

# THE JAMMU AND KASHMIR CO-OPERATIVE SOCIETIES ACT. 1989

ACT No. X OF 1989

(Received the assent of the Governor on 8<sup>th</sup> July, 1989 and Published in the Government Gazette dated 11<sup>th</sup> July 1989)

An act to consolidate and amend the law relating to Co-operative Societies in the State, with a view to providing for the orderly development of the Co-operative movement in the State in accordance with the directive principles of State policy enunciated in the Constitution of Jammu and Kashmir.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty ninth Year of the Republic of India as follows:-

## CHAPTER 1

### PRELIMINARY

1. Short title, extent and commencement:-

- (1) This act may be called the Jammu and Kashmir Co-operative Societies Act. 1989.
- (2) It shall extend to the whole of the State of Jammu and Kashmir
- (3) It shall come into force on such date as the Government may by notification in the Government Gazette, appoint in this behalf.

2. Definitions:-

In this Act, unless the context otherwise requires.-

- (a) "Board" means governing body of a Co-operative Society to which the direction and control of the management of the affairs of the society is entrusted,
- (b) "Bye-laws" means the bye-laws for the time being in force which have been registered under this Act and includes amendments thereto which have been duly registered under this Act.
- (c) "Chief Executive" means the Chief Executive of State level Federation Central Societies or Primary Societies by whatever designation called who shall also be a member of the Board and other committees constituted by the Board.
- (d) "Committee" means the governing body of a Co-operative society to whom the management of its affairs is entrusted.
- (e) "Co-operative Bank" means Co-operative Society which undertakes banking business.
- (f) "Co-operative Federations" at-
  - (i) "District level" means a Federation of Co-operative Societies to which primaries as well as block level societies are affiliated.
  - (ii) "Divisional level" means Co-operative Societies to which block level/primary level/district level societies are affiliated.
  - (iii) "State level" means a Co-operative Society at Apex level to which divisional level/district level/primary level Co-operative Societies are affiliated
- g. "Co-operative Society" means a society registered or deemed to be registered under this Act.

- h. "Co-operative Society year " in relation to any Co-operative society or class of such society means the year ending 31st day of March and where the accounts of such society or class of such societies are, with the previous sanction of the Registrar, Co-operative Societies, balanced on any other day, the year ending on such day.
- i. "Co-operative Society with unlimited liability" means a Co-operative Society, the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of all its obligations and to contribute to any deficit in the assets of the society.
- j. "Co-operative Society with limited liability means a Co-operative Society in which the liability of its members, for the debts of the society in the event of its being wound up, is limited by its bye-laws:-
  - i) to the amount, if any, up paid on the shares respectively held by them; or
  - ii) to such amount as they may respectively undertake to contribute to the assets of the society.
- k. "Creditor" includes depositor.
- l. "Deposit Insurance Corporation" means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961.
- m. "Federal body" means a Co-operative Federation at District Divisional or State level as the case may be.
- n. "Member " means a person joining fin the application for the registration of a Co-operative Society and a person admitted to membership after such registration in accordance with this Act, rules and bye-laws and includes a nominal and an associate member.
- o. "Net profit" means profit after deduction of establishment charges contingent charges, interest payable on loans and deposits audit fee and such other sums as may be prescribed.
- p. "NABARD" means the national bank for Agriculture and Rural Development established under the national bank for Agriculture and Rural Development Act. 1981.
- q. "officer" means a president, Vice-President, Chairman, Vice-Chairman, Managing Director, Secretary, Manager, Member of the Board, Treasurer, Liquidator and Administrator appointed under section 30 and include any other person empowered under this Act or rules of bye-laws to give directions in regard to the business of a Co-operative Society.
- r. "Prescribed" means prescribed by rules made under this Act.
- s. "Registrar of Co-operative Societies under this Act and include any person appointed to assist the Registrar when exercising all or any or the powers of the Registrar.
- t. "Reserve Bank" means the Reserve Bank of India established under section 3 of the Reserve Bank of India Act.1934.
- u. "Tribunal" means the Tribunal constituted under section 157.

## CHAPTER II.

### REGISTRATION OF CO-OPERATIVE SOCIETIES

#### The Registrar-

- 1) The Government may appoint a person to be the Registrar of Co-operative Societies for the whole state for all types of societies and may appoint a person or persons to assist him.

- 2) The Government may, by general or special order, confer on any person appointed to assist the registrar, all or any of the powers of the Registrar under this Act.
- 3) Every person appointed to assist the registrar shall exercise the powers conferred on him under sub-section (2) subject to the general superintendence and control of the Registrar.
- 4) The Government may appoint any number as Additional Registrar Co-operative Societies to assist the Registrar. The person or persons so appointed to assist the Registrar and on whom any power of Registrar is conferred shall work under the general guidance, superintendence and control of the registrar.

Societies which may be registered:-

Subject to the provisions of this Act, a Co-operative Society which has as its object the promotion of the economic interests of its members in accordance with Co-operative principles, or a Co-operative Society established with the object of facilitating the operations of such a society, or a Co-operative Society, established for carrying out any of the objects specified in section 113 may be registered under this Act.

- 5) Application for registration of Co-operative Societies:-
  - (1) An application for the registration of a Co-operative Society shall be made to the Registrar in such form as the Registrar may from time to time specify and the applicants shall furnish to him all such information about the society as he may require.
  - (2) Every such application shall conform to the following requirements namely:-
    - a) the application shall be accompanied by three copies of the proposed bye-laws of the Co-operative Society.
    - b) Where all the applicants are individuals the number of applicants shall not be less than 100 in case of primary agricultural societies, not less than 50 in case of registration of primary non-agricultural societies provided that in case of husband and wife joining as member they shall be treated as one member for the purpose of registration. This will not apply in case of registration of Federal Co-operative societies.
    - c) Membership to be open to all such persons ordinarily residing within the area of operation of the society who can make use of the services offered by the society.
    - d) Individuals can only become associate/normal members in Federal and Apex level institutions:
    - e) Every one of the applicants who is individual shall be above the age of eighteen years;
    - f) Where the objects of the Co-operative society include the creation of funds to be lent to its members and where all the applicants are individuals, the applicants shall reside in same village or in the same group of villages or belong to the same class or pursue the same occupation.
    - g) the application shall be signed by everyone of the applicants who is individual and by a person duly authorized on behalf of Cooperative Society which is an applicant.

6. Registration:-

- (1) If the Registrar is satisfied –
  - a. that the application complies with the provisions of this Act and Rules:

- b. that the objects of the proposed Society are in accordance with Section 4:
- c. that the aims of the proposed Society are not in consistent with the principles of social justice:
- d. that the proposed Bye-Laws are not contrary to the provisions of this Act and Rules, and
- e. that the proposed Society complies with the requirements of sound business and has reasonable chances of success;

the Registrar shall register the Society provisionally for maximum period of six months during which period the Society shall fulfill the following obligations in order to qualify for permanent registration-

- i. Capital building to the extent to be prescribed.
- ii. Membership mobilization/education to be prescribed
- iii. Development of projects, plans and schemes.

(2) Where the Registrar refuses to register Cooperative Society he shall communicate the order of refusal together with the reasons therefor to such of the applicants as may be prescribed.

7. Registration Certificate:

- (1) Where a Cooperative Society is registered provisionally under this Act, the Registrar shall issue the provisional certificate signed by him.
- (2) When the Registrar is satisfied that the Society has complied the obligations as laid down in Section 6 of this Act qualifying for permanent registration, the Registrar shall issue a certificate of registration signed by him which shall be conclusive evidence that the Cooperative Society mentioned therein is a cooperative Society duly registered under this Act.

8. Registration with limited or unlimited liability:-

- (1) A cooperative Society may subject to the provisions of sub-section
  - (2) Registered with or without limited liability
- (2) Unless the Government by general or special order otherwise directs:-
  - (a) A Cooperative Society shall be registered with limited liability if any of its members is another Cooperative Society
  - (b) The liability of the members of the Cooperative Society is unlimited or limited by shares, the liability of the Government which has taken shares in the Cooperative Society shall be limited to the share capital subscribed by the Government
- (3) The word 'limited' shall be the last word in the name of the Society with limited liability registered under this Act

9. Amendment of the bye-laws of Co-operative Society:-

- (1) No amendment of any bye-laws of a Co-operative Society shall be valid unless such amendment has been registered under this Act.
  - (2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment-
    - i) is not contrary to provisions of this Act and the rules.
    - ii) does not conflict with Co-operative principles.
      - iii) satisfies the requirements of sound business
      - iv) will promote the economic interests of the members of the society; and
      - v) is not inconsistent with the principles of social justice;
- he may register the amendment.

- 3) The Registrar shall forward to the society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered.
- 4) Where the Registrar refuses to register an amendment of the bylaws of a Co-operative society he shall communicate the order of refusal together with the reasons thereof, to the society.

10. Power to direct amendment of bye-laws:-

- (1) If it appears to the Registrar that an amendment of the bye-laws of a class of societies is necessary or desirable in the interest of such societies or in the interests of the Cooperative Movement or for the implementation of the development programmes of the State, he may call upon all the Societies of the class, in the manner prescribed, to make the amendment within such time as he may specify.
- (2) If any Society of that class fails to make the amendment within the time specified, the Registrar may, after giving the Society a n opportunity of being heard, register such amendment, and issue to the Society a copy fo such amendment certified by him. With effect from the date of amendment in the manner aforesaid, the Bye-Laws shall be deemed to have been duly amended accordingly and the Bye-Laws as amended shall be binding on the Society and its members.

11. Change of name of Cooperative Society:

- (1) A Cooperative Society may, by an amendment of its Bye-Laws, change its name.
- (2) Where Cooperative Society changes its name, the Registrar shall enter the new name on the Register of Cooperative Societies in place of the former name and shall amend the certificate of registration accordingly.
- (3) The change of name of a Cooperative Society shall not affect any rights or obligations of the Cooperative Society, or render defective any legal proceedings by or against it: and any legal proceedings which might have been continued or commenced by or against the Society by its former name may be continued or commenced by its new name.

12. When amendment of Bye-Laws comes into force:

An amendment of Bye-Laws of a Cooperative Society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered.

13. Change of liability:-

- (1) Subject to the provision of this Act and Rules, a Cooperative Society may, by amendment of its Bye-Laws, change the form of extent of its liability.
- (2) When a Cooperative Society has passed a resolution to change the form or extent of its liability, it shall giver notice thereof in writing to all its members and creditors and, notwithstanding any Bye-Laws or contract to the contrary, any member or creditor shall, during a period of one month from the date of service of the notice upon him, have the option of withdrawing his shares, deposits or loans as the case may be.
- (3) Any member or creditors who does not exercise his option within the period specified in sub-section (2) shall be deemed to have assented to the change.
- (4) An amendment of the Bye-Laws of a Cooperative Society changing the form or extent of its liability shall not be registered or take effect until either-
  - a. the assent thereto of all the members and creditors has been obtained; or
  - b. all claims of members and creditors who exercise the option refereed to in sub-section (2) within the period specified therein, have been met in full.

#### 14. Amalgamation , transfer of assets and liabilities and division of Cooperative Societies

- (1) A Co-operative Society may, with the previous approval of the Registrar and by a resolution passed by a two-third majority of the members present and voting at the general meeting of the society-
  - (a) transfer its assets and liabilities in whole or in part to any other Co-operative society;
  - (c) divide itself into two or more Co-operative societies.
- (2) Any two or more Co-operative Societies may, with the previous approval of the Registrar and by a resolution passed by a two third majority of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new Co-operative Society.
- (3) The resolution of a Co-operative Society under sub-section (1) or sub-section (2) shall contain all particulars of the transfer, division or amalgamation as the case may be.
- (4) When a Co-operative Society has passed any such resolution it shall give notice thereof in writing to all its members and creditors, and notwithstanding any bye-laws or contract to the contrary any such member or creditor shall, during the period of one month of the date of service of the notice upon him, have the option of withdrawing his shares, deposits, or loans or interest as the case may be.
- (5) Any member or creditor who does not exercise his option within the period specified in sub-section (4) shall be deemed to have assented to the proposals contained in the resolution.
- (6) A resolution passed by a Co-operative society shall not take effect until, either-
  - (a) the assent thereto of all the members, and creditors affected has been obtained; or
  - (b) all claims of members and creditors affected who exercise the option referred to in sub-section (4) within the period specified therein, have been met in full.
- (7) Where the resolution passed by a Cooperative Society under this section involves the transfer of any assets and liabilities , the resolution shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance , to vest the assets and liabilities in the transferee without any further assurance.

#### 15. Cancellation of registration certificate of Cooperative Societies in certain cases.

- (1) Where the whole of the assets and liabilities of a Cooperative Society are transferred to another Cooperative Society in accordance with provisions of Section 14 the registration of the first mentioned Cooperative Society, shall stand cancelled and the Society shall be deemed to have been dissolved and shall cease to exist as corporate body.
- (2) Where two or more Cooperative Societies are amalgamated into new Cooperative Society in accordance with the provisions of section 14 the registration of each of the amalgamating Societies shall stand cancelled on the registration of new Society and each Society shall be deemed to have dissolved and shall cease to exist as a body corporate.
- (3) Where a Cooperative Society divides itself into two or more Cooperative Societies, in accordance with the provisions of section 14, the registration of

that Society shall stand cancelled on the registration of new Societies , and that Society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

16. Re-organization of societies:-

(1) Where the Registrar is satisfied that it is essential in the public interest , or in the interest of Cooperative Movement or for a purpose of securing proper management of any Cooperative Society, that two or more Societies should be amalgamated or any Society should be divided to form two or more Societies or should be reorganized, then notwithstanding anything contained in section 3 but subject to the provisions of this section, the Registrar may after consulting the federal body of particular class of Societies, Jammu and Kashmir Cooperative Union/the financing agency which may have advanced any loan to the Societies or Society concerned , provide for the amalgamation , division or reorganization of these Societies into a single Society or Societies with such constitution , property, rights, interests and authorities and such liabilities, duties and obligations, as may be specified in the order:

Provided further that notwithstanding anything contained in section in respect of a non-agricultural society shall be issued after obtaining prior approval of the Government and every such order shall be laid, as soon as may be, after it is made, before each House of the State legislature:

Provided further that notwithstanding anything contained in section 3 or any order made thereunder, the powers of the Registrar under this section shall not be exercised by any person other than the Registrar himself.

2) No order shall be made under this section, unless-

- (a) a copy of the proposed order has been sent in draft to the Society or each of Society concerned.
- (b) The Registrar has considered and made such modifications in the draft order as may seem to him desirable, in the light of any suggestion and objection which may be received by him 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, 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 incidental, consequential or supplemental provisions as may in the opinion of the Registrar, be necessary to give effect to the amalgamation, the division, or re-organization. On the issue of an order under Sub-section (1), the provisions of such sub-section (7) of section 14 shall apply to the societies so amalgamated divided or re-organized as if they were amalgamated or-organized under that section.

4) Notwithstanding anything contained in this section or in any other provision of this Act, no action in pursuance of sub-section (1) or sub-section (2) of section 14 or sub-section (2) of this section and no scheme of compromise or arrangement or re-construction or amalgamation of a Co-operative Bank, shall be taken or given effect to without the previous sanction in writing of the reserve bank.

