

GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961

10 of 1962

[1st March, 1962]

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SCHEDULE 1 :- APEX SOCIETIES

GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961

10 of 1962

[1st March, 1962]

An Act to consolidate and amend the Law relating to co-operative societies in the State of Gujarat. It is hereby enacted In the Twelfth Year of the Republic of India as follows:-

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

- (1) This Act may be called the Gujarat Co-operative Societies Act, 1961 .
- (2) It extends to the whole of the State of Gujarat.
- (3) It shall come into force on such date as the State Government may, by notification In the Official Gazette, appoint.

2. Definitions :-

In this Act. unless the context otherwise requires,-

- (1) "auditor" means a certified auditor appointed either by the Registrar or by a society to audit the accounts of the society;
- (2) "bye-laws" means bye-laws registered under this act and for the time being in force, and include registered amendments of such bye-laws;

CHAPTER 2

Registrar and Registration

3. Registrar and other officers and their powers :-

- (1) For carrying out the purposes of this Act. the State Government shall appoint a person to be the Registrar of Co-operative Societies for the State.
- (2) To assist the Registrar In his functions under this Act. the State

Government may appoint such number of Additional Registrars, Joint Registrars, Deputy Registrars. Assistant Registrars and other persons with such designations as It may think fit.

(3) The State Government may. by general or special order. confer on a person or persons appointed under sub-section (2) all or any of the powers of the Registrar under this Act.

(4) Every person appointed under sub-section (2) shall work under the general guidance, and the superintendence and control of the Registrar.

4. Societies which may be registered :-

A society, which has as its object the promotion of the economic interests or general welfare of its members or of the public, in accordance with co-operative principles, or a society established with the object of facilitating the operations of any such society, may be registered under this Act:

Provided that it shall not be registered if, in the opinion of the Registrar, it is economically unsound, or its registration may have an adverse effect upon any other society, or it is opposed to, or its working is likely to be in contravention of public policy.

5. Registration with limited or unlimited liability :-

A society may be registered with limited or unlimited liability.

6. Conditions of registration :-

(1) No society other than a federal society shall be registered under this Act unless it consists of atleast ten persons (each of such persons being a member of different family) who are qualified to be members under this Act and who reside In the area of operation of the society.

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

(3) No federal society shall be registered, unless it has atleast five societies as its members.

(4) Nothing in this Act shall be deemed to effect the registration of any society made before the commencement of this Act.

(5) The word "limited" or "unlimited" shall be the last word in the name of every society with limited or unlimited liability, as the case

may be. which is registered or deemed to be registered under this Act.

Explanation.-For the purposes of this section the expression "member of a family" means a wife, husband, father, mother, grant-father, grand-mother, step-father, step-mother, son daughter, step-son, step-daughter, grand-son, grand-daughter, brother, sister, half-brother, half-sister and wife of brother or half-brother.

7. Power to exempt societies from conditions as to registration :-

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

8. Application for registration :-

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

(2) The application shall be signed-

(a) In the case of a society other than a federal society, by at least ten persons (each of such persons being a member of a different family) who are qualified under this Act. and

(b) In the case of a federal society, by atleast five societies.

(3) No signature to an application on behalf of a society shall be valid unless the person signing is a member of the committee of such society, and is authorised by the committee by resolution to sign on Its behalf the application for registration of the society and its bye-laws: and a copy of such resolution Is appended to the application.

9. Registration and provisional registration, Certificate of registration :-

(1) On receipt of an application for registration from a society-

(a) if the Registrar is satisfied that the society has complied with

the provisions of this Act and the rules as to registration and that its bye-laws are not contrary to this Act and the rules, he shall register the society and Its bye-laws: and

(b) If the Registrar is of opinion that the application complies with the requirements of section 8 but that its bye-laws are not in conformity with the provisions of this Act and the rules, he may provisionally register the society and by an order In writing permit the society to perform such functions subject to such conditions as he may specie in the order and may also by an order in writing direct the society to amend within the period prescribed in this behalf Its bye-laws so as to bring them in conformity with this Act and the rules.

(2) When a society has been provisionally registered, the Registrar shall, on its compliance with the order made under clause (b) of sub-section (1) finally register it and its bye- laws. and on its failure to comply with the order shall cancel its provisional registration.

(3) A provisionally registered society shall not be deemed to be a society registered under this Act.

(4) On the registration of a society, the Registrar shall issue to It a certificate of registration signed by him.

(5) A certificate of registration issued under sub-section (4) shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration has been cancelled.

(6) If the Registrar refuses to register the society, he shall forthwith communicate his decision with reasons therefor, to the person who has signed first on the application.

10. Register of societies :-

The Registrar shall maintain a register In the prescribed form of all societies registered or deemed to be registered under this Act.

11. Power of Registrar to decide certain questions :-

When, any question arises whether for the purpose of the formation, or registration or continuance of a society, or the admission of a person as a member of a society under this Act a person is an agriculturist or non-agriculturist, or whether any person is a resident In a town, or village or group of villages, or

whether two or more villages, shall be considered to form a group, or whether any person belongs to any particular tribe, class or occupation, the question shall be decided by the Registrar.

12. Classification of societies :-

The Registrar may classify all societies in such manner, and into such classes, as he thinks fit; and the classification of a society under any head of classification by the Registrar shall be final.

13. Amendments of bye-laws of societies :-

(1) No amendment of the bye-laws of a society shall be valid until registered under this Act. For the purpose of registration of an amendment of the bye-laws, a copy of the amendment passed. In the manner prescribed, at a general meeting of the society, shall be forwarded to the Registrar.

(2) If the Registrar is satisfied that the amendment so forwarded is not contrary to this Act or the rules, he may register the amendment:

Provided that no order refusing to register the amendment shall be passed except after giving the society an opportunity of being heard.

(3) When the Registrar registers an amendment of the byelaws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of its registration.

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

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

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

(2) If the society fails to make the amendment within the time so specified, the Registrar after giving the society an opportunity of being heard and with the prior approval of the State Co-operative Council, may register the amendment, and shall thereupon issue to

the society a copy thereof certified by him. With effect from the date of the registration of the amendment In the manner aforesaid, the bye-laws shall be deemed to have been duly amended accordingly; and the bye-laws as amended shall be binding on the society and Its members.

15. Change of name :-

(1) Subject to the provisions of the rules a society may, by resolution passed at a general meeting, and with the approval of the Registrar, change Its name but such change shall not affect any right or obligation of the society, or of any of Its members, or of any of the persons who have ceased to be members; and any legal proceedings pending before any person, authority or court may be continued by or against the society, under Its new name.

(2) When a society changes its name, the Registrar shall enter the new name in its place in the register of societies, and shall also amend the certificate of registration accordingly.

16. Change of liability :-

(1) Subject to the provisions of this Act and the rules, a society may by passing a resolution and by amending Its bye-laws, change the form or extent of Its liability.

(2) When a society has passed a resolution to change the form or extent of its liability, it shall give notice thereof in writing to all its members and creditors and. notwithstanding anything in any bye-laws or contract to the contrary, any member or creditor shall, during a period of one month from the date of service of such notice upon him, have the option of withdrawing his investment in its shares, and his deposits and loans, and of demanding the payment of his other dues, if any.

(3) Any member or creditor who does not exercise his option within the period specified in sub-section (2). shall be deemed to have assented to the change.

(4) An amendment of the bye-laws of a society, changing the form or extent of Its liability, shall not be registered or take effect until, either-

(a) all members and creditors have assented, or deemed to have assented thereto as aforesaid; or

(b) all claims of members and creditors exercising the option, under sub-section (2) have been met In full.

17. Amalgamation, transfer, division or conversion of societies :-

(1) Subject to the provisions of the rules and the previous sanction of the Registrar a society may. 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;

(d) to convert Itself into another class of society; or

(e) to change Its objects.

(2) Where the amalgamation, transfer, division or conversion referred to in sub-section (1) Involves a transfer of the liabilities of society to any other society, the Registrar shall not sanction the resolution of the society unless he is satisfied that-

(i) the society, after passing such resolution, has given notice thereof In writing 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 the receipt of such notice, of becoming members of any of the new societies, or continuing their membership in the amalgamated or converted society, or of withdrawing their investments in its shares, their deposits and loans and demanding payment of their other dues. if any.

(ii) all the members and creditors and other interested persons, have assented to the decision, or are deemed to have assented thereto by having failed to exercise the option within the period specified in clause (i), 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.

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882 (IV of 1882), or the Indian Registration Act, 1908 (XVI of 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.

(4) The amalgamation, transfer, division or conversion made under this section shall not affect any right or obligation of the societies so amalgamated, or of the society so divided or converted. or of the transferee, 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. the converted society, the new societies or the transferee, as the case may be.

17A. Power to direct amalgamation and re-organisation of societies in public Interest, etc :-

(1) Where the Registrar is satisfied that it is essential in the public interest or in the interest of co-operative movement, or for the purpose of securing proper management of any society that two or more societies should be amalgamated or that any society should be re-organised, then. notwithstanding anything contained in section 17 but subject to the provisions of this section, the Registrar may. after consulting such federal society as may be notified In this behalf by the State Government by order published in the Official Gazette, provide for the amalgamation of these societies Into a single society or, as the case may be, for the re-organisation of that society, with such constitution, property rights, interests and authorities, and such liabilities, duties and obligations as may be specified in the order. Such order may also provide for the constitution of the committee of management or any other committees of the new amalgamated, or re-organised society, the persons who shall be, or continue to be the officers of such society and the period after which such committee or committees may be re-constituted.

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

(a) a copy of the draft of the proposed order has been sent to the society or each of the societies concerned;

(b) the Registrar has considered suggestions and objections if any received either from the society or from any member or class of members thereof or from any creditor or class of creditors within such period (not being less than one month from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, and has, if necessary, modified the same in the light of such suggestions and objections.

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

(4) Every member of each of the societies so amalgamated, shall be deemed to be a member of the new amalgamated society. and every member of the society so re-organised shall be deemed to be a member of the new re-organised society and all such members shall have all rights, privileges and liabilities of the members of the concerned new societies:

Provided that any member of the new society so amalgamated, or re-organised may, within such period and in such manner as may be prescribed, resign his membership of the new society and on such resignation he shall be entitled to withdraw his share and any other dues and interest in the society.

(5)

(a) On the issue of an order under sub-section (1) in respect of any societies or society, notwithstanding anything contained In any law for the time being In force, all the assets. rights and liabilities of the amalgamating societies, or, as the case may be. the original society which is re-organised shall stand transferred to. and vest In. the new amalgamated society. or, as the case may be, the new re-organised society;

(b) the provisions of sub-sections (3) and (4) of section 17 and the provisions of section 18 shall apply in relation to the amalgamation or re-organisation of the societies under this section as if-

(i) the order of amalgamation were a resolution of societies concerned with amalgamation, and

(ii) the original society was re-organised under section 17 .]

18. Cancellation of registration of amalgamated, divided or converted societies :-

Where two or more societies have been amalgamated, or a society has been divided or converted, the registration of such societies or society, as the case may be. shall be cancelled on the date of registration of the new society or societies so formed.

19. Reconstruction of societies :-

Where a compromise or arrangement is proposed-

(a) between a society and its creditors, or

(b) between a society and its members the Registrar may. on the application of the society or of any member or of any creditor of the society, or in the case of a society which is being wound up, of the liquidator, order reconstruction in the prescribed manner, of the society.

20. Cancellation of registration :-

(1) The Registrar shall make an order cancelling the registration of a society if it transfers the whole of its assets and liabilities to another society, or amalgamates with another society, or divides itself into two or more societies, or if its affairs are wound up or it has not commenced business within a reasonable time of its registration or has ceased to function.

(2) An order made under sub-section (1) shall be published in the Official Gazette.

(3) 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.

21. Partnership of societies :-

(1) Any two or more societies may, with the prior approval of the Registrar, by resolution passed by three-fourths majority of the members present and voting at a general meeting of each such society, enter into partnership for carrying out any specific business or businesses, provided that each member of each society has had clear ten days' written notice of the resolution, and the date of the meeting.

(2) Nothing in the Indian Partnership Act, 1932 (XI of 1932) and

the Indian Companies Act, 1956 (I of 1956) shall apply to such partnership.

CHAPTER 3

Members and Their Rights and Liabilities

22. Person who may become member :-

(1) Subject to the provisions of section 25 . 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 (IX of 1872).

(b) a firm. company, ¹[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 (XXI of 1860):

(c) a society registered, or deemed to be registered, under this Act;

(d) the State Government

²[(e) a local authority;

(f) a public trust registered or deemed to have been registered under Bombay Public Trusts Act, 1950 ; (Bom. XXIX of 1950)]:

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 general or special order ³[a firm or a company or other body corporate constituted under any law for the time being In force] may be admitted as a member only of such society as may be prescribed.

⁴ [(2)

(a) Every person seeking admission as a member of a society of such class as may be notified by the State Government in the Official Gazette In this behalf, shall, if he is duly qualified for membership of such society under the provisions of this Act, the rules and the bye-laws of the society, be deemed to have become a member of such society on the date of receipt by the society of the application for admission made by such person.

(b) Where such society refuses to accept the application for admission as a member, or the payment in respect of membership made by such person, such person may tender such application, together with payment in respect of membership, if necessary, to the Registrar, who shall, on receipt of the same. forthwith, forward them to the society concerned and thereupon such member shall be deemed to have become a member of such society on the date of receipt by the society of such application and the payment for membership. If any, from the Registrar.

(c) Where the society is of the opinion that such person is not qualified for being a member of the society or that he may not be continued as its member, such society may, within a period of three months from the date of receipt of his application for admission under clause (a), or, as the case may be, clause (b). move the Registrar by an application in writing stating all grounds in support thereof, for a declaration that such person shall cease to be its member with effect from such date as may be specified by the Registrar, in such declaration.

(d) On receipt of the application under clause (c), the Registrar shall after making such Inquiry as he thinks fit and for reasons to be recorded in writing make an order either rejecting the application of the society or accepting the application of the society and declaring that such person shall cease to be its member with effect from such date as may be specified in such order:

Provided that no order accepting the application of the society and making a declaration as aforesaid shall be made by the Registrar under this clause unless an opportunity of being heard is given to the person concerned.

(e) The decision of the Registrar under clause (d) shall be final and shall not be called in question in any Court.

(3) Notwithstanding anything contained in subjection (1), the State Government, may. having regard to the fact that the interest of any person or class of persons engaged in or carrying on any profession, business or employment conflicts or is likely to conflict with the objects of any society or class of societies by general or special order published in the Official Gazette, declare that such person or such class of persons shall be disqualified from being admitted, or for continuing, as member or members or shall be eligible for membership only to a limited extent, of any 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.]

1. Substituted for the word "association" by Gujarat 23 of 1982.
2. Inserted by Gujarat 23 of 1982.
3. Substituted for the words -a firm or company" by Gujarat 23 of 1982.
4. Substituted for sub-sections (2) and (3) by Gujarat 23 of 1982.

23. Removal from membership in certain circumstances :-

(1) Where a person becomes a member of any society on his making a declaration as required by the bye-laws of the society or otherwise and such declaration is found to be false, then such person shall be disqualified to continue as a member of the society.

(2) Where a person continues as a member of the society notwithstanding the disqualification incurred by him ¹ [under sub-section (3) of section 22 or under sub-section (1)]. he shall be removed from the society by the Registrar:

Provided that the Registrar shall, before making an order of removal give the person an opportunity of being heard.

1. Substituted for the words, brackets and figures "under sub-section (1)" by Gujarat 23 of 1982.

24. Open membership :-

(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act. the rules and bye-laws of such society.

(2) Where the society does not communicate any decision to a person within a period of three months from the date of receipt by the society of his application for admission, such person shall be deemed to have become the member of such society on the expiry of the aforesaid period of three months.

(3) Where a person is refused admission as a member of a society, the decision together with the reasons therefor shall be communicated in writing to such person by the society within three months from the date of receipt by the society of the application for admission made by such person.

(4) Any society aggrieved by the admission of a member under sub-section (2) or any person aggrieved by the decision of the

society refusing him Its membership under sub-section (3) may appeal to the Registrar.

(5) An appeal under sub-section (4) shall be made within a period of two months from the date of communication to him of the decision of the society or, as the case may be, from the date of the expiry of the period of three months specified in sub-section (2).

(6) The decision of the Registrar in appeal shall be final and shall not be called in question in any court.

(7) Nothing in this section shall apply to a society belonging to a class notified under sub-section (2) of section 22 .]

25. Nominal, associate and sympathiser member :-

(1) Notwithstanding anything contained in section 22 . a society of such class as may be prescribed may admit any person as a nominal. associate, or sympathiser member:

Provided that the total number of associate and sympathiser members in a society shall not exceed ten per cent of the total number of members thereof.

(2) A nominal, associate or sympathiser member shall not be entitled to any share. In any form whatsoever, in the assets or profits of the society. Subject to the provisions of sub-section (6) of section 28 a nominal, associate or sympathiser member shall have such privileges and rights of a member and be subject to such liabilities of a member, as may be specified in the bye- laws of the society.

26. Cessation of membership :-

A person shall cease to be a member of a society on his resignation from the membership thereof being tendered in writing to the society and accepted by the society 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:

Provided that, the resignation of a person from the membership of a society. If such member Is not In debt to the society or is not a surety for an unpaid debt due to the society, shall unless It Is accepted earlier be deemed to have been accepted on the expiry of one month from the date of tendering his resignation in writing to the society.

27. No rights of membership to be exercised till due payments arc made :-

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 In the society, as may be prescribed by the rules, or the bye-laws of such society.

28. Voting powers of members :-

(1) No member of any society shall have more than one vote In Its affairs:

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, each such person shall have. in the absence of preceding person or persons, a right to vote:

Provided that such person is present and is not a minor:

Provided further that where the manner of voting Is by ballot. all the joint holders of the share may appoint one of them to vote on their behalf in the affairs of the society.

(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 the first society shall not appoint any of Its members who is also its paid employee.

(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 officers 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 the body corporate, as the case may be.

(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 person shall have the right to vote on behalf of the local authority or the public trust, as the case may be.

(7) 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.

(8) The voting rights of Individual members of a federal society shall be such as may be regulated by the rules and by the byelaws of the society.]

29. Restrictions of holding on shares :-

In any society, no member other than the State Government or a society, shall hold more than such portion not exceeding one fifth of the total share capital of the society as may be prescribed:

Provided that the State Government may. by notification In the Official Gazette, specify in respect of any class of societies a higher maximum than one-fifth of the share capital.

30. Restrictions on transfer of share or interest :-

(1) Subject to the provisions of section 29 and sub-section (2) a transfer of. or charge on, the share or Interest of a member in the 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 or charge Is made to the society, or to a member of the society, or to a person whose application for membership has been accepted by the society; and

(c) the committee has approved such transfer.

