

Legislative Reforms in Statutes

Introduction

8.1 One of the Terms Of Reference made to the Committee is to identify areas that require Legislative reforms and suggest necessary amendments in relevant Union and State Legislations with a view to strengthen Urban Cooperative Banking Movement. Prior to 1st March 1966, cooperative societies carrying on banking business were not covered under the Banking Regulation Act, 1949. In terms of the Cooperative Societies Acts of respective States, the Registrar of Cooperative Societies was the sole regulator and supervisor of all the societies registered in his State including societies carrying on banking business. With the application of Banking Regulation Act, 1949 to cooperative societies carrying on banking business this position has since changed. The Reserve Bank is now the regulator and supervisor of banking activities carried on by cooperative societies. The Registrar of Cooperative Societies of the concerned state, continues to be the regulator and supervisor of cooperative institutions. This has given rise to the 'duality of control' by Reserve Bank and the Registrar of Cooperative Societies (RCS) of the respective State over such of the societies as are eligible to carry on banking business in terms of Section 22 of the Banking Regulation Act, 1949.

Origin of dual control

8.2 "Regulating the activities of India's Cooperative Banks first came into focus as an adjunct of the extension of deposit insurance to this sector of banking" ²¹ Reserve Bank of India and various State Governments had extensive deliberations over the issue of bringing in cooperative credit institutions carrying on banking activities under the ambit of Banking Regulation Act. Unless, the Reserve Bank, as the Central Bank of the country, was able to exercise control over cooperative banks, it was not found feasible to introduce deposit insurance cover for these institutions. Initially many a State Government expressed its reservation in sharing the control over cooperative societies carrying on banking business with Reserve Bank of India. A conference convened by RBI in November 1963 to deliberate on the issue, "witnessed intense debate over the virtues of vesting in the Bank powers to liquidate a cooperative bank or supersede its management, with the Madras Government, in particular, marshalling ideological, constitutional and practical arguments against the idea. Mysore joined Madras in suggesting that the regulation by Reserve Bank was too high a price to pay for extending insurance cover to depositors of cooperative banks" ²². The RBI, made strenuous efforts to dispel these apprehensions and clarified that it would advise State Governments and RCS whenever it contemplated taking any serious action against a cooperative bank. The then Governor of RBI, Shri P.C.Bhattacharya assured the State Governments that the Bank would entrust its powers to regulate cooperative banks only to the Agricultural Credit Department which was familiar with these institutions and was sensitive to their special needs. It was explained that it would not be feasible to extend deposit insurance cover to UCBs if the RBI was not vested with these powers through suitable legislative measures.

8.3 Cooperative banks not only received substantial funds by way of created money from RBI but also accepted deposits from public and financed agriculture, industry, commerce and trade. With the State Governments committed to a policy of positive support to cooperative banks, it was felt that the impact of cooperative credit institutions on the monetary and credit policy was going to become more and more significant. In late fifties and early sixties, a number of banks had failed, thus, adversely affecting the interests of the depositors. This had led to certain

amendments in the Banking Regulation Act. It was considered desirable to extend some of these provisions also to banks in the cooperative sector so as to safeguard the interest of depositors. Hence, the RBI felt that it was a regulatory necessity to bring the banking institutions operating in the cooperative sector within the statutory control of RBI. Thus, the application of banking laws to cooperative banks basically emanated because of the following reasons;

- i) Interests of depositors required extension of Banking Regulation Act to banks in the cooperative sector,
- ii) RBI's supervision was considered necessary for extending deposit insurance,
- iii) Substantial funds were granted to cooperative credit structure by way of created money from RBI and, hence, it had a monetary policy connotation,
- iv) Public interest required that institutions having substantial public deposits and functioning as banks should operate under the supervision of Reserve Bank of India.

8.4 After prolonged deliberations on the need for RBI to have control over cooperative societies carrying on banking business, the Banking Laws (Application to Cooperative Societies) Bill was passed by the Parliament. It received the assent of the President in September 1965 and the Act came in to force from 1 March, 1966. With this amendment in the Banking Regulation Act, certain provisions of the Banking Regulation Act became applicable to cooperative banks carrying on banking business. This brought in an era of dual control over cooperative banks. In terms of the Cooperative Societies Act of the State, the Registrar of Cooperative Societies was to have jurisdiction over the incorporation, registration, management, amalgamation, merger, liquidation etc. and the Reserve Bank was to have jurisdiction over the banking activities of the cooperative society.

