



सत्यमेव जयते

RECOMMENDATIONS
FOR SUITABLE AMENDMENTS
AND
ADDITION OF FEW NEW SECTIONS / RULES
IN
THE GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961
AND
THE RULES FRAMED THEREUNDER

MARCH, 2015

JUSTICE M. B. SHAH
FORMER JUDGE,
SUPREME COURT OF INDIA
AND
CHAIRMAN,
GUJARAT STATE LAW COMMISSION

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EXECUTIVE SUMMARY

On the basis of various Judgments rendered by Hon'ble High Court of Gujarat and to remove the lacuna pointed out and also on the basis of suggestions made by the Advocates practicing before the Registrar of Co-operative Societies / Board of Nominees / Gujarat State Co-operative Tribunal, the suggestions / recommendations are made for suitable amendments in The Gujarat Co-operative Societies Act, 1961 ("the Act") and the Rules framed thereunder for rendering just equitable justice.

In nutshell, it is to be stated that:—

- (i) By Judgment rendered in the case of **Rasiklal Patel & Ors. v/s. Kailasgauri Ramanlal Mehta & Ors. [1971 GLR 355]**, the Hon'ble High Court of Gujarat held that Clauses (c), (d) & (e) and the words "any past or present agent" and "deceased agent" in Clause (a) of Section 96(1) along with Explanation II are ultra vires and void as offending Article 14. For empowering the parties who are affected by grant of loan or for deposits with the society or lending by the society, specific provisions are required to be made so that the dispute can be resolved by the procedure prescribed under Section 96. For that purpose, suitable suggestions are made for amending Section 96 of the Act which are discussed in Chapter: I of this Report.

(ii) By Judgment rendered in the case of **Federation of Kheda District Co-operative Credit Societies Ltd. & Ors. v/s. State of Gujarat & Ors.**, [Special Civil Application (SCA) No.20104/2006 with SCA No.20105-20116/2006], the Hon'ble High Court of Gujarat set aside the Circulars dated 23.01.2004 and 04.11.2004 issued by the Registrar of Co-operative Societies, Gujarat State, by holding that the powers of the liquidator to determine the order of priority are not only qua the different class of creditors, but also within the same class of creditors *inter se* and the Court held that priorities prescribed by the said Circulars are null and void, as they are contrary to Section 110(e) of the Act. Hence, it is suggested to amend Section 110(e) and also to add Section 110 A, prescribing priority for disbursement of assets of the society under liquidation.

(iii) At present, a number of new housing societies are constituted. Apart from it, before constructing houses, the builders collect money from the persons who are interested in purchasing building / flat / office / shop, etc. and, thereafter, various disputes arise. For codifying the rights of the purchasers of such premises and the duties of the contractor / builder / promoter, "Special Provisions for Housing Societies" are suggested by adding Chapter X-C, in the Act. The said provisions are discussed in Chapter: II of this Report.

- (iv) Further, for better redevelopment of the society, no provisions are in existence in the Rules, at present. Therefore, for solving number of problems / disputes faced by the societies as well as their members, Chapter IV-A “Management and Redevelopment of Housing Society” is suggested for adding it in the Rules. The said Chapter is discussed in Chapter: V of this Report.
- (v) Many of the times, parties to the proceedings do not comply with and/or disrespect the orders of Board of Nominees and/or Co-operative Appellate Tribunal. For compliance, Section 149 A is suggested to be added, after Section 149. The said suggested Section is similar to Section 148 A of The Maharashtra Co-operative Societies Act, 1960. The suggested Section 149 A is discussed in Chapter: III of this Report.
- (vi) In addition, suggestions are made for relevant amendments in various Sections of the Act, such as, Sections 17, 22, 44, 45, 46, etc. for the reasons, as discussed in Chapter: I of this Report.
- (a) Section 17 deals with amalgamation, transfer, division or conversion of societies. Sub-Section 1A is suggested by providing that resolution passed in a special general meeting shall be binding to all the members of the society so that further dispute can be avoided.
- (b) Amendment in Section 22 is on the basis of the Judgments rendered by the High Court in the cases of Jain Merchants Co-Op. Housing Society & Ors. v/s. HUF of Manubhai Kalyanbhai Shah & Ors. [1995 (1) GLR 19] and Abhinav Co-Op. Housing Society Ltd. v/s. Pankajkumar Babulal Doshi [2002 (2) GLR 1768]. The said Judgments *inter-alia* provide that HUF and Trust could be member of the society.

- (c)** Suggestions for amending Sections 44, 45 and 46 are in conformity with the Judgment rendered by the High Court in the case of **Rasiklal Patel & Ors. (Supra)**.
- (d)** For adding Sub-Section (5) in Section 74C, suggestion is made to empower the voter to cast a negative vote i.e. “NOTA – None of The Above” against the voting column by placing a symbol “**(O) – Zero**”. This suggestion is in conformity with the Judgment dated 27.09.2013 rendered by the Apex Court in the case of **People’s Union for Civil Liberties & Anr. v/s. Union of India & Anr. [Writ Petition (C) No.161/2004]**. On that basis, Election Commission of India has also issued a letter No.51/8/NOTA/2013-EMS, dated 30.10.2013.
- (e)** Amendment in Section 78 is suggested so that special general meeting can be called within reasonable time.
- (f)** Amendment in Clause (b) of Section 99(5) is suggested by adding the word “unconditionally”, since there is no specific provision for granting unconditional leave and on occasions, the Registrar is finding difficult to grant unconditional leave to defend.
- (g)** Sub-Section (4) in Section 100 is suggested for addition, since there is no specific power to the Board of Nominees/Registrar/authorized person to pass interlocutory orders.

- (h)** It is observed that a number of Petitions are filed before the Hon'ble High Court, pending election on the ground that patent illegalities are committed during the election process. For clarifying the situation, specific provision is suggested by adding proviso to Sub-Section (2) of Section 145 U. Further, Clause (e) in Sub-Section (3) of Section 145 U is also suggested for addition, by making it clear that no stay would be granted, pending election.
- (i)** Finally, amendment is suggested in Section 153 which provides for appeal.

In addition, suggestions are also made for relevant amendments in Rules 40-A, 43 and 78 of the Rules, for the reasons, as discussed in Chapter: IV of this Report.

For proper codification of the rights of the members of the society and of the society as well as that of builders, the Act and the Rules are required to be amended, as suggested and recommended in this Report.

Finally, it is to be stated that before preparing this Report, exhaustive consultation is made with Mr. Hitendra Ramanlal Shah, President of the Gujarat Co-operative Bar Association. The Commission expresses gratitude and records the appreciation for valuable services rendered by Mr. Hitendra R. Shah.

Date : March, 2015

Place : Ahmedabad

JUSTICE M. B. SHAH
Former Judge, Supreme Court of India
AND
Chairman, Gujarat State Law Commission

RECOMMENDATIONS FOR SUITABLE AMENDMENTS AND ADDITION OF FEW NEW SECTIONS / RULES IN THE GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961 AND THE RULES FRAMED THEREUNDER

CHAPTER: I

**SUGGESTED SUITABLE AMENDMENTS
IN
THE GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961**

Section 17:—

Section 17 of the Act reads as under:—

“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;*

⁺*[aa. to amalgamate with another society registered under the Multi State Co-Operative Societies Act, 2002 (39 of 2002)]*

(b) *to transfer its assets and liabilities, in whole or in part, to any other society;*

(c) *to divide itself into another class of societies;*

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

(e) *to change its objects.*

+ Inserted by Guj. Act No.19 of 2013 dt. 19.09.2013

- (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.”*

Suggested amendment in the afore-quoted Section 17:-

After Clause (e) of Sub-Section (1), following Sub-Section 1A is required to be added:-

“1A. Such a resolution shall be binding to all the members of the society.”

Reason:-

Even though a resolution passed by two thirds majority as provided in Sub-Section (1), a member of the society unnecessarily makes litigations and puts society and its members in lot of inconvenience and hardship. Hence, Sub-Section 1A is required to be added.

Section 22:—

Section 22 of the Act reads as under:—

“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)];*
 - ³*[(g) a group of the individuals eligible under Clause (a), whether incorporated or not and whether established or not by or under any law:]*

-
1. **Subs. for the word “association” by Guj. 23 of 1982**
 2. **Ins. by Guj. 23 of 1982**
 3. **Ins. by Guj. 1 of 2008, Sec. 5(1) (w.e.f. 08.10.2007)**

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 order¹[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.

