SAHULAT

A Journal of Interest Free Microfinance

2

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Vol. 1 December 2012 No. 2

SAHULAT: A Journal of Interest Free Micro Finance is a research based refereed journal. To begin with it is published twice a year, in January and June every year. It is brought out by the Sahulat Micro finance Society, New Delhi, India. Sahulat welcomes contributions from all interested scholars all over the world. The areas of special interest for the journal are: economic development of minorities, poor people and economically weaker sections of the society, financial sector, Cooperative effort and Cooperative movement, Commercial banking, interest free finance, micro finance and interest free micro finance. The sole purpose of the journal is to encourage free and frank discussion on the issues of concern in these areas so as to develop them as scientific disciplines.

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1. M. Umer Chapra, *Islam and the Economic Challenge,* The Islamic Foundation and the International Institute of Islamic Thought, 1992, p.147

2. Muhammad Hamidullah, "Relations of Muslims with Non-Muslims", *Journal Institute of Muslim Minority Affairs,* VII No 2 January 1986, pp. 7-12 (No parentheses please.)

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ISSN 2319-2941

SAHULAT

A Journal of Interest Free Microfinance

A Bi-annual Publication of Sahulat Microfinance Society
devoted to scientific investigation of issues involved in the
development of poor people in India and abroad.

Editor
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Sahulat Microfinance Society
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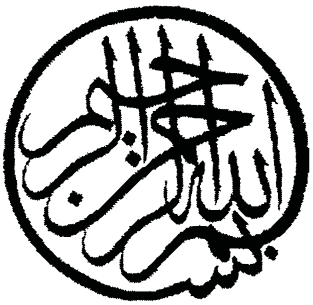

In the name of ALLAH
The Most Beneficent
The Most Merciful

SAHULAT
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Vol. 1 **December 2012** **No. 2**

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Printer and Publisher :
Arshad Ajmal, on behalf of Sahulat Microfinance Society
Printed at Bharat Offset Printing - 2034/35, Qasim Jan Street, Lal Kuan, Jama Masjid, Delhi - 110006
Published from : E-55, 3rd Floor, Abul Fazal Enclave -1, Jamia Nagar, Okhla, New Delhi - 110025 (INDIA)

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ARTICLES

QARD HASAN: ITS RULES AND APPLICATIONS IN ISLAMIC FINANCE

*Syed Faiq Najeeb & Ahcene Lahsasna**

Introduction

The Arabic word 'Qard' literally means to cut off or to tear something apart. However, Qard in practice refers to the act of lending and giving loans since the property of the lender is in essence cut off from him when it is lent to the borrower[1]. Therefore, according to Muslim jurists, Qard legally implies giving of anything of value to the ownership of another person so that the receiver may avail the benefit of the lent item with the condition that the same item or its equivalent should be returned to the lender on demand or at a specified future date[2]. But the Qard (loan) approved by Shari'ah is one that is without a promise of benefits and gifts for the lender. Muslim jurists of the past have unanimously stated that loans which have compensations stipulated in contracts that will lead to repayment in excess of principal amounts or additional gifts/benefits for the lender are prohibited in Shari'ah as this leads to Riba[3]. In pre-Islamic times, borrowing amongst traders, merchants, consumers, buyers etc. were highly usurious without proper written agreements and prescribed procedures.This led to grave injustices in the society[4]. Islam endeavoured to eradicate such injustices through the prohibition of Riba (usury) and thus, a valid Qard contract in Shari'ah is in fact known as Qard Hasan.

The Arabic word Hasan may be translated as splendid or beautiful. Thus, Qard and Hasan together refer to the act of extending a 'beautiful loan'. As a proper definition, Institute of Islamic Banking and Insurance London (IIBI) (2007, p.19) defined Qard Hasan as "an interest-free loan given for either for welfare purposes or for fulfilling short-term funding requirements. The borrower is only obligated to pay back the principal amount of the loan."

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Legality of Qard Contracts in Shari'ah

The permissibility of Qard (loan) contracts has been established from the Quran and Sunnah as well as the Ijma (consensus) of the Muslim scholars. For example, Allah (swt) says:

"O you who believe! When you (enter into a) contract of a debt for a fixed period, write it down." [2: 282]

According to Abu Ja'far al-Tabari, this verse although directly specifying al-dayn (debt), is also referring to al-qard and al-salam (advanced sale) contracts Imam Ahmad ibn Hanbal narrates a tradition of the Prophet in his Musnad that Allah's Messenger is reported to have said,

"Allah will place a servant of Him under His shade on the day when there will be no shade except His shade, who waits from a borrower who lives in straitened circumstances or relinquishes for the debtor"

The above hadith is interpreted in Hassan (2007, p. 174) to refer to a lender who patiently waits for a poor or impoverished borrower to clear his debt and/or ultimately pardons the debtor and waives his claims over the debtor. Therefore, this hadith is also taken in context of permissibility of loan contracts. And finally, Al-Shaukani (2003) reports that there is an ijma' of the Muslim scholars on the validity of qard contracts in Shari'ah. In fact, Al-Shaukhani's further emphasizes that a Qard contract is praiseworthy for the creditor and permissible for the debtor (Vol. 5, p. 229).

Merits of Qard Hasan

The expression Qard Hasan appears directly a number of times in the Quran. For example, Allah (swt) says:

"Who is he that will lend to Allah Qard Hasan so that He may multiply it to him many times?" [2: 245]

"If you lend to Allah a Qard Hasan He will double it for you, and will forgive you. And Allah is Most Ready to appreciate and to reward, Most Forbearing". [64:17]

In Surah Al-Hadid, Verse 11:

"Who is he that will lend to Allah a Qard Hasan, then (Allah) will increase it manifold to his credit (in repaying), and he will have (besides) a good reward (i.e. Paradise)." [57:11]

From the above verses, many writers have interpreted that Allah regards extending of Qard Hasan as a loan to Himself. For example, Mirakhor and Iqbal (2007) say that loan contracts in Shari'ah are so called (Qard hasan) "perhaps because, as the Quran asserts, these loans are made to Allah s.w.t. rather than to the borrower and this eases the pain of 'tearing away' part of one's wealth and lending it to someone in need" (p.19). However, these interpretations may not be entirely accurate.

The Fatwa Committee chaired by Sheikh `Abd al-Wahhâb al-Turayrî[5] was asked the meaning of lending to Allah a beautiful loan and whether it refers specifically to giving people interest-free loans, the fatwa issued stated, "In all of these cases, the term "beautiful loan" refers to spending in Allah's cause specifically or spending in charity generally. It is not referring specifically to giving other people interest-free loans."

This can be further reaffirmed from the Tafsir of Ibn Kathir. Ibn Kathîr,in his commentary on the Qur'ân, explains the meaning of a "beautiful loan" when he discusses Surah At-Taghabun, verse 17. He writes: "Whatever you spend, then Allah will replace it, and on Him will be the reward of whatever you give away in charity. Allah considers giving charity as if it is a loan to Him."

About Surah Al-Hadid, verse 11, Ibn Kathîr says: "Umar bin Al-Khattab said that this Ayah refers to spending in the cause of Allah. It was also said that it pertains to spending on children. It may be correct to hold that this verse is more general than the earlier one. So, it may cover all those who spend in the cause of Allah with good

intentions and a sincere heart. "

However, many narrations from the Prophet (pbuh) pointing out the virtues of Qard Hasan. In a hadith narrated in Ibn Majah, it is reported by Anas ibn Malik that Allah's Messenger said,

"in the night of the journey, I saw on the gate of heaven written, 'reward for sadaqah is ten times and reward for Qard Hasan is eighteen times'. So I asked Jibrail, how is it possible? The angel replied, 'Because beggar who asked had already had something but a loanee did not ask for loan unless he was in need'."

In an another hadith narrated in Muslim, Abu Hurayrah (May Allah agree with him.) reported that Allah's Messenger said, "whoever relieves a believer from a difficulty in this world, Allah will relieve him from his difficulty in the hereafter and Allah will facilitate him in this world and world hereafter."

Providing Qard Hasan to those who are in need falls under the heading of relieving a believer from a difficulty in this world. Therefore, there is no doubt that providing Qard Hasan with sincere intentions is a noble act in Islam.

Conditions of Qard Contracts

Unlike conventional loans that are usually extended with a profit incentive, Qard contracts are categorized as charitable contracts (Uqud tabarru') or non-commutative contracts (Uqud Ghair Mu'awadha) in Shari'ah and have to observe some conditions that are peculiar to it. The major conditions of Qard contracts are described in this section. In Qard contracts, the borrower is given full privilege and ownership over the lent item and he is free to utilize the item as he wills. However, he also assumes full responsibility and is obliged to return the loaned item in full. It is narrated in Ahmad, Tirmidhi and Ibn Majah: 'Abu Hurairah reported that the Messenger of Allah said: The soul of the believer remains hanging with his debt till it is paid.'

Therefore, loans have to be repaid and there is a capital guarantee

for the lender as the borrower assumes full risk of the loaned items. Due to this condition, any returns generated from the use of loaned items are halal and legitimate for the borrower based on the principles of al-kharaj bi al-daman (profits devolve with liability). The evidence for this can be found in the practice of the companion of the Prophet (PBUH), Zubayr bin Awwam.

Al-Zubayr ibn al-Awwam was one of the ten companions of the Prophet (pbuh) who was promised paradise within this life. People always wanted to deposit their money with him for safekeeping (wadiah) due to his honesty. However, the contract of Wadiah in Shariah entailed that the money deposited for safekeeping cannot be used by Zubayr for his own means nor was he liable to provide guarantee for the deposited money unless he was proven negligent in his safekeeping. As a result, Zubayr asked people to provide him their money as a qard instead so that he may be able to utilize the funds for his own purpose and consequently was fully responsible to repay the loaned money in all circumstances.

The most sensitive condition in Qard contracts is that the lender is not entitled to any kind of predetermined benefit(s) from the borrower as a result of this loan. This is because there is no real risk for the lender as the borrower must repay under all conditions and specifying benefits in this transaction would lead to Riba. Sawari et al (2011) report that there is an ijma amongst the classical Muslim scholars that, "if the debtor promised to the creditor that gifts or benefits will be given to the creditor because of this loan, it would be prohibited as it would be riba (p. 264)."

Amongst the contemporary scholars, Dr Yusuf Qardawi (1998) states that in every loan, "riba is a gift or benefit which was imposed as condition earlier" (p. 46). In a publication of Al-Azhar University, it is quoted of Ibn Al-Mundhir that, "They (scholars) have unanimously agreed that if the creditor imposed a condition upon the debtor of any increment or gift and he gave a loan on this commitment, truly, the taking of such excess (increment) would be riba (2003, p. 19)." And finally, the Shari'ah Advisory Council of Bank Negara Malaysia states that, "Hibah (gift or present) cannot be imposed as a condition or promise in qard and wadi'ah contracts

because it may lead to the element of riba (2008, p. 11)".

Therefore, the issue of Riba is very sensitive as it is one of the gravest major sins in Islam. It is narrated in Musnad Ahmad that: '*Abdullah ibn Hanzalah reported that the Messenger of Allah said: A dirham of usury a man devours with knowledge is greater than thirty six fornications.*'

It is useful to mention here that Shari'ah permits 'Husnal Qadha' or gracious repayment of loans/debts. Husnal Qadha is when a borrower repays the lender in excess of the principal out of free consent and without any precondition or demand by the lender. This is compatible with the Sunnah of the Prophet (pbuh) where in a hadith reported in Sahih Muslim, Jabir (r.a.) narrated that the Prophet (pbuh) owed him a debt and he repaid Jabir in excess of the principal[6].

Amongst other conditions of Qard contracts are that the two parties engaging in this contract must have the appropriate legal capacities (Ahliyyat); a clear offer (ijab) and acceptance (qabul) made before entering into the contract; it is strongly recommended (obligatory according to minority opinion) to write down the loan contract; recommended to take two witnesses; and the subject matter of the contract (the item to be given as loan) must also be present[7].

Table 1 :
Summary of Major conditions of Qard Contracts

Table 1: *Summary of Major Conditions of Qard Contracts*
❖ Non-commutative contract which provides divine rewards as opposed to material rewards.
❖ Borrower assumes full ownership of lent item and is free to utilize it as he wills.
❖ Borrower assumes full risk of loaned item and obliged to repay lender under all circumstances.
❖ Any returns generated from the use of loaned items are legitimate for the borrower.
❖ The lender is not entitled to any kind of predetermined benefit(s) from the borrower as a result of this loan.
❖ However, a borrower may repay the lender in excess of the principal out of free consent and without any precondition or demand by the lender.
❖ Pillars of contracts such as offer (ijab) and acceptance (Qabul), contracting parties and their legal capacities, subject matter etc must be met.
❖ It is strongly recommended (obligatory according to minority opinion) to write down the loan contract.
❖ It is recommended to take two witnesses.

Qard Contracts in Islamic Finance

The contemporary Islamic finance industry makes use of Qard contracts in a number of their products and services. However extreme care has to be taken in structuring such products as there is always the danger of falling into Riba transactions as elaborated in the previous section. This section will review these products and services and highlight various issues surrounding their structuring particularly from the perspectives of risks of Shari'ah non-compliance.

Deposit Products based on Qard

The Islamic financial institutions like their conventional counterparts also offer current and savings accounts to their clients for depositing money. The Shari'ah compliant contracts utilized in structuring these accounts are either Qard/Wadiah Yad Damanah or Mudharabah (AIBIM, 2008).

For current/savings accounts structured under the concept of Qard, the client provides an interest-free loan to the bank through deposits and the bank may utilize the funds for its own means. The client at any time may withdraw his funds and the bank is obliged to return the amount in full. The bank at its sole discretion may reward its depositors through means of hibah (gifts) that have not been predetermined or promised earlier in the Qard contract (Bakar, 2008a, p.71). However, many Islamic banks, particularly in Malaysia, usually offer deposit products under the structure of Wadiah Yad Damanah which is translated as safekeeping with guarantee.

According to Al-Zuhayli (2006), a wadiah contract will change into a guarantee contract (wadiah yad damanah) if the trustee violates the principles of a wadiah contract for example by using the deposited item for his own use; for merging the deposited item with that of others; etc[8]. Islamic banks take their clients deposits and then use the funds for their own means as well as merge one client's money with the others. This practice entails the contract is of wadiah yah damanah. But in fact, Muslim jurists have likened the

Islamic banking products structured under wadiah yad damanah concept to qard contracts and stated that all conditions pertaining to qard contracts are applicable on it. Dr Qardawi (1998) stated that in a wadiah yad damanah product, the bank's relationship with the client should be that of a debtor with creditor. The Islamic Fiqh Academy of OIC (1998) also concluded that, "Savings money in an account that may be withdrawn at any time, whether in Islamic banks or conventional banks, are considered as loans in the view of Fiqh ruling. The bank, as a receiver of the deposit, is responsible for the deposit and must return when demanded by the depositor. The bank keeps the savings with a guarantee responsibility."

Therefore, deposit products under the principles of wadiah yad damanah are also qard contracts from the fiqh point of view and so all rules of qard contracts are applicable on them. In essence, there can be no promise of additional rewards to the depositors and if there are any rewards in future, it must be in the form of hibah (gift) at the sole discretion of the bank.

Credit Cards / Cards based on Qard

Islamic financial institutions are also able to offer charge cards and credit cards to their clients structured on the principles of Qard Hasan. From the conventional perspective, the difference between a charge and credit card is that there are no revolving credit facilities in a charge card whereas the facility exists in a credit card (Bakar, 2008b, p. 117). From an Islamic perspective, the revolving of credit with higher repayments against time is riba and therefore, charge cards and credit cards based on underlying contracts of Qard Hasan are similar in nature and will be discussed together[9]. This structure of credit card is referred to as the Ujarah-based (fee based) Islamic credit card.

In an Ujarah-based Islamic credit card, the customer may use the card at any supported merchants/outlets posts, terminals to make payments or to withdraw cash from any ATM. At the time of payment/withdrawal, the issuing IFI is said to have extended a qard hasan to the customer. The customer is then to repay this loaned

amount without interest before a specified time period. The catch here is that the bank charges a fee (ujarah) from the customer for providing this credit card service (Engku Ali, 2008, p. 155).

The issue regarding charging this fee is very sensitive since the money being extended to the customer is on the basis of Qard Hasan and there is an imminent risk of riba creeping in. Skeptics have questioned what is this service fee for? The Islamic Fiqh Academy of OIC (1986) has ruled that this service fee must be fixed in terms of amount and based on actual cost incurred by the issuing IFI in providing this facility. The service fee should not vary according to the amount withdrawn. Other than the actual cost, should the IFI charge additional to the customer, then it leads to Riba. This issue of service fee is further discussed in later sections of the paper.

Financing Products based on Qard

Unfortunately, the role of extending financing through qard has been very limited in the Islamic financial industry and this is mainly due to lack of ability to profit from such products (with the exception of Iran where most banks are state-owned). In a survey conducted by Ariffin and Adnan (2010) asking Malaysian Islamic bankers on problems in offering qard financing, the results indicated six main reasons in the following order of prevalence: "Not able to generate any profit; not able to cover the financing; high administrative and transaction costs; high risk; no support from top management; and no demand from customers" (p.21). To emphasize their point, Ariffin and Adnan (2010, p. 14) provide statistics which indicate that only 3 banks in Malaysia reported Qard Hasan in their financial statements. These were Bank Muamalat (RM5.65 million outstanding Qard Hasan), Al-Rajhi (RM2.84 million) and KFH Malaysia (RM33,000). In comparison to the total outstanding financing, these are only 0.1%, 0.15% and 0.001% respectively for each of the three banks.

According to Khan (2008), Islamic banks usually provide qard hasan to their existing clients or restrict this facility only for the very weak and needy sections of the society. However, the concept is

widely used in providing microfinance by NGOs, charities, religious organizations, etc. Islamic micro financing based on Qard Hasan contracts will be explored in the next sub-section. As an example of Qard hasan financing, Dubai Islamic Bank in UAE offers qard hasan to its existing customers in order to help them overcome financial difficulties. The qard is mainly directed at facilitating social needs such as marriage, education and situations beyond the control of the applicant like prolonged delay in salaries or wages (Atan, 2009, p. 8). The Qard Hasan fund consists of funds from the bank itself but also includes contributions from other individuals, financial corporations, business organizations and even the government. The recipients are granted one year's time for repayment with installments starting within a month from the date of receiving the qard.

However, financing based on Qard hasan by Islamic banks is popular in the Islamic Republic of Iran where the banks (mostly state-owned) collaborate with local mosques, religious organizations, and at times with professional associations to extend small consumer and producer loans on the basis of qard hasan (Mirakhor and Iqbal, 2007). The qard hasan fund is made up of contributions by the well-off and capable individuals of the society who have guarantee on their capital by the banks and they are free to withdraw their funds any time they desire. There is no interest charges involved, but some funds do charge administrative costs from the recipients of qard hasan. The controversial issue surrounding financing products based on qard hasan is the charging of these administrative costs.

According to Shari'ah Standards of AAOIFI, charging of service cost is allowable, provided that it is the actual cost (Atan, 2009, p.10). Farooq (2010) explains that charging service fees on Qard hasan is allowed provided it is to cover the actual administrative costs incurred in processing and extending the qard to the client. However, these should not be related to the amount or time period of the qard. It should be fixed and representative of the actual costs. But what is found in practice is that service fees on qard hasan are in fact charged as a percentage ranging from 1% to 3% of the loaned amount (Khan, 2008, p.15). The percentage in some

jurisdictions is issued by the governing regulator while in other cases, a formula is used to arrive at the figure by the financial institution themselves. For example, Ahmad (1993) reports that maximum service charge on loans in Pakistan are calculated using the following formula:

Service charge: (E/A) x 100
Where
E: administrative expenses during the year
A: average assets during the year

Is this percentage method of calculating service costs on qard hasan legitimate given the fact that based on the percentage method, the service charge directly varies with the amount being extended as Qard hasan? Both AAOIFI standards and resolution of OIC IFA have clearly stated that service charge on Qard Hasan/Credit Cards should not be linked to the amount of financing being extended and must be a fixed value representative of the actual cost. This issue is a matter of grave concern which Islamic banks must clearly rectify since if these service charges are not actual costs, then they are riba. And Riba is the only sin in Islam on which the Quran says, "…take a notice of war from Allah and His Messenger..." [Surah Al-Baqarah, Verse 279].

Micro-Financing Products based on Qard

The concept of micro financing in the conventional finance industry originates from the Nobel Prize winning initiative by Professor Muhammad Yunus with Grameen Bank in Bangladesh in 1976. Grameen Bank's (2011) official charter describes this initiative as "an action research project to examine the possibility of designing a credit delivery system to provide banking services targeted at the rural poor." Being a conventional finance project, this type of micro-financing indulges in riba.

On the other hand, Islamic micro-financing schemes based on principles of qard hasan while being non-existent in most Islamic banks (except in the case of Iran) are widely operated and implemented by the informal sector of the Muslim world consisting of NGOs, religious organizations, charitable trusts, etc. As per Khan

(2008), these informal institutions have allowed small producers, farmers or entrepreneurs who are unable to receive finance from other commercial banks or other lending institutions to be able to receive much needed liquidity as Qard hasan.

To give a few examples, the Akhuwat foundation in Pakistan extends qard hasan to various needy individuals of the society. The service charges are very low [$1.14 in 2011] per application and are fixed regardless of qard amount requested. The contributions to the qard hasan fund and expenses of the organization are managed through donations (Akhuwat, n.d).

The Ansar Personal Loans in UK also operates a micro financing scheme based on principles of qard hasan. It has a list of registered members who each pay in GBP 10 a month as donations to the qard hasan fund. The donations are also used to pay for the expenses of running the organization. No service fees are charged on extending the qard hasan although only its registered members are entitled to avail the qard hasan facility (El Diwany, 2010). There are some Shari'ah objections raised in this model since it appears the facility to avail qard is conditional to registering and donating to the organization. And contingent/conditional contracts are not permitted in Shari'ah. However, Ansar argues that their donations and their qard hasan facility are independent to each other and unilateral in nature. Mirakhor and Abbas (2007) report a number of small scale micro/rural banks in Indonesia providing micro-financing on the principles of Qard Hasan. Khan (2008) also reports of qard hasan micro-financing by Islamic Relief organization in Kosovo, Bosnia & Herzegovina and Pakistan.

In a summary, qard hasan micro-financing is a very competent financial instrument for alleviating hardships and redistributing income amongst the needy segments of the society[10]. Grameen bank is accredited to transforming millions of lives in Bangladesh with its micro financing scheme while charging interest rates as high as 30% on outstanding amounts. What is the potential of transformation from qard hasan micro financing; an interest-free Shari'ah endorsed loan? The Islamic financial industry should consider providing such services on a formal platform as a

benevolent gesture to improve the state of affairs of the Muslim Ummah as well as to attract non-Muslims to Islam.

Government Securities / Private Debt Securities

In order to facilitate liquidity flow amongst Islamic financial institutions, the contract of qard hasan has also been used to create public and private debt securities that allow effective liquidity management for Islamic financial institutions. These securities are developed on the underlying contract of Qard Hasan, and the lender gives an interest-free loan to the borrowing institution. We will discuss a few examples of both government and private debt securities based on Qard Hasan from the Malaysian markets as the Malaysian Islamic interbank, capital and secondary markets are most advanced amongst the Islamic finance nations.

As an example of government securities, the Malaysian government back in 1983 issued the Government Investment Certificates (now replaced with Government Investment Issues) on the basis of qard hasan in order to facilitate Islamic banks and Islamic windows to comply with central bank's statutory liquidity requirements as well as to park their idle funds (Bakar, 2008c, p.431). The conventional central bank instruments such as treasury bills are interest-bearing and therefore, Islamic banks cannot hold such liquid papers (BNM, 2009). GICs could be bought and sold at par at the central bank depending on the liquidity needs of the institutions. However, such GICs were not tradable in secondary markets since it makes no economic sense to trade these certificates at any values other than par.

As a result, over time, the government securities in Malaysia have moved towards using other underlying contracts such as that of Bay al-inah, Mudharabah, and more recently Commodity Murabahah to enable trading of these securities in secondary markets and allow participants to make some profits[11] (Dusuki, 2008a, p. 178). According to BNM, "Since qard hasan concept is essentially benevolent in nature, it is improper to implement it in commercial transaction with profit orientation."

Nonetheless, the Malaysian government has been experimenting with another Shari'ah compliant instrument known as Malaysian Government Certificates (MGCs) that are based on qard hasan and is reflective of borrowing by the government from its citizens, financial institutions, etc. These certificates have varying maturities and are issued at par in multiples of RM 10,000 and can be redeemed on maturity or at demand at par value from Bank Negara Malaysia (Al-Amine, 2008, p. 525). Bank Negara, at its sole discretion, may also reward the certificate holders' monetary benefits in the form of dividends based on the principle of hibah (gift-giving).

In the case of Islamic private debt securities (IPDS), the use of qard hasan is very limited since there are no economic benefits to be made. Therefore, issuance of private debt securities on principles of qard hasan has mostly been between parent and subsidiary companies where profiting from lending is not the motive. For example, in 1994 Petronas Dagangan Berhad (PDB) issued RM 300 million worth of IPDS to its parent Petroleum Nasional Berhad (PNB) as an interest-free loan However, these IPDS did have 120 million detachable warrants attached with them in the form of transferable subscription rights for the lender (Engku Ali, 2008b, p. 453). Therefore, these were later criticized for possible non-Shari'ah compliance as these warrants represented extra benefit for the lender.

As a review for this sub-section, it should be recalled that the spirit of qard hasan in shari'ah is tabarru' (charitable) and not for profit-making purposes. Based on this, Al-Amine (2008) cautions that product structures using qard hasan principles which form implicit expectations in lender's mind of hibah should be tread on carefully. According to Al-Amine, if this gift-giving in the form of hibah becomes the custom and general practice, then it may be considered extending loans with Riba. The acid-test of lenders' intentions who subscribe to such products would be when the borrower does not provide any hibah and repays the exact principal back in maturity.

Takaful Products

The use of Qard hasan is also found in some models of takaful (Islamic insurance) as practised by the takaful operators in the industry. Describing these models is beyond the scope of this paper[12]. But in brief, takaful models are normally based on shari'ah concepts of wakalah, mudarabah and/or waqf. Based on these concepts, takaful operators maintain different pools of money received from clients for various purposes, for e.g. savings a/c for long-term life Islamic insurance; risk account for more frequent motor or fire or accident takaful, etc. Qard hasan is used to transfer funds between these accounts whenever there is a shortfall in one. For example, if there is a shortage of funds in the risk account at a particular time while there are excess funds in the savings account, the required funds from the savings account maybe transferred to the risk account as a qard hasan or even as a donation. Therefore, it represents an internal funds transfer on the basis of qard hasan or tabarru' and the motive is not to profit from this transfer but to alleviate liquidity issues.

Issues

It has been established in this paper so far that lending a Qard Hasan is a very noble and virtuous act of worship in Islam. The lender of Qard Hasan having sincere intentions is promised of abundant rewards from Allah (SWT). However, the contract of Qard hasan is governed by rules and regulations in Shari'ah of which the most sensitive is the impermissibility of contracting benefits for the lender as a result of the qard extended. Based on such rules, the contract of qard hasan has failed to make inroads in the Islamic finance industry. Currently, the levels of financing by IFIs in the form of loans or debt securities on principles of qard hasan are negligible. However, there are some activities by IFIs in offering charge cards/credit cards, micro-financing and other basic short-term small amount financing on the principles of Qard Hasan as we have reviewed in the paper. But, the contentious issue involved in such products is that the lending institutions charge a 'service fee' from the recipient. While AAOIFI, OIC and other scholars have

expressed permissibility of this fee, they clearly stated that it must be the actual cost in processing the applications of Qard Hasan and any additional benefit for the lender is Riba.

Yet, as observed earlier, in practice the lenders usually charge service fees as a percentage of the amount being extended (which leads to the service fee varying with the amount of qard hasan) or as a fixed amount based on some average estimate. Are these the real and actual costs of providing the service? According to one Shari'ah auditor in a local Malaysian Islamic bank[13], banks are in fact able to profit from collecting such service fees if they are able to generate large volumes of transactions. The auditor gave example of an Ujrah-based Islamic credit card. The service fee in his bank is fixed but based on an average cost estimate. If the bank exceeds the original budgeted number of clients and transactions for its credit card product which it used to estimate the average cost, it will be in profit as its service fee collections will exceed actual costs.

This is a very sensitive and delicate issue that cannot be taken lightly and efforts must be made to rectify the problem. In Sahih Muslim, Jabir r.a. reported that the Messenger of Allah cursed 'the devourer of usury, its payer, its scribe, and its two witnesses. And he said that they are equal (in sin)'. Therefore, profit on qard hasan is riba and if riba creeps in these qard hasan transactions, the lending institution and the client both are equal in sin. And we have established earlier how heinous a sin is Riba in Islam!

For the case of deposit products and government securities where wadi'ah yad damanah/qard hasan contracts are used in mobilizing funds and which award non-stipulated monetary rewards as hibah, caution has been raised by certain writers. If such rewards in the form of hibah become the norm and general practice, and both the lender expects to receive and the borrower expects to give a certain percentage as hibah, then this may become a violation of qard hasan contract and abuse of the spirit of husnal qadha principle in Shari'ah. As mentioned earlier in the paper, the acid-test of lenders' intentions in these cases would be when the borrower does not provide any hibah and repays the exact principal back in maturity.

Recommendations

Islamic financial institutions must find alternative ways to cover their administrative costs involving Qard Hasan contracts. Mirakhor and Iqbal (2007) suggest that lending institutions can cover their administrative costs by investing fractions of their qard hasan funds in Shari'ah compliant investment opportunities or by instead engaging in mudharabah/musharakah contracts with their clients. It must also be kept in mind the spirit of qard hasan in shari'ah is tabarru' (charitable) and not for profit-making purposes.
A major concern for banks in provided micro-financing is the risk inherent in financing activities involving the poor and small entrepreneurs. As a possible solution, Dusuki (2008b) proposes banks engage in micro-financing activities through a bankruptcy-remote Special Purpose Vehicle (SPV) that would allow the core balance sheet of the financial institution to be protected from adversaries in the micro-financing activities. Therefore, within the context of Islamic finance and use of qard hasan contracts, Dusuki's model proposes the following basic procedures for qard hasan financing through SPV:

(1) The Islamic bank mobilizes various sources of funds with specific microfinance objectives.
(2) The Islamic bank creates a bankruptcy-remote SPV.
(3) The bank allocates certain amount of funds and passes it to the SPV.
(4) The funds are channelled to various clients depending on needs and demands. For example, zakah funds may only be allocated to poor clients for consumption purposes and capacity building initiatives, while other type of funds can be used to finance their productive economic activities.

Through this model using SPV, the Islamic financial institution can specialize in using non-commutative contracts such as Qard Hasan, Awqaf (endowments), Sadaqah (donations) etc. to engage in micro-financing activities amongst the needy sections of the society. The administrative costs can be recovered through investing portions of the funds in Shari'ah compliant investment opportunities or by instead engaging in mudharabah/musharakah

contracts with their clients. With regards to the issue of gift-giving (hibah) on qard hasan becoming customary, this could be overcome in financial institutions through randomly omitting paying hibah on some months of the year. Therefore, by adopting such measures, there is no certainty of regular monthly hibah payments.

Conclusion

In conclusion, it is regrettably noted that qard hasan is not widely extended by IFIs due to a lack of profit incentive. To this end, it must be questioned that are profits the only objective of a commercial company as per Islamic perspectives? Community welfare in the form of CSR is now increasingly being endorsed by conventional companies. Qard Hasan can be a form of CSR for IFIs that not only gains public appreciation but also divine rewards for parties involved. Therefore, qard hasan contract needs to be further researched in order to preserve its original spirit in current practice and also to find ways to enhance its application in the industry. We noted earlier that if a riba-based Grameen bank can be commended for transforming millions of lives, we can only imagine the potential of the blessed contract of Qard Hasan!

END NOTES

1. Based on Kettell (2011), p. 154
2. Adapted from Ibn Hazm (1988), Vol. 6, p. 347
3. See Nawawi (2009), pgs. 147-149
4. See Hassan (2007), pg. 173
5. For the full fatwa on Qard Hasan as in the verses of the Quran, please go to: http://en.islamtoday.net/node/1345
6. Taken from Najeeb (2012), pg. 44
7. For more details on conditions for Qard contracts, see Hossain (2011) "Qard Hasan: A Practical Approach"
8. For a full list of cases where a wadi'ah yad amanah (safekeeping) contract changes into a wadi'ah yad damanah contract, please see Al-Zuhayli (2006), pgs. 4024-4033
9. As an example of an Islamic charge card, see HSBC Amanah's Charge Card or Al-Rajhi's charge card. Ujarah-based Islamic credit cards were common in banks in United Arab Emirates. However, nowadays most banks offer Tawarruq or Ijarah-based Islamic credit cards that allow them to earn profits.

10. To read about real world examples of how qard hasan micro financing has transformed lives of its recipients, please read Islamic Relief's (2008) report on Islamic Microfinance pgs 27-35
11. The selling of securitized debts (Bay al-dayn) at values other than par is a controversial issue in Islamic Finance that is heavily debated. It is not in the scope of this paper to discuss the issue but readers may refer to Engku Ali (2008b) 'Issues in Islamic Debt Securitization' for in depth understanding.
12. Interested readers can refer to pgs. 327-349 in El Diwany (2010) for an explanation on the various models of takaful operations as practiced in the industry.
13. The concerned individual requested full anonymity of his and his employer's identity.

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HELP ERADICATE

POVERTY, ECONOMIC INJUSTICE

AND

INEQUALITY

JOIN

A MICROFINANCE INSTITUTION TODAY

LEGAL CO-EXISTENCE OF ISLAMIC FINANCE AND CONVENTIONAL FINANCE

*Tahmina Laskar**

It is well known that the business activities in Islamic finance are not confined merely to countries which have Shariah based legal system; they are also practiced in the countries, where Islamic legal system is not enforced. This often creates a conflict in the co-existence of Islamic Finance and Conventional finance legally. Islamic finance in the past few years has witnessed a double digit growth rate, a target which conventional finance finds to achieve. Keeping in view of this unprecedented growth of Islamic financial system, reconciling it with the conventional finance becomes inevitability. The aim of the present study is to explore the ways to reconcile Islamic and Conventional financial systems in terms of legal mandates to allay some of the apprehensions in their co-existence. The paper will suggest developing a system of alternative disputes redressal (ADR), which has historical roots in Islamic jurisprudence. It is a well established concept in Islamic law in dealing with the legal issues if there is a conflict between the Islamic and conventional legal systems. The paper would also compare the different circumstances out of which both these systems emerged and how their application differed. The limitations of ADR will also be discussed in the paper along with its role in finding a common ground of reconciliation for both the systems to co-exist in a competitive environment for larger public good and the economy.

ADR or "Alternative Dispute Resolution" is an attempt to devise a machinery which should be capable of providing an alternative to the conventional methods of resolving disputes. An alternative means the privilege of choosing one of two things or courses offered at one's choice. It does not mean the choice of an alternative court but something which is alternative to court procedures or something which can operate as court annexed procedures.

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Human conflicts are inevitable. Disputes are equally inevitable. It is difficult to imagine a human society without conflict of interests. Disputes must be resolved at minimum possible cost both in terms of money and time, so that more time and more resources are spared for constructive pursuits.

For resolution of disputes there is a legal system in every human society. Every injured person is supposed to go to courts for his redressal. All the legal systems are trying to attain the legal ideal that wherever there is a wrong there must be a remedy so that nobody shall have to take law into own hands.

The fact that the Courts are overburdened with litigation calls for an alternative remedy which will not be bogged down by costs and delays and all that can be said is that now ADR is rapidly developing its own national institutions, experience, and theoretical and practical development, and at the same time offering a simpler cross-border dispute resolution approach. Arbitration is one of the alternatives as conceived by the mechanism of ADR. Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (the "award") they agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.

Although market has recognized the existence and importance of Islamic banking to the global financial system, uniform and regulatory and legal framework supportive of an Islamic financial system has not yet been developed. Existing banking regulations in Islamic countries are based on the Western banking model. Similarly, Islamic financial institutions face difficulties operating in non-Islamic countries owing to the absence of a regulatory body that operates in accordance with Islamic principles

Arbitration is one of the concepts in Islamic law which Western jurisprudence has tried to understand in the context of Islamic Jurisprudence philosophy; e.g. how it was referenced in past books

and how it has developed in recent times as shown in modern writing. Arbitration can be intermixed with other contracts; for example arbitration and reconciliatory sulh are major concepts in Shari'ah law that require study and profound analysis to distinguish clearly how Islamic scholars understand them and to eliminate what could cause confusion for non-Shariah experts.

Without doubt arbitration can prove beneficial to conflicting parties in that it can end conflicts rapidly with minimal costs. Moreover, arbitration is undertaken willingly by the conflicting parties as method to settle their dispute. Arbitration has been provided and recognized by the four sources of the Shariah: the Quran, the Sunnah (Prophetic tradition), Ijma (consensus of opinion) and Qiyas (reasoning by analogy). The evidence for legality of arbitration as a means of resolving dispute can be derived from the following verse : And if you fear a breach between the two, then appoint a judge from her people; if both desire agreement, Allah will effect harmony between them, surely Allah is Knowing, Aware. (Al-Quran,3:35). The condition precedent for arbitration from the Islamic point of view is that the arbitrator may only resolve conflicts based upon justice and reasonability which Islam does not prohibit. Arbitration has always been a means of settling disputes, whether between individuals or between tribes. Islam approves, organizes and promotes arbitration from non-obligatory contract binding upon all parties with the power of a judicial judgment.

Financial experts estimate the current worth of Shari'ah compliant assets at almost one trillion US dollars globally. As measured by these assets, the global market for Islamic financial services has grown ten percent per year since the mid-1990s. The potential market for Islamic financial products could be as high as four trillion U.S. dollars. The bulk of these assets are held by commercial banks, while investment banks, sukuk (means all Islamic bonds, hedge funds, and Shariah-complaint stocks and securities), equity funds, and the assets of takaful (takaful similar to mutual insurance, is a risk-sharing entity that allows for the transparent sharing of risk by pooling individual contributions for the benefit of all subscribers) account for twenty five percent of Shariah-

compliant assets. The demand for Shariah-complaint services within a non-Shariah legal system creates potential conflict of law issues. The present environment in the law of Shariah-compliant finance is unprecedented in that non-scholars of Shariah are being called upon to interpret Islamic law. Those versed in business and finance laws draft contracts to agree with Shari'ah principles to the best of their ability. Of course, the realities of life cannot be drafted out of a contract, and disputes do arise.

All of the major players in the sukuk market are parties to the New York Convention. This list includes Malaysia, Qatar, UAE, and Bahrain. The rules and practices of arbitration centers in these countries and others demonstrate a consistent practice of combined-law arbitration. Islamic banks normally retain a specialized board for approval of financial transactions, and this branch may double as an arbitration body. One of the most successful and notable such body is the Kuala Lumpur Regional Centre for Arbitration (KLRCA), it houses a specialized department to arbitrate Islamic financial disputes. The Asian-African Legal Consultative Organization (AALCO) established KLRCA in 1978 to facilitate commerce between its 47 member states. It is obvious that, as with any modern arbitral tribunal, the KLCRA allows parties to choose the law which shall govern the arbitration. As a forum specialized in Islamic Finance, the KLRCA also provides that the arbitral tribunal shall apply Shari'ah principles and the law designated by the parties as applicable to the substance of the dispute. This statement explicitly provides for the application of Shari'ah law in combination with the chosen law of parties as necessitated by the terms of the contract and facts surrounding the conflict. However, the KLRCA presupposes that when a Shari'ah principle is in dispute the arbitrator will not be competent to judge the matter. In such cases where a Shari'ah principle is in dispute, Rule 33 provides that the arbitrator shall adjourn the proceedings and refer the issue to either the Shari'ah Advisory Council of the Central Bank of Malaysia or a Shari'ah expert agreed upon by parties. KLRCA claims to be one of the first arbitration centres in the region to provide institutionalized Islamic Banking and Financial Services Arbitration Rule. In Malaysia, for adjudication purposes for instance, a dedicated judge in the commercial division of the high

court in Malaysia has been assigned to preside over litigations relating to Islamic banking and finance. The court's adjudication role in Islamic finance is reinforced by the support from the Shariah Advisory Council (SAC) in its capacity as a consultative body to the Malaysian judiciary system.

Under the law, the Central Bank of Malaysia Act 2009 maintains that if a question of law, concerning a Shariah matter arises in any proceedings relating to Islamic financial business, where the court or the arbitrator shall take into consideration any published rulings of the Shariah Advisory Council or refer the matter to the Shariah Advisory Council for its ruling. The Shariah Advisory Council's rulings are binding on the courts and arbitrators

This referral system preserves and enhances the sanctity of Shariah rulings. It also shows consistency in the interpretation and application of Shariah principles in transactions. To complement the court system, specific arbitration rules for Islamic banking and financial services have also been developed, enabling disputes for both domestic and international cases to be dealt with by the Kuala Lumpur Regional Centre for Arbitration (KLRCA). The KLRCA is also putting efforts to obtain assistance from various Islamic banking scholars, eminent arbitrators to revise the rules to ensure that the awards rendered are in compliance with the New York Convention on the enforcement of Foreign Arbitral Awards and Shariah principles both.

Given the growing number of court cases involving Islamic Banks or financial transactions over the past few years, including several in the high court in London, financial regulators are keen to see the industry adopt alternative dispute resolution schemes involving arbitration. Arbitration is fast becoming the preferred method of dispute resolution as opposed to litigation. It forms an integral part of financial and business culture especially those dealing with transnational companies. The efforts of KLRCA can be taken in perspective by other nations as well to reconcile the differences between conventional financial system and Islamic financial system as well as allay fears that both cannot co-exist. The practices in Malaysia show that a lot of caution must be exercised in reconciling

the conventional and Islamic laws. The most glaring difference between the conventional and Islamic banking arbitration is that in the latter whenever an arbitrator has to form an opinion on a point related to Shari'ah principle and decide on a dispute arising from the Shari'ah aspect of an Islamic banking and financial business, the arbitrator shall refer to the relevant council for its decision. In circumstances where the arbitration relates to a dispute arising from the Shari'ah aspect of an Islamic banking and finance business it is beyond the purview of the SAC and the arbitrator shall refer the matter to a Shariah expert or council to be agreed between the parties. If caution and respectability for the Shari'ah principles are kept in view, then the arbitration can turn out to be cost effective as compared to litigation as the disputing parties have to go through only one dispute resolution process as the arbitral awards are final and binding.

