

CO-OPERATIVE LAW

*K. Elumalai**

I INTRODUCTION

THE SUBJECT co-operative Law, perhaps, for the first time, is taken up for review for the year 2013 hence, it is essential as well as necessary to trace out *inter-alia*, in brief (a) the legislative history of co-operative law, (b) the legislative competence to enact law on the subject co-operation, (c) constitutional status of co-operatives, (d) the constitution (ninety seventh amendment) Act, 2011 on co-operative societies and (e) the review of case laws on the subject co-operative law.

The review of case laws on the subject ‘co-operative law’ has been taken up at the most appropriate time as large number cases are likely to be agitated before higher courts in the years to come due to the coming into force of constitution (ninety seventh amendment) Act, 2001 on co-operative societies *w.e.f.* 15.02.13.

During the year under review, the courts were confronted with several interesting as well as important cases affecting co-operative institutions such as (i) challenge to constitutional validity of constitution (ninety seventh amendment) Act, 2001 (ii) political interference in the management affairs of co-operative institutions, (iii) application/non-application of various enactments such as RTI Act 2005, SARFAESI Act, 2002 and state Acts to co-operative banks, *etc.*

II CO-OPERATIVE LEGISLATION IN INDIA

The term ‘co-operate’ refers to the intention to work or operate together for a common purpose effect *etc.* and the term ‘co-operative’ is defined as an act of working together or inclined to work together or pertaining to or set up as a co-operative.¹

The term ‘co-operation’ is not defined under any law, instead, only the term ‘co-operative society’ is defined under various laws² passed by Indian legislature.

* Director, School of Law, Indira Gandhi National Open University, New Delhi.

1 Webster Illustrated Contemporary Dictionary (1984).

2 Multi State Co-operative Societies Act, 2002 passed by parliament and respective state co-operative societies Acts passed by state legislatures.

The legal definition of 'co-operative society' provided under co-operative laws concentrated generally on three dimensions such as: *first*, what ought to be the objective(s) behind the formation of co-operative society, *second*, the legal necessity or requirement and urgency to follow the principles of co-operation³ by co-operative society and *third*, the need to get such co-operative society registered under respective co-operative law so as to gain legal status or recognition for the purpose of enjoyment of rights, privileges, advantages and concessions on the one hand and seeking legal remedy before the judicial machinery available under concerned laws, on the other.

Formation of co-operative through legal framework

The Co-operative Credit Societies Act, 1904 (CCS Act, 1904) passed on 25th March 1904, was the first co-operative legislation passed by British India. Prior to this period, co-operatives were governed by the then companies Act in force in India. The observations made in the floor of the house while introducing the first CCS Act, 1904 had contained the basis, reasons and logic in detail for having a separate law for co-operatives.⁴

The CCS Act, 1904 aimed to provide only for the formation and control of co-operative credit societies with a view to encourage thrift, self- help and co-operation among agriculturists, artisans and persons of limited means. This law conferred power upon the Registrar to register only the primary⁵ co-operative credit society but not other primary or other than credit co-operative societies⁶

- 3 There are seven principles of co-operation advocated by international co-operative alliance in the year 1955, popularly known as ICA Principles of co-operative identity (includes co-operative principles and values) for observance by co-operative institutions.
- 4 "The Companies Act at present in force ...is wholly unsuited to societies of the kind which we desire to encourage. The first thing is to take such societies out of the operations of the general law. In the second place, it is desirable to confer upon them special privileges and facilities. Thirdly it is very necessary to take such precautions to prevent speculators and capitalists from availing of privileges which were not intended for them".
- 5 The word 'primary' in relation to the formation of a co-operative society means or refers to a group of individual natural persons coming together with the common purpose and objective to form a co-operative society for the benefit of all members. (iv) Fisherman co-operative society having fishermen as members. (v) Tribal co-operative society having Tribal population as members. (vi) Farmer producers' co-operative society having producer agricultural farmers as members. (vii) Women co-operative society having predominantly women as members, etc.
- 6 They include:
 - (i) Sugar co-operative society (factory) having farmer cane growers as members.
 - (ii) Spinning/cotton grower's co-operative society hiving cotton grower farmers/spinning loom owners as members.

and secondary/ federal co-operative societies.⁷ In order to fill the limitations noticed, the then British government enacted another co-operative legislation called the Co-operative Societies Act, 1912 (CS Act, 1912) primarily with an objective to facilitate the formation of co-operative societies for the promotion of thrift societies and self-help groups among agriculturists, artisans and persons of limited means.

Prior to the enactment of the Government of India Act, 1919,⁸ the British government had a herculean task of enacting laws on all subject matters for all the Indian provinces. It realized the difficulty as well as delay involved in passing such laws timely, hence, realized the need to transfer the law making power; of course, on less important subject matters to provincial governments. Accordingly, an attempt was made, through the Government of India Act, 1919 *inter-alia*, to prepare a list containing subject matters falling under the competence and jurisdiction of British government and Indian provincial governments separately. As per this list, the subject 'co-operation' was transferred to provincial government along with conferment of power to regulate the co-operative societies through enactments.

The Bombay provincial government, accordingly, became the first Indian province to enact its own law for the purpose of control and regulation of co-operatives within its own territorial limits. This process, in due course, led to the enactment of several co-operative legislation roughly numbering 20 by provincial governments. The noted legislations passed under this Act were: (a) Bombay Co-operative Societies Act, 1925, (b) Madras co-operative societies Act, 1932, (c) Bihar & Orissa Co-operative Societies Act, 1935 and (d) Bengal Co-operative Societies Act, 1940, *etc.* The said transfer of legislative power to the Indian provincial governments paved way for the emergence of strong state run co-operative departments thereby, making more emphasize on quantitative expansion and showing least importance on the qualitative improvement in the functioning of co-operative societies. Rather, the officials of co-operative departments of respective province were largely responsible for creating an impression in the minds of people that "Sahakari" (co-operative) means "Sarkari" (government).

With the passing of the Reserve Bank of India Act, 1934, the RBI started functioning with effect from 01.04.35, which at present, *inter-alia* regulates co-operative banks particularly urban co-operative banks as per part V of provisions

(iii) Handloom/Power loom co-operative society having handloom/ power loom owners as members.

7 Secondary/federal co-operative societies refers to or means a group of primary co-operative societies as members as against individual as members with the same purpose and objective i.e. come together to form a taluka/district/state level co-operative societies/federations.

