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## **Maharashtra co-operative society act 1960.**

### **Introduction of cooperative.**

Cooperatives have evolved significantly over the last 200 years and are of increasing importance to economies and societies throughout the world irrespective of their level of socioeconomic development. Yet, cooperatives, generally speaking, are peripheral to contemporary scholarly analyses. Moreover, they are treated as inefficient and relatively ineffective organizational types whose presence is typically transient and of some importance in times of crises and to marginal socioeconomic participants. Even those with a sympathetic eye consider cooperatives to be of marginal importance. It is therefore of some consequence to discuss the significance of cooperatives over historical time and the extent to which they are actually both efficient and effective economically and socially.

### **Meaning of cooperative-**

"Literally, Co-operation means working together. To be more appropriate, we may define Co-operation as acting together to accomplish the common goal through Co-operative principles". Likewise, Co-operative society may be defined as an organisation of individuals with small means, formed for running in common of business, the profits being shared in accordance with the amount of labour or capital contributed by each.

### **Definition.**

. A **cooperative** is a private business organization that is owned and controlled by the people who use its products, supplies or services. Although **cooperatives** vary in type and membership size, all were formed to meet the specific objectives of members, and are structured to adapt to member's changing needs

### **PRINCIPLES OF CO-OPERATION .**

The term “principle”, derived from the Latin word “Principium” meaning “basis”, has different meanings: the primary idea, a certain thesis, a rule of an organization. The principles of co-operation may be considered as the broad guidelines for co-operative societies in the conduct of various activities. “ALL FOR ONE AND ONE FOR ALL” “SELF HELP AND MUTUAL HELP” Co-operative principles are those principles which are essential for the achievement of the co-operative objectives. In the words of George Davidonic, “They are Set of Rules which governs the life and activity of Co-operative Organization.” In spite of the diversity of their sources, co-operative principles have come to be known the world over mainly as Rochdale’s principles. This is due to two reasons: first the clarity in the formulation of the Rochdale pioneers; and second, the universality in their application.

These principles have inspired the co-operative movement throughout the world. These principles are; (1) Democratic control (2) Open membership (3) Limited interest on capital; (4) Patronage dividend; (5) Cash trading; (6) Political and religious neutrality; and (7) Promotion of education.

### **History and GROWTH OF CO-OPERATIVE MOVEMENT IN INDIA:-**

Co-operation is not in any way new to India. It has a fairly long history in India. The Co-operative form of social and economic activities has been in existence since times immemorial. The oldest scriptural works like the vedas, the upanishads, the Bhagawat Purana, Kautilya's Artha Shastra etc., referred about joint actions of the people. There were four main traditional forms of Co-operation in ancient India, viz Kula, Grama, Shreni and

Jati. According to G.P. Srivastava,<sup>12</sup> the Kula was the first form of Co-operative activity that emerged in Indian society. It was both a political and socio-economic organisation in which kinsmen, friends and relatives worked Co-operatively to promote their social, economic and political interest. With the expansion and stabilisation of society, the aspects of economic and social Co-operation gradually narrowed to the limits of joint family which has survived even today. Co-operation at the level of Grama, emerged after Kula which became a stabilised unit. The Grama Sabha was a Co-operative organisation which undertook works for the economic and social progress of the village and looked after the improvement and maintenance of village lands, pastures, roads, highways, paths, common gardens and grasslands. The agriculturists often 11. Bedi, R.D. (1992). Theory-History and Practice of Co-operationk. Agra : Vikas Publishing House. P.7. 12. Rayudu; C.S. (1991). Kurd Credit xn India. New Delhi: Mittal Publications. Pp.58- 59. 27 pooled their resources of livestock and implements and helped one another in tilling their respective fields. The members jointly undertook buying or selling or obtaining equipments, tools, seeds and other items of production. The shreni is a later development which emerged in the post vedic era. It was a Co-operative and economic organisation of artisans, industrial handcraft workers, merchants, traders, bankers, agriculturalists, house-builders and building contractors. "Co-operation at the level of Jati was mostly for social purposes as education, charity, and relief work, but when a particular occupation, craft or trade became associated with a particular caste, the system evolved a pattern in which Co-operation become an important aspect of the economic activities of the community".

#### **PRE-INDEPENDENCE ERA:-**

Towards the end of the 19th Century, the condition of the rural masses in India was quite deplorable. The countryside was studded with problems of poverty, ignorance, improvidence, and ancestral debt and occasional outbreaks of natural calamities. The outcome of all these

factors was rural indebtedness. The rural poor was being exploited by money-lenders by way of charging usurious rates of interest. This led to murderous uprisings of the debtors against creditors;<sup>14</sup> It also resulted in riots and rebellions. With a view to mitigate the sufferings of the peasants provincial Governments enacted several measures of relief, such as, 13. Srivasthav, G.P. (1983). Traditional Forms of Co-operation in India, New Delhi: C.B. Matoria Publications. Pp. 1-5. 14. Kulkarni, C.R. (1985). Theory and Practice of Co-operation in India. Bombay : Cooperative Book Depot. P.5. 28 Deccan Agricultural Relief Act (1879); Land Improvements Loans Act (1883); and Agriculturist's Loans Act (1884). These measures, however, did not prove much success due to stringent and cumbersome official procedures. In 1892 the Government of Madras presidency deputed one of their senior officers, Sir Fredrick Nicholson to study the theory and practice of Co-operatives structure in England and Germany, and to examine the feasibility and modalities of their introduction in the Indian situation. About the same time, H. Dupernex, an ICS officer, experimented with village banks in the United Provinces. Similarly Sir Anthony Macdonnel did a pioneering work by establishing two hundred Cooperative credit societies in 1901 in the United Provinces. Nicholson in his exhaustive Reports (1897 and 1899) observed that we must find "Raiffeisen in India". The intention of Raiffeisen was to collect together small bodies of men who lived on close proximity to each others and were fully cognizant of each others circumstances and character and enabled these persons by pledging their unlimited liability. Further, Raiffeisen wanted that the credit was to be strictly supervised by an elected committee in each society and the administration of the society was to be entirely gratuitous. In 1901, the Government of India appointed a committee under the chairmanship of Sir Edward Law, to study the prevailing economic conditions in the country.

THE CO-OPERATIVE CREDIT SOCIETY ACT, 1904 The passage of this Act, was the first milestone in the Co-operative movement in India. This laudable measure was

hailed as "a turning point in economic and social history."<sup>16</sup> It aimed at encouraging thrift habits among poor artisans and peasants by setting up Co-operative societies. There was, however, no provision for the establishment of non-credit societies or central agencies, such as, central Co-operative banks /federations. In course of time, the 1904 Act was found insufficient to meet the growing needs of the farmers.

#### CO-OPERATIVE SOCIETIES ACT, 1912

So, in order to rectify the shortcomings, the Government passed a comprehensive Co-operative societies Act in 1912. As a result, the movement made rapid strides and extended into many fields. In order to assess the quantitative and qualitative progress of the movement, the Government of India, appointed a committee on Co-operation in 1914 under the chairmanship of Sir IR Edward Maclagan. The committee (1915) recommended stoppage of further registration of societies,

#### **Government of India Act,1919**

(Popularly known as the Montagu-chelmsford Act, 1919). Under this Act, the Co-operation became a provincial subject. Under this Act, the provincial Government could enact separate Acts to suit the provincial requirements. The Bombay province was the first to enact a separate Co-operative societies Act,1925. This was followed by Madras Act, 1932, Bihar and Orissa Act, 1935; Coorg Act, 1936; and Bengal Act of 1940 while the rest of provinces adopted the existing Act of 1912.<sup>20</sup> The Act of 1919 gave great stimulus to the movement. Its success was measured more by its quantity than by its quality. It pointed out that the existing Co-operative organisations could not handle the entire problem single-handedly and that state's assistance was necessary. It, therefore, suggested setting up of an Agricultural Credit Corporation as an autonomous body at the provincial level. The Saraiya Committee, however, did not agree with this basic recommendation of the Gadgil committee. It suggested that (i) rural activities should be diversified by granting liberal loans to agriculturists, (ii)

close link between credit and marketing should be established, and (iii) 25 % of the total marketable surplus of agricultural produce of the country should be brought within the purview of Co-operatives.<sup>25</sup> The partition of the country in 1947 gave a big shock to the movement. The number of societies and their membership fell down considerably.

### **MAHARASHTRA COOPERATIVE SOCIETIES ACT OF 1961.**

After independence, attempt has been made to achieve the developmental objectives through this measure. The recommendations made by the RBI Committee were accepted in general and schemes of cooperative development under the five-year plan were drawn up to give effect to the recommendations contained in the rural credit survey report. Consequently, a Committee on Cooperative Law was appointed by the Government of India in 1956. The Government of Bombay also appointed a similar Committee to consider suitable amendments to the Bombay Cooperative Societies Act and Rules. The recommendations of both the committees were taken into consideration and the Maharashtra Cooperative Societies Act was enacted in 1961

### **CO-OPERATION DURING THE PLANNING ERA**

The importance of Co-operation was strongly emphasised by the Cooperative planning committee, when it stated "the Co-operative society has an important role to play as the most suitable medium for the democratisation of economic planning."<sup>29</sup> In the pattern of development envisaged in Five Years Plans, Co-operation is accepted to become progressively the principle basis of organisation, in several branches of economy, notably in agriculture, small scale industries, marketing, processing, distribution, construction and provision of essential amenities for local communities.

### **FIVE YEAR PLAN (1951-56)**

In the First Plan 'Co-operation' was recognised as an instrument of planned economic action in democracy.<sup>30</sup> The First Plan observed as it is the purpose of plan to change the economy

of the country from an individualistic to a socially regulated and Co-operative basis, its success should be judged among their things, by the extent to which it is implemented through Co-operative organisation." 29. 50 Years of Co-operation (1905-1954) Golden Jubilee Souvenir. Bombay : Provincial Cooperative Institute. 1965. P.5 30. Government of India,(1951-56) First Five Year Plan Document New Delhi: Planning commission. . 35 The progress of Co-operative movement . From these figures it is clear that the average increase in membership per year was about 5 lakhs against the average increase of only 1 lakh members per year during the earlier history of the movement. A substantial increase was made in the credit made available to members.

### **Importance terms**

**2(1)** "agricultural marketing society" means a society— (a) the object of which is the marketing of agricultural produce and the supply of implements and other requisites for agricultural production, and (b) not less than three-fourths of the members of which are agriculturists, or societies formed by agriculturists ;

### **Bonus:2(4)**

Any payment made in cash or kind from the profits of the society to a member or non member comes under the definition of bonus. This however does not include any sum paid to any employee of the society under the payment of Bonus Act of 1965.

### **Bye-Laws:2(5)**

All laws of the society registered under the Maharashtra cooperative societies Act of 1960 including registered amendments therein come under the umbrella of bye-laws.

### **Central Bank:2(6)**

Central Bank is defined as any cooperative bank which has been constituted with the objective to create funds to be loaned to other societies.

### **Committee:2(7)**

Committee is defined as any management committee or board of directors managing the day to day affairs of the society as per the laws drafted in section 73 of the Act.

### **Cooperative Bank:2(10)**

A Cooperative bank is defined as a society which is doing the business of banking as per the guidelines of the Banking Regulation Act of 1949.

### **Cooperative Appellate Court:2(10-ai)**

Cooperative Appellate Court is defined as the Maharashtra cooperative appellate court constituted under the Maharashtra Cooperative Societies Act, 1960.

**Dividend:2(11)**

Dividend means any amount paid out of profits of a society to its member(s) in proportion to the shares held by him or her.

(13) " federal society “

means a society— (a) not less than five members of which are themselves societies, and (b) in which the voting rights are so regulated that the members which are societies have not less than four-fifths of the total number of votes in the general meeting of such society;

**Member:2(19(a))**

Any person joining the cooperative society as per the bye-laws and by submitting an application for registration is known as a member once accepted.

**Officer. 2(20)**

: An officer is a person elected or appointed by any society to an office as per the society bye-laws. Chairman, vice chairman, president and secretary of the society all come under the umbrella of officers.

**Working Capital. 2(31)**

The funds at the disposal of any society including its paid up share capital, profits as well as other raised or borrowed money all come under the definition of working capital.

**Salient feature of this act:-**

**Registration of Society:**

Any society formed with the objective to offer general welfare and promotion of economic interest of its members or public at large can register as a society under the Maharashtra Co-Operative Societies Act, 1960

**Conditions of registration:**

A society must have on penal a minimum of ten persons who are qualified to become members. Each family must be from a different family and residing within the area of operation of the society in question.

**Application for registration:**

The application of society registration must be signed by minimum ten persons, all of whom should be members of the society committee. The signatories must be authorized by the committee resolution to sign on its behalf. Four copies of the proposed bye-laws must be attached with the application and the prescribed fee.

**Amendment to bye-laws:**

If the registrar finds the application duly filled with all details, it would be forwarded to the concerned registering authority. If the registrar is not satisfied with the bye-laws, he or she may suggest amendments for the same. No society can amend any bye-laws or initiate

any bye-law amendment unless the society is registered under the Maharashtra Co-Operative Societies Act, 1960. Any amendment must be passed with a resolution of over 2/3rd of its members voting only.