31. Transfer of Interest on death of member :-

(1) On the death of a member of a society, the society shall subject to the provisions of sub-section (2) transfer his share or Interest in the society to a person or persons nominated by such member in accordance with the rules or, in the absence of such nomination to such person as may appear to the Committee to be the heir or legal

representative of such member.

(2) No such transfer shall be made unless such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society.

(3) Notwithstanding anything contained in sub-section (2). 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 as prescribed.

(4) 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.

(5) 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.

(6)

(a) Nothing in the foregoing provisions of this section or section 22 shall be construed to prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member of a society, but his liability in consequence of such acquisition shall be limited to his interest In the shares of the society and the unpaid dividends as also the loan. stock, bonds, if any, and the interest earned on them which is unpaid and he shall not have the right of voting.

(b) A person under any such disability as is referred to in clause (a) shall, on his disability ceasing, furnish to the society a declaration of his willingness to become a member. On receipt of such declaration the society, notwithstanding anything contained in this section may. and if It Is a co-operative housing society such society shall admit him as a member If he Is not otherwise disqualified. A person so admitted shall become entitled to all the rights and privileges of a member and become subject to liabilities like any other member of the society.

32. 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 deposits 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 a Receiver under the Provincial Insolvency Act, 1920 (V of 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.

33. 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 bye-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, 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 therefor, a copy of any of the documents mentioned In sub-section (1).

34. Liability of person who has ceased to be member :-

Where a person has ceased to be a member of a society under section 26 ,

(a) his liability In respect of any debt due by him to the society and in respect of any outstanding demand owing to the society by him shall continue as If he had not ceased to be a member.

(b) his liability for the debts of the society as they stood Immediately before the date of such cessation shall, save as otherwise provided in sub-section (2), continue for a period of three years from such date as If he had not ceased to be a member:

Provided that the liability shall attach to the estate of such person. If such cessation was due to his death or such person dies after his ceasing to be a member.

(2) Where a society Is ordered to be wound up under any provisions of this Act, then the liability under clause (b) of sub-section (1) of a person who has ceased to be a member thereof within three years immediately preceding the date of order of winding up, shall continue, until the entire liquidation proceedings are completed.

35. Insolvency of members :-

Notwithstanding anything contained in the Provincial Insolvency Act. 1920 (V of 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 his dues to Government or to a local-authority.

36. Expulsion of members :-

(1) A society may, by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for the purpose. expel a member for acts which are detrimental to the proper working of the society:

Provided that, 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 unless It is submitted to the Registrar for his approval and approved by him:

Provided further that. the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and In the absence of such communication the resolution shall be effective.

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

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

CHAPTER 4

Incorporation, Duties and Privileges of Societies

37. Societies to be bodies corporate :-

A society on its registration shall be 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.

38. Address of societies :-

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

39. 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 as 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.

40. 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 bye-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.

41. Admissibility of copy of entry as evidence :-

(1) A copy of any entry in any book. register or list. regularly kept In the course of business 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 matter.

(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 sub-section (1) or to appear as a witness to prove the matters, transactions and accounts therein recorded, except by order of the Court or a Judge made for special cause.

42. Exemption from compulsory registration of instruments relating to shares and debentures of society :-

Nothing In clauses (b) and (c) of sub-section (1) of section 17 of the Indian Registration Act. 1908 (XVI of 1908) shall, apply-

(a) to any instrument relating to shares In a society ¹ [not being a housing society] notwithstanding that the assets of the society consist In whole or in part of immovable property: or

(b) to any debenture 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 debenture Issued by any society.

1. Substituted for the words "land mortgage bank" by Gujarat 24 of 1964.

43. Power to exempt from taxation :-

The State Government, by notification In the Official Gazette may. In the case of any society or class of societies, remit-

(a) the stamp duty with which, under any law relating to stamp duty for the time being In force. Instructions 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 award of the Registrar or his nominee or board of nominees 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.

44. Restriction on borrowings :-

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

45. Restrictions on making loans :-

(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 sub-section (1), a society may make a loan to a depositor on the security of his deposit.

46. Restrictions on other transactions with non-members :-

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.

47. Charge and set off in respect of share or interest of member :-

In respect of any debt due to a society by any member thereof, the society shall have a charge upon the share or Interest of such member In the capital of the society, upon the deposits of such member with the society and upon any dividend, rebate or profits payable to such member; and the society may set off any sum credited or payable to such member in or towards the 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 72 , and no co-operative bank shall be entitled to set off any such sum towards any debts due from the society.

48. Prior claim of society :-

(1) Notwithstanding anything contained 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 Section 60 of the Code of Civil Procedure, 1908 , Section 61 of the Code of Civil Procedure, 1908 (V of 1908).-

(a) any debt or outstanding demand, owing to a society by any member or a person who has ceased to be a member shall be a first charge upon-

(i) the crops or other agricultural produce raised in whole or In part whether with or without a loan taken from the society by him,

(ii) 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 him in whole or in part, from any loan whether in money or goods made to him by the society, and

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

(b) any outstanding demands or dues payable to a society by any member or a person who has ceased to be a 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:

Provided that the prior claim of Government In respect of dues other than land revenue, shall be restricted for the purpose of this sub-section to the assets created by a member out of the funds In respect of which the Government has a claim.

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

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

(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 bye-laws, or may otherwise contract with its members,-

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

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

49. Charge on Immovable property of members borrowing from certain societies :-

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

(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 aforesaid 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 for a member to execute a

mortgage bond In favour of a mortgage bank or the State Government in respect of such land or any part thereof, under the rules made under the Bombay Irrigation Act. 1879 (Bom. VII of 1879) or under any corresponding law for the time being in force, for the supply of water from a canal to such land:

Provided further that, if a part of the amount borrowed by a member is paid. the society 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 declaration as It may deem proper, with due regard to the adequacy, of the security for the balance of the amount remaining due from or outstanding against the member:

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

(f) subject to the prior claims of the Government In respect of land revenue or any money recoverable as land revenue, and to the charge. If any created under an award made under the Bombay Agricultural Debtors Relief Act. 1947 (Bom. XXV of 1947) or any corresponding law for the time being in force In any part of the State, and to any mortgages created in favour of a ¹ [land development bank] by its members 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 the extent of the dues owing by him on account of the loan; and

(g) notwithstanding anything contained in BOMBAY LAND REVENUE CODE, 1879 , the Record of Rights maintained thereunder shall also Include the particulars of every charge on land or Interest created under a declaration under clause (a) or (b).

(2) For the purposes of this section, the expression "society" means-

(i) any 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.

1. Substituted for the words "land mortgage bank" by Gujarat 24 of

1964.

50. Deduction from salary to meet societys claim in certain cases :-

(1) A member of a society may execute an agreement in favour of the society, providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified In the agreement. and to pay to the society the amount so deducted in satisfaction of any debt or other demand of the society against the member.

(2) On the execution of such agreement, the employer shall, If by a requisition in writing so required by the society and so long as the society does not intimate that the whole of such debt or demand has been paid. make the deduction in accordance with the agreement notwithstanding anything to the contrary contained in the Payment of Wages Act, 1936 (IV of 1936) and pay the amount so deducted to the society, as If It were a part of the wages payable by him as required under the said Act on the day on which he makes payment. In making such deduction and payment, it shall not be open to the employer to question the validity or otherwise of such debt or demand.

(3) If after receipt of a requisition made under sub-section (2) the employer at any time falls to deduct the amount specified in the requisition from the salary or wages payable to the member concerned, or makes default In remitting the amount deducted to the society, the employer shall be personally liable for the payment thereof: and the amount shall be recoverable on behalf of the society from him as an arrear of land revenue on a certificate being issued by the Registrar after holding such Inquiry as he deems fit, and the amount so due shall rank In priority In respect of such liability of the employer as wages In arrears. A certificate so issued by the Registrar shall not be questioned in any court.

(4) Nothing contained In this section shall apply to persons employed in any railway (within the meaning of the Constitution), and in mines and oil fields.

51. Direct partnership of State Government in societies :-

¹[(1)] The State Government may subscribe directly to the share capital of a society with limited liability.

2 [(2) The share capital subscribed by the State Government under sub-section (1) shall not be returned to the State Government by a society except with the previous sanction of the Government.]

1. Renumbered by Gujarat 23 of 1982.

2. Substituted for the words and figure "exceeding 9 percent" by Gujarat 8 of 1978 and for "exceeding 12 per cent." by Gujarat 17 of 1994.

52. Indirect partnership of State Government in societies :-

The State Government may, under appropriation made by law, provide moneys to a society for the purchase directly or indirectly, of shares in other societies with limited liability. A society to which moneys are so provided for the aforesaid purpose is hereinafter in this Act referred to as an "Apex society".

53. Principal State Partnership Fund :-

(1) An Apex society shall, with the moneys provided under section 52 establish a Fund to be called the "Principal State Partnership Fund".

(2) An Apex society shall utilise the Principal State Partnership Fund for the purpose of-

(a) directly purchasing shares in other societies with limited liability:

(b) providing moneys to a society to enable that society (hereinafter in this Chapter referred to as a "Central society") to purchase shares in other societies with limited liability (the latter societies being hereinafter in this Chapter referred to as "Primary societies");

(c) making payments to the State Government in accordance with the provisions of this Chapter: and for no other purpose.

54. Subsidiary State Partnership Fund :-

(1) A Central society which is provided with moneys by an Apex society from the Principal State Partnership Fund shall, with such moneys establish a Fund to be called the "Subsidiary State Partnership Fund".

(2) A Central society shall utilise the Subsidiary State Partnership Fund for the purpose of-

(a) purchasing shares in primary societies;

(b) making payments to the Apex society in accordance with the provisions of this Chapter; and for no other purpose.

55. Approval of State Government for purchase of shares :-

Shares shall not be purchased in a society from the moneys in the Principal State Partnership Fund or the Subsidiary State Partnership Fund, except with the previous approval of the State Government.

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

Where any shares are purchased In a society by-

(a) the State Government, or

(b) an Apex society from the Principal State Partnership Fund, or a Central society from the Subsidiary State Partnership Fund, as the case may be.

then in the event of the winding up of such society the liability in respect of such shares shall be limited to the amount paid In respect of such shares.

57. Restriction on amount of dividend :-

An Apex society which has purchased shares in other societies from the moneys in the Principal State Partnership Fund, and a Central society which has purchased shares in Primary societies from the moneys In the Subsidiary State Partnership Fund, shall be entitled only to such dividend on the said shares as Is declared by the society concerned and Is payable to other shareholders of that society.

58. Indemnity of Apex and Central Societies :-

(1) If a society In which shares are purchased out of the Principal State Partnership Fund Is wound up or dissolved, the State Government shall not have any claim against the Apex society which purchased the shares in respect of any loss arising from such purchase: but the State Government shall be entitled to any moneys received by the Apex society in liquidation proceedings or on dissolution, as the case may be.

(2) If a society in which shares are purchased out of the Subsidiary State Partnership Fund is wound up or dissolved, neither the State Government nor the Apex society shall have any claim against the Central society which purchased the shares. In respect of any loss arising from such purchase; but the Apex society shall be entitled to any moneys received by the Central society in liquidation

proceedings or on dissolution, as the case may be, and such moneys shall be credited to the Principal State Partnership Fund.

59. Disposal of share capital and dividend etc :-

(1) All moneys received by an Apex society in respect of the redemption of shares of other societies purchased out of the moneys in the Principal State Partnership Fund, or by way of dividends or otherwise or by way of interest, dividend or otherwise on the balance of that fund shall be credited to that Fund.

(2) All moneys received by a Central society in respect of the redemption of shares of Primary societies purchased out of the moneys in the Subsidiary State Partnership Fund, or by way of dividends or otherwise or by way of interest, dividend or otherwise on the balance of that fund. shall in the first Instance be credited to that Fund, and then transferred to the Apex society which shall credit them to the Principal State Partnership Fund.

(3) All moneys and dividends referred to in sub-sections (1) and (2) shall, notwithstanding that the shares stand in the name of the Apex society or the Central society, as the case may be, be paid to the State Government.

(4) Save as provided In sub-section (3), the State Government shall not be entitled to any other return on the moneys provided by it to an Apex society under section 52 .

60. Disposal of Principal or Subsidiary State Partnership Fund on Winding up of Apex or Central Society :-

(1) If an Apex society which has established a Principal State Partnership Fund is wound up or dissolved, all moneys at the credit of, or payable to that Fund, shall be paid to the State Government.

(2) If a Central society which has established a Subsidiary State Partnership fund is wound up or dissolved, all .moneys at the credit of. or payable to that Fund, shall be paid and credited to the Principal State Partnership Fund from which it received moneys under clause (b) of sub-section (2) of section 53 .

61. Principal or Subsidiary State Partnership Fund not to form part of assets :-

Any amount at the credit of a Principal State Partnership Fund or a Subsidiary State Partnership Fund shall not form part of the assets of the Apex society or the Central society, as the case may be.

62. Agreement by State Government and Apex Societies :-

Subject to the foregoing provisions of this Chapter-

(a) the State Government may enter into an agreement with an Apex society setting out the terms and conditions on which It shall provide moneys to the Apex society for the purpose specified In section 52 :

(b) an Apex society may, with the previous approval of the State Government, enter Into an agreement with a Central society, setting out the terms and conditions on which it shall provide moneys to that society from the Principal State Partnership Fund for the purpose specified in clause (b) of sub-section (2) of section 53 .

63. Other forms of State aid to societies :-

Notwithstanding anything contained In any law for the time being in force, but subject to such conditions as the State Government by general or special order may specify in this behalf, the State Government may,-

(a) give loans to a society;

(b) guarantee the payment of the principal of debentures issued by a society, or of Interest thereon, or both, or the repayment of the share capital of a society to Its members, or the payment of dividends thereon at such rates as may be specified by the State Government;

(c) guarantee the repayment of the principal of and the payment of interest on, means given by a Co-operative Bank to a society:

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

(e) provide financial assistance, in any other form (Including subsidies), to a society.

64. Provision of this Chapter to override other laws :-

The provisions of section 52 to Section 62 (both inclusive) In this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

CHAPTER 6

Property and Funds of Societies

65. Fund not to be divided :-

(1) No part of the funds or assets of a society, other than the dividend equalization fund. If any, and the net profits thereof, shall be paid by way of rebate or dividend or otherwise distributed, to its members:

Provided that in the case of a member, who is also a salaried servant of the society payment on such scale as may be laid down by the bye-laws may be made to him for work done as such servant.

(2) No honorarium shall be paid out of the funds and assets of a society other than the net profits and such honorarium shall not exceed the prescribed limit.

66. Appropriation of profits :-

(1) A society earning profit, shall calculate its annual net profits by deducting from the gross profits for the year, all accrued interest which is overdue for more than six months, establishment charges, contributions. If any. towards the provident fund and gratuity fund of its employees, interest payable on loan and deposits, audit fees, working expenses including repairs, rents, taxes and depreciation, and after providing for or writing off bad debts and losses not adjusted against any fund created out of profits. A Society may, however, add to the net profits for the year, interest accrued in the preceding years, but actually received during the year. The net profits thus arrived at, together with the amount of profits brought forwarded from the previous year shall be available for appropriation.

(2) A society may appropriate its profits to Its reserve fund or any other fund created by It to payment of dividends to members on their shares, to contribution to the educational fund of such federal co-operative society as the State Government may by notification in the Official Gazette specify as "the Gujarat State Co-operative Union" to the payment of rebate on the basis of support received from members and persons who are not members to its business and subject to the prescribed conditions to payment of honoraria, and to 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.

67. Reserve fund :-

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

(2) Atleast one-fourth of the net profits of the society each year, shall be carried to the reserve fund: and such reserve fund may be used in the business of the society or may, subject to the provisions of section 71 . 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 if the Registrar is satisfied that financial condition of the society is such that It is unable to carry to its reserve fund an amount upto the aforesaid limit of one-fourth of its net profits, he may by order In writing for such period as he may specie In the order, fix for the society a limit lower than the aforesaid limit but not lower than one-tenth of its net profits.

(3) Where the reserve fund of a society exceeds Its authorised share capital, then, notwithstanding anything contained in subsection (1), the society may, with the previous permission of the Registrar carry to Its reserve fund each year an amount which may be less than one-fourth but not less than one-tenth of its net profits.

68. Restriction on dividend :-

No society shall pay a dividend to Its members, at a rate ¹ [exceeding 15 per cent].

1. Added by Gujarat 6 of 1981.

69. Contribution to education fund of the Gujarat State Co-operative Union :-

(1) Every society which declares, out of the current year's profit, a dividend to Its members at a rate of 3 per cent or more, shall contribute towards the education fund of the Gujarat State Co-operative Union at such rate as may be prescribed.

(2) No society. liable to contribute towards the education fund, shall pay a dividend to its members, unless the said contribution Is

made to the Gujarat State Co-operative Union within two months from the date on which Its accounts are adopted by the general body of members at Its annual general meeting.

(3) An officer wilfully falling to comply with the requirements of this section, shall be personally liable for making good the amount to the Gujarat State Co-operative Union.

Explanation.-In this section the expression "Gujarat State Co-operative Union" means federal society established for the State of Gujarat with the object of giving training facilities for familiarising, promoting or encouraging In co-operative movement.]

70. Contribution to public purpose :-

After providing for the reserve fund as provided In section 67 and for the educational fund as provided In section 69 , a society may set aside a sum not exceeding twenty per cent of Its net profits, and utilise from time to time, with the approval-

(a) of the Gujarat State Co-operative Union, If the society operates in more than one district, and

(b) of the District Co-operative Board, in any other case. the whole or part of such sum In contributing to any prescribed co-operative purpose, or to any charitable purpose within the meaning of section 2 of the Charitable Endowments Act. 1890 (VI of 1890). or to any other public purpose.

71. Investments of funds :-

(1) A society may invest, or deposit its fund,-

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

(b) in the State Bank of India.

(c) in the Postal Savings Bank.

(d) in any of the securities specified in section 20 of the Indian Trusts Act. 1882 (II of 1882),

(e) In shares, or security bonds, or debentures. issued by any other society with limited liability, or

(f) In any co-operative bank or in any banking company approved for this purpose by the Registrar, and on such conditions as the Registrar may from time to time Impose.

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

(2) Notwithstanding anything contained In sub-section (1). the Registrar may. with the approval of the State Co-operative Council, order a society or a class of societies to invest any funds in a particular manner, or may impose conditions regarding the mode of Investment of such funds.

72. 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 section 71 and shall be administered in the prescribed manner.