8 Constitutional Reforms Report/ Montague - Chelmsford Report, 1919.

of Banking Regulation Act, 1949 (application to co-operative banks) *w.e.f.* 01.03.66.⁹

During the Second World War, the salary earners co-operative societies were organised by employees of organizations, both in government and other establishments who could be posted anywhere in India. Accordingly, the Multi Unit Co-operative Societies Act, 1942 (MUCS, 1942) was passed by British India in the year 1942. This enactment by British government, however, did not affect or withdraw or take away the law making power conferred upon Indian provinces through the Government of India Act, 1919.

After independence and the enactment of the States Re-organisation Act, 1956,¹⁰ the MUCS Act, 1942 failed to meet the changing needs and requirement of newly emerging co-operative societies having areas of operation in more than one state. Therefore, the (MSCS) Act, 1984 was enacted by the central (federal) government in the year 1984 by repealing the MUCS Act, 1942. The MSCS Act, 1984 was made applicable to all co-operative societies having area of operation in more than one state with objects not confined to one state and serving the interest of members of co-operatives in more than one state. It was basically a central legislation.

Further, for bringing up qualitative improvement and strengthening the co-operatives as an important sector of national economy, the need for strengthening the democratic character of co-operatives and improving the professional competence of co-operatives and their staffs were found essential and important, hence, the government of India formed the Committee on Co-operative Law for Democratization and Professionalization of Management in Co-operatives in the year 1987.

This committee made two-fold recommendations *i.e.*, (a) deletion of those legal provisions in state co-operative societies Acts, which militate against the democratic character and the autonomy of co-operatives, and (b) the incorporation of several provisions in the said Acts which activate the democratic processes for infusing professional management into co-operatives.

9 The Banking Regulation Act, 1949 (Act no. 10 of 1949) was not made applicable to co-operative banks prior to this date. Due to the entry of co-operative societies to carryout banking business in large scale, the parliament with a view to ensure the growth of co-operative banking on sound banking principles and practices, enacted the banking law (application to co-operative societies) Act, 1965 (Act no. 23 of 1965) and s.56 of part-V provide for the application of this Act, to co-operative banks *w.e.f.* 1st March, 1966.

10 Act no. 37 of 1956.(viii) The Karnataka Sauharata Sahakari Act, 2001 (ix) The Uttaranchal Self Reliant Co-operative Societies Act, 2003. (x) The Jharkhand Self Supporting Co-operative Societies Act, 1996. (xi) Mizoram Co-operative Societies Act, 2006.

In order to bring the above dream and aspirations into a practical orientation and application, the Planning Commission, government of India, in the year 1990 constituted a committee popularly known as the Committee on Model Co-operatives Act, 1991 to draft model state co-operative societies bill.

The main objective behind this Model Co-operatives Act, 1991 *inter-alia*, was to promote voluntary formation and democratic functioning of co-operatives as people's institution based on self help and mutual aid to enable people to promote their economic and social betterment. The committee had drafted and submitted a Model Co-operative Act in the year 1991, which was regarded liberal in nature hence, forwarded the same to all the state governments with a request to modify the state laws suitably.

Based on the said Model Co-operative Act, 1991, nearly a dozen states had enacted separate co-operative laws¹¹ without of course, repealing their own co-operative laws already in force in such states. This ultimately resulted into two co-operative laws in force on the same subject in each state. The old co-operative laws enacted between the years 1925 and 1991 are regarded as rigid and applicable to co-operatives substantially funded or financed by state governments and laws enacted later (after the year 1991) are regarded as self reliant or liberal law made applicable to co-operatives neither funded nor assisted by state governments.

As stated above, the central government advised the state governments to change, modify or amend their laws by granting more freedom and autonomy to co-operatives on the one hand and remove the excessive controls exercised by Registrar and government on the other hand, on the lines of Model Co-operatives Act, 1991. In this context, the state governments expressed the opinion that the Central government should take a lead in this regard by amending its own Multi State Co-operative Societies Act, 1984. Based on this concern raised, the Central government, repealed the earlier MSCS Act, 1984 in the year 2002 and in its place enacted a new MSCS Act, 2002 with the objective to (a) facilitate the voluntary formation and democratic functioning of co-operatives as peoples institutions based on self help and mutual aid, (b) to enable them to promote their economic and social betterment, and (c) to provide functional autonomy and freedom to co-operatives.

11 (i) Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. (ii) The Bihar Self Supporting Co-operative Societies Act, 1996. (iii) The J & K Self Reliant Co-operative Societies Act, 1999. (iv) The Madhya Pradesh Swayatta Sahakari Adhinyam, 1999. (v) Chhattisgarh Co-operative Societies Act, 1999. (vi) Orissa Self-Reliant Co-operative Societies Act, 2002. (vii) Rajasthan Self-Reliant Co-operative Societies Act, 2002.

III CONSTITUTIONAL STATUS OF CO-OPERATIVES

[PRIOR TO THE CONSTITUTION (NINETY SEVENTH AMENDMENT) ACT, 2011]

As per entry 32 of List II¹², the state legislature have the legislative competence to enact law on the subject 'co-operation' (i.e. co-operative societies institutions/ federations) falling within their territorial jurisdiction. Similarly, the parliament is vested with the legislative competence to enact law on the subject co-operation having areas of operation in more than one state by virtue of the combined reading of Entry 43¹³ and Entry 44¹⁴ of List I This was clarified by the constitution bench of supreme court of India in the case of *Daman Singh v. State of Punjab*.¹⁵ Further, the law making power of the parliament as well as state legislature on the subject of co-operation came up for discussion in a case before the High Court of Gujarat¹⁶ and the above view of Supreme Court was held in this case as well.

Co-operative institutions regarded as state

Several co-operative institutions such as UP State Co-operative Land Development Bank Ltd.,¹⁷ Sikar District Central Co-operative Bank,¹⁸ State Agriculture and Rural Development Bank¹⁹ and Karnataka Co-operative Milk Producers Federation,²⁰ etc., have been held as state under article 12 of the Constitution by the Supreme Court and several high courts for the purpose of enforcement of Fundamental Rights, even before the coming into force of the Constitution (ninety seventh amendment) Act, 2011.

- 12 List- II entry 32: Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
- 13 List- I, entry 43: Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.
- 14 List- I, entry 44: Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one state, but not including universities.
- 15 AIR 1985 SC 973.
- 16 *Kheralu Nagrik Sahakari Bank Ltd. v. State of Gujarat*, 1998 CTJ- 193.
- 17 *UP State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey*, C.A. Nos. 514, 151b of 1985 dated 18/12/1998
- 18 *Gopal v. Sikar Central Co-operative Bank*, 1997 (1) WLN 320.
- 19 *Narayan s/o Balaji Bhange v. Maharashtra State Co-operative Land Development Bank*, CTJ- 668 Bombay High Court.
- 20 *K.V Pandu Ranga Rao v. Karnataka Dairy Development Corporation*, 1994, CTJ- 684.