**Change of name of society:**

Any society registered under the Act needs an approval from the registrar before changing the name of the society. Once the approval is granted after notification in the official gazette, the society can change its name by passing a resolution at its general body meeting. The bye-laws must be amended accordingly as per the new name of the society. Any change in name does not change the rights and liabilities of the society and its members.

**Rights of Member:**

Every society member has the right to inspect the society office during office hours free of cost. The copy of act and rules along with society bye-laws and registration certificate must be available in the head office of the society at all times. Each member must be given access to the latest audit reports, balance sheets and all profit and loss accounts of the society. List of members of the society as well as the list of committee members must be displayed in the society office or made public for any member on request.

**Dispute Management:**

As per the section 91 of the Act, any dispute regarding the business activities of the society can be forwarded to any society member of surety of the member for resolution. In case one or both of the applicants are members of the society, the complaint needs to be filed with the cooperative court for dispute resolute.

**Registration of society (u/s.3).**

This article contains brief description of formation of a Society in India under the ‘Societies Registration Act, 1960’. In this article, I have tried to highlight the procedural formalities, important provisions of the act and various difficulties faced by a professional, while forming a society. This act is a very important piece of law, as it regulates the formation of Society and its governance. A society can perform very significant rules in the wellbeing of civic life. Also this is a significant area of practice of cross section of professionals viz., CS, Advocates, etc. .

**PURPOSE.**

Societies Registration Act, 1960 was enacted on 1960 and came into force on 6-6-1961, by replacing the earlier act. The purposes of the act is to improve the legal conditions of

societies established for the promotion of literature, science, or the fine arts and to give them a legal status. Therefore, it is a fine piece of act which helps greater social development, harmony and public convenience without direct involvement of Government.

### **STATUS.**

Societies Registration Act, 1960 was enacted before evolving the method of bifurcation of power between Central and States (Entry 32 of List II of Seventh Schedule) to the Constitution. After enactment of Entry 32 of List II of Seventh Schedule, which provides that unincorporated literary, scientific, religious and other societies and association is a state subject, normally their should be a state laws to regulate the activities of promotion of literature, science, or the fine arts. If in any state, no such law is enacted, then the Central act should be applicable. The Act has been specifically repealed in many States and those States have their own Acts.

### **PROCEDURE.**

Any seven or more persons associated for any scientific, literary or charitable purposes can apply for Registration of a society. No limit of maximum number of members is prescribed in the act. For registering a society, following documents needs to be prepared and submitted to the Registrar: a. Memorandum of Association(MOA): Major Contents are Name of the Society, Working Area, Address of Registered Office, Aims and Object of the Society, Name address, occupation of the Governing body members, desirous persons. b. Rules & Regulation: Major contents are Name of the Association, Admissions of members, Subscription, Cessation of Membership, Rights and privilege of members, Powers and functions of General Body members, Meetings, Election, Power and duties of Office bearers, Quorum of meeting etc. These documents needs to be certified by at least three members of the governing body and should be filled along with the MOA. a. Proof of Identity & Address of Governing Body Members; b. Address of the registered office and Consent; c. NOC of the

owner of the address of Registered Office Premises; d. A fee of Rupees fifty is required to be paid. Name of the Society should not be identical with any existing society, registered under the Societies Registration Act, 1960. The name of the Society also should not be undesirable.

**MEMBERS** In relation to a Society registered under Societies Registration Act, a member is a person who is admitted according to the rules and regulations of society and who pays subscription, or signed the roll or list of members, and who has not resigned from membership. A member can be sued as stranger for arrear in subscription or if he destroys the property of society. Member guilty of offence of stealing, embezzlement or willful destruction of society property can be punished as stranger, i.e. not a member. Annual list of managing body to be filed Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the societies is held, or, if it rules do not provide for an annual general meeting, then in the months of January, list, containing the names, addresses and occupations of the governors, council, committee, or other governing body then entrusted with the management of the affairs of the society shall be filed with the Registrar of Joint Stock Companies.

### **SOCIETY IS NOT A BODY CORPORATE.**

A society incorporated under the Act is not a body corporate. Following provisions of the act reflect the same: i) As per the act, the assets of a registered society vests on the governing body of the society. ii) Section 6 of the Act provides that suits by or against the society should be made in the name of the President, Chairman, Principle Secretary or the Governing body, as determined by the rules and regulations of the society, and in the absence of any clause in this regards in the Rules and Regulations in the name of such person as shall be appointed by the Governing Body. iii) But, Section of 8 of the act makes it amply clear the

though suit against society is to be instituted in the name of some persons, they are not personally liable, but the property of the society will be liable.

### **AMALGAMATION OF SOCIETY**

Whenever it appears to the governing body of a Society registered under the Act, which has been established for any particular purposes, that it is advisable to amalgamate such Society, either wholly or partially, such governing body should submit the proposition to the members of the society in a written or printed form, and may convene a special meeting for consideration thereof according to the regulations of the Society. The proposition should be forwarded to the members of the society before specified time period, as spelt of the act of the state, of the special meeting, convened for consideration of the propositions. For carrying out the activities the consent of at least three-fifth of the members by person or by proxy, and the proposition must reconfirm by members with at least three-fifth of the members give their consent in favor of the propositions.

### **DISSOLUTION**

The act provides the dissolution of the society also. In this regards, consent of specified numbers of members in special meeting needs to be obtained.

### **HINDRANCE**

Though the Societies Registration Act motadis-motandis provides all required formalities, still keeping in view the seriousness of the act, some immediate steps needs to be taken. To avoid delay in incorporating a Society, introduction of system of e-filing is an immediate requirement. It can prevent delay to incorporate a society and will bring transparency in governance of a Society. In fact, this matter has also been acknowledged by the Government. In the press release dated 8th September 2011, the then Minister of State in the Ministry of

Corporate Affairs Shri R.P.N. Singh informed the Lok Sabha that an Expert Group under the Chairmanship of Shri.K.N.Chaturvedi has been constituted to study the legislative and regulatory architecture of the Society Registration Act, 1860.The minister was replying to a written question whether the Government proposes to review the Societies Registration Act to make the functioning of Non-Governmental Organizations (NGOs) more transparent and whether the Government proposes to make it mandatory for the societies to go for e-filing of their statement. The system of checking of name availability needs to be more systematic and transparent. Also, a regular review of the functioning of the relevant officials of the department .

## **17. AMALGAMATION, TRANSFER, DIVISION OR CONVERSION OF SOCIETIES.**

### **With Rule 16 MCS Rules 1961**

- (1) A society may, with the previous approval of the Registrar, by resolution passed by two-thirds majority of the members present and voting at a special general meeting held for the purpose, decide— (a) to amalgamate with another society ; (b) to transfer its assets and liabilities, in whole or in part; to any other society; (c) to divide itself into two or more societies ; or (d) to convert itself into another class of society : Provided that, when such amalgamation, transfer, division or conversion, aforesaid, involves a transfer of the liabilities of a society to any other society, no order on the resolution shall be passed by the Registrar, unless he is satisfied that— (i) the society, after passing such resolution, has given notice thereof in such manner as may be prescribed to all its members, creditors and other persons whose interests are likely to be affected (hereinafter, in this section referred to as "other interested persons"), giving them the option, to be exercised within one month from the date of such notice, of becoming members of any of the new

societies, or continuing their membership in the amalgamated or converted society, or demanding payment of their share or interest or dues, as the case may be; (ii) all the members and creditors and other interested persons, have assented to the decision, or deemed to have assented thereto by virtue of any member of creditor or any other interested person failing to exercise his option within the period specified in clause (i) aforesaid, and (iii) all claims of members and creditors and other interested persons who exercise the option within the period specified, have been met in full or otherwise satisfied. (2) Notwithstanding anything contained in the Transfer of Property Act, 1882 or the Indian Registration Act, 1908, in the event of division or conversion, the registration of the new societies or, as the case may be, of the converted society, and in the event of amalgamation, on the amalgamation the resolution of the societies concerned with amalgamation, shall in each case be sufficient conveyance to vest the assets and liabilities of the original society or amalgamating societies in the new societies or converted or amalgamated society, as the case may be. (3) The amalgamation of societies, or division or conversion of a society shall not affect any rights or obligation of the societies so amalgamated, or society so divided or converted, or render defective any legal proceedings which might have been continued or commenced by or against the societies which have been amalgamated, or divided or converted; and accordingly, such legal proceedings may be continued or commenced by or against the amalgamated society, or, as the case may be, the converted society, or the new societies. (4) Where two or more societies have been amalgamated, or a society has been divided or converted, the registration of such societies or society shall be cancelled on the date of registration of the amalgamated society, or the converted society. or the new societies between which the society may have been divided.

**U/S .20- RECONSTRUCTION OF SOCIETIES.-**

With rule.17 MSC rule act 1961

Where a proposal for a compromise or arrangement,— (a) between a society and its creditors, or (b) between a society and its members, is approved at a special general meeting called for the purpose, the Registrar may, on the application of the society or of any member or of any creditor of the society, or in the case of a society which is being wound up, of the Liquidator, order reconstruction in the prescribed manner, of the society.

#### **u/s 21. CANCELLATION OF REGISTRATION.**

The Registrar shall make an order canceling the registration of a society if it transfers the whole of its assets and liabilities to another society, or amalgamates of with another society, or divides itself into two or more societies or if its affairs are wound up, [or it is de-registered under the provisions of sub-section (1) of section 21A] [or winding up proceedings in respect of the society are closed or terminated under section 109.]The society shall, from the date of such order of cancellation, be deemed to be dissolved, and shall cease to exist as a corporate body.

#### **Members of societies their right and liabilities.**

**(U/S.22-35).**

#### **Section 22 - Person who may become member**

(1) Subject to the provisions of section 24, no person shall be admitted as a member of a society except the following, that is to say--

- (a)an individual, who is competent to contract under the Indian Contract Act, 1872;
- (b)a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the societies Registration Act, 1860;
- (c)a society registered, or deemed to be registered, under this Act;

(d) the State Government or the Central Government;

(e) a local authority;

(f) as public trust registered under any law for the time being in force for the registration of such trusts;

Provided that, the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of students of a school or college:

Provided further that, subject to such terms and conditions as may be laid down by the State Government by general or special order, a firm or company may be admitted as a member only of society which is a federal or urban society or which conducts or intends to conduct an industrial undertaking:

Provided also that, any firm or company, which is immediately before the commencement of this Act, a member of a society deemed to be registered under this Act, shall have, subject to the other provisions of this Act, the right to continue to be such member on and after such commencement.

Explanation.--For the purpose of this section "an urban society" means a society the business of which mainly falls within the limits of a municipal corporation, municipality, cantonment or notified area committee.

(1A) Notwithstanding anything contained in sub-section (1), the State Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any society or class or societies, by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment [as the case may be; and the

question whether a person is or is not so engaged in or carrying on any profession, business or employment or whether a person belongs or does not belong to such class of persons as declared under this sub-section and has or has not incurred a disqualification under this sub-section shall be decided by the Registrar u/s.11.

(1B) Notwithstanding anything contained in sub-section (1), where the Registrar has decided u/s.11 that a person has incurred a disqualification under subsection(1A), the Registrar or the person not below the rank of District Deputy Registrar of Co-operative Societies, authorised by him in this behalf, may, by order, remove such person from the membership of the society; and such person shall cease to be a member of the society on expiration of a period of one month from the date of receipt of such order by him.

(2) Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months [from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been [admitted] as a member of the society.] 7 [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.]

### **u/s.23. OPEN MEMBERSHIP**

(1) No society shall without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its by-laws. (1A) Where a society refuses. to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an

application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.]] (2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar. [Every such appeal, as far as possible, b& disposed of by the Registrar within a period of three months from, the date of its receipt : Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.] (3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof. [(4) Without, prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation.] 24. NOMINAL, ASSOCIATE AND SYMPATHISER MEMBER.

(1) Notwithstanding anything contained in section 22, a society may admit any person as a nominal, associate or sympathiser member. (2) A nominal member or sympathiser member shall not be entitled to any share in any form whatsoever in the profits

or assets of the society as such member. A nominal or sympathiser member shall ordinarily not have any of the privileges and rights of a member, but such a member, or an associate member, may, subject to the provisions of sub-section (8) of section 27, have such privileges and rights and be subject to such liabilities of a member, as may be specified in the by-laws of the society.

#### 25. CESSATION OF MEMBERSHIP.

A person shall cease to be a member of a society on his resignation from the membership, thereof being accepted, or on the transfer of the whole of his share or interest in the society to another member, or on his death, or removal or expulsion [from the society, or where a firm, company, any other corporate body, society or trust is a member, on its dissolution or ceasing to exist.]

#### **u/s.26. NO RIGHTS OF MEMBERSHIP TO BE EXERCISED TILL DUE PAYMENTS ARE MADE.**

person who has ceased to be a member or who stands disqualified by or under the provisions of this Act for being the member or continuing to be the member of a society : Provided that, if the society does not comply with the requirement of this section, the Registrar shall direct such society to remove the name of such person, and the society shall be bound to comply with such direction.]

. No person shall exercise the rights of a member of a society, until he has made such payment to the society in respect of membership, or acquired such interest membership in the society, as may be prescribed by the rules, or the by-laws of such society.

