TAMIL NADU COOPERATIVE DEPARTMENT MANUAL

DRAFT REVISION

by

COMMITTEE FOR

REVISION OF COOP.DEPT. MANUAL

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CHAPTER I

INQUIRY, INSPECTION AND INVESTIGATION

Scope of inuiry under section 81

1.1.Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 provides for an inquiry by the Registrar or any person authorised by him. Such an inquiry may be held or caused to be held by the Registrar on his own motion. The Registrar should, however, order an inquiry under section 81 on the application of a majority of the board or of not less than one-third of the members or on the request of the financing bank or of the District Collector. The Registrar may hold the inquiry or direct some person authorised by him by order in writing in this behalf to hold the inquiry. The powers of a Registrar under this section have been conferred on the Joint Registrars, Deputy Registrars and Co-operative Sub-Registrars.

1.2. Under Sec 81 of the Tamil Nadu Cooperative Societies Act 1983, the term 'inquiry' is used. Under sub rule (4) of rule 104, the person holding the inquiry is called as 'Enquiry Officer'. While ordering an 'inquiry' the Officers of the Department normally use the term 'enquiry'. Though this difference in terms does not alter in any way the legal position, the terms 'inquiry' and 'enquiry officer' as mentioned under section 81 of the Act and rule 104 (4) of the rules respectively may invariably be used in the order of inquiry.

1.3. When an inquiry under section 81 is to be conducted by a Co-operative Sub-Registrar, he need not be specifically authorised to conduct the inquiry as he has got the powers of a Registrar to hold such an inquiry. It is enough, if he is directed to invoke the provisions of section 81 of the Act and hold the inquiry. If a Junior Inspector or a Senior Inspector not having the powers of a Registrar is asked to conduct an inquiry under section 81 he should be specifically authorised in writing, by the Deputy Registrar or Co-operative Sub-Registrar. In order to avoid issue of proceedings whenever there is transfer of persons, authorisation should be by designation; and not by their names though in special cases, where the authorising officer considers that the nature of inquiry, inspection or investigation is such as could be conducted only by a person with some experience or aptitude, the auhorisation may be by name.

1.4. Section 65 of the Tamil Nadu Cooperative Societies Act 1961 provided for enquiry, only into the constitution, working and financial condition of a registered society. Under Section 81 of the Act,

1983 the scope of inquiry is enlarged to include any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of the society. Therefore the inquiry ordered under section 81 of the Act need not always be a detailed review of the constitution, working, and financial condition of the society, but may be restricted and confined to and/or directed towards a particular irregularity or any specific purpose as may warrant.

1.5. The inquiry, in cases where frauds are brought to light, should be primarily directed towards the investigation of the items of fraud. While conducting such an inquiry, the enquiry officer should initial all entries of a suspicious nature in the accounts or books of the society. He should also initial with date all documents and exhibits produced before him during such inquiry. The depositions recorded during these inquiries should be endorsed by the enquiry officer to the effect that the contents of the deposition were read over to the deponent and admitted by him to be correct. The endorsement is necessary in law in order to make it admissible as evidence under the Indian Evidence Act. Where an inquiry under section 81 should be held in every case warranting such a course, it should not be resorted to in each and every case as a matter of routine. Where the purpose sought to be achieved by such an inquiry can be achieved by other processes such as inspection, etc., an inquiry under section 81 should not be normally resorted to.

Power of Enquiry Officer.

2.1. The Registrar or the person authorised by him under section 81 shall have the following powers**:** —

(a) He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society.

(b) He may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents securities cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof. It should be noted that this power does not authorise the enquiry officer to summon the production of books, etc. at any place outside the headquarters of the society or any branch thereof. He may, however, summon the person concerned at any place at the headquarters of the society or any branch thereof and not necessarily at the head office of the society (the premises of the head office of the society) or at the office of its branch.

(c) if a person summoned fails or refuses to produce any record or property of the registered society specified in the summons, the Registrar,or the person authorised under sub sec (1) with the previous sanction of the Registrar, should apply to the Metropolitan Magistrate or the Judicial Magistrate concerned in whose jurisdiction the office of the society or the records and properties of the society is or are situated on receipt of which the Metropolitan Magistrate or the Judicial Magistrate concerned shall direct the delivery to the Registrar or the person authorised of the possession of the records and properties of such society.

(d) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts, or documents or to facilitate his inquiry. It should be noted that the power to seize does not include the power to search. The enquiry officer can seize the records only on production or on inspection of the records. Only the records of the society can be seized. When the records are seized, an acknowledgement for the receipt of records has to be given to the person from whose custody the records have been seized.The records so seized can be moved to any place, even outside the head quarters of the society. The records seized can be retained only so long as may be necessary for their examination or for the purpose of inquiry and they cannot be retained by the enquiry officer beyond 3 months at any time except with the permission of the next higher authority.

(e) He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and examine such person on oath. He may also summon any person to produce any books, accounts or documents belonging to him or in his custody, if he has reason to believe that such books, accounts or documents contain any entry relating to the transactions of the society. An enquiry officer can summon persons under this clause even outside the headquarters of the society and may examine them on oath. Section 51 of the Indian Penal Code defines the term oath to include a solemn affirmation subsituted by law for an oath and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a court of justice or not.

(f) He may require any officer or officers of the society to call a general meeting or a meeting of the board and may call the meeting himself, if the officer or officers refuses or refuse to call such meeting or if in the opinion of the Registrar (Deputy Registrar or Co-operative

Sub-Registrar) there is no board or officer or officers competent under the Act, the Rules or the By-laws to call such meeting or if there be an order of the Registrar or of the Civil Court restraining the board to function. The calling of such a meeting should be only for the limited purpose connected with the inquiry and of appraising the general body of the out come of inquiry conducted by him as well as the gist of the irregularities if any noticed during the inquiry and not for any other purpose. It should be noted that the enquiry officer can preside over the general or board meeting called by him either as the officer having the powers of a Registrar (e.g. Deputy Registrar, Co-operative Sub-Registrar) or a person (e.g. a Junior Inspector) authorised by the Registrar. In other words, if the enquiry officer happens to be a Deputy Registrar or a Co-operative Sub-Registrar, he can preside over the meeting called by him without any authorisation from anybody. If the enquiry officer is a Junior Inspector or a Senior Inspector not having the powers of a Registrar, he should be authorised by the Deputy Registrar or Cooperative Sub-Registrar to preside over the general body or board meeting called by him. It should be noted that the provisions of clause (b) of sub-section (4) of section 32 and sub-section (5) of that section will apply to meetings called by the enquiry officer under section 81(2)(e) (ii) as if it were a meeting called under section 32 (4) (a) of the Act.

Inspection & Investigation

3.1.Co-operative societies are generally inspected with a view to rectifying the defects noticed in their working or to suggest measures for their development. Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 provides that the Registrar may, of his own motion, or on the application of a creditor of a society, inspect or investigate or direct any person authorised by him in this behalf by general or special order in writing to inspect the affairs of the society in general or to investigate into any alleged misappropriation, fraudulent retention of any money or property, breach of trust or mismanagement in relation to the society or into any particular aspect of the working of the society. The Registrar or the person authorised shall have all the powers of the Registrar when holding an inquiry under section 81 of the Act. Section 82 also stipulates that no such inspection shall however, be made or directed on the application of a creditor unless the said creditor**:** —

(a) satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection or investigation as the Registrar may require.

3.2. In other words, the Registrar shall not order any inspection or investigation at the instance of a creditor of the society unless 'the debt is a sum then due'. "The debt is a sum due then" means that the debt is due for payment to the creditor. The creditor cannot seek an inspection or investigation immediately after the date of maturity of the debt. There should be a demand by the creditor for payment of the debt after it has become due for payment and the society should fail to make the payment within a reasonable time.

3.3.The words "within a reasonable time" should be interpreted liberally, if the society had asked for time to repay the debt and if the time is not unduly long, the credior may wait for getting the repayment. If the society fails to pay the debt even after the extended period, the creditor may apply to the Registrar for inspection or investigation.

3.4. Further, the Registrar should be satisfied with reference to the facts placed before him that an inspection or investigation is necessary and justifiable.

3.5.Sub-rule (2) of rule 104 specifies that a creditor making an application under section 82 shall state:-

(a) the amount due to him from the society;
(b) when he demanded payment thereof;
(c) when the amount was due;
(d) whether he has received any reply; and
(e) if so, how it is not satisfactory.

3.6. Another condition to be satisfied by the creditor is that he should deposit with the Registrar such sum as security towards cost of the proposed inspection or investigation. Sub-rule (2) (b) of rule 104 prescribes that the creditor shall deposit a sum of Rs.150/- as security towards the cost of the inspection or investigation sought for by him.

This gives power to the Registrar in preventing vexatious and frivolous petitions requesting inspection or investigation under the section.

3.7. An inspection conducted under section 82 should be distinguished from a casual or periodical inspection of a society, which is done in an administrative capacity. The case of a Senior Inspector/Junior Inspector conducting a casual or quarterly inspection of a society is a case of administrative inspection as opposed to statutory inspection, as the Senior Inspector/Junior Inspector has no inherent powers of a Registrar to function under section 82. If the Senior Inspector/Junior Inspector during the course of his casual inspection finds any difficulty in getting the account books, cash balance, etc., or where serious irregularities are noticed which require detailed probe and the exercise of the statutory powers under section 82, he should bring the facts to the notice of the Deputy Registrar, who may, after examining the merits of the case, either authorise him to conduct an inspection or investigation under section 82 or direct an inquiry under section 81 as the circumstance of the case may warrant. The inspection or investigation conducted by an inspector on such authorisation will be a statutory inspection under section 82 and the inspector will have all the powers of an inspection / investigation officer under that section. It should be borne in mind in this connection that the Registrar or the person authorised by him under section 82 will have all the powers of a Registrar when holding an inquiry under section 81 viz., the power to summon and seize the records, power to call a general or board meeting, etc., A Deputy Registrar or a Co-operative Sub-Registrar conducting a casual or periodical inspection of a society, may by virtue of the powers of a Registrar under section 82 conferred on him avail of the provisions of the said section, should the need for the exercise of any of the powers arise in the course of such inspection. As the Deputy Registrars and Co-operative Sub-Registrars have got inherent powers of a Registrar under section 82, no specific order or authorisation is necessary to invoke the provisions of section 82. Wherever the provisions of section 82 are availed of, the inspecting officers should, however, make it clear in the process issued, statements obtained, etc. that they are functioning under the said section.