Further, the right to equality guaranteed under article 14 of the Constitution of India was made available up to members²¹ and employees²² of co-operative institutions by the courts as well.

With regard to enjoyment of fundamental right to freedom by citizens guaranteed under article 19 (1) (c)²³ and article 19 (1)(g)²⁴ by co-operatives, the courts have consistently held that citizens do not enjoy any right to become a member of a co-operative society²⁵ and any interference with the functioning of co-operatives does not violate the freedom to form association guaranteed under article 19 (1)(c) of the constitution of India.²⁶

While interpreting the spirit behind the duty cast upon the state to secure a living wage under article 43 (promotion of cottages industries on an individual or co-operative basis) and article 46 (promotion of educational and economic interest of SCs/STs and weaker sections), the Orissa High Court²⁷ observed as under:

The government while discharging its duty to grant lease of 'Fishery Sairat' the consideration to grant lease should be in favour of co-operative societies formed by hungry fishermen who earn their livelihood by fishing rather than multi-millionaire who are interested in developing a water sports complex as per the spirit of Art. 46 of the constitution of India.

IV THE CONSTITUTION (NINETY SEVENTH AMENDMENT) ACT, 2011

The constitution (ninety seventh amendment) Act, 2011 was passed by Lok Sabha on 22nd December, 2011 and Rajya Sabha on 28th December, 2011.²⁸ This Act received the assent of the President of India on 12th January, 2012²⁹ and came into force with effect from 15th February, 2012.³⁰ Most importantly, this constitutional amendment has provided one year period from the date of notification 15th Feb, 2012 to the state legislature with a view to bring:

21 *Prafulla Pradhan v. State of Orissa*, AIR- 1998 Ori 168, 1998 CTJ-722.

22 *Audesh Chandra Saxena v. UP Co-operative Sugar Factories*, 1992, CTJ- 265 (all HC).

23 Art. 19 (1) (c): Right to form associations or unions

24 Art. 19 (1) (g): To practice any profession or to carry on any occupation, trade or business.

25 *State of UP v. C.O.D. Cheeki Employee Co-operative Society*, 1987, CTJ- 305 (SC).

26 *Zoroastrian co-operative Housing Society Ltd. v. District Registrar of Co-operative Societies Ahmadabad*, AIR- 1998, Guj 108.

27 *Nuanai Primary Fisherman Co-operative Society v. State of Orissa*. 1992(I) OLR 410.

28 *Rajendra N. Shah v. Union of India*. WP (P12) No 166 of 2012 HC Guj.

29 The Gazette of India, Extraordinary, Part- II, No. 12 Dated 13.01.12.

30 The Gazette of India, Extraordinary, Part- III, No. 235 Dated 13.02.12.

- (i) necessary amendment to remove inconsistent provisions already in force, if any, in the respective state co-operative Laws vis-à-vis- the constitution (ninety seventh amendment) Act, 2011.
- (ii) necessary amendment in the existing provisions of respective state Law to add new provisions or modify/delete/alter the existing provisions.

The said period had expired on 14th February, 2013. This, otherwise, means that the provisions of 97th constitutional amendment will have the force of law after 14th February, 2013 over the inconsistent provisions in force in the respective state co-operative laws, if the state legislatures failed to bring appropriate amendment in their respective co-operative laws on the lines outlined in the 97th constitutional amendment.

The statement of objects and reasons attached with the constitution amendment Bill, 2009 [which became the constitution (ninety seventh amendment) Act, 2011] contained in brief the genesis and background behind bringing such a constitutional amendment,³¹ and the proposed broad areas to empower the parliament in respect of multi state co-operative societies Act and state legislatures in the case of other co-operative societies to make appropriate law.³²

31 “There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators remaining in-charge of these institutions for a long time. This reduces the accountability of the management of co-operative societies to their members. Inadequate professionalism in management in many of the co-operative institutions has led to poor services and low productivity. Co-operatives need to run on well established democratic principles and elections held on time and in a free and fair manner. Therefore, there is a need to initiate fundamental reforms to revitalise these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management”. (g) Empowering the state governments to obtain periodic reports of activities and accounts of co-operative societies; (h) Providing for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for Women on the board of every co-operative society, which have individuals as members from such categories; (i) Providing for offences relating to co-operative societies and penalties in respect of such offences.

32 The proposed new part in the constitution, *inter alia*, seeks to empower the parliament in respect of multi-state co-operative societies and the state legislature in the case of other co-operative societies to make appropriate law, laying down the following matters, namely:-

- (a) Provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;
- (b) Specifying the maximum number of directors of a co-operative society to be not exceeding twenty-one members;

The 97th constitutional amendment Act, 2011 had, further, made two significant changes in favour of co-operative societies. First, the term ‘co-operative societies’ are added after the words or union under Art. 19 (1)(c) of the constitution of India. Second a new article 43B³³ (under part IV Directive Principles of State Policy) is inserted towards the promotion of the co-operative societies. One of the reasons for bringing such an amendment under article 19 (1) (c) was that prior to the 97th Constitutional amendment Act, 2011, the courts started ruling that the citizens do not have a fundamental right to become members of co-operative societies. Due to such rulings, several co-operative societies resorted to refusal of membership to genuine natural persons in co-operative societies despite fulfilling all the legal requirements to become a member of a co-operative society under respective laws, rules and bye-laws.

Similarly, a few of co-operative societies resorted to expulsion of already admitted members into co-operative societies on flimsy grounds or without following the due procedure prescribed under respective co-operative law, rules and bye-laws. In a few cases, persons not eligible to become members in a co-operative society have been admitted as members into co-operative society. Based on the above practices found widely prevalent in many parts of the country and in several sectoral and functional co-operatives, the government of India, perforce, with a view to arrest such degeneration, inserted the term ‘co-operative society’ under article 19 (1)(c) of the Constitution of India so as to treat the right of members of co-operative society analogous to that of trade union members.