8.5 In terms of Article 246 of the Constitution, the field of exercise of legislative powers is divided into three areas ;

- (i) exclusively reserved for the Union of India and referred to as the "Union List"
- (ii) exclusively reserved for the States and referred to as the "State List"
- (iii) those left for both and referred to as the "Concurrent List".

These areas of Legislation are indicated by Entries in List I, II and III respectively, of the VIIth Schedule to the Constitution. The Cooperative Credit Societies doing banking business fall, to a certain extent in the area exclusively reserved for the Union and to a certain extent, in the area exclusively reserved for the States. This results in the duality of jurisdiction over cooperative banks both by the Reserve Bank of India, in terms of the Banking Regulation Act, 1949 and the Registrar of Cooperative Societies, in terms of the Cooperative Societies Act, of the State concerned. Entries 43 and 45 in the Union List and the Entry 32 of the State List are the relevant

Entries for and they read as under :

Union List

Entry 43, "Incorporation, regulation and winding up of trading corporations, including banking insurance or any financial corporations but not including cooperative societies." Entry 45, "Banking"

State List

Entry 32, "Incorporation, regulation and winding up of Corporations, other than those specified in list I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies".

8.6 In a case involving corresponding entry (banking) under the Government of India Act, 1935, (Bank of Commerce India Vs Nriphendranatha Datta, AIR 1945 FC 7) the Supreme Court observed that the Entry must be held to cover only such laws which affect the conduct of business of a bank. The Hon'ble Supreme Court in R. C. Cooper Vs Union of India, 1970 (3) SCR 530 , again observed that Entry 45 in List I of the VIIth Schedule is 'banking' and not banker or bank. The Court also observed that a Legislative Entry indicates the contour of plenary power and must receive a meaning conducive to the widest amplitude, subject, however, to limitations inherent in the federal scheme which distributes legislative power between the Union and the Constituent units. These are then the broad constitutional limitations within which the Committee has to make its recommendations.

Approach of the Committee

8.7 The Committee had detailed discussions with individual cooperators, cooperative banks and their federations. All of them unanimously expressed their dissatisfaction over the "dual control regime". They felt that the dual control regime over UCBs should end and RBI should act as the regulatory authority for the banking activities of UCBs. Perhaps, on no other issue, was there such a unanimity of views. After having heard the views of the cooperators, federations and cooperative banks as also the State Governments officials, and after examining the existing statutory framework under the State Cooperative Societies Acts, the Committee feels that the dual control regime, per se, need not cause any hindrance to the growth of the urban banking movement. It is the absence of a clear cut demarcation between functions of RBI and that of the State Governments that adversely affects the smooth functioning of Urban Cooperative Banks. Interestingly, the Committee did not find similar difficulties in the supervision and regulation of banking companies. Although they are registered as companies under the Companies Act 1956, by the Registrar of Companies, they carry on the banking business under the sole Supervision of RBI. This is because the Registrar of Companies does not interfere in the field covered by the Banking Regulation Act. Once a company registered under the Companies Act, gets licence from Reserve Bank, its *activities* are regulated by its Memorandum and Articles of Association and the provisions of the B R Act. Since the provisions of Banking Regulation Act have an overriding effect on the Memorandum and Articles of Association, the RBI becomes the sole regulatory authority in relation to business activities of banking companies.

8.8 The Committee believes that the role of the Reserve Bank in matters of supervision of a bank vis a vis a company or a cooperative society, should be looked at from the functional angle rather

than the institutional angle. No doubt urban cooperative banks are cooperative entities, but their primary objective is to carry on banking business. Regulation of banking business is the concern of the Reserve Bank. Hence, it is absolutely necessary that Reserve Bank should be the sole regulator of the banking business carried on by Urban Cooperative Banks. The issue needs to be examined, in the context of experience of cooperative banks operating under the dual control regime, as also, the interest of the banks and their depositors .