Like any other alternative, arbitration process also has limitations, e.g. some unknown biases may creep in and the competency of the arbitrator may be questioned. But if due care and diligence is applied in choosing the experts arbitration surely is the way forward for a world of finance where Islamic finance is fast growing and developing.

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SHARI'AH COMPATIBLE PRACTICES IN THE INDIAN STOCK MARKET: A Review of Potentials and Prospects of Islamic Capital Market

Ausaf Ahmad*

Abstract

India may boast of having one of largest concentrations of Muslims outside the Islamic world. The official estimates put Muslim population in the country around 150 million while unofficial guestimates put the figure as high as 200 million or even more. Despite its large numerical muslim population, India does not have an Islamic bank! However, India has one of the most advanced banking networks amongst the developing countries. Its regulatory agencies are also well placed. However, the laws concerning capital market are not as stringent as the banking sector. The financial sector is much less regulated and offers much more scope for the application of Islamic rules. Lately some firms have appeared, that offer various kinds of services to Islamic investors. Various indices of Indian stocks have also appeared. Indian capital market waits the ingenuity and innovative spirits of Islamic investors and entrepreneurs. Within this background, this paper undertakes a review of Shari'ah screening of business companies listed in India. It introduces the firms which are undertaking this kind of business.

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*The author is thankful to Mr. Sadiq Shabibi (Sahulat Microfinance Society) for procuring a book and Mawlana Anis Aslam for providing the hard and soft copies of the Resolutions of Islamic Fiqh Academy, India. Thanks are also due to Prof Nejatullah Siddiqi, Professor Rodney Wilson and an anomous referee for reading a first draft and making some useful suggestions for improvement. However, none of them whose names have been mentioned are in any way implicated in the remaining errors and conclusions drawn by the author which are his sole responsibility.

Introduction

It is well known that India is predominantly a non-Muslim country. The total number of Muslims in the country has been a subject of difference of opinion, disagreements and even disputes between the community and the government and its organs. The Census of India, a governmental institution, enumerated the number of Muslims as 138 million people in a total population of 1029 million in 2001[1]. This means that Indian Muslims constitute 13.4 percent of Indian population[2]. This is contested by the community which alleges that official figures are highly suspect, it is alleged that official circles highly under report the number of Muslims due for political reasons. The unofficial guestimates put the number of Muslim population in India, somewhere between 140 to 200 million, or even more. However, not much confidence may be placed in the unofficial figures as basis of their calculation remains shrouded in mystery. Not being the result of any scientific calculation, these figures are mere guess work. The last Indian census, conducted in the year 2011, reports the total Indian Muslim population to be 138 million against a total population of 1029 million people. The detailed breakdown of figures is not available yet. Assuming that their proportion in the parent population remained constant at the level of 2001, the total number of Indian Muslims in 2011 does not go beyond 162 million.

Whatever may be the fact regarding correct population figures of Muslims in India, at least this much may be said without much fear of contradiction that India can boast of having one of the largest concentration of Muslims outside the ambit of the Organization of Islamic Conference (OIC). It may even exceed the total population of several Muslim Countries[3]. It is rather surprising that despite its large Muslim presence, the country is still without the services of a full-fledged and legal Islamic bank[4]. It seems rather ironical in view of the fact that some of the earlier models of Islamic banking came out of India as early as 1940s[5].

The absence of an Islamic bank presents a predicament for Indian Muslims: What should they do with their money? Most of the financial instruments in the money market such as bank fixed deposits, company deposits and government securities etc. are

interest based. In view of Divine Prohibition of interest, these instruments do not have much attraction for Muslim investors. Hence equity investments remain the only available choice. This paper is a modest attempt to evaluate the suitability of such choices particularly in the Indian stock market.

Most of Shari'ah experts regard the investment in shares of business companies as permissible[6] subject to fulfillment of certain conditions. For example, nearly all scholars agree that participation in the businesses of those companies which may be involved in the production, exchange or distribution of prohibited items is not allowed. The experts of Islamic Shari'ah in India have debated the issue of its permissibility for quite some time. The positions on which there is near consensus of scholars may be summarized as follows:

A share of a company represents the ownership of the holder in the company. It is not mere a document showing that purchaser has invested so much amount in such and such company. The initial purchase of shares of such companies which are in the stage of collecting the resources is really participation in the company and not purchase in the usual sense of the term. Thus, equity share in a company is a proof of limited ownership of the shareholder in the company and not a mere indication that he has invested that much amount in it.

The buying of shares of the companies in their initial stages, which are in the process of collecting their capital, is not buying; from the Shari'ah point of view. Rather it is participating or having a share in the company.

Generally, the other properties of the company have more value than its capital. That's precisely why it is sound to purchase the shares of a company. Nevertheless, if it is known that the amount to be paid is either less than or equal to the face value of shares, then under these circumstances it would not be correct to buy these shares at a price less than or more than its fixed amount.

The buying and selling of shares of the companies, which indulge in

impermissible businesses, like that of liquor, pork or interest-bearing loans are strictly invalid and impermissible.

It has been observed that the establishment of companies, which would conduct business purely on Islamic lines, is feasible in India. Nevertheless, since such companies have not been established in India that work strictly on Islamic lines as yet or even if present they are still negligibly small in number, therefore, those Muslims who have capital and are unable to invest in valid and permissible business ventures owing to certain circumstances, can purchase the shares of the companies carrying permissible businesses (for example, manufacturing of engineering instruments or items of general use) even if they have to indulge in interest transactions owing to legal liabilities and constraints.

Muslims holding shares in such companies, whose prime business is permissible, although they are, incidentally, involved in certain impermissible practices, should try and forbid the company from such impermissible practices in future at the annual general meetings of shareholders. Furthermore, they should convince other shareholders through mutual discussions too in order to garner their support during the meeting.

In case, interest is a part of the profits earned by the company in a fiscal year and it's quantity is known, then it should be deducted from the profits earned by the shareholders and should be given away in charity (Sadqah) without expecting any recompense for it.

In case, interest is a part of the profits reaped by the company, thereafter the interest-included income is invested in a business venture, and profits, thus, earned out of it, then the interest shall be excluded from the profit earned proportionately and it should be given away as charity without expecting any recompense.

A company is a legal entity, which represents the collective status of the shareholders. The Board of Directors is a group of people elected by the company, which expends on behalf of the company and in this way enjoys the status of an authorized representative of the shareholders. Moreover, it is incumbent upon all the

shareholders to share the liabilities of expenditure of the Board of Directors; provided they are in conformity with the rules and regulations, laid down by the company."[7]

It is quite right to trade in the shares of those companies, which undertake, solely, permissible business."

Stock Markets In India

It is commonly known that capital is usually divided into two categories: fixed and working. Fixed capital is that part of the capital which has either been spent or earmarked for the acquisition (purchase) of fixed assets such as land, building, machinery, implements, instruments and equipment etc. On the other hand, working capital is that part of the capital that is required to cover the day to day expenses of the enterprise such as purchase of raw material and salaries advanced to the workers etc. Long term funds are raised through issue of capital or by institutional borrowing or by a combination of both. The market in which these funds are raised is called capital market. The capital markets in India constitute of the following:

1. Insurance Companies
2. Commercial Banks
3. Specialized Financial Institutions
4. Provident Fund Societies
5. Merchant Bank Societies
6. Credit Guarantee Corporation
7. Individual Investors

It may also be mentioned that the capital market may also be divided in to two constituents: financial institutions and the securities market. The securities market is a market where securities

are bought and sold. It consists of new issue market (the primary market) and the stock exchange which is the secondary market. Economic history of different countries is a testimony to the fact that first to develop is the primary market. With the growth of primary market, increases in the number of issuing companies, a secondary market also develops where shares of established companies are bought and sold. There is no need to say that primary and secondary markets are not independent of each other. On the contrary, they are complementary where one market reinforces the impact of the other.

Growth of Stock markets in India

India is one of those few developing countries where social and economic infrastructure developed quite early, after the establishment of a few industries in the colonial era. The development of capital markets and allied institutions is a testimony to this. Thus, first stock market in the country was established in Mumbai as early as 1887. In 1956, when the Securities Contract (Regulation) Act was passed, the number of stock exchanges in the country was only seven. These were Mumbai, Ahmedabad, Calcutta, Chennai, Delhi, Hyderabad and Indore. Among these only Indore was not a metropolitan city. However, the number of stock exchanges in the country rose quickly and by the end of 1995, there was 22 stock exchanges in India, where it currently stands. Various parameters of growth of Indian Capital markets have been presented in Table 1. These figures tell us the story of tremendous growth particularly in the last three decades.

Table 1

Growth of Indian Capital Market 1975-2012

ITEMS	Year / Categories	1975-76	1985-86	1995-96	2011-12
	Number of Stock Exchanges	8	14	22	20
	Number of Companies	1,882	4,344	9,100	13,700
	Market Value of Capital	3,273	25,002	5,07,272	N.A.
	Capital Issue	98	1,745	29,056	N.A.

Source: Tata Services Ltd, *Statistical Outline of India, p.135*

The Table1 reveals that while there were only eight stock exchanges in the country, quarter of a century after independence, their number swelled to 22 at the turn of the century. Similarly, the number of business companies, which was a little over to 1800 in 1975, had increased to over 13,000 by the end of 2011. Similar trends could be noticed in Capital issue, which consists of issue of shares and debentures. It may be noted that debentures do not confer any ownership right upon its holder but are purely debt instruments yielding only interest income. Probably, that is the reason for their unpopularity amongst Indian Muslims.

Various parameters of growth of capital markets in India have been reported in Table 1. The number of stock exchanges in the country did not go even to a double digit figure well in Seventies, although today India may boast to have more than 20 stock exchanges. The Mumbai (previously, Bombay) Stock Exchange (BSE) is that oldest stock exchange in Asia. It was established in 1875 as "The Native Stocks and Share brokers Association." Today, it has become one of the largest stock exchanges in the World. It is World's No 1 in terms of listed companies, World's No 5 in terms of transaction and one in the top 10 in terms of market capitalization[8]. The market capitalization of the companies on BSE stood at $ trillion 1.28 in 2010.

Predicament of Indian Muslims

Despite the fact that Indian Muslims constitute second largest majority in the country and probably single largest concentration of Muslims outside the Islamic countries[9], they are faced with a big predicament at least in the economic and monetary fields, that they cannot conduct their financial activities in accordance with percepts of social and economic values they believe in[10]. The simple reason for this is the absence of any Islamic bank. The Central Bank of the country The Reserve Bank of India (RBI) which is the custodian of all banking activities is still wary of the concept of Islamic banking[11]. Despite the fact that plethora of evidence to the claims of the RBI (the claim being that interest free banking is not viable) is available elsewhere[12].

The absence of commercial banks, which conduct their financial operations in accordance with the Islamic percepts, has resulted in a situation in which many Muslims stay away from the banking system. Their interaction with the banking system is minimal at best. Even if some Muslims, willingly or unwillingly, interact with existing commercial banks, their access to present banking institutions, both in the private and public sectors, is very poor, minimal at best. The Sachar Committee is on record as having said in its report that, "Iniquitous access to public and private banking institutions across socio religious communities can increase the disparities in the financial market".

Lower access of minorities in general and of Muslims in particular has been corroborated from other indeprndent sources. The data reported in Table 2 bears this out. This table has been constructed on the basis of figures supplied by the Reserve Bank of India to the National Minorities Commission, Which uhad requested it to supply some information to enable the commission to determine the extent of bank use by national minorities.

Table 2

The Extent of Bank Use by Indian Muslims' (For Public Sector Banks only)

For All Districts			Minority Concentration Districts	
	Number of Accounts	Amount of loans outstanding (in Million Rs)	Number of Accounts	Amount of loans outstanding (in Million Rs)
Muslims	325,4286 (9.34)	2136.18 (4.99)	105,8320 (23.06)	107,5707 (23.30)
Minorities other than Muslims	225.3381 (6.47)	2727.90 (6.30)	20,5198 (4.58)	20,6868 (4.50)
Total all minorities	550,7667 (15.81)	4866.09 (11.36)	126,3518 (28.24)	128,2575 (28.37)
Others	293134 (84.18)	37,968,78 (88.64)	320,8129 (71.72)	323,7171 (71.62)
Grand Total	348,211,20 (100.0)	42,834.87 (100.0)	447,1647 (99.96)	451.9746 (100.0)

Note: Figures in Parentheses are percentages to the total. Some of the figures may not add up to totals due to rounding,. Source: National Minorities Commission, Annual Report,1992 Also, Mutaleaat Urdu Quarterly, Vol 2 No:1 p.77

The data given Table 2 reveals that Indian Muslims, compared with other socio-religious groups, have somewhat lower access to commercial banks. The data shows that in the financial year 1990-91 the total number of accounts held by the public stood at 3 450,21,120 , Out of these only 9.3 percent of accounts were held by Muslims while their share in total population stood at around 13 percent. The situation in 44 minority concentration districts was somewhat better. The figures about loan disbursement are even more revealing where Muslims had a little less than five percent of all loans. Again, the proportion is a little higher in the districts which have been designated as minority concentration districts. Incidentally, one may remark that these trends reinforced the tendencies of ghettoization amongst Indian Muslims.

Till a long time, during the hay days of control and regulation only two options were available to the Indian investors: they could keep their savings in the interest bearing fixed deposits in the commercial Banks, or they could invest in the shares of companies in the stock market. For the obvious reasons, both options were not very attractive for the Muslim investors who wanted to avoid Riba (interest) at all costs.

Unit Trust of India (UTI)

During the nineteen sixties, the Government of India launched a scheme of resource mobilization, which resembled in its form and contents the mutual fund scheme. This scheme was known as Unit Trust of India (also better known by its abbreviation UTI). After an experience of about two decades, UTI has been reorganized into two separate companies dealing with asset and liability management respectively. In its original scheme, the company was supposed to sell its units to the public, the proceeds of which were to be invested in which UTI itself had invested. Thus, the profits of the UTI were variable and not pre-determined as in the case of usual debt instruments. That was probably the reason that a great number of people considered to be islamically permissible although there were a number of unresolved issues. For instance, UTI was nor declaring the expected rate of profit for the coming year in the beginning. However, very soon it started declaring the

profit in the similar projects as undertaken last year. However, UTI made it a point to say that declared profit rate was only indicative of the trend and actual profit in any given year may deviate from the declared rates. Nevertheless, if one intends to be true to the statement made, then, why make the declaration in the first place. Secondly and more importantly, it is well known that Islamic Shari'ah is repugnant of making investment in certain socially harmful industries, e.g. alcohol, gambling, drugs, pornography etc. In the UTI scheme, there is no way of ensuring that in the lure of maximum profits its investment will not go in the direction of these industries. This made the UTI investment in the eyes of a great number of ethical investors highly suspect.[13]

Shari'ah Compliant Screening Process

A big problem before the Islamic investor is the selection of industries in which to invest. There are thousands of companies listed on the stock market. They churn out hundreds of thousand products every year. All this can be very confusing for the individual investor indeed. Till very recently, there were no firms which could provide technical guidelines to the Islamic investor. However, recently some firms have appeared, that provides this kind of information. Before, we describe some salient features of some of these firms; it shall be prudent to have a bird's eye view of the screening procedures adopted by these firms.

Moral Filters ['Primary Filtering']

"Islamic Investment" is nothing but a form of "ethical investment". An investment may be described as "Ethical" when its investors place more emphasis on ethical considerations and insist that their financial resources be invested in some special manner satisfying certain moral criteria, so that they can derive some added spiritual satisfaction. Thus, an ethical investment is one in which ethically motivated clients recognize and get satisfaction from their wider religious and social responsibilities rather than from simply personal material gains[14]. Lately, ethical considerations have acquired more prominent place in investment decisions than pure profit. According to a study done by Economist's Intelligence Unit

sponsored by the Oracle Corporation, about 85 percent of investors covered in the survey ranked "Corporate responsibility" as a "central" or important factor in their investment decisions. This only shows the growing significance of moral factors[15].

Ethical values may either be drawn from secular morality or religious thought. Those religiously inclined may argue that even secular moral values are rooted in the religious thought. For instance, many people, even banking institutions do not like to invest in the armament industry on moral grounds, particularly, due to their strong belief in the philosophy of non-violence and dis-armament, which is said to be linked with Tolstoy's and Gandhi's thought.[16]

The most popular ethical investment these days derived from religious teachings, is "Islamic Investment." An Investment is considered to be "Islamic" if it is made in accordance with the Islamic teachings. In the current parlance, such investment is also called Shari'ah Compatible Investment. The basic sources of Islamic values are the Divine guidance contained in the holy Quran and in the traditions of Prophet Mohammad (pbuh). Hence, all for stocks must be on the criterion as if they are some Islamic teachings. If they do violate any of these teaching they need to be kept out. Therefore, a moral filter is first to be used in devising Islamic index. The industries which are excluded from being included in the set comprise of the following:

1. Industries dealing with pork and its derivatives and products which pork or its derivatives as inputs. The industries using n skin and fat are also excluded under the same clause.
2. Production, processing, distribution and marketing of wine.
3. Industries dealing with Riba such as commercial banks, insurance companies, investment companies and other financial companies where their main function requires their indulgence in Riba.
4. Similarly, some other socially harmful industries such as drugs, pornography, gambling, casinos etc. are also kept

out on the moral grounds.

All firms dealing in any of the above are dropped from the set. Financial filters are applied on the remaining firms:

Financial Filters ['Secondary Filtering']

Financial filters refer to a set of financial guidelines that are enforced upon the set to ensure adherence to certain arbitrarily chosen norms to include them in the set of Shari'ah compatible business firms. Currently, financial filters include the following "rules of thumb":

1. All those firms are kept out whose ratio of total Debt to annual capitalization exceeds 33 per cent. This is a measure of indebtedness of the company. If a company owes debt to its debtors which is more than one third of its net worth, then it is perceived as as an indebted company and current Islamic practices imply that transactions carried out in cash and on the spot are preferred forms of transactions. This is probably to avoid the possibility of avoiding Riba. At this stage, it may be made clear that there is nothing inherently sacrosanct about the figure 33 percent. Analytically, it is an exogenously given norm. It is said to have been based that once Prophet (pbuh) approved the ratio of one third for one of his companions to be given in the way of Allah[17]. However, it may be argued that the approval accorded on that occasion was case-specific. Sometimes, this condition is also revoked to argue that Islam does not approve of debt. Nothing could be farther from truth. Islam, being a natural religion, recognizes that there may be situations where 'own' resources may not be sufficient and need for borrowing resources from others may arise. Hence, borrowing has been retained as a distinct Islamic alternative to meet genuine needs.

2. All those firms are also kept out in whose case the ratio of interest income to their all receivables exceeds 5 percent or more.

3. If the ratio of their receivables to their annual capitalization also exceeds 33 percent, such firms also need to be kept out.

According to Nisar and Khatkhate, the share of Indian Shari'ah compliant market capitalization stands at 61 percent which is highest amongst several Muslim countries, for example , the share of Shari'ah compliant companies in total number of listed companies is only 57 percent in Malaysia, 51 percent in Pakistan and 60 of percent in Bahrain[18]. In terms of number of companies, 285 companies belonging to Bombay Stock Exchange Index BSE 500, 23 companies belonging to SENSEX30 and 39 companies belonging to NSE 50 are found to be Shari'ah compliant as defined above[19].

A word of caution appears to be necessary here. Saying that these companies are Shari'ah compliant does not mean that they take any special effort to observe the rules of Shari'ah. This is so, only in a statistical sense that these companies are described as Shari'ah compliant. This could also be understood by the working of moral and financial filters which has been explained above.

Some Shari'ah Compliant Companies

It has been mentioned above that some companies have been recently established that offer different specialized services required by the Islamic investors. This section intends to introduce some of those companies[20].

Idafa Investments

Idafa Investments Private Limited was established in 1994 as special business for Shari'ah compliant investments, which includes equity shares, mutual funds and portfolio management. It started franchising only in 2004 after gaining considerable experience in the market. The Company claims to be "the only firm in India offering equity shares brokerage, mutual funds and portfolio management services exclusively in compliance with the Shari'ah guidelines" to interested investors.

Parsoli Corporation

Parsoli Corporation is a public limited company listed on the

Bombay Stock Exchange. Its market capitalization is around 25 million U.S. dollars. It has some foreign involvement too as several institutional investors have subscribed to its capital. The Reserve India (RBI) has given permission to Parsoli Corporation to operate as a non-banking financial company (NBFC). It provides stock booking and stock advisory services to its clients.

Parsoli specialized in identifying the opportunities for Islamic investment with the Indian financial market. The details about Shari'ah compliant equities and Parsoli's investment policies are also available at www.islamicquity.co.in. In order to service the investors who would like to make Shari'ah Compliant investment, Parsoli has created an Index called Parsoli'.s Islamic Equity Index (PIE). The method of construction is very similar to what has been described above. Parsoli index includes only the actively traded stocks that are easily accessible to the investors who like to make shari'ah compatible investments.

TASIS

Taqwah Advisory and Shari'ah Investment Solution (TASIS) was established in 2005 by a group of professionals to provide guidance and support to individuals and companies interested in Islamic finance. The firm provides advisory and shari'ah solutions within the Indian legal framework.

TASIS screens Indian companies listed on major Indian Stock exchanges for Shari'ah compatibility. This is done on an ongoing basis. The method of screening is alsmost similar to the one described above. i.e. first moral filter is applied and firms incompatible with the morals approved by Shari'ah are screened out. Financial filters are applied to the remaining firms. At this stage, more firms are screened out. The firms remaining after screening is completed, are considered to be Shari'ah compatible. This is the list which is supplied to the clients. Stock broking firms, fund managers, and other interested individuals, firms and agencies constitute the clients of TASIS.

Unlike other firms in the field, TASIS also carries out Shari'ah

Certification. The process of Shari'ah certification usually starts with a request of the client expressing his / her willingness to structure his/her business in accordance with the dictates of Shari'ah. Initial discussion between TASIS and client at this stage are focused on the objective, methodology and legal issues involved in the structuring the product. After being convinced of the technical feasibility and economic viability of the project, TASIS prepare an Initial Shari'ah Assessment Report outlining various Shari'ah issues involved in the restructuring.

At this stage the Shari'ah Board of Tasis gets involved. The draft report and the required actions are discussed with the members of the Shari'ah Board in detail. Once they approve the suggested course of action, Final Report is handed over to the client and his attention is drawn towards actions for restructuring.

Taurus Ethical Fund

The companies introduced so far belonged to same class of companies. They are all index companies. Taurus belongs to another set of companies. It is an ethical fund. Over the years, there has been phenomenal growth in ethical funds, like Green Funds, Environment funds, Anti war Funds. These funds are also based upon some moral statement rooted in some social philosophy like preservation and promotion of greenery, protection of environment and prevention of war or maintenance of peace etc.

The Islamic funds belong to general class of religious funds where ethical values of the investment are based on the value system of some religion. They are called Islamic or Shari'ah compatible funds because investment policies of these funds are guided by moral values of Islam. An Islamic Investment is guided by the principles of Justice, equity, transparency, fulfillment of common social interests, and Public need. A certain framework for Islamic investment is prescribed which may, inter alia, include: avoidance of Riba (interest and its manifestation in different forms), Gharar (ambiguity), and Maysir (gambling) in the first place. Respecting these restrictions would mean exclusion of certain sectors from the very beginning. Consequently, pork and its derivatives, Alcohol and

its derivatives, Gambling, Drugs and pornography etc. are treated as prohibited sectors in which no Islamic investment can take place.

Taurus is first actively managed Shari'ah compliant Fund in India. It is certified by an independent Shari'ah Board. Subject to restrictions mentioned above, the Fund is authorized to invest in the companies that are listed in India. Taurus also adopts the screening procedure discussed above. It is an open ended fund. It is mainly aimed at investment with high growth options. Its main clients are those people who keep their money in the form of liquid cash in view of non-availability of Shari'ah compatible avenues of investment. The people who wish to make socially responsible investment may also benefit from the services offered by Taurus.

Eastwind Capital Advisors

Eastwind Capital Advisors Pvt. Ltd is a firm of Indian origin providing bench marking and quantitative research advisory solutions to Institutional and other large Investors. The company launched an Islamic Index in 2008. The method of Its preparation of Islamic index is the same as described above. Its benchmarking services involve Index Management Services and Quantitative Analysis of Stocks of Various corporate entities, which is an institutional tool for portfolio building.

Eastwind Capital Advisors is credited with being one of the pioneers in Quantitative equity research in India. It continuously analyzes earnings, valuations and balance sheet details of companies helping formulate and implement various top down beta and alpha portfolios. These include thematic beta portfolios, corner growth portfolios and value portfolios. The company claims that its wide coverage and explicit quantitative models deliverable in simplified manner are of higher quality than many of the similar products offered by its competitors.

Some Shari'ah Compatible Products

Not all products on the Indian stock market are Shari'ah Compatible. India being a dominantly non- Muslim country,

probably that is not possible either. However, there are many products against which there may not be any objection from Shari'ah point of view. Such products are termed Shari' ah compatible. It is necessary to keep in mind that these products were not devised to meet the requirements of Shari'ah. But they were created to achieve some other objectives. However, they are devised in a manner that, in the opinion of some scholars they do not violate any of Shari'ah rules. So, Muslims can invest in such instruments. Some of such products are reviewed in this section:

Equity

The total resources of a company may be raised by using own resources, by raising a debt which is usually from large financial corporations or banks and by issuing shares. A share of equal value is called equity. Most of Islamic scholars agree that with certain qualifications, equity is a legitimate form of Islamic investment. These qualifications, generally speaking, might include the following:

1. The companies do not have any involvement with the goods prohibited by the Shari'ah such as wine, pork, gambling and pornography etc.
2. The companies do not practice the activities prohibited by the Shari'ah such as Riba, Gharar etc.
3. The companies do not have any involvement with anything that is socially harmful or morally reprehensible.

Investment in any company that deals with any one or all of the above is not allowed. Leaving thse companies aside, investment in rest of the companies is permitted.

However, it has been found that Indian Muslims do not participate much in the Indian stock market. In fact, it would be more appropriate to say that they generally stay away from the activities of the stock market lest they may be involved in something that is not legal[21].

It is argued that this situation is mainly caused by misconceptions

and misunderstanding about the working of stock markets[22]. The risks faced by the business entities may be classified in two types of risks: Systematic and unsystematic. The unsystematic risks are also called market risks and are caused by the loss of production, inappropriate management policies, inferior quality of products etc[23]. These risks could be managed by adoption of appropriate management policies. The task of Islamic firms in the stock markets, particularly in the Muslim minority countries, is to identify these risks which are not apparent to the ordinary players on the market. It may also be the case that non-availability of relevant and timely information is a big stumbling block for Muslims in India preventing their full scale and wholehearted participation in the stock market. In addition to Islamic scholars, market and management experts, economists, Islamic indexing firms may play a useful social role.

Islamic Investment Funds

While equities have been with us with the beginning of joint stock companies covering several hundred years, emergence of Investment Funds is only a few decades old. Investment funds have become particularly popular amongst institutional investors, like finance companies, investment companies, insurance companies and provident funds etc. One reason for the popularity of investment funds is high rates of profit they can generate. The available evidence suggests that investments of these funds have been growing at much faster rate than the deposits of the commercial banks. The trend has been so powerful that it prompted several commercial banks to jump on the bandwagon as they established their own funds. The high profit rate has been estimated by some to be around 15 percent per year very long periods. This kind of return is almost inconceivable in case of bank deposits. Beside high rates of return, other factors behind the success of investment funds have been professional management, cost efficiency, diversification of portfolio etc.

The Islamic Investment Funds are not much different from other contemporary investment funds, at least in their style of functioning. Like their counterparts elsewhere, they also invite the

members of the public to contribute to their coffers, the funds thus collected, are invested in mostly in the stock market in accordance with the declared policies and preferences of the investment funds. The returns made by the fund on its investment are shared between the fund and the depositors. This resembles to Mudarabah model used by the contemporary Islamic banks. Hence there are no qualms about the permissibility of this technique.

Probably major difference between Islamic Investment funds and other investment is avoidance of Riba. The Islamic Investment funds do not get involved in anything that resembles Riba. In fact, this is the litmus test of their being Islamic. The lure of more profits attracts certain investment fund companies to involvement in illegal activities such as wine (distilleries, wineries, bar etc.), gambling (casinos, gambling houses, lottery systems, etc.), sex (pornography, brothels, prostitution etc.) and other prohibited items (Drugs, intoxicants such as tobacco, restaurants serving pork preparations etc,). Muslims abhor these activities and would not like their money to have anything with these goods, even if managed by a third party.

The nature of modern industrial civilization is such that it offers hundreds of thousands of products to the consumer, thus, expanding his choice set. Similarly, thousands of business entities producing these products and offering innumerous opportunities to prospective consumers. Selecting companies which are suitable for investment from a moral angle is not an easy task. That is where the services offered by the Portfolio Management Companies become relevant. Fortunately, even in India, some companies have appeared that offer portfolio management services in accordance with the values prescribed by Islam. The number and size of these companies may still be small. However, it could be said that a beginning has been made.

END NOTES

1. Prime Minister's *High level Committee cabinet Secretariat*, Government of India, New Delhi, *Social, Economic and Educational Status of the Muslim Community of India*, 2006, P.28

2. Calculated by the present author, on the basis of figures reported in the text.

3. It may be noted that total population of Indonesia, the largest and most populated Muslim country (Indonesia) is only a little over than 220 million. See Quarterly Mutaleaat (Urdu) Combined issue number 17, 18 and 19, January- April 2011, p. 7

4. There are a number of Islamic financial institutions in India. Some of them have gtown in size also, but nearly all of them are in the unorganized sector without any legal support. M. I . Bagisiraj: Islamic financial institutions in India. In the opinion of the present writer these institutions should not be described as Islamic banks or even Islamif financial institutions, which require a legal framework to operate.

5. See for instance, Anwar Iqbal Qureshi, Islam an Theory of Interest, Mohammed Uzair , An Outline of Islamic Banking, M.N. Siddiqi, Banking without Interest

6. A good summary of some of the opinions of some Shari'ah scholars is available in Abdul Azim Islahi: Invstment in the Stock Market: Contemporary Practices and Islamic point of View (in Urdu) Aligarh: Idarah Tahqeeq wa Tasneef Islami, 1999, Chapter 8, pp. 81-104

7. Islamic Fiqh Academy, India: Juristic Decision and New Issues. Fiqh Seminar No.9, held in Jaipur Rajastthan, India 27=30 Jumad I , 1417 H corresponding to 11-14 October 1996 .

8. The information reported here has been obtained from the official website of BSE www. Bseindia.com. Accessed on March 31, 2012.

9. Here the expression " Islamic countries" is being used to refer the group of countries that are the members of the Organization of Islamic Conference (OIC) without consideration of the fact whether they are really "Islamic"

10. This does not mean that in other sectors, their condition is any better. For other sector like employment in public and private sectors, education and social interaction, see Omar Khalidi, "Hinduising India: Secular Politics in Practice" Third World Quarterly Vol. 29, No: 8, 2oo8, pp.1545-62

11. No bank, commercial or non-commercial, could be established in India unless necessary permission is obtained from the Reserve Bank of India which is the custodian of the monetary system in the country.

12. It may be noted here that Indian law does not make interest a necessary ingredient of commercial banking in the country. Section 5 (b) of the

Indian Banking (Regulation and Control Act) 1949 defines banking as "accepting, for the purposes of lending or investment, of deposits of money from the public, repayable on demand or otherwise or and withdrawal by cheque, draft, order or otherwise."

13. Abdul Azim Islahi , op.cit. p.92

14. Institute of Objective Studies, Emergence of Ethical Investment: Issues and Practices, Background papers prepared for the seminar on Emergence of Ethical Investment : Issues and Practices held on June 14, 2008 at the India Islamic Cultural Centre, New Delhi

15. Ausaf Ahmad and Ahsanul Haqure "Emergence of Ethical Investment: Issues and Practices" in Institute of Objective Studies, op.cit. 2008, P, 8

16. Many people argue that Tolstoy's ideas about non-violence are deeply rooted in Christian cultural ethos.

17. It is reported that at the time of War of Tabuk, the Prophet of Allah (pbuh) invited the people of Medinah to contribute generously to the War Fund. At that time, Abu Bakr Siddiq (may Allah agree with him) who later became the first caliph, wanted to give all his wealth in the cause of Allah. The Prophet (pbuh) did not approve of it. Then, Abu Bakr suggested giving half of his total wealth. The Prophet did not approve of it either. Then he suggested to give One Third and the Prophet of Allah approved it. First of all, it appears to be case-specific. Second, its application to financial matters appears to be an innovation (ijtihad) of the modern times. There is nothing in the episode that may suggest such an application. Hence, one may conclude that the condition of 33 percent is not as sacrosanct as it is sometimes made out to appear.

18. Shariq Nisar and M.H. Khatkhate, " Possibilities of Islamic Investment in India" Economic Times dated April01,2008

19. The Week, dated February 12, 2008 p.84

20. Most of information narrated here has been obtained trom the relevant website of different companies. Any good search engine shall enable the interested reader to access those sites. The individual citation of information is not resorted to, in order to save the space.

21. M.Y. Khan, "Risk in Equity Market and Reaction of Muslims" Islami Tijarah, March 2012. P. 12

22. Ibid p.12

23. Ibid p.12

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* MAKING MONEY MORAL *

REGULATION OF MFI'S: A Game Theoretic Analysis Of The Government's Dilemma

Abdul Raheem Shariq*

Abstract

The paper highlights the dilemma that the Indian Government is currently facing with regards to the adoption of the regulatory policy for the Micro Finance Institutions (MFI's). Apart from formulating a policy document per se, the regulation necessitates driving a balanced bargain in terms of interest rates charged, the practices adopted, the funds borrowed among others that are simultaneously acceptable to "For Profit MFI's" as well as compatible with the interests of the distressed borrowers who are not the same as the normal borrowers in terms of their capacity to absorb risk. In response to the infamous suicides committed by the indebted borrowers, the Government set up a committee to explore the various ways of regulating the MFI industry. As a result of a few stringent policies of the government, many commercial banks became reluctant in loaning out funds to MFI's. In this backdrop, the paper uses extensive form game of complete information to depict such a dilemma faced by the Government. It uses backward induction to show how the absence of alternative sources of finance for the needs of distressed borrowers can compound the matters for both MFI's that are concerned about the feasibility of their business operations as well as government that wants to protect the interests of the borrowers.

Introduction

Over the last few decades, micro-finance is being presented as a promising option to make a dent on the poverty. This optimism is based on the premise that poor have all that it takes to be an entrepreneur or adopt a profession in order to earn a decent living, except for the availability of finances. They not only have their own sources of finances, no external agency is willing to provide them

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with finances as they are presumably considered un-bankable. In this context, microfinance was considered a promising option to create the crucial link of the chain. But, In India, the bitter experiences of microfinance provision over the last decade have forced policy makers and other stakeholders to deliberate on the issue of regulation of micro-finance practices so that the objective of micro finance could be attained.

After recognising the potential of microfinance in technological adoption, this article looks at few crucial aspects of regulation. Under certain conditions, it argues that, the provision of government supported microfinance would be a weakly dominant strategy for the government. The argument in this article is structured as follows. Section I looks at the two major models of micro-finance provision in India and then moves on to look at the studies looking at the relationship between asset creation and microfinance. If we can expect significantly positive impact, given certain conditions, in terms of asset creation due to microfinance, then we can focus on the effective regulation of microfinance practices for the attainment of desired objective. Therefore, Section II looks at the problems with the present state of micro-finance in India and summarises the regulation efforts by different stakeholders. Finally, Section III looks at some aspects of regulation which might turn out to be crucial for the attainment of desirable objective.

I

Microfinance is a mode of providing financial services to those poor and asset-less people, who are considered to be un-bankable by the mainstream banking system. Through their carefully designed products and processes, the Micro Finance Institutions (MFI) help these people to avail banking services such as savings, credit and insurance. Broadly speaking, there are two major models of microfinance that have been adopted in last 2-3 decades. First is the SHG-Bank-Linkage Model (SBM), where self -help groups (SHGs) are directly linked with banks for financial services. In this model SHGs are provided financial services in a sequential manner. First stage is about training and skill building of the SHGs. Once

they are trained sufficiently, they are linked with a bank and they collectively save for some time. Afterwards they are provided credit in an incremental manner. Another model of microfinance provision is MFI-Bank-Linkage Model. In this model, banks give funds to MFIs, who in turn transfer it to SHGs and other small borrowers. Essentially MFIs work as intermediary between the lenders (banking system, equity market and other donors) and borrowers (SHGs and other small borrowers).

Banks are given various incentives to provide funds to these institutions. Banks lending to both these models was considered under "priority sector lending" by the Reserve Bank of India (RBI) until the reforms of 2011. Now, RBI allows this status for priority sector lending to only those MFIs who abide by the new regulations. On the other hand, institutions such as The National Agricultural Bank and Rural Development (NABARD) provide refinance facilities to the banking sector for the provision of microfinance. Moreover, NABARD offers capacity building support, revolving fund assistance and grant assistance.

Figure 1 Amount in Rs. Crore

Model		2008-09		2009-10		2010-11	
		No. Of SHGs/MFIs	Amount	No. Of SHGs/MFIs	Amount	No. Of SHGs/MFIs	Amount
SHG-Bank-Linkage	Savings With Banks	61.21 Lakh	5545.62	69.53 Lakh	6198.71	74.62 Lakh	7016.30
	Loans Disbursed by Banks	16.1 Lakh	12253.51	15.87 Lakh	14453.3	11.96 Lakh	14547.73
	Loans Outstanding against SHGs	42.24 Lakh	22679.84	48.51 Lakh	28038.28	47.87 Lakh	31221.17
MFI-Bank-Linkage Program	Loans Disbursed by Banks	581	3732.33	691	8062.74	471	8448.96
	Loans Outstanding against MFIs	1915	5009.09	1513	10147.54	2315	13730.62

Note: Actual number of MFIs availing loans from Banks would be less than the figures shown as most of MFIs avail loans from more than one Bank.

Source: NABARD Annual Reports

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The above table gives data about the provision of micro finance by the two models. One can clearly notice the phenomenal increase in the loans disbursed and loans outstanding for the MFI-Bank-Linkage model. Loans outstanding doubled between 2008-09 and 2009-10 and disbursement of loans nearly tripled for the same period. Similar trend can be observed for previous few years in the activities of MF-Bank-Linkage. But SHG-Bank-Linkage still holds the dominant position in terms of loans disbursed and loans outstanding. As it will be highlighted later, this dominance could be explained by the crucial role played by the public sector commercial banks in the provision of finances to the SHG-Bank-Linkage Model. One can also note the significant amount of savings held by SHG-Bank-Linkage Model which is not allowed for the MFI-Bank-Linkage Model.

Whether micro-finance helps a household in technological adoption is a debatable issue. But one can look at the data for asset creation from micro-finance and infer something about the technological adoption. Empirical evidence suggests that, given

certain conditions, micro-finance helps in asset creation. But even if asset is acquired, one does not know clearly about the technological features of the asset such as its vintage etc. But one can safely assume that the acquirer has acquired an asset which is technologically viable and profitable. In other words, the choice of technology is such that it has led to value addition in terms of income of the acquirer.

A significant study appraising the impact of micro-finance was Puhazendhi and Badataya (2002). It covered 115 members and three states. The study measured impact of micro-finance by calculating the mean percentage differences of members' variables pre and post SHGs membership. It was found that SHG membership significantly increased the asset structure (30% increase in the mean asset value).

In a recent study Swain and Varghese (2009) have analysed the results from a sample study of one thousand respondents of a survey conducted in 2003. They used quasi-experimental design to collect cross-sectional data for two representative districts each, from ?ve Indian states. The study finds that asset creation is positively related with the length of membership of an individual in a SHG. This is to be expected as banks give credit sequentially and in an incrementally increasing manner. So when a SHG sustains itself for a longer duration of time, greater will be the possibility of availing critical level of finances for the asset creation of its members. The study has also found that households with greater education will be more adept at asset creation. Going in the specificities of the asset creation, this study finds that the impact of SHG microfinance occurs primarily through livestock accumulation and savings. Members are found to move from agriculture to non-agriculture as sources of income with the increases in their level of assets.

II

If there were to be any positive relation between the account book statistics and the welfare of clients, we could have been content about the state of the affairs in the microfinance sector. However,

the reality does not conform to this hypothesis. The practices of MFIs have been alleged to cause financial distress to the poor clients. This distress has been linked to the spate of suicides among the indebted farmers in various states of India. Among various problems arising due to microfinance practices, three have been highlighted as major problems that require immediate attention. First is with regards to the exorbitant rates of interest charged by the MFIs. MFIs justify these rates of interest by citing the high operational costs involved in dealing with small deposits and credits. Nevertheless, the average annual rate of interest of 30% and above are considered unjustifiably high by most others. The gap is so much higher than the normally acceptable levels that the MFIs have been alleged of profiteering and they are considered to be modern version of loan sharks (Sahukars). Second problem is with regards to the over-competition among the MFIs, which is chiefly responsible for the indebtedness of the poor clients, who end up borrowing from multiple sources. Thirdly, the MFIs have been found to be indulging in coercive and undignified practices while recovering their loans.

RBI is the chief body responsible for regulating the MFIs. However, until recently, RBI was not only allowing MFIs to function freely, it was preventing state governments when they wanted to regulate MFIs. According to Y.V. Reddy, this policy was adopted due to the strong belief in RBI that the MFIs are highly effective for making a dent on poverty; hence regulating them in any way would create hurdles in their way to attain this desirable objective. In retrospection, he considered this policy to be based on misplaced trust on the MFIs and stressed that RBI must regulate MFIs.

When many borrowers committed suicides in the last quarter of 2010 in Andhra Pradesh, AP State government was the first agency to react strongly to the practices of MFIs in the form of AP Microfinance Institutions Ordinance (Now Act)-2010.