#### **u/s.27. VOTING OF POWERS OF MEMBERS.**

[(1) Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every powers of right to vote shall be

exercised personally, and not by proxy : Provided that, in the case of an equality of votes the Chairman shall have a casting vote.] (2) Where a share of a society is held jointly by more than one person, [the person whose name stands first in the share certificate, if present, shall have the right to vote. But in his absence the person whose name stands second, and in the absence of both, the person whose name stands next and likewise, in the absence of the preceding persons the person whose name next on the share certificate, who is present and who is not a minor, shall have the right to vote.] (3) A society, which has invested any part of its funds in the shares of another society, may appoint one of its members to vote on its behalf in the affairs of that other society; and accordingly such member shall have the right to vote on behalf of the first society; [Provided that,] where the election is to a reserved seat under section 73-B, no person shall have more than one vote.] (4) A company or any other body corporate constituted under any law for the time being in force which has invested any part of its funds in the shares of a society may appoint any one of its directors or officer to vote on its behalf in the affairs of such society: and accordingly such director or officer shall have the right to vote on behalf of the company or body corporate. (5) Where a firm has invested any part of its funds in the shares of a society, any one of its partners [appointed by the firm] shall be entitled to vote in the affairs of the society on behalf of the firm. (6) A local authority or public trust which has invested any part of its funds in the shares of a society, may appoint any of its members or trustees, to vote on its behalf in the affairs of that society; and accordingly such persons shall have the right to vote on behalf of the local authority or the public trust, as the case may be. (7) In the case of a federal society, the voting rights of individual members thereof shall be such as may be regulated by the rules made under this Act and by the by-laws of the society. (8) No nominal, or sympathiser member shall have the right to vote [and no such member shall be eligible to be a member of a committee or for appointment as a representative of the society on any other society]. (9) No nominee of the

Government or any financing bank on the committee of any society shall be entitled to vote at any election of officers of such committee such as, the President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatsoever designation called, who holds the office by virtue of his election to that office.], [(10) In the case of an agricultural credit society, if a member has taken a loan from the society, such member shall, whenever he is a defaulter in paying two or more consecutive installments towards repayment of the loan on the due dates, have no right to vote in the affairs of the society : Provided that, a member shall not be deemed to be a defaulter, if he has discharged his obligation to deliver his marketable produce to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his due, either in whole or in part, takes place at a later stage. (11) The agricultural credit society may issue suitable orders for the purpose of carrying out the provisions of sub-section (10)].

**u/s.28. RESTRICTIONS ON TRANSFER OR CHARGE OF SHARES OF INTEREST.**

T In any society, [no member, other than the Government, or any other holding society, or with the previous sanction of the State Government, a Zilla Parishad of shares, constituted under the Maharashtra Zilla, Parishads and Panchayat Samitis Act, 1961, shall-] (a) hold more than such portion of the total share capital of the society (in no case exceeding one-fifth thereof) as may be prescribed, or (b) have or claim any interest in the shares of the society exceeding [Twenty thousand rupees] ; Provided that the State Government may, by notification in the Official Gazette, specify in respect of any class of societies a higher or lower maximum than one-fifth of the share capital or, as the case may be, a higher or lower amount than , [twenty thousand rupees.].

**u/s. 29. RESTRICTIONS ON TRANSFER OR CHARGE OF SHARE OR INTEREST.**

(1) Subject to the provisions of the last preceding section as to the maximum on transfer holding of shares and to any rules made in this behalf, a transfer of or charge on, or

charge of the share or interest of a member in the share capital of a society shall be subject to such conditions as may be prescribed. (2) A member shall not transfer any share held by him or his interest in the capital or property of any society, or any part thereof, unless— (a) he has held such share or interest for not less than one year ; (b) the transfer is made to a member of the society or to a person whose application for membership as been accepted [by the society, or to a person whose appeal under section 23 of the Act has been allowed by the- Registrar ; or to a person who is deemed to be a member under sub-section (1A)of section 23.]. (3) Notwithstanding anything contained in sub-sections (1) and (2), where a member is allowed to resign, or is expelled, or ceases to be a member on account of his being disqualified by this Act or by the rules made thereunder or by the by-laws of the society, the society may acquire the share or interest of such member in the share capital by paying for it at the value determined in the manner prescribed, provided that the total payment of share capital of a society in any financial year for such purposes does not exceed ten per cent. of the paid-up share capital of the society on the last day of the financial year immediately preceding. Explanation I.-The right to forfeit the share or interest of any expelled member fin the share capital by virtue of any by-laws of the society, shall not be affected by the aforesaid provision. Explanation II.-In this section, the expression "financial year' means the year ending on the [31st day of March] or, in the case of any society or class of societies the accounts of which are with the previous sanction of the Registrar balanced on any other day, the year ending on such day.] (4) Where the State Government is a member of a society, the restrictions contained in this section shall not apply to any transfer made by it of its share or interest in the capital of the society; and that Government may, notwithstanding anything in this Act, withdraw from the society its share capital at any time, after giving to the society notice thereof of not less than three months.

**u/s. 30. TRANSFER OF INTEREST ON DEATH OF MEMBER.**

(1) On the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in interest on accordance with the rules or, if no person has been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member : Provided that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society : Provided further that, nothing in this sub-section or in section 22 shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society. (2) Notwithstanding anything contained in sub-section (1), any such nominee, heir or legal representative, as the case may be, may require the society to pay to him the value of the share or interest of the deceased member, ascertained in accordance with the rules. (3) A society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be. (4) All transfers and payments duly made by a 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.

**u/s.31.SHARE OR INTEREST NOT LIABLE TO ATTACHMENT.**

The share or interest of a member in the capital of a society, or in the loan stock issued by a housing society, or in the funds raised by a society from its members by way of savings deposit, shall not be liable to attachment or sale under any decree or order of a Court for or in respect of any debt or liability incurred by the member;and accordingly, neither the Official Assignee under the Presidency-towns Insolvency m of Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920 , nor any such person or authority under any corresponding law for the time being in force, shall be entitled to or have any claim on, such share or interest.

**u/s.32. RIGHTS OF MEMBERS TO SEE BOOKS ETC.**

(1) Every member of a society shall be entitled to inspect, free of cost, at the society's office during office hours, or any time fixed for the purpose by the society, a copy of the Act, the rules, and the by-laws, the last audited annual balance sheet, the profit and loss account, a list of the members of the committee, a register of members, the minutes of general meetings, minutes of committee meetings and those portions of the books and records in which his transactions with the society have been recorded. (2) A society shall furnish to a member, on request in writing and on payment of such fees as may be prescribed therefore, a copy of any of the documents mentioned in the foregoing sub-section within one month from the date of payment of such fees.

**u/s. 32A. CERTAIN SOCIETIES TO GIVE PASS BOOKS TO MEMBERS AND ENTRIES IN SUCH BOOK EVIDENCE OF AMOUNT DUE.**

(1) A society which gives loans to its members [or a society or class of societies which the State Government may notify in the Official Gazette, from time to time,] shall furnish each member with a pass book, which shall contain an account members and of the transactions with the member, such as, the date of the transaction, the amount of loan advanced, the rate of interest, the repayment made by the member, the amount of the principle and interest due, and such other particulars as may be prescribed. The necessary entries shall be made in the pass book, from time to time, which shall be countersigned by such office-bearer of the society as may be authorised in this behalf by the committee. For this purpose, [the member] shall be bound to present the pass book to such office-bearer, and if the pass books is required to be kept for some time for making the necessary entries the member shall be granted a receipt therefor, by such office-bearer. (2) The entries in the pass book duly made shall, until the contrary be proved, be prima facie evidence of the account of transactions of the society with the member.]

**u/s. 33. LIABILITY OF PAST MEMBER AND ESTATE OF DECEASED MEMBER.**

(1) Subject to the provisions of sub-section (2), the liability of a past member, past member or of the estate of a deceased member, of a society for the debts of the society as they stood,- (a) in the case of a past member, on the date on which he ceased to be a member, and (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) Where a society is ordered to be wound up under any provision of this Act, the liability of a past member or of the estate of a deceased member, who ceased to be a member or died. within two years immediately 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 stood on the date of his ceasing to be a member or death, as the case may be.

#### **u/s34 INSOLVENCY OF MEMBERS.**

Notwithstanding anything contained in the Presidency-towns Insolvency Act, 1909, the Provincial Insolvency Act, 1920, or any corresponding law for the time being in force, the dues of a society from a member, in insolvency proceedings against him, shall rank in order of priority next to the dues payable by him to Government or to a local authority.

#### **u/s 35. EXPULSION OF MEMBERS.**

(1) A society may, by resolution passed -[by a majority not less than three-fourths of the members entitled to vote who are present at a general meeting held for the purpose, expel a member for acts which are detrimental to the interest or proper working of the society : Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective under the foregoing sub-section shall be eligible for re-admission as a member of that society, or for admission as a member of any other society, for a period of one year from the date of such expulsion: Provided that, the Registrar may, on an application by the society and in special circumstances, sanction the re-admission or admission, within the said period, of any such member as a member of the said society or of any other society, as the case may be.

#### **Section 36 - Societies to be bodies corporate**

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

Caselaw-Eknath Vishnu v/s state of maharashtra1985(1)bom.c.r598.

### **Section 37 - Address of societies**

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

caselaw-bhaudas Krishna v/s liquidator,jalgoanpeoples consumers'co-op.society.

### **Section 38 - Register of members**

(1) Every society shall keep a register of its members and enter therein the following particulars, that is to say,--

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

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

- (2) The register shall be prima facie evidence of the date on which any person was admitted to membership, and of the date on which he ceased to be a member.

Caselaw-Adarsh grahanirman sanstha ltd .through chairman/secretary v/s Dr.k.k londhe,1992.

### **Section 39 - Copy of Act, etc. to be open to inspection**

Every society shall keep, at the registered address of the society, a copy of this Act and the rules and of its by-laws, and a list of members, open to inspection to the public, free of charge, during office hours or any hours fixed by the society therefor.

### **Section 40 - Admissibility of copy of entry or evidence**

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

(2) In the case of such societies, as the State Government may by general or special order direct, no officer of a society shall in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the contents of which can be proved under the foregoing sub-section, or to appear as a witness to prove the matters,

transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

### **Section 41 - Exemption from compulsory registration of instruments relating to shares and debentures of societies**

Nothing in clauses (b) and (c) of sub-section (I) of section 17 of the Indian Registration Act, 1908, shall apply--

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

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

(c) to any endorsement upon, or transfer of, any debentures issued by any society.

### **Section 42 - Power to exempt from taxation [power to refund]**

(1) The State Government, by notification in the Official Gazette may, in the case of any society or class of societies, [reduce or remit, whether prospectively or retrospectively, in the whole of the State or any part thereof]--

(a) the stamp duty with which, under any law relating to stamp duty for the time being in force, instruments executed by or on behalf of a society or by an officer or member thereof and relating to the business of the society, or any class of such instruments, or awards of the Registrar [or Co-operative Court] under this Act, are respectively chargeable,

(b) any fee payable by or on behalf of a society under the law relating to the registration of documents and to court-fees, for the time being in force, and

(c) any other tax or fee or duty (or any portion thereof) payable by or on behalf of a society under any law for the time being in force, which the State Government is competent to levy.

(2) The State Government may refund the amount of any tax, fee or duty paid in pursuance of any law referred to in sub-section (1) in such circumstances, to such extent and subject to such terms and conditions, if any, as the State Government may by order determine.

### **Section 43 - Restrictions on borrowings**

(1) A society shall receive deposits and loans from members and other persons, only to such extent, and under such conditions, as may be prescribed, or specified by the bylaws of the society.

(2) If in the opinion of the Registrar it is necessary so to do for ensuring safety of the funds obtained under sub -section ( 1), for proper utilisation of such funds in furtherance of the objects of the society or societies concerned and for keeping them within the borrowing limits as laid down in the rules and by-laws, the Registrar may, by general or special order, impose additional conditions on any society or class of societies, subject to which and the extent up to which such society or such class or societies may receive deposits, issue debentures or raise loans from any creditor other than a Central Bank.

[Provided that, nothing in this sub-section shall apply to a society which has not taken any financial assistance from the Government in the form of share capital, loan or guarantee and such society may, adopt its own borrowing policy having regard to its financial position. However, such society shall send to the Registrar, in writing, full details about its borrowing policy, and change, if any introduced in such policy at any time.]

Regulation of loan making policy (u/s.44).

(1) No society shall make a loan to any person other than a member, or on the security of its own shares, or on the security of any person who is not a member:

Provided that, with the special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in the foregoing sub-section, a society may make a loan to a depositor on the security of his deposit.

(3) If in the opinion of the State Government, it is necessary in the interest of the society or societies concerned to do so, the State Government may, by general or special order, prohibit,

restrict or regulate the lending of money by any society or class of societies on the security of any property: Provided that, the Registrar may, for ensuring safety of the funds of the society or societies concerned, for proper utilisation of such funds in furtherance of their objects and for keeping them within the loan making limits laid down in the rules and bye-laws, with the approval of the Apex Bank, by general or special order, regulate further the extent, conditions and manner of making loans by any societies to its members or other societies.

Limit on interest in certain cases( u/s.44A ).