8.9 The Committee has been informed that at times, there has been interference by State Governments, even in the banking related functions of urban cooperative banks. A few instances brought to the attention of the Committee of overlapping jurisdiction resulting in avoidable difficulties for UCBs are chronicled below:

i) In terms of Section 23 of B.R.Act, 1949 (AACS) the RBI has the authority to issue a branch licence to an urban cooperative bank and under the existing policy, RBI issues branch licence after convincing itself about the financial strength of the UCB.

Strangely, in some states, the UCBs are required to obtain "No Objection Certificate" (NOC) from RCS of the concerned State even after the licence has been granted by the RBI. The Committee fails to understand the necessity of a NOC from the Registrar of Cooperative Societies. The Committee feels that grant of licence is purely a banking related function and should be left to the Reserve Bank.

ii) Another area of concern arising out of dual control is investment of surplus funds by UCBs. The "investment" is also a banking function within the meaning of Section 5 of Banking Regulation Act,1949. Hence UCBs should, subject to the guidelines issued by the Reserve Bank, have the freedom to choose the products in which they may invest. Yet, some Registrars of Cooperative Societies insist on their permission being taken for every investment decision. Due to limited avenues of profitable investments in the cooperative sector, the RBI has allowed UCBs to invest upto 10% of their surplus funds in the equity of All India Financial Institutions, units of UTI, and PSU bonds. However, in some of the States, this freedom is frustrated by the Registrars of Cooperative Societies. The Committee is unable to understand why, the RCS or any other Government Official should sit in judgement over the commercial decision of the board or a professional treasury manager of a bank.

iii) There are instances when the Registrars of Cooperative Societies have issued instructions in clear conflict with those issued by Reserve Bank. For example, in terms of Section 21 of the Banking Regulation Act 1949, the Reserve Bank is empowered to give direction to a cooperative bank regarding "the rate of interest and other terms and conditions on which advances or other financial accommodations may be made or guarantees may be issued". Section 21 (3) further lays down that every bank shall be "bound to comply with any direction given by Reserve Bank". Notwithstanding these provisions, there are instances where a RCS issued a direction that UCBs should charge interest on deposits in accordance with his instructions. After having learnt about it, the RBI took up the matter with the RCS and with the Cooperation Department of the State but has not succeeded in getting the

directive withdrawn.

iv) Area of operation is again a matter closely related to the banking business and should, therefore, remain in the domain of the RBI. The Reserve Bank found that barriers on expansion of UCBs was adversely affecting their growth. Hence, it allowed UCBs to expand their area of operation to the entire district of their registration and in some cases to the whole of the State. Notwithstanding RBI's clearance, in many States, specific approval of RCS is insisted upon. When a company desires to expand its activities to all over the State, the Registrar of Companies does not prescribe any restrictions on its expansion. If General Body approves the expansion and RBI gives clearance, the Committee does not find any rationale for a further approval to be granted by the RCS. One member (Shri Subhash S. Lalla) feels area expansion by way of opening new branches involves banking as well as cooperative function. RCS should also have a say in branch expansion matters to see if cooperative character will be diluted and whether the branch expansion really benefits the members of the UCB.

v) Similarly, acquisition of movable and immovable properties, incidental to carrying-on the banking related functions, needs approval of RCS. Some UCBs expressed difficulty in getting permission even for buying computers. Registrars of Cooperative Societies insist on their prior permission before recruiting any staff even for banking related functions.

vi) Democratic spirit is the quintessential trait of cooperative societies. But a State, which happens to be a cradle ground for cooperative movement in India, superseded the Boards of Management of all cooperative societies, including UCBs, with a stroke of pen on the pretext of reorganising and strengthening the cooperative sector. It is needless to add that the said decision was a fall out of change in political dispensation rather than a desire to bring any substantial improvement in the development of cooperative institutions. As a result, banks were placed under the charge of the nominees of Registrar of Cooperative Societies for over a period of 6 years. Even after the democratic process was restored, the State Govt. appoints Co-op. Department's officials as MDs of UCBs.

vii) In many a State, the General Body or the Managing Committee cannot write off unrecoverable / bad debts from the books without the concurrence of the Registrar of Cooperative Societies even though the act of writing-off an asset is purely a management decision and guidelines are issued by RBI and Central RCS in this regard.