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

CHAPTER 7

Management of Societies

73. Final authority of society :-

Subject to the provisions in this Act and the rules, the final authority of every society shall vest In the general body of members In general meeting, summoned in such a manner as may be specified in the bye-laws:

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

74. Committee, its powers and functions :-

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 on It respectively by this Act. the rules and the bye-laws:

1 [Provided that a Committee of a society falling in any of the categories mentioned In sub-section (1) of section 74C shall not

be so constituted as to require a certain part or number, of its members to periodically retire by rotation and any bye-law of such society containing such provision shall with effect on and from the commencement of section 2 of the Gujarat Co-operative Societies (Amendment) Act, 1981 (6 of 1981) cease to be in force.]

1. Sections 74-A, 74B, and 74C were Inserted by Gujarat 6 of 1981.

74A. Disqualification for being designated officer simultaneously of certain specified societies or for being designated officer of the same society for more than six years :-

(1) In this section "a designated officer", means the Chairman and the President, and Includes any other officer of the society as may be declared by the State Government by notification in the Official Gazette, to be a designated officer, but does not include any officer appointed or nominated by the State Government or by the Registrar.

(2) No person shall, at the same time. be or continue to be, a designated officer of more than one society falling In Category I or Category II or ¹[Category III or Category IV] of the categories mentioned below; and shall not be or continue to be a designated officer In more than two societies in the aggregate ²[in the four categories]:-

Category 1. -Societies, the area of operation of which, extends to the whole of the State.

Category 2.-

(a) Societies, the area of operation of which does not extend to the whole of the State but extends to the City of Ahmedabad; ³[xxx];

(b) Societies the area of operation of which does not extend to the whole of the State but extends to one or more districts;

⁴[x x x]

⁵[Category 3. -Societies the area of operation of which does not extend to the whole of a district but extends to more than one taluka in a district.

Category 4. -Such societies (the area of which extends to a taluka

or less than a taluka) as the State Government may, having regard to their share capital, financial position and the public interest involved in their operation, by notification in the Official Gazette specify.]

(3) If any person is at the commencement of the Gujarat Cooperative Societies (Amendment) Act. 1981 (6 of 1981). a designated officer of more than two societies In the said categories, or of more than one society in the same category, then unless he resigns his office in the society or societies in excess of the number prescribed under sub-section (2) within a period of ninety days from such commencement he shall, at the expiration of the said period, cease to be a designated officer of all such societies.

(4) If any person becomes, at the same time, after the commencement of the said Act. a designated officer of societies in excess of the number prescribed under sub-section (2), unless he resigns his office in the society or societies in excess of the said number within a period of ninety days from the date on which he is elected or appointed a designated officer of more than the permissible number of society or societies, or if the elections or appointments are held or made simultaneously, from the date on which the result of last of such elections or appointments is declared, he shall, at the expiration of the said period of ninety days. cease to be a designated officer of all such societies.

(5) No person shall be, or shall continue to be, a designated officer of any society of any of the categories referred to in sub-section (2) for a consecutive period of more than ⁶ [six years) and at the expiration of that period any such person shall cease to be a designated officer of that society and shall not be eligible for being re-elected or re-appointed as a designated officer, until a period of [three years] has elapsed after the expiry of the aforesaid period of [six years 1.

[Explanation.-For the purposes of this sub-section:

(a) In calculating the consecutive period of six years in office, any period for which the person concerned may have been such officer, before the commencement of the Gujarat Co-operative Societies (Amendment) Ordinance. 1982 (Gujarat Ord. 1 of 1982) shall be excluded.

(b) If any person resigns his office as a designated officer at any

time within twelve months from the date on which the consecutive period of six years would, but for his resignation, have been completed, he would be deemed to have completed a period of six years on his resignation.]

1. Substituted for the word and figures. "Category III" by Gujarat 23 of 1982.
2. Sections 74-A, 74B, and 74C were Inserted by Gujarat 6 of 1981.
3. Omitted by Gujarat 23 of 1982.
4. Clause (c) was deleted by Gujarat 23 of 1982.
5. Category III, Category IV were subs. for Category III by Gujarat 23 of 1982.
6. Substituted by Gujarat 23 of 1982.

74B. Reservation of seats on committees of certain societies, for Scheduled Castes and Tribes and small and marginal farmers :-

1[(1) On the committee of such society or class of societies as the State Government may, by general or special order direct, two seats shall be reserved as follows, namely:-

(a) one for the persons belonging to the Scheduled Castes or the Scheduled Tribes or to both the Scheduled Castes and the Scheduled Tribes as the State Government may. having regard to the population of the Scheduled Castes and the Scheduled Tribes In the area of operation of the society, specify, and

(b) one for the persons who are small farmers and marginal farmers.]

(2) Where any of such reserved seats is not filled by election or appointment the committee shall fill such seat by co-option of a member on the committee **2**[from amongst other members].

Explanation.-For the purposes of this section (1) the expressions "marginal farmer" and "small farmer" shall have the meanings respectively assigned to them In clauses (g) and (p) of section 2 of the Gujarat Rural Debtors' Relief Act, 1976 (President's Act of 1976):

3 [(1A) the expression "population" in relation to the area of operation of a society means the population of that area as ascertained at the last preceding censu

(2) the expression "Scheduled Castes" means such castes. races or

tribes or parts of, or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the State of Gujarat under Art.341 of the Constitution of India ;

(3) the expression "Scheduled Tribes" means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under Art.342 of the Constitution of India:

1. Substituted by Gujarat 23 of 1982.
2. Substituted for the words "from amongst persons eligible to fill the reserved seats" by Gujarat 23 of 1982.
3. Inserted by Gujarat 23 of 1982.

74C. Provision for conduct of elections committees and officers of certain societies and term of office of members of committees :-

(1) The election of members of the committees and of the officers by the committee, of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI- A and shall be conducted in the manner laid down by or under that Chapter:-

1[(i) Apex societies mentioned In the Schedule and such other apex societies as the State Government may, by general or special order, published in the Official Gazette, from time to time specify in this behalf, having regard to financial position and share capital of such societies;]

(ii) all District Central Co-operative Banks;

(iii) all Primary Land Development Banks;

(iv)

(a) all District Co-operative Sale and Purchase Organisations:

(b) all Taluka Co-operative Sale and Purchase Organisations;

(v) all Co-operative Sugar Factories:

(vi) all Co-operative Spinning Mills:

2[(vi-a) all district co-operative milk unions: (vi-b) all taluka co-operative processing societies:]

(vii) any other society or class of societies, which the State Government may, by general or special order published in the

Official Gazette, from time to time specify in this behalf, regard being had to the financial position and share capital of such Institutions.

(2) When the election of all the members of the committee of any such societies held at the same time. the members elected on the committee at such general election shall hold office for a period of ³[three years] from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.

(3) Notwithstanding anything In the bye-laws of any such society, the committee of management shall be elected by a general body of members of the society and all other committees authorised by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management, and all such committees shall be sub-committees of the committee, of management, and shall be subordinate to it:

Provided that It shall be lawful for the State Government,-

(a) to nominate Its representatives on a Committee of any such society under Section 80 , or

(b) to nominate the first Committee of Management of any such society where the bye-laws of such society so provide).

⁴ [Provided further that It shall be lawful for any body or authority to nominate Its representative on a Committee of such society where the bye-laws of such society so provide.]

1. Substituted by Gujarat 23 of 1982.

2. Inserted by Gujarat 23 of 1982.

3. Substituted for five years- by Gujarat 23 of 1982.

4. Added by Gujarat 14 of 1983, [7.1.1981].

74D. Appointment of custodian in certain circumstances :-

(1) Where in respect of any society Including a society existing immediately before the commencement of the Gujarat Co-operative Societies (Amendment) Ordinance, 1982 (1 of 1982) a new committee of management is, for any reason whatsoever, not elected or having been elected not functioning, within a period of six months after the expiry of the term of office of members of a committee of management of such society, (not being a committee

referred to in section 80A) the Registrar may by an order In writing, appoint a person or a committee of persons to be the custodian of the society until a new committee of management is elected or, as the case may be, starts functioning.

(2) The custodian so appointed shall, subject to the control of the Registrar and to such Instructions as he may from time to time give, have powers to exercise all or any of the functions of the committee, and take all such actions as may be required in the Interest of the society.

(3) All acts done or purported to be done by the custodian during the period when the affairs of the society are carried on by such custodian, shall be binding on the new committee of management.]

75. Handing over records and property to new Chairman on election :-

(1) On the election of a new committee and its Chairman, the retiring Chairman In whose place the new Chairman is elected shall hand over charge of the office of the committee and all papers and property, if any, of the society in possession of the committee or any officer thereof, to the new Chairman of the Committee.

(2) If the retiring Chairman fails or refuses to hand over charge or to hand over the papers and property of the society as aforesaid, the Registrar, or any person empowered by him in this behalf, may by order in writing direct him to forthwith handover such charge and property and the Registrar may, on the retiring Chairman's failure to comply with such direction, make order for seizing the records and property and handing them over to the new Chairman, In the manner provided in section 83 .

75A. Restriction on rates of sitting fees and travelling and dally allowances of members of Committee :-

Notwithstanding anything contained In the bye-laws of a society-

(1) no society shall prescribe nor a member of a committee thereof shall be entitled to sitting fees, and travelling and dally allowances while touring on public business, at rates exceeding such rates as may be prescribed, and

(2) a member of a committee of a society shall, in relation to touring on public business be subject to such conditions and limitations as may be prescribed and different rates, conditions and

limitations may be prescribed in relation to members of committees of different societies or class of societies.

Explanation.-For the purposes of this section "touring on public business" Includes-

- (a) a journey for attending any meeting of the committee;
- (b) a journey In connection with the performance of any other functions of the committee:
- (c) a journey for attending any conference sponsored by-
 - (i) the Central Government,
 - (ii) a State Government.
 - (iii) any co-operative Institution, or
 - (iv) such other Institutions recognised by the State Government in this behalf.]

76. Appointment of officers and employees and their conditions of service :-

The qualifications for the appointment of a manager, secretary, accountant or any other officer or employee of a society and the conditions of service of such officers and employees shall be such as may. from time to time. be prescribed:

Provided that no qualifications shall be prescribed In respect of any officer not In receipt of any remuneration.

76A. Appointment or removal of Managing Director or Chief Executive Officer to be approved :-

(1) No Managing Director or Chief Executive Officer of such society falling within such class of societies as the State Government may. by notification in the Official Gazette, specify (hereinafter In this section referred to as "the notified society"), or person exercising the powers and performing the functions and duties of the Managing Director or Chief Executive Officer of such notified society by whatever designation known, shall be appointed or removed by such notified society except with the previous approval of the Registrar.

(2) Any appointment or removal of a Managing Director or Chief Executive Officer or a person exercising the powers and performing the functions and duties of such Director or officer made without

the previous approval of the Registrar shall be void.

76B. Removal of officer :-

(1) If in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have held if the vacancy had not occurred.

(2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years from the date of the order and such officer shall stand disqualified accordingly.]

77. Annual general meeting :-

(1) Every society shall, within a period of three months next after the date fixed for drawing up its accounts for the year under the rules for the time being in force, call a general meeting of its members:

Provided that, the Registrar may, by general or special order, extend the period for holding such meeting 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, the Registrar or any person authorised by him in that behalf may in the prescribed manner call such meeting which shall be deemed to be a general meeting duly called by the society.

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

Explanation.-In the case of a society not carrying on business for

profit and 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 is recommends for payment by way of dividend, bonus, or honoraria to honorary workers. The Committee's report shall also deal with any changes in the nature of the society's business which have occurred during the year for which the accounts are drawn up. The committee's report shall be signed by its Chairman, or any other member authorised to sign on behalf of the committees.

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

(5) Where any officer of the society, whose duty it was to call a general meeting within the period specified in sub-section (1) or, as the case may be, the period extended by the Registrar under that sub-section or to comply with sub-section (2). (3) or (4) falls without reasonable excuse to call such meeting or to comply with sub-section (2). (3) or (4). then-

(i) if such officer is a servant of the society, the Registrar may by an order in writing impose on him a penalty of an amount not exceeding one hundred rupees, and

(ii) if such officer is not a servant of the society, the Registrar may by an order in writing declare such officer to be disqualified for being an officer or a member of the Committee, of the society or for being elected or appointed to any office of the society, for such period not exceeding three years as he may specify In the order:

Provided that before making an order under this sub-section, the Registrar shall give or cause to be given, a reasonable opportunity to the officer to show cause against the action proposed to be

taken In regard to him.

78. Special general meeting :-

(1) A special general meeting may be called at any time by a majority of the committee, and shall be called by the committee within one month-

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

(ii) on a requisition from the Registrar, or

(iii) in the case of a society, which Is a member of a federal society, on a requisition from 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, falls 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 in sub-section (1). the Registrar or any person authorised by him that behalf, shall have power to call such meeting, which 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 sub-section (3) shall be paid out of the funds of the society or by such person or persons who. in the opinion of the Registrar, were responsible for refusal or failure to convene the meeting.

79. Acts of societies etc., not to be invalidated by certain defects :-

(1) No act of a society or a committee or any officer, done in good faith In pursuance of the business of the society shall be deemed to

be Invalid by reason only of some defect subsequently discovered in the organisation of the society, or in the constitution of the committee, or In the appointment or election of an officer, or on the ground that such officer was disqualified for his office.

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

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

80. Power to appoint Government nominee :-

¹[(1)] Where the State Government has subscribed to the share capital of a society, directly or through another society, or has guaranteed the repayment of the principal of and payment of Interest on. debentures Issued or loans raised by a society, ²[the State Government shall, notwithstanding anything contained In the bye- laws of such society, have the right to nominate three representatives on the Committee of such society]. in such manner as may be determined by the State Government from time to time. The members so nominated shall hold office during the pleasure of the State Government, or for such period as may be specified in the order by which they are appointed, and any such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he were a member of the committee duly elected.

³[Explanation.- Any nomination of the Registrar or his nominee on the Committee of a society under the bye-laws of such society shall not be construed as nomination of the representative on that Committee in exercise of the right of the State Government under this sub-section.]

⁴ [(2) Where the State Government is of the opinion that having regard to the public interest involved in the operation of a society it i s necessary or expedient so to do. it may nominate its representatives on the committee of such society as if the State Government had subscribed to the share capital of the society and the provisions of sub-section (1) shall, so far as may be apply to such nomination.]

1. Renumbered by Gujarat 23 of 1982.
2. Substituted by Gujarat 14 of 1983.
3. Inserted by Guj. 14 of 1983.
4. Added by Gujarat 23 of 1982.

80A. Extension of term of nominated committee or appointment of custodian :-

(1) Where on the expiry of the term of office of the members of any committee of management nominated by the State Government, or the Registrar, the State Government or, as the case may be, the Registrar is of the opinion that it is necessary or expedient so to do. it or he may, by an order published In the Official Gazette,-

(a) extend the term of office of the members of the said committee of the management; or

(b) appoint a person or a committee of persons to be the custodian of the society; for such period not exceeding two years in the aggregate or until a new committee of management is elected, whichever is earlier.

(2) The custodian so appointed shall, subject to the control of the Registrar and to such Instructions as he may, from time to time. give, have powers to exercise all or any of the functions of the Committee, and take all such actions as may be required in the interests of the society.

(3) All acts done or purported to be done by the custodian during the period when the affairs of the society are carried on by the custodian appointed under sub-section (1) shall be binding on the new committee of management.]

81. Super session of committee :-

1[(1) If In respect of a committee of a Society having the Registrar as Its member, the State Government and In respect of a Committee of a Society which does not have the Registrar as Its member, the Registrar, Is of the opinion that the Committee-

(a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or does anything which is prejudicial to the interest of the society or its members, or

(b) falls to comply with any directions issued under subsection (1)

of section 160 . or such directions as modified under sub- section (2) of that section, then subject to the rules the State Government or, as the case may be the Registrar may. after giving the committee an opportunity of stating its objections, if any, within fifteen days from the date of issue of notice, by order in writing, remove the Committee: and appoint-

(i) a committee, consisting of one or more members of the society. in its place, or

(ii) one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding two years as may be specified In the order, which period may. at the discretion of the Registrar, be extended from time to time, so, however, that the total period does not exceed four years In the aggregate.]

(2) The committee or administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society, and take all such action as may be required in the interests of the society.

(3) If at any time during any period or extended period ² [referred to in sub-section (1)]. It appears to the Registrar that it is no longer necessary to continue to carry on the affairs of the society as aforesaid, he may. by an order published in the Official Gazette, direct that the management shall terminate; and on such order being made. the management of the society shall be handed over to a new committee duly constituted.

(4) The committee or administrator shall, at the expiry or termination of its or his term of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.

(5) All acts done or purported to be done by the committee or administrator during the period during which the affairs of the society are carried on by the committee or administrator appointed under sub-section (1), shall be binding on the new committee.

(6) Before taking any action under sub-section (1) in respect of a society, the Registrar shall consult any co-operative financing institution to which it is indebted.

1. Substituted by Gujarat 23 of 1982.

2. Substituted by Gujarat 23 of 1982.

82. Registrars power to enforce performance of obligation

:-

(1) It shall be the duty of every society to keep the prescribed books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and such records to the Registrar as the Registrar may by order direct from time to time; and the officer or officers of the society shall be bound to comply with the order within the period specified therein.

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

(a) within the time provided in this Act, the rules or the bye-laws, or the order, as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing.

(3) Where the Registrar takes action under sub-section (2), he may call upon any officer of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the bye-laws, or the order made under sub-section (1), and after giving him an opportunity of being heard, may require him to pay to the society the expenses paid or payable by it to the State Government as a result of his failure to take action, and to pay to the assets of the society such sum not exceeding fifteen rupees as the Registrar may think fit for each day until Registrar's directions are carried out.

83. Registrars power to seize records etc :-

(1) Where the Registrar is satisfied that the books and records of a society are likely to be suppressed, tampered with or destroyed or the funds and property of a society are likely to be misappropriated or mis-applied or the officer or the person in possession unreasonably refuses to give possession of the records, funds and property, the Registrar may issue an order directing the person duly authorised by him in writing to seize and take possession of such books and records, funds and property of the

society, and the officer of the society responsible for the custody of such books, records, funds and property or person In possession of the same shall give delivery thereof forthwith to the person so authorised. If the officer of the society or person In possession does not so give the delivery, then. without prejudice to any other action that may be taken against such officer, person or society under the provisions of this Act, the Registrar or the person authorised by him may apply to the Executive Magistrate within whose jurisdiction the society is functioning for seizing and taking the possession of the records and property of the society.

(2) On receipt of an application under sub-section (1), the Magistrate may authorise any police officer not below the rank of a Sub-Inspector to enter and search any place where the records and property are kept or likely to be kept and to seize them and hand over possession there of to the Registrar or the person authorised by him, as the case may be.]