This ordinance puts severe restrictions on the practices of MFIs such as:

- Cumulative interest on any loan cannot be more than the principal amount

- If the SHG has an outstanding loan from a Bank, then without prior approval MFI cannot lend to the SHG or any of its members

- MFIs cannot seek security for loan

- Heavy penalty for coercive actions

- Member of a SHG cannot be member of more than one SHG State Government reserves the power to require production of records or documents and power of entry, inspection and seizure by the Registering authority

In response to this AP State's reaction and facing pressure on reports of the financial distress of the borrowers and malpractices by the MFIs, RBI finally constituted a sub-committee under the chairmanship of Y.H. Malegam, which submitted its report in January 2011. Some of the important measures suggested by Y.H.Malegam Committee are:

- For the control of over-indebtedness problem, the committee suggested:

  (a) MFIs cannot charge an interest rate greater than the ceiling rate decided by RBI (24% as suggested by the sub-committee)
  (b) MFIs can only lend to members of a Joint Liability Group (JLG)
  (c) A borrower cannot be a member of more than one SHG/JLG
  (d) Not more than two MFIs can lend to one borrower

- For documentation and transparency, it suggested:

  (a) MFIs must provide borrowers a loan card which shows the effective rate of interest, other terms and conditions of the loan, information which adequately identifies the borrower, and

acknowledgements of payments received

(b) Effective rate of interest must be displayed in all offices, all literature, and on website

(c) Standard loan agreement

- With regards to Collection Practices, it suggested:

  (a) Sanctioning and disbursement of loans should be done only at a central location
  (b) Field staff should not be allowed to make recovery at customer's place of residence or place of work
  (c) All recoveries should be made at the group level
  (d) More than one individual should be involved in sanctioning and disbursement
  (e) Disbursement should be closely supervised
  (f) MFIs and their management teams should be subject to severe penalties if coercive methods of recovery are used
  (g) Regulators should monitor systems for recruitment, training, and supervision of field staff

- For the pooling of information under Credit Information Bureau, it suggested:

  (a) One or more Credit Information Bureaus should be established and operational as soon as possible
  (b) All MFIs should be required to become members of a bureau
  (c) MFIs are responsible for obtaining information from potential borrowers until bureau is functional

Except for few minor issues, RBI broadly accepted the recommendations made by the Malegam Committee.

Moreover, the central government has also floated a bill on the regulation of MFIs and it plans to present it in the parliament shortly. The bill is called "Micro Finance Institutions (Development

and Regulations) Bill 2011" and some major highlights of the bill are:

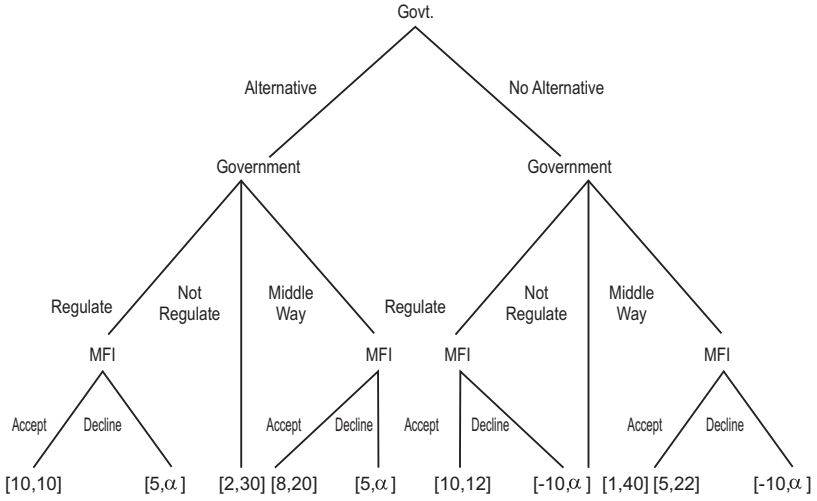
- Designation of RBI as the sole regulator for all microfinance institutions.
- Giving RBI power to regulate interest rate caps, margin caps, and prudential norms
- All microfinance institutions must register with RBI.
- Formation of a Micro Finance Development Council, which will advise the central government on a variety of issues relating to microfinance .
- Creation of Micro Finance Development Fund for investment, training, capacity building, and other expenditures as determined by RBI

III

There are few important aspects of MFI regulation, ignoring which might render attempts at achieving a fair and inclusive financial system hopelessly futile. When for profit MFIs invest their funds for lending to the poor, they forgo other opportunities to use that fund. Let us call that best forgone opportunity to give them a profit. If government wants to retain for profit MFIs as well as regulate them, then it must have to guarantee them at least level of profit.

Moreover, if the for profit MFIs know that government will be flexible in the terms of regulation in order to retain 'for profit MFIs', then they might use their bargaining power strategically. In a game, given the feasibility and strategic aspects of regulation highlighted above, let a government choose about the provision of government supported microfinance in the beginning. Assuming government's payoff to be positively related with the welfare of the clients, we can use the backward induction to find out equilibrium of the following games.

(a) Feasibility Aspect of Regulation



- Where α is the opportunity cost of putting funds for running the MFI.

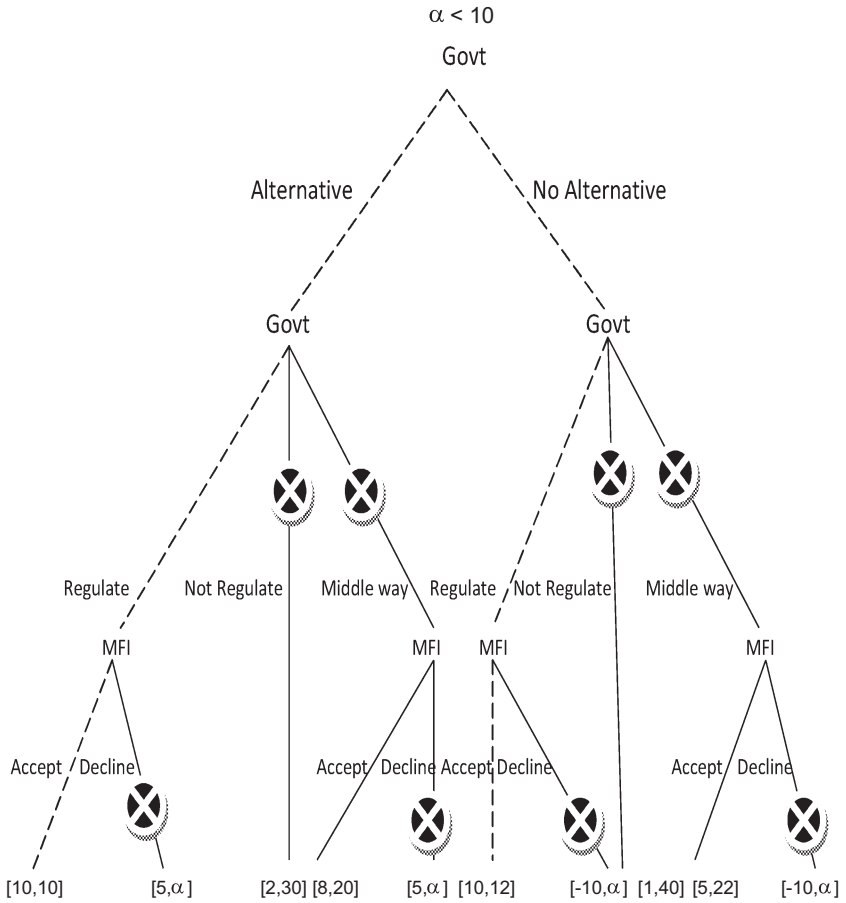
- {Alternative, No Alternative}choice is about setting up a government supported Microfinance as against for profit microfinance.

- Middle way stands for an option where govt shows leniency in its rigidity and accommodates the concerns of for profit MFIs.

- Govt's payoff positively depends on the number of beneficiaries and fair terms of the loan. It negatively depends on the provision of alternative [as provision involves cost].

- While comparing the pay-off for Govt between 'Alternative' and No Alternative' scenario, it is assumed that in the 'No Alternative' scenario: [the positive effect of not incurring the cost of providing 'Alternative'] < [the negative effect due to welfare loss of clients due to unfair terms of the loan].

- MFI's payoff negatively depends on the presence of the regulation and the provision of 'Alternative' [as some of its potential clients are catered by the 'Alternative'].



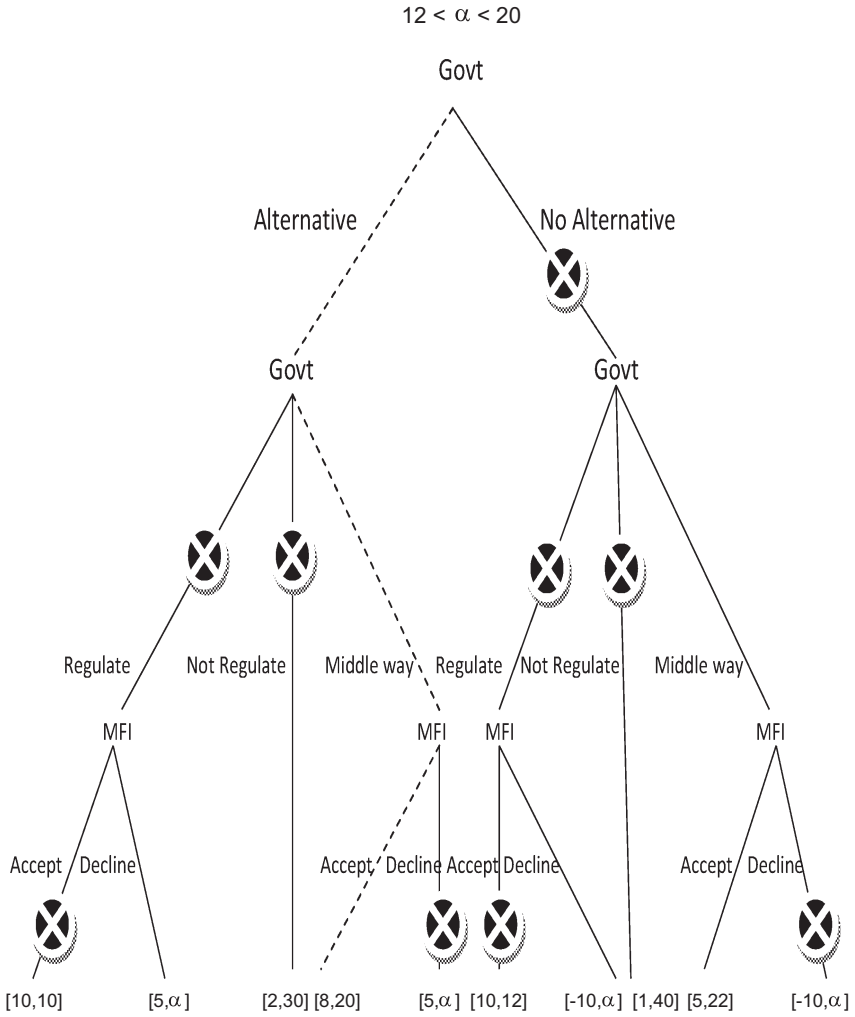
Equilibrium:

{(Alternative, Regulate) ; (Accept) }

And

{(No Alternative, Regulate) ; (Accept) }

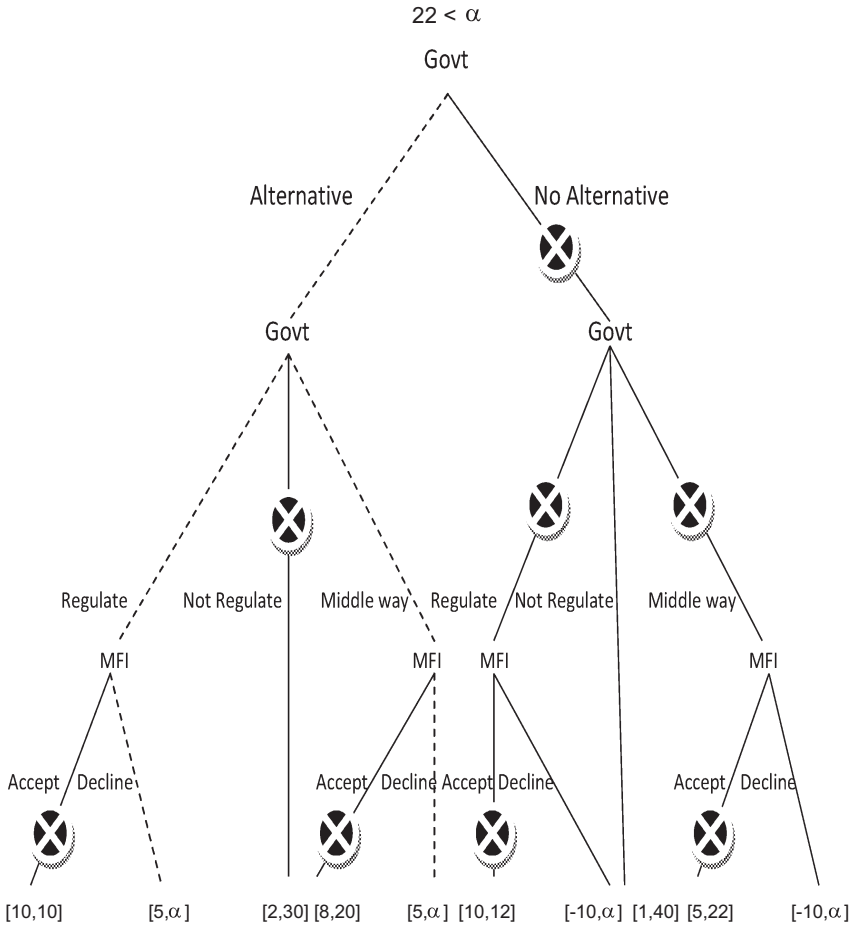
This is the best case scenario that a government would wish while regulating the 'for profit MFIs'.



Equilibrium:

{(Alternative, Middle Way) ; (Accept) }

In this scenario, the government would be better off choosing middle way while floating its own alternative as against any other option under 'no alternative' scenario.



Equilibrium:

{(Alternative, Regulate) ; (Decline) }

And

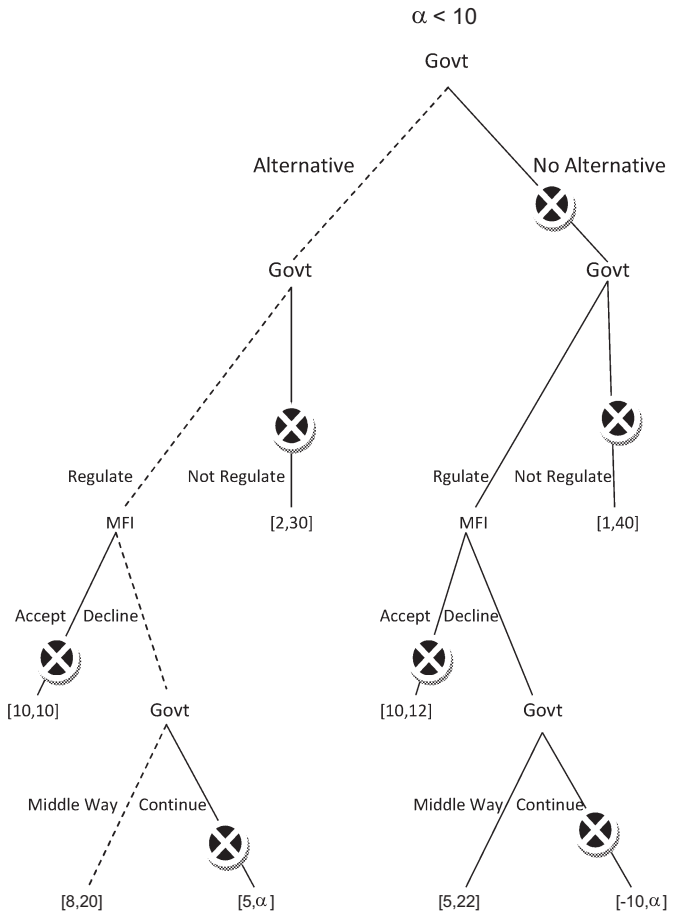
{(Alternative, Middle Way) ; (Decline) }

Under this scenario, the government would have incurred hefty losses had it not set up an alternative.

(b) Strategic Aspect of Regulation

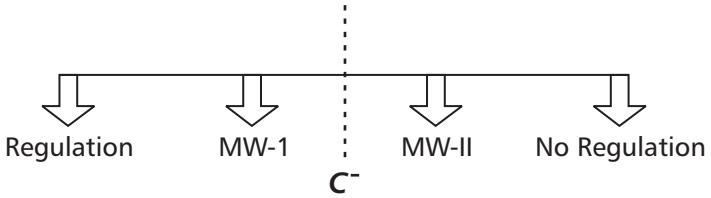
Equilibrium:

{(Alternative, Regulate, Middle Way) ; (Decline)}

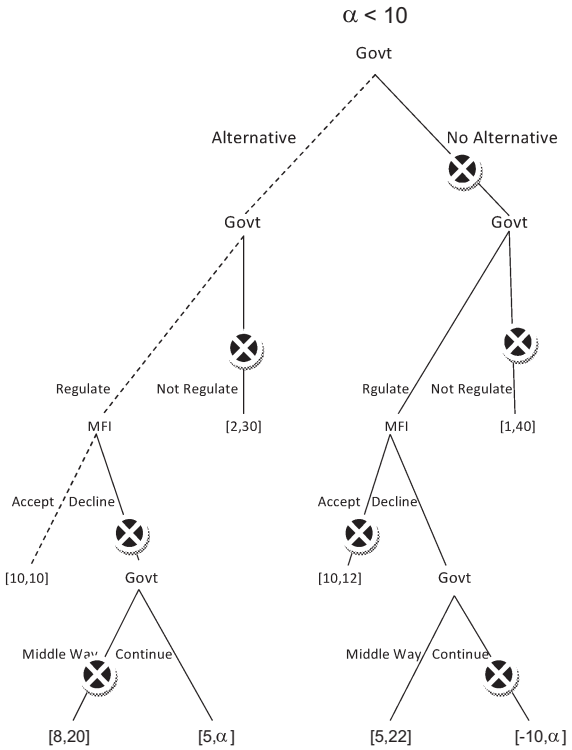


- In the last stage of the game, continue stands for continuing with earlier set of regulatory policy

- The 'Middle Way' in this game is by nature different from the Middle Way' option in the previous games. Let the points in the degree of flexibility be:



Let C^- denote the critical level of flexibility for the borrowers' welfare. That is to say, if we move towards the right of then the ill-effects of the deregulation on the borrowers will be unacceptable by some criteria. The pay-offs of the Middle Way option in this game are calculated assuming that it is 'MW-I'. But if it happens to be MW-II, then government can even continue with the regulation in the last stage of the game and avoid serious losses. In such a situation, the game might look something like the following:



Equilibrium:

{(Alternative, Regulate, Continue) ; (Accept)}

So, the government can avoid serious losses by the provision of government supported micro-finance in the both the cases where the 'for profit MFI' chooses to play strategically or where retaining 'for profit MFI' by adopting necessary middle way might have suicidal repercussions for the welfare of the poor borrowers.

The payoffs indicated above are ordinal. So the inequality between the payoffs between two alternatives is important, not the absolute value. From the cases discussed above, it can be noted that providing a microfinance alternative to for profit micro-finance is a weak dominant strategy for the government. If we slightly weaken around the sequence of the game, then we can appreciate the second point made in the first paragraph of this section. Suppose a game where first a government chooses from {alternative, no alternative}. Then government chooses from {Regulate, not regulate}. Then let the MFI choose from {accept, decline}. Then, finally, let government to decide from {continue with regulation, flexible mixed regulation}. In such a game, we can easily think of pay-offs that would reflect how MFIs can use their bargaining power to force government to go for option other than regulation (i.e., mixed regulation). In such a scenario, having an alternative would augment the payoff of the government and curtail the bargaining power of the 'for profit MFIs'.

Now the question arises about the viability of the alternative where government supports the microfinance activity. In this regard, a closer look at the performance of SHG-Bank-Linkage model will be interesting. By nature this model depends on the government support for its functioning. Although an independent NGO might play a crucial role in the establishment, capacity building and over-all nurturing of the SHG, ultimately it has to depend on the government's support in the form of a mandate for banks to co-operate with these SHGs. Banks are first mandated to open saving accounts for these SHGs. After certain period and the satisfactory performance of the SHGs, banks are mandated to issue credit to these SHGs in an incrementally increasing manner. Government has categorised these funds under the priority sector lending. Moreover, NABARD provides 'refinance' facilities to the banking sector for the provision of microfinance. It also offers capacity

building support, revolving fund assistance and grant assistance. The enthusiasm found in the public sector commercial banks in the promotion and provision of micro-finance is far greater than that of private sector commercial banks. The data provided by NABARD is very insightful in this regard.

Amount in Rs. Lakh

		2009-10			2010-2011		
		No of SHGs	No of Members	Amount	No of SHGs	No of Members	Amount
Public Sector Comm Banks	Savings of the SHGs	3919680	46555114	353340	4163434	5179090	415654
	Banks Loans Disbursed to SHGs	959668		956478	645881		943012
	Banks Loans Outstanding against SHGs	3176691		1972441	2990785		2141274
Private Sector Comm Banks	Savings of the SHGs	133235	1746197	14049	160039	2180421	7352
	Banks Loans Disbursed to SHGs	17853		21540	23860		29442
	Banks Loans Outstanding against SHGs	60572		44029	62687		47050

	2009-2010			2010-2011		
	Total Loans Outstanding against SHGs	Amount of NPAs	NPA as % to the total O/S	Total Loans Outstanding against SHGs	Amount of NPAs	NPA as % to the total O/S
Public Sector Commercial Banks	1972441	51353	2.6	2141274	101989	4.8
Private Sector Commercial Banks	44029	2393	5.44	47050	4709	10

A glimpse over the data would make it clear that the public sector commercial banks plays far more crucial role in the provision of micro-finance as against private sector commercial banks. This data also contradicts the myth that government financial support is bound to be inefficient. In fact the NPA as percentage of total outstanding loans has been very low. This becomes more impressive if we consider the absolute value of outstanding loans

against the public sector commercial banks and the yearly loans disbursed. There is no doubt that the SHG-Bank-Linkage model suffers from various drawbacks, but the efficient functioning of this model with the help of government support points towards the far greater potential of this model when these weaknesses would be overcome. Thus, government can come up with a viable alternative by either overcoming the weaknesses in the present SHG-Bank-Linkage model through innovative products and practices, or it can come up with altogether newer ways of catering to this necessity. This government supported alternative would be of great help in attaining the objective of provision of finance on fair conditions. And the game trees constructed above help us in realising the importance of such an alternative.

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POVERTY AND FOREIGN TRADE

*Gouher Ahmed**

Abstract

Poverty in India has a long history, and it is of deep and universal nature . Mahatma Gandhi was very much moved by it and his whole economic or economic orientation was towards the poor and their moving poverty. Such a concern is not visible , after Gandhi. Even the post reforms and post UPA growth rates appear not to have quelled enough , at a low PL of about Rs. 24. Trade could be of considerable help , but India's trade is of a deficit kind. Hence, the problem is proposed to meet with employments, food security, and 'magical' cash endowment.

Introduction

Poverty is recognized to be a world-wide phenomenon by the United Nations (UN), However, the presence of poverty is more acute in the underdeveloped world, and India is known to be the home to the largest number of poor in the world, which may be attributed to the large Indian population of 1.2billion (2011). At best, it may be only partly true. Economic development of the country, it is needless to say, should bring population into equilibrium with its natural resources, and whether it has happened or happening or likely to happen is altogether a different issue. It is progress or economic development which is held to bring down poverty , and ultimately to reduce it to insignificant numbers, as held by the history of economic development of the West or the developed world (Wilkinson: 1973). India's case of poverty cannot be different. Still, poverty seems a persistence phenomenon of the Indian economy.

The history of India's poverty is quite long, dating back to the colonial 19th century Dadabhai Naoroji had attributed the miserable living conditions of the Indian populace to the 'drain' of the wealth of India to England, and the unconcerned British rule

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(Naoroji: 1901). According to Naoroji, India was sinking in poverty in the 19th century. Mahatma Gandhi's description of Indian poverty is "desolating pauperism" (Gandhi: 1947), and his prescription for this desolate poverty is the well-known village based development model which has not been given much attention by the successive governments of India (GOI), including those headed by the Mahatma's political heir Jawaharlal Nehru. However, the present-day aam-admi or common man paradigm of development, in its essence, is very much Gandhian.

In spite of more than sixty years of planned economic development and many anti - poverty programs, poverty still appears to be a phenomenal problem of the Indian economy, the latest nation-wide poverty fighting program being National Rural Employment Guarantee Act (NREGA) (2006 Gandhiji's name has been used to make it a prestigious program and a program of honor and national commitment. The Pre- NREGA major poverty alleviation measures are women dominated Self-help Groups-a(SHGs-) and SHG aided Micro Finance Institutions (MFIs)- . Notwithstanding all these measures, this paper is addressed to an examination of the role of foreign trade or external economic orientation in poverty eradication in these times of globalization and free trade regimes under the aegis of the World Trade Organization (WTO) (1995). The Objectives and Methodology of the paper are intended to bring out the magnitude of poverty and the ways and means of overcoming it through the external sector of the economy too, usually not paid attention in poverty management.

Objectives & Methodology

- To bring out the depth and dimensions of Indian poverty.
- To through light on the poverty lines, as measures of poverty and scaling of them.
- To investigate the nature of poverty removal programs and their meeting poverty challenges.
- To expand foreign trade angle to the alleviation of poverty, and linking the poor to the external or world economy.

Methodologically, poverty poses a number of problems, regarding definition, poverty-lines, poverty eradications measures etc., Poverty, in effect, is a very hard concept to define, and the poverty lines appear more difficult to draw. India's poor does not only exhibit large numbers but also appears to be a hard-core type, seemingly defying a forever solution. After Naoroji, Dandekar-Rath appear to be the patriarchs of the present day Indian poverty studies (Dandekar & Rath: 1971) abounding in number and variety. Dandekar-Rath classic reigniting the poverty concern and debate in the country which is going on and on, should have been aptly titled Indian Poverty instead of Poverty in India, as Indian poverty seems to be a category of its own. It appears to be of deep abiding type, and a disturbing variety.

At the start, methodology of the study consists of bringing out the nature of Indian Poverty (IP). In the first instance, it does not appear to measure up to the world's poverty standard of $1 a day per person of the Millennium Development Goals (MDGs) of the 2000AD, since, revised to $ 1.25 (Sundaram: 2012). Not of the 2008 global economic and financial crisis, greatly impacting the poor quite adversely (World Bank, 2009). Next, Indian poverty is of continental size, made up of huge number of people running into millions upon millions which are quite overwhelming. There is no use in underestimating the problem of poverty and its great numbers. There appears to be a need not for the gentle and time-bound programs of poverty alleviation but a war or revolution of course bloodless-in respect of poverty world-wide, not to say of the first poverty country of India. Realizing the gravity of the poverty situation, especially in India, the late Prof. C.K. Prahalad, the management doyen, had called upon the MNCs to enter the picture and produce the goods for the poor at economical and yet profitable rates. His is the famous Bottom of the Pyramid Theory or Strategy of Poverty Alleviation (Prahalad : 2002). The Government of India's case for FDI in Retail Trade is based on its benefits to aam-aadmi or the common man, made up of minorities, SCs, STs, farmers, farm workers, village adivasis, urban poor etc.

The methodology of the paper therefore is to establish the nature of Indian poverty, appearing to be of special type or deep and

massive nature, and see foreign trade, in these days of globalized trade and trade drives, can be of any help in finding poverty solution, which is establishing poverty and foreign trade linkages and the nature of the country's foreign trade.

Dadabhai Naoroji's is the ever lowest per capita income figure of the country , pertaining to the year 1867-68, which is Rs. 23.50, which even for those far of times seems nothing of an income. It looks an income of semi-hunger and starvation, and Naoroji had felt the conditions of the India's masses quite slavish (Naoroji 1901, p. 652) Nobody no more appears to be moved by the misery of the poor. Things, of course, in 2012 are not the same as in 1867. For, there are not only Employment and Food security schemes for the poor but also a cash transfer program from January 2013 (The Hindu: 2012) straight into the bank accounts of their own. Today, the aam aadmi seems a sovereign for the ruling classes of all persuasions. Surprisingly, with the aam aadmi, Mahatma Gandhi too appears to have come into some national reckoning. For, the story or history of Indian Poverty and the poor, Mahatma Gandhi stands' out as the most concerned personality, and as the most eminent poor man of his times, dwarfing the kings and emperors. His is a very moving life, moved by the moving and desolate lives of the common people of his country, most loved by him. His life is a great journey from comfort to poverty for self realization and salvation and service and to be one with the poverty-ridden masses of the country. (Gandhi: 1928). Mahatma Gandhi's advocacy of the cause of the poor is the most telling than any life-less, dry state poverty-lines (PLs).

In Gandhiji's Autobiography Champaran district in Bihar portrays the case of Indian poverty of mean living conditions of the common people of the country. He had also cure for the economic ills of the country, simple and seemingly well effective, based on agriculture, village industries, new education or Naitalim, etc., and village panchayats governance (Gandhi:1947), which however had not impressed the ruling classes from the congress onward. Nor did they imbibe his prescription of simple living that would economize public expenditure and greatly contribute to the public welfare. For example, colonial type of ministerial bungalows do

not fit into the general poverty of the nation. So also flashy ministerial cars flashed on Doordarshan at the time of the central cabinet meetings, and Z securities. India's model of development appears to be destructive of its slender natural resources, palliative in every sense of the world and poverty enhancing, divisive and of small-time leadership. It does not appear to reach out to the general public and deliver the normal public services of health, sanitation, education etc. Its poverty standard of $1/1.25 Indian poverty appears to be of less than $ 0.50 variety, quite visible to the naked eye across the length and breadth of the country in a variety of ways and form beggary, naked infants and children and their seemingly undernourished mothers, pavement dwellers, mean insanitary housing, ragged clothing, poor household belongings and so on. There are SCs and STs a great majority of whom are apparently poverty-ridden, with debt, bondage, untouchability and isolation, the winds of development appearing not to have greatly touched them (Somashekhar, 2010). SC, ST development appears to be the yardstick of development and poverty eradication , the SCs and STs and other weaker sections makeup the bottom of the social-economic pyramid (BOP) and are at the base of the economy.

Poverty, in recent times, appears to be aggravated through farm-holders also joining the ranks of the poor due to the crisis in agriculture owing to rising input costs, drought, debt, crop failures, unremunerated prices, marketing exploitation, forcing many farmers suicides which is altogether a new development on the poverty front, extending the frontiers of poverty and intensifying its depth. MGNREGA it itself is an evidence of the daily deep hold of poverty over the rural masses across the country. If any, the program appears to establish the forever nature of Indian poverty or poverty as a permanent feature of the Indian economy. So seems the proposed scheme of cash transfers, which is indeed a massive scheme. And, with a limiting growth poverty is likely to become a far formidable problem. Not only the growth rate, agriculture is also seen to be back stepping, posing a formidable problem for the poor. The international economic situation is also crisis ridden with the global financial crisis of 2008, also travelling to the shores of India, all seeming to aggravate the poverty

situation. However, the political and economic leadership of the country, appearing to lack in public trust and confidence, appears to make light of the problem. The Planning Commission appears to draw a bare portrait of poverty and draw poverty lines in term of the bare needs of the poor. The lines appears to be just substance lines which do not meet even substance with inflation.

Poverty International and National

Internationally or world-wide, the world Bank, devoted to world economic development, is at the work of constant monitoring of the poverty levels by drawing up poverty-lines, per capita per day in Dollar (US) terms, which can be expected to be more realistic and well reliable. It has old or the Millennium-eve upgraded line liberal poverty lines of Dollars 1.00, 1.25, 2.00, The bottom rate of $ 1.25 is felt to be inadequate and should have been at least 1.50 dollars (Reddy, 2010). Even 2 dollars seems a small sum or poor sum of the poor, which it should not be difficult to make by any adult member he or she, who however have to provide for the children and the old . It is not easy to solve the problem of poverty by understating and underestimating it that would only aggravate the problem in the long run and make it almost insoluble and continuing. Even otherwise also, it is doubtful whether it is possible to get rid of the problem and make it Zero (0). There, among other things, is said to be a tendency on the part of the Bank and the governments to show the problem at a lower magnitude that would not aggravate their financial deficits (Rao, 2012). The poverty of 1-2 Dollars seem a poor poverty (Jomo & Chowdhury, 2011). Even at the lighted poverty-lines, which are being aggravated by the twin problems of inflation and Global Financial Crisis, Poverty figures or the number of poor world-wide appears to be quite daunting; 130 Crores at $ 1.25 and 230 Crores at 2.00. Undoubtedly the BOP of the Pyramid numbers would be more formidable, as its exponent the Late Prof. C.K. Prahalad wanted the poor to be given a fair deal of not only the necessities of life but also little comforts of life , say, like ice creams. The problem is not only of bug numbers but also of malnutrition and undernourishment quasi-hunger.

Internationally, India is the first home of poverty , wherein poverty is very much visible to the naked eye, the first sign of which is beggary, seemingly all over the problem, quite understandably, is immersed in controversy over the PLs and their numbers or the number of the poor, rural, urban and the total, and their percentages. World-wide, the proportion of the poor is 1/5-130/700 crores. In India, it can be expected to be more and giving out a figure upward 300 million . Notwithstanding any number of poverty measures and the consequent PLs and their numbers or the number of the poor, it is the planning Commission's estimate that are the determinants of poverty levels in the country, and in respect of the fall of poverty the last eight years of UPA Government's rule is claimed to make a distinct mark on the Indian economy-its reforms growth, employment, welfare, poverty, foreign trade, etc. claiming itself to be an common man government standing for growth extending to all people viz., inclusive growth. There is seeming powerful NAC-National Advisory Council-advising the Government of India. The nation-wide, program of MGNREGA, a rural poverty fighting program, is a brain-child of the NAC, chaired by the UPA-United Progressive Alliance-Chairperson and the congress President Mrs. Sonia Gandhi. That NAC may seem a super cabinet and governing council of no constitutional and standing is a different question. The common man is Mahatma Gandhi's daridra-Narayan (The poorest man). Then, NAC selective body is presumed to be higher and superior to the elected Government of India and most concerned with the welfare of the common people, the AA, of the land. Seeing the laboring pictures of men and women on the Doordarshan, the MGNREGA, notwithstanding the name of Mahatma Gandhi, looks like a famine relief program, meant only for extreme agricultural conditions like extensive crop failures and agricultural deprivation. Far more, it is well known to have created an artificial crisis in agriculture all over through an acute shortage of farm hands and rising agricultural wages, and agricultural costs, debt. There is an inflationary regime.

The MGNREGA is not the end of the New Deal for the poor under the NAC's dispensation, but is to be followed by a comprehensive food security and cash transfer schemes, which put an end to the age-old poverty of the country. They are also expected to give rich dividends to the congress party in 2014

parliamentary elections giving it an unquestionable majority in the Parliament, there appearing to be a big leadership gap in the country. According to the Mahatma Gandhi , the common people in free India should feel that the government is their own. But do they? There seem a long distance between the Government and the common people in spite of the country being the largest democracy in the world, but seems to lack in economic democracy or entitlement of health, education, sanitation, housing, food clothing, drinking water, electricity, transport, communication, world and leisure which should be universally available goods and services of a democracy. The panchayats or village governments should be very much functional rather dormant and paper organizations. The present day Gandhijis should imbibe at least some spirit of Mahatma Gandhi. There needs to be a good affinity between the ends and means too, as well put by Mahatma Gandhi. As against this holistic approach to the problem, there appears to be attempts to measure poverty in terms of just a few unconvincing Rupees or at lower than the international or World Bank standard = $1.25. What is the PL in terms of Rupees, with a falling domestic and international R-value, following inflation and foreign trade (-) a/c or the external sector disequilibria.

Indian PLs (Rs)

Notwithstanding so many experts, it is the Planning Commission of India, headed by no less a personage than the Prime Minister of India from the first eminent Prime Minister Pundit Jawaharlal Nehru times onward, is the final poverty authority in the country, with the prime national advisory body of NAC headed by the eminent personage of Madam Sonia Gandhi seeming silent or non-interfering or non advising in the matter.

As per the poverty yardstick of $1.25 of the World Bank, Indian poverty line, assuming a fixed price-line, at the current dollar and rupee exchange rate of 1:55 (Business Standard, 2012, p.1) is 1.25x55=68.75, not an inconsiderable sum. Of course, at 2.00 it is Rs. 110, quite a tidy amount. At 55/1.25 it is Rs. 44, a modest figure. The resultant world-standard or the World Bank's equivalent Indian PLs are four, namely, PL1, PL2, PL3, PL4.

POVERTY LINE	$ (Dollar)	₹ (Rupees)
PL 1	1	55
PL 2	55/1.25	44
PL 3	1.25	68.75
PL 4	2	110

PL2 is the most modest of the Four, and may seem appropriate to the overriding poverty conditions of India. The PLs are at the going exchange rate of Dollar & Rupees (1:55), the Rupee set to fall further against the Dollar, given the running rate of Inflation of 7 plus % and a heavy CAD- current account deficit, not to say of a heavy fiscal deficit, setting the alarm bells further for the 'continental' or a great sized poverty afflicted population of the country. However, the planning commission of India, in charge of the general as well as the planning for the poor, appears to take a calm view of the problem, the Commission lowering the poverty lines (PLs), Rural (R) and Urban (U), at which there would be a natural or statistical, against the real, reduction or lowering of the population of the poor, which has been termed " Poverty of Measurement" (Editorial, 2012). Over the years, Dandekar-Rath and others, and the Lakdawala (1993), Suresh Tendulkar (2005-09) Committees had drawn the poverty lines, with the Rangarajan Committee set to probe the problem afresh (Editorial, 2012). A good measure of poverty may be the per capita income which is national income disorder by the population.

The planning commission is said to have picked up the tendency or late of understanding the problem of poverty and the poverty numbers. Its poverty statements and statistics and PLs are said to be 'infamous' (The New Indian Express, 2012a). In a submission made to no less an authority the than the Supreme Court of India, the poverty lines were submitted to be Rs. 32 and 26 for urban and rural areas respectively, raising a nation-wide indignation and protest. Undeterred, the Commission had further lowered the lines to Rs. 28 and Rs. 22, claiming a poverty reduction of about 7.3 percentage points between 2004-05 and 2009-10, in view of the good growth performance under the UPA governance and also schemes like the MGNREGA, the UPA Government, appears to think itself as a great happening for the country's common man, claiming itself to be an common man government, which is actually the model of governance advanced by Mahatma Gandhi with his vast

and intimate experience of the Indian people in South Africa and India and his great concern for them (Balchand, 2012). His was a holistic and very concerned and grassroots model of development, for the common people, which needed no PLs.

Poverty States 2011-12

Total Population	**1.2 billion**
Poverty Lines	**In Rupees (Persons/Per Day)**
Rural	22.42
Urban	28.35
Poverty Lines (Per Capita Monthly)	
Rural	672.8
Urban	859.6
Poverty Levels (%) 2004-05	
Rural	42.0
Urban	25.5
Poverty Levels (%) 2009-10	
Rural	33.8
Urban	20.9
Low Poverty States (2009-10)	Pondicherry (1.2), Goa (8.7), J & K (9.4), Himachal Pradesh (9.5), Kerala (12.0), Sikkim (13.1), Punjab (15.9), Delhi (14.2), Tamil Nadu & Meghalaya (17.1), Tripura (17.4) and Uttarakhand (18.0).
High Poverty States	Bihar (53.5), Chattisgarh (48.7), Manipur (47.1), Jharkhand (39.1), Assam (37.9), UP (37.7), Orissa (37.0) MP (36.7)
Mid Poverty States	West Bengal (26.7), Arunachal Pradesh (25.9), Rajasthan (24.8), Maharashtra (24.5), Karnataka (23.6), Gujrath (23.0), Mizoram & Andhra Pradesh (21.1 each), Haryana (20.1), Nagaland (20.9).

Source: The Hindu, 29 March 2012, p.15. Based on the planning commission figures.

It is pertinent that each state has its own PL. The problem states are the high poverty incidence states Bihar, UP and others- and the poverty increased states of Assam, Meghalya Manipur, Mizoram and Nagaland. Even at the very low PLs of the Planning commission, great poverty figures are reported notwithstanding their claimed sizeable decline in the UPA era of 2004-05 to 2009-10, with the regime to last till 2014, when another round of steep fall in poverty numbers may be reported by the planning commission on the eve of Parliamentary elections, for the UPA to win another 5-year run. The poverty numbers are 35.6 crore (total), 27.82 (rural) and 7.64 Crore (urban) (Balchand, 2012). They are quite sizable numbers. There seems to be no end to the attempts at lowering the poverty-line, over-all, the latest attempt being that of Delhi Chief Minister to strike a poverty-line of Rs. 600 a month for a family of Five members while getting Delhi Government's cash

transfer scheme of Annashree inaugurated by the UPA Chairperson, Mrs. Sonia Gandhi, which appears to out-beat Planning Commission Vice-Chairman's urban and rural poverty lines of Rs. 28 and Rs. 22, respectively. It's Rs. 20 a day per family of Five in Delhi (The New Indian Express, 2012b,). Cash conferment's appear to be the upcoming mode or new weapon of poverty eradication, and the poor are going to be on the central government's salary-like monthly payments direct into their individual bank accounts. It's going to be a massive scheme of cash transfers to lakhs and lakhs of bank a/cs. It must be the end of the age-old poverty of the country, the badge of the nation according to many. It is banked upon a higher growth rate of 8-9 per cent (Harriss, 2012), which however after flying at even 9 per cent , unprecedented (Ahmed, 2009a) is back to less than 6 per cent (Financial Express, 2012), making the Union Finance Minister, P. Chidambaram, talk of 'bitter medicine' for 'Better growth' (Business Standard, 2012, p.1,4) which is a language of common man friendliness. There is an endless urging of the autonomous Reserve Bank of India (RBI) to cut rates in spite of an anti-common man food rate of inflation of around 10 per cent, and urging more and more FDI, which do not speak of a good management of the Indian economy. Reforms and Reforms is another refrain of the Indian economy or macro-economic managers, meaning mostly invitation mostly to FDI in different sectors and sub-sectors of the economy, as in Retail trade recently, staking the very survival of the Governments, on the grounds of it being quite favorable to the farmer and consumer. So, Wal-Mart and the like are expected to lift the economy to higher growth path, hold inflation in check and lower the poverty levels-indeed great expectation from the single factor of FDI, which is equivalent to putting all Indian eggs in the single FDI basket.

