.

431. *The Registrar and other officers to be public servants.*—A comprehensive provision for the purpose of including certain officers within the meaning of “public servant”, as defined in Section 21 of the Indian Penal Code, has been made in various Acts. Section 61 of the Hyderabad Co-operative Societies Act, presently applicable to Marathwada has, for instance, such a provision. Persons who are required to exercise the powers of a public servant in connection with the administration of this Act and working of societies in certain circumstances, are the Registrar, a person exercising his powers, a person authorised by him to make an inspection or hold an inquiry or appointed as Liquidator or Arbitrator and an Auditor and they should be covered by this section. A suggestion was made to us that certain types of officers of societies should also be included in this section. We are of the view that its acceptance will lead to regimentation of societies and might lead to complications which will defeat the purpose of this

Act. We, therefore, recommend that the following new Section No. 148 be added :—

SECTION 148—Registrar and other officers to be public servants.—The Registrar, a person exercising the powers of the Registrar, a person authorised to hold an enquiry under Section 80 or to make an inspection under Section 81, a person appointed as a Liquidator under Section 99 or as nominee or board of nominees under Section 87, or authorised under Section 75(1) to audit the accounts of a society, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

432. *Indemnity for acts done in good faith.*—Certain officers have to take actions under this Act against certain persons connected with a society or have to issue orders under this Act in connection with the working of a society or to carry on the business of a society in certain circumstances. All these officers are defined as public servants in the preceding section. Here we propose to provide for indemnifying them from any possible action arising from the discharge of their duties, provided it is taken in good faith. The onus of proving so will, however, lie on the person. We, therefore, recommend the following new section No. 149.

SECTION 149—Indemnity for acts done in good faith.—No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority, in respect of anything done or purporting to have been done by him under this Act in good faith.

433. *Recovery of sums due to the Government.*—Section 65 in the present Act provides for recovery of sums due to Government. In sub-sections (2) and (3) there is a reference to liability of past members from which estate of the deceased member is excluded which is not proper. We, therefore, deem it necessary to make an appropriate change. We have also renumbered Section 28 as Section 34 and have recommended the formation of societies without liability. Consequential changes are, therefore, necessary. As a result, the existing Section 65, renumbered as Section 150 will read as under :—

SECTION 150—Recovery of sums due to the Government.—(1) All sums due from a society or from an officer or member or past member or a deceased member of a society as such to the Government may be recovered according to the law and under the Rules for the time being in force for the recovery of arrears of land revenue.

(2) Sums due from a society to the Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members or

past members or the estate of deceased members, subject of their past members or the estate of deceased members, subject to the limit of their liability; and, thirdly, in the case of societies with unlimited liability from the members or past members or estate of deceased members.

(3) The liability of past members or estate of deceased members shall in all cases be subject to the provisions of Section 33.

434. *Exemption to societies, non-application of Companies Act, branches, etc., of societies outside the State and notice necessary in suits.*—Section 67 deals with powers to exempt societies from the provisions of the Act and we have no change to recommend therein. Section 68 deals with non-application of the Indian Companies Act of 1913. This Act has been consolidated and is now known as Companies Act, 1956. We propose to make the necessary change. Section 69 deals with branches, etc., of societies outside the Presidency. In addition to the need for substituting the word “State” for the word “Presidency”, owing to the change in the Constitution of India, we also consider it necessary to provide that no society registered in any other State should open a branch in this State without the prior permission of the Registrar. This is because the society is registered under an Act of another State. Similarly, it is necessary that society registered under this Act should not open a branch outside the State without the prior permission of the Registrar. In the former case, the existing provisions in Section 69 regarding returns, etc., are desirable. The period of six months prescribed is, however, in our opinion too long and we recommend that it should be reduced to 3 months. As regards Section 70 we do not recommend any change therein since we have included a Liquidator within the meaning of “officers” in Section 2. As a result of the above recommendations the relevant Sections be worded as under :—

SECTION 151—*Power to exempt societies from provisions of Act.*—The State Government may, by general or special order to be published in the Official Gazette, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order; provided that no order to the prejudice of any society shall be passed without any opportunity being given to such society to represent its case.

SECTION 152—*Companies Act not to apply.*—The provisions of the Companies Act, 1956, shall not apply to societies registered under this Act.

SECTION 153—*Branches etc. of societies outside the State.*—(1) No society other than a society registered under this Act shall open a branch or a place of business outside Bombay State and no co-operative society registered under any Law in any other State shall open a branch or a place of business in Bombay State without the permission of the Registrar.

(2) Every co-operative society registered under any Law in any other State and permitted to open a Branch or a place of business in Bombay State under sub-section (1) or which has a branch or a place of business in Bombay State at the commencement of this Act, shall within 3 months from the commencement of this Act, or from the opening of such branch or place of business, file with the Registrar a certified copy of the bye-laws and amendments and, if these are not written in English language, a certified translation in English thereof, and shall submit to the Registrar such returns and information as are submitted by similiar societies registered under this Act in addition to those submitted to the Registrar of the State where such society is registered.

SECTION 154—*Notice necessary in suits.*—No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

435. *Power to make rules.*—In paragraph 36, we have observed that some of the existing Rules lack the requisite clarity and even the authority of Section 71 of the present Act of 1925. The power of the State Government under this Section requires to be strengthened against the background of our proposals for revising the Act. The powers to frame Rules have been laid down in a little over 40 clauses of Section 71. As a result of our recommendations, the number has gone up to 158. Seven clauses have been recommended to cover procedural matters relating to land mortgage banks in respect of which a special chapter has been included in the Act proposed by us. Other matters proposed to be covered by the Rules include expulsion of a member, limits of borrowing for different classes of societies, conditions for satisfying the charge of a society, regulation of investment of funds, administration of employees' provident fund, procedure and conditions to be observed before a society is directed to be affiliated to a federal society, conditions for disqualifying a member for voting, qualifications of employees, procedure for suspending a committee, for seizing records, rectification of defects in accounts, etc., rules relating to the constituion of supervisory authority, transfer of property which cannot be sold, investigation of claims, qualifications of liquidator, auditor, etc., and appeals to the State Government. A large number of additional clauses has been sought to be strengthened by a general clause to cover matters which might have been left uncovered. Section 71 (1) covers a very general aspect "to carry out the purposes of this Act". We have deemed it necessary to reinforce it in view of the Courts

discretion to interpret "the purposes of this Act" by extending the provision to "conduct and regulation of business" of societies. The precise scope of the Rules can, however, be determined when the Bombay State Co-operative Societies Act is enacted.

SECTION 155—*Rules.*—(I) The State Government may, for the whole or any part of the State and for any society or class of societies, make rules for the conduct and regulation of the business of such society or class of societies and for carrying out the purpose of this Act.

(II) In particular and without prejudice to the generality of the foregoing power such rules may—

(1) subject to the provisions of section 3, prescribe the delegation of powers vested in the Registrar to persons appointed to assist the Registrar ;

(2) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;

(3) prescribe the matters in respect of which a society may make or the Registrar may direct a society to make, bye-laws and the procedure to be followed in making, altering and abrogating bye-laws and the conditions to be satisfied prior to such making, alteration or abrogation ;

(4) prescribe the procedure to be followed and conditions to be observed for change of name or liability, amalgamation, transfer, division, conversion or reconstruction of society ;

(5) prescribe the form of and procedure for an application under section 19 and the procedure for calling, holding and conducting a meeting under that section ;

(6) prescribe the conditions to be complied with by a person applying for admission or admitted as a member and provide for the election and admission of members and the payment to be made and the interest to be acquired before the exercise of the right of membership ;

(7) prescribe in the case of a federal society or class of federal societies the proportion of individual members to society members in such society or class of societies and the proportion of individual members to society members in the committee of such society or class of societies.

(8) subject to the provisions of section 27, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;

(9) prescribe the procedure for the admission of joint members, members of a joint Hindu undivided family, and

minors and persons of unsound mind inheriting the share or interest of deceased members and provide for their rights and liabilities ;

(10) provide for the withdrawal, removal or expulsion of members and for the payments to them and for the liabilities of past members and the estate of deceased members ;

(11) prescribe the conditions and procedure for the transfer of share or interest ;

(12) provide for the nomination of a person to whom the share or the interest of a deceased member may be paid or transferred ;

(13) provide for ascertaining the value of a share or interest of a past member or deceased member ;

(14) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent to an individual member ;

(15) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same ;

(16) the procedure for registering the address of a society and the change of its address ;

(17) provide for the formation and maintenance of a register of members, and where the liability of the members is limited by shares, of a register of shares and a list of members ;

(18) provide for securing that the share capital of any society shall be variable in such a way as may be necessary to secure that the share shall not appreciate in value and that necessary capital shall be available for the society as required ;

(19) provide for the procedure to be adopted by a society with limited liability in order to reduce its share capital ;

(20) prescribe the period and terms upon which Government aid may be given to societies and terms under which the State Government may subscribe to the share capital of and guarantee the payment of the principal of and interest on debentures issued by societies ;

(21) regulate the manner in which funds may be raised by a society or class of societies by means of shares or debentures or otherwise and the quantum of funds so raised ;

(22) prescribe the limits for loans to be granted by a society or class of societies against different classes of securities or without security and the procedure for granting loans ;

(23) prescribe the manner of recalling a loan ;

(24) prescribe the limits for granting credit by a non-credit society or a class of non-credit societies ;

(25) prescribe the prohibitions and restrictions subject to which societies may trade or transact business with persons who are not members ;

(26) prescribe the conditions in which any charge in favour of a society shall be satisfied and the extent to which and the order in which the property to the charge shall be used in its satisfaction ;

(27) provide for giving reasonable notice of the charge under section 50 ;

(28) prescribe the procedure by which a society shall calculate and write off bad debts ;

(29) prescribe the sums which, in addition to those referred to in section 53 (1), shall be deducted from profits before arriving at the profit for the purpose of section 53 (2) ;

(30) provide for the formation and maintenance of reserve fund, and the objects to which such fund may be applied, and for the investment and use of any fund including reserve fund under the control of a society ;

(31) prescribe the conditions under which profits may be distributed as dividend and bonus among the members and non-members of a society under section 55 ;

(32) prescribe the rate at which a society shall contribute towards the educational fund of the Bombay State Co-operative Union ;

(33) define the co-operative purpose for which a society shall, under section 57, utilise its fund ;

(34) prescribe the mode of investment of funds of a society under section 58 and the proportion of investment in any security or class of securities ;

(35) provide for the payment of contribution to any provident fund which may be established by a society for the benefit of officers and servants employed by them and for the administration of such provident fund ;

(36) prescribe the procedure and conditions for the exercise by a federal society of the powers conferred by this Act and the conditions on which the Registrar may direct a society to be affiliated to a federal society under section 60 ;

(37) provide for general meetings of the members, for the procedure at such meetings and the powers to be exercised by such meetings ;

(38) prescribe the circumstances in which and the methods by which delegates may be elected under section 62 for the purposes of sections 63 and 64 the manner of electing delegates

for any of the purposes of this Act and the manner in which delegates so elected shall vote ;

(39) prescribe the conditions in which a member of a society may be disqualified from voting ;

(40) provide for the appointment, suspension and removal of the members of the committee and other officers and for the appointment of administrator under section 70 and prescribe procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee, administrator and other officers ;

(41) prescribe qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by societies ;

(42) prescribe the conditions for deputation of and the powers to be exercised and duties to be performed by persons appointed under section 71 (2) ;

(43) prescribe the returns to be submitted by a society to the Registrar and provide for the person by whom and the form in which such returns shall be submitted ;

(44) provide for the person by whom and the form in which copies of documents and entries in books of societies may be certified and the charges to be levied for the supply of copies thereof ;

(45) provide for the procedure to be adopted by the Registrar in cases where the taking of possession of books, documents, securities, cash and other properties of a society or of a society the affairs of which have been ordered to be wound up by the Registrar or by a person entitled to the same is resisted or obstructed ;

(46) provide for the procedure to be adopted for taking possession of books, documents, securities, cash and other property of a society by a person acting under sections 74, 75, 80 and 81 in cases where misappropriation of funds, breach of trust or fraud has been committed or where it is suspected or apprehended that the books, documents, securities, cash and other properties are likely to be tampered with or destroyed or done away with ;

(47) prescribe the accounts and books to be kept by a society or class of societies ;

(48) prescribe the procedure for conducting an audit, the matters on which the Auditor shall submit a report, the form in which the statement of accounts shall be prepared for his audit, the limits within which the Auditor may examine the

monetary transactions of a society, the form of audit memorandum and report, and the charges, if any, to be paid by a society for audit ;

(49) prescribe the procedure for appointment of Auditors under Section 75 ;

(50) prescribe the form for rectification of defects discovered in the course of audit, inspection or enquiry ;

(51) prescribe the procedure and principles for the conduct of enquiry under Section 80 and inspection under Section 81 ;

(52) prescribe the procedure for apportioning the cost of enquiry and inspection and for assessing damages against delinquent promoters under Section 85 and for recovery of cost and damages ;

(53) prescribe the manner in which appointment shall be made and control exercised by, and the number of persons comprising, and functions to be performed by, the authority constituted under Section 86, the manner of election and nomination of such persons, the fee to be paid to such authority and the manner of such payment, and the procedure for and the method of calculating any cost, charges or expenses required to be levied under this Act or the Rules ;

(54) provide for appointment of Registrar's nominee or board of nominees, procedure to be followed in proceedings before the Registrar or his nominee or board of nominees and for fixing, and levying the expenses for determining the dispute and for enforcing the decisions or awards in such proceedings ;

(55) prescribe the form in which a dispute shall be referred to the Registrar ;

(56) provide for the issue and service of processes and for proving of service thereof ;

(57) provide for the investigation of claims and objections that may be preferred against any attachment effected by the Registrar ;

(58) prescribe the procedure for and the method of recovery of any sums due under this Act or the Rules ;

(59) prescribe the procedure to be followed for the custody of property attached under Section 91 ;

(60) prescribe the procedure to be followed in the execution of awards ;

(61) prescribe the manner in which any property shall be delivered to, and the terms and conditions subject to which such property shall be held by a society under Section 97 ;

(62) prescribe the procedure for attachment and sale of property for the realisation of any security given by a person in the course of execution proceedings ;

(63) prescribe the procedure and conditions for the exercise of the powers conferred under Section 101 and the procedure to be followed by a liquidator and provide for the disposal of surplus assets ;

(64) prescribe the matters in which an appeal shall lie from the order of a liquidator appointed under Section 99 ;

(65) prescribe the procedure for the withdrawal of orders to wind up a society ;

(66) prescribe the particulars to be furnished by the persons applying for the registration of a society to which Chapter IX is applicable ;

(67) prescribe the procedure for examining a scheme proposed by promoters of a society to which Chapter IX is applicable ;

(68) prescribe the manner of determining the value of land of a member of a society to which Chapter IX is applicable ;

(69) prescribe the procedure and conditions for the issue, redemption, reissue, transfer, replacement or conversion of debentures, issued by a society to which Chapter X is applicable ;

(70) prescribe the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures issued by a society to which Chapter X is applicable ;

(71) prescribe the qualifications and methods of appointment of an officer to effect sale under Section 129 and the powers and functions which such an officer may exercise ;

(72) prescribe, in the case of sale of immovable property under Chapter X ;

(i) the procedure for proclamation and conduct of the sale and the conditions on which an attempt of sale may be abandoned ;

(ii) the method of calculating the expenses incidental to the sale or attempted sale ;

(iii) the procedure for the receipt of deposit and disposal of the proceeds of sale ;

(iv) the procedure for a resale if an attempted sale is abandoned or the purchase money is not deposited within the prescribed time and penalty to be levied against the purchaser who fails so to deposit the purchase money ;

(v) the form and method of disposal of money by a mortgage bank under Section 132 ;

(vi) the form of sale certified under Section 133 ;

(vii) the form of the notice to be served under Section 135 ;

(viii) the fee payable for the service of such notices and the manner of serving such notices on, and of transmitting landlords' fee to the landlord named in such notices; and

(ix) the procedure for the delivery by the Court of the property purchased to the purchaser under Section 133;

(73) prescribe the time within which and the procedure according to which property purchased by a mortgage bank at a sale of immoveable property under Chapter X shall be disposed off by the bank;

(74) prescribe for the appointment of a receiver of the produce and income of the mortgaged property for sale under Section 129, the conditions in which he may be appointed or removed, the powers and functions which he may exercise and the expenses of management and remuneration which he may receive;

(75) prescribes the circumstances in which action may be taken by a mortgage bank against a mortgagor under Section 129(2);

(76) prescribe the procedure to be followed in presenting and disposing of appeals;

(77) prescribe the qualifications of the members of the Tribunal;

(78) prescribe in the case of appeals lying to the State Government the authority to which power of hearing appeals may be delegated;

(79) prescribe the method of communicating or publishing any order, decision or award required to be communicated or published under this Act or the Rules; and

(80) provide for all matters expressly required or allowed by this Act to be prescribed by Rules.

436. *Formal provisions.*—Section 72, 72A and 72B deal with saving of existing societies, construction of references to Co-operative Societies Act, 1912 in enactments, and validity of transfer made under Section 59(2) of Bombay Act VII of 1925 while Section 73 provides for repeal. The saving clause in respect of existing societies relates to societies registered under the Acts in force prior to the enactment of Act VII of 1925 whose repeal we have recommended. Since the new Act is to be extended to the component parts of the Bombay State, it is also necessary to bring societies in

Saurashtra, Kutch, Vidarbha and Marathwada registered under their respective Acts within the scope of this section. For this purpose references to Bombay Co-operative Societies Act, 1925, as adapted and applied to the State of Saurashtra, the Bombay Co-operative Societies Act, 1925, read with the Kutch (Application of Laws) Order, 1949, the Co-operative Societies Act, 1912, as applied to by the Central Provinces and Berar and the Hyderabad Cooperative Societies Act, 1952, require to be construed as references to this Act. The necessary change is, therefore, recommended. Sub-section (2) of Section 59 of the Bombay Act of 1925 was deleted by an amendment of the Section in 1935. The amendment sought to validate certain transfers of lands under Section 59(2) during the thirties. Since 22 years are over since the action was taken, this section has now become redundant and we recommend its deletion. We recommend that the existing Section 72 and 72-A be renumbered as Sections 156 and 157 and be read as under :—

SECTION 156—*Savings of existing societies.*—(1) Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904 or under the Co-operative Societies Act, 1912, or under the Bombay Co-operative Societies Act, 1925 or under the Bombay Co-operative Societies Act, 1925, as adapted and applied to the State of Saurashtra, or the Bombay Co-operative Societies Act, 1925, read with the Kutch (Application of Laws) Order, 1949, or the Co-operative Societies Act, 1912, as applied to Vidarbha, or the Hyderabad Co-operative Societies Act, 1952, shall be deemed to be registered under this Act and its bye-laws shall so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) All appointments, Rules and orders made, notifications and notices issued and suits and other proceedings instituted, under the said Act shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

SECTION 157—*Construction of references of Co-operative Societies Act in enactment.*—All references to the Co-operative Societies Act, 1912, the Bombay Co-operative Societies Act, 1925, and to any other Co-operative Societies Act applicable to the component parts of Bombay State prior to the reorganisation of the State, occurring in any Law and for the time being in force in any part of the State of Bombay, shall, in the application, to the said State, or part of State of any such enactment, be read and construed as references to this Act and anything done or any proceeding commenced in pursuance of any such enactment on or after the date on which this Act shall have come into operation shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, the Bombay Co-operative Societies Act, 1925, and such other Acts as had been in force prior to reorganisation of the State in the component parts of Bombay State had been

the reference to this Act and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

Section 158—Repeal.—The enactments specified in the Schedule are hereby repealed in so far as they apply to Bombay State to the extent specified in the fourth column of the said Schedule.

SCHEDULE.

Enactments repealed.

(See Section 158.)

Year.	No.	Short title.	Enactment of repeal.
1925	... VII	The Bombay Co-operative Societies Act, 1925, as amended up-to-date.	The whole.
1912	... II	The Co-operative Societies Act, 1912, as applied to Vidarbha.	The whole.
1952	... XVI	The Hyderabad Co-operative Societies Act, 1952	... The whole.
		The Bombay Co-operative Societies Act, 1925, read with the Kutch (Application of Laws) Order, 1949.	The whole.
		The Bombay Co-operative Societies Act, 1925, as adapted and applied to the State of Saurashtra.	The whole.

CHAPTER XVII.**CONCLUSION.**

437. We have come to the end of our inquiry. In Appendix "A" we have indicated the changes which we have recommended to the Bombay Co-operative Societies Act, 1925. In respect of a few changes we are divided, but the decision by a majority have guided our recommendations. Our proposals involve a radical revision of the Acts. We have, therefore, recommended that Bombay Act No. VII of 1925 and the corresponding Acts applicable to co-operative societies in the component parts of the Bombay State be replaced by the Bombay State Co-operative Societies Act, 1957. The new Act proposed by us will have 158 sections as against 73 sections in the present Act. The increase is to be explained by the addition of a chapter on land mortgage banks which has 23 sections and the inclusion of 62 new sections designed to impart "new discipline" to the registration, privileges, responsibilities and working of societies, clarify the rights and obligations of members and codify the procedure for audit, inspection, inquiry, supervision and liquidation of societies and the settlement of disputes. We have also broadened the scope of the Chapter relating to offences and penalties and appeals and revision. Although we have not made specific recommendations regarding the Rules to be prescribed, we have indicated in the Report our approach and have favoured considerably expansion of the powers of the State Government to frame the Rules. We are confident that should the Government of Bombay be pleased to accept our recommendations in toto and prescribe the Rules by using fully the rule making powers indicated in Section, the Co-operative institutions in Bombay State can be assured of a legal structure which can, if administered efficiently, tone up their working appreciably. For this purpose, it would, however, be necessary to bring the bye-laws of societies in line with the proposed Act and the Rules to be prescribed thereunder. As a beginning towards this effort, we would urge the revision of model bye-laws and leaflets on different types of societies published by the Co-operative Department so as to bring them in line with the new Act and the new set of Rules. In this context, we beg to point out that much of the material therein was prepared twenty-five years ago and many of the leaflets are not only out of date, but also out of print.

438. Administrative problems are outside our terms of reference and we have made no recommendation thereon. But their solution has an intimate bearing on the success of Co-operation. An important pillar of the co-operative structure is the Registrar who has to serve as a watch-dog of societies in different stages ranging from

cradle to grave. Audit, inspection, settlement of disputes and liquidation and other aspects of working have to be tackled efficiently and promptly. There is a wide gap between the requirements and their fulfilment. We are not competent under our terms of enquiry to examine the reasons for the present state of affairs but beg to point out that we are not quite happy with the trend and our anxiety is shared by co-operators throughout the State. The fact is that the resources in men and money for their employment placed by the State Government at the disposal of the Registrar are not commensurate with his growing responsibilities, the expansion of the co-operative movement and the stake of public revenues. Under the Act proposed by us and the programme for economic development of the State with the aid of co-operatives—not to mention of the long-term objectives—the strain on the department is bound to be heavier and if timely care is not taken to absorb the strain, there is every danger of the co-operative law being held in ridicule and the effort to stimulate co-operation being frustrated. We therefore, hope that this aspect of the problem of imparting efficiency will be tackled while examining our recommendations on reforms in co-operative legislation so that no critic will have an opportunity in future to repeat the slogan, torn out of its context from the report of the Rural Credit Survey Committee that Co-operation is a failure but it must succeed.

439. Before we conclude, we wish to acknowledge with thanks the assistance received by us in the matter of conducting our enquiry. Co-operators from different parts of the State and the Registrar, Shri F. N. Rana, willingly came forward to acquaint us with the problems arising from the operation of the Law and with the suggestions to tackle them. The Co-operative Department kindly placed at our disposal the vast mass of material it had collected prior to the appointment of the Committee. The Chairman and four members of the Committee, other than the Member-Secretary, desire to place on record their thanks to Shri C. K. Patel, Member-Secretary and the Joint Registrar, Co-operative Societies, who placed his experience of the administration of the Co-operative Law at our disposal and assisted us in formulating appropriate recommendations. The Committee also places on record the valuable services rendered by Shri I. I. Patel, Office Superintendent and his staff, in the matter of fixing the tour programme of the Committee and making arrangements incidental to the enquiry.

We, the members of the Committee, other than the Chairman, wish to place on record our high sense of gratitude to our Chairman, Shri G. M. Laud, for taking great pains in guiding the deliberations of the Committee and for the unfailing courtesy and kindness he has always extended to the members of the Committee. But for the great troubles taken by him, it would have been difficult for the

Committee to conclude its deliberations and to submit the report in a short time.

Bombay, the 18th July 1957.

(Signed) G. M. LAUD,

(Signed) G. H. THAKORE,

(Signed) C. K. PATEL,

(Signed) R. V. KALIKAR,

(Signed) M. P. NANDEDKAR,

(Signed) MALDEVJI ODEDRA.

Recommendation.

The specific problems arising out of the administration of the law have been indicated in the context of the different sections—*vide* Appendix A. The recommendations, which are outside the terms of reference of the Committee but which are related to the efficient working of the Co-operative Movement and which arise out of our inquiry, are as follows :—

Recommendation No.	—————	Paragraph No.
1	We particularly wish to record that an efficient administration of the co-operative law is highly important for the healthy expansion of the co-operative movement and would urge the Government to examine this administrative problem against the background of the growth of the movement in this State.	28
2	We have come to the conclusion that for the proper functioning of the land mortgage banks, a separate chapter is necessary. Some of the parts of the State already have this facility under the Acts presently applicable to them and we propose to extend it to Maharashtra and Gujerat where land mortgage banking has not been sufficiently well developed.	35
3	We beg to point out that the revision of the model bye-laws and the leaflets is also overdue and suggest that all this work should be undertaken in collaboration with non-officials after the law is amended.	36
4	We, therefore, recommend that no time period be provided for the application of the Act to any part of the Bombay State and that the Act should be applied to the whole State simultaneously.	37

Recommendation No.	—————	Paragraph No.
5	It has been represented to us that as a result of the inclusion of the words "firms and companies", other associations, such as society registered under the Societies' Registration Act and the Public Trust Act have been excluded from the privilege of being members of co-operatives. Those of us, who interpret the word "person" in terms of the Bombay General Clauses Act, feel that it would be better to use the word "person" than to mention the type of persons and to differentiate between individuals and other persons, so that in the case of individuals, the qualifications regarding the age and of sound mind will be applicable. This does not arise in the case of an institution. We, however, suggest that this view-point be examined in the Legal Department.	108
6	The procedure for the admission of joint Hindu family as a member may suitably be laid down by the Registrar for the guidance of the societies, though it may not form part of the Rules.	109
7	Representations have been made that the scope of this section should be extended to other classes of instruments which a society has at present to register under the Indian Registration Act, 1908, in the absence of exemption. This is a point falling outside our terms of reference and is a matter for being represented to the Government for its consideration.	158
8	Section 33 of the Bombay Act dealing with this subject has a provision enabling the Central Government and the State Government to exempt societies from certain taxation. Clause (1) of the section has been derived from the Government of India Act of 1912 and doubts have been expressed by certain witnesses regarding the competence of a State Act to incorporate this provision. We suggest that this view-point should be examined by the Government further.	159

Recommendation No.	—————	Paragraph No.
9	We do not want to anticipate the Government's policy in regard to further exemptions nor do we recommend exemption from any specific taxation since these are matters outside our terms of reference, but we feel that the section should not be restrictive and a general clause enabling the Government to give further concessions in regard to the taxation should be inserted.	159
10	In Bombay State the system of converting the outstandings arising from the failure of crop into a medium term loan and granting fresh finance for the next crop has been in operation. We opine that such a rational system can be developed only if the charge is made continuous. The proposal tends to gravitate around fixed property but the position corresponds to machinery which, when fixed to the ground, is considered as immovable property, but is otherwise movable property. The legal implications of the suggestions made may be examined further.	183
11	In certain societies, the honorarium itself is treated as a part of the expenditure and is not subjected to the approval of the general body, which remains in the dark about the quantum of expenditure the society has incurred on the services of its own members. We feel that this aspect of the working of the co-operative societies may have to be inquired into by the Registrar.	195
12	We, therefore, opine that the power of veto should not be vested in the Government nominees and should be exercised either by the State Government or by the Registrar. This is again a matter, which should, in our opinion, be decided by Government in consultation with the representative co-operative opinion and need not be provided for in the Act itself.	252
13	In extraordinary circumstances, however, immediate action is necessary, even by doing away with the procedure, in order to prevent a Committee from frittering away the assets of the Society. A view has been expressed that	256

Recommendation No.	-----	Paragraph No.
	such a provision shall be <i>ultra vires</i> the Constitution and we urge the Government to examine the legal aspect of this particular provision which is in the Rules and which we consider absolutely essential for serving the objectives of such a drastic step.	256
14	In the case of Shop Act, however, certain basic difficulties are experienced by societies..... Since the operation of the Act has proved restrictive to the growth of Co-operation, we urge the Government to examine the problem. The subject matter falls outside our terms of reference and, therefore, we are unable to make any recommendation on the Shop Act.	267
15	We, therefore, urge the Government to assess the adequacy of the existing machinery for recovering money through the Collectorates and strengthen it, so that the distinction between Recovery Officers and Special Recovery Officers can disappear and all societies, irrespective of their size or the number of awards they send for execution, can take advantage of this section.	335
16	Although this aspect is not within our purview, we wonder whether the time has not come for exploring the possibility of appointing official liquidators under the control of Registrar.	344
17	It may also be possible to appoint federal societies as joint liquidators. We are emphatic that no individual from amongst the non-officials should be appointed.	344
18	The fact is that the resources in men and money for their employment placed by the State Government at the disposal of the Registrar are not commensurate with his growing responsibilities, the expansion of the Co-operative Movement and the stake of public revenues. Under the Act proposed by us and the programme for economic development of the	437

Recommendation
No.

Paragraph
No.

State with the aid of co-operatives— not to mention of the long-term objectives—the strain on the department is bound to be heavier and if timely care is not taken to absorb the strain, there is every danger of the co-operative law being held in ridicule and the effort to stimulate Co-operation being frustrated. We, therefore, hope that this aspect of the problem of imparting efficiency will be tackled while examining our recommendations on reforms in co-operative legislation.

ACCOMPANIMENT (A).

Statement indicating changes in the Bombay Co-operative Societies Act, Bombay Act VII of 1925.

MO-A Qb 2437-17

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act, as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
1 Preamble	... Preamble	... Whereas it is expedient further to facilitate the formation, organisation, working and regulation of Co-operative Societies for the promotion of thrift, selfhelp and mutual aid amongst agriculturists and other persons with common interest and for that purpose, to provide effective State aid and partnership, wherever necessary, so as to create conditions to bring about better living, better business, better methods of production, processing and disposal and to promote the Indian economy and to provide for machinery to help realise such objectives, and whereas for this purpose, it is expedient to consolidate and amend the law relating to co-operative societies in the State of Bombay including that in force in the component parts of Kutch, Saurashtra, Vidarbha and Marathwada and whereas the previous sanction of the President as required under the Article 248 of the Constitution of India has been obtained for passing of the Act, it is hereby enacted as follows :—	<p>Substitute "the formation, organisation, working and regulation" for "the formation and working" in the first line of the Preamble.</p> <p>Substitute "common interests" for "common economic needs" in the third line. Add thereafter "and for that purpose to provide effective State aid and partnership wherever necessary."</p> <p>Insert "to create conditons" between "so as", and "to bring about" in the third line.</p> <p>Add "Processing, and disposal and to promote the Indian economy and to provide for machinery to help realise such objectives and whereas" between "production" and "and" in the fourth line.</p> <p>Add "it is expedient" between "that purpose" and "to consolidate" in the fourth and the fifth lines.</p>	

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

Substitute " State of Bombay including that in force in the component parts of Kutch, Saurashtra, Vidarbha and Marathwada and whereas the previous sanction of the President as required under the Article 246 of the Constitution of India has been obtained for passing of the Act, it is hereby enacted as follows"; for " Presidency of Bombay; and whereas the previous sanction of the Governor-General required by sub section (3) of section 80-A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows" occurring in the last four lines of the Preamble.

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CHAPTER I.

PRELIMINARY

2 (1) Short title	...	1. Short title, extent and commencement.	(1) This Act may be called the Bombay State Co-operative Societies Act, 1957.	Add sub-section 3, to provide for the Act of commencement.
(2) Extent	...		(2) It extends to the whole of the State of Bombay.	Substitute "State of Bombay" for "Presidency of Bombay" wherever occurring.
			(3) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint.	

3 Definitions

... 2. Definitions

... In this Act, unless there is anything repugnant in the subject or context—

Add 16 new definitions as mentioned in column No. 4 and respectively numbered as serial nos. 1, 2, 3, 5, 6, 9, 10, 11, 16, 18, 20, 21, 22, 23, 26 and 29.

Regroup the definitions in the alphabetical order.

Delete definition of "General Society".

- (1) "Arbitrator" means a person appointed under this Act to decide disputes referred to him by the Registrar and includes the Registrar's nominee or Board of nominees ;
- (2) "Auditor" means a person appointed by the Registrar to audit the accounts of a society and includes a person appointed by the society in the general meeting and a full time officer appointed by the Committee to audit the accounts as a local or internal auditor, as the case may be ;
- (3) "Bonus" means dividend paid to a member or non-member out of profits of a society on the basis of his contribution to the business of the society and includes dividend and patronage dividend provided it is related to the share in the business of the society ;
- (4) "By-laws" means by-laws registered under this Act and for the time being in force and includes a registered amendment of such by-laws ;
- (5) "Central Bank" means a co-operative Bank, the objects of which include the creation of funds to be loaned to other societies and includes a banking union, District Co-operative Bank, State Co-operative Bank and Industrial Co-operative Bank ;
- (6) "Co-operative Bank" means a society registered under this Act and doing the business of banking as defined in clause (b) of Section 5 of the Banking Companies Act, 1949 ;

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(7) "Committee" means the committee of management or other directing body to which management of the affairs of a society is entrusted;

(8) "Company" means a company as defined in section 3 of the Companies Act, 1956, and includes a banking company;

Substitute "Section 3 of the Companies Act, 1956" for "clause (2) of sub-section (1) of Section 2 of the Indian Companies Act, 1913" occurring sub-section (b2) in Section 3.

(9) "Dividend" means the interest paid to a member on the shares held by him in the share capital of a society out of its profits and includes bonus provided it is paid on share capital;

(10) "Society with limited liability" means a society having the liability of its members limited by its by-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may, respectively, undertake to contribute to the assets of the society in the event of its being wound up;

(11) "Society with unlimited liability" means a society having, subject to its by-laws, an unlimited liability of its members to contribute jointly and severally to any deficiency in the assets of the society;

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- (12) "Consumers Society" means a society formed with the object of obtaining and/or producing and processing and distributing goods to or performing other services for its members, as well as for other customers and dividing among its members and customers in a proportion prescribed by the rules or by the by-laws of such society, the profits accruing from such supply, production, processing and distribution;
- Insert the words "and/or producing and processing" between the words "obtaining" and "and distributing".
Insert the word "other" between the words "performing" and "services".
Substitute the words "for other customers" for the words "to other consumers".
Insert the words "production, processing" between the words "supply" and "and distribution".
- (13) "Farming Society" means a society formed with the object of promoting development of land and better methods of cultivation and includes a better farming society, co-operative farming society, collective farming society, joint farming society, lift irrigation society and a crop protection society;
- Substitute the portion "and includes a better farming society, co-operative farming society, collective farming society, joint farming society, lift irrigation society and a crop protection society", for the portion "by means of improved seed, manure, irrigation, bunding, tractor ploughing, gully plugging and soil conservation".
- (14) "Federal Society" means a society not less than four-fifths of the members of which are societies;
- Delete Explanation.
Substitute the words "four-fifths" for the words "three-fourths"
- (15) "Housing Society" means a society formed with the object of providing its members with residential accommodation;
- Substitute words "residential accommodation" for the words, "dwelling houses on conditions to be determined by its by-laws".
- (16) "Marketing Society" means a Society three-fourths members of which are agriculturists and their societies, and is formed with the object of marketing agricultural produce and selling requisites for agricultural production;
- (17) "Producers' Society" means a society formed with the object of producing and disposing of goods as a collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society;
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Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(18) "Processing Society" means a society formed with the object of producing goods by mechanical or hand process and includes an industrial society and a society for the processing of agricultural commodities ;

(19) "Resource Society" means a society formed with the object of obtaining for its members the credit, goods or services required by them ;

(20) "Dispute" means any matter capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by a society whether such claim be admitted or not;

(21) "Firm" means a firm registered under section 59 of Indian Partnership Act, 1932 ;

(22) "Land Mortgage Bank" means a society, the objects of which includes the creation of funds to be loaned to members for a long period upon mortgage of their immovable property ;

(23) "Liquidator" means a person appointed by the Registrar under the Act to wind up the affairs of a society and includes provisional liquidator and joint liquidator ;

(24) "Member" means a person as defined in section 3(35) of the Bombay General Clauses Substitute the word "means" for the word "includes"

Act, 1904, joining in the application for the registration of a society and/or a person admitted to membership after registration in accordance with this Act, the Rules and the by-laws applicable to such society and includes the Government when it subscribes to the share capital of a society ;

Insert the words "as defined in Section 3 (3) of the Bombay General Clauses Act, 1904" between the words "a person" and "joining".

Insert "or" between the words "society and" and "a person".

Delete the word "or" appearing between the words "this Act" and "the rules" in the third line.

Add the words "and includes the Government when it subscribes to share capital of a society" at the end and shift the semi-colon (;) thereat.

(25) "Officer" means a person elected or appointed by a society according to its by-laws to any office of such society and includes a Chairman, Vice-Chairman, President, Vice-President, Managing Director, Manager, Secretary, Treasurer, Member of the Committee and any other person elected or appointed under this Act, the rules or the by-laws to give directions in regard to the business of such society, and also includes Auditor in matters relating to his duties as an Auditor ;

Substitute the definition of the term "Officer" as shown in Column No. 4 for the existing definition.

(26) "Prescribed" means prescribed by the Rules ;

(27) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes an Additional, Joint, a Deputy or an Assistant Registrar ;

Add "and includes an Additional, Joint, a Deputy or an Assistant Registrar" at the end of sub-section (f) of section 3 and shift the semi-colon (;) to the end of the sub-section.

(28) "Rules" means rules made under this Act ;

(29) "Working Capital" means funds at the disposal of society inclusive of paid up share capital, funds built out of profits and money raised by borrowing and by other means ;

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

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

(31) "Tribunal" means the Bombay State Co-operative Tribunal constituted under this Act.

Insert the word "State" between the word "the Bombay" and "Co-operative Tribunal".

Note.—In regard to Registrar's obligation to classify societies appearing in the concluding portion of Section 3, *vide* Section 12 of the Act.

CHAPTER II.

REGISTRATION.

4.	4. Registrar	...	3. Registrar	...	The State Government may appoint a person to be a Registrar of the Co-operative Societies for the State and may appoint a person or persons to assist such Registrar, and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under the Act., The person or persons so appointed to assist the Registrar and empowered to exercise any of his powers shall work under the general guidance, superintendence and control of the Registrar.
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Delete the words "or any portion of it" occurring between the words "State" and "and".

Add the following sentence at the end.

"The person or persons so appointed to assist the Registrar and empowered to exercise any of his powers shall work under the general guidance, superintendence and control of the Registrar.

5. Societies which may be registered.	4. Societies which may be registered	A society which has as its objects the promotion of economic interests and/or general welfare of its members in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society may be registered under this Act :	Add the words "general welfare", between the words "interests" and "of" Add proviso as mentioned under section 3, column 4. Delete proviso 1 and 2 in section 5, Column 3 vide text of the Act.
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Provided that no society shall be registered if in the opinion of the Registrar it is economically unsound or it may have an adverse effect upon any other society or it is opposed to, or its working is likely to be in contravention of the public policy.

6.	5. Registration with limited or unlimited liability or without liability.	A co-operative society may be registered with limited or unlimited or without any liability. Provided that—	New.
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- (1) Unless the State Government by a general or special order otherwise directs the liability of a society of which a member is a society shall be limited ;
- (2) No society shall be registered without a liability unless its object is not to do any business for profit and its by-laws provide for no payment of a dividend to its members.

7. Conditions of Registration.	of	6. Conditions of Registration.	of	(1) No society other than a federal society, shall be registered under this Act unless it consists of at least 10 persons, who are qualified to be the members under Section 22 and who reside in the area of operation of the society.	Sub-section 1.—Add the word "federal" between the words "than" and "society" in the first line. Delete the words "of which a member is a society, Company or Firm." Substitute "unless it consists of" for "which does not consist".
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Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
			(2) No Society with unlimited liability shall be registered unless all persons forming the society reside in the same town or village or in the same group of villages,	Substitute "Section 22" for "Section 6-A".
			(3) No federal society, shall be registered unless it has at least 5 societies as members.	Substitute the words "and who resides in the area of operation of the Society", for the words "and, where the object of the society is the creation of funds to be lent to its members unless all persons forming the Society—".
			(4) Nothing in the Bombay State Co-operative Societies Act, 1957, shall be deemed to affect the registration of any society made before the said Act comes into force.	Delete "sub-section (1) (a) and (b)". Substitute "Sub-section (5) as in column 4 for sub-section (2)".
			(5) The word "limited" or "unlimited" shall be the last word in the name of every society with limited or unlimited liability, as the case may be, registered under this Act.	Add "sub-sections (2) and (3)" to section 4 as in column 4. Substitute "nothing under the Bombay State Co-operative Societies Act, 1957" for "nothing in the Bombay Co-operative Societies Act (Amendment) Act, 1952" occurring in sub-section (3) of section 7, Column 2 and read it as under sub-section (4) of Section 6 under Column 4.
8	8. Power of Registrar to decide certain questions.	.....		Vide Section 9.