CHAPTER 8

Audit, Inquiry, Inspection and Supervision

84. Auditor :-

(1)The Registrar shall audit, or cause to be audited by a person possessing prescribed qualifications and authorised by the Registrar by general or special order In writing in this behalf, the accounts of every society at least once in each year. The person so authorised shall be an auditor for the purposes of this Act.

(2) The audit under the foregoing sub-section shall Include an examination of overdue debts. If any, the verification of the cash balance and securities, and a valuation of the assets and liabilities of the society.

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

(4) Every person who is, or has at any time been, an officer or employee of the society, and every member and past member of

the society shall furnish such Information In regard to the transactions and working of the society as the Registrar, or the auditor may require.

(5) The auditor shall have the right to receive all notices, and every, communications relating to the annual general meeting of the society and to attend such meeting and to be heard thereat. in respect of any part of the business with which he is concerned as auditor.

(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 provision of this Act applicable to audit of accounts of the society shall apply to such re-audit.

1 [(7) For auditing the accounts of a society under this section, every society shall be liable to pay to the Registrar, or, as the case may be. to the auditor, audit fee,-

(i) In relation to any period beginning from the date of the commencement of this Act and ending on the day Immediately before the date of general or, as the case may be, special order made under clause (ii), at the existing rates;

(ii) In relation to any other period at such rates or scales as the State Government may. from time to time. by general or special order, determine.

(8) The State Government may. If It considers It necessary to do so In public Interest, exempt, by notification In Official Gazette, and for reasons to be specified therein, any society or class of societies wholly or partially from payment of audit fees.

(9) The amount of audit fees payable by any society for any period, whether before or after the commencement of this Act, shall be deemed to be a sum due to the Government for the purpose of section 157 .

Explanation.-For the purpose of clause (i) of sub-section (7), "existing rates" means the rates of fees for auditing the accounts of societies, which were in force immediately before the commencement of this Act under the MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960 (VII of 1925) as then in force and such rates shall be deemed to be the rates or scales prescribed

under sub-section (7) as In force during the period referred to In the said clause (i).]

1. Substituted sub-sections (7), (8), (9) and Explanation by Gujarat 23 of 1982.

85. Rectification of defects in accounts :-

If the result of the audit held under section 84 discloses any defects in the working of the society, the society shall within three months from the date of the audit report, explain to the Registrar the defects or the Irregularities pointed out by the auditor, and take steps to rectify the defects and remedy irregularities, and report to the Registrar the action taken by it thereon. The Registrar may also make an order directing the society or its officers to take such action and within such time as may be specified therein to remedy the defects. Where the society concerned Is a member of a federal society, such order shall be made after consulting the federal society.

86. Inquiry by Registrar :-

(1) The Registrar may of his own motion himself, or by a person duly authorised by him In writing In this behalf, hold an inquiry Into the constitution, working and financial conditions of a society.

(2) The Registrar shall hold such an Inquiry-

(a) on the requisition of a society duly authorised by rules made In this behalf to make such requisition. In respect of any of its members, such member being Itself a society, or

(b) on the application of a majority of the committee of a society, or

(c) on the application of one-third of the members of a society.

(3)

(a) Every officer, member and past member of the society in respect of which an inquiry is held. and any other person who is in possession of Information, books and papers relating to the society, shall on being so required furnish such Information as is in his possession, and produce all books and papers relating to the society which are in his custody or power, and otherwise give to the officer holding the inquiry all assistance in connection with the Inquiry which he 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 paper 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 may impose on the defaulter a penalty of an amount not exceeding five hundred rupees. Before imposing such penalty, the Registrar shall give, or cause to be given a reasonable opportunity to the defaulter, of showing cause against the action proposed to be taken in regard to him.

(4)

(a) If at any stage of the Inquiry under this section the Registrar is satisfied that in the interest of the members of the society it is necessary to take over all books and papers relating to the society during the period of inquiry, he may make an order in writing to that effect and directing the society to hand over all books and papers relating to the society to such officer as may be specified in the order. The Registrar may also issue a direction to the society to refrain from doing such acts or engaging in such activities as may be specified in the direction.

(b) The society shall be bound to comply with any direction issued to it under clause (a).

(c) The books and papers taken over under clause (a) shall be returned to the society on the completion of the Inquiry.

(5) When the Inquiry is held under this section the Registrar shall communicate the result of the Inquiry-

(i) in case the State Government have subscribed directly to the share capital of the society or in case any moneys are due from the society to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund, to the State Government or to any officer appointed by it in this behalf;

(ii) to the federal co-operative society concerned, and

(iii) to the society concerned.

(6) 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.

87. Inspection of books of Indebted society :-

(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 there of 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, the Registrar may. If he thinks It necessary, inspect or direct a person authorised by him by order In writing in this behalf to Inspect, the books of the society.

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

(3) It shall be competent for the Registrar to withdraw any Inspection from the officer to whom it Is entrusted, and to carry out the Inspection himself or entrust It to any other person as he deems fit.

88. Inspection of books by Registrar or financing bank or federal society :-

(1)

(a) The Registrar or the person authorised by him In this behalf shall have the right to inspect the books of any society and shall have free access to the books, accounts, documents, securities, cash and other properties belonging to. or In the custody of, the society.

(b) 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 such transactions and working of the society as the Registrar or the person authorised by him may require.

(2) Where a society is Indebted to any co-operative financing bank, such bank shall have the right to Inspect the books of that society. The inspection may be made either by an officer of the bank authorised by the committee of such bank or by a member of its paid staff certified by the Registrar as competent to undertake such Inspection. The officer or member so Inspecting shall at all

reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or In the custody of the society and may also call for such Information, statements and returns, as may be necessary, to ascertain the financial condition of the society and the safety of the sums lent to It by the bank.

(3) Where a society Is a member of a federal society recognised by the State Government under section 95 such federal society shall have the right to Inspect the books of that society. The Inspection may be made either by an officer of the federal society authorised by the committee of such federal society or by a paid employee of such federal society certified by the Registrar as competent to undertake such inspection. Such officer or employee shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other proper- ties belonging to, or In the custody of the society and may also call for such Information, statements and returns as may be necessary.]

89. Suspension of officer or servant of society :-

(1) Where In the course of an audit under section 84 or an Inquiry under section 86 or an Inspection under section 87 or section 88 . it is brought to the notice of the Registrar that a paid officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence. In relation to the society, the Registrar may. If In his opinion, there Is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary In the Interest of the society, direct the committee of the society pending the Investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him.

(2) On receipt of a direction from the Registrar under sub-section (1). the committee of the society shall, notwithstanding any provision to the contrary In the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.

(3) The Registrar may direct the committee to extend from time to time, the period of suspension and that the paid officer. or servant suspended shall not be reinstated except with the previous sanction of the Registrar.

(4) If the committee fails to comply with the direction issued under

sub-section (1). the Registrar may make an order placing such paid officer or servant under suspension from such date and for such period as he may specify In the order and thereupon the paid officer or servant, as the case may be, shall be under suspension.

90. Costs of Inquiry and inspection :-

(1) The cost of an Inquiry under section 86 or. as the case may be of an inspection under section 87 shall be in the first Instance from the Consolidated Fund of the State and shall be recovered In accordance with sub- section (2) and section 91 .

(2) The Registrar shall determine the total amount of the cost referred to In sub-section (1) and by order apportion the cost or such part thereof 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 of the society:

Provided that where a person has ceased to be a member on his death, the order of apportionment shall be made against his estate. If such person was liable for the costs:

Provided further that no order of apportionment of costs shall be made under this section without-

(a) having heard or given a reasonable opportunity of being heard to, the society or person or in the case of an estate its legal representative, as the case may be. against whom or which such order is proposed to be made: and

(b) setting out in the order the grounds on which the apportionment is made.

(3) 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 sub-section (1).

91. Mode of recovery of sums imposed as penalty or awarded as costs :-

Any sum Imposed as penalty under Section 77 , Section 78 or Section 86 or awarded by way of costs under section 90 may. on an application by the Registrar or a person authorised by him in that behalf to a Magistrate having jurisdiction in the place where the person from whom the penalty or costs are recoverable resides or

carries his business, be recovered by the Magistrate as If it were a fine imposed by himself: and such Magistrate shall proceed to recover the same in the manner provided by the Code of Criminal Procedure, 1898 (V of 1898), for the recovery of fines.

92. Registrar to bring defects disclosed In Inquiry or Inspection to notice of society :-

(1) If the result of any inquiry held under section 86 or Inspection made under section 87 , discloses any defects In the constitution, working or financial condition or the books of a society, the Registrar may bring such defects to the notice of the society. 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 make an appeal against an order made by the Registrar under sub-section (1) to the State Government within two months from the date of the communication of the order to the society.

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

(4) Where the society fails to rectify the defects as directed by the Registrar and where no appeal has been made to the State Government under sub-section (2) 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 cast from the officers of the society who. in his opinion, have failed to rectify the defects.

93. Power of Registrar to assess damages against delinquent, promoters, etc :-

(1) Where, In the course of or as a result of an audit under section 84 . or an inquiry under section 86 or an Inspection under section 87 , or the winding up of a society. the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make Inquiry under section 86 . or the person authorised to Inspect the books under section 87 , or the Liquidator under section 110 , that any person who has taken any part. In the organisation or management of the society or any deceased, or past or present officer of the society has. within a period of five years prior to the date of such audit, inquiry. Inspection or order

for winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust In relation to the society, the Registrar or a person authorised by him in that behalf may Investigate the conduct of such person or persons and after framing charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges. make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation In regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

(2) The Registrar or the person authorised under sub-section (1) In making any order under this section, may provide therein for the payment of the costs or any part thereof of such investigation, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been Issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.

94. Power to enforce attendance etc :-

The Registrar or the person authorised by him, when acting under section 86 , section 87 or section 93 shall have the power to summon and enforce the attendance of any person to give evidence or to compel the production of any document or other material object by the same means and In the same manner as Is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908).

95. Constitution or recognition of federal society to supervise working of societies :-

(1) The State Government may constitute committees or recognise one or more co-operative federal societies In such manner as may be prescribed and subject to such conditions as the State Government may Impose for the supervision of a society or a class of societies and may frame rules for making grants to any such committee or federal society.

(2) The State Government may, by general or special order, require

of a society or a class of societies to make contribution of such sum every year as may be fixed by the Registrar towards the recoupment of expenditure which the State Government or any person authorised or a committee in that behalf has Incurred or is likely to incur. In respect of the supervision of societies.

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

CHAPTER 9

Procedure for deciding disputes

96. Disputes :-

(1) Notwithstanding anything contained in any other law for the time being In force, any dispute touching the constitution, management or business of a society shall be referred In the prescribed form either by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar. If the parties thereto are from amongst the following:-

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

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

(c) a person, other than a member of the society, who has been granted loan by the society, or with whom the* society has or had transactions under the provisions of section 46 , and any person claiming through such a person:

(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 46 , whether such a surety Is or is not a member of the society;

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

(2) When any question arises whether for the purposes of sub-

section (1) a matter referred to for decision Is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

Explanation 1.-For the purposes of this sub-section, a dispute shall Include-

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, without such a debt or demand be admitted or not:

(ii) a claim by a surety for any sum or demand due to him from the principal borrower In respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to It by a member, past member, or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by Its committee, past or present whether such loss be admitted or not:

(iv) a refusal or failure by a member, a past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by It for breach of conditions of the assignment.

Explanation 2.-For the purposes of this section, the expression "agent" Includes In the case of a housing society, an architect, engineer or contractor engaged by the society.

97. Limitation :-

(1) Notwithstanding anything contained In the Indian Limitation Act. 1908 (IX of 1908). but subject to the specific provisions made in this Act, the period of limitation In the case of a dispute referred to the Registrar under section 96 shall-

(a) when the dispute relates to the recovery of any sum, Including Interest thereon due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;

(b) when the dispute is between a society or Its committee. and any past committee, any past or present officer, or past or present

agent, or past or present servant or the nominee, heir or legal representative of a deceased officer, deceased agent or deceased servant of the society, or a member or past member, or the nominee, heir or legal representative of a deceased member, and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under section 107, or in respect of which a nominated committee or an administrator has been appointed under section 81, be six years from the date of the order issued under section 107, or section 81, as the case may be;

(d) when the dispute is in respect of an election of any office-bearer of a society, be two months from the date of the declaration of the result of such election.

(2) The period of limitation in the case of any dispute other than those mentioned in sub-section (1) which are required to be referred to the Registrar under section 96 shall be regulated by the provisions of the Indian Limitation Act, 1908 (IX of 1908), as if the dispute were a suit, and the Registrar a Civil Court.

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

98. Settlement of disputes :-

(1) If the Registrar is satisfied that any matter, referred to him is a dispute, within the meaning of section 96 the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal to a nominee, or a board of nominees, appointed by the Registrar:

Provided that no person who is connected with a dispute or with the society at any stage or has previously inspected the society or audited its accounts shall be appointed as a nominee or as member of the board of nominees to settle the dispute.

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

(3) Notwithstanding anything contained in section 96, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute. If the question at issue between a society and a claimant or between different claimants is one involving a complicated question of law or fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as is provided in sub-section (1).

99. Procedure for settlement of disputes and power of Registrar, his nominee or board of nominees :-

(1) The Registrar, or his nominee or board of nominees, hearing a dispute under section 98 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, and to compel the production of documents by the same means and as far as possible in the same manner as provided in the case of a Civil Court by the Code of Civil Procedure, 1908 (V of 1908).

(2) Except where a dispute involves a complicated question of law or fact, no legal practitioner in his capacity as a legal practitioner or as a person holding a power of attorney shall be permitted to appear on behalf of any party at the hearing of a dispute.

(3)

(a) If the Registrar or his nominee or board of nominees is satisfied that a person, whether he be a member of the society or not, has acquired any interest in the property of a person who is a party to a dispute, he may order that the person who has acquired the interest in the property may join as a party to the dispute: and any decision that may be passed on the reference by the Registrar or his nominee or board of nominees shall be binding on the party so joined. In the same manner as if he were 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 been not Included, the Registrar or his nominee or board of nominees may, at any stage of the hearing of the dispute If satisfied that the mistake was bonafide. order any other person to be substituted or added as a plaintiff or a defendant, upon such terms as he thinks just.

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

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

100. Attachment before award :-

(1) Where a dispute has been referred to the Registrar or his nominee or board of nominees under section 98 or under section 110 , or where the Registrar or the person authorised under section 93 hears a person against whom charges are framed under that section, the Registrar or his nominee or board of nominees, or as the case may be. the person so authorised under section 93 If satisfied on enquiry or otherwise that a party to such dispute or against whom proceedings are pending under section 93 with Intent to defeat, delay or obstruct the execution of any award or the carrying out of any order that may be made,-

(a) Is about to dispose of whole or any part of his property. or

(b) Is about to remove the whole or any part of his property from the jurisdiction of the Registrar, may, unless adequate security Is furnished, direct conditional attachment of the said property and

such attachment shall have the same effect as If made by a competent Civil Court.

(2) Where a direction to attach property Is Issued under sub-section (1) the Registrar, his nominee or board of nominees or the person authorised, under section 93 shall Issue a notice calling upon the person whose property Is so attached to furnish such security within such period as may be specified In the notice; and I f the person falls to provide the security so demanded, the Registrar or his nominee or board of nominees or, as the case may be, the person authorised under section 93 may confirm the order and, after the decision in the dispute or the completion of the proceedings referred to In sub-section (1) may direct the disposal of the property so attached towards the claim if awarded.

(3) Attachment made under this section shall not affect the rights subsisting prior to the attachment of the property, of persons not parties to the proceedings In connection with which the attachment Is made, or bar any person holding a decree prior to such attachment against the person whose property is so attached from applying for the sale of the property under attachment In execution of such decree.

101. Decision of Registrar or his nominee or board of nominees :-

1(1)When a dispute is referred to the Registrar for decision, he or his nominee or board of nominees may. after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses Incurred by the parties to the dispute In connection with the proceedings, and the fees and expenses payable to the Registrar or his nominee or, as the case may be, board of nominees. Such an award shall not be Invalid merely on the ground that it was made after the expiry of the period fixed by the Registrar, for deciding the dispute and shall, subject to appeal or review or revision, be binding on the parties to the dispute.

2 [(2) The Registrar, his nominee or. as the case may be. the board of nominees, may before hearing the parties, require any party or parties to such dispute to deposit such sum as may, in his or its opinion, be considered reasonable to meet the expenses Including the payment of fees, that may be payable to the Registrar, his nominee or, as the case may be. the board of

nominees. In pursuance of the award to be made under sub-section (1).

(3) The Registrar may, having regard to the nature of the cause of action or subject matter of dispute, the nature of relief that may be claimed in a dispute and such other matters, specify by a general or special order, the scale of fees and expenses that may be made payable to him or his nominee or, as the case may be, the board of nominees, by or under an award made under sub-section (1).

1. Renumbered by Gujarat 23 of 1982.

2. Inserted by GUJ. 23 of 1982.

102. Appeal against decision of Registrar or his nominee or board of nominees :-

Any party aggrieved by any decision of the Registrar or his nominee or board of nominees under section 101 or in an order passed under section 100 may, within two months from the date of the decision or order, appeal to the Tribunal.

103. Money how recovered :-

Every order passed by the Registrar or a person authorised by him under section 93, or by the Registrar, his nominee or board of nominees under Section 100 or Section 101, every order passed in appeal under section 102, every order passed by a Liquidator under section 110, every order passed by the State Government in appeal against orders passed under section 110 and every order passed in revision under section 155 shall, if not carried out,-

(a) on a certificate signed by the Registrar or a Liquidator, be deemed to be a decree of a Civil Court, as defined in clause (2) of Section 2 of the Code of Civil Procedure, 1908 and shall, be executed in the same manner as a decree of such Court, or

(b) be executed according to the provisions of the Land Revenue Code and the rules thereunder for the time being in force for the recovery of arrears of land revenue:

Provided that, any application for the recovery in such manner of any such sum shall be made to the Collector, and shall be accompanied by a certificate signed by the Registrar, or by any Assistant Registrar to whom the said power has been delegated by the Registrar. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.

104. Private transfer of property made after issue of certificate void against society :-

Any private transfer or delivery of, or encumbrance or charge on, property made or created after the Issue of the certificate of the Registrar, Liquidator or Assistant Registrar, as the case may be under section 103 shall be null and void as against the society on whose application the said certificate was issued.