Meanwhile the poverty front, the reports are that there are classes-STs, SCs, Women-which are still greatly excluded from the process of development and poverty alleviation and India's perspectives on poverty are of limited and short time nature that do not extend far and wide, being mostly rural and provision of some employment and minimum food requirements (World Bank, 2011), of which the latest Planning Commission PLs appear to amply speak about. In

spite of the deep and abiding nature of poverty in the country, poverty program had a late start in the 1970s with the political slogan like 'garibi-hatao' in a halting manner (Rangnekar, 2012) The programs appear to lack in real economic content (Sabnavis, 2012). What is the share of the poor in the near $1 trillion GDP Indian economy? Is there still a case for poverty? It seems a case of poverty amidst plenty (Kohli, 2012). There does not seem to be a case for so much poverty in the country, the reason for which is the bad political and economic management of the country and drain of its much hard earned wealth into foreign (Swiss) secret bank accounts, estimated at $1.2 trillion in the past decade itself or alone (Deccan Chronicle, 2012) which really belong to the people of the country.

The Poor and Trade

Given the pervading fact of the poverty of the Indian economy, the problem of poverty needs to be tackled through foreign trade. As there is a new economic and growth regime in the country, of the free market, there is also a new trade regime of free trade as part of the new world trade order of non-discriminating trade empires by the new World Trade Organization WTO (1995), ushered in after many Rounds of trade negotiations 1947-1994, which is said to be promoter of a poverty less, prosperous world economic order. India is an active member of this new trade order (Paul, 2008). Trade and poverty linkages are not difficult to fathom, as foreign trade - FT extends the frontiers of an economy by removing demand (D) and supply (S) constraints, and thus is promotive of optimum production and full employment, maximum GDP, as expounded by the originator of economic and trade theory Adam Smith in the 18th century through his breakthrough book The Wealth of Nations (1776) (Smith, 2003). There is a Renaissance of this trade theory in the post second world war (1939-45) period 1945 on, with the founding world bodies of UNO, World Bank & International Monetary Fund for world peace, trade and economic development, and the Renaissance appears to have come to full fruition in the 21st century of IT, internet, mobile phones, consumerism, innovations, entrepreneurship, MNCs, regional trade groupings, international migration and mobility or labor,

capital and entrepreneurship, HRD, CSR-Corporate Social Responsibility and growth into which the poor are to be automatically drawn putting an end to their age-old poverty. The 10 nation ASEAN group, with which India has close trade relations and expanding trade which is expected to hit $100 bn by 2015 (GOI, 2012), is held to be a model of the new growth and trade model, of which the Bank-Fund are the well-known prime votaries.

India has a long tradition of trade, is also on the new growth path, with a greatly deficit trade economy or external or trade sector , the bridging of which and acquiring a due share of some 3-4 per cent of world X trade or world exports would be of immense help for trade, growth, the poor and poverty (Ahmed, 2009b). In trade, the country has to gain back its lost historical heights. It has to start right with agriculture, which has immense export prospects, as that of the major crops like rice and the agriculture sector is greatly peopled by the poor, but even a modest 4 per cent agricultural growth is turning out to be greatly elusive. The starting point or the heart of 9-10 per cent rate of economic growth is agriculture on which a great majority of the massive Indian population-to the extent of about 2/3rds-is still dependent, making very concerned agricultural scientists and economists like M.S. Swaminathan passionately plead for an ever Green Revolution to make the nation a bread-basket of the world, with food appearing to be an ever critical commodity. Among the many bottlenecks to growth yet of the country is a small trade sector Vis-à-Vis GDP and share in the international trade, especially exports, which calls for pushing the sector farther and farther and ending its present state of imbalance and disequilibrium (Shilling, 2012), which would go a long way.

It is agricultural products, and the products of STs, SCs, and lakhs of women's self-help groups (SHGs), producing a variety of fine products, that need special international marking, as nature and human friendly and as products of unique special groups. Only a thriving and people and pulsating economy that will have a thriving foreign trade with its products and services and people making an international mark. Instead, the rural poor are employed

on greatly famine-relief like employment program, creating an artificial labor crisis in agriculture. As against a thriving FT which a nation of 1.2 billion people, still growing widely and murderously putting the girl child to abortion, infanticide, live-burial and dustbin abandonment and rape, has greatly an imbalanced and deficit FT- sector or economy.

Year	Exports (Xs)	Imports (Ms)	Balance of Trade (X-M)
2005-06	456418 (21.6)	660409 (31.8)	-203991
2006-07	571779 (25.3)	840506 (27.3)	-268727
2007-08	655863 (14.7)	1012312 (20.4)	-356449
2008-09	840754 (28.2)	1374434 (35.8)	-533680
2009-10	845534 (0.6)	1363736 (-0.8)	-518202
2010-11	1142922 (35.2)	1683467 (23.4)	-540545
2011-12	1454066 (27.2)	2342217 (39.1)	-888151
2012-13	908340 (11.5)	1507203 (15.5)	-598862

Source: Economic & Political Weekly, 22 December 2012, p. 78 (Current Statistics).
*Figures in parentheses are the percentage change over the previous year, 2012-13 figures from April-Sept.

In 2012-13, trade deficit seems bound to cross Rs. 1 million crore. It is enough to say that the FT sector appears to be poverty adding rather than reducing , with its apparent class characteristics. It's reflective of the class or non-poor characteristics of the internal economy and its growth, including the alleged 'new' growth.

Conclusion

From population 'planning' which is blatantly biased or anti-women and cruelly anti-girl child, to the internal and external management of the Indian economy appears to be class rather than mass based, sporting poverty as badge and manipulating poverty statistics. From 2013, poverty is intended to be over-powered with the 'magic' of massive cash transfers or doles.

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CASE STUDY

DOES MICROFINANCE EMPOWER URBAN WOMEN? A Case Study of Murshidabad Town, Murshidabad, West Bengal

*Madhumanjari Chakravorty**

Women Empowerment plays a key role in sustainable development. Kabeer (1999) defines empowerment 'as the expansion in people's ability to make strategic life choices in a context where this ability was previously denied to them'. Thus women empowerment implies enhancing capabilities and entitlements so that poor women can access better living conditions, improved health and education status, greater autonomy in decision-making and fulfillment of their roles as wives, mothers and workers under non-oppressive conditions. There has been much debate about the way of achieving women empowerment. Microfinance, as an alternative source of financial assistance for the poor (especially for women) has received wide attention in the recent years owing to its contribution to women empowerment. The assumption is that with increasing access to microfinance women will be enable to make their own decisions about credit, savings and setting-up micro-enterprises with increasing control over their income. Greater controls over financial resources enable women to make a greater contribution to household income which increases household well-being and the well-being of themselves. But how many dimensions can be fulfilled by microfinance as it has multi-dimensional approach? How far financial assistance is required for women empowerment? With an empirical study in Murshidabad Town (Murshidabad District, West Bengal) this paper tries answer these questions.

Generally women empowerment is viewed in terms of two different conceptions: (i) One-dimensional concept of empowerment focuses on political empowerment and deals with notion of power as command [Freire (1972), Bystydziensky (1992), Batiwala (1993)]. There are three distinguish usages of power as

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command having command over one's own body and actions, and over institutional resources such as decision-making bodies,(ii) Multidimensional concept of empowerment that incorporated dimensions like social, economic and psychological and political. In its broader conceptualization, empowerment refers to capacity building (Dhulia M.L.and Singh.P, 2011).Stromquist (1994) has included four components of empowerment. These are cognitive, psychological, economic and political. Cognitive component means women's understanding of their condition. Psychological component includes the feelings to improve their condition. Economic component implies engagement in productive activities. Political empowerment includes the ability to analyse the surrounding environment in political and social terms. The World Bank (World Bank, 2001) has suggested that empowerment of women should be a key aspect of all social development. All the Millennium Development Goals can be achieved through women empowerment. Table1 shows that women empowerment approach solely may bring about development and eradicates all evils that constraints development.

Table1

Women Empowerment and the Millennium Developmental Goals:

Goal 1. Eradicate Extreme Poverty and Hunger	• Need-based capacity-building and better access livelihood opportunities for women will provide a major boost to family-income and reduces extreme poverty and hunger. • Equal investment in women's health and nutritional status reduces chronic hunger and malnourishment resulting increase in productivity and well-being.
Goal 2. Achieve Universal Primary Education	• Empowered women have greater control on her children's school enrolment & attainment of their health and nutrition outcomes.
Goal 3. Promote Gender Equality and Empowerment	• Women empowerment leads to gender equality which is the necessary condition for sustainable development.
Goal 4. Reduce Child Mortality	• Economically empowered women have significant impact on their children's health which reduces child mortality.
Goal 5. Improve Maternal Health	• Empowerment plays a significant role in women's health treatment seeking behaviour which reduces reproductive morbidity and maternal mortality.
Goal 6. Combat HIV/AIDS, Malaria & Other Diseases	• Empowerment enhance women's capability to negotiate inter-spouse consultation, their awareness level about STDs and the importance of contraceptives. • Empowerment enhance awareness about epidemics and accessibility to healthcare.
Goal 7. Ensures Environmental Sustainability	• Empowered women can manage environmental resources more sustainably than that of men
Goal 8. Develop a global partnership for development	• Political empowerment enhance their role in development cooperation

Source: Author's articulation based on Hazra A.(2012)

But what is the sustainable way of achieving empowerment of poor women? There has been much debate on the means of achieving women empowerment. Economic empowerment as an approach for development and gender equality has gained much attention. It enhances opportunities, capabilities, bargaining power and autonomy for women by increasing their participation in overall economic activity. Microfinance is considered as one of the most appropriate way of achieving women empowerment through direct control over resources and income generating activities. Microfinance enables women to make a greater contribution to household income and well-being that further brings about wider changes in gender inequality.

Microfinance and Women Empowerment:

Urban poverty is as much a reality as rural poverty. Poor and vulnerable people living in urban areas have very limited scope of livelihood generation. If the poor urban women can start up income generating activities it will empower them economically and that will bring about other dimensions of empowerment. The following table shows type of assistance required to start up livelihood activities:

Table 2

Percentage Distribution of urban women of age 15 years and above usually engaged in domestic duties and willing to accept work at the household by type of assistance required in selected states(2004-2005)

States	Initial Finance on Easy Terms	Working Finance Facilities	Training	Assured Market
Andhra Pradesh	38.2	15.0	23.2	9.6
Assam	46.6	9.5	10.4	5.3
Bihar	36.5	11.3	18.3	10.0
Gujrat	40.3	13.6	14.1	11.4
Haryana	27.1	16.2	19.7	15.9
Himachal Pradesh	43.5	1.4	16.0	13.9
Karnataka	25.9	14.2	23.6	16.8
Kerala	61.4	7.4	13.6	3.1
Madhya Pradesh	30.5	12.0	17.7	13.9
Maharastra	31.4	11.7	17.7	13.8
Orissa	49.9	18.3	21.1	4.0
Punjab	26.8	20.1	21.4	13.9
Rajasthan	45.6	10.3	7.3	6.3
Tamil Nadu	42.8	8.4	18.7	8.0
Uttar Pradesh	39.7	18.1	13.7	7.4
West Bengal	25.4	17.9	20.1	15.4
All-India	35.3	13.7	17	10.5

Source: Author's articulation based on U.Kalpagam(2011)

The above table shows that most of the states need initial capital on easy terms. But access to finance, specially organized finance has been a critical need. As the poor do not have sufficient collateral, formal financial institutions are inaccessible for them. Microfinance fills the gap and provides the financial services for the urban poor. In India, Microfinance is defined as "the provision of thrift[1], credit and other financial services and products of very small amounts to the poor in rural, semi-urban and urban areas for enabling them to raise their income level and improve living standards (NABARD, 2004)." Most of the microfinance clients are women. It is assumed that with the help of microfinance women can enrich their family well-being and raise their level of empowerment.

Murshidabad town is one of the poorest urban centre in West Bengal. With empirical evidence from Murshidabad town the present study shows how microfinance plays a major role to include the poor, especially the women into the process of development and make more equitable growth. Being deprived from the services of formal financial institution they find microfinance as a way to sustain their livelihood, start up new income generating activities and come over crisis periods.

Objectives

The main objective of the paper is:
To evaluate the empowerment of poor women of Murshidabad town as a result of participating in the microfinance program.

Database and Methodology

The study was conducted mainly on the basis of primary data. But some secondary data have been used too. Two hundred women were randomly selected from different JLGs (Joint Liability Groups) from the sixteen wards of Murshidabad town. Members of the groups were interviewed with well structured questionnaire schedule. They were interviewed during the time of group meeting .Sometimes some of the respondents called me up and expressed some additional views, spontaneously. Five point Likert-type scale

were given to all respondents. Descriptive statistical analysis such as mean has been carried out.

Study Area and its existing Poverty Situation:

The city of Murshidabad is located on the eastern bank of the river Bhagirathi-Hooghly. It has a geographical area of 12.95 sq km. According to 2001 Census report the total population of Murshidabad town is 44024. Of them 22207 are male and 21817 are female. Total Hindu population is 28648 and total Muslim population is 8242. The following table shows that in every ward there are a huge number of BPL families. With the absence of formal financial assistance these families are compelled to borrow loans from microfinance institutions.

Table 3

Number of BPL families in Murshidabad Municipal Area (Wardwise)

Ward No	Total Population	Total No. of Households	Total BPL Family
1	4342	1005	551
2	3256	840	375
3	1918	438	55
4	1611	406	74
5	1847	463	232
6	2157	487	82
7	3567	855	276
8	5020	1107	599
9	3012	653	382
10	1682	378	177
11	1633	365	183
12	1738	383	241
13	4282	878	606
14	2725	590	503
15	3107	635	628
16	1848	607	376
Total	**44024**	**10090**	**5340**

Source: Murshidabad Municipality (2012)

Review of Existing Policy Situations and Institutional structure

This section is divided into two subsections. The first part focuses on the existing Governmental Policies and the second part analyses the existing MFI, their background, operations, features of existing microfinance products.

Existing Governmental Programs

A wide range of program exists in Murshidabad town. But the outcomes are very disappointing.

Table 4

Existing Government Programmes and their status

Programme for the urban poor	Present Status of the programme and Reasons of failure
SJSRY	• Even the applications of the 2008 beneficiaries have not been processed. SUDA (State Urban Development Agency) had sent the allotted 20% subsidy to SBI. The bank authority does not bother to inform the ground of cancellation (in case of cancelled application)
Wage Employment Programme	• The money allotted is not enough, so very few people get chance in this programme
NSDP	• Unknown
JNNURM	• Each ward gets only 3-4 Lakhs every year, which is not sufficient to provide jobs for many people

Source: Murshidabad Municipality and SUDA (State Urban Development Agency)

The above table shows the grim pictures of different governmental schemes for the urban poor. The economy of the town is very poorly developed with little scope of employment opportunity. People need financial assistance to start up livelihood activities, but formal institutions deny. So the only option left to them is microfinance because local moneylenders are highly exploitative in nature.

Existing MFIs

The major MFIs operating in Murshidabad town are:

Table 5
Major MFIs Operating in Murshidabad

Name of the MFIs	Legal Status	Lending Model	Existing Microfinance Products
Bandhan Financial Services Pvt. Ltd. (BFSPL)	NBFC	JLG	Microcredit, Microinsurance
Sahara Uttarayan	Society	JLG	Microcredit
Share	NBFC	JLG	Microcredit
Village Financial Services Pvt. Ltd.	NBFC	JLG	Microcredit
SKS	NBFC	JLG	Microcredit
Asha	A Financial Institution of Bangladesh	JLG	Microcredit
Sarala	NBFC	JLG	Microcredit
All Backward Class Relief and Development Mission	Society	Individual	Microcredit

Source: Primary Data

The above table shows that all MFIs are using JLG model. Microfinance through group lending model has been popularized by Md. Yunus's Grameen Bank .In group lending model a set of people come together to form a group. MFIs give loan to individual members of the group but the group jointly takes the responsibilities for repayments. In Murshidabad town Bandhan has the maximum outreach followed by Sahara and Share.

Socio-Economic Profile of the Respondents:

The socio-economic profile of the respondents are shown in table 6. According to the age groups of the respondents, the majority of the respondents belong to the age groups of 31-40 years, followed by 41-50 years age group. Educational qualification plays a vital role in the process of women empowerment. From the table it can be inferred that majority of the respondents are illiterate. Only 9%

of the respondents have attained secondary level. About two third of the respondents are Muslim while only 32 percent respondents are Hindu. Family income and empowerment are interrelated. The annual family income of the respondents is given in table 6. Majority of the respondents belong to the income level of above Rs.35000 followed by income level of Rs.25000-Rs.35000. That means microfinance services do not reach to the poorest of the poor properly. Most of the respondents are unskilled workers working as domestic help, laborer at construction works and bidi factory. About 40% of the respondents are housewives but rear goat and hen. Most of the respondents are married where about 5% of the respondents are deserted by their husbands. These unfortunate women find microfinance as a means to survive.

Table 6

Personal and Socio-economic Character of the Respondent

Characteristics	Category	Respondents (%)
Age	20-30 31-40 41-50 >50	12.5 50.5 30.0 07.0
Education	Illiterate Primary Secondary High School & Above	68.0 22.0 09.0 01.0
Religion	Muslims Hindu Others	67.0 32.0 01.0
Annual Income of the Family	<15000 15000-25000 25000-35000 >35000	07.5 12.0 35.0 45.5
Occupation	Housewife Unskilled Worker Skilled Worker	40.0 59.5 0.5
Marital Status	Married Unmarried Widow Deserted by Husband	92.0 01.0 02.0 05.0

Source : Primary Data

The duration for which the respondents had been member of JLGs is given in table 7.Among all respondents about 42% respondents

had been members of the group from past 3 to 5 years. About 21% of the respondents had joined the group during the last year. Only 2% of the members had joined group more than 5 years.

Table 7
Distribution of Respondents on the basis of Membership

Membership in Years	% of Respondents
< 1	21
1 - 3	35
3 - 5	42
> 5	02

Source : Primary Data

The motivation of the members behind joining the group is shown in table 8. Respondents were asked what factors motivated them to join joint liability group. Majority of the respondents stated that they had joined the group due to the motivation of group members. About forty percent of the respondents stated that they had joined the group due to the motivation of their neighbours, friends and relatives. Only two percent of the member had joined the group due to self motivation.

Table 8
Distribution of Respondents on the basis of
Motivation for joining the group

Factors	% of Respondents
Friends and Relatives	17
Neighbours	21
Group Members	60
Others	2

Source : Primary Data

The purpose of borrowing loans is shown in table 9. Respondents were asked about the purpose of borrowing loans. Majority of the respondents replied that they borrow loan for the male members of their family. The male members used the money to run their own livelihood activities and sometimes to start up new income

generating activities. About eleven percent of the members stated that they borrowed money for the purpose of construction and repairing of their house. Only nine percent of the members started up new income generating activities with the money borrowed. Two percent of the respondents stated that they borrowed money to meet the crisis of health-care cost. Only one percent of the respondents replied that they spent the money on their children's education.

Table 9

Distribution of Respondents on the basis of Purpose of Borrowing Loan

Purpose of Borrowing	% of Respondents
Male member of the family used the loan	75
Asset Building	11
Income Generating Activity	09
Education for Children	01
Health	02
To repay other loans	02

Source : Primary Data

The amount of microcredit availed by the members of the joint liability group is shown intable 10.Majority of the respondents had availed the loan ranging between the amount of Rs.12000to Rs.15000.Twenty percent of the respondents had availed the loan of ranging between the amount of Rs. 8000 to Rs.12000.Only 8% of the respondents had availed the loan of less than Rs.8000. Very few respondents had availed the loan of above Rs.15000.

Table 10

Amount of Loan availed by the members of the group

Amount of Loan (in Rs.)	% of Respondents
<8000	8
8001 - 12000	20
12001 - 15000	70
>15000	2

Source : Primary Data

Analysis of Data

This section is divided into three sub-sections. The first one evaluates the role of microfinance on women empowerment in Murshidabad town. The second one analyzes the problems faced by the women borrowers in this area. The third one suggests some strategies to involve women in microenterprise that may lead to the sustainable development of the area.

Level of Empowerment

Empowerment is a multidimensional concept. This study evaluates the impact of microfinance amongst urban poor women in six dimensions of empowerment. For each aspect of empowerment a set of variables are selected to assess the level of empowerment among the respondents.

Here the effectiveness of microfinance in terms of empowerment is analysed and the opinions of the respondents is presented in the table 11. For every variable five response categories ranged from 'very high' to 'very low'. Score 5 is given for very high and score 1 is given for 'very low'.

The study shows that majority of the respondents (49.5%) reported that their family income had increased after joining microfinance program. About 45.5% of the respondents opined that their contribution to family income is very high and 37.5% of the respondent perceived their contribution as high. Self employment opportunities are very low for most of the respondents but the money they borrow helps their male family members to start up new income generating activities. Interestingly, most of the respondent stated that they want to start up income generating activities in near future. Their accessibility and control over family resources has increased moderately. Microfinance reduces poverty among most of the family. Their ability in operating bank transaction has increased. Their mobility has increased. Most of the respondents stated that their attitude towards their daughters has been changed and they spent money for their education. In case of decision making process the study shows a mixed picture. About

half of the respondents play a moderate role in decisions relating to children's education. But their role is very low in decisions relating to child bearing, family planning.

Table 11
Six Dimensions of Empowerment

Dimensions	Variables	Opinion of the women respondents (figures denote percentage to their respective totals)					
		Very High	High	Mode Rate	Low	Very Low	Mean
Economic	1. Increase in Income	11.5	32.5	49.5	4.2	2	3.47
	2. Increase in Self Employment Opportunities	5.5	7.5	13.5	15.5	58	1.87
	3. Increase in contribution in Family income	45.5	37.5	10	5.5	1.5	4.2
	4. Increase in Access & control of family resources	10.5	28.5	43.5	12.5	5	3.27
	5. Reduction of poverty in the family	11.5	25.5	44.5	14	4.5	3.25
	6. Ability to meet financial crisis in the family	10.5	18	49.5	16.4	5.6	3.11
	7. Increase in Bank Transition ability	22	25	20.5	15.5	17	3.19
Socio-Cultural	8. Increase in mobility	25.5	34.5	23	12.5	4.5	3.64
	9. Treatments towards daughters	13.5	25.5	46.5	12	2.5	3.35
	10. Initiatives towards educating girl child	34.5	35.5	25.5	1.5	3	3.97
Familial	11. Active involvement in decision making process in the family	7.5	30.5	45.5	10	6.5	3.22
	12. Control over child-bearing decisions	5.5	3.5	12.5	24	54.5	1.81
	13. Control over family planning	1.5	2.5	15	28.5	52.5	1.72
	14. Reduction of Domestic Violence	12.5	14	34.5	23.5	15.5	2.84
Legal	15. Knowledge about Women Rights	0.5	1.5	8.5	12	77.5	1.35
	16. Family support and encouragement exercising women's rights	0.5	1	2.5	10.5	85.5	1.20
Political	17. Ability to cast votes independently	44.5	35.5	11.5	5.5	3	4.13
Psychological	18. Respect from every member of the family	13	15.5	48.5	12.5	10.5	3.06
	19. Increase in self-esteem	23	27	45	3.5	1.5	3.66
	20. A feeling of social efficacy	18.5	25.5	34.5	18	3.5	3.37
	21. Psychological well-being	21.5	23.5	38.5	11.5	5	3.45

Source : Siwal (2005)

Most of the respondents are ashamed of using contraceptives and they have taboos regarding this matter. Domestic violence had been reduced moderately. Most of respondents have very little knowledge about women's right and do not get family support in exercising their rights. About half of the women reported that they can cast their vote independently. About half of the respondents reported that their family members respect them. Most of the

respondents reported that their self-esteem has increased remarkably. After joining JLGs they have learnt so many things like reading, mathematical calculations and their behavioral pattern has been modified too. These things give most of the respondents a feeling of social-efficacy which results into the feeling of psychological well-being.

The mean value (table11) shows that among the six dimension of empowerment microfinance has brought socio-cultural, psychological, economic and political empowerment than legal and familial empowerment. Religious norms make them feel that they should not adopt family planning measures. Low literacy level is another reason for this type of mindset. But interestingly their self-esteem has increased highly. With the help of microfinance their financial contribution and capability to meet the financial crisis in the family have been increased, this feeling make them happy and give them a feeling of social efficacy.

Conclusion

In conclusion we can say that accessibility to financial services only is not the answer for poverty alleviation and women empowerment. The following suggestions have come out from this study:

1. As the level of literacy is very low, Government and NGOs should take initiatives to provide basic education. Government should take initiatives to implement various Govt. schemes as early as possible.

2. Local Municipal body should arrange awareness campaign about various schemes made for poor urban women.

3. The Income Generating Activities of the poor women are very low and lack diversity. As Murshidabad town is a paradise of heritage tourism, more women JLGs can be involved in this sector. Cultural and heritage tourism may get a momentum with the inclusion of women JLGs into tourism business. Soil and climate of this place are favourable for flower and vegetable production but lack of good transport facilities prevents the growth of this sector. With the provision of proper marketing and transport facilities women JLGs can be involved in such activities.

4. All the women JLGs (under various organisations) in this area should come together and make a cluster. It will increase their collective power and strengthen their activities.

End Note:

'Thrift' means the regular compulsory savings of fixed amount that members save. Thrift does not include voluntary savings. According to Micro-finance Sector Act (2007) only not-for profit organisation can collect thrift. See Microfinance(2009)[A Book Made by IIBF for their Diploma students]

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DISCUSSION

INTEREST FREE MICRO FINANCE THROUGH COOPERATIVES : CHALLENGES AND OPPORTUNITIES

*L. D. Ahuja**

Role of Cooperatives in the Indian Economy

Cooperative Movement in India, which claims to have about 600 thousand cooperative societies and more than 250 million members, may be considered the largest in the world. It plays a pivotal role in the Indian economy, particularly, in the agriculture and its allied secondary and tertiary sectors. Its role in ushering in of Green and White Revolutions deserves more special mention. Cooperatives are now working towards bringing in blue and yellow revolutions in fishery and poultry activities respectively.

The benefits of cooperatives have largely gone to small and marginal farmers, landless workers, people belonging to economically weak and generally vulnerable sections of the society i.e. scheduled castes and tribes, handloom weavers, poultry and dairy farmers, fishermen, women and unemployed youth. The minorities have yet to benefit from the cooperative movement in any big way. It is in this context that the initiative taken by Sahulat microfinance society must be evaluated and appreciated.

The Cooperative movement has turned out to be an engine for inclusive development and growth in the country and has diversified now in many fields. New generation cooperatives are coming up. In over 100 years of its history, it has developed into a major force in socio-economic transformation of the country. It is hoped that the initiative taken by Sahulat microfinance society shall further strengthen these trends.

Microfinance and Cooperatives

Cooperatives are basically member driven, people centric and

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community based organizations. They already have a wide network throughout the country right from village to national levels. They provide production credit, organize post production infrastructure and impart education , training, and capacity building capabilities for human resources; they also look after developmental aspects of ite members and motivate the community at large to join the cooperatives through a country wide network. The National Bank for Agriculture and Rural Development (NABARD), The National Cooperative Development Corporation (NCDC) and National Cooperative Union of India (NCUI) take care of production processes, post production infrastructure and human resource developmental aspects of cooperatives to forge an integrated approach to development.

Cooperatives have made forays into micro finance field with the spearheading of the Movement led by NABARD. The network of credit cooperatives consists of about 1 lakh Primary Agriculture Cooperative Societies (PACs), 372 District Central Cooperative Banks (DCCBs), 31 State Cooperative Banks (SCBs), besides structures for long term operations and a strong presence of cooperative banking in urban areas.Thus, a large cooperative credit structure is being utilized for promoting self help groups and dispensation of micro finance as well.

NABARD supports the growth of the micro finance sector at the national policy level and develops the SHG-bank linkage model of micro finance. This is implemented through primary agriculture cooperative societies (PACs). Self Help Groups of 15 to 20 persons, mostly of women, are formed and a system of savings and credit is set in motion. For income generating activities, funding support comes from the credit institutions. At a later stage, these groups either federate and form their own Multi-State Cooperative Society or join some existing cooperative society. The society arranges training for skill development of the members and also provides marketing support. The funding organizations charge interest as per NABARD guidelines. There is a growing demand that micro finance should attract concessional rate of interest as in the case of crop loans which are now provided at 7% with interest subvention of 3 to 4%. In some states, if the payment is made on time, the loans become almost free of charge.

Another system in vogue is that of NCDC which promotes and finances area development projects (ICDP) by forging backward, forward, vertical and horizontal linkages with cooperatives in a district. The Project life is usually 5 years. The District Central Cooperative Bank acts as Project Implementation Agency (PIA) and a Project Implementation Team (PIT) is positioned. Plans are designed and implemented in different sectors for instance, infrastructure, business and human resource development. The NCDC provides loan. The State Government passes on as loan and share capital. Subsidy is available for infrastructure development and project implementation to a limited extent.

Here also, one of the activities that is promoted is the formation of self help groups by PACS, LAMPS etc. for income generating activities and empowerment of women. Savings and grant of loans is the main ingredient. The NCDC also provides loan to State Government for creation of a Revolving Fund by the Society and State Government passes on the money to the Fund either as a clean share capital or refundable share capital with a moratorium of 2 to 3 years. The rate of interest is charged on the loan advances as per NABARD guidelines which provide refinance facilities. Any surplus generated is used for replenishment of the Fund. At a later stage, the members join either the local cooperative or form their own cooperative. Subsidy is available for such an activity under some Government of India/State Government Schemes.

The National Cooperative Union of India (NCUI) is also promoting Cooperative Education Field Projects in 44 districts of the country. One of the activities of these projects is formation of self help groups for which all the required support is provided by the Project Team consisting of Project Manager, Lady Mobiliser, Cooperative Education Instructor, Farm Guidance Instructor and so on. The operational cost is met by Government of India. The Project aims at identification of target group, assessment of needs, formation of SHGs, group dynamics, implementation of action plan, enforcement of feed back system and so on. These groups get funding support from cooperative banks and later on join a local cooperative or form their own Multi Purpose Cooperative. Thrift or savings is essential part of their functioning.

By and large, the Model of Cooperatives works on an Integrated Approach rather than Minimalist Approach.

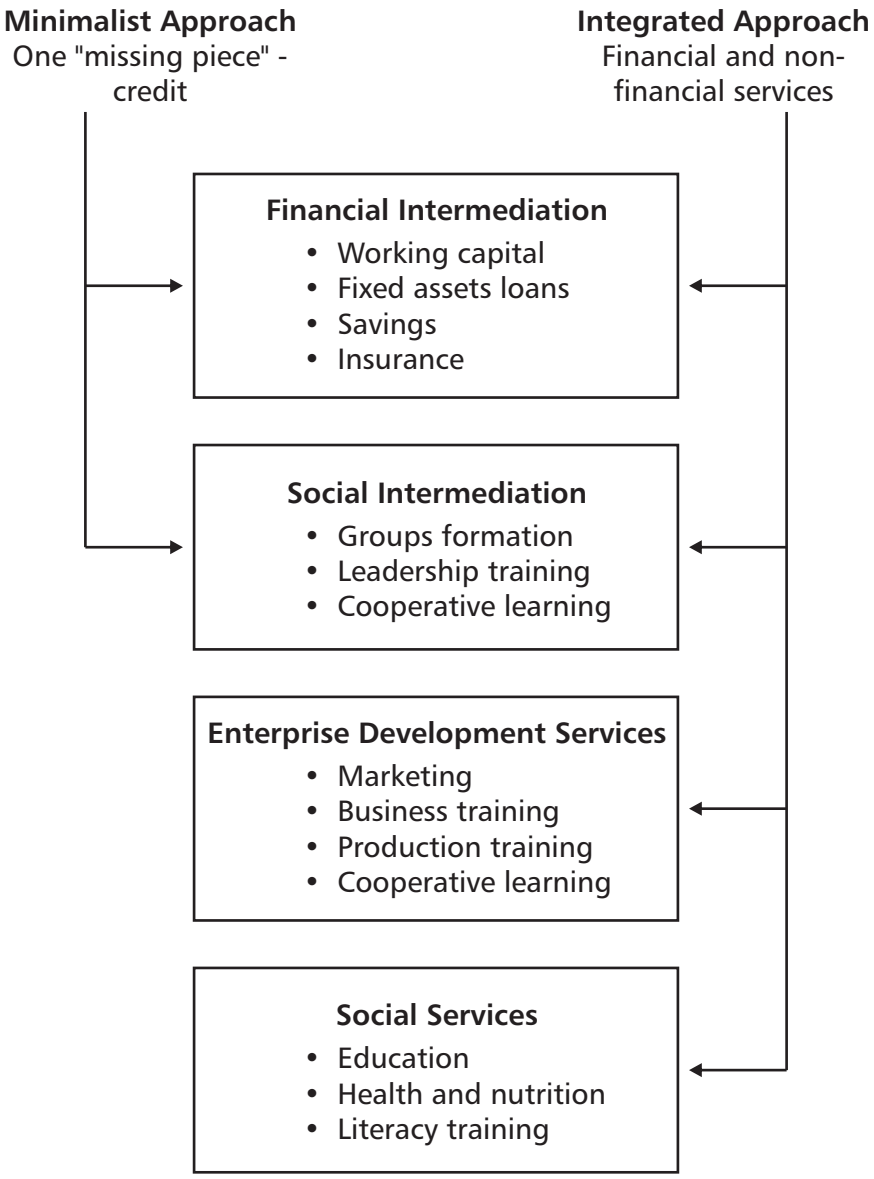

Figure 1. Multifarious Roles of Cooperatives in Development

Thus, cooperatives perform multifarious roles in development. They have been outlined in the figure (f1).

VIEWS ON SOME OTHER RELEVANT ISSUES

There is no doubt that cooperative is an ideal form of organization to undertake microfinance activity. However, provision of interest free finance may involve incurring certain costs. Special attention may be given to consideration of following costs:

- Financing Cost Low or zero if donated funds are available.
- Operating Cost salaries, rent, travel, and administration- this may vary from 12 to 30% of outstanding loans.
- Loan loss It depends on quality of loan portfolio.
- Cost of capital which varies depending on the market rate of interest and inflation rate of the country.

Grant of interest free loan may require careful assessment of above costs. One of the considerations could be sharing . In the absence of a sharing arrangement, these costs are to be borne by the donor or sponsoring body themselves. Sharing of profit could be another element. It has also to be kept in mind that cooperative lending may require little collateral. This is based on character references and cosigning of loans between the members. Micro finance activity may attract subsidy/grants in many schemes of Government of India/State Governments. This activity can be dovetailed with Bharat Nirman Schemes/programs in the area of operation of the societies and thus economize the cost.

Steps to overcome the practical hurdles in registration of Interest-free Microfinance Cooperative Societies.

Recently, the Parliament has passed a Constitution Amendment Bill whereby formation of a cooperative is now one of the fundamental rights of every citizen. Therefore, normally there should not be any big hassle in forming a cooperative. However, formation of interest free microfinance cooperative societies all over the country is a new concept and has to pass through the provisions of several Central/State Laws. There could also be some hurdles. All Acts in this case have provisions for raising deposits and advancing loans. The rate of interest has to be determined by the societies themselves and provided in their bye-laws. One of the steps suggested in this case could be to establish a process of dialogue

with one or two States, see their reaction and then proceed further. It would also be necessary to show the viability of the operation and prove that interest free model is workable.

Mechanism of suitable cooperative structure

The successful operation of interest free cooperative societies would require evolution of a mechanism having a suitable cooperative structure. This is possible either to have a tie up with the existing structure on the mutually advantageous terms or to create a new structure of 2 to 3 tiers with multi-purpose cooperative societies or branches at the grass root levels, and federate them at the state and national levels. This will be rather a herculean task. It will entail costs that either may have to be recovered from the beneficiaries or to be met by the organization sponsoring the project.

Some Insights on the feasibility of interest free business model in the Indian context.

In our perception, interest may be described as a mechanism or source of recovery of various costs or time value of costs. We may recover the costs and call it service charges. Service is the motto. Therefore, profit generated could be shared or not is a question to be asked. This may have to be provided in the bye-laws. Some part of Profit or surplus has to divert towards building of reserves, so that part of the retained income can be ploughed back. Cooperatives are also liable to pay income or other taxes. This aspect has also to be taken into account. The feasibility of interest free business model in Indian context has to be established. Efforts can be made to dovetail the model with Government of India/State Government Schemes/local agencies and Bharat Nirman Programs to obtain subsidies /grants or other benefits to make the model sustainable. Generation of savings should be an integral part of the scheme as it ensures margin of security or own funds which form the base for wirhdrawal of credit.

Socio-economic Development, self-employment and reduction of poverty through interest-free cooperative societies.

All this is possible if an integrated approach is followed but when the question of implementation through interest free cooperative societies comes, ways may have to be found to achieve the objectives. It is all the more easy if the concept is well understood and implemented. Generally, microfinance clients are not very sensitive about interest rates . However, efficiency of the operations has to be ensured so that undue burden is not put on its clients in the form of fees etc.

Development of marketable, ethical and socially responsible products of interest-free microfinance.

There is no dearth of activities which can be pursued. However, micro and small enterprises with marketing support in good measure, insurance, consumer durables, with mechanism for improving the service quality have higher chances of sustainability in the Indian context may be considered as priorities.

Interest free credit cooperative societies in India.

There is a need to establish a meaningful dialogue with all the stakeholders responsible for formulating Central/State Acts and hold intensive discussions as to how this unique idea could be cemented and relevant processes can be smoothened.

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SAHULAT

A Journal of Interest Free Microfinance

Published in December and June Every Year

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Subscription Rates (per copy)

In India : ₹150.00

Abroad : US$ 10.00

Annual Subscription : (Two Issues per Year)

	India (₹)	Abroad ($)
Individuals	250	18
Libraries	400	25
Students	200	15

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MICROFINANCE (DEVELOPMENT & REGULATION) BILL, 2012: A BRIEF ANALYSIS

Sahulat Research Desk

In the last issue of Sahulat Journal, we had carried a draft Bill for the development and Regulation of microfinance institutions. This bill was internally reviewed at the Sahulat Research desk. These comments are being published here. It shall be useful to read both the documents together. The Editor

The Preamble of this BILL provides for regulation of micro finance institutions. It defines those institutions which provide micro finance services, such as micro credit facilities, thrift, pension or insurance services and remittance of funds as microfinance institutions prohibiting all other financial institutions from undertaking any activity of micro finance services without registration with the Reserve Bank of India.

Sec -2(1) (i) Provides for all forms of MFIs to be registered under the Act and further the services of microfinance.

Existing Non-Banking Financial Companies (NBFCs) registered under the Reserve Bank of India Act, 1934 are allowed to continue such services even without registration under this Act. Clearly NBFCs have the option to register under the new Act **(Sec -2(1) (i) (B))** or to continue with RBI under the existing regulatory structure **(Sec -14(2))** further clarity is obtained from the Statement of Objects and Reasons (para 4(a) on page no 19). But it is interpreted that NBFCs willing to continue under the present regulatory framework may find it difficult to offer thrift services.

The Net Owned Fund for this Act has been maintained at Rs 5 lakhs or such other higher amounts as may be specified by regulation. The RBI has a power to specify a higher amount of Net Owned Fund under Sec 50 (2) (e).

Sec-2(1)(j)(A) Microfinance and Micro Credit defined

Micro credit is defined as credit facilities involving such amount, not exceeding in aggregate five lakh rupees for each individual and for such special purposes, not exceeding **ten lakh rupees.**

This particular section also mentions that RBI may also put a ceiling on the number of individual clients to whom such microcredit facilities may be provided by any microfinance institution.

Sec 2(1)(j): Microfinance Services has been defined as one or more of the following financial services by the MFIs

(A) micro credit facilities
(B) collection of thrift;
(C) pension or insurance services;
(D) remittance of funds to individuals within India

Thrift services has been allowed as Microfinance services and is defined as **"thrift"** means money collected in any form other than current account or demand deposits, by a micro finance institution from members of self-help groups or any other group of individuals, by whatever name called, who are availing micro finance services provided by such micro finance institution in accordance with the regulations made by the Reserve Bank in this behalf.

Sec- 24 Regulatory powers

The section 24 confers the regulatory powers to the RBI. Some of the key powers conferred upon the regulator is to

- Grant certificate of registration to MFIs (Sec-15)
- Cancellation of license (Sec-16)
- Power to make regulation (limits, margin, APR, prudential norms) (Sec-24(2) and Sec-50)
- Issue directions to MFIs (Sec-25)

- Power to impose penalty (Sec-37)

- Application of Microfinance Development Fund (Sec-50 (2)(l))

Sec-42- Delegation of Power

The Central Government upon consultation with RBI, may delegate any of the powers of RBI to NABARD or any other appropriate agency. There is scope for SROs to bid for this role. However, it requires the sectoral commitment to be worth of self regulation.

However the powers to make rules (sec-49), impose penalty (Sec-37) and approval for winding up or closure of the business (Sec-30) cannot be delegated to NABARD or any other entity.

Sec-33-Grievance Redressal

This section entrusts the function of Grievance redressal to any Ombudsman established under any other scheme framed by the Reserve Bank for clients of banks, with powers to issue directions to micro finance institutions. It has dispensed up with the earlier draft that suggested for Microfinance Ombudsmen schemes. Voluminous complaints may lead to overburdening of the banking/insurance ombudsmen and the quality and early redressal of grievances may get affected.

The sections 10, 11, 12 provide for establishment of a District Micro Finance Committee in each District, to be headed by the Collector of the District or any officer not below the rank of Additional Collector, to review the growth and development of micro finance activities in the district, monitor over-indebtedness and methods of recovery used by the micro finance institutions and discharge the functions specified in clause 11.