Not with standing anything contained in any agreement or any law for the time being in force, a society (including a co-operative bank but excluding <sup>2</sup> [an Agriculture and Rural Development Bank] shall not for any loan (including rehabilitation loan but excluding long-term loan for irrigation or agricultural development purposes or loan exceeding rupees three thousand for non-agricultural or commercial purposes) given by it to any member (including a member-society) for a period not exceeding 15 years, whether the loan was given before or is given after the commencement of the Maharashtra Cooperative Societies (Second Amendment) Act, 1985, recover, in any manner whatsoever, on account of interest, a sum greater than the amount of the principal of the loan.]

Restrictions on other transactions with non members(u/s.45).

Save as is provided in this Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed.

Charge and set-off in respect of share or interest of members (u/s 46).

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

Provided that, no co-operative bank shall have a charge upon any sum invested with it by a society out of the provident fund established by it under section 71, or its reserve fund; and no co-operative bank shall be entitled to set off any such sum towards any debts due from the society.

Prior claim of society (u/s. 47).

(1) Notwithstanding anything in any other law for the time being in force, but subject to any prior claim of Government in respect of land revenue or any money recoverable as land revenue and to the provisions of sections 60 and 61 of the Code of Civil Procedure, 1908.

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

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

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

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

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

Explanation.--The prior claim of Government in respect of dues other than land revenue,

shall be restricted for the purpose of sub-section (1) to the assets created by a member out of the funds in respect of which the Government has a claim.

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

(3) Any transfer made in contravention of sub-section (2) shall be void.

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

(a) that every such member shall dispose of his produce through the society, and  
(b) that any member, who is found guilty of a breach of the by-laws or of any such contract, shall reimburse the society for any loss, determined in such manner as may be specified in the by-laws.

Section 48 - Charge on immovable property of members borrowing from certain societies

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

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

(b)any person who has taken a loan from a society of which he is a member, before the date of the coming into force of this Act, and who owns any land or has interest in land as a tenant, and who has not already made such a declaration before the a foresaid date shall,as soon as possible thereafter, make a declaration in the form and to the effect referred to in clause (a); and no such person shall, unless and until he has made such declaration, be entitled to exercise any right, as a member of the society;

(c)a declaration made under clause (a) or (b) may be varied at any time by a member, with the consent of the society in favour of which such charge is created;

(d)no member shall alienate the whole or any part of the land or interest therein, specified in the declaration made under clause(a) or (b) until the whole amount borrowed by the member together with interest thereon, is repaid in full:

Provided that, it shall be lawful to a member to execute a mortgage bond [in respect of such land or any part thereof in favour of [an agriculture and Rural Development Bank or of the State Government] under the Bombay Canal Rules made under the Bombay Irrigation Act,1879 or under any corresponding law for the time being in force for the supply of water from a canal to such land, or to any part thereof:

Provided further that, if a part of the amount borrowed by a member is paid [the society with the approval of the Central Bank to which it may be indebted] may, on an application from the member, release from the charge created under the declaration made under clause (a) or (b), such part of the movable or immovable property specified in the said declaration, as it may deem proper, with due regard to the security of the balance of the amount remaining outstanding from the member;

(e) any alienation made in contravention of the provisions of clause (d)shall be void;

(f)[Subject to all claims of the Government in respect of land revenue or any money recoverable as land revenue, and all claims of the [Agriculture and Rural Development Bank] in respect of its dues, in either case whether prior in time or subsequent,] and to the charge (if any) created under an award made under the Bombay Agricultural Debtors Relief Act, 1947 or any corresponding law for the time being in force in any part of the State, there shall be a first charge in favour of the society on the land or interest specified in the declaration made under clause (a) or (b), for and to extent of the dues owing [by the member] on account of the loan.

(g) and in particular, notwithstanding anything contained in <sup>8</sup> [Chapter X of the Maharashtra Land Revenue Code, 1966], the Record of Rights maintained there under shall also include the particulars of every charge on land or interest created under a declaration under clause (a) or (b), <sup>9</sup> [and also the particulars of extinction of such charge.]

Explanation.--For the purposes of this section, the expression "society" means--

- (i) any resource society, the majority of the members of which are agriculturists and the primary object of which is to obtain credit for its members, or
- (ii) any society, or any society of the class of societies, specified in this behalf by the State Government, by a general or special order.

Section 48A - Deductions from sale price of certain agricultural produce to meet society's dues.

(1) Where a loan has been advanced by any society in accordance with the last preceding section for the growing of any agricultural produce, or has been advanced by any other society which is [an Agriculture and Rural Development Bank] for any of the purposes enumerated in clause and if in either case any agricultural produce is tendered by the person who has taken any such loan] for sale at a collection centre under section 30A of the

Maharashtra Agricultural Produce Marketing(Regulation) Act, 1963, on any day then the price agreed to be paid thereof shall be paid by the purchaser to the tenderer after deducting the dues of 4 [the societies mentioned] aforesaid 5 [\* \* \* \* \*] and the amount so deducted shall be paid to the Market Committee constituted under that Act as provided in that section. On making payment to the tenderer and the Market Committee in the manner provided in the aforementioned section 30A the purchaser shall be discharged of his liability to pay the price to the tenderer.

[The amount of the deduction on account of loans advanced by societies shall 7 [be made at such rate as may be notified by the State Government in this behalf by general or special order, so, however, that such rate shall] not in the aggregate exceed the following percentage of the total amount to be paid by the purchaser as the price, namely:--

(i) if the produce tendered for sale is sugarcane 100 %

(ii) if the produce tendered for sale is 8 [cotton] 60 % (iii) in any other case 40 %.]

(2) The Market Committee on receiving the amount from the purchaser shall arrange to pay 9 [[to the societies concerned] the amount of dues from the tenderer within a reasonable time to be prescribed for the purpose. If the Market Committee does not pay such dues within 8 days, after the realisation of the cheque the Market Committee shall be liable to pay interest on such dues 10 [[to the societies concerned] at a rate prescribed in this behalf, such rate not being in excess of the maximum rate of interest fixed for unsecured loans under the Bombay Money- lenders Act, 1946.]

[(3) Where any such purchase is the State Government or an agent or officer appointed by that Government, or is a processing factory notified by the State Government in this behalf by

general or special order or an agent or officer appointed by such factory, the purchaser shall pay the price to the tenderer after deducting the dues of the societies mentioned aforesaid and pay the amount so deducted on behalf of the tenderer to the concerned societies direct: Provided that, where loans have been taken by the tenderer from more than one society, the purchaser may, keeping in view the extent of the dues, on account of financing of crop or seasonal finance or finance for other agricultural purposes, repayable during a period of not less than eighteen months and not more than five years and the extent of the dues of any [1] [Agriculture and Rural Land Development Bank] and subject to such directions (if any) as may be issued by the State Government from time to time determine the proportion in which the amount of deduction made shall be apportioned between the different lending societies.]

[Explanation.--For the purpose of this section, "purchaser" shall include any person who pays the purchase price of any agricultural produce tendered for sale, or by whom payment of such price is made, whether on his own account or as an agent or on behalf of another person.

#### **Fund of societies- (u/s.64-71)**

##### **Section 64 - Funds not to be divided**

No part of the funds, other than [the dividend equalisation or bonus equalisation funds as may be prescribed or] the net profits of a society, shall be paid by way of bonus or dividend, or otherwise distributed among its members:

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

##### **Ascertainment and appropriation of profits (u/s.65)**

(1) A society shall construct its relevant annual financial statements and arrive at its consequent net profit or loss in the manner prescribed.

(2) A society may appropriate [its net profits] to the reserve fund or any other fund to payment of dividends to members on their shares to the payment of bonus on the basis of support received from members and persons who are not members to its business, to payment of honoraria and towards any other purpose which may be specified in the rules or bye-laws: Provided that no part of the profits shall be appropriated except with the approval of the annual general meeting and in conformity with the Act, rules and bye-laws.

**Reserve fund (u/s66)**

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

(2) [Every society shall carry at least one-fourth of the net profits each year to the reserve fund;] and [such reserve fund may, subject to the rules made in this behalf, if any, be used] in the business of the society or may, subject to the provisions of section 70, be invested, as the State Government may by general or special order direct, or may, with the previous sanction of the State Government, be used in part for some public purpose likely to promote the objects of this Act, or for some such purpose of the State, or of local interest: [Provided that, the Registrar may, having regard to the financial position of any society or class of societies, fix the contribution to be made to the reserve fund under this subsection at a lower rate, but not lower than one-tenth of the net profits of the society or societies concerned.]

**Restrictions on dividend(u/s.67)**

No society shall pay divided to its members at a rate exceeding 15 per cent except with the prior sanction of the Registrar.

**Contribution to education fund of the State federal (u/s.68).**

(1) Every society shall contribute annually towards the education fund of the State federal society which may be notified in this behalf by the State Government at such rate as may be prescribed, and different rates may be prescribed for different societies or classes of societies depending on their financial condition.

(2) Every society shall pay its contributions to the said fund within three months after the close of the co-operative year. Any officer willfully failing to comply with the requirement of this section, shall be personally liable for making good the amount to the federal society notified as aforesaid.

(3) Where any society fails to pay the contribution within the period specified in subsection (2), the amount of contribution due shall be recoverable as an arrear of land revenue and on the State Federal Society making a report of such failure to the Registrar, the Registrar shall, after making such inquiry as he deems fit, grant a certificate for recovery of the amount due as an arrear of land revenue.

**Section 69 - Contribution to public purposes**

After providing for the reserve fund as provided in section 66, and for the educational funds as provided in section 68 a society may set aside a sum not exceeding twenty per cent of its net profits, and utilise, with the approval of such federal society as may be notified by the State Government in this behalf from time to time, the whole or part of such sum in contributing to any co-operative purpose, or to any charitable purpose within the meaning of section 2 of the Charitable Endowments Act, 1890, or to any other public purpose.

**Section 70 - Investment of funds**

A society shall invest or deposit its funds in one or more of the following:--

(a) in a Central Bank or the State Co-operative Bank;

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882;

(c) in the shares, or security bonds, or debentures, issued by any other society with limited liability and having the same classification to which it belongs:

Provided that, no society shall invest more than such proportion of its paid up share capital as may be prescribed:

Provided further that, the provisions of this clause shall not apply to any investment made by any agricultural credit society in any processing society based on agricultural produce.

(d) [in any co-operative bank (other than those referred to in clause (a) of this section) or banking company,] approved for this purpose by the Registrar, and on such conditions as the Registrar may from time to time impose;

(e) in any other permitted by the rules, or by general or special order of the State Government.

### **Section 71 - Employees' provident fund**

(1) Any society may establish for its employees a provident fund, into which shall be paid the contributions made by its employees and by the society. Such provident fund shall not be used in the business of the society, nor shall it form part of the assets of the society; but shall be invested under the provisions of the last preceding section, and shall be administered in the manner prescribed.

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

## **Management of societies.**

### **FINAL AUTHORITY OF SOCIETY(u/s72).**

Subject to the provisions in this Act and the rules, the final authority of authority every society shall vest in the general body of members in general meeting, summoned in such a manner as may be specified in the bye-laws. [Where the bye-laws of a society so provide, the general meeting shall be attended by delegates appointed by the members, and such meeting shall be deemed to be the meeting of the general body, for the purpose of exercising all the powers of the general body.]

### **COMMITTEES, ITS POWERS AND FUNCTIONS(u/s.73)**

(1) The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the bye-laws.

(1A) Notwithstanding anything contained in this Act, the rules made thereunder or in the bye-laws of any society or class of societies,— (a) the first general meeting of a society shall be convened within three months from the date of its registration to appoint a provisional committee and to transact other business as may be prescribed. The term of the members of such provisional committee shall be for a period of one year from the date on which it has been first appointed or till the date on which a regular committee is duly constituted in accordance with the provisions of the rules or bye-laws made under this Act; whichever is earlier; and all the members of such provisional committee shall vacate office on the date of expiry of such period or such constitution of the committee ; (b) notwithstanding anything contained in clause (a), the provisional committees for the Co-operative Sugar Factories and

Co-operative Spinning Mills and such other class of societies, as the State Government may, by special or general order, in the Official Gazette, specify in this behalf, shall be appointed by the State Government; and the members thereof shall hold office for a period of three years, which period may be extended by one year, at a time, so however that, the total period shall not exceed five years, in the aggregate : Provided that, the State Government shall have the power to change or reconstitute such committee or, any or all members thereof at its discretion even before the expiry of the period for which a member or members were nominated thereon : Provided further that, the member or members assuming office on such change or re-constitution of the committee shall hold office for the period for which, the provisional committee has been appointed under this clause ; (c) pending the first constitution of. the committee of a society, the provisional ; committee of the society shall exercise the powers and perform the duties of the committee of such society as provided in this Act, the rules and bye-laws and make necessary arrangements for holding election of the committee, before the expiry of its term] (2) Notwithstanding anything contained in any bye-laws of a society or class of societies, the Registrar may, having regard to the area of operation, subscribed share capital or turnover of a society or class of societies, by general or special order, published in the, Official Gazette, prescribe the maximum number of members on the committee of such society or class of societies, as may be specified in such order.] [(3) (a) Notwithstanding anything contained in this Act or the rules made thereunder or in the bye-laws of any society or any other law for the- time being in force, in a general election of members of the committee of a society, on the election of two-thirds or more number of members, the returning officer or any other officer or authority conducting such election shall within seven days after the declaration of results of the election of such members, or where such election is held before the date of commencement of the Maharashtra Co-operative Societies (Second Amendment)Act, 1986, and such number of members have been elected

but the committee has, Vii for whatever reason, not been so far constituted, forward their names together with of their permanent addresses to the Registrar, who shall, within fifteen days from the 1986. date of receipt thereof by him publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office; and upon such publication, the committee of the society shall be deemed to be duly constituted. In determining two thirds of the number of members, a fraction shall be ignored: Provided that, such publication shall, not be deemed— (i) to preclude the completion of election of the remaining members and the publication of their names and permanent addresses of the elected members likewise as and when they are available; or (ii) to affect the term of the office of members of the committee under the Act, (b) The names of the remaining, members, after they are elected (together with their permanent addresses), may also thereafter be likewise published by the-Registrar.