9 Application for registration.

8. Application for registration.

(1) For purposes of registration, the application to register a society shall be made to the Registrar in the prescribed form and shall be accompanied by four copies of the proposed by-laws of the society. The person by whom or on whose behalf such application is made, shall furnish such information in regard to the society, as the Registrar may require.

*Sub-section (1).—*Add the words “in the prescribed form and shall be accompanied by four copies of the proposed by-laws of the society. The person by whom or on whose behalf such application is made, shall furnish such information in regard to the society, as the Registrar may require”.

(2) The application shall be signed—

Substitute “sub-section (2)” for “sub-sections (2) and (3) of section 9”.

(a) In the case of a society other than federal society, by at least 10 persons qualified in accordance, with the requirements of section 21 and.

Add sub-section (3) regarding provisional registration under section 8, column 4.

(b) in the case of a federal society by at least five societies. No signature to the application will be valid on behalf of a society or a company, unless a member of the committee of such a society or company, is authorised by such committee by a resolution to sign the application for registration of the society and its by-laws on its behalf and a copy of such resolution is appended to the application. In the case of a firm subscribing to the application, no application shall be valid unless it is signed by one of the partners of such a firm.

(3) The Registrar may register a society provisionally, pending the approval of the by-laws as amended by the Registrar and compliance with such conditions as may be laid down by the Registrar in regard to the registration, in the first general meeting. The provisional registration would not, however, entitle the society to transact any business other than that necessary for enabling the society to comply with the conditions of registration, which the Registrar may prescribe.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
10	8. Power of Registrar to decide certain questions.	9. Power of Registrar to decide certain questions.	When any question arises for the purpose of formation, or registration, or continuance of a society, the question shall be decided by the Registrar and the Registrar's decision on the question as to whether a person is an agriculturist or a non-agriculturist, or whether any person resides in the same area of operation or not, shall be final.	<p>Delete—</p> <p>(i) "whether" in the first line.</p> <p>(ii) "or the admission of a person as a member of a society under this Act" in the second and third lines.</p> <p>(iii) "or whether any person is a resident in a town or village or group of villages or whether two or more villages shall be considered to form a group, or whether any particular person belong to any particular tribe, class, or occupation".</p> <p>Add the words "or whether any person resides in the same area of operation or not" after the words "or a non-agriculturists"</p> <p>Insert the word "whether" between the words "a society" and "a person" in the second and third lines.</p> <p>Re-draft the section as shown under column 4 for appropriate reading.</p>
11	10. Registration ...	10. Registration ...	If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules, that its proposed by-laws are not contrary to this Act and the rules and to the co-operative principles and the objectives of the Constitution of India, and that in his opinion, the society has complied with the requirements of sound business, he may register the society	<p>Delete the word "and" appearing between the words "the rules" and "that its" in the second line.</p> <p>Substitute the word "and" for the word "or" in the third line.</p> <p>Insert the portion, "and to the Co-operative principles and the objectives of the Constitution of India, and that in his</p>

and its by-laws with such modifications as he might consider necessary.

(2) Where the Registrar refuses to register a society or its by-laws under section 10, he shall communicate to the first signatory to the application his reasons for doing so.

opinion the society has complied with the requirements of sound business," between the words "the rules" and "he may", in the last line.

Add the words, "with such modifications as he might consider necessary" at the end of this section.

Add "sub-section (2)" as in Column 4.

12 11. Evidence of registration.

of 11. Registration certificate.

(1) Where a co-operative society is registered under this Act, the Registrar shall issue the certificate of registration signed by him and the said certificate shall be a conclusive evidence that the society therein mentioned has been duly registered unless it is proved that the registration of society has been subsequently cancelled, or that the first general meeting has not adopted the by-laws approved by the Registrar with modifications if any.

(2) No society shall commence any business unless it has obtained a certificate of registration under sub-section (1) and every member of such society carrying on such business in contravention of this sub-section shall be personally liable for all liabilities incurred in such business.

Substitute "Registration certificate" for "evidence of registration" in the heading of the section.

Delete the words "of registration signed by the Registrar" in the first line.

Delete article 'A' and insert "where a co-operative society is registered under this Act, the Registrar, shall issue the certificate of Registration signed by him and the said" at the commencement of the section.

Add at the end of the sub-section (1) "or that the first general meeting has not adopted the by-laws approved by the Registrar with modifications, if any".

Add "sub-section (2)" as in Column 4.

Add "subsequently" between "been" and "cancelled" in the 7th line of the section.

13 Section 3. In so far as it relates to Registrar's obligation to classify the societies.

12. Classification of societies.

(1) The Registrar shall classify all societies under one or the other head and his decision shall be final;

Provided that a society formed with the object of facilitating the operations of any one of the classes of societies shall be classified as a society of that class.

Arrangements of sub-section revised. No change in substance.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
			<p>(2) The Registrar for reasons to be recorded in writing may alter the classification of any society from one head to another head or one sub-head to another sub-head.</p> <p>(3) A list of all such societies, so classified, shall be published triennially in such manner as the State Government may from time to time direct.</p>	
14.	16. Amendment of the by-laws of a society.	13. Amendment of the by-laws of a society.	<p>(1) No amendment of the by-laws of a society shall be valid until registered under this Act for which purpose a copy of the amendment passed at a General Meeting of the society in the manner prescribed shall be forwarded to the Registrar.</p> <p>(2) If the Registrar is satisfied that the proposed amendment is not contrary to this Act or to the rules or to co-operative principles and is not inconsistent with objectives of the Constitution of India, he shall, unless he refuses to register the amendments for reasons to be recorded in writing, register the amendments with or without any modifications on his own motion.</p> <p>(3) When the Registrar registers an amendment of the by-laws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered and communicates to the society the date from which the amendment shall be effective.</p> <p>(4) Where the Registrar refuses to register an amendment of the by-laws of a society, he shall communicate the order of refusal, together with the reasons therefor, to the society.</p>	<p>Delete the words "approved by the resolution of a general meeting and" appearing in the first and second lines. Thereafter re-draft this sub-section as shown in Column 4.</p> <p>Redraft "sub-section (2)" as shown under Column 4.</p> <p>Add the words "and communicate to the society the date from which the amendment shall be effective" at the end.</p> <p>Add "sub-section 4" as shown in Column 4.</p>

15

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14. Power to direct amendments of by-laws.

(1) If it appears to the Registrar that an amendment of the by-laws of a society is necessary or desirable in the interest of such a society, he may call upon the society in the manner prescribed to make the amendment within such time as he may specify.

(2) If the society fails to make the amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard and after consulting and with concurrence of the President of the Bombay State Co-operative Union, register such amendment and issue to the society a copy of such amendment certified by him. Such amendment shall thereupon be binding on the society and its members.

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14. Change of name : its effect. 15. Change of name.

of (1) A society may, by a resolution of a general meeting and with the approval of the Registrar, change its name, but such change shall not affect any right or obligation of the society, or of any of its members, or past members, or deceased members and any legal proceedings pending may be continued by or against the society under its new name.

(2) Where a society changes its name, the Registrar shall, enter the new name in its place in the register of co-operative societies and shall amend the certificate of registration accordingly.

Insert the words "or deceased members" between the words "past members" and "and".

Add "sub-section (2)" as in Column 4.

17

16-A. Change of liability of society from limited to unlimited or from unlimited to limited. 16. Change of liability of a society from a limited to unlimited or vice versa.

(1) A society may, subject to the provisions of section 17, by an amendment of its by-laws change its liability from limited to unlimited or unlimited to limited.

(2) No such amendments shall be registered by the Registrar unless he is satisfied,—

(i) that a fifteen days' notice has been given to every member of a society and to any person or class of persons whose interest will, in the opinion of the Registrar, be affected by the alteration, and

Substitute "Section 13" for "Section 16" in Sub-section (1).

Substitute the words "fifteen days," for the word "Sufficient" in the first line of sub-section 2 (i)".

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
			<p>(ii) that with respect to every such member or person who, in the opinion of the Registrar is entitled to object—</p> <p>(a) either his assent has been obtained to the change or is deemed to have been obtained by virtue of his failure to object within fifteen days, from the date of the notice.</p> <p>(b) or if he signifies his objection,</p> <p>(i) he is allowed to withdraw his share if he is a member, or</p> <p>(ii) that his debt or claim has been discharged or has been determined or has been secured to the satisfaction of the Registrar within three months from the date of receipt of the objection if he is a creditor.</p> <p>Provided that the Registrar may, in the case of any person or class of persons for special reasons dispense with the notice required by this sub-section.</p>	<p>Add the words "or is deemed to have been obtained by virtue of his failure to object within fifteen days from the date of the notice" at the end of sub-clause (ii) (a) of sub-section 2 and shift the coma(,) to the end.</p> <p>Insert the word "been" between the words "has" and "determined" in the first line of sub-clause (b) (ii) in sub-section (2).</p> <p>Substitute the words "date of receipt of the objection, if he is a creditor" for the words "the date of the notice" in sub-clause (b) (ii) in sub-section (2).</p>
18.	15 and 15-A. Amalgamation or transfer of societies and Division or conversion of societies.	Section 17. Amalgamation, transfer, division or conversion of societies.	<p>(1) A society may, with the prior approval of the Registrar, by a resolution passed by two-thirds majority of the members present and voting at a special general meeting, held for the purpose, decide -</p> <p>(a) to amalgamate with another society, or</p> <p>(b) to transfer its assets and liabilities in whole or in part to any other society, or</p>	<p>Section 15 and 15-A have been combined into one by prescribing a common procedure which was noticeable in the two sections.</p> <p>Amalgamation or division is permitted at present under the 2 Sections "with the approval of the Registrar". It was difficult to determine whether the intention of legislature is to provide for</p>

(c) to divide itself into two or more societies,
or

(d) to convert itself into a class of society, the
object of which is materially different from
that under which it has been classified under
the Act :

Provided that when such amalgamation or transfer
of assets and liabilities or division or con-
version involves a transfer of liabilities of a society
to any other society, no order on the resolution
shall be passed, by the Registrar unless he is
satisfied that—

(a) a society, after passing such resolution, has
given notice thereof in writing to all its
members, creditors and such other persons
whose interests are likely to be affected,
giving them the option, to be exercised within
a month from the date of the issue of such
notice, of becoming a member of any of the
new societies or continuing their membership
in converted or amalgamated society, or
demanding the payment of their share or
interest or dues, as the case may be,

(b) the assent of all the members and creditors
and other person whose interests are likely to
be affected has been obtained or deemed to
have been obtained by virtue of any member
or creditor or any other person whose interest
is likely to be affected failing to exercise his
option within a period of one month from the
date of issue of notice, and

(c) that all claims of members and creditors
and such other persons whose interests are
likely to be affected, who exercise the option
referred to in clause (a) within the period
specified therein have been met in full.

prior approval of the scheme or the
approval of the by-laws. To remove
such ambiguity, as may be, in this
respect, the section has been amplified.

Proviso to sub-section (1) of section 17
has been incorporated so as to provide
to the members and creditors sufficient
opportunity to exercise their objection or
to have their claims and interest satisfied
prior to Registrar's order on such
amalgamation or transfer of assets and
liabilities or division or conversion in
the circumstances mentioned thereunder.

Sub-section 4 has been added as a new
feature to provide for cancellation of
the registration of the society or societies
specified thereunder.

Substitute the words "two-thirds" for
the words "three-fourths" wherever
they occur.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(2) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908, the registration of the new societies in the event of division or the converted society in the event of conversion of society, and the resolutions of the societies concerned with the amalgamation shall be sufficient conveyance to vest the assets and liabilities of the original society or societies in new societies or society.

(3) The amalgamation of societies or division or conversion of a society shall not affect any rights or obligation of the society so amalgamated, divided or converted or render defective any legal proceedings which might have been continued or commenced by or against a society which may have been amalgamated, divided or converted may be continued or commenced by the amalgamated society or the converted society or the new societies between which the society may have been divided.

(4) Where any two or more societies have been amalgamated or a society has been divided or converted the registration of such societies or society shall be cancelled on the date of registration of the amalgamated society or the converted society or the new societies between which society may have been divided.

- 19 15-AA. Power of State Government to provide for amalgamation of Co-operative societies in public interest.
18. Power to direct amalgamation.
- (1) Where the Registrar is of opinion that it is essential in the public interest necessary in order to secure the proper management of any society that two or more societies should amalgamate then notwithstanding anything contained in section 17 but subject to the provisions of this section, the Registrar may, by order notified in the Official Gazette, provide for the amalgamation of those societies into a single society with such constitution, property, rights, interests and authorities and such liabilities, duties and obligations, as may be specified in the order.
- Substitute the word "Registrar" for the words "State Government" wherever it occurs.
Substitute figure "17" for the figure "15" in sub-section (1).
Rename "Sub-section (2)" as "Sub-section (3)" and re-draft it for a proper reading as in Column 4.
Delete "Sub-section (3)" and incorporate its substance under "sub-section (4)" as shown in Column 4.
- (2) No order shall be made under this Section unless—
- (a) a copy of the proposed order has been sent in draft to each of the societies concerned calling upon them to furnish within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, a list of members and creditors who object to the Scheme of amalgamation and wish to withdraw from it;
- (b) The Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period as mentioned in sub-clause (a) either from the society or from any member or class of members thereof or from any creditor or class of creditors.
- Rename "Sub-section (4)" as Sub-section (2), thereafter add under Sub-section (2) (a) "calling upon them to furnish within such period (not being less than 2 months from the date on which the copy of the order aforesaid was received by the society) as the Registrar may fix in that behalf, a list of members and creditors who object to the Scheme of amalgamation and wish to withdraw from it".
- Re-draft "Sub-section (4) (b)" as Sub-section (2) (b) as shown under Column No. 4, which shows minor consequential changes in the wording.
Add "Sub-sections (4) and (5)" as shown under Column No. 4.
- (3) The order referred to in Sub-section (1) may contain such consequential, incidental and

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

supplemental provisions as may in the opinion of the Registrar be necessary to give effect to the amalgamation.

(4) Every member or creditor of each of the societies before amalgamation who has objected to the Scheme of amalgamation within the period specified shall be entitled to receive on the issue of the order of amalgamation his share or interest if he is a member and the amount in satisfaction of his dues if he is a creditor.

(5) On the issue of order under Sub-section (1) provisions in Section 17 (2), (3) and (4) shall apply to the societies so amalgamated as if they were amalgamated under Section 17 and to the society amalgamated.

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19. Reconstruction of societies. (1) Where a compromise or arrangement is proposed between (a) a society and its creditors and (b) between a society and its members, the Registrar may, on the application of the society or of any member or of any creditor of the society, or in the case of a society which is being wound up, of the liquidator, order a meeting of the members or creditors, as the case may be, to be called, held and conducted in such manner as the Registrar directs. New.

(2) If a majority in number representing three-fourths of the members or three-fourths in value of the creditors, as the case may be, present and voting in person at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Registrar, be binding on all members or all the creditors, as the case may be, and also on the society, or in the case of a society which is being wound up, on the liquidator.

(3) When an order calling a meeting is passed under Sub-section (1), the Registrar may give notice of such order to a Civil Court in which proceedings, where instituted before or after the order, in respect of any liability of the society due to a creditor to whom a copy of the order is posted are pending and on receipt of such notice the Civil Court shall stay the proceedings. If no compromise or arrangement is confirmed under Sub-section (2) the Registrar shall inform the Civil Court accordingly, and the proceedings which may have been stayed shall be resumed. If compromise or arrangement is confirmed under Sub-section (2) the proceedings, if any, stayed under this Sub-section shall abate and no proceedings shall lie in a Civil Court in respect of any liabilities of the society to which the compromise or arrangement relates.

(4) Where the Registrar makes an order under Sub-section (2) sanctioning a compromise or an arrangement in respect of a society, the Registrar shall have power to supervise the carrying out of the compromise or arrangement and to give such directions, at the time of making such order or at any time thereafter in regard to any matter and to make such modifications in the compromise or arrangement as he may consider necessary for the proper working of the compromise or arrangement.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section Column No. 3.	Change.
1	2	3	4	5

21 15-B. Partnership of Societies.

20. Partnership ...

(5) If the Registrar is satisfied that a compromise or arrangement sanctioned under sub-section (2) cannot be worked satisfactorily with or without modifications, he may either of his own motion or on the application of the society, or in the case of a society being wound up, on the application of the Liquidator, make an order cancelling the scheme of compromise.

- (1) Any two or more societies with similar objectives may, with the prior approval of the Registrar, by a resolution passed by a simple majority of the members present and voting at a general meeting of each such society, enter into a contract of partnership for carrying out specific business or businesses.
- (2) Nothing in the Indian Partnership Act, 1932, shall apply to such contracts of partnership and matters including disputes arising from such partnership, shall be determined under this Act.

Insert the words "with similar objectives" between the words "societies" and "may" in the first line.

Insert the word "prior" between the words "with the" and "approval" in the first line.

Substitute the words "a simple" for the words "three-fourths" in the second line.

Delete the portion "provided that each member has had clear ten days' written notice of the resolution and the date of the meeting" in the concluding lines of sub-section (1).

Replace "full-point (.)" for "comma (,)" appearing after the word "businesses".
 Add the words "and matters including disputes arising from such partnership, shall be determined under this Act" at the end of sub-section (2).

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21. Cancellation of registration. The Registrar shall make an order cancelling the registration of a society if it transfers the whole of assets and liabilities to another society or amalgamates with another society or divides itself into two or more societies under section 17, or its affairs are wound up, or it has not commenced business. The society shall be deemed to be dissolved from the date of such order and shall cease to exist as a corporate body. New.

CHAPTER III.

MEMBERS AND THEIR RIGHTS AND LIABILITIES.

23	6-A. Person who cannot be member.	22. Person who may become member.	No person shall be admitted as a member of society except the following, viz.— (a) An individual, who is competent to contract under Section 11 of the Indian Contract Act, 1872. (b) A firm, company, association and any society registered under the societies Registration Act or Public Trust Act or any other Act for the time being in force. (c) A society registered under this Act, and (d) The State Government : Provided that the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of the students.	Substitute the words "except the following, viz." for the word "unless", in the first line. Add "Sub-Clauses (a), (b), (c) and (d) with a proviso" as shown in column 4.
24	.....	23. Open membership.	(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under its by-laws ; (2) Any person aggrieved by the decision of a society refusing admission to him to its membership may appeal to the President of the federal society to which the said society is affiliated or, if it is not affiliated to any federal society, to the President of the Bombay State Co-operative Union.	New.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(3) The decision of the President of the federal society or of the Bombay State Co-operative Union in appeal shall be final.

25	Section 24. Nominal, associate and sympathiser members.	<p>(1) Notwithstanding anything contained in Section 22, a society may admit any person as a nominal, associate or sympathiser member who shall have no share either in the management, profits or assets of a society and shall not be subject to any contributory liability in the case of winding up of the society.</p> <p>(2) Save as provided in sub-clause (1), a nominal associate or sympathiser 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 by-laws of the society and be subject to the provisions in this Act in regard to the settlement of disputes and recovery of dues.</p>	New.
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26	Section 25. Cessation of membership.	<p>A person shall cease to be a member on resignation or transfer of the whole of his share or interest in the society to another member or on death or on removal or expulsion :</p> <p>Provided that no member shall be allowed to resign from a society unless he is not in debt and is not surety for an unpaid debt and no resignation may be accepted by a society unless it has received at least one months notice from the member of his intention to resign. The date of resignation shall be the date on which the society accepts the resignation of the member.</p>	New:
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27 Section 17. No rights of membership to be exercised till due payments are made.	Section 26. No rights of membership to be exercised till due payments are made.	No person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed by the rules or the by-laws of such society.	No change.
28 Section 18. Votes of members.	Section 27. Voting powers of members.	<p>(1) Every member of a society shall have one vote in the affairs of the society provided that—</p> <p>(a) a nominal, associate or sympathiser member shall have no vote ;</p> <p>(b) where a society is a member of another society such a society shall have one additional vote ;</p> <p>(c) where the State Government is a member of a society, each person nominated by the State Government on the Committee of that Society shall have one vote :—</p> <p>Provided further that each member may be entitled to additional votes subject to a maximum of three votes based on his contribution to the business of the society and exercisable in the manner specified in the by-laws:</p> <p>Provided further that in the case of equality of votes, the Chairman shall have a casting vote.</p> <p>(2) Subject to the rules relating to voting by a delegate, every member of a society shall exercise his vote in person and no member shall be permitted to vote by proxy. A society, company, firm or any other institution entitled to vote as a member may, however, exercise its voting right through an authorised representative.</p>	<p>Substitute the word "Every" for the word "No" in the first line.</p> <p>Delete the words "more than" and also "in the case of an equality of votes the Chairman shall have a casting vote" occurring in sub-section (1) of Section 18.</p> <p>Delete "Sub-sections (1-A), (2), (3) and (4)" and add "Sub-Sections (a), (b) (c) under sub-section (1)". Also add "Sub-section (2) as in Section 27 column No. 4, with the provisos.</p>
29 Section 6. Restrictions on interest of member of society with limited liability and a share capital.	Section 28. Restriction on holding of share capital by a member.	Where the liability of a member of a society is limited by shares or guarantee no member other than a society and the State Government shall hold more than such portion of the share capital of the society subject to a maximum of one-tenth as may be prescribed by the Rules and the by-laws.	<p>Substitute article and word "a member" for the article and word "the members" in the first line.</p> <p>Insert the words "or guarantee" between the words "by shares" and "no member" in the first line.</p>

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
30	Section 9. Restrictions on transfer of share or interest.	Section 29. Restrictions on transfer of share or interest.	<p>(1) The transfer or charge of the share or interest of a member in the share capital of a society shall be subject to such conditions as to maximum holding by the transferee as may be prescribed by this Act and the Rules and the by-laws and shall be valid only after the Committee has approved such transfer.</p> <p>(2) A member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless—</p> <p>(a) he has held such share or interest for not less than one year ;</p> <p>(b) the transfer is made to a member of the society or to a person whose application for membership has been accepted by the society.</p>	<p>Delete the words "company or firm" in the second line, and add the words "and the State Government" between "society" and "shal:" in the second line.</p> <p>Substitute in sub-clause (a) the word "one-tenth" for the word "one-fifth" and add the words "and the by-laws" at the end of "sub-clause (a)" and shift the semi-colon (;) to the end.</p> <p>Delete "Sub-clauses (a) and (b)".</p> <p>Insert the word "shall" between the words "the" and "capital" in sub-section (1).</p> <p>Add the words "by the transferee" after the words "maximum holding" in sub-section (1).</p> <p>Substitute "and the Rules and the Bye-laws and shall be valid only after the committee has approved such transfer" for the words "or by the rules" in sub-section (1).</p> <p>Delete the words "or charge" in Sub-clause (b) of sub-section (2).</p> <p>Delete the words "to the Society or" in the af resaid sub-clause.</p>

31 Section 17-A, Inheritance or acquisition of rights of member by minor or person of unsound mind.

Section 27. Transfer of interest on death of member.

.....

Section 30. Transfer of interest on death of member.

Notwithstanding anything contained in sub-sections (1) and (2) a society may acquire the share or interest of a member in his share capital by paying for it at the value determined in the manner prescribed, provided that the member is allowed to resign or is expelled or ceases to be a member on account of being disqualified under the Act, and the Rules and the by-laws of the society, and that the total refund of share capital of the society in any one financial year does not exceed 10 per cent. of the paid-up capital of the society on the last day of the preceding financial year.

(1) On the intimation of the death of a member of a society, such society may within a period of two years from the date of the intimation of death of such member, transfer the share or other interest of the deceased member to a person or persons nominated in accordance with the by-laws of the society or, if there is no person so nominated, to such person as may appear to the Committee to the heir or legal representative of the deceased member, provided the person or persons to whom share or other interest of the deceased member is to be transferred, has been duly admitted as a member in accordance with the Act, the Rules and the by-laws of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or other interest as ascertained in accordance with the Rules and the by-laws:

Provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made by the society within two years from the date of intimation of death of the member of the value of the share or interest of such member ascertained as aforesaid.

(2) All transfers and payments made by a society in accordance with sub-clause (1) shall be valid and effectual against any demand made upon the society by any other person.

Delete the word "and" appearing at the end of the aforesaid sub-clause and replace the semi-colon (;) by a full point (.) at the end.

Delete sub-clause (c).

New.

Combine "Section 17-A and 27" into one section numbering 30.

Delete "Subject to the provisions of Section 17-A", appearing at the beginning of sub-section (1) of Section 27.

Insert the words "intimation of the" between the words "on the" and "death" in the first line.

Substitute the words "two years" for the words "one year" in the second line.

Insert the words "of intimation of death" between the words "of" and "such" appearing in the second line of sub-section (1).

Insert the word "other" between the word "or" and "interest" in the third line.

Delete the portion "if duly admitted a member of the society, in accordance with the rules or the by-laws of the society" appearing in the fourth and fifth lines of sub-section (1).

Delete the portion "if duly elected a member of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or by-laws :

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(3) Notwithstanding anything contained in sub-section (1) and (2) and section 24 a minor or a person of unsound mind shall be entitled as a beneficiary to inherit or otherwise acquire the share or other interest of the deceased member, but his liability in consequence of such acquisition shall be limited to his interest in the shares, the loan-stock bonds and the property of the society which he may have inherited or acquired and the dividends and the interest earned thereon. The person so inheriting or acquiring interest shall be admitted as a nominal member and his guardian shall have the right to receive the benefits from the society on his behalf to the extent of the share or interest inherited and incur liability on behalf of such person for the benefits of such person until the disability ceases. On his disability ceasing, such nominal member shall furnish to the society a declaration of his willingness to become a member, and on receipt of such declaration, and provided, such person is qualified to be a member of the society under its by-laws, such society shall admit him as a member and the person so admitted shall become entitled to all the rights and privileges of a member and become subject to liabilities like any other member of the society.

Provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made by the society within one year from the death of the member of the value of the share or interest of such member ascertained as aforesaid", in sub-section (1) of section 27 and substitute "provided the person or persons to whom share or other interest of the deceased member is to be transferred, has been duly admitted as a member in accordance with Act, the Rules and the by-laws of the Society or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or other interest as ascertained in accordance with the Rule and the by-laws."

Add thereafter the proviso "provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made by the society within two years from the date of intimation of death of the member of the value of the share or interest of such member ascertained as aforesaid".

32	Section 26. Shares or interest not liable to attachment.	Section 31. Share or interest not liable to attachment.	The share or interest of a member in the capital of a society or in a loan-stock issued by a housing society or in the funds raised by a society from its members, by way of savings deposit shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member and neither the Official Assignee under the Presidency towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest.	Delete the portion "subject to the provisions of section 25" appearing at the beginning of Section 26. Substitute "in the funds raised by a society from its members by way of savings deposit" for "the share or interest of a member or officer or servant of a society in any provident fund established under Section 41 of this Act."
Transpose sub-section (3) of Section 27 as sub-section (2) of Section 30 and redraft it as shown in Column 4. Delete Sub-section (2) of Section 27. Add "Sub-Section (3) to Section 30" as shown under Column 4 and delete Section 17A which bears the substance.	Delete the words "officer or servant" appearing in the sixth line of Section 26.	235		
33	.....	Section 32. Rights of members to see books etc.	Every member of a society shall be entitled to inspect free of cost at the society's office during the office hours or any time fixed for the purpose by the society, a copy of the Act, the Rules, and the by-laws, the last audited annual balance sheet and the profit and loss account, a list of the members of the committee, a register of the members, the minutes of the general meetings and that portion of the books in which his transactions with the society have been recorded.	New.
34	.....	Section 33. Borrowing by members.	(1) Every person, who is a member of more than one credit society other than a land mortgage bank or a central financing agency, shall make a declaration in the prescribed form that he will borrow only from one such society to be mentioned in the declaration and shall send a copy of such declaration duly attested to the societies of which he is or has become a member.	New.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change
1	2	3	4	5
			(2) A member borrowing from a society shall utilise the loan for the purpose for which it is made and shall refund, if not so utilised, the loan immediately on its recall by the society.	
			(3) Any member, who does not comply with the provisions in clause (1) or (2), shall be liable to be removed from the membership of any or all societies upon receiving a written requisition from the Registrar to that effect.	
35	28. Liability of past member.	Section 34. Liability of a past member or the estates of a deceased member.	Liability of a past member or the estate of a deceased member of a society for the debts of the society, as they existed when he ceased to be a member by death or otherwise, shall continue for a period of 2 years from such date and shall continue, in the event of liquidation of the society, until the liquidation proceedings are terminated.	Combine "Sections 28, 29 and 48-A" into one section and number the new Section as "Section 34", substituting the wording "until the liquidation proceedings are terminated" for the wording "until all the liabilities of the society are met" occurring in Section 48-A.
	29. Liability of the estates of deceased member.			
	48-A. Effect of Liquidation of society on past member or on estate of deceased member.	.....	
36	....	Section 35. Insolvency of members.	Notwithstanding anything contained in the Presidency Towns Insolvency Act of 1909, and the Provincial Insolvency Act, 1920, the dues of a society from a member shall rank next to his dues to Government or to any legal authority in order of priority in insolvency proceedings against the person.	New.

Section 36. Expulsion of members.

(1) A society may expel a member, for acting in a manner which results in financial loss to such a society, by a resolution passed by three-fourths majority at a general meeting of the members held for the purpose :

Provided that no resolution shall be valid unless the member concerned is given an opportunity to represent his case to the general body and no resolution shall be effective unless it is approved by the Registrar.

(2) No member of a society who has been expelled under sub-section (1) shall be eligible for re-admission as a member of that society or for admission as a member of any other society, for a period of two years from the date of such expulsion :

Provided that the Registrar, may in special circumstances, sanction the re-admission or admission within the said period of any such member as a member of the said society or of any other society, as the case may be.

New.

CHAPTER IV.

DUTIES, PRIVILEGES, PROPERTY AND FUNDS OF SOCIETIES.

38 Section 23. Societies to be bodies corporate.

Section 37. Societies to be bodies corporate.

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

Substitute the words "for the purpose for which it is constituted" for the words "for the purposes of its constitution" in the last two lines of section 23.

39 Section 20. Address of societies.

Section. 38. Address of societies.

Every society shall have an address registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice in writing to the Registrar of any change in the said address within 30 days of such change.

No change.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
40	Section 30. Register of members.	Section 39. Register of members.	<p>(1) Every society shall keep a register of its members and enter therein the following particulars :—</p> <p>(a) the name, address and occupation of each member ;</p> <p>(b) in the case of a society having a share capital, the share held by each member ;</p> <p>(c) the date on which each person was admitted as a member; and</p> <p>(d) the date on which any person ceased to be a member :</p> <p>Provided that, where a society has under the Act, the rules and the by-laws permitted a member to transfer his share or interest on death to a person, the register shall also show the name of the person entitled to the share or interest of the member, against the member concerned and the date on which the nomination was recorded.</p> <p>(2) Such register shall be <i>prima facie</i> evidence of the date on which any person was admitted as a member and of the date on which any person ceased to be a member.</p>	<p>Sub-section (1)—New.</p> <p>Delete the words “or list” and “or shares kept by any society” and “any of the particulars entered therein” in the first two lines of section 30.</p> <p>Re-draft thereafter the whole section with minor change in wording and number it as sub-section (2) of section 39 as shown under column 4.</p>
41	Section 21. Copy of Act, etc., to be open to inspection.	Section 40. Copy of Act etc., to be open to inspection.	<p>Every society shall keep a copy of this Act and the Rules and of its by-laws and a list of members open to inspection to the public free of charge during the office hours or any hours fixed by the society at the registered address of the society.</p>	<p>Add the words “to the public free of charge” between the words “inspection” and “at”.</p> <p>Delete “sub-clause (d)” in section 21.</p> <p>Re-draft the whole section thereafter to read as shown under column 4 and number it as section 40.</p>

42 Section 31. Admissibility of copy of entry as evidence.

Section 41. Admissibility of copy of entry as evidence.

(1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a society shall, if duly certified in such manner, as may be prescribed by the Rules, be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original entry would, if produced, have been admissible to prove such matters.

Substitute the word "State" for the word "Provincial" in sub-section (2).

(2) In the case of such societies as the State Government by general or special order may direct no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

48 Section 32. Exemption from compulsory registration of instruments relating to shares and debentures of society.

Section 42. Exemption from compulsory registration of instruments relating to shares and debentures of society.

Nothing in section 17, sub-section (1), clauses (b) and (c), of the Indian Registration Act, 1908, shall apply to :—

No change.

- (1) 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
- (2) any debentures issued by any society and not creating, declaring, assigning, limiting or extinguishing any rights, title or interest to or in immovable property except in so far as it entitle 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
- (3) any endorsement upon or transfer of any debentures issued by any society.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
44	Section 33. Power to exempt from income tax, stamp duty, registration and court fees.	Section 43. Power to exempt from taxation.	<p>(1) The Central Government, by notification in the Official Gazette, may, in the case of any society or class of societies, remit the income-tax or super-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the society.</p> <p>(2) The Government, by notification in the Official Gazette may, in the case of any society or class of societies, remit,</p> <p>(a) the stamp duty, with which under any law for the time being in force, instruments executed by or on behalf of a society or by an officer or member and relating to the business of the society, or any class of such instruments or awards of the Registrar or his nominee or Board of nominees under this Act are respectively chargeable and,</p> <p>(b) any fee payable under the law of registration and of court fees for the time being in force and any other tax or fee or duty, or a portion thereof, which the State Government is competent to levy.</p> <p>In this sub-section "Government" in relation to stamp-duty, means the Government as defined in sub-section (2) of section 9 of the Indian Stamp Act, 1899, in relation to court fees means the Government which is the appropriate Government for the purposes of the Court Fees Act, 1870, and save as aforesaid means the State Government.</p>	<p>Add the words "or Board of nominees" between the words "his nominee" and "under this Act".</p> <p>Add "and any other tax or fee or duty, or a portion thereof, which the State Government is competent to levy" at the end of sub-clause (b) of sub-section (2).</p>

45	Section 33-A. State Government may give loans, contribute to share capital or guarantee debentures, share capital or dividend.	Section 44. State aid.	State Subject to such conditions as the State Government may, by general or special order specify in this behalf, the State Government may—	Delete "and to such other conditions at may be provided for by any law for the time being in force" appearing in the second and third lines of section 33A. Add "Sub-clauses (e) and (f)" as shown under Column 4.
			(a) give loans to societies,	
			(b) contribute towards the share capital of a society,	
			(c) guarantee the payment of principal of debentures issued by a society or of interest thereon or both or the repayment of the share capital of a society to its members or the payment of dividend thereon at such rates as may be specified by the State Government,	
			(d) guarantee the repayment of loans given by a co-operative bank to a society,	
			(e) guarantee repayment of principal and payment of interest on loans and advances given by the Reserve Bank of India or the Industrial Finance Corporation of India or any other authority constituted under any law for the time being in force,	
			(f) provide financial assistance in any other form to a society.	
46	Section 35. Restrictions in borrowing.	Section 45. Restrictions on borrowings.	A society shall receive deposits and loans from members and other persons only to such extent and under such conditions as may be prescribed by the Rules or specified by the by-laws of the society.	Substitute "members and other persons" for "persons who are not members" occurring in the first line in section 35.
				Insert the word "specified" between the words "or" and "by" in the last line.
47	Section 34. Restrictions on loans.	Section 46. Restrictions on loans.	(1) No society shall make a loan to any person other than a member or on the security of its own shares or of a non-member provided that with the special sanction of the Registrar a society may make loans to another society.	Insert "Section 46 as mentioned under Column 4" for the existing section.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
				<p>The special features of the revised section are—</p> <p>(i) that it excludes loans to non-members from its perview altogether,</p> <p>(ii) that it provides for loans to another society with the sanction of the Registrar,</p> <p>(iii) that it provides for a loan to the depositor against the security of his deposit, and</p> <p>(iv) that it authorises the Registrar to determine and enforce on societies or a class of societies a policy in respect of loans in public interest.</p>
48	Section 36. Restrictions on other transactions with non-members.	Section 47. Restrictions on other transactions with non-members.	Consumers', Producers' and Housing Societies may to the extent permitted by their by-laws trade with persons who are not members, but the transactions of a Resource society with persons other than members except as provided under sections 45 and 46 shall be subject to such prohibitions and restrictions, if any, as the State Government may by rules prescribe. Such society shall have a charge upon the interest of such non-member in the society in respect of any debt due from such non-member and may set-off any sum credited or payable to a non-member in or towards payment of any such debt.	<p>Add at the end of section 47, the following—</p> <p>“Such society shall have a charge upon the interest of such non-member in the society in respect of any debt due from such non-member and may set-off any sum credited or payable to a non-member in or towards payment of any such debt.”</p>

49 Section 25. Charge and set-off in respect of share or interest of member.

Section 48. Charge and set-off in respect of share or interest of member.

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 upon any dividend, bonus or profits payable to a member or past member or deceased member to the society, and may set-off any sum credited or payable to a member or past member or deceased member in or towards payment of any such debt :

Add the words "or deceased member" after the words "past member" wherever they occur.

Add proviso as stated under section 48 in Column 4.

Provided that no co-operative bank shall have a charge upon any sum invested with it by a society out of the Provident Fund established by it under section 59 or its Reserve Fund and no co-operative bank shall be entitled to set-off any such sum towards any debts due from such society.

50 Section 24. Prior claim of society.

Section 49. Prior claim of society.

(1) Notwithstanding anything contained in sections 60 and 61 of the Code of Civil Procedure, 1908, and notwithstanding any provision in any other 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,

(a) any debt or outstanding demand owing to a society by any member or past member or deceased member shall be a first charge, (i) upon crops or other agricultural produce raised in whole or in part with or without a loan taken from the society by such member or past member or deceased member, (ii) upon any cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture or work-shops, godown or place of business, supplied to or purchased by such

Insert the portion "notwithstanding anything contained in sections 60 and 61 of the Code of Civil Procedure, 1908 and notwithstanding any provision in any other law for the time being in force but" at the beginning of section 24 and delete the words "or of a Landlord in respect of rent or any money recoverable as rent", appearing in the second and third lines of sub-section (1) of section 24.

Add the words "or deceased member" after the words "past member" wherever they occur.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

member or past member or deceased member in whole or in part from any loan whether in money or goods given him by the society and (iii) upon any movable property which may have been hypothecated, pledged or otherwise mortgaged by a member with the society and remaining in his custody. (b) any outstanding demands or dues payable to a housing society by any member or past member or deceased member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society, shall be first charge upon his interest in the immovable property of the society.

Explanation.—The prior claim of Government in respect of dues other than land revenue shall be restricted within the meaning of sub-section (1) to the assets created by a member out of the funds in respect of which the Government has a claim.

(2) No property or interest in property which is subject to a charge under sub-section (1) shall be transferred in any manner without the previous permission of the society and such transfer shall be subject to such conditions, if any, as the society may impose.

Insert the words "or without" between the words "past with" and "a loan" in sub-clause (a) in the third line.

Delete the word "and" at the end of sub-clause (a).

Add the word "and" at the end of sub-clause (a) (ii) of sub-section (1) and add "sub-clause (iii)" as stated in column 4.

Add "explanation" as mentioned under column 4, under sub-section (1).

Delete the portion "except by way of lease for a term not exceeding 10 years" occurring in sub-section (2) and add at the end thereafter the portion "and such transfer shall be subject to such conditions, if any, as the society may impose".

Delete the words "notwithstanding anything contained in any law" appearing at the beginning of sub-section (3).

(3) Any transfer made in contravention of sub-section (2) shall be void and any member transferring any property and any person acquiring, or abeting in the acquisition of, such property which is subject to a charge under sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees.

Delete the words "of the provisions" between the words "contravention" and "of sub-section (2)" in sub-section (3). Thereafter add at the end "and any member transferring any property and any person acquiring, or abeting in the acquisition of, such property which is subject to a charge under sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees."

(4) Notwithstanding anything contained in sub-sections (2) and (3) a society which has as one of its objects the disposal of produce of its members, may provide in its by-laws or may otherwise contract with its members,

Delete sub-section (4) of section 24 which appears with modification as reproduced in the concluding portion of the preceding para.

(a) that every such member shall dispose of his produce through the society, and (b) that any member who is found guilty of a breach of the by-law or of any such contract shall reimburse the society for the loss determined in such manner as may be specified in the by-laws.

Add sub-section (4) as mentioned in column 4.

51	Section 24-AA. Charge on immovable property of members borrowing loans from certain societies.	Section 50. Charge on immovable property of members borrowing from certain societies.
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Notwithstanding anything contained in this Act or in any other law for the time being in force—

(1) Any person who makes an application to a society of which he is a member for a loan shall, if he owns any land or has interest in any land as a tenant make a declaration in the form prescribed by rules. Such declaration shall state that the applicant thereby creates a charge on such land or interest specified in the declaration for the payment of the amount of the loan which the society may make to the member in pursuance of the application and for all future advances, if any, required by him which the society may make to him as such member subject to such maximum as may be determined by the society together with interest on such amount of the loan and advances.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(2) Any person who has borrowed a loan from a society of which he is a member before the date of the coming into force of the Bombay State Co-operative Societies Act, 1957, and who owns any land shall, as soon as possible, make a declaration in the form and to the effect referred to in sub-section (1) and no such person shall, unless and until he has made such declaration, be entitled to exercise any right as a member of the society.

(3) Any person who has borrowed a loan from a society of which he is a member before the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955, or any other Act in any part of the State and has any interest in land as a tenant shall, as soon as possible, make a declaration in the form and to the effect referred to in sub-section (1) and no such person shall, unless and until he has made such declaration, be entitled to exercise any right as a member of the society.