3.8. However, before ordering an inquiry under section 81 or an inspection or investigation under section 82, the departmental officers should carefully examine and analyse the issues noticed by and or brought before them. It should be noted that while section 81 provides specifically for an inquiry into the constitution,

working and financial condition of a registered society , section 82, provides only for the inspection of the affairs of the registered society in general. More over while under section 81 an inquiry can also be ordered into any alleged misappropriation, fraudulent retention of any money or property, breach of trust or mismanagement in relation to that society or into any particular aspect of the working of the society, under section 82 only an investigation and not an inspection can be ordered into these aspects.

3.9. while under section 81, the Registrar is bound to hold an inquiry when applied for by persons mentioned in the section, the Registrar is not so bound to hold an inspection or investigation and that too only on the application a creditor and non else. The use of the word "may" in sub section (1) of section 82 and the word "shall" used in sub-section (1) or section 81 should be noted.

Proceedure regarding Inquiry, Inspection or Investigation.

4.1. Rule 104 details the procedure regarding inquiry,inspection or investigation as to how the application made under sub section (1) of Sec.81 or of Sec 82 should be and what is to be followed on receipt of it. It also deals with the completion and submission of the reports. The Tamil Nadu Cooperative Societies Act 1961 did not stipulate any time frame for the completion of inquiry or inspection ordered. But sub section (4) of Sec 81 and 82 of the Act clearly indicates that the inquiry, inspection or investigation ordered shall be completed within a period of three months from the date of ordering or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in aggregate. However the initial time limit of three months or for that purpose any other time limit specified in the Act should not be specified in the proceedings authorising the persons to hold the inquiry, inspection or investigation ; date line should be fixed for the completion of such inquiry inspection or investigation with reference to the volume and nature of work involved in a separate memo issued for the purpose.Once an inquiry, inspection or investigation ordered, the progress should be watched carefully to ensure that it is completed as expediously as possible with reference to the purpose of the inquiry, inspection or investigation and in any case within three months as stipulated under the relevant section of the Act. It should be particularly noted that the period of three months prescribed is only the maximum time limit and that it should be possible to complete many simple inquiries, inspection or investi gation within much shorter period than three months.With this

time schedule in mind, the Circle Deputy Registrars should see that the order of inquiry, inspection or investigation is sent to the officer immediately and in any case not latter than three days from the date of order and the officer commences his work at once on receipt of such order, seizes all the connected records, and reports the fact of commencement of the inquiry, inspection or investigation as the case may be. The Circle Deputy Registrar should monitor closely the progress in the conduct of inquiry, inspection or investigation and its early completion and within the time limit fixed. There would only be a few cases requiring extension of time. Where an inquiry or inspection or investigation under section 81 or section 82, is not or could not be completed within the period of three months from the date of ordering the inquiry or inspection or investigation the person holding the inquiry or conducting the inspection or investigation shall make an application to his next higher authority requesting extension of time detailing the action taken to complete the inquiry or inspection or investigation within the specified time, the reasons for non completion within that time, the further steps taken or proposed to be taken for the completion of the inquiry or inspection or investigation and the period within which it will be completed. An application for further extension of time shall state also the reason for non-completion within the extension of time already granted.

4.2.Second Proviso to clause (c) of sub-section (2) of section 81 stipulates that the books, accounts or documents seized shall not be retained for more than three months at a time except with the permission of the next higher authority. Hence whenever an extension of time for the completion of inquiry, inspection or investigation is applied for, extension for the retention of the books, accounts or documents of the society so seized, and if so necessary, shall also be applied for simultaneously.

4.3.After the completion of the inquiry, inspection or investigation as the case may be, the records, documents and books of accounts that are seized by the inquiry, inspection or investigation officer and that are required for initiating appropriate followup action should be handed over to the Circle Deputy Registrar.

4.4.In such cases where extension proposal has to be sent, the Regional Joint Registrars/Circle Deputy Registrars shall send such proposals within time stating the reasons for extension. They should not ask the extension in a routine manner. They should justify themselves after examining all aspects of the process of inquiry or inspection or

investigation and send necessary extension proposal justifying the reasons for such requisition. When an extension is permitted such permission shall be communicated to the Enquiry Officer, Inspection or Investigation Officer as the case may be and the society, the financing bank and the federal society concerned.

Conduct of inquiry, inspection or investigation at a place other than the head-quarters of the society.

5. A doubt may arise as to whether an inquiry, inspection or investigation can be conducted at a place other than the head quarters of the society. Sub-section (2) of section 81, enumerates the powers of the enquiry officer. The inspecting officer or the investigation officer under section 82 of the Act has also vested with the same powers as that of the enquiry officer under section 81. According to clause (a) of sub-section (2) of section 81, enquiry officer shall have powers to summon any person in possession of or responsible for custody of books, accounts, documents etc to produce the same to any place at the head-quarters of the society or branch thereof. As per clause (b) of sub section (2) of section 81 the enquiry officer has got powers to seize the books, accounts documents etc, of the society and for facilitating the completion of 'enquiry'. From the above points it is clear that the production of records should be made at the head-quarters only. As the enquiry officer has got powers to seize the records of the society, on production he can move the same to other safer place for custody other than the head-quarters, if it is not convenient to the enquiry officer to conduct the inquiry in smooth manner. The enquiry officer can summon any persons and examine such person on oath in any place other than the head-quarters of the society. The records belonging to persons other than the cooperative society for which enquiry was ordered can also be summoned for production even outside the head-quarters of the society.

Issue of summons and initiating action against persons disobeying summons under I.P.C.

6.The enquiry, inspection or investigation officer may issue summons as provided under section 81 (2) or 82(1) as the case may be, to any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody. The summons should be in the proper format, with all particulars regarding the documents, records etc, the place, date and time of the inquiry, inspection or investigation, filled in legibly, avoiding corrections and over writings and duly signed by the enquiry,

inspection or investigation officer with date and seal. It no seal is available it should be marked as [redacted] meaning Local Seal. The issue of summons is more so important, particularly where persons who are arrayed in the list of delinquents by the enquiry, inspection or investigation officer, in all probabilities, should have been summoned and examined by him on oath. When such persons to whom summons were issued (i) disobey the summons issued and fail to appear (ii) appear, but fail to produce the records (iii) appear,but refuse to give deposition and refuse to answer question (iv) refuse to sign the deposition given by them, it constitute an offence under section (2) of section 157 of the Act. Without prejudice to any action under section 157 (2) of the Act, prosecution may also be launched under sections 174, 175, 179, & 180 of the Indian Penal Code. Though prosecution can be launched under any of the two enactments viz. Tamil Nadu Co-operative Societies Act or Indian Penal Code, according to Section 26 of the General Clause Act, 1897, "where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. If prosecution is launched under the provision of the I.P.C, it will have a salutory effect in enforcing appearance of summoned person. Hence prosecution can be launched by the Circle Deputy Registrars under section 174 (Failure to appear), section 175. (omission to produce summoned documents), Section 179 (refusal to give statement or answer questions), Section 180, (refusal to sign the statement made) of the Indian Penal Code instead of launching prosecution under section 157 (2) of the Tamil Nadu Cooperative Societies Act, 1983. When the enquiry, inspection or investigation officer is not able to get at the summoned person or record his deposition, he has to report the matter to the Circle Deputy Registrar for taking action under the provisions of the I.P.C. by making complaint before the concerned magistrate with necessary evidence to prove the case. Before submitting proposals for prosecution, the enquiry, inspection or investigation officer should have issued summons for a minimum two to three times. Unless the enquiry, inspection or investigation officer is able to get at the summoned person or record his deposition, he is bound to submit a report for Prosecuting the summoned person. The Circle Deputy Registrars who will in turn arrange for taking action against

the summoned persons under the provisions of the I.P.C. after examining the facts of each case, by making a complaint before the concerned magistrate with necessary evidence to prove the case.

Examination of Departmental officers - Procedure.

7. During the course an inquiry under Section 81 or an inspection or investigation under section 82 there may be instances, wherein the inquiry inspection or investigation officer have to examine officers of the Department on oath. Though it may be in order for such an examination on oath, in the interests of good official relationship and decorum, the following procedure has to be followed in such cases.

(a) When the inquiry/ inspection/ investigation is into the alleged commission of offences under I.P.C or into other serious irregularities committed by a person other than the departmental officer, the Enquriy/Inspection/Investigation officer need not straight away issue summons to the departmental officer and examine him on oath just for the purpose of eliciting certain information which could be otherwise gathered or obtained from the departmental officer concerned. In such cases he may contact the departmental officer personally or address him confidentially indicating the points on which he requires information. The departmental officer concerned should feel it obligatory to furnish any information or the particulars required by the enquiry/inspection/investigation/officer promptly, lest he should face the embarassment of being summoned by the enquiry/inspection/investigation officer for obtaining those particulars.

(b) If the particulars or information furnished by the departmental officer throw sufficient light on the offences committed by the delinquents and are considered to be valuable evidence to prove the guilt of the delinquents in a court of law, the enquiry/inspection / investigation officer may then proceed to record the deposition of the departmental officer concerned on oath.

(c) In case where an inquiry under section 81 or an inspection/investigation under section 82 is ordered into the alleged commission of an offence under IPC by the departmental officer or in cases where during the course of inquiry/inspection/investigation it appeals that the departmental officer has committed any offence, under the IPC or is directly involved in the offence, the enquiry/inspection/investigation officer may examine the departmental officer as per the provisions contained under section 81(2) (d) of the Act.

Wherever there is need for recording statements from the departmental officers the enquiry/inspection/investigation officer should inform his intention to do so to his superior officer.

(d) Issue of summons to the departmental officers should not be resorted to as a matter of routine. Summons should be issued only in cases where their presence could not be secured without the issue of summons.

Recording of depositions- procedure

8.Under section 81 (2) of the Act the enquiry officer, and the inspection/investigation officer under section 82 (1) who is having all the powers under section 81, have been vested with the powers to summon any persons as mentioned therein, and examine such person on oath, necessitating the recording of deposition. The enquiry/investigaton/inspection officer should bear in mind that such deposition and endorsement thereon form part of important admissible evidence under the Indian evidence Act during the course of trial in the appropriate judicial forums. They should therefore follow the following procedure for the proper recording of such depositions.

(a) Manner of recording deposition

The inquiry/ inspection/ investigation officer should record the deposition in his own hand . When he is unable to record the deposition in his own hand under any exceptional circumstances, he may utilise a Government servant attached to him to record the deposition in his presence. In such cases, the reasons for not recording the depositions himself should be recorded in the enquiry/ inspection/investigation report.