**ANNUAL GENERAL MEETING(u/s.75).**

(1) Every society shall, within a period of three months next after the dale general fixed for making up its accounts for the year under the rules for the time being in meeting force, call a general meeting of its members : Provided that, the Registrar may, by general or special order, extend the period for holding such meeting for a further period not exceeding three months : Provided further that if in the opinion of the Registrar, no such extension is necessary, or such meeting is not called by the society within the extended period (if any) granted by him, the Registrar or any person authorised, by him may call such meeting in the manner prescribed, and that meeting shall be deemed to b® a general meeting duly "[called by the society, and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who in the opinion of the Registrar, were responsible for the refusal or failure to convene the general

meeting]. (2) At every annual general meeting of a society, the committee shall lay before the society [a statement showing the details of the loans (if any) given to any of the members of the committee or any member of the family as defined in the Explanation [to clause (v) of sub-section (1) of section 73 FF of any committee member (including a society or firm or company of which such member or member of his family is a member, partner or director, as the case may be). and the details of repayment of loan made, during the last preceding year and the amount outstanding at the end of that year,] and] a balance sheet and profit and loss account for the year in the manner, prescribed by the Registrar by general or special order for any class or classes of societies. Explanation.—In the case of a society not carrying on business for profit, an income and expenditure account shall be placed before the society at the annual general meeting instead of profit and loss account; and all references to profit and loss account, and to "profit" or "loss" in this Act shall be construed in relation to such society as references, respectively, to the [excess of] income over expenditure", and "excess of expenditure over income." (3) There shall be attached to every balance sheet laid before the society, in general meeting, a report by its committee, With respect to (a) the state of the society's affairs; (b) the amounts, if any, which it proposes to carry to any reserve either in such balance sheet or any specific balance sheet; and (c) the amounts if any, which it recommends, should be paid by way of dividend, bonus, or honoraria to honorary workers. The committee's report shall also deal with any changes which have occurred during the year for which the accounts are made up, in the nature of the society's business. The committee's report shall be signed by its Chairman or any other member authorized to sign on behalf of the committee. (4) At every annual general meeting the balance sheet, the profit and loss account [the audit memorandum submitted by the auditor appointed under section 81] and the committee's report, shall be placed for adoption, and such other business will be transacted as may be laid down in the by-laws and of which due notice has been given. (5) If default is

made, in calling a general meeting within the period or, as the case may be, the extended period, prescribed under sub-section (1), or in complying with sub-section (2), (3) or (4), the Registrar may by order declare any officer or member of the committee whose duty it was to call such a meeting or comply with sub-section (2), (3) or (4) and who without reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified for being elected and for being any officer or member of the committee for such period not exceeding three years, as he may specify in such an order and if the officer is a servant of the society, impose a penalty on him to [pay] an amount not exceeding one hundred rupees. Before making an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him. (6) Any penalty imposed under sub-section (5) or under [section 76], may be recovered in the manner provided by the [Code of Criminal Procedure, 1973], for the recovery of fines imposed by a Magistrate, as if such fine was imposed by the Magistrate himself.

#### SPECIAL GENERAL MEETING. (u/s76)

- (1) A special general meeting may be called at any time by the Chairman special or by a majority of the committee and shall be called within one month— (i) on a requisition in writing of one-fifth of the members of the society of members the number of which is specified in the by-laws for the purpose, whichever is lower, or (ii) at the instance of the Registrar, or (iii) in the case of a society, which is a member of a federal society, at the instance of the committee of such federal society. (2) Where any officer or a member of the committee, whose duty it was to call such meeting, without reasonable excuse, fails to call such meeting, the Registrar may by order declare such officer or member disqualified, for being a member of the committee for such period not exceeding three years, as he may specify in such order; and if the officer is a

servant of the society, he may impose on him a penalty not exceeding one hundred rupees. Before making an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him. (3) If a special general meeting of a society is not called in accordance with the requisition referred to the Registrar or any person authorized by him in this behalf, shall have power to call such meeting, and that meeting shall be deemed to be a meeting duly called by the committee. (4) The Registrar shall have power to order that the expenditure incurred in calling a meeting under subsection (3) shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the meeting.

#### **AUDIT (u/s81).**

(1) (a) The Registrar shall audit, or cause to be audited, at least once in each co-operative year, by a person authorised by him by general or special order in writing in this behalf, the accounts of every society which has been given (financial assistance including guarantee by the State Government [or Government undertakings, from time to time, and the accounts of the apex societies. State and District Level Federal Societies, District Central Co-operative Banks, Co-operative Sugar Factories, Urban Co- operative Banks, Co-operative Spinning Mills, District and Tuluka Co-operative Sale and Purchase Organisations, and any such Society of class of Societies which the State Government may, from time to time, by notification in the Official Gazette specify.

(b) The societies other than the societies referred to in clause (a) shall arrange to get their accounts audited, at least once in each co-operative year, by an auditor from the panel of auditors maintained by the Registrar, or by a chartered accountant holding a certificate in co-operative audit issued by the Institute of Chartered Accountants of India.

Provided that, the Registrar may, for reasons to be recorded in writing, audit or cause to be audited accounts of any such societies of any year and at any time.]

(2) The audit under sub-section (1) shall include examination or verification of the following items, namely :—

- (i) overdues of debts, if any ;
- (ii) cash balance and securities and a valuation of the assets and liabilities of the society ;
- (iii) whether loan and advances and debts made by the society on the basis of security have been properly secured and the terms on which such loans and advances are made or debts are incurred are not prejudicial to the interest of the society;
- (iv) whether transactions of the society which are represented merely by book entries are not prejudicial to the interest of the society ;
- (v) whether loans and advances made by the society have been shown as deposits. (vi) whether personal expenses have been charged to revenue account ;
- (vii) whether the society has incurred any expenditure in furtherance of its objects.
- (viii) whether the society has properly utilised the financial assistance granted by Government or Government undertakings or financial institutions, for the purpose for which such assistance was granted;
- (ix) whether the society is properly carrying-out its objects and obligations towards member.

(2A) Where, in the opinion of the State Government, it is necessary in the public interest to do so in relation to any society or class of societies for ensuring management thereof in accordance with sound business principles or prudent commercial practices, the State Government may, by order, direct [that such society or class of societies shall prepare and maintain its accounts in the form determined by the State Government, from time to time and] that cost audit or performance audit or both, of such society or class of societies, as may be specified in the order, shall be conducted. (2B) Where any order is issued under sub-section (2A), the Registrar shall cause such audit of such society or class of societies to be conducted by a cost accountant who is a member of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959.]

(3)[a] The Registrar or the person authorised shall, for the purpose of audit, at all 'time have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to or in the custody of the society, and may summon any person in possession or responsible for the custody of any such books accounts, documents, papers, securities, cash or other properties to produce the same at any place at the head-quarters of the society or any branch thereof.

(b) The Registrar shall be competent to depute Flying Squad to a society or societies for examination of books, records, accounts, and such other papers and for verification of cash balance. The report of the Flying Squad shall be deemed to be an audit report for the purpose of taking further action, if necessary.

(c) The registrar or the person authorised by him in this behalf may carry out or cause to be carried out the test audit of the accounts of any society. The test audit shall include the examination of such items as maybe prescribed.

(4) Every person who is, or has at any time been, an officer or employee of the society, and every member and past member of the society, shall furnish such information in regard to the

transactions and working of the society as the Registrar, or the person authorised by him, may require.

(5) The auditor appointed under sub-section (1) shall have the right to receive all notices, and every communication relating to the annual general meeting of the society and to attend such meeting and to be heard there at, in respect of any part of the business with which he is concerned as auditor.

(5A) If, during the course of audit of any society, the auditor is satisfied that some books of accounts or other documents contain any incriminatory evidence against past or present officer or employee of the society the auditor shall immediately report the matter to the Registrar and, with previous permission of the Registrar, may impound the books or documents and give a receipt thereof to the society.

(5B) The auditor shall submit an audit memorandum duly signed by him to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society the said accounts give all information required by or under this Act and present the true and fair view of the finan(1) The Registrar may of his own motion, and shall on the application of one-third of the members of a society, himself or by a person duly authorized by him in writing in this behalf, hold an inquiry into the constitution, working and financial condition of a society.

(6) If it appears to the Registrar, on an application by a society or otherwise, that it is necessary or expedient to re-audit any accounts of the Society, the Registrar may by order provide for such re-audit and the provisions of this Act applicable to audit of accounts of the society shall apply to such re-audit.

**INQUIRY BY REGISTRAR(u/s.83).**

(2) Before holding any such inquiry on an application, the Registrar may [having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine,] towards the cost of the inquiry. If the allegations made in the application are substantially proved at the inquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85, after following the procedure laid down in that section, direct from whom and to what extent the cost of the inquiry should be recovered. If it proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall, be recovered » from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the State Government,]

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

(b) If any such person refuses to produce to the Registrar or any person authorised by him under sub- section (1), any book or papers which it is his duty under clause (a) to produce or to answer any question which is put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a), the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar, after hearing any statement which may be offered in defence, punish the defaulter with a penalty not exceeding five hundred rupees. Any sum imposed as penalty under this section shall, on the application by the Registrar or the person authorised by him, to a Magistrate having jurisdiction, be recoverable by the Magistrate as if it were a fine imposed by himself.

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

(5) It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted, and to hold the inquiry himself or entrust it to any other person as he deems fit.

#### **INSPECTION OF BOOKS OF INDEBTED SOCIETY(u/s.84).**

(1) On the application of a creditor of a society who,-- (a) satisfies the Registrar that the debt is a sum then due, and that he has, demanded payment thereof and has not received satisfaction within reasonable time, and (b) deposits with the Registrar such sum as the Registrar may require as security for the costs of any inspection of the books of the society, (

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

( 3) It shall be competent for the Registrar to withdraw any order of inspection from the officer to whom it is entrusted, and to inspect himself or entrust it to any other person as he deems fit.

( 4) The powers of inspection conferred on the Registrar by this section may be exercised by him of his own motion in respect of any society, which is indebted to Government or for which share capital (wholly or partly) is provided by Government or where any financial interest of Government is otherwise involved.

#### **Costs of inquiry and inspection(u/s 85)**

(1) Where an inquiry is held under section 83 or an inspection is made, under the last preceding section, the Registrar may apportion the costs, or such part of the costs, as he may think just between the society, the members or creditors demanding the inquiry or inspection, the officers or former officers and the members or past members or the estates of the deceased members of the society: Provided that,-- (a) no order of apportionment of the costs shall be made under this section unless the society or person or the legal representative of the deceased person liable to pay the costs thereunder, has or have been heard, or has or have had a reasonable opportunity of being heard; (b) the Registrar shall state in writing the grounds on which the costs are apportioned. (2) No expenditure from the funds of a society shall be incurred, for the purpose of defraying any costs in support of any appeal preferred by any person other than the society against an order made under the foregoing sub-section. Section.

#### **Recovery of costs(u/s.86).**

Any sum awarded by way of costs under the last preceding section, may be recovered, on an application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable resides or carries on business,

Registrar to bring defects disclosed in inquiry or inspection to notice of society(u/s.87).

(1) If the result of any inquiry held under section 83 or an inspection made under section 84 discloses any defects in the constitution, working or financial conditions or the books of society, the Registrar may bring such defects to the notice of the society. The Registrar may also make an order directing the society or its officers to take such action as may be specified in the order to remedy the defects, within the time specified therein.

(2) The society concerned may within sixty days from the date of any order made by the Registrar under the foregoing sub-section appeal against it to the State Government

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

(4) If a society fails to rectify the defects disclosed in the course of or as a result of an audit under section 81 or fails to rectify the defects as directed by the Registrar, and where no appeal has been made to the State Government within the time specified in the order, or where on the appeal so made the State Government has not annulled, reversed or modified the order, the Registrar may himself take steps to have the defects rectified, and may recover the costs from the officer or officers of the society who, in his opinion, has or have failed to rectify the defects.

#### **PROCEDURE FOR SETTLEMENT OF DISPUTES AND POWER OF CO-OPERATIVE COURT (u/s.94)**

(1) [The Co-operative Court], hearing a dispute under the last preceding section, shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of document by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(1A) Save as otherwise provided in this Act, every dispute in relation to any election shall be heard and decided by the Co-operative Court as expeditiously as possible and endeavour shall be made to conclude the hearing and decision within six months from, the date on which the dispute is filed before it.

(2) Except with the permission of [the Co-operative Court] no party shall be represented at the bearing of a dispute by a legal practitioner.

(3) (a) If [the Co-operative Court] is satisfied that a person, whether he be a member of the society or not, has acquired any interest in the property of a person who is a party to a dispute, [it may order], that the person who has acquired the interest in the property may, join as a party to the dispute; and any decision that may be passed on the reference by [the Co-operative Court] shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.