The article 43B is inserted under part IV of the Constitution of India primarily with a view to enable the legislature to promote formation of co-operative societies based on the principles of co-operation enunciated at the World Co-operators International Co-operative Alliance ((ICA) congress held at Manchester in the year 1995.³⁴

(c) Providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;

(d) Providing for a maximum time limit of six months during which a board of directors of co-operative society could be kept under supersession or suspension;

(e) Providing for independent professional audit;

(f) Providing for right of information to the members of the co-operative societies;

33 “43B Promotion of co-operative societies. The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies”. 5th Principle: Education, training and information. 6th Principle: Co-operation among co-operatives. 7th Principle: Concern for community.

34 1st Principle: Voluntary and open membership. 2nd Principle: Democratic member control. 3rd Principle: Member economic participation. 4th Principle: Autonomy and independence.

V CHALLENGE TO THE CONSTITUTIONAL VALIDITY OF CONSTITUTION (NINETY SEVENTH AMENDMENT) ACT, 2011

This important Constitutional amendment from the point of view of recognising as well as realising the rights, duties and responsibilities of members of co-operative societies, functions of management, executive and other committees and the general bodies including representative general bodies has been challenged as *ultra vires* of the constitution of India before the High Court of Gujarat³⁵ by a writ petition through a PIL on the following grounds:³⁶

The power under article 368 of the Constitution of India itself is the basic structure of the constitution and the fact that the procedure prescribed under Art. 368(2) of the constitution of India which recognises the federal structure of the constitution as one of the basic structures has not been followed by the constitution 97th amendment, hence, is in violation of the constitution of India.

The subject matter 'co-operative societies' does not fall under the 7th schedule i.e. Entry 45 of List I and those are specifically excluded from Entry 43 of List I of constitution of India; The state legislature therefore, is the only competent authority under Law (by virtue of Entry 32 of List II) to enact law for co-operative societies. Hence, the proposed amendment should be set aside as violation of the constitution of India, as the consent of the majority of state legislature was not received before presenting the Bill proposing said amendment to the President of India.

The parliament, a creature of the constitution, has violated the basic structure of the constitution by not complying with the requirement of article 368(2) of the constitution of India.

The submissions made on behalf of Union of India, on the contrary, are summarised as follows:

The only limitation on the parliament in exercise of the constituent power to amend the constitution in the matters enumerated in clauses (a), (b), (c), (d) and (e) of the proviso to sub-article (2) of article 368 is that, such amendment shall also required to be ratified by the Legislatures of not less than one half of the states before the Bill making provision for such amendment is presented to the President for his assent and several cases in support of this contention were quoted.³⁷

35 *Rajendra N. Shah v. Union of India*, 2013 (2) GLR 698.

36 *Id.* at para 1.

37 *Shankari Prasad v. Union of India* AIR 1951 SC 458; *Golaknath v. Union of India* AIR 1967 SC 1643; *Keshavanand v. State of Kerala* AIR 1973 SC 1461; *Minerva Mills v. Union of India* AIR 1980 SC 522.

Thus, the power to amend the constitution is vested upon the parliament and while exercising the powers under article 368, the parliament would not be subject to the limitations which curb its Legislative powers to make laws under article 245-246 because the amending power conferred by article 368 is “constituent” power as held by the apex court.³⁸

By virtue of the constitution 97th amendment, co-operative societies have now been included in Part III of the Constitution under article 19 (1)(c), accordingly fundamental right guaranteed under 19 (1)(c) has been extended to the co-operative societies.

The proviso to article 368(2) of the Constitution of India, therefore, have to be read in its strict sense and it is apparent that the amendment under challenge is not changing any of the matters enumerated in clauses (a) to (e) of article 368(2).

The parliament has exercised its constituent powers, which is distinct from its legislative power. The parliament by the constitution 97th amendment has not legislated on the subject, but in its constituent power has amended the constitution by addition of guarantee of the fundamental right in favour of co-operative societies. By this amendment, the parliament has not attempted to change the basic feature of the Constitution. The principles of federalism are also not altered. Therefore, the challenge to the constitution 97th amendment is misconceived and has no merits; hence, the writ-petition deserves to be dismissed.

The observation made by the high court that various restrictions have been imposed upon the state legislature by the 97th Constitutional amendment is completely erroneous and out of context for the simple reason that the objects and reasons behind bringing such an important Constitutional amendment³⁹ on the one hand and the proposed broad areas to empower parliament and state legislature⁴⁰ so as to bring corrective measures on the other as spelt out in the statement of object and reasons attached with the Bill have more than adequately justified the imposition of such restrictions. In other words, whenever the validity of any legislation, more so the constitutional validity of a constitutional amendment is challenged as *ultra vires* of the constitutional provisions, it is imperative on the part of higher courts to refer to the statement of object and purpose behind bringing such constitutional amendments. The high court, to that extent in this case, has committed an error of an inbuilt judicial practice.

Second, when the state legislature have accepted the legislative competence of parliament to enact law on the subject falling under the legislative competence of state under entry 32 of list II, the high court should have refrained from undertaking the task of identification of restrictions imposed upon state legislature by the said constitutional amendment.

38 See *Sasank v. Union of India* AIR 1981 SC 522.

39 See *supra* note 36.

40 See part V (emphasis added).

Third, it is an established proposition not only by actual practice but also by judicial observations and pronouncement that co-operatives to a larger extent are influenced by external instrumentalists and also run mostly by persons with vested interest. In such cases, it is essential to look into the legal status of the petitioner(s) who challenge the legal and constitutional provisions.

Fourth, the high court held that the insertion of part IX B is *ultra vires* of the constitution for not taking recourse to article 368 (2) of the constitution providing for ratification by the majority of state legislatures. This ruling of high court is also not justifiable to the extent of consistent views taken by higher courts that lapses if any noticed in the procedure to be followed should not become the sole reason or basics for declaring such law unconstitutional. Moreover, the 97th constitutional amendment clearly stated that the provisions specified therein will come into force after the expiration of one year from its commencement,⁴¹ therefore, the executive have been given a period of said one year for the completion of the procedural requirement specified under article 368 (2). Due to this reason as well, the declaration of the 97th constitutional amendment as unconstitutional by the high court before the expiry of the said one year period is incorrect. It is hoped that as and when the subject matter comes before the apex court on appeal, the concerns raised above shall be addressed afresh by the apex court.

VI APEX COURTS CAUTION TO STATE GOVERNMENTS NOT TO PLAY POLITICS WITH CO-OPERATIVE SOCIETIES (SUPERSESION OF DULY ELECTED BOARD OF MANAGEMENT)

The Supreme Court of India, in this case⁴² was concerned with the legality of an order of supersession of Board of Directors (BODs) of District Central Co-operative Bank (DCCB), passed by the Joint Registrar of the Co-operative Societies (JRCS), without having previous consultation with Reserve Bank of India (RBI) as required under Madhya Pradesh Co-operative Societies Act, 1960 (MPCS Act, 1960)⁴³ which was challenged by the BODs of DCCB as violation of the said provision.