(b) Contents of deposition

The deposition recorded shall contain the information among others, that it was recorded after administration of oath; the section under which it was recorded; the place at which the deposition was recorded; the name and the designation of the enquiry/inspection/ investigation officer before whom the deposition was given.

(c) Confessional deposition

While recording deposition from a delinquent which is of a confessional nature, the mere confessional statement alone is not sufficient. Deposition covering full details regarding the nature and manner of commission of offences confessed should be taken which can be used as extra judicial evidence.

(d) Authentication of deposition

The enquiry/inspection/investigation officer should endorse in the deposition that it was recorded by him, read over to the deponent or read by the deponent and accepted by him as correct and attest the same. Depositions recorded on different dates from a particular person shall be in the form of a separate deposition on oath.

(e) Numbering and attesting of deposition

Pages of deposition shall be serially numbered. Each page of the deposition shall be signed by the deponent. Corrections, if any, on each page shall be attested by the deponent.

Submission of the Inquiry, inspection or investigation report

9.1. The enquiry officer or inspection Officer, or Investigation Officer shall submit his report to the Registrar within such time as may be specified by the Registrar but not exceeding ten days from the date of completion of the inquiry or inspection or investigation. No extension of time is allowed. The enquiry / inspection or investigation officer need not submit his reports in two parts viz., Part A and Part B.The report shall contain his findings supported by documentary or other evidence as recorded or gathered by him during the course of his inquiry or inspection or investigation as the case may be and also the procedure followed in case if it was into a specific allegation. He shall not include, as far as practicable any matter of confidential nature in his main report but shall submit such matter or matters in a separate confidential report. Where any mater of confidential nature has to be discussed in the main report, the report may be drafted in such a manner that the matter of confidential nature can either be segregated or be not communicated except to the party concerned. If the enquiry inspection or investigation officer is of the opinion that, *prima facie* the inquiry/ inspection or investigation reveals frauds such as criminal misappropriation, criminal breach of trust, forgery and falsification of accounts etc which are offences under the Indian Penal Code and require launching of prosecution he should also submit a separate report for prosecution. This report for prosecution should invariably contain all the details and in the manner as required & specified under part A of annexure I to this chapter. He shall send a separate report pointing out the lapses on the part of any officer or servant of a society or of the Government responsible for administration or supervision or audit or an officer or servant of any other organisation noticed if any, during such enquiry, inspection or investigation and suggesting suitable action against him. Wherever necessary he may also submit separate reports for initiating departmental action as required under sec 36 for the Disqualification and removal, under sec 76 for the Suspension of paid officer or servant of the society, under sec 87 for Surcharge and under sec 137 for the Winding up of society, as the case may be and if so required. He shall also specify in his report the cost of the inquiry or inspection or investigation together with his

recommendation as to the manner in which the entire cost or part thereof may be opportioned among the parties specified in sub sec (1) of sec 85, with justification therefor. All these reports of inquiry under section 81, inspection or investigation under section 82, should have the dated initials of the officer to whom they are submitted and for the dated seal of the office for the receipt of such report so as to avoid any future complication that may arise, during the course of any judicial process regarding the submission of such report within the time limit specified under the Act & the Rules.

9.2. The Circle Deputy Registrars themselves should examine personally all the reports of inquiry, inspection or investigation submitted to him within a week and at any rate within a fortnight and pass necessary orders thereon. This important work of examination of these reports should not be entrusted to subordinates. The Circle Deputy Registrar should take suitable action against the enquiry/ inspection or investigation officer, who has submitted incomplete or perfunctory report. The Circle Deputy Registrar before communicating the results of the inquiry or inspection or investigation, shall consider whether the cost of inquiry or inspection or investigation has to be recovered fully or partly from the parties specified in sub sec (1) of sec 85.

Results of an inquiry and inspection/ investigation

10.1.The Registrar is under an obligation to communicate, the results of an inquiry / inspection or investigation, in brief, wihout going into details and without disclosing matter of confidential nature within a period of three months from the date of receipt of the report,

(a) in the case of inquiry: —

(i) to the Government or to any officer appointed by the Government, where the Government have subscribed to the share capital of the society.

(ii) to the financing bank to which the society is affliated

(iii) to the society concerned

(iv) to the federal society concerned and

(b) in the case of inspection or investigation: —

(i) to the society concerned,

(ii) to the financing bank to which the society is affliated

(iii) to the federal society concerned and

(iv) to the creditor concerned where the inspection or investigation is made on the application of the creditor.

10.2. While communicating the results of the inquiry or inspection or investigation as indicated above, it should be ensured that such of the portions, evidences, depositions, which are confidential in nature and which cannot be disclosed in the public interest are not communicated by the officers. For this purpose the officers may exercise their discretion, examine thoroughly each case and decide the issue before communicating the results. It should also be remembered that only the results of the inquiry, inspection or investigation should be communicated and not the reports themselves.

10.3. Where the inquiry/inspection/investigation officers have submitted reports indicating the part of the auditors, who audited the accounts of the society, to detect any such frauds or misappropriation, and recommending departmental action against such auditors, the Deputy Registrars should send the copies of such reports to the concerned Assistant Director of Cooperative Audit, for taking appropriate action. The Deputy Registrars should not communicate the same direct to the Director of Cooperative Audit; but should send a copy to him without fail.

Statutory follow-up action for rectification of defects.

11.1. Sub-section (6) of section 81 provides that the Registrar may by order in writing, direct any officer of the society or its financing bank to take such action as may be specified in the order to remedy within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry. Similarly, sub-section 5 of section 82 provides that the Registrar may, by an order in writing, direct any officer of the society to take such action as may be specified in the order to remedy within such time as may be specified therein the defects, if any, disclosed as a result of the inspection or investigation. Usually the Circle Deputy Registrars instruct the Cooperative Societies to rectify the defects at an early date, while some call for immediate reports of rectification. When the Act contemplates that the Registrar may specify the manner of action to be taken and fix up time limit to remedy the defects disclosed, it will not be in order, if the Circle Deputy Registrars forward the list of defects for rectification in a routine way without specific instruction allowing reasonable time to remedy the defects. The Circle Deputy Registrars should therefore specify the manner of action to be taken to remedy the defects and also fix up time limit (allowing reasonable time) for submission of

compliance reports. In case no time limit is specified while communicating the defects to the society the society should rectify the defects within a period of two months from the date of communication.

The time-limit that should be specified in the direction under section 81 (6) or section 82 (5) will vary depending upon the nature of the defects noticed and the circumstances of the case. The Circle Deputy Registrars have to keep a watch whether the society takes action to rectify the defects communicated to it. Failure to comply with the direction, wilfully and without any reasonable excuse, will constitute an offence under section157 of theTamil Nadu Co-operative Societies Act, 1983.

11.2. The Regional Joint Registrar/Circle Deputy Registrars should invariably initiate followup action both statutory and administrative on the basis of the inquiry or inspection or investigation reports such as disqualification of members of the board, surcharge action, disciplinary action, against employees of the society and departmental officers, prosecution and liquidation of the society concerned and orders passed thereon without any delay. In any case action should be initiated within thirty days from the date of completion of inquiry/ inspection or investigation.

Withdrawal of inquiry/ inspection / investigation

12.The Registrar under section 81(5)and 82 (3), is empowered to withdraw any inquiry and inspection or investigation from the person authorised by him under the relevent provision and to hold the inquiry and inspection or investigation himself or entrust it to any other person as he deems fit.

Inspection of books by financing bank.

13.1. According to Section 83 of the Act a financing bank may at any time but shall atleast once in every year inspect the books of every registered society, which is indebted to it and also any other registered society financed by any registered society which is indebted to the financing bank. The inspection may be made either by an officer of the bank or by a member of its paid staff. The term “Officer” has been defined in section 2 of the Act.

Section 67 of the Tamil Nadu Cooperative Societies Act 1961 required that the member of the paid staff of the financing bank inspecting a society under this section should have been certified by the Registrar as competent to under take such inspection. Section 83 of the Tamil Nadu Cooperative Societies Act, 1983 does not stippulate any such requirement. However, as

a society can be directed to be wound up on the basis of an inspection under this section it is desired that the financing bank should see that such statutory inspection are made only through persons who possess the requisite qualifications under the by-laws governing the service conditions of the employees of the bank and who are otherwise fit to do the inspection.

13.2. The person conducting an inspection under this section shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may also call for such information, statements and returns as may be necessary to ascertain the financial condition of that society and shall also have power to summon any person in possession of, or responsible for , the custody of any books, accounts, documents, securities, cash and other properties referred to, to prodcue the same for inspection or verification at any place at the headquarters of the registered society or any branch thereof in respect of which the inspection is made. If the officers of the society, which is inspected under section 83, do not allow access to books, accounts, etc., and do not furnish any information lawfully required of them, and any person who do not obey the summons issued under this section can be charged for an offence under section 157 of the Act. The financing bank will have to apply to the Registrar (Deputy Registrar) for the sanction of prosecution under section 164 (3) of the Act.

13.3. The provisions of section 83 of the Act do not apply to the ordinary or routine inspection of societies undertaken by the inspectors and supervisors employed by the financing bank; they apply only to inspection of a society indebted to the financing bank undertaken in order to ascertain the financial condition of the society and the safety of the sums lent to it by the financing bank.

Cost of inquiry and inspection or investigation

14. Section 85 of the Act provides that where an inquiry is held under section 81 or an inspection or investigation is made under section 82, the Registrar may, after giving the parties an opportunity of making their representations order the recovery of the entire costs or such part of the costs as he may think just, from the society, or the members or the creditors demanding the inquiry or inspection or investigation or from the officers, former officers of the society in such proportion as may be determined by the Registrar from all or any of them. Costs may also be awarded by the Registrar to the financing

bank in the case of inspection of books or investigation made by it under section 83. The Deputy Registrars and Cooperative Sub-Registrars have also got powers of a Registrar under this section to award costs. Any such sum awarded by way of costs by the Registrar may be recovered as if it were an arrear of land revenue. Such costs may also be recovered under section 148 of the Act. It should be noted that Government servants who are undertaking journeys in compliance with the summons issued by an enquiry officer, or inspecting officer or investigating officer will not be eligible to draw travelling allowance from the Government. In such case, the inquiry officer or inspecting officer or investigating officer should arrange for payment of the travelling allowance from the funds of the society.