Sec 13: Provides that no microfinance institution can come into existence or carry on existing microfinance activities without obtaining a certificate of registration under this Act.

Sec-31 and 32 Microfinance Development Fund

These sections provide for constitution of a Micro Finance Development Fund to be applied for the purpose of providing loans, grants or seed capital as also for training of personnel engaged in micro finance services. As opposed to the earlier draft wherein the fund was to be housed with RBI, NABARD or any other authority, the present Bill, proposes to constitute the fund with the Reserve Bank of India.

Sec-47 Applicability of other Laws

The relevant section of the Act maintains that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But the explanation note to this Section of Act is removed. The earlier explanation stated the following: For removal of doubts it is declared that micro finance services extended by any micro finance institution registered with the Reserve Bank shall not be treated as money-lender for the purpose of any State enactments relating to money-lenders and usurious loans.

Sec-4 Composition of Micro Finance Development Council

While the total number of members of the committee is retained at 13, the representation of Central Govt. has increased to four (4). They are one each from the Ministry or the Department of the Central Government having the administrative control of Finance, Rural Development, Women and Child Development and Housing and Urban Poverty Alleviation, not below the rank of Joint Secretary.

Hence the representation under of Sector Under Sec (4)(g) has come down to only four (4). However, the representatives from Central Government, RBI, NABARD, SIDBI, NHB, have been made ex-officio (total 8).

Table 1

Features Of MFI Bill-2012 and MFI Bill 2011: A Comparison

MFI Bill-2012	Draft MFI Bill 2011
Preamble: A BILL to provide for development and regulation of the micro finance institutions for the purpose of facilitating access to credit, thrift and other micro finance services to the rural and urban poor and certain disadvantaged sections of the people and promoting financial inclusion through such institutions and for matters connected therewith or incidental thereto.	A BILL to provide access to financial services for the rural and urban poor and certain disadvantaged sections of the people by promoting the growth and development of micro finance institutions as extended arms of the banks and financial institutions and for the regulation of micro finance institutions and for matters connected therewith and incidental thereto.
CHAPTER I: PRELIMINARY	
Sec- 2(1)(a) "annual percentage rate" means aggregate rate per annum in percentage consisting of interest, processing fees, service charges and any other charges or fees	"annual percentage rate" means aggregate rate consisting of interest, processing fees, service charges and any other charges or fees charged by the micro finance institution on any financial assistance granted to any client
Sec- 2(1)(b) "client" means any member of the micro finance institution or self-help group or any other group availing the micro finance services from such institution or group	Not Defined
Sec- 2(1)(e) "District Micro Finance Committee" means a Committee constituted by the Reserve Bank under section 10;	Not defined
Sec- 2(1)(f) "margin" means the difference between the annual percentage rate charged by the micro finance institution and the cost of funds raised in percentage by the micro finance institution for providing any micro credit facilities;	"margin" means the difference between the annual percentage rate collected by the micro finance institution for any financial assistance granted to clients and the cost of funds raised and other operational costs incurred by the micro finance institution for grant of and servicing such financial assistance
Sec- 2(1)(g) "Member" means a Member of the Micro Finance Development Council constituted under section 3;	Not defined

Sec- 2(1)(h) "micro credit facilities" means any loan, advance, grant or any guarantee given or any other credit extended in cash or kind with or without security or guarantee	Not defined
Sec- 2(1)(i) "micro finance institution" means,— (A) a society registered under the Societies Registration Act, 1860; or (B) a company registered under section 3 of the Companies Act, 1956; or (C) a trust established under any law for the time being in force; or (D) a body corporate; or (E) any other organization, as may be specified by the Reserve Bank, the object of which is to provide micro finance services in such manner as may be specified by regulations	"micro finance institution" means an entity (irrespective of its organizational form), which provides micro finance services in the form and manner as may be prescribed
but does not include— (i) a banking company, the State Bank of India including its subsidiary banks, a scheduled bank, a co-operative bank, Export and Import Bank, Reconstruction Bank, National Housing Bank, National Bank, a Regional Rural Bank and Small Industries Development Bank; (ii) a co-operative society engaged primarily in agricultural operations or industrial activity or purchase or sale of any goods; (iii) any individual carrying on the activity of money-lending and registered as a moneylender under the provision of any State law which regulates such activities;	but does not include (i) a banking company, State Bank of India, a Subsidiary Bank, a corresponding new bank, a cooperative bank, EXIM Bank, Reconstruction Bank, National Housing Bank, National Bank, a Regional Rural Bank and Small Industries Bank; ii) a co-operative society engaged primarily in agricultural operations or industrial activity or purchase or sale of any goods; (iii) a cooperative society not accepting deposits from anybody except from its members having voting rights or from those members who will acquire voting rights after a stipulated period of their making deposits as per the law applicable to such cooperative society.

Sec- 2(1)(j) "micro finance services" means any one or more of the following financial services provided by any micro finance institution, namely: (A) micro credit facilities involving such amount, not exceeding in aggregate five lakh rupees for each individual and for such special purposes, as may be specified by the Reserve Bank from time to time, such higher amount, not exceeding ten lakh rupees, as may be prescribed; (B) collection of thrift; (C) pension or insurance services; (D) remittance of funds to individuals within India subject to prior approval of the Reserve Bank and such other terms and conditions, as may be specified by regulations	"micro finance services" means one or more of the following financial services involving small amounts to individuals or groups: (i) providing micro credit; (ii) collection of thrift; (iii) remittance of funds; (iv) providing pension or insurance services; (v) Any other services as may be specified. in such form and manner as may be prescribed.
Implications: Under Sec25 (2)The Reserve bank has been entrusted with the powers to issue directions ceiling on amount of micro credit facilities and the number of individual clients to whom such micro credit facilities may be provided by any micro finance institution;	
Removed	"Systemically important micro finance institution" means a micro finance deploying such amount of funds for providing micro credit to such minimum number of clients as may be specified by the Reserve Bank by regulations framed under this Act.
Sec- 2(1)(r) "thrift" means money collected in any form other than in the form of current account or demand deposits, by a micro finance institution from members of self-help groups or any other group of individuals, by whatever name called, who are availing micro	"thrift" means money collected in any form other than in the form of current account or demand deposits, by a micro finance institution from members of self-help groups or any other group of individuals, by whatever name called, who are availing micro finance services provided by such micro finance institution

finance services provided by such micro finance institution in accordance with the regulations made by the Reserve Bank in this behalf	
Chapter-2 Micro Finance Development Council	
Composition: four officers, one each from the Ministry or the Department of the Central Government having the administrative control of Finance, Rural Development, Women and Child Development and Housing and Urban Poverty Alleviation, not below the rank of Joint Secretary to the Government of India, to be nominated by the Central Government —ex officio Members	two officers, not below the rank of Joint Secretary to the Government of India, one each from the Ministry of Finance and the Ministry of Rural Development – Members
not more than four persons, of whom at least two shall be women, to be nominated by the Central Government, in consultation with the Reserve Bank from amongst persons with experience in the field of banking, rural credit or micro finance or the representatives of micro finance institutions or scheduled banks or any other institution providing micro finance services	not more than six persons, of whom at least two shall be women, to be nominated in consultation with the Reserve Bank from amongst persons with experience in banking, rural credit and micro finance or the representatives of micro finance institutions or scheduled banks or any other institution providing micro finance services - Members
Members Implication	Total members- 13
Total member-5 Ex Officio members=8 Sector Representation limited to 4 Central Govt. Representation increased to 4	No Ex officio member Sector Representation limited to 6 Central Govt. Representation – 2
Sec- 2(1)(q) State Micro Finance Council In Addition to the functions already mentioned, shall Coordinate the activities of the District Micro Finance Committees in the State; shall submit a quarterly report to the Central Government on the implementation of the measures undertaken for the promotion and development of the micro finance institutions in the State	

Chapter- IV	No mention
DISTRICT MICRO FINANCE COMMITTEES 10. (1) The Reserve Bank may, constitute a District Micro Finance Committee in each district, to be headed by the Collector or an officer not below the rank of Additional Collector in that district in such manner as may be specified by regulations. (2) The District Micro Finance Committee shall meet at such time and place, as the Collector may direct, at least once in three months and shall observe such rules of procedure]in regard to the transaction of business at its meetings, as may be specified by regulations: Provided that the representatives of the Lead Bank of the District, representative of the National Bank in the district, a representative of micro finance institutions operating in the district and beneficiaries of micro finance services shall be invited to the meetings of the District Micro Finance Committees. Explanation.—For the purposes of this section, "Lead Bank" of the District means a bank to which a district is assigned as per the Lead Bank Scheme of the Reserve Bank of India.	
11. The District Micro Finance Committee shall discharge the following functions, namely:— (a) to review growth and development of micro finance activities in the district; (b) to monitor over-indebtedness, if any, caused by micro finance institutions in the district; and (c) to monitor whether methods of recovery used by micro finance institutions are in accordance with the guidelines made by the Reserve Bank and to report to the Reserve Bank in respect of the violations, if any. 12. Every District Micro Finance Committee shall submit a quarterly report to the Reserve Bank in such form and manner as may be specified and forward its copy to the State Micro Finance Council.	

CHAPTER V **REGISTRATION OF MICRO FINANCE INSTITUTIONS**	CHAPTER IV REGISTRATION OF MICRO FINANCE INSTITUTIONS
Micro finance institution, in existence at the commencement of this Act, engaged in providing micro finance services before such commencement, would have to apply for registration to the Reserve bank before the expiry of three months. Provided that they may continue to carry on its activity of providing micro finance services till the disposal of such application	Application before expiry of three months No mention of carrying on of the activities
Net Owned Fund -5 Lakh Net owned fund" shall have, *mutatis mutandis,* the same meaning as assigned to it in the Explanation to sub-section (7) of section 45-IA of the Reserve Bank of India Act, 1934.	Net Owned Fund -5 lakh
Removed to Sec-28	Sec-13 on Cease and Desist order 13 (1), 13 (2), 13 (3), 13(4)
Completely Removed	Sec-15: Systematically important MFI
CHAPTER VI **RESERVE, ACCOUNTS, AUDIT AND RETURNS**	
Reserve Fund: Reserves to be created as prescribed Provided that nothing contained in this sub-section shall apply to a NBFCs Registered with RBI which is maintaining such reserve fund pursuant to any provisions of the RBI Act, 1934 or any directions or regulations issued there under.	Every MFI registered with RBI under this Act shall create a reserve fund and transfer therein a sum, representing such percentage, as may be specified by the Reserve Bank, of its net profit or surplus realized by providing micro finance services every year as disclosed in the profit and loss account or income and expenditure account and before surplus is utilized for any other purpose: No mention of this

CHAPTER VII	
FUNCTIONS AND POWERS OF RESERVE BANK	
Sec 25(2)-RBI may issue directions on Ceiling on Amount of microcredit facilities and number of clients	 Ceiling on amount of financial assistance and number of individual clients
CHAPTER VIII MICRO FINANCE DEVELOPMENT FUND	
The Central Government may, after due appropriation made by Parliament by law in this behalf, grant such sum of money as that Government may think fit, to the Reserve Bank for being utilized for the purposes specified under sub-section (3) of section 32	The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Reserve Bank, National Bank or any other authority s may be prescribed, grant such sums of money as that Government may think fit for being utilized for the purposes of this Act.
CHAPTER IX REDRESSAL MECHANISM	
Entrust the function of Grievance redressal to any Ombudsman established under any other scheme framed by the Reserve Bank for clients of banks, with powers to issue directions to micro finance institutions	Sec- 31(1)-To appoint as many ombudsmen as it deem fit with framing a scheme under this section
CHAPTER XI DELEGATION OF POWERS	
The Central Government, in consultation with the Reserve Bank may, by notification, delegate any of the powers of the Reserve Bank conferred under this Act, except under sections 30, 37 and 49, to the National Bank or any agency under the control of the Central Government in respect of any micro finance institution or a class of micro finance institutions or micro finance institutions generally, subject to such conditions as it deems fit.	The Reserve Bank may with the Previous approval of the Central Government delegate any of its powers conferred under this Act to the National Bank in respect of any micro finance institution or a class of micro finance institutions generally, by issue of a notification in the Official Gazette

CHAPTER XII MISCELLANEOUS	
Preference in repayment: In the event of any micro finance institution making default in repayment of thrift to its members or clients who had made a contribution to thrift, all the workmen shall be paid their dues in priority to all others and thereafter all such members or clients of such micro finance institution shall have a preference in repayment, and shall have the first charge over the assets of the micro finance institution and specified unencumbered securities, if any, referred to in sub-section (3) of section 18	In the event of a micro finance institution making any default in repayment of thrift to any of its members or eligible clients who had made a contribution to thrift, all members or eligible clients of such micro finance institution shall have a first charge over the specified unencumbered securities referred to in sub-section (3) of section 18
Sec-44: Power to Central Government to issue Direction to RBI, MFDC, SAC on matters of policy and implementation of Schemes	No mention
The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Explanation is removed	The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Explanation : For removal of doubts it is declared that micro finance services extended by any micro finance institution registered with the Reserve Bank shall not be treated as money-lender for the purpose of any State enactments relating to money-lenders and usurious loans

BACKGROUND

The latest bill on Microfinance Institutions (Development and Regulation), 2012 (Bill No.62 of 2012) has not excluded cooperative credit society from the definition of "micro finance institution" for which various regulatory provisions have been made in the proposed Act. These provisions are detrimental to the growth and functioning of cooperative societies based on the principles of "voluntary formation, autonomous functioning, democratic control and professional management" as enshrined under 43B of the Indian Constitution after 97th Amendment. The

proposed Act not only prohibits the operation of small cooperative societies but also opens the door of external bureaucratic intervention in its functioning. This would cause diminishing of people's initiated cooperative societies and thus harm the basic "purpose of facilitating access to credit, thrift and other micro finance services to the rural and urban poor and certain disadvantaged sections of the people and promoting financial inclusion" as stated at the top of the proposed Act.

Microfinance got a bad name in different parts of the country because in the name of "assisting the poor to work their way out of poverty", the players in microfinance sector adopted such bad practices which were detrimental to the interest of poor people. Reserve Bank of India formed a committee to study "issues and concerns in the microfinance sector in so far as they related to the entities regulated by the Bank". The said committee under the chairmanship of Shri Y H Malegam submitted its report in 2011. The committee pointed out two major players in the microfinance sector: (i) SHG-Bank linkage Model, and (ii) Non-Banking Finance Companies. The committee also mentioned specific areas of concern having been identified in several studies in Indian context. These are:

(a) Unjustified high rates of interest
(b) Lack of transparency in interest rates and other charges
(c) Multiple lending
(d) Upfront collection of security deposits
(e) Over-borrowing
(f) Ghost borrowers
(g) Coercive methods of recovery

As such, the committee submitted various recommendations to correct the aberrations caused by the above mentioned two major players in microfinance sector. The committee gave opinion on the proposed Micro Finance (Development and Regulation) Act 2010 in which cooperative societies were excluded from the ambit of the proposed Act and recommended that all such micro finance entities whose aggregate loan portfolio does not exceed Rs.10 crores should be exempted from registration under the provisions of the proposed Act.

Later on, the Central Government drafted the Microfinance Institutions (Development and Regulation) Bill 2012 (Bill No.62 of 2012) afresh. As stated above, the earlier bill named Micro Finance Institutions (Development and Regulation) Bill as on 20th June, 2011 had defined "microfinance institutions" in the following terms:-

> 2(f) - "micro finance institution" means an entity (irrespective of its organizational form), which provides micro finance services in the form and manner as may be prescribed but does not include:-
>
> i) a banking company, State Bank of India, a Subsidiary Bank, a Corresponding new bank, a cooperative bank, EXIM Bank, Reconstruction Bank, National Housing Bank, National Bank, a Regional Rural Bank and Small Industries Bank;
>
> ii) a co-operative society engaged primarily in agricultural operations or industrial activity or purchase or sale of any goods and such other activities.
>
> iii) A co-operative society not accepting deposits from anybody except from its members having voting rights after a stipulated period of their making deposits as per the law applicable to such co-operative society.

The clause (iii) of the above section had clearly excluded cooperative credit societies from its realm It was well in line with the 97th Constitutional Amendment Act, 2011 since the amendment upholds the right to form cooperative as a fundamental right and ensures the principles of promotion of voluntary formation, autonomous functioning, democratic control and professional management of a cooperative society. The exclusion of cooperative credit societies from the ambit of the Bill was fully logical as Cooperative Society is in fact a different genre of "micro finance institutions" which are created by "voluntary association" of people with the aim of "mutual cooperation" to meet the "micro credit needs" of its "members" by "mutually sharing the benefit & risk" without external intervention. For better and prudential management of such credit cooperative societies,

the existing "liberal" State cooperative Acts and central Multi-State Cooperative Act provides necessary regulatory provisions subscribing the basic "Principles of Cooperation".

But the newly introduced Bill no. 62 of 2012 has given a death blow to the well acclaimed "Principles of Cooperation". This Bill defines "micro finance institutions" as follows:

2 (i) : "micro finance institution" means,-

(A) a society registered under the Societies Registration Act, 1860 or

(B) a company registered under S3 of the Companies Act, 1956; or

(C) a trust registered under any law for the time being in force; or

(D) a body corporate; or

(E) any other organization, as may be specified by the Reserve Bank, t he object of which is to provide micro-finance services in such manner as may be specified by regulations but does not include-

i) a banking company, the State Bank of India including its subsidiary banks, a scheduled bank, a co-operative bank, EXIM bank, Reconstruction Bank, National Housing bank, National Bank, a Regional Rural Bank and Small Industries Development Bank;

ii) a co-operative society engaged primarily in agricultural operations or industrial activity or purchase or sale of any goods;

iii) any individual carrying on the activity of money-lending and registered as a money lender under the provision of any State law which regulates such activities.

If we go through the definition closely we find that by implication it means that cooperative credit societies have been included in the above defined "micro finance institutions" which are proposed to be regulated like profit-making financial institutions working under service provider vs. client mode. This is a big blow to the cooperative structure of finance.

Nature of Cooperative Credit Society

The cooperative credit societies generally starts at a very small scale initially both under the State cooperative Acts and Multi-State Cooperative Act. But the newly introduced Bill makes it mandatory to have rupees 5 lakh as "net owned fund" before any micro finance institution (including cooperative credit society) is registered under the proposed Act. Credit cooperatives in India were originally envisaged as a mechanism for pooling the resources of people with small means and providing them access to different financial services out of the micro deposit/savings of its poor members. On the strength of its democratic, voluntary and inclusive characters, the cooperative movement became also an effective instrument for development of degraded waste lands, increasing productivity, providing food security, generating employment opportunities in rural areas and ensuring social and economic justice to the poor and vulnerable sections of the society. Since Section-13 of the proposed Act makes it mandatory for "micro finance institutions" (including cooperatives) to get themselves registered under the terms and conditions of the RBI, it leaves no space or alternative for Credit Cooperative Societies which are meant for facilitating "voluntary association" of people for addressing their credit needs on the basis of self-help and mutual aid. These cooperatives are meant to enable people to promote their economic and social betterment with functional autonomy within the provisions of Cooperative Acts. The proposed restriction of having at least 5 lakh rupees as a prerequisite for registration and excessive bureaucratic interference after registration would surely destroy the very existence of people's cooperatives which are playing an effective role in financial inclusion of common people.

Current Status of the Bill

This Microfinance Institutions (Development and Regulation) Bill, 2012 (Bill No. 62 of 2012) has been introduced in the Lok Sabha on 22/05/2012 and has now been referred to the Standing Committee on Finance on 28/05/2012.

A few implications of some Provisions in the Act

1. Cooperative Credit Societies have also been put under the control of RBI and has been stripped off its autonomous character. [Section-13 & 14 & 16(1)]

2. No Cooperative Credit Society can perform its micro finance activities without fulfilling the stringent conditions imposed under the proposed Act. [Section-13, 2(1)(i)].

3. In contrast to the basic characteristics of "voluntary association, mutual cooperation, free will", the Cooperative societies have also been treated in terms of finance house vs. "clients" perspective. [Section-15.(1)(a)]

4. Poor people cannot form a cooperative credit society if they are not able to raise "net owned fund" to the tune of "at least five lakh rupees". [Section-15.(1)(c)]

5. Several provisions of the Act have opened a gateway of bureaucratic intervention in the functioning of people's cooperative societies. [Sections-26, 27 & 28]

Issues of Concern

1. The latest bill makes the operation of microfinance impossible through credit cooperatives by including credit cooperatives in the definition of microfinance institutions.

2. As per this bill, the Reserve Bank of India becomes the central regulator for all micro-finance institutions which means the scale of operation has to be in accordance with RBI regulations to be imposed from time to time.

3. RBI regulatory role and the bureaucratic setup proposed in the Act would weaken the grass root level operations of micro-finance through people's cooperatives.

4. The proposed Act would destroy people's initiative of mutual financial cooperation on the basis of voluntary sharing of benefits & risks for their micro financial needs.

5. The proposed Act would pave the way for the big financial houses to carry on the micro finance activities with profit motive. The proposed Act would obliterate the very existence of people's cooperative credit societies which are managing their micro financial services through mutual cooperation.

Submissions

(1) Keeping in view, the size and diversity of India, one Central Legislation or one Central Regulating Authority like RBI is neither necessary nor viable to regulate all types and varieties of Microfinance Institutions.

(2) While framing an Act for better regulation of financial institutions, difference should be made between financial institutions working "for profit" and voluntary institutions working "for providing a service". Latter should be regulated without harming self-initiative of members, free will, voluntarism and autonomous character of such institutions.

(3) Cooperative institutions are based on the principles of "voluntary formation, democratic member-control, member-economic participation and autonomous functioning" as enshrined in the 97th Constitutional amendment Part IXB Section-243ZI. Imposing a Central regulation with wider scope of bureaucratic intervention in the functioning of Cooperative Societies deprives these societies of their self-regulatory, self-sustaining and autonomous character.

AN ANALYSIS OF CONCERNS AND ISSUES ARISING OUT OF MSCS (Amendment) BILL 2010

Abstract

The texts of various documents, regulating and controlling micro finance and cooperative institutions are published in the Sahulat Journal to encourage informed discussion about the need and purpose of regulation. This hopefully would lead to a dialogue between regulators and those regulate. In the last issue of the Sahulat Journal we carried the text of a proposed law on the Development and regulation of microfinance institutions. In this issue we are presenting the text of a proposed law on multi State Cooperative Society and a critique or analysis of the provisions by Mr. Arshad Ajmal, Vice-President of Sahulat Microfinance Society. Naturally, he presents the case from the point of view of a practitioner. We would be pleased to present the case of regulators also, if received.

Arshad Ajmal*

Historical Background

In 1942, the Government of India enacted the Multi-Unit Cooperative Societies Act, 1942 with an object to cover societies whose operations are extended to more than one state. Armed with an experience of 42 years in the working of Multi Unit Cooperative Societies and the Multi-Unit Cooperative Societies Act, 1942, the Central Government enacted a comprehensive Act known as Multi State Cooperative Societies Act, 1984, repealing the Act of 1942.

Over the years, there has been a growing feeling in concerned quarters that undue interference from the State, lack of autonomy and widespread politicization has severely impaired the functioning of these institutions and there is a need to introduce

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The author is thankful to Ms Tahmina Laskar for her invaluable assistance.

urgent reforms in the sector. During the last two decades, a number of Committees were appointed to go into various issues of cooperatives. Choudhary Brahm Prakash Committee (which proposed a model law) (1990), Mirdha Committee (1996), Jagdish Kapoor Committee (2000), Vikhe Patil Committee (2001) and V. S. Vyas Committee (2001) went for a complete dissection of the sector and made a number of suggestions to turn cooperatives into self-reliant, autonomous and democratized institutions. These Committees strongly advocated the need to replace the existing government dominated cooperative laws by a new people centric legislation.

The passage of the Mutually Aided Cooperative Societies Act by the Andhra Pradesh government in 1995 marked a significant step towards reform of this sector. This was followed by similar enactments in nine other States; Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Jammu and Kashmir, Karnataka, Orissa, Uttarakhand and Delhi being among them. In all cases the new laws provide for cooperatives to become democratic, self-reliant and member-centric, without much State involvement or financial support. They provide for cooperatives registered under the old law to migrate to the new Act. The new laws lead to the emergence of a "new generation autonomous financial cooperatives", albeit slowly and unevenly across the country.

As a consequence of these recommendations, major events took place on the cooperative scene of the country.

The Union Government replaced the existing Multi-State Co-operative Law by a fresh statute; the Multi-State Cooperative Societies (MSCS) Act, 2002 based on the idea of self help and mutual aid and to enable cooperatives to promote economic betterment.

The similar line of logic of democratic control of cooperatives and minimal external interference was adopted by the Supreme Court of India while deciding the appeal in A.P Dairy Development Corporation Federation Vs B. Narasimha Reddy and others (2008) saying "The cooperative society under the Act would be a

democratic organization as its affairs would be administered by persons elected or appointed in a manner agreed by members and be accountable to them". Cooperatives had found explicit mention in the Indian Constitution only at two places: (i) in Part IV, Article 43 as a Directive Principle which enjoins the State Government to promote cottage industry on an individual or cooperative basis in rural areas, and (ii) in Schedule 7 as Entries 43 and 44 in the Union list and Entry 32 in the State list.

In addition, the Right to form cooperatives can also be construed as a Fundamental Right emanating out of Article 14 (Right to Equality) and Article 19(1)(c) as 'Right to form Associations or Unions'. Theoretically, when a cooperative is formed by a set of people to serve some common needs of the members, it inherently falls under Article 19(1)(c).

However, further developments followed when the Constitution (Ninety-seventh) Amendment Act, 2011 was passed. Now Cooperatives are separate chapter, the Part IXB (Articles 243ZH to Art 243ZT) deals with Cooperatives. Moreover forming Cooperative Societies has been granted as a fundamental right under 19 (1) (c), after the words "or unions" the words "or cooperative societies" have been inserted. In Part IV, Article 43B has been added which states:

"43B. The State shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies."

All these developments have culminated into a single position that Cooperatives by their very nature are inward looking organizations. They are meant to serve the member community unlike outward looking organizations such as the corporate entities, which operate for profits. The focus of the activities of a cooperative organization needs to be on its members. Its business is to be developed around their needs, policies are to be designed according to their views and administration is to be carried out through member participation.

The Multistate Cooperative Societies (amendment) Bill, 2010:

Background: With the passage of time and developments in the co-operative movement in the country, certain difficulties have been experienced by the Multi-State Co-operative Societies in the implementation of the Multi-State Co-operative Societies Act, 2002. A Conference of the State Co-operative Ministers was held on the 7th December, 2004 to, inter alia, ascertain the difficulties experienced by the Multi-State Co-operative Societies. In pursuance of the resolution passed in the said conference, a High Powered Committee on Co-operatives was constituted under the Chairmanship of Shri S.G. Patil. In view of the recommendations made in the Report of aforesaid High Power Committee and suggestions received from the co-operative sector and other stake holders and considering the importance of Multi-State Co-operative Societies in the national economy and the experience gained during the last eight years of implementation of the Multi-State Co-operative Societies Act, 2002, it has been felt that the said Act should be amended to keep the legislation in tune with the changing economic policies and to facilitate the Multi- State Co-operative Societies to take advantage of the new and emerging opportunities and to keep pace with other economic entities and facilitate raising of resources by the Multi- State Co-operative Societies more efficiently and effectively by making appropriate provisions for promoting their functional autonomy.

Overview of the Bill:

The Bill proposes to amend the Multi-State Co-operative Societies Act, 2002, inter alia, to-
(a) make the management of these co-operative societies more responsive to the needs of the members and making them more accountable by making provision for (i) constitution of Interim Board, (ii) accounting standards, (iii) constitution of an Audit and Ethics Committee;(iv) calling for information or explanation by the Central Registrar of the Multi-State Co-operative Societies, (v) Special Audit; (b) strengthen the provision relating to election of the members of the Board of the Multi-State Co-operative Societies; (c) make provisions for broad based representation in the

Board, (ii) accounting standards, (iii) constitution of an Audit and Ethics Committee;(iv) calling for information or explanation by the Central Registrar of the Multi-State Co-operative Societies, (v) Special Audit; (b) strengthen the provision relating to election of the members of the Board of the Multi-State Co-operative Societies; (c) make provisions for broad based representation in the Board of the Multi-State Co-operative Societies by providing reservation for the Scheduled Castes, the Scheduled Tribes and women; (d) take certain measures which would facilitate the building of self-reliant, democratic and professionally efficient co-operative institutions;(e) bringing transparency in the functioning of the Multi-State Co-operative Societies by making provision for appointment of Co-operative Information Officer, Chief Information Officer for providing information about the affairs and management of the Multi-State Co-operative Societies and also make provision for appeal.

ANALYSIS OF SOME PROVISIONS OF THE BILL

Regarding Cancellation of Registration: Insertion of sub-section (5) in Section 21 which will be worded as "The Central Registrar may cancel the registration of a multi-state co-operative society, if he has reasons to believe that,-

(a) the registration was obtained by misrepresentation of facts, submission of false or misleading information, suppression of substantial material facts or fraud; or

(b) the number of members or the number of societies or the number of persons as the case may be, have been, at any time reduced below the number of members or societies or persons as specified in sub-section (2) of section 6:

Provided that no registration shall be cancelled without providing an opportunity of being heard to the multi-state co-operative society."

Comments

"Misrepresentation of facts", "submission of false or misleading

information", "suppression of material facts or fraud" are very wide and vague terms which do not specify grounds and give sweeping powers to the Central Registrar and leave power of the cancellation of registration of a society at his sweet will on any flimsy ground. If the registration of a society is granted from the Office of the Central Registrar it is assumed that all documents have been perused and verified before and on satisfaction of the fact that the proposal was genuine the registration was granted. Hence there should be no question of coming back to facts and information so provided once more and deliberately creating bureaucratic hassles. This particular amendment is therefore uncalled for.

Redemption of Shares

The section S 35 of the MCS Act, 2002 originally read as,

1) Shares held in a multi-state cooperative society by any of the authorities referred to in clause (c) to (g) of sub-section

2) on (1) of Section 25 shall be redeemable in accordance with the bye-laws of such multi-state cooperative society and in case where the bye-laws do not contain any provision in this regard, in such manner as may be agreed upon between the multi-state co-operative society and such authority.

3) The redemption of shares referred to in sub-section (1) shall be on the face value of shares.

The **amendment** proposes that in sub-section (1), the following proviso shall be inserted, namely " Provided that the multi-state co-operative society may refund full or part of the share capital held by the Government who shall accept such redemption."

Further it proposes that in sub-section (2), for the words "on the face value of the shares" the words "on the face value or book value of shares, whichever is higher" shall be substituted;

After sub-section (2), the following Explanation shall be inserted,

namely:-

Explanation: For the purposes of this sub-section, "book value" means the value of the shares as shown in the books of account taking into account the total share capital, free reserves and surpluses.

Comment

The amendment seems unreasonable as the condition "on the face value or book value of shares", whichever is higher creates a difficult situation for the society as the situation if the society is making profit or making losses is not taken into account and is expected to redeem the shares in the same manner both ways. The maximum that the amendment could have asked is to have the condition as "on the face value or book value of shares", whichever is less to be fair and reasonable to the society.

Regarding Elections

In the principal Act under Section 45 (1) the conduct of elections to the Board of a multi-state cooperative society shall be responsibility of the existing Board.

The **amendment** seeks to substitute S45 (1) with the following words "The Central Government may, by notification, appoint an Authority to be known as the Co-operative Election Authority for conduct of elections for such societies as may be prescribed and the superintendence, direction and control of preparation of electoral rolls for, and the conduct of election of such multi-State co-operative societies shall be vested in returning officer as may be appointed by the Election Authority and the returning officer shall discharge such function under the control of Election Authority in such manner as may be prescribed:

Provided that where such Authority has not been appointed in respect of a multi-State co-operative society, the elections to the boards of such society shall be conducted by the existing board of such society."

Comment

Earlier the conduct of elections was the responsibility of the board and only when the board failed to conduct elections within 90 days' time from the time when election became due the Central Registrar shall hold elections as per Section 45 (6) of MSCS Act, 2002. But the amendment reserves a right with the Central Government to appoint a Co-operative Election Authority for conduct of elections for such societies as may be prescribed and the superintendence, direction and control of preparation of electoral rolls for, and the conduct of election of such multi-State co-operative societies shall be vested in returning officer as may be appointed by the Election Authority and the returning officer shall discharge such function under the control of Election Authority in such manner as may be prescribed; meaning thereby a very important right of the Board is being curtailed and indirectly being brought under unnecessary bureaucratic intervention much against the spirit of democratic member control and cooperative principles of autonomy and independence.

Inquiry by Central Registrar

As per Section 78 (1) of MSCS Act, 2002, the Central Registrar may, on a request from a federal co-operative to which a multi-state co-operative society is affiliated or a creditor or not less than one-third of the members of the board and not less than one-fifth of the total number of members of a multi-state co-operative society, hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a multi-state cooperative society:

Provided that no inquiry under this sub-section shall be held unless a notice of not less than fifteen days has been given to the multi-state cooperative society.

The **amendment** substitutes the following sub-sections for 78 (1), namely:-

" (1) Where on a scrutiny of any document filed by a multi-State

cooperative society or otherwise, the Central Registrar is of the opinion that any further information or explanation or any further documents relating to the multi-state co-operative society is necessary, he may, by a written notice, require the multi-state co-operative society-

i) To furnish in writing such information or explanation; or

ii) To produce such documents,

within such reasonable time, as may be specified in the notice.

(1A) If the Central Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a multi-state co-operative society is being carried on for a fraudulent or unlawful purpose, he may, after informing the multi-State co-operative society to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein, and hold such inquiry as he deems fit:

Provided that the Central Government may, if it is satisfied that circumstances so warrant, direct, the Central Registrar or an inspector appointed by it for the purpose, to hold an inquiry under this sub-section.

(1B) The Central Registrar may, on request from a federal cooperative to which a multi-state co-operative society is affiliated or a creditor or not less than one-third of the total number of the members of a multi-state cooperative society, hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a multi-state cooperative society:

Provided that no inquiry under this sub-section shall be held unless a notice of not less than fifteen days has been given to the multi-State co-operative society."

Comment

The inquiry earlier was an internally generated request but now the present provision makes it possible to generate it externally as well by any person operations of any cooperative society. Such inquiry is going to open the traditional pandora's box as it may open flood gate of baseless inquiries which may involve waste of considerable time. Moreover giving such wide powers to the Central Registrar gives way to inspector raj by enhancing control which adversely affects democratic structure like a cooperative society.

Reference of Disputes

Section **84 (1)** of the principal Act provided that disputes shall be referred to arbitration but the present amendment restates S 84 (1) as:

a) in sub-section (1), for the words "such dispute shall be referred to arbitration", the words "such dispute shall be referred to the Central Registrar" shall be substituted;

b) after the sub-section (1), the following sub-section shall be inserted, namely:-
"(1A) The Central Registrar may, on receipt of the reference of dispute under sub-section (1),-

a) decide the dispute himself

b) transfer it for the decision to such person and upon such terms and conditions as may be specified, and the order passed under this sub-section shall be final and binding on the multi-State co-operative societies and other concerned parties and shall not be called in question in any court:

Provided that the Central Registrar may, at any time after transferring the dispute under clause (b) and after recording reason for doing so withdraw the dispute so transferred and decide the dispute himself.

Explanation - For the removal of doubts, it is clarified that power to decide dispute under this section includes the power to pass interim order;

c) in sub-section (3), __

a) For the word " arbitration", the words "Central Registrar" shall be substituted;

b) For the word "arbitrator", the words, brackets, letters and letters and figures "Central Registrar or person authorized by him under clause (b) of sub-section (1A)" shall be substituted;

c) sub-sections (4) and (5) shall be omitted.

Comment

Arbitration is an option taken up to save time, costs and to have an expert to decide upon disputes exclusive to his domain. Curtailing the option of arbitrator deciding the dispute and giving Central Registrar is a double whammy, on the one hand it interferes in the autonomy of societies in handling their own affairs and on the other hand it over burdens the bureaucratic set up making the process lengthy and since Central Registrar may have many other important functions to perform. Furthermore, the proposed amendment appear to be against the spirit of democratic functioning of societies which is the hallmark of Cooperative movement.

Appointment of Central Information Officer

The amendment proposes that the following sub-sections shall be inserted in Section 106 of the MSCS Act, 2002, namely:-

"(2) Every Multi-State Cooperative Society shall appoint a Cooperative Information Officer to provide, on application made to him and on payment of such fee as may be prescribed, information about the affairs and management of the society, within thirty days

from the date of receipt of application.

(3) Every multi-State co-operative shall also appoint a Chief Information Officer who shall hear and dispose of any complaint regarding the non-supply of information by the Co-operative Information Officer within time specified in sub-section (2).

(4) Any person, aggrieved by the order of the Chief Information Officer, may file an appeal before the Central Registrar whose decision thereon shall be final:

Provided that the Central Registrar may impose penalty on the officers responsible for non-furnishing of information to the amount of two hundred and fifty rupees for each day of delay above the specified period.

(5) The manner of appeal, the time within which such appeal may be filed and the procedure of appeal shall be such as may be prescribed."

Comment

This entire amendment of Section 106 seems to be colossal wastage of resources. As far as information is concerned Information officers are already in place with the office of the Central Registrar and there is no need of having Information Officers at society level. Moreover the members of the society have their rights in the Act itself to inspect documents and books of accounts of the society. Moreover to give their information to outsiders by a society which by its very nature is autonomous and not fed by State funds is not mandatory.

Inspection of books of accounts etc.

The amendment proposes to add in sub section(1), of Clause (i) of S 108, after the words "Central Registrar", the words " or any person authorized by him in this behalf"

Comment

This provision enhances powers of Central Registrar and paves the way for the for Inspector raj in the operation of cooperative societies.

SOME POSITIVE POINTS OF THE BILL

The Bill has brought in some technological advancements like in the Section 10 (2) (a) of the MSCS Act, 2002 amendment is proposed to substitute for the word "address", " address (including electronic mail address)". Further in Section 50 of the MSCS Act 2002 the amendment proposes to insert sub-section (4) which reads as "The quorum for a meeting of the board of directors of a multi-state cooperative society shall be one-third of its total strength and the participation of the directors by video-conferencing or by other electronic means shall also be counted for the purpose of quorum under this sub-section. These technological advancements are welcome steps which would make the legislation in tune with the times. The Bill further has sought to remove the existing restrictions on borrowings which is twenty-five percent in the MSCS Act, 2002. In Section 41 (3) of the MSCS Act 2002, the amendment proposes add provisos substituting the original provisos, and one of those provisos speak about having co-opted directors having experience in the field of banking, management and finance or having specialization in any field relating to the objects and activities undertaken by such multi-state cooperative society. This provision will add to the professionalism and expertise in the functioning of a cooperative society and is a move in the positive direction.

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REPORT

NATIONAL CONSULTATION ON INTEREST FREE MICROFINANCE THROUGH COOPERATIVES: CHALLENGES AND OPPORTUNITIES

Sahulat Microfinance Society organized a one day National Consultation, on May 08, 2012 at the India international centre, New Delhi, in pursuance of its liaising and advocacy policy towards mobilizing intellectual resources for the formulation and evolution of a National Policy towards microfinance institution in India, which may also be conducive to the growth and effective functioning of Interest Free Microfinance institutions in the country. The purpose of the consultation was to take into account perspectives of participants from various sectors and to provide them a suitable platform to discuss the prospective challenges and opportunities within the conceptual frame described above. The consultation was a rich discourse where various ideas, potentials, challenges and concerns related to Interest Free Microfinance Model were tabled and discussed. A report of the consultation meeting is given below. The Editor.

The meeting was addressed by Prof. M.S. Swaminathan, well known Father of Green Revolution and a member of Rajya Sabha who delivered a Key Note address. Dr. Syeda Saiyidain Hameed, Member Planning Commission, government of India, was the Chief Guest for the evening. It was attended by other distinguished participants* who contributed multi-dimensional views on the Interest Free Microfinance (hereafter called 'IFM') model.

The deliberations covered over different aspects of interest free micro finance through cooperative effort including its historical aspects as well as the present context of micro credit issues in India, differential requirements of credits, the potential of 'IFM' in the present situation, the possibility of cooperatives as implementing institutions for 'IFM', the modus operandi of the suggested model

[1]The participants list is attached as Annexure I

and the concerns and challenges regarding the 'IFM' through cooperative societies etc. The consultation meeting concluded with a suggestion to identify the windows through which this model could be contextualized for specific regions of the country and could be successfully used as vehicle to alleviate poverty.

The meeting had begun with a welcome address by Arshad Ajmal, the Vice President of Sahulat Microfinance Society. He introduced Sahulat as a facilitating agency for Interest free Microfinance through Cooperatives. He shared with the audience the vision and the long term goals of the Sahulat Microfinance Society (SMS). Mr. Ajmal recalled a statement by Professor Swaminathan, made in Chennai in 2010 on the issue of farmers' suicides in Andhra Pradesh, in which he had suggested that the issue of suicides by farmers could be addressed with an approach similar to the approach of Islamic finance which does not charge interest on the amount lent. Mr. Arshad Ajmal said that Interest Free Microfinance draws its linkages to the essence of this statement and this present consultation meeting could be a medium to delve deep into this concept.

The Objectives of Interest Free Finance: A Contextual Frame

The technical discussions at the consultation meeting were started by Dr. Ausaf Ahmad by presenting a paper that summarized the issues for discussion. Dr. Ahmad sketched the contextual background of the origin of interest free finance, Sahulat Microfinance Society and the idea of Interest free Cooperatives. He introduced Sahulat Microfinance Society as a voluntary, non-political and non-profit, social service organization committed to economic development of underprivileged and weaker sections of the society especially the Muslim community. He pointed out that the aim of SMS is to provide Interest free microfinance options for removing socio-economic disparities and to achieve justice and equity for those people who are faced with discrimination and marginalization.