²*[(2) Every person seeking admission as a member of a society, if duly qualified for membership of such society under the provision of this Act, the rules and the bye-laws of the society, may make an application to the society for membership. The society shall take decision on the application and shall communicate the decision within a period of three months from the date of receipt of the application.]*

(3) Notwithstanding contained in Sub-Section (1), the State Government, 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 a member or members or shall be eligible for the 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. Subs. for the words “a firm or company” by Guj. 23 of 1982

2. Subs. by Guj. 1 of 2008, Sec. 5(2) (w.e.f. 08.10.2007)

¹[(4) All the depositors having deposits of rupees ten thousand or above for a minimum period of one year and the borrowers shall be compulsorily made members in the Primary Agricultural Credit Co-operative Societies:

Provided that the depositors having deposits less than rupees ten thousand shall be made nominal members.

(5) The State Government may, by notification in the Official Gazette, after the limit of rupees ten thousand specified by Sub-Section (4) and also specify such amount of deposit as it deems necessary for a class of society and different amount may be specified for different classes of societies. In the case of borrowing members, the society shall prescribe in its bye-laws, linking shares subject to minimum of two and half percent of the loan taken by the borrowers.]”

Suggested amendment in the afore-quoted Section 22:-

- In Clause (b) of Sub-Section (1), after the word “company”, the words “HUF, Trust” is required to be added which reads as under:—

“(b) a firm, company, **HUF, Trust** [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);”

1. **Added by Guj. 1 of 2008, Sec. 5(3)
(w.e.f. 08.10.2007)**

Reason:-

Due to non-mentioning of words “HUF, Trust” in Clause (b), ambiguity was arising – whether HUF and Trust can become a member of the society, or not. However, in the case of **Jain Merchants Co-Op. Housing Society & Ors. v/s. HUF of Manubhai Kalyanbhai Shah & Ors. [1995 (1) GLR 19]**, it has been held that HUF can become a member of the society. Further, in the case of **Abhinav Co-Op. Housing Society Ltd. v/s. Pankajkumar Babulal Doshi [2002 (2) GLR 1768]**, it has been held that Trust can become a member of the society. Hence, the words “HUF, Trust” are required to be added in Clause (b) of Section 22(1).

- After Clause (g) of Sub-Section (1), following Clause (h) is required to be added:—

“(h) Person owning unit such as flat/office/shop, etc. in a service society shall be deemed to be a member of the service society.”

Reason:-

Now-a-days, regular society is not formed and service societies are registered and in service societies, unit holders do not become members and due to that, complications arise in administration of the society. Hence, for smooth functioning of such service society, Clause (h) is suggested for addition.

Section 44:—

Section 44 of the Act reads as under:—

“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.”

Suggested amendment in the afore-quoted Section 44:-

Following Sub-Section (1) is required to be added:-

“(1) Any dispute pertaining to such transaction arises, shall be deemed to be a dispute under Section 96 of the Act.”

Reason:-

Where a dispute arises for the transactions with a person other than a member, jurisdiction to decide the same arises. However, there is no clarity for the same in the Act. Hence, Sub-Section (1) is required to be added for clarity. This would be in conformity with the Judgment of the Hon'ble High Court of Gujarat, passed in the case of **Rasiklal Patel & Ors. v/s. Kailasgauri Ramanlal Mehta & Ors. [1971 GLR 355]**.

Section 45:—

Section 45 of the Act reads as under:—

“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.*

¹*[(3) Notwithstanding anything contained in this Act, no person or group of persons other than a member or members shall be eligible to borrow from or make deposit in a Primary Agricultural Credit Co-operative Society.]”*

Suggested amendment in the afore-quoted Section 45:—

Following Sub-Section (4) is required to be added:—

“(4) Any dispute pertaining to such transaction arises shall be deemed to be a dispute under Section 96 of the Act.”

1. **Added by Guj. 1 of 2008, Sec. 8 (w.e.f. 08.10.2007)**

Reason:-

Where a dispute arises for the transactions with a person other than a member, jurisdiction to decide the same arises. However, there is no clarity for the same in the Act.

Hence, Sub-Section (1) is required to be added for clarity. This would be in conformity with the Judgment of the Hon'ble High Court of Gujarat, passed in the case of **Rasiklal Patel & Ors. (Supra)**.

Section 46:—

Section 46 of the Act reads as under:—

“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.”

Suggested amendment in the afore-quoted Section 46:—

Following Sub-Section (1) is required to be added:—

“(1) Any dispute pertaining to such transaction arises shall be deemed to be a dispute under Section 96 of the Act.”

Reason:—

Where a dispute arises for the transactions with a person other than a member, jurisdiction to decide the same arises. However, there is no clarity for the same in the Act. Hence, Sub-Section (1) is required to be added for clarity. This would be in conformity with the Judgment of the Hon'ble High Court of Gujarat, passed in the case of **Rasiklal Patel & Ors. (Supra)**.

Section 74C:—

Section 74C of the Act reads as under:—

“74C. Provision for conduct of elections of 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 this 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 Organization;

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

(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;]

1. Subs. by Guj. 23 of 1982.

2. Ins. by Guj. 23 of 1982.

- (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 ¹[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 authorized 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*

1. Subs. for “three years” by Guj. 23 of 1982.

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

¹*[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.*

²*[(4) The election of the Managing Committee shall be conducted before the expiry of its term so as to ensure that the newly elected members of the Managing Committee assumes office immediately on the expiry of the term of office of the members of the outgoing Managing Committee.]”*

**Suggested amendment in the afore-quoted
Section 74C:-**

After Sub-Section (4), Sub-Section (5) is required to be added which reads as under:-

“(5) Notwithstanding anything contained in the Rules or bye-laws, at the time of election, it would be open to the members to vote for one or more candidates. In case where a member desires not to vote for any candidate or some candidates, he may stamp a symbol of “(O): Zero – meaning thereby ‘NOTA’: None of the above” against the voting column.”

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- 1. Added by Guj. 14 of 1983. (07.01.1981)**
 - 2. Inserted by the Gujarat Co-operative Societies (Amendment) Act, 2013 (Guj. Act No.17 of 2013) dated 15th April, 2013.**

Reason:-

On occasions, it is contended that elections are contested by panel of candidates and in that case, if it is compulsory to vote for fix number of candidates, then member is required to vote for the person who, according to him, is not eligible to be elected. Take for illustration that, against the panel of seven contesting members, if one or two members desire to contest, they would be required to vote for other fixed number of candidates. By this process, one or two members who are contesting election independently, may not be elected.

Hence, the afore-quoted Sub-Section (5) is required to be added in Section 74C. This recommendation is on the basis of the Judgment dated 27.09.2013 rendered by the Apex Court in the case of **People's Union for Civil Liberties & Anr. v/s. Union of India & Anr. [Writ Petition (C) No.161/2004]**. On that basis, Election Commission of India has also issued a letter No.51/8/NOTA/2013-EMS, dated 30.10.2013.

Section 78:—

Section 78 of the Act reads as under:—

“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, fails to call such meeting, the Registrar may by order declare such officer or member disqualified for being a member of the committee for such period not exceeding three years, as he may specify in such order: and if the officer is a servant of the society, he may impose on him a penalty not exceeding one hundred rupees. Before making an order under this subsection, 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 sub-section (1), the registrar or any person authorized by him in 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.”*

Suggested amendment in the afore-quoted Section 78:-

- After Sub-Section (3), following proviso is required to be added:-

“Such meeting shall be called by the Registrar within fifteen days from the date of receipt of the requisition.”

- After Sub-Section (4), following proviso is required to be added:-

“After receiving requisition, if Registrar fails to call such meeting within fifteen days, the members shall be eligible to call such meeting.”

Reason:-

Many times, it is observed that the Registrar does not call meeting and, therefore, undue hardship is caused to the members. Hence, the aforesaid provisos after Sub-Sections (3) and (4) are required to be added which would clarify the powers of the Registrar and that of the members who have sought requisition.

Section 96:—

Section 96 of the Act reads as under:—

“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 I

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 on 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 result 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 II

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.”