Periodicity of inspection of different types of Societies

15.In the case of Primary Agricultural Cooperative Banks under section 81 inquiry, the Circle Deputy Registrars concerned should specifically inform the Central Bank, whether the societies may be financed or not, with reference to the basis of the inquiry. Unless there is *prima facie* case against the President or the Board having misappropriated funds or stocks or tampered the records or having become disqualified, further financing of the society need not be prevented. If any paid employee has misappropriated or committed any grave offence, action may be caused to be taken against him, by placing him under suspension if necessary and the financing the bank may be continued. In the case of those banks under Section 81 inquiry and to which loans can be given the loan applications may be got processed and recommended by the Central Bank Staff themselves and need not be referred to the Circle Deputy Registrars for their recommendation.

CHAPTER II
SURCHARGE

When the aid of section 87 can be invoked.

1.1.Section 87 of the Tamilnadu Cooperative Societies Act, 1983 provides for passing an order of surcharge by the Registrar or any person specially authorised by him in this behalf against any person, who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society, who has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to the Act, the Rules or the By-laws and in case such a person is deceased then against his representative who inherits his estate. Action under section 87 can be taken only if the omission and commission mentioned therein have come to light in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82, or inspection of books under section 83 or the winding up of a society and not otherwise. It is not, however, necessary that any of the above processes, viz., audit, inspection, inquiry, etc., should have been completed before initiating action under section 87.

1.2.The prerequisite for initiating surcharge action under this section is complied with if there was an audit or inquiry or inspection etc., at some time previous to the action taken under that section though not immediately preceding such action and the results of the audit or inquiry or inspection or investigation as the case may be, was communicated as required in the relevant section. Matters appearing in interim report of audit or inquiry or inspection are not excluded from the provisions of this section in view of the expression "Where in the Course of" used at the beginning of sub-section (1).

1.3.The circumstances under which action under section 87 can be instituted are narrated below:-

(a) *Misappropriation of money or property:*

The offence of criminal misappropriation consists in dishonest misappropriation by a person or conversion to his own use of any movable property.

(b) *Fraudulent retention of moeny or other property:* According to section 25 of the I.P.C. a person is said to do a thing fraudulently, if he does the thing with intent to defraud but not otherwise. Fraudulent retention of money or other property implies that the money or property though still intact has been dishonestly kept back by the person or officer or servant.

(c) *Guilty of breach of trust in relation to the Society:* According to section 405 of I.P.C.whoever, being in any manner entrusted with property, or with dominion over property, dishonestly misappropriates or converts to his own use that property,or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made, touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust". For invoking section 87, breach of trust need not necessarily be criminal breach of trust. Every act of omission or commission amounting to a breach of duty in the case of an officer (As defined in section 2 (19) of the Tamil Nadu Co-operative Societies Act, 1983) for a Co-operative Society in a fiduciary relationship to the soceity will amount to breach of trust.

(d) *Causing any deficiency in the assets of the society by breach of trust or wilful negligience:* The general loss sustained in the normal course of business of the society or the loss suffered on account of sale of goods in good faith by reduction in price to avoid further loss may not come under the purview of section 87. The fact that an institution has incurred business loss by itself cannot form the basis for initiating action under section 87 of the Act. Only the deficiency to the assets of the society caused by breach of trust or wilful negligence by the member of the board, officer or servant of the society will come under the purveiw of section 87.

In cases where an auditor or an inquiry or an inspection/ investigation officer suggests action under section 87 of the Act for the deficiency casued in the assets of a society, he should report clearly

with supporting particulars and evidence and substantiate how the loss has been caused by wilful negligence etc, of the persons concerned.

Whenever the report or suggestion of an auditor or an enquiry/ inspection /investigation officer to initiate action under section 87 of the Act is communicated to the Regional Joint Registrars or the Circle Deputy Registrars, they should not blindly issue notice under that section straightaway without examining the legal implications of the matter. It is for them to examine the legal aspect thoroughly before taking action under that section as their orders are subject to judicial scruitiny by the Tribunal i.e. the District Judge or the Chief Judge of the Court of Small Causes as the case may be on appeal by the aggrieved party. If they are convinced that there is not case for action under section 87, they should record it in the file and inform the higher officer, if the suggestion to take action under that section had come from him.

(e) *Any payment which is not made in accordance with the provisions of the Act, Rules or the bylaws:* This means any unauthorised or irregular payment not in accordance with the provisions of the Act, the Rules or the bylaws. If the funds are misutilised, it will amount to payment which is not in accorodance with the provisions of the Act, the Rules or the bylaws.

Who can pass an order of surcharge

2. The Registrar or any person specially authorised by him in this behalf may pass an order of surcharge under section 87 either of his own motion or on the application of the board, liquidator or any creditor or contributory. The powers of the Registrar under this section have been conferred on Joint Registrars, the Deputy Registrars and the Co-operative Sub-Registrars. The conferment of the powers on the Co-operative Sub-Registrars is, however, restricted to cases involving a sum not exceeding Rs.2,00,000. Under this section, the Registrar may himself conduct the inquiry and pass an order of surcharge or specially authorise any person to do so. Earlier Cooperative Sub-Registrars were entertaining arbitration claims etc as Extension Officers (Cooperation) but this practice has been done away with . At present all references under section 87 & 90 irrespective of the amount involved are entertained by, enquired into and disposed only by the Circle Deputy Registrars. In cases that are within the financial limit prescribed for a Cooperative Sub-Registrar, the Deputy Registrar after entertaining such cases, may refer it to Cooperative Sub-Registrars for inquiry and disposal. Further,

surchage claims for sums exceeding the financial limit prescribed for a Cooperative Sub-Registrar and filed by the Circle Deputy Registrar when he was working as a Chief Executive of a society in his circle may also be referred to a Cooperative Sub-Registrar working under him who is capable of dealing with such cases for inquiry and disposal. As the exercise of this power under section 87 will involve careful assessment of the various facts leading to the passing of an order of surcharge the Deputy Registrars and Co-operative Sub-Registrars on whom the powers of a Registrar have been conferred should themselves function under this section and should not under any circumstances authorize any other person by virtue of the powers vested in them. When suo moto proceedings have been instituted under section 87, Registrar (Deputy Registrar) can also direct, of his own motion, conditional attachment of properties of the persons concerned under section 167. In such cases, the provisions of rules 116 to 141 under the Rules, in so far as they are not repugnant to the subject or context, will apply to the conditional attachment of property directed under section 167 and no execution fees need be collected from any party.

Important changes made in sec.87

3. The following are the important changes made in section 87 of the Tamil Nadu Co-operative societies Act, 1983 to that of the provisions in section 71 of the erstwhile Tamil Nadu Co-operative Societies Act, 1961.

(a) Section 71 of the Tamil Nadu Co-operative Societies Act, 1961, did not provide for instituting surcharge action against the legal representative of a deceased person. Sub-section (1) of section 87 of the Tamil Nadu Co-operative societies Act, 1983 now provides for taking surcharge action against the representative who inherits the estate of a deceased person.

(b) the period of limitation within which surcharge action could be taken under section 71 of the Tamil Nadu Co-operative societies Act, 1961 was six years from the date of the act or omission. This period of limitation has been raised to 7 years under section 87.

(c) There were no time limit for completion of surcharge action initiated under section 71 of the Tamil Nadu Co-operative societies Act, 1961. But as per the 2nd proviso to sub-section (1) of section 87 of the Tamil Nadu Co-operative Societies Act, 1983, the surcharge action commenced shall be completed within a period

of six months from the date of such commencement, or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(d) Under section 71 of the erstwhile Tamil Nadu Co-operative Societieis Act, 1961 the Registrar or the person authorised by him did not have the necessary power to enforce attendance of any person and to examine him on oath. But under sub-section (4) of section 87 of the new Act all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) have been given to Registrar or any person authorised by him in respect of the following matter, namely:

(i) summoning and enforcing the attendance of any person and examining him on oath.
(ii) requiring the diiscovery and production of any documents;
(iii) reception of evidence on affidavits;
(iv) requisitioning any public record from any court of office;
(v) issuing commission for examining of witnesses.

Applicability of the section when cases fall both under sections 87 and 90.

4. A doubt may arise as to whether an arbitration claim may be filed under section 90 in respect of a matter which falls within the scope of section 87 also. Section 90 is a general provision intended to settle disputes through arbitration proceedings in the manner prescribed in the rules, whereas section 87 is a special provision intended to deal with certain failures and misconduct enumerated therein and brought to light in the course of audit, inquiry etc. It is to be noted that action under the one does not exclude action under another in as much as one is not a substitution of another and independent of each other. However, when a matter falls under both the special and general provision, the special provision alone should be availed of. A claim, which falls both under section 87 and 90 should, therefore, be entertained only under section 87. In cases of frauds and misappropriations resulting in the loss of funds the Deputy Registrar without waiting for the orders of the Registrar for launching prosecution should initiate legal proceedings for the

recovery of the amount lost. They should not also wait for the filing of arbitration claims by the society for the amounts lost, where section 87 can be invoked straight away. As soon as the surcharge inquiry is initiated, the properties of the person against whom the proceedings have been inititated should be identified and conditionally attached wherever necessary.

Surcharge inquiry

5.1. Before passing an order of surchage, an inquiry into the conduct of the person or persons concerned, is provided for in section 87. This inquiry is a mandatory one, as it is intended to ensure that the person against whom action is proposed under this section is responsible for the acts of omission or commission. The inquiry may be done by an examination or an investigation of the records or persons connected with the acts of omission and commission.

5.2. When action is taken under this section on an application made by the board or liquidator. etc., the investigation in this application will amount to an inquiry into the conduct of the person. This investigation may be made by furnishing a copy of the application, to the person concerned, requiring him to file a counter statement within a stipulated time, examining the statement so filed with reference to the connected records and by giving personal hearing, wherever necessary.