(b) Where a dispute has been instituted in the name of the wrong person, or where all the defendants have not been included, [the Co-operative Court] may, at any stage of the hearing of the dispute, if satisfied that the mistake was bona fide and any other person to be substituted or added as a plaintiff or a defendant, upon such terms as [it thinks just.]

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

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

(3A) In any case in which a dispute is decided by the Co-operative Court ex-parte against any person, he may apply to the Court, within thirty days from the date of the decision, to set it aside. If he satisfies the Court that there was sufficient cause for his failure to appear when the dispute was called and heard, the Court shall make an order setting aside the decision as against him, upon such terms as to costs, payment into Court or otherwise, as it thinks fit, and appoint a day for hearing and deciding the dispute so far as it relates to him.

(3) Save as otherwise directed by the State Government in any case or class of cases, every dispute shall be decided in such summary manner as may be prescribed and as expeditiously as possible.

## **Section 102 - Winding up**

(1) If the Registrar,--

(a) after an inquiry has been held under section 83 or an inspection has been made under section 84 or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of a society which--

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or members' deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the by laws.

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society and to the creditors of the society, if any of being heard, may issue a final order, vacating or confirming the interim order.

### **Section 103 - Appointment of Liquidators**

(1) When an interim order is passed under the last preceding section or a final order is passed under that section, for the winding up of a society, the Registrar may in accordance with rules, appoint a person to be Liquidator of the society, and fix his remuneration.

(2) On issue of the interim order, the officers of the society shall hand over to the Liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled and, of all books, records and other documents pertaining to the business of the society and, shall have no access to any of them

(3) When a final order is passed confirming the interim order, the officers of the society shall vacate their offices, and while the winding up order remains in force the general body of the society shall not exercise any powers.

(4) The person appointed under this section as Liquidator shall, subject to the general control of the Registrar, exercise all or any of the powers mentioned in section 105. The Registrar may remove such person and appoint another in his place, without assigning any reason.

(5) The whole of the assets of the society shall on the appointment of Liquidator under this section vest in such Liquidator, and notwithstanding anything contained in any law for the time being in force, if any immovable property is held by a Liquidator on behalf of the

society, the title over the land shall be complete as soon as the mutation of the name of his office is effected, and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.

(6) In the event of the interim order being vacated, the person appointed as Liquidator shall hand over the property, effects and actionable claims and books, records and other documents of the society to the officers who had delivered the same to him. The acts done, and the proceedings taken by Liquidator, shall be binding on the society, and such proceedings shall, after the interim order has been cancelled under the preceding section, be continued by the officers of the society.

#### **Section 104 - Appeal against order of winding up**

[(1) The committee, or any member of the society, ordered to be wound up may prefer an appeal against the final order of winding up within two months from the date of the issue of the order made under section 102, --

(a) if made by the Registrar, or the Special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government;

(b) if made by any person other than the Registrar, or special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar;

Provided that, no appeal shall lie against an order, issued under sub -clause (i), (ii) or (iii) of clause (c) of sub-section (1) of section 102.]

(2) No appeal from a member under this section shall be entertained unless it is accompanied by such sum as security for the costs of hearing the appeal, as may be prescribed.

#### **Section 105 - Powers of Liquidator**

[(1)] The Liquidator appointed under section 103 shall have power, subject to the rules and the general supervision, control and direction of the Registrar, --

(a) to institute and defend any suit and other legal proceedings, civil or criminal, on behalf of the society, in the name of his office;

(b) to carry on the business of the society, so far as may be necessary for the beneficial winding up of the same;

(c) to sell immovable and movable property and actionable claims of the society by public auction or private contract, with power to transfer the whole or part thereof to any person or body corporate, or sell the same in parcels;

[(c-i) to transfer by sale assets valued at market price to a society registered with similar objects or to Government undertaking which carries on the same business as of the society under liquidation;

(c-ii) to lease to other societies or to Government undertaking, with prior approval of the Registrar, the property of the society to run the same business as that of the society under liquidation;]

(d) to raise, on the security of the assets of the society, any money required;

(e) to investigate all claims against the society and, subject to the provisions of the Act, to decide questions of, priority arising out of such claims, and to pay any class or classes of creditors in full or rateable according to the amount of such debts, the surplus being applied in payment of interest from the date of liquidation at a rate to be approved by the Registrar, but not, exceeding the contract rates;

(f) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claims, present or future, whereby the society may be rendered liable;

(g) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person

apprehending liability to the society, and all questions in any way relating to or affecting the assets or the winding up of the society, on such terms as may be agreed, and take any security for the discharge of any such call, liability, debt, or claim, and give a complete discharge in respect thereof;

(h) to determine, from time to time, after giving an opportunity to answer the claim, the contribution to be made or remaining to be made by the members or past members or by the estates, nominees, heir or legal representatives of deceased members, or by any officer, past officer or the assets of the society, such contribution being inclusive of debts due from such members or officers;

(i) to issue requisitions under section 98.;

[(j) to refer or to get referred any dispute to the Co-operative Court for decision;]

(k) to determine by what persons and in what proportion the costs of the liquidation shall be borne;

(l) to fix the time or times within which the creditors shall prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved;

(m) to summon and enforce the attendance of witnesses and to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the society by the same means and in the same manner as is provided in the case of a Civil Court under Code of Civil Procedure, 1908;

(n) to do all acts, and to execute in the name and on behalf of the society, all deeds, receipts and other documents as may be necessary to such winding up;

(o) to take such action as may be necessary under section 19 with the prior approval of the Registrar, if there is reason to believe that the society can be re constituted.

<sup>4</sup> (2) Notwithstanding anything contained in sub-section (1), the Liquidator shall not have the right to vote on behalf of the society in liquidation, at the election of the members of the committee or of officers of any other society.

### **Section 106 - Effect of order of winding up**

After expiry of the period for appeal against the order made under sub-section (1) of section 102 or where the appeal has been dismissed, the order for winding up shall be effective and shall operate in favour of all the creditors and of all the contributories of the society, as if it had been made on the joint petition of creditors and contributories. When a winding up order becomes effective, the Liquidator shall proceed to realise the assets of the society by sale or otherwise, and no dispute shall be commenced or if pending at the date of the winding up order, shall be proceeded with, against the society, except by leave of the Registrar and subject to such terms as the Registrar may impose. The Registrar, may of his own motion, however, entertain or dispose of any dispute by or against the society.

### **Section 107 - Bar of suit in winding up and dissolution matters**

Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act; and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator, except by leave of the Registrar, and subject to such terms as he may impose:

Provided that, where the winding up order is cancelled, the provisions of this section shall

cease to operate so far as the liability of the society and of the members thereof to be sued is concerned, but they shall continue to apply to the person who acted as Liquidator.

### **Section 108 - Audit of Liquidator's accounts**

(1) The Liquidator, shall, during his tenure of office, at such times as may be prescribed, but not less than twice each year, present to the Registrar an account in the prescribed form of his receipts and payments as Liquidator. The Registrar shall cause the accounts to be audited in such manner as he thinks fit; and for the purpose of audit, the Liquidator shall furnish the Registrar with such vouchers and information as he, or the person appointed by him, may require.

(2) The Liquidator shall cause a summary of audited accounts to be prepared, and shall send a copy of such summary to every contributory.

(3) The Liquidator shall pay such fees as the Registrar may direct, for the audit of the accounts and books kept by him in the manner prescribed.

(4) The Liquidator shall be held liable for any irregularities which might be discovered in the course or as a result, of audit in respect of transactions subsequent to his taking over the affairs of the society, and may be proceeded against as if it were an act against which action could be taken u/s88.

Provided that, no such action shall be taken unless the irregularities have caused or are likely to cause loss to the society, and have occurred due to gross negligence or want or omission, in carrying out the duties and functions.

#### Section 109 - Termination of liquidation proceedings

(1) The winding up proceedings of a society shall be closed [as soon as practicable within six years] from the date [the Liquidator takes over the custody or control of all the property, effects and actionable claims to which the society is or appears to be entitled and of all books, records and other documents pertaining to the business of the society, under sub-section

(2) of section 103], unless the period is extended by the Registrar:

Provided that, the Registrar shall not grant any extension for a period exceeding one year at a time and four years in the aggregate, and shall, immediately after the expiry of [ten years] from the date [aforesaid], deem that the liquidation proceedings have been terminated, and pass an order terminating the liquidation proceedings.

[Explanation.-- In the case of a society which is under liquidation at the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1985 the period of six years shall be deemed to have commenced from the date on which the Liquidator took over the custody or control as aforesaid].

(2) Notwithstanding anything contained in the foregoing sub -section, the Registrar shall terminate the liquidation proceedings on receipt of the final report from the Liquidator. The final report of the Liquidator shall state that the liquidation proceedings of the society have been closed, and how the winding up has been conducted and the property of and the claims of the society have been disposed of, and shall include a statement showing a summary of the account of the winding up including the cost of liquidation, the amount (if any), standing to

the credit of the society in liquidation, after paying of its liabilities including the share or interest of members, and suggest how the surplus should be utilised.

(3) The Registrar, on receipt of the final report from the Liquidator, shall direct the Liquidator to convene a general meeting of the members of the society for recording his final report.

### **Section 110 - Disposal of surplus assets**

The surplus assets, as shown in the final report of the Liquidator of a society which has been wound up, may either be divided by the Registrar, with the previous sanction of the State Government, amongst its members in such manner as may be prescribed or be devoted to any object or objects provided in the bye-laws of the society, if they specify that such a surplus shall be utilised for the particular purpose or may be utilised for both the purpose. Where the surplus is not so divided amongst the members and the society has no such by-laws, the surplus shall vest in the Registrar, who shall hold it in trust and shall transfer it to the reserve fund of a new society registered with a similar object, and serving more or less an area which the society, to which the surplus belonged was serving:

Provided that, where no such society exists or is registered within three years of the cancellation of the society whose surplus is vested in the Registrar, Registrar may distribute the surplus, in the manner he thinks best, amongst any or all of the following:--

- (a) an object of public utility and of local interest as may be recommended by the members in general meeting held under the preceding section;
- (b) a federal society with similar objects to which the cancelled society was eligible for affiliation or, where no federal society exists, the State federal society which may be notified in this behalf by the State Government; and

(c) any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

### **Section 145 - Prohibition of use of the words**

(1) No person, other than a society registered, or deemed to be registered, under this Act, and a person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into force, shall without the sanction of the date on which this Act comes into force, shall without the sanction of the State Government, function, trade or carry on business under any name or title of which the word "co-operative", or its equivalent in any Indian language, forms part.

(2) Every person contravening the provisions of the foregoing sub-section shall, on conviction, be punished with fine which may extend to five hundred rupees.

### **offences and penaulties:-**

#### **Section 146 - Offences**

It shall be a offence under this Act, if--

(a) any member of a society transfers any property or interest in property in contravention of or any person knowingly acquires, or abets in the acquisition of, such property;

(b) any employer every director, manager, secretary or other officer or agent acting on behalf of such employer who, without sufficient cause, fails to comply with or

(c) a committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by section70 or

(d) any person, collecting share money for a society in formation, does not within a reasonable period deposit the same in the State Co-operative Bank, or a Central Cooperative Bank, or an Urban Co-operative Bank or a Postal Savings Bank; or

(e) any person, collecting the share money for a society in formation, makes use of the funds so raised for conducting any business or trading in the name of society to be registered or otherwise; or

(e-1) [any person, who collects share money or any other sum by misrepresentation to the members or prospective members in the name of the society to be registered, or after registration of a society by such misrepresentation, or otherwise; or

(e-2) any person, knowingly gives a false certificate in whatever form showing that a person is or is not a "defaulter" within the meaning he of that expression in the Explanation to **clause (i) sub section (1) of section 73ff.**

(f) a committee of a society, or an officer or member thereof, fails to comply with the provisions of **sub section (20),(3) or(4) u/s.75** or

(g) any officer or member of a society who is in possession of information, books and records, fails to furnish such information or produce books and papers, or give assistance to a person appointed or authorised by the State Government or the Registrar under section 78, 81, 84, 94 or 103; or

(h) any officer of a society fails to hand over the custody of books, records, cash, security and other property belonging to the society of which he is an officer, to a person appointed under section 78 or 103; or

(i) a committee of a society with a working capital of fifty thousand rupees or more, or any officer or a member thereof, fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything which the committee, officer or member is by this Act required to give, send, do or allow to be done or comply with orders made under section 79; or

(j) a committee of a society or an officer or member thereof wilfully neglects or refuses to do any act, or to furnish any information required for the purposes of this Act by the Registrar, or other person duly authorised by him in writing in this behalf; or

(k) a committee of a society, or an officer or member thereof, wilfully makes a false return, or furnishes false information, or fails to maintain proper accounts; or

(l) any officer, member agent or servant of a society fails to comply with the requirements of sub-section (4) of section 81; or

(m) any officer or a member of a society wilfully fails to comply with any decision, award or order passed under section [96]; or

(n) a member of a society fraudulently disposes of property over which the society has a prior claim, or a member or officer or employee or any person disposes of his property by sale, transfer, mortgage, gift or otherwise, with the fraudulent intention of evading the dues of the society; or

(o) any officer of a society wilfully recommends or sanctions for his own personal use or benefit or for the use or benefit of a person in whom he is interested, a loan in the name of any other person; or

(p) any officer or member of a society destroys, mutilates, tampers with, or otherwise alters, falsifies or secretes or is privy to the destruction, mutilation, alteration, falsification or secreting of any books, papers or securities or makes, or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the society; or

(q) any officer or member of a society or any person does any act declared by the rules to be an offence.