The red highlighted portions in the afore-quoted Section are held ultra vires and void as offending Article 14, in view of Para: 21 of the Judgment passed in the case of Rasiklal Patel & Ors. v. Kailasgauri Ramanlal Mehta & Ors. [1971 GLR 355].

Suggested amendment in the afore-quoted Section 96:-

- In Sub-Section (1), after the words, “... *any dispute touching the constitution,*” the words, “*election of committee or its officers, conduct of general meetings,*” are required to be added and, accordingly, the said Sub-Section reads as under:-

“(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, **election of committee or its officers, conduct of general meetings, 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:–”

- At the end of Clause (b) of Sub-Section (1), the words “or a person who claims to be a member of the Society;” are required to be added and, accordingly, the said Clause reads as under:–

“(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 **or a person who claims to be a member of the Society;**”

- After Explanation I (iv), following Clauses are required to be added:–

“(v) a claim or a dispute regarding property of the Society;

(vi) a claim or a dispute not covered under Clause (k) of Section 2 of the Industrial Disputes Act, 1947.”

- **Suggestion for Clause (c) of Section 96(1):-**

In Para: 5(B) of the Judgment passed in the case of **Rasiklal Patel (Supra)**, the detailed grounds on which the constitutional validity of Section 96 was challenged, are stated. The relevant Sub-Para (B) is reproduced as under:-

“The impugned provisions in so far as they provide a special procedure for non-members having disputes with Co-operatives Societies are in any event violative of Article 14 inasmuch as all non-members though similarly situate as regards the subject matter of the legislation are non uniformly treated: non-members who are creditors of a Co-operative Society or who have disputes arising out of investment of its funds made by a Co-operative Society under the provisions of Sec. 71 or who have transactions with a Co-operative Society which are not “transactions under the provisions of Sec. 46” are left out from the scope and ambit of the impugned provisions: there is no intelligible differentia distinguishing one class of non-members from the other and in any event, if there is any differentia, it has no rational relation with the object sought to be achieved by the impugned provisions.”

Further, in Para: 9 of the aforesaid Judgment, the Court *inter-alia* observed that, “... If it was the intention of the Legislature to include within Clause (c) non-members having transactions with the society of the kind referred to in Sec. 46, there was nothing easier for the Legislature than to use appropriate words such as “referred to in Sec. 46” or “in respect of which restrictions can be prescribed under Sec. 46” which would clearly and adequately convey its intention but the Legislature instead deliberately and advisedly used a different phraseology quite inappropriate to express such intention....”

In addition, in Para: 21 of the aforesaid Judgment, the Court held that,

*“We are, therefore, of the view that Clause (a) without the words “any past or present agent” and “deceased agent” and Clause (b) of Sec. 96(1) are not violative of Article 14 of the Constitution but **Clauses (c), (d) and (e) and the words “any past or present agent” and “deceased agent” in Clause (a) of Sec. 96(1) along with Explanation II** which make the special procedure set out in the impugned provisions applicable only to certain specified categories of non-members **are ultra vires and void as offending Article 14.**”*

Considering the aforesaid Judgment as a whole, in view of the Commission, Clause (c) of Section 96(1) be replaced to read as under:—

*“(c) 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 45, 46, 47 and 71** and any person claiming through such a person;”*

Reason:—

This would be in conformity with the afore-quoted Judgment of the Hon’ble Court.

Section 99:—

Section 99 of the Act reads as under:—

“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 complicated question of law or fact, no legal practitioner in his capacity as a legal practitioner or as 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 on 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 is satisfied that the mistake was bona fide, order any other person to be substituted or added as a plaintiff or a defendant, upon such terms he thinks just.*
- (c) *The Registrar, his nominee or board or 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.*

¹(4) *Notwithstanding anything contained in sub-sections (1), (2) and (3), the following disputes or class of disputes, if the plaintiff so desires, shall be decided summarily by the Registrar, or his nominee or board of nominees, in such manner as may be prescribed, namely:—*

- (a) any dispute for recovery of debt upon promissory note, hundi, bill of exchange or bond, with or without interest, whether agreed upon under such instrument or under the bye-laws;*
 - (b) any dispute for recovery of a fixed sum of money or in the nature of debt, with or without interest, arising on a written contract;*
 - (c) any dispute for recovery of price of goods sold and delivered, where the rate, quality and quantity are admitted in writing;*
 - (d) any dispute for recovery of dues payable by a member of a housing society towards contribution for construction of the house, or any dispute in respect of repayment of any loan, interest or loan, ground rent, local authority taxes, sinking fund, water charges, electrical charges, maintenance and upkeep charges or charges for other services rendered by the society and the interest on such arrears, payable under the written agreement or under the bye-laws.*
- (5) (a) The defendant shall not be entitled to defend the dispute unless he obtains leave from the Registrar, his nominee or, as the case may be, the board of nominees, in such manner as may be prescribed.*

1. Ins. for sub-sections (4) to (6) by Gujarat Co-operative Societies (Amendment) Act, 1997 (Act 4 of 1997) Sec. 3.

- (b) *The Registrar, his nominee or board of nominees may grant the leave under clause (a) on such conditions, as he thinks fit.*
- (c) *The Registrar, his nominee or board of nominees shall not refuse the leave to defend the dispute, unless he is satisfied that the facts disclosed by the defendant do not indicate that he has substantial defence to raise or that the defence intended to be put up by him is frivolous or vexatious.*
- (d) *Where the defendant fails to obtain such leave or fails to appear or defend the dispute in pursuance of such leave, the averments made in the plaint any documents produced therewith shall be deemed to have been admitted by the defendant:*
- Provided that the Registrar, his nominee or board of nominees in his discretion requires any fact so admitted to be proved otherwise than by such admission.*
- (e) *Where the conditions on which leave to defend is granted are not complied with by the defendant, the Registrar, his nominee or, as the case may be, board of nominees may pass an award against him, as if he has not been granted such leave.*
- (6) *The Registrar, his nominees or, as the case may be, board of nominees shall under special circumstances set aside the award passed by him and if necessary stay or set aside execution, and may grant leave to the defendant to appear and defend the disputes, if it seems reasonable so to do, and on such terms as he thinks fit.]”*

Suggested amendment in the afore-quoted Section 99:-

Clause (b) of Section 99(5) is required to be amended as under:-

*“(b) The Registrar, his nominee or board of nominees may grant the leave **unconditionally** or upon such conditions, as he thinks fit.”*

Reason:-

Ambiguity has been created, due to non-mentioning of the word “unconditionally”.

In Civil Procedure Code, 1908 as well as in the Co-operative Societies Act of other States, the word “unconditionally” is used for the summary suits.

Clause (b) of Section 99(5) is, therefore, required to be amended, as quoted above.

Section 100:—

Section 100 of the Act reads as under:—

“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 authorized 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 authorized 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 authorized, 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 if the person fails to provide the security so demanded, the Registrar or his nominee or board of nominees or, as the case may be, the person authorized 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.”*

**Suggested amendment in the afore-quoted
Section 100:—**

After Sub-Section (3), following Sub-Section (4) is required to be added:—

- “(4) *Board of Nominees, the Registrar or the authorized person, as the case may be, may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision in a dispute referred to in Sub-Section (1) as may appear to be just and convenient.”*

Reason:-

In The Gujarat Co-operative Societies Act, 1961 and the Rules framed thereunder, there is no provision to pass interlocutory orders during the proceedings and due to which, ambiguity arises.

However, in the Judgment passed in the case of **Baroda Central Co-operative Bank Ltd. v/s. Baroda District Industrial Co-operative Mandal Ltd. & Others [3 CTD 67]**, the Gujarat Co-operative Tribunal has held that the Registrar or his nominee has inherent power to grant temporary injunction, if it is considered absolutely necessary for the ends of justice to do so.

In view of the Commission, the aforesaid powers are required to be conferred upon the Board of Nominees. Without such clarification, number of disputes are raised which are required to be finally decided and dealt with by the Tribunal or by the High Court.

Further, Section 95(4) of The Maharashtra Co-operative Societies Act, 1960, *inter-alia*, provides for passing interlocutory orders.

Hence, Sub-Section (4) is required to be added in Section 100, for clarity.