The single judge of the high court directed parties to avail of the alternative remedy provided under section 78 of the MPCS Act, 1960.⁴⁴

41 Art. 243 ZT.

42 *State of MP v. Sanjay Naga Yach*, AIR 2013 SC 1921.

43 Second proviso to s. 53(1): provided further that in case of a co-operative Bank, the order of supersession shall not be passed without previous consultation with the Reserve Bank.

44 S.78. Appeal before Registrar and Tribunal:

(i) Save where it has been otherwise provided, an appeal shall lie from every original order under this act, or the rules made thereunder:

(a)

(b) If such order is passed by the Registrar, Additional Registrar or Joint Registrar, to the Tribunal.

(c)

The division bench of high court, however, on appeal, set aside the order of supersession on the ground of non-compliance to have previous consultation with RBI as required under law referred above. The order was challenged before the Supreme Court.⁴⁵

- (i) The High Court was not justified in interfering with the order of supersession passed by the JRCS, owing to an alternative remedy available under Section 78 of the MPCS Act, 1960 by placing reliance on several decisions of the Supreme Court.⁴⁶
- (ii) JRCS had forwarded the show-cause notice to RBI which failed to respond within 30 days of the receipt of the same, hence, presumed under law that RBI had agreed to the proposed action, accordingly, the order of supersession passed by JRCS is just and proper.
- (iii) The aggrieved party should have availed the alternative remedy provided under section 78 of MPCS Act, 1960.

The Supreme Court issued the following directions as under:⁴⁷

- (i) The re-instatement the Board of Directors back in office so as to complete the period during which they were out of office by the impugned order.

45 *Supra* note 42 at para 5.

46 *Harbanslal Sahnia v. Indian Oil Corpn. Ltd* (2003) (2) SCC 107; *United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110; *Om Prakash Saini v. DCM Ltd.* (2010) 11 SCC 622.

47 *Supra* note 42 at para 34.

- (iii) Elected Committee in Office be given sufficient time, say at least six months, to rectify the defects, if any, pointed out in the audit report with regard to incidents which originated when the previous committee was in office.
- (iv) Registrar Joint Registrar is legally obliged to comply with all the statutory formalities, including consultation with the financing banks/ Controlling Banks etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not.
- (v) Registrar/ Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also disqualify them for standing for election in the succeeding elections. Registrar/ Joint Registrar therefore are duty bound to exercise his powers bona fide and not on the dictation or direction of those who are in power.
- (vi) Registrar/ Joint Registrar shall not act under political pressure or influence and, if they do, be subjected to disciplinary proceedings and be also held personally liable for the cost of the legal proceedings.
- (vii) Public money not to be spent by the State Government or the Registrar for necessary litigation involving disputes between various factions in a co-operative society. Tax payer's money is not expected to be spent for settling those disputes. If found necessary, the same be spent from the funds available with the concerned Bank.

- (ii) The state government to pay an amount of Rs. 1 lakh to MP Legal Services Authority within a period by one month by way of cost and also imposed a cost of Rs. 10,000/- as against JRCS, who passed the order, which will be deducted from his salary and be deposited in the DCCB within a period of two months.
- (iii) In view of the mushrooming of cases in various courts challenging orders of supersession of elected committees, the Supreme Court issued several general directions.⁴⁸

The observation made by the apex court that the order of supersession passed is in clear violation of section 53 (1) of MP Act, 1960 is incorrect *i.e.*, failure to hold previous consultation with RBI. The third proviso to section 53 (1) (c) of the said Act clearly stipulated that in the event of failure on the part of RBI to communicate its views within 30 days of the receipt of notice, it shall be presumed that RBI agree with the proposed action and the Registrar is free to pass any order deemed fit. As there was a failure on the part of RBI in this case to communicate its views within 30 days to the bank, the supersession order passed by JRCS is just and proper. Second, the reference made by the apex court about the observation made by RBI against the supersession, it should be kept in mind that such an observation was made by RBI at the behest of apex court and not made in the normal course to the bank. Under such circumstances, it is not prudent to find fault with the order of supersession passed by JRCS on the ground of failure to have consultation with RBI.

Third, the direction issued by the apex court for re-instatement of the Board of Directors back in office for completion of the period during which they were out of office is not sustainable under law particularly in the democratically elected institutions such as co-operatives. In other words, the tenure of a duly elected democratic body by the people or members as the case may be, cannot be extended beyond the term provided under law by the rulings of the court in the event of absence of any provision under law for such an extension.

VII APPLICATION/NON-APPLICATION OF RTI ACT TO CO-OPERATIVE INSTITUTIONS

The main issue raised in this case⁴⁹ is whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969 (KCS Act, 1969) will fall within the definition of “public authority” under section 2(h) of the Right to

48 (i) Supersession of an elected managing Committee/ Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the term for which it is elected.

(ii) Elected Committee in Office be not penalized for the shortcomings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous committees.

49 *Thalappalam Ser. Cooperative Bank Ltd. v. State of Kerala* 2013 (12) SCALE 527.

Information Act, 2005 (RTI Act) and be bound by the obligations to provide information sought for by a citizen under the RTI Act.

A full bench of the Kerala High Court answered the question in the affirmative⁵⁰ in view of the conflicting views⁵¹ expressed by a division bench⁵² and single judge⁵³ of the same high court.

The Supreme Court made it clear that this case is concerned only with the co-operative societies registered or deemed to be registered under the co-operative societies Act, which are not owned, controlled or substantially financed by the state or Central government or formed, established or constituted by law made by parliament or state legislature.

The apex court examined a few cases wherein co-operative societies have been held as ‘state’⁵⁴ as well as not falling under the expression of ‘state’⁵⁵ for the purpose of article 12 of the Constitution of India.