Dr. Ahmad mentioned that Al-Khair Cooperative Credit Society is a pioneering organization successfully implementing IFM in 10

towns of Bihar and Uttar Pradesh. He said that Al Khair experiment induced SMS to upscale the model and test it in different parts of India. He also elaborated Sahulat's arguments to implement IFM through a cooperative framework. He said that for development process to be empowering and sustainable, it is important that development financing institutions function in a manner in which the community owns and relates to the institutions that generate loan able funds from within and manages their transactions in a transparent way. Apart from this, the principally inherent characteristics of cooperatives like 'democratic functioning' and 'peoples' participation' gives it an edge over other institutions, which function on the basis of 'trickle down' theory. Thus being a legal entity it can undertake the task of interest free transaction with effective control on the members without causing any major threat to the smooth functioning of the system.

The present Indian policies related to Cooperatives viz. the Central Co-operative Societies Act (Multi-State Co-operative Societies Act 2002) as well as the liberal State Co-operative Societies Acts does not mandate the cooperatives to charge interest, which scores a point for the idea of implementing IFM through cooperatives in India.

With regards to Interest free finance he said, that the concept adds a human face to the financial sector as it aims to address the issues of high rates of interest, multiple lending and high-handedness in loan recovery. This will be done through trade based Sahulat Business Corporation Group (hereafter called 'SBCG'). He analyzed the viability of such a model through a hypothetical situation in his paper and thus inferred that this model has the inherent strength and soundness to brave the financial turmoil in the market at large. He maintained that the feasibility and viability of IFM institutions has already been demonstrated by many organizations world over.
The author shared the objectives of the National Consultation which aimed to focus on the following:

- Steps to overcome the practical hurdles in registration process of Interest free Microfinance Cooperative societies all over the country.

- Mechanisms of suitable cooperative structure based on the concept of Interest free Microfinance.

- Insights on the feasibility of interest free business model in the context of a multiple and democratic society like India.

- Ways to achieve the objective of financial inclusion, socio-economic development, self- employment and reduction of poverty through Interest free cooperative societies.

- Development of marketable, ethical and socially responsible products of IFM with higher chances of sustainability in the Indian context and mehanism for improving the service quality.

- Methods of establishing and sustaining Interest free credit cooperative societies in India under the Central/State Acts. The stress is on overcoming hurdles involved in the process.

- It has been noticed that in development of economic, management and financial sciences and models, there is an inherent bias towards urban concentrations. Since most of the microfinance activities are expected to be concentrated in the rural areas, particularly so in the countries of Asia and Africa, there is a need for a rural restatement of these theories.

- Most of the Western societies are singular societies. Their conversion into plural societies is a recent phenomenon. By comparison, Eastern societies have been plural societies since the time immemorial. India is a case in point. Therefore these theories mostly handle the situations arising out in singular societies. This aspect of economic theory also needs our attention.

The Key Note Address

Professor M. S. Swaminathan delivered the key note address introducing the participants to the historical and present contexts

of supply of credit in India. He gave an overall perspective on the relevance of the Interest free Microfinance model in the present context and how it can be made operational.

Before that, he congratulated Sahulat Microfinance Society for taking the initiative to organize such a consultation meet and create a platform for such a discussion. He said, "When I heard about this meeting I was quite excited because the country as a whole is looking for the methods by which the poor could have access to credits at affordable rates and especially the women because today there is a strong gender differentiation within the issue of farmers or poverty elimination". He substantiated this claim by citing some figures which indicate a small share of about only one or two percent of credit cards issued by the NABARD, given to women farmers. This is mainly because they do not have patta (ownership papers) for the land in their own names. Therefore, the banks do not give them credit.

Being a member of Rajya Sabha, Professor Swaminathan was part of a discussion on the problems of drought affected areas mainly in Karnataka and Maharashtra where both the Kharif and Rabi crops have failed. The overall analysis of the situation by the members, clearly articulated the cause that farmers take loans for various purposes and the inability to repay the previously raised loans. It leads to social ostracism and other forms of harassment, due to which many of them finally commit suicides. This reiterates the fact that varied methods have to be devised and tried out by which the poor can have access to credit.

Prof. Swaminathan agreed with Ausaf Ahmad that Interest free does not mean cost free or return free, else it will be 'philanthropy rather than credit'. The need of credit will increase with the increasing problems of droughts and extreme weather events as an effect of climate change", Observed Prof Swaminathan. In the light of this statement, he raised a concern on the trends to take loan on high rates of interest with a condition to repay them on time. He said that even in colonial days the first requirement was to wave off either the loan or the interest on the loan, or postpone the recovery period, in the face of uncertainties of repayment. These have been

the methods by which credit, once given, could be obtained back or recovered but not immediately in the same year

He wondered that "If these practices do not continue, where will the Vidarbha farmers go? " He said that the farmers invest very high amount of money in cotton, BT cotton and other crops, as even, seeds have become quite expensive. They do not have the coping capacity to meet the problems of crop failure due to drought, insects etc. Their limited coping capacity becomes the reason why they are not able to withstand the shocks of continuous pressure from the disbursers of non-institutional credit or loans.

Talking about the credit policy, Prof. Swaminathan highlighted the credit allocation in a bill recently prepared by the then Finance Minister, Mr. Pranab Mukherjee and passed by Lok Sabha. In that Mr. Mukherjee allocated up to 5 lakhs 75 thousand Corers for institutional agricultural credit during 201-2013, which is 1 Lakh corer more than the previous year. Though these figures appear to be impressive, what trickles down to the farmers is a very small amount. The journey of this credit amount, stations at a number of Institutions related to the agricultural credit system like NABARD, RIDF (Road Infrastructure Development Fund), etc. before it reaches its destination - the farmers. All of these are put together in the bill as 'agricultural credit' out of which a very small amount is directly lent to farmers which is the central issue. That is why more and more non-institutional credit becomes important particularly for poor farmers who lack access to institutions.

With regards to the approach and methods for microfinance and microcredits Prof. Swaminathan quoted Muhammad Yunus, the pioneer of the Grameen Bank, and said, "The poor are not considered to be credit-worthy by the banks and the banks are not people-worthy." Prof. Swaminathan said, "I think that was the conviction that led to setting up of Bangladesh's Grameen Bank. The same is with Ela Bhatt in our country who started the Self Employed Women's Association."

He was of the opinion that there are various examples of a number of credit methods which have been adopted in India and which can

be useful for cross-learning. He traced the development of IFM through the Islamic Banking which already gives interest free loans based on the compassionate approach in Islam. And therefore their origin is from compassion which is the root of the whole idea of Interest free loan. Professor Swaminathan informed that the Chinese too give Interest free loan to their farmers.

In India, the National Commission on Farmers went into greater details of the credit issue and recommended to bring down the interest rates to around 4 percent. It came down to 7 percent and later to 4 percent. They did not propose a zero percent interest rate, but the consultation may show a way how Interest Free microcredit institutions could operate in a sustainable way. It has to be sustainable; otherwise its objective will be lost.

Referring to the concept paper by Ausaf Ahmad, he said that cooperatives are structured on a principle of win-win for every member. There are no winners and losers in a cooperative. If it is a successful cooperative, everyone shall be a winner. Otherwise, cooperatives also will not be sustainable.

Prof. Swaminathan said, in India, the power of cooperative societies has been shown by Dr. Kurien and his colleagues at Anand. We are now world's largest milk producers where we were producing only 20 million tons of milk 35-40 years ago. This year, we have produced 120 million tons of milk. He remarked, "I am a crops' man, I know it is easier to increase the yield of wheat but it is difficult to increase the production of milk. Therefore, it should be considered a big achievement to get an increase in the production of milk. Our target is to produce 200 million tons of milk by 2020. Probably, this target will be achieved."

"The other area that requires a lot of credit support, Professor Swaminathan pointed out", is the horticulture of perishable commodities like onion, tomato, eggs or meat." The people require credit because they have to sell these commodities as soon as the harvest of these commodities becomes available. It is important to link horticulture and animal husbandry to credit for productive purposes. Thus the IFM should encompass the needs of credit

linked with market-driven enterprise on one hand and credit-linked insurance on the other.

On the need to link IFM to the insurance system, he said that National Commission of Farmers has developed a low cost insurance Scheme which combines compensation for crop loss as well as for health purposes. In the unorganized sector, the provision of old age pension should also be included to help the people in the sector to survive. He thus emphasized the need to design the provisions of credit linked to the market and marketable products, to avoid the possibility of IFM getting into purely credit recycling.

Revisiting the engagement with the issue of Microfinance, the world over, he gave examples of Microcredit Summits organized by the World Bank and contrasted it with how there have been many microfinance societies which have come to a standstill during the last one or two years.

He thus stated that when microcredit becomes exploitative due to high rates of interest like 25, 30 and 35 percent. Then, survival itself becomes a challenge. The increasing incidents of suicides by farmers of Andhra Pradesh, triggered a soul-searching process on what has gone wrong with microfinance which was initially thought to be the answer to many problems.

A great number of ideas have sprung up in the last one year and the Microfinance societies themselves have realized that purely borrowing of credit and then giving it at higher rates of interest to someone else will not solve the problem. It is only credit recycling. The credit will have to be used for a productive purpose as the Chinese do what they call the 'Township Village Enterprises'.

With reference to the Chinese model, Prof. Swaminathan said, when they started their 'agricultural revolution' or 'rural revolution' they had a 2 pronged strategy a) to improve non-farm productivity and profitability by small farmers (more than 50% of their farmers have land around one hectare or less) and b) to improve opportunities for viable non-farm employment. Through the

Township Village Enterprise, he said, "As far as I know it is the only country which has no landless labor, all have work. It is not only the question of land but it is an issue of having access to some assets. It could be land, or a productive job, money, or some other asset. So it is an asset building approach and not purely providing loans. But how can we build assets? . We must have a methodology by which it can be done."

Prof. Swaminathan shared some vital information with the participants that 35 districts have been identified as Agrarian Distress Hotspots by the Government which is faced with agrarian distress due to drought with high rates of farmer suicides. He suggested that it would be useful to take up these 35 agrarian hotspots to start Interest free Microfinance entities.

Interest free finance would be useful because credit is a key factor in development. Many people suffer because they do not have access to inputs. Today, in the Karnataka model it is said that the earliest evidence of agrarian distress during drought is seen when the farmers start selling their cattle, because livestock and livelihood are very closely related in our country. When they find that they can't maintain the animal, they sell it. This is why cattle camps are important. Regarding methods of feeding, he said, fodder may not be available but all the agricultural residues can be used as fodder. "There are other methods where one can create a fodder bank consisting of agricultural residues quantified by urea and mala, it becomes complete animal food." He suggested, "When this whole movement evolves we can try it out in some of the agrarian hotspot areas where the present approaches of government are obviously not working. There are problems which are more deep seated. So it is important to try to link up with credit linked insurance on one hand and a sustainable Interest free Microfinance on the other."

He said that though IFM is not the only approach but, it is certainly an important approach to deal with the problems. "I personally have no doubt about its viability and sustainability but one has to gain by experiences as many problems crop up with time because agriculture is the riskiest profession in the world. You may have rain

you may have flood, you may have pest or the market uncertainties."

He felt it is necessary to have many approaches to a problem. "We can have different methods but the key point or the bottom line is whether the borrowers, be it the farmer or artisan or anyone else taking the credit, have ability to repay the loan in the given period of time, keeping into view their well being and their viability. They cannot be helped individually, which means that there is a need to provide some support services also."

He complemented Sahulat Society to initiate in the National Capital, a serious debate on viability and desirability of Interest free Microfinance. And he stressed on the fact that "in this kind of an approach, one root has to be compassion and concern for the poor and that is what Muhammad Yunus also held that it is not purely a business transaction it has to be business for economic viability but nevertheless its success requires more than a business model. It requires a feeling for fellow human beings."

The Presidential Address

Dr. Syeda Saiyidain Hameed, in her speech offered remarks and observations on the points highlighted by Prof. Swaminathan and others. She also gave her own views on the concept of IFM.

She congratulated Sahulat Microfinance Society for having taken an important initiative. Appreciating the word 'Sahulat' she expressed that everyone in their lives look for sahulat and the more underprivileged, the more deprived and the more marginalized have lesser access to sahulat. She was glad that the society was called by this name as the very word inspires a lot of confidence.

The other point she made was to draw upon Prof. Swaminathan's remark on IFM cooperatives where he talked about compassion in Islam. She said "I am sure that everyone, sitting here, may relate to the fact that it is from the compassionate understanding in Islam (also true for all other religions), of the Prophet (pbuh) and the jurists (Fuqaha) and all the great interpreters (mufassarun) of Islam;

that this idea of Interest Free Microfinance been taken to be established as a model."

She was convinced that anytime anyone says anything different from what prevails in our society, he/she is immediately marginalized.. But it is important to be able to express what one's feelings that can be proved. The fact that Sahulat has been engaging with IFM for a few years in an earlier avatar, goes to prove that they are collecting their statistics, facts, their hard data which could convince others of its viability.

She accepted that even after being a member of planning commission for 8 years, one problem which is completely and totally intractable is how to facilitate the poor to get access to finance. The fact is that it is very difficult for a poor tribal woman from a backward district like Bastar etc. to even cross the threshold of the bank, leave alone to get any kind of relief, assistance or even credit. On the other hand, it has also been demonstrated by several institutions like SEWA Bank in Ahmedabad that a women's self-owned institution can be viable.

She referred to the process of writing the twelfth five year plan document, of which Dr. Devaki Jain was also a part, when many Non-Governmental Organizations, especially the ones engaging with the issue of microfinance, had suggested them that they should have a high level committee to enquire into the gaps in the policy on microfinance. They raised a pertinent question that when microfinance was supposed to be facilitating the poorest of the poor, then why the exorbitant rates of interests are driving the women to desperation because they cannot repay.

Adding on Dr. Swaminathan's remark about selling of livestock and of relationship between livestock and livelihood, the chairperson shared her observation that even children are sold; and sometimes even body parts like kidney and blood are sold too at the times of distress. She said, "When one thinks of it the face of poverty becomes horrific due to the burden of finance of having to repay the loans."

She expressed her anxiety to learn that even in a developed state like Kerala, five districts have been included in the list of agrarian hotspots. She felt that IFM is an excellent idea and particularly in the districts which have been impacted by the Naxal terror attacks. She said that Naxal movement has led to the formation of an Integrated Action Plan by the government in which funding is made available for the development of the affected districts to get people into the paradigm of development while addressing at the same time the real problems of the tribal people - access to Jal, Jungle and land etc are largely neglected.

She thinks that the agrarian hotspots that have been identified are potential areas where compassion can sink its roots. She also suggested that there is a scope of working with the IFfM model in the so called 90 Minority Concentrated Districts (MCDs) and some more districts identified in the Twelfth plan document.. She shared a concern that though Sahulat has selected these MCDs because these are dominated by Muslims, she thinks there is a scope to widen the target group as she says "a poor and an unfortunate human being, whether it is a Muslim or a tribal or a Dalit or Scheduled Caste, Islam has a feeling for every human being. The compassion is universal."

Dr. Syeda concluded by saying that Sahulat is experimenting with a very interesting model. She equally felt that it is definitely worth trying out in some of the agrarian hotspots that Prof. Swaminathan referred to. Though Sahulat works mainly in the Minority Concentrated Districts, it can try to expand the scope of its work. She remarked "It is important to think out of the box and I think what Sahulat has done is to think out of the box."

The Chief Guest's address was followed by deliberations of a few speakers. A summary of the views expressed by some distinguished participants is given here:

Mr. J.N.L Srivastava, Member, IFFCO Foundation seconded Prof. Swaminathan's articulation of 'Compassion with Sustainability' to be the hallmark of any microfinance initiative in order to ensure elimination of poverty and empowerment of women through IFM.

He appreciated the objective of the concept as well as highlighted a few concerned.

He emphasized that the enterprise that will be initiated by the poor as a result of accessing Interest free credit, should be viable. To ensure that, credit shall be accompanied with availability of training, technology and market.

To meet the demand for credit as well as to bear the inevitable costs (like the establishment cost) in the IFM institution, it is important to think through the strategies to mobilize various kinds of resources and capital. Dependence on an external agency for this may further complicate the process. He also stated the importance of enumerating the mechanisms for profit sharing as well as management.

Referring to the existence of various Informal credit systems floating in the market that may take loans at 2 percent and lend it out at a higher rate of interest, he also felt the need to develop mechanisms to address the informal systems. He stressed on the importance of working out strategies for unforeseen issues before scaling up the model.

Dr. Devaki Jain, an economist and development activist stated that the idea of Interest Free loan transactions as a part of women's culture in the form of thrift societies had emerged long before the concept of microfinance.

She appreciated the idea of Sahulat to work with urban poor that usually lack attention of the development policies in comparison to the rural poor. At the same time, she also brought to the notice that this needs to be cogitated more deeply as the Reserve Bank of India has an entire structure for Urban Cooperative Banks which presently are operating no better than family fiefdoms. In the face of this existing structure, it is important to look into whether the proposed IFM Cooperative Societies will be legitimately and significantly different or not.

She also drew the attention of the participants towards an

additional challenge to Cooperative Society with the introduction of a 'new cooperative bill' in the Parliament which will soon become an Act. The bill proposes the cooperative societies to be slid from being liberal societies to department controlled cooperative societies. Many people, including Dr. Devaki Jain moved a letter to the government in protest of this bill as they believed that these societies are vital to support self-sustenance. Thus, she said, it is important to follow up on this bill, to prevent Sahulat's dream of a free cooperative society from being shattered by a new Act.

She specifically mentioned her appreciation for the idea of Sahulat Business Cooperation Groups (SBCGs) in the proposed framework of IFM. She said that SBCGs had the potential to be viable units with the support from the existing government schemes. As an idea she threw, that even the SHGs can be potentially transformed or integrated into SBCGs. She thus requested the government officials present in the consultation, with a special mention to Prof. Swaminathan to look into the possibilities of such integration or adoption of the idea. She particularly mentioned that the idea of SBCGs as self-sustaining poverty alleviating institutions shall be incorporated in the chapter on urbanization in the Twelfth 5 year plan. Finally she said that it is noteworthy that there will be a number of bottlenecks in registering the cooperative and Sahulat needs to chalk out appropriate strategies to deal with them.

The Regional Director, International Cooperative Alliance, **Dr. Chan Ho Choi** made a few critical points about the concept of Interest free microfinance through cooperatives. His emphasis was on understanding the essentials for a cooperative and to give a framework based on which the IFM could be revisited and re-analyzed for its feasibility and viability.

He felt that the IFM model should provide certain business opportunities to the members. He believed in the feasibility and viability of the model but at the same time also laid emphasis on the clarity of its objectives. Wherein he said that if the Interest free model aims to establish a cooperative then it should be linked to certain business rather than just for the disbursement of loans. That business, he underlined as one of the mandates of cooperatives,

should be a business by a group of people rather than an individual. He also remarked that generally the business,enterprises or entities under the cooperatives , shall be equally shared by its members, so that they can govern and manage it. This characteristics of cooperatives may be kept in mind.

Dr. Choi thought that every person has the ability to create or produce something for which that person may require capital or credit. Thus he stated that credit should be provided based on the demand for it to produce something. This can be useful for ensuring its viability and returns.

Regarding the management of profits, he opined that every cooperative has surplus capital earned due to bulk purchasing or bulk lending, even if it does not earn profit per se. The cooperatives are supposed to locate certain portion of their surplus as reserve for delinquent situations. He suggested that the members of the cooperatives must be rewarded for the investment made by them where the surplus could be used for their training and capacity building.

Dr. Chitra Kasana, Vice Dean of Student Affairs, Symbiosis International University, gave her views on the viability of Interest free microfinance which she explained by analyzing money as a 'medium of exchange' as well as 'money as a product'.

Money as a medium of exchange, she said, is linked to the issue of value and fluctuations in the value which gives rise to the concept of interest. She also mentioned that the value is also dependent on the fiat currency that does not remain constant and is the medium of exchange worldwide. If money is understood as a product in the model then, she articulates, that it becomes easy to have IFM as buying and selling of products involves profit which, in this case, becomes acceptable. Therefore, profit will not be associated as something that will exploit the masses in terms of interest. It will just be, as a matter of fact, a give and take relationship, which will help to sustain this model.

According to Dr. Kasana, interest becomes an integrated factor in

the loanable funds. She questioned the idea of using surplus to create surplus to the extent that everyone associated with the IFM can come above subsistence level. She also raised the issue that mostly people save to get interest on their savings. So if they want interest, then the borrower, because they need to pay high rate of interest on their borrowings and thus the borrower gets trapped in the vicious circle of credit. She also suggested looking into the possibility of IFM model to be able to divert people in disguised unemployment in the non-farm activities and make them more productive.

Mr. B. K. Sahu, Assistant Professor, Indian Institute of Foreign Trade, shared his concerns about the concept of IFM. On the basis of a study, on microfinance and its operations in India, conducted by him, he said that there exists extreme scarcity of credit or limited access to credit irrespective of the source of credit i.e. formal or informal. People, usually, would do anything to meet their needs, irrespective of the terms and conditions of the credit. With a high demand for credit, it is important to figure out the terms and conditions of an Interest free loan. He also essentially linked provision for credit to the creation of credit and its absorption capacity in order to enhance credit utilization.

He articulated another issue that when credit is introduced without insurance, the possibility of its misuse and non-repayment increases. Thus, he proposed the idea of linking credit with Insurance which has worked well in the states of Kerala, Karnataka and Tamil Nadu.

Addressing the dynamics of repayment, he said the idea of 'group collateral' partly works well with the groups that are dynamic but where the group is not dynamic or homogenous, tremendous stress comes on individual members to repay. He stressed on the need to have specific targett groups as well as region specific strategies in order to achieve the objective of IFM based cooperative societies.

Mr. Fuad Mahmood, IRAS, RL&DA, concentrated mainly on the idea of an interest free model to enable the poor people to break

out of the vicious circle of credit. At the same time he also raised a concern on the concept of 'Interest free' which according to him loses on the sincerity and discipline of the borrower's perception to repay. He advocated for a credit system based on a moderate rate of interest that will ensure discipline and sincerity to repay the loan.

Mr. G.K. Gangopadhyay, Chief Director, NCDC, stated that one of the NCDC's major tasks is to assist in infrastructural development. Since Interest free credit needs to be associated with other business enterprises these enterprises, may be linked to NCDC for their Infrastructural development. He assured that NCDC will, assist these enterprises, to the extent possible.

Dr. Naveen Anand, Microfinance Community Solution Exchange, UNDP, responded to the proposed model as being a wonderful initiative because he felt it will create a culture of thought among the poor people that there could be interest free loans as well. He also cited a few examples which may prove its feasibility. He emphasized that it is necessary to have a portfolio of activities listed down In order to ensure ways in which IFM will be subsidized. He suggested a few activities which could be part of the portfolio.

The first component of the portfolio, in his opinion, shall be savings not only mandatory but also voluntary, which otherwise do not form part of any of the mandate of Microfinance institutions. He pointed out that Micro-leasing is another emerging subject in the area. Micro leasing is the leasing for very poor people by which they can have access to some productive assets with minimal risks. Social security, insurance and remittances may also form part of the portfolio. He suggested that these cooperatives can also function as counseling centers wherein government and NABARD both may provide some assistance. He observed that with regards to Interest Free loans, heterogeneity in the institution can be useful.

Dr. Dinesh, CEO, NCUI observed that mass perception about freely available goods is that these are not to be taken seriously. This is also true of credit if it is Interest- free. He felt that due to lack of seriousness. it may be difficult to ensure repayment. In his opinion,

it was the biggest drawback of interest free credit. He also offered some suggestions to deal with this situation. He suggested that there could be a minimal amount of interest on the credit provided, to foster discipline and to introduce seriousness in the matter. . In both the cases, whether credit is provided with or without interest, the borrowers should be trained to utilize the credit and gain profit. According to him this approach will have a two pronged advantage 1) Entrepreneurship Development and 2) credit with assured repayment.

Mr. L.D. Ahuja, Consultant, NCUI also expressed his concerns about the ways in which the institutions will bear the minimum essential cost. He tabled the issue of developing concrete provisions for management and sharing of profit or surplus in the institution. He also felt the need to adopt such a model in the face of existing credit issues. Thus, he suggested dovetailing of the model with the government schemes and utilization of existing cooperative structures to economize the cost.

He also mentioned that the Indian Parliament has passed a bill to make cooperative formation a Fundamental Right. This also means that the efficiency of operations needs to ensured. So a dialogue with stakeholders will be important in this regard. .

Ms. Punam, Freelance Consultant, Community Based Organisations, focused on the same issue from a different angle- the standpoint of the community. She felt that it is also worth taking a look at our expectations from the community with regard to the IFM. She underlined thatsuccess of the model is possible only if both hands meet i.e where the appropriate strategies are worked out for sustainability and sufficient rapport and trust is built in the community so that they take this model forward. She reiterated the fact that cooperatives being the peoples' institution should not lose their essence and hence should be owned by the members. Since there is a lot of experience of fall outs and crises that MFI's have faced in the past, it is important to develop some code of conduct and ethics before establishing interest free cooperative societies. She also suggested that backward and forward linkages may be taken into account to identify the possible lacunae in the plan.

Mr. Shashi Bhushan, General Manager, Naandi Foundation, Hyderabad elaborated the challenges that Al-Khair cooperative Credit Society had faced during its pilot project on IFMF. He stressed on the fact that among poor people, Indian Muslims are the most disadvantaged section of the population. Their credit needs are distinctly different from other poor groups as they also carry the burden of certain biases against them;. This pushes them further to the peripheries of the society. He tried to bring out the fact that it is quite possible that a distinct poverty group may require distinct attention in terms of provisions and strategies. He shared an observation that there exists a stark contrast in the policies of the government, where on one hand it proposes the, cooperatives to be a department and to make Right to form cooperatives as a Fundamental Right. He identified some challenges to establish IFMF cooperative societies in 90 districts,. He said that, in the face of such contrasting policies, establishment of such societies might be a more stringent task than usually anticipated.

Dr. Veena Nabar, former Chief Economist NCDC and Consultant, shared her views on bringing the Right to form cooperatives a Fundamental Right. She said it is a useful decision since previously the people convicted for violation of the law, were dealt with under State laws as cooperatives, was a state subject. They lost their Fundamental Right. So what was needed to be done was to have some kind of definition of cooperative for which it was necessary to put it in the Fundamental Right. Through a constitutional amendment, Article 43B was added in part IV of the Constitution as Directive principle of State Policy for voluntary formation of cooperative societies. This constitutional amendment, she informed, will allow people to approach the legal authority with their fundamental rights.

She said, "There is much hope now with this amendment." She could not see a reason why the central government wants to push cooperatives into hands of the Secretary, Cooperative Department. She calls the proposed amendment as retrogressive since it gives power back to the central registrar. She highlighted some essentials before replicating the IFMF model like multiple designs should be worked out as models for different areas or states. She also raised a

concern as to why working out a strategy is important. She said, because many producer companies which were supposed to take care of the problems in the cooperatives act, faced scarcity of resources due to raising of internal resources, as reported by NABARD. Therefore she strongly felt that the proposed model should be an integrated model which should be able to address the problem of scarcity of resources. That she felt, should be the strength of this model.

Mr. S.K. Tucker, Chief Director, NCDC said that the cooperatives are also revisiting and changing their model. He emphasized the need to address the 'element of efficiency' which is one of the key elements in IFM and which is presently at low ebb in cooperatives. He submitted that the professionalism in such models is very low, which reduces efficiency. He pointed to another existing government institutional model called Primary Agricultural Cooperatives. They exist in a large number, almost 90,000, all over the country and were supposed to function as credit window which affected their viability. It was suggested that these credit lending Institutions should become multipurpose to survive i.e. they should get into marketing, crop subsidization, consumer lending, agro-processing etc to increase their margins.

He raised a pertinent question on the ways to deal with non-repayments which he said, should be looked into before starting to replicate the model. He finally suggested that building some kind of cost might bring in efficiency in repayments.

Mr. Anoop Kaul from Basix spoke on the basis of his experience with institutional Microfinance. He gave another standpoint to the idea of IF, and suggested that it should rather be called 'participatory finance' which better describes the objective of the model proposed. He explained the scope of the word 'participatory' to mean much more than just finance. It essentially requires provisions of building entrepreneurial skills of the borrowers, earn profits on the microenterprises and ensure repayments. He also clarified that Microfinance does not just mean credit but also includes pension, remittances etc. based on which he said that calling it Interest free 'Microfinance' might not be appropriate since the other things are not being provided in interest free in the

proposed model. He shared about an exercise that had been done to analyse around 400 enterprises taken up by the poor people. The analysis showed that the internal rate of return for these enterprises was about 35% to 40% which is encouraging with respect to the viability of microenterprises.

He spoke about increasing the scope of the proposed institutional model from being providers of seed capital using of role of the IFM from being transactional (where they give money and wait for returns to come) to becoming transformational (to make the poor people understand the economic activity they are getting into, to understand financial discipline to capitalize the money and get more returns on it). Since Sahulat is a cooperative with intellectual capital it will be easy for it to provide both credit as well as intellectual capital to the poor.

After the profound discussion and inputs by different speakers on the concept of IFM,, Prof. Swaminathan culled out the vital points from the discussion and responded with his own suggestions and recommendations on them. He also sketched a framework of strategies and essential elements for Sahulat's proposed model, to facilitate the host organization in its endeavor to upscale the intervention of Interest free Microfinance through cooperatives.

Suggestions and Recommendations

Encompassing the various critical points made by the speakers, Prof. Swaminathan enunciated the importance of initiating work in some of the agrarian hotspot districts. He suggested that organizations like Sahulat shall select few of these districts where there is urgent need for a different form of credit which will be sustainable and which will not aggravate the problems of the poor. He does not forget to mention that with the available experience in this direction, Sahulat shall also be benefitted in its way forward, by a few cardinal points that came up in the presentations by speakers regarding the following aspects.

Strategy for sustainability

Getting to more concrete steps ahead, Prof. Swaminathan

identified the need to prepare the ground before up scaling and implementing interest free models in other areas. He said it is important to think through, the kind of strategies that could be designed in order to make it sustainable, economically viable and self-replicating model instead of working in the philanthropy mode.

Governance and Management

Prof. Swaminathan referred to Dr. Choi's observations in which he mentioned many aspects of the cooperative model of governance with shared membership and the elected office bearers. He also emphasized that some professional management shall also be necessary to incorporate in the functioning of the cooperative, in order to ensure efficiency.

Training and Capacity Building

Prof. Swaminathan highlighted the importance of training and capacity building, as being essential to the viability of the model. He said it is important to orient the members with the culture and philosophy of IFM as some people may have difficulties in absorbing the concept. They should also be trained on the ways in which resources will be mobilized in terms of finance as well as other forms of capital to make it sustainable. The capacities shall be built on the basis of experience and successful models.

For that he gave the idea of either to develop training and capacity building centres or to integrate this activity with the Krishi Vigyaan Kendras or other existing institutions or infrastructure and use them as training centres.

Engendering IFM

Spotting gender dimension as a key thread in the fabric of the IFM he expressed his interest in the Idea floated by Mr. Anoop Kaul, about renaming the intervention as 'participatory finance' instead of 'Interest free'. He felt the former widens the scope of Microfinance and assigns it a more transformational role transforming people from being hopeless to becoming hopeful,

which he said, is most important as most of the people have lost hope due to maladies of credit and indebtedness. Together with this, he felt, revival of the multiple support systems are also required.

He also shared some exemplary ideas both at policy level as well as at the implementation level from all over the world which can provide learning ground to concretely analyze the pros and cons of the proposed concept. One such example was the Brazilian model of 'Zero Hunger Program' *(Programa Fome Zero)*, a series of hunger initiatives aimed at eliminating hunger in Brazil.

In his concluding remark he thanked Sahulat for giving him the opportunity to be part of the consultation. He suggested following it up with 3-4 districts level seminars in the districts which are more vulnerable like Koraput, naxal affected district etc. With a hopeful message of planning the next step to select a few districts and design feasible and sustainable strategies based on the inputs in the consultation, he thanked all the participants.

The consultation concluded with the vote of thanks by H. Abdur Raqueeb, General Secretary, Indian Centre for Islamic Finance. He summarized the discussions and suggestions and agreed with Dr. Syeda Hameed that this model resulted due to thinking out of the box, and it is eventually gaining grounds all over the world especially in 2010. He also shared his hope with the speakers and the participants that some of the issues raised here that require policy advocacy, shall be taken up by the government. He summed up with a wish that, "Microfinance had started with a social mission but eventually got confined to commercial activities, now it has to come back to basics."

Annexure 1
List of Participants of the Consultation

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The Multi-State Cooperative Societies Act, 2002

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THE MULTI-STATE COOPERATIVE SOCIETIES ACT, 2002
(Act No. 39 of 2002)
3rd July 2002

An Act to consolidate and amend the law relating to cooperative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of cooperatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:- of India as follows: -

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Multi-State Cooperative Societies Act, 2002.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Application

This Act shall apply to -

(a) all cooperative societies, with objects not confined to one State which were incorporated before the commencement of this Act

(i) under the Cooperative Societies Act, 1912 (2 of 1912), or

(ii) under any other law relating to cooperative societies in force in any State or in pursuance of the Multi-unit Cooperative Societies Act, 1942 or the Multi-State Cooperative Societies Act, 1984.

and the registration of which has not been cancelled before such commencement; and

(b) all multi-State cooperative societies.

3. Definitions

In this Act, unless the context otherwise requires, -

(a) "area of operation" means the area from which the persons are admitted as members;

(b) "board" means the board of directors or the governing body of a multi-state cooperative society, by whatever name called, to which the direction and control of the management of the affairs of the society is entrusted;

(c) "bye-laws" means the bye-laws for the time being in force which have been duly registered or deemed to have been registered under this Act and includes amendments thereto which have been duly registered or deemed to have been registered under this Act;

(d) "Central Registrar" means the Central Registrar of Cooperative Societies appointed under sub-section (1) of section 4 and includes any officer empowered to exercise the powers of the Central Registrar under sub-section (2) of that section;

(e) "Chief Executive" means a Chief Executive of a multi-state cooperative society appointed under section 51;

(f) "cooperative bank" means a multi-state cooperative society which undertakes banking business;

(g) "cooperative principles" means the cooperative principles specified in the First Schedule;

(h) "cooperative society" means a society registered or deemed to be registered under any law relating to cooperative societies for the time being in force in any State;

(i) "cooperative year", in relation to any multi-state cooperative society or class of such societies, means the year ending on the 31st day of March of the year and where the accounts of such society or class of such societies are, with the previous sanction of the Central Registrar, balanced on any other day, the year ending on such day;

(j) "Deposit Insurance Corporation" means the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1961);

(k) "federal cooperative" means a federation of cooperative societies registered under this Act and whose membership is available only to a cooperative society or a multi-state cooperative society;

(l) "general body", in relation to a multi-state cooperative society, means all the members of that society and in relation to a national cooperative society or a federal

cooperative means all the delegates of member of cooperative societies of delegates of multi-state cooperative societies and includes a body constituted under the first proviso to sub-section (1) of section 38;

(m) "general meeting" means a meeting of the general body of a multi-state cooperative societies and includes special general meeting;

(n) "member" means a person joining in the application for the registration of a multi-state cooperative society and includes a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws;

(o) "member cooperative" means a cooperative society or a multi-state cooperative society which is member of a federal cooperative;

(p) "multi-state cooperative society" means a society registered or deemed to be registered under this Act and includes a national cooperative society and a Federal cooperative;

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

(r) "national cooperative society" means a multi-state cooperative society specified in the Second Schedule;

(s) "notification" means a notification published in the Official Gazette;

(t) "officer" means a president, vice-president, chairperson, vice-chairperson, managing director, secretary, manager,

member of a board, treasurer, liquidator, an administrator appointed under section 123 and includes any other person empowered under this Act or the rules or the bye-laws to give directions in regard to the business of a multi-state cooperative society;

(u) "prescribed" means prescribed by rules;

(v) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934);

(w) "rules" means the rules made under this Act.

CHAPTER II

CENTRAL REGISTRAR AND REGISTRATION OF MULTI-STATE COOPERATIVE SOCIETIES

4. Central Registrar

(1) The Central Government may appoint a person to be the Central Registrar of Cooperative Societies and may appoint such other persons as it may think fit to assist the Central Registrar.

(2) The Central Government may, by notification, direct that any power exercisable by the Central Registrar under this Act (other than the power of registration of a multi state cooperative society) shall, in relation to such society, and such matters as may be specified in the notification, be exercisable also by any other officer of the Central Government or of a State Government as may be authorised by the Central Government subject to such conditions as may be specified therein:

Provided that no officer of a state government shall be empowered to exercise such power in relation to a national cooperative society.

5. Multi-state cooperative societies which may be registered

(1) No multi-state cooperative society shall be registered under this Act, unless,

(a) its main objects are to serve the interests of members in more than one state; and

(b) its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles.

(2) The word "limited" or its equivalent in any Indian language shall be suffixed to the name of every multi-state cooperative society registered under this Act with limited liability.

6. Application for registration

(1) For the purposes of registration of a multi-state cooperative society under this Act, an application shall be made to the Central Registrar in such form and with such particulars as may be prescribed.

(2) The application shall be signed

(a) in the case of a multi-state cooperative society of which all the members are individuals, by at least fifty persons from each of the state concerned;

(b) in the case of a multi-state cooperative society of which the members are cooperative societies, by duly authorised representatives on behalf of at least five such societies as are not registered in the same state; and

(c) in the case of a multi-state cooperative society of which another multi-state cooperative society and other

cooperative societies are members, by duly authorised representatives of each of such societies:

Provided that not less than two of the cooperative societies referred to in this clause, shall be such as are not registered in the same state;

(d) in the case of a multi-state cooperative society of which the members are cooperative societies or multi-state cooperative societies and individuals, by at least

(i) fifty persons, being individuals, from each of the two states or more; and

(ii) one cooperative society each from two states or more or one multi-state cooperative society.

(3) The application shall be accompanied by four copies of the proposed bye-laws of the multi-state cooperative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require.

7. Registration

(1) If the Central Registrar is satisfied

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

(b) that the proposed multi-state cooperative society satisfies the basic criterion that its objects are to serve the interests of members in more than one state;

(c) that its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles;

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

he may register the multi-state cooperative society and its bye-laws.

(2) The application for registration shall be disposed of by the Central Registrar within a period of four months from the date of receipt thereof by him.

(3) Where the Central Registrar refuses to register a multi-state cooperative society, he shall communicate, within a period of four month from the date of receipt of the application for registration, the order of refusal together with the reasons thereof to the applicant or applicants, as the case may be:

Provided that no order or refusal shall be made unless the applicants have been given a reasonable opportunity of being heard;

Provided further that if the application for registration is not disposed of within a period of four months specified in sub-section (2) or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue the registration certificate in accordance with the provisions of this Act and the rules made thereunder.

8. Registration certificate

Where a multi-state cooperative society is registered under this Act, the Central Registrar shall issue a certificate of registration signed by him, which shall be conclusive evidence that the society therein mentioned is duly registered under this Act, unless it is proved that the registration of the society has been cancelled.

9. Multi-state cooperative society to be body corporate

(1) The registration of a multi-state cooperative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to acquire, hold and dispose of property, both movable and immovable, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted, and shall, by the said name, sue or be sued.

(2) All transactions entered into in good faith prior to the registration of a multi-state cooperative society shall be deemed to be its transactions after registration for furtherance of the objects of its registration.

10. Bye-laws of multi-state cooperative societies

(1) Every multi-state cooperative society may make its bye-laws consistent with the provisions of this act and the rules made thereunder.

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

(a) the name, address and area of operation of the society;

(b) the objects of the society;

(c) the services to be provided to its members;

(d) the eligibility for obtaining membership;

(e) the procedure for obtaining membership;

(f) the conditions for continuing as member;

(g) the procedure for withdrawal of membership;

(h) the transfer of membership;

(i) the procedure for expulsion from membership;

(j) the rights and duties of the members;

(k) the nature and amount of capital of the society;

(l) the manner in which the maximum capital to which a single member can subscribe;

(m) the sources from which the funds may be raised by the multi-state cooperative society;

(n) the purpose for which the funds may be applied;

(o) the manner of allocation or disbursement of net profits of the multi-state cooperative society;

(p) the constitution of various reserves;

(q) the manner of convening general meetings and quorum thereof other than those provided under this Act;

(r) the procedure for notice and manner of voting, in general and other meetings;

(s) the procedure for amending the bye-laws;

(t) the number of members of the board not exceeding twenty-one;

(u) the tenure of, directors, chairperson and other office bearers of the society, not exceeding five years;

(v) the procedure for removal of members of the board

and for filling up of vacancies;

(w) the manner of convening board meetings, its quorum, number of meetings in a year and venue of such meetings;

(x) the frequency of board meetings;

(y) the powers and functions of the Chief Executive in addition to those provided under section 52;

(z) the manner of imposing the penalty;

(za) the appointment, rights and duties of auditors and procedure for conduct of audit;

(zb) the authorisation of officers to sign documents and to institute and defend suits and other legal proceedings on behalf of the society;

(zc) the terms on which a multi-state cooperative society may deal with persons other than members;

(zd) the terms on which a multi-state cooperative society may associate with other cooperative societies;

(ze) the terms on which a multi-state cooperative society may deal with organisation other than cooperative societies;

(zf) the rights, if any, which the multi-state cooperative society may confer on any other multi-state cooperative society or federal cooperative and the circumstances under which such rights may be exercised by the federal cooperative;

(zg) the procedure and manner for transfer of shares and interest in the name of a nominee in case of death of a member;

(zh) the educational and training programmes to be conducted by the multi-state cooperative society;

(zi) the principal place and other places of business of multi-state cooperative society;

(zj) the minimum level of services, to be used by its members;

(zk) any other matter which may be prescribed.

11. Amendment of bye-laws of a multi-state cooperative society

(1) No amendment of any bye-law of a multi-state cooperative society shall be valid, unless such amendment has been registered under this Act.

(2) The amendment to the bye-laws of a multi-state cooperative society shall be made by a resolution passed by a two-third majority of the members present and voting at general meeting of the society.

(3) No such resolution shall be valid unless fifteen clear days' notice of the proposed amendment has been given to the members.