5) Where an order of moratorium has been made by the Central Government under Sub-section (2) of section 45 of the banking Regulation Act, 1949, in respect of a Co-operative bank, the Registrar with the previous approval of the Reserve Bank in writing, may, during the period of moratorium, prepare a scheme –

- I for the reconstruction of the Co-operative bank, or
- li for the amalgamation of the Co-operative bank with any other Co-operative bank

hereinafter referred to as "the Transferee Bank".

- 6) Where a Co-operative Bank being an insured bank within the meaning of the Deposit Insurance Corporation Act, 1961 is amalgamated, or in respect of which a scheme of compromise or arrangement or of reconstruction has been sanctioned and the Deposit Insurance Corporation has been liable to pay to the depositors of the insured bank under sub-section (2) or section 16 of that Act, the bank with which such insured bank is amalgamated or the Co-operative Bank or the transferee bank shall, be under an obligation to repay the Deposit Insurance Corporation in the circumstances, to the extent and in the manner referred to in section 21 of the Deposit Insurance Corporation Act, 1961.

### **CHAPTER III**

#### **MEMBERS OF COOPERATIVE SOCIETIES, THEIR RIGHTS AND LIABILITIES**

17. Persons who may become members:-

- 1) No person shall be admitted as member of Co-operative Society except the following, namely:-
  - a) An individual who is-
    - (i) competent to contract under section 11 of the Jammu and Kashmir Contract Act, Samvat 1977;
    - (ii) a permanent resident of the State of Jammu and Kashmir as defined in section 6 of the Constitution of Jammu and Kashmir
  - b) any other Co-operative Society registered under this Act;
  - c) a firm, company or any other body corporate constituted under any law for the time being in force or a society registered under the Jammu and Kashmir Societies registration Act, Samvat 1998; provided that every partner, director or member as the case may be, of such firm, company, corporate body or society is a permanent resident of the State.
- 2) Where a person is refused admission as a member in a Co-operative Society, the decision refusing admission shall be communicated by the society to that person within fifteen days of the date of submission of application for admission.
- 3) No individual shall be admitted as member of a Central or Apex Society unless such a society has been exempted by the Registrar in this behalf, by general or special order.
- 4) The Central and Apex Societies having individual as member on the date of commencement of this Act, shall retire the shares of such individuals within a period of three years of such commencement in the prescribed form.

Explanation:-

For the purpose of this section-

- a) "Primary Society" means a Co-operative Society whose membership consists exclusively of individuals;
- b) "Central Society" means a Co-operative Society whose membership includes primary societies;
- c) "Apex Society" means a Co-operative Society whose membership includes Central Societies, Notwithstanding anything contained herein, the Jammu and



Kashmir State Co-operative Rural Development Bank shall be construct as Apex Society for the purpose of this Act:

provided that in case of districts where Central level Societies do not exist and Apex level Societies have been undertaking the functions of Central level Societies and have enrolled primary societies as members. These Primary Societies will continue to remain as the members of the Apex level Societies in these districts. After the central level Societies are registered in these districts, primary societies, shall cease to exist as members of Apex level societies.

- 5) Every person eligible for admission as member of a Co-operative Society shall be deemed to have been admitted as a member of the society from the date of receipt of his application for such admission in the office of that society.
- 6) The Registrar may, of his own motion or on a complaint made by the Committee of the society or any aggrieved person, by an order determine that such a person is not eligible to be a member of the society and on such determination that person will cease to be member:

Provided that no such order shall be made unless the person already admitted as a member is given opportunity of being heard and where an order is to be made on the basis of complaint is shall be made within a period of thirty days of the receipt thereof.

- 7) Notwithstanding anything contained in sub-section (1) the Government or any person authorized by the Government may, having regard to the fact that the interests of any person or class of persons conflict or are likely to conflict with the Objects of any society or class of societies, by general or special order published in the Government Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be dis-qualified from being admitted or for continuing as members or shall be eligible for membership only to a limited extent of any specified society or class of societies so long as such person or persons are engaged in or carry on that profession, business or employment the case may be.

18. Nominal or associate members:-

- 1) A Co-operative Society may admit any person as nominal or associate member in accordance with its bye-laws.
- 2) A nominal member shall not be entitled to any share, in any form whatsoever, in the assets or profit of the society.
- 3) Save as provided in this section a nominal or associate member shall have such privileges and rights of a member and be subject to such liabilities of a member as may be specified in the bye-laws of the society.

19. Member not to exercise rights till due payment made:-

- 1) No member of a Co-operative Society shall, save as otherwise provided in sub-section (2), exercise the rights of a member unless or until he has made such payment to the society in respect of membership or has acquired such interest in the society as may be specified in the bye-laws.
- 2) In the case of a society registered after the commencement of this Act, the persons who have signed the application to register the society may elect a committee to conduct the affairs of the society for a period of six months from the date of registration or for such further period not exceeding nine months as the Registrar may fix:

Provided that the Committee shall cease to function as soon as the members of the society have elected a Committee in accordance with its bye-laws.

20. Votes for members:-

Every member of Co-operative Society shall have one vote in the affairs of the society:

- i) in the case of an equality of votes the Chairman shall have an additional casting vote:
- ii) a nominal or associate member shall not have the right of vote;
- iii) where the Government is a member of a Co-operative Society each person nominated by the Government on the Committee of the Co-operative Society shall have one vote.

21. Manner of exercising vote:-

- 1) Every member of a Co-operative Society shall exercise his vote in person and no member shall be permitted to vote by proxy.
- 2) Notwithstanding anything contained in sub-section (1) a Co-operative Society which is a member of another Co-operative Society may, subject to any rules made under this Act, authorize one of its members to vote on its behalf in the affairs of that other society.

22. Restrictions on holding of shares:-

In any Co-operative Society no member other than the Government or any other Co-operative Society shall-

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

Provided that where the society is a financing Bank, a member may have or claim an interest in the shares of the society not exceeding five thousand rupees:

Provided further that the Government may, by notification in the Government Gazette, specify in respect of any class of Co-operative Societies a higher maximum than one-fifty of the share capital or a higher amount than five thousand as the case may be.

23. Restriction on transfer of shares or interest:-

- 1) The transfer of share or interest of a member in the capital of a Cooperative Society shall be subject to such conditions and restrictions as to the maximum holdings as are specified in section 22.
- 2) No transfer by a member of his share or interests in a Co-operative Society shall be valid unless-
  - a) the member has held such share or interests for not less than one year;
  - b) the transfer is made to a member of the society; and
  - c) the transfer is approved by the Committee of the society.

24. Transfer of interest on death of member:-

- 1) On the death of a member the Co-operative Society may transfer the share or interest of the deceased member in the capital to the person nominated in accordance with the rules made in this behalf, or if there is no person so nominated, the legal heirs or legal representative of the deceased member or pay to such nominee, heir or legal representatives, as the case may be, a sum representing the

value of such members share or interest as ascertained in accordance with the rules or bye-laws:

provided that where the share or interest exceeds rupees five hundred in value, payment shall be made to the person who is certified to be legal heir by competent civil court:

provided further that:-

i) in the case of a Co-operative Society with unlimited liabilities such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interests of the deceased member ascertained as aforesaid; and

ii) in the case of a Co-operative Society with limited liability, the society shall transfer the share or interests of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and byelaws for membership of the society or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

2. Subject as aforesaid, a Co-operative Society shall within six months pay all other money due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.
3. All transfers and payments made by a Co-operative Society in accordance with the provisions of the section shall be valid and effectual against any demand made upon the society by any other person.

25. Liability of a past member and estate of deceased member:-

- 1) Subject to the provisions of sub-section 2), the liability of a past member or of the estate of a deceased member of a Co-operative Society for the debts of the society as they existed-

- a) in the case of deceased member, on the date of his death;
- b) in the case of a past member, on the date on which he ceased to be a member,

shall continue for a period of one year from such date.

- 2) Where a Co-operative Society is ordered to be wound up under section 74, the liability of a past member or of the estate of a deceased member who ceased to be a member or died within two years immediately proceeding the date of the order of winding up, shall continue until the entire liquidation proceedings are completed, but such liability shall extend only to the debts of the society as they existed on the date of his ceasing to be a member or death, as the case may be.

#### CHAPTER IV.

#### MANAGEMENT OF CO-OPERATIVE SOCIETIES

26. Final authority in a Co-operative Society:-

The final authority in a Co-operative Society shall vest in the general body of members:

Provided that where the bye-laws of a Co-operative Society provide for the constitution of a smaller body consisting of delegates of members of the society elected in accordance with such bye-laws the smaller body shall exercise with powers of the general body as may be prescribed or as may be specified in the bye-laws of the society:

Provided further that nothing in this section shall effect any powers conferred on a committee or any officer of a Co-operative Society by the rules or the bye-laws.

**26. Annual General Meeting:-**

- 1) A general meeting of every Co-operative Society shall be held once in a year for the purpose of-
  - a) approval of the programme of the activities of the society prepared by the Committee for the ensuing year;
  - b) election, if any, in the prescribed manner of the members of the Committee other than nominated members;
  - c) consideration of the audit report and the annual report;
  - d) disposal of the net profits; and
  - e) consideration of any matter which may be brought forward in accordance with the bye-laws.
2. At every annual general meeting of a society, the Committee shall lay before the general body of the society balance, profit and loss account/statement showing details, statement showing list of defaulters and information's regarding embezzlements and the persons or members involved in such embezzlements.

**28. Special general meeting:-**

1. The Committee of a Co-operative Society may, at any time, call a special general meeting of the society and shall call such meeting within one month after the receipt of a requisition in writing from the Registrar or from such number of members or a proportion of the total number of members, as may be prescribed.
2. If a special general meeting of a Co-operative society is not called in accordance with the requisition referred to in sub-section (1), the Registrar or any person authorized by him in this behalf shall have the power to call meeting and that meeting shall be deemed to be meeting called by the committee.

**29. Election and nomination of members of Committee:-**

1. The members of the Committee of a Co-operative Society shall be elected in such manner as may be prescribed and no person shall be elected unless he is a share holder of the society.
2. The term of office of the committee shall be three years.
3. Each committee shall within 90 days before expiry of its term, make arrangements for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws made thereunder.
4. Where any Committee has ceased to hold office and no Committee has been constituted in accordance with the provisions of this Act and rules and bye-laws made thereunder, the Registrar, may, by an order in writing, appoint an Administrator for such period as may, from time to time, be specified in the order and the Administrator shall before the expiry of the period of his appointment, arrange for the constitution of a new Committee in accordance with the provisions of this Act and rules and bye-laws made thereunder:

5. Notwithstanding anything contained in this section where the bye-laws of the society so provide the first committee may be nominated by the authority mentioned in those bye-laws.
6. Where the Government have subscribed to the share capital of a Co-operative Society or has guaranteed the repayment of the Principal and the payment of interest on debentures issued for loans raised by a Co-operative Society, the Government or any person authorized by it in this behalf shall have the right to nominate on the Committee such number of persons not exceeding three or one third of the total number of members thereof, whichever is less, as the Government may determine:

Provided that in addition to members so appointed two seats shall be reserved for members belonging to Scheduled Castes and other Back ward Classes and one seat shall be reserved for women, which shall be filled by the Government in such manner as may be prescribed.

7. In the case of societies which give loans for purchase of machinery, implements, equipments, commodities or other goods, no member, whose near relation is a dealer in such goods or is a Director of the Company or a partner of a firm carrying on business in such goods, shall be eligible for being elected or appointed as a member of the Committee of such society.

30. Supersession/removal of Committee:-

- 1) If in the opinion of the registrar, a Committee or Board, by whatever name called, of a Co-operative Society is persistently making a fault or is negligent in the performance of the duties imposed on it by this Act or the Rules or the Bye-laws made thereunder or has committed any act which is prejudicial to the interests of the Society or its members, or has committed or fail to comply with any direction given to it by the Govt. or by the Registrar for the purpose of securing proper implementation of Cooperative production and other development programmes or that, there is a stalemate in the constitution or functioning of the Committee or the Board, the Registrar, may, after giving the Committee or Board as the case may be an opportunity to state its objections, if any, within 7 days and after considering the objections, if received by order in writing remove the Committee or the Board and appoint one or more Administrators to manage the affairs of the Society for a period not exceeding six months within which period the elections shall be held for the reconstitution of the Committee or the Board.
- 2) The Registrar may fix such remuneration for the Administrators, as he may think fit and the remuneration shall be paid out of the funds of the Cooperative Society.
- 3) The Administrator shall, subject to the control of the Registrar and to such instructions, as he may, from time to time give, have power to perform all or any of the functions of the Committee or the Board or of any officer of the Co-operative Society and take all such actions as may be required in the interests of the society.
- 4) Save as otherwise provided in sub-section (5), the Administrator shall, before the expiry of his term of office, arrange for the constitution of a new Committee or Board as the case may be in accordance with the bye-laws of the Co-operative Society.
- 5) Where the Administrator is appointed under sub-section (1), the Registrar may, by order in writing giving reasons therefor, direct the Administrator to arrange for the constitution of a new Committee or Board for such Co-operative Society in accordance with the bye-laws of such Society and immediately on the constitution of such Committee or the Board, the Administrator shall hand over the management of such society to such newly constituted committee of the Board and shall cease to function.

- 6) Before taking action under sub-section (1), the Registrar shall consult the Federal Society concerned.
- 7) Notwithstanding anything contained in this Act, the registrar shall in case of Co-operative bank, if so required in writing by the Reserve Bank or National bank for Agriculture and Rural Development in the public interest or for preventing the affairs of the Co-operative bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of a Co-operative bank, pass an order for the supersession of the Committee or the Board of that Co-operative bank and for the appointment of an Administrator for such period or periods not exceeding one year in the aggregate as may, from time to time, be specified by the Reserve Bank or National Bank for Agriculture and Rural Development.

31. Securing possession of records, etc:-

1. If the Committee or the Board, as the case may be, of Co-operative Society is reconstituted at a general meeting of the Society or the Committee or the Board of a Co-operative Society is removed by the Registrar under section 30 or if the society is ordered to be wound up under section 74 and the outgoing members of the Committee or the Board refuse to handover charge of the records and property of the society to the new committee or Board or to the Administrators or the liquidators, as the case may be, the new committee or Board or the Administrators or the liquidators may apply to the Executive Magistrate, within whose jurisdiction the society functions, for securing the records and property of the society.
2. If the custodian of records and the property, movable and immovable, of the society refuses to handover the records or property of the society to the newly constituted committee, Administrators or liquidators or refuses to produce such records or property before an officer or official of the Co-operative Department conducting enquiry, audit, inspections under the provisions of this Act, such as the case may be, may apply to the Executive Magistrate within whose jurisdiction the society falls for securing the possession of records and property of the society.

Explanation:-

For the purposes of this section, Accountant, paid Secretary and Storekeeper, Cashier and salesman, shall be deemed to be the custodian of records, stocks and property respectively.

3. The officer or official conducting enquiry, inspection or audit shall not remove the records from the headquarter of the society. However,, the authorities deciding disputes, appeals, revision or review can call for such records and these records shall be produced before such authorities on a written requisition made by them.
4. On receipt of an application under sub-section 1), the executive Magistrate may by a warrant authorize any Police Officer, not below the rank of Inspector to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and property so seized shall be handed over to the newly constituted committee, Board or Administrators of the society or the liquidator, officer or officials, as the case may be.
5. Where the Registrar or any other officer of the Department not below the rank of the Deputy Registrar is satisfied that the books and records of the society are likely to be suppressed or destroyed, or the funds and property of the society are misappropriated, or misapplied or likely to be misappropriated or misapplied, the Registrar or any other person not below the rank of Deputy Registrar may apply to

Executive Magistrate 1st class within whose jurisdiction the society is functioning for seizing and taking possession of records and property of the society.