Section 110:—

Section 110 of the Act reads as under:—

“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 question 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.”*

**Suggested amendment in the afore-quoted
Section 110:-**

In Section 110(e), after the words, “... arising out of such claims”, the words, “as provided in Section 110 A” are required to be added and, accordingly, Section 110(e) reads as under:-

- “(e) *to investigate all claims against the society and subject to the provisions of the Act, to decide question of priority arising out of such claims **as provided in Section 110 A** 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.”*

Section 110 A is required to be added to the following effect:—

“110 A. Preferential Payment

- (1) (a) *All revenues, taxes, cesses and rates due from the society to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date.*
- (b) *All wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the society and due for a period not exceeding twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified.*
- (c) *All sums due to any employee from the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the Society. Also provident fund amount collected by the society with its contribution and not deposited with Provident Fund Commissioner.*
- (d) *Amount due to secured creditors in proportion to security.*

- (2) *Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.*
- (3) *After payment of the aforesaid amount, if any amount remains, it shall be paid as under:—*
- (a) *Dues of depositors insured by Co. Op. Bank below rupees one lac (if it is remitted in advance by DICGCI, then it shall be remitted to DICGCI).*
 - (b) *Remaining amount payable under Deposits beyond rupees one lac, after payment made by Insurance Company (DICGCI) of Deposits for rupees one lac or below remained in the liquidated Bank.*
 - (c) *Outstanding dues besides security of Secured Creditors.*
 - (d) *Dues of other Banks, Co. Op. Societies, etc.*
 - (e) *Dues of Unsecured Creditors.*
 - (f) *Any other amount due and payable to the employees.*

- (4) *The debts enumerated in sub-section (3) shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.”*

Reason for amendment of Section 110(e) and addition of Section 110 A:—

It is to be stated that in the case where Co-operative Society is under liquidation, priorities for making payments to the creditors and others were prescribed in the Circulars dated 23.01.2004 and 04.11.2004 issued by the Registrar of Co-operative Societies, Gujarat State. The said Circulars are set aside by the Hon'ble High Court of Gujarat vide its Judgment dated 01/02.12.2006, passed in the case of **Federation of Kheda District Co-operative Credit Societies Limited & Ors. v/s. State of Gujarat & Ors.**, [Special Civil Application (SCA) No.20104/2006 with SCA No.20105-20116/2006]. The said Judgment was followed in the case of **Gujarat State Co-operative Bank Ltd. v/s. State of Gujarat & Ors.** (SCA No.11615/2004).

In **Federation of Kheda District (Supra)**, the Court held that the said Circulars are without authority of law and the liquidator is entitled to fix the order of priority not only qua class of creditors in relation to the Bank in liquidation of which the liquidator has been put in charge, but also qua the creditors *inter se* in a particular category of creditors. In other words, the powers of the liquidator to determine the order of priority are not only qua the different class of creditors, but also within the same class of creditors *inter se*. For this purpose, the Court interpreted Section 110(e) of the Act.

Considering the law as interpreted by the Court, Section 110(e) is required to be amended otherwise the liquidator would have unguided powers for distribution of assets of the society under liquidation. Therefore, liquidator's powers are required to be codified so that there may not be any contention of favour or disfavour.

For the aforesaid purpose, Section 110 A, specifying the priority to be followed by the liquidator, is required to be added. Section 110 A, as quoted hereinabove, is to some extent in conformity with the Circulars issued by the Registrar of Co-operative Societies, Gujarat State and also in conformity with general law such as, Indian Companies Act, 2013, particularly, Clauses (a), (b) and (f) of Section 327(1).

Section 145 U:—

Section 145 U of the Act reads as under:—

“145 U. Disputes relating to elections to be submitted to the ¹[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 ²[Tribunal].*
- (2) *Such reference may be made by an aggrieved party by presenting an election petition to the ³[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 ⁴[Tribunal] unless it is made within two months from the date of such declaration:

Provided further that, the ⁵[Tribunal] may admit any petition after the expiry of that period, if the petitioner satisfies the ⁶[Tribunal] that he had sufficient cause for not preferring the petition within the said period.

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1. **Subs. for the words “State Government” by Guj. 23 of 1982**
 2. **Subs. for the words “State Government” by Guj. 23 of 1982**
 3. **Subs. for the words “State Government” by Guj. 23 of 1982**
 4. **Subs. for the words “State Government” by Guj. 23 of 1982**
 5. **Subs. for the words “State Government” by Guj. 23 of 1982**
 6. **Subs. for the words “Government” by Guj. 23 of 1982**

- (3) *In exercising the functions conferred on it by or under this Chapter, the ¹[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 ²[Tribunal] in this behalf may administer the oath to the deponent.*
- (4) *³[Subject to any regulation] made by the ⁴[Tribunal] in this behalf, any such petition shall be heard and disposed of by the ⁵[Tribunal] as expeditiously as possible. An order made by the ⁶[Tribunal] on such petition shall be final and conclusive and shall not be called in question in any Court.”*

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1. **Subs. for the words “State Government” by Guj. 23 of 1982**
 2. **Subs. for the words “State Government” by Guj. 23 of 1982**
 3. **Subs. for the words “Subject to any rules” by Guj. 23 of 1982**
 4. **Subs. for the words “State Government” by Guj. 23 of 1982**
 5. **Subs. for the words “State Government” by Guj. 23 of 1982**
 6. **Subs. for the words “Government” by Guj. 23 of 1982**

**Suggested amendment in the afore-quoted
Section 145 U:-**

- In Sub-Section (2), third proviso is required to be added:-

“Provided that if the Tribunal satisfies that there is patent illegality in the procedure of the election, then the Tribunal may admit petition by recording reasons of such illegality during the election process.”

Reason:-

Sometimes, patent illegality is committed during the election process and as provided, presently, Petition can be filed after election and due to that, scrupulous and unwarranted elements succeed in election. Therefore, for the purity of election, the said proviso is required to be added.

- After Clause (d) in Sub-Section (3), the following Clause (e) is required to be added:-

“(e) to pass any appropriate interim orders in the election petition, only after election results are declared.”

Reason:-

In the Act, there is no provision regarding interim orders for the election petition and in the case of patent illegality, for doing justice, power for passing interim orders is required to be conferred to the Tribunal.

Hence, the second proviso in Sub-Section (2) and Clause (e) in Sub-Section (3) are required to be added.

Section 153:—

Section 153 of the Act reads as under:—

“153. Appeals

(1) *An appeal against an order or decision under Sections 4, 9, 11, 13, 17, 19, 36, 81 and 160 shall lie,—*

(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 Sections 82, 90, 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) *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.”*

Suggested amendment in the afore-quoted Section 153:-

- In Sub-Section (1), the word “36” is required to be deleted.
- In Sub-Section (3), the words “23, 36” are required to be added before the word “82”.

Reason:-

Section 36 provides for expulsion of member/s which is a serious matter. Hence, there should be a provision for filing an appeal before the Tribunal. Further, in such a case, there is specific Section 86(4) in The Delhi Co-Operative Societies Act, 2003.

In The Maharashtra Co-Operative Societies Act, 1960, also, appeal against such order for expulsion is provided under Section 152.

Similarly, removal under Section 23 of the Act is a serious matter. For that, there should be a provision for filing an appeal before the Tribunal.

CHAPTER: II

SPECIAL PROVISIONS FOR CO-OPERATIVE HOUSING SOCIETIES

In the State of Gujarat, about 50,000 housing societies are in existence and most of the housing societies are in wear and tear conditions, and, therefore, for redevelopment, maintenance, maintenance costs, repair, repair charges, provision for recovery of said costs/charges in case of non-payment, permission to transfer, transfer fee, unauthorized construction, use of common plot, common area, allotment-reallotment, etc. require codification.

As there are large numbers of housing societies in the State of Gujarat, if special provisions are enacted, as suggested below, which is as per Delhi Co-operative Societies Act, 2003, it would solve number of problems/ disputes faced by the societies as well as their members for transfer, redevelopment of societies, etc. Further, in the State of Gujarat, we are having The Gujarat Ownership Flats Act, 1973.

In view of the above, the following Chapter X-C is required to be added.

The suggested Chapter X-C, namely “Special Provisions for Housing Societies” is as under:-

“CHAPTER X-C

SPECIAL PROVISIONS FOR HOUSING SOCIETIES

115 M. Application of this Chapter

This Chapter shall apply to all co-operative housing societies including housing finance society registered or deemed to be registered at the commencement of this Act.