(4) In every case in which a multi-state cooperative society proposes to amend its bye-laws, an application to register such amendments shall be made to the Central Registrar together with-

(a) a copy of the resolution referred to in sub-section (2);

(b) a statement containing the particulars indicating-

(i) the date of the general meeting at which the amendments to the bye-laws were made;

(ii) the number of days' notice given to convene the

general meeting;

(iii) the total number of members of the multi-state cooperative society;

(iv) the quorum required for such meeting;

(v) the number of members present at the meeting;

(vi) the number of members who voted in such meeting;

(vii) the number of members who voted in favour of such amendments to bye-laws;

(c) a copy of the relevant bye-laws in force with the amendment proposed to be made together with reasons justifying such amendments;

(d) four copies of the text of the bye-laws incorporating therein the proposed amendments signed by the officer duly authorised in this behalf by the general body;

(e) a copy of the notice given to the members and the proposal to amend the bye-laws;

(f) a certificate signed by the person who presided at the general meeting certifying that the procedure specified in sub-sections (2) and (3) and the bye-laws, had been followed;

(g) any other particular which may be required by the Central Registrar in this behalf.

(5) Every such application shall be made within sixty days from the date of the general meeting at which such amendment to the bye-laws was passed.

(6) The procedure given in sub-sections (2) to (5) of this section shall apply to the amendment of the bye-laws of a cooperative society desiring to convert itself into a multi-state cooperative society as per the provisions of section 22.

(7) If, on receipt of application under sub-section (5), the Central Registrar is satisfied that the proposed amendment-

(a) is not contrary to the provisions of this Act or of the rules;

(b) does not conflict with cooperative principles; and

(c) will promote the economic interests of the members of the multi-state cooperative society,

he may register the amendment within a period of three months from the date of receipt thereof by him.

(8) The Central Registrar shall forward to the multi-state cooperative society a copy of the registered amendment together with a certificate signed by him within a period of one month from the date of registration thereof and such certificate shall be conclusive evidence that the amendment has been duly registered.

(9) Where the Central Registrar refuses to register an amendment of the bye-laws of a multi-state cooperative society, he shall communicate the order of refusal together with the reasons therefor to the Chief Executive of the society in the manner prescribed within fifteen days from the date of such refusal;

Provided that if the application for registration is not disposed of within a period of three months specified in sub-section (7) or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue registration

certificate in accordance with the provisions of this Act.

12. When amendment of bye-laws comes into force

An amendment of the bye-laws of a multi-state 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 name

(1) A multi-state cooperative society may, by an amendment of its bye-laws, change its name but such change shall not affect any right or obligation of the multi-state cooperative society or of any of its members or past members, and any legal proceedings which might have been continued or commenced by or against the multi-state cooperative society by its former name, may be continued or commence by or against its new name.

(2) Where a multi-state cooperative society changes its name, the Central Registrar shall enter the new name on the register of multi-state cooperative society in place of former name and shall amend the certificate of registration accordingly.

14. Change of address

Every multi-state cooperative society shall have principal place of business and an address registered in the manner prescribed to which all notices and communications may be sent.

15. Publication of name by multi state cooperative society

Every multi-state cooperative society-

(a) shall paint or affix its name and the address of its registered office and keep the same painted or affixed, on the outside of every office or place in which its

business is carried on, in conspicuous position, in letters easily legible; and if the characters employed therefor are not those of the language, or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(b) shall have its name engraven in legible characters on its seal; and

(c) shall have its name and the address of its registered office mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices and other official publications; and also have its name so mentioned in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the multi-state cooperative society, and in all bills of parcels, invoices, receipts and letters of credit of the multi-state cooperative society.

16. Liability

(1) No multi-state cooperative society with unlimited liability shall be registered after the commencement of this Act:

Provided that where a multi-state cooperative society with unlimited liability was functioning before the commencement of this Act, such a society shall exercise the option within a period of one year from such commencement either to continue to function as such or to convert itself into a multi-state cooperative society with limited liability by following the procedure specified in sub-sections (2) to (4).

(2) Subject to the provisions of this Act and the rules, a multi-state cooperative society may, by an amendment of its bye-laws, change the extent of its liability.

(3) When a multi-state cooperative society has passed a resolution to change the extent of its liability, it shall give notice thereof in writing to all its members and creditors, and, notwithstanding anything contained in the bye-laws or contract to the contrary, any member or creditor shall, during the 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.

(4) Any member or creditor who does not exercise his option within the period specified in sub-section (3) shall be deemed to have assented to the change.

(5) An amendment of a bye-law of a multi-state cooperative society changing the extent of its liability shall not be registered or shall not take effect until either-

(a) the assent thereto of all members and creditors has been obtained; or

(b) all claims of members and creditors who exercise the option referred to in sub-section (3) within the period specified therein have been met in full or otherwise satisfied.

17. Amalgamation or transfer of assets and liabilities, or division of multi-state cooperative societies

(1) A multi-state cooperative society may, by a resolution passed by a majority of not less than two-thirds of the members, present and voting at a general meeting of the society held for the purpose,-

(a) transfer its assets and liabilities in whole or in part to any other multi-state cooperative society or cooperative society;

(b) divide itself into two or more multi-state cooperative societies;

(c) divide itself into two or more cooperative societies.

(2) Any two or more multi-state cooperative societies may, by a resolution passed by a majority of not less than two-thirds of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new multi-state cooperative society.

(3) The resolution of a multi-state cooperative society under sub-section (1) or sub-section (2) shall contain all particulars of the transfer or division or amalgamation, as the case may be.

(4) When a multi-state cooperative society has passed a resolution under sub-section (1) or sub-section (2), it shall give notice thereof in writing to all the members and creditors, and, notwithstanding anything contained in the bye-laws or contract to the contrary, any 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 share, deposits or loans, 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) A resolution passed by a multi-state cooperative society under this section shall not take effect until the assent thereto of all the members and creditors has been obtained.

(b) The multi-state cooperative society shall make arrangements for meeting in full or otherwise satisfying all claims of the members and creditors who exercise the option within the period specified in sub-section (4).

(7) On receipt of an application for the registration of new societies formed by division in accordance with the resolution passed under sub-section (1) or of a new society formed by amalgamation in accordance with the resolution passed under sub-section (2), the Central Registrar, on being satisfied that the resolution has become effective under sub-section (6) shall, unless for reasons to be recorded in writing he thinks fit to refuse so to do, Register the new society or societies, as the case may be, and the bye-laws thereof.

(8) On the issue of an order under sub-section (7), the provisions of section 21 shall, so far as may be, apply to the multi-state cooperative society so divided or the multi-state cooperative societies so amalgamated.

(9) Where a resolution passed by a multi-state cooperative society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any other law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

18. Central Registrar to prepare scheme of amalgamation or reorganisation of a cooperative bank in certain cases

When an order of moratorium has been made by the Central Government under sub-section (2) of section 45 of the Banking Regulation Act, 1949 (10 of 1949) in respect of a cooperative bank, the Central Registrar, with the previous approval of the Reserve Bank in writing, may, during the period of moratorium prepare a scheme-

(a) for the amalgamation of the cooperative bank with any other cooperative bank; or

(b) for the reorganisation of the cooperative bank.

19. Promotion of subsidiary institution

(1) Any multi-state cooperative society may, by a resolution passed at general meeting by a majority of members present and voting, promote one or more subsidiary institutions, which may be registered under any law for the time being in force, for the furtherance of its stated objects.

(2) Any subsidiary institution promoted under sub-section (1) shall exist only as long as general body of the multi-state cooperative society deems its existence necessary.

Provided that a multi-state cooperative society while promoting such a subsidiary institution, shall not transfer or assign its substantive part of business or activities undertaken in furtherance of its stated objects.

Explanation For the purposes of this section,-

(a) an institution shall be deemed to be a subsidiary institution if the multi-state cooperative society,-

(i) controls the management or board of directors or members of governing body of such institution; or

(ii) holds more than half in nominal value of equity shares of such institutions; or

(iii) if one or more members of such multi-state cooperative society, hold whether by themselves or together with subsidiary institution or their relatives, as the case may be, the majority of equity shares in this institution;

(b) a subsidiary institution shall not include a partnership firm.

(3) The annual reports and accounts of any such subsidiary institution shall be placed each year before general meeting

of the promoting multi-state cooperative society.

20. Liability of a cooperative bank to deposit insurance and credit guarantee corporation

Notwithstanding anything contained in section 17 or any other provision of this Act, where a cooperative bank, being an insured bank within the meaning of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, is amalgamated or reorganised and the Deposit Insurance Corporation has become liable to pay to the depositors of the insured bank under sub-section (2) of section 16 of that Act, the bank with which such insured bank is amalgamated or the new cooperative bank formed after such amalgamation, or, as the case may be, the insured bank or transferee bank shall be under an obligation to repay to the Deposit Insurance Corporation in the circumstances, to the extent and in the manner referred to in section 21 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

21. Cancellation of registration certificate of multi-state cooperative societies in certain cases

(1) Where the whole of the assets and liabilities of a multi-state cooperative society are transferred to another multi-state cooperative society or to a cooperative society in accordance with the provisions of section 17, the registration of the first mentioned multi-state cooperative society shall stand cancelled and the society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(2) Where two or more multi-state cooperative societies are amalgamated into a new multi-state cooperative society in accordance with the provisions of section 17, the registration of each of the amalgamating societies shall stand cancelled on the registration of the new society, and each of the amalgamating societies shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(3) Where a multi-state cooperative society divides itself into two or more multi-state cooperative societies or two or more cooperative societies in accordance with the provisions of section 17, the registration of that society shall stand cancelled on the registration of the new societies and that society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(4) The amalgamation or division of multi-state cooperative societies shall not in any manner whatsoever affect any right or obligation of the resulting multi-state cooperative society or societies or render defective any legal proceedings by or against the multi-state cooperative society or societies, and any legal proceedings that might have been continued or commenced by or against the multi-state cooperative society or societies, as the case may be, before the amalgamation or division, may be continued or commenced by or against the resulting multi-state cooperative society or societies.

22. Conversion of a cooperative society into a multi-state cooperative society

(1) A cooperative society may, by an amendment of its bye-laws, extend its jurisdiction and convert itself into a multi-state cooperative society:

Provided that no such amendment of bye-laws of a cooperative society shall be valid unless it has been registered by the Central Registrar.

(2) (a) Every proposal for such amendment of bye-laws shall be forwarded to the Central Registrar in accordance with the provisions contained in sub-section (4) of section 11.

(b) If the Central Registrar, after consulting the Registrars of Cooperative Societies of the States concerned, has satisfied himself that such amendment-

(i) fulfils the requirements of the members being from more than one state:

(ii) is in accordance with the provisions contained in sub-section (4) of section 11,

he may register the amendment within a period of six months from the date of receipt thereof by him.

Provided that no cooperative society shall be deemed to have been converted into a multi-state cooperative society on any ground whatsoever unless such society is registered as a multi-state cooperative society.

(3) The Central Registrar shall forward to the cooperative 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 registered.

(4) Where the Central Registrar refuses to register an amendment of the bye-laws or a cooperative society, he shall communicate the order of refusal together with the reasons therefor to the society in the manner prescribed within seven days from the date of refusal.

(5) (a) Once the amendment of bye-laws has been registered by the Central Registrar, the cooperative society shall, as from the date of registration of amendment, become a multi-state cooperative society.

(b) The Central Registrar shall forward to the cooperative society a certificate signed by him to the effect that such society has been registered as a multi-state cooperative society under this Act and also forward a copy of the same to the Registrar of Cooperative Societies of the State concerned.

(c) The Registrar of Cooperative Societies referred to in clause (b) shall thereupon make an order directing that the society had, as from the date of registration by the Central Registrar, ceased to be a society under the law relating to cooperative societies in force in that state.

CHAPTER III

REGISTRATION AND FUNCTIONS OF FEDERAL COOPERATIVES

23. Registration of federal cooperative

(1) Every federal cooperative shall obtain registration certification in accordance with the provisions of this Act.

(2) Every federal cooperative shall in its general meeting be represented by its member cooperative.

(3) The classification of federal cooperative and other terms and conditions applicable to it shall be such as may be prescribed.

(4) All provisions of this Act, applicable to a multi-state cooperative society shall, as far as may be, apply to a federal cooperative.

24. Functions of federal cooperative

(1) Subject to the provisions of this Act and any other law for the time being in force, a federal cooperative may discharge the functions to facilitate the voluntary formation and democratic functioning of cooperative societies as federal cooperative or multi-state cooperatives based on self-help and mutual aid.

(2) Without prejudice to the generality of the provisions contained in sub-section 2 the federal cooperative may-

(a) ensure compliance of the cooperative principles;

(b) make model bye-laws and policies for consideration of its member cooperative;

(c) provide specialised training, education and data-base information;

(d) undertake research, evaluation and assist in preparation of perspective development plans for its member cooperative;

(e) promote harmonious relations amongst member cooperative;

(f) help member cooperative to settle disputes among themselves;

(g) undertake business services on behalf of its member cooperative, if specifically required by or under the resolution of the general body or the board, or bye-laws of a member of cooperative;

(h) provide management development services to a member cooperative;

(i) evolve code of conduct for observance by a member cooperative;

(j) evolve viability norms for a member cooperative;

(k) provide legal aid and advice to a member cooperative;

(l) assist member cooperative in organising self-help;

(m) develop market information system logo brand promotion, quality control and technology upgradation.

CHAPTER IV

MEMBERS OF MULTI-STATE COOPERATIVE SOCIETIES AND THEIR DUTIES, RIGHTS AND LIABILITIES

25. Persons who may become members

(1) No person shall be admitted as a member of a multi-state cooperative society except the following, namely-

(a) an individual, competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);

(b) any multi-state cooperative society or any cooperative society;

(c) the Central Government;

(d) a State Government;

(e) the National Cooperative Development Corporation established under the National Cooperative Development Corporation Act, 1962 (26 of 1962);

(f) any other corporation owned or controlled by the Government;

(g) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(h) such class or classes or persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-state cooperative society.

(2) No individual person shall be eligible for admission as a member of a national cooperative society or a federal cooperative.

(3) Any person eligible for membership of a multi-state cooperative society may, on his application, be admitted as a member by such society.

(4) Every application for admission as a member of a multi-state cooperative society shall be disposed of by such society within a period of four months from the date of receipt of the application, and the decision of such society on the application shall be communicated to the applicant within fifteen days from the date of such decision:

Provided that if the application is not disposed of within the period aforesaid, or the decision is not communicated within a period of fifteen days of the expiry of the aforesaid period of four months, the multi-state cooperative society shall be deemed to have made a decision, on the date of expiry of such period, refusing admission to the applicant.

(5) It shall be the duty of every member of a multi-state cooperative society to promote and protect the interests and objects of such society.

26. Nominal or associate members of society

A multi-state cooperative society may, if provided in its bye-laws, admit a person as nominal or associate member:

Provided that no such nominal or associate member shall be entitled to subscribe the shares of such society or have any interest in the management thereof including right to vote, elect as a director of the board or participate in the general body meetings.

27. Educational course for members

(1) Every multi-state cooperative society shall organise cooperative education programmes for its members, directors and employees.

(2) Every multi-state cooperative society may provide funds for such cooperative education programmes.

28. Members not to exercise rights till due payment made

No member of a multi-state cooperative society shall exercise the rights of a member, unless he has made the payment to the society in respect of membership, or has acquired such interest in the society, as may be specified in the bye-laws.

29. Disqualification for member of a multi-state cooperative society

No person shall be eligible for being a member of a multi-state cooperative society if-

(a) his business is in conflict or competitive with the business of such multi-state cooperative society; or

(b) he used for two consecutive years the services below the minimum level specified in the bye-laws; or

(c) he has not attended three consecutive general meetings or the multi-state cooperative society and such absence has not been condoned by the members in the general meeting; or

(d) he has made any default in payment of any amount to be paid to the multi-state cooperative society under the bye-laws of such society.

30. Expulsion of members

(1) A multi-state cooperative society may, by resolution passed by a majority of not less than two-thirds of the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society:

Provided that the member concerned shall not be expelled unless he has been given a reasonable opportunity of making representation in the matter.

(2) No member of the multi-state cooperative society, who has been expelled under sub-section (1), shall be eligible for re-admission as a member of that society, for a period of one year from the date of such expulsion.

31. Vote of members

Every member of a multi-state cooperative society, including a member who is an employee of such society, shall have one vote in the affairs of the society:

Provided that-

(a) a member who is an employee of such society shall not be entitled to vote

(i) at the election of a member of the board of such society;

(ii) in any general meeting convened for framing the bye-laws of such society or any amendments thereto:

(b) in the case of an equality of votes, the chairperson shall have a casting vote;

(c) where any of the authorities, multi-state cooperative society or a cooperative society referred to in clauses (b) to (g) of sub-section (1) of section 25 is a member of a multi-state cooperative society, each person nominated by such authority or society, on the board in accordance with provisions contained in this Act and the rules shall, have one vote:

(d) a multi-state cooperative society, the membership of which include cooperative societies or other multi-state

cooperative society, may provide in its bye-laws for an equitable system of voting having regard to the membership of, and the extent of business carried on by such cooperative societies or multi-state cooperative societies.

32. Manner of Exercising Vote

Every member of a multi-state cooperative society shall exercise his vote in person and no member shall be permitted to vote by proxy:

Provided that a multi-state cooperative society or a cooperative society or any other institution which is a member of any other multi-state cooperative society may, subject to the provisions of sub-section (3) of section 38 and the rules, appoint its representative to vote on its behalf in the affairs of such multi-state cooperative society.

33. Restriction on holding of shares

No member, other than the authorities referred to in clauses (c) to (g) of sub-section (1) of section 25 of a multi-state cooperative society or a cooperative society, shall hold more than such portion of the total share capital of the society (in no case exceeding one-fifth thereof) as may be prescribed in the rules or bye-laws of such multi-state cooperative society.

34. Restriction on transfer of shares or interest

The transfer of share or interest of a member in the capital of a multi-state cooperative society shall be subject to such conditions as to maximum holding as specified in section 33.

35. Redemption of shares

(1) Shares held in a multi-state cooperative society by any of the authorities referred to in clauses (c) to (g) of sub-section (1) of section 25 shall be redeemable in accordance with the

bye-laws of such multi-state cooperative society and in a case where the bye-laws do not contain any provision in this regard, in such manner as may be agreed upon between the multi-state cooperative society and such authority.

(2) The redemption of shares referred to in sub-section (1) shall be on the face value of the shares.

36. Transfer of interest on death of members

(1) On the death of a member, a multi-state cooperative society may transfer the share or interest of the deceased member to the person nominated in accordance with the bye-law made in this behalf or, if there is no person nominated, to such person as may appear to the board to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules:

Provided that no such transfer or payment shall be made except with the consent of the nominee, heir or legal representative, as the case may be.

(2) A multi-state cooperative society shall, unless within six months of the death of the member prevented by an order of a competent court, pay to such nominee, heir or legal representative, as the case may be, all other moneys due to the deceased member from the society.

(3) All transfers and payments made by a multi-state cooperative society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

37. Liabilities of 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

multi-state cooperative society for the debts of the society as they existed-

(a) in the case of a past member, on the date on which he ceased to be a member;

(b) in the case of a deceased member, on the date of his death.

shall continue for a period of two years from such date.

(2) Notwithstanding anything contained in sub-section (1), where a multi-state cooperative society is ordered to be wound up under section 86, the liability of a past member who ceased to be a member or of the estate of a deceased member who died within two years immediately preceding 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 cessation of membership or death, as the case may be.

CHAPTER V

DIRECTION AND MANAGEMENT OF MULTI-STATE COOPERATIVE SOCIETIES

38. Constitution, powers and functions of general body

(1) The general body of a multi-state cooperative society shall consist of all the members of such society:

Provided that where the bye-laws of a multi-state cooperative society provide for the constitution of a smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws, that smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the society.

(2) Subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a multi-state cooperative society shall vest in the general body of its members:

Provided that nothing contained in this sub-section shall affect the exercise by the board or any officer of a multi-state cooperative society of any power conferred on such board or such officer by this Act or the rules or the bye-laws.

(3) Where in any meeting of the general body or the board of a multi-state cooperative society, a cooperative society or another multi-state cooperative society is to be represented, such cooperative society or other multi-state cooperative society shall be represented in such meeting only through the Chairperson or the president or the Chief Executive or a member of the board of such cooperative society or other multi-state cooperative society, as the case may be, if such member is so authorised by the board and where there is no board of such cooperative society or other multi-state cooperative society, for whatever reasons, through the administrator, by whatever name called, of such cooperative society or other multi-state cooperative society:

Provided that where the bye-laws of a multi-state cooperative society provide for representation of other institutions in any meeting of general body or the board of such multi-state cooperative society, such institutions shall be represented through its nominee.

39. Annual general meeting of general body

(1) The board of every multi-state cooperative society shall, within such period as may be prescribed, and not later than six months after the close of the corresponding year, call the annual general meeting in the manner prescribed for the purpose of-

(a) consideration of the audited statement of accounts;

(b) consideration of the audit report and annual report;

(c) consideration of audit compliance report;

(d) disposal of net profits;

(e) review of operational deficit, if any;

(f) creation of specific reserves and other funds;

(g) approval of the annual budget;

(h) review of actual utilisation of reserve and other funds;

(i) approval of the long-term perspective plan and the annual operational plan;

(j) review of annual report and accounts of subsidiary institution, if any;

(k) expulsion of members;

(l) list of employees who are relatives of members of the board or of the Chief Executive;

(m) amendment of bye-laws, if any;

(n) formulation of code of conduct for the members of the board and officers;

(o) election of members of the board, if any.

(2) Where the board of a multi-state cooperative society fails to convene the annual general meeting within the period specified in sub-section (1), the Central Registrar or the person authorised by him in this behalf shall be competent to convene such annual general meeting within a period of

ninety days from the date of expiry of the period mentioned in that sub-section and the expenditure incurred on such meeting shall be borne by the society.

(3) At every annual general meeting of a multi-state cooperative society, the board lay before the society a statement showing the details of the loans or goods on credit, if any, given to any of the members of the board or to the spouse or a son or daughter of a member of the board during the preceding year or outstanding against him or against such spouse or son or daughter of the member of the board.

40. Special general meeting of general body

(1) The Chief Executive may, at any time, on the direction of the board, 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 Central Registrar or from such member or members or a proportion of the total number of members, as may be provided in the bye-laws.

(2) If a special general meeting of a multi-state cooperative society is not called in accordance with the requisition referred to in sub-section (1), the Central Registrar or any person authorised by him in this behalf shall have the power to call such meeting and that meeting shall be deemed to be a meeting called by the Chief Executive in accordance with the provisions of that sub-section and the Central Registrar may order that the expenditure incurred in calling such meeting shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Central Registrar, was or were responsible for the refusal or failure to convene the special general meeting.

41. Board of directors

(1) Subject to the provisions of this Act and rules, there shall be a board of directors for every multi-state cooperative society consisting of such number of members as specified in sub-section (3).

(2) The members of a multi-state cooperative society, by a resolution in a general meeting, shall elect directors who shall be members of board.

(3) The board shall consist of such number of directors as may be specified in the bye-laws:

Provided that the maximum number of directors in no case shall exceed twenty-one:

Provided further that the board may co-opt two directors in addition to twenty-one directors specified in the first proviso:

Provided also that the functional directors in the national cooperative societies shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in the first proviso.

42. Association of employees in management decision making process

Every multi-state cooperative society shall devise such procedure, as may be specified in the bye-laws or in the administrative instructions of such society, for the association of the representatives of employees of such multi-state cooperative societies at such level or bodies as may be specified in the bye-laws or the instructions issued in this regard, in the management decision making process.

43. Disqualifications for being a member of board

(1) No member of any multi-state cooperative society or nominee of a member, society or a national cooperative society shall be eligible for being chosen as, or for being, a member of the board of such multi-state cooperative society or a national cooperative society, or of any other cooperative society to which the multi-state cooperatives

society is affiliated, if such member-

(a) has been adjudged by a competent court to be insolvent or of unsound mind;

(b) is concerned or participates in the profits of any contract with the society;

(c) has been convicted for an offence involving moral turpitude;

(d) holds any office or place of profit under the society:

Provided that the Chief Executive or such full time employee of the society as may be notified by the Central Government from time to time or a person elected by the employees of such society to represent them on the board of such society shall be eligible for being chosen as, or for being, a member of such board:

(e) has been a member of the society for less than twelve months immediately preceding the date of such election or appointment;

(f) has interest in any business of the kind carried on by the society of which he is a member;

(g) has taken loan or goods on credit from the society of which he is a member, or is otherwise indebted to such society and after the receipt of a notice of default issued to him by such society, has defaulted-

(i) in repayment of such loan or debt or in payment of the price of the goods taken on credit, as the case may be, within the date fixed for such repayment or payment or where such date is extended, which in no case shall exceed six months, within the date so extended, or

(ii) when such loan or debt or the price of goods taken on credit is to be paid in instalments, in payment of any instalment, and the amount in default or any part thereof has remained unpaid on the expiry of six months from the date of such default:

Provided that a member of the board who has ceased to hold office as such under this clause shall not be eligible, for a period of one year, from the date on which he ceased to hold office, for re-election as a member of the board of the multi-state cooperative society of which he was a member or for the election to the board of any other multi-state cooperative society;

(h) is a person against whom any amount due under a decree, decision or order is pending recovery under this Act;

(i) is retained or employed as a legal practitioner on behalf of or against the multi-state cooperative society, or on behalf of or against any other multi-state cooperative society which is a member of the former society.

Explanation For the purposes of this clause, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961):

(j) has been convicted for any offence under this Act;

(k) is disqualified for being a member under section 29;

(l) has been expelled as a member under section 30;

(m) absents himself from three consecutive board meetings and such absence has not been condoned to by the board;

(n) absents himself from three consecutive general body meetings and such absence has not been condoned by the members in the general body.

(2) A person shall not be eligible for being elected as member of board of a multi-state cooperative society for a period of five years if the board of such multi-state cooperative society fails-

(a) to conduct elections of the board under section 45; or

(b) to call the annual general meeting under section 39; or

(c) to prepare the financial statement and present the same in the annual general meeting.

44. Prohibition to hold office of chairperson or president or vice-chairperson or vice president in certain cases

(1) No member of a board shall be eligible to be elected as the chairperson or president or vice-chairperson or vice-president of a multi-state cooperative society if such member is a Minister in the Central Government or a State Government.

(2) No member of a board shall be eligible to be elected as the chairperson or president of a multi-state cooperative society, after he has held the office as such during two consecutive terms, whether full or part:

Provided that a member who has ceased to hold the office of the chairperson or president continuously for one full term shall again be eligible for election to the office as such.

Explanation:- where any member holding the office of the chairperson or president at the commencement of this Act is against elected to that office after such commencement,

he shall for the purpose of this section, be deemed to have held office for one term before such election.

45. Elections of members of board

(1) The conduct of elections to the board of a multi-state cooperative society shall be the responsibility of the existing board.

(2) The election of members of board shall be held by secret ballot in the manner as may be prescribed.

(3) The election of the members of the board shall be held in the general meeting of the members of the multi-state cooperative society.

(4) The elected members of the board shall, if the bye-laws of such society permit, be eligible for re-election.

(5) The term of office of the elected members of the board shall be such, not exceeding five years from the date of elections, as may be specified in the bye-laws of a multi-state cooperative society:

Provided that elected members shall continue to hold office till their successors are elected or nominated under the provisions of this Act or the rules or bye-laws and assume charge of their office.

(6) Where the board fails to conduct election of the members of board, the Central Registrar shall hold the election within a period of ninety days from the date when such election became due.

(7) No person shall be eligible to be elected as a member of the board of a multi-state cooperative society unless he is a member of the general body of that society.

(8) The expenses for holding election by the Central Registrar

shall be borne by the multi-state cooperative society.

(9) The Central Government may make rules generally to provide for or to regulate matters in respect of election of members of the board.

46. Holding of office in cooperative society

Notwithstanding anything contained in this Act, no person shall be eligible to hold, at the same time, office of a president or chairperson or vice-president or vice-chairperson on the board of more than two multi-state cooperative societies.

47. Removal of elected members by general body

An elected member of a board, who has acted adversely to the interests of multi-state cooperative society, may on the basis of a report of the Central Registrar or otherwise be removed from the board upon a resolution of the general body passed at its meeting by a majority of not less than two-third of the members present and voting at the meeting:

Provided that the member concerned shall not be removed unless he has been given a reasonable opportunity of making a representation in the matter.

48. Nominee of Central Government or State Government on the board

(1) Where the Central Government or a State Government has subscribed to the share capital of a multi-state cooperative society, the Central Government or the State Government, as the case may be, or any person authorised by the Central Government or the State Government shall have right to nominate on the board such number of persons as its members on the following basis, namely:-

(a) where the total amount of issued equity share capital held by the Central Government or the State

Government is less than twenty six per cent of the total issued equity share capital, one member of the board;

(b) where the total amount of issued equity share capital held by the Central Government or the State Government is twenty-six per cent or more but less than fifty-one per cent of the total issued equity share capital, two members of the board;

(c) where the total amount of issued equity share capital held by the Central Government or the State Government is fifty-one per cent or more of the total issued share capital, three members of the board:

Provided that the number of such nominated persons shall not exceed one third of the total number of members of the board:

Provided further that where the Central Government or a State Government has guaranteed the repayment of principal and payment of interest on debentures issued by a multi-state cooperative society or has guaranteed the repayment of principal and payment of interest on loans and advances to a multi-state cooperative society or has given any assistance by way of grants or otherwise to a multi-state cooperative society, the Central Government or the State Government in this behalf, as the case may be, or any person authorised by the Central Government, shall have the right to nominate person on the board of such a society in the manner as may be prescribed.

(2) A person nominated under this section shall hold office during the pleasure of the Government by which he has been so nominated,

49. Powers and functions of board

(1) The board may exercise all such powers as may be necessary

or expedient for the purpose of carrying out its functions under this Act.

(2) Without prejudice to the generality of the foregoing powers, such powers shall include the power-

(a) to admit members;

(b) to interpret the organisational objectives and set up specific goals to be achieved towards these objectives;

(c) to make periodic appraisal of operations;

(d) to appoint and remove a Chief Executive and such other employees of the society as are not required to be appointed by the Chief Executive;

(e) to make provisions for regulating the appointment of employees of the multi-state cooperative society and the scales of pay, allowances and other conditions of service of, including disciplinary action against such employees;

(f) to place the annual report, annual financial statements, annual plan and budget for the approval of the general body;

(g) to consider audit and compliance report and place the same before the general body;

(h) to acquire or dispose of immovable property;

(i) to review membership in other cooperatives;

(j) to approval annual and supplementary budget;

(k) to raise funds;

(l) to sanction loans to the members; and

(m) to take such other measures or to do such other acts as may be prescribed or required under this Act or the bye-laws or as may be delegated by the general body.

50. Meeting of board

(1) The Chief Executive shall convene the meetings of the board at the instance of the chairperson or president of the multi-state cooperative society.

(2) The total number of meetings of the board in a year and the venue of meetings as may be specified in the bye-laws:

Provided that the board shall meet at least once in every quarter:

Provided further that not more than two persons may be invited by the board in its meetings.

(3) The Chairperson, or if for any reason, he is unable to attend a meeting of the board, any other member of the board chosen by the members of the board present from amongst themselves at the meeting, shall preside at the meeting.

51. Chief Executive

(1) There shall be a Chief Executive, by whatever designation called, of every multi-state cooperative society to be appointed by the board and he shall be a full-time employee of such multi-state cooperative society.

(2) The Chief Executive shall be a member of the board and of the Executive Committee and such other committees or sub-committees as may be constituted under sub-section (1) of section 53.

(3) Where the Central Government or the State Government holds fifty one per cent, or more of he equity share capital or of total shares of the multi-state cooperative society, the

salary and allowances payable to and other terms and conditions of service including pension, gratuity and other retirement benefits of the Chief Executive shall be such as may be prescribed.

52. Powers and functions of Chief Executive

The Chief Executive shall under the general superintendence, direction and control of the board, exercise the powers and discharge the functions specified below, namely:

(a) day-to-day management of the business of the multi-state cooperative society;

(b) operating the account of the multi-state cooperative society and be responsible for making arrangements for safe custody of cash;

(c) signing on the documents for and on behalf of the multi-state cooperative society;

(d) making arrangements for the proper maintenance of various books and records of the multi-state cooperative society and for the correct preparation, timely submission of periodical statements and returns in accordance with the provisions of this Act, the rules and the bye-laws;

(e) convening meetings of the general body of the multi-state cooperative society, the board and the Executive Committee and other committees or sub-committees constituted under sub-section (1) of section 53 and maintaining proper records for such meetings;

(f) making appointments to the posts in the multi-state cooperative society in accordance with the bye-laws;

(g) assisting the board in the formulation of policies, objectives and planning;

(h) furnishing to the board periodical information necessary for appraising the operations and functions of the multi-state cooperative society;

(i) appoint the person to sue or be sued on behalf of the multi-state cooperative society;

(j) present the draft annual report and financial statement for the approval of the board within thirty days of closure of the financial year;

(k) performing such other duties, and exercising such other powers, as may be specified in the bye-laws of the multi-state cooperative society.

53. Committees of board

(1) The board may, subject to such conditions as may be prescribed, constitute an Executive Committee and other committees or sub-committees as may be considered necessary:

Provided that other committees or sub-committees, other than the Executive Committee shall not exceed three.

(2) The Executive Committee or other committee or sub-committee referred to in sub-section (1) shall perform such functions as are assigned to it in accordance with the bye-laws of the multi-state cooperative society.

54. Securing possession of records, etc

(1) if-

(a) the records, including registers and books of account of a multi-state cooperative society are likely to be tampered with or destroyed or the funds or other property of such society are likely to be mis-appropriated; or

(b) the board of a multi-state cooperative society is reconstituted at a general meeting of the society; or

(c) a multi-state cooperative society is ordered to be wound up under section 86 and the outgoing members of the board refuse to handover charge of the records and property of the society to those having or entitled to receive such charge.

the Chief Executive may apply to the magistrate within whose jurisdiction the multi-state cooperative society functions for securing the records and property of the society.

(2) On receipt of an application under sub-section (1), the magistrate may, by a warrant, authorise any police officer not below the rank of a sub-inspector to enter and search any place where such records and property are kept or are believed to be kept and to seize such records and property; and the records and property so seized shall be handed over to the new board or the liquidator, as the case may be

(3) Every such search and seizure shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

CHAPTER VI

PRIVILEGES OF MULTI-STATE COOPERATIVE SOCIETIES

55. Charge and set-off in respect of share or contribution or interest of members

A multi-state cooperative society shall have a charge on the share or contribution or interest in the capital and on the deposits of a member or past or deceased member and on any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or the estate of

such deceased 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 in or towards payment of any such debt.

56. Share of contribution or interest not liable to attachment

(1) Subject to the provisions of section 55, the share or contribution or interest of a member or past or deceased member in the capital of a multi-state cooperative 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 an official assignee or a receiver under any law relating to insolvency shall not be entitled to, or have any claim on, such share or contribution or interest.

(2) The reserve fund, or the bad debt reserves, or the provident fund of the employees, of a multi-state cooperative society invested by such society in accordance with the provision of this Act and the bye-laws shall not be liable to attachment under any decree or order of a court in respect of any debt or liability incurred by the society.

57. Register of members

Any register or list of members or shares kept by any multi-state cooperative society shall be prima facie evidence of any of the following particulars entered therein, namely:-

(a) the date on which any person entered in such register or list became a member; or

(b) the date on which any such person ceased to be a member.

58. Admissibility of copy of entry as evidence

(1) A copy of any entry in a book of a multi-state cooperative 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 proceedings as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent, as the original entry itself if admissible.

(2) No officer of a multi-state cooperative society and no officer in whose office the books of a multi-state cooperative 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, or to appear as a witness to prove the matters, transactions and accounts therein recorded, except under an order of a court or an arbitrator made for a special cause.

59. Exemption from compulsory registration of instruments

Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Registration Act, 1908 (16 of 1908) shall apply to-

(a) any instrument relating to shares in a multi-state cooperative society notwithstanding that the assets of the 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 thereof to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

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

60. Deduction from salary to meet multi-state cooperative society's claim in certain cases

(1) Notwithstanding anything contained in any law for the time being in force, a member of a multi-state cooperative society may execute an agreement in favour of that society providing that his employer disbursing his salary or wages shall be competent to deduct every month from the salary or wages payable to him, 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 the member owes to the society.

(2) On the execution of such agreement, the employer disbursing the salary or wages of the members shall, if so required by the multi-state cooperative society, by a requisition in writing and so long as the society does not intimate that the whole of such debt or other demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society within a period of fourteen days of the date on which deduction has been made, as if it were a part of the salary or wages payable on the day as required under the Payment of Wages Act, 1936 (4 of 1936), and such payment shall be valid discharge of the employer for his liability to pay the amount deducted.

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

61. Government aid to multi-state cooperative societies

Notwithstanding anything contained in any law for the time

being in force, the Central Government or a State Government, on receipt of request from a multi-state cooperative society and with a view to promoting cooperative movement, may,-

(a) subscribe to the share capital of a multi-state cooperative society;

(b) give loans or make advances to a multi-state cooperative society;

(c) guarantee the repayment of principal and payment of interest on debentures issued by a multi-state cooperative society;

(d) guarantee the repayment of share capital of a multi-state cooperative society and dividends thereon at such rates as may be specified by the Central Government or the State Government;

(e) guarantee the repayment of principal and payment of interest on loans and advances to a multi-state cooperative society;

(f) give financial assistance in any other form, including subsidies, to any multi-state cooperative society; and

(g) provide aid to any other multi-state cooperative society on such terms and conditions as may be prescribed.

CHAPTER VII

PROPERTIES AND FUNDS OF MULTI-STATE COOPERATIVE SOCIETIES

62. Funds not to be divided by way of profit

(1) No part of the funds, other than net profits, of a multi-state cooperative society shall be divided by way of bonus or dividend or otherwise distributed among its members.

(2) The net profits of a multi-state cooperative society referred to in sub-section (1) in respect of a society earning profits shall be calculated by deducting from the gross profit for the year, all interest accrued and accruing in relation to amounts which are overdue, establishment charges, interest payable on loans and deposits, audit fees, working expenses including repairs, rent, taxes and depreciation, bonus payable to employees under the law relating to payment of bonus for the time being in force, and equalisation fund for such bonus, provision for payment of income-tax and making approved donations under the Income-tax Act, 1961 (43 of 1961), development rebate, provision for development fund, bad debt fund, price fluctuation fund, dividend equalisation fund, share capital redemption fund, investment fluctuation fund, provision for retirement benefits to employees, and after providing for or writing off bad debts and losses not adjusted against any fund created out of profit:

Provided that such society may added to the net profits for the year interest accrued in the preceding years, but actually recovered during the year:

Provided further that in the case of such multi-state cooperative societies as do not have share capital, the surplus of income over expenditure shall not be treated as net profits and such surplus shall be dealt with in accordance with the bye-laws.

63. Disposal of net profits

(1) A multi-state cooperative society shall, out of its net profits in any year-

(a) transfer an amount not less than twenty-five per cent, to the reserve fund;

(b) credit one per cent, to cooperative education fund maintained, by the National Cooperative Union of

India Limited, New Delhi, in the manner as may be prescribed;

(c) transfer an amount not less than ten per cent to a reserve fund for meeting unforeseen losses.

(2) Subject to such conditions as may be prescribed, the balance of the net profits may be utilised for all or any of the following purposes, namely:-

(a) payment of dividend to the members on their paid-up share capital at a rate not exceeding the prescribed limit;

(b) constitution of, or contribution to, such special funds including education funds, as may be specified in the bye-laws;

(c) donation of amounts not exceeding five per cent, of the net profits for any purpose connected with the development of cooperative movement or charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890 (6 of 1890);

(d) payment of ex gratia amount to employees of the multi-state cooperative society to the extent and in the manner specified in the bye-laws.

64. Investment of funds

A multi-state cooperative society may invest or deposit its funds-

(a) in a cooperative bank, state cooperative bank, cooperative land development bank or central cooperative bank; or

(b) in any of the securities specified in section 20 of the Indian Trust Act, 1882 (2 of 1882); or

(c) in the shares or securities of any other multi-state cooperative society or any cooperative society; or

(d) in the shares, securities or assets of a subsidiary institution or any other institution; or

(e) with any other bank; or

(f) in such other mode as may be provided in the bye-laws.

Explanation- For the purposes of clause (e), "bank" means any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), and includes-

(i) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);

(ii) a subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

65. Restriction on contribution

No multi-state cooperative society shall make a contribution, either in money or in kind, whether directly or indirectly, to an institution which has an object of furtherance of the interest of a political party.

66. Restriction on loans

(1) A multi-state cooperative society, other than a cooperative bank, shall not make a loan to a member on the security of

his share or on the security of a non-member.

(2) Notwithstanding anything contained in sub-section (1), a multi-state cooperative society may make a loan to a depositor on the security of his deposit.

67. Restrictions on borrowing

(1) A multi-state cooperative society may receive deposits, raise loans and receive grants from external sources to such extent and under such conditions as may be specified in the bye-laws:

Provided that the total amount of deposits and loans received during any financial year shall not exceed ten times of the sum of subscribed share capital and accumulated reserves:

Provided further that while calculating the total sum of subscribed share capital and accumulated reserves, the accumulated losses shall be deducted.

(2) Subject to provisions of sub-section (1), a multi-state cooperative society may accept funds or borrow funds for the fulfilment of its objects on such terms and conditions as are mutually contracted upon.

(3) A multi-state cooperative society may issue non-convertible debentures or other instruments subject to the provisions of any law for the time being in force to raise resources for the fulfilment of its objectives to the extent of twenty-five per cent of its paid-up share capital.

68. Restrictions on other transactions with non-members

Save as provided in sections 66 and 67, the transaction of a multi-state cooperative society with any person other than a member, shall be subject to such prohibitions and restrictions, if any, as may be specified in the bye-laws.

69. Contributory provident fund

(1) Subject to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), a multi-state cooperative society having such number or class of employees as may be prescribed, may establish a contributory provident fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the bye-laws of the society.

(2) Monies standing to the credit of any contributory provident fund established by a multi-state cooperative society under sub-section (1) shall not-

(a) be used in the business of the society;

(b) form part of the assets of the society;

(c) be liable to attachment or be subject to any other process of any court or other authority.