The court has also referred to the relevant provisions of RTI Act, 2005 such as ‘public authority’,⁵⁶ ‘appropriate government’⁵⁷ and the legislative intention

- 50 The full bench of the high court upheld the Circular No.23 of 2006 dated 01.06.2006, issued by the Registrar of the co-operative Societies, Kerala stating that all the co-operative institutions coming under the administrative control of the Registrar, are “public authorities” within the meaning of Section 2(h) of the RTI Act and obliged to provide information as sought for.
- 51 The question as to whether a co-operative society will fall under Section 2(h) of the RTI Act is a question of fact, which will depend upon the question whether it is substantially financed, directly or indirectly, by the funds provided by the State Government which, the Court held, has to be decided depending upon the facts situation of each case.
- 52 *Supra* note 49.
- 53 All co-operative societies registered under the Societies Act are public authorities for the purpose of the RTI Act and are bound to act in conformity with the obligations in Chapter 11 of the Act and amenable to the jurisdiction of the State Information Commission.[Mulloor co-operative society W.P. No. 335 of 2008]
- 54 *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey* (1999) 1 SCC 741; *All India Sainik Schools employees’ Association v. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society*, (1989) 1 SCC 205.
- 55 *S. S. Rana v. Registrar, Co-operative Societies* (2006) 11 SCC 634; *Zoroastrian Co-operative Housing Society Ltd. v. Distt. Registrar, Co-operative societies* AIR 2000 Guj 9. Government, and includes any (i) body owned, controlled or substantially financed; (ii) non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government”
- 56 S.2(h) “public authority” means any authority or body or institution of self-government established or constituted—
(a) by or under the constitution; (b) by any other law made by parliament; (c) by any other law made by state legislature; (d) by notification issued or order made by the appropriate
- 57 S. 2(a) “appropriate government” means in relation to a public authority which is established, constituted, owned, controlled, or substantially financed by funds provided

behind such an enactment and came to the conclusion that the co-operative societies under reference do not fall in any of the clauses of (a), (b), (c) and (d) of section 2 (h) of RTI Act, 2005⁵⁸ as none of them is either a body or institution of self government, established or constituted under the constitution, by law made by parliament or state legislature or by way of notification issued or made by the appropriate government.

The Supreme Court observed:⁵⁹

- (i) The appellant co-operative societies are not owned by the appropriate government; hence, outside the purview of body owned by appropriate government⁶⁰ and referred several cases in support of such contention.⁶¹
- (ii) Merely providing subsidiaries, grants, exemptions, privileges, etc. as such cannot be said to be covered under the words ‘substantially financed’ used in section 2(h) (d) (i) & (ii) of RTI Act, 2005.
- (iii) The court specifically observed in respect of co-operative societies as under:

The state may also float many schemes generally for the betterment and welfare of the co-operative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as “substantially financed” by the state government to bring the body within the fold of “public authority” under section 2(h) (d) (i) of the Act.

The Supreme Court finally held that co-operative societies registered under KCS Act, 1969 will not fall within the definition ‘public authority’ under section 2(h) of RTI Act.

The apex court committed an error by rejecting the claim made by the state government that the co-operatives should be treated as an institution covered under

directly or indirectly –(i) by the Central Government or the Union territory administration, the Central Government: (ii) by the State Government, the State Government

58 See *infra* note 60.

59 *Supra* note 49 at para 38.

60 S.2 (h)(d)(i), RTI Act, 2005.

61 *State of West Bengal v. Nripendra Nath Bagchi*, AIR 1966 SC 447; *Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu* (1979) 2 SCC 34; *Madan Mohan Choudhary v. State of Bihar* (1999) 3 SCC 396; *Gauhati High Court v. Kuladhar Phukan* (2002) 4 SCC 524; *State of Haryana v. Inder Prakash Anand HCS* (1976) 2 SCC 977; *High Court of Judicature of Rajasthan v. Ramesh Chand Paliwal* (1998) 3 SCC 72; *Kanhaiya Lal Omar v. R. K. Trivedi* (1985) 4 SCC 628; *TMA Pai Foundation v. State of Karnataka* (2002) 8 SCC 481; *Ram Singh v. Union Territory, Chandigarh* (2004) 1 SCC 126.

public authority taking into consideration the large public interest involved in the promotion of transparency and accountability in the working of co-operative society. The co-operative credit societies accept deposit from members and utilize the same for grant of loans. The loan granted, if goes beyond recoverable limit, will definitely affect the economic interest of small depositors, therefore, the state has the responsibility to prospect the economic interest of such small depositors. The verdict of the apex court in this case, for the reasons explained above is incorrect.

VIII APPLICATION OF SARFAESI ACT, 2002 TO CO-OPERATIVE BANKS

The Supreme Court, in this case⁶² was confronted with the legality of the 'Sale Certificate' issued in favour of the auction purchaser of property from a co-operative bank under sub-clause (b) of rule 9 of the Security Interest (Enforcement) Rules 2002 framed under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

The borrower availed a housing loan from the co-operative bank by mortgaging his immovable property (house) and committed default in repayment of the housing loan. The bank issued a notice⁶³ calling upon him to repay the outstanding loan failing which the mortgaged property will be sold as per law.⁶⁴ The auction purchaser made the highest bid of Rs. 8.50 lakhs. The sale of mortgaged property fell short of total outstanding, hence, the bank obtained an ex-parte award for a sum of Rs. 2.37 lakhs against the borrower.

The borrower at this stage, challenged the 'Sale Certificate' issued in favour of the auction purchaser on the following grounds:⁶⁵

- (i) The public auction should not have been conducted before the expiry of 30 days from the date of auction sale notice.
- (ii) The 25 per cent sale price from the auction purchaser should have been collected on the date of confirmation of sale in his favour, instead, only Rs. 90,000/- were collected.
- (iii) The auction purchaser did not pay the balance amount i.e. 75 per cent within the 15 days of confirmation of sale⁶⁶ as per Rule (5),⁶⁷ hence, the earnest money deposited (Rs. 90,000/-) by the auction purchaser should have been forfeited and property resold.

62 *GM Sri Siddeshwara co-operative bank v. Sri Ikkal*, 2013 (10) SCC 396.

63 S.13.2 of SARFAESI Act, 2002.

64 See S. 13(4) of SARFAESI Act, 2002.

65 *Supra* note 62.

66 Instead, paid the same in several installments spread over nearly 10 months.

67 Security interest (Enforcement) Rules, 2002.

The Supreme Court of India:⁶⁸

- (i) There was a written agreement between the borrower and the bank for extension of time up to 13.11.2006 (as the borrower sent a letter to the bank and the bank accepted the Contention) i.e. the 'sale price' may be accepted from the auction purchaser now and Sale certificate be issued to him.
- (ii) The auction purchaser paid the balance amount on the extended date (i.e. 13.11.2006), which indicates that he was impliedly a party to the written agreement between the co-operative bank and the borrower.
- (iii) The condition of rule 9 (4) viz. "such extended period as may be agreed upon in writing between the parties" may be treated substantially satisfied in this case for the reasons explained above.
- (iv) The single judge was not justified in quashing the sale certificate, hence, was clearly in error in invoking the extra ordinary jurisdiction under Art. 226 of the constitution of India particularly when an alternative remedy to prefer an appeal before Debt Appellate Recovery Tribunal (DART) was provided under s.17 of SARFAESI Act, 2002 by placing reliance on a case.⁶⁹ Accordingly, the order passed by single judge was set aside.