115 N. Definitions

In this Chapter, unless the context otherwise require-

- (a) “allottee” means a member of a co-operative housing society to whom a plot of land or a site, or a flat in a building or complex held by it, is allotted by the co-operative society;*
- (b) “building fund” means a fund created by the collection of contributions from members for-*
 - (i) the purchase and/or acquisition of land; or*
 - (ii) the land development; or*
 - (iii) the construction of dwelling units in a complex or buildings; or*
 - (iv) for the purpose of providing any other common amenities to achieve the objectives of the co-operative housing society;*

- (c) *“building maintenance fund” means a fund created by collection of the contribution from its members at such rate as may be determined by the general body meeting of the members annually as a part of budget provision for carrying out repairs or structural additions, improvements or alterations to the property of the co-operative housing society which is likely to increase the life of such property and to maintain the property of the said society in good and habitable conditions at all times;*
- (d) *“carpet area” means the net usable floor area within a building excluding that covered by the walls or any other areas specifically exempted from floor space index computation.*
- (e) *“co-operative housing society” means a co-operative society –*
- (i) *registered or deemed to be registered as a co-operative housing society under this Act;*
- (ii) *the principal object of which is to provide its members open plots under plot housing, dwelling units or flats (whether in a multi-storeyed building or otherwise) in a complex under group housing and in case where open plots or dwelling units or flats are already acquired to provide its members common amenities and services including services relating to the arrangement of finances for facilitating construction of dwelling units in order to solve their needs of dwelling units*

through mutual-aid in accordance with the co-operative principles, and includes a house building, co-partnership, co-ownership housing society, co-operative housing maintenance society, multipurpose co-operative housing society and any other co-operative society of like nature and purpose;

- (iii) “co-operative housing maintenance society” means a co-operative society formed by the owners of dwelling units in a building for the purpose of maintenance of the building and provisions of common amenities, services, etc;*
- (iv) “tenant – ownership co-operative housing society” means a co-operative society known as “house building” or plotted society in which the land is held either on lease-hold or free-hold basis by the co-operative society and the houses constructed on it are owned or to be owned by its members;*
- (v) “co-partnership co-operative housing society” known as group housing means a co-operative society in which land and buildings are held by the co-operative society on lease-hold or free hold basis and members are allotted flats or such other premises in such buildings with a right to occupy the same in accordance with terms of lease, Government’s guidelines and the bye-laws of such group housing;*

- (vi) *“multi-purpose co-operative housing society” means a society formed with the object of undertaking multifarious activities for the economic and social development of its members, particularly of slum dwellers and economically weaker sections of the people, in addition to providing better housing accommodation and better environment to improve their quality of life;*
- (vii) *“service society” means a society formed for the purpose of maintenance of common amenities.*
- (f) *“dwelling unit” includes a house, flat and apartment for the purpose of dwelling;*
- (g) *“external repairs” means all structural repairs and repairs required to be carried out to the property of the co-operative society the use of which is common to two or more members, and includes repairs of common walls, external walls, roads, lifts, water tanks, electric pumps, staircases, terraces and parapet walls, roofs of flats, street lights, electric lines, all leakages of water, water pipelines, compound walls, septic tanks, fencing, drainage, gates and other like common amenities;*
- (h) *“internal repairs” means such repairs as are not external repairs;*
- (i) *“maintenance fund” means periodical payments which are made by the members or occupants of house or flat to meet the expenditure incurred by a housing co-*

operative society towards providing of clearliness, watch and ward, landscape, water supply, lifts, maintenance services for sanitary, electric fittings, drains, fire, fighting system, generation sets, intercom systems, etc., within the complex fixed annually by the general body meeting of the members as a budget provision;

- (j) “occupancy right” means the right of an allottee to possess and use the plot of land, site or dwelling unit or flat allotted to him and member shall not give it on hire or on lease and licence or to mortgage it without previous consent in writing of the society;*
- (k) “transfer fee” means fee payable to transfer the membership of a member to another person in a co-operative housing society;*
- (l) words and expressions defined in this Act and used, but not defined, in this Chapter, shall have the same meanings, assigned to them in this Act.*

115-O. Rights and Privileges of members on allotment of plot or dwelling unit in a co-operative housing society

- (1) Every member of a co-operative housing society, whether registered before or after the commencement of this Act, to whom plots of land or dwelling units have been allotted, shall be issued certificate of allotment by the co-operative housing society under its seal and signature in such form as may be prescribed.*

- (2) *Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or the Registration Act, 1908 (16 of 1908), any allotment (including reallocation) of a plot of land or dwelling unit in a building of a co-operative housing society to its member as per terms of allotment shall entitle such member to hold such plot of land or dwelling unit with such title or interest.*
- (3) *A member of a co-operative housing society shall not be entitled to any title or interest in any plot of land or dwelling unit in a building of the co-operative society until he has made such payment as may be specified by the co-operative housing society towards the cost of such plot of land or construction of such dwelling unit, as the case may be, to the co-operative housing society.*
- (4) *The right, title and interest in a plot of land or dwelling unit in a building of the co-operative housing society (including the undivided interest in common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force:*

Provided that notwithstanding anything contained in any other law for the time being in force, such land or building shall not be partitioned for any purpose whatsoever.

- (5) *Every member of a co-operative housing society shall be entitled to an undivided interest in the common areas and facilities pertaining to the plot of land or dwelling unit allotted to him, which shall be described in the certificate of allotment as provided in Sub-Section (1).*
- (6) *Every member of a co-operative housing society in whose favour a plot of land or a dwelling unit has been allotted shall have the right to use the common areas and facilities as prescribed by the co-operative housing society and in case of any violation by a member, the committee shall be competent to recover it at the cost of the encroacher which also be applicable with regard to the common areas under the control of the co-operative housing society.*
- (7) *The work relating to the maintenance, repair and replacement of the common areas and facilities (including additions or improvements thereto) shall be carried out in accordance with the building rules of the concerned civic authorities, or other competent authority, as the case may be, and the costs thereof shall be apportioned amongst the members of the co-operative housing society in such manner as may be determined and notified by the committee from time to time.*
- (8) *That the society shall be entitled to discontinue the common amenities of members who has not paid maintenance regularly.*

115 P. Restriction on transfer of share or interest of a member

Subject to the provisions of this Act, in the case of a co-operative housing society, no transfer of share or interest of a member or the occupancy right, except the transfer to his heir or a nominee, shall be effective, unless –

- (a) the previous permission of the co-operative housing society has been obtained by the transferor;*
- (b) the dues of the co-operative housing society are paid or transferred to the transferee with the consent of the co-operative housing society;*
- (c) the transferor vacates and gives possession of the premises to the transferee; and*
- (d) the transferee applies and acquires membership of the co-operative society.*

115 Q. Permission for transfer of occupancy right not to be ordinarily refused and provision for appeal

- (1) No co-operative housing society shall ordinarily refuse to grant to its member permission for transfer of his occupancy right in the property of the co-operative housing society unless the transferee is otherwise not qualified to be a member:*

Provided that nothing contained in any agreement, contract or the bye-laws regarding eligibility for membership stipulated therein shall apply to a nominee, heir or legal representative of the deceased member for his admission to membership of the co-operative housing society.

- (2) *The decision of the co-operative housing society on an application for permission to such transfer shall be communicated to the applicant within thirty days from the date of receipt of the application.*
- (3) *Any person aggrieved by the decision of the co-operative housing society refusing permission for such transfer may within thirty days from the date on which the refusal of permission is communicated to him appeal to the Registrar.*
- (4) *The Registrar shall dispose of the appeal within a period of one hundred and twenty five days whose decision shall be final.*

115 R. Settlement of disputes

- (1) *Notwithstanding anything contained in any law relating to rents or any other corresponding law for the time being in force in Gujarat, any dispute relating to the occupation or recovery of possession of any plot, dwelling unit or flat in any co-operative housing society, the recovery of dues payable by a member or suballottee to a co-operative housing society or vice-versa arising on or after the date of the commencement of this Act and suits or proceedings pending in any Court after such commencement, shall be deemed to be a dispute within the meaning of Section 96 of this Act and shall be decided in accordance with the provisions of this Act, and no Court or other Tribunal or authority shall have jurisdiction to entertain and decide any proceedings in respect of such disputes.*

(2) *Notwithstanding anything contained in the law relating to rents or any other corresponding law for the time being in force, no licensee, caretaker, or suballottee who is occupying the dwelling unit or flat, or plot of land in a co-operative housing society shall be a tenant of such dwelling unit or flat or plot of land within the meaning of that law.*

115 S. A member of a housing society who has sold his plot or flat or by sale deed, shall cease to be a member of that society from the date of the sale of plot or flat.