(4) A declaration made under sub-sections (1), (2) or (3) may be varied at any time by a member with the consent of the society in favour of which such charge is created.

(5) No member shall alienate the whole or any part of the land or interest therein specified in the declaration made under sub-sections (1), (2) or (3) until the whole amount borrowed by the member together with interest thereon is paid in full:

Re-number "sub-section (iia) as sub-section (3)" and substitute "(3)" for "(iia)" wherever it occurs.

Insert the words, "or any other Act in any part of the State" between the words and figures "Act 1955" and "and has".

Re-number "sub-sections (3) and (4)" as sub-section "(4) and (5)" respectively. Delete the "first proviso under sub-section (iv)".

Delete the word "further" between the words "provided" and "that" appearing in second proviso.

Provided that it shall be lawful to a member to execute a mortgage bond in favour of a mortgage Bank or the State Government in respect of such land or any part thereof under the Bombay Canal Rules made under the Bombay Irrigation Act, 1879, for the supply of water from a canal to such land or any part thereof.

Insert the words "a mortgage Bank or" between the words "in favour of" and "the State Government".

(6) Any alienation made in contravention of the provisions of sub-section (5) shall be void.

Re-number "sub-sections (v), (vi) and (vii)" as sub-sections "(6), (7) and (8)" respectively.

(7) Subject to the prior claims of the Government in respect of land revenue or any money recoverable as land revenue and to the charge, if any, created under an award made under the Bombay Agricultural Debtors Relief Act, 1947, or any other Act in any part of the State there shall be a first charge in favour of the society on the land or interest specified in the declaration made under sub-sections (1), (2) or (3) for and to the extent of the dues owing by him on account of the loan.

Insert the words "or any other Act in any part of the State" between the words and figure "Act, 1947" and "there shall".

(8) Notwithstanding anything contained in Chapter X-A of the Bombay Land Revenue Code, 1879, the Record of Rights maintained under the said Chapter shall also include the particulars of every charge on land or interest created under a declaration under sub-sections (1), (2) or (3).

Explanation.—For the purpose of this section "society", shall mean—

- (a) any resource society, the majority of the members of which are agriculturists and the primary object of which is to obtain credit for its members; or
- (b) any society or any society of the class of societies specified in this behalf by the State Government by a general or special order.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in Column No. 3.	Change.
1	2	3	4	5
52	24-A. Deduction from salary to meet society's claim in certain cases.	Section 51. Deduction from salary to meet society's claim in certain cases.	<p>(1) A member of a society may execute an agreement in favour of the society providing that his employer 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 by the member to the society.</p> <p>(2) On the execution of such agreement the employer shall, if so required by the society by a requisition in writing and so long as the society does not intimate that the whole of such debt or demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society, as if it were a part of the salary, or wages payable on the day as required under the Payment of Wages Act.</p> <p>(3) If after the receipt of a requisition, made under sub-section (2), the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting the amount deducted to the society, the society shall be entitled to recover any such amount from the employer as an arrear of land revenue and the amount so due from the employer shall rank in priority in respect of the liability of the employer equal to that of the wages in arrears.</p>	<p>Substitute "the society does not intimate that the whole of such debt or demand has been paid", for the portion "such debt or demand or any part of it remains unpaid" occurring in sub-section (2) of the Section 24A.</p> <p>Delete the portion "(within fourteen days from the date on which such deduction is made)" appearing at the end of sub-section (2) of Section 24A.</p> <p>Add "sub-section (3)" as mentioned in Column 4.</p> <p>Renumber "sub-sections (3) and (4)" as "sub-sections (4) and (5)" respectively.</p>

		(4) The provisions of this section shall also apply to all such agreements of the nature referred to in sub-section (1) as were in force on the date of the commencement of the Bombay State Co-operative Societies Act, 1957.	Substitute the portion "the Bombay State Co-operative Societies Act, 1957", for the portion "the Bombay Co-operative Societies (Amendment) Act, 1942."
		(5) Nothing contained in this section shall apply to persons employed in railways (within the meaning of the Constitution), mines and oil-fields.	
	Section 52. Funds not to be divided.	No part of the resources, other than the net profit, of a society shall be distributed among its members by way of bonus or dividend, honorarium or otherwise.	New.
	Section 53. Appropriation of profits.	(1) A society earning profit shall calculate net profit by deducting from the gross profits for the year, all accrued interest which is overdue for more than six months, establishment charges, interest payable on loans and deposits, audit fees, working expenses including repairs, rent, taxes and depreciation, and after providing for or writing off bad debts and losses not adjusted against any fund created out of profit. A society may, however, add to the net profit for the year interest accrued in the proceeding years but actually recovered during the year. The net profit thus arrived at, together with the amount of profit brought forward from the previous year, shall be available for appropriation.	New.
		(2) A society may appropriate its profit to Reserve Fund, any other fund, the payment of dividend to the members on their share, to the contribution to Educational Fund of the Bombay State Co-operative Union, to the payment of bonus on the basis of support received from members and non-members to its business, to payment of honorarium, and towards any other purpose as may be specified in the by-laws. Provided that no part of the profit shall be appropriated except with the approval of the Annual General Meeting and in conformity with the Act, Rules and By-laws.	

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in Column No. 3.	Change.
1	2	3	4	5
54	Section 39. Reserve Fund.	Section 54. Reserve Fund.	<p>(1) Every society which does or can derive profit from its transactions shall maintain a Reserve Fund.</p> <p>(2) In the case of Resource or Producers' Society at least 1/4th of the net profits of the society each year shall be carried to the reserve fund and in the case of any other society at least 1/10th of the net profit of the society each year shall be carried to the reserve fund, and such reserve fund may be used in its business by a society other than a co-operative bank or may be invested in accordance with provision of Section 58.</p>	<p>Substitute the portion "other than a Co-operative Bank or may be invested in accordance with the provisions of Section 58" for the portion "or may be invested subject to the provisions of Section 37, as (the Provincial Government) may by general or special order direct, or may, with previous sanction of (the Provincial Government) be used in part for some public purpose likely to promote the objects of this Act or for some purposes of provincial or local interest" appearing in the five concluding lines of sub-section (2) of Section 39;</p>
55	Section 38. Restrictions on dividend.	Section 55. Restriction on dividend.	<p>(1) No society shall pay a dividend out of its net profits to its members on its share capital at a rate exceeding $6\frac{1}{2}$ per cent. interest, and no resource society on a basis of unlimited liability in which the members hold shares, shall pay a dividend until 10 years from the date of registration of the society have elapsed. Provided that if any consumers', producers', housing or farming society is unable to pay a dividend of 4 per cent. in respect of any year, it may pay additional dividend representing the difference between the dividend paid for that year and the dividend of 4 per cent. payable, out of profits in future years</p>	<p>Insert the words "out of its net profits" between the words "dividend" and "to its members". Also insert the words "on its share capital" between the words "members" and "at a rate". Add the words "interest" at the end of the Section 38.</p> <p>Re-draft thereafter the whole section as mentioned under Column 4.</p>

at any time not later than 10 years immediately succeeding the year of such deficit. Provided further that if any society other than a consumers', producers', housing or farming society, is unable to pay a dividend at 6½ per cent. in respect of any year it may make good the deficit by paying an additional dividend out of profits in the two years immediately succeeding the year of such deficit.

(2) A society may credit in any year a sum not exceeding 2 per cent. on the paid up share capital to a fund called the "Dividend Equalisation Fund" and no withdrawal from such fund shall be made except for the purpose of paying the dividend without the previous written sanction of the Registrar.

(3) Notwithstanding anything contained in sub-section (1) a society classified either as consumers' or producers' resource or housing, may pay bonus to its members and persons who are not members to the extent and subject to conditions prescribed by the Rules or by-laws of such societies provided that no resource society on a basis of unlimited liability in which the members do not hold shares shall pay any bonus without the general or special order of the State Government in this behalf.

Explanation.—No society shall make any payment under sub-sections (1) and (3) or any appropriation under sub-section (2) without the sanction of the annual general meeting. The annual general meeting may reduce the dividend recommended by the Committee, but it shall not be within its powers to declare a higher dividend.

58 39A. Contribution to educational fund of Bombay (State) Co-operative Institute.

Section 56. Contribution to educational fund of the Bombay State Co-operative Union.

(1) Every society which declares a dividend to its members at a rate of 4 per cent. or more, shall contribute towards the educational fund of the Bombay State Co-operative Union at such rate as may be prescribed.

Insert article "a" before the word dividend in the first line. Substitute the word "declares" for the word "pays" in the first line.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
			(2) No society liable to contribute towards the educational fund, shall pay a dividend to its members unless the said contribution is made to the Bombay State Co-operative Union. An Officer or Officers wilfully failing to comply with the requirement of sub-section (1) shall be held personally liable for making good the amount to the Bombay State Co-operative Union.	Substitute the word "Union" for the word "Institute". Add "Sub-section (2)" as in Col. 4.
57.	Section 42. Contribution to charitable purpose.	Section 57. Contribution to charitable purpose.	A society may set aside a sum not exceeding 10 per cent. of its net profits, after providing for the reserve fund as prescribed in sub-section (2) of Section 54 and for the educational fund, as prescribed in Section 56 and utilise, with the approval of the Bombay State Co-operative Union, from time to time, the whole or part of such sum in contributing to any co-operative purpose, or to public purpose, or to a charitable purpose, as defined in Section 2 of the Charitable Endowments Act, 1890.	Substitute the figure "10" for the figure "20" in sub-clause (a). Substitute the word "Union" for the word "Institute" wherever it occurs. Insert the words "or part" between the words "whole" and "of" occurring in the first line of sub-clause (b). Re-draft the whole Section as in column 4 for a better reading.
58.	Section 37. Investment of Funds.	Section 58. Investment of Funds.	(1) A society may invest or deposit its funds— (a) in a Central Bank or the State Co-operative Bank; or (b) in the State Bank of India; or (c) in the Postal Savings Bank; or (d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or (e) in the shares or security bonds or debentures issued by any other society with limited liability; or	Substitute the following for clause (a):— " (a) in a Central Bank or the State Co-operative Bank, or ". Re-number " clause (b) " as " clause (d) ". Add " sub-clauses (b), (c) and (f) ". Delete the word " of " in sub-clause (c) and, insert the words " bonds or debentures issued by " between the words " security " and " any ".

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Fulltext of the Section in column No. 3.	Change.
1	2	3	4	5
61.	Section 51. Bar of suit in winding up and dissolution matters.	Section 61. Bar of Jurisdiction of Courts.	<p>(1) Save in so far as is expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of—</p> <p>(a) the registration of a society or its by-laws, or of any amendment of its by-laws, or the dissolution of the committee of a society and the management of the society on dissolution thereon ; or</p> <p>(b) any dispute required to be referred to the Registrar or his nominee or board of nominees for decision ;</p> <p>(c) any matter concerned with the winding up and dissolution of a society.</p> <p>2) While a society is being wound up no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.</p> <p>(3) All orders, decisions or awards passed in accordance with this Act or the rules shall be final subject to the provisions for appeal in this Act and such order, decision or award, shall be liable to be challenged, set aside, modified, revised or declared void in any court upon merits or upon any grounds whatsoever except for want of jurisdiction.</p>	Save in respect of sub-section (2) and sub-clause (c) of sub-section (1) of section 61 which correspond in substance with the provisions of section 51 (deleted), the new section represents new aspects whereof the jurisdiction of courts is barred.

CHAPTER V

MANAGEMENT OF SOCIETIES

62. Section 62. Final authority of a society. subject to the provisions in this Act and the Rules, the final authority of every society shall vest in the general body of members in General Meeting summoned in such a manner as may be specified in the by-laws. New.

Provided that where the bye-laws of a society provide for the election of delegates of such members, the final authority may vest in the delegates, of such members elected in the prescribed manner and assembled in general meeting.

63. Section 12. Annual General Meeting. Section 63. Annual General Meeting. (1) Every Society shall, within a period of three months after the date fixed for making up its accounts for the year under the Rules for the time being in force, call a general meeting of its member; Add "sub-sections (2), (3) and (4)" as shown in Column 4.

Provided that the Registrar may, by general or special order, extend the period for holding such meeting by a period not exceeding three months.

(2) At every annual general meeting of the society the committee of the society shall lay before the society a balance sheet and profit and loss account for the year in the manner prescribed by the Registrar by general or specific order for class or classes of societies.

In view of insertion of sub-sections as aforesaid, "renumber sub-section (2) of section 12 as sub-sec. (5)", in Section (63) (new) and insert the words "or in complying with sub-sections (2), (3) and (4)" between the words and figure "sub-section (1)" and "the Registrar" in the second line. Again add the words "and comply with sub-sections (2), (3), and (4)" between the words "and" and "and who" in the fourth line.

Explanation.—In the case of a society not carrying the business for profit, an income and expenditure account shall be placed before the society at the annual general meeting, instead of profit and loss account and the references to profit and loss account, profit, and loss in this Act, shall be construed in relation to such a society as references respectively to the "income over expenditure", and "excess of expenditure over income".

Substitute the words and figures "to comply with sub-sections (1), (2), (3) and (4)" for the words "to call such meeting."

Substitute "sub-section (5)" for "sub-section (2)" in the first line of sub-section (3) and renumber it as "Sub-section (6)".

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(3) There shall be attached to every balance sheet laid before the society in a general meeting, a report by its Committee, with respect to (a) state of the society's affairs; (b) amounts, if any, which it proposes to carry to any reserve either in such balance sheet or any specific balance sheet; and (c) the amounts, if any, which it recommends, should be paid by way of dividends, bonus and honorarium to the honorary workers. The Committee's report shall also deal with any changes, which have occurred during the year for which the accounts are made up, in the nature of the society's business. The Committee's report shall be signed by its Chairman or any other member authorised to sign on behalf of the Committee.

(4) At every annual general meeting, the balance sheet, the profit and loss account, the Auditor's report and the Committee's report, shall be placed for adoption and such other business will be transacted as might be laid down in the by-laws and of which a due notice has been given.

(5) If default is made in calling a general meeting within the period or the extended period, as the case may be, as prescribed under sub-section (1), or in complying with sub-sections (2), (3) and (4), the Registrar may by order declare any officer or

member of the Committee whose duty it was to call such a meeting and comply with sub-sections (2), (3) and (4) and who without reasonable excuse failed to comply with sub-sections (1), (2), (3) and (4), disqualified for being elected and for being an officer or member of the Committee for such period not exceeding 3 years, as may be specified in such an order and, if the officer is a servant of the society, fine him to an amount not exceeding one hundred rupees.

(6) Any fine imposed under sub-section (5) may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines, imposed by a Court as if such fine was imposed by a Court.

64 Section 13. Special General Meeting. Section 64. Special General Meeting.

(1) A special general meeting may be called at any time by a majority of the Committee and shall be called within one month, (i) on the requisition in writing of one-fifth of the members of the society, or of members the number of which is specified in the bye-laws for the purpose, whichever is lower, or (ii) at the instance of the Registrar, or (iii) in the case of a society, which is a member of a federal society, at the instance of the Committee of such Federal Society.

Substitute "Sub-clause (i)" under sub-section (1) as in Col. 4, for "sub-section (1) of section 13."

Re-number "sub-section (2)" as "sub-clause (ii)" of sub-section (1) as in Col. 4.

Substitute the words "The Committee" for the words "an officer" in sub-section (3) of section 13 and renumber it as sub-clause (iii) of section 64 as in Col. 4.

Add "sub-sections (2), (3) and (4)" as in Col. 4.

(2) Where any officer or a member of the Committee whose duty it was to call such meeting and who, without reasonable excuse, failed to call such meeting, the Registrar may by an order declare such officer disqualified for being a member of the Committee for such period not exceeding three years as may be specified in such order and if the officer is a servant of the society, impose a fine not exceeding one hundred rupees.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
			<p>(3) If the Committee or an officer or officers of the society refuse or fail to call a meeting in accordance with the section 63, or 64 (1), or if in the opinion of the Registrar, there be no Committee or officer or officers competent under the Act, Rules and by-laws to call the meeting or if there be a dispute regarding the competence of the Committee, officer or officers to call the meeting the Registrar shall have the power to call the meeting himself, in such manner and at such place and time as he may direct and for considering such matters as may be specified by him. At such meeting, the Registrar may either preside himself or authorise some other person by an order in writing to preside and the Registrar or the person authorised by him to preside, shall have the power to conduct the meeting, and any resolution passed at the meeting shall be valid.</p> <p>(4) The Registrar shall have the power to order that the expenditure incurred in calling the meeting under sub-section (3) shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the meeting under sections 63 and 64.</p>	
65		Section 65. Committee, its powers and functions.	The management of every society shall vest in a Committee constituted in accordance with this Act, the Rules and by-laws which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the Rules and the by-laws.	New.

**Section 66. Vali-
dation of acts.**

- (1) No act of a society or a Committee or any officer done in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some defect subsequently discovered in the organisation of the society or in the constitution of the Committee or in the appointment or election of the officer or on the ground that such an officer was disqualified for his office. **New.**
- (2) No act done in good faith by any person appointed under this Act the Rules and the by-laws shall be invalid merely by reason of the fact that his appointment has been cancelled by or in consequence of any order subsequently passed under this Act, Rules and the by-laws.
- (3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of the society and his decision shall be final.

**Section 67. Power
to appoint Govern-
ment nominees.**

Where the State Government has subscribed to the share capital of a society, directly or through another society, or has guaranteed the repayment of the principal and payment of interest on debentures issued by or loans raised by a society, the State Government shall have the right to nominate not more than three representatives on the Committee of such a society in such manner as may be determined by the State Government from time to time. The members so nominated shall hold office during the pleasure of the State Government or for such period as may be specified in the order under which they are appointed and such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he is a member of the Committee duly elected. **New.**

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
68	Section 68. Suspension of Committee.	<p>(1) If at any time, whether in the course of or after an inquiry held under Section 80 or inspection made under section 81 or audit, the Registrar has reason to believe that the Committee or any of its members or any officer is mis-managing or has mis-managed the affairs of a society or is negligent of the performance of the duties, imposed on it or him, as the case may be, by the Act or the Rules or the by-laws or is otherwise acting in a manner likely to be prejudicial to the interest of the society or is otherwise not functioning properly, the Registrar may give notice to the Committee or any of its members or any officer to show cause why it should not be dissolved and any of its members or any officer should not be removed from office :</p> <p>Provided that where the Registrar is satisfied that the issue of such a notice is likely to result in the frittering away of the assets of the society or in the destruction or misplacing of the record of the society, the Registrar may dispense with the issue of notice to the Committee or any of its members or any officer, as the case may be.</p> <p>(2) If after giving such notice subject to the proviso in sub-section (1) and after considering the explanation, if any, given by such person, the Registrar</p>	New.

is satisfied that the Committee or any of its members or any officer is mis-managing or has mis-managed the affairs of the society or is negligent of the performance of the duties imposed on it or him, as the case may be, by the Act or the Rules or the by-laws or is otherwise acting in a manner likely to be prejudicial to the interests of the society or is otherwise not functioning properly, the Registrar may, notwithstanding anything contained in this Act or the Rules or the by-laws, dissolve the Committee and remove all its members or remove any of its members or any officer from the office and direct the Committee or any of its members or any officer to hand over the charge of the records and properties of the society to a person or persons appointed by him for holding the same in custody.

- (3) If the Committee which has been dissolved under sub-section (2) or any of its members or any officer who has been removed under sub-section (2) refuse to hand over charge of the records and properties to the person authorised by the Registrar under sub-section (2), person or persons so appointed by the Registrar may apply through the Registrar to the Magistrate, within whose jurisdiction the society functions to take step to secure the records and properties and the Magistrate may for this purpose enter and search any place where he has reason to believe that they are kept and may by warrant authorise any police officer, not below the rank of sub-Inspector, to enter and search in such place or to seize such records and properties. The records and properties so secured shall be handed over to the person or persons authorised by the Registrar as the case may be.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

69

Section 69. Nomination of Committee.

(1) Where a Committee of a society has been dissolved and removed from office or any of its members or any officer has been removed from office under Section 68, the Registrar may appoint new Committee consisting of one or more members of the society or appoint a member or members of the society or officer or officers as may be considered necessary in place of the member or members or officer or officers so removed and such person, or persons, as the case may be, shall hold office for a period not exceeding 2 years, as may be directed by the Registrar, from the date of his or their appointment.

New.

Provided that the Registrar may from time to time extend such period, but the total period of the appointment including the extended period shall not exceed 3 years in the aggregate :

Provided further that the Registrar may, if he is satisfied that it is not necessary in the interest of the society to have its affairs managed by the person or persons appointed under this sub-section, cancel the order and the person or persons so appointed shall cease to hold office notwithstanding the period for which such person or persons, as the case may be, were so appointed.

(2) Person or persons so appointed under sub-section (1), shall subject to the control of the Registrar and to such instructions as he may

from time to time give, perform the duties and exercise the powers of the members of the Committee or officers of the society, as the case may be, notwithstanding anything contained in the by-laws of the society regarding the qualifications of members for being members of the Committee.

- (3) The Registrar may fix the remuneration payable to the person or persons so appointed and the amount of such remuneration and the other cost, if any, incurred in the management of the society shall be payable from the funds of the society.
- (4) Where a Committee has been appointed by the Registrar under Sub-section (1), the Committee shall, before the expiry of the period of its appointment, arrange for the constitution of a new Committee in accordance with the by-laws of the society and shall hand over the charge of the records and properties to the new Committee at the expiry of the period of its appointment. All acts done or purported to be done by the Committee appointed under Sub-section (1) during the period the affairs of the society were carried on by the Committee shall be binding on the new Committee and society.

70 Section 46B. Ap- Section 70. Ap-
pointment of pointment of
Administrator. Administrator.

- (1) Where the Registrar has suspended a Committee of a society under Section 68 and is satisfied that it is desirable in the interest of the society to have its affairs managed by an Administrator, the Registrar may, by an order published in the Official Gazette, appoint an Administrator to carry on the affairs of the society. The Administrator so appointed need not be a member of the society and shall hold office for such period not exceeding 2 years as may be specified by the Registrar:
Provided that the Registrar may from time to time extend such period, but the total period of his appointment including an extended period shall not exceed 3 years in the aggregate.

Substitute the word "Registrar" for the words "The State Government" wherever they occur.

Re-draft the whole Section as Section 70 in view of its being linked up in effect with Section 68 to embody the substance of Section 46B.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

2) The Administrator may be assisted and advised by such persons not exceeding five as may be appointed by the Registrar and shall, subject to the control of the Registrar and to such instructions as he may from time to time give, exercise all the powers and perform all the functions of the Committee of the society.

(3) The Registrar may fix the remuneration payable to the Administrator and person or persons appointed to assist and advise him and the amount of such remuneration and any expenses of the management shall be payable out of the funds of the society within such time or at such intervals as the Registrar may fix. If such remuneration or expenses are not paid out within the time or at the interval fixed, the Registrar may make an order directing the person or persons having custody of the funds of the society to pay to the Administrator such remuneration and expenses in priority to other charges, except the land revenue, the arrears of the land revenue or any sum recoverable from the society as arrears of land revenue and he or they shall, so far as the funds to the credit of the society admit, comply with the order of the Registrar.

(4) If at any time during any period or extended period, referred to in sub-section (1) it appears to the Registrar that it is no longer necessary to continue to carry on affairs of the society as aforesaid, the Registrar may by an order direct that the management of the society shall be

Serial No.	Heading and section No in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
73	Section 73. Registrar's power to enforce performance of obligations.	Section 73. Registrar's power to enforce performance of obligations.	<p>(1) The Registrar may direct any society or class of societies to keep proper books of accounts with respect to all sums of money received and expended by the society and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by the society and assets and liabilities of the society and to furnish such statement and returns as he may require from time to time and the officer or officers of the society shall be bound to comply with his order within the period specified therein.</p> <p>(2) Where any society is required to take any action under this Act, the Rules or the by-laws or to comply with the order made under sub-section (1), and such action is not taken—</p> <p>(a) within the time provided in this Act, the Rules or the By-laws, or</p> <p>(b) where no time is so provided within such time having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing,</p> <p>the Registrar may himself or through a person authorised by him take such action at the expense of the society and such expense shall be recoverable from the society as if it were an arrear of land revenue.</p>	New.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with sub-section (1), and, after giving such officer or officers an opportunity to be heard may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding Rs. 25 as the Registrar may think fit for each day until Registrar's directions are carried out.

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Section 74. Registrar's power to seize records etc.

(1) Where the Registrar is satisfied that the books and records 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, the Registrar may issue an order directing a person duly authorised by him in writing to seize and take possession of such books and records, funds and property of the society and the officer or officers of the society responsible for the custody of such books, records, funds and property shall give delivery thereof to the person so authorised.

New.

(2) Any officer or officers of such society failing to comply with the Registrar's order made under sub-section (1) shall be liable to be punished with imprisonment extending up to 6 months or with fine which may extend to Rs. 1,000 or both.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
i	2	3	4	5

CHAPTER VI.

AUDIT, INQUIRY, INSPECTION AND SUPERVISION.

Section 22. Audit...	Section 75. Audit and Audit fees.	<p>(1) The Registrar shall by himself or some person authorised by him in writing by general or special order in this behalf audit the accounts of every society once at least in every year and shall recover from such society such fees as may be prescribed.</p> <p>(2) Notwithstanding anything contained in sub-section (1), every society having a working capital of Rs. 1,00,000 and over shall appoint an Auditor to audit its accounts for the financial year and the report of such auditor shall be placed before annual general meeting following the completion of the financial year. The Registrar may, however, for reasons stated in the order, exempt a society or a class of societies from the provision of sub-section (2).</p>	<p>The section 22 has been bifurcated into two new sections viz., Section 75 and 76 as shown in column No. 4. Moreover, additional portion has been added as "sub-section (2) of section 75" and sub-section (3) and (4) of section 76" as shown in column 4. The two sections viz., section 75 and section 76 have been so drafted as to give more details of the substance contained in section 22 with a provision for a penalty in case of defaults.</p>
Section 22. Audit...	Section 76. Powers and duties of auditors.	<p>(1) The Registrar or any person appointed under section 75 to audit the accounts of a society shall have free access to the books, accounts and vouchers of such society and shall be allowed to verify its cash balances and securities and shall be entitled to require the production of any book or document relating to the affairs of the society by an officer, agent, or servant or member in possession of such book, document, cash or securities and summon at the time of his audit any officer, member, agent, or servant of the society who he has reason to</p>	

believe can give valuable information in regard to any transaction of the society or the management of its affairs.

- (2) Every officer, agent or servant shall furnish to the Registrar or any other person appointed to audit the accounts of a society under section 75 (1) all such information and explanation as to its transactions and working as the Registrar or such person may require. The Committee of such society shall also supply him a list of the assets together with their value certified as correct.
- (3) Any officer, agent or servant failing to comply with the requirements of sub-section (2) shall be punishable with fine which may extend to Rs. 100.
- (4) The auditor appointed under section 75 shall have the right to receive all notices and every communication relating to the annual general meeting of the society and to attend such meeting and to be heard thereat in respect of any part of the business with which he is concerned as an auditor.

Section 77 Auditor's Report.

- (1) The Auditor shall make a report to the members of the society on the accounts examined by him and on every balance sheet and profit and loss account which are placed before the society's general meeting during the tenure of office and the report 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 the information required by this Act in the manner so required and give true and fair view (i) in the case of the balance sheet of the state of the society's affairs as at the end of the financial year; and (ii) in the case of profit and loss account, of the profit or loss for its financial year.
- (2) The Auditor's report shall also state—
 - (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit,

New.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
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- (b) whether, in his opinion, proper books of accounts as required by the Act, Rules and the bye-laws have been kept by the society so far as it appears from the examination of those books, and
- (c) whether the society's balance sheet and profit and loss account dealt with by the report are in agreement with the books of accounts and returns.
- (3) Where any of the matters referred to in subsection (2) is answered in the negative or with a qualification, the Auditor's report shall state the reasons for the answer.
- (4) The Auditor's report shall be read before the society in a general meeting and shall be open to inspection by any member of the society.
- (5) In addition to the report referred to in subsections (1), (2), (3) and (4) the Auditor shall submit a memorandum to the Committee of the Society and the Registrar in the prescribed form on the audit of the Accounts of the society made by him and the said report shall give full particulars of—
- (a) every transaction which appears to be contrary to the Act, or the Rules or the bye-laws,
- (b) every sum which ought to have been but has not been brought into account,

....	Section 78. Penalty for Auditors.	<p>(c) the amount of any deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation,</p> <p>(d) any money or property belonging to the society which appears to him to be bad or doubtful, and</p> <p>(e) any other matter prescribed.</p> <p>If any report is made or any document of the society is signed or authenticated by the auditor otherwise than in conformity with requirements of section 77, the Auditor concerned who signs the report or signs or authenticates the documents, shall, if the default is wilful, be punishable with fine which may extend to Rs. 1,000.</p>	New.
Section 22-A. Registrar to bring defects disclosed in audit to notice of society.	Section 79. Rectification of defects in accounts.	<p>(1) If the result of the audit held under section 75 discloses any defects in the working of a society, the society shall within three months from the date of audit report, explain to the Registrar the defects or the irregularities pointed out by the auditor and take steps to rectify the defects and remedy irregularities and report to the Registrar the action taken by it thereon. The Registrar may also make an order directing the society or its officers to take such action, as may be specified in order to remedy the defects, within the time specified therein. Where the society concerned is a member of a federal society such order shall be made after consulting the federal society.</p> <p>(2) Where the society fails to rectify the defects as directed by the Registrar or to the satisfaction of the Registrar, the Registrar may himself take steps to have the defects rectified and may recover the cost thereof from the officer or officers of such society, who in his opinion has or have failed to rectify the defects.</p>	<p>Insert the words "the society shall within three months from the date of audit report explain to the Registrar the defects or the irregularities pointed out by the auditor and take steps to rectify the defects and remedy irregularities and report to the Registrar, the action taken by it thereon", between the words "a society" and "the Registrar" occurring in the second line of Section 22-A. Thereafter delete the words "the Registrar may bring such defects to the notice of the society and if the society is a member of the federal society also to the notice of the federal society" in the second, third and the fourth lines of section 22-A.</p> <p>Add "sub-section (2)" as shown in column 4.</p>

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1	2	3	4	5
Section 43. Inquiry by Registrar.	Section 80. Inquiry by Registrar.	<p>(1) The Registrar may of his own motion by himself or by a person duly authorised by him in writing in this behalf hold an inquiry into the constitution, working and financial conditions of a society.</p> <p>(2) The Registrar shall hold such an inquiry as is contemplated in sub-section (1) of this Section.</p> <p>(a) on the requisition of the Federal society in respect of a society which is or it its member and is of the same class as that of such Federal Society.</p> <p>(b) on the application of two-fifths of the members of the committee of the society.</p> <p>(c) on the application of one-fifth or 100 which ever is less, of the members of a years' standing of the society.</p> <p>Provided that no application under sub-clause (b) and (c) shall be valid unless the persons making the application deposit such security for cost, if any, as the Registrar may direct.</p> <p><i>Explanation</i>—For the purpose of sub-clause (c) in the case of a Federal Society, the majority from amongst the members making the application shall be societies.</p> <p>(3) (a). All officers, members, and past members of the society relating to, which an inquiry is held and any other person who, in the opinion of the officer holding the inquiry is in possession of information, books and papers relating to the society shall furnish such information as is in their possession and produce all books and papers relating to the society which are in their custody</p>	<p>Substitute "Sub-Clause (a)" as in column 4 for "Sub-clause (a) in Section 43".</p> <p>Substitute the words "two-fifths of the members" for the words "a majority" in Sub-clause (b) of Sub-Section (2) of Section 43.</p> <p>Substitute "Sub-clause (c)" of sub-section (2) as in column 4 for corresponding sub-clause in Sub-Section (2).</p> <p>Add "proviso and Explanation," to sub-section (2) as in column 4.</p> <p>Substitute "sub-section (3)" as in column 4 for "sub-section (3)".</p>	

or power and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorised by him under sub-section (1) any book or papers which it is his duty under sub-clause (a) to produce or to answer any question which is put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar, after hearing any statement which may be offered in defence, punish the offender with a fine not exceeding Rs. 500.

(4) The report of any inquiry under this section shall be communicated to the society in respect of which an inquiry is held and to the person at whose instance the inquiry was ordered and to the Federal Society."

Substitute the word "report" for the word "result" in sub-section (4) and also the portion "in respect of which an inquiry is held and to the person at whose instance the inquiry was ordered and to the federal society" in sub-section 4, for the words "whose affairs have been investigated" appearing in the corresponding section.

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31 Section 44. Inspection of books of indebted society.

Section 81. Inspection of books of indebted society.

(1) The Registrar may, if he deems necessary on the application of a creditor of a society inspect or direct some person, authorised by him by order in writing in this behalf to inspect the books of the society :

Provided that,

(a) The applicant 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) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

Insert the words "if he deems necessary" between the words "may" and "on" in the first line of sub-section (1).

Substitute the word "applicant" for the words "creditor" and add thereafter the words "and the society whose books are inspected" at the end of sub-section (2).

(2) The Registrar shall communicate the result of any such inspection to the applicant and to the society whose books have been inspected.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
82	Section 45. Costs of inquiry.	Section 82. Costs of inquiry and inspection.	<p>(1) Where an inquiry is held under section 80 or an inspection is made under Section 81, the Registrar may apportion the costs, or such part of the costs, as he may think right, between the society, the members or creditors, demanding the inquiry or inspection, the officers or former officers and the members or past members or the estate of the deceased members of the society ;</p> <p>Provided that—</p> <p>(a) No order of apportionment of the cost shall be made under this section, unless the society or persons or the legal representative of deceased person liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard ;</p> <p>(b) The Registrar shall state in writing the grounds on which the costs are apportioned.</p> <p>(2) No expenditure from the funds of a society shall be incurred for the purpose of defraying any cost in support of any appeal preferred by any person other than the society against an order made under sub-section (1).</p> <p>(3) The orders or awards passed by the Registrar under this section shall not be called in question in any Civil Court.</p>	<p>Insert the words "or the estate of the deceased members" between the words "members" and "of" in the fourth line of Section 45.</p> <p>Delete the portion "and may also provide that the costs or any part thereof (in particular any fees which may be payable to any person authorised as aforesaid to hold the inquiry) shall be paid in the first instance from the funds of the society and then recovered and repaid to the society."</p> <p>Insert the words "or the legal representative of deceased person" between the words "person" and "liable" in the 2nd line of sub-clause (a).</p> <p>Add "sub-clauses(2) and (3)" as in column 4.</p>

83 Section 46. Recovery of costs. Section 83. Recovery of costs.

Any sum awarded by way of costs under Section 82 may be recovered, on the application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable resides, or carries on business by the distress and sale of any property within the limits of the jurisdiction of such Magistrate, belonging to such person, and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself.

Delete the words "actually and voluntarily" in the third line. Also delete the word "movable" in the 4th line.

84 Section 46-A. Registrar to bring defects disclosed in inquiry or inspection to notice of society. Section 84. Registrar to bring defects disclosed in inquiry or inspection to notice of society.

- (1) If the result of any inquiry held under section 80 or an inspection made under Section 81 discloses any defects in the constitution, working or financial condition or the books of a society, the Registrar may bring such defects to the notice of the society and, if the society is a member of a Federal Society to the notice of the Federal Society. The Registrar may also make an order directing the society or its officers or the Federal Society to take such action as may be specified in the order to remedy the defects within the time specified therein.
- (2) The Federal Society or the Society concerned may appeal against an order made by the Registrar under sub-section (1) to the State Government within the time specified in the order.
- (3) The State Government may, in deciding the appeal, annul, reverse, modify or confirm the order of the Registrar.
- (4) Where the society fails to rectify the defects as directed by the Registrar and where no appeal has been made to the State Government within the time specified in the order or where on the appeal so made the State Government has not annulled, reversed or modified the order, the Registrar may himself take steps to have the defects rectified and may recover the costs from the officer or officers of the society who, in his opinion, has or have failed to rectify the defects.

Insert the word "constitution" between the words "in the" and "working" in the 2nd line. Thereafter add the words "or financial condition or the books" between the words "working" and "of a society."

Add "sub-section (4)" as in column 4.

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85	Section 50-A. Power of Registrar to assess damages against delinquent promoters etc.	Section 85. Power of Registrar to assess damages against delinquent promoters etc.	(1) Where in the course of or as a result of an audit under section 75 or an inquiry under section 80 or an inspection under section 81 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the Auditor or the person authorised to make inquiry under section 80 or the person authorised to inspect the books under section 81, or the liquidator under section 101 that any person who has taken any part in the organisation or management of the society or any deceased, past or present officer of the society, has, within a period of five years prior to the date of such audit, inspection inquiry or the order for winding up of the society, misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may frame charges against such person or persons and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar may determine or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as the Registrar may determine.	Delete the words "it appears" in the 2nd line, and thereafter insert the portion "the Registrar is satisfied on the basis of the report made by the Auditor or the person authorised to make inquiry under section 80 or the person authorised to inspect the books under section 81, or the liquidator under section 101", between the words "society" and "that" in the second and third lines respectively. Substitute the words "any deceased, past or present officer" for the words "any past, or present Chairman, Secretary, member of the Managing Committee or officer" in the fourth and fifth lines. Add the words "within a period of five years prior to the date of such audit, inspection, inquiry or the order for winding up of the society" between the words "has" and "misapplied" in the 4th line. Delete the portion "on the application of the officer conducting the audit or holding the inquiry or inspection or of the liquidator or of any creditor or contributory, examine into the conduct of such person" in sub-section (1) and redraft [the sub-section (1)] as in sub-section (1) as in col. 4.

(2) The Registrar after framing the charges under sub-section (1) may, by an order in writing, authorise any person, subject to general or special order of the State Government, to hear the person or the representative of the deceased person against whom the charges are framed under sub-section (1). The person so authorised shall, after giving such person reasonable opportunity to submit his explanation make to the Registrar his recommendation as to what action, if any, the Registrar should take. The Registrar after considering his recommendations, may make any order which he considers just in the circumstances and which he could have made under sub-section (1) if he had given such person a reasonable opportunity to submit his explanation to him, and such order shall have the same effect as if it was made under sub-section (1).

(3) The Registrar, in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued and the amount so recovered shall be paid to the person authorised by him under sub-section (2).

(4) This Section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

Insert the words "or persons" between the words "person" and "and" appearing in the tenth line. Substitute the portion "and in case of a deceased person to his representative who inherits his estate, to answer the charges", for the words "to submit his explanation." Delete the word "respectively" appearing after the words "any part thereof". Substitute the words "may determine" for the words "thinks just" in the last four lines of sub-section (1).

Substitute the portion "The Registrar after framing the charges under sub-section (1) may, by an order in writing authorise any person, subject to general or special order of the State Government to hear the person or the representative of the deceased person against whom the charges are framed under sub-section (1)", for the portion "The Registrar, instead of himself examining into the conduct of any such persons under sub-section (1) may, by an order in writing, authorise any person to examine into the conduct of such person under sub-section (1)."

Substitute the word "report" for the word "make" between the words "explanation" and "to" in the 7th line.

Delete the words "the result of the examination with" in the 8th line, in sub-section (1A).

Substitute the words "his recommendations" for the words "the report" occurring in the 8th line.

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Section 86, Constitution of an authority to supervise working of societies.

- (1) The State Government may constitute an authority in such manner as may be prescribed and subject to such conditions as the State Government may lay down for the supervision of societies and may frame rules for making grants to such an authority.
- (2) The State Government may by general or special order require of a society or a class of societies to make contribution of such sum every year as may be fixed by the Registrar towards the recoupment of expenditure which the State Government or any person authorised in that behalf has incurred or is likely to incur in respect of supervision.
- (3) Society to which sub-section (2) is applicable shall pay to such authority such fee as may be prescribed under sub-section (2) within a reasonable time and, if it fails to pay such fees within a reasonable time, the authority may recover it as if it were an arrear of land revenue.

Substitute the portion "if he had given such person a reasonable opportunity to submit his explanation to him, and such order shall have the same effect as if it was made under sub-section (1)," for the portion "if he had made the examination himself".
Delete "sub-section (1B)."
Redraft "Sub-section (1C)" as in col. 4 and renumber it as "sub-section (3)".
Renumber "sub-section (2)" as sub-section (4).
New.

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CHAPTER VII.

DISPUTES AND ARBITRATION.

87 Section 54. Decision of disputes. Section 87. Dispute.

- (1) Notwithstanding anything containing in any other law for the time being in force any dispute touching the constitution, management or business of a society or the liquidation of a society shall be referred by any of the parties to the dispute or by a federal society to which the society is affiliated or by a creditor of the society to the Registrar if the parties thereto are among the following :—
- (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or a legal representative of any deceased officer, deceased agent or deceased servant of the society or the liquidator of the society,
 - (b) a member, past member or a person claiming through a member, past member or a deceased member of a society or a society which is a member of the society,
 - (c) a person other than a member of the society who has been granted loan by the society or with whom the society has or had transactions under the provisions of section 47 and any person claiming through such a person,
 - (d) a surety of a member, past member or a deceased member or a person other than a member who has been granted a loan by the society under section 47, whether such a surety is or is not a member of the society,
 - (e) any other society or the liquidator of such a society.
- (2) When any question arises whether for the purposes of sub-section (1), a matter referred to for a decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

Section 54 has been overhauled to amplify the definition of the term "dispute" and that of the parties thereto. Other special features are as follows :—

1. It admits of disputes which may otherwise fall within the purview of law other than this Act *vide* opening lines of sub-section (1).
2. A right is conceded to the Registrar to get certain disputes referred to arbitration at the instance of a federal society or a creditor *vide* explanation 3.