Explanation.--For the purpose of this section, an officer or a member referred to in the section shall include past officer and past member, as the case may be.

### **Section 147 - Punishments for offences.**

Every society, officer or past officer, member or past member, employee or past employee of a society, or any other person, who commits an offence under section 146 shall, on conviction, be punished,--

(a) if it is an offence under clause (a) of that section, with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

(b) if it is an offence under clause (b) of that section, with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(c) if it is an offence under clause (c) of that section, with fine which may extend to five hundred rupees;

(d) if it is an offence under clause (e) of that section, with fine which may extend to five hundred rupees;

(e) if it is an offence under clause (e) of that section, with imprisonment for a term which may extend to one year, or with fine, or with both;

[(e-1) if it is an offence under clause (e-1) of that section, with imprisonment of a term which may be extend to three years, or with fine which may extend to five thousand rupees, or with both;

(e-2) if it is an offence under clause (e-2) of that section, with imprisonment of a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;].

(f) if it is an offence under clause (f) of that section, with fine which may extend to two hundred an fifty rupees;

(g) if it is an offence under clause (g) of that section, with fine which may extend to five hundred rupees;

(h) if it is an offence under clause (h) of that section, with fine which may extend to five hundred rupees;

(i) if it is an offence under clause (i) of that section, with fine which may extend to five hundred rupees;

(j) if it is an offence under clause (j) of that section, with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

(k) if it is an offence under clause (k) of that section, with imprisonment for a term which may extend to one year, or with fine which may to one year, or with fine which may extend to two thousand rupees, or with both;

(l) if it is an offence under clause (l) of that section, with fine which may extend to one hundred rupees;

(m) if it is an offence under clause (m) of that section, with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both;

(n) if it is an offence under clause (n) of that section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

(p) if it is an offence under clause (p) of that section, with imprisonment for a term which may extend to three years, or with fine, or with both;

(q) if it is an offence under clause (q) of that section, with fine which may extend to two hundred and fifty rupees.

### **Section 148 - Cognizance of offences**

(1) No court inferior to that of a [Metropolitan Magistrate or a Judicial Magistrate of the First Class], shall try and offence under this Act.

(3) No prosecution under this Act shall be lodged, except with the previous sanction of the Registrar.

**. Section 148A - Contempt of Co-operative Courts and of Co-operative Appellate Court**

(1) If any person--

(a) when ordered by a Co-operative Court or the Co-operative Appellate Court to produce or deliver up any document or to furnish information, being legally bound so to do,

intentionally, omits to do so; or

(b) when required by any such Court to bind himself by an oath or affirmation to state the truth, refuses to do so;

(c) being legally bound to state the truth on any subject to any such Court, refuses to answer any question demanded of him touching such subject by the Court; or

(d) intentionally offers any insult or causes any interruption to any such Court at any stage of its judicial proceeding;

he shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) If any person refuses to sign any statement made by him, when required to do so by a Co-operative Court or the Co-operative Appellate Court, he shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(3) If any offence under sub-section (1) or (2) is committed in the view or presence of a Court concerned, the said Court may, after recording the facts constituting the offence and the statement of the accused as provided in the [Code of Criminal Procedure, 1973], forward the

case to a Magistrate having jurisdiction to try the same, and may require security to be given or the appearance of the accused person before such Magistrate or, if sufficient security is not given, shall forward such person in custody to such Magistrate. The Magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the [Code of Criminal Procedure, 1973].

(4) If any person commits any act or publishes any writing which is calculated to improperly influence a Co-operative Court or the Co-operative Appellate Court to bring any such Court or a member thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of the said authorities, such person shall be deemed to be guilty of contempt of the said authorities.

(5) In the case of contempt of itself, the Co-operative Appellate Court shall record the facts constituting such contempt, and make a report in that behalf to the High Court

(6) In the case of contempt of a Co-operative Court, the Co-operative Court shall record the facts constituting such contempt, and make a report in that behalf to the Cooperative Appellate Court, and thereupon, that Court may, if it considers it expedient to do so, forward the report to the High Court.

(7) When any intimation or report in respect of any contempt is received by the High Court under sub-section (5) or (6), the High Court shall deal with such contempt as if it were contempt of itself, and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself.

## Section 149 to 154

### **Section 149 - Maharashtra State Co-operative [Appellate Court]**

(1) A Court to be called the Maharashtra State Co-operative Appellate Court is hereby constituted to exercise the powers and to discharge the functions conferred on it by or under this Act.

(2) The Co-operative Appellate Court] shall consist of the President, [and such number of other members as the State Government may from time to time consider necessary, who possess] such qualifications as may be prescribed. [The President and other members shall hold office for such period or such different periods as may be prescribed.

(3) Any vacancy in the membership of the [Co-operative Appellate Court] shall be filled by the State Government.

(4) All or any of the powers and functions of the Co-operative Appellate Court may be exercised and discharged by any of its members sitting singly or in Benches, as may be determined by the President.

(5) Such Benches shall consist of two or more members.

(6) Where a matter is heard [by an odd number of members constituting a Bench] the opinion of the majority shall prevail, and the decision shall be in accordance with the opinion of the majority. Where a matter is heard by an even number of members the opinion of the president shall prevail; and in other cases the matter shall be referred for hearing to the President, and shall be decided in accordance with his decision.

(7) Subject to the previous sanction of the State Government, the [Co-operative Appellate Court] shall frame regulations, consistent with provisions of this Act and rules made thereunder, for regulating its procedure and the disposal of its business.

(8) The regulations made under sub-section (7), shall be published in the official Gazette.

(9) The [Co-operative Appellate Court] may call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case, it appears to the [Co-operative Appellate Court] that any such decision or order should be modified, annulled or reversed, the [Co-operative Appellate Court] may pass such order thereon as it may deem just.

(10) Where an appeal or application is made to the court pending the decision of the appellants as may be necessary for the ends of justice, or to prevent the abuse of the process of the <sup>3</sup> [Co-operative Appellate Court].

(11) An order passed in appeal, or in revision under sub-section (9), or in review under section 150 by the [Co-operative Appellate Court], shall be final and conclusive, and shall be not called in question in any Civil or Revenue Court.

(12) (a) The President and other members of the Maharashtra State Co-operative Tribunal functioning immediately before the commencement of the Maharashtra Co-operative Societies (Third Amendment) Act, 1973, shall be deemed, respectively to be the President and other Members of the Maharashtra State Co-operative Appellate Court constituted for the purpose of this Act; and all appeals and other proceedings pending before the said Tribunal shall be heard and disposed of by the said Court from the stage they reached before such commencement.

(b) Anything done or any action taken (including any orders passed or regulations made) by the said Tribunal, shall be deemed to have been done or taken by the said Court and shall continue in operation until, duly modified or annulled.

(c) Any reference to the said Tribunal in any law or instrument, for the time being in force, shall, with effect from the commencement of the Maharashtra Co-operative Societies (Third Amendment) Act, 1973, be construed as a reference to the said Court.

### **Section 150 - Review of orders of [Co-operative Appellate Court]**

(1) The [Co-operative Appellate Court] may, either on the application of the Registrar, or on the application of any party interested, review its own order in any case, and pass in reference thereto such order as it thinks Just:

Provided that, no such application made by the party interested shall be entertained, unless the [Co-operative Appellate Court] is satisfied that there has been the discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason:

Provided further that, no such order shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such order.

(2) An application for review under the foregoing sub-section by any party, shall be made within ninety days from date of the communication of the order of the [Co-operative Appellate Court].

### **Section 151 - [Co-operative Appellate Court] to have power of Civil Court**

(1) In exercising the functions conferred on it by or under this Act, the [Co-operative Appellate Court] shall have the same powers as are vested in a Court in respect of,--

- (a) proof of facts by affidavit,
- (b) summoning and enforcing the attendance of any person and examining him on oath,
- (c) compelling discovery or the production of documents, and
- (d) issuing commissions for the examination of witnesses.

(2) In the case of any such affidavit, any officer appointed by the [Co-operative Appellate Court] in this behalf may administer the oath to the deponent.

## **Section 152 - Appeals**

(1) An appeal against an order or decision<sup>1</sup> [under sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21 21 A, 29, 35, 77 A, [ 78, 79, 88, and 105 including an order for paying compensation to a society] shall lie,--

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

(2) Where an appeal against an order or decision to the Co-operative Appellate Court has been provided under this Act, it shall lie to the Co-operative Appellate Court

(3) An appeal under sub-section (1) or (2) shall be filed within two months of the date of the communication of the order or decision.

(4) Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions.

## **Section 152A - Appeal against rejection of nomination paper at election**

(1) Notwithstanding anything contained in this Act or the rules or the bye-laws made thereunder, a person aggrieved by the rejection of nomination of a candidate at the election of a committee of any society, other than a society specified by or under section 73G may file an appeal to the Registrar within three days of the date of rejection of the nomination. The Registrar shall dispose of such appeal within ten days of the date of receipt of such appeal and the decision of the Registrar in appeal shall be final and no further appeal or revision

shall lie against the decision of the Registrar in such appeal. [In the case of a society specified by or under , an appeal shall lie to the Divisional Commissioner who shall dispose of such appeal within ten days from the date of receipt of such appeal and the decision shall lie against the decision of the Divisional Commissioner in such appeal.]

(2) Notwithstanding anything contained in this Act or the rules or the bye-laws made thereunder, the list of validly nominated candidates shall be subject to the decision of any appeal filed under sub-section (1), and the period between the date of scrutiny of nomination papers and the last date of the withdrawal of candidatures shall not be less than fifteen days.

(3) Section 153 - Extension of period of limitation by appellate authority in certain cases

(1) In all cases in which it is provided under this Act that an appeal may be filed against any decision or order within a specified period, the appellate authority may admit an appeal after the expiry of such period, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

#### **Section 154 - Revisionary powers of State Government and Registrar**

(1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed,

the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A) [No application for revision shall be entertained against the recovery certificate issued by the Registrar under the applicant deposits with the concerned society, fifty per cent. amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.]



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## **The Maharashtra,ownership flats(Regulation, promotion, construction and sale management and transfer act 1963.**

U/S 2- Definition.

(a) "Competent Authority" means a Competent Authority appointed under section (5A)

(a-1) "Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, show-room or shop or godown [or for carrying on any industry or business] (and includes a garage), the premises forming part of a building [and includes an apartment.

*Explanation.* - Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate

### 1) Flat

The MOFA defines the term to inculcate within itself:-

\* A separate and self-contained premises;

\* Which is used or intended to be used as a Residence, office, showroom, shop, godown, carrying on of any industry or business including a garage;

\* And the premises forms part of a building.

The term flat also includes an apartment. The Explanation to the section provides that even if a provision is made for sanitary, washing, bathing or other convenience as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained.

All the criteria of this definition must be fulfilled to be able to apply the provisions of MOFA, and it is a misconception that it applies only to residential premises.

(b) "prescribed" means prescribed by rules made under this Act;

(c) "promoter" means a person and includes a partnership firm or a body or association of persons, whether registered or not] who constructs or causes to be constructed a block or building of flats, [or apartments] for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;

## PROMOTER-

The promoter includes as per this act:-

\*A person,

\*A Partnership Firm,

\*A body or association of persons whether registered or not

And who constructs or causes to be constructed

\*A block or buildings of flats or apartments

\* For selling all or any of them to a Company, Co-operative Society, Association of Persons

All the criteria of this definition must be fulfilled to construct a promoter, and the term also includes his assigns and thus, if a person assigns his interests in the land to another person then the assignee would become a promoter. If the builder and the person selling the flats are different, then both of them are promoters. It happens many times that the builder who builds the flats gives the contract to an advertising agency to promote the flats than in this case both of them are promoters.

(d) "Registrar" means the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, (Maharashtra XXIV of 1961) or, as the case may be, in the Companies Act, 1956;

(e) "to construct a block or building of flats [or apartments]" includes to convert a building or part thereof into flats [or apartments];

[(f) the expressions, "apartment" and "apartment owner" shall have the meanings, respectively assigned to them in the Maharashtra Apartment Ownership Act, 1970.]

### **U/S 3 General liabilities of promoter.**

3. (1) Notwithstanding anything in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall-

(a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing, [and having been duly entered in the Property card or extract of Village Forms VI or VII and XII or any other relevant revenue record;].

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

(c) give inspection on seven day's notice or demand, of the plans and specifications of the building built or to be built on the land; such plans and specifications, having been approved by the local authority which he is required so to do under any law for the time being in force;

(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;

(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respect the design and the materials to be used in the construction of the building, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the buildings;

(f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);

(g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken;

(h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats;

(i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority);

(j) make a full and true disclosure of all outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);

(k) make a full and true disclosure of such other information and documents in such manner as may be prescribed; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor;

(l) display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c), at the site and permit inspection thereof to persons intending to take or taking one or more flats;

(m) when the flats are advertised for sale, disclose *inter alia* in the advertisement the following particulars, namely

(i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;

(ii) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which the instalments thereof may be paid;

(iii) the nature, extent and description of the common areas and facilities; and

(iv) the nature, extent and description of limited common areas and facilities, if any.