Provided that the purchaser having registered sale deed, as the case may be, in respect of such plot or flat, may apply for membership by paying transfer fee and share money and admission fee as per the provisions of the bye-laws of the society and the committee shall grant membership to the applicant within thirty days after the submission of his application. In case of refusal by the committee, the applicant may appeal to the Registrar within thirty days and the decision of the Registrar shall be final:

Provided further that no purchaser shall be entitled for more than one membership in a housing society.

115 T. Redevelopment of Society

(1) *A society made by resolution passed by 3/4th majority of the members present and voting at a special general meeting of members held for the purpose of redevelopment of the society and decision of the society shall be binding to the members.*

- (2) *A society shall invite offers from the developers for the redevelopment by publishing into widely circulated daily local newspapers.*
- (3) *A society shall form a committee for the redevelopment and said committee shall execute agreement for redevelopment with the developers and sign the plans for the redevelopment. As per redevelopment agreement, all the members shall be liable to hand over the vacant possession of the unit to the society and/or developers.*
- (4) *A society shall admit the members for the additional units constructed and allotted by the developers.*
- (5) *A society and the developers shall execute registered allotment deed in favour of newly admitted members.*
- (6) *A society shall admit the developers as a nominal member of the society for the purpose of redevelopment.*
- (7) *A developers and a society shall construct the unit as per plans approved by the competent authority.”*

CHAPTER: III

CONTEMPT OF BOARD OF NOMINEES AND GUJARAT STATE CO-OPERATIVE TRIBUNAL

Section 149 A, namely, “Contempt of Board of Nominees and Gujarat State Co-operative Tribunal” is required to be added after Section 149. Section 149 A is similar to Section 148 A of The Maharashtra Co-operative Societies Act, 1960. The suggested Section 149 A is as under:-

“149 A. Contempt of Board of Nominees and Gujarat State Co-operative Tribunal

- (1) *If any person—*
- (a) *when ordered by a Board of Nominee or the Co-operative Appellate Tribunal to produce or deliver up any document or to furnish information, being legally bound so to do, intentionally omits to do so; or*
 - (b) *when required to bind himself by an oath or affirmation to state the truth, refuses to do so;*
 - (c) *being legally bound to state the truth on any subject refuses to answer any question demanded of him touching such subject; or*
 - (d) *intentionally offers any insult or causes any interruption at any stage of its judicial proceeding, he shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees; or with both.*

- (2) *If any person refuses to sign any statement made by him, when required to do so by a Board of Nominee or the Co-operative Appellate Tribunal, he shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.*
- (3) *If any offence under Sub-Section (1) or (2) is committed, the said Board of Nominee or Co-operative Appellate Tribunal may, after recording the facts constituting the offence and the statement of the accused as provided in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of the accused person before such Magistrate or, if sufficient security is not given, shall forward such person in custody to such Magistrate. The Magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the Code of Criminal Procedure, 1973.*
- (4) *If any person commits any act or publishes any writing which is calculated to improperly influence the Board of Nominee or Co-operative Appellate Tribunal to bring into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of the said authorities, such person shall be deemed to be guilty of contempt of the said authorities.*

- (5) *In the case of contempt of itself, the Co-operative Appellate Tribunal shall record the facts constituting such contempt, and make a report in that behalf to the High Court.*
- (6) *In the case of contempt of a Board of Nominees, Board of Nominees shall record the facts constituting such contempt, and make a report in that behalf to the Co-operative Appellate Tribunal, and thereupon, the Co-operative Appellate Tribunal may, if it considers it expedient to do so, forward the report to the High Court.*
- (7) *When any intimation or report in respect of any contempt is received by the High Court under Sub-Section (5) or (6), the High Court shall deal with such contempt as if it were contempt of itself, and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself.”*

Reason:—

Many times, parties to the proceedings do not comply with and/or disrespect the orders of Board of Nominees and Co-operative Appellate Tribunal and for compliance; there is no provision in the Act or Rules. Hence, the afore-quoted Section 149 A is suggested to be added.

In the State of Maharashtra, Section 148 A is added in The Maharashtra Co-operative Societies Act, 1960 for the said purpose. The suggested Section 149 A is similar to Section 148 A of The Maharashtra Co-operative Societies Act, 1960.

CHAPTER: IV

SUGGESTED SUITABLE AMENDMENTS IN THE GUJARAT CO-OPERATIVE SOCIETIES RULES, 1965

Rule 40-A:—

Rule 40-A of the Rules reads as under:—

“¹/40-A. Qualifications of a nominee of the Board of Nominees

No person shall be eligible for appointment as a nominee of a Board of Nominees, unless, he—

(a) is holding or has held a judicial office not lower in rank than that of Senior Civil Judge; or

(b) has practiced as an Advocate, Pleader or Vakil for not less than ten years; or

²*[(c) holds a degree in law from a university established by Law in India; and*

(i) has worked for not less than five years as a Deputy Registrar of Co-operative Societies, Gujarat State or its equivalent post; or

(ii) has worked as a Joint Registrar of Co-operative Societies, Gujarat State.]

(d) no person shall hold or continue to hold the office of the Nominee of a Board of Nominees after he attains the age of sixty five years.]”

1. Ins. by Noti. dated 17.02.2007.

2. Subs. by Noti. dated 07.10.2007.

Suggested amendment in the afore-quoted Rule 40-A:-

- Following Sub-Rule (e) is required to be added:—

“(e) Subject to Sub-Rule (c) and save as otherwise specified by the Registrar, in any case, the person shall hold the office for a period of five years in first instance and, thereafter, his term of office may be extended from time to time upto the age of sixty five years, if found, otherwise suitable.”

Reason:-

Presently, appointments are made for one year and, hence, appointee can not work enthusiastically and he would not have desire to do hard work, as his tenure is uncertain. Hence, Sub-Rule (e) is required to be added.

- Further, following Sub-Rule (f) is required to be added:—

“(f) Appointment of the Nominee shall be made by the Registrar appointed by the State Government on the recommendation of a Selection Committee, consisting of the following, namely:-

- i) A sitting High Court Judge, nominated by the Chief Justice of the High Court;*
- ii) The President of the Gujarat State Co-operative Tribunal;*
- iii) The Secretary, Law Department of the State; and*
- iv) The Secretary in-charge of Co-operative Department.”*

Reason:-

At present, in the Rules, there is no provision for constituting a Special Committee, consisting of afore-quoted persons to appoint the Nominees.

It is to be well-understood that mostly, the Nominee is exercising quasi-judicial function. If he is not well-versed with the Co-Operative Societies Act and the Rules framed thereunder, then it would be difficult for him to discharge his duties effectively and efficiently.

Hence, for appointing competent person, Sub-Rule (f) is required to be added.