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(3) No Court shall have the jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation.—(1) For the purpose of this sub-section, a dispute shall include (i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or the legal representative of the deceased member, whether such debt or demand be admitted or not; (ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan taken, by a society and recovered from the surety owing to the default of the principal borrower whether such a sum or demand be admitted or not; (iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its committee, past or present whether such loss be admitted or not; (iv) a refusal or failure by a member, past member or a nominee, heir or a legal representative of the deceased member to deliver the possession to a society of land, asset or any other asset resumed by it for breach of conditions of the assignment; (v) a question regarding rights etc., including tenancy rights between a housing society and its tenants or members.

Explanation.—(2) No dispute relating to the election of the committee of a society shall be referred to the Registrar until the results of election are declared and no such dispute shall be entertained by the Registrar unless it is made within one month from the date of declaration of results of such election by a candidate at such election or any member of the society.

Explanation—(3) In the case of application under sub-section (1) of a federal society or a creditor, the Registrar shall require such parties or any party to the dispute, as he may think fit, to refer the dispute to him within such time as he may specify, and if such reference is not made within the time so specified, the dispute shall be deemed to have been referred to him under sub-section (1).

Section 88 Limitation.

(1) Notwithstanding anything contained in the Indian Limitation Act, 1908, and subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under Section 87 shall:—

New.

(a) when the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society.

(b) when the dispute is between a society or its committee and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or the legal representative of a deceased officer, deceased agent or deceased servant of the society or a member or past member or the nominee, heir or the legal representative of a deceased member and when the dispute relates to any

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act or omission on the part of either party to the dispute, be 6 years from the date on which the act or omission with reference to which the dispute arose, took place,

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under section 93 or in respect of which a nominated committee or an administrator has been appointed under section 68 and section 69 respectively, be 6 years from the date of the order issued under section 93, section 68 and section 69 as the case may be.

(2) The period of limitation in the case of any other dispute except those mentioned in sub-section (1) which are required to be referred to the Registrar under section 86 shall be regulated by the provisions of the Indian Limitation Act, 1908, as if the dispute were a suit and the Registrar a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2) the Registrar may admit a dispute after the expiry of the limitation period if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired.

Section 89. Settlement of dispute.

(1) If the Registrar is satisfied that any matter referred to him is a dispute within the meaning of section 87, the Registrar shall, subject to the Rules, decide the dispute himself or refer it for disposal to one or a board of more than one nominee to be appointed by the Registrar. **New.**

(2) Where any dispute is referred to under sub-section (1) for decision by the Registrar's nominee or a board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or board of nominees and may decide the dispute himself or refer it again to any other nominee or board of nominees appointed by him for decision;

Provided that no such dispute shall be withdrawn except on any of the following grounds:—

- (i)** the Registrar's nominee or board of nominees has failed to decide the dispute within 2 months or such further period, as may be allowed by the Registrar
 - (ii)** proceedings before the Registrar's nominee are violated in consequence of corruption or misconduct on the part of the Registrar's nominee or board of nominees.
- (3)** Notwithstanding anything contained in section 87(1) and (2), the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as laid down in sub-section (1).

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1	2	3	4	5
90	Section 90. Procedure for settlement of disputes and power of Registrar his nominee or board of nominees.	Section 90. Procedure for settlement of disputes and power of Registrar his nominee or board of nominees.	<p>(1) The Registrar or his nominee or Board of nominees hearing the dispute under section 89 shall hear the dispute in the manner prescribed and shall have the power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.</p> <p>(2) No party shall be represented at the hearing of the dispute by any legal practitioner, except with the permission of the Registrar or his nominee or board of nominees, as the case may be.</p> <p>(3) (a) If the Registrar or his nominee or board of nominees is satisfied that a person whether he be a member of the society or not has acquired any interest in the property of a person who is held a party to the dispute, he may order that the person who has acquired the interest in the property may join as a party to the dispute; and any decision that may be passed on the reference by the Registrar or his nominee or board of nominees shall be binding on the party so joined in the same manner as if he were the original party to the dispute.</p> <p>(b) Where a dispute has been instituted in the name of the wrong person or where all the defendants have not been included, the Registrar or his</p>	New.

nominee or board of nominees may, at any stage of the hearing of the dispute, if satisfied that the mistake was bonafide, order any other person to be substituted or added as a plaintiff or a defendant upon such terms as he thinks just.

- (c) The Registrar, his nominee or board of nominees may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Registrar, his nominee or board of nominees as the case may be, be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Registrar, his nominee or board of nominees, as the case may be, may be necessary in order to enable the Registrar, his nominee or board of nominees effectually and completely to adjudicate upon and settle all the questions involved in the dispute be added.
- (d) Any person who is a party to the dispute and entitled to more than one reliefs in respect of the same cause of action may claim all or any of such reliefs; but if he omits to claim for all such reliefs he shall not forward claim for any reliefs omitted except with the leave of the Registrar, his nominee or board of nominees.

31 Section 55. Attachment before award or before order made under section 50-A. Section 91. Attachment before award.

(1) Where a dispute has been referred to the Registrar or his nominee or board of nominees under Section 89 or under section 101 or where the Registrar or the person authorised by him under sub-section (2) of Section 85 hears a person against whom the charges are framed under section 85(1), the Registrar or his nominee or board of nominees or the person authorised by him under section 85 (2) as the case may be, if satisfied on enquiry or otherwise that a party to such dispute or against whom proceedings are pending under section 85,

Substitute "sub-sections (1), (2), and (3)" as in column 4 for the existing "sub-sections (1) and (2)".

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act (as recommended) by the Committee.	Full text of the Section in column No. 3.	Charge.
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with intent to delay or obstruct the execution of any award or the carrying out of any order that may be made—

- (a) is about to dispose of whole or any part of his property; or
- (b) is about to remove whole or any part of his property from the jurisdiction of the Registrar, may, unless adequate security is furnished directconditional attachment of the said, property; and such attachmentshall have the same effect as if made by a competent Civil Court.

(2) Where the Registrar or his nominee or board of nominees or the person authorised by him under section 85(2) directs conditional attachment of property under sub-section (1), he shall issue a notice calling upon the person whose property is so attached to furnish security which he thinks adequate within a specified period and if the person fails to provide the security so demanded the Registrar or his nominee or board of nominees or the person authorised, as the case may be, may confirm the order and, after the decision in the dispute or the completion of the proceedings referred to in sub-section (1), may direct the disposal of the property so attached towards the claim if awarded.

(3) Attachment made under sub-sections (1) and (2) shall not affect the rights subsisting prior to the attachment of property under sub-section (1) of

persons not parties to the proceedings in connection with which the attachment is made nor bar any person holding a decree against the person whose property is so attached from applying for the sale of the property under attachment in execution of such decree.

92.

Section 92. Decision of Registrar or his nominee, or board of nominees.

When a dispute is referred to arbitration, the Registrar or his nominee or board of nominees may, after giving reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and the fees and expenses payable to the Registrar or his nominee or board of nominees, as the case may be. Such an award shall not be invalid even though it may have been made after the expiry of the period fixed for deciding the dispute by the Registrar and shall, subject to appeal or review or revision, be binding on the parties to the dispute. The award so made shall not be liable to be called in question in any civil or Revenue Court.

New.

93. Section 56. Appeal against decision of Registrar and his nominee.

Section 93. Appeal against the decision of Registrar or his nominee or board of nominees.

- (1) Any party aggrieved by any decision of the Registrar or his nominee or board of nominees under section 92 or an order passed under section 91 by the Registrar or his nominee or board of nominees or the person authorised by the Registrar under section 85(2), may, within two months from the date of the decision or order or award, appeal or apply to the Tribunal and the Tribunal may for reasons to be recorded in writing—
- (i) modify the award, or
 - (ii) set aside the award and order that the dispute shall be referred back to the Registrar or his nominee or board of nominees or the person authorised by the Registrar under section 85(2) in the manner provided
 - (iii) pass such orders thereon as it deems fit;

Delete the proviso "(a) and (b) of section 56". Redraft thereafter the new section with consequential changes in figures and minor changing in wording as in column 4 which combines the relevant features of section 54-A which has been deleted by section 9 of Bombay Act No. XLI of 1956.

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Provided that no such order shall be made (a) after the issue of a certificate under section 94 for the execution of the award and (b) except on any of the following grounds:—

- (i) the objection to the legality of the award is apparent on the face of it; or
- (ii) the award has been vitiated in consequence of corruption or misconduct on the part of the Registrar or his nominee or board of nominees or the person authorised by the Registrar under section 85(2); or
- (iii) the award is in any way perverse.

(2) In making an order under sub-section (1) that the dispute shall be referred back to the decision of the Registrar or his nominee or board of nominees or the person authorised by the Registrar under section 85(2), the Tribunal may direct that any of the persons who made the award shall not decide the dispute or pass the order under section 91.

(3) Where a dispute or an order under section 91 is referred back under sub-section (1), the Registrar or his nominee or board of nominees or the person authorised under section 85(2), as the case may be, shall make a fresh award or give a fresh decision within such time as may be fixed by the Tribunal. If the Registrar or his nominee or board of nominees fails to make a fresh award or the person authorised fails to give

a fresh decision within the time so fixed, the Registrar or his nominee or board of nominees or a person authorised by him appointed for the purpose shall decide the dispute or make a fresh order and the Tribunal may on the application of any of the parties to the award or decision or otherwise for reasons to be recorded in writing modify the award or pass such orders thereon as it deems just.

(4) Notwithstanding anything contained in sub-section (1) the Tribunal may admit any appeal or any application relating to an award made under section 92 or an order made under section 91 after the expiry of the said period of two months provided the appellant satisfies the Tribunal that he had sufficient cause for not making the application within the said period.

94. Section 59. Money how recovered.

Section 94. Mode of execution of awards and orders.

Every order passed by a Liquidator under section 101 or by the Registrar or his nominee or a board of nominees under section 92 or clause (1) of section 91, or by the Registrar under section 85, every order passed in appeal under section 93, every order passed in revision under section 147 and every order passed by the State Government in appeal against orders passed under section 145 shall, if not complied with on a certificate signed by the Registrar or a Liquidator, be deemed to be a decree of a Civil Court, and shall (a) be executed in the same manner as a decree of such Court or (b) be executed according to the law and under the Rules for the time being in force for the recovery of arrears of land revenue, provided that an application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar, or (c) be executed by the Registrar or

Substitute the figure "5" for the figure "12" in provision, under clause (c).

Add "sub-clause (c)" as in col.4.

Redraft the section with consequential changes in section numbers with minor change in wording.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

any persons subordinate to him empowered by the Registrar in this behalf, subject to such Rules as may be prescribed by the State Government and without prejudice to any other mode of recovery provided in this sub-section :

Provided that no application for the execution of the orders referred to herein shall be made after the expiry of 5 years from the date fixed in the order or if no such date is fixed, from the date of the order.

95.	Section 59-B. Recovery of moneys due to land mortgage Banks.	Section 95. Recovery of loans.	Re-crop (1) Notwithstanding anything contained in sections 87, 89 and 94 on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors' Relief Act, 1947, for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.	Delete the portion "by a land mortgage bank for the recovery of arrears of any sum advanced by it to any of its members or" appearing in sub-section (1). Delete "explanation" under sub-section (3). Redraft the section thereafter as in col. 4.
			(2) Where the Registrar is satisfied that a resource society has failed to take action under sub-section (1) in respect of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance, the Registrar may,	

of his own motion, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears and such a certificate shall be deemed to have been issued as if the application was made by the society concerned.

(3) A certificate granted by the Registrar under sub-sections (1) and (2) shall be final and a conclusive proof of the arrears stated to be due therein and the same shall be recoverable according to the law for the time being in force for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by sections 140 to 144 of the Bombay Land Revenue Code, 1879, until the arrears due to the resource society together with interest and any incidental charges incurred in the recovery of such arrears are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar.

96	Section 59-AA. Private transfer of property made after issue of certificate void against society.	Section 96. Private transfer of property made after issue of certificate void against society.	Any private transfer or delivery of, or encumbrance or charge on, property made or created after the issue of the certificate of the Registrar, Liquidator, or Assistant Registrar, as the case may be under section 94 shall be null and void as against the society on whose application the said certificate was issued.	No change except in numbering.
97	Section 59-A. Transfer of property which cannot be sold.	Section 97. Transfer of property which cannot be sold.	(1) When in any execution of an order sought to be executed under section 94, any property cannot be sold for want of buyers, if such property is in occupancy of the defaulter or of some person in his behalf or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Liquidator or the Assistant Registrar, under clause (a) or	Delete the words "with the previous consent of the Registrar" in sub-section (1). Add the words "or on whose behalf an application has been made" between the words "has applied" and "for the execution" in sub-section (1). Add the words "or the Registrar" after the

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(b) or (c) of section 94, the Court or the Collector or the Registrar, as the case may be, may direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order in the manner prescribed.

words "the Collector" wherever they occur. Redraft the section as shown in col.4.

(2) Where a property is transferred to the society under sub-section (1) or where a property is sold under section 94, the Court, the Collector or the Registrar, as the case may be, may, in accordance with the Rules prescribed place the society or the purchaser, as the case may be, in possession of the property transferred or sold, by removing, if necessary, any person bound by the decision or award.

(3) Subject to such rules as may be made in this behalf and to any rights, encumbrances, charges or equities lawfully subsisting in favour of any person such property or portion thereof shall be held under sub-section (1) by the said society on such terms and conditions as may be agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society. Subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of an Assistant or the Deputy Collector or the Assistant Registrar, powers exercisable by the Collector or the Registrar under this section.

CHAPTER VIII.

LIQUIDATION.

98 Section 47. Winding up.
Section 48. Society may be wound up if membership is reduced.

Section 98. Winding up.

- (1) If the Registrar,
- (a) after an enquiry has been held under section 80 or an inspection has been made under section 81 or on the report of the Auditor auditing the accounts of the society; or
 - (b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a Special General Meeting called for the purpose; or
 - (c) of his own motion in the case of a society which—
 - (i) has not commenced working; or
 - (ii) has ceased working; or
 - (iii) possesses shares or members' deposits not exceeding Rs. 500; or
- (iv) has ceased to comply with any conditions as to registration and management in this Act or the Rules or the by-laws,
- is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.
- (2) A copy of such order made under sub-section 1(a) and sub-section 1(c) (iv) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society to be heard, may issue a fresh order, which shall be called the final order, vacating or confirming the interim order.

Add the portion "or (iv) has ceased to comply with any condition as to registration and management in this Act or the Rules or the By-laws" after the words and figures "exceeding Rs. 500".

Insert the word "interim" between the words "issue on" and "order directing" in the concluding lines of the section 47.

Delete the portion, "may appoint a liquidator for the purpose and fix his remuneration" appearing at the end of the section 47.

Redraft the section thereafter to read as in Column 4, and number it as sub-section (1).

Add sub-section (2) as in Column 4.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
99		Section 99. Appointment of liquidator.	<p>(1) When an interim order is passed under section 98(1) for the winding up of a society, the Registrar may, in accordance with the Rules, appoint a person to be provisional Liquidator of the society and fix his remuneration.</p> <p>(2) On issue of the interim order, the officers of the society shall hand over to the provisional Liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled and of all books, records and other documents pertaining to the business thereof and shall have no access to any of them.</p> <p>(3) When a final order is passed under Section 98(2) confirming the interim order, the Registrar may appoint in the manner prescribed, the person appointed under sub-section (1) or any other person as Liquidator of the society. Upon the appointment of the Liquidator, the officers of the society shall vacate their office, and while the winding up order remains in force, the general body of the society shall not exercise any powers.</p> <p>(4) The person appointed under sub-section (1) as provisional Liquidator or as Liquidator under sub-section (3) shall subject to the general control of the Registrar, exercise all or any of the powers mentioned in Section 101. The Registrar may remove such person and appoint another in his place without assigning any reason.</p>	New.

- (5) The whole of the assets of the society shall, on the appointment of provisional Liquidator under sub-section (1) or Liquidator under sub-section (3), vest in such provisional Liquidator or Liquidator as the case may be and notwithstanding anything contained in any law for the time being in force, if any landed property is held by a provisional Liquidator or Liquidator, as the case may be, on behalf of the society, the title over the land shall be complete as soon as the mutation of the name of his office is effected and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.
- (6) In the event of the interim order being vacated, the person appointed as provisional Liquidator shall hand over the property, effects and actionable claims and books, records and other documents of the society to the officers who had delivered the same to him. The acts done and the proceedings taken by the provisional Liquidator shall be binding on the society and such proceedings shall, after the interim order has been cancelled under section 98(2), be continued by the officers of the society.

100

Section 100. Appeal against the order of winding up.

The Committee or any member of the society ordered to be wound may within 2 months from the date of the issue of the order made under section 98 appeal to the State Government, if the order is made by the Registrar or to the Registrar if the order is made by any person on whom the powers of the Registrar are conferred, provided that no appeal shall lie against an order, issued under sub-section 1(c)(i), (ii), (iii) of Section 98 :
 Provided that no appeal shall lie against an order passed by the Registrar on appeal.
Explanation.—No application under this section shall be entertained from a member unless it is accompanied by such sum as security for the cost of hearing the appeal as may be prescribed.

Detached from the perview of section 64, and separated to read as in Column 4.

Serial No. 1	Heading and Section No. in the Act in force. 2	Heading and Section of the Act by the Committee. 3	Full text of the Section in column No. 3. 4	Charge. 5
101	Section 50. Powers of a liquidator.	Section 101. Powers of liquidator.	<p>The liquidator appointed under section 99 shall have powers, subject to the rules and the general control of the Registrar,—</p> <p>(a) to institute and defend any suit and other legal proceedings, civil or criminal, on behalf of the society in the name of his office ;</p> <p>(b) to carry on business of the society so far as may be necessary for the beneficial winding up of the same ;</p> <p>(c) to sell the immovable and movable property and actionable claim of the society by a public auction or private contract with power to transfer whole or part thereof to any person or body incorporate or sell the same in parcels ;</p> <p>(d) to raise on the security of the assets of the society any money required ;</p> <p>(e) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising out of such claims, and to pay any class or classes of creditors in full or rateable according to the amount of such debts, the surplus, if any being applied in payment of interest from the date of liquidation at a rate to be approved by the Registrar, but not exceeding the contract rate ;</p> <p>(f) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the society may be rendered liable ;</p> <p>(g) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims present or future, certain or contingent, subsisting or supposed to subsist</p>	<p>Substitute the words "subject to the Rules and the general control" for the words "with the sanction" in the first line of section 50.</p> <p>Add the words, "or Board of nominees" at the end of sub-clause (g).</p> <p>Add as "sub-clause (c), (d), (l), (m), (n)" as shown in Column 4.</p> <p>Delete the proviso appearing at the end of the section.</p> <p>Redraft the section thereafter as shown in Column 4.</p>
	Section 58. Powers to enforce attendance.	.....	

between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society and all questions in anyway relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt, or claim and give a complete discharge in respect thereof ;

- (h) to determine from time to time, after giving an opportunity to answer the claim, the contribution to be made or remaining to be made by the members or past members or by the estate, nominees, heirs or legal representatives of deceased members or by any officer, past officer or the estate or nominees, heirs or legal representatives of deceased officer to the assets of the society, such contribution being inclusive of debts due from such members or officers ;
 - (i) to issue requisitions under section 94 ;
 - (j) to get disputes referred to the Registrar for decision by himself or his nominee or board of nominees ;
 - (k) to determine by what person and in what proportion the cost of the liquidation shall be borne ;
 - (l) to fix the time or times within which the creditor shall prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved ;
 - (m) to summon and enforce the attendance of witnesses and to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the society by the same means and in the same meanner as is provided in the case of a civil court under Code of Civil Procedure, 1908 ;
 - (n) to do all acts and to execute in the name and on behalf of the society, all deeds, receipts and other documents as may be necessary to such winding up.
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Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
102	Section 102. Withdrawal of final order.	Section 102. Withdrawal of final order.	The State Government or the Registrar, in an appeal under Section 199 and the Registrar of his own motion at any time may cancel the final order for the winding up of a society where the State Government or the Registrar in appeal or the Registrar of his own motion is of the opinion, that the society should continue to exist. On the cancellation of the final order, the liquidator shall arrange for the constitution of a new Committee in accordance with the by-laws of the society if the Registrar so directs, or where the Registrar nominates a Committee to the nominated committee, and shall hand over to such committee the charge of the society. The acts done and the proceedings taken by the Liquidator while the winding up order remained in force shall be binding on the society and such proceedings shall, after the winding up order has been cancelled, be continued by the Committee and officers of the society.	New.
	Section 103. Effect of order of winding up.	Section 103. Effect of order of winding up.	(1) After the expiry of the period for appeal against the order made under Section 98(1) or where the appeal has been dismissed, the order for winding up shall be effective and shall operate in favour of all the creditors and of all the contributories of the society as if it had been made on the joint petition of creditors and contributories. When a winding up order becomes effective the liquidator shall proceed to realise the assets of the society by sale or otherwise and no dispute shall be	New.

commenced or, if pending at the date of the winding up order, shall be proceeded with, against the society, except by leave of the Registrar and subject to such terms as the Registrar may impose. The Registrar, may of his own motion, however, entertain or dispose of any dispute by or against the society.

104 Section 51. Bar of suit in winding up and dissolution matters.

Section 104. Bar of suit in winding up and dissolution matters.

Save in so far as is expressly provided in this Act, no Civil Court shall take cognisance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall be proceeded with against the society or the liquidator except by leave of the Registrar and subject to such terms as he may impose:

Add the words "or the liquidator" between the words "the society" and "except by" in the fourth line.

Add proviso as mentioned in Column 4.

Provided that where the winding up order is cancelled the provisions of this sanction shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned but they shall continue to apply to the person who acted as liquidator.

105

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Section 105. Audit of liquidators' account.

(1) The liquidator shall at such times as may be prescribed but not less than twice each year during his tenure of office, present to the Registrar an account in the prescribed form of his receipts and payments as Liquidator. The Registrar shall cause the accounts to be audited in such manner as he thinks fit and for the purpose of the audit, the Liquidator shall furnish the Registrar with such vouchers and information as he or the person appointed by him may require.

New.

(2) The Liquidator shall cause a summary of audited accounts to be prepared and shall send a copy of such summary to every contributory:

Provided that the Registrar may in the case of any winding up proceedings exempt the liquidator from compliance with sub-section (2).

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1	2	3	4	5

(3) The liquidator shall pay such fees as the Registrar may direct for the audit of the accounts and books kept by him in the manner prescribed.

(4) The liquidator shall be held liable for any irregularities which might be discovered in the course or as a result of audit in respect of transactions subsequent to his taking over the affairs of the society and may be proceeded against as if it were an offence under section 85.

106

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Section 106. Liquidator's report.

(1) The liquidator shall, as soon as practicable, but not later than six months from the date of the order made under section 99, submit a preliminary report to the Registrar—

(a) as to the estimated amounts of assets and liabilities, giving separately under the heading of assets, particulars of (i) cash and negotiable securities; (ii) debts due from contributories; (iii) debts due to the society and securities, if any, available in respect thereof; (iv) moveable and immovable properties belonging to the society, and (v) the liability of members, past members, deceased members, and Officers, past Officers, and deceased Officers;

(b) the causes of the failure of the society; and

(c) where, in his opinion, action is necessary as to any matter relating to the promotion, formation or failure of the society, or the conduct of the business thereof.

New.

Section 107. Termination of liquidation proceedings.

- (2) The liquidator shall submit a half-yearly progress report to the Registrar in such form as the Registrar may require.
- (3) The report of the liquidator under sub-section (2) to the Registrar shall be available for inspection to the members of the society in the office of the liquidator during office hours.

Explanation.— For the purpose of sub-section (3) the office of the liquidator shall be the office where the books of the society are kept and if there is no office the residence of the liquidator shall be considered as the said office of the liquidator.

- (1) Where the order for winding up a society has not been withdrawn under section 102, the winding up proceedings of the society shall be closed within three years from the date of the order of the winding up unless the period is extended by the Registrar: New

Provided that the Registrar shall not grant any extension for a period exceeding one year at a time but four years in all and shall, immediately after the expiry of seven years from the date of the order for winding up of the society, deem that the liquidation proceedings have terminated and pass an order terminating the liquidation proceedings.

Explanation.— In the case of a society which is under liquidation at the commencement of this Act, order for the winding up of the society shall be deemed for the purpose of this section to have been passed on the date on which this Act comes into operation.

- (2) Notwithstanding anything contained in sub-section (1), the Registrar shall terminate the liquidation proceedings on receipt of the final report from the liquidator. The final report of

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
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the liquidator shall state that the liquidation proceedings of the society have been closed and how the winding up has been conducted and the property of and the claims of the society have been disposed of, and shall include a statement showing a summary of the account of the winding up including the cost of liquidation, the amount, if any, standing to the credit of the society in liquidation after paying off its liabilities including the share or interest of members and suggest how the surplus should be utilised.

(3) The Registrar, on receipt of the final report from the liquidator, shall direct the liquidator to convene a general meeting of the members of the society for recording his final report.

108 Section 49. Effect of cancellation of registration. Section 108. Effect of cancellation of registration.

(1) On the termination of winding up proceedings as provided in Section 107 the Registrar shall make an order cancelling the registration of the society and the society shall be deemed to be dissolved and shall cease to be a body corporate by the name under which it was registered, from the date of such order.

(2) All books, registers and accounts belonging to the society and all books, accounts and papers relating to its liquidation proceedings which are in possession of the liquidator shall be delivered

Delete the portion "when the affairs of a society for which a liquidator has been appointed under section 47 have been wound up or where no liquidator has been appointed after two months from the date of an order under section 47, or after confirmation of such order in appeal," from section 49.

Insert the words "and shall cease to be a body corporate by the name under which it was registered" between the words

by the liquidator to the Registrar or to such person as the Registrar may direct and no person will have any claim for inspection or otherwise on any of them.

“be dissolved” and “from the date” in the last line.

Add “sub-section (2)” as in Column No. 4.

Insert the portion “on the termination of winding up proceedings as provided in section 107,” at the commencement of Section.

109 Section 52. Disposal of surplus assets.

Section 109. Disposal of surplus assets.

The surplus assets, as shown in the final report of the liquidator of a society which has been wound up, shall not be divided amongst its members but shall be devoted to any object or objects provided in the by-laws of the society if they specify that such a surplus shall be utilised for the particular purpose. Where the society has no such by-laws, the surplus shall vest in the Registrar who shall hold it in trust and shall transfer it to the reserve fund of a new society registered with the similar object and serving more or less an area which the society to which the surplus belonged was serving:

Change the order of priority and re-draft the Section as shown in Column No. 4

Provided that where no such society exists or is registered within three years of the cancellation of the society whose surplus is vested in the Registrar, the Registrar may distribute the surplus in the manner he thinks best among any or all of the following :—

- (a) an object of public utility and of local interest as may be recommended by the members in general meeting held under section 107 (3);
- (b) a federal society with similar objects to which the cancelled society was eligible for affiliation or, where no federal society exists to the Bombay State Co-operative Union; and
- (c) any charitable purpose as defined in section (2) of the charitable Endowments Act, 1890.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

CHAPTER IX.

FARMING SOCIETIES.

Section 64-B. Application of this chapter.

Section 110. Application of this chapter.

This Chapter shall apply to farming societies including better farming societies, tenant farming societies, joint farming societies, collective farming societies and societies for consolidation of holdings, land reclamation and improvement, crop protection, irrigation, and for providing embankment facilities :

Provided that the State Government may, by general or special order published in the *Official Gazette*, direct that the provisions of this Chapter shall also apply to any other class of societies and thereupon they shall apply as if such societies are farming societies.

Add the portion "including better farming societies, tenant farming societies, joint farming societies, collective farming societies, and the societies for consolidation of holdings, land reclamation and improvement, crop protection, irrigation and for providing embankment facilities" at the end of the first line.

.....

Section 111. Registration.

(1) If the Registrar is satisfied that the conditions of registration as laid down in section 6 of this Act have been fulfilled and that the scheme proposed by the society is economically sound and has been sanctioned by the State Government after due enquiry in the manner prescribed, the Registrar shall register the society.

(2) Notwithstanding anything contained in subsection (1), no farming society shall be registered unless 66 per cent. of the owners and/or tenants in possession of or having interest as tenants in not less than 75 per cent. in aggregate of the land proposed to be included in the area of operation of the proposed society have given their consent to the making of the scheme.

New.

<p>112 Section 64-M. Effect of scheme. Section 64-N. Power to enforce scheme. Section 64-O. Contribution towards the cost of the scheme.</p>	<p>Section 112. Effect of registration.</p>	<p>(1) On the registration of a farming society, all the owners of and tenants having interest in lands included in the area of operation of the society, whether they are members of the society or not, shall have such rights and shall be subject to such liabilities as are conferred or imposed on them under the by-laws of the society. (2) The society registered under section 111 may execute any work and undertake such other functions as may be laid down in its by-laws and may recover expenditure thereon from all the owners of and tenants having interest in lands included in its area of operation whether they are members of the society or not, on the basis of contribution leviable at a rate specified in the by-laws or in the general meeting or in any manner prescribed in the Rules or specified in the scheme.</p>	<p>Combine "sections 64-M, 64-N and 64-O" into one section and re-draft it to read as in column 4.</p>
<p>113 Section 64-P. Dues of farming societies to be first charge. Section 64-Q. Recovery of arrears.</p>	<p>Section 113. Dues of farming societies and their recovery.</p>	<p>(1) Subject to the provisions in section 49, any outstanding demands or dues payable to a farming society by any person, whether he is a member or not, in respect of any other rights or amounts payable by him to such society shall be a first charge upon his interest in the crops or other agricultural produce on the land included in the area of operation of such society and of which he is an owner or in which he has interest as a tenant. (2) Any sum due to a society under sub-section (1) shall, on the application being made by such society for recovery be recoverable as if it were dues to be recovered under section 94.</p>	<p>Combine "sections 64-P and 64-Q" into one section and re-draft it to read as in column 4.</p>
<p>114 Section 64-R. Power to exempt farming societies from provisions of Chapter XI.</p>	<p>Section 114. Power to exempt farming societies from provisions of Chapter IX.</p>	<p>(1) Notwithstanding anything contained in section 110, the State Government may, by general or special order to be published in the <i>Official Gazette</i>, exempt any farming society or class of such societies from any or all of the provisions of Chapter IX.</p>	<p>Insert the words "or any other Co-operative Societies Act applicable to societies in any of the component parts of Bombay State" between the words and figures "(Amendment) Act, 1949", and "comes into force" in sub-section (2), and re-draft the section as in column 4.</p>

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(2) Any farming society in respect of which a certificate of registration has been issued by the Registrar under section 10 of the Bombay Co-operative Societies Act, 1925, or any other Co-operative Societies Act applicable to societies in any of the component parts of Bombay State, before this Act comes into force shall be deemed to have been validly registered under this Act, notwithstanding that any of the provisions of Chapter IX as to registration have not been complied with.

CHAPTER X.

LAND MORTGAGE BANKS.

115

Section 115.
Application of this Chapter.

(1) This Chapter shall apply to land mortgage banks and any other bank permitted to function as such under this Act. New.

(2) In this Act unless there is repugnant in the subject or context, "State Mortgage Bank" means the Bombay State Co-operative Land Mortgage Bank, Limited" and includes the Saurashtra Central Co-operative Land Mortgage Bank, Limited, and the Vidarbha Co-operative Bank, Limited, and "mortgage bank" means a primary co-operative land mortgage bank registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, and admitted as a member of the State Mortgage Bank and includes

the State Mortgage Bank where it functions as a mortgage Bank and any other co-operative bank permitted under this Act to function as a mortgage bank.

116

Section 116.
Appointment,
powers and func-
tions of Trustee.

- (1) The Registrar, or where the State Govern-
ment appoints any other person in this behalf, such
person shall be the Trustee for the purpose of
securing the fulfilment of the obligations of the
State Land Mortgage Bank to the holders of
debentures issued by the State Mortgage Bank.
- (2) The Trustee appointed under sub-section (1)
shall be a corporation sole, by the name of the
Trustee for the debentures in respect of which he is
appointed, and, as such, shall have the perpetual
succession and a common seal and in his corporate
name shall sue and be sued.
- (3) Powers and functions of the Trustee shall be
governed by the provisions of this Act and Instru-
ment of Trust executed between the State
Mortgage Bank and the Trustee as modified from
time to time by mutual agreement between the
State Mortgage Bank and the Trustee.

New.

117

Section 117. Issue of
debentures.

- (1) With the previous sanction of the State Govern-
ment and the Trustee, the State Mortgage Bank
may for the purpose of investment in land
mortgage business and for no other purpose, issue
debentures of such denominations for such periods
and at such rates of interests as it may deem
expedient on the security of the mortgages and
other assets of the land mortgage business.
- (2) Every debenture may contain a term fixing a
period not less than 10 years and not exceeding
30 years from the date of issue during which period
it may be redeemable by reserving to the State
Mortgage Bank the right to call it at any time in
advance of the date fixed for redemption after
giving to the holder of the debenture not less than
3 month's notice in writing.

New.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(3) The total amount due on debentures issued by the State Mortgage Bank and outstanding at any time shall not exceed the aggregate of the amounts due on the mortgages, the value of other assets transferred or deemed to have been transferred under Section 120 by the mortgage banks to the State Mortgage Bank and subsisting at such time and the amounts paid under the mortgage aforesaid and remaining in the hands of the State Mortgage Bank of the Trustee at that time.

118

Section 118. Guarantee by State Government.

(1) The principal of, and interest on, the debentures issued under Section 117 shall carry the guarantee of the State Government to such maximum amount as may be fixed by the State Government and subject to such conditions as the State Government may think fit to impose.

New.

(2) The State Government may, after consulting the State Legislature, increase the maximum amount of any guarantee given under sub-section (1).

(3) The State Government may, after consulting the State Mortgage Bank and the trustee, by notification in the Official Gazette and by notice, of not less than 14 days in such of the principal newspapers in the State and of other States in India as the State Government may select in this behalf, discontinue the guarantee given under sub-section (1) or restrict the maximum amount thereof or

modify the conditions subject to which it is given with effect from a specified date, not being earlier than six months from the date of the publication of the notification in the Official Gazette: Provided that the withdrawal, restriction or modification of any guarantee under sub-section (3) shall not in any way affect the guarantee carried by any debentures issued prior to the date on which such withdrawal, restriction or modification takes effect.

(4) Every notification and notice referred to in sub-section (3) shall, where the maximum amount of guarantee is to be restricted, or the conditions subject to which the guarantee is given are to be modified, set forth, with sufficient clearness, the scope and effect of the restriction or modification, as the case may be.

(5) The State Government may also guarantee to the State Mortgage Bank for a specified period the repayment of loan to the extent of the excess where the loan given by the State Mortgage Bank or a mortgage bank to a member for the development of any land is in excess of the amount of the loan to which such member would be entitled on the basis of the value of the land as determined in accordance with the principle of valuation approved by the Registrar.

119

Section 119. Vesting of property in trustee and debenture holders' charge on assets.

Upon the issue of debentures under the provisions of sub-section (1) of Section 117 the mortgage and assets referred to in sub-section (3) of section 117 held by the State Mortgage Bank shall vest in the trustee and the holders of debentures shall have a floating charge on all such mortgages and assets and on the amount paid under such mortgages and remaining in the hands of the State Mortgage Bank or of the trustee.

New.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
120	Section 120. Priority of mortgage.	<p>(1) A mortgage executed in favour of a mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884 or under any other law for the time being in force, granted after the execution of the mortgage.</p> <p>(2) Notwithstanding anything contained in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other law for the time being in force where a mortgage is in respect of land in which a tenant has an interest, the mortgage may be against the security of such interest and the rights of the mortgagee shall not be affected by the failure of the tenant to comply with the requirements of that Act and the sale of the land and tenants interest therein under the said Act shall be subject to the prior charge of the mortgage bank.</p>	New.
121	Section 121. Mortgages executed in favour of mortgage banks to stand vested in State Mortgage Bank.	The mortgages executed in favour of, and all other assets transferred to, a mortgage bank, by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by such mortgage bank to the State Mortgage Bank and shall vest in the trustee.	New

1:2	.....	Section 122. Mortgages not to be questioned on insolvency of mortgagors.	Notwithstanding anything contained in the Presidency Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920 a mortgage, executed in favour of a mortgage bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the Bank a preference over other creditors of the mortgagor.	New.
123		Section 123. Right of mortgage bank to pay prior debts of mortgagor.	<p>(1) Where a mortgage is executed in favour of a mortgage bank for payment of prior debt of the mortgagor, the mortgage bank shall, notwithstanding anything contained in the Transfer of Property Act, 1882, by a notice in writing, require any person to whom any such debt is due, to receive payment of such debt or part thereof from the bank at its registered office within such period as may be specified in the notice.</p> <p>(2) Where any such person fails to accept such notice or, to receive such payments, such debts or part thereof as the case may be shall cease to carry interest from the expiry of the period specified in the notice :</p> <p>Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the mortgage bank towards the debt but such receipt shall not prejudice the right, if any, of such person to recover the balance claimed by him.</p>	New.
124		Section 124. Mortgages executed by managers of joint Hindu families.	<p>(1) Where a mortgage is executed in favour of a mortgage bank either before or after the commencement of this Act and is called in question on the ground that it was executed by Manager of a joint Hindu family for a purpose not binding on the members, whether major or minor, thereof, the burden of proving the same shall, notwithstanding any law to the contrary, lie on the party raising it.</p>	New.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(2) Mortgages in respect of loans by mortgage bank or the State Mortgage Bank for the improvement of agricultural land or of the methods of cultivation, or for financing any other means to raise productivity of the land, or for the purchase of land, shall not be called in question and shall be binding on every member of such joint Hindu family notwithstanding any law to the contrary.

125

Section 125. Restrictions on lease.

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other enactment for the time being in force, no mortgagor of property mortgaged to a mortgage bank shall be entitled, after the execution of the mortgage, without the previous permission of the bank which may be subject to such conditions as the bank may impose, to transfer or mortgage his equity of redemption or lease such property; Provided that no mortgage bank shall be competent to give its approval without the previous sanction of the State Mortgage Bank. New.

(2) Where the State Mortgage Bank accords its consent under sub-section (1) it shall send an intimation thereof to the trustee appointed under section 116.

126

Section 126. Power of mortgage Bank to receive money and give discharge.

Notwithstanding anything contained in section 121 all moneys due under the mortgage shall, unless otherwise directed by the State Mortgage Bank or trustee and communicated to the mortgagor be payable by the mortgagor to the mortgage bank and such payments shall be as valid as if the mortgage has not been so transferred; and the mortgage bank shall in the absence of any specific direction to the contrary issued by the State Mortgage Bank or trustee and communicated to the bank as such be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

127

Section 127. Power of Mortgage Bank where mortgaged property is destroyed or security becomes insufficient.

Where any property mortgaged to a Mortgage Bank is wholly or partially destroyed or the security is rendered insufficient for any other reason and the mortgagor, having been given a reasonable opportunity by the Bank of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the Bank, has failed to provide such security or to repay such portion of the loan the whole of the loan shall be deemed to fall due at once and the bank shall be entitled to take action against the mortgagor under section 128 or section 129 for the recovery thereof.

New.

Explanation.—A security shall be deemed insufficient within the meaning of this Section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the Rules or the Bye-laws of the mortgage bank.

128

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Section 128. Power to distrain.

If any sum due as an instalment or part of an instalment payable under a mortgage executed in favour of a mortgage bank or the State Mortgage Bank has remained unpaid for more than one month from the date on which it fell due or if on default being made by the mortgagor in

New.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

129

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Section 129. Sale of mortgaged property.

payment of land revenue or any other Government dues in respect of land mortgaged by him, the mortgage bank or the State Mortgage Bank has paid the same according to the Government demand, the mortgage bank or the State Mortgage Bank may, in addition to any other remedy available to the mortgage bank, apply to the Registrar for the recovery of such sum by distraint and sale of the produce of the mortgaged land including the standing crops thereon and on its furnishing the statement of accounts in respect of arrears the Registrar may, after making such enquiries as he deems fit, grant certificate for the recovery of the amount stated therein to be due as arrears. A certificate so granted by the Registrar shall have the effect of the certificate issued under section 95 and the arrears stated to be due therein shall be recoverable in the same manner as is prescribed under Section 95 (3).

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Trustees and Mortgagees Powers Act, 1886, the mortgage bank or any persons authorised by it in this behalf shall, in case of default of payment of the mortgaged money or any part thereof, have power, in addition to any other remedy available to the bank to bring the mortgage property to sale by public auction in the village in which the mortgaged property is situated or at the nearest place of public resort without the intervention of the Court :

New.

Provided that no action shall be taken under sub-section (1) and no such power shall be exercised unless and until (a) the mortgage bank has been previously authorised to exercise the power conferred under sub-section (1) after hearing the objections, if any, of the mortgagor or mortgagors, (b) notice in writing requiring payment of such mortgaged money or part thereof has been served upon,

- (i) the mortgagor or each of the mortgagors,
 - (ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same so far as known to the bank,
 - (iii) any surety for the payment of the mortgaged debt or any part thereof, and
 - (iv) any creditor of the mortgagor who has in a suit for administration of his estate obtained a decree for sale of mortgaged property; and
- (c) default has been made in payment of such mortgaged money or part thereof for three months after service of the notice.