8.10 The above instances pertaining to the role played by the State Government functionaries in the working of UCBs, which were brought to the attention of the Committee, caused concern to it. It, therefore, wanted to personally interact with the functionaries of State Governments to ascertain their view point. The Committee interacted with the representatives of various State Governments. Some States were represented by the Secretary Cooperation, some by RCS and some by both. Most of them found fault with the Managing Committees and senior functionaries of UCBs who in some cases, were alleged to have vested interests, lack motivation and financial integrity. They are convinced that if the role of the RCS is curtailed, it would result in sharp increase in the sickness rate of UCBs. They feel that RBI is far removed from the field realities

and, hence, it is in no position to diagnose and take necessary curative measures in time to remove the deficiencies inherent in the working of the UCBs. Most of them feel that Chartered Accountants (CAs) are just not good for the audit of UCBs. When it was put to them that the country is trusting CAs to audit companies with a turnover of several thousands crores of rupees, they replied that UCBs are a class by themselves and CAs are not equipped to audit these delicate entities. They are not even prepared to give an option to UCBs to choose between cooperative audit and CA's audit, keeping in view the cost, speed and quality of these two classes of auditors.

8.11 They asserted that even if the RBI has exclusive jurisdiction on the banking functions of UCBs, the RCS and the State Government will be pilloried by the public and press, if any thing goes wrong with an UCB. They said that, they are not prepared to bear the cross in the event of failure of RBI's supervision. When it was put to them that Registrar of Companies or the concerned State Government are not being blamed for the sickness of the commercial banks, they argued that public always associate regulation of UCBs with RCS. When it was brought to their notice that State Governments appointed their employees, who were at the verge of retirement, for a period of two to three years in UCBs without reference to their work experience, their reply was that the quality of staff selected by the Managing Committee is any day much inferior.

8.12 The Committee is of the opinion that right and timely investment decisions will maximise bank's profits. Some of the State Governments do not give freedom to UCBs to invest their surplus funds but dictate where the investment should be made. When this problem was raised with the representatives of State Governments, they emphatically argued (except in Madhya Pradesh) that funds from cooperative sector cannot be allowed to be invested outside the cooperative sector.

8.13 The instances mentioned above are only illustrative. One of the suggestions, repeatedly put forth by the cooperators is that excesses of dual control regime can be contained by transferring the item "cooperation" to Union List or to Concurrent List so as to enable the Union Parliament to legislate on the subject of cooperative banks. Given the federal polity of our country, it is unlikely that the State Governments would agree to such a transfer. Earlier Committees like Madhava Das Committee, Marathe Committee and quite recently Narsimham Committee have all suggested that there is need to address the issue of 'duality of control', by carrying out necessary statutory amendments. However, nothing substantial has been done till date. The Committee is of the opinion that the only effective way to address the problem of dual control is to carry out amendments in the State Cooperative Societies Act, the Multi State Cooperative Societies Act, 1984, as also the Banking Regulation Act, 1949 to clearly demarcate the banking related functions which are to be regulated solely by RBI and those related to establishment of cooperative societies and their cooperative character which shall remain within the domain of the RCS of concerned state. The Committee feels that for banking related functions, the RBI should be the sole regulator. Accordingly, the Committee has made an attempt to list the banking-related- functions and cooperative functions as under :

Banking Related Functions Cooperative Functions which should be under the domain of Reserve Bank of India the Registrar of

Cooperative Societies for concerned state

- | | |
|---|--|
| 1. Issues relating to interest rates, loan policies, investments, prudential exposure norms, forms of financial statements, reserve requirements, appropriation of profits etc. | 1. Registration of co-op. societies. |
| 2. Branch licensing, area of operation | 2. Approval and amendment to by-laws. |
| 3. Acquisition of assets incidental to carrying on banking functions. | 3. Elections to Managing Committees. |
| 4. Policy regarding remission of debts. | 4. Protection of members' rights. |
| 5. Audit | 5. Supersession of Managing Committee for violation on items 1 to 4 above. |
| 6. Change of Management and appointment of CEO. | |
| 7. Appointment of administrator. | |
| 8. Any other banking related function to be notified by RBI from time to time. | |