Rule 43:—

Rule 43 of the Rules reads as under:—

“43. Summonses, notices and the fixing of dates, place, etc.—

- (1) *In proceedings for the settlement of disputes as adjudicating authority shall fix the date, hour and the place for hearing the dispute.*
- (2) *The adjudicating authority may issue summonses or notices atleast 15 days before the date fixed for hearing of the dispute requiring—*
 - (i) *the attendance of the parties concerned and of witness; and*
 - (ii) *the production of all books and documents relating to the matter in dispute.*
- (3) ¹*[(i) Notices or summons issued by the adjudicating authority may be served personally on the party or its agent or through the Mamlatdar, Mahalkari, Talati or any officer of the Panchayat, or any employees of the Co-operation Department or of a federal society or through the Chairman or Secretary of Society or by registered post with acknowledgement due.]*

1. Subs. by Noti., dated 07.05.1988.

- (ii) *The serving officer shall, in all cases in which summons or notice has been served, endorse, annex or cause to be endorsed or annexed on or to the original summons or notice send a return stating the time when, and the manner in which, the summons or notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons or the notice.*
- (iii) *The person issuing the summons or notice may examine the serving officer on oath or cause him to be so examined by the Mamlatdar or Mahalkari through whom it is served and make such further inquiry in the matter as he thinks fit; and shall either declare that the summons or notice has been duly served or order it to be served in such manner as he thinks fit.*
- (iv) *If the summons or notice is issued by the adjudicating authority under Section 99 shall, if sent for service to a Mamlatdar or a Mahalkari, be served by such officer.*
- (v) *The mode of serving of summonses or notices under Sections 86 and 94 or to make an inspection under Section 87 or by the auditor acting under Section 84 by the liquidator appointed under Section 108 and acting under Section 108 shall be the same as provided in the forgoing provision of this sub-rule.*

¹[(vi) *If the party or the witness evades service, of summons or notice or refuses to accept service, or whereabouts of the party or witness are not known, the summons or notice may be served by affixing a copy thereof at the last known residence of the party or witness and if such address is not known the summons or notice may be affixed at the office of the panchayat or a gram or nagar or municipal office of the town or city in which such party or witness is known to have last resided or by publication of the same in any local newspaper.]”*

Suggested amendment in the afore-quoted Rule 43:-

In Sub-Rule (3)(i), the words “speed post or courier or fax or e-mail” are required to be added, after the words “acknowledgement due” and, accordingly, the said Sub-Rule reads as under:-

*“(3)(i) Notices or summons issued by the adjudicating authority may be served personally on the party or its agent or through the Mamlatdar, Mahalkari, Talati or any officer of the Panchayat, or any employees of the Co-operation Department or of a federal society or through the Chairman or Secretary of Society or by registered post with acknowledgement due **speed post or courier or fax or e-mail.**”*

Reason:-

In modern days, service of summons on parties can speedily and effectively be delivered by other means, such as, speed post or courier or fax or e-mail.

In Civil Procedure Code, Order V Rule 9 *inter-alia* provides that summons can be served by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the same or by speed post or by courier services as are approved by the High Court. It can also be served by other means of transmission of documents including fax message or electronic mail service.

Further, Rule 78(2) of The Maharashtra Co-operative Societies Rules, 1961, also provides service of summons by registered post acknowledgement due or speed post or courier.

Hence, the words “speed post or courier or fax or e-mail” are required to be added in Sub-Rule (3)(i) of Rule 43.

Rule 78:—

Rule 78 of the Rules reads as under:—

“¹78. Qualifications of President and other members of Co-operative Tribunal

(1) *The State Government shall appoint a person who is or has been a Judge of a High Court or is or has been a District Judge, to be the President of the Gujarat State Co-operative Tribunal:*

Provided that the appointment of a person who was a Judge of a High Court or a District Judge, as the President of the Tribunal, shall be made in consultation with the Chief Justice of the High Court.

(2) *Each of the other members of the Tribunal to be appointed by State Government shall be a person—*

(a) *who possesses any qualification as laid down in sub-rule (1); or*

(b) *who is enrolled as an Advocate or holds a degree or other qualification in law of any University established by law or of any other authority which entitles him to be enrolled as an Advocate, and either—*

²*[(i) has worked for not less than five years as a Deputy Secretary having some background in or experience of working in Co-operation Department, Gujarat State; or*

1. **Subs. by Noti., dated 17.02.2007**

2. **Subs. by Noti., dated 07.10.2010**

- (ii) *has worked as a Joint Secretary or an Additional Secretary having some background in or experience of working in Co-operation Department, Gujarat State; or*
 - (iii) *has worked for not less than five years as a Joint Registrar, Co-operative Societies, Gujarat State; or*
 - (iv) *has worked as an Additional Registrar of Co-operative Societies, Gujarat State.]*
- (3) *Appointment of the persons, who have not held or are not holding the judicial office in the State, as Members of the Tribunal, shall be made in consultation with the Advocate General of the State.*
- (4) *No person shall hold or continue to hold the office of the President or Member of the Tribunal after he attains the age of sixty-five years.*
- (5) *Subject to sub-rule (4) and save as otherwise specified by the State Government in any case, the President and any other member of the Tribunal shall hold office for a period of three years in the first instance, and thereafter his term of office may be extended by the State Government, from time to time, for such period as it may deem fit.*
- (6) *In the event of occurrence of any vacancy in the office of the President of the Tribunal, the senior-most member shall act as in-charge President as per the order of the State Government.]”*

Suggested amendment in the afore-quoted Rule 78:-

Sub-Rule (3) is required to be substituted to read as under:—

“(3) Appointment of the Members of the Tribunal shall be made by the State Government on the recommendation of a Selection Committee, consisting of the following, namely:-

- i) A sitting High Court Judge, nominated by the Chief Justice of the High Court;*
- ii) The President of the Gujarat State Co-operative Tribunal;*
- iii) The Secretary, Law Department of the State; and*
- iv) The Secretary in-charge of the Department, dealing with Co-op. affairs in the State.”*

Reason:-

At present, in the Rules, there is no provision for constituting a Special Committee, consisting of afore-quoted persons to appoint the Members who are required to discharge quasi-judicial function in accordance with justice and also in accordance with the provisions of The Gujarat Co-Operative Societies Act, 1961 and the Rules thereunder as well as in conformity with the Judgments rendered by the Apex Court and the High Court.

Hence, Sub-Rule (3) is required to be substituted so that a suitable independent person is selected and appointed.

CHAPTER: V

MANAGEMENT AND REDEVELOPMENT OF HOUSING SOCIETY

As discussed earlier in Chapter: II of this Report, about 50,000 housing societies are in existence in the State of Gujarat and most of the housing societies are in wear and tear conditions, and, therefore, for redevelopment, maintenance, maintenance costs, repair, repair charges, provision for recovery of said costs/charges in case of non-payment, permission to transfer, transfer fee, unauthorized construction, use of common plot, common area, allotment-reallotment, etc. require codification.

For better redevelopment of the society, no provisions are in existence in the Rules, at present. Hence, if special provisions in that regard are added in the Rules, as suggested below, which are as per The Delhi Co-operative Societies Rules, 2007; it would solve number of problems/disputes faced by the societies as well as their members.

The suggested Chapter IV-A namely, “Management and Redevelopment of Housing Society” is required to be added after Chapter IV in the Rules. The suggested Chapter IV-A is as under:—

“CHAPTER IV-A

MANAGEMENT AND REDEVELOPMENT OF HOUSING SOCIETY

27-A. Right and privileges of members on allotment of plot or dwelling unit in a co-operative housing society

- (1) *A member of the co-operative housing society shall not be entitled to any interest in any plot of land or dwelling unit unless he has made full payment towards the cost of such plot or dwelling unit as may be finally apportioned by the co-operative housing society.*
- (2) *The committee shall charge the entire cost of the flat or plot alongwith garage or parking area, servants quarter and shop etc., before allotment of the same.*
- (3) *It shall be the responsibility of the committee to ensure that the concerned local body is informed timely about any unauthorized constructions or encroachment within the common areas.*
- (4) *The committee shall take all legal steps to remove the encroachment and unauthorized construction in the common areas of complex of the co-operative society.*
- (5) *Save as otherwise provided in the Act, the cost of maintenance, repair and replacement in the common areas and facilities shall be apportioned amongst the members, the power of attorney holders and holders of conveyance deed whoever may be having occupancy rights of the plot or flat or garage, etc.*

Explanation:-

“Common areas and facilities,” in relation to a multi-storeyed building, means:-

- (a) The land on which such building is located and all easements, rights and appurtenances belonging to the land and the building;*
- (b) The foundations, columns, girders, beams, supports, main walls, roof, halls, corridors, lobbies, stairs, stairways, fire escapes and entrances and exits of the building;*
- (c) The basements, cellars, yards, gardens, parking areas, shopping centers, schools and storage spaces;*
- (d) The premises for the lodging of janitors or persons employed for the management of the co-operative society.*
- (e) Installation of central services, such as, power, light, gas, hot and cold water, heating refrigeration, air conditioning, incinerating and sewerage;*
- (f) The elevators, tanks, pumps, motors, fans compressors, ducts and in general all apparatus and installations existing for common use;*
- (g) Such other community and commercial facilities as the Registrar may, declare; and*
- (h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.*