CHAPTER VIII

AUDIT, INQUIRY, INSPECTION AND SURCHARGE

70. Appointment and remuneration of auditors

(1) Every multi-state cooperative society shall cause to be audited by an auditor referred to in sub-section (2), its accounts at least once in each year.

(2) Every multi-state cooperative society shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed.

Provided that such auditor or auditors may be appointed from a panel of auditors approved by the Central Registrar or from a panel of auditors, if any, prepared by the multi-state cooperative society.

(3) Every auditor appointed under sub-section (1) shall, within thirty days of the receipt from the multi-state cooperative society of the intimation of his appointment, inform the Central Registrar in writing that he has accepted, or refused to accept, the appointment.

(4) A retiring auditor shall be re-appointed unless-

(a) he is not qualified for re-appointment;

(b) he has given the multi-state cooperative society a notice in writing of his unwillingness to be re-appointed;

(c) a resolution has been passed at the general meeting of members appointing some body instead of him or providing expressly that he shall not be re-appointed; or

(d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or all those persons, as the case may be, the resolution cannot be proceeded with.

(5) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Registrar may appoint a person to fill the vacancy.

(6) First auditor or auditors of a multi-state cooperative society shall be appointed by the board within one month of the date of registration of such society and the auditor or auditors so appointed shall hold office until the conclusion

of the first annual general meeting:

Provided that-

(a) the multi-state cooperative society may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the multi-state cooperative society and of whose nomination notice has been given to the members of the multi-state cooperative society not less than fourteen days before the date of the meeting; and

(b) if the board fails to exercise its powers under this sub-section, the multi-state cooperative society in the general meeting may appoint the first auditor or auditors.

(7) (a) The multi-state cooperative society may fill any causal vacancy in the office of an auditor; but while any such vacancy continues, the remaining auditor or auditors, if any, may act:

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filed by the multi-state cooperative society in general meeting.

(b) Any auditor appointed in a causal vacancy shall hold office until the conclusion of the next annual general meeting.

(8) Any auditor appointed under this section may be removed from office before the expiry of his term by the multi-state cooperative society in general meeting.

(9) The remuneration of the auditors of a multi-state cooperative society-

(a) in the case of an auditor appointed by the board or the Central Registrar may be fixed by the board or the Central Registrar, as the case may be; and

(b) subject to clause (a), shall be fixed by the multi-state cooperative society in general meeting or in such manner as the multi-state cooperative society in general meeting may determine.

Explanation- For the purposes of this sub-section, any sums paid by the multi-state cooperative society in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration"

71. Provision as to resolutions for appointing or removing auditors

(1) A special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such a resolution, the multi-state cooperative society shall forthwith send a copy thereof to the retiring auditor.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the multi-state cooperative society (not exceeding a reasonable length) and requests their notification to members of the multi-state cooperative society, the multi-state cooperative shall, unless the representations are received by it too late for it to do so,-

(a) in any notice of the resolution given to members of the multi-state cooperative society, state the fact of the representations having been made; and

(b) send a copy of the representation to every member of

the multi-state cooperative society to whom notice of the meeting is sent, whether before or after the receipt of the representations by the multi-state cooperative society,

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the multi-state cooperative society's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

72. Qualifications and disqualifications of auditors

(1) A person shall not be qualified for appointment as an auditor of a multi-state cooperative society unless he is a chartered accountant within the meaning of the Chartered Accountants Act 1949 (38 of 1949).

(2) None of the following persons shall be qualified for appointment as auditor of a multi-state cooperative society-

(a) a body corporate;

(b) an officer or employee of the multi-state cooperative society;

(c) a person who is a member, or who is in the employment, of an officer or employee or the multi-state cooperative society;

(d) a person who is indebted to the multi-state cooperative society or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the multi-state cooperative society for an amount exceeding one thousand rupees.

(3) A person shall also not be qualified for appointment as an

auditor of a multi-state cooperative society if he is, by virtue of sub-section (2), disqualified for appointment as an auditor of any other body corporate or multi-state cooperative society or cooperative society.

(4) If an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (2) and (3), he shall be deemed to have vacated his office as such.

73. Powers and duties of auditors

(1) Every auditor of a multi-state cooperative society shall have a right of access at all times to the books, accounts and vouchers of the multi-state cooperative society, whether kept at the head office of the multi-state cooperative society or elsewhere, and shall be entitled to require from the officers or other employees of the multi-state cooperative society such information and explanations as the auditor may think necessary for the performance of his duties as an auditor.

(2) Without prejudice to provisions of sub-section (1), the auditor shall inquire,-

(a) whether loans and advances made by the multi-state cooperative society on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the multi-state cooperative society or its members;

(b) whether transactions of the multi-state cooperative society which are represented merely by book entries are not prejudicial to the interests of the multi-state cooperative society;

(c) whether personal expenses have been charged to revenue account; and

(d) where it is stated in the books and papers of the multi-

state cooperative society that any shares have been allotted for cash, whether case has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.

(3) The auditor shall make a report to the members of the multi-state cooperative society on the accounts examined by him and on every balance-sheet and profit and loss account and on every other document required to be part or annexed to the balance-sheet or profit and loss account, which are laid before the multi-state cooperative society in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view-

(a) in the case of the balance-sheet, of the state of the multi-state cooperative society's affairs as at the end of its financial year; and

(b) in the case of the profit and loss account, of the profit or loss for its financial year.

(4) The auditor's report shall also state-

(a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(b) whether, in his opinion, proper books of account have been kept by the multi-state cooperative society so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches or offices of the multi-state cooperative society not visited by him;

(c) whether the report on the accounts of any branch office audited by a person other than the multi-state cooperative society's auditor has been forwarded to him and how he has dealt with the same in preparing the auditor's report;

(d) whether the multi-state cooperative society's balance-sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

(5) Where any of the matters referred to in clauses (a) and (b) of sub-section (3) or in clauses (a), (b), (c) and (d) of sub-section (4) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

74. Signature of audit report etc

Only the person appointed as an auditor of the multi-state cooperative society shall sign the auditor's report, or sign or authenticate any other document of the multi-state cooperative society required by law to be signed or authenticated by the auditor.

75. Reading and inspection of auditor's report

The auditor's report shall be read before the multi-state cooperative society in the general meeting and shall be open to inspection by any member of the multi-state cooperative society.

76. Right of auditor to attend general meeting

All notices of, and other communications relating to, any general meeting of a multi-state cooperative society, which any member of the multi-state cooperative society is entitled to have sent to him, shall also be forwarded to the auditor of the multi-state cooperative society; and the auditor shall be

entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

77. Power of Central Government to direct special audit in certain cases

(1) Where the Central Government is of the opinion-

(a) that the affairs of any multi-state cooperative society are not being managed in accordance with self-help and mutual aid and cooperative principles or prudent commercial practices; or with sound business principles; or

(b) that any multi-state cooperative society is being managed in a manner likely to cause serious injury or damage to the interest of the trade, industry or business to which it pertains; or

(c) that the financial position of any multi-state cooperative society is such as to endanger its solvency,

the Central Government may at any time by order direct that a special audit of the multi-state cooperative society's accounts for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint either a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) or the multi-state cooperative society's auditor himself to conduct with special audit:

Provided that the Central Government shall not order for special audit of a multi-state cooperative society's accounts if that Government or the State Government either by itself or both hold less than fifty-one per cent of the paid up share capital or of the shares in such multi-state cooperative society.

(2) The chartered accountant or the multi-state cooperative society's auditor appointed under sub-section (1) to conduct a special audit as aforesaid is hereafter in this section referred to as the special auditor.

(3) The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a multi-state cooperative society has under section 73:

Provided that the special auditor shall, instead of making his report to the members of the multi-state cooperative society, make the same to the Central Government.

(4) The report of the special auditor shall, as far as may be, include all the matters required to be included in the auditors' report under section 73 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government.

(5) The Central Government may by order direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit.

(6) On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force:

Provided that if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the multi-state cooperative society either a copy of, or relevant extract from, the report with its comments thereon and require the multi-state cooperative society either to circulate that copy or those extracts to the members or to have such copy or extracts read before the multi-state cooperative society at its next general meeting.

(7) The expenses of, and incidental to, any special audit under this section (including the remuneration of the special auditor) shall be determined by the Central Government which determination shall be final and paid by the multi-state cooperative society and in default of such payment, shall be recoverable from the multi-state cooperative society as an arrear of land revenue.

78. Inquiry by Central Registrar

(1) The Central Registrar may, on a request from a federal cooperative to which a multi-state cooperative society is affiliated or a creditor or not less than one-third of the members of the board or not less than one-fifth of the total number of members of a multi-state cooperative society hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a multi-state cooperative society:

Provided that no inquiry under this sub-section shall be held unless a notice of not less than fifteen days has been given to the multi-state cooperative society.

(2) The Central 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, accounts, documents, securities, cash and other properties belonging to or in the custody of the multi-state cooperative society and may summon any person in possession or responsible for the custody of any such books, accounts documents, securities, cash or other properties to produce the same, at any place specified by him;

(b) he may, notwithstanding any bye-law specifying the period of notice for a general meeting of the multi-state cooperative society, require the officers of the

society to call a general meeting of the society by giving notice of not less than seven days at such time and place at the headquarters of the society to consider such matters, as may be directed by him; and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself;

(c) he may summon any person who is reasonably believed by him to have any knowledge of the affairs of the multi-state cooperative society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath.

(3) Any meeting called under clause (b) of sub-section (2) shall have all the powers of a general meeting of the society called under the bye-laws of the society and its proceedings shall be regulated by such bye-laws.

(4) The Central Registrar shall, within a period of three months of the date of receipt of the report, communicate the report of inquiry to the multi-state cooperative society, the financial institutions, if any, to which the society is affiliated, and to the person or authority, if any, at whose instance the inquiry is made.

79. Inspection of multi-state cooperative societies

(1) The Central Registrar may, on a request from a federal cooperative to which a multi-state cooperative society is affiliated or a creditor or not less than one-third of the members of the board or not less than one-fifth of the total number of members of a multi-state cooperative society by general or special order in writing in this behalf, inspect or direct any person authorised by him by order in writing in this behalf to make an inspection into the constitution, working and financial condition of a multi-state cooperative society:

Provided that no inspection under this sub-section shall be made unless a notice of not less than fifteen days has been given to the multi-state cooperative society.

(2) (a) For the purpose of inspection under sub-section (1), the Central Registrar or the person authorised by him under that sub-section shall at all times have access to all books, accounts, papers, vouchers, securities, stock and other property of that society and may, in the event of serious irregularities discovered during inspection, take them into custody and shall have power to verify the cash balance of the society and subject to the general or special order of the Central Registrar to call a meeting of the board and also a general meeting of the society where such general meeting is, in his opinion, necessary.

(b) Every officer or member of a multi-state cooperative society shall furnish such information with regard to the working of the society as the Central Registrar or the person making such inspection may require.

(3) A copy of the report of inspection under this section shall be communicated to the multi-state cooperative society within a period of three months from the date of completion of such inspection.

80. Inspection of books of indebted multi-state cooperative societies

(1) The Central Registrar shall, on the application of a creditor of a multi-state cooperative society, inspect, or direct some person authorised by him by order in writing in this behalf to inspect, the books of the society:

Provided that no such inspection shall be made unless the applicant-

(a) satisfies the Central Registrar that the debt is a sum

then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time;

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

(2) The Central Registrar shall communicate the result of any such inspection to the creditor.

81. Costs of inquiry and inspection

Where an inquiry is held under section 78 or an inspection is made under section 79, the Central Registrar may apportion the costs, or such part of the costs, as he may think fit, between the multi-state cooperative society, the members or creditors demanding an inquiry or inspection, and the officers or former officers and the members or past members of that society:

Provided that-

(a) no order of apportionment of the costs shall be made under this section unless the society or the person liable to pay the costs thereunder has had a reasonable opportunity of being heard;

(b) the Central Registrar shall state in writing under his own hand the grounds on which the costs are apportioned.

82. Recovery of costs

Any sum awarded by way of costs under section 81 may be recovered, on application to a magistrate having jurisdiction in the place where the person, from whom the money is claimable, actually and voluntarily resides or carries on business, and such magistrate shall recover the same as if it were a fine imposed by himself.

83. Repayment, etc

(1) If in the course of an audit, inquiry, inspection or the winding up of a multi-state cooperative society, it is found that any person, who is or was entrusted with the organisation 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, or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Central Registrar may, of his own motion or on the application of the board, liquidator or any creditor inquire himself or direct any person authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person within a period of two years from the date of the report of the audit, inspection or inquiry or the date of the order of winding up, as the case may be:

Provided that where the Central Registrar is satisfied that such inquiry could not be commenced during the period of two years aforesaid on account of fraud or concealment of facts, he may make or direct the inquiry to be made within such period not exceeding six years from the date of the report of the audit, inspection or inquiry or the date of the order of winding up, as he thinks fit.

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

CHAPTER IX

SETTLEMENT OF DISPUTES

84. Reference of disputes

(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-state cooperative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-state cooperative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-state cooperative society, its board or any officer, agent or employee of the multi-state cooperative society or liquidator, past or present, or

(c) between the multi-state cooperative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-state cooperative society, or

(d) between the multi-state cooperative society and any other multi-state cooperative society, between a multi-state cooperative society and liquidator of another multi-state cooperative society or between the liquidator of one multi-state cooperative society and the liquidator of another multi-state cooperative society,

such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-state cooperative society, namely:-

(a) a claim by the multi-state cooperative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

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

(c) any dispute arising in connection with the election of any officer of a multi-state cooperative society.

(3) If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-state cooperative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

85. Limitation

(1) Notwithstanding anything contained in the Limitation Act, 1963, but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to arbitration shall,-

(a) when the dispute relates to the recovery of any sum including interest thereon due to a multi-state cooperative society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;

(b) save as otherwise provided in clause (c), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) or clause (d) of sub-section (1) of section 84, be six years from the date on which the act or omission, with reference to which the dispute arose, took place;

(c) when the dispute is in respect of an election of an officer of a multi-state cooperative society, be one month from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any dispute, except those mentioned in sub-section (1), which are required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit and the arbitrator a civil court.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the arbitrator may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the arbitrator that he had sufficient cause for not referring the dispute within such period.

CHAPTER X

WINDING UP OF MULTI-STATE COOPERATIVE SOCIETY

86. Winding up of multi-state cooperative societies

(1) If the Central Registrar, after audit has been conducted under section 70 or special audit has been conducted under section 77 or an inquiry has been held under section 78 or an inspection has been made under section 79, is of opinion that the society ought to be wound up, he may, after giving the society a reasonable opportunity of making its representations by order, direct it to be wound up.

(2) The Central Registrar may, of his own motion and after giving the multi-state cooperative society a reasonable opportunity of making its representation, make an order directing the winding up of the multi-state cooperative society,-

(a) where it is a condition of the registration of the society that the society shall consist of at least fifty members and the number of members has been reduced to less than fifty; or

(b) where the multi-state cooperative society has not commenced working within a period of six months of the date of its registration or such extended period as the Central Registrar may allow in this behalf or has ceased to function in accordance with cooperative principles.

(3) The Central Registrar may cancel an order for the winding up of a multi-state cooperative society, at any time, in any case where, in his opinion, the society should continue to exist.

(4) A copy of such order shall be communicated by registered post to the multi-state cooperative society and to the

financial institutions, if any, of which the society is a member.

(5) Notwithstanding anything contained in this section, no cooperative bank shall be wound up except with the previous sanction, in writing of the Reserve Bank.

(6) Notwithstanding anything contained in this section, the Central Registrar shall make an order for the winding up of a multi-state cooperative society, if the society, by a resolution passed by two-third majority of members present and voting in a general meeting decides for winding up of that society.

87. Winding up of cooperative bank at the direction of Reserve Bank

Notwithstanding anything to the contrary contained elsewhere in this Act, the Central Registrar shall make an order for the winding up of a cooperative bank, if so required by the Reserve Bank in the circumstances mentioned in section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961).

88. Reimbursement to the Deposit Insurance Corporation by liquidator

Where a cooperative bank, being an insured bank within the meaning of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, is wound up and the Deposit Insurance Corporation has become liable to the depositors of the insured bank under sub-section (1) of section 16 of that Act, the Deposit Insurance Corporation shall be reimbursed by the liquidator or such other person in the circumstances, to the extent and in the manner provided in section 21 of that Act.

89. Liquidator

(1) Where the Central Registrar has made an order under

section 86 for the winding up of multi-state cooperative society, the Central

Registrar may appoint a liquidator for the purpose and fix his remuneration.

(2) A liquidator shall, on appointment, take into his custody or under his control all the property, effects and actionable claims to which the multi-state cooperative society is or appears to be entitled and shall take such steps as he may deem necessary or expedient to prevent loss or deterioration of, or damage to, such property, effects and claims and he may carry on the business of the multi-state cooperative society so far as may be necessary with the previous approval of the Central Registrar.

(3) Where an appeal is preferred under clause (f) of sub-section (1) of section 99, an order for the winding up of a multi-state cooperative society made under section 86 shall not operate thereafter until the order is confirmed in appeal:

Provided that the liquidator shall continue to have custody or 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 for the winding up of a multi-state cooperative society is set aside in appeal, the property, effects and actionable claims of the society shall re-vest in the society.

90. Powers of liquidator

(1) Subject to any rules made in this behalf, the whole of the assets of a multi-state cooperative society in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 89 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.

(2) Such liquidator shall also have power, subject to the control of the Central Registrar-

(a) to institute and defend suits and other legal proceedings on behalf of the multi-state cooperative society by the name of his office;

(b) to determine from time to time the contribution (including debts due and costs of liquidation) 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 the deceased members or by an officers or former officers, to the assets of the multi-state cooperative society;

(c) to investigate all claims against the multi-state cooperative society and subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to pay claims against the multi-state cooperative 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; and the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order or winding up at a 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 the liquidation are to be borne;

(f) to determine whether any person is a member, past member or nominee of a deceased member;

(g) to give such directions in regard to the collection and distribution of the assets of the multi-state cooperative society as may appear to him to be necessary for

winding up the affairs of that society;

(h) to carry on the business of the multi-state cooperative society so far as may be necessary for the beneficial winding up of the same;

(i) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the multi-state cooperative society may be rendered liable;

(j) to make any compromise or arrangement with any person between whom and the multi-state cooperative society there exists any dispute and to refer any such dispute for decision;

(k) after consulting the members of the multi-state cooperative society, to dispose of the surplus, if any, remaining after paying the claims against the society, in such manner as may be prescribed.

(l) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or alleged to be subsisting between the multi-state cooperative society and a contributory or other debtor or person apprehending liability to the multi-state 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.

(3) When the affairs of a multi-state cooperative society have been wound up, the liquidator shall make a report to the Central Registrar and deposit the records of the society in such place as the Central Registrar may direct.

91. Disposal of surplus assets

The surplus assets, as shown in the report of a liquidator of a multi-state cooperative society which is wound up-

(a) may, if the bye-laws of the multi-state cooperative society specify the purpose for which surplus shall be utilised, be utilised by the Central Registrar for the said purpose, and

(b) if the bye-laws aforesaid do not specify the purpose, be divided by the Central Registrar with the previous sanction of the Central Government, amongst the members of such multi state cooperative society in such manner as may be prescribed.

92. Priority of contributions assessed by liquidator

Notwithstanding anything contained in any law relating to insolvency, the contribution assessed by a liquidator shall rank next to debts due to the Central Government or a State Government or a local authority in accordance with the order of priority in insolvency proceedings.

93. Power of Central Registrar to cancel registration of a multi-state cooperative society

(1) The Central Registrar may, after considering the report of the liquidator made to him under sub-section (3) of section 90, order the registration of the multi state cooperative society to be cancelled and on such cancellation, that society shall stand dissolved.

(2) An order passed under sub-section (1) shall be communicated by registered post to the president or the chairperson as the case may be, of the multi-state cooperative society and to the financial institutions, if any, of which the society was a member.

CHAPTER XI

EXECUTION OF DECREES, ORDERS AND DECISIONS

94. Execution of decisions, etc

Every decision or order made under section 39 or section 40 or section 83 or section 99 or section 101 shall, if not carried out,-

(a) on a certificate signed by the Central Registrar or any person authorised by him in writing in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as if it were a decree of such court and such decree shall be executed by the Central Registrar or any person authorised by him or it in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-state cooperative society against whom the decision or order has been made; or

(b) where the decision or order provides for the recovery of money, by executed according to law for the time being in force for the recovery of arrears of land revenue:

Provided that any application for the recovery of any sum shall be made in such manner-

(i) to the Collector and shall be accompanied by a certificate signed by the Central Registrar or by any person authorised by him or it in writing in this behalf;

(ii) within twelve years from the date fixed in the decision or order and if no such date is fixed, from the date of decision or order, as the case may be; or

(c) be executed by the Central Registrar or any person authorised by him in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-state cooperative society against whom the decision or order has been made.

95. Execution of orders of liquidators

Every order made by the liquidator under section 90 shall be executed according to the law for the time being in force for the recovery of arrears of land revenue.

96. Attachment before award

(1) Where the arbitrator is satisfied that a party to any reference made to him under section 84 with intent to defeat or delay the execution of any decision that may be passed thereon is about to-

(a) dispose of the whole or any part of the property; or

(b) remove the whole or any part of the property from its existing precincts,

the arbitrator may, unless adequate security is furnished, direct conditional attachment of the said property or such part thereof as its deems necessary.

(2) The attachment under sub-section (1) shall be executed by a civil court having jurisdiction in the same way as an attachment order passed by itself and shall have the same effect as such order.

97. Central Registrar or arbitrator or person authorised to be civil court for certain purposes

The Central Registrar or the arbitrator or any person authorised by him in writing in this behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property, or when passing any orders or any application made to him for such recovery, or for taking a step-in-aid of such recovery, to be a civil court for the purposes of article 136 of the Schedule to the Limitation Act, 1963 (36 of 1963).

98. Recovery of sums due to Government

(1) All sums due from a multi-state cooperative society, or from an officer or member or past member of a multi-state cooperative society, to the Central Government or a State Government, including any cost awarded to the Central Government or the State Government, as the case may be, under any provision of this Act, may, on a certificate issued by the Central Registrar in this behalf, be recovered in the same manner as arrears of land revenue as first charge on the assets of such society or officer or member, as the case may be.

(2) Sums due from a multi-state cooperative society to the Central Government or a State Government and recoverable under sub-section (1) may be recovered firstly from the property of the society and secondly from the members, past members or the estates of deceased members, subject to the limit of their liability:

Provided that the liability of past members and the estate of deceased members shall in all cases be subject to the provisions of section 37.

CHAPTER XII

APPEALS AND REVIEW

99. Appeals

(1) Subject to the provisions of section 100, an appeal shall lie under this section against-

(a) an order made by the Central Registrar under sub-section (3) of section 7 refusing to register a multi-state cooperative society;

(b) an order made by the Central Registrar under sub-section (9) of section 11 refusing to register an

amendment of the bye-laws of a multi-state cooperative society;

(c) a decision of a multi-state cooperative society refusing or deemed to be refusing under sub-section (4) of section 25 to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;

(d) an order made by the Central Registrar under section 81 apportioning the costs of an inquiry held under section 78 or an inspection made under section 80;

(e) an order made by the Central Registrar under sub-section (2) of section 83;

(f) an order made by the Central Registrar under section 86 directing the winding up of a multi-state cooperative society;

(g) an order made by the liquidator of a multi-state cooperative society under section 90.

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of such decision or order to the prescribed appellate authority.

(3) The appellate authority may, if satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period of sixty days, admit the appeal within such further period as that authority may deem fit.

(4) In disposing of an appeal under this section, the appellate authority may, after giving the parties a reasonable opportunity of making their representation, pass such order thereon as that authority may deem fit.

(5) The decision or order of the appellate authority on appeal shall be final.

100. No appeal in certain cases

Notwithstanding anything contained in this Act, where, with the previous sanction in writing of, or on requisition by, the Reserve Bank, a cooperative bank-

(a) is being wound up; or

(b) in respect of which a scheme of amalgamation or reorganisation is given effect to,

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

101. Review

(1) The appellate authority referred to under section 99, may, on the application of any party, review its own order in any case and pass in reference thereto such orders as it thinks fit:

Provided that no such application shall be entertained unless the appellate authority is satisfied that there has been a discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made or that there has been some mistake or error apparent on the face of the record or for any other sufficient reason:

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

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

sought to be reviewed.

107. Interlocutory orders

Where an appeal is made under section 99, the appellate authority may in order to prevent the ends of justice being defeated, make such interlocutory orders, including an order of stay pending the decision of the appeal as such authority may deem fit.

CHAPTER XIII

SOCIETIES WHICH BECOME MULTI-STATE COOPERATIVE SOCIETIES CONSEQUENT ON REORGANISATION OF STATES

107. Cooperative societies functioning immediately before reorganisation of states

(1) Where, by virtue of the provisions of Part II of the State Reorganisation Act, 1956 (37 of 1956) or any other enactment relating to reorganisation of states, any cooperative society which immediately before the day on which the reorganisation takes place, had its objects confined to one state becomes, as from that day, a multi-state cooperative society, it shall be deemed to be a multi-state cooperative society registered under the corresponding provisions of this Act and the bye-laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded.

(2) If it appears to the Central Registrar or any officer authorised in this behalf by the Central Government (hereafter in this section referred to as the authorised officer) that it is necessary or expedient to reconstitute or reorganise any society referred to in sub-section (1), the Central Registrar or the authorised officer, as the case may be, may, with the previous approval of the Central

Government, places before a meeting of the general body of that society, held in such manner as may be prescribed, a scheme for the reconstitution or reorganisation, including proposals regarding-

(a) the formation of new multi-state cooperative societies and the transfer thereto in whole or in part, of the assets and liabilities of that society; or

(b) the transfer, in whole or in part, of the assets and liabilities of that society to any other multi-state cooperative society in existence immediately before the date of that meeting of the general body (hereafter in this section referred to as the existing multi-state cooperative society).

(3) If the scheme is sanctioned by a resolution passed by a majority of the members present at the said meeting, either without modifications or with modifications to which the Central Registrar or the authorised officer agrees, he shall certify the scheme and upon such certification, the scheme shall, notwithstanding anything to the contrary contained in any law, regulation or bye-laws for the time being in force, be binding on all the societies affected by the scheme, as well as the shareholders and creditors of all such societies.

(4) If the scheme is not sanctioned under sub-section (3), the Central Registrar or the authorised officer may refer the scheme to such judge of the appropriate High Court, as may be nominated in this behalf by the Chief Justice thereof, and the decision of that judge in regard to the scheme shall be final and shall be binding on all the societies affected by the scheme as well as the shareholders and creditors of all such societies.

Explanation-For the purposes of this sub-section, "appropriate High Court" means the High Court within the local limits of whose jurisdiction the principal place of

business of the multi-state cooperative society is situated.

(5) Notwithstanding anything contained in this section, where a scheme under sub-section (2) includes any proposal regarding the transfer of the assets and liabilities of any multi-state cooperative society referred to in clause (b) thereof, the scheme shall not be binding on such multi-state cooperative society or the shareholders and creditors thereof, unless the proposal regarding such transfer is accepted by that multi-state cooperative society by a resolution passed by a majority of the members present at a meeting of its general body.

CHAPTER XIV

OFFENCES AND PENALTIES

104. Offences and penalties

(1) A multi-state cooperative society or an officer or member thereof wilfully making a false return or furnishing false information, or any person wilfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act, or wilfully not furnishing any information required from him by a person authorised in this behalf under the provisions of this Act, shall be punishable with fine which shall not be less than two thousand rupees and which may extend to ten thousand rupees.

(2) Any employer who, without sufficient cause, fails to pay to a multi-state cooperative society the amount deducted by him under section 60 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 other law for the time being in force, be punishable with fine which may extend to five thousand rupees.

(3) Any officer or custodian who wilfully fails to hand over

custody of books, accounts, documents, records, cash, security and other property belonging to a multi-state cooperative society of which he is an officer or custodian, to a person entitled under section 54, or section 70, or section 78, or section 79, or section 89 shall be punishable with fine which may extend to two thousand rupees and in the case of a continuing breach, with a further fine which may extend to five thousand rupees for every day during which the breach is continued after conviction for the first such breach.

(4) Whoever, before, during or after the election of delegates under the proviso to sub-section (1) of section 38 or election of members of the board,-

(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity; or

(d) without due authority supplies any ballot paper to any person or received any ballot paper from any person or is in possession of any ballot papers; or

(e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(f) without due authority destroys, takes, opens or otherwise interferes, with any ballot box or ballot papers then in use for the purposes of the election; or

(g) fraudulently or without due authority, as the case may

be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts;

(h) offers any gift or promises to offer any gratification to any person with the object, directly or indirectly, of including-

(i) a person to stand or not to stand as, or to withdraw or not to withdraw from, being a candidate at an election; or

(ii) a member to vote or refrain from voting at an election, or as a reward to a person for having so stood or not stood or for having withdrawn or not having withdrawn his candidature; or

(iii) a member for having voted or refrained from voting,

shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

105. Cognizance of offences

(1) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(2) No prosecution for offences under section 104 shall be instituted except on a complaint filed in writing by a member of a multi-state cooperative society or by the Central Registrar in the competent court.

CHAPTER XV

MISCELLANEOUS

106. Copies of bye-laws, etc, to be open to inspection

Every multi-state cooperative society shall keep a copy of the

rules and its bye-laws and also a list of its members open to inspection free of charge at all reasonable times, at the registered address of the society.

107. Place of keeping and inspection of, registers and returns

(1) The register of members commencing from the date of the registration of multi-state cooperative society, the index of members, the register of debenture holders, and copies of all annual returns prepared together with the copies of certificates and documents, shall be kept at the registered office of the multi-state cooperative society.

(2) The registers, indexes, returns and copies of certificates and other documents referred to in sub-section (1) shall be open during business hours (subject to such reasonable restrictions, as the multi-state cooperative society may impose, so that not less than two hours in each day are allowed for inspection) to the inspection-

(a) of any member or debenture holder, without fee; and

(b) of any other person, on payment of such sum as may be prescribed for each inspection.

108. Inspection of books of account, etc., of multi-state cooperative society

(1) The books of account and other books and papers of every multi-state cooperative society shall be open to inspection during business hours-

(i) by the Central Registrar, or

(ii) by such officer of the Government as may be authorised by the Central Government in this behalf:

Provided that such inspection may be made without giving

any previous notice to that society or any officer thereof;

(iii) by the members of the multi-state cooperative society.

(2) It shall be the duty of every director, other officer or employee of the multi-state cooperative society to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the multi-state cooperative society in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of such society as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the multi-state cooperative society to give to the person making inspection under this section all assistance in connection with the inspection which the multi-state cooperative society may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,-

(i) make or cause to be made copies of books of account and other books and papers; or

(ii) place or cause to be placed any marks or identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, the Central Registrar or an officer authorised under clause (ii) of sub-section (1), making an inspection under this section shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely-

(i) the discovery and production of books of account and

other documents, at such place and such time as may be specified by such person;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, register and other documents of the multi-state cooperative society at any place.

(6) Where an inspection of the books of account and other books and papers of the multi-state cooperative society has been made under this section, the Central Registrar or an officer authorised under clause (ii) of sub-section (1), making the inspection shall make a report to the Central Government

109. Annual accounts and balance sheet

At every annual general meeting of a multi-state cooperative society, the board shall lay before the multi-state cooperative society-

(a) a balance-sheet as at the end of every cooperative year; and

(b) a profit and loss account for that year.

110. Minutes of proceedings of general meetings and of board and other meetings

(1) Every multi-state cooperative society shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its board or of every committee of the board, to be kept by making within thirty days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered.

(2) Each page of every such book shall be initiated or signed

and the last page of the record of proceedings of each meeting in such books shall be dated and signed-

(a) in the case of minutes of proceedings of a meeting of the board or of a committee thereof, by the chairperson of the said meeting or the chairperson of the next succeeding meeting;

(b) in the case of minutes of proceedings of a general meeting, by the chairperson of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairperson within that period, by a member of the board duly authorised by the board for the purpose.

(3) In no case the minutes of proceedings of a meeting shall be attached to any such books as aforesaid by pasting or otherwise.

(4) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(5) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(6) In the case of a meeting of the board or of a committee of the board, the minutes shall also contain-

(a) the names of the members of the board present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the members of the board, if any, dissenting from, or not concurring in, the resolution.

(7) Nothing contained in sub-section (1) to (6) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairperson of the meeting-

(a) is, or could reasonably be regarded as, defamatory of any person;

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the multi-state cooperative society.

Explanation - The chairperson shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section.

111. Minutes to be evidence

Minutes of meetings kept in accordance with the provision of section 110 shall be evidence of the proceedings recorded therein.

112. Presumptions to be drawn where minutes duly and signed

Where minutes of the proceedings of any general meeting of the multi-state cooperative society or of any meeting its board or a committee of the board have been kept in accordance with the provisions of section 110 then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

113. Inspection of minutes book of general meetings

The books containing the minutes of the proceedings of any general meeting or a multi-state cooperative society shall-

(a) be kept at the registered office of that society, and

(b) be open, during business hours, to the inspection of any member of that society.

114. Liquidator to be public servant

Any person appointed as liquidator under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

115. Notice necessary in suits

No suit shall be instituted against a multi-state cooperative society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of ninety days next after notice in writing has been delivered to the Central 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.

116. Power to amend Second Schedule

(1) If the Central Government is satisfied that any multi-state cooperative society should be designate as a national cooperative society or any national cooperative society specified in the Second Schedule should be omitted from the said Schedule, it may, by notification, amend the said Schedule so at to include therein such multi-state cooperative society or exclude therefrom such national cooperative society, and thereupon the said Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification under sub-section (1) shall be laid before each House of Parliament as soon as may be after it is made.

117. Bar of jurisdiction of courts

(1) Save as otherwise provided in this Act, no court shall have jurisdiction in respect of-

(a) the registration of a multi-state cooperative society or its bye-laws or of an amendment of the bye-laws;

(b) any matter concerning the winding up and the dissolution of a multi-state cooperative society.

(2) While a multi-state cooperative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator or against the society or any member thereof, except by leave of the Central Registrar and subject to such terms and conditions as he may impose.

(3) Save as otherwise provided in this Act, no decision or order made under this Act shall be questioned in any court.

118. Indemnity

No suit, prosecution or other legal proceedings shall be against the Central Registrar or, any person subordinate to him or acting on his authority or against any other person, in respect of anything in good faith done or purporting to have been done under this Act.

119. Opening of branches

Notwithstanding anything contained to the contrary in any law relating to cooperative societies in force in a state, a multi-state cooperative society, not being a cooperative bank, may open branches or places of business in any place in India.

120. Filing of returns

Every year within six months of the closure of the accounting year every multi-state cooperative society shall file the following returns with the Central Registrar, namely-

(a) annual report of the activities

(b) audited statements of accounts;

(c) plan for surplus disposal as approved by the general body;

(d) list of amendments to the bye-laws of the multi-state cooperative society;

(e) declaration regarding date of holding of general body meeting and conduct of elections where due;

(f) any other information required by the Central Registrar in pursuance of any of the provisions of this Act.

121. Certain Acts not to apply

(1) The provisions of the Companies Act, 1956 (1 of 1956) and the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) shall not apply to the multi-state cooperative societies.

(2) The multi-state Cooperative societies registered or deemed to be registered under the provisions of this Act shall not indulge in monopolistic and restrictive trade practices as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).

122. Central Government's power to give directions to specified multi-state cooperative societies in public interest

If the Central Government is satisfied that in the public interest or for the purposes of securing proper implementation of cooperative production and other developmental programmes approved or undertaken by the Central Government or to secure proper management of the business of the specified multi-state cooperative societies generally or for preventing the affairs of such society being conducted in a manner detrimental to the interests of the members, any depositors or creditors thereof, it is necessary to issue directions to any class of

specified multi-state cooperative societies generally or to any specified multi-state cooperative society or societies in particular, the Central Government may issue directions to it or to them, from time to time, and all such specified multi-state cooperative society or the societies concerned, as the case may be, shall be bound to comply with such directions.

123. Supersession of board of specified multi-state cooperative society

(1) If in the opinion of the Central Government, the board of any specified multi-state cooperative society is persistently making default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or has committed any act which is prejudicial to the interests of the society or its members, or has omitted or failed to comply with any directions given to it under section 122 in public interest or that there is a statement in the constitution or functions of the board, the Central Government may, after giving the board an opportunity to state its objections, if any, and considering the objections, if received, by order in writing, remove the board and appoint one or more administrators, who need not be members of the society, to manage the affairs of the society for such period not exceeding six months, as may be specified in the order which period may, at the discretion of the Central Government, be extended from time to time, so, however, that the aggregate period does not exceed one year.

Provided that in the case of a cooperative bank, the provisions of this sub-section shall have effect as if for the words "one year", the words "two years" had been substituted.

(2) The Central Government may fix such remuneration for the administrators, as he may think fit and the remuneration shall be paid out of the funds of the specified multi-state cooperative society.

(3) The administrator shall, subject to the control of the Central Government and to such instructions as it may from time to time give, have power to exercise all or any of the functions of the board or of any officer of the specified multi-state cooperative 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 board in accordance with the bye-laws of the specified multi-state cooperative society.

(5) If, at any time during the period the administrator is in office, the Central Government considers it necessary or expedient so to do, it may, by order in writing giving reasons therefor, direct the administrator to arrange for the constitution of a new board for such specified multi-state cooperative society in accordance with the bye-laws of such society and immediately on the constitution of such board, the administrator shall hand over the management of such society to such newly constituted board and cease to function.

(6) Where a specified multi-state cooperative society is indebted to any financial institution, the Central Government shall, before taking any action, under sub-section (1) in respect of that society, consult the financial institution.

Explanation.- For the purposes of sections 122 and 123, "specified multi-state cooperative society" means any multi-state cooperative society in which not less than fifty-one per cent, of the paid-up share capital or of total shares, is held by the Central Government.

124. Power to make rules

(1) The Central Government may, by notification, make rules to

carry out the provisions of this Act.

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

(a) the form to be used, the particulars to be given and the conditions to be complied with in the making of applications under section 6 for the registration of a multi-state cooperative society and the procedure in the matter of such applications;

(b) the matters in respect of which a multi-state cooperative society may make bye-laws under sub-section (2) of section 10;

(c) the manner in which the order of refusal to register any amendment of the bye-laws shall be communicated under sub-section (9) of section 11;

(d) the manner in which a multi-state cooperative society shall have a principal place of business and registered address under section 14;

(e) the procedure and conditions for change in the extent of the liability of a multi-state cooperative society under section 16;

(f) the manner in which order of refusal to register an amendment of bye-laws shall be communicated under sub-section (4) of section 22;

(g) the classification of federal cooperative and other terms and conditions applicable to in under sub-section (3) of section 23;

(h) the restriction on holding the share capital of the society other than a member referred to in section 33;

(i) the constitution and powers of smaller body representing the general body under the proviso to sub-section (1) of section 38;

(j) the period within which annual general meeting be called and the procedure at such meetings and the powers to be exercised by such meeting under section 39;

(k) the election of members of the board under sub-section (2) of section 45 through secret ballot;

(l) the nomination of members under the second proviso to sub-section (1) of section 48;

(m) the additional measures and acts which may be taken or, as the case may be, done by the board under section 49;

(n) the salary and allowances payable to and other terms and conditions of the Chief Executive under sub-section (3) of section 51;

(o) the conditions subject to which the board may constitute an Executive Committee and other committees or sub-section (1) of section 53;

(p) the persons by whom and the form in which copies of entries in books of multi-state cooperative societies may be certified under section 58 and the charges to be levied for the supply of such copies;

(q) providing aid to multi-state cooperative societies on certain terms and conditions under clause (g) of section 61;

(r) the conditions under which profits may be distributed to the members of a multi-state cooperative society and the maximum rate of dividend which may be paid

by the multi-state cooperative societies under section 63;

(s) establishment of contributory provident fund under sub-section (1) of section 69;

(t) the manner of disposing of the surplus under clause (k) of sub-section (2) of section 90;

(u) the manner in which surplus assets be divided by the Central Registrar with the previous sanction of the Central Government under clause (b) of section 91;

(v) the appellate authority to be specified under sub-section (2) of section 99;

(w) the procedure under section 103 for reconstitution and reorganisation of societies which became the multi-State co- operative societies consequent on reorganisation of States;

(x) the inspection of records of the society on payment of fees under clause (b) of sub- section (2) of section 107;

(y) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, a the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

125. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act s may appear to be necessary for removing the difficulty: Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

126. Repeal and saving

(1) The Multi- State Co- operative Societies Act, 1984 (51 of 1984) is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897) with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Multi- State Co- operative Societies Act, 1984 (51 of 1984) shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done un er the corresponding provisions of this Act.

(3) Every multi- State co- operative society, existing immediately before the commencement of this Act which has been registered under the Co- operative Societies Act, 1912 (2 of 1912) or under any other Act relating to co-operative societies in force, in a y State or in pursuance of the provisions of the Multi- unit Co- operative Societies Act, 1942 (6 of 1942) or the Multi- State Co- operative Societies Act, 1984 (51 of 1984), shall be deemed to be registered under the corresponding provisions of this Act, an the bye-laws of such society shall, in so far as they are not

inconsistent with the provisions of this Act, or the rules, continue to be in force until altered or rescinded.

(4) All appointments, rules and orders made, all notifications and notices issued and all suits and other proceedings instituted under any of the Acts referred to in sub- section (1) shall, in so far as they are not inconsistent with the provisions of thi Act, be deemed to have been respectively made, issued and instituted under this Act, save that an order made cancelling the registration of a multi- State co-operative society shall be deemed, unless the society has already been finally liquidated, to be an order made under section 86 for its being wound up.

(5) The provisions of this Act shall apply to
   (a) any application for registration of a multi- State co-operative society;

   (b) any application for registration of amendment of bye-laws of a multi- State co- operative society, pending at the commencement of this Act and to the proceedings consequent thereon and to any registration granted in pursuance thereof.

(6) Save as otherwise provided in this Act, any legal proceeding pending in any court or before the Central Registrar or any other authority at the commencement of this Act shall be continued to be in that court or before the Central Registrar or that authority as if this Act had not been passed.

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