Through this case, the Supreme Court has expressed serious concern over the invoking of the extraordinary jurisdiction by high court judges under article 226 particularly when the borrower is turned out to be a chronic defaulter in repayment of loan and also on the strength of contentions raised above by the bank. The application of the provisions of SARFAESI Act, 2002 to co-operative banks has been upheld by the apex court.

IX APPLICATION OF STATE ACT TO THE PROTECTION OF DEPOSITORS OF CO-OPERATIVE BANKS

In this case,⁷⁰ the legislative competence of the state government of Andhra Pradesh to enact a law⁷¹ to extend protection to small depositors was challenged as unconstitutional and violation of Fundamental Rights guaranteed under article 14 and article 21 of the Constitution of India, by the petitioner Board of Directors (BODs) of the urban co-operative bank

The facts of the case are that based on large number of complaints received from small depositors of an urban co-operative bank alleging that the BODs of the said bank had swindled away the money of the depositors amounting to crores of

68 *Supra* note 62.

69 *United Bank of India v. Satyawati Tondon* (2010) 8 SCC 110.

70 *Soma Suresh Kumar v. Government of Andhra Pradesh* 2013 (10) SCC 677.

71 The Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (hereinafter referred as Andhra Act, 1999).

rupees by creating false documents, the co-operative bank had filed a criminal complaint against the BODs of bank after conducting an inquiry under various provisions of IPC, 1860 and the Andhra Pradesh Protection of Depositors of Financial Establishment Act, 1999 (Andhra Act, 1999).

X LEGAL STATUS OF PURCHASE/TRANSFER OF LAND BY THE PROMOTERS OF CO-OPERATIVE SOCIETY EVEN BEFORE REGISTRATION

The question confronted by the apex court in this case⁷² was 'whether the admission made by the defendant in the plaint in favour of plaintiff (promoters of co-operative society before registration by the Registrar of Co-operative Society (RCS)) can be withdrawn.

The brief facts of the case are that for the purpose of registration of co-operative society under Andhra Pradesh Co-operative Societies Act, 1964 it was necessary to show to the RCS that the proposed co-operative society by promoters have entered into an agreement for purchase of land for the benefit of its members. Accordingly, the defendant had executed an agreement in favour of chief promoters of the co-operative society agreeing to the effect that the defendant will get the land measured and get the transfer of Patta in favour of co-operative society and pay the money to the land owner. The defendant was entrusted with the work for affecting the purchase after measurement.

It was the case of the plaintiff co-operative society that the defendants, in spite of several requests and demands, were postponing the transfer of Patta in one pretext or the other, hence a suit was filed before the trial court.

The defendant admitted the claim of plaintiff promoter co-operative society by filing a written statement, however, moved the court thereafter for withdrawal of the said admission made in favour of plaintiff.

The trial court did not permit the defendants to substitute the above said written statement by holding that the defendant appellants cannot be allowed to substitute their earlier written statement filed wherein there was an admission of the claim of plaintiff society. The high court on a revision petition filed by defendant came to the conclusion that the defendants – appellants cannot be allowed to reside from the admission made in favour of plaintiff.

The Supreme Court on further appeal upheld the order passed by high court and further observed that filing of subsequent application for the same relief is an abuse of process of the court.

The verdict of Supreme Court in this case has recognized the legal right and status of a proposed co-operative society by promoters even before registration by RCS as per law.

72 *S. Malla Reddy appellants v. M/s. Future Builders Co-operative Housing Society* 2013 (9) SCC 349.

XI CO-OPERATIVE HOUSING SOCIETY AND THE CONSUMER PROTECTION ACT, 1986

The main issue involved in this case⁷³ was that in the event of the housing co-operative society (society), after accepting necessary payment from a person as a member to get an apartment in the said society, is not in a position to either allot any apartment or refund the money paid for the purpose, who should be held liable to refund the money *i.e.*, whether the housing co-operative society or the promoter of the society who received the money on behalf of the society.

The brief facts of the case are that the respondent paid all payment as a member to get an apartment in the appelland housing co-operative society, however, was not allotted any apartment, hence, moved the State Consumer Disputes Redressal Commission (SCDRC) for relief after the society failed to refund the amount received. The SCDRC held the housing co-operative society responsible and passed an order against the society and the chief promoter of the society who received the money on behalf of the society.

The society, on an appeal preferred before the National Consumer Disputes Redressal Commission (NCDRC), argued that it was the chief promoter of the society who was responsible for non-payment of the amount because of mismanagement of society funds by him. The NCDRC directed the society and the chief promoter of the society to repay the amount awarded by SCDRC along with interest @ 9 per cent per annum to the aggrieved member.

The main contention raised before the apex court on appeal by the society was that the society was not responsible for the misdeeds of the chief promoter of the society and the society was unnecessarily held to pay the amount. In short, the main plea raised was that the members (consisting of middle class) are made to suffer for the action and misdeeds of promoter of the society. On behalf of the promoter of the society, it was argued that the members of the present management committee were also along with the chief promoter in all the transactions took place from time to time.

The Supreme Court after hearing both the sides expressed the view that the aggrieved member had made the payment when the chief promoter of the society was the in-charge of the society and the present management committee was not in picture, hence, the responsibility to refund the amount primarily lies on the chief promoter and in the event of his failure, on the society. Accordingly, the order passed by the NCDRC was modified by holding the chief promoter primarily responsible for making the payment.

The verdict, in this case, is yet another example wherein the provisions of Consumer Protection Act, 1986 has been extended to housing co-operative society despite a separate machinery for settlement of disputes provided under concerned state co-operative societies Act.

73 *Pariwar Co-operative Housing Society Ltd. v. Chandrashekar M. Virkud*, 2013 STPL (web) 1023 (SC).

XII THE FIXATION OF THE LIABILITY TO UNDERTAKE REPAIR WORKS IN FLATS HELD BY HOUSING CO-OPERATIVE SOCIETY

In the event of housing co-operative society (society), carrying out major repair works in the flats held by members of the said society, who should bear the cost *i.e.*, whether the society or the concerned member or the builder (*i.e.* Municipal Corporation of Greater Mumbai- MCGB - in this case) is the main issue involved in this case.⁷⁴

The society, being a co-operative housing society registered under Maharashtra Co-operative Societies Act, 1960 (MCS Act, 1960) prayed for relief before co-operative appellate court created under MCS Act, 1960 for settlement of the said co-operative dispute raised. The said court ruled that the cost of repairs *etc.* have to be borne by the applicant member and recoverable from the respondents (society *etc.*) subject to the outcome of the dispute.