6. On the receipt of an application under sub-section ( 5), the executive Magistrate 1st Class may authorize any police officer, not below the rank of Inspector to enter and search any place where the records and property are kept or likely to be kept, and to seize them and hand over the possession thereof to the registrar or any other person empowered under sub-section (5) as the case may be.
32. Acts of Co-operative Societies not to invalidate by certain defects:-

No act, of a Co-operative society or any committee or Board or of any officer shall be deemed to be invalid by reason only of the existence of any defect in the constitution of such society, committee or Board or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment.

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## CHAPTER V.

### PRIVILEGES OF COOPERATIVE SOCIETIES

33. Co-operative Societies to be bodies corporate:-
  - 1) The final registration of a Co-operative Society shall rendered it is body corporate by the name under which it is registered, having perpetual succession and a common seal with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it was constituted.
  - 2) Notwithstanding anything contained in sub-section (1), no person being a member of a Co-operative Society shall by reason only of such membership acquire or hold property if such person is under any law for the time being in-force, ineligible for acquiring or holding property in the state.
34. First charge of Co-operative Society on certain assets:-
  - 1) Notwithstanding anything contained in any 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 arrears of land revenue and subject to the provisions of the Tenancy Act, Samvat 1980 any debt or any outstanding demand owing to a Cooperative Society by any member or past member or deceased member, shall be first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw material for manufacture and any finished products manufactured from such raw materials, belonging to such

member, past member or forming part of estate of the deceased member, as the case may be.

- 2) No person shall transfer any property which is subject to a charge under sub-section 1 except with the previous permission in writing of the Cooperative Society which hold the charge.
  - 3) 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 interests in the immovable property of the Society. No member or past member or a heir of a deceased member shall transfer any property or his interest in the immovable property of the Society which is subject to a charge except with the previous permission in writing of the Cooperative Society which holds the charge.
  - 4) Notwithstanding anything contained in any law for the time being in force, any transfer of property made in contravention of the provisions of sub-section (2) and (3) shall be void.
35. Declaration for creating charge:-

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

- 1) a member who makes an application for a loan to a registered society of which the majority are Agriculturists shall, if he owns land, or other immovable property, make a declaration in the form prescribe, if any, that he thereby creates a charge upon such land or other immovable property or such portion thereof as may be specified in the declaration in respect of the loan which the society may make to a member on the application and future loans, if any, that may be made to him from time to time, by the society together with interest on such loan or loans:

Provided that it shall be lawful for a member to create subsequent charges in favour of the Agricultural and Rural Development Bank, Jammu and Kashmir Bank, the State Govt. or a bank contained in Schedule II of the Reserve bank of India Act, 1934, subject to the provisions of section 140 of the Transfer of Property Act, Samvat 1977.

- ii. a declaration made under clause (i) may be varied or cancelled at any time by the member with the previous written permission of the society in favour of which such charge has been created:
- iii. no land or other immovable property in respect of which a declaration has been made under clause (I) or any part of such land or other immovable property or any interest in such land or other immovable property shall be sold until the entire amount of the loan or loans taken by the member from the society together with interest thereon is paid to



society and any transaction made in contravention of this clause shall be null and void;

- iv. the declaration made under clause (i) or any variation or cancellation thereof under clause (ii) shall be sent by registered post by the society to the Sub-Registrar having jurisdiction over the area in which the land or other immovable property is situated;
- v. the declaration made under clause (I) for any variation or cancellation thereof under clause (ii), shall be duly registered by the society in its own records;
- vi. any declaration made under clause (I) or any variation or cancellation thereof under clause (ii) which has not been registered shall be null and void;
- vii. the society granting loans under this section shall forward a copy of the particulars of every charge on land or interest created under a declaration under clause (I) or clause (ii) to Tehsildar concerned for being entered in the revenue records;
- viii. where the committee of a Co-operative Society fails or is found negligent in getting the charge created in revenue records as laid down under clause (vii), it shall be liable for action under section 77 for not securing the loans advanced to members.

36. Charge and set off in respect of shares or interest of members in the capital of a Co-operative Society:-

A Cooperative Societies shall have a charge upon the share, contribution or interest in the capital and on the deposits of the member or past member or deceased member and upon any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in respect of any debt due from such member to the society, and may set off any sum credited or payable to a member or past member or the estate of deceased member towards payment of any such debt.

37. Shares of interest not liable to attachment:-

Subject to the provisions of section 42 the share or contribution or interest of a member or past member or deceased member in the capital of a Co-operative society shall not be liable to attachment or sale under any decree or order of any court in respect of any debt or liability incurred by such member and receiver under any law relating to insolvency shall not be entitled to or have any claim on such share, contribution or interest.

38. Register of members:-

Any register or list of members or shares kept by any Co-operative Society shall be prima facie evidence of any of the following entered therein:

- a) the date on which the name of any person ceased to be a member.

- b) The date on which any such person ceased to be a member.

39. Proof of entries in Co-operative Society's books:-

- 1) A copy of any entry in book of a Co-operative Society regularly kept in the course of its business, shall, if certified in such manner as may be prescribed, be received in any suit or legal proceeding as prima facie evidence, of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in the same manner and to the same extent as the original entry itself is admissible.
- 2) A Co-operative Society may grant copies of any document obtained and kept by it in the course of its business, or of any entries in such document; and any copy so granted shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.
- 3) No Officer of a Co-operative Society and no officer in whose office the books of a Co-operative Society are deposited after liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce, any of the society's books or documents the contents of which can be proved under this section, documents the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and account therein recorded, except under order of the Government, Court, Tribunal or the arbitrator for the special cause.

40. Exemption from compulsory registration of instruments:-

Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Jammu and Kashmir Registration Act, Samvat 1977 shall apply to-

- a) any instrument relating to shares in a Co-operative Society, notwithstanding that the assets of society consist in whole or in part of immovable property; or
- b) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holder of such debentures; or
- c) any endorsement upon or transfer of any debentures issued by any such society.

41. Exemption from certain taxes, fee and duties:-

- (1) The Government may, by notification, remit in respect of any class of Co-operative Societies-
  - (a) the stamp duty chargeable under any law for the time being in force in respect of any instruments, executed by or on behalf of a Co-operative Society or by an

officer or member thereof and relating to be business of such society, or any class of such instruments or in respect of any award or order made under this Act, in case, where, but for such remission the Co-operative Society, officer or member, as the case may be, would be liable to pay such stamp duty

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

2. The Government may, by notification, exempt any class of Co-operative Societies from-

- a. land Revenue;
- b. taxes on agricultural income;
- c. taxes on sale or purchase of goods;
- d. taxes on profession, trades, callings and employments, and
- e. toll taxes on transportation of chemical fertilizers and foodgrains.

42. Deduction from salary to meet society's claim in certain cases:-

- 1) Notwithstanding anything contained in any law for the time being in force a member of a Co-operative 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 owing by the member to the society.
- 2) On the execution of such an agreement the employer shall, if so required by the society by a requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amount so deducted to the society, within fourteen days from the date of deduction.
- 3) If after the receipt of the requisition made under sub-section (2) the employer fails to deduct the amount specified in requisition from the salary or wages payable to the member concerned or make a default in remitting the amount deducted to the society, such amount shall be recovered from the employer as arrears of land revenue.

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## CHAPTER VI.

### **GOVERNMENT AID TO COOPERATIVE SOCIETIES**

43. Direct partnership of Government in Co-operative Societies:-

- 1. The Government may subscribe directly to the share capital of Co-operative Society with limited liability.

2. Notwithstanding any agreement to the contrary, the Government shall not be entitled to a dividend on the share of any such Co-operative Society at a rate higher than that at which such dividend is payable to any other share holder of the society.

44. Indirect partnership of Government in Co-operative Societies:-

The Government may subject to appropriate bye-laws, provided money to a Co-operative Society (hereinafter in this chapter referred to as apex society) for the purchase of share in other Co-operative Societies with limited liability.

45. Principal Government partnership Fund:-

- 1) An apex society which is provided with money by the Government under section 44 shall, with such moneys, establish a fund to be called the “principal Government partnership Fund.”
- 2) An apex society shall utilize the ‘Principal Government Partnership Fund’ for the purpose of-
  - a) directly purchasing shares in other Co-operative Societies with limited liability;
  - b) providing money to a Co-operative Society (hereinafter in this chapter referred to as central society) to enable that society to purchase shares in other Co-operative Societies with limited liability ( hereinafter in this chapter referred to as primary societies);
  - c) making payment to the Government in accordance with the provisions of this Chapter; and for no other purpose.

46. Subsidiary Government partnership Fund:-

1. A Central society which is provided with money by an apex society from the “principal Government partnership Fund’ shall with such money establish a fund to be called the ‘Subsidiary Government partnership Fund’ for the purpose of-
2. A central society shall utilize the ‘Subsidiary Government Partnership Fund.’
  - a) purchasing shares in primary societies;
  - b) making payment to the apex society in accordance with the provisions of this Chapter; and for no other purpose.

47. Approval of Government of purchase of shares:-

No shares shall be purchased in a Co-operative Society from the money in the ‘ Principal Government Partnership Fund’ or the ‘Subsidiary Government Partnership Fund’ except with the previous approval in writing of the Government.

48. Liability to be limited in respect of certain shares:-

- a. the Government ; or
- b. an apex society or a central society from the ‘principal Government partnership Fund’ as the case may be;  
the liability in respect of such shares shall, in the event of the Co-operative society being wound up, be limited to the amount paid in respect of such shares.

49. Restriction on amount of dividend:-

An apex society which has purchased shares in other Co-operative Societies from the money in the 'Principal Government partnership Fund' and central society which has purchased shares in primary societies from the money in the 'subsidiary Government Partnership Fund' shall be entitled only to such dividend on the said shares as is declared by the society concerned and is payable to other share holders of that society.

50. Indemnity of apex and central societies:-

- 1) If a Co-operative Society in which shares are purchased from the "principal Government Partnership Fund" is wound up, or is dissolved, the Government shall not have any claim against the apex society which purchased the shares in respect of any loss arising from such purchase, but the Government shall be entitled to any money received by the apex society in liquidation proceedings or on dissolution as the case may be.
- 2) If a Co-operative Society in which shares are purchased from the "Subsidiary Government partnership Fund" is wound up or is dissolved, neither, the Government nor the apex society shall have any claim against the Central society which purchased the shares in respect of any loss arising from such purchases, but the apex society shall be entitled to any money received by the Central society in liquidation proceedings or on dissolution, as the case may be and such money shall be credited to the 'Principal Government partnership Fund.'

51. Disposal of share capital and dividend etc:-

1. All money received by an apex society in respect of shares of other Co-operative Societies purchased from the money on in the 'Principal Government Partnership Fund' on redemption of such shares or by way of dividends or otherwise, shall be credited to that fund.
2. All moneys received by the central society in respect of shares of primary societies purchased from the money in the 'Subsidiary Government partnership Fund ' on redemption of such shares or by way of dividends or otherwise, shall in the first instance be credited to that fund and then transferred to the apex society which shall credit them to the "principal Government Partnership Fund."
3. All moneys and dividends referred to in sub-section (1) and sub-section (2) shall notwithstanding that the shares stand in the name of the apex society or the Central society, as the case may be, be paid to the Government.
4. Save as provided in sub-section (3) the Government shall not be entitled to any other return on the money provided by it to the apex society under section 44.

52. Disposal of Principal Government Partnership Fund and Subsidiary Government Partnership Fund on winding up of an apex or a Central society:-

- 1) If a apex society which has established a 'principal Government Partnership Fund' is wound up or is dissolved, all moneys to the credit of, or payable to, that fund shall be paid to the Government.
- 2) If a Central society which has established 'Subsidiary Government Partnership Fund' is wound up or is dissolved all money to the credit of or payable to that fund shall be paid and credited to the " Principal Government Partnership Fund" from which it received money under clause (b) of sub-section (2) of section 45.

53. Principal Government Partnership Fund and Subsidiary partnership Fund not to form part of assets:-

Any amount to the credit of 'Principal Government Partnership Fund' or a 'Subsidiary Government partnership Fund' shall not form part of the assets of the apex society or the central society, as the case may be.

54. Agreement by Government and apex societies subject to the foregoing provisions of this chapter:-

- a. The Govt. may enter into an agreement with the Apex Society setting out the terms and conditions on which it shall provide money to the apex society for the purpose specified in section 44;
- b. The apex society may, with the previous approval of the Government enter into an agreement with a central society setting out the terms and conditions on which it shall provide money to that society from the principal Government partnership Fund" for the purpose specified in clause (b) of sub-section (2) of section 45.

55. Other forms of Government aid to Co-operative Societies;

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

- a) give loans or make advances to Co-operative Societies.
- b) Guarantee the repayment of principal and payment of interest on debentures issued by a Co-operative Society;
- c) Guarantee the repayment of share capital of Co-operative Society and dividends thereon at such rates as may be specified by the Government;
- d) Guarantee the repayment of principal and payment of interest on loans and advances to a Co-operative Society; and
- e) Give financial assistance in any other form including subsidies, to any Co-operative Society.

56. Provisions of this chapter to over ride other laws:-

The provisions of section 43 to 55 of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

## CHAPTER VII.

### PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES.

57. Fund not to be divided:-

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

Provided that a member may be paid remuneration on such scale as may be prescribed for any service rendered by him to the Co-operative Society as secretary or as Clerk.

58. Procedure for calculation of profits:-

A Society earning profit shall calculate the net profits by deducting from a 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 profits. A society may, however, add to the net profits for the year interest accrued in the preceding year, but actually recovered during the year. The net profit thus arrived at, together with the amount of profits brought forward from the previous year, shall be available for appropriation.

59. Disposal of net profits:-

- 1) A Co-operative Society shall, out of its net profits duly certified in audit in any year, transfer an amount not being less than twenty five per cent of the profits to the reserve fund.
- 2) The balance of the net profits may be utilized for all or any of the following purposes, namely:-
  - a) payment of dividend to members of their paid up share capital at a rate not exceeding the prescribed limit;
  - b) payment of bonus to members on the amount or volume of business done by them with the society, to the extent and in the manner specified in the bye-laws;
  - c) constitution of, or contribution to such special fund as may be specified in the bye-laws;
  - d) donations of amounts not exceeding ten per cent of the net profits for any charitable purposes;
  - e) payment of bonus to employees of the society, to the extent and in the manner specified in the bye-laws.

Explanation:-

Charitable purpose includes relief to the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

- 3) A Co-operative Society which pays dividend to its members at the rate of four per cent or more shall contribute at such rate as may be prescribed towards the education fund of the Jammu and Kashmir Co-operative union to be utilized in such manner as may be prescribed.

**60. Investment of funds:-**

A Co-operative Society may invest or deposit its funds:-

- a) in Government saving bank; or
- b) in any of the securities specified in section 20 of the Trust Act, Samvat 1977; or
- c) in the shares or securities of any other Co-operative Society; or
- d) with any bank or person carrying on the business of banking approved for this purpose by the registrar; or
- e) in any other mode permitted by the rules.