105. Transfer of property which cannot be sold :-

(1) When in execution of an order sought to be executed under section 103 any property cannot be sold for want of buyers, if such property is In occupancy of the defaulter, or of some person In his behalf. or of such person claiming under a title created by the defaulter subsequently to the Issue of the certificate of the Registrar, Liquidator or the Assistant Registrar, under clause (a) or (b) of section 103 , the Court or the Collector or the Registrar, as the case may be, may direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order. In the manner prescribed.

(2) Where property is transferred to the society under sub-section (1) or Is sold under the provisions of section 103 , the Court, the Collector or the Registrar, as the case may be. may. In accordance with the rules, place the society or the purchaser, as the case may be, in possession of the property transferred or sold.

(3) Subject to the rules made In this behalf, and to any rights, encumbrances, charges or equities lawfully subsisting in favour of any person, such property or portion thereof shall be held under sub-section (1) by the said society on such terms and conditions as may be agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society. Subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of an Assistant or Deputy Collector or an Assistant Registrar powers exercisable by the Collector or the Registrar under this section.

106. Recovery of crop loans :-

(1) Notwithstanding anything contained in section 96 . Section 98 and Section 103 . on an application made by a society undertaking the financing of crops and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947 (Bom.XXVIII of

1947) ¹[or undertaking medium term finance] for the recovery of arrears of any sum advanced by it to any of its members on account of the [financing of crops, seasonal finance or medium term finance] and on Its furnishing a statement of accounts In respect of the arrears, the Registrar may, after making such Inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

²[Explanation. -In this sub-section "medium term finance" means advancing of loans for any purpose of production, relating to agriculture, fishery, animal husbandry and industry such loans being re-payable otherwise then In the manner specified In the definitions of the expressions "financing of crops" and "seasonal finance" In the Bombay Agricultural Debtors Relief Act, 1947 (Bom. XXVIII of 1947)].

¹[(1A) If a society referred to in sub-section (1) falls to make an application under that sub-section, then, if such society is a member of any co-operative financing bank such co-operative financing bank may direct such society to take such action and If the society falls to take action In pursuance of such direction. the co-operative financing bank may Itself make an application under sub-section (1) on behalf of the society.)

(2) ⁴ [Where the Registrar Is satisfied that a society or the cooperative financing bank to which such society Is affiliated has failed to make an application under sub-section (1) or, as the case may be, under sub-section (I A)] In respect of such arrears the Registrar may, of his own motion, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as such arrears, and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.

(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears, stated to be due therein, which shall be recoverable according to the provisions of the Land Revenue Code and of the Rules thereunder for the time being In force for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by sections 140 to 144 of the Land Revenue Code, until the arrears due to the society together

with interest and any incidental charges incurred in the recovery of such arrears, are paid. or security for payment of such arrears Is furnished to the satisfaction of the Registrar.

1. Inserted by Gujarat 23 of 1982.
2. Inserted by Gujarat 23 of 1982.
4. Substituted by Gujarat 23 of 1982.

CHAPTER 10

Liquidation

107. Winding up :-

(1) If the Registrar.-

(a) after an Inquiry has been held under section 86 , or an Inspection has been made under section 87 , 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 of members' deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management In this Act or¹ [the rules or the bye-laws, or]

[(v) has failed to comply with any directions Issued under sub-section (1) of section 160 or such directions as modified under sub-section (2) of that section.]

(2) Where an interim order is made on a ground specified in clause (a) or sub-clause (iv) of clause (c) of sub-section (1) a copy thereof 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.

(3) The Registrar, after giving an opportunity to the society of being heard, shall make a final order, vacating or confirming the interim order.

1. Inserted by 8 of 1978.

108. Appointment of Liquidator :-

(1) When an Interim or final order Is made under section 107 for the winding up of a society, the Registrar may. In accordance with the rules appoint a person to be the liquidator of the society, and fix his remuneration.

(2) Where an Interim order Is made 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.

1 (3) When a final order Is made confirming the interim order, the officers of the society-

(a) shall hand over to the liquidator the custody and control of any property, effects and actionable claims and any books, records, and other documents pertaining to the business of the society, which for any reason are not handed over to the liquidator under sub-section (2) at the time when an Interim order was made.

(b) shall vacate their offices and while winding up order remains In force, the general body of the society shall not exercise any powers.)

(4) The liquidator shall, subject to the general control of the Registrar, exercise all or any of the powers mentioned In section 110 . The Registrar may remove him from his office and appoint another In his place, without assigning any reason.

(5) The whole of the assets of the society shall on the appointment of the liquidator vest In him and notwithstanding anything contained In any law for the time being force. If any Immovable property Is held by him 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 liquidator shall hand over the property, effects, actionable claims, books, records and other documents of the society to the officers who had

delivered the same to him. The acts done. and the proceedings taken by the liquidator, shall be binding on the society, and such proceedings shall, after the Interim order has been vacated under section 107 be continued by the officers of the society.

1. Inserted by 8 of 1978.

109. Appeal against order of winding up :-

(1) The committee, or any member, of the society ordered to be wound up, may within two months from the date of the communication to the society of the order made under section 107 appeal. If the order is made by the Registrar, Additional Registrar or Joint Registrar to the State Government, or If the order is made by any other person 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 107 :

Provided further that, no appeal shall lie against an order passed by the Registrar on appeal.

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

110. Powers of Liquidator :-

The Liquidator appointed under section 108 shall have power, subject to the rules and the general supervision, control and direction of the Registrar,-

(a) to Institute and defend suits 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 the 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;

(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 ratably according to the amount of such debts, the surplus being applied In payment of Interest from the date of liquidation at a rate 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 claim, present or future. whereby the society may be rendered liable:

(g) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting In debts, and all claims present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society, and all questions In any way relating to or affecting the assets or the winding up of the society, on such terms as may be agreed, and take any security for the discharge of any such call. liability, debt. or claim, and give a complete discharge In respect thereof;

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

(i) to make applications under section 103 ;

(j) to get disputes referred to the Registrar for decision by himself or his nominee or board of nominees:

(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 benefits 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 provided In the case of a Civil Court under Code of Civil Procedure, 1908 (V of 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 reconstructed.

111. Effect of order of winding up :-

After the expiry of the period for appeal under section 109 against the order made under sub-section (3) of section 107 , or where the appeal has been dismissed, the order for winding up shall be effective and shall operate In favour of all creditors and of all the contributories of the society, as if it has been made on the joint petition of creditors and contributories. When awinding up order becomes effective, the liquidator shall proceed to realize 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, 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.

112. 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.

113. Audit of Liquidators 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 of 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 charge of the affairs of the society, and may be proceeded against as if it were an act against which action could be taken under section 93 :

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 of omission by the liquidator in carrying out the duties and functions.

114. Termination of liquidation proceeding :-

(1) The winding up proceedings of a society shall be closed within three years from the date of the order of the winding up, unless the period is extended by the Registrar:

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

Explanation.-In the case of a society which is under liquidation at the date of the commencement of this Act, an order for the winding up of the society shall be deemed for the purpose of this section to have been passed on the said date.

(2) Notwithstanding anything contained In sub-section (1) the Registrar shall terminate the liquidation proceedings on receipt of the final report from the liquidator. The final report of the liquidator shall state that the liquidation proceedings of the society have been closed, and also state how the winding up has been conducted and the property and claims of the society have been disposed off, 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, after paying off Its liabilities Including the share or interest of members and shall 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 the report.

115. Disposal of surplus assets :-

Any surplus assets, as shown In the final report of the liquidator of a society which has been wound up, shall not be divided, amongst Its members but shall be devoted to any object or objects provided In the bye-laws of the society. If they speedy that such a surplus shall be utilised for the particular purpose. Where the society has no such bye- law, 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 registration of the society whose surplus Is vested In the Registrar, the Registrar may distribute the surplus In the manner he thinks best, among any or all of the following:-

(a) an object of public utility and of local Interest as may be recommended by the members in general meeting held under section 114 or where the society has ceased to function and Its record is not available or none of Its members is forthcoming, as the Registrar thinks proper;

(b) a federal society with similar objects to which the cancelled society was eligible for affiliation or, where no federal society exists, the Gujarat State Federal Society; and

(c) any charitable purpose as defined In Section 2 of the Charitable Endowments Act, 1890 (VI of 1890).

115A. Order for winding up, reconstruction, supersession of committee, etc. of insured co-operative bank not to be made without sanction or requisition of Reserve Bank- of India :-

Notwithstanding anything contained In this Act, In the case of an Insured co-operative bank,-

- (1) an order for winding up or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction (including division or reorganisation) of the bank may be made only with the previous sanction in writing of the Reserve Bank of India;
- (2) an order for the winding up of the bank shall be made by the Registrar If so required by the Reserve Bank of India in the circumstances referred to in S.13D of the Deposit Insurance Corporation Act, 1961 (47 of 1961);
- (3) if so required by the Reserve Bank of India In the public Interest or for preventing the affairs of the bank being conducted in a manner detrimental to the Interests of the depositors or for securing the proper management of the bank, an order shall be made by the Registrar for supersession of the committee and the appointment of an administrator in place thereof for such period or periods, not exceeding five years In the aggregate, as may from time to time be specified by the Reserve Bank of India, and the administrator so appointed shall, after the expiry of his term of office, continue In office until the day immediately preceding the date of the first meeting of the new committee of such bank;
- (4) an order for winding up of the bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction (Including division or reorganisation) or an order for the supersession of the committee of the bank and the appointment of an administrator In place thereof made with the previous sanction In writing or on the requisition of the Reserve Bank of India shall be final and shall not be liable to be called in question In any manner In any court; and
- (5) the liquidator or such bank or the transferee bank, as the case may be, shall be under an obligation to pay the Deposit Insurance Corporation established under the Deposit Insurance Corporation

Act, 1961 (47 of 1961), in the circumstances, to the extend and In the manner referred to in section 21 of that Act.

Explanation.-In this section,-

(a) the expression "insured co-operative bank" means a society which Is an Insured bank under the provisions of the Deposit Insurance Corporation Act. 1961 (47 of 1961);

(b) the expression "transferee bank" In relation to an Insured co-operative bank means a co-operative bank-

(i) with which such Insured co-operative bank is amalgamated, or

(ii) to which the assets and liabilities of such Insured co-operative bank are transferred, or

(iii) into which such insured co-operative bank Is divided or converted, under sub-section (1) of section 17 .]

CHAPTER 11

Land Development Banks

116. Application of chapter to certain 2[Land Development Banks] :-

This Chapter shall apply to (Land Development Banks] advancing loans, other than short term loans, for the purposes herein enumerated that Is to any-

1[(i) Improvement and development of agriculture and productive purposes;]

(ii) the erection, rebuilding or repairing of houses for agricultural purposes;

(iii)the purchase or acquisition of title to agricultural lands by tenant purchasers or tenants under the Bombay Tenancy and Agricultural Lands Act. 1948 (Bom. LXVII of 1948), or any corresponding law for the time being In force In any part of the State;

(iv) the liquidation of debt under the Bombay Agricultural Debtors Relief Act, 1947 (Bom. XXVIII of 1947). or anycorresponding law for the time being In force In any part of the State:

2(v) the purchase of agricultural lands by agriculturists whose agricultural lands have been acquired for any public purpose under the Land Acquisition Act. 1894 or any other law for the time being

In force;

(vi) promoting the development of animal husbandry, dairy farming, poultry farming, pisciculture or fishery; or

(viii) purchase of shares in a co-operative society engaged in the manufacture of sugar.]

Explanation 1 .-For the purposes of this section a short term loan means a loan for a duration of less than 18 months.

Explanation 2. -³(Productive purposes] means any work, construction or activity which adds to the productivity of the land and, in particular. Includes the following, that is to say-

(a) construction and repair of wells (including tube wells), tanks, and other works for the storage, supply or distribution of water for the purpose of agriculture, or for the use of men and cattle employed in agriculture;

(b) renewal or reconstruction of any of the foregoing works, or alterations therein, or additions thereto:

(c) preparation of land for irrigation:

(d) drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes, or waste land which is cultivable;

(e) bunding and similar improvements;

(f) reclamation, clearance and enclosure or permanent improvement of land for agricultural purposes;

(g) horticulture;

(h) purchase of oil-engines, pumping sets and electrical motors for any of the purposes mentioned herein:

(i) purchase of tractors or other agricultural machinery;

(j) Increase of the productive capacity of land by addition to it of any special variety of soil;

(k) construction of a permanent farm-house, cattle-sheds, and sheds for processing of agricultural produce at any stage;

(l) purchase of machinery for crushing sugarcane. manufacturing gur or khandsarl or sugar;

(m) purchase of land for consolidation of holdings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. 1947 (Bom. LXII of 1947);

(n) such other purposes as the State Government may, from time to time, by notification In the Official Gazette, declare to be ⁴ productive purposes) for the purpose of this Chapter.

1. Substituted by Gujarat 23 of 1982.

2. Clauses (v), (vi) and (vii) Inserted by Gujarat 23 of 1982.

3. Substituted for "Land Improvement and productive purposes" by Gujarat 23 of 1982.

4. These words were substituted for the words "Land Improvement or productive purposes" by Gujarat 23 of 1982.

117. Definition :-

In this Chapter unless the context otherwise requires,-

(1) ¹("Land Development Bank"] means a Co-operative Bank registered or deemed to be registered under this Act. and to which this Chapter applies:

(2) ²["Primary Land Development Bank"] means a ¹[Land Development Bank] recognised as [Primary Land Development Bank] by the Registrar;

(3)⁴["State Land Development Bank] means a⁵ [Land Development Bank] for the whole of the State of Gujarat and recognised as such by the Registrar.

1. These words were substituted for the words "Land Mortgage Bank" by Guj. 24 of 1964.

2. These words were substituted for the words "Primary Land Mortgage Bank" by Gujarat 24 of 1964.

4. These words were substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

5. These words were substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

118. Appointment, powers and functions of Trustee :-

(1) The Registrar or where the State Government appoints any other person In this behalf, such person, shall be the Trustee for the purpose of securing the fulfilment of the obligations of the ¹[State Land Development Bank] to the holders of debentures Issued by the ²[State Land Development Bank].

(2) The Trustee shall be a corporation sole. by the name of the

Trustee, for the debentures in respect of which he is appointed and, as such, shall have perpetual succession and a common seal, and in his corporate name may sue and be sued.

(3) The powers and functions of the Trustee shall be governed by the provisions of this Act, and the instrument of trust executed between the³[State Land Development Bank] and the Trustee, as modified from time to time by mutual agreement between the⁴ [State Land Development Bank] and the Trustee.

1. These words were substituted for the words "State Land Mortgage Bank" by GUJ. 24 of 1964.

2. These words were substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

3. These words were substituted for the words "State Land Mortgage Bank" by GUJ. 24 of 1964.

4. These words were substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

119. Issue of debentures :-

(1) With the previous sanction of the State Government and the Trustee, and subject to the rules, the¹[State Land Development Bank] In the discharge of its functions Issue debentures of such denominations, for such period, and at such rates of Interest, as it may deem expedient on the security of the mortgages, or mortgages to be acquired or partly on mortgages held and partly on those to be acquired and properties and other assets of Its land mortgage business.

(2) Every debenture may contain a term fixing a period not exceeding thirty years from the date of Issue during which it shall be redeemable, or reserving to the committee the right to redeem at any time in advance of the date fixed for redemption after giving to the holder of the debenture not less than three months' notice in writing.

(3) The total amount due on debentures Issued by the²[State Land Development Bank]), and outstanding at any time. shall not exceed-

(a) where debentures are Issued against mortgages held. the aggregate of-

(i) the amounts due on the mortgages;

(ii) the value of the properties and other assets transferred or

deemed to have been transferred under section 124 by the ³[Primary Land Development Bank] to the ⁴[State Land Development Bank] and subsisting at such time; and

(iii) the amounts paid under the mortgages aforesaid and the unsecured amounts remaining In the hands of the ⁵ [State Land Development Bank] or the Trustee at the time;

(b) where debentures are Issued otherwise than on mortgages held. the total amount as calculated under clause (a) Increased by such portion of the amount obtained on the debentures as Is not covered by a mortgage.

1. These words were substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

2. These words were substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

3. These words were substituted for the words "Primary Land Mortgage Bank" by GuJ. 24 of 1964.

4. These words were substituted for the words "State Land Mortgage Bank" by GUJ. 24 of 1964.

5. These words were substituted for the words "State Land Mortgage Bank" by GuJ. 24 of 1964.

120. Guarantee by State Government :-

The principal of. and Interest on, the debentures Issued under section 119 shall. to such maximum amount as may be fixed by the State Government and subject to such conditions as the State Government may think fit to impose, carry the guarantee of the State Government.

121. Vesting of property In trustee and debenture holders charge on assets :-

Upon the Issue of debentures under the provisions of section 119 , the mortgaged properties and other assets referred to In sub-section (3) of section 119 held by the [State Land Development Bank] shall vest In the Trustee: and the holders of debentures shall have a floating charge on all such mortgages and assets, and on the amount, paid under such mortgages and remaining In the hands of the [State Land Development Bank] or of the Trustee.

122. Priority of mortgage :-

(1) A mortgage executed In favour of a ¹[Land Development Bank] shall have priority over any claim of the Government arising from a loan granted after the execution of the mortgage under the Land

Improvement Loans Act, 1883 (XIX of 1883). or the Agriculturists' Loans Act. 1884 (XII of 1884) or any other law for the time being In force.

(2) Notwithstanding anything contained In the Bombay Tenancy and Agricultural Lands Act. 1948 (Bom. XLVII of 1948). or any other corresponding law for the time being In force, where a mortgage In favour of a ²Land Development Bank] Is In respect of land In which a tenant has an Interest, the mortgage may be against the security of such Interest, and the rights of the mortgagee shall not be affected by the failure of the tenant to comply with the requirement of such law. and the sale of the land and tenant's Interest therein under such law shall be subject to the prior charge of the ¹ [Land Development Bank].

1. Substituted for the words "Land Mortgage Bank" by Guj. 24 of 1984.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

123. Order granting loans conclusive of certain matters :-

A written order by the ¹ Land Development Bank], or persons or committees authorised under the bye-laws of the Bank to make loans for all or any of the purposes specified In section 116 granting either before or after the commencement of this Act. a loan to or with the consent of a person mentioned therein, for the purpose of carrying out the work specified therein, for the benefit of the land or for the productive purpose specified therein, shall for the purposes of this Act be conclusive of the following matters that Is to say.-

(a) that the work described or the purpose for which the loan Is granted. Is an Improvement or productive purpose. as the case may be. within the meaning of section 116 ;

(b) that the person had at the date of the order a right to make such an improvement, or Incur expenditure for productive purpose, as the case may be: and

(c) that the Improvement Is one benefiting the land specified and the productive purpose concerns the land offered In security, or any part thereof as may be relevant.