Recommendations for amendments in State Cooperative Societies Act /Multi State Cooperative Societies Act

8.14 In view of the above discussion, the Committee makes the following, seemingly radical, but necessary recommendations ;

- i) RBI should not issue any new licence for the establishment of an urban cooperative bank unless it is registered under a Cooperative Societies Act or Multi State Co-op. Societies Act, 1984 which has incorporated amendments on the above lines.
- ii) RBI should not sanction licence for opening a branch to existing banks unless the bank is incorporated under a Cooperative Societies Act or Multi State Co-op. Societies Act, 1984 which has been amended on the lines suggested by us.

One member (Shri Subhash S. Lalla) feels that these two recommendations are "too harsh" and tantamount to "challenging the Legislative Authority of State Governments". Instead, he feels that "forceful" recommendation by this Committee, RBI and GOI to State Governments to amend their Acts would be enough to create the proper atmosphere to take care of this issue.

8.15 The Committee is well aware of the resistance shown by the State Governments when cooperative banks were brought under the purview of the RBI for extending certain provisions of

the B. R. Act to cooperative societies in the year 1966. The Committee is also aware of the disappointing experience in the past, about the non-implementation of the recommendations made by the Madhava Das Committee, Marathe Committee, Narasimham Committee and the efforts made by RBI to get Model Bye-laws adopted by the State Governments.

8.16 As indicated earlier, the Committee organised a survey of 103 clients belonging to 13 UCBs. More than 80% of these clients stated that they have become members of UCBs because they were not entertained by commercial banks. Similarly more than 80% said that UCBs provide faster and more personalised service compared to commercial banks. Data with RBI shows that 84.1% of UCBs which reported data fulfilled the stipulated priority sector lending of 60% of banks total lending. The priority sector lending target for commercial banks is only 40%. Since this target is not being met, the RBI had to prescribe that the shortfall in the target should be invested in Rural Infrastructure Development Fund (RIDF). State Government Officials, field officers of RBI and independent observers confirm that UCBs predominantly cater to the small borrowers. Thus, the UCBs render yeomen service to the micro credit needs of the small borrower. Since dual control is the major impediment in smooth functioning and growth of UCBs and State Governments implement a number of pro poor programmes spending several hundreds of crores of rupees, they should be willing to amend the respective Cooperative Societies Act for helping the small borrower. It is true that this would mean giving up power. As beautifully put by a Greek philosopher "The true measure of love is what one is prepared to give up for it". By agreeing to give up control on the banking activity of UCBs, State Governments would be amply demonstrating their commitment to the small man.

8.17 There is more sky than a man can see. There are more stars than a man can count. There is more sea than a man can sail. Millions of people can join in and share the sky, the stars and the sea without disturbing their serenity. But regulation of banking activity of UCBs cannot be shared by even two authorities without adversely affecting the smooth functioning of UCBs. Politically it may appear difficult to agree to stop exercising power on the banking activities of UCBs. But almost all State Governments are taking a number of difficult and harsh decisions (in the context of new economic policy) like reducing subsidies, increasing water and power charges, etc. There are several experts who feel that the new economic policies are not necessarily helping poor and may even be increasing income disparities. Hence, the "safety net" programmes to protect the poor man from the adverse effects of the economic policy. But here the recommendation of the Committee is to take a decision which will clearly help the small man getting his much needed micro credit.

8.18 There are thousands of cooperative societies in every State . The number of UCBs is only a small percentage of those societies. Hence, States will still have ample scope to serve the cooperative sector even after the control over cooperative societies carrying on banking business is given away to the RBI.