**61. Restriction of loans:-**

- 1) A Co-operative Society shall not make a loan to any person other than a member:

Provided that, with the general or special sanction of the Registrar a Co-operative Society may make loans to other Co-operative Society.

- 2) Notwithstanding anything contained in sub-section (1) a Co-operative Society may make loans to a depositor in the security of the deposits.

**62. Restriction on borrowings:-**

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

**63. Restrictions on other transactions with non-member:-**

Save as is provided in sections 61 and 62 the transactions of a Co-operative Society with persons other than members shall be subject to restrictions any, as may be prescribed.

**CHAPTER VIII.**

**Audit Enquiry, Inspection and Surcharge**

**64. Audit**



- 1) The Registrar shall audit or cause to be audited by a person authorised by him by general or special order in writing in this behalf, the accounts of every Co-operative Society at least once in each year.
- 2) The audit under sub-section (1) shall include an examination of over due debts. If any, the verification of cash balance and securities valuation of the assets and liabilities of the society.
- 3) The Registrar or the authorised person shall at all times have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, papers, securities, cash or other properties, to produce the same at any place at the headquarters of the society or any branch thereof.
- 4) Every person who is, or has at any time been, an officer or employee of the society and every member and past member of the society shall furnish such information in regard to the transaction and working of the society as the Registrar or the person authorised by him may require.

Explanation:-

For purposes of this section:-

- 1) 'Audit' shall mean annual audit of accounts of a Co-operative Society for each Co-operative year and shall include Recurring Audit and Re-audit.
  - 2) Recurring audit shall mean audit of accounts of a Co-operative Society within a Co-operative year on monthly or quarterly basis as the Registrar may decide.
  - 3) 'Re-audit' shall mean audit of the accounts of a Co-operative Society for checking up the quality or standard of any previous audit. A Co-operative Society shall pay for every audit recurring audit or re-audit such audit fee in such manner as may be prescribed.
65. Communication of defects in audit to Co-operative Society:-
- 1) If the result of the audit held under section 64 discloses any defects in the working of a Co-operative society, the Registrar may bring such defect to the notice of the society and if the society is affiliated to another Co-operative Society also to the notice of that other society.
  - 2) A Co-operative Society shall rectify the defects pointed out in the audit report and submit to the Registrar a report of compliance within 45 days from the date of receipt of the audit report from the Registrar.
  - 3) Where the registrar is of the opinion that the defects pointed out in the audit report have not been fully rectified by the Co-operative Society, he may direct the Co-operative Society to rectify defects still persisting in the accounts and to submit a further report of compliance with explanation within 45 days from the date of receipt of such direction, and the Co-operative Society shall rectify such defects and submit a further report of compliance accordingly.
66. Inspection of books of a Co-operative Society:-

- 1) The Registrar may of his own motion and shall on the application of a creditor of a Co-operative Society, inspect or direct any person authorized by him by order in writing to inspect the books of the society and the Registrar or the person so authorised shall have all the powers of the Registrar when holding an inquiry/inspection under section 67:

provided that no such inspection shall be made on an application of a credit or under sub-section (1) unless the creditor-

- a) satisfies the Registrar that the debt or deposit is a sum then due and that he has demanded payment or return thereof and has received satisfaction within a reasonable time; and
- b) deposits with the Registrar such sum as security for the cost of the proposed inspection as the Registrar may require.

- 2) The Registrar shall communicate the result of any such inspections:-

- a) where the inspection is made of his own motion to the society and
- b) where the inspection is made on the application of a creditor, to creditors including the Financing Bank, to which the society is undebted and the society.

- 3) A Financing bank may cause the books of a Co-operative Society affiliated to it to be inspected by an officer as such Bank or by a member of its paid staff, authorised by the Registrar, by order in writing in this behalf. The officer or member so inspecting shall at all reasonable times have free access to books, accounts, documents securities, cash and other properties belonging to, or in the custody of, the society and may also call for such information, statements and returns as may be necessary to ascertain the financial condition of the society.

#### 67. inquiry by Registrar:-

1. The Registrar may of his own motion and shall on the application of a majority of the committee or of not less than one third of the members hold an inquiry, or direct some person authorized by him by order in writing in this behalf to hold inquiry into the constitution working and financial condition of a Co-operative Society.
2. The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely:-
  - a. he shall at all reasonable times, have free access to the books, documents, securities cash and other properties belonging to or in the custody of the society and may summon any person possession or responsible for the custody of any such book accounts, documents, securities, cash or other properties to produce the same at any place, at the headquarters of the society or any branch thereof;
  - b. he may summon any person who he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place, at the

headquarter of the society or any branch thereof and may examine such person on oath; and

- c) i) he may, notwithstanding any rule or bye-law prescribing the period of notice for a general meeting of the society require the officers of the society to call a general meeting at such time and place at the headquarter of the society or any branch thereof and to determine such matters as may be directed by him. If the officers of the society refuse or fail to call such a meeting he shall have power to call it himself:
- ii) any meeting called under sub-clause (I) shall have all the powers of the general meeting called under the Bye-Laws of the Society and its proceedings shall be regulated by such Bye-Laws:
- iii) The Registrar shall communicate the result of any such inquiry where the inquiry is held of his own motion or on the application of the majority of the committee or of not less than  $\frac{1}{3}$  of the members, to the Society and to the financing bank, if any, to which the Society is indebted.

68. Costs of inquiry:-

- (1) Where an inquiry is held under section 67 or an inspection is made under section 66, the Registrar may apportion the cost of such part of costs as he may deem fit between the Cooperative Society to which the Cooperative Society concerned is affiliated, the Society, the members or creditors demanding an inquiry or inspection and the officers or former officers of the Society:

Provided that:-

- (a) No order of apportionment of the costs shall be made under this section unless the Society or the person sought to be made liable to pay the costs thereunder, has had a reasonable opportunity of being heard:
  - (b) The Registrar shall state in writing the grounds in which the costs are apportioned
- (2) Any such award by way of costs under this section may be recovered on an application to a Magistrate having jurisdiction, where the person from whom the money is claimable actually and voluntarily reside or carries on business, and such Magistrate shall recover the same as if it were a fine imposed by himself.

69. Surcharge :-

- 1) If in the course of an audit, enquiry, inspection or the winding up of a Cooperative Society, it is found that any person, who is or was entrusted with the organization or management of such society, or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of

the society by breach of trust or wilfull negligence or misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself for direct any person authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person.

- 2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, make an order requiring him to repay or restore the money or pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable.

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## SETTLEMENT OF DISPUTES

70. Dispute which may be referred to arbitration:-

1. Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a Co-operative Society arises-
  - a. among members, past members and persons claiming through a member, past member or deceased member, and sureties of members, past members or deceased members whether such sureties are members or non-member; or
  - b. between any member, past members or persons claiming through a member, past members or deceased member, or sureties of members, past members or deceased members and the society, its committee or any officer, agent or employee of the society; or
  - c. between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representative of any deceased officer, deceased agent or deceased employee or the society; or
  - d. between the society and any other Co-operative Society.Such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such disputes.
2. For the purposes of sub-section (1) the following shall be deemed be dispute touching the constitution, management or the business of a Co-operative society, namely:-

- a. a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of deceased member, whether such debt or demand be admitted or not;
  - b. a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result the default of the principal debtor whether such debt or demand is admitted or not;
  - c. any dispute arising in connection with the election of any office of the society;
  - d. the question whether a person is or was member of a Cooperative society or not
3. If any question whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a Co-operative Society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.
71. Recovery of money by Financing Bank:-
- 1) If a society is unable to pay its debts to a Financing Bank by reason of its members committing default in the payment of the money due to them, the Financing bank may direct the committee of such society to proceed against such members under section 70 and if the committee fails to do so within a period of 60 days from the date of receipt of such directions, the Financing Bank itself may proceed against such members under section 70 in which case the provisions of this Act, the rules or the bye-laws shall apply as if all references to the society or its committee in the said provisions were references to the Financing Bank.
  - 2) Where a Financing bank has obtained a decree or award against a society in respect of moneys due to it from the society, the financing Bank may proceed to recover such money, firstly from the assets of the society and secondly from the members, to the extent of their debts due to the society.
72. Reference of disputes to the authorities or arbitration:-
- 1) Disputes mentioned in sections 70 and 71 of the Act may be referred to the following authorities for adjudication-
    - i) Deputy Registrar Co-operative Societies for a sum of money not exceeding Rs. 50,000/-. However this will not apply in case of Deputy Registrar Special who will continue to utilize powers regarding the cases of embezzlement, misappropriation to be referred to him;
    - ii) Joint Registrar/Additional Registrar Co-operative Societies for a sum exceeding Rs.50,000/-
  - 2) The authority mentioned in clause (I) of sub-section ( 1) or any other persons to whom dispute is referred under clause ( ii) or sunb-section (1) for adjudication

may, pending the decisions of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

- 3) Where a dispute is referred to an authority specified under clause ( i or (ii) of sub-section (1) such authority shall decide the dispute within six months from the date of receipt thereof.
- 4) If the authority or the person or the arbitrator fails to decide a dispute within the period specified in sub-section (2), he shall submit a report to Registrar stating reasons for such failure at least 15 days before the expiry of the said period and the Registrar shall allow further time not exceeding six months or disposal of the case.

(5) where a dispute involve property pledged as collateral security the person deciding the dispute may make an award which shall have the same force and effect as the decree of a civil court.

73. Recovery of sums advanced:-

1. Notwithstanding anything contained in sections 70 and 71 on an application made by a society 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 inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

2. An application under section (1) may also be made to the Registrar by the Financing bank against any member of the borrowing society.

3. Where the registrar is satisfied that a society has failed to take action under the foregoing sub-section 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, on his own motion after making such inquiries 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 on an application made by the society concerned.

4. A certificate granted by the Registrar under sub-section (1) or ( 3 ) shall be final and conclusive proof of the arrears to be due therein, and the same shall be recoverable according to the law for the time being in force for the recovery of the Land Revenue.

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CHAPTER X.

WINDING UP AND DISSOLUTION OF CO-OPERATIVE SOCIETY.

74. Winding up of Co-operative Societies:-

- 1) If the Registrar, after enquiry has been held under section 67 or an inspection has been made under section 66 or on receipt of an application made by not less than three fourth of the members of a Co-operative Society, is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up. Before issuing such an order the Registrar shall consult the concerned federal society.
- 2) The Registrar may of his own motion make an order directing the winding up of a Co-operative society-
  - a) Where it is a condition of the registration of the society that the society shall consist of at least one hundred members in respect of primary Agricultural Societies and number of members has been reduced to less than one hundred or fifty, as the case may be;
  - b) Where the Co-operative society has not commenced working has ceased to work.
- 3) The Registrar may cancel an order for the winding up of a Co-operative society at any time, in any case, wherein his opinion, the society should continue to exist.
- 4) Notwithstanding anything contained in sub-sections (1), (2) and (3), no Co-operative Bank shall be wound up except with the previous sanction in writing of the NABARD or Reserve bank of India.
- 5) Notwithstanding anything to the contrary contained in this Act the Registrar shall make an order for the winding up of a Co-operative Bank, if so required by the NABARD or Reserve bank of India in the circumstances mentioned in section 13-D of the Deposit Insurance Corporation Act 1961.
- 6) Where a Cooperative Bank, being an insured bank within the meaning of the Deposit Insurance Corporation Act 1961 is wound up or is taken into liquidation and the deposit Insurance Corporation has become liable to pay to the depositors of the insured Bank under sub-section 1 of section 66 of that Act, the Deposit Insurance Corporation shall be reimbursed in the circumstances top the extent and in the manner provided in section 21 of the Deposit Insurance Corporation act 1961.

75. Liquidator:-

1. Where the Registrar has made an order under section 74 for the winding up of a Cooperative Society, he may appoint a Liquidator for the purpose and fix such remuneration as may be prescribed .
2. A Liquidator shall on appointment, take into his custody and under his control all the property, effects, and actionable claim to which the Society is or appear to be entitled and shall take such steps as he may deem necessary or expedient, to prevent loss or deterioration of, or damage to, such property effects and claims.
3. Where an appeal is preferred under Section 158 an order of winding up of a Cooperative Society made under section 74 shall not operate, thereafter, until the order is confirmed in appeal:

Provided that the Liquidator shall continue to have custody and control of the property, effects and actionable claims mentioned in sub-section (2) and have authority to take the steps referred to in that sub-section.

4. Where an order of winding up of a Cooperative Society is set aside in appeal, the property, effects and actionable claim of the Society shall revert in the Society.
5. The Liquidator shall finalize the liquidation proceedings within a period of six months in case of primary society from the date of his taking over as Liquidator and 1 year in case of other Societies. In case the Liquidator fails to complete the liquidation proceedings within the stipulated period, he shall make a report to the appointing authority, explaining the reasons for non-finalization of liquidation proceedings within the stipulated period, he shall make a report to the appointing authority, explaining the reasons for non-finalization of liquidation proceedings and if the appointing authority is satisfied, it may extend the period by one year more in each case.

76. Powers of liquidator:-

- 1) Subject to any rules made in this behalf, the whole of the assets of a Co-operative Society in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 75 from the date on which the order takes effect and the liquidator shall have power to realize such assets by sale or otherwise.
- 2) Such Liquidator shall also have power, subject to the control of the Registrar-
  - a. to institute and defend suits and legal proceedings on behalf of the Cooperative Society by name of his office;
  - b. to determine from time to time the contribution (including debts due) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officer, to the assets of the society;
  - c. to investigate all claims against the Co-operative society and subject to the provisions of this Act, to decide questions of priority arising between claimants;
  - d. to pay claims against the co-operative society including interest up to the date of winding up according to their respective priorities, if any, in full or rateably, as the assets of the society may permit; the surplus, if any, in payment of interest from the date of such order of winding up at the rate fixed by him but not exceeding the contract rate in any case ;
  - e. to determine by what persons and in what proportions the costs of liquidation are to be borne;
  - f. to determine whether any person is a member, past member or nominee of deceased member;
  - g. to give such directions in regard to the collection and distribution of the assets of the Society as may appear to him to be necessary for winding up the affairs of the Society;



- h. to carry on the business of the Society so far as may be necessary for the beneficial winding up of the same:
  - i. with the previous approval of the Registrar to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the Society may be rendered liable; and
  - j. with the previous approval of the Registrar to compromise all calls or liabilities to call 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 liabilities to the Cooperative 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.
4. When the affairs of a Cooperative Society have been wound up, the Liquidator shall make a report to the Registrar and deposit the records of the Society in such place as the Registrar may direct.

77. Cancellation of registration of a cooperative Society  
 Where in respect of a cooperative Society which has been ordered to be wound up under section 74 no Liquidator has been appointed under section 75 after two months from the date of such order, or if an appeal has been filed from the date of confirmation of the order in appeal or where the affairs of a Cooperative Society in respect of which a Liquidator has been appointed under section 75 have been wound up, the Registrar shall make an order canceling the registration of the Society and the Society shall be deemed to have dissolved and shall cease to exist as a Corporate body from the date of such order of cancellation.