(2) If the mortgage bank fails to take action against defaulter under Section 127, Section 128 or under this section the State Mortgage Bank may direct the mortgage bank to take appropriate action and where no action is taken either by the State Mortgage Bank or the mortgage Bank, the trustee may take such action. If such action is taken by the trustee, the provisions of this Chapter and of any Rules prescribed shall apply in respect thereto as if all references to the mortgage bank in the said provision were reference to the trustee.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
130	Section 130. Right of mortgage bank to buy mortgaged property.	<p>(1) Notwithstanding anything contained in any law for the time being in force, it shall be lawful for a mortgage bank or the State Mortgage Bank to purchase any mortgaged property sold under this Chapter, and in accordance with Section 97 of this Act and the property so purchased may be disposed off by such bank by sale within such period as may be fixed by the Trustee.</p> <p>(2) Nothing in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other law for the time being in force, fixing a maximum limit of agricultural holding shall apply to the acquisition of land by a mortgage bank or the State Mortgage Bank under sub-section (1).</p>	New.
131	Section 131. Application to set aside sale.	<p>(1) On effecting the sale by a mortgage bank under section 129 the bank shall, in the prescribed manner, submit to the State Mortgage Bank and the Registrar a report setting forth the manner in which the sale has been effected and the result of the sale and the State Mortgage Bank may, with the approval of the Registrar, confirm the sale or cancel it.</p> <p>(2) Where the sale is effected by the State Mortgage Bank under section 129 the State Mortgage Bank shall in the prescribed manner, submit to the Registrar a report setting forth the manner in which the sale has been effected and the result of the sale, and the Registrar may confirm or cancel the sale.</p> <p>(3) Where the trustee has effected the sale under section 129(2), he shall, in the prescribed manner, submit to the Registrar a report, setting forth the</p>	New.

manner in which the sale was effected and the result of the sale, and the Registrar may confirm or cancel the sale.

(4) Where an order is passed by Registrar under sub-sections (1), (2) and (3) confirming a sale, the sale shall thereupon become absolute.

Explanation.—The Registrar shall not confirm a sale if the State Government informs him that it claims to take the property at the sum last bid and deposits the full amount of the last bid. On so doing, the property shall be sold to the State Government.

132

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Section 132. Disposal of sale proceeds.

(1) The proceeds of every sale effected under section 129 and confirmed under section 131 shall be applied first in payment of all costs, charges, and expenses incurred in connection with the sale or attempted sales, secondly in payment of any or all interest due on account of the mortgage in consequence whereof the mortgaged property was sold and thirdly, in payment of the principal due on account of the mortgage including cost and charges incidental to the recovery. If there remains any residue from the proceeds of sale, the same shall be paid to the person proving himself interested in the property sold or if there are more such persons than one, then to such persons upon their joint receipt or according to their respective interest therein as may be determined by the mortgage bank.

(2) Notwithstanding anything contained in sub-section (1) no residue shall be disposed off until 30 days have elapsed from the communication of the decision to pay the residues, to all the persons concerned and all payments of such residue may thereafter shall be valid and effectual against any demand relating thereto made upon the mortgage bank by the mortgagor or by any other person.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
133	Section 133. Certificate to purchaser, delivery of property and title of purchaser.	<p>(3) Any person dissatisfied with the decision of the mortgage bank in regard to the distribution of such residue may, within 30 days from the communication to him of such decision under subsection (2), institute a suit in a court to establish the right he claims to such residue and on receipt of the intimation within the said period of 30 days of such suit being filed the mortgage bank shall not proceed with the distribution of the residue until the suit is decided and shall distribute the same thereafter in accordance with the decision of the Court thereon.</p> <p>(1) Where a sale of a mortgaged property has become absolute under Section 131 and the sale proceeds have been received in full by the mortgage bank, the mortgage bank shall grant a certificate to the purchaser in the prescribed form certifying the property sold, the sale price, the date of its sale, the name of the person who at the time of the sale is declared to be the purchaser and the date on which the sale became absolute and upon the production of such certificate the sub-Registrar, appointed under the Indian Registration Act, 1908, within the limits of whose jurisdiction the whole or any part of the property comprising such certificate is situated shall enter the contents of such copy in his register relating to immovable property.</p> <p>(2) (a) Where the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or some person claiming under a title created by the mortgagor subsequent to mortgage in favour of the State Mortgage Bank or the</p>	New.

mortgage bank and a certificate in respect thereof has been granted under sub-section (1), the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(b) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under sub-section (1), the Court shall, on the application of the purchaser and after notice to such tenants or other persons, order the delivery to be made by affixing copy of the certificate of sale in conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the right, title and interest of the mortgagor have been transferred to the purchaser.

(3) Where any property is sold in the exercise or purported exercise of a power of sale under section 129 the title of the purchaser shall not be questioned on the ground that the circumstances required for authorising the sale had not arisen or due notice of the sale was not given or the power of sale was otherwise improperly or irregularly exercised :

Provided that any person who has suffered any damage by an unauthorised, improper or irregular exercise of any such power shall have a remedy in damages against the mortgage bank and the State Mortgage Bank.

Section 134. — Ex-emption of officers of mortgage bank from personal appearance before the registering officers. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for any officer of a mortgage bank or the State Mortgage Bank to appear in person or by agent at any registered office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act. New.

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

(2) Where any instrument is so executed, the Registering Officer to whom such instrument is presented for registration may, if he thinks fit, refer to such officer for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

135

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Section 135. Service of Notice.

(1) Whenever under the provisions of this Chapter a notice is required to be given to any person in writing it shall be sufficient to send such notice by registered post.

(2) The provisions of Sections 102 and 103 of the Transfer of Property Act, 1882, and of any rules made under Section 104 thereof for carrying out the purpose of the Sections, shall apply so far as may be in respect of all notices to be served under this Chapter.

New.

136

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Section 136. Officers of Banks not to bid at sales.

At any sale of movable or immovable property, held under the provisions of this Chapter, no officer or employee of a mortgage bank or the State Mortgage Bank, except on behalf of the Bank of which he is an officer or an employee, and no person having any duty to perform in connection with such sale shall either directly or indirectly bid for, or acquire or attempt to acquire any interest in, such property.

New.

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Section 137. Construction of references to other Acts.

All references to the Hyderabad Land Mortgage Banks Act, 1349-F, the Central Provinces Co-operative Land Mortgage Banks Act, 1937 and the Saurashtra Co-operative Land Mortgage Banks Act, or to any other Act, Central or State, occurring in any enactment made by any authority in India and for the time being in force in Bombay State shall, in the application, to the said State, of any such enactment, be read and construed as references to this Chapter and anything done or any proceeding commenced in pursuance of any such enactment on or after the date on which this Chapter shall have come into operation shall be deemed to have been done or to have been commenced and to have been had effect as if the reference in such enactment to the Hyderabad Land Mortgage Banks Act, 1349-F., the Central Provinces Co-operative Land Mortgage Banks Act, 1937, and the Saurashtra Co-operative Land Mortgage Banks Act or any other Act, Central or State, for the time being in force in the areas comprising the Bombay State as on November 1st, 1956 or thereafter, had been the reference to this Chapter and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Chapter.

New.

CHAPTER XI.

OFFENCES AND PENALTIES.

138 Section 62. Prohibition of the use of the word "co-operative."

Section 138. Prohibition of the use of the word "co-operative."

(1) No person, other than a society registered under this Act and a person or his successor in interest of any name or title, under which he traded or carried on business at the date on which this Act comes into operation, shall without the sanction of the State Government, function, trade or carry on business under any name or title of which the word "co-operative" or its equivalent in any Indian language forms part.

Insert the portion "under this Act and a person or his successor in interest of any name or title, under which he traded or carried on business at the date on which this act comes into operation" between the words "registered" and "shall" in sub-section (1).

Serial No.	Heading and section No. in the Act in force.	Heading and section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5
				Insert the word "function" between the words "Government" and "trade" in the second line.
			(2) Every person who is a member of a society formed in contravention of Section 11(2) of this Act and every person contravening the provisions of sub-section (1) shall be punishable with a fine which may extend to Rs. 500.	Substitute the words "equivalent in any Indian language" for the words "vernacular equivalent". Thereafter redraft the section as shown in column 4. Substitute "sub-section (2)" for "sub-section (2)" as shown in column 4.
139	Section 60. Offences.	Section 139. Offences.	It shall be an offence under this Act, if—	Insert the words "a committee of" at the commencement of sub-section (a). Substitute the word "committee" for the word "society" in the 3rd line.
			(a) a committee of a society with a working capital of Rs. 50,000 or more or an officer or a member thereof fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything, which the committee, officer or member is by this Act required to give, send, do or allow to be done or comply with orders made under Section 73; or	Insert the words "a committee of" at the commencement of sub-sections (b), and (c). Add the words "or fails to maintain proper accounts" thereafter at the end of sub-section (c).
			(b) a committee of a society or an officer or member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorised by him in writing in this behalf; or	Add "Sub-Sections (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o) with explanation as in column 4.
				Delete "Sub-Section (d)" of Section 60.

- (c) a committee of a society or an officer or member thereof wilfully makes a false return or furnishes false information or fails to maintain proper accounts ; or
- (d) a committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by Section 58 ; or
- (e) any person collecting share money for a society in formation does not deposit the same in the State Co-operative Bank or a central co-operative bank or an urban co-operative bank or a postal savings bank ; or
- (f) a person collecting the share money for a society in formation makes use of the funds so raised for conducting any business or trading in the name of a society to be registered or provisionally registered ; or otherwise ; or
- (g) a committee of a society or an officer or member thereof fails to comply with the provisions under section 63 (2), (3) and (4) ; or
- (h) any officer of a society wilfully recommends or sanctions for his own personal use or benefit or for the use or benefit of a person in whom he is interested, loan in the name of any other person ;
or
- (i) an officer or member destroys, mutilates, alters, falsifies or secretes or is privy to the destruction, mutilation, alteration, falsification or secreting of any books, papers or securities or makes, or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the society ; or

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(j) an officer or member who is in possession of information, books and records, fails to furnish such information or produce books and papers or give assistance to a person appointed or authorised by the Registrar under Sections 69, 70, 75, 80, 81, 90 and 99; or

(k) an officer fails to hand over the custody of books, records, cash, security and other property belonging to the society of which he is an officer, to a person appointed under Sections 69, 70 and 99; or

(l) an officer or a member wilfully fails to comply with any decision, award or order passed under section 89; or

(m) a member fraudulently disposes of property over which the society has a prior claim or a member or officer or employee or any person disposes of his property by sale, transfer, mortgage, gift or otherwise, with the fraudulent intention of evading the dues of the society; or

(n) any employer and every director, manager, secretary or other officer or agent acting on behalf of such employer who, without sufficient cause, fails to comply with section 51(2); or

(o) an officer or member of a society or any person does any act or omission declared by the Rules to be an offence.

Explanation.—For the purpose of this section an officer or a member referred to in the section shall include past officer and past member as the case may be.

140 Section 60-A. Penalty for officer sanctioning benami loans.

Section 60-B. Penalty for failure to pay amount under section 24-A and offences by corporations.

Section 61. Penalty for offences not otherwise provided for.

Section 140. Penalties for offences.

Every society, officer or past officer or member or past member or an employee or past employee of a society or any other person found guilty of an offence referred to in Section 139 shall be liable to be punished—

(a) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(a); or

(b) with imprisonment for a term which may extend to one month or with fine not exceeding five hundred rupees or with both provided that he is convicted of an offence referred to in section 139(b); or

(c) with imprisonment for a term which may extend to one year or with fine not exceeding rupees two thousand or both provided that he is convicted of an offence referred to in section 139(c); or

(d) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(d); or

(e) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(e); or

Delete Sections 60-A, 60-B and 61 and redraft the provisions for penalties as in section 140 as shown in column 4 in respect of offences detailed under Section 139 above.

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(f) with imprisonment for a term which may extend to one year provided that he is convicted of an offence referred to in section 139(f);
or

(g) with fine not exceeding two hundred and fifty rupees provided that he is convicted of an offence referred to in section 139(g); or

(h) with imprisonment for a term which may extend to two years provided that he is convicted of an offence referred to in section 139(h); or

(i) with imprisonment for a term which may extend to three years provided that he is convicted of an offence referred to in section 139(i); or

(j) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(j); or

(k) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(k); or

(l) with imprisonment for a term which may extend to six months or with fine not exceeding five hundred rupees or both provided that he is convicted of an offence referred to in section 139(l); or

(m) with imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or both provided that he is convicted of an offence referred to in Section 139 (m); or

(n) with imprisonment for a term which may extend to one month or with fine not exceeding five thousand rupees or with both provided that he is convicted of an offence referred to in Section 139 (n); or

(o) with fine not exceeding two hundred and fifty rupees provided that he is convicted of an offence referred to in Section 139 (o).

141 Section 63. Cognizance of offences. Section 141. Cognizance of offences.

(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act. No change.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898—

(a) every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognizable;

(b) it shall be lawful for a Presidency Magistrate or a Magistrate of the First Class to pass a sentence of fine exceeding one thousand rupees on any person convicted of an offence under Section 139 (n).

(3) No prosecution under this Act shall be lodged except with the previous sanction of the State Government in the case of an offence under Section 139 (n) and of the Registrar in the case of any other offence under this Act. Such sanction shall not be given except after hearing the party concerned by an officer authorised in this behalf by the State Government by a general or special order.

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CHAPTER XII.

APPEALS AND REVIEW.

142	Section 63A. Bombay Co-operative Tribunal.	Section 142. Bombay State Co-operative Tribunal.	(1) The State Government shall constitute a Tribunal called the Bombay State Co-operative Tribunal, to exercise the functions conferred on the Tribunal by or under this Act.	
			(2) The Tribunal shall consist of not more than four members possessing such qualifications as may be prescribed.	Substitute the word "four" for the word "three" wherever it occurs in this context.
			(3) Where the Tribunal consists of more than one member, any two members of the Tribunal shall form the quorum for the disposal of its business.	Re-number "sub-section 2A" as "sub-section (3)".
			(4) Any vacancy in the membership of the Tribunal shall be filled by the State Government.	Substitute the words "more than one members" for the words "three members" and with consequential change in serial number of sub-section (3), (4), (5), (6), (6A) and (7).
			(5) Subject to the previous sanction of the State Government, the Tribunal shall frame regulations consistent with the provisions of this Act and Rules made thereunder for regulating its procedure and the disposal of its business.	Add "explanation" as shown in Column 4.
			(6) The regulations made under sub-section (4) shall be published in the Official Gazette.	

(7) 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. If in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit.

(8) Where an appeal is made to the Tribunal under Section 93, it may, in order to prevent the ends of justice being defeated, make such interlocutory orders pending the decision of the appeal as may appear to it to be just and convenient or such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Tribunal.

(9) An order passed in appeal, or in revision under sub-section (7) or in review under section 143 by the Tribunal shall be final and conclusive and shall not be liable to be called in question in any civil or revenue court.

Explanation.—The Tribunal hearing an appeal under section 93 shall exercise all the powers conferred upon an appellate court by section 97 and order 41 of the Civil Procedure Code.

143 Section 63B. Review of orders of Tribunal

Section 143. Review of orders of Tribunal.

(1) The Tribunal may, either on the application of the Registrar or on the application of any party interested, review its own order in any case and pass in reference thereto such order as it thinks fit ;

No change.

Provided that no such application made by the applicant shall be entertained unless the Tribunal is satisfied that there has been a discovery of new and important matter of 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 for any other sufficient reason :

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			<p>Provided further that no such order shall be varied or revised unless notice has been given to the parties interested to appear and be heard in support of such order.</p> <p>(2) An application for review under sub-section (1) by any party shall be made within 90 days from the date of the communication of the order of the Tribunal.</p>	
144	Section 63C. Tribunal to have powers of Civil Court.	Section 144. Tribunal to have powers of Civil Court.	<p>(1) In exercising the functions conferred on it by or under this Act, the Tribunal shall have the same powers as are vested in courts in respect of—</p> <p>(a) proof of facts by affidavits ;</p> <p>(b) summoning and enforcing the attendance of any person and examining him on oath ;</p> <p>(c) compelling the production of documents ; and</p> <p>(d) issuing commissions for the examination of witnesses.</p> <p>(2) In the case of any such affidavit, any officer appointed by the Tribunal in this behalf may administer the oath to the deponent.</p>	No. change.
145	Section 64. Appeals ...	Section 145. Appeals.	<p>(1) An appeal against an order or decision under Section 10, 13, 14, 17, 18, 19, 36, 60, 68, 69, 70, 98 and 101 shall lie—</p> <p>(a) if made or sanctioned or approved by the Registrar or the Joint Registrar on whom powers of the Registrar are conferred, to the State Government ;</p>	<p>Delete the figures " 45 and 50A " in sub-section (1).</p> <p>Add sections " 14, 17, 18, 19, 36, 60 68, 69 and 70 " as of the Bombay Co-operative Societies Act, 1957, and rearrange the serial order in sub-section (1).</p>

		(b) if made or sanctioned by any person other than the Registrar or the Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.	Add the words "or approved" after the words "or sanctioned" in clause (a). Insert the words "the Registrar" between the words "other than" and "or the Joint Registrar" in Clause (b). Delete "the proviso under sub-section (1)" and re-draft it as shown in "sub-section 4" under Column 4. Add "sub-section (2)" as shown in Col.4. Rename "sub-section (2)" as "sub-section (3)" as in Col. 4.
		(2) An appeal against an order or decision under sections 73, 82, 85 and any order passed by the Registrar for paying compensation to a society and any other order for which an appeal to the Tribunal has been provided under this Act shall lie with the Tribunal.	
		(3) An appeal under sub-sections (1) and (2) shall be filed within two months of the date of communication of the order or decision.	
		(4) Save as provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act, and every such order, decision or award shall be final and where the appeal has been provided for, any order passed on appeal shall be final and no appeal shall lie against it.	
146	Section 64-1A. Extension of period of limitation by appellate authority in certain cases.	Section 146. Extension of period of limitation by appellate authority in certain cases.	In all cases in which it is provided under this Act that an appeal may be filed against any decision or order within a specified period, the appellate authority may admit an appeal after the expiry of such period, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.
			No change.
147	Section 54A. Power of State Government and the Registrar to call for proceedings of subordinate officers and to pass orders thereon.	Section 147. Power of State Government and the Registrar to call for proceedings of subordinate officers and to pass orders thereon.	The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them except those referred to in sub-section (7) of section 142 for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case, it shall appear to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may pass such order thereon as to it or he may deem fit.
			No. change.

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CHAPTER XIII.

MISCELLANEOUS.

148	Section 148. Registrar and other officers to be public servants.	The Registrar, a person exercising the powers of the Registrar, a person authorised to hold an enquiry under Section 80 or to make an inspection under Section 81, a person appointed as a Liquidator under Section 99 or as a nominee or board of nominees under Section 87, or authorised under Section 75(1) to audit the accounts of a society, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.	New.
149	.....	Section 149. Indemnity for acts done in good faith.	No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority, in respect of anything done or purporting to have been done by him under this Act in good faith.	New.
150	Section 65. Recovery of sums due to the Government.	Section 150. Recovery of sums due to the Government.	(1) All sums due from a society or from an officer or member or past member or a deceased member of a society as such to the Government may be recovered according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. (2) Sums due from a society to the Government and recoverable under sub-section (1) may be recovered firstly, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members or past members or the estate of deceased	Insert the words "or the estate of deceased member" between the words "past member" and "subject to" in sub-section (2). Substitute the words "societies with unlimited liability" for the words "other societies" in sub-section (2). Add the words "or estate of deceased members" at the end of sub-section (2). Insert the words "or estate of deceased members" between the words "past members" and "shali" in sub-section (3).

members, subject to the limit of their liability ; and, thirdly, in the case of societies with unlimited liability from the members or past members or estate of deceased members.

(3) The liability of past member or estate of deceased members shall in all cases be subject to the provisions of Section 33.

151 Section 67. Power to exempt societies from provisions of Act.	Section 151. Power to exempt societies from provisions of Act.	The State Government may, by general or special order to be published in the Official Gazette, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order : provided that no order to the prejudice of any society shall be passed without any opportunity being given to such society to represent its case.	No change.
152 Section 68. Indian Companies Act not to Apply.	Section 152. Companies Act not to apply.	The provisions of the Companies Act, 1956, shall not apply to societies registered under this Act.	Substitute the words "the Companies Act, 1956" for the words "the Indian Companies Act, 1913."
153 Section 69. Branches etc. of Societies outside the Presidency.	Section 153. Branches etc. of societies outside the State.	(1) No society other than a society registered under this Act shall open a branch or a place of business outside Bombay State and no co-operative society registered under any law in any other State shall open a branch or a place of business in Bombay State without the permission of the Registrar. (2) Every co-operative society registered under any other State and permitted to open a Branch or a place of business in Bombay State under sub-section (1), or which has a branch or a place of business in Bombay State at the commencement of this Act shall within 3 months from the commencement of this Act, or from the opening of such branch or place of business, file with the Registrar a certified copy of the byelaws and amendments and, if these are not written in	Substitute the figure "3" for the figure "6" in the third line. Redraft the section as sub-section as shown under column 4. Add "sub-section (1)" as shown under column 4.

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			English language, a certified translation in English thereof, and shall submit to the Registrar such returns and information as are submitted by similar societies registered under this Act in addition to those submitted to the Registrar of the State where such society is registered.	
154	Section 70. Notice necessary in suits.	Section 154. Notice necessary in suits.	No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.	No change.
155	Section 71. Rules ...	Section 155. Rules.	<p>(1) The State Government may, for the whole or any part of the State and for any society or class of societies, make rules for the conduct and regulation of the business of such society or class of societies and for carrying out the purpose of this Act.</p> <p>(2) In particular and without prejudice to the generality of the foregoing power such rules may—</p> <p>(1) subject to the provisions of section 3 prescribe the delegation of powers vested in the Registrar to persons appointed to assist the Registrar ;</p>	<p>Substitute the word "State" for the "Presidency" wherever it occurs.</p> <p>Substitute the portion "for the conduct and regulation of the business of such society or class of societies and for carrying" for the words "to carry" in Section 71 (1).</p> <p>Add "Clause (1) under sub-section (2)" as in Column 4.</p>

- (2) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such application;
- (3) prescribe the matters in respect of which a society may make, or the Registrar may direct a society to make, by-laws and the procedure to be followed in making, altering and abrogating by-laws and the conditions to be satisfied prior to such making, alteration or abrogation;
- (4) prescribe the procedure to be followed and conditions to be observed for change of name or liability, amalgamation, transfer, division, conversion, or reconstruction of society;
- (5) prescribe the form of and procedure for an application under Section 19 and the procedure for calling, holding and conducting a meeting under that Section;
- (6) prescribe the conditions to be complied with by a person applying for admission or admitted as a member and provide for the election and admission of members and the payment to be made and the interest to be acquired before the exercise of the right of membership;
- (7) prescribe in the case of a federal society or class of federal societies the proportion of individual members to society members in such society or class of societies and the proportion of individual members to society members in the committee of such society or class of societies;
- (8) subject to the provisions of Section 27, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;
- Add also enabling clauses under subsection (2) to provide for matters arising out of the expansion of the Act and in particular in respect of the following—
- (i) matters relating to land mortgage banks in respect of which a special chapter has been included;
- (ii) expulsion of a member;
- (iii) limits of borrowing for different classes of societies;
- (iv) conditions for satisfying the charge of a society;
- (v) Regulations of investment of funds;
- (vi) administration of Employees' Provident Fund;
- (vii) Procedure and conditions in respect of affiliations to a federal society.
- (viii) Conditions for disqualifying a member for voting;
- (ix) Qualifications of employees;
- (x) Procedure in respect of suspension of Committee;
- (xi) Seizure of records;
- (xii) Rectification of defects in account;

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			<p>(9) prescribe the procedure for the admission of joint members, members of a joint Hindu undivided family, and minors and persons of unsound mind inheriting the share or interest of deceased members and provide for their rights and liabilities.</p> <p>(10) provide for the withdrawal, removal or expulsion of members and for the payments to them and for the liabilities of past members and the estate of deceased members ;</p> <p>(11) prescribe the conditions and procedure for the transfer of share or interest ;</p> <p>(12) provide for the nomination of a person to whom the share or the interest of a deceased member may be paid or transferred ;</p> <p>(13) provide for ascertaining the value of a share or interest of a past member or deceased member ;</p> <p>(14) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent to an individual member ;</p> <p>(15) provide for the inspection of documents in the Registrar's Office and the levy of fees for granting certified copies of the same ;</p> <p>(16) the procedure for registering the address of a society and the change of its address ;</p> <p>(17) provide for the formation and maintenance of a register of members, and where the liability of the members is limited by shares, of a register of shares and a list of members ;</p>	<p>(xiii) Constitution of supervisory authority ;</p> <p>(xiv) Transfer of property which cannot be sold ;</p> <p>(xv) Investigation of claims ;</p> <p>(xvi) Qualifications of liquidator, auditor etc. ;</p> <p>(xvii) Procedure for appeals to State Government thereafter redraft 'sub-section (2)' as in Column 4.</p>

- (18) provide for securing that the share capital of any society shall be variable in such a way as may be necessary to secure that the share shall not appreciate in value and that necessary capital shall be available for the society as required;
- (19) provide for the procedure to be adopted by a society with limited liability in order to reduce its share capital;
- (20) prescribe the period and terms upon which Government aid may be given to societies and terms under which the State Government may subscribe to the share capital of and guarantee the payment of the principal of an interest on debentures issued by societies;
- (21) regulate the manner in which funds may be raised by a society or class of societies by means of shares or debentures or otherwise and the quantum of funds so raised;
- (22) prescribe the limits for loans to be granted by a society or class of societies against different classes of securities or without security and the procedure for granting loans;
- (23) prescribe the manner of recalling a loan;
- (24) prescribe the limits for granting credit by a non-credit society or a class of non-credit societies;
- (25) prescribe the prohibitions and restrictions subject to which societies may trade or transact business with persons who are not members;
- (26) prescribe the conditions in which any charge in favour of a society shall be satisfied and the extent to which and the order in which the property to the charge shall be used in its satisfaction;
- (27) provide for giving reasonable notice of the charge under Section 50;
- (28) prescribe the procedure by which a society shall calculate and write off bad debts;

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- (29) prescribe the sums which, in addition to those referred to in section 53(1), shall be deducted from profits before arriving at the profit for the purpose of section 53(2);
- (30) provide for the formation and maintenance of reserve fund, and the objects to which such fund may be applied and for the investment and use of any fund including reserve fund under the control of a society;
- (31) prescribe the conditions under which profits may be distributed as dividend and bonus among the members and non-members of a society under Section 55;
- (32) prescribe the rate at which a society shall contribute towards the educational fund of the Bombay State Co-operative Union;
- (33) define the co-operative purpose for which a society shall, under section 57, utilise its fund;
- (34) prescribe the mode of investment of funds of a society under section 58 and the proportion of investment in any security or class of securities;
- (35) provide for the payment of contribution to any provident fund which may be established by a society for the benefit of officers and servants employed by them and for the administration of such provident fund;
- (36) prescribe the procedure and conditions for the exercise by a federal society of the powers conferred by this Act and the conditions on which the Registrar may direct a society to be affiliated to a federal society under Section 60;

- (37) provide for general meetings of the members, for the procedure at such meetings and the powers to be exercised by such meetings;
- (38) prescribe the circumstances in which and the methods by which delegates may be elected under section 62 for the purpose of sections 63 and 64, the manner of electing delegates for any of the purposes of this Act and the manner in which delegates so elected shall vote;
- (39) prescribe the conditions in which a member of a society may be disqualified from voting;
- (40) provide for the appointment, suspension and removal of the members of the committee and other officers and for the appointment of administrator under section 70 and prescribe procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee, administrator and other officers;
- (41) prescribe qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by societies;
- (42) prescribe the conditions for deputation of and the powers to be exercised and duties to be performed by persons appointed under section 71 (2);
- (43) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted;
- (44) provide for the persons by whom and the form in which copies of documents and entries in books of societies may be certified and the charges to be levied for the supply of copies thereof;
- (45) provide for the procedure to be adopted by the Registrar in the cases where the taking of possession of books, documents, securities, cash and other properties of a society or of

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- a society the affairs of which have been ordered to be wound up by the Registrar or by a person entitled to the same is resisted or obstructed;
- (46) provide for the procedure to be adopted for taking possession of books, documents, securities, cash and other property of a society by a person acting under sections 74, 75, 80 and 81 in cases where misappropriation of funds, breach of trust or fraud has been committed or where it is suspected or apprehended that the books, documents, securities, cash and other properties are likely to be tampered with or destroyed or do away with;
- (47) prescribe the accounts and books to be kept by a society or class of societies;
- (48) prescribe the procedure for conducting an audit, the matters on which the Auditor shall submit a report, the form in which the statement of accounts shall be prepared for his audit, the limits within which the Auditor may examine the monetary transactions of a society the form of audit memorandum and report and the charges, if any, to be paid by a society for audit;
- (49) prescribe the procedure for appointment of Auditors under section 75;
- (50) prescribe the form for rectification of defects discovered in the course of audit, inspection or enquiry;

- (51) prescribe the procedure and principles for the conduct of enquiry under section 80 and inspection under section 81;
- (52) prescribe the procedure for apportioning the cost of enquiry and inspection and for assessing damages against delinquent promoters under section 85 and for recovery of cost and damages;
- (53) prescribe the manner in which appointment shall be made and control exercised by, and the number of persons comprising, and functions to be performed by, the authority constituted under section 86, the manner of election and nomination of such persons the fee to be paid to such authority and the manner of such payment and the procedure for and the method of calculating any cost, charges or expenses required to be levied under this Act or the rules;
- (54) provide for appointment of Registrar's nominee or board of nominees, procedure to be followed in proceedings before the Registrar or his nominee or board of nominees and for fixing, and levying, the expenses for determining the dispute and for enforcing the decisions or awards in such proceedings;
- (55) prescribe the form in which a dispute shall be referred to the Registrar;
- (56) provide for the issue and service of processes and for proving of service thereof;
- (57) provide for the investigation of claims and objections that may be preferred against any attachment effected by the Registrar;
- (58) prescribe the procedure for and the method of recovery of any sums due under this Act or the rules;
- (59) prescribe the procedure to be followed for the custody of property attached under section 91;
- (60) prescribe the procedure to be followed in the execution of awards;

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- (61) prescribe the manner in which any property shall be delivered to, and the terms and conditions subject to which such property shall be held by a society under section 97 ;
- (62) prescribe the procedure for attachment and sale of property for the realisation of any security given by a person in the course of execution proceedings ;
- (63) prescribe the procedure and conditions for the exercise of the powers conferred under section 101 and the procedure to be followed by a liquidator and provide for the disposal of surplus assets ;
- (64) prescribe the matters in which an appeal shall lie from the order of a liquidator appointed under section 99 ;
- (65) prescribe the procedure for the withdrawal of orders to wind up a society ;
- (66) prescribe the particulars to be furnished by the persons applying for the registration of a society to which Chapter IX is applicable ;
- (67) prescribe the procedure for examining a Scheme proposed by promoters of a society to which Chapter IX is applicable ;
- (68) prescribe the manner of determining the value of land of a member of a society to which Chapter IX is applicable ;
- (69) prescribe the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of debentures, issued by a society to which Chapter X is applicable ;

- (70) prescribe the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures issued by a society to which Chapter X is applicable ;
- (71) prescribe the qualifications and methods of appointment of an officer to effect sale under section 129 and the powers and functions which such an officer may exercise ;
- (72) prescribe, in the case of sale of immoveable property under Chapter X,—
- (i) the procedure for proclamation and conduct of the sale and the conditions on which an attempt of sale may be abandoned ;
 - (ii) the method of calculating the expenses incidental to the sale or attempted sale ;
 - (iii) the procedure for the receipt of deposit and disposal of the proceeds of sale ;
 - (iv) the procedure for a re-sale if an attempted sale is abandoned or the purchase money is not deposited within the prescribed time and the penalty to be levied against the purchaser who fails so to deposit the purchase money ;
 - (v) the form and method of disposal of money by a mortgage bank under section 132 ;
 - (vi) the form of sale certified under section 133 ;
 - (vii) the form of the notice to be served under section 135 ;
 - (viii) the fee payable for the service of such notices and the manner of serving such notices on, and of the transmitting landlords fee to the landlord named in such notices ;
and
 - (ix) the procedure for the delivery by the Court of the property purchased to the purchaser under section 133 ;
- (73) prescribe the time within which and the procedure according to which property purchased by a mortgage bank at a sale of immovable property under Chapter X shall be disposed off by the Bank ;

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 2.	Change.
1	2	3	4	5
			<p>(74) prescribe for the appointment of a receiver of the produce and income of the mortgaged property for sale under section 129, the conditions in which he may be appointed or removed, the powers and functions which he may exercise and the expenses of management and remuneration which he may receive ;</p> <p>(75) prescribe the circumstances in which action may be taken by a mortgage bank against a mortgagor under section 129 (2) ;</p> <p>(76) prescribe the procedure to be followed in presenting and disposing of appeals ;</p> <p>(77) prescribe the qualifications of the members of the Tribunal ;</p> <p>(78) prescribe in the case of appeals lying to the State Government the authority to which power of hearing appeals may be delegated ;</p> <p>(79) prescribe the method of communicating or publishing any order, decision or award required to be communicated or published under this Act or the Rules ; and</p> <p>(80) provide for all matters expressly required or allowed by this Act to be prescribed by Rules.</p>	
156	Section 72. Savings of existing societies.	Section 156. Savings of existing societies.	(1) Every Society now existing which has been registered under the Co-operative Credit Societies Act, 1904, or under the Co-operative Societies Act, 1912, or under the Bombay Co-operative Societies Act, 1925, or under the Bombay Co-operative Societies Act, 1925, as adapted and applied to the State of Saurashtra	Add the portion " or under the Bombay Co-operative Societies Act, 1925, as adapted and applied to the State of Saurashtra, or the Bombay Co-operative Societies Act, 1925, read with the Kutch (Application of Laws) Order, 1949, or the Co-operative Societies Act, 1912, as

or the Bombay Co-operative Societies Act, 1925, read with the Kutch (Application of Laws) Order, 1949, or the Co-operative Societies Act, 1912, as applied to Vidarbha, or the Hyderabad Co-operative Societies Act, 1952, shall be deemed to be registered under this Act and its by-laws shall so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

applied to Vidarbha, or the Hyderabad Co-operative Societies Act, 1952" between the words "Societies Act, 1912" and "shall be deemed" in sub-section (1).

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted, under the said Act shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

157 Section 72-A. Construction of references to Co-operative Societies Act, 1912, in enactment.

Section 157. Construction of references of Co-operative Societies Act, in enactment.

All references to the Co-operative Societies Act, 1912, the Bombay Co-operative Societies Act, 1925, and to any other Co-operative Societies Act applicable to the component parts of Bombay State prior to the reorganisation of the State, occurring in any law and for the time being in force in any part of the State of Bombay, shall, in the application, to the said State, or part of State of any such enactment, be read and construed as references to this Act and anything done or any proceeding commenced in pursuance of any such enactment on or after the date on which this Act shall have come into operation shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, the Bombay Co-operative Societies Act, 1925, and such other Acts as had been in force prior to reorganisation of the State in the component parts of Bombay State had been the reference to this Act and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

Add the portion "the Bombay Co-operative Societies Act, 1925, and to any other Co-operative Societies Act applicable to the component parts of the Bombay State prior to the reorganisation of the State" after "Co-operative Societies Act, 1912" in the first line.

Redraft the section as in column 4.

Serial No.	Heading and Section No. in the Act in force.	Heading and Section of the Act as recommended by the Committee.	Full text of the Section in column No. 3.	Change.
1	2	3	4	5

Section 72-B.
Validity of transfer made under section 59(2) of Bombay VII of 1925.

.....

.....

Delete.

158 Section 73. Repeal. Section 158. Repeal. The enactments specified in the Schedule are hereby repealed in so far as they apply to Bombay State to the extent specified in the fourth column of the said Schedule. Substitute the word "State" for the word "Presidency".

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APPENDIX "B"

A draft of the Bombay State Co-operative Societies Act, 1957.

WHEREAS it is expedient further to facilitate the formation, organisation, working and regulation of co-operative societies for the promotion of thrift, self-help and mutual aid amongst agriculturists and other persons with common interest and for that purpose, to provide effective State aid and partnership, wherever necessary, so as to create conditions to bring about better living, better business, better methods of production, processing and disposal and to promote the objectives of the Constitution of India, and to provide for machinery to help realise such objectives, and whereas for this purpose, it is expedient to consolidate and amend the law relating to co-operative societies in the State of Bombay including that in force in the component parts of Kutch, Saurashtra, Vidarbha and Marathawada and whereas the previous sanction of the President as required under the Article 246 of the Constitution of India has been obtained for passing of the Act; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title extent and commencement.*—(1) This Act may be called the Bombay State Co-operative Societies Act, 1957.

(2) It extends to the whole of the State of Bombay.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context—

(1) "Arbitrator" means a person appointed under this Act to decide disputes referred to him by the Registrar and includes the Registrar's nominee or Board of nominees.

(2) "Auditor" means a person appointed by the Registrar to audit the accounts of a society and includes a person appointed by the society in the general meeting and a full time officer appointed by the Committee to audit the accounts as a local or internal auditor, as the case may be.

(3) "Bonus" means dividend paid to a member or non-member out of profits of a society on the basis of his contribution to the business of the society and includes dividend and patronage dividend provided it is related to the share in the business of the society.

(4) "By-laws" means by-laws registered under this Act and for the time being in force and includes a registered amendment of such by-laws.

(5) "Central Bank" means a co-operative bank, the objects of which include the creation of funds to be loaned to other societies and includes a banking union, District Co-operative Bank, State Co-operative Bank and Industrial Co-operative Bank.

(6) "Co-operative Bank" means a society registered under this Act and doing the business of banking as defined in clause (b) of Section 5 of the Banking Companies Act, 1949.

(7) "Committee" means the committee of management or other directing body to which management of the affairs of a society is entrusted.

(8) "Company" means a company as defined in section 3 of the Companies Act, 1956, and includes a banking company.

(9) "Dividend" means the interest paid to a member on the shares held by him in the share capital of a society out of its profits and includes bonus provided it is paid on share capital.

(10) "Society with limited liability" means a society having the liability of its members limited by its by-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may, respectively, undertake to contribute to the assets of the society in the event of its being wound up.

(11) "Society with unlimited liability" means a society having, subject to its by-laws, an unlimited liability of its members to contribute jointly and severally to any deficiency in the assets of the society.

(12) "Consumers' Society" means a society formed with the object of obtaining and/or producing and processing and distributing goods to or performing other services for its members, as well as for other customers and dividing among its members and customers in a proportion prescribed by the rules or by the by-laws of such society, the profits accruing from such supply, production, processing and distribution.

(13) "Farming Society" means a society formed with the object of promoting development of land and better methods of cultivation and includes a better farming society, co-operative farming society, collective farming society, joint farming society, lift irrigation society and a crop protection society.

(14) "Federal Society" means a society not less than four-fifths of the members of which are societies.

(15) "Housing Society" means a society formed with the object of providing its members with residential accommodation.

(16) "Marketing Society" means a society three-fourths members of which are agriculturists and their societies, and is formed with the object of marketing agricultural produce and selling requisites for agricultural production.

(17) "Producers' Society" means a society formed with the object of producing and disposing of goods as a collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society.

(18) "Processing Society" means a society formed with the object of producing goods by mechanical or hand process and includes an industrial society and a society for the processing of agricultural commodities.

(19) "Resource Society" means a society formed with the object of obtaining for its members the credit, goods or services required by them.

(20) "Dispute" means any matter capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by a society whether such claim be admitted or not.

(21) "Firm" means a firm registered under section 59 of Indian Partnership Act, 1932.

(22) "Land Mortgage Bank" means a society, the objects of which include the creation of funds to be loaned to members for a long period upon mortgage of their immovable property.

(23) "Liquidator" means a person appointed by the Registrar under the Act to wind up the affairs of a society and includes provisional liquidator and joint liquidator.

(24) "Member" means a person, as defined in section 3(35) of the Bombay General Clauses Act, 1904, joining in the application for the registration of a society and/or a person admitted to membership after registration in accordance with this Act, the rules and the by-laws applicable to such society and includes the Government when it subscribes to the share capital of a society.

(25) "Officer" means a person elected or appointed by a society according to its by-laws to any office of such society and includes a Chairman, Vice-Chairman, President, Vice-President, Managing Director, Manager, Secretary, Treasurer, Member of the Committee and any other person elected or appointed under this Act, the Rules or the by-laws to give directions in regard to the business of such society, and also includes Auditor in matters relating to his duties as an Auditor.

(26) "Prescribed" means prescribed by the Rules.

(27) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes an Additional, Joint, a Deputy or an Assistant Registrar.

(28) "Rules" means rules made under this Act.

(29) "Working capital" means funds at the disposal of a society inclusive of paid-up share capital, funds built out of profits and money raised by borrowing and other means.

(30) "Society" means a co-operative society registered or deemed to be registered under this Act.

(31) "Tribunal" means the Bombay State Co-operative Tribunal constituted under this Act.

CHAPTER II.

REGISTRATION.

3. *Registrar.*—The State Government may appoint a person to be Registrar of the Co-operative Societies for the State and may appoint a person or persons to assist such Registrar, and may, by general or special order confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and empowered to exercise any of his powers shall work under the general guidance, superintendence and control of the Registrar.

4. *Societies which may be registered.*—A society which has as its objects the promotion of economic interest and/or general welfare of its members in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society may be registered under this Act :

Provided that no society shall be registered if in the opinion of the Registrar it is economically unsound or it may have an adverse effect upon any other society or it is opposed to or its working is likely to be in contravention of the public policy.