5.3. When *suomotu* action is initiated, this inquiry into the conduct of the person may be made by a mere examination of the records connected with the audit, inquiry, inspection,or investigation etc. with reference to which action is proposed to be taken; provided such audit, inquiry, inspection or investigation is all comprehensive and has brought out fully all facts connected with the omissions and commissions. In such cases, the examination of these records will itself constitute an inquiry into the conduct of the person contemplated in section 87. In other cases, where the audit, inquiry, inspection or investigation has not brought out fully all facts connected with the acts of omissions and commission, a further investigation should be made by examining the persons connected with acts, recording statements from them etc. The nature and mode of inquiry into the conduct of the person referred to in this section have to be decided with reference to the needs and circumstances of each case, keeping in view the purpose of the inquiry. viz., to find out that there is a case for passing an order of surcharge against the person concerned. It should be noted that the surcharge inquiry under section 87 should be commenced before the expiry of seven years from the

date of any act or omission referred to in the section and not from the date when such acts came to light. This does not mean that no action can be taken under section 87 against the members of the board concerned after the expiry of seven years from the original act of omiission or commission. The following illustration will make the position clear. If an item of misappropriation was committed by an employee, no action under section 87 can be taken against him after the expiry of 7 years from the date of commission of the misappropriation. But, action can be taken under section 87 for wilful negligence against the members of the board concerned, who failed to take prompt action against the employee in question within a period of 7 years. The period of limitation for action against such board members will run for another 7 years from the period of their wilful negligence. Similarly successive members of the board will be liable under section 87 for their failure to take action against the previous board members for their wilful negligence, etc.,

5.4. According to Section 34 (5) (b) no member of a board in respect of whom proceeding under section 87 is pending shall be eligible for election or nomination to the board till the termination of such proceeding. Further, once action has been initiated under section 87 of the Act, it can not be dropped for the reason that the affairs of the society were ordered to be wound up or the board of the society was dissolved. On the other hand the responsibility of the persons concerned to make good the deficiency caused to other assets of the society has to be fixed and an order passed in this regard can be executed even if the society is subsequently wound up.

Opportunity to make representations.

6.Where, as a result of the inquiry into the conduct of the person under section 87, it is proposed to pass an order of surcharge against any person, then such person should be given a reasonable opportunity to make his representations against the proposed order within a specified time, as required under sub section (1) of section 87. If no representation is made within the specified time limit or if the representation made is not sustainable, an order of surcharge may be passed. If any personal hearing is requested in the representation such request should be disposed of on merits.

Time limit for completion of the surcharge inquiry.

7. It should also be noted that as required under the second provisio to sub section (1) of Sec 87, the inquiry commenced should be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit, and

such extended period or periods should not exceed six months in the aggregate. It should be ensured that the surcharge inquiry should invariably completed as expeditiously as possible and in any case within six months. In case the same could not be completed within that period, extension proposals should be sent to the next higher authority well in time stating the reasons for not completing the action, the steps taken or proposed to be taken for completing it and the probable date within which it will be completed. Such an extension should not be asked for in a routine manner. It is to be noted that while computing the period for surcharge proceedings the period held up on account of any stay or injunction of any court shall be excluded.

Orders passed after expiry of the period specified under section 87 do not have the legal sanctity, suffer from infirmities and may be struck down on appeal for this sole reason. Further the societies concerned are also deprived of any further legal remedies or otherwise open to that society for recoupment of deficiency.

Speedy disposal of surcharge cases.

8.1. The following reasons are mostly attributed for the delay in the disposal of surcharge proceedings:-

(a) Records were with police in connection with the criminal complaints.

(b) Persons involved in the surcharge proceedings required perusal of some of the records, not made available to them.

(c) Parties on whom action under section 87(1) have been initiated are many in numbers and each of them wanted more time for their attendance before the office cocerned for examining them and furnishing replies.

8.2. In respect of item (1) above, if the enquiry reveals any scope for criminal action a complaint should be lodged with the police while simultaneously initiating the surcharge proceedings. The original records should not be handed over to police. The records should be kept in the circle offices till the proceedings are completed. The surcharge proceedings should be completed as expeditiously as possible and at any rate within the time limit of six months and without seeking any extension of time. In Govt. letter No.52095/CJ1/92-3, Cooperation Food and Consumer Protection Department dated 16.12.92, it has been instructed that priority should be given to complete disciplinary proceedings and surcharge proceedings over prosecution.

8.3. For item (ii) the enabling provision under Sec 47 (1) of the Act Should be made better use of, which states:-

" A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified, in such manner as may be prescribed, be received in any suit or legal proceedings as *'prima facie'* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent, as the original entry is admissible". In view of this specific provision, certified copies can be made use of in any proceedings including surcharge, and copies of records, documents etc., should be taken and got certified as soon as the statutory inquiry, inspection or investigation is over. This should be ensured by the Circle Deputy Registrars while scrutinising the reports of the inquiry, inspection or investigation. This enabling provision should be availed of to the maximum extent.

8.4. As regards item (iii), the parties concerned in the proceedings on whom the action under section 87 (1) were initiated may often seek extension of time for their attendance before the officer for examining them on oath, perhaps only with a view to delay the proceedings. To over come these problems the Regional Joint Registrars/Circle Deputy Registrar should not give more than three opportunities to the persons concerned without valid reasons. If the officer is of the opinion that the parties concerned with the proceedings, wantonly delay the proceedings then the officer may consider the issue and pass final orders on merits of the case. The Regional Joint Registrars should fix time limit for the disposal of surcharge cases and watch strict compliance and ensure that under no circumstances pending surcharge proceedings cross the maximum time limit. Only in extraordinary cases the maximum time limit should be resorted to.

8.5. All the Circle Deputy Registrars should therefore follow the provisions of Sec 87 scrupulously and pass final orders within the stipulated time of six months from the date of issue of notice of surcharge. If, however, for any valid reason, the orders could not be passed in time, they should seek and obtain necessary orders from the Regional Joint Registrar for extension of time. In extra-ordinary cases, if order could not be passed on account of interference by courts or on account of non-availability of records and such other valid reasons, the Deputy Registrars, should send proposals through Regional Joint Registrar, seeking orders of the Government to relax

the provisions of this section, pertaining to the time limit prescribed, under section 170 of the Act, to the extent necessary to complete the surcharge before a specified date. But before obtaining the orders of the Government the Deputy Registrar should ensure that the first extension of time should have been got sanctioned by the Regional Joint Registrar. Orders of surcharge should be passed only after getting such order of the Regional Joint Registrar or the Government as the case may be and details of the order giving extension of time should also be mentioned in the order of surcharge so as to make it self-explanatory.

8.6. It should also be noted that proposals for extension of time limit will not be entertained and recommended to Government in normal circumstances and in a routine manner. Only such proposals sent with due justification, stating those extraordinary circumstances which necessitates such an extension alone will be examined and then recommended to Government.

8.7. To ensure that the surcharge cases under section 87 are disposed off within the time limit prescribed the Regional Joint Registrars & Circle Deputy Registrars should maintain a register showing the details of surcharge case in the form given in Annexure.

Surcharge Action against departmental officers.

9.1.There may be cases where *suomotu* surcharge proceedings have to be initiated against departmental officers. Before issuing surcharge notice in order to avoid possible and to maintain good relationship among departmental staff it should be observed that: —

(a) *Suomotu* action under section 87 should not ordinarily be initiated against departmental officers as a matter of routine

(b) Before initiating action the written representation of the officer concerned may perhaps be called,and

(c) On the examination of representation if it appears that there is a case, then surcharge action may be initiated against the departmental officer.

9.2. Where surcharge action under section 87, have been initiated against the departmental officers requiring them to repay or restore the deficiency caused to the funds and or properties of the society, administrative lapses, failures, omissions and commission on the part of the departmental officers also form part of such losses or deficiencies. Hence besides surcharge action against the departmental officers to recover the loss or deficiency, disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules should also be initiated against them.

Surcharge cases pending in courts.

10. In respect of cases filed before courts on surcharge orders effective action has to be taken at the field level. Where surcharge proceedings are stayed by the court immediate action should be taken to vacate the stay. Regional Joint Registrars and Circle Deputy Registrars should see that counter affidavits are filed immediately and the progress of such cases are monitored closely so that the cases are disposed off expeditiously. They should also have complete and upto date details of the court case No. date of order of court stay, last hearing held, action taken to both for vacation of stay and disposal of case, whether counter affidavit filed, present stage of the case etc., at any point of time.

Communi-cating order.

11.The departmental officers should not take their own time to communicate their order under section 87 to the parties concerned. As per section 152 (1) of the Act, an aggrieved party can prefer an appeal before the appellate authority within sixty days from the date of communication of the order. The officers should therefore observe utmost promptitude in communicating their order to the parties concerned.

Collection of amount involved in surcharge cases.

12. The very purpose of initiating any surcharge action under section 87 of the Act is to see that the loss made or deficiency caused to the funds, properties and assets of a society are made good to the society at the earliest and with no loss of time so that the society should not suffer on account such loss or deficiency. Hence the Regional Joint Registrar and Circle Deputy Registrar should not rest content with only passing orders on such cases, but should see that wherever necessary the amount is covered by E.P. and watch effective and speedy recovery of the amount surcharged. It should be noted that unless effective action is taken to recover the deficiencies caused to the soicety, the very purpose for which the surcharge orders were passed will be defeated.

CHAPTER III
SUPERSESSION

When supersession is resorted to.

1. The board of co-operative societies are generally superseded when they are not functioning properly. A board may be said to be not functioning properly, if it fails to discharge its duties satisfactorily in the interests of the members and creditors of the society or when there is a dead-lock in its management. A board may also be superseded if it wilfully disobeys or wilfully fails to comply with any lawful order or direction issued by the Registrar under the Act or the Rules. Winding up a society, the board of which is not functioning properly, is too drastic a remedy because, in the course of time, the defective working of the society can be rectified or the society can be reformed and worked again to the benefit of the members. The management of such a society can with advantage be entrusted to a special officer or a managing committee, so that when its affairs improve, proper persons in the locality may come forward and take up its management.

Statutory provision for supersession of board of societies.

2.1. Section 88 provides for the supersession of the board of a society by the Registrar. According to this section the Registrar (a) may, if he is of opinion that the board of any registered society is not functioning properly or wilfully disobeys or wilfully fails to comply with any order or direction issued by the Registrar under the Act or the Rules, and (b) shall, where for two consecutive cooperative years, more than sixty percent of the total dues of a financing bank from its members remain unpaid or the number of defaulting members of such financing bank exceeds sixty percent of the total number of members indebted to such bank and in the case of other registered societies, more than seventy percent of total dues to the registered society from its members remain unpaid or the number of defaulting members of such registered society exceeds seventy percent of the total number of members indebted to such society, after giving the board an opportunity for making its representations, by an order in writing supersede the board and appoint a Government servant or an employee of any bodycorporate owned or controlled by the Government viz., the Special Officer, to manage the affairs of the society.

2.2. In computing the total dues remaining unpaid for the purposes of item (b), any instalment or sum which is not recoverable by reason of any remission or suspension or order of stay passed by the appropriate authority due to adverse seasonal conditions or any other reason shall be excluded in respect of that instalment or sum and for the purposes of computing the number of defaulting members, any member who is not liable to pay any instalmment or sum by reason of any remission or suspension or order of stay passed by the appropriate authority due to adverse seasonal conditions or any other reason shall be excluded in respect of that instalment or sum.