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## CHAPTER XI

### AGRICULTURE AND RURAL DEVELOPMENT BANK

#### CHAPTER XI

#### AGRICULTURAL AND RURAL DEVELOPMENT BANK

##### **Definitions; - In this Chapter;-**

- a. ***'Board'*** means the Board of Directors of Jammu and Kashmir State Co-operative Agricultural and Rural Development Bank.
- b. ***'Agricultural and Rural Development Bank'*** means Co-operative Agriculture and Rural Development Bank registered or deemed to be registered under this Act and admitted as a member of the state Agriculture and Rural Development Bank;
- c. ***'State Agriculture and Rural Development Bank'*** means the Jammu and Kashmir State Co-operative Agriculture and Rural Development Bank;
- d. ***'Trustee'*** means the Trustee referred to in section 81.

79.State and Other Agriculture and Rural Development Banks:-

1. There shall be a State Agriculture and Rural Development Bank for the State and as many Primary Agriculture and Rural Development Banks, as may be deemed necessary.
1. A reference to the Land Development Bank or Land Development Banks in any law, or instrument, for the time being a force, shall with effect from the commencement of this Act be construed as a reference to the State Agriculture and Rural Development Bank or Agriculture and Rural Development Bank respectively within the meaning of this chapter and until such time as the names of the State Land Development Bank and Land Development Bank are changed into State Agriculture and Rural Development Bank and Agriculture and Rural Development respectively, all acts done or mortgages and other documents executed by them, or in their favour and all suits and other proceedings filed, by or against them shall be deemed to have been done, executed or filed, as the case may be, by or against them as State Agriculture and Rural Development Bank or Agriculture and Rural Development Bank.

80. Powers of Agriculture and Rural Development Bank to advance loans and to hold lands:-

Subject to the provisions of this Act and the rules made thereunder, it shall be competent for the Agriculture and Rural Development Bank and the primary banks when authorized in this behalf by the Board to advance loans for the following purpose, namely:-

a. land improvement and productive purposes;

Explanation:-

Land improvement and productive purposes, mean any work construction or activity which adds to the productivity of the land and in particular, includes the following-

- i. construction and repair of wells ( surface wells, dug cu-bore wells, tube-wells and filter points) tanks and other works or the exploitation of surface and ground water and storage supply or distribution of water for the purpose of agriculture, or for the use of cattle employed in agriculture for all types of irrigation.
- ii. renewal or construction of any of the foregoing works, or alterations therein or additions thereto;
- iii. preparation of land for irrigation;
- iv. drains, declamation from rivers or other water, or protection from floods or from erosion or other damage by water, of land used for agricultural purpose or waste land which is cultivable;
- v. bunding, leveling, terracing and similar improvements;
- vi. reclamation, clearance and enclosure or permanent improvements of land for agriculture purposes;
- vii. horticulture and plantations including forest plantations;
- viii. purchase of oil engines, pumping sets and electric motors for any of the purposes mentioned herein;
- ix. purchase of draught animals and horse carts and other carts;
- x. purchase of tractors and other agricultural machinery;

- xi. increase of the productive capacity of land by addition to it of special variety of soil;
- xii. construction or repair of permanent farm houses, and farm cold storages, cattle sheds and sheds for processing of agricultural produce at any stage;
- xiii. construction of stone fence, barbed wire fence or any other kind of fence for protection of land including earthen wall;
- xiv. purchase of land for consolidation of holdings;
- xv. such other purposes as the Government may specify, from time to time, as land improvement and productive purposes for the purpose of this chapter by a special or general order;
  - b. development of dairy, poultry, sheep goat and other livestock and inland and marine fisheries;
  - c. procurement of fishery requisites like fishing boats mechanized or non-mechanized, fishing nets, ropes and marine point;
  - d. production of animal and poultry feed;
  - e. procurement and installation of equipments and machinery for processing, marketing and transportation of agricultural or horticultural products including products of animal origin like milk, meat, fish, eggs, and manure and construction of buildings for any such purpose;
  - f. installation of gobar gas plants;
  - g. redemption of prior debts;
  - h. payment of purchase price by tenants for purchase of the right, title and interest of landlords under the Jammu and Kashmir Land Reforms Act, or compensation or other amount payable for the purchase of rights of landlords under any law for the time being in force;
  - i. to meet credit needs of Industrial co-operative and the artisan members of the Primary Agriculture Co-operative Society, Large size Agriculture Multipurpose society, Farmers Sale Service Society for setting up of Cottage and Small Scale Industries in terms of section 52 of the NABARD ACT, 1981.
  - j. acquisition, construction, rebuilding or repairing of Rural dwelling houses and G.I. sheeting of existing rural houses;
  - k. to provide working capital to individual borrowers for establishment for Animal Husbandry, Poultry and Industrial Units.
  - l. to meet credit needs of individual artisans, craftsmen, handicraftsmen and small entrepreneurs under section 25 of the NABARD Act, 1981.

- m. any other purpose conducive to agricultural development as decide by the Board with the approval of the Registrar from time to time.

81. Appointment of Trustee and his powers and functions:-

- 1) The Registrar or when the Government appoint any other person this behalf such person, shall e the trustee for the purpose of security the fulfillment of the obligations of the (Agriculture and Rural Development Bank) to the holders of debentures issued by the Board.
- 2) The powers and functions of the Trustee shall be governed by the provisions of this Act and by the instruments of Trust executive between the bank and the Trustee as modified from time to time by mutual agreement between the Board and the Trustee

82. Trustee to be a corporation sole:-

The Trustee appointed under section 81 shall be a corporation sole by the name of the trustee for the debentures and as such shall have perpetual succession and common seal and in his corporate name shall sue and be sued.

83. Issue of debentures by the Board: \_

- 1) With the previous sanction of the Trustee, the Board may from time to time issue debentures of one or more denominations for such periods as it may deem expedient, on the security of mortgage hypothecation held or mortgages, charges or hypothecation partly held and partly to be acquired or other assets taken by the Agriculture or and Rural Development Bank and its other assets and mortgage of hypothecations transferred or deemed under the provisions section 93 to have been transferred to the Agriculture and Rural Development Bank.
- 2) Notwithstanding anything contained in sub-section (1) in respect of loans guaranteed by the Government and granted to any person or to anybody of persons, whether incorporated or not, and whether or not, establishment by or under any law for the time being in force such a body is approved by the Government the Board may, with the previous permission of the Trustee issue debentures on the strength of such Government guarantee and without the security of mortgage or hypothecation or charge and other assets, of one or more denomination, for such period as it may deem expedient and subject to such conditions as the Government may think fit to impose.

- 3) The debentures issued under sub-section (2) may contain a term fixing a period not exceeding twenty years from the date of issue during which they shall be irredeemable or reserving to the Board the right to call in, at any time, any of the debentures in advance of the date fixed for redemption after giving the debenture holder concerned not less than three months notice in writing.
- 4) The total amount due on the debentures issued by the Board and outstanding at any time, shall not exceed the aggregate of the amounts due on the mortgages or hypothecation and other assets and Government guarantee referred in sub-section (2) and the amounts paid the under and the unsecured amount remaining in the hands of the Board or the Trustee at such time.

84. Powers to borrow money be issue of bonds or by way of loan:-

1. Notwithstanding anything contained in this Act the Board may with the prior approval of the Government and subject to the regulations made under this Act, borrow money by issue of bonds:  
Provided that the issue of the bonds shall be in conformity with such directions or instructions as may be issued by the reserve bank of India or national Bank for Agriculture and Rural Development from time to time.
2. The bonds shall be in the form of scripts and shall be repayable on the expiry of such period or periods from the date of issue thereof as may be approved by the Reserve bank of India or the National Bank for Agriculture and Rural Development;  
Provided that the Board may repay the amount due under the bonds at any time before the period so fixed after issuing a notice in such manner as the Board may direct in that behalf to the holders of the bonds.
3. Notwithstanding anything contained in this Act, the Board may borrow money by way of loans from the Government the national Bank for Agriculture and Rural Development, the Reserve Bank of India or such other financial institutions as may be approved by the Trustee.
4. To raise deposits from the Government approved bodies, institutions and the individuals on the terms and conditions to be determined by NABARD/RBI.

85. Charge of debentures holders on certain properties:-

The holders of the debentures shall have floating charge on-

- a) all such mortgages and assets as are referred to in sub-section (4) of section 83.

- b) the amount paid under such mortgages and remaining in the hands of the Board or the Trustee: and
- c) the other properties of the State Agriculture and Rural Development Bank.

86. Guarantee by Government of Principal of and interest on debentures bonds etc:-

1. The principal of, and interest on, the debentures issued under section 83 or bonds issued or loans raised under section 84 to such maximum amount as may be fixed by the Government from time to time and subject to such conditions as it may deem fit to impose, shall carry the guarantee of the Government.
2. The Government may, increase the maximum amount of any guarantee given under sub-section (1)
3. The Government may, after consulting the Board and the Trustee:-
  - a. by Notification in the Government Gazette, and
  - b. by notice of not less than fourteen days in such of the principal newspaper in the State and other State in India as the Government may select in this behalf.

discontinues any guarantee given by it 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 publication of the notification in the Government Gazette:  
 Provided that the withdrawal, restriction or modification of any guarantee under this sub-section shall not in any way affect the guarantee carried by the 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 the guarantee is to be restricted, or the conditions subject to which the guarantee is given are to be modified, set forth precisely the scope and effect of the restriction or modification, as the case may be.

87. Security for loans:-

1. Subject to the provisions of this Act, the Agriculture and Rural Development Bank and the Primary Banks may advance loans individuals and Institutions on the security of lands and other fixed assets or of assets acquired by the loans borrowed which have been hypothecated to the Agriculture and Rural Development Bank, as the case may be:

Provided that the Agriculture and Rural Development bank, the Primary Banks may, for such purposes and for such periods as may be specified by the Government by special or general order, advanced loans without such security of land but on the specific guarantee of the Government for the repayment of the principal and payment of interest thereon.

2. Notwithstanding anything contained in any other law for the time being in force, the Agriculture and Rural Development bank or a primary Bank may, under any land development scheme grant or advance loans to any person or a group of persons with or without security of land for carrying out the work specified in the scheme, subject to such terms and conditions as are agreed upon between Government and the Agriculture and Rural Development Bank or the Primary bank, as the case may be.
3. All loans and advances granted and all amounts payable to or recoverable by the Agriculture and Rural Development Bank or the primary Banks shall, in case of default of payment, in addition to other remedies available to the banks, be recoverable in the same manner as if they are arrears of public revenue due on land.

88. Mode of dealing with applications for loans:-

1. When an application for loan is made for any of the purposes mentioned in section 80 a public notice shall be given of the application in such manner as may be prescribed calling upon all persons interested to present their objections to the loan, if any, in person at a time and place fixed, therein. The Government or the bank may from time to time prescribed the person by whom such public notice shall be given and the manner in which the objections shall be heard and disposed of.
2. The prescribed office shall consider every objections submitted under sub-section (1) and make an order in writing either upholding or overruling it:
3. A notice under sub-section (1) published in the manner prescribed shall, for the purpose of this Act, be deemed to be proper notice to all person having or claiming interest in the land to be improved or ordered as security for the loan.
4. Subject to such rules as may be framed by the Board and approved by the Registrar, the Agriculture and Rural Development Banks or State Agricultural and Rural Development Bank, shall consider such applications after due enquiry for the purpose of making loans under this Chapter.
5. Every person who applies for a loan Primary Bank shall make a declaration in the prescribed form before an officer specified by the Registered in this behalf, that the movable or immovable property on which the mortgage or hypothecation or charge is created as security for the loan is free from encumbrances, that he in actual possession there of and that he has right to create the mortgage or hypothecation, as the case may be thereon in favour of the Primary Bank.
6. Notwithstanding anything contained in any law for the time in force where a declaration under sub-section (5) in respect of any movable or immovable property is false defective, the Agriculture and Rural Development Bank shall

subject to the provisions of section 91 have a first charge on all other movable properties of the applicant and all such properties shall be deemed to have been included in the mortgage of hypothecation or charge executed by the applicant as security for the loan granted to him by the Primary Bank.

7. Any person who makes a false declaration under sub-section (5) or make any statement which is false in any such declaration shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupee or more with more.
8. The amount of loan that may be sanctioned on the basis of declaration made under sub-section (5) shall be subject to such limit as may be determined by the Bank

89. *Other guarantees by the Government :-*

Where a State Agriculture and Rural Development Bank has given a loan 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 principals of valuation approved by the Government ,the Government may guarantee for specified period the repayment of the loan to the extent of the excess.

90. *Order granting loan conclusive of certain matters :-*

A written order by the State Agriculture and Rural Development bank the Agriculture and Rural Development Bank or person or committee authorized under the bye-laws of the bank to make loans for all or any of the purposes specified in section 80, granting either before or after the commencement of this Act, a loan to or with the consent of a person mentioned therein, for the purpose of carrying out the work specified therein for the benefit of the land or for productive purpose specified therein shall for the purpose of this Act, be conclusive of the following matters:-

- a. that the work described for the purpose for which the loan is granted, is an improvement or productive purpose as the case may be, within the meaning of section 80;
- b. that the person had at the date of the order a right to make such an improvement or incur expenditure for productive purpose as the cas may be; and
- c. that the improvement is one benefiting the land specified and productive purpose concerns the land offered in security or any part thereof, as may be relevant.

91. Priority of mortgagee executed in favour of a Agriculture and Rural Development bank shall have priority over any claims of the Government arising from a loan under the aid to Agriculturists and



Land Improvement Act. Samvat 1993 granted after the execution of the mortgage.

1. A mortgage executed in favour of a Agriculture and Rural Development bank shall have priority over any claims of the Government arising from a loan under the aid to Agriculturists and Land Improvement Act. Samvat 1993 granted after the execution of the mortgage.
  2. Notwithstanding anything contained in any law for the time being force, a mortgage or hypothecation or charge executed in favour the Agriculture and Rural Development Bank or a Primary bank shall take precedence over any attachment or equitable mortgage over the properties, where after publication of a notice in the prescribed form, the claim or interest under such attachment or equitable mortgage has not been notified to such bank within the time prescribed in the said notice.
92. Right of Agriculture and Rural Development bank or of the State Agriculture and Rural Development bank to purchase mortgaged property:-
1. Notwithstanding anything contained in any law for the time being in force, it shall be lawful for a Agriculture and Rural Development Bank of State Agriculture and Rural Development bank to purchase any mortgaged property sold under this chapter, and the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the Trustee.
  2. Nothing in the Big landed Estates Abolition Act, Samvat 2007, fixing a maximum limit of Agriculture holding shall apply to the acquisition of land by a Agriculture and Rural Development Bank to the State Agriculture and Rural Development bank and shall vest in the Trustee.
93. Mortgages executed in favour of Agriculture and Rural Development bank to Stand vested in State Agriculture and Rural Development Bank:-  
The mortgages executed in favour of, and all other assets transferred to, a Agriculture and Rural Development Bank by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by such Agriculture and Rural Development bank to the State Agriculture and Rural Development Bank and shall vest in the Trustee.
94. Registration of mortgage in favour of Agriculture and Rural Development Bank:-  
Notwithstanding anything contained in the Registration Act, Samvat 1977, or any other law for the time being in force it shall not be necessary to register any mortgage or hypothecation or charge created or executed in favour of the

Agriculture and Rural Development bank or a primary Bank; provided the Agriculture and Rural Development Bank or the Primary Bank. As the case may be send within such time and in such manner as may be prescribed, a copy of the declaration or instrument whereby the mortgage or hypothecation has been created or executed for the purpose of securing repayment of the loan, to the Registering officer within the local limits of whose jurisdiction the whole or any part of the property to which the mortgage or hypothecation relates is situated.