1. Substituted for the words "Land Mortgage Bank" by Guj. 24 of 1984.

124. Mortgages executed in favour of¹[Primary Land Development Banks] to stand vested In ²[State Land Development Banks] :-

The mortgages executed In favour of. and all other assets transferred to a¹[Primary Land Development Bank) by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by it to the ²[State Land Development Bank] and shall vest In the³ [State Land Development Bank].

1. These words were substituted for the words "Primary Land Mortgage Bank" by Guj. 24 of 1964.
2. These words were substituted for the words "State Land Mortgage Bank" by Guj. 24 of 1964.
3. These words were substituted for the words "State Land Mortgage Bank" by Guj. 24 of 1964.

125. Registration of mortgage in favour of ⁶[Land Development Banks] :-

Notwithstanding anything contained In the Indian Registration Act. 1908 (XVI of 1908) It shall not be necessary to register mortgages executed in favour of the ¹[Land Development Banks], provided that the ² [Land Development Bank] concerned sends within such time and In such manner as may be prescribed, a copy of the Instrument whereby Immovable property Is mortgaged for the purpose of securing repayment of the loan to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property mortgaged Is situate. Such Registering Officer shall file a copy or copies as the case may be In his Book No. I prescribed under Section 51 of the Registration Act, 1908 (XVI of 1908).

1. Substituted for the words "Land Mortgage Bank" by Guj. 24 of 1964.
2. Substituted for the words "Land Mortgage Bank" by Guj. 24 of 1964.

126. Mortgages not to be questioned on insolvency of Mortgagors :-

Notwithstanding anything contained In the Presidency-Towns Insolvency Act. 1909 (III of 1909) or the Provincial Insolvency Act. 1920 (V of 1920) or any corresponding law for the time being In force, a mortgage, executed In favour of ¹ [Land Development Bank] shall not be called In question on the ground that It was not executed in good faith for valuable consideration, or on the ground

that It was executed In order to give the bank a preference over other creditors of the mortgagor.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

127. Right of 1[Land Development Bank] to pay prior debts of mortgagor :-

(1) Where a mortgage Is executed In favour of a ¹[Land Development Bank] for payment of prior debts of the mortgagor, the ²[Land Development Bank] shall, notwithstanding anything contained In Transfer of Property Act. 1882 (IV of 1882). by notice In writing, require any person to whom any such debt Is due. to receive payment of such debt or part thereof from the bank at Its registered office, within such period as may be specified In the notice.

(2) Where any such person falls to accept such notice or, to receive such payments, such debts or part thereof, as the case may be, shall cease to carry Interest from the expiry of the period specified in the notice:

Provided that where there Is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the ³ [Land Development Bank] towards the debt, but such receipt shall not prejudice the right. If any. of such person to recover the balance claimed by him.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

3. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

128. Mortgages executed by managers of Joint Hindu Families :-

(1) Where mortgage (other than a mortgage to which sub-section (2) applies) executed in favour of a¹[Land Development Bank] either before or after the commencement of this Act, Is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof whether such members have attained majority or not the

burden of proving the same shall, notwithstanding any law to the contrary, lie on the party raising It.

(2) A mortgage executed in favour of a ²[Land Development Bank] or the ³ [State Land Development Bank] by the manager of a joint Hindu family In respect of a loan advanced by such bank for the Improvement of agricultural land or of the methods of cultivation, or for financing any other means to raise the productivity of the land. or for the purchase of land. shall be binding on every member of such joint Hindu family, notwithstanding any law to the contrary.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

3. Substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

129. Restrictions on lease :-

(1) Notwithstanding anything contained In the Transfer of Property Act, 1882 (V of 1882), or any other law for the time being In force, no mortgage of property mortgaged to a ¹[Land Development Bank], shall, except with the prior consent In writing of the bank and subject to such terms and conditions as the bank may Impose, lease or create any tenancy rights on any such property:

Provided that, the rights of the bank shall be enforceable against the lessee or the tenants, as the case may be, as If he himself was a mortgagor.

(2) Where land mortgaged with possession to a ² [Land Development Bank], is in actual possession of a tenant, the mortgagor or the mortgagee bank shall give notice to the tenant to pay rent to the bank during the currency of the lease and the mortgage, and on such notice being given, the tenant shall be deemed to have attorned to the bank.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

130. Section 8 of Act XXXII of 1956 to apply to mortgages to [Land Development Banks], subject to certain modifications :-

¹.- Section 8 of the Hindu Minority and Guardianship Act, 1956

(XXXII of 1956). shall apply to mortgages In favour of a ² [Land Development Bank], subject to the modification that any reference to the Court therein shall be construed as reference to the Collector or his nominee, and the appeal against the order of the Collector or his nominee shall lie to the Commissioner.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

131. Power of Primary Land Development Bank] to receive money and give discharge :-

¹.-Notwithstanding anything contained In section 124 . all moneys due under the mortgage shall, unless otherwise directed by the ²[State Land Development [Bank, of the Trustee and communicated to the mortgagor, be payable by the mortgagor to the ³[Primary Land Development Bank]and such payment shall be valid as If the mortgage had not been so transferred under that section and the ⁴Primary Land Development Bank] shall In the absence of any specific direction to the contrary Issued by the ⁵ State Land Development Bank] or the Trustee and communicated to It be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

1. These words were substituted for the words "Primary Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

3. These words were substituted for the words "Primary Land Mortgage Bank" by Guj. 24 of 1964.

4. These words were substituted for the words "Primary Land Mortgage Bank" by Guj. 24 of 1964.

5. Substituted for the words "State Land Mortgage Bank" by GuJ. 24 of 1964.

132. Powers of [Land Development Bank] where mortgage property is destroyed or security becomes insufficient :-

¹. -

(1) Where any property mortgaged to a ²[Land Development Bank] Is wholly or partially destroyed, or the security Is rendered Insufficient for any other reason, and the mortgagor. having been given a reasonable opportunity by the bank of providing further security enough to render the whole security sufficient, or of

repaying such portion of the loan as may be determined by the bank. has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once, and the bank shall be entitled to take action against the mortgagor under section 133 or section 134 for the recovery thereof.

(2)A security shall be deemed Insufficient within the meaning of this section, unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified In the rules or the bye-laws of the ³ [Land Development Bank].

1. Substituted for the words "Land Mortgage Bank" by GuJ. 24 of 1964.
2. Substituted for the words "Land Mortgage Bank" by GuJ. 24 of 1964.
3. Substituted for the words "Land Mortgage Bank" by GuJ. 24 of 1964.

133. Power to distrain :-

(1) If any Instalment payable under a mortgage executed in favour of a ¹ [Land Development Bank]. or any part of such instalment, has remained unpaid for more than one month from the date on which It fell due. the committee of such bank may. In addition to any other remedy available to the bank. apply to the Registrar for the recovery of such instalments or part thereof by distraint and sale of the produce of the mortgaged land. Including the standing crops thereon.

(2) On receipt of such application the Registrar may. notwithstanding anything contained in the Transfer of Property Act. 1882. take action In the manner prescribed for the purpose of distraining and selling such produce subject to the prior charge of the society:

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

(3) The value of the property distrained shall as nearly as possible be equal to the amount due and the expenses of the distraint and the costs of the sale.

1. Substituted for the words "Land Mortgage Bank" by GuJ. 24 of 1964.

134. Sate of mortgaged property :-

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (IV of 1882). the ¹[Land Development Bank) or any person possessing the prescribed qualifications and authorised by the bank in this behalf shall. In case of default in payment of the mortgage money or any part thereof have power. In addition to any other remedy available to the bank to bring the mortgaged property to sale by public auction In the village in which the mortgaged property Is situated or at the nearest place of public resort, without the intervention of the Court. Such sale shall be effected In accordance with the prescribed procedure.

(2) No power under sub-section (1) shall be exercised, unless and until-

(a) notice in writing requiring payment of such mortgage money or part thereof has been served upon-

(i) the mortgagor or each of the mortgagors,

(ii) any person who has any Interest in or charge upon the property mortgaged, or In or upon the right to redeem the same so far as is known to the bank.

(iii) any surety for the payment of the mortgaged debt or any part thereof, and

(iv) any creditor of the mortgagor who has In a suit for administration of his estate obtained a decree or sale of the mortgaged property, and

(b) no payment of such mortgaged money or part thereof. has been made till the expiry of three months after service of the notice.

(3) If the ²[Primary Land Development Bank] falls to take action against the mortgagor under section 132 . section 133 or under this section, the ³State Land Development Bank] may direct It to take appropriate action and where no action Is taken by the ⁴[Primary Land Development Bank], the ⁵[State Land Development Bank], may take such action and where the ⁶[State Land Development Bank] falls to take action, the Trustee may direct it to take such action and where no action is taken thereupon by the ⁷ [State Land Development Bank], the Trustee may take such action.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24

of 1964.

2. Substituted for the words "Primary Land Mortgage Bank" by Gujarat 24 of 1964.

3. Substituted for the words -State Land Mortgage Bank by Gujarat 24 of 1964.

4. Substituted for the words "Primary Land Mortgage Bank by Gujarat 24 of 1964.

5. Substituted for the words -State Land Mortgage Bank- by Gujarat 24 of 1964.

6. Substituted for the words -State Land Mortgage Bank- by Gujarat 24 of 1964.

7. Substituted for the words -State Land Mortgage Bank- by Gujarat 24 of 1964.

135. Right of mortgage bank to buy mortgaged property :-

(1) Notwithstanding anything contained In any law for the time being in force, it shall be lawful for a¹[Land Development Bank] to purchase any mortgaged property sold under this Chapter and the property so purchased may be disposed of by such bank by sale within such period as may be fixed by the Trustee subject to the condition that such sales shall be in favour only of agriculturists eligible to hold land under the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVIII of 1948). or any corresponding law for the time being In force, or may be leased out by them on such terms and conditions as may be laid down by the State Government from time to time.

(2) Nothing In any law for the time being In force fixing a maximum limit of agricultural holdings, shall apply to the acquisition of land by a ² Land Development Bank] under this section.

1. Substituted for the words -Land Mortgage Bank- by GUJ. 24 of 1964.

2. Substituted for the words -Land Mortgage Bank- by Gujarat 24 of 1964.

136. Confutation of sale :-

(1) On effecting a sale under section 134 . the [Primary Land Development Bank] shall In the prescribed manner, submit to the [State Land Development Bank] and the Registrar a report setting forth the manner In which the sale has been effected and the result of the sale, and the [State Land Development Bank] may. with the approval of the Registrar, confirm the sale or cancel It.

(2) Where the sale is effected by the ¹[State Land Development Bank] or the Trustee under section 134, the ² (State Land Development Bank] or the Trustee, as the case may be, shall in the prescribed manner, submit to the Registrar a report setting forth the manner in which the sale has been effected and result of the sale, and the Registrar may confirm or cancel the sale:

Provided that where the Registrar is the Trustee, he shall submit such report to the State Government and the State Government may confirm the sale or cancel it.

1. Substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.
2. Substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

137. Disposal of sale proceeds :-

The proceeds of every sale effected under section 134 and confirmed under section 136, shall be applied first in payment of all costs, charges and expenses incurred in connection with the sale or attempted sales, secondly in payment of the interest due on account of the mortgage in consequence whereof the mortgaged property was sold. and thirdly in payment of the principal due on account of the mortgage including costs and charges incidental to the recovery. If there remains any residue from the proceeds of sale, the same shall be paid to the person proving himself interested in the property sold. or If there are more such persons than one, then to such persons upon their joint receipt or according to their respective interest therein, as may be determined by the [Land

Provided that, before any such payments are made

(a) the unsecured dues owned by the mortgagor to the ¹State Land Development Bank] or ² [Primary Land Development Bank] may be adjusted, and

(b) the unsecured dues owed by any members or past member of either of the above mentioned banks to whom the mortgagor is indebted may also be adjusted under the written authority given by such member and past member, and after holding such inquiry as may be deemed necessary.

1. Substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.
2. Substituted for the words "Primary Land Mortgage Bank" by GUJ.

138. Certificate to purchases, delivery of property and title of purchaser :-

(1) Where a sale of mortgaged property has become absolute under section 136 and the sale proceeds have been received in full by the ¹[Land Development Bank], the bank shall grant a certificate to the purchaser, In the prescribed form certifying the property sold, the sale price, the date of Its sale. the name of the person who at the time of the sale Is declared to be the purchaser, and the date on which the sale became absolute: and upon the production of such certificate the Sub-Registrar appointed under the Indian Registration Act. 1908. (XVI of 1908) within the limits of whose Jurisdiction the whole or any part of the property specified In such certificate Is situated, shall enter the contents of such certificate in his register relating to immovable property.

(2)

(a) Where the mortgaged property sold Is In the occupancy of the mortgagor, or of some person on his behalf, or some person claiming under a title created by the mortgagor, subsequent to the mortgage in favour of the ²[State Land Development Bank] or the ³[Land Development Bank], and a certificate In respect thereof has been granted under sub-section (1) the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property.

(b) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same. and a certificate in respect thereof has been granted under sub-section (1) the Court shall, on the application of the purchaser and after notice to such tenant or other person, order the delivery to be made by affixing copy of the certificate of sale in a conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the right. title and Interest of the mortgagor have been transferred to the purchaser.

(3) Where any property Is sold in the exercise or purported exercise of power of sale under section 134 , the title of the purchaser shall not be questioned on the ground that the circumstances required for authorising the sale had not arisen, or

due notice of the sale was not given, or the power of sale was otherwise Improperly or irregularly exercised.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.
2. Substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.
3. Substituted for the word? "Land Mortgage Bank" by Guj. 24 of 1964.

139. Recovery of loans on Certificate by Registrar :-

(1) Notwithstanding anything contained in section 96 and Section 103 on an application made by a ¹[Land Development Bank] for the recovery of arrears of any sum advanced by It to any of Its members and on its furnishing a statement of accounts in respect of the arrears, the Registrar may. after making such enquiries as he deemed fit. grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) A certificate by the Registrar under sub-section (1) shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall be recoverable according to the law for the time being In force for the recovery of arrears of land revenue.

(3) It shall be lawful for the Collector to take precautionary measures authorised by section 140 to Section 144 of the MAHARASHTRA LAND REVENUE CODE, 1966 . until the arrears due .to the ²[Land Development Bank] together with Interest and any Incidental charges Incurred In the recovery of such arrears, are paid or security for such arrears Is furnished to the satisfaction of the Registrar.

(4) It shall be competent for the Registrar or a person authorised by him to direct conditional attachment of the property of the mortgagor until the arrears due to the ³ [Land Development Bank] together with Interest and any Incidental charges incurred In the recovery of such arrears, are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar and the provisions of section 100 shall apply mutatis mutandis to conditional attachment of any property made or to be made under this section.

1. Substituted for the words "Land Mortgage Bank" by Guj. 24 of 1964.
2. Substituted for the words "Land Mortgage Bank" by Gujarat 24

of 1964.

3. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

140. Collector to make recoveries during certain period :-

(1) During such period as the State Government may by general or special order notify in the Official Gazette, It shall be competent for the Collector, on application being made to him In that behalf by a¹[Land Development Bank], to recover all sums due to the ²[Land Development Bank] (including the cost of such recovery).

(2) Any amount due to a³ [Land Development Bank] shall be recoverable by the Collector, or any officer specially authorised by the Collector in this behalf, in all or any of the following modes, namely:-

(a) from the borrower as If they were arrears of land revenue due by him;

(b) out of the land for the benefit of which the loans has been granted-as If they were arrears of land revenue due In respect of that land:

(c) from a surety (if any)-as If they were arrears of land revenue due by him;

(d) out of the property comprised In the collateral security (if any) according to the procedure for the realisation of land revenue by the sale of immovable property other than the land on which the revenue is due.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

3. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

141. Provision or guarantee funds to meet certain losses :-

(1) It shall be competent for the State Government to constitute one or more Guarantee Funds on such terms and conditions as It may deem fit, for the purpose of meeting losses that might arise as a result of loans being made by the ¹[Land Development Banks] on titles to immovable property subsequently found to be defective or for any other purpose under this Chapter, for which In the opinion

of the State Government, it is necessary to provide for or create a separate Guarantee Fund.

(2) The ²[State Land Development Bank] and the ³ Primary Land Development Bank] shall contribute to such funds at such rate as may be prescribed, and the constitution, maintenance and utilisation of such funds shall be governed by such rules, as may be made by the State Government In this behalf.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "State Land Mortgage Bank" by Gujarat 24 of 1964.

3. Substituted for the words "Primary Land Mortgage Bank" by GUJ. 24 of 1964.

142. Agreements executed by members for loans advanced by [Land Development Banks] to be conclusive evidence :-

¹.-Notwithstanding anything contained In this Chapter. where a loan is given by the ² [Land Development Bank] to a co-operative Society for undertaking any work or development of agriculture on condition that, the members of such society are jointly and severally liable to the Bank for the payment of the whole amount and an agreement to that effect is entered with and signed by each of such members in the presence of an officer authorised in that behalf by the Registrar that agreement shall be conclusive evidence of the portion of that amount which each of the members Is bound to contriute and against which he had mortgaged his lands or a portion of the lands by executing a separate mortgage deed with the Bank.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

143. Exemption of officer of [Land Development Bank] from personal appearance before registering officers :-

¹.-

(1) Notwithstanding anything contained in the Indian Registration Act. 1908 (XVI of 1908). It shall not be necessary for any officer of a ² [Land Development Bank] to appear in person or by agent at any registration office In any proceedings connected with the registration of any instrument executed by him In his official capacity, or to sign as provided in section 58 of that Act.

(2) Where any instrument is so executed, the Registering Officer to whom such instrument is presented for registration may, if he thinks fit, refer to such officer for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

1. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

2. Substituted for the words "Land Mortgage Bank" by Gujarat 24 of 1964.

143A. Transfer of rights and liabilities of Government in respect of schemes sanctioned under Bombay XXVIII of 1942 :-

1 .-

(1) Where any works included in a land improvement scheme which has come into force under the Bombay Land Improvement Schemes Act, 1942 (XXVIII of 1942) are carried out at the cost or part cost of the State Government, and such cost or part of cost is to be recovered from the owners of the lands (other than Government) included in the scheme as shown in the statement prepared under section 13 or in the interim or final statement prepared under section 13A of that Act, then, notwithstanding anything contained in this Act, all the rights and liabilities of the State Government for the recovery of the cost or part cost from the owners of land shall stand transferred to the State Land Development Bank, in relation to such owners of land, and subject to such terms and conditions (including any condition regarding giving of any guarantee by the State Government) as may be agreed upon between the State Government and such Land Development Bank; and for arriving at such agreement, every owner of land shall produce before the Bank all such documents, and other evidence relating to his land included in such scheme as the Bank may require.