2.3.The opening words under sub-section (1) (a) (i) of section 88 "if he (Registrar) is of opinion" show that the Registrar has to form an opinion which would form the basis of the order of supersession. It should be apparent that he has applied his mind and arrived at the conclusion that a particular society has defaulted etc. It is, however not necessary that the Registrar should order an inquiry, inspection or audit to form the opinion. He can form the opinion on the report of Deputy Registrar and on the basis of the materials placed before him.

2.4.That a board is not functioning proper by has to be gathered taking into account the duties entrusted to it under the Act or Rules or Bylaws and discharge of such duties by the board.

2.5.Sec 88 stipulates that the order of supersession should be passed within a period of three months from the date of issue of notice of supersession or such further period or periods as the next higher authority may permit but such extended period or periods should not exceed six months in the aggregate. As the very purpose of supersession is to ensure the proper administration of the society at the earliest it should be ensured that the order of supersession is issued without any delay and at the most within the original period of three months as provided under sec 88. And in case if the same could not be completed within the said three months, extension proposals should be sent well in time stating the reason for extension and justifying the reasons for such requisition to the next higher authorities. It should also be noted that the extension should not be asked for as a matter of routine.

Procedure to be followed before supersession.

3.1. In the case of a society indebted to the financing bank, the Registrar has, under section 88(6) of the Act, to consult the board of the financing bank regarding the supersession of the board of the society. Consultation is not, however, a mere formality but a mandatory provision. Absense of consultation will vitiate the action taken by the Registrar. If the society is not indebted to a financing bank, such consultation may be dispensed with. If the society, the board of which is proposed to be superseded, is a financing bank, the Registrar should consult the Tamil Nadu State Apex Co-operative Bank before taking such action. If the financing bank does not communicate its comments within fifteen days of the receipt of a communication from the Registrar in this regard, the board of the financing bank shall be deemed to have no comments to make on the order proposed to be passed under sub section (1) by the Registrar. In consulting the board of the financing bank, the Registrar should, in the manner prescribed under rule 105 of the Rules, send to the board a copy of the notice of supersession issued by him and a copy of the reply, if any, to the notice received from the board or any member of the board of the society together with the tentative conclusion arrived at by him or the gist thereof. The dictionary meaning of the word consultation is “to seek advice from or to consider jointly”. It is not necessary that the advice given must be accepted. And consultation does not mean concurrence. Hence the concurrence of the financing bank or of the State Apex Co-operative Bank, as the case may be, for the proposed supersession is, however, not necessary. In all cases, the Registrar should issue a notice to the board of the society concerned asking it to make before a specified date, its representations, if any ,in the matter. After taking into consideration the representations, if any, of the board, and also the views of the financing bank, if any, the Registrar may, if he thinks fit order the supersession of the board. The Registrar can order supersession for a specified period not exceeding one year. The period may be extended by the Registrar, at his discretion from time to time subject to the condition that the order of supersession should not remain in force for more than two years in the aggregate. Government are specifically prohibited from invoking the provisions contained in Section 170 of the Act for extending this period of supersession. It is the policy of the department to invoke the provisions of Section 88 after exhausting all less drastic remedies. The Deputy Registrars should bear this in mind and submit proposals for supersession only after all efforts to set right the affairs of the society by other methods have proved futile.

3.2. While submitting proposals for superssion, they should indicate the steps taken by them in this regard. The charges in the draft supersession notice should be self contained, specific and brief. They may be classified under the following major heads:—

(a) Violations of the provisions of the Tamil Nadu Co-operative Societies Act, the TNCS Rules and the by-laws of the society. Each voilations should be indicated item by item.

(b) Acts of mismanagement of the board affecting adversely the financial condition of the society.

(c) Disregard of departmental instructions. Each disregard should be stated item by item. Wilful disobedience or failure to comply with any lawful order or direction issued by the Registrar under the Act or the Rules, should be dealt with under this head.

(d) Faction among the members or members of the board affecting the smooth working of the society. Incidents in support should be enumerated.

(e) Deadlock in the administration of the society, such as, two sets of directors claiming office, want of quorum for the board meeting, etc.

(f) Other irregularities, if any,

3.3. An audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 of the Act is not a pre-requisite for supersession. But the officer recommending supersession should have ample evidence to support each charge. Along with the proposals for supersession, the latest balance sheet of the society should be submitted. The rank of the officer to be appointed as Special Officer, in case the board is superseded, should be discussed in the letter enclosing the draft notice and it should be stated definitely whether the society can meet the cost of the Special Officer if appointed.

Power to winding up.

4. Sub section (7) of secton 88 states that nothing contained in the section shall be deemed to affect, the power of the Registrar to order the winding up of the soceity under section 137. If during the period of supersession, the Registrar considers that the society should be wound up, he is free to do so under section 137.

Date of taking effect.

5. According to sub-section (8), the supersession ordered under sub-section (1) takes effect from the date specified therein unless stayed by an order of the appellate authority. Where this order is reversed on appeal, the Special Officer shall forth with hand over the managment of the society to the Board.

Disqualification on account of supersession.

6.1. It is laid down in section 34 (5) (a) that no member of a board which has been superseded under section 88 and no person who was a member of such superseded board on the date of issue of notice of supersession shall be eligible for election or nomination to any board for a period of three years from the date of expiry of the period of supersession.

6.2. According to section 34 (5) (b), no member of a board in respect of which proceedings under section 88 is pending shall be eligible for election or nomination to the board till the termination of such proceedings.

Appointment of Special Officers and their remuneration.

7. The Registrar generally appoints as Special Officers only departmental subordinates over whom he has control. Advisory boards, consisting of not more than five persons from among the members of that society who are not disqualified for being elected or nominated to the board of that society, may also be appointed by the Registrar under section 88 (2) to advise the special officers on such matters as may be specified by him particularly in societies with fairly large transactions. These boards, however, function only as advisory bodies; the special officers are responsible for the proper aministration of the societies' affairs. When one society cannot give adequate work for a full time special officer or cannot afford to maintain him, the question of appointing a part-time special officer may be considered.

Powers and duties of Special Officers.

8.1. Subject to the control of the Registrar and such general or special instructions as he may issue from time to time, the Special Officer appointed to manage the affairs of the society under section 88 (3) can exercise all or any of the functions of the board or of any officer of the society and can take all such action as may be required in the interest of the society.

8.2. As required under sub rule(1) of rule 106, the Special Officer appointed under sub section of section 88 shall immediately after taking charge of the management examine the defects which resulted in the supersession of the board and take steps to remedy the defects and send his report to the Registrar on the action taken by him to rectify or remedy the defects within a period of three months from

the date of his appointment and periodically thereafter till the defects are completely rectified. According to sub section (9) and sub-rule (2) of rule 106, the Special Officer shall also exmine whether any paid offiicer or servant of the society, whether or not he is borne on a common cadre of service was also responsible for any of the acts leading to the supersession of the board and where there is a *prima-facie* evidence, he shall take such action against the paid officer or servant as may be necessary, including disciplinary action and suspension pending enquiry into grave charges and report to the Registrar the action taken by him within a period of three months from the date of his appointment and periodically thereafter till the action taken against the paid officer or servant is completed.

8.3. The person appointed as Special Officer shall at the end of the period of his appointment, arrange for the constitution of a board in accordance with the Act, the Rules and the by-laws of the society, after obtaining the orders of the Registrar under section 88 (5), if the Registrar is satisfied that no further extension of the period of supersession is necessary.

8.4. The President of the society will normally preside over the general meetings of the society. In the case of a society, the board of which is under supersession, the Special Officer takes the place of the President and as such he would preside over the general body meetings. When a society is superseded by the Registrar under section 88, such powers and duties of the general body as may clash with the powers and duties of the person appointed by the Registrar are '*pro-tanto'* superseded: the general body cannot exercise any control in competition with the Registrar. The general body can, however, continue to exercise such powers and duties as are not inconsistent with the control of the Registrar. For example, the power to make a change in the bylaws is vested in the general body. This power is not passed on to the Registrar by reason of the supersession of the board. According to the by-laws of societies, the budget estimate of every year should be placed before the general body for approval. As such, the Special Officer should prepare the budget estimate every year and place them before the general body for approval. There may be instances where the general body refuses to pass the budget. In such cases, the Special Officer should submit it for the approval of the Deputy Registrar concerned in the case of a primary society and to the Registrar through the Deputy Registrar concerned in the case of apex and central societies as the powers of the Registrar under section 32(2) (a) have not been conferred on them.

8.5. The Registrar is not liable for any losses or damages that a society by the Special Officer appointed by him under section 88. The wording in the section to *manage* means that the actual working of the society is done by the person appointed by the Registrar. The powers given to the Registrar in sub-section (3) are only supervisory and hence the Registrar is not liable for the acts of the person or persons appointed by him. The person or persons, though appointed by him, represents the share-holders. The profits which may be made as a result of the management by the person go only to the benefit of the share-holders and they should likewise bear all the losses.

Inspection of societies the board of which are under supersession.

9. The societies, the boards of which are under supersession, should be inspected by the Deputy Registrars at least once in a half year and invariably when they propose restoration of management. In the case of societies, the board of which are proposed for restoration of normal management, the inspection reports should be submitted to the Registrar not later than the end of the month succeeding the half year for which the inspection is done. The inspection reports should contain among other things, particulars of progress made in the rectification of the defects and irregularities for which the board was superseded, special steps taken by the Special Officer to improve and develop the business of the institution and the results achieved (comparative figures should be furnished and balance sheet as on the date of inspection). Besides the half yearly inspection, the Deputy Registrars should also call for monthly demi-official narrative reports from the Special Officers and review their work once a quarter. For this purpose a time bound plan of work with monthly or quarterly breakup, for the improvement of the society's affairs should be drawnup for implementation by the Special Officer of the society. Progress in the implementation of this plan of action should be assessed periodically.

Restoration of normal management.

10.As already stated under para (3) above section 88 of the Act empowers the Registrar to appoint a Special Officer to manage the affairs of the society for a specified period not exceeding one year and at his discretion this may be extended from time to time provided that such order shall not remain in force for more than two years in the aggregate. However, it is necessary to ensure that normal managment is restored in these societies as quickly as possible after rectifying the defects and irregularities for which the boards were superseded. The term of office of the Special Officer should not be extended in a routine manner.

The need for the continuance or otherwise of the Special Officer should be critically examined with reference to the progress made by the society and the action taken for the rectification of the defects and irregularities which necessitated the supersession of the society.

CHAPTER IV
ARBITRATION

Statutory provision for settlement of disputes.