5. *Registration of societies with limited or unlimited liability or without liability.*—A co-operative society may be registered with limited or unlimited or without any liability :

Provided that—

(1) Unless the State Government by a general or special order otherwise directs the liability of a society of which a member is a society shall be limited ;

(2) No society shall be registered without a liability unless its object is not to do any business for profit and its bye-laws provide for no payment of a dividend to its members.

6. *Conditions of registration.*—(1) No society other than a federal society, shall be registered under this Act unless it consists of at least 10 persons, who are qualified to be the members under section 21 and who reside in the area of operation of the society.

(2) No society with unlimited liability shall be registered unless all persons forming the society reside in the same town or village or in the same group of villages.

(3) No federal society shall be registered unless it has at least 5 societies as members.

(4) Nothing in the Bombay State Co-operative Societies Act, 1957, shall be deemed to affect the registration of any society made before the said Act comes into force.

(5) The word “limited” or “unlimited” shall be the last word in the name of every society with limited or unlimited liability, as the case may be, registered under this Act.

7. *Power to exempt societies from conditions as to registration.*—Notwithstanding anything contained in this Act, the State Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

8. *Application for registration.*—(1) For purposes of registration, the application to register a society shall be made to the Registrar in the prescribed form and shall be accompanied by four copies of the proposed bye-laws of the society. The person by whom or on whose behalf such application is made, shall furnish such information in regard to the society, as the Registrar may require.

(2) The application shall be signed—

(a) In the case of a society other than federal society, by at least 10 persons qualified in accordance with the requirements of section 21 and

(b) in the case of a federal society by at least five societies. No signature to the application will be valid on behalf of a society or a company, unless a member of the committee of such a society or company, is authorised by such committee by a resolution to sign the application for registration of the society and its bye-laws on its behalf and a copy of such resolution is appended to the application. In the case of a firm subscribing to the application, no application shall be valid unless it is signed by one of the partners of such a firm.

(3) The Registrar may register a society provisionally, pending the approval of the bye-laws as amended by the Registrar and compliance with such conditions as may be laid down by the Registrar in regard to the registration, in the first general meeting. The provisional registration would not, however entitle the society to transact any business other than that necessary for enabling the society to comply with the conditions of registration, which the Registrar may prescribe.

9. *Power of Registrar to decide certain questions.*—When any question arises for the purpose of formation, or registration, or continuance of a society, the question shall be decided by the Registrar and the Registrar's decision on the question as to whether a person is an agriculturist or a non-agriculturist, or whether any person resides in the same area of operation or not, shall be final.

10. *Registration.*—(1) If the Registrar is satisfied that a society has complied with the provisions of this Act and the Rules, that its proposed bye-laws are not contrary to this Act and the Rules and to the co-operative principles and the objectives of the Constitution of India, and that in his opinion, the Society has complied with the requirements of sound business, he may register the society and its bye-laws with such modifications as he might consider necessary.

(2) Where the Registrar refuses to register a society or its bye-laws under section 10, he shall communicate to the first signatory to the application his reasons for doing so.

11. *Registration certificate.*—(1) Where a co-operative society is registered under this Act, the Registrar shall issue the certificate of registration signed by him and the said certificate shall be conclusive evidence that the society therein mentioned has been duly registered unless it is proved that the registration of the society has been subsequently cancelled, or that the first general meeting has not adopted the Bye-laws approved by the Registrar with modifications, if any.

(2) No society shall commence business unless it has obtained a certificate of registration under sub-section (1) and every member of such society carrying on business in contravention of this sub-section shall be personally liable for all liabilities incurred in such business.

12. *Classification of societies.*—(1) The Registrar shall classify all societies under one or the other head and his decision shall be final:

Provided that a society formed with the object of facilitating the operations of any one of the classes of societies shall be classified as a society of that class.

(2) The Registrar for reasons to be recorded in writing may alter the classification of any society from one head to another head or one sub-head to another sub-head.

(3) A list of all such societies, so classified, shall be published triennially in such manner as the State Government may from time to time direct.

13. *Amendment of the bye-laws of a society.*—(1) No amendment of the bye-laws of a society shall be valid until registered under

this Act for which purpose a copy of the amendment passed at a General Meeting of the society in the manner prescribed shall be forwarded to the Registrar.

(2) If the Registrar is satisfied that the proposed amendment is not contrary to this Act or to the Rules or to co-operative principles and is not inconsistent with objectives of the Constitution of India, shall, unless he refuses to register the amendment for reasons to be recorded in writing, register the amendments with or without any modifications on his own motion.

(3) When the Registrar registers an amendment of the bye-laws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered and communicate to the society the date from which the amendment shall be effective.

(4) Where the Registrar refuses to register an amendment of the bye-laws of a society he shall communicate the order of refusal, together with the reasons therefor, to the society.

14. *Power to direct amendments of bye-laws.*—(1) If it appears to the Registrar that an amendment of the bye-laws of a society is necessary or desirable in the interest of such a society, he may call upon the society in the manner prescribed to make the amendment within such time as he may specify.

(2) If the society fails to make the amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard and after consulting and with the concurrence of the President of the Bombay State Co-operative Union, register such amendment and issue to the society a copy of such amendment certified by him. Such amendment shall thereupon be binding on the society and its members.

15. *Change of name.*—(1) A society may, by a resolution of a General Meeting and with the approval of the Registrar, change its name, but such change shall not affect any right or obligation of the society, or of any of its members, or past members, or deceased members and any legal proceedings pending may be continued by or against the society under its new name.

(2) Where a society changes its name, the Registrar shall, enter the new name in its place in the register of co-operative societies and shall amend the certificate of registration accordingly.

16. *Change of liability of a society, from limited to unlimited or vice-a-versa.*—(1) A society may, subject to the provisions of Section 13 by an amendment of its bye-laws change its liability from limited to unlimited or unlimited to limited.

(2) No such amendments shall be registered by the Registrar unless he is satisfied.

(i) that a fifteen days' notice has been given to every member of a society and to any person or class of persons whose interest will, in the opinion of the Registrar, be affected by the alteration, and

(ii) that with respect to every such member or person who, in the opinion of the Registrar, is entitled to object—

(a) either his assent has been obtained to the change or is deemed to have been obtained by virtue of his failure to object within fifteen days from the date of the notice,

(b) or if he signifies his objection, or

(c) and he is allowed to withdraw his share if he is a member or

(iii) that his debt or claim has been discharged or has been determined or has been secured to the satisfaction of the Registrar within three months from the date of receipt of the objection, if he is a creditor.

Provided that the Registrar may in the case of any persons or class of persons, for special reasons, dispense with the notice required by this sub-section.

17. *Amalgamation, transfer, division or conversion of societies.*—

(1) A society may with the prior approval of the Registrar, by a resolution passed by two-thirds majority of the members present and voting at a special general meeting, held for the purpose, decide—

(a) to amalgamate with another society, or

(b) to transfer its assets and liabilities in whole or in part to any other society, or

(c) to divide itself into two or more societies, or

(d) to convert itself into a class of society, the object of which is materially different from that under which it has been classified under the Act :

Provided that when such amalgamation or transfer of assets and liabilities or division or conversion involves a transfer of liabilities of a society to any other society, no order on the resolution shall be passed by the Registrar unless he is satisfied that—

(a) a society, after passing such resolution, has given notice thereof in writing to all its members, creditors and such other persons whose interests are likely to be affected, giving them the option, to be exercised within a month from the date of the issue of such notice, of becoming a member of any of the new societies or continuing their membership in converted or amalgamated society, or demanding the payment of their share or interest or dues, as the case may be,

(b) the assent of all the members and creditors and other persons whose interests are likely to be affected has been obtained or deemed to have been obtained by virtue of any member or

creditor or any other person whose interest is likely to be affected failing to exercise his option within a period of one month from the date of issue of notice, and

(c) that all claims of members and creditors and such other persons whose interests are likely to be affected, who exercise the option referred to in clause (a) within the period specified therein have been met in full.

(2) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908, the registration of the new societies in the event of division or the converted society in the event of conversion of a society, and the resolutions of the societies concerned with the amalgamation shall be a sufficient conveyance to vest the assets and liabilities of the original society or societies in new societies or society.

(3) The amalgamation of societies or division or conversion of a society shall not affect any rights or obligation of the society so amalgamated, divided or converted or render defective any legal proceedings which might have been continued or commenced by or against a society which may have been amalgamated, divided or converted may be continued or commenced by the amalgamated society or the converted society or the new societies between which society may have been divided.

(4) Where any two or more societies have been amalgamated or a society has been divided or converted the registration of such societies or society shall be cancelled on the date of registration of the amalgamated society or the converted society or the new societies between which society may have been divided.

18. *Power of Registrar to direct amalgamation.*—(1) Where the Registrar is satisfied that it is essential in the public interest or necessary in order to secure the proper management of any society, that two or more societies should amalgamate, then notwithstanding anything contained in section 17 but subject to the provisions of this section, the Registrar may, by order notified in the Official Gazette, provide for the amalgamation of those societies into a single society with such constitution, property, rights, interests, and authorities, and such liabilities, duties and obligations, as may be specified in the order.

(2) No order shall be made under this section unless—

(a) a copy of the proposed order has been sent in draft to each of the societies concerned calling upon them to furnish within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, a list of members and creditors who object to the Scheme of amalgamation and wish to withdraw from it;

(b) The Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period as mentioned in sub-clause (a) either from the society or from any member or class of members thereof or from any creditor or class of creditors.

(3) The order referred to in sub-section (1) may contain such consequential, incidental and supplemental provisions as may in the opinion of the Registrar be necessary to give effect to the amalgamation.

(4) Every member or creditor of each of the societies before amalgamation who has objected to the Scheme of amalgamation within the period specified shall be entitled to receive on the issue of the order of amalgamation his share or interest if he is a member and the amount in satisfaction of his dues if he is a creditor.

(5) On the issue of order under sub-section (1) provisions in section 17(2), (3) and (4) shall apply to the societies so amalgamated as if they were amalgamated under section 17 and to the society amalgamated.

19. *Reconstruction of societies.*—(1) Where a compromise or arrangement is proposed between (a) a society and its creditors and (b) between a society and its members, the Registrar may, on the application of the society or of any member or of any creditor of the society, or, in the case of a society which is being wound up, of the liquidator, order a meeting of the members or creditors, as the case may be, to be called, held and conducted in such manner as the Registrar directs.

(2) If a majority in number representing three-fourths of the members or three-fourths in value of the creditors, as the case may be, present and voting in person at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Registrar, be binding on all members or all the creditors, as the case may be, and also on the society, or, in the case of a society which is being wound up, on the Liquidator.

(3) When an order calling a meeting is passed under sub-section (1), the Registrar may give notice of such order to a Civil Court in which proceedings, where instituted before or after the order, in respect of any liability of the society due to a creditor to whom a copy of the order is posted are pending and on receipt of such notice the Civil Court shall stay the proceedings. If no compromise or arrangement is confirmed under sub-section (2) the Registrar shall inform the Civil Court accordingly, and the proceedings which may have been stayed shall be resumed. If compromise or arrangement is confirmed under sub-section (2) the proceedings, if any, stayed under

this sub-section shall abate and no proceedings shall lie in a Civil Court in respect of any liabilities of the society to which the compromise or arrangement relates.

(4) Where the Registrar makes an order under sub-section (2) sanctioning a compromise or arrangement in respect of a society, the Registrar shall have power to supervise the carrying out of the compromise or arrangement and to give such directions, at the time of making such order or at any time thereafter in regard to any matter and to make such modifications in the compromise or arrangement as he may consider necessary for the proper working of the compromise or arrangement.

(5) If the Registrar is satisfied that a compromise or arrangement sanctioned under sub-section (2) cannot be worked satisfactorily with or without modifications, he may either of his own motion or on the application of the society, or, in the case of a society being wound up, on the application of the Liquidator, make an order cancelling the scheme of compromise.

20. *Partnership.*—(1) Any two or more societies with similar objectives may, with the prior approval of the Registrar, by a resolution passed by a simple majority of the members present and voting at a general meeting of each such society, enter into a contract of partnership for carrying out specific business or businesses.

(2) Nothing in the Indian Partnership Act, 1932, shall apply to such contracts of partnership and matters including disputes arising from such partnership, shall be determined under this Act.

21. *Cancellation of registration.*—The Registrar shall make an order cancelling the registration of a society if it transfers the whole of assets and liabilities to another society or amalgamates with another society or divides itself into two or more societies under Section 17, or its affairs are wound up, or it has not commenced business. The society shall be deemed to be dissolved from the date of such order and shall cease to exist as a corporate body.

CHAPTER III.

MEMBERS AND THEIR RIGHTS AND LIABILITIES.

22. *Person who may become member.*—No person shall be admitted as a member of a society except the following, viz :—

(a) An individual, who is competent to contract under Section 11 of the Indian Contract Act, 1872 ;

(b) A firm, company, association or any society registered under the Societies Registration Act or the Public Trust Act or any other Act for the time being in force ;

- (c) A society registered under this Act, and
 (d) The State Government :

Provided that the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of the students.

23. *Open membership.*—(1) No Society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under its bye-laws.

(2) Any person aggrieved by the decision of a society refusing admission to him to its membership may appeal to the President of the federal society to which the said society is affiliated or, if it is not affiliated to any federal society, to the President of the Bombay State Co-operative Union.

(3) The decision of the President of the federal society or of the Bombay State Co-operative Union in appeal shall be final.

24. *Nominal, associate and sympathiser members.*—(1) Notwithstanding anything contained in section 22, a society may admit any person as a nominal, associate or sympathiser member who shall have no share either in the management, profits or assets of a society and shall not be subject to any contributory liability in the case of winding up of the society.

(2) Save as provided in sub-section (1), a nominal, associate or sympathiser 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 and be subject to the provisions in this Act in regard to the settlement of disputes and recovery of dues.

25. *Cessation of membership.*—A person shall cease to be a member on resignation or transfer of the whole of his share or interest in the society to another member or on death or on removal or expulsion :

Provided that no member shall be allowed to resign from a society unless he is not in debt and is not surety for an unpaid debt and no resignation may be accepted by a society unless it has received at least one month's notice from the member of his intention to resign. The date of resignation shall be the date on which the society accepts the resignation of the member.

26. *No rights of membership to be exercised till due payments are made.*—No person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the Rules or the bye-laws of such society.

27. *Voting powers of members.*—(1) Every member of a society shall have one vote in the affairs of the society provided that—

- (a) a nominal, associate or sympathiser member shall have no vote ;

(b) where a society is a member of another society such a society shall have one additional vote ;

(c) where the State Government is a member of a society, each person nominated by the State Government on the Committee of that Society shall have one vote :

Provided further that each member may be entitled to additional votes subject to a maximum of THREE votes based on his contribution to the business of the society and exercisable in the manner specified in the bye-laws. Provided further that in the case of equality of votes, the Chairman shall have a casting vote.

(2) Subject to the rules relating to voting by a delegate, every member of a society shall exercise his vote in person and no member shall be permitted to vote by proxy. A society, company, firm or any other institution entitled to vote as a member may, however, exercise its voting right through an authorised representative.

28. *Restriction on holding of share capital by a member.*—Where the liability of a member of a society is limited by shares or guarantee no member other than a society and the State Government shall hold more than such portion of the share capital of the society subject to a maximum of one-tenth as may be prescribed by the Rules and the bye-laws.

29 *Restrictions on transfer of shares or interest.*—(1) The transfer or charge of the share or interest of a member in the share capital of a society shall be subject to such conditions as to maximum holding by the transferee as may be prescribed by this Act and the Rules and the bye-laws and shall be valid only after the Committee has approved such transfer.

(2) A member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless (a) he has held such share or interest for not less than one year; (b) the transfer is made to a member of the society or to a person whose application for membership has been accepted by the society.

Notwithstanding anything contained in sub-sections (1) and (2) a society may acquire the share or interest of a member in his share capital by paying for it at the value determined in the manner prescribed, provided that the member is allowed to resign or is expelled or ceases to be a member on account of being disqualified under the Act and the Rules and the byelaws of the society, and that the total refund of share capital of the society in any one financial year does not exceed 10 per cent. of the paid-up capital of the society on the last day of the preceding financial year.

30. *Transfer of interest on death of member.*—(1) On the intimation of the death of a member of a society, such society may within a period of two years from the date of the intimation of death of such member, transfer the share or other interest of the deceased member to a person or persons nominated in accordance with the bye-laws of the society or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member, provided the person or persons to whom share or other interest of the deceased member is to be transferred, has been duly admitted as a member in accordance with the Act, the Rules and the bye-laws of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or other interest as ascertained in accordance with the Rules and the bye-laws :

Provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made by the society within two years from the date of intimation of death of the member of the value of the share or interest of such member ascertained as aforesaid.

(2) All transfers and payments made by a society in accordance with sub-section (1) shall be valid and effectual against any demand made upon the society by any other person.

(3) Notwithstanding anything contained in sub-sections (1) and (2) and section 24 a minor or a person of unsound mind shall be entitled as a beneficiary to inherit or otherwise acquire the share or other interest of the deceased member, but his liability in consequence of such acquisition shall be limited to his interest in the shares, the loan-stock bonds and the property of the society which he may have inherited or acquired and the dividends and the interest earned thereon. The person so inheriting or acquiring interest shall be admitted as a nominal member and his guardian shall have the right to receive the benefits from the society on his behalf to the extent of the share or interest inherited and incur liability on behalf of such person for the benefit of such person until the disability ceases. On his disability ceasing, such nominal member shall furnish to the society a declaration of his willingness to become a member, and on receipt of such declaration, and provided such person is qualified to be a member of the society under its bye-laws, such society shall admit him as a member and the person so admitted shall become entitled to all the rights and privileges of a member and become subject to liabilities like any other member of the society.

31. *Share or interest not liable to attachment.*—The share or interest of a member in the capital of a society or in a loan-stock issued by a housing society or in the funds raised by a society from its members, by way of savings deposit shall not be liable to attachment or sale under any decree or order of a Court of justice in respect of any debt or liability incurred by such member and neither

the Official Assignee, under the Presidency towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest.

32. *Rights of members to see books, etc.*—Every member of a society shall be entitled to inspect free of cost at the society's office during the office hours or any time fixed for the purpose by the society, a copy of the Act, the Rules, and the bye-laws, the last audited annual balance sheet and the profit and loss account, a list of the members of the committee, a register of the members, the minutes of the general meetings and that portion of the books in which his transactions with the society have been recorded.

33. *Borrowing by members.*—(1) Every person, who is a member of more than one credit society other than a land mortgage bank or a central financing agency, shall make a declaration in the prescribed form that he will borrow only from one such society to be mentioned in the declaration and shall send a copy of such declaration duly attested to the societies of which he is or has become a member.

(2) A member borrowing from a society shall utilise the loan for the purpose for which it is made and shall refund, if not so utilised, the loan immediately on its recall by the Society.

(3) Any member, who does not comply with the provisions in subsection (1) or (2), shall be liable to be removed from the membership of any or all societies upon receiving a written requisition from the Registrar to that effect.

34. *Liability of a past member or the estates of a deceased member.*—Liability of a past member or the estate of a deceased member of a society for the debts of the society, as they existed when he ceased to be a member by death or otherwise, shall continue for a period of 2 years from such date and shall continue, in the event of liquidation of the society, until the liquidation proceedings are terminated.

35. *Insolvency of members.*—Notwithstanding anything contained in the Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act, 1920, the dues of a society from a member shall rank next to his dues to Government or to any legal authority in order of priority in insolvency proceedings against the person.

36. *Expulsion of members.*—(1) A society may expel a member, for acting in a manner which results in financial loss to such a society, by a resolution passed by three-fourths majority at a general meeting of the members held for the purpose :

Provided that no resolution shall be valid unless the member concerned is given an opportunity to represent his case to the general body and no resolution shall be effective unless it is approved by the Registrar.

(2) No member of a society who has been expelled under subsection (1) shall be eligible for readmission as a member of that society or for admission as a member of any other society, for a period of two years from the date of such expulsion :

Provided that the Registrar may, in special circumstances sanction the re-admission or admission within the said period of any such member as a member of the said society or of any other society, as the case may be.

CHAPTER IV.

DUTIES, PRIVILEGES, PROPERTY AND FUNDS OF SOCIETIES.

37. *Societies to be bodies corporate.*—The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with powers to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all things necessary for the purpose for which it is constituted.

38. *Address of societies.*—Every society shall have an address registered in accordance with the Rules, to which all notices and communications may be sent, and shall send notice in writing to the Registrar of any change in the said address within 30 days of such change.

39. *Register of members.*—(1) Every society shall keep a register of its members and enter therein the following particulars:—

(a) the name, address and occupation of each member ;

(b) in the case of a society having a share capital, the share held by each member ;

(c) the date on which each person was admitted as a member ;
and

(d) the date on which any person ceased to be a member :

Provided that, where a society has under the Act, the Rules and the bye-laws permitted a member to transfer his share or interest on death to a person, the register shall also show the name of the person entitled to the share or interest of the member, against the member concerned and the date on which the nomination was recorded.

(2) Such register shall be *prima-facie* evidence of the date on which any person was admitted as a member and of the date on which any person ceased to be a member.

40. *Copy of the Act, etc. to be open to inspection.*—Every society shall keep a copy of this Act and the Rules and of its bye-laws and a list of members open to inspection to the public free of charge during the office hours or any hours fixed by the society at the registered address of the society.

41. *Admissibility of copy of entry as evidence.*—(1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a society shall, if duly certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original entry would, if produced, have been admissible to prove such matters.

(2) In the case of such societies as the State Government by general or special order may direct no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

42. *Exemption from compulsory registration of instruments relating to shares and debentures of society.*—Nothing in section 17, sub-section (1), clauses (b) and (c) of the Indian Registration Act, 1908, shall apply to:—

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

(2) any debenture issued by any society and not creating, declaring, assigning, limiting or extinguishing any rights, 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 immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(3) any endorsement upon or transfer of any debenture issued by any society.

43. *Power to exempt from taxation.*—(1) The Central Government, by notification in the Official Gazette, may, in the case of any society or class of societies, remit the income-tax or super-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the society.

(2) The Government by notification in the Official Gazette may, in the case of any society or class of societies, remit :

(a) the stamp duty, with which under any law for the time being in force, instruments executed by or on behalf of a society

or by an officer or member and relating to the business of the society, or any class of such instruments or awards of the Registrar or his nominee or Board of nominees under this Act are respectively chargeable ; and

(b) any fee payable under the law of registration and of court fees for the time being in force and any other tax or fee or duty, or a portion thereof, which the State Government is competent to levy.

In this sub-section "Government" in relation to stamp-duty means the Government as defined in sub-section (2) of section 9 of the Indian Stamp Act, 1899, in relation to court fees means the Government which is the appropriate Government for the purposes of the Court Fees Act, 1870, and save as aforesaid means the State Government.

44. *State aid.*—Subject to such conditions as the State Government may, by general or special order specify in this behalf, the State Government may—

(a) give loans to societies,

(b) contribute towards the share capital of a society,

(c) guarantee the payment of principal of debentures issued by a society or of interest thereon or both or the repayment of the share capital of a society to its members or the payment of dividend thereon at such rates as may be specified by the State Government,

(d) guarantee the repayment of loans given by a co-operative bank to a society,

(e) guarantee repayment of principal and payment of interest on loans and advances given by the Reserve Bank of India or the Industrial Finance Corporation of India or any other authority constituted under any law for the time being in force,

(f) provide financial assistance in any other form to a society.

45. *Restrictions on borrowings.*—A society shall receive deposits and loans from members and other persons only to such extent and under such conditions as may be prescribed by the rules or specified by the bye-laws of the society.

46. *Restrictions on loans.*—(1) No society shall make a loan to any person other than a member or on the security of its own shares or of a non-member provided that with the 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.

(3) Where the Registrar is satisfied that it is necessary or expedient in the public interest so to do he may determine the policy in relation to loans, to be followed by societies generally or any class of societies or any society in particular, and all societies or a class of societies or the societies concerned, as the case may be, shall be bound to follow the policy so determined.

47. *Restrictions on other transactions with non-members.*—Consumers', Producers' and Housing Societies may to the extent permitted by their bye-laws trade with persons who are not members, but the transactions of a Resource society with persons other than members except as provided under sections 45 and 46 shall be subject to such prohibitions and restrictions, if any, as the State Government may by Rules prescribe. Such society shall have a charge upon the interest of such non-member in the society in respect of any debt due from such non-member and may set-off any sum credited or payable to a non-member in or towards payment of any such debt.

48. *Charge and set-off in respect of share or interest of member.*—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 upon any dividend, bonus or profits payable to a member or past member or deceased member in respect of any debt due from such member or past member or deceased member to the society, and may set-off any sum credited or payable to a member or past member or deceased member in or towards payment of any such debt :

Provided that no co-operative bank shall have a charge upon any sum invested with it by a society out of the Provident Fund established by it under section 59 or its Reserve Fund and no co-operative bank shall be entitled to set-off any such sum towards any debts due from such society.

49. *Prior claim of society.*—(1) Notwithstanding anything contained in sections 60 and 61 of the Code of Civil Procedure, 1908, and notwithstanding any provision in any other 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,

(a) any debt or outstanding demand owing to a society by any member or past member or deceased member shall be a first charge,

(i) upon crops or other agricultural produce raised in whole or in part with or without a loan taken from the society by such member or past member or deceased member,

(ii) upon any cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture

or workshops godown, or place of business, supplied to or purchased by such member or past member or deceased member in whole or in part from any loan whether in money or goods given him by the society, and

(iii) upon any movable property which may have been hypothecated, pledged or otherwise mortgaged by a member with the society, and remaining in his custody ;

(b) Any outstanding demands or dues payable to a housing society by any member or past member or deceased member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society, shall be a first charge upon his interest in the immovable property of the society.

Explanation.—The prior claim of Government in respect of dues other than land revenue shall be restricted within the meaning of sub-section (1) to the assets created by a member out of the funds in respect of which the Government has a claim.

(2) No property or interest in property which is subject to a charge under sub-section (1) shall be transferred in any manner without the previous permission of the society and such transfer shall be subject to such conditions, if any, as the society may impose.

(3) Any transfer made in contravention of sub-section (2) shall be void and any member transferring any property and any person acquiring or abetting in the acquisition of, such property which is subject to a charge under sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees.

(4) Notwithstanding anything contained in sub-sections (2) and (3) a society which has as one of its objects the disposal of produce of its members, may provide in its bye-laws or may otherwise contract with its members,

(a) that every such member shall dispose of his produce through the society, and

(b) that any member who is found guilty of a breach of the bye-law or of any such contract shall reimburse the society for the loss, determined in such manner as may be specified in the bye-laws.

50. *Charge on immovable property of members borrowing from certain societies.*—Notwithstanding anything contained in this Act or in any other law for the time being in force—

(1) any person who makes an application to a society of which he is a member for a loan shall, if he owns any land or has interest

in any land as a tenant, make a declaration in the form prescribed by rules. Such declaration shall state that the applicant thereby creates a charge on such land or interest specified in the declaration for the payment of the amount of the loan which the society may make to the member in pursuance of the application and for all future advances, if any, required by him which the society may make to him as such member subject to such maximum as may be determined by the society together with interest on such amount of the loan and advances ;

(2) any person who has borrowed a loan from a society of which he is a member before the date of the coming into force of the Bombay State Co-operative Societies Act, 1957, and who owns any land shall, as soon as possible, make a declaration in the form and to the effect referred to in sub-section (1) and no such person shall, unless and until he has made such declaration, be entitled to exercise any right as a member of the society ;

(3) any person who has borrowed a loan from a society of which he is a member before the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955 or any other Act in any part of the State and has any interest in land as a tenant shall, as soon as possible, make a declaration in the form and to the effect referred to in sub-section (1) and no such person shall, unless and until he has made such declaration, be entitled to exercise any right as a member of the society ;

(4) a declaration made under sub-section (1), (2) or (3) may be varied at any time by a member with the consent of the society in favour of which such charge is created ;

(5) no member shall alienate the whole or any part of the land or interest therein specified in the declaration made under sub-section (1), (2) or (3) until the whole amount borrowed by the member together with interest thereon is paid in full :

Provided that it shall be lawful to a member to execute a mortgage bond in favour of a Mortgage Bank or the State Government in respect of such land or any part thereof under the Bombay Canal Rules made under the Irrigation Act, 1879, for the supply of water from a canal to such land or any part thereof ;

(6) any alienation made in contravention of the provisions of sub-section (5) shall be void ;

(7) subject to the prior claims of the Government in respect of land revenue or any money recoverable as land revenue and to the charge, if any, created under an award made under the Bombay Agricultural Debtors Relief Act, 1947, or any other Act in any part of the State there shall be a first charge in favour of the society on

the land or interest specified in the declaration made under sub-section (1), (2) or (3) for and to the extent of the dues owing by him on account of the loan ;

(8) notwithstanding anything contained in Chapter X-A of the Bombay Land Revenue Code, 1879, the Record of Rights maintained under the said Chapter shall also include the particulars of every charge on land or interest created under a declaration under sub-section (1), (2) or (3).

Explanation.—For the purpose of this section “Society” shall mean—

(a) any resource society, the majority of the members of which are agriculturists and the primary object of which is to obtain credit for its members ; or

(b) any society or any society of the class of societies specified in this behalf by the State Government by a general or special order.

51. *Deduction from salary to meet society's claim in certain cases.*—(1) A member of a society may execute an agreement in favour of the society providing that his employer 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 by the member of the society.

(2) On the execution of such agreement the employer shall, if so required by the society by a requisition in writing and so long as the society does not intimate that the whole of such debt or demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society, as if it were a part of the salary, or wages, payable on the day as required under the Payment of Wages Act.

(3) If after the receipt of a requisition, made under sub-section (2), the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting the amount deducted to the society, the society shall be entitled to recover any such amount from the employer as an arrear of land revenue and the amount so due from the employer shall rank in priority in respect of the liability of the employer equal to that of the wages in arrears.

(4) The provisions of this section shall also apply to all such agreements of the nature referred to in sub-section (1) as were in force on the date of the commencement of the Bombay State Co-operative Societies Act, 1957.

(5) Nothing contained in this section shall apply to persons employed in railways (within the meaning of the Constitution), mines and oil-fields.

52. *Funds not to be divided.*—No part of the resources, other than the net profit, of a society shall be distributed among its members by way of bonus or dividend, honorarium or otherwise.

53. *Appropriation of profits.*—(1) A society earning profit shall calculate net profit by deducting from the gross profits for the year, all accrued interest which is overdue for more than six months, establishment charges, interest payable on loans and deposits, audit fees, working expenses including repairs, rent, taxes and depreciation, and after providing for or writing off bad debts and losses not adjusted against any fund created out of profit. A society may, however, add to the net profit for the year interest accrued in the preceding years but actually recovered during the year. The net profit thus arrived at, together with the amount of profit brought forward from the previous year, shall be available for appropriation.

(2) A society may appropriate its profit to Reserve Fund, any other fund, the payment of dividend to the members on their share, to the contribution to Educational Fund of the Bombay State Co-operative Union, to the payment of bonus on the basis of support received from members and non-members to its business, to payment of honorarium, and towards any other purpose as may be specified in the bye-laws. Provided that no part of the profit shall be appropriated except with the approval of the Annual General Meeting and in conformity with the Act, Rules and Bye-laws.

54. *Reserve Fund.*—(1) Every society which does or can derive profit from its transactions shall maintain a reserve fund.

(2) In the case of Resource or Producers' Society at least $\frac{1}{4}$ of the net profits of the society each year shall be carried to the reserve fund and in the case of any other society at least $\frac{1}{10}$ th of the net profit of the society each year shall be carried to the reserve fund, and such reserve fund may be used in its business by a society other than a co-operative bank or may be invested in accordance with the provisions of section 58.

55. *Restriction on dividend.*—(1) No society shall pay a dividend out of its net profits to its members on its share capital at a rate exceeding $6\frac{1}{2}$ per cent. interest and no resource society on a basis of unlimited liability in which the members hold shares, shall pay a dividend until 10 years from the date of registration of the society have elapsed. Provided that if any consumers', producers', housing or farming society is unable to pay a dividend of 4 per cent. in respect of any year, it may pay additional dividend, representing the

difference between the dividend paid for that year and the dividend of 4 per cent. out of profits in future years at any time not later than 10 years immediately succeeding the year of such deficit. Provided further that if any society other than a consumers', producers', housing or farming society, is unable to pay a dividend at 6½ per cent. in respect of any year it may make good the deficit by paying an additional dividend out of profits in the two years immediately succeeding the year of such deficit.

(2) A society may credit in any year a sum not exceeding 2 per cent. on the paid up share capital to a fund called the "Dividend Equalisation Fund" and no withdrawal from such fund shall be made except for the purpose of paying the dividend, without the previous sanction of the Registrar.

(3) Notwithstanding anything contained in sub-section (1), a society classified either as consumers' or producers' or resource or housing, may pay bonus to its members and persons who are not members to the extent and subject to the conditions prescribed by the Rules or Bye-laws of such societies provided that no resource society on a basis of unlimited liability in which the members do not hold shares shall pay any bonus without the general or special order of the State Government in this behalf.

Explanation.—No society shall make any payment under sub-sections (1) and (3) or any appropriation under sub-section (2) without the sanction of the annual general meeting. The annual general meeting may reduce the dividend recommended by the committee; but it shall not be within its powers to declare a higher dividend.

56. *Contribution to educational fund of the Bombay State Co-operative Union.*—(1) Every society which declares a dividend to its members at a rate of 4 per cent. or more, shall contribute towards the educational fund of the Bombay State Co-operative Union at such rate as may be prescribed.

(2) No society liable to contribute towards the educational fund, shall pay a dividend to its members unless the said contribution is made to the Bombay State Co-operative Union. An officer or officers wilfully failing to comply with the requirements of sub-section (1) shall be held personally liable for making good the amount to the Bombay State Co-operative Union.

57. *Contribution to charitable purpose.*—A society may set aside a sum not exceeding 10 per cent. of its net profits, after providing for the reserve fund as prescribed in sub-section (2) of section 54 and for the educational fund, as prescribed in section 56 and utilise, with the approval of the Bombay State Co-operative Union, from time to time,

the whole or part of such sum in contributing to any co-operative purpose, or to public purpose, or to a charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.

58. *Investment of funds.*—(1) A society may invest or deposit its funds :

(a) in a Central Bank or the State Co-operative Bank ; or

(b) in the State Bank of India ; or

(c) in the Postal Savings Bank ; or

(d) in any of the securities specified in Section 20 of the Indian Trusts Act, 1882 ; or

(e) in the shares or security bonds or debentures issued by any other society with limited liability ; or

(f) in any banking company approved for this purpose by the Registrar and on such conditions as the Registrar may lay down from time to time ; or

(g) in any other mode permitted by the rules or by general or special order of the State Government ;

(2) Notwithstanding anything contained in sub-section (1), the Registrar may order a society or a class of societies to invest funds in a particular manner or may lay down conditions regarding the mode of investment of such funds.

59. *Employees' Provident Fund.*—(1) Any society may establish a provident fund for its employees into which shall be paid the contributions made by its employees and by the Society. Such provident fund shall not be used in the business of the society and shall not form part of the assets of the society and shall be invested under the provision of section 58 and shall be administered in the manner prescribed.

(2) Notwithstanding anything contained in sub-section (1), a provident fund established by a society to which the Employees Provident Fund Act, 1952 is applicable shall be governed by that Act.

60. *Power to direct affiliation to a Federal Society.*—The Registrar may, by general or special order, direct that all or any of the societies situated within a specified area shall be affiliated to a Federal Society or Federal Societies in such manner and on such conditions as the Registrar may, by general or special order, determine from time to time. The constitution and functions of a Federal Society in respect of which an order of compulsory affiliation is made shall be regulated by him.

61. *Bar of jurisdiction of Courts.*—(1) Save in so far as is expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of—

(a) the registration of a society or its bye-laws, or of any amendment of its bye-laws or the dissolution of the committee of a society, and the management of the society on dissolution thereon; or

(b) any dispute required to be referred to the Registrar or his nominee or board of nominees for decision;

(c) any matter concerned with the winding up and dissolution of a society.;

(2) While a society is being wound up no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.

(3) All orders, decisions or awards passed in accordance with this Act or the rules shall be final subject to the provisions for appeal in this Act and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any court upon merits or upon any grounds whatsoever except for want of jurisdiction.

CHAPTER V.

MANAGEMENT OF SOCIETIES.

62. *Final authority of a society.*—Subject to the provisions in this Act and the Rules, the final authority of every society shall vest in the general body of members in general meeting summoned in such a manner as may be specified in the bye-laws :

Provided that where the bye-laws of a society provide for the election of delegates of such members, the final authority may vest in the delegates of such members elected in the prescribed manner and assembled in general meeting.

63. *Annual General Meeting.*—(1) Every society shall, within a period of three months after the date fixed for making up its accounts for the year under the rules for the time being in force, call a general meeting of its members:

Provided that the Registrar may, by general or special order, extend the period for holding such meeting by a period not exceeding three months.

(2) At every annual general meeting of the society, the Committee of the society shall lay before the society a balance sheet and profit and loss account for the year in the manner prescribed by the Registrar by general or specific order for class or classes of societies.

Explanation.—In the case of a society not carrying the business for profit, an income and expenditure account shall be placed before the society at the annual general meeting, instead of profit and loss account and the references to profit and loss account, profit, and loss in this Act, shall be construed in relation to such a society as references respectively to the “income and expenditure account”, “excess of income over expenditure”, and “excess of expenditure over income”.

(3) There shall be attached to every balance sheet laid before the society in a general meeting, a report by its Committee, with respect to (a) state of the society's affairs (b) amounts, if any, which it proposes to carry to any reserve either in such balance sheet or any specific balance sheet, and (c) the amounts, if any, which it recommends, should be paid by way of dividends, bonus and honorarium to the honorary workers. The Committee's report shall also deal with any changes, which have occurred during the year for which the accounts are made up, in the nature of the society's business. The Committee's report shall be signed by its Chairman or any other member authorised to sign on behalf of the Committee.

(4) At every annual general meeting, the balance sheet, the profit and loss account, the Auditor's report and the Committee's report, shall be placed for adoption and such other business will be transacted as might be laid down in the bye-laws and of which a due notice has been given.

(5) If default is made in calling a general meeting within the period or the extended period, as the case may be, as prescribed under sub-section (1), or in complying with sub-sections (2), (3) and (4), the Registrar may by order declare any officer or member of the Committee whose duty it was to call such a meeting and comply with sub-sections (2), (3) and (4) and who without reasonable excuse failed to comply with sub-sections (1), (2) (3) and (4), disqualified for being elected and for being an officer or a member of the Committee for such period not exceeding 3 years as may be specified in such an order and, if the officer is a servant of the society, fine him to an amount not exceeding one hundred rupees.

(6) Any fine imposed under sub-section (5) may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines, imposed by a Court as if such fine was imposed by a Court.

64. *Special General Meeting.*—(1) A special general meeting may be called at any time by a majority of the Committee and shall be called within one month—

(i) on the requisition in writing of one-fifth of the members of the society, or of members the number of which is specified in the bye-laws for the purpose, whichever is lower, or

- (ii) at the instance of the Registrar, or
- (iii) in the case of a society, which is a member of a federal society, at the instance of the Committee of such Federal Society.

(2) Where any officer or a member of the Committee whose duty it was to call such meeting and who, without reasonable excuse, failed to call such meeting, the Registrar may by an order declare such officer disqualified for being a member of the Committee for such period not exceeding three years as may be specified in such order and if the officer is a servant of the society, impose a fine not exceeding one hundred rupees.

(3) If the Committee or an officer or officers of the society refuse or fail to call a meeting in accordance with the section 63 or 64(1) or if in the opinion of the Registrar, there be no Committee or Officer or Officers competent under the Act, Rules and bye-laws to call the meeting, or if there be a dispute regarding the competence of the Committee, officer or officers to call the meeting, the Registrar shall have the power to call the meeting himself, in such manner and at such place and time as he may direct and for considering such matters as may be specified by him. At such meeting, the Registrar may either preside himself or authorise some other person by an order in writing to preside and the Registrar or the person authorised by him to preside, shall have the power to conduct the meeting, and any resolution passed at the meeting shall be valid.

(4) The Registrar shall have the power to order that the expenditure incurred in calling the meeting under sub-section (3) shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the meeting under sections 63 and 64.

65. *Committee, its powers and functions.*—The management of every society shall vest in a committee constituted in accordance with this Act, the Rules and the bye-laws which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the Rules and the bye-laws.

66. *Validation of acts.*—(1) No act of a society or a committee or any officer done in good faith in pursuance of the business of the society, shall be deemed to be invalid by reason only of some defect subsequently discovered in the organisation of the society or in the constitution of the committee or in the appointment or election of the officer or on the ground that such an officer was disqualified for his office.

(2) No act done in good faith by any person appointed under this Act, the Rules and the bye-laws shall be invalid merely by reason

of the fact that his appointment has been cancelled by or in consequence of any order subsequently passed under this Act, Rules and the bye-laws.

(3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of the society and his decision shall be final.

67. *Power to appoint Government nominees.*—Where the State Government has subscribed to the share capital of a society, directly or through another society, or has guaranteed the repayment of the principal and payment of interest on debentures issued by or loans raised by a society to State Government shall have the right to nominate not more than three representatives on the committee of such a society in such manner as may be determined by the State Government from time to time. The members so nominated shall hold office during the pleasure of the State Government or for such period as may be specified in the order under which they are appointed and such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he is a member of the Committee duly elected.