95. Restriction on lease and transfer:-

- 1) Notwithstanding anything contained in the Transfer of property Act, Samvat 1977, or any other law for the time being in force, no mortgage or property mortgaged to a State Agriculture and Rural Development Bank or to an Agriculture and Rural Development Bank, shall except with the prior consent in writing of the Bank, and subject to such terms and conditions as the bank may impose, lease or create any tenancy rights on any such property :

Provided that, the rights of the State Agriculture and Rural Development Bank and the Agriculture and Rural Development Bank shall be enforceable against the tenant , purchaser, the lessee of the tenant as the case may be, as if he himself were a mortgager.

2. No land or other movable or immovable property or any movable property or movable assets to be acquired with the loan or advance and no part there of or of the interest in such land or movable or immovable property shall, without the consent of the Agriculture and Rural Development bank, be sold or otherwise transferred until the entire amount of the loan or advance taken by the member from the Primary Bank, together with interest thereon has been paid to the Bank, and any transaction made in contravention of this subsection shall be null and void.

96. Recovery of loans by Agriculture and Rural Development Banks:-

All loans granted by the State Agriculture and Rural Development bank or the Agriculture and Rural Development banks, all interest if any, chargeable thereon and costs, if any, incurred in making the same shall when they become due, be recoverable by the State Agriculture and Rural Development bank or the Agriculture and Rural Development concerned, as the case may be.

97. Power of Agriculture and Rural development bank to receive money and grant discharges:-

Notwithstanding with a mortgage executed in favour of an Agriculture and rural Development bank has been transferred, or is deemed under the provisions of section 93 to have been transferred to the State Agriculture and Rural Development Bank-

- a. all money due under the mortgage, shall, in the absence of any specific direction to the contrary issued by the Board or Trustee and communicated to the mortgager , be payable to the Agriculture and rural Development bank and such payment shall be as valid as if the mortgage had not been so transferred; and
- b. the Agriculture and Rural Development bank shall, in the absence of any specific direction to the contrary issued by the Board or Trustee and communicate to the Agriculture and Rural Development Bank, be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

98. Right of Agriculture and rural Development Bank to pay prior debts of mortgager:-

- (1) Where a mortgage is executed in favour of an Agriculture and Rural Development Bank for payment of prior debts of the mortgager, the bank may, notwithstanding the provisions of section 76 of the Transfer of Property Act Samvat 1977, by notice in writing require and 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 receive such notice or such payment, such debt or part thereof, as the case may be , shall cease to carry interest from the expiration 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 Agriculture and Rural Development Bank, towards the debt, but such receipt shall not prejudice the right, if any, of such person, to recover the balance claimed by him.

99. Distraint when to be made:-

- (1) If any installment payable under a mortgage executed in favour of an Agriculture and Rural development bank or any part of such installment has remained unpaid for more than one month from the date on which it fell due, the Committee may in addition to any other remedy available to the bank, apply to the Registrar for recovery of such installment or part thereof by distraint and sale of the produce of the mortgaged land including the standing crops thereon.
- (2) On receipt of such application the Registrar or such person may, notwithstanding anything contained in the Transfer of Property Act, Samvat

1977, take action in the manner prescribed for the purpose of distraint and selling such produce:

Provided that no distraint shall be made after the expiry of 12 months from the date on which the installment fell due.

- 3) The value of the property distrained shall be, as nearly as possible, equal to the amount due and the expense of the distraint and the costs of the sale.
100. 1) Notwithstanding anything contained in the Transfer of Property Act, Samvat 1977, and where a power of sale without the intervention of the Court is expressly conferred on the Agriculture and Rural bank or any person authorized by such committee in this behalf shall, in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the bank, to bring the mortgaged property to sale without the intervention of the Court.
- (2) No such power shall be exercised unless and until-
- a) the Board has previously authorised the exercise of the power conferred by sub-section (1) after hearing the objections, if any, of the mortgagor;
  - b) notice in writing requiring payment of such mortgage money or part thereof has been served upon-
    - i) the mortgagor;
    - ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;
    - iii) any surety for the payment of mortgage debt or any part thereof; and
    - iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property;
  - c. default has been made in payment of such mortgage money or part thereof for thirty days after such service.
101. Power of Agriculture and Rural Development Bank where mortgaged property is destroyed or security becomes insufficient:-
- (1) Where any property mortgaged to an Agriculture and Rural Development Bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor having been given a reasonable opportunity by the committee of Agriculture and Rural Development 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 committee, has failed to provide such security or to repay such portion or the loan, the whole of the loan shall be deemed to fall due at once and the committee shall be entitled to take action against the mortgagor under section 99 or section 100 for the recovery thereof.

Explanation:-

A Security is insufficient with 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 bye-laws of the Agriculture and Rural Development Bank.

102. Power of Board or of Trustee to Distrain and sell property etc:-

- 1) The Board or the Trustee may direct the committee of an Agriculture and Rural Development Bank to take action against a defaulter under section 99, section 100 or section 101 and if the committee neglects or fails to do so or if there be no such committee the Board or the Trustee may take such action.
- 2) Where such action is taken-
  - a. by the Boards the provisions of this Chapter and any rules made in this behalf shall apply in respect thereto as if all references to the Agriculture and Rural Development bank and to its committee in the said provisions were references to the State Agriculture and Rural Development Bank and the Board respectively;
  - b. by the Trusted the provisions of this Act and of any rules made thereunder shall apply in respect thereto as if all references to the Bank or to its committee in the said provisions were references to the Trustee.

102. Title of purchaser not to be questioned on the ground of irregularity etc.:-

Where any property is sold in exercise or purported exercise of a power of sale under section 99 the title of the purchase shall not be questioned on the grounds that-

- a. the circumstances required for authorizing the sale had not arisen;  
or
- b. due notice of the sale was not given; or
- c. the power of the sale was otherwise improperly or irregularly exercised:

but any person who has suffered any damage by an unauthorized, improper or irregular exercise of any such power shall have a remedy in damages against the Agriculture and Rural Development Bank

104. Mortgage not be questioned on insolvency of mortgager

Notwithstanding anything contained in any law relating to insolvency, a mortgage executed in favour of an Agriculture and Reural Development 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 Agriculture and Rural Development bank a preference over the other creditors of the mortgagor.

105. Appointment of receiver and his powers:-

1. The Board may, on the application of an Agriculture and Rural Development bank and under circumstances in which the power of sale conferred by section 100 may be exercised, appoint in writing a receiver of the produce and income of the mortgage property or any part thereof and such receiver shall be entitled either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realized by him, his expenses of management including his remuneration, if any, as fixed by the Board, and to apply the balance in accordance with the provisions of subsection (8) of section 69-A of the Transfer of Property Act, Samvat 1977.
2. A receiver appointed under sub-section (1) may for sufficient cause and on application made by the mortgagor, be removed by the Board
3. A vacancy in the office of receiver may be filled up by the Board.
4. Nothing in this section shall empower the Board to appoint a receiver where the mortgaged property is already in possession of a receiver appointed by a civil court.

106. Mortgager's powers to lease:-

1. Notwithstanding anything contained in the Transfer of Property Act, Samvat 1977 or any other law for the time being in force, a mortgager shall not grant a lease of the mortgaged property for a period exceeding 5 years .
2. Any lease granted in contravention of the provisions of sub-section (1) shall be void .

107. Registration of documents executed on behalf of an Agriculture and rural Development Bank or of the State Agriculture & Rural Development Bank:-

1. Notwithstanding anything contained in the Jammu and Kashmir Registration Act, Samvat 1977, it shall not be necessary for any officer of an Agriculture and Rural Development Bank or of the State Agriculture and Rural Development bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 59 of that Act.

3. Where any instrument is so executed, the Registering Officer to whom such instrument is presented for registration may, if thinks fit, refer to such office for

information respecting the same, and on being satisfied of the execution thereof, shall register the instrument.

108. Delegation of certain power by the Board:-

The Board may, if it thinks fit, delegate all or any of its powers under sections 100, 102 and 105 to an executive committee constituted by it and consisting of two or more of its members.

108. Sections 102, 103 and 104 of the Transfer of Property Act, Samvat 1977 to apply to notice under this Chapter:-

The Board may, if it thinks fit, delegate all or any of its powers under sections 100, 102 and 105 to an executive committee constituted by it and consisting of two or more of its members.

109. Sections 102, 103 and 104 of the Transfer of Property, Act, Samvat 1977 to apply to notice under this Chapter: -

The provision of sections 102, 103 and 104 of the Transfer of Property Act Samvat 1977 and of any rules made by the high Court under section 104 of that Act for carrying out the purpose of the said section, shall apply as far as may be in respect of all notice to be served under this Chapter.

110. Power of the Board to make regulations:-

(1) 1. The Board may, subject to the approval of the Trustee make regulations not inconsistent with the provisions of this Chapter

a for affixing the period of debentures and the rate of interest payable thereon.

b. for calling in debentures after giving notice to debentures holders.

c. for the issue of new debenture in place of debentures damaged or destroyed.

d. for converting one class of debentures into another bearing a different rate of interest;

e. for the inspection of account book, reports and proceedings of Agriculture and Rural Development bank;

f. for the submission of return and reports by Agriculture and Rural Development Bank in respect of their transactions;

g. for the periodical settlement of accounts between Agriculture and Rural Development bank and for the payment of the amounts recovered by Agriculture and Rural Development Banks on mortgages transferred or deemed under the provision of section 93 to have been transferred to the State Agriculture and Rural Development Bank;

h. for specifying the form, in which application to Agriculture and Rural Development Bank for loans should be made and for the valuation of the properties offered as security for such loans;

- i. for the investment of moneys realized form mortgagors; and
  - j. generally for purpose of carrying out the provisions of this Chapter.
111. Mortgage Bank to be Agricultural Class:-
- Notwithstanding anything contained in section 6 of the Jammu and Kashmir Land Alienation Act, Samvat 1995, the State Agriculture and Rural Development Bank established under this Chapter shall be deemed to belong to an a agricultural class throughout the Jammu and Kashmir state for the purpose of said Act.
112. Over-riding effect:-
- Except as otherwise expressly provided, nothing in this Chapter shall effect the provisions of the Jammu and Kashmir Land Alienation Act, Samvat 1995, and the Big Landed Estate Abolition Act, Samvat 2007.

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## **CHAPTER XII**

### **HOUSING SOCIETIES**

**113. Housing Co-operative Societies:-**

The provisions of this Chapter shall apply to Co-operative Housing Societies registered in the Jammu & Kashmir State before or after the commencement of this Act for the purpose hereinafter enumerated, namely;

- (i) purchase acquisition of land ;
- (ii) land improvement
- (iii) construction, re-building of house
- (iv) redemption of debts, incurred for any of the purpose mentioned in clauses( i) to (iii).

**114. Definition for purposes of this Chapter:-**

- (a) 'Board' means the governing body of Housed.
- (b) 'Committee means the governing body of Primary Housing society.
- (c) 'Housefed' means Jammu and Kashmir State Co-operative Housing Federation Limited, having its principal object of raising funds and providing loans to Member Primary Co-operative Housing Societies.



- (d) 'Housing Society' means a co-operative society which has its principal object the construction of the house for its members or financing or facilitating the construction of houses by its members and includes a Primary House Building Society registered under the Act, and admitted or affiliated as member of the Housefed.
- (e) 'Primary House Building Society' means a society which engages itself in the construction of houses/flats for its members or advance/loans to its members for construction of houses and allot sites to its members.
- (f) 'Trustee' means the trustee for holders of debentures and as referred to in section 115 of this Act.

115. Issue of debentures:-

- (1) With the previous sanction of the Government and the trustee the Board may for the purpose of financing Housing Societies issue debentures of such denominations, on the security of mortgages held property or such assets of Housing Society and at such rates of interest as may be prescribed.
- (2) Every debenture may contain a term fixing a period not exceeding twenty five years from the date of issue during which it shall be irredeemable or reserving to the Board the right to call it in at any time in advance of the date fixed for redemption, after giving to the holder of the debenture not less than three months notice in writing.
- (3) The total amount due on debentures issued by the Board shall not exceed:-
  - (i) the amount due on the mortgages.
  - (ii) The value of other assets of the Housing Societies.
  - (iii) The amount paid under the mortgages and the unsecured amount remaining in the hands of the Board or the trustee at that time.

116. Appointment and powers of trustee:-

- (1) The Registrar or such other person as the Government may appoint in this behalf shall be the trustee for the purpose of securing the fulfillment of the obligation of the Housefed to the holders of debentures issued by the Board.
- (2) The trustee shall be a corporation sole by the name of the trustee and shall have perpetual succession and a common seal and in this corporate name may sue and be sued.
- (3) The powers and functions of the trustee shall, be governed by the instrument of executed between the Housefed and the trustee. The form of such instrument or any modification which the parties thereto may mutually agree to make in any of its terms after its execution shall be subject to the previous approval of the Government.

**117. Vesting Property in trustee.**

The mortgages and other assets transferred or deemed to have been transferred under section 1325 by the Housing Society to Housefed shall vest in the trustee from the date of such transfer and the holders of debentures shall have a floating charge on all such mortgages and assets and on the amounts paid under such mortgages and remaining in the hands of the Board or of the trustee and on the properties of the Housefed.

**118. Guarantee by Government of Principal of and interest on debentures:-**

(1) The principal of an interest on the debentures issued under section 115 shall carry the guarantee of the Government to such maximum amount as may be fixed and subject to such conditions, as may be imposed by the Government.

(2) The Government may, increase the maximum amount of any guarantee given under sub-section (1)

(3) The Government may, after consulting the Board or trustee:-

(a) by notification in the Government Gazette; and

(b) by notice of not less than fourteen days in such of the principal newspapers in the State and other States in India as the Government may selected in this behalf;

discontinue any guarantee given by it 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 publication of the notification in the Government Gazette;

Provided that the withdrawal, restriction or modification of any guarantee under this sub-section shall not in any way affect the guarantee carried by the debentures issued prior to the date on which such withdrawal, restriction or modification taken effect.

**119 Guarantee Fund:-**

(1) The Government may constitute a fund to be called 'Guarantee Fund' on such terms and conditions as it may deem fit, for the purpose of meeting losses that might arise on account of loans advanced by the Housing society on the security of mortgages not being fully recovered due to such circumstances as may be prescribed.

(2) The Housefed and the Primary Housing Society shall contribute to the guarantee fund at such rates as may be prescribed.

(3) The guarantee fund shall be maintained and utilized in such manner and for such purposes as may be prescribed.

**120. Rights of debenture holders:-**

The holders of the debentures shall have floating charge on:-

(a) all such mortgages and assets as are referred to in section 115.

- (b) The amount paid under such mortgage and remaining in the hands of the Housefed or of the trustee; and
- (c) The other properties of Housefed.

**121.**Raising of loans from Government and funding agencies at national and international levels:-

The Housefed may raise loans from the following organizations on such terms and conditions as may be agreed between the lending institutions and the Housefed namely:-

- (a) The Life Insurance Corporation of India.
- (b) Housing and Urban Development Corporation;
- (c) Commercial and Co-operative Bank;
- (d) General Insurance Corporation;
- (e) Central and State Government;
- (f) National Co-operative Housing Federation;
- (g) National housing Bank.
- (h) World Bank; and
- (i) Any other funding institutions in India or abroad as many be approved by the Government.