1. The general object of the co-operative societies is to promote thrift,self-help and mututal aid among persons with common economic needs and it will be impossible to attain this object if the members of societies have, for the settlement of thier disputes, necessarily to undergo all the troubles and worries of an expensive and protracted litigation. Section 90 of the Tamil Nadu Cooperative Societies Act, therefore, provides for the compulsory settlement of disputes arising in societies by the Registrar or by any person subordinate to and empowered by the Registrar, or by an arbitrator appointed by the Registrar, instead of the disputants having to go to the civil courts.

What is a dispute

2. The word "dispute" includes all matters touching the constitution of the board or the management or the business of a registered society and which could form the subject-matter of civil litigation. This word, as used in section 90, includes (i) a claim by a registered society for any debt or demand due to it from a member, past member, or the nominee, heir or the legal representative of a deceased member, whether such debt or demand be admitted or not (ii) a claim by a registered society against a member, past member, or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property (iii) and a decision by the Board under sub section (3) of section 34 that any member of the Board was or has become disqualified to hold office as such. But, the disciplinary action taken by the competent authority constituted under sub section (3) of section 75 or the Registrar or the society or its board against a paid servant of the society is specially excluded from the scope of section 90. If a debt is overdue and the defaulter fails to pay or refuses to show adequate cause for non-payment, he is libale to be proceeded against under section 90 and the sum awarded is recoverable as a decree. Decree means any decree, decision award, order or certificate obtained or passed under the Act and includes a decree or order of a civil court.

The term business of a society does not merely mean those items of business for the transaction of which the society was organised, but includes any kind of transaction which the society may have, either with its members or with its employees.The fact that the matter was within the discretion of the board of management of the society is not sufficient justification for not entertaining an arbitration reference.

When the aid of section 90 is to be invoked.

3. Most of the disputes filed by co-operative societies relate to loans due to them by members. A society working on sound co-operative lines should not refer all the cases of default for decision under section 90 of the Act. A co-operative society is an association of people of character. The members should exercise mutual control and supervision among themselves and there is, therefore, no need ordinarily for a society to obtain an award or decree against any of its members. An award against a member generally means either the members have failed to exercise mutual and timely control and supervision or that the member could not repay owing to circumstances beyond his control. It is the duty of the board to impress on the members of societies the need for exercising personal influence on defaulting members and for recovering their arrears by persuation in good time. It is only as a last step that any overdue debt should be referred for adjudication under section 90 of the Act. If, however, the default is caused by circumstances within the control of the defaulter and an award or decree becomes necessary, it should be obtained without delay and executed expediously in order that it may have a deterrent effect on other members.

To whom references to be made

4. The reference will have to be made to the Registrar or to the person exercising the powers of a Registrar under section 90 (1) of the Act. Disputes arising in a circle should normally be referred to the concerned Deputy Registrar or the Co-operative Sub Registrar and not to the Registrar or the Joint Registrar, who exercises such powers throughout the State/ Region. Neither section 90 nor rule 107 mentions anything about the place of suing or to whom references under section 90 (1) should be made. Section 15 of the Civil Procedure Code provides that every suit shall be instituted in the court of the lowest grade, competent to try it. Section 16 of the said Code provides that where the suit relates to an immovable property, it shall be instituted in a court within whose local limits or within whose jurisdiction, the property is situtated. According to section 20 of the same Code, all other suits shall be instituted either

in the court having jurisdiction over the area where the cause of action wholly or in part arises or where the defendant actually and voluntarily resides or carries on business or personally works for gain. These provision will generally apply to references filed under section 90 of the Tamil Nadu Cooperative Societies Act also, in the absence of any stipulation to the contrary either in the Tamil Nadu Cooperative Societies Act or the Tamil Nadu Cooperative Societies Rules, 1988, or in the bylaws of the societies.

Against whom arbitration reference may be filed.

5.1. Section 90 (1) of the Act lays down the nature of disputes which could be referred to the Registrar and the persons against whom a reference may be made.It is as follows:-

"If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken bythe competent authority constituted under sub section (3) of section 75 or the Registrar or the society or its board against a paid servant of the society) arises —

(i) among members, past members and persons claiming through members, past members and deceased members; or

(ii) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society; or.

(iii) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representative of any deceased officer, deceased agent or deceased servant of the society; or.

(iv) between the soceity and any other registered society; such dispute shall be referred to the Registrar for decision."

Provisio under sub-section (1) of sec 90 states that no dispute relating to, or in connection with any election shall be referred under this sub section till the date of the declaration of the result of such election.

5.2. These provisions are applicable to disputes arising among members or the persons mentioned therein and not to others. For instance, disputes, in which non-member depositors or other non-member creditors are parties, do not come under these provisions. An arbitration reference can be filed against a member of the society only if he is liable to the society in his capacity as a member. For instance, the conduct of a member appearing as an advocate on behalf of a society cannot be made the subject matter

of a dispute under section 90, as the member has not acted in his capacity as a member, when he appeared as an advocate on behalf of the society. A dispute filed by an officer against another officer of a society will not fall under section 90 of the Act. They should be taken to civil courts. A dispute claiming damages filed by parties referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 90 can be entertained under the said section. But such disputes should be treated as non-monetary disputes and a fee of Rs.400/- should be charged for their entertainment. Persons claiming through a member includes the heirs, executors or administrators and assignees of a member and also his nominees, where nomination is allowed. It is not enough that a dispute should touch the business of the society. It is also necessary that the capacity of the members in the transaction giving rise to dispute should also be as such a member. Before a person can be said to claim as a member, the claim should arise through a transaction which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member but as stranger, then the case cannot be referred to the Registrar under this section. Once it is held that the original transaction was entered into by the member with the society as a member, then a person who claim right or title through that member must come within the provision of this section. The provisions of sub-section (1) cannot be applied to disputes between a society and non-members who stand surety to the paid staff of the society. It is, therefore, necessary that societies should insist on their paid employees getting only members as sureties to enable them to take action against such sureties under section 90 of the Act in case they are found liable to make good any loss that is caused by the neglect of the employees concerned. If a question arises whether any person is or was a member of the society or not, or whether any dispute is one touching the constituion of the board or management or the business of the society, such question shall be decided by the Registrar. If any such issue is raised during the course of hearing, the arbitrator or other person deciding the dispute should refer back the case to the Registrar (i.e., Deputy Registrar or Co-operative Sub-Registrar, who have got the powers of a Registrar in this regard) for decision of the issue, as the Registrar alone is competent to decide such question under section 90 (4) of the Act. Where any arbitration claim filed under section 90 relates to immovable property, the Registrar or the person deciding the dispute or the arbitrator

may on an application of a party to the dispute, direct that any person who is interested in such property, whether such person be a member or not be included as a party, to the dispute. In such a case, any decision that may be passed on the claim will be binding on the party so included; but he will be liable only to the extent of such property.

Application to Registrar.

6.1.The board of management of a society should ordinarily pass a resolution authoring the Secretary or the President, or whoever is competent to sue under its by-laws to refer to the Deputy Registrar for decision, overdue loans or other disputes specified in the resolution. According to rule 107 of the Rules, the reference should be in writing.

6.2. A society, which has resolved to refer a case of simple monetary dispute, should apply to the Deputy Registrar and should enclose to its application (a) a copy of the resolution of the board or general body referring the case for decision (full names and addresses of the defaulters and the sureties and the fact whether the principal debtor and sureties are alive or, if dead, the names of their heirs or their legal representatives should be given); (b) a statement of the subject matter of the dispute referred to; (c) a certified copy of the relevant records on which the dispute is based; (d) a receipted chalan or record to evidence payment of the fees fixed in accordance with rule 107(11) and as per schedule III of the rules . The Registrar may at his discretion remit the whole or any part of such fees. (e) sufficent number of copies of the application with all the enclosures for service on the defendant; and (f) such other statement or records required by the Deputy Registrars.

6.3.Some District Central Cooperative Banks file arbitration for Non-Farm Sector and Non- Agricultural loans only with the Circle Deputy Registrars in which the head quarter of the District Central Cooperative Bank is located and some with the Circle Deputy Registrars in whose jurisdiction the bank branch is situated, With a view to have uniform procedure all the District Central Cooperative Banks should file the arbitration cases for Non-Farm Sector and Non Agricultural loans and other direct loans given by them before the Circle Deputy Registrars in whose jurisdiction the bank branch is situated.

6.4.The documents and records including bond or agreement executed by the defaulter in favour of the society, in original, should, however, be produced before the arbitrator only at the time of hearing and it should not be sent by post lest it may be lost in transit.

6.5.In respect of defaulters, who owe more loans than one to a society, references may be consolidated into one single claim and filed, provided the property mortgaged is the same, or the sureties are the same in the several loans under dispute. The plaintiffs, who are commonly affected by the same act or resolution of a soceity, may well join together and file a single arbitration reference. In all other cases, separate references should be filed and separate awards obtained.

Application of provisions of Arbitration Act and code of Civil Procedure.

7. The provisions of sub-section (7) and (8) of Section 90 are new ones. They exclude the application of the provisions of Arbitration Act, 1940 (Central Act X of 1940) and the provisions in section 34 of the Code of Civil Procedure (Central Act V of 1908) to any decision passed or award made under section 90. The effect of such exclusion is that while passing a decision, award or order, the Registrar or the arbitrator or the person authorised to decide dispute can order for the payment of further interest, if the decision, award or order is for payment of money, at such rate as he finds reasonable and just, irrespective of the restriction imposed in section 34 of the Code of Civil Procedure in awarding payment of further interest.

Scrutiny of references.

8. On receipt of references under section 90 of the Act, the Deputy Registrars or the Co-operative Sub-Registrars should examine whether they come under the provisions of the section.They should see whether or not (i) the dispute is between the persons mentioned in clauses (a) to (d) of sub-section (1) of section 90, (ii) there is cause of action for the dispute (the existence of a dispute is essential): and (iii) the dispute relates to the constitution of the board or management or business of the society.

Arbitration claims received with the requisite fees should be straightaway entertained, assigned arbitration running current number and entered in the arbitration register, even if they have to be returned for any defect. Arbitration claims received without the requisite fees should, however, be returned in original with the personal register numbers. The officer entertaining a dispute should not get any administrative or preliminary enquiries conducted into the dispute, before admitting it. Defective plaints filed by societies should be returned to them under acknowledgement for re-presentation by a specified date after rectifying the defects. If the claims are not received back duly rectifed within the date line fixed, they should be dismissed straightaway and no correspondence should be entered into to secure

their re-presentation. If the arbitration claim is re-presented after rectification after the date line fixed (i.e), after the original claim has been dismissed, it should be treated as a new claim and fresh admission fee should be charged. The office-bearers of the societies concerned are liable to be held personally responsible for any loss that the societies may sustain owing to the claims getting time-barred on account of their failure to re-present the plaints by the date specified. It may not always be possible to decide whether a claim is time-barred or not at the very outset, before entertaining a dispute. In all such cases, the disputes should be entertained, if they are otherwise in order and the question of limitation should be decided first before going into the merits of the case.