27-B. Provision for nomination

- (1) *A member of a co-operative housing society may nominate a person or persons within blood relation to whom in the event of his death his right and interest in the co-operative housing society shall be transferred. Joint and more than one nomination with the blood relation shall be permissible. The nomination shall have to be made in writing in the proper Form, in triplicate by the member in the presence of two witnesses and it is to be entered in the books of the co-operative housing society kept for the purpose.*
- (2) *The member may, from time to time, revoke or vary such nomination during his life time.*
- (3) *In case a member nominates more than one person in respect of any shares held by him, he shall, as far as practicable, specify percentage of share of each nominee in terms of whole share and interest thereon. The transfer shall be made in the name of first named nominee and other nominee(s) shall be made joint member(s). If the nominee is a minor, a guardian or a legal representative of the minor to represent the minor nominee in the matters connected with this nomination, shall be appointed.*
- (4) *The Nominee shall submit along with his application to the co-operative society with regard to his claim, an indemnity bond, indemnifying the co-operative housing society against any claim made in respect of share and interest in said plot or flat.*

27-C. Restriction on transfer of share or interest of a member

- (1) No other amount towards donation or contribution on any other pretext or name shall be collected by the committee from the transferor or the transferee.
- (2) On receipt of application for membership as provided in Rule 18 of the Rules, the committee shall consider and examine it as to whether the person is prima facie eligible to become member of the co-operative housing society under the provisions of the Act, Rules and bye-laws of the co-operative housing society.
- (3) If any clarification is required, the committee shall inform such person about deficiency found in the form within fifteen days of the receipt of the application form.
- (4) The transferee shall submit the following documents alongwith application form for satisfaction of the committee:—
 - (a) Affidavit on a stamp paper for discharging all the liabilities to the co-operative society in respect of the flat/plot or common areas which may be outstanding against the allottee or occupant of the flat or plot within a period of ninety days of raising the demand by the society;
 - (b) Attested copy of duly registered sale deed, agreement to sell and conveyance deed; as the case may be;

- (c) *Original share certificate issued to the allottee and in case the original share certificate is not available, the transferee shall execute an indemnity bond to indemnify the society for any losses caused on this account;*
- (d) *Receipt of transfer fee as may be prescribed by resolution, for the Common Good Fund of the co-operative housing society;*
- (5) *On the receipt of the document mentioned in sub rule (4), committee shall transfer the membership to the transferee within thirty days.*
- (6) *In case the committee fails to take a decision within prescribed time or rejects the application, the applicant may file an appeal before the Registrar, who shall decide it within ninety days time.*
- (7) *The applicant shall be allotted a new memberships number by recording the membership number of the original member and the same shall be recorded in the Membership Register.*
- (8) *The share money of the original member or the transferor, as the case may be, who has sold the flat or plot shall be forfeited and transferred to the common Good Fund of the society.*

27-D. Management of co-operative housing complex by the co-operative housing societies

- (1) *It shall be the responsibility and duty of the committee to carry out the repairs works and maintenance of the property of the co-operative housing society.*
- (2) *The committee shall be competent to incur expenditure on repairs and maintenance of the co-operative housing society upto the one time expenditure limit approved by the general body from time to time or as provided in the bye-laws of a co-operative housing society.*
- (3) *If one time expenditure on repairs, maintenance of works of the co-operative housing society exceeds the limits prescribed in sub rule (1) above, prior sanction of the general body shall be necessary.*
- (4) *The general body shall decide:*
 - (a) *The limit of the expenditure on repairs, maintenance of works could be incurred by the committee without calling the tenders for the works;*
 - (b) *In respect of works, the cost which exceeds the limits, so fixed, the committee shall follow the procedure of inviting tenders, placing them before the general body for approval and entering into agreement with the architect (if appointed or required) and the contractor.*

- (5) (a) *Various items of the repairs, and maintenance which are to be carried out by the co-operative housing society from its funds are mainly as under:*
- (i) *Internal roads;*
 - (ii) *Compound wall;*
 - (iii) *External water pipe lines;*
 - (iv) *Water pumps;*
 - (v) *Water storage tanks;*
 - (vi) *Drainage lines;*
 - (vii) *Septic tank (where in use);*
 - (viii) *Staircases;*
 - (ix) *Fire fighting system;*
 - (x) *Structural repairs of roofs of all flats;*
 - (xi) *Outside walls / exterior of the building(s);*
 - (xii) *All leakages of water including leakage due to rain water and leakages due to external common pipe line and drainage line;*
 - (xiii) *Electric lines upto main switches in the flats and lightning of common areas;*
 - (xiv) *Lifts;*
 - (xv) *Damaged ceiling and plaster thereon in the top floors, on account of the leakage of the rain water through the terrace;*

- (xvi) Maintenance of parks and mandatory green areas;*
 - (xvii) Facilities for household garbage collection in segregated form;*
 - (xviii) Telephone exchange and telephone wires upto flats;*
 - (xix) Security guard room;*
 - (xx) Common Parking and garages;*
 - (xxi) Power back up or Genset; and*
 - (xxii) Any other common property/ space/ facility/ service as prescribed by the General Body.*
- (b) The committee and its officers shall carry out regular inspection of the items mentioned in sub-clause (a) and shall take immediate action for their repair and maintenance.*
- (c) Any complaint of a member or occupant in respect of items given in Clause (4) shall be considered by the committee within a period of fifteen days and shall take suitable action as deem fit by it.*
- (d) The committee shall adhere to following principle for repair, maintenance and cleaning of items mentioned in Clause (5):-*
- (i) Energy conservation, water conservation and water harvesting;*
 - (ii) Protection of green areas;*

- (iii) To protect environment and health;*
- (iv) Scheduled routine maintenance;*
- (v) To develop procedure to avoid accidents;*
- (vi) Minimize human exposure to harmful contaminants and cleaning residues;*
- (vii) Ensure building occupants and workers safety at all times;*
- (viii) Ensure waste management in environmentally safe ways;*
- (ix) Beauty and aesthetic sense of the complex; and*
- (x) Prevention of pollution in the building and complex;*

Note:

In case any unauthorized work is carried out by a member or an occupant, the committee shall, if comes to the conclusion that the problem is due to the action of the member or occupant after informing this to such a member or occupant, as the case may be carry out the repair work at his cost.

- (6) All the repairs not covered by sub-rule (5) and any other item as approved by General Body or provided in the bye-laws of the co-operative housing society shall be carried out by the committee at cost of member or occupant:*

Provided that if due to internal change or damage, there is any seepage or structural defect in another flat, the affected member/occupant may make a representation to committee, which shall carry out inspection of the flat within fifteen days and if it comes to the conclusion that the representation is correct, the committee shall advise the concerned member to take corrective steps immediately, and if no action is taken within seven days, the committee shall initiate action for getting the defects removed, if necessary by taking police assistance for it and approach the Registrar for the recovery of amount incurred thereon as arrears of the land revenue from the member, who had carried out internal changes which has caused harm to another flat.

- (7) Fire Prevention Plan shall be prepared by the co-operative housing society and regular awareness, drill about their prevention and evacuation etc. shall be carried out in consultation with Fire Department.*
- (8) Any other organization such as Resident Welfare Association or Apartment Owners Association, by whatever name it may be called, shall not be allowed to control or participate in the management of co-operative housing complex. However, the committee of the co-operative housing society may set up sub-committees consisting of members and non member to assist the committee in the management of the complex of the co-operative housing society.*

(9) *No member or occupant shall carry out any work which would be prejudicial to the soundness or safety of the property or reduce the value thereof or impair any easement or hereditament, or shall add any material structure or excavate any additional basement or cellar without obtaining the consent of committee.”*

It is to be stated that at present, Housing Societies providing various facilities, are increasing day-by-day in the State of Gujarat. For proper codification of the rights of the members of the society and of the society as well as that of builders, the Act and the Rules are required to be amended, as suggested and recommended in this Report.

Suggestions are also made for regulating the procedure of distributing the assets of the society under liquidation because as per the existing provisions, the liquidator is having unguided powers for distribution of the assets of the society under liquidation. Other relevant suggestions for amending various provisions are also made.

In view of the Commission, the suggestions/ recommendations made in this Report are required to be implemented in their true spirit.

Date : March, 2015

Place : Ahmedabad

JUSTICE M. B. SHAH

**Former Judge, Supreme Court of India
AND**

Chairman, Gujarat State Law Commission