**122.**Accepting of deposits:-

The Housefed may accept deposits from the member co-operative institutions, nominal members and State Government on such terms and conditions as may be decided by the Board from time to time.

**123** Distraint when to be made:-

- (1) If one or more instalments or any part of such instalment including interests,penal interest and other dues payable under a mortgage executed in favour of Housing Society or the Housefed remains unpaid for more than one month from the date on which it fell due,the Board or committee, as the case may be , in addition to any other remedy available to the Primary Housing Society or the Housefed make an application to the Registrar with a statement of account in respect of such arrears of the defaulted amount from the recovery of such amount by Distraint and sale of movable property.
- (2) On receipt of such application, the Registrar or any person authorized by the Registrar may notwithstanding anything contained in the Transfer of Property Act 1977, after making such inquiry as he deem fit , pass an order and grant certificate for the recovery of the amount stated therein to be due as arrears.
- (3) A certificate by the Registrar or any person authorized by him shall be final and conclusive proof as to arrears due.
- (4) The arrears stated by the Registrar or any person authorized by him to be so due, if not paid within 15 days of the communication of the said order , shall be recoverable under section 126 of this Act.

- (5) The value of the property distrained shall be, as nearly as possible equal to the amount due and the expense of the distraint and the cost of the sale.

124. Distraint how to be effected:-

- (1) When a distraint is made under section 123 the distrainer shall serve or cause to be served upon the defaulter a written notice of demand specifying the amount for which the distraint is made.
- (2) The notice of demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy thereof to him or to some adult male member of his family at his usual place of abode or to his authorized agent or if such service cannot be effected by affixing a copy thereof on some conspicuous part of his place of abode.

125. Sale of property disstrained:-

- (1) If, within fifteen days from the date of service of the notice of demand referred to in section 124 the defaulter does not pay the amount for which the distraint is effected, the distrainer may sell by auction the distrained property or such part thereof as may in his opinion be necessary to satisfy and demand together with the expenses of the distraint and the cost of the sale.
- (2) From the proceeds of the sale, a deduction shall be made at a rate not exceeding five paise in the rupee on account of the cost of the sale and the expenses incurred on account of distraint shall be deducted from the balance amount.
- (3) The remainder, if any, shall be applied to realise the amount for which the distraint was made.
- (4) The surplus, if any, shall be delivered to the person whose property had been sold and he shall be given a receipt for the amount realised from the proceeds of the sale.

126 Powers of sale of mortgage and property when and how to be exercised:-

- (1) Notwithstanding anything contained in the Transfer of Property Act, 1977, the Board or any person authorised by it in this behalf shall have power, in addition to any other remedy available to the Housing Federation to bring the mortgaged property to sale without the intervention of the Court.
- (2) No such power, shall be exercised unless:-
  - (a) notice in writing requiring payment of such mortgage money or part thereof has been served upon:-
    - i. the mortgagor or each of the mortgagors;

- ii. any person who has any interest or charge upon the mortgage property or upon right to redeem the same so far as known to the Board,
- iii. any surety for the payment of the mortgage debt or any part thereof; and
- iv. any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for the same of the mortgaged property;

(b) default has been made in payment of such mortgaged money or part thereof for three months after service the notice.

127. Application for sale and manner of sale:-

- (1) The Board or any authorised person by it under sub-section (1) of section 126 may apply to the Sale Officer appointed for the purpose under section 135 to sell the mortgaged property or any part thereof and such officer shall after giving notice in writing to all the person referred to in sub-section(2) of section 126.
- (2) The Sale Officer shall sell such property by public auction in the place in which the mortgaged property is situated or at the nearest place of public resort, if the Sale Officer is of opinion that auction of the property at such place is in the interest of the owner thereof.

Provided that no person who is not a permanent resident of the State shall be eligible to bid or otherwise participate in the auction.

128. Application to set aside sale:-

- (1) When any mortgage property has been sold under section 127 the mortgagor or any person having a right or interest therein may, within thirty days from the date of sale, set aside on his depositing at the office of the Sale Officer.
  - (j) for payment to the Board or committee of the Housing Society the amount specified in the proclamation of sale together with interest and the costs, if any, incurred by the committee or the Board in bringing the property to sale;
  - (ii) for payment to the purchaser a sum equal to five percent of the purchase money;
- (2) Where a person has deposited the amount specified in sub-section (1) the Sale Officer shall make an order setting aside the sale.

129 Disposal of sale proceeds:-

- (1) The proceeds of every sale shall be applied by the Sale Officer.
  - (i) in payment of all costs, charges and expenses incurred by him as incidental to the sale or any attempted sale;

- (ii) in payment of all interest due on account of the mortgage in consequence where of the mortgaged property was sold.
  - (iii) In payment of the principal money due on account of the mortgage;
  - (iv) The residue, if any, shall be paid by the Sale Officer to the persons/persons having any interest in the property.
- (2) Any person dissatisfied with the decision of the Sale Officer in regard to the distribution of the residue may within thirty days from the communication to him of such decision, institute a suit in a court having jurisdiction to establish his interest in the property.
- (3) The Sale Officer shall not dispose of such residue until thirty days have lapsed from the communication of his decision, to all the persons concerned or of a suit has been instituted within the period of thirty days by any such person until the suit is decided by the court.

130. Grant of certificate to purchaser ;

Where a sale of mortgaged property has become absolute ,the Sale Officer shall grant a certificate specifying the property, the name of the purchaser and date on which the sale became absolute.

131. Delivery of property to purchaser;

- (1) If the property sold under section 127 is in possession of the mortgagor or some person on his behalf or of some persons claiming under a title other than a lease operated by the mortgagor subsequent to the mortgage in favour of the Housing Society of HouseFed and a certificate has been granted under section 130 the court shall on the application of the purchaser order the person in possession of the property to put the purchaser or his nominee in possession of such property
- (2) If the property sold is in the possession of a tenant or other person entitled to possess the same and a certificate in respect thereof has been granted under section 130,the Court shall,on the application of the purchaser and after notice to such tenant or other person, order delivery to be made by affixing a copy of certificate of sale in some conspicuous place of the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that interest of the mortgagor has been transferred to the purchaser.
- (3) In regard to the cases dealt with in sub-section (1) and (2) the provisions of Code of Civil Procedure, Samvat 1977 , shall mutatis mutandis apply .

132. Appointment and power of receiver:-

- (1) Notwithstanding anything contained in section 126 the Board may on the application of a Housing Society and in circumstances in which the powers to sale conferred by section 126 may be exercised appoint in writing a receiver of the property and income of such property or any part thereof and such receiver shall be entitled to take possession of the property or collect its

income, as the case may be, to retain out any money realized by him his expenses of management including his remuneration, if any fixed by the Board and to apply the balance in accordance with the provisions of sub-section 8 of section 89-A of the Transfer of property Act, Samvat 1977.

- (2) A receiver appointed under sub-section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Board.
- (3) A vacancy in the office of the receiver may be filled up by the Board.
- (4) Nothing in this section shall empower the Board to appoint a receiver where the mortgaged property is already in the possession of receiver appointed by Civil Court.

133. Title of purchaser not impeachable for irregularities:-

When a sale has been made in exercise of power of sale under section 126 and a certificate has been granted under section 132 the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised.

134. Eviction of defaulter member and tenants etc. And non application of the Jammu & Kashmir Houses and Shops Rent Control Act 1966-

- (1) Notwithstanding anything contained in Jammu & Kashmir Houses and Shops Rent Control Act, 1966 or in any other law for the time being in force, when the mortgaged property sold in accordance with the provisions of this Act, is occupied by tenant or borrower or any other persons, such person shall be evicted forthwith treating him illegal and unauthorised occupant.
- (2) Nothing in the aforesaid Act, shall apply to the Houses, flats, buildings owned by the Housing Societies or and all matters regarding fair rent, enhancement of rent, and eviction of premises etc. shall be decided by the Registrar or officer authorised by him who shall be the final authority.

135. Appointment of Sale Officers:-

The Registrar may appoint sale Officer for the purposes of conducting sales under this Chapter.

136 Mortgages executed in favour of Housing Society to stand vested in Housefed.

Notwithstanding anything contained in the Transfer of Property Act, 1978 the mortgages executed in favour of and all other assets transferred to Housing Society by the members thereof, shall with effect from the date such execution or transfer be deemed to have been transferred by such Housing Society to HOUSEFED.

137 Requirement when property mortgaged is destroyed or security is rendered insufficient etc:-

If any property mortgaged to any Housing Society is wholly or partially destroyed or the security rendered is insufficient and the mortgagor, having been given reasonable opportunity by the Committee or Board or Housefed of providing further security enough to render the security sufficient or of repaying such portion of the loan as may be determined by the Committee or Board, has failed to provide such security or to repay such portion of loan the whole of the loan shall be deemed to fall due at once and the Committee or Board shall be entitled to take action against the mortgagor under section 123 and 126 for the recovery thereof.

Explanation:-

A security shall be deemed insufficient within the meaning of this section unless value of the mortgaged property exceeds the amount for the time being by such portion as may be specified in the Bye-Laws of the Housing Society.

138. Power of Board and Trustee to direct distraint sale:-

The Board of the Trustee may direct the Committee of a housing society to take action against a defaulter under section 123 or 126 and if the Committee neglects or fails to do so, the Board or the Trustee may take such action and any reference in the provisions of this chapter to the Board, Trustee or the Committee shall be construed accordingly.

139. Mortgage not to be questioned in insolvency of mortgagor:-

Notwithstanding anything contained in any law related to insolvency. Mortgage executed in favour of Housing Society or Housefes 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 not executed in order to give Housing Society or HOUSEFED a preferenece over other creditors of the mortgagor.

140. Right of Housing Society to pay prior debts of mortgagor:-

If a mortgage is executed in favour of Housing society for payment of prior debt of the mortgagor, the Society may notwithstanding anything contained in Section 82 and 84 of the Transfer of property Act, 1977 by notice in writing require any person to whom any such debt is due to receive payment of such debt or part thereof from the Society at its registered office within such period as may be specified in the notice. If such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the Notice.

Provided that if there is 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 Housing Society towards the debt, but such receipt shall not prejudice the right, if any, of such persons to recover the balance claimed by him.

141. Power of Housing Society regarding mortgages transferred top HOUSEFED:-



Notwithstanding the fact that mortgage has been transferred or deemed to have been transferred under section 136 by a Housing Society to the HOUSEFED:-

- (a) all money due under the mortgage shall, in the absence of any specified direction to the contrary issued by the Board or Trustee and communicated to the Housing Society, be entitled to sue on the mortgage or take any other proceeding for the recovery of the money due under the mortgage.
- (b) The Housing Society shall in the absence of any specific direction to the contrary issued by the Board or trustee and communicated to the Housing Society, be entitled to sue on the mortgage or take any other proceeding for the recovery of the money due under the mortgage.

142. Mortgages executed by Manager of Joint Hindu Family:-

If a mortgage executed in favour of a Housing Society or HOUSEFED, either before or after the commencement of this Act, is called in question on the ground that it was executed by the Manager of a Joint Hindu Family for a purpose not binding on the members thereof, the burden of proving the same shall notwithstanding any law to the contrary, lie on the party raising it.

143. Non applicability of Land Acquisition Act to Lands of Housing Societies:-

Notwithstanding anything contained in Jammu & Kashmir Land Acquisition Act, Samvat, 1990 or any other law for the time being in force no land of Housing Societies purchased or acquired for housing purposes shall be liable for acquisitions for any other housing agency of authority or local body for the same purpose.

144. Proof of documents or entries in documents:-

Any Housing Society or the HOUSEFED may grant copies to the borrowers themselves, or on the order of the court, to any person of any document obtained and kept by it in course of its business, or of any entries in such documents and any copy as granted shall, when certified, in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.

145. Application of this Chapter to loans advanced by Housing Society from funds not borrowed from HOUSEFED:-

The provisions of this chapter shall apply also to loans advanced by a Primary Housing Society from funds which have not been borrowed by it from the HOUSEFED.

146. Application of provisions of Transfer of Property Act, Samvat 1977 to notices:-

The provisions of section 102, 103 and 104 of Transfer of Property Act, Samvat 1977 shall apply, so far as may be, in respect of all notices to be served under this Chapter.

147. Officers of Housing Societies and sale officers not to bid at sales:-

At any sale of movable or immovable property held under this chapter, no Director, Secretary or other officer of such Housing Society or of the Director, Secretary

or other officer of such Housing Society or of the HOUSEFED and no other officer or other persons 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.

148. Delegation of powers of Board:-

The Board may, if it think fit, delegate all or any of its powers under sections 126, 132 and 138 to an executive committee constituted by it consisting of two or more of its members of whom one shall be the Registrar or his nominee not below the rank of Joint Registrar or Deputy Registrar Co-operative Societies.

149. Board's power of supervision:-

notwithstanding anything contained in this Act, or the rules made thereunder, the Board shall have a general power of supervision over the Primary Housing Societies.

150. Regulations under this Chapter:-

This Board may, subject to the approval of the Trustee, make regulations not inconsistent with the provisions of this Chapter:-

- i) for fixing the period of debentures and the rate of interest payable thereon;
- ii) for calling in debentures in advance of the date fixed for redemption after giving notices to the holders thereof;
- iii) for the issue of new debentures in place of debentures as damaged or destroyed and fixing the fee for such issues; and
- iv) for converting one class of debentures into another class bearing a different rate of interest.

151. Power to make rules:-

The Government may, by notification, make rules not inconsistent with the provisions of this Chapter:-

- a) for the manner of effecting distraint and calculating the expenses thereof;
- b) for the custody, preservation and sale of distrained property;
- c) for the investigation of claims by persons other than the defaulters to any right or interest in the distrained property and for the postponement of the sale pending such investigation;
- d) for the immediate sale of perishable articles;
- e) for the due proclamation and conduct of the sale;
- f) for the recovery of the expenses of proclamation and sale;
- g) for the deposit of the purchase money;
- h) for the resale of the property, if the purchase money is not deposited; and
- i) generally for carrying out the provisions of this Chapter.

## CHAPTER XIII

### EXECUTION OF AWARDS, DECREES, ORDERS AND DECISIONS.

**152.** Enforcement of charges:-

Notwithstanding anything contained in Chapter X or any other law for the time being in force but without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered under this Act or by the registrar in this behalf may, on the application of a Co-operative Society, make an order directing the payment of any debt or outstanding demand due to the society by any interest therein which is subject to a charge under sub-section (1) of section 34.

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

**153.** Execution of orders etc:-

Every order made by the Registrar under sub-section (2) of section 69 or under section 152 every decision or award made under section 73 every order made by the liquidator under section 76 and every order made by the Tribunal or Government under sections 158, 160, 161 or 162 and every order made under section 158 shall if not carried out:-

- (a) on a certificate signed by the Registrar, or any person authorized by him in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as 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 any application for the recovery in such manner of any sum shall be made:-

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

order , decision or award has been obtained or passed. A sale officer conducting attachment under this clause shall be deemed to be public servant under Jammu and Kashmir Ranbir Penal Code.

#### **154. Attachment of property before award or order**

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

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

#### **155. Registrar or person empowered by him to be civil court for certain purposes**

The Registrar or any person empowered by him under the Act in this behalf shall be deemed, when exercising any power under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property , or when passing any order on any application made to him for such recovery or for taking a step , in aid of such recovery , to be civil court for the purpose of Article 182 of the First Schedule to the Limitation Act, Samvat 1995.