8.19 The Committee would like to emphasise that it is not the representations of UCBs and their Federations nor the difficulties experienced by the RBI about the dual control, which made the Committee come up with the above recommendations. Independent observers and organisations associated with and interested in the Cooperative Movement and Banking Sector like Vaikuntha Mehta National Institute of Co-operative Management, The Indian Society for Studies in

Cooperation and All India Bank Depositors' Association are *deeply disturbed about the dangers of dual control*. The last mentioned Association is emphatic that public keep their deposits in UCBs because they think that RBI is *the regulator* and that it will come to their rescue if any UCB fails. They are equally emphatic that dual control is fatal to the UCBs and Banking Sector and plead for immediate replacement of dual control by exclusive regulation by RBI. The Committee is, therefore, convinced that the dual control must end and end soon.

8.20 Till now, we have dealt with the amendments that are needed to be introduced in the Cooperative Societies Acts of different States and the Multi State Cooperative Societies Act. We now propose to deal with amendments in the Banking Regulation Act 1949, as applicable to cooperative societies.

RECOMMENDATIONS FOR AMENDMENTS IN BANKING REGULATION ACT, 1949.

Nomenclature – 'Primary Cooperative Bank'

8.21 Many a bank and their federations voiced protest for the nomenclature used for UCBs in the Banking Regulation Act. The said Act refers to UCBs as primary cooperative banks. They said that some scheduled and large size UCBs are having state-wide presence and had even gone beyond the State. These banks are handling much larger resources than DCCBs. They are, therefore, of the opinion that the word "*primary*" should be deleted from their names and they should be known as urban cooperative banks. The Committee observed that the primary cooperative banks are in fact popularly known as urban cooperative banks and many of them use the word 'urban' as part of their name. The Committee other than Shri Subhash S. Lalla agrees to their suggestion of primary cooperative banks being referred as Urban Cooperative Banks and recommends that Section 5(ccv) should be suitably modified to give effect to the above suggestion.

Membership

8.22 At present, primary cooperative banks, by their very definition, are not permitted to admit any other cooperative society as a member. This restricts their ability to provide loans to cooperative societies like housing cooperative societies or cooperative societies involved in manufacturing of goods, etc. Since a large number of UCBs have surplus funds and borrowers are not available within the cooperative fold, the representatives of UCBs suggested that the restriction on enrolling the cooperative society as a member should be done away with. The Committee feels that the restriction acts to the detriment of urban cooperative banks and is restrictive in nature. The Committee recommends that UCBs may be allowed to enroll any cooperative society other than a cooperative credit society or an urban cooperative bank as their member. One member (Shri Subhash S. Lalla) feels that the word "*primary*" indicates the character and category of the society viz. that it deals with individual members directly. Moreover, there are District Central Cooperative Banks which are in the category of "*secondary*" tier. All primary cooperative societies are members of DCCBs and get credit support from the latter. Deleting the word "*primary*" and allowing UCBs to enroll other cooperative societies as their members may create problems of multiple membership leading to confusion and malpractices.

Use of term bank, banker and banking -

8.23 Existing provisions of Section 5 (ccvi) and certain provisions of Section 22 read with provisions of Section 49, permit a primary credit society to function as a primary cooperative bank even if it is not licensed. In view of this, primary cooperative societies are allowed to carry on banking business and they use the word 'bank', 'banker', 'banking', etc. This Committee is of the opinion that this statute induced conversion should be done away with and only such of those societies which have been specifically licensed to carry on banking business, should be allowed to use the word 'bank', 'banker', 'banking'. Hence, Committee recommends suitable amendment in Section 7. of the B.R. Act. Incidentally, this amendment was also suggested by the Marathe Committee, but is yet to be implemented.

Amendment to section 5 (ccv) of B.R. Act -

8.24 The Committee has discussed the problem of licensing of unlicensed banks in [Chapter V](#) of the Report. As discussed therein, the proliferation of unlicensed and weak banks is basically on account of automatic transformation of primary credit societies into UCBs. Under the provisions of Section 5 (ccv) read with Section 22 of B.R. Act (AACS) 1949, if a primary credit society's share capital and reserves reaches the level of Rs. 1 lakh, it gets automatically converted into an UCB. Such automatic conversion has resulted in far too many primary credit societies converting themselves into UCBs without the necessary strength on other parameters. This in turn, has resulted in many of them becoming weak banks. The Committee feels that unless this automatic route is plugged, the inherent causes of weakness for this class of banks cannot be contained. The Committee, therefore, recommends Section 5 (ccv) as also Section 22 of the B.R. Act, 1949 (AACS) to be so amended as to stop automatic conversion of primary credit societies into primary cooperative banks.