(2) On such transfer of rights and liabilities of the State Government, the State Land Development Bank shall pay to the State Government an amount equal to the extent of the liability accepted by it under such agreement, and the State Government shall inform the owners of land concerned of such transfer: and thereupon, the provisions of this Act and rules made thereunder in so far as they provide for the advancing of loans (including provision for mortgaging of property) and recovery thereof shall

apply in relation to the amount of cost to be recovered from each owner of land as they apply in relation to the advancing of loans and recovery thereof (including interest) as if such owner was a member of the State Land Development Bank. The transfer of the rights and liabilities and payment made in accordance therewith shall discharge the owners of lands of their liability to make payment to the State Government under the Bombay Land Improvement Schemes Act, 1942 (Bom. XXVIII of 1942) but to the extent only of their respective liability accepted by the State Land Development Bank].

1. Inserted by Gujarat 21 of 1969.

144. Service of notice :-

The provisions of Section 102 of the Transfer of Property Act, 1882 , Section 103 of the Transfer of Property Act, 1882 (IV of 1882), and of any rules made under section 104 thereof, shall apply, so far as may be. In respect of all notices to be served under this Chapter.

146. Officers of banks not to bid at sales :-

At any sale movable or immovable property, held under the provisions of this chapter no officer or employee of a ¹ [land development bank] except on behalf of the bank of which he is an officer or an employee, and no person having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

1. Substituted for the words "land mortgage bank" by Gujarat 24 of 1964.

CHAPTER 11A

Elections of Committees and Officers of certain Societies

145A. Application :-

All sections of this Chapter except section [145-Z) shall apply to elections to committees of societies belonging to the categories specified in section 74C .

145B. Definitions :-

In this Chapter, unless the context otherwise requires,-

(a) "Collector" means the Collector having jurisdiction over area in which the registered office of the society concerned is situated and includes the Additional Collector. and also any officer not below the rank of Deputy Collector appointed by the State Government to

exercise the powers and perform the duties of the Collector under this Chapter;

(b) "election" means election of a member or members of the committee of a specified society;

(c) "specified society" means a society belonging to any of the categories specified In section 74C .

145C. Time when election to be held :-

Every election shall be held as far as possible one month before the date on which the term of office of the members Is due to expire.

145D. Conduct of elections :-

(1) Save as otherwise provided, every election shall be held on such date or dates as the Collector may fix. and shall be conducted under his control by such Returning Officer and other Officers, as may be appointed by the Collector In this behalf.

(2) In all cases, where a society has to send a nominee as a member of the committee of the specified society, the election of such nominee shall be conducted under the control of the Collector of the District in which the registered office of the society sending the nominee Is situated.

(3) The voting at every election shall be by secret ballot.

(4) No election shall be held In the case where under the bye- laws of a specified society the Government nominee or the nominee of a Financing Agency becomes a member of the committee of the society.

145E. Cost of conducting elections :-

(1) The expenses of the holding of any election. Including the payment of travelling allowances, dally allowances and other remuneration. If any. to the persons appointed to exercise the powers and perform the duties In respect of the election, shall be borne by the specified society concerned.

(2)

(a) The Collector may. by written requisition, call upon a specified society to deposit with him such amount as he considers necessary to meet with the expenditure likely to be incurred for the conduct of the election.

(b) Within eight days from the receipt of such requisition from the Collector, the society shall deposit the specified amount with Collector.

(3)

(a) The Collector shall maintain an account of expenses Incurred In connection with the election.

(b) Within six months from the declaration of results of the election, the Collector shall render the accounts to the society concerned and-

(i) Where the expenditure Is less than the amount of deposit he shall refund to the society the balance of the amount remaining with him: and

(ii) where the expenditure exceeds, the amount of deposits. he shall by written requisition call upon the society to pay the amount of excess expenditure specified-by him in such requisition, within eight days from the receipt of such requisition and the society shall comply with such requisition.

(4) Where a specified society falls to deposit the amount or to pay the amount of excess expenditure, the Collector may recover from the society such sum together with Interest thereon at the rate of 12 per cent. per annum, as arrears of land revenue.

145F. Disqualification for membership :-

(1) A person shall be disqualified for being elected, as, and for being a member of the committee of any specified society-

(a) if he is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or Is appointed to the office of a Managing Director or any other office under the society declared by the State Government by general or special order not to disqualify Its holder;

(b) if he has been convicted of an offence punishable under section 153A or section 171E or section 171F or subsection (2) or sub-section (3) of Section 505 of the Indian Penal Code, 1860 (XLV of 1860), or under section 145R or clause (a) of sub-section (2) of section 145S of this Act. unless a period of six years has elapsed since the date of his conviction;

(c) if he has been convicted by a Court in India for any offence and sentenced to imprisonment for not less than two years, unless a period of five years has elapsed since his release:

(d) If he is found guilty of a corrupt practice under this Chapter by the State Government unless a period of six years has elapsed since the date on which the decision of the State Government takes effect:

(e) if he is also disqualified by or under any other provision of this Act.

(2) Any salaried employee of a society who was a member of the committee of a specified society immediately before the commencement of the Gujarat Co-operative Societies (Amendment) Act, 1981 (6 of 1981), shall not be disqualified, and be deemed never to have been disqualified, under clause (a) of sub-section (1). If he was at that time holding any office saved from disqualification under the said clause (a) and shall continue to be such member for such period or subject to such term and conditions for which or on which he would have otherwise continued as such member; and anything done or any action to be duly done or taken and the committee shall be deemed to be properly constituted, and such thing done or action taken shall not be called in question in any court or authority on the ground only that the committee was not properly constituted or that the person was disqualified to continue as a member.

(3) Notwithstanding anything contained in clause (b) or (c) of sub-section (1), disqualification under either clause shall not, in the case of a person who on the date of the conviction is a member of any specified society, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence until that appeal or application is disposed of by the Court.

145G. . :-

][xxx]

145H. . :-

] [xxx]

146I. Removal or reduction of period of disqualification :-

The State Government may, for reasons to be recorded, remove any disqualification under this Chapter or reduce the period of any

such disqualification.

145J. Corrupt practices :-

The following shall be deemed to be corrupt practices for the purposes of this Chapter:-

(1) "Bribery" that Is to say-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or Indirectly of Inducing-

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to-

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of. or agreement to receive, any gratification, whether as a motive or a reward-

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being a candidate or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to Induce any elector to vote or refrain from voting, or any candidate to withdraw nor not to withdraw his candidature.

Explanation. -For the purposes of this clause, the term "gratification" Is not restricted to pecuniary gratifications or gratifications estimable In money and it Includes all forms of entertainment and all forms of employment for reward, but It does not Include the payment of any expenses bonafide Incurred at, or for the purpose of. any election and duly entered in the account of election expenses referred to In section 145G .

(2) Undue Influence, that Is to say, any direct or Indirect Interference or attempt to Interfere on the part of the candidate or his agent, or of any other person with the consent to the candidate or his election agent with the free exercise of any electoral right:

Provided that -

(a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who-

(i) threatens any candidate or any elector or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure. shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any polling station shall not be deemed to be a corrupt practice under this clause:

Provided further that the use of any public transport vehicle or vessel or railway carriage by any elector at his own cost for the purpose of going to or coming from any polling station shall not be deemed to be a corrupt practice.

Explanation.-In this clause and in the next succeeding clause, the expression "Vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(4) The use of vehicles belonging to a specified society for the

purpose of any election.

(5) ¹ [x x x]

(6) Making special advances of loans or otherwise favouring any elector or group of electors between the date of declaration of programme for an election and the date of declaration of the result thereof.

1. Delete by Gujarat 23 of 1982.

145K. Maintenance of secrecy of voting :-

(1) Every officer, clerk, agent or other person who performs any duty In connection with the recording or counting of votes at an election shall maintain, and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any Information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of subsection (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

145L. Officers etc. at election not to act for candidates or to influence voting :-

(1) No person who Is a Returning Officer or an Assistant Returning Officer or a Presiding or Polling Officer at an election or an officer or clerk, appointed by the Returning Officer or the Presiding Officer to perform any duty In connection with an election shall in the conduct or the management of the election do any act (other than the giving of vote) for the further- ness of the prospects of the election of a candidate.

(2) No such person as aforesaid and no member of a Police Force, shall endeavour-

(a) to persuade any person to give his vote at an election, or

(b) to dissuade any person from giving his vote at an election, or

(c) to Influence the voting of any person at an election In any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall, on conviction, be punished with Imprisonment which may extend to six months or with fine, or with

both.

(4) An offence punishable under sub-section (3) shall be cognizable.

146M. Prohibition of canvassing in or near polling station :-

(1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place with a distance of one hundred meters of the polling station, namely:-

(a) canvassing for votes: or

(b) soliciting the vote of any election: or

(c) persuading any elector not to vote for any particular candidate: or

(d) persuading any elector not to vote at the election; or

(e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under sub-section (2) shall be cognizable.

145N. Penalty for disorderly conduct in or near polling station :-

(1) No person shall on the date or dates on which a poll is taken at any polling station,-

(a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighborhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loud-speaker, or

(b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll. or so as to interfere with the work of the officer and other person on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the

contravention of the provisions of sub-section (1) shall, on conviction be punished with Imprisonment which may extend to three months or with fine or with both.

(3) If the Presiding Officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1) and may seize any apparatus used for such contravention.

145O. Penalty for misconduct at the polling station :-

(1) Any person who during the hours fixed for the poll at any polling station misconducts himself or falls to obey the lawful direction of the Presiding Officer may be removed from the polling station by the Presiding Officer or by any police officer on duty or by any person authorised in this behalf by such Presiding Officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled to vote, at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the Presiding Officer he shall on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

145P. Penalty for Illegal hiring or procuring of conveyances at elections :-

If any person is guilty of any such corrupt practice as is specified in clause (3) or (4) of section 145J at or in connection with an election, he shall, on conviction, be punished with fine which may extend to one thousand rupees.

145Q. Breaches of a official duty in connection with election :-

(1) If any person to whom this section applies is without reasonable

cause guilty of any act or omission in breach of his official duty. he shall, on conviction, be punished with fine which may extend to five hundred rupees.

(2) An offence punishable under sub-section (1) shall be cognizable.

(3) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(4) The persons to whom this section applies are the Returning Officers. Assistant Returning Officers. Presiding Officers, Polling Officers and any other persons appointed to perform any duty In connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election: and the expression "official duty" shall for the purposes of this section 6 construed accordingly; but shall not include duties Imposed otherwise than by or under this Act.

145R. Removal of a ballot paper from polling station to be offence :-

(1) Any person who at any election fraudulently takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act. shall on conviction, be punished with Imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(2) If the Presiding Officer of a polling station has reason to believe that any person Is committing or has committed an offence punishable under sub-section (1). such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the Presiding Officer, or when the search Is made by a police officer, shall be kept by such officer In safe custody.

(4) An offence punishable under sub-section (1) shall be

cognizable.

145S. Other offence and penalties therefor :-

(1) A person shall be guilty of an electoral offence. If at any election he-

(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a Returning Officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark. on any ballot paper or any declaration of Identity or official envelope used In connection with voting by postal ballot; or

(d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or Is In possession of any ballot paper; or

(e) fraudulently puts Into any ballot box anything other than the ballot paper which he Is authorised by law to put in; or

(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then In use for the purposes of the election; or

(g) fraudulently or without due authority, as the case may be. attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an electoral offence under this section. shall-

(a) If he Is a Returning Officer or an Assistant Returning Officer or a Presiding Officer at a polling station or any other officer or clerk employed on official duty In connection with the election, on conviction, be punished with Imprisonment for a term which may extend to two years or with fine, or with both:

(b) If he is any other person, on conviction, be punished with Imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section a person shall be deemed to be

on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection, with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

(4) An offence punishable under sub-section (2) shall be cognizable.

145T. Application of section 149 to offences under this Chapter subject to certain modifications :-

The provisions of section 149 shall apply to the offences under this Chapter, subject to the modifications that it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass a sentence or fine on any person convicted of any offence under this Chapter in excess of his powers under Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974) and that no prosecution for an offence punishable under this Chapter shall be lodged, except with the previous sanction of the Collector.

145U. Disputes relating to elections to be submitted to the [Tribunal] :-

(1) Notwithstanding anything contained in section 96 or any other provisions of this Act, any dispute relating to an election shall be referred to the [Tribunal].

(2) Such reference may be made by an aggrieved party by presenting an election petition to the [Tribunal]:

Provided that no such petition shall be made till after the final result of the election is declared and where any such petition is made it shall not be admitted by the [Tribunal] unless it is made within two months from the date of such declaration:

Provided further that, the ¹[Tribunal] may admit any petition after the expiry of that period. If the petitioner satisfies the [Tribunal] that he had sufficient cause for not preferring the petition within the said period.

(3) In exercising the functions conferred on it by or under this Chapter, the ²[Tribunal] 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. In the case of any such affidavit, an officer appointed by the ³[Tribunal] in this behalf may administer the oath to the deponent.

(4) ⁴[Subject to any regulations) made by the ⁵[Tribunal] In this behalf, any such petition shall be heard and disposed of by the ⁶[Tribunal] as expeditiously as possible. An order made by the ⁷[Tribunal] on such petition shall be final and conclusive and shall not be called in question In any Court.

1. Substituted for the words "State Government" by Gujarat 23 of 1982.

2. Substituted for the words "State Government" by Gujarat 23 of 1982.

3. Substituted for the words "State Government" by Gujarat 23 of 1982.

4. Substituted for the words "Subject to any rules" by Gujarat 23 of 1982.

5. Substituted for the words "State Government" by Gujarat 23 of 1982.

6. Substituted for the words "State Government" by Gujarat 23 of 1982.

7. Substituted for the words " Government" by Gujarat 23 of 1982.

145V. Deposit towards cost for hearing and power to award cost :-

A petitioner presenting an election petition under section 145U shall pay a deposit not exceeding Rs. 500 as the [Tribunal] may direct towards the costs for hearing the petition. Unless the petitioner deposits the same as aforesaid, the petition shall be summarily dismissed. Subject to such conditions as may be prescribed, at the time of deciding the petition, the ¹[Tribunal] shall assess the costs of the hearing of the petition and shall require the petitioner or the respondents, or both as the case may be, to defray the whole or in such proportion as it thinks fit, the costs of the petition Including the deposit so made. Such sum as the ²[Tribunal] may assess as the cost to ³ [Tribunal] of hearing the petition (but not exceeding Rs. 500 In any case) shall be credited to the Government.

1. Substituted for the words " Government" by Gujarat 23 of 1982.

2. Substituted for the words Government" by Gujarat 23 of 1982.

3. Substituted for the words Government" by Gujarat 23 of 1982.

146W. Contents of petitions :-

(1) An election petition shall-

(a) contain a concise statement of the material facts on which the petitioner relies:

(b) set forth full particulars of any corrupt practice that the petitioner alleges. Including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) be signed by the petitioner and verified In the manner laid down In the Code of Civil Procedure, 1908 (V of 1908)for the verification of pleadings:

Provided that, where the petitioner alleges any corrupt practice. the petition shall also be accompanied by an affidavit In a support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified In the same manner as the petition.

146X. Relief that may be claimed by the petitioner :-

A petitioner may. In addition to claiming a declaration that the election of all or any of the returned candidates Is void. claim a further declaration that he himself or any "other candidate has been duly elected.

145Y. Powers to make rules for purposes of this Chapter :-

Without prejudice to any other power to make rules contained elsewhere In this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to the various stages of the elections (Including preparation of the list of voters).

146Z. Special provision for election of officers of specified societies :-

(1) This section shall apply only to election of fleers by members of committees of societies belonging to the categories specified In section 74C .

(2) After the election of the members of the committee or

whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its bye-laws, but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf.]

CHAPTER 12

Offences and Penalties

146. Prohibition of use of the word "Co-operative" :-

(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 or under which he traded or carried on business at 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 "cooperative". or its equivalent in any Indian language, forms part.

(2) Every person contravening the provisions of sub-section (1) shall, on conviction, be punished with the fine which may extend to five hundred rupees.

147. Offences :-

(1) It shall be an offence under this Act. if-

(a) any person makes a declaration referred to in section 23 which he knows or has reason to believe to be false;

(b) any member of a society transfers any property or interest in property in contravention of sub-section (2) of section 48 or any person knowingly acquires, or abets the acquisition of. such property;

(c) any employer or any director, manager, secretary or other officer or agent acting on behalf of such employer without sufficient cause, fails to comply with sub-section (2) of section 50 :

(d) a committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by section 71 :

(e) 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 Co-operative Bank or an Urban Co-operative Bank. or a postal savings bank;

(f) 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 a society to be registered or otherwise;

(g) a retiring chairman to whom a direction has been Issued under sub-section (2) of section 75 falls to comply with such direction;

1 [(g-i)] -a committee of a society or a member thereof falls to comply with the provisions of section 75A ;]

(h) a committee of a society, or an officer or member thereof, falls to comply with the provisions of sub-section (2). (3) or (4) of section 77 ;

(i) any officer or member of a society who Is in possession of Information, books, records, falls 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 80 , Section 82 . Section 84 , Section 86 . section 87 . Section 99 or Section 108 ;

(j) any officer of a society falls 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 80 . Section 82 or Section 108 :

(k) a committee of a society with a working capital of fifty thousand rupees or more, or any officer or a member thereof falls without any reasonable excuse to comply with orders made under section 82 or to give any notice. or to 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;

(l) 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;

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

(n) an officer or a society falls to comply with the order made by the Registrar under section 83 :

(o) an officer, member, agent or servant of a society falls to comply with the requirements of sub-section (4) of section 84 ;

(p) an officer or a member of a society wilfully falls to comply with any decision, award or order passed under section 98 ;

(q) 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 sales, transfer, mortgage, gift or otherwise, with the fraudulent intention of evading the dues of the society;

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

(s) an 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.