68. *Suspension of committee.*—(1) If at any time, whether in the course of or after an inquiry held under section 80 or inspection made under section 81 or audit, the Registrar has reason to believe that the committee or any of its members or any officer is mis-managing or has mis-managed the affairs of a society or is negligent of the performance of the duties, imposed on it or him, as the case may be, by the Act or the Rules or the bye-laws or is otherwise acting in a manner likely to be prejudicial to the interest of the society or is otherwise not functioning properly, the Registrar may give notice to the Committee or any of its members or any officer to show cause why it should not be dissolved and any of its members or any officer should not be removed from office :

Provided that where the Registrar is satisfied that the issue of such a notice is likely to result in the frittering away of the assets of the society or in the destruction or mis-placing of the record of the society, the Registrar may dispense with the issue of notice to the committee or any of its members or any officer, as the case may be.

(2) If after giving such notice subject to the proviso in subsection (1) and after considering the explanation, if any, given by such person the Registrar is satisfied that the Committee or any of its members or any officer is mis-managing or has mis-managed the affairs of the society or is negligent of the performance of the duties imposed on it or him, as the case may be, by the Act or the Rules or the bye-laws or is otherwise acting in a manner likely to

be prejudicial to the interests of the society or is otherwise not functioning properly, the Registrar may, notwithstanding anything contained in this Act or the Rules or the bye-laws, dissolve the Committee and remove all its members or remove any of its members or any officer from the office and direct the committee or any of its members or any officer to hand over the charge of the records and properties of the society to a person or persons appointed by him for holding the same in custody.

(3) If the Committee which has been dissolved under sub-section (2) or any of its members or any officer who has been removed under sub-section (2) refuse to hand over charge of the records and properties to the person authorised by the Registrar under sub-section (2), person or persons so appointed by the Registrar may apply through the Registrar to the Magistrate within whose jurisdiction the society functions to take steps to secure the records and properties and the Magistrate may for this purpose enter and search any place where he has reason to believe that they are kept and may by warrant authorise any Police Officer, not below the rank of Sub-Inspector, to enter and search in such place or to seize such records and properties. The records and properties so secured shall be handed over to the person or persons authorised by the Registrar as the case may be.

69. *Nomination of Committee.*—(1) Where a committee of a society has been dissolved and removed from office or any of its members or any officer has been removed from office under section 68, the Registrar may appoint a new committee consisting of one or more members of the society or appoint a member or members of the society or officer or officers as may be considered necessary in place of the member or members or officer or officers so removed and such person or persons, as the case may be, shall hold office for a period not exceeding 2 years, as may be directed by the Registrar, from the date of his or their appointment :

Provided that the Registrar may from time to time extend such period, but the total period of the appointment including the extended period shall not exceed 3 years in the aggregate :

Provided further that the Registrar may, if he is satisfied that it is not necessary in the interest of the society to have its affairs managed by the person or persons appointed under this sub-section, cancel the order and the person or persons so appointed shall cease to hold office notwithstanding the period for which such person or persons, as the case may be, were so appointed.

(2) Person or persons so appointed under sub-section (1), shall, subject to the control of the Registrar and to such instructions as he may from time to time give, perform the duties and exercise the powers of the members of the committee or officers of the society,

as the case may be, notwithstanding anything contained in the bye-laws of the society regarding the qualifications of members for being members of the Committee.

(3) The Registrar may fix the remuneration payable to the person or persons so appointed and the amount of such remuneration and the other cost, if any, incurred in the management of the society shall be payable from the funds of the society.

(4) Where a committee has been appointed by the Registrar under sub-section (1), the committee shall, before the expiry of the period of its appointment, arrange for the constitution of a new committee in accordance with the bye-laws of the society and shall hand over the charge of the records and properties to the new committee at the expiry of the period of its appointment. All acts done or purported to be done by the committee appointed under sub-section (1) during the period the affairs of the society were carried on by the committee shall be binding on the new committee and society.

70. *Appointment of an Administrator.*—(1) Where the Registrar has suspended committee of a society under section 68 and is satisfied that it is desirable in the interest of the society to have its affairs managed by an Administrator, the Registrar may by an order published in the Official Gazette appoint an Administrator to carry on the affairs of the society. The Administrator so appointed need not be a member of the society and shall hold office for such period not exceeding 2 years as may be specified by the Registrar :

Provided that the Registrar may from time to time extend such period, but the total period of his appointment including an extended period shall not exceed 3 years in the aggregate.

(2) The Administrator may be assisted and advised by such persons, not exceeding five as may be appointed by the Registrar and shall, subject to the control of the Registrar and to such instructions as he may from time to time give, exercise all the powers and perform all the functions of the committee of the society.

(3) The Registrar may fix the remuneration payable to the Administrator and person or persons appointed to assist and advise him and the amount of such remuneration and any expenses of the management shall be payable out of the funds of the society within such time or at such intervals as the Registrar may fix. If such remuneration or expenses are not paid out within the time or at the interval fixed, the Registrar may make an order directing the person or persons having custody of the funds of the society to pay to the Administrator such remuneration and expenses in priority to other charges, except the land revenue, the arrears of the land revenue or any sum recoverable from the society as arrears of land revenue and he or they shall, so far as the funds to the credit of the society admit comply with the order of the Registrar.

(4) If at any time during any period or extended period, referred to in sub-section (1) it appears to the Registrar that it is no longer necessary to continue to carry on affairs of the society as aforesaid, the Registrar may by an order direct that the management of the society shall be handed over to a duly constituted committee. Upon the election of such committee, the Administrator shall hand over all the records and properties to the committee so elected and all acts done or purported to be done by the Administrator during the period the affairs of the society were carried on by them shall be binding on such committee and the society.

71. *Appointment of Managers, Secretaries and other officers.—*

(1) No society shall appoint a manager, Secretary or Accountant or any other officer unless he holds the qualifications which the Registrar may prescribe from time to time for the employees or a class of employees of any society or class of society.

(2) Where the Registrar is satisfied that a society is unable to appoint a person so qualified as a manager or Secretary or an Accountant or any other officer, he may direct the society to appoint such person as he may consider fit for being appointed and on such terms as he may deem fit and the society shall be bound to appoint such a person.

72. *Registrar's power to determine terms of employment in societies.—*(1) The Registrar may from time to time frame rules governing the terms of employment and working conditions in a society or a class of societies and the society or the class of societies to which such terms of employment and of working conditions are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where dispute including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society arises between a society and its employees the Registrar or any official appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees.

73. *Registrar's power to enforce performance of obligations.—*

(1) The Registrar may direct any society or class of societies to keep proper books of accounts with respect to all sums of money received and expended by the society and the matters in respect of which the receipt and expenditure take place; all sales and purchases of goods by the society and the assets and liabilities of the society and to furnish such statements and returns as he may require from time to time and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(2) Where any society is required to take any action under this Act, the rules or the by-laws or to comply with the order made under sub-section (1), and such action is not taken—

(a) within the time provided in this Act, the Rules or the by-laws or,

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing,

the Registrar may himself or through a person authorised by him take such action at the expense of the society and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with sub-section (1), and, after giving such officer or officers an opportunity to be heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding Rs. 25 as the Registrar may think fit for each day until the Registrar's directions are carried out.

74. *Registrar's power to seize records etc.*—(1) Where the Registrar is satisfied that the books and records of a society are likely to be tampered with or destroyed and the funds and property of a society are likely to be mis-appropriated or mis-applied, the Registrar may issue an order directing a person duly authorised by him in writing to seize and take possession of such books and records, funds and property of the society and the officer or officers of the society, responsible for the custody of such books, records, funds and property shall give delivery thereof to the person so authorised.

(2) Any officer or officers of such society failing to comply with the Registrar's order made under sub-section (1) shall be liable to be punished with imprisonment extending up to 6 months or with fine which may extend to Rs. 1,000 or both.

CHAPTER VI.

AUDIT, INQUIRY, INSPECTION AND SUPERVISION.

75. *Audit and audit fee.*—(1) The Registrar shall by himself or by some person authorised by him in writing by general or special order in this behalf audit the accounts of every society once at least in every year and shall recover from such society such fees as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), every society having a working capital of Rs. 1,00,000 and over shall appoint an Auditor to audit its accounts for the financial year and

the report of such auditor shall be placed before annual general meeting following the completion of the financial year. The Registrar may, however, for reasons stated in the order, exempt a society or a class of societies from the provision of sub-section (2).

76. *Powers and duties of auditors.*—(1) The Registrar or any person appointed under section 75 to audit the accounts of a society shall have free access to the books, accounts and vouchers of such society and shall be allowed to verify its cash balances and securities and shall be entitled to require the production of any book or document relating to the affairs of the society by an officer, agent or servant or member in possession of such book, document, cash or securities and summon at the time of his audit any officer, member, agent, or servant of the society who he has reason to believe can give valuable information in regard to any transaction of the society or the management of its affairs.

(2) Every officer, agent or servant shall furnish to the Registrar or any other person appointed to audit the accounts of a society under section 75(1) all such information and explanation as to its transactions and working as the Registrar or such person may require. The Committee of such society shall also supply him a list of the assets together with their value certified as correct.

(3) Any officer, agent or servant failing to comply with the requirements of sub-section (2) shall be punishable with fine which may extend to Rs. 100.

(4) The auditor appointed under Section 75 shall have the right to receive all notices and every communication relating to the annual general meeting of the society and to attend such meeting and to be heard thereat in respect of any part of the business with which he is concerned as an auditor.

77. *Auditors' Report.*—(1) The Auditor shall make a report to the members of the society on the accounts examined by him and on every balance sheet and profit and loss account which are placed before the society's general meeting during his tenure of office and the report 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 the information required by this Act in the manner so required and give true and fair view, (i) in the case of the balance sheet of the state of the society's affairs as at the end of the financial year and (ii) in the case of profit and loss account, of the profit or loss for its financial year.

(2) The Auditor's report shall also state (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit, (b) whether, in his opinion, proper books of accounts as required by the Act, Rules and the bye-laws have been kept by the society so far as it appears from the examination of those

books and (c) whether the society's balance sheet and profit and loss account dealt with by the report are in agreement with the books of accounts and returns.

(3) Where any of the matters referred to in sub-section (2) is answered in the negative or with a qualification the Auditor's report shall state the reasons for the answer.

(4) The Auditor's report shall be read before the society in a general meeting and shall be open to inspection by any member of the society.

(5) In addition to the report referred to in sub-sections (1), (2), (3) and (4), the Auditor shall submit a memorandum to the Committee of the society and the Registrar in the prescribed form on the audit of the accounts of the society made by him and the said report shall give full particulars of (a) every transaction which appears to be contrary to the Act, or the Rules or the bye-laws; (b) every sum which ought to have been out has not been brought into account; (c) the amount of any deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation; (d) any money or property belonging to the society which appears to him to be bad or doubtful and (e) any other matter prescribed.

78. *Penalty for Auditors.*—If any report is made or any document of the society is signed or authenticated by the Auditor otherwise than in conformity with requirements of Section 77, the Auditor concerned who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to Rs. 1,000.

79. *Rectification of defects in accounts.*—(1) If the result of the audit held under section 75 discloses any defects in the working of a society, the society shall within three months from the date of audit report, explain to the Registrar the defects or the irregularities pointed out by the Auditor and take steps to rectify the defects and remedy irregularities and report to the Registrar the action taken by it thereon. The Registrar may also make an order directing the society or its officers to take such action, as may be specified, in order to remedy the defects, within the time specified therein. Where the society concerned is a member of a Federal Society such order shall be made after consulting the Federal Society.

(2) Where the society fails to rectify the defects as directed by the Registrar or to the satisfaction of the Registrar, the Registrar may himself take steps to have the defects rectified and may recover the cost thereof from the officer or officers of such society, who in his opinion, has or have failed to rectify the defects.

80. *Inquiry by Registrar.*—(1) The Registrar may of his own motion by himself or by a person duly authorised by him in writing in this behalf hold an inquiry into the constitution, working and financial conditions of a society.

(2) The Registrar shall hold such an inquiry as is contemplated in sub-section (1) of this section—

(a) on the requisition of a Federal Society in respect of a society which is its member and is of the same class as that of such Federal Society,

(b) on the application of two-fifths of the members of the committee of the society,

(c) on the application of one-fifths or 100, whichever is less, of the members of a year's standing of the society :

Provided that no application under sub-clause (b) and (c) shall be valid unless the persons making the application deposit such security for cost, if any, as the Registrar may direct.

Explanation.—For the purpose of sub-clause (c) in the case of a Federal Society, the majority from amongst the members making the application shall be societies.

(3) (a) All officers, members and past members of the society relating to which an inquiry is held and any other person who, in the opinion of the officer holding the inquiry is in possession of information, books and papers relating to the society shall furnish such information as is in their possession and produce all books and papers relating to the society which are in their custody or power and otherwise give to the officer holding an enquiry all assistance in connection with the inquiry which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorised by him under sub-section (1) any book or papers which it is his duty under sub-clause (a) to produce or to answer any question which is put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar, after hearing any statement which may be offered in defence, punish the offender with a fine not exceeding Rs. 500.

(4) The report of any inquiry under this section shall be communicated to the society in respect of which an inquiry is held and to the person at whose instance the inquiry was ordered and to the Federal Society.

81. *Inspection of books of indebted society.*—(1) The Registrar may, if he deems necessary on the application of a creditor of a society inspect or direct some person, authorised by him by order in writing in this behalf to inspect the books of the society :

Provided that—

(a) the applicant 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) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the result of any such inspection to the applicant and to the society whose books have been inspected.

82. *Costs of inquiry and inspection.*—(1) Where an inquiry is held under section 80 or an inspection is made under section 81, the Registrar may apportion the cost or such part of the costs as he may think right, between the society, the members or creditors demanding the inquiry or inspection, the officers or former officers and the members or past members or the estate of the deceased members of the society :

Provided that—

(a) No order of apportionment of the cost shall be made under this section, unless the society or persons or the legal representative of deceased person liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard ;

(b) The Registrar shall state in writing the grounds on which the costs are apportioned.

(2) No expenditure from the funds of a society shall be incurred for the purpose of defraying any cost in support of any appeal preferred by any person other than the society against an order made under sub-section (1).

(3) The orders or awards passed by the Registrar under this Section shall not be called in question in any Civil Court.

83. *Recovery of costs.*—Any sum awarded by way of costs under Section 82 may be recovered, on the application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable resides, or carries on business by the distress and sale of any property within the limits of the jurisdiction of such magistrate, belonging to such person, and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself.

84. *Registrar to bring defects disclosed in inquiry or inspection to notice of society.*—(1) If the result of any inquiry held under Section 80 or an inspection made under Section 81 discloses any defects in the constitution, working or financial condition or the books of a society, Registrar may bring such defects to the notice of the Society and, if the society is a member of a Federal Society to the notice of the Federal Society. The Registrar may also make an order

directing the society or its officers or the Federal Society to take such action as may be specified in the order to remedy the defects within the time specified therein.

(2) The Federal Society or the Society concerned may appeal against an order made by the Registrar under sub-section (1) to the State Government within the time specified in the order.

(3) The State Government may, in deciding the appeal, annul, reverse, modify or confirm the order of the Registrar.

(4) Where the Society fails to rectify the defects as directed by the Registrar and where no appeal has been made to the State Government, within the time specified in the order or where on the appeal so made the State Government has not annulled, reversed or modified the order, the Registrar may himself take steps to have the defects rectified and may recover the costs from the Officer or Officers of the society who, in his opinion, has or have failed to rectify the defects.

85. *Power of Registrar to assess damages against delinquent promoters etc.*—(1) Where in the course of or as a result of an audit under Section 75 or an inquiry under Section 80 or an inspection under Section 81 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the Auditor or the person authorised to make inquiry under Section 80 or the person authorised to inspect the books under Section 81, or the liquidator under Section 101 that any person who has taken any part in the organisation or management of the society or any deceased, past or present officer of the society has, within a period of five years prior to the date of such audit, inspection inquiry or the order for winding up of the society, misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may frame charges against such person or persons and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar may determine or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as the Registrar may determine.

(2) The Registrar after framing the charges under sub-section (1) may, by an order in writing, authorise any person, subject to general or special order of the State Government, to hear the person or the representative of the deceased person against whom the charges are framed under sub-section (1). The person so authorised shall, after giving such person reasonable opportunity to submit his explanation make to the Registrar his recommendations as to what action, if any,

the Registrar should take. The Registrar after considering his recommendations, may make any order which he considers just in the circumstances and which he could have made under sub-section (1) if he had given such person a reasonable opportunity to submit his explanation to him, and such order shall have the same effect as if it was made under sub-section (1).

(3) The Registrar, in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued and the amount so recovered shall be paid to the person authorised by him under sub-section (2).

(4) This Section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

86. *Authority to supervise working of societies.*—(1) The State Government may constitute an authority in such manner as may be prescribed and subject to such conditions as the State Government may lay down for the supervision of societies and may frame rules for making grants to such an authority.

(2) The State Government may by general or special order require of a society or a class of societies to make contribution of such sum every year as may be fixed by the Registrar towards the recoument of expenditure which the State Government or any person authorised in that behalf has incurred or is likely to incur in respect of supervision.

(3) A society to which sub-section (2) is applicable shall pay to such authority such fee as may be prescribed under sub-section (2) within a reasonable time and, if it fails to pay such fees within a reasonable time, the authority may recover it as if it were an arrear of land revenue.

CHAPTER VII.

DISPUTES AND ARBITRATION.

87. *Dispute.*—(1) Notwithstanding anything containing in any other law for the time being in force any dispute touching the constitution, management or business of a society or the liquidation of a society shall be referred by any of the parties to the dispute or by a federal society to which the society is affiliated or by a creditor of the society to the Registrar if the parties thereto are among the following :—

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or a legal representative of any deceased officer, deceased agent or deceased servant of the society or the liquidator of the society.

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society or a society which is a member of the society,

(c) a person other than a member of the society who has been granted loan by the society or with whom the society has or had transactions under the provisions of Section 47 and any person claiming through such a person,

(d) a surety of a member, past member or a deceased member or a person other than a member who has been granted a loan by the society under Section 47, whether such a surety is or is not a member of the society,

(e) any other society or the liquidator of such a society.

(2) When any question arises whether for the purposes of sub-section (1), a matter referred to for a decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

(3) No Court shall have the jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation.—(1) For the purpose of this sub-section, a dispute shall include (i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or the legal representative of the deceased member, whether such debt or demand be admitted or not; (ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan taken, by a society and recovered from the surety owing to the default of the principal borrower whether such a sum or demand be admitted or not; (iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its committee, past or present, whether such loss be admitted or not; (iv) a refusal or failure by a member, past member or a nominee, heir or a legal representative of the deceased member to deliver the possession to a society of land, asset or any other asset or any other asset resumed by it for breach of conditions of the assignment; (v) a question regarding rights etc., including tenancy rights between a housing society and its tenants, or members.

Explanation.—(2) No dispute relating to the election of the committee of a society shall be referred to the Registrar until the results of election are declared and no such dispute shall be entertained by the Registrar unless it is made within one month from the date of declaration of results of such election by a candidate at such election or any member of the society.

Explanation.—(3) In the case of application under sub-section (1) of a federal society or a creditor, the Registrar shall require such parties or any party to the dispute, as he may think fit, to refer the dispute to him within such time as he may specify, and if such reference is not made within the time so specified, the dispute shall be deemed to have been referred to him under sub-section (1).

88. *Limitation.*—(1) Notwithstanding anything contained in the Indian Limitation Act, 1908, and subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under section 87 shall—

(a) when the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society,

(b) when the dispute is between a society or its committee and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or the legal representative of a deceased officer, deceased agent or deceased servant of the society, or a member or past member, or the nominee, heir or the legal representative of a deceased member and when the dispute relates to any act or omission on the part of either party to the dispute, be 6 years from the date on which the act or omission with reference to which the dispute arose, took place.

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under section 93 or in respect of which a nominated committee or an administrator has been appointed under section 68 and section 69 respectively, be 6 years from the date of the order issued under section 93, section 68 and section 69, as the case may be.

(2) The period of limitation in the case of any other dispute except those mentioned in sub-section (1) which are required to be referred to the Registrar under section 86 shall be regulated by the provisions of the Indian Limitation Act, 1908, as if the dispute were a suit and the Registrar a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2) the Registrar may admit a dispute after the expiry of the limitation period if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired.

89. *Settlement of dispute.*—(1) If the Registrar is satisfied that any matter referred to him is a dispute within the meaning of section 87, the Registrar shall, subject to the rules, decide the dispute himself or refer it for disposal to one or a board of more than one nominee to be appointed by the Registrar.

(2) Where any dispute is referred to under sub-section (1) for decision by the Registrar's nominee or a board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or board of nominees and may decide the dispute himself or refer it again to any other nominee or board of nominees appointed by him for decision :

Provided that no such dispute shall be withdrawn except on any of the following grounds :—

(i) The Registrar's nominee or board of nominees has failed to decide the dispute within 2 months or such further period, as may be allowed by the Registrar.

(ii) Proceedings before the Registrar's nominee are violated in consequence of corruption or mis-conduct on the part of the Registrar's nominee or board of nominees.

(3) Notwithstanding anything contained in section 87(1) and (2), the Registrar, may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as laid down in sub-section (1).

90. *Procedure for settlement of disputes and power of Registrar, his nominee or board of nominees.*—(1) The Registrar or his nominee or Board of nominees hearing the dispute under section 89 shall hear the dispute in the manner prescribed and shall have the power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(2) No party shall be represented at the hearing of the dispute by any legal practitioner, except with the permission of the Registrar or his nominee or board of nominees, as the case may be.

(3) (a) If the Registrar or his nominee or board of nominees is satisfied that a person whether he be a member of the society or not has acquired any interest in the property of a person who is held a party to the dispute, he may order that the person who has acquired the interest in the property may join as a party to the dispute ; and any decision that may be passed on the reference by the Registrar or his nominee or board of nominees shall be binding on the party so joined in the same manner as if he were the original party to the dispute.

(b) Where a dispute has been instituted in the name of the wrong person or where all the defendants have not been included, the Registrar or his nominee or board of nominees may, at any stage of the hearing of the dispute, if satisfied that the mistake was *bona fide*, order any other person to be substituted or added as a plaintiff or a defendant upon such terms as he thinks just.

(c) The Registrar, his nominee or board of nominees may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Registrar, his nominee or board of nominees, as the case may be, be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Registrar, his nominee or board of nominees, as the case may be, may be necessary in order to enable the Registrar, his nominee or board of nominees effectually and completely to adjudicate upon and settle all the questions involved in the dispute be added.

(d) Any person who is a party to the dispute and entitled to more than one reliefs in respect of the same cause of action may claim all or any of such reliefs; but if he omits to claim for all such reliefs he shall not forward claim for any relief so omitted except with the leave of the Registrar, his nominee or board of nominees.

91. *Attachment before award.*—(1) Where a dispute has been referred to the Registrar or his nominee or board of nominees under section 89 or under section 101 or where the Registrar or the person authorised by him under sub-section (2) of section 85 hears a person against whom the charges are framed under section 85(1), the Registrar or his nominee or board of nominees or the person authorised by him under section 85(2), as the case may be, if satisfied on enquiry or otherwise that a party to such dispute or against whom proceedings are pending under section 85, with intent to delay or obstruct the execution of any award or the carrying out of any order that may be made —

(a) is about to dispose off whole or any part of his property;
or

(b) is about to remove whole or any part of his property from the jurisdiction of the Registrar,

may unless adequate security is furnished, direct conditional attachment of the said property; and such attachment shall have the same effect as if made by a competent Civil Court.

(2) Where the Registrar or his nominee or board of nominees or the person authorised by him under section 85(2) directs conditional attachment of property under sub-section (1), he shall issue a notice calling upon the person whose property is so attached to furnish security which he thinks adequate within a specified period and if

the person fails to provide the security so demanded the Registrar or his nominee or board of nominees or the person authorised, as the case may be, may confirm the order and, after the decision in the dispute or the completion of the proceedings referred to in sub-section (1), may direct the disposal of the property so attached towards the claim if awarded.

(3) Attachment made under sub-sections (1) and (2) shall not affect the rights subsisting prior to the attachment of property under sub-section (1) of persons not parties to the proceedings in connection with which the attachment is made nor bar any person holding a decree against the person whose property is so attached from applying for the sale of the property under attachment in execution of such decree.

92. *Decision of Registrar or his nominee or board of nominees.*—When a dispute is referred to arbitration, the Registrar or his nominee or Board of nominees may, after giving reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and the fees and expenses payable to the Registrar or his nominee or board of nominees, as the case may be. Such an award shall not be invalid even though it may have been made after the expiry of the period fixed for deciding the dispute by the Registrar and shall, subject to appeal or review or revision, be binding on the parties to the dispute. The award so made shall not be liable to be called in question in any Civil or Revenue Court.

93. *Appeal against the decision of Registrar, or his nominee or board of nominees.*—(1) Any party aggrieved by any decision of the Registrar or his nominee or Board of nominees under section 92 or an order passed under section 91 by the Registrar or his nominee or board of nominees or the person authorised by the Registrar under section 85(2) may, within two months from the date of the decision or order or award, appeal or apply to the Tribunal and the Tribunal may for reasons to be recorded in writing—

(i) modify the award; or

(ii) set aside the award and order that the dispute shall be referred back to the Registrar or his nominee or board of nominees or the person authorised by the Registrar under section 85(2) in the manner provided,

(iii) pass such orders thereon as it deems fit :

Provided that no such order shall be made—

(a) after the issue of a certificate under section 94 for the execution of the award, and

(b) except on any of the following grounds :—

(i) the objection to the legality of the award is apparent on the face of it ; or

(ii) the award has been vitiated in consequence of corruption or misconduct on the part of the Registrar or his nominee or board of nominees or the person authorised by the Registrar under Section 85(2); or

(iii) the award is in any way perverse.

(2) In making an order under sub-section (1), that the dispute shall be referred back to the decision of the Registrar or his nominee or board of nominees or the person authorised by the Registrar under Section 85(2), the Tribunal may direct that any of the persons who made the award shall not decide the dispute or pass the order under Section 91.

(3) Where a dispute or an order under Section 91 is referred back under sub-section (1), the Registrar or his nominee or board of nominees or the person authorised under Section 85(2), as the case may be, shall make a fresh award or give a fresh decision within such time as may be fixed by the Tribunal. If the Registrar or his nominee or board of nominees fails to make a fresh award or the person authorised fails to give a fresh decision within the time so fixed, the Registrar or his nominee or board of nominees or a person authorised by him, appointed for the purpose shall decide the dispute or make a fresh order and the Tribunal may on the application of any of the parties to the award or decision or otherwise for reasons to be recorded in writing modify the award or pass such orders thereon as it deems just.

(4) Notwithstanding anything contained in sub-section (1), the Tribunal may admit any appeal or any application relating to an award made under Section 92 or an order made under Section 91 after the expiry of the said period of two months provided the appellant or the applicant satisfies the Tribunal that he had sufficient cause for not making the application within the said period.

94. *Mode of execution of awards and orders.*—Every order passed by a Liquidator under Section 101 or by the Registrar or his nominee or a board of nominees under Sections 92 or clause (1) of Section 91, or by the Registrar under Section 85, every order passed in appeal under Section 93, every order passed in revision under section 147, and every order passed by the State Government in appeal against orders passed under Section 145 shall, if not complied with on a certificate signed by the Registrar or a Liquidator, be deemed to be a decree of a Civil Court and shall (a) be executed in the same manner as a decree of such Court, or (b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue, provided that an application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar or (c) be executed by the Registrar or any persons subordinate to him empowered by the Registrar in this behalf, subject

to such Rules as may be prescribed by the State Government and without prejudice to any other mode of recovery provided in this sub-section :

Provided that no application for the execution of the orders referred to herein shall be made after expiry of 5 years from the date fixed in the order or, if no such date is fixed, from the date of the order.

95. *Recovery of crop loans.*—(1) Notwithstanding anything contained in Sections 87, 89 and 94 on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors' Relief Act, 1947, for the recovery of arrears of any sum advanced by it to any of its member on account of the financing of crop or seasonal finance and on its furnishing a statement of accounts in respect of the arrears, the Registrar may after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) Where the Registrar is satisfied that a resource society has failed to take action under sub-section (1) in respect of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance, the Registrar may, of his own motion, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears and such a certificate shall be deemed to have been issued as if the application was made by the society concerned.

(3) A certificate granted by the Registrar under sub-sections (1) and (2) shall be final and a conclusive proof of the arrears stated to be due therein and the same shall be recoverable according to the law for the time being in force for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by Sections 140 to 144 of the Bombay Land Revenue Code, 1879, until the arrears due to the resource society together with interest and any incidental charges incurred in the recovery of such arrears are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar.

96. *Private transfer of property made after issue of certificate void against society.*—Any private transfer or delivery of, or encumbrance or charge on, property made or created after the issue of the certificate of the Registrar, Liquidator, or Assistant Registrar, as the case may be, under Section 94 shall be null and void as against the society on whose application the said certificate was issued.

97. *Transfer of property which cannot be sold.*—(1) When in any execution of an order sought to be executed under Section 94, any property cannot be sold for want of buyers, if such property is in

occupancy of the defaulter or of some person in his behalf or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Liquidator or the Assistant Registrar, under clause (a) or (b) or (c) of Section 94, the Court or the Collector or the Registrar, as the case may be, may direct that the said property or any portion thereof shall be transferred to the Society which has applied for the execution of the said order in the manner prescribed.

(2) Where a property is transferred to the society under sub-section (1) or where a property is sold under section 94, the Court, the Collector or the Registrar, as the case may be, may, in accordance with the rules prescribed, place the society or the purchaser, as the case may be, in possession of the property transferred or sold by removing, if necessary, any person bound by the decision or award.

(3) Subject to such rules as may be made in this behalf and to any rights, encumbrances, charges or equities lawfully subsisting in favour of any person such property or portion thereof shall be held under sub-section (1) by the said society on such terms and conditions as may be agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society. Subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of an Assistant or the Deputy Collector or the Assistant Registrar, powers exercisable by the Collector or the Registrar under this Section.

CHAPTER VIII.

LIQUIDATION.

98. *Winding up.*—(1) If the Registrar,

(a) after an enquiry has been held under section 80 or an inspection has been made under section 81 or on the report of the Auditor auditing the accounts of the Society; or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a Society present at a Special General Meeting called for the purpose; or

(c) of his own motion in the case of a Society which—

(i) has not commenced working; or

(ii) has ceased working; or

(iii) possesses shares or member's deposits not exceeding Rs. 500; or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the Rules or the By-laws, is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under sub-section 1(a) and section 1(c) (iv) shall be communicated in the prescribed manner, to the Society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the Society to be heard, may issue a fresh order, which shall be called the final order, vacating or confirming the interim order.

99. *Appointment of Liquidator.*—(1) When an interim order is passed under section 98(1) for the winding up of a Society, the Registrar may, in accordance with the Rules, appoint a person to be provisional Liquidator of the Society and fix his remuneration.

(2) On issue of the interim order, the Officers of the Society shall hand over to the provisional Liquidator the custody and control of all the property, effects and actionable claims to which the Society is or appears to be entitled and of all books, records and other documents pertaining to the business thereof and shall have no access to any of them.

(3) When a final order is passed under section 98(2) confirming the interim order, the Registrar may appoint in the manner prescribed, the person appointed under sub-section (1) or any other person as Liquidator of the Society. Upon the appointment of the Liquidator the Officers of the Society shall vacate their office and, while the winding up order remains in force, the general body of the Society shall not exercise any powers.

(4) The person appointed under sub-section (1) as provisional Liquidator or as Liquidator under sub-section (3) shall subject to the general control of the Registrar, exercise all or any of the powers mentioned in section 101. The Registrar may remove such person and appoint another in his place without assigning any reason.

(5) The whole of the assets of the Society shall, on the appointment of provisional Liquidator under sub-section (1) or Liquidator under sub-section (3), vest in such provisional Liquidator or Liquidator, as the case may be, and notwithstanding anything contained in any law for the time being in force, if any landed property is held by a provisional Liquidator or Liquidator, as the case may be, on behalf of the Society, the title over the land shall be complete as soon as the mutation of the name of his Office is effected and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.

(6) In the event of the interim order being vacated, the person appointed as provisional liquidator shall hand over the property, effects and actionable claims and books, records and other documents of the society to the officers who had delivered the same to him. The acts done and the proceedings taken by the provisional liquidator

shall be binding on the society and such proceedings shall, after the interim order has been cancelled under section 98(2), be continued by the officers of the society.

100. *Appeal against the order of winding up.*—The committee or any member of the society ordered to be wound may within 2 months from the date of the issue of the order made under section 98 appeal to the State Government, if the order is made by the Registrar, or to the Registrar if the order is made by any person on whom the powers of the Registrar are conferred, provided that no appeal shall lie against an order, issued under sub-section 1(c) (i), (ii), (iii) of section 98 :

Provided that no appeal shall lie against an order passed by the Registrar on appeal.

Explanation.—No application under this section shall be entertained from a member unless it is accompanied by such sum as security for the cost of hearing the appeal as may be prescribed.

101. *Powers of liquidator.*—The liquidator appointed under section 99 shall have powers, subject to the rules and the general control of the Registrar,

(a) to institute and defend any suit and other legal proceedings, civil or criminal on behalf of the society in the name of his office ;

(b) to carry on business of the society so far as may be necessary for the beneficial winding up of the same ;

(c) to sell the immovable and movable property and actionable claim of the society by a public auction or private contract with power to transfer whole or part thereof to any person or body incorporate or sell the same in parcels ;

(d) to raise on the security of the assets of the society any money required ;

(e) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising out of such claims, and to pay any class or classes of creditors in full or rateable according to the amount of such debts, the surplus, if any, being applied in payment of interest from the date of liquidation at a rate to be approved by the Registrar, but not exceeding the contract rate ;

(f) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the society may be rendered liable ;

(g) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist

between the society and a contributory or a legal contributory or other debtor or person apprehending liability to the society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt, or claim and give a complete discharge in respect thereof ;

(h) to determine from time to time, after giving an opportunity to answer the claim, the contribution to be made or remaining to be made by the members or past members or by the estate, nominees, heirs or legal representatives of deceased members or by any officer, past officer or the estates of the society, such contribution being inclusive of debts due from such members or officers ;

(i) to issue requisitions under section 94 ;

(j) to get disputes referred to the Registrar for decision by himself or his nominee or board of nominees ;

(k) to determine by what person and in what proportion the cost of the liquidation shall be borne ;

(l) to fix the time or times within which the creditors shall prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved ;

(m) to summon and enforce the attendance of witnesses and to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the Society by the same means and in the same manner as is provided in the case of a civil court under the Code of Civil Procedure, 1908 ;

(n) to do all acts and to execute in the name and on behalf of the society all deeds, receipts and other documents as may be necessary to such winding up.

102. *Withdrawal of final order.*—The State Government or the Registrar, in an appeal under section 99 and the Registrar of his own motion at any time may cancel the final order for the winding up of a society where the State Government or the Registrar in appeal or the Registrar of his own motion is of the opinion that the society should continue to exist. On the cancellation of the final order, the liquidator shall arrange for the constitution of a new Committee in accordance with the bye-laws of the society if the Registrar so desires, or where the Registrar nominates a Committee to the nominated committee, and shall hand over to such committee the charge of the society. The acts done and the proceedings taken by the liquidator while the winding up order remained in force shall be binding on the society and such proceedings shall, after the winding up order has been cancelled, be continued by the Committee and officers of the society.

103. *Effect of order of winding up.*—(1) After the expiry of the period for appeal against the order made under section 98(1) or where the appeal has been dismissed, the order for winding up shall be effective and shall operate in favour of all the creditors and of all the contributories of the society as if it had been made on the joint petition of creditors and contributories. When a winding up order becomes effective the liquidator shall proceed to realise the assets of the Society by sale or otherwise and no dispute shall be commenced or, if pending at the date of the winding up order, shall be proceeded with, against the society, except by leave of the Registrar and subject to such terms as the Registrar may impose. The Registrar may, of his own motion, however, entertain or dispose of any dispute by or against the society.

104. *Bar of suit in winding up and dissolution matters.*—Save in so far as is expressly provided in this Act, no Civil Court shall take cognisance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society or the liquidator except by leave of the Registrar and subject to such terms as he may impose :

Provided that where the winding up order is cancelled the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned but they shall continue to apply to the person who acted as Liquidator.

105. *Audit of liquidator's account.*—(1) The liquidator shall, at such times as may be prescribed but not less than twice each year during his tenure of office, present to the Registrar an account in the prescribed form of his receipts and payments as Liquidator. The Registrar shall cause the accounts to be audited in such manner as he thinks fit and for the purpose of the audit, the Liquidator shall furnish the Registrar with such vouchers and information as he or the person appointed by him may require.

(2) The Liquidator shall cause a summary of audited accounts to be prepared and shall send a copy of such summary to every contributory :

Provided that the Registrar may in the case of any winding up proceedings exempt the liquidator from compliance with subsection (2).

(3) The liquidator shall pay such fees as the Registrar may direct for the audit of the accounts and books kept by him in the manner prescribed.

(4) The liquidator shall be held liable for any irregularities which might be discovered in the course or as a result of audit in respect of transactions subsequent to his taking over the affairs of the society and may be proceeded against as if it were an offence under section 85.

106. *Liquidator's report.*—(1) The Liquidator shall, as soon as practicable but not later than six months from the date of the order made under section 99 submit a preliminary report to the Registrar,

(a) as to the estimated amounts of assets and liabilities, giving separately under the heading of assets, particulars of (i) cash and negotiable securities; (ii) debts due from contributories; (iii) debts due to the society and securities, if any, available in respect thereof; (iv) movable and immovable properties belonging to the society and (v) the liability of members, past members, deceased members, and officers, past officers and deceased officers;

(b) the causes of the failure of the society;

(c) where, in his opinion, action is necessary as to any matter relating to the promotion, formation or failure of the society, or the conduct of the business thereof.

(2) The Liquidator shall submit a half-yearly progress report to the Registrar in such form as the Registrar may require.

(3) The report of the liquidator under sub-section (2) to the Registrar shall be available for inspection to the members of the society in the office of the liquidator during office hours.

Explanation.—For the purpose of sub-section (3) the office of the Liquidator shall be the office where the books of the society are kept and if there is no office, the residence of the Liquidator shall be considered as the said office of the Liquidator.

107. *Termination of liquidation proceedings.*—(1) Where the order for winding up a Society has not been withdrawn under section 102 the winding up proceedings of the society shall be closed within three years from the date of the order of the winding up unless the period is extended by the Registrar :

Provided that the Registrar shall not grant any extension for a period exceeding one year at a time but four years in all and shall, immediately after the expiry of seven years from the date of the order for winding up of the society, deem that the liquidation proceedings have terminated and pass an order terminating the liquidation proceedings.

Explanation.—In the case of a society which is under liquidation at the commencement of this Act, order for the winding up of the society shall be deemed for the purpose of this section to have been passed on the date on which this Act comes into operation.

(2) Notwithstanding anything contained in sub-section (1), the Registrar shall terminate the liquidation proceedings on receipt of the final report from the Liquidator. The final report of the liquidator shall state that the liquidation proceedings of the society have been closed and how the winding up has been conducted and the

property of and claims of the society have been disposed of, and shall include a statement showing a summary of the account of the winding up including the cost of liquidation, the amount, if any, standing to the credit of the society in liquidation after paying off its liabilities including the share or interest of members and suggest how the surplus should be utilised.

(3) The Registrar, on receipt of the final report from the liquidator, shall direct the Liquidator to convene a general meeting of the members of the society for recording his final report.

108. *Effect of cancellation of registration.*—(1) On the termination of winding up proceedings as provided in section 107 the Registrar shall make an order cancelling the registration of the society and the society shall be deemed to be dissolved and shall cease to be a body corporate by the name under which it was registered, from the date of such order.

(2) All books, registers and accounts belonging to the society and all books, accounts and papers relating to its liquidation proceedings which are in possession of the liquidator shall be delivered by the liquidator to the Registrar or to such person as the Registrar may direct and no person will have any claims for inspection or otherwise on any of them.

109. *Disposal of surplus assets.*—The surplus assets, as shown in the final report of the liquidator of a society which has been wound up, shall not be divided amongst its members but shall be devoted to any object or objects provided in the bye-laws of the society if they specify that such a surplus shall be utilised for the particular purpose. Where the society has no such bye-laws, the surplus shall vest in the Registrar who shall hold it in trust and shall transfer it to the reserve fund of a new society registered with the similar object and serving more or less an area which the society to which the surplus belonged was serving :

Provided that where no such society exists or is registered within three years of the cancellation of the society whose surplus is vested in the Registrar, the Registrar may distribute the surplus in the manner he thinks best among any or all of the following :—

(a) an object of public utility and of local interest, as may be recommended by the members in general meeting held under section 107(3).

(b) a federal society with similar objects to which the cancelled society was eligible for affiliation or, where no federal society exists to the Bombay State Co-operative Union and

(c) any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

CHAPTER IX.

FARMING SOCIETIES.

110. *Application of this Chapter.*—This chapter shall apply to farming societies including better farming societies, tenant farming societies, joint farming societies, collective farming societies and societies for consolidation of holdings, land reclamation and improvement, crop protection, irrigation, and for providing embankment facilities :

Provided that the State Government may, by general or special order published in the *Official Gazette*, direct that the provisions of this chapter shall also apply to any other class of societies and thereupon they shall apply as if such societies were farming societies.

111. *Registration.*—(1) If the Registrar is satisfied that the conditions of registration as laid down in section 6 of this Act have been fulfilled and that the scheme proposed by the society is economically sound and has been sanctioned by the State Government after due enquiry in the manner prescribed, that Registrar shall register the society.