The division bench of high court, on appeal, *inter-alia*, held that there is no provision under the Act⁷⁵ to justify the high court to direct the municipal commissioner to spend for repairs in the private flat out of public funds, however, the petitioner is entitled to carry out repairs in his flat and recover the same from the society- as decided by the co-operative appellate court with a freedom to the petitioner to approach the co-operative court for necessary relief.

The Supreme Court upheld the said rulings of division bench of high court by making the following observations:⁷⁶

- (i) The appellant could have availed the remedy available under section 499⁷⁷ by making an application to the municipal commissioner for grant of approval to execute the work which the society failed to execute.
- (ii) Once the appellant succeeded in persuading the Co-operative Appellant Court to issue direction for repair of the flat in question, he had no locus to file the writ petition under article 226 of the constitution.

The Supreme Court, in this case, clearly clarified that the primary responsibility to carry out repair or other incidental works in the flat lies upon the owner member in the case of housing co-operative society and not upon the society as a whole.

74 *Makarand Dattatreya Sugavkar v. Municipal Corporation of Greater Mumbai*, 2013 (9) SCC 136.

75 Mumbai Municipal Corporation Act, 1888.

76 See *supra* note 74.

77 *Ibid.*

XIII LEGAL STATUS OF ACTION INITIATED BY MINISCULE
MEMBERS VIS-A-VIS RESOLUTION PASSED BY THE BODY OF
HOUSING CO-OPERATIVE SOCIETY

This case⁷⁸ is a classic example of how, an action initiated by miniscule members (five) of a housing co-operative society against the decision taken by a resolution passed by the body of the same society consisting of 230 members can render such resolution ineffective even after fought at civil court, co-operative court, high court and the Supreme Court over four and half decades. The relevant facts, in brief, are as under:⁷⁹

The Bombay catholic co-operative housing society passed a resolution on 25/09/1966 to provide 161 apartment-allotments in the building proposed to be raised in the land belonged to the society. The said resolution attained finality on 25/07/1972 after series of litigation agitated before co-operative court/appellate court and high court.

The said miniscule members have again agitated for the bifurcation/division of the society. The initial protection given to every member for bifurcation of society by co-operative court and single judge of high court was vacated on 07/12/2012 by division bench of high court. The same was challenged before the apex court.

The Supreme Court observed that it would be inappropriate to consider the grant of any interim relief, in the absence of any clear determination that the claim pressed are at the behest of at least a simple majority. Also between the society with all members on the one side and 5 members on the other, the society will have the authority to decide who should be given the redevelopment rights.

In this case, the courts involved therein, including the high court and Supreme Court failed to appreciate the democratic principles such as finality attached to decisions arrived based on resolutions passed by majority of members in the case of co-operative society, as incorporated under the concerned law, rules and bye-laws and allowed the litigation to prolong for over four and half decades. Secondly, although the apex court clearly invoked the principle of balance of convenience in favour of majority (230.5-230), it should have cautioned the lower/ subordinate courts to lay more emphasis/ and importance or to take cognizance of the democratic principles/process inbuilt under the concerned law by the creation of institutional arrangements and mechanism provided therein.

78 *Margaret Almeida v. Bombay Catholic Co-operative Housing Society*, 2013 (6) SCC 538.

79 *Id.* at para 9.

XIV CONCLUSION

Co-operative society/institution is basically a democratic institution governed by democratic principles. They are regarded as institutions created for the members, by the members, and of the members analogous to the infamous definition of 'democracy' by Abraham Lincoln. The co-operative institutions are created with specific purpose and objective to meet the social, economic and cultural need of members on the one hand and restore and recognise the rights, duties, responsibilities and privileges conferred/imposed upon the members under the law, on the other. A few of sovereign functions of state such as to provide cheap financial assistance to poor and needy people, to ensure regular supply of essential commodities at a fair and reasonable price to common people, to provide a platform for purchase and sale of agricultural commodities, etc. are performed by co-operative institutions. The executive, perhaps, keeping in view the above as well as the current apathy faced by co-operatives, management committees/bodies created under law and members, have brought an important constitutional (ninety seventh amendment) Act, 2011 thereby, intending to provide an appropriate environment for them to become truly democratic institutions.

The review of case laws has showed disturbing trends as the higher courts have failed to appreciate and understand the genesis and importance behind the formation of though small and tiny co-operative institution but with greater social purpose and objective. The disturbing trends noticed are summarized as under:

- (i) Failure to take cognizance of the objective and purpose, as provided in the statement of objects and reasons, behind bringing any amendment including constitutional amendment when the constitutional validity of such amendment was challenged.
- (ii) To probe into the legislative competence of parliament vis-à-vis that of state legislature, particularly when the later did not raise any objection upon the legislative competence of parliament.
- (iii) To lay excessive importance on the fulfillment procedural aspects involved in the legislative process at the time of presenting the Bill despite the proposed constitutional amendment itself provided sufficient time for its commencement after the assent of the president is received.
- (iv) Failure to understand and appreciate the legislative intention behind the provision made under law to have consultation with other institutions such as RBI. When the law itself clearly and specifically provided for presumption of completion of implied consultation process after the expiry of specified period provided therein, the apex court's approach otherwise, to have express consultation as against implied consultation was uncalled for.
- (v) Failure on the part of the apex court to appreciate the fact that co-operative society accepting deposit from public and lending money to borrower members is engaged in dealing with deposit of public and members at large and accordingly are covered under the definition of

‘public authority’ under RTI Act. In contrast, the denial of information relating to bank accounts of members of co-operative society on the ground that the information sought is confidential in nature and its approval by apex court only reveals its non-application of mind in correct perspective.

The apex court, however, in another case involving the protection of small depositors of co-operative banks upheld the legislative competence of state legislatures more so correctly, recognizing the need for protecting the interest of small depositors by the state, even though the petitioner raised the objection against the legislative competence of state that the subject matter ‘Banking’ falls under the legislative competence of the parliament. In a few cases involving the housing co-operative society and its members, the approach adopted by the apex court is not only found correct but also in the beneficial interest of such society and its members as housing is regarded as one of basic needs of mankind.