(2) Where an offence under this Act has been committed by a committee of a society, every person who at the time the offence was committed, was a member of such committee, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment as provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

1. Inserted by Gujarat 23 of 1982.

148. Punishments for offences under section 147 :-

(1) Every employer or officer, member, agent or servant of a society, or any other person, who commits an offence under section 147 shall, on conviction, be punished,-

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

(b) If it is an offence under clause (b) 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;

(c) If It Is an office under clause (c) of that section, with Imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(d) If It Is an offence under clause (d) 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 fine which may extend to five hundred rupees;

(f) If It Is an offence under clause (f) of that section, with Imprisonment for a term which may extend to one year, or with fine, or with both;

(g) if It Is an offence under clause (g) of that section, with simple Imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or both;

¹[(g-i)] If It Is an offence under clause (g-i) 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;]

(h) If it Is an offence under clause (h) of that section, with fine which may extend to two hundred and fifty rupees;

(i) If It is an offence under clause (1) of that section,²[with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:]

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

(k) if It is an offence under clause (b) of that section, with fine which may extend to five hundred rupees:

(l) If it Is an offence under clause (1) 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;

(m) If It Is an offence under clause (m) of that section, with Imprisonment for a term which may extend to one year, or with fine which may extend to two thousand 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 one year. or with

fine which may extend to one thousand rupees, or with both;

(o) If It Is an offence under clause (o) of that section, with fine which may extend to ³ [five hundred rupees];

(p) If it Is an offence under clause (p) 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:

(q) If It is an offence under clause (q) 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:

(r) If It Is an offence under clause (r) of that section, with Imprisonment for a term which may extend to two years, or with fine, or with both;

(s) If-It is an offence under clause (s) of that section, with Imprisonment for a term which may extend to three years, or with fine, or with both:

(2) No prosecution for an offence under section 147 shall be instituted In respect of the same facts on which a penalty has been imposed by the Restistrar under any provisions of this Act.

1. Inserted by Gujarat 23 of 1982.

2. Substituted for the words "with fine which may extend to five hundred rupees" by Gujarat 23 of 1982.

3. Substituted for the words "one hundred rupees" by Gujarat 23 of 1982.

149. Cognizance of offences :-

(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the First class shall try any offence under this Act.

(2) Notwithstanding anything contained In the Code of Criminal Procedure, 1898 (V of 1898), it shall be lawful for a Presidency Magistrate or a Magistrate of the First Class to pass a sentence of fine on any person convicted of an offence under clause (c) of sub-section (1) of section 147 as provided under section 148 . In excess of his powers under section 32 of that Code.

(3) No prosecution under this Act shall be lodged, except with the previous sanction of the State Government In the case of an offence under clause (c) of sub-section (1) of section 147 , and of the Registrar In the case of any other offence under this Act. Such sanction shall not be given, except after hearing the party

concerned, by an officer authorised In this behalf, by the State Government by a general or special order.

CHAPTER 13

Appeals, Review and Revision

150. Gujarat State Co-operative Tribunal :-

(1) The State Government shall constitute a Tribunal called the Gujarat State Co-operative Tribunal to exercise the functions conferred on the Tribunal by or under this Act.

(2) The Tribunal shall consist of a President, and not more than three other members possessing such qualifications as may be prescribed.

1 [(2A) The State Government may terminate the appointment of any member of the Tribunal before the expiry of the term of his office if such member-

(a) Is adjudged an insolvent, or

(b) engages during his term of office in any paid employment outside the duties of his office unless such employment Is authorised by the State Government, or

(c) Is or becomes In any way concerned or Interested In any contract or agreement made by or on behalf of the State Government or participates In any way in the profit thereof or In any benefit or emoluments arising there- from otherwise than as a member, or

(d) is In the opinion of the State Government, unfit to continue In office by reason of infirmity of mind or body, or

(e) is convicted of an offence Involving moral turpitude.]

(3) Any vacancy in the membership of the Tribunal shall be filled by the State Government.

(4) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members of the Tribunal Including himself:

Provided that, any Interlocutory application may be heard by one or more members who may be present.

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

(6) Where a matter is heard by three members 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 and the members are equally divided. If the President be one of the 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 Tribunal shall frame regulations consistent with the provisions of this Act and rules made thereunder, for regulating Its procedure and the disposal of Its business.

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

(9) The Tribunal 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 Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as It may deem just.

(10) Where an appeal is made to the Tribunal under section 102. It may. In order to prevent the ends of justice being defeated. make such Interlocutory orders pending the decision on the appeal as may appear to It to be just and convenient, or such or of as may be necessary for the ends of justice, or to prevent the abuse of the process of the Tribunal.

(11) An-order passed In appeal or In revision under sub-section (9), or In review under section 151 , by the Tribunal, shall be final and conclusive, and shall not be called In question In any Civil or Revenue Court.

(12) The Tribunal hearing an appeal under this Act shall exercise all the powers conferred upon an appellate court by section 97 and Order XLI In the First Schedule of the Code of Civil Procedure, 1908 (V of 1908).

1. Inserted by Gujarat 30 of 1964.

151. Review of orders of Tribunal :-

(1) The Tribunal may, either on the application of the Registrar, or

on the application of any party Interested, review its own order In any case. and pass In reference thereto such order as It thinks Just:

Provided that. no such application made by the party Interested shall be entertained, unless the Tribunal Is satisfied that there has been 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 reasons:

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

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

152. Tribunal to have power of Civil Court :-

(1) In exercising the functions conferred on It by or under this Act. the Tribunal shall have the same power's 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 the production of documents, and

(d) issuing commissions for the examination of witnesses.

(2) In the case of any such affidavit, any officer appointed by the Tribunal in this behalf may administer the oath to the deponent.

153. Appeals :-

(1) An appeal against an order or decision under sections section 4 , section 9 , section 11 . section 13 section 17 , section 19 , section 36 Section 82 and section 160 shall he,-

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

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

(2) An appeal against an order of a liquidator under section 110 shall lie-

(a) to the State Government If the order was made with the sanction or approval of the Registrar, and

(b) to the Registrar In any other case.

(3) An appeal against an order or decision under section 82 . section 90 , section 93 and any order passed by the Registrar for paying compensation to a society, and any other order for which an appeal to the Tribunal has been provided under this Act, shall lie to the Tribunal.

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

(5) The procedure to be followed In presenting and disposing of appeals under this section or under any other provisions of this Act shall be such as may be prescribed.

(6) Save as provided In this Act, no appeal shall lie against any order, decision or award passed In accordance with this Act; and every such order, decision or award shall be final, and where any appeal has been provided for, any order passed on appeal shall be final and no further appeal shall lie against It.

154. Extension of period of limitation by appellate authority in certain cases :-

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

155. Power of State Government and Registrar to call for proceedings of subordinate officers and to pass orders thereon :-

The State Government and the Registrar may call for and examine the record of any Inquiry or the proceedings of any other matter of

any officer subordinate to them, except those referred to In sub-section (9) of section 150 , for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If In any case. It appears to the State Government, or the Registrar, that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard pass such order thereon as It or he may deem just.

CHAPTER 14

Miscellaneous

156. Constitution of State Co-operative Council, its functions etc :-

(1) There shall a Council to be called the Gujarat State Co-operative Council consisting of the following members, namely:-

(A) Chairman

(i) Minister in charge of the Department dealing with cooperative societies In the State.

(B) Vice-Chairman.

1(ii) Minister of State dealing with the Co-operative societies In the State or In the absence of such Minister of State. Deputy Minister dealing with that subject shall be ex-officio Vice-Chairman. If there Is neither such Minister of State nor such Deputy Minister, the Vice-Chairman shall be elected by the council from amongst Its members:]

2 Provided that during the operation of a Proclamation issued under clause (1) of article 356 of the Constitution. the Chairman and the Vice Chairman shall be appointed by the Governor.]

(iii) Chairman of Apex societies.

(iv) Seven members to be nominated by the State Government out of which one shall be a woman, one a person belonging to a Scheduled Caste and one a person belonging to a Scheduled Tribe.

(v) Three members to be elected by the Members of the Gujarat Legislative Assembly from amongst themselves.

(vi) The Secretary to the Government In the Department dealing with Co-operative societies.

(vii) The Registrar of Co-operative Societies, Gujarat State.

(viii) The Director of Agriculture, Gujarat State.

(ix) The Director of Industries, Gujarat State.

(2) Such officer as the State Government may appoint In this behalf shall act as the Secretary to the Council.

(3) The function of the Council so constituted shall be as follows, namely-

(a) to advice the State Government on all general questions relating to co-operative movement;

(b) to review the co-operative movement and to suggest ways of co-ordinating the activities of co-operative societies in the State:

(c) to suggest ways and means to remove the difficulties experienced by the co-operative societies In the State in their administration.

(d) to make suo-motu recommendations to the State Government in regard to any matter relating to the administration of co-operative societies; and

(e) to report to the State Government on such matters as may be referred to it by the State Government for its opinion.

(4) The State Government may by general or special order provide for-

(a) the calling of the meetings of the Council and the procedure at meetings;

(b) duties of the Secretary to the Council;

(c) sub-committees of the Council:

(d) the term of office of nominated members of the Council and travelling allowance and daily allowance admissible to the members of the Council.

1. Substituted by Gujarat 23 of 1982.

2. Added by Gujarat 23 of 1982.

157. Recovery of sums due to Government :-

(1) Unless otherwise provided by this Act, all sums due from a society or from an officer or member or past member or a deceased member of a society as such to the Government, may be recovered as arrears of land revenue.

(2) Sums due from a society to the Government and recoverable under sub-section (1) may be recovered, firstly from the property of the society: secondly in the case of a society of which the liability of the members is limited, from the members or past members or from their estate if they have died, subject to the limit of their liability, and, thirdly, in the case of societies with unlimited liability from the members or past members or their estate. If they have died.

(3) The liability under this section shall in all cases be subject to the provisions of section 34 .

158. Competency of a member to transfer land or Interest therein to society :-

Notwithstanding anything contained in the Transfer of Property Act. 1882 (IV of 1882) and the Indian Registration Act. 1908 (XVI of 1908), It shall be lawful for a member of a Co- operative Farming Society to transfer to the society any land held by him or the whole or part of his Interest in any land by an agreement and in such manner as may be prescribed.

159. Registrars powers to recover certain sums by attachment and sale of property :-

(1) The Registrar or any officer subordinate to him and empowered by him in this behalf may, subject to such rules as may be made by the State Government but without prejudice to any other mode of recovery provided by or under this Act. recover-

(a) any amount due under a decree or order of a Civil Court obtained by a society,

(b) any amount due under a decision, award or order of the Registrar, his nominee or the board of nominees or Liquidator or Tribunal,

(c) any sum awarded by way of costs under this Act,

(d) any sum ordered to be paid under this Act as a contribution to the assets of the society, together with Interest, if any, due on such amount or sum and the costs of recovering the same by the

attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

(2) The Registrar or the officer empowered by him shall be deemed when exercising the powers under sub-section (1) or when passing any order on any application made to him for such recovery, to be a Civil Court for the purposes of article 182 In the First Schedule to the Indian Limitation Act, 1908 (IX of 1908).

160. Registrars power to give direction :-

(1) If the Registrar of his own motion or otherwise is satisfied that in public interest or for the purposes of securing the proper implementation of co-operative production and other development programmes approved or undertaken by the State Government or for linking and co-ordinating of co-operative activities such as marketing and credit or securing the proper management of the business of the society generally or preventing the affairs of the society being conducted In a manner detrimental to he Interests of the members. or of the depositors or the creditors thereof. It Is necessary to issue directions to any class of societies generally or to any society or societies in particular, he may Issue directions to them, from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions.

(2) The Registrar may of his own motion or otherwise modify or cancel any directions issued under sub-section (1). and in modifying or cancelling such directions he may Impose such conditions as he may deem fit.

(3) Where the Registrar is satisfied that any committee or, as the case may be, a general body of any society, whose duty it was to comply with any directions issued or modified as aforesaid. has failed, without any reasonable or sufficient cause, to comply with such directions, the Registrar may exercise the powers conferred on him under sub-section (1) of section 81 or, as the case may be, under sub-section (1) of section 107 .

(4) Where the Registrar is satisfied that any person, whose duty It was to comply with any directions issued or modified as aforesaid, has failed without any reasonable or sufficient cause, to comply with such directions, the Registrar may, by an order In writing,-

(a) If such failure is committed by a member of the committee of

the society In his capacity as a member of such committee, remove him as a member from the committee and appoint any other person as a member of the committee in his place for the remainder of the term of his office:

(b) If such failure is committed by a member of the society not falling under clause (a), remove him as a member of the society;

(c) If such failure is, committed by an employee of the society, direct the society to remove such employee from employment of the society forth-with and if the society fails, without reasonable or sufficient cause to take action In pursuance of such direction, make an order removing such person from employment of the society and thereupon such person shall be deemed to have been removed by the society:

Provided that, before making any order under this sub-section, the Registrar shall give or cause to be given a reasonable opportunity to the person concerned to show cause against the action proposed to be taken in regard to him.]

161. Power to exempt societies from provisions of Act :-

The State Government may, by general or special order, to be published In the Official Gazette, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies with such modifications not affecting the substance thereof as may be specified in the order:

Provided that no order to the prejudice of any society shall be passed, without an opportunity being given to such society to represent Its case.

162. Delegation of powers of State Government and of Registrar :-

The State Government may by notification in the Official Gazette and subject to such conditions, as it may think fit to Impose, delegate-

(a) any power exercisable by it under this Act except the power under sub-section (1) of section 153 and section 168 thereof to the Registrar;

(b) all or any of the powers of the Registrar under this Act to any committee constituted or to any co-operative federal society

recognised under section 95 or to an officer of such society or to any panchayat constituted under any law relating to panchayats for the time being in force.

163. Branches etc. of societies outside the State :-

(1) No society shall open a branch or a place of business outside the State of Gujarat, and no co-operative society registered under any law In any other State shall open a branch or a place of business In the State of Gujarat without the permission of the Registrar.

(2) Every co-operative society registered under any law in any other State and permitted to open a branch or a place of business In the State of Gujarat under sub-section (1) or which has a branch or a place of business in the State of Gujarat at the commencement of this Act. shall, within three months from the date of the opening of such branch or place of business or from the date of the commencement of this Act, as the case may be, file with the Registrar a certified copy of the bye-laws and amendments and. If these be not In English a certified translation thereof in English or Hindi and shall submit to the Registrar such returns and Information as are submitted by similar societies registered under this Act in addition to those which may be submitted to the Registrar of the State where such society Is registered.

(3) The provisions of sub-section (1) and (2) shall not apply to co-operative societies to which the provisions of the Multi-Unit Co-operative Societies Act, 1942 (VI of 1942) applies.

(4) Nothing in sub-section (1) shall affect a society which has a branch or a place of business outside the State of Gujarat at the commencement of this Act.

164. Registrar and other officers to be public servants :-

The Registrar, a person exercising the powers of the Registrar, a person authorised to audit the accounts of a society under section 84 , or to hold an inquiry under section 86 , or to make an Inspection under section 87 , and a person appointed as an administrator under section 81 , or as a nominee or board of nominees under section 98 . or as a liquidator under section 108 , and all members of the Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (XLV of 1860).

165. Indemnity for acts done In good faith :-

No suit, prosecution or other legal proceedings shall lie against the Registrar, or any person subordinate to him or acting on his authority. In respect of anything in good faith done. or purported to be done [in pursuance of this Act or the rules made thereunder.]

166. Bar of jurisdiction of Courts :-

(1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction In respect of-

(a) the registration of a society or Its bye-laws, or the amendment of Its bye-laws, or the dissolution of the committee of a society, or the management of the society on dissolution thereof; or

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

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

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

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

167. Notice necessary In suits :-

Save as otherwise provided In this Act, no suit shall be instituted against a society, or any of its officers in respect of any act touching the business of the society, until the expiration of two months next after notice In writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plant shall contain a statement that such notice has been so delivered or left.

168. Rules :-

(1) The State Government may, by notification In the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made-

(a) for the whole or any part of the State of Gujarat and for any society or class of societies, and

(b) to provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section Is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to such modification as the Legislature may make during the session In which they are so laid, or the session Immediately following.

(5) Any modifications so made by the State Legislature shall be published In the Official Gazette, and shall thereupon take effect.

169. Repeal, saving and construction :-

(1) The Bombay Cooperative Societies Act. 1925(VII of 1925) (hereinafter referred to as "the said Act") is hereby repealed:

Provided that, the repeal shall not affect the previous operation of the said Act and anything done or action taken (including any appointment or delegation made, application or other document filed, certificate of registration granted, agreement executed, notification, order, direction or notice issued, rule, regulation, form or bye-law framed or proceeding Instituted before any Registrar, arbitrator, liquidator or tribunal or other officer, authority or person) by or under the provisions of the said Act shall. In so far as It Is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue In force unless and until superseded by anything done or any action taken under this Act.

(2) All societies registered or deemed to be registered under the said Act the registration of which was in force immediately before the commencement of this Act. shall on such commencement to be deemed to be registered under this Act; and all proceedings

pending immediately before such commencement before any registrar, arbitrator, liquidator or tribunal or other officer, authority or person under the provisions of the said Act shall stand transferred where necessary, to the Registrar, arbitrator, liquidator or tribunal or other corresponding officer, authority or person under this Act and If no such. officer, authority or person exists or If there be a doubt as to the corresponding officer, authority or person to such officer, authority or person as the State Government may designate and shall be continued and disposed of by such officer, authority or person In accordance with the provisions of this Act.

(3) Any reference to the said Act or to any provisions thereof or to any officer, authority or person entrusted with any functions thereunder. In any law for the time being In force or in any Instrument or document, shall be construed, where necessary, as a reference to this Act or Its relevant provisions or the corresponding officer, authority or person functioning under this Act, and the corresponding officer, authority or person, as the case may be, shall have and exercise the functions under such law, instrument or document.

170. Companies Act not to apply :-

For the removal of doubt, it Is hereby declared that the provisions of the Companies Act, 1956 (I of 1956), shall not apply to societies, registered or deemed to be registered under this Act.

SCHEDULE 1

APEX SOCIETIES

(1) The Gujarat State Co-operative Land Development Bank Limited. (2) The Gujarat State Co-operative Bank Limited. (3) The Gujarat State Co-operative Consumers Federation Limited, Ahmedabad. (4) The Gujarat Pustkalaya Sahayak Sahakari Mandal Limited, Vododara. (5) The Gujarat State Co-operative Kheti Sangh Limited. Ahmedabad. (6) The Gujarat State Poultry Farmers' Co-operative Federation Limited, Bharuch. (7) The Gujarat State Co-operative Housing Finance Society Limited, Ahmedabad. (8) The Gujarat Co-operative Milk Marketing Federation Limited, Anand. (9) The Gujarat State Co-operative Marketing Federation Limited, Ahmedabad. (10) The Gujarat State Co-operative Cotton Marketing Federation Limited, Ahmedabad. (11) The Gujarat State Co-operative Oil Seeds Growers' Federation Limited, Bhavnagar. (12) The Gujarat State Co-operative Oil Industries Limited. Ahmedabad. (13) The Gujarat State Co-operative Fruits and Vegetable Federation Limited, Bardoli. District Surat. (14) The Gujarat Industrial Co-operative Bank Limited. Ahmedabad. (15) The Gujarat State Co-operative Industrial Association Limited, Ahmedabad. (16) The Gujarat State Mitha Utpadak Sahkari Sangh Limited. Surendranagar.]