#### **156. Recovery of sum due to Government**

(1) All sums due from a co-operative society or from an officer or a member or a past member of a co-operative society as such to Government , including any costs awarded to the Government under any provision of this Act, may, on a certificate issued by the Registrar in this behalf, be recovered in the same manner as arrears of land revenue.

(2) Sums due from Society to Government and recoverable under sub section (1) may be recovered firstly, from the property of the society, secondly, in the case of society the liability of the members of which is limited from the members, past members or the estates of deceased members, subject to the limit of their liability, and thirdly, in the case of other societies, from the members, past members, or the estates of deceased members:

Provide that the liability of past members and the estates of deceased members shall in all cases be subject to the provisions of section 25.

## **Chapter XIV**

### **APPEALS, REVISION AND REVIEW**

#### **157. Constitution of Co-operative Appellate Tribunal**

- (1) the Government shall constitute a Co-operative Appellate Tribunal or Tribunals to be called the Co-operative Appellate Tribunal or Tribunals to exercise the functions conferred on Tribunal under this Chapter.
- (2) The Tribunal shall consist of at last three members possessing the qualifications as may be prescribed.
- (3) Where a Tribunal consists of three members, any two members shall form the quorum for the disposal of its business.
- (4) Any vacancy in the membership of the Tribunal shall be filled by the Government,
- (5) Subject to the previous sanction of the Government, the Tribunal shall frame Regulations consistent with the provisions of this Act and the rules made thereunder for regulating its procedure and the disposal of its business.
- (6) All regulations made by the Tribunal shall be published in the Govt. Gazetted and shall come into force from the date of such publication.

#### **158. Appeals to Tribunal and other authorities**

Save as otherwise provided by this Act, an appeal shall lie from the original order or appellate order of Dy. Registrar Co-operative Societies, Joint Registrar, Addl. Registrar as follows;

- a. To the Joint Registrar Co-operative Societies when the order, decision or award is made by Deputy Registrar,
- b. To the Additional Registrar, Co-operative Societies, when the Order, decision, or award is made by Joint Registrar;
- c. To the Registrar when the order, decision or award is made by Additional Registrar and against such order and decision as mentioned in clause (b);
- d. To the Co-operative Tribunal when the order, decision is made by the Registrar:

Provided that where an original order is confirmed on first appeal, no further appeal shall lie against the orders passed in the first appeal.

#### **159. Limitation of appeal**

The period of limitation for filing an appeal shall be as follows:-

- a. 60 days from the date of decision or order, when the appeal lies to the Joint Registrar;

- b. 90 days from the date of decision or order when the appeal lies to the Registrar or Additional Registrar or Tribunal;

Provided that in District Ladakh and Kargil the period of limitation shall be twice the period specified in clause (a) and (b) as the case may be.

### **160. Revision**

(1) The Government or the Tribunal may call for and examine the record of any proceedings held or inspection made under this Act or the proceedings of any person vested with powers of Registrar or acting under his authority and if the Government or the Tribunal is of the opinion that any order, decision, or award or any proceedings so called for should be modified, annulled or revised, the Government or the Tribunal may make such order thereon as it may think fit.

Provided that the Government or Tribunal, as the case may be, shall before passing such order, give an opportunity of being heard to the person likely to be adversely affected by such order.

(2) The Registrar Co-operative Societies may at any time call for the record of any case pending before or disposed of by an officer of the Co-operative Department.

(3) The Additional Registrar may call for the record of any case pending before or disposed of by any officer of the Co-operative Department subordinate to him.

(4) If in case in which the Additional Registrar has called for the record, he is of opinion that the proceedings taken or order made should be modified or revised, he shall report that case with his opinion thereon for the orders to the Registrar.

(5) The Registrar may in any case called for by him, under sub section (1) or reported to him under sub section (3) pass such order as he may think fit.

Provided that he should not pass order reversing or modifying any proceedings or order of a subordinate officer without giving an opportunity of being heard to the party adversely effected.

### **Comments**

Arbitration proceedings under s.70 removing petitioner from directorship of citizens Co-operative Bank, filed before Special Tribunal are not entertain able since Tribunal does not have original or appellate jurisdiction but has only revisional jurisdiction under section 160. \_\_\_ Dinseh Gupta v Citizens Co-operative Bank Ltd & Anr. 2004 (1) JKJT-1

Registrar Co-operative Societies is not competent to go into the question of validity of rules framed under the Act or to make reference on the said question to Hon'ble High Court u/s 113 CPC , while exercising revisional jurisdiction 2003 (1) JKJ page 621.

Co-operative Bank is not competent to withhold increments of its employees. Every employee earns annual increment as a matter of right if permissible under the condition of service 2003 (2)JKJ page 628.

## **161. Review**

(1) The Deputy Registrar, Joint Registrar, Additional Registrar or the Tribunal, Registrar, as the case may be, may of its own motion or on an application by any person aggrieved by its order review its own order in any case and pass in reference thereto such order, as it thinks fit, after serving notice to the persons likely to be effected by such order and affording such persons an opportunity of being heard.

(2) Any application for review under sub-section (3) by any party, shall be made within 30 days from the date of the communication of the Order of Deputy Registrar, Joint Registrar, Additional Registrar, Registrar of the Tribunal, as the case may be.

## **162. Interlocutory Orders**

(1) Where an appeal is made to the Government or the Tribunal under section 150 or where the Government or Tribunal calls for the record of a case under section 160, the Government or the Tribunal, as the case may be, may in order to prevent the ends of justice being defeated, make such interlocutory orders pending the decision of the appeal or revision as it may deem fit.

(2) Notwithstanding to the contrary contained in this Act where with the previous sanction in writing on the repulsion of Reserve Bank-

- i. A Co-operative Bank is being wound up; or
- ii. In respect of which a scheme of compromise or arrangement or of reconstruction or amalgamation is given effect to; or
- iii. In respect of which an order for the supercession of its committee (or other managing body by whatever name called) and the appointment of an administrator thereof has been made.

No appeal, revision or review there against shall lie or be permissible and the sanction or requisition of Reserve Bank shall not be liable to be called in question.

## CHAPTER XV

### OFFENSES AND PENALTIES

#### 163. Offenses

(1) Any person other than a co-operative society carrying on business under any name or title of which the words “cooperative” or its equivalent in any Indian language, is part, without the sanction of the Government shall be punishable with fine which may extend to two hundred rupees.

(2) Any member, post member or the nominee, heir or legal representative or deceased member of a co-operative society who contravenes the provisions of section 42 by disposing of any property in respect of which the society is entitled to have first charge under that section or do any act to the prejudice of such claim shall be punishable with fine which may extend to two hundred rupees.

(3) A co-operative society or an officer or member thereof wilfully making false return or furnishing false information, or any person wilfully or without any reasonable excuse disobeying any summons, requisitions or lawful written order issued under the provisions of this Act or wilfully not furnishing any information required from him by a person authorized in this behalf under the provisions of this Act shall be punishable with fine which may extend to two hundred rupees.

(4) Any employer, who without sufficient cause, fails to pay to a co-operative society the amount deducted by him under sub-section (2) of section 42 within a period of fourteen days from the date on which such deduction is made shall, without prejudice to any action that may be taken against him under any law for the time being in force, be punishable with fine which may be extended to five hundred rupees.

#### 164. Cognizance of offenses

(1) No court inferior to that of a Judicial Magistrate of the Ist Class shall try any offense under this Act.

(2) No prosecution shall be instituted under this Act without the previous sanction of the Registrar and such sanction shall not be given without giving the person concerned an opportunity of being heard.



**CHAPTER XVI**  
**MISCELLANOUES**

**165. Address of a Co-operative Society**

Every co-operative society shall have an address registered in accordance with the rules to which all notices and communications may be sent and shall send to the Registrar notice of any change thereof within thirty days of the change.

**166. Copy of Act, Rules and Bye-Laws to open to inspection**

Every co-operative society shall keep a copy of this Act, the rules and its Bye-Laws open to inspection free of charge at all reasonable times at the registered address of the society.

**167. Prohibition against the use of the word “Co-operative”.**

No person other than a Co-operative Society shall trade or carry on business under any name or title of which the word “co-operative” or its equivalent in any Indian language is part:

Provided that nothing in this section shall apply to the use by any person or his successor-in-interest of any name or title under which he carried on business at the date on which the Jammu and Kashmir Co-operative Societies Act, 1960 came into operation.

**168. Notice necessary in suits**

No suit shall be instituted against a co-operative society or any of its officers in respect of any Act touching the constitution, management of the business of the society until the expiration of two months next after notice in writing has been delivered to 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.

**169. Travelling and other allowances etc.**

No member of the committee of any society shall be entitled to receive from the society the travelling allowance, daily allowance or any other allowances or fees for attending meetings of its committee or for performing any other function as such member at a rate higher than the maximum rate prescribed in this behalf, and different rates may be prescribed for different societies or class of societies or for different purposes by the Registrar.

**170. Securities etc.**

The Registrar shall prescribe the amount and nature of the securities to be furnished by an officer or employee of any society or class of societies, who are required to handle cash, securities, or property belonging to the society and the maximum amount of cash which may be handled or kept at a time by any officer or employee.

### **171. Companies Act not to apply**

The provisions of the Companies Act 1956 (Central Act No. 1 of 1956) shall not apply to Co-operative Societies.

### **172. Saving of existing societies**

(1) Any co-operative society now existing which has been registered under the Co-operative Societies Act, 1960 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 appointment, 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.

### **173. Indemnity**

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 in good faith under this Act.

### **174. Power of Civil Court**

(1) In exercising the functions conferred on it by or under this Act, the Government, the Tribunal, the Registrar, the Arbitrator or any other person deciding any dispute and the liquidator of a co-operative society shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, Samvat 1977, in respect of the following matters, namely:-

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of any document;
- c. proof of facts by affidavits; and
- d. issuing summons for examining witness

(2) In the case of any affidavit any Magistrate of the first Class or any officer appointed by the Government, the Tribunal, Registrar, the Arbitrator or any other person deciding a dispute or the liquidator, as the case may be, in this behalf may administer the oath to the deponent.

### **175. Bar of jurisdiction of Courts**

(1) Save as provided under this Act, no Civil Court, Revenue officer or Revenue Court shall have the jurisdiction in regard to:-

- a. the registration of a co-operative society or its bye-laws or an amendment of its bye-laws; or

- b. dissolution or supersession of the board of co-operative society and the management of such co-operative society on such dissolution or supersession; or
- c. any direction issued by the Government under any provisions of this Act; or
- d. any dispute referred to the Registrar under section 70; or
- e. any matter concerning the winding up of or dissolution of a co-operative society or concerning liquidator or amalgamation or re-organization of a co-operative society.

(2) While a co-operative society is being wound up, no suit or legal proceedings relating to the affairs of such co-operative society shall be proceeded with or instituted against the liquidator or such co-operative society or any member thereto except by the leave of the Registrar and subject to such conditions as the Registrar may impose.

(3) Save as provided in this Act, no order, decision or award made under this Act shall be challenged, set aside, modified, revised or declared void in any court on any ground whatsoever except for want of jurisdiction.

#### **176. Power to make rules**

(1) The Government may for the whole or any part of the State and for any class of Co-operative Societies after previous publication make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

- i. the applicant to whom the order refusing the registration of a co-operative society may be sent by the Registrar;
- ii. the procedure and conditions for change in the form and extent of the liability of a co-operative society;
- iii. the matter in respect of which a co-operative society shall or may make bye-laws;
- iv. the procedure to be followed for amendment of bye-laws by a co-operative society;
- v. the qualifications or disqualifications of individuals who may be admitted as members of co-operative societies;
- vi. the provisions for a second or casting vote by the Chairman of a meeting of a co-operative society;
- vii. the appointment by a co-operative society of one of its members to represent and vote on its behalf at a meeting of another co-operative society of which it is a member;

- viii. the maximum number of shares or portion of the share capital of a co-operative Society which may be held by an individual member;
- ix. the procedure for the nomination of a person to whom the share or interest of a member on his death may be transferred or the value thereof may be paid;
- x. the mode in which the value of a deceased member's share shall be ascertained;
- xi. the election of members of committee by the general body of a co-operative society;
- xii. the requisitioning of a general meeting of a co-operative society;
- xiii. the remuneration payable to a new committee or administrators, a person or persons appointed in place of a committee removed by the Registrar;
- xiv. the constitution of a common service or services comprising of officers and other employees of different classes of co-operative societies and for determining the number and designation of such officers and other employees;
- xv. the qualification, remuneration, allowances, recruitment and other conditions of service of such officers and other employees of co-operative societies;
- xvi. the constitution of boards at state and district level for recruitment of officers and other employees of different classes of co-operative societies;
- xvii. the constitution and maintenance by any apex or central society of a cadre personnel to work as officers or as other employees in affiliated societies;
- xviii. the prohibition against officers of a co-operative society being interested in contracts in co-operative society;
- xix. the matters connected with the direct and indirect partnership of the Government in co-operative society;
- xx. the rate at which dividend may be paid by co-operative societies;
- xxi. the payment to be made to the "Co-operative Education Fund" by a Co-operative Societies out of its net profits and mode of its investment;
- xxii. the mode of investment of funds of a co-operative society;
- xxiii. the objects of the reserve fund of a co-operative society and the mode of its investment;

- xxiv. the mode of disposal of reserve fund of a co-operative society on its winding up;
- xxv. the extent and conditions, subject to which a co-operative society may receive deposits and loans;
- xxvi. the restriction on transactions by a co-operative society with non-members;
- xxvii. the restriction on grant of loans by a co-operative society against its shares;
- xxviii. the form and standards of fluid resources to be maintained by a co-operative society accepting deposits and granting cash credit;
- xxix. the levy of audit fees on co-operative societies;
- xxx. the procedure to be followed in proceedings before the Registrar, arbitrator or other persons deciding disputes;
- xxxi. the conditions subject to which assets of a co-operative society shall vest in liquidator and the procedure to be adopted in winding up of a co-operative society;
- xxxii. the procedure of recovery of amount due or payable to a co-operative society;
- xxxiii. the mode of making attachment before a judgement;
- xxxiv. the procedure for the distraint and sale of property mortgaged to Agriculture and Rural Development Banks;
- xxxv. the qualifications of members of the Tribunal;
- xxxvi. the manner for registering the address of a co-operative society;
- xxxvii. the account books and registers to be kept by a co-operative society and power of Registrar to direct the accounts and books to be written-up;
- xxxviii. the manner of certification of entries in the books of a co-operative society and copies of documents kept by it in the course of its business;
- xxxix. the statements and returns to be furnished by co-operative societies to the Registrar;
  - xl. the restrictions on persons appearing as legal practitioners;
  - xli. the inspection of documents and the levy of fees for granting certified copies thereof; and
  - xlii. the matters expressly required or allowed by the Act to be prescribed.

**177. Repeal and savings**

(1) The Jammu and Kashmir Co-operative Societies Act, 1960 (Act No. XXVIII of 1960) is hereby repealed.

(2) Notwithstanding such repeal anything done, any action taken, order or notification issued, rule or bye-laws made under the provisions of the aforesaid Act, shall, in so far the same are not inconsistent with the provisions of this Act, be deemed to have been done, taken, issued, made under the corresponding provisions of this Act.

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