Appointment of Auditor for a Cooperative Bank -

8.25 In terms of Section 30 of B.R. Act, 1949 (As Applicable to Banking Companies) the Balance Sheet and Profit & Loss Account of a Bank has to be audited by a person duly qualified under any law for the time being in force to be the auditor of companies i.e. by a Chartered Accountant. Such appointment has to be with the previous approval of the Reserve Bank. This Section is not applicable to cooperative banks. In the case of a cooperative bank, audit is conducted by the auditors of the Cooperation department of the respective state.

8.26 In the case of commercial banks, since appointment of the auditor is subject to the approval of RBI, it is able to exercise control over the auditor's performance. Moreover, the auditor is subject to the disciplinary jurisdiction of the Institute of Chartered Accountants of India. The RBI also interacts with the Institute on a continuous basis and jointly monitors and directs the basis on which the audit is done.

8.27 The Committee, therefore, recommends that in case of UCBs also, the audit should be conducted by a Chartered Accountant whose appointment is approved by the Reserve Bank. The Committee, therefore, recommends that Section 30 of the B.R. Act, may be extended to UCBs also. To avoid the duplication of audit, suitable amendment may become necessary in the State Cooperative Societies Acts also.

Power to remove Director, Chief Executive Officer of Urban Bank, to be vested with

Reserve Bank

8.28 By virtue of the provisions contained in the Deposit Insurance & Credit Guarantee Act, 1961, the Reserve Bank has power to ask the Registrar of Cooperative Societies to pass an order for supersession of the Board and appointment of an Administrator. The Committee is of the opinion that there may, at times, be a situation where it may not be necessary to supersede the entire Board and it may be sufficient to remove only one or a few members of the Board or the Chief Executive Officer or some other Officer of the Bank. The Committee is of the opinion that the Reserve Bank should be vested with such a power. It, therefore, recommends that Section 36AA of the B.R. Act, 1949 (As Applicable to Banking Companies) may be extended to UCBs.

Central Governments powers to pass orders of moratorium for cooperative banks

8.29 The existing provisions of Section 45 of the Banking Regulation Act, (AACS), permit Reserve Bank to apply to the Central Government for a moratorium in respect of a cooperative bank. Section 45 (2), authorises Central Government to make an order of moratorium. Again under Section 45(3), the cooperative bank is required to adhere to the order of moratorium passed by the Central Government. Other provisions of Section 45 of the B. R. Act, contained in sub-sections 45 (4) to 45 (15) have not been extended to cooperative banks. The reasons for the extension of limited provisions of the B.R. Act (AABC) in respect of an order of moratorium passed by the Central Government, is said to be, the limitation imposed by the Constitution. The provisions as contained in sub-sections (4) and (5) of Section 45 relate to drawing a scheme, change in the Board of Directors, appointment of new board, the reduction of interest, depositors and other creditors have in a banking company etc. The Committee is of the opinion that many of these issues do not relate to the managerial functions and hence, there should not be any difficulty in subjecting it to the decision of the Central Government / Reserve Bank by suitable amendment in the Banking Regulation Act. The Marathe Committee in its report, suggested that sub-sections (4), (5) and (6) of Section 45 of the B. R. Act, can be extended to UCBs also. The Committee is aware that 'drawing a scheme of amalgamation or merger' in respect of a bank, may amount to acting in relation to a juristic person. Cooperative societies are covered by Entry of the State List hence it may well be argued that the Parliament can not pass any law that relates to the existence or non existence of a cooperative society. The Committee is, however, of the opinion that the issue of drawing a scheme of amalgamation, merger or reconstruction has to be seen as a matter incidental to or connected with the banking business. A cooperative bank carrying on banking business cannot carry on any activity other than those allowed by Banking Regulation Act. In view of this, the Committee is of the opinion that the order of moratorium being incidental to the business of banking, relates to the operational / functional aspect of a cooperative bank and it only incidentally affects the juristic-person viz a cooperative bank. Since "banking" falls under List I of Schedule VII of the Constitution, such a provision may not be ultra vires the power of the Government of India. Hence, the power to prepare a scheme pursuant to an order of moratorium, in respect of a cooperative society carrying on banking business, may also rest with the Government of India/ Reserve Bank of India.