(2) Notwithstanding anything contained in sub-section (1) no farming society shall be registered unless 66 per cent. of the owners and or tenants in possession of or having interest as tenants in not less than 75 per cent. in aggregate of the land proposed to be included in the area of operation of the proposed society have given their consent to the making of the scheme.

112. *Effect of registration.*—(1) On the registration of a farming society, all the owners of and tenants having interest in lands included in the area of operation of the society, whether they are members of the society or not, shall have such rights and shall be subject to such liabilities as are conferred or imposed on them under the by-laws of the society.

(2) The Society registered under section 111 may execute any work and undertake such other functions as may be laid down in its by-laws and may recover the expenditure thereon from all the owners of and tenants having interest in lands included in its area of operation whether they are members of the societies or not, on the basis of contribution leviable at a rate specified in the by-laws or in the general meeting or in any manner prescribed in the rules or specified in the scheme.

113. *Dues of Farming Societies and their recovery.*—(1) Subject to the provisions of section 49, any outstanding demands or dues payable to a farming society by any person, whether he is a member

or not in respect of any rent shares, loans, contributions or any other rights or amounts payable by him to such society shall be a first charge upon his interest in the crops or other agricultural produce on the land included in the area of operation of such society and of which he is an owner or in which he has interest as a tenant.

(2) Any sum due to a society under sub-section (1) shall, on the application being made by such society for recovery, be recoverable as if it were dues to be recovered under section 93.

114. *Power to exempt farming societies from provisions of Chapter IX.*—(1) Notwithstanding anything contained in section 110 the State Government may, by general or special order to be published in the *Official Gazette*, exempt any farming society or class of such societies from any or all of the provisions of Chapter IX.

(2) Any farming society in respect of which a certificate of registration has been issued by the Registrar under section 10 of the Bombay Co-operative Societies Act, 1925, or any other Co-operative Societies Act, applicable to societies in any of the component parts of Bombay State, before this Act comes into force, shall be deemed to have been validly registered under this Act, notwithstanding that any of the provisions of Chapter IX as to registration have not been complied with.

CHAPTER X.

LAND MORTGAGE BANKS.

115. *Application of this Chapter.*—(1) This Chapter shall apply to land mortgage banks and any other bank permitted to function as such under this Act.

(2) In this Act unless there is repugnant in the subject or context, "State Mortgage Bank" means the Bombay State Co-operative Land Mortgage Bank, Limited, and includes the Saurashtra Central Co-operative Land Mortgage Bank, Limited, and the Vidarbha Co-operative Bank, Limited, and "mortgage bank" means a primary co-operative land mortgage bank registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, and admitted as a member of the State Mortgage Bank and includes the State Mortgage Bank where it functions as a mortgage bank and any other co-operative bank permitted under this Act to function as a mortgage bank.

116. *Appointment, powers and functions of Trustee.*—(1) The Registrar, or where the State Government appoints any other person in this behalf, such person, shall be the Trustee for the purpose of

securing the fulfilment of the obligations of the State Land Mortgage Bank to the holders of debentures issued by the State Mortgage Bank.

(2) The Trustee appointed under sub-section (1) shall be a corporation, sole, by the name of the Trustee for the debentures in respect of which he is appointed, and, as such, shall have the perpetual succession and a common seal and in his corporate name shall sue and be sued.

(3) Powers and functions of the Trustee shall be governed by the provisions of this Act and Instrument of Trust executed between the State Mortgage Bank and the Trustee as modified from time to time by mutual agreement between the State Mortgage Bank and the Trustee.

117. *Issue of debentures.*—(1) With the previous sanction of the State Government and the Trustee, the State Mortgage Bank may for the purpose of investment in land mortgage business and for no other purpose, issue debentures of such Denominations for such periods and at such rates of interests as it may deem expedient on the security of the mortgages and other assets of the land mortgage business.

(2) Every debenture may contain a term fixing a period not less than 10 years and not exceeding 30 years from the date of issue during which period it may be redeemable by reserving to the State Mortgage Bank the right to call it at any time in advance of the date fixed for redemption after giving to the holder of the debenture not less than 3 months' notice in writing.

(3) The total amount due on debentures issued by the State Mortgage Bank and outstanding at any time shall not exceed the aggregate of the amounts due on the mortgages, the value of other assets transferred or deemed to have been transferred under section 120 by the mortgage banks to the State Mortgage Bank and subsisting at such time and the amounts paid under the mortgage aforesaid and remaining in the hands of the State Mortgage Bank of the Trustee at that time.

118. *Guarantee by State Government.*—(1) The principal of, and interest on, the debentures issued under section 117 shall carry the guarantee of the State Government to such maximum amount as may be fixed by the State Government and subject to such conditions as the State Government may think fit to impose.

(2) The State Government may, after consulting the State Legislature, increase the maximum amount of any guarantee given under sub-section (1).

(3) The State Government may, after consulting the State Mortgage Bank and the Trustee, by notification in the Official Gazette and by notice, of not less than 14 days in such of the principal newspapers in the State and of other States in India as the State Government may select in this behalf, discontinue the guarantee given under sub-section (1) or restrict the maximum amount thereof or modify the conditions subject to which it is given with effect from a specified date, not being earlier than six months from the date of the publication of the notification in the Official Gazette

Provided that the withdrawal, restriction or modification of any guarantee under sub-section (3) shall not in any way affect the guarantee carried by any debentures issued prior to the date of which such withdrawal, restriction or modification takes effect.

(4) Every notification and notice referred to in sub-section (3) shall, where the maximum amount of guarantee is to be restricted, or the conditions subject to which the guarantee is given are to be modified, set forth, with sufficient clearness, the scope and effect of the restriction or modification, as the case may be.

(5) The State Government may also guarantee to the State Mortgage Bank for a specified period the repayment of loan to the extent of the excess where the loan given by the State Mortgage Bank or a Mortgage Bank to a member for the development of any land is in excess of the amount of the loan to which such member would be entitled on the basis of the value of the land as determined in accordance with the principle of valuation approved by the Registrar.

119. *Vesting of property in Trustee and debenture holders' charge on assets.*—Upon the issue of debentures under the provisions of sub-section (1) of section 117 the mortgage and assets referred to in sub-section (3) of section 117 held by the State Mortgage Bank shall vest in the Trustee and the holders of debentures shall have a floating charge on all such mortgages and assets and on the amount paid under such mortgages and remaining in the hands of the State Mortgage Bank or of the Trustee.

120. *Priority of mortgage.*—(1) A mortgage executed in favour of a mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884, or under any other law for the time being in force, granted after the execution of the mortgage.

(2) Notwithstanding anything contained in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other law for the time being in force where a mortgage is in respect of land in which a tenant

has an interest, the mortgage may be against the security of such interest and the rights of the mortgagee shall not be affected by the failure of the tenant to comply with the requirements of that Act and the sale of the land and tenants interest therein under the said Act shall be subject to the prior charge of the mortgage bank.

121. *Mortgages executed in favour of mortgage banks to stand vested in State Mortgage Bank.*—The mortgage executed in favour of, and all other assets transferred to, a mortgage bank, by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by such mortgage bank to the State Mortgage Bank and shall vest in the Trustee.

122. *Mortgages not to be questioned on insolvency of mortgagors.*—Notwithstanding anything contained in the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, a mortgage, executed in favour of a mortgage bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the Bank a preference over other creditors of the mortgagor.

123. *Right of mortgage bank to pay prior debts of mortgagor.*—
(1) Where a mortgage is executed in favour of a mortgage bank for payment of prior debts of the mortgagor, the mortgage bank shall, notwithstanding anything contained in the Transfer of Property Act, 1882, by a notice in writing, require any person to whom any such debt is due, to receive payment of such debt or part thereof from the bank at its registered office within such period as may be specified in the notice.

(2) Where any such person fails to accept such notice or, to receive such payments, such debts or part thereof, as the case may be, shall cease to carry interest from the expiry of the period specified in the notice :

Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the mortgage bank towards the debt, but such receipt shall not prejudice the right, if any, of such person to recover the balance claimed by him.

124. *Mortgages executed by managers of joint Hindu families.*—
(1) Where a mortgage is executed in favour of a mortgage bank either before or after the commencement of this Act and is called in question on the ground that it was executed by Manager of a joint Hindu family for a purpose not binding on the members, whether major or minor, thereof, the burden of proving the same shall, notwithstanding any law to the contrary, lie on the party raising it.

(2) Mortgages in respect of loans by Mortgage Bank or the State Mortgage Bank for the improvement of agricultural land or of the methods of cultivation, or for financing any other means to raise productivity of the land, or for the purchase of land, shall not be called in question and shall be binding on every member of such joint Hindu family notwithstanding any law to the contrary.

125. *Restrictions on lease.*—(1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other enactment for the time being in force, no mortgage or property mortgaged to a Mortgage Bank shall be entitled, after the execution of the mortgage, without the previous permission of the bank which may be subject to such conditions as the bank may impose, to transfer or mortgage his equity of redemption or lease such property :

Provided that no Mortgage Bank shall be competent to give its approval without the previous sanction of the State Mortgage Bank.

(2) Where the State Mortgage Bank accords its consent under sub-section (1) it shall send an intimation thereof to the Trustee appointed under section 116.

126. *Power of Mortgage Bank to receive money and give discharge.*—Notwithstanding anything contained in section 121 all moneys due under the mortgage shall, unless otherwise directed by the State Mortgage Bank or Trustee and communicated to the mortgagor be payable by the mortgagor to the Mortgage Bank and such payments shall be as valid as if the mortgage had not been so transferred; and the Mortgage Bank shall in the absence of any specific direction to the contrary issued by the State Mortgage Bank or Trustee and communicated to the bank as such be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

127. *Power of Mortgage Bank where mortgaged property is destroyed or security becomes insufficient.*—Where any property mortgaged to a Mortgage Bank is wholly or partially destroyed or the security is rendered insufficient for any other reason and the mortgagor, having been given a reasonable opportunity by the Bank of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the Bank, has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the bank shall be entitled to take action against the mortgagor under section 128 or section 129 for the recovery thereof.

Explanation.—A security shall be deemed insufficient within the meaning of this Section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the Rules or the Bye-laws of the Mortgage Bank.

128. *Power to distrain.*—If any sum due as an instalment or part of an instalment payable under a mortgage executed in favour of a mortgage bank or the State Mortgage Bank has remained unpaid for more than one month from the date on which it fell due or if on default being made by the mortgagor in payment of land revenue or any other Government dues in respect of land mortgaged by him, the Mortgage Bank or the State Mortgage Bank has paid the same according to the Government demand, the Mortgage Bank or the State Mortgage Bank may, in addition to any other remedy available to the Mortgage Bank, apply to the Registrar for the recovery of such sum by distraint and sale of the produce of the mortgaged land including the standing crops thereon and on its furnishing the Statement of accounts in respect of arrears the Registrar may, after making such enquiries as he deems fit, grant certificate for the recovery of the amount stated therein to be due as arrears. A certificate so granted by the Registrar shall have the effect of the certificate issued under section 95 and the arrears stated to be due therein shall be recoverable in the same manner as is prescribed under section 95(3).

129. *Sale of Mortgaged Property.*—(1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Trustees and Mortgagees Powers Act, 1886, the Mortgage Bank or any persons authorised by it in this behalf shall, in case of default of payment of the mortgaged money or any part thereof, have power, in addition to any other remedy available to the bank, to bring the mortgaged property to sale by public auction in the village in which the mortgaged property is situated or at the nearest place of public resort without the intervention of the Court :

Provided that no action shall be taken under sub-section (1) and no such power shall be exercised unless and until—

(a) the mortgage bank has been previously authorised to exercise the power conferred under sub-section (1) after hearing the objections, if any, of the mortgagor or mortgagors,

(b) notice in writing requiring payment of such mortgaged money or part thereof has been served upon—

(i) the mortgagor or each of the mortgagors,

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same so far as known to the Bank,

(iii) any surety for the payment of the mortgaged debt or any part thereof, and

(iv) any creditor of the mortgagor who has in a suit for administration of his estate obtained a decree for sale of mortgaged property ; and

(c) default has been made in payment of such mortgaged money or part thereof for three months after service of the notice.

(2) If the mortgage bank fails to take action against a defaulter under section 127, section 128 or under this section the State Mortgage Bank may direct the Mortgage Bank to take appropriate action and where no action is taken either by the State Mortgage Bank or the Mortgage Bank, the Trustee may take such action. If such action is taken by the Trustee, the provisions of this Chapter and of any Rules prescribed shall apply in respect thereto as if all references to the Mortgage Bank in the said provision were reference to the Trustee.

130. *Right of Mortgage Bank to buy mortgaged property.*—

(1) Notwithstanding anything contained in any law for the time being in force, it shall be lawful for a Mortgage Bank or the State Mortgage Bank to purchase any mortgaged property sold under this Chapter, and in accordance with Section 97 of this Act and the property so purchased may be disposed off by such bank by sale within such period as may be fixed by the Trustee.

(2) Nothing in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other law for the time being in force, fixing a maximum limit of agricultural holding shall apply to the acquisition of land by a Mortgage Bank or the State Mortgage Bank under sub-section (1).

131. *Application to set aside sale.*—(1) On effecting the sale by a Mortgage Bank under Section 129 the bank shall, in the prescribed manner, submit to the State Mortgage Bank and the Registrar a report setting forth the manner in which the sale has been effected and the result of the sale and the State Mortgage Bank, with the approval of the Registrar, confirm the sale or cancel it.

(2) Where the sale is effected by the State Mortgage Bank under Section 129 the State Mortgage Bank shall in the prescribed manner, submit to the Registrar a report setting forth the manner in which the sale has been effected and the result of the sale, and the Registrar may confirm or cancel the sale.

(3) Where the Trustee has effected the sale under section 129(2) he shall, in the prescribed manner, submit to the Registrar a report, setting forth the manner in which the sale was effected and the result of the sale the Registrar may confirm or cancel the sale.

(4) Where an order is passed by the Registrar under sub-sections (1), (2) and (3) confirming a sale, the sale shall thereupon become absolute.

Explanation.—The Registrar shall not confirm a sale if the State Government informs him that it claims to take the property at the sum last bid and deposited the full amount of the last bid. On so doing, the property shall be sold to the State Government.

132. *Disposal of sale proceeds.*—(1) The proceeds of every sale effected under Section 129 and confirmed under Section 131 shall be applied first in payment of all costs, charges, and expenses incurred in connection with the sale or attempted sales, secondly in payment of any or all interest due on account of the mortgage in consequence whereof the mortgaged property was sold and thirdly, in payment of the principal due on account of the mortgage including cost and charges incidental to the recovery. If there remains any residue from the proceeds of sales, the same shall be paid to the person proving himself interested in the property sold or if there are more such persons than one, then to such persons upon their joint receipt or according to their respective interest therein as may be determined by the Mortgage Bank.

(2) Notwithstanding anything contained in sub-section (1) no residue shall be disposed of until 30 days have elapsed from the communication of the decision to pay the residues, to all the persons concerned and all payments of such residue may thereafter shall be valid and effectual against any demand relating thereto made upon the mortgage bank by the mortgagor or by any other person.

(3) Any person dissatisfied with the decision of the Mortgage Bank in regard to the distribution of such residue may, within 30 days from the communication to him of such decision under sub-section (2), institute a suit in a Court to establish the right he claims to such residue and on receipt of the intimation within the said period of 30 days of such suit being filed, the Mortgage Bank shall not proceed with the distribution of the residue until the suit is decided and shall distribute the same thereafter in accordance with the decision of the Court thereon.

133. *Certificate to purchaser, delivery of property and title of purchaser.*—(1) Where a sale of a mortgaged property has become absolute under Section 131 and the sale proceeds have been received in full by the Mortgage Bank, the Mortgage Bank shall grant a certificate to the purchaser in the prescribed form specifying the property sold, the sale price, the date of its sale, the name of the person who at the time of the sale is declared to be the purchaser and the date on which the sale became absolute and upon the production of such certificate the Sub-Registrar, appointed under the Indian Registration Act, 1908, within the limits of whose jurisdiction the whole or any part of the property comprising such certificate is situated shall enter the contents of such copy in his register relating to immoveable property.

(2) (a) Where the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or some person claiming under a title created by the mortgagor subsequent to mortgage in favour of the State Mortgage Bank or the Mortgage Bank and a certificate in respect thereof has been granted under sub-section (1), the Court shall, on the application of the purchaser,

order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(b) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under sub-section (1), the Court shall, on the application of the purchaser and after notice to such tenants or other persons, order the delivery to be made by affixing copy of the certificate of sale in conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the right, title and interest of the mortgagor have been transferred to the purchaser.

(3) Where any property is sold in the exercise or purported exercise of a power of sale under Section 129, the title of the purchaser shall not be questioned on the ground that the circumstances required for authorising the sale had not arisen or due notice of the sale was not given or the power of sale was not given or the power of sale was otherwise improperly or irregularly exercised :

Provided that any person who has suffered any damage by an unauthorised, improper or irregular exercise of any such power shall have a remedy in damages against the mortgage bank and the State Mortgage Bank.

134. *Exemption of officers of mortgage bank from personal appearance before the registering officers.*—(1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for any officer of a mortgage bank or the State Mortgage Bank to appear in person or by agent at any registered office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

(2) Where any instrument is so executed, the Registering Officer to whom such instrument is presented for registration may, if he thinks fit, refer to such officer for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

135. *Service of notice.*—(1) Whenever under the provisions of this Chapter a notice is required to be given to any person in writing it shall be sufficient to send such notice by registered post.

(2) The provisions of sections 102 and 103 of the Transfer of Property Act, 1882, and of any rules made under section 104 thereof for carrying out the purpose of the sections, shall apply so far as may be in respect of all notices to be served under this Chapter.

136. *Officers of Banks not to bid at sales.*—At any sale of movable or immovable property, held under the provisions of this Chapter, no officer or employee of a mortgage bank or the State Mortgage Bank, except on behalf of the Bank of which he is an officer or an employee, and no person having any duty to perform in connection with such sale shall either directly or indirectly bid for, or acquire or attempt to acquire or attempt to acquire any interest in, such property.

137. *Construction of references to other Acts.*—All references to the Hyderabad Land Mortgage Banks Act, 1349 F., the Central Provinces Co-operative Land Mortgage Banks Act, 1937, and the Saurashtra Co-operative Land Mortgage Banks Act, or to any other Act, Central or State, occurring in any enactment made by any authority in India and for the time being in force in Bombay State shall, in the application, to the said State, of any such enactment, be read and construed as references to this Chapter and anything done or any proceeding commenced in pursuance of any such enactment on or after the date on which this Chapter shall have come into operation shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Hyderabad Land Mortgage Banks Act, 1349 F., the Central Provinces Co-operative Land Mortgage Banks Act, 1937, and the Saurashtra Co-operative Land Mortgage Banks Act or any other Act, Central or State, for the time being in force in the areas comprising the Bombay State as on November 1st, 1956 or thereafter, had been the reference to this Chapter and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Chapter.

CHAPTER XI

OFFENCES AND PENALTIES.

138. *Prohibition of the use of the word "Co-operative".*—(1) No person, other than a society registered under this Act and a person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation, shall, without the sanction of the State Government, function, trade or carry on business under any name or title of which the word "Co-operative" or its equivalent in any Indian language forms part.

(2) Every person who is a member of a society formed in contravention of section 11(2) of this Act and every person contravening the provisions of sub-section (1) shall be punishable with a fine which may extend to Rs. 500.

139. *Offences.*—It shall be an offence under this Act, if—

(a) a committee of a society with a working capital of Rs. 50,000 or more or an officer or a member thereof fails without any reasonable excuse to give any notice, send any return or

document, do or allow to be done anything, which the Committee, officer or member is by this Act required to give, send, do or allow to be done or comply with orders made under section 73; or

(b) a committee of a society or an officer or member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorised by him in writing in this behalf; or

(c) a committee of a society or an officer or member thereof wilfully makes a false return or furnishes false information or fails to maintain proper accounts; or

(d) a Committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by section 58; or

(e) any person collecting share money for a society in formation does not deposit the same in the State Co-operative Bank or a central co-operative bank or an urban co-operative bank or a postal savings bank; or

(f) a person collecting the share money for a society in formation makes use of the funds so raised for conducting any business or trading in the name of a society to be registered or provisionally registered or otherwise; or

(g) a Committee of a society or an officer or member thereof fails to comply with the provisions under section 63(2), (3) and (4); or

(h) any officer of a society wilfully recommends or sanctions for his own personal use or benefit or for the use or benefit of a person in whom he is interested, loan in the name of any other person; or

(i) an officer or member destroys, mutilates, alters, falsifies or secretes or is privy to the destruction, mutilation, alteration, falsification or secreting of any books, papers or securities, or makes, or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the society; or

(j) an officer or member who is in possession of information, books and records, fails to furnish such information or produce books and papers or give assistance to a person appointed or authorised by the Registrar under sections 69, 70, 75, 80, 81, 90 and 99; or

(k) an officer fails to hand over the custody of books, records, cash, security and other property belonging to the society of which he is an officer, to a person appointed under sections 69, 70 and 99; or

(l) an officer or a member wilfully fails to comply with any decision, award or order passed under section 89; or

(m) a member fraudulently disposes of property over which the society has a prior claim or a member or officer or employee or any person disposes of his property by sale, transfer, mortgage, gift or otherwise, with the fraudulent intention of evading the dues of the society; or

(n) any employer and every director, manager, secretary or other officer or agent acting on behalf of such employer who, without sufficient cause, fails to comply with section 51(2); or

(o) an officer or member of a society or any person does any act or omission declared by the Rules to be an offence.

Explanation.—For the purpose of this section an officer or a member referred to in the section shall include past officer and past member as the case may be.

140. *Penalties for offences.*—Every Society, officer or past officer or member or past member or an employee or past employee of a society or any other person found guilty of an offence referred to in section 139 shall be liable to be punished—

(a) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(a); or

(b) with imprisonment for a term which may extend to one month or with fine not exceeding five hundred rupees or with both provided that he is convicted of an offence referred to in Section 139(b); or

(c) with imprisonment for a term which may extend to one year or with fine not exceeding rupees two thousand or both provided that he is convicted of an offence referred to in Section 139(c); or

(d) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(d); or

(e) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in Section 139(e); or

(f) with imprisonment for a term which may extend to one year provided that he is convicted of an offence referred to in Section 139(f); or

(g) with fine not exceeding two hundred and fifty rupees provided that he is convicted of an offence referred to in Section 139(g); or

(h) with imprisonment for a term which may extend to two years provided that he is convicted of an offence referred to in section 139(h); or

(i) with imprisonment for a term which may extend to three years provided that he is convicted of an offence referred to in section 139(i); or

(j) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139(j); or

(k) with fine not exceeding five hundred rupees provided that he is convicted of an offence referred to in section 139 (k) ; or

(l) with imprisonment for a term which may extend to six months or with fine not exceeding five hundred rupees or both provided that he is convicted of an offence referred to in Section 139(l) ; or

(m) with imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or both provided that he is convicted of an offence referred to in Section 139(m) ; or

(n) with imprisonment for a term which may extend to one month or with fine not exceeding five thousand rupees or with both provided that he is convicted of an offence referred to in Section 139(n) ; or

(o) with fine not exceeding two hundred and fifty rupees provided that he is convicted of an offence referred to in Section 139(o).

141. *Cognizance of offences.*—(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898—

(a) every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognizable ;

(b) it shall be lawful for a Presidency Magistrate or a Magistrate of the First Class to pass a sentence of fine exceeding one thousand rupees on any person convicted of an offence under section 139(n).

(3) No prosecution under this Act shall be lodged except with the previous sanction of the State Government in the case of an offence under section 139(n) and of the Registrar in the case of any other offence under this Act. Such sanction shall not be given except after hearing the party concerned by an officer authorised in this behalf by the State Government by a general or special order.

CHAPTER XII

APPEALS AND REVIEW.

142. *Bombay State Co-operative Tribunal.*—(1) The State Government shall constitute a Tribunal, called the Bombay State Co-operative Tribunal, to exercise the functions conferred on the Tribunal by or under this Act.

(2) The Tribunal shall consist of not more than four members possessing such qualifications as may be prescribed.

(3) Where the Tribunal consists of more than one member, any two members of the Tribunal shall form the quorum for the disposal of its business.

(4) Any vacancy in the membership of the Tribunal shall be filled by the State Government.

(5) Subject to the previous sanction of the State Government, the Tribunal shall frame regulations consistent with the provisions of this Act and rules made thereunder, for regulating its procedure and the disposal of its business.

(6) The regulations made under sub-section (4) shall be published in the *Official Gazette*.

(7) 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. If in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit.

(8) Where an appeal is made to the Tribunal under section 93 it may, in order to prevent the ends of justice being defeated, make such interlocutory orders pending the decision of the appeal as may appear to it to be just and convenient or such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Tribunal.

(9) An order passed in appeal, or in revision under sub-section (7) or in review under section 143 by the Tribunal shall be final and conclusive and shall not be liable to be called in question in any civil or revenue court.

Explanation.—The Tribunal hearing an appeal under section 93 shall exercise all the powers conferred upon an appellate court by section 97 and order 41 of the Civil Procedure Code.

143. *Review of orders of Tribunal.*—(1) The Tribunal may, either on the application of the Registrar or on the application of any party interested, review its own order in any case and pass in reference thereto such order as it thinks fit :

Provided that no such application made by the applicant 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 for any other sufficient reason :

Provided further that no such order shall be varied or revised unless notice has been given to the parties interested to appear and be heard in support of such order.

(2) An application for review under sub-section (1) by any party shall be made within 90 days from the date of the communication of the order of the Tribunal.

144. *Tribunal to have powers of civil court.*—(1) In exercising the functions conferred on it by or under this Act, the Tribunal shall have the same powers as are vested in courts in respect of—

- (a) proof of facts by affidavits ;
- (b) summoning and enforcing the attendance of any person and examining him on oath ;
- (c) compelling the production of documents ; and
- (d) issuing commissions for the examination of witnesses.

(2) In the case of any such affidavit, any officer appointed by the Tribunal in this behalf may administer the oath to the deponent.

145. *Appeal.*—(1) An appeal against an order or decision under Sections 10, 13, 14, 17, 18, 19, 36, 60, 68, 69, 70, 98 and 101 shall lie—

(a) if made or sanctioned or approved by the Registrar or the Joint Registrar on whom powers of the Registrar are conferred, to the State Government ;

(b) if made or sanctioned by any person other than the Registrar or the Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

(2) An appeal against an order or decision under sections 73, 82, 85 and any order passed by the Registrar for paying compensation to a society and any other order for which an appeal to the Tribunal has been provided under this Act shall lie with the Tribunal.

(3) An appeal under sub-sections (1) and (2) shall be filed within two months of the date of communication of the order or decision.

(4) Save as provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act, and every such order, decision or award shall be final and where the appeal has been provided for, any order passed on appeal shall be final and no appeal shall lie against it.

146. *Extension of period of limitation by appellate authority in certain cases.*—In all cases in which it is provided under this Act that an appeal may be filed against any decision or order within a specified period, the appellate authority may admit an appeal after the expiry of such period, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

147. *Power of State Government and the Registrar to call for proceedings of subordinate officers and to pass orders thereon.*—The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them except those referred to in sub-section (7) of section 142 for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case, it shall appear to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may pass such order thereon as to it or he may deem fit.

CHAPTER XIII.

MISCELLANEOUS.

148. *Registrar and other officers to be public servants.*—The Registrar, a person exercising the powers of the Registrar, a person authorised to hold an enquiry under section 80 or to make an inspection under section 81, a person appointed as a Liquidator under section 99 or as a nominee or board of nominee under section 87, or authorised under section 75(1) to audit the accounts of a society, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

149. *Indemnity for acts done in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority, in respect of anything done or purporting to have been done by him under this Act in good faith.

150. *Recovery of sums due to the Government.*—(1) All sums due from a society or from an officer or member or past member or a deceased member of a society as such to the Government may be recovered according to the law and under the rules for the time being in force for the recovery of arrears of land revenue.

(2) Sums due from a society to the Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members or past members or the estate of deceased members, subject to the limit of their liability; and, thirdly, in the case of societies with unlimited liability from the members or past members or estate of deceased members.

(3) The liability of past members or estate of deceased members shall in all cases be subject to the provisions of section 33.

151. *Power to exempt societies from provisions of Act.*—The State Government may, by general or special order to be published in the Official Gazette, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order : provided that no order to the prejudice of any society shall be passed without any opportunity being given to such society to represent its case.

152. *Companies Act not to apply.*—The provisions of the Companies Act, 1956, shall not apply to societies registered under this Act.

153. *Branches, etc. of societies outside the State.*—(1) No society other than a society registered under this Act shall open a branch or a place of business outside Bombay State and no co-operative society registered under any law in any other State shall open a branch or a place of business in Bombay State without the permission of the Registrar.

(2) Every co-operative society registered under any law in any other State and permitted to open a Branch or a place of business in Bombay State under sub-section (1), or which has a branch or a place of business in Bombay State at the commencement of this Act, shall within 3 months from the commencement of this Act, or from the opening of such branch or place of business, file with the Registrar a certified copy of the bye-laws and amendments and, if these are not written in English language, a certified translation in English thereof, and shall submit to the Registrar such returns and information as are submitted by similar societies registered under this Act in addition to those submitted to the Registrar of the State where such society is registered.

154. *Notice necessary in suits.*—No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

155. *Rules.*—(I) The State Government may, for the whole or any part of the State and for any society or class of societies, make rules for the conduct and regulation of the business of such society or class of societies and for carrying out the purpose of this Act.

(II) In particular and without prejudice to the generality of the foregoing power such rules may—

(1) subject to the provisions of section 3 prescribe the delegation of powers vested in the Registrar to persons appointed to assist the Registrar ;

(2) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;

(3) prescribe the matters in respect of which a society may make, or the Registrar may direct a society to make, by-laws and the procedure to be followed in making, altering and abrogating by-laws and the conditions to be satisfied prior to such making, alteration or abrogation ;

(4) prescribe the procedure to be followed and conditions to be observed for change of name or liability, amalgamation, transfer, division, conversion, or reconstruction of society ;

(5) prescribe the form of and procedure for an application under Section 19 and the procedure for calling, holding and conducting a meeting under that Section ;

(6) prescribe the conditions to be complied with by a person applying for admission or admitted as a member and provide for the election and admission of members and the payment to be made and the interest to be acquired before the exercise of the right of membership ;

(7) prescribe in the case of a federal society or class of federal societies the proportion of individual members to society members in such society or class of societies and the proportion of individual members to society members in the committee of such society or class of societies ;

(8) subject to the provisions of section 27, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;

(9) prescribe the procedure for the admission of joint members, members of a joint Hindu undivided family, and minors and persons of unsound mind inheriting the share or interest of deceased members and provide for their rights and liabilities.

(10) provide for the withdrawal, removal or expulsion of members and for the payments to them and for the liabilities of past members and the estate of deceased members ;

(11) prescribe the conditions and procedure for the transfer of share or interest ;

(12) provide for the nomination of a person to whom the share or the interest of a deceased member may be paid or transferred ;

(13) provide for ascertaining the value of a share or interest of a past member or deceased member ;

(14) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent to an individual member ;

(15) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same ;

(16) the procedure for registering the address of a society and the change of its address ;

(17) provide for the formation and maintenance of a register of members, and where the liability of the members is limited by shares, of a register of shares and a list of members ;

(18) provide for securing that the share capital of any society shall be variable in such a way as may be necessary to secure that the share shall not appreciate in value and that necessary capital shall be available for the society as required ;

(19) provide for the procedure to be adopted by a society with limited liability in order to reduce its share capital ;

(20) prescribe the period and terms upon which Government aid may be given to societies and terms under which the State Government may subscribe to the share capital of and guarantee the payment of the principal of and interest on debentures issued by societies ;

(21) regulate the manner in which funds may be raised by a society or class of societies by means of shares or debentures or otherwise and the quantum of funds so raised ;

(22) prescribe the limits for loans to be granted by a society or class of societies against different classes of securities or without security and the procedure for granting loans ;

(23) prescribe the manner of recalling a loan ;

(24) prescribe the limits for granting credit by a non-credit society or a class of non-credit societies ;

(25) prescribe the prohibitions and restrictions subject to which societies may trade or transact business with persons who are not members ;

(26) prescribe the conditions in which any charge in favour of a society shall be satisfied and the extent to which and the order in which the property to the charge shall be used in its satisfaction ;

(27) provide for giving reasonable notice of the charge under Section 50.

(28) prescribe the procedure by which a society shall calculate and write off bad debts ;

(29) prescribe the sums which, in addition to those referred to in Section 53(1), shall be deducted from profits before arriving at the profit for the purpose of Section 53(2) ;

(30) provide for the formation and maintenance of reserve fund, and the objects to which such fund may be applied, and for the investment and use of any fund including reserve fund under the control of a society ;

(31) prescribe the conditions under which profits may be distributed as dividend and bonus among the members and non-members of a society under Section 55 ;

(32) prescribe the rate at which a society shall contribute towards the educational fund of the Bombay State Co-operative Union ;

(33) define the co-operative purpose for which a society shall, under Section 57, utilise its fund ;

(34) prescribe the mode of investment of funds of a society under Section 58 and the proportion of investment in any security or class of securities ;

(35) provide for the payment of contribution to any provident fund which may be established by a society for the benefit of officers and servants employed by them and for the administration of such provident fund ;

(36) prescribe the procedure and conditions for the exercise by a federal society of the powers conferred by this Act and the conditions on which the Registrar may direct a society to be affiliated to a federal society under Section 60 ;

(37) provide for general meetings of the members, for the procedure at such meetings and the powers to be exercised by such meetings ;

(38) prescribe the circumstances in which and the methods by which delegates may be elected under section 62 for the purposes of sections 63 and 64 the manner of electing delegates for any of the purposes of this Act and the manner in which delegates so elected shall vote ;

(39) prescribe the conditions in which a member of a society may be disqualified from voting ;

(40) provide for the appointment, suspension and removal of the members of the committee and other officers and for the appointment of administrator under section 70 and prescribe procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee, administrator and other officers ;

(41) prescribe qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by societies ;

(42) prescribe the conditions for deputation of and the powers to be exercised and duties to be performed by persons appointed under section 71(2) ;

(43) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted ;

(44) provide for the persons by whom and the form in which copies of documents and entries in books of societies may be

certified and the charges to be levied for the supply of copies thereof ;

(45) provide for the procedure to be adopted by the Registrar in cases where the taking of possession of books, documents, securities, cash and other properties of a society or of a society the affairs of which have been ordered to be wound up by the Registrar or by a person entitled to the same is resisted or obstructed ;

(46) provide for the procedure to be adopted for taking possession of books, documents, securities, cash and other property of a society by a person acting under sections 74, 75, 80 and 81 in cases where misappropriation of funds, breach of trust or fraud has been committed or where it is suspected or apprehended that the books, documents, securities, cash and other properties are likely to be tampered with or destroyed or done away with ;

(47) prescribe the accounts and books to be kept by a society or class of societies ;

(48) prescribe the procedure for conducting an audit, the matters on which the Auditor shall submit a report, the form in which the statement of accounts shall be prepared for his audit, the limits within which the Auditor may examine the monetary transactions of a society the form of audit memorandum and report, and the charges, if any, to be paid by a society for audit ;

(49) prescribe the procedure for appointment of Auditors under section 75 ;

(50) prescribe the form for rectification of defects discovered in the course of audit, inspection or enquiry ;

(51) prescribe the procedure and principles for the conduct of enquiry under section 80 and inspection under section 81 ;

(52) prescribe the procedure for apportioning the cost of enquiry and inspection and for assessing damages against delinquent promoters under section 85 and for recovery of cost and damages ;

(53) prescribe the manner in which appointment shall be made and control exercised by, and the number of persons comprising, and functions to be performed by, the authority constituted under section 86, the manner of election and nomination of such persons, the fee to be paid to such authority and the manner of such payment, and the procedure for and the method of calculating any cost, charges or expenses required to be levied under this Act or the Rules ;

(54) provide for appointment of Registrar's nominee or board of nominees, procedure to be followed in proceedings before the Registrar or his nominee or board of nominees and for fixing, and levying the expenses for determining the dispute and for enforcing the decisions or awards in such proceedings ;

(55) prescribe the form in which a dispute shall be referred to the Registrar ;

(56) provide for the issue and service of processes and for proving of service thereof ;

(57) provide for the investigation of claims and objections that may be preferred against any attachment effected by the Registrar ;

(58) prescribe the procedure for and the method of recovery of any sums due under this Act or the rules ;

(59) prescribe the procedure to be followed for the custody of property attached under section 91 ;

(60) prescribe the procedure to be followed in the execution of awards ;

(61) prescribe the manner in which any property shall be delivered to, and the terms and conditions subject to which such property shall be held by a society under section 97 ;

(62) prescribe the procedure for attachment and sale of property for the realisation of any security given by a person in the course of execution proceedings ;

(63) prescribe the procedure and conditions for the exercise of the powers conferred under section 101 and the procedure to be followed by a liquidator and provide for the disposal of surplus assets ;

(64) prescribe the matters in which an appeal shall lie from the order of a liquidator appointed under section 99 ;

(65) prescribe the procedure for the withdrawal of orders to wind up a society ;

(66) prescribe the particulars to be furnished by the persons applying for the registration of a society to which Chapter IX is applicable ;

(67) prescribe the procedure for examining a Scheme proposed by promoters of a society to which Chapter IX is applicable ;

(68) prescribe the manner of determining the value of land of a member of a society to which Chapter IX is applicable ;

(69) prescribe the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of debentures, issued by a society to which Chapter X is applicable ;

(70) prescribe the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures issued by a society to which Chapter X is applicable ;

(71) prescribe the qualifications and methods of appointment of an officer to effect sale under section 129 and the powers and functions which such an officer may exercise ;

(72) prescribe, in the case of sale of immovable property under Chapter X ;

(i) the procedure for proclamation and conduct of the sale and the conditions on which an attempt of sale may be abandoned ;

(ii) the method of calculating the expenses incidental to the sale or attempted sale ;

(iii) the procedure for the receipt of deposit and disposal of the proceeds of sale ;

(iv) the procedure for a re-sale if an attempted sale is abandoned or the purchase money is not deposited within the prescribed time and the penalty to be levied against the purchaser who fails so to deposit the purchase money ;

(v) the form and method of disposal of money by a mortgage bank under section 132 ;

(vi) the form of sale certified under section 133 ;

(vii) the form of the notice to be served under section 135 ;

(viii) the fee payable for the service of such notices and the manner of serving such notices on, and of transmitting landlords' fee to the landlord named in such notices ; and

(ix) the procedure for the delivery by the Court of the property purchased to the purchaser under section 133

(73) prescribe the time within which and the procedure according to which property purchased by a mortgage bank at a sale of immovable property under Chapter X shall be disposed off by the bank ;

(74) prescribe for the appointment of a receiver of the produce and income of the mortgaged property for sale under section 129, the conditions in which he may be appointed or removed, the powers and functions which he may exercise and the expenses of management and remuneration which he may receive.

(75) prescribe the circumstances in which action may be taken by a mortgage bank against a mortgagor under section 129(2) ;

(76) prescribe the procedure to be followed in presenting and disposing of appeals ;

(77) prescribe the qualifications of the members of the Tribunal ;

(78) prescribe in the case of appeals lying to the State Government the authority to which power of hearing appeals may be delegated ;

(79) prescribe the method of communicating or publishing any order, decision or award required to be communicated or published under this Act or the Rules ; and

(80) provide for all matters expressly required or allowed by this Act to be prescribed by Rules.

156. *Savings of existing societies.*—(1) Every Society now existing which has been registered under the Co-operative Credit Societies Act, 1904 or under the Co-operative Societies Act, 1912, or under the Bombay Co-operative Societies Act, 1925 or under the Bombay Co-operative Societies Act, 1925, as adapted and applied to the State of Saurashtra, or the Bombay Co-operative Societies Act, 1925, read with the Kutch (Application of Laws) Order, 1949, or the Co-operative

Societies Act, 1912, as applied to Vidarbha, or the Hyderabad Co-operative Societies Act, 1952, shall be deemed to be registered under this Act and its by-laws shall so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the said Act shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

157. *Construction of references of Co-operative Societies Act in enactments.*—All references to the Co-operative Societies Act, 1912, the Bombay Co-operative Societies Act, 1925 and to any other Co-operative Societies Act applicable to the component parts of Bombay State prior to the reorganisation of the State, occurring in any law and for the time being in force in any part of the State of Bombay, shall, in the application, to the said State, or part of State of any such enactment, be read and construed as references to this Act and anything done or any proceeding commenced in pursuance of any such enactment on or after the date on which this Act shall have come into operation shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, the Bombay Co-operative Societies Act, 1925, and such other Acts as had been in force prior to reorganisation of the State in the State in the component parts of Bombay State had been the reference to this Act and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

158. *Repeal.*—The enactments specified in the Schedule are hereby repealed in so far as they apply to Bombay State to the extent specified in the fourth column of the said Schedule.

SCHEDULE.

Enactments repealed.

(See Section 158.)

Year.	No.	Short title.	Enactment of repeal.
1925	... VII	The Bombay Co-operative Societies Act, 1925, as amended up-to-date.	The whole.
1912	... II	The Co-operative Societies Act, 1912, as applied to Vidarbha.	The whole.
1952	... XVI	The Hyderabad Co-operative Societies Act, 1952, ...	The whole.
		The Bombay Co-operative Societies Act, 1925, read with the Kutch (Application of Laws) Order 1949.	The whole.
		The Bombay Co-operative Societies Act, 1925, as adapted and applied to the State of Saurashtra.	The whole.