[(n) sell flat on the basis of the carpet area only:

Provided that, the promoter may separately charge for the common areas and facilities in proportion 'to the carpet area of the flat'.

*Explanation.* - For the purposes of this clause, the carpet area of the flat shall include the area of the balcony of such flat.]

#### **U/S 5A. Competent Authority -**

The State Government may, by notification in the *Official Gazette*, appoint an officer, not below the rank of the District Deputy Registrar of Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under Sections 5, 10 and 11 of this Act. not affect the right and interest of such persons.

#### **U/S 10- Promoter to take steps for formation of co-operative society or company.- (1)**

As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

Provided that, if the promoter fail within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society:

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants request and giving the concerned promoter a reasonable opportunity of being heard.

(2) If any property consisting of building or buildings is constructed or to be constructed [and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing and registering a Declaration as provided by that

Act] then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

#### **U/S. 12 General liabilities of flat-taker –**

(1) Every person who has executed an agreement to take a flat shall pay at the proper time and place the price, his proportionate share of the municipal taxes, water and electricity charges, ground rent (if any) and other public charges in accordance with his agreement with the promoter; and where a co-operative society or company of persons taking the flats is to be constituted, co-operate in the formation of such society or company, as the case may be.

(2) Any person who has executed an agreement to take a flat and who, without reasonable excuse, fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to two thousand rupees.

#### **U/S.13 - Offences by promoters and consequences on conviction -**

(1) Any promoter who, without reasonable excuse, fails to comply with or contravenes, the provisions of section 3, 4, 5 [save as provided in sub-section (2) of this section], 10 or 11 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine, or with both.

(2) Any promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction, be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Any promoter who, without reasonable excuse, fails to comply with or, contravenes, any other provision of this Act or of any rule made thereunder, shall, if no other penalty is expressly provided for the offence, be punished, on conviction, [with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees or with both.]

(4) When any promoter is convicted of any offence under this Act, except offence under Section 12A, such promoter shall be disqualified from undertaking construction of flats for a period of five years from the date of such conviction. However, such disqualification shall not affect the permission for construction of flats already granted before incurring such disqualification and shall also not debar the promoter from seeking or being granted any additional requisite permissions which may be required from the concerned local authorities for completion of constructions already undertaken by him.

(5) The Competent Authority shall, on such conviction of a promoter under this Act, subject to the orders of the appellate court, if any, or after the 'expiry of the appeal period, forward

the name of the convicted promoter to the local authorities under his jurisdiction, with a direction that such promoter shall not be granted permission under the 'relevant law for undertaking any construction of flats during the period of such disqualification, specifically mentioning such period.

(6) On receiving such intimation from the Competent Authority, notwithstanding anything contained in any other law for the time being in force, the concerned local authority shall not grant such promoter any permission or licence under the relevant law for construction of flats for a period for which the promoter is so disqualified.]

### **13. Offences by promoters and consequences on conviction.**

(1) Any promoter who, without reasonable excuse, fails to comply with or contravenes, the provisions of section 3, 4, 5 [save as provided in sub-section (2) of this section], 10 or 11 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine, or with both.

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(6) On receiving such intimation from the Competent Authority, notwithstanding anything contained in any other law for the time being in force, the concerned local authority shall not

grant such promoter any permission or licence under the relevant law for construction of flats for a period for which the promoter is so disqualified.

## **\*Maharashtra Apartment ownership Act 1970\***

### **U/S.3- Definition of Apartment:**

**(a) Apartment.. -**

(b) As per the Maharashtra Apartment Ownership Act 1970, apartment means any part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residence, office, practice of any profession, or for carrying on any occupation, trade or business or for any other type of independent use and with a direct exit to public street, road or highway or to a common area leading to such street, road or highway.

**(c) "apartment owner"**

(d) means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration;

**(c) "apartment number."**

means the number, letter, or combination thereof designating the apartment in the Declaration;

**(e) "Association of Apartment Owners."**

(f) means all of the apartment owners acting as a group in accordance with the by-laws and Declaration;

**(e) "building."**

Means a building containing five or more apartments, or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings, and comprising a part of the property;

**(g) "common areas and facilities.",**

(h) unless otherwise provided in the Declaration or lawful amendments thereto, means-

(1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of the buildings;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces;

(4) the premises for the lodging of janitors or persons employed for the management of the property;

(5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating;

(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(7) such community and commercial facilities as may be provided in the Declaration; and

(8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

**(g) "common expenses" means,-**

(1) all sums lawfully assessed against the apartment owners by the Association of Apartments Owners;

(2) expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(3) expenses agreed upon as common expenses by the Association of Apartment Owners;

(4) expenses declared as common expenses by the provisions of this Act, or by the Declaration or the bye-laws;

**(h) "common profits."**

means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;

**[(i) "Competent authority."-**

(1) in relation to buildings constructed or to be constructed by the Housing and Area Development Authority established under section 3, or a Housing and Area Development Board established under section 18 of the Maharashtra Housing and Area Development Act, 1976, or by a company, means the Deputy Chief Engineer or the officer referred to in sub-section (2) of section 7 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963; and

(2) in any other case, means the Registrar of Co-operative Societies as defined in the Maharashtra Co-operative Societies Act, 1960;]

**(j) "Declaration."**

means the instrument by which the property is submitted to the provisions of this Act, [as provided by section 2], and such Declaration as from time to time may be lawfully amended.

**(m) "joint family."**

means an undivided Hindu family, and in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence;

**(n) "limited common areas and facilities."**

means those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

**(o) "majority" or "majority of apartment owners."**

means the apartment owners with 51 per cent, or more of the votes in accordance with the percentages assigned in the Declaration to the apartments for voting purposes;

**(p) "person."**

includes a joint family;

**(q) "prescribed."**

means prescribed by rules made under this Act;

(r) "property" means the land, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been, or are intended to be, submitted to the provisions of this Act.

**Compliance with covenants bye-laws and administrative provisions.(U/S.7) –**

Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his apartment. Failure to comply with any of the same shall be a ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the Manager or Board of Managers on behalf of the Association of Apartment Owners, or, in a proper case, by an aggrieved apartment owner

**Explain details Common profit and expenses.(u/s.10)**

Empowers apartment owners to fully own the apartment, including the proportional share in the undivided common areas and facilities. It also makes the apartment transferable and heritable, enabling apartment owners to secure a mortgage on the apartment. This, of course, proves beneficial to both the apartment owner and the builder, who is able to use the freed up capital to start new constructions.

Besides all this, the Act helps apartment owners come together and form associations, which in turn take responsibility for ensuring residents' welfare and promoting their rights.

Although unregistered apartment owners' associations also exist, it's always wiser to register your association so that you can defend yourself legally in case of a conflict at a later time.

We'll begin by understanding some of the terms used in the Act and then learn the key features and provisions of the Act.

**Memorandum Of Association**

Memorandum of Association contains the name and objectives of the society, the address of the registered office of the society, names, occupations, and addresses of the

governing body, as well as the names, addresses, and signatures of people subscribing to the Memorandum of Association.

### **Common Areas And Facilities(u/s.6)**

Common Areas and Facilities constitutes the land on which the multi-storied apartment building is located, the gardens, basements, cellars, parking areas, and any other such creations, and all the structural elements like lobbies, corridors, fire escapes, and beams and columns.

### **Common Expenses**

Common expenses are sums of money, lawfully assessed against the apartment owners, which go into administration, repair, and maintenance or for modifying common areas and facilities.

### **Deemed The Owner Of The Apartment**

Under the Maharashtra Apartment Ownership Act 1970, you'll be deemed the owner of a particular apartment in the building along with a proportional share in the undivided common areas and facilities. Simply put, you become the independent owner of your flat, i.e., the complete physical structure, besides having all the rights of an owner.

### **The Apartment Becomes Heritable And Transferable**

The said apartment will also become heritable and transferable, which means, among many things, that you can raise capital on your apartment. As an owner of the apartment, you will have the right to transfer the apartment to anyone else, as long as the transfer is being accomplished as per the byelaws.

Other legislations in Maharashtra, such as the Cooperative Societies and Companies Act, treat a flat as a part of the building and unit owned commonly by the company or society. The Maharashtra Apartment Ownership Act 1970, on the other hand, considers a flat as an independent unit of ownership, despite actually being a unit of the building.

### **An Association Of Apartment Owners**

- All apartment owners willing to join the association need to come together at one place to complete the formalities.
  - The eligibility for forming an association is that one or more buildings should have at least 5 apartments.
  - At least 7 members above the age of 18 years need to come together to form the association.
  - A Memorandum of Association, comprising details such as name, address, and occupation of all the members of the association and the name and objectives of the association.
  - The rules and regulations of the association, called the byelaws, also need to be filed along with the Memorandum of Association.
- The Common Expenses For Common Areas And Facilities**

Common expenses need to be paid by every apartment owner. Each owner's share is proportional to the percentage of his or her undivided interest in common areas and facilities.

**Contents of Declaration( u/s.11). –**

(1) The Declaration shall contain the following particulars, namely:-

- (a) Description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold [and whether any lease of the land is to be granted in accordance with the second proviso to section 2 of this Act];
- (b) Description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed;
- (c) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;
- (d) Description of the common areas and facilities;
- (e) Description of the limited common areas and facilities, if any, stating which apartments their use is reserved;
- (f) Value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities, appertaining to each apartment and its owner for all purposes, including voting; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration;
- (g) Statement of the purposes for which the building and each of the apartments are intended and restricted as to use;
- (h) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located;
- (i) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property;
- (j) Any other details in connection with the property which the person executing the Declaration may seem desirable to set forth consistent with this Act;
- (k) The method by which the Declaration may be amended, consistent with the provisions of this Act.

(2) A true copy of each of the Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority

**. Contents of Deeds of Apartments. (u/s(12). With rule (6) Maharashtra apartment ownership rule1972.**

(1) Deeds of Apartments shall include the following particulars, namely:-

- (a) Description of the land as provided in section 11 of this Act or the post-office address of the property, including in either case the liber, page and date of executing the Declaration, the date and serial number of its registration under the [Registration Act, 1908], and the date and other reference, if any, of its filing with the competent authority.
  - (b) The apartment number of the apartment in the Declaration and any other date necessary for its proper identification.
  - (c) Statement of the use for which the apartment is intended and restrictions on its use, if any.
  - (d) The percentage of undivided interest appertaining to the apartment in the common areas and facilities.
  - (e) Any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and this Act.
- (2) A true copy of every Deed of Apartment shall be filed in the office of the competent authority.

**Rule 6. Parties to Deeds of Apartment. –**

In the case of the first Deed of Apartment, the party of the first part shall be either the sole owner or all the owners of the property who has or have executed and registered the Declaration in Form "A" and the party of the second part shall be the apartment owner. In the case of subsequent Deeds of Apartment, the party of the first part shall be the apartment owner and the party of the second part shall be his transferee.

**Declarations, Deeds of Apartments and copies of floor plans to be registered.(U/S.13) –**

- (1) The Declaration and all amendments thereto and the Deed of Apartment in respect of each apartment and the floor plans of the buildings referred to in subsection (2) shall all be registered under the [Registration Act, 1908].
- (2) Simultaneously with the registration of the Declaration there shall be filed alongwith it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the Declaration to which shall be attached a verified statement of an architect certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built.
- (3) In all registration offices a book called "Register of Declarations and Deeds of Apartments under the Maharashtra Apartment Ownership Act, 1970" and Index relating thereto shall be kept. The book and the Index shall be kept in such form and shall contain such particulars as the State Government may prescribe.
- (4) It shall be the duty of every Manager or Board of Managers to send to the Sub-Registrar of the Sub-district in which the property containing the apartments situate, or if there is no Sub-Registrar for the area, to the Registrar of the district in which such property is situate a

certified copy of the Declaration and Deed of Apartment made in respect of every apartment contained in the building forming part of the property together with a memorandum containing such particulars as the State Government may prescribe.

(5) The Sub-Registrar, or as the case may be, the Registrar shall register the Declaration alongwith floor plans of the building and the Deed of Apartment in the Register of Declarations and Deeds of Apartments under the Maharashtra Apartment Ownership Act, 1970 and shall also enter particulars in the Index kept under subsection (3). Any person acquiring any apartment of any apartment owner shall be deemed to have notice of the Declaration and of the Deed of Apartment as from the date of its registration under this section.

(6) Except as provided in this section, the provisions of the [Registration Act, 1908], shall *mutatis mutandis* apply to the registration of such Declarations and Deeds of Apartments and the words and expressions used in this section but not defined in this Act, shall have the meanings assigned to them in the [Registration Act, 1908].

**Rule-7. Contents of Deeds of Apartment.** - (1) The first Deed of Apartment shall be accompanied by a copy of the relevant floor plans of the building filed under subsection (2) of section 13 and by a certificate of an architect certifying that the said floor plan shows the number and dimensions of the apartment being conveyed and of the immediately adjoining apartments and that the said floor plan fully and accurately depicts the lay-out of the apartment, its location, dimensions, approximate area, main entrance, common areas and facilities and limited common areas and facilities, if any, to which it has access, as built.