8.30 The Committee observed that in terms of Section 2(gg) (iv) of DICGC Act, 1961, an 'eligible cooperative bank' means a cooperative bank, the law for the time being governing which provides besides other things that, - 'an order sanctioning a scheme for compromise or arrangement or amalgamation, reconstruction or an order for supersession of Committee of Management or other Managing Body of the Bank and the appointment of an Administrator

therefor made on the requisition of Reserve Bank, shall not be liable to be called in question in any manner.' Pursuant to this, requirement of the DICGC Act, 1961, the State Cooperative Societies Acts, have been amended. Thus, Section 110A (iv) of the Maharashtra Cooperative Societies Act, 1961, incorporates the above provision of the DICGC Act. In view of these provisions of the DICGC Act, the Maharashtra Cooperative Societies Act, 1961 and similar provision in other State Cooperative Societies Acts, it is open to the Reserve Bank to sanction a scheme of compromise or arrangement or of amalgamation or reconstruction (including division or reorganisation) or pass an order for the supersession (removal) of the Committee and appointment of an Administrator therefor. The action taken by the Registrar on the requisition made by the Reserve Bank, is not liable to be challenged in any manner. The Committee is, therefore, of the opinion that no legal difficulty would arise, if sub-sections (4), to (15) of Section 45 of the Banking Regulation Act, (As Applicable to Banking Companies) are extended to UCBs.

8.31 The Committee, therefore, recommends that Section 45 of the Banking Regulation Act should be suitably amended to extend to UCBs sub-sections (4),(5) and (6) as also, all other provisions of Section 45 of the B. R. Act, as are incidental to or connected with the carrying on banking business.

Restrictions on acceptance of deposits withdrawable by cheque, available to primary credit societies

8.32 Under the provisions of Section 49 A of the Act, primary credit societies are allowed to accept deposits withdrawable by cheque. As the Committee is not in favour of primary credit societies carrying on banking business, the Committee recommends that clause (a) of the proviso to Section 49 A be deleted from the Act so that primary credit societies are stopped from accepting deposits withdrawable by cheque. Such a provision is desirable when primary credit societies having a paid up share capital and reserves of Rs.1 lakh and above are allowed automatic conversion into urban cooperative bank. Since the present Committee is not in favour of any automatic conversion of credit societies into UCBs, it recommends deletion of clause (a) of the proviso to Section 49A.

Form of Balance Sheet and Profit and Loss Account

8.33 The forms in which the Balance Sheet and Profit and Loss Account of an urban cooperative bank are prepared and prescribed in The Third Schedule to the Banking Regulation Act. These forms differ substantially from the form in which the Balance Sheet and Profit and Loss Account of a commercial bank are required to be prepared under the B.R. Act. As the same prudential norms and measures of computation of financial stability are proposed to be applied to both types of banks, it is necessary that the forms in which their balance sheets and profit and loss account are prepared, be as similar as is possible. It is, therefore, necessary to amend the forms in The Third Schedule applicable to UCBs to make them comparable, as far as possible, to the forms as applicable to commercial banks suggesting suitable modification to Third Schedule of B.R.Act (AACS). [Annexure XV ([A](#) & [B](#))]

Suggested amendments in B.R. Act

8.34 As amendments in Cooperative Societies Acts of different States and the Multi-State Cooperative Societies Act, have to be carried out by respective State/Union Legislatures, we

suggest that these amendments may be made in consultation with the Reserve Bank of India. The amendments in the Banking Regulation (AACS) Act, 1949 necessary to reflect the recommendations made in this Chapter, are given in [Annexure XVI](#).

21. The Reserve Bank of India 1951-1967 - K Balchander

22. The Reserve Bank of India 1951-1967 - G. Balachandran