References to other officers or arbitrators.

9. The Deputy Registrars exercising the powers of a Registrar under section 90 should themselves hear all difficult and complicated cases filed before them. In particular all election disputes and disputes filed under section 90 (1) (c) of the Act (if the amount of the claim exceeds Rs.2,00,000/-) and those filed under section 90 (1) (d) of the Act should be disposed of only by the Deputy Registrars. Other ordinary cases (money disputes) may be transferred under clause (a) of sub-section (2) of section 90 to any person subordinate to and empowered by the Deputy Registrar or Co-operative Sub-Registrar or referred under clause (b) of the said sub-section to an arbitrator or arbitrators. The references filed by co-operative societies for the staff of the Co-operative Department against the members should not be referred to honorary arbitrators or to the Co-operative Sub-Registrar, who functions as the ex-officio President of the society. Such references should be disposed of by the Deputy Registrar, who is not connected with the staff society. If a dispute is referred to several arbitrators for disposal, one of them shall be nominated by the Deputy Registrar himself and one by each of the parties to he dispute. In such cases, the arbitrator nominated by the Deputy Registrar shall act as the Chairman of the body of arbitrators and shall fix the time and place for the hearing of the dispute and carry on the necessary correspondence in connection with the reference. When there is a difference of opinion among the arbitrators the opinion of the majority shall prevail. Deputy Registrars and other persons deciding disputes under clause (a) of sub-section (2) of section 90 cannot designate themselves as arbitrators in deciding a dispute. They will be deciding the disputes only as Registrar or the person subordinate to and empowered by the Registrar. And hence

the Deputy Registrar, while referring the disputes to a person subordinate and empowered by him, should not refer such a person in his proceedings as an arbitrator.

Time limit for the disposal of arbitration claims.

10. The transfer of reference of disputes to other officers and arbitrators should be in writing. Unlike inquiry under section 81, inspection or investigation under section 82, surcharge under section 87, etc., no time limit has been specified under section 90 or rule 107, for the disposal of disputes referred to under sub section (1) of sec 90. This does not mean that the subordinate officers have got unfettered liberty and take their own time for the settlement of such disputes. Hence when the Regional Joint Registrars or Circle Deputy Registrars entertain the disputes themselves or the arbitration claims are referred to others, they should ordinarily fix time-limits within which the references should be disposed of. If a reference is not disposed of within the specified time-limit or within such further extended time as they may grant, they should withdraw the reference and arrange for its prompt disposal. However, according to the instructions of the Government (vide G.O.Ms No.6154, Industries, Labour and Cooperation Department dated 17.12.1962 communicated in Registrar's Endt. R.C.No.168582/62 F4 dated 4.1.63) the original authority who hears an arbitration claim should dispose of it within a period of four months from the date of entertainment. The above time limit of four months should be treated only as an outer time limit for difficult and complicated cases. Otherwise ordinarily, arbitration claims should be disposed of within two months in the case of simple monetary claims and within three months in all other cases. The Regional Joint Registrars and Circle Deputy Registrars should see that the arbitration cases are disposed of within the above time limits. And in any case it should be ensured that no cliam is kept pending disposal beyond the maximum time-limit of four months fixed by the Government. Election disputes should, however, be disposed of with utmost expedition at any rate within a maximum period of two months, as the continuance or otherwise of the members of the board in such cases depends upon the decision and any delay in deciding the dispute will not be in the interest of the smooth administration of the society. Adjournments should never be granted as a matter of course on flimsy grounds, as this is found to be one of the reasons for the delay in the disposal of arbitration claims.

Powers and duties of Registrar and arbitrators and procedure in deciding disputes.

11. The Registrar or the arbitrator or body of arbitrators or any other person deciding a dispute have powers under rule107 to administer oaths,to require by issue of summons the attendance of all parties concerned including witnesses and to require the production of all books and documents relating to the subject-matter of the dispute, preferably at the headquarters of the society or at some convenient place as near to it as possible. As far as possible, the parties to the suit should themselves bring their witnesseses, at their own cost. Parties desiring to have certain persons examined as witnesss, whose attendance they cannot secure without summons, can have summons issued to them by the Deputy Registrar or the person deciding the dispute on payment in advance of the expenses of travel, etc. incidental to such process. Witnesses attending the arbitration proceedings under section 90 may be given travelling allowance, batta etc., at the rates admmissible to witnesses attending criminal courts (vide rule 387 of the Criminal Rules of Practice and Orders for Rates).In their Order No.1308 (Finance Department), dated 7th July 1955, Government directed that moneys collected as batta and travelling allowances in arbitration cases under the Tamil Nadu Cooperative Societies Act should be credited into the treasury as "Civil Court Deposits" to be drawn and disbursed whenever necessary. Government also directed that a separate detailed head of account "Deposits of Deputy Registrars" should be opened for the purpose in the deposit section under "Deposits and Advances — Deposits not bearing interest 104 C— Civil Court Deposits—DPC 8443-00-104-AA 0009.

Service of summons.

12.1. On the admission of the dispute, the Deputy Registrar, or other officer or arbitrator or arbitrators deciding the dispute should issue summons to the parties. Rule 111 and 112 of the Rules which deals with the mode of service of summons is summed up below:—

(a) Every summons issued shall be in writing, shall be authenticated by the signature and the seal, if any, of the officer by whom it is issued and shall be signed by such officer or by any person authorised by him in writing in that behalf. Officers and others, who have not been supplied with seal, may mark **L.S** meaning Local Seal in the summons.

(b) It shall require the person summoned to appear before the said officer at a stated time and place, and shall specify whether his attendance is required for the purpose of giving evidence, or to produce a document, or for both and any particular document, the production of which is required, shall be described in the summons with reasonable accuracy.

(c) When the summons is issued to the party against whom a reference has been made under sub-section (1) of section 90, it shall be accompanied by a copy of the reference made or the application for revision of proceedings, as the case may be.

(d) Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced, instead of attending personally to produce the same.

(e) The service of summons on any person may be effected (i) by giving or tendering it to such person under his acknowledgement; or (ii) by sending it by registered post with acknowledgement due, or (iii) if such person is not found by giving or tendering it to some adult member of his family under his acknowledgement or (iv) if none of the means aforesaid is available by affixing it on some conspicuous part of his last-known place of residence or business and in such a case the person effecting the service shall make a report to that effect attested by two or more witnesses of the locality. In the case of summon or notice if sent by post shall be by registered post with acknowledgement due.

12.2. *Persons served to sign acknowledgement*:— Where the serving officer delivers or tenders a copy of the summons to the defendant personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.

12.3.*Endorsement of time and manner of service:*—The serving officer shall in all cases in which the summons has been served by giving or tendering it to the concerned person personally or to an agent or other person on his behalf endorse or annex or cause to be endorsed on or annexed to the original summons a return stating the time when, and the manner in which, the summons 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.

12.4. *Service on public officer or on servant of railway administration or local authority.*— When the party to be summoned is a Public Officer or is the servant of a railway administration or local authority, or any undertaking of the Government of any State or Central, the officer issuing the summons may, if it appears that the summons may be most conveniently so served, send it by registered post with aknowledgement due for service on the person, to the head of the office in which he is employed together with a copy to be retained by the defendant.

12.5.When summons sent by registered post are refused by the parties and the Postal Department gives an endorsement to that effect, the summons shall be deemed to have been properly served. In the case of service by affixture, the person entrusted with the service of summons should, get the attestation of two or more persons of the locality regarding the manner of service together with the addresses of such persons. Care should be taken to see that summons are served in time on the parties so as to enable them to appear before the persons hearing the dispute without undue inconvenience or haste. Where summons has not been served properly on all persons concerned before the date of hearing, the Deputy Registrar or other officer or the arbitrator or arbitrators deciding the dispute should adjourn the hearing of the dispute to some other day and arrange for the issue of fresh summons in time before the next hearing. Where the parties who have appeared in the first hearing give an undertaking in writing to appear at the next hearing, no summons need be served on them again for the subsequent hearing.

Failure of parties to appear for hearing.

13. Sub-rule (7) prescribes the procedure to deal with the arbitration in the following circumstances: —

(a) *Neither party appears:*

Where neither party appears when the dispute is called on for hearing, the person deciding the dispute may make an order that it be dismissed for default.

(b) *Defendant appears and applicant does not appear:*

Where the defendant appears and the applicant does not appear for hearing, the person deciding the dispute may make an order that the dispute be dismissed unless the defendant admits the whole or part thereof, in which case, the person deciding the dispute may make an order against the defendant upon such

admission. Where only a part of the claim is admitted, he may dismiss the dispute so far as it relates to the remainder.

(c) *Applicant appears and defendant does not appear:*

Where the applicant appears and the defendant does not appear for the hearing, if the person hearing the dispute is satisfied from the record and proceedings that the summons were duly served, the dispute may be decided ex-parte.

Deciding a Dispute.

14.1. During the course of hearing and deciding a dispute, in all complicated cases and also where the evidence available is not clear, or where legal aspects are involed, definite issues should be framed so as to pin-point the arguments of both sides on them. The Deputy Registrar or other officer or the arbitrator, the Chairman where several arbitrators are nominated or other person deciding the dispute shall record (or cause to be recorded) a brief note (deposition of parties), in English or in Tamil of the evidences and witnesses who attend, read it out an translate it to them, if necessary, and take their signatures in token of their acceptance of the same. They shall also attest the same to indicate that the deposition was taken by them or before them. The depositions should be attested by the parties in all pages. The corrections should also be attested by the deponents.

14.2.The arbitrator must hear all the evidences in the presence of both parties; he should be careful not to examine a party or witness except in the presence of the opposite party. If any party keeps back his evidence or fails to attend when called upon, the persons hearing the dispute may proceed ex-parte. If the defendant or defendants do not appear before the officer deciding a dispute in person or by proxy, the officer shall make a searching enquiry whether the summons has been properly served. An attempt should be made to send for the parties or to serve the summons a second time in a way different from the one adopted at first.

Decision, award or order.

15.1. Upon the evidence so recorded and after the consideration of the evidence so recorded, and of any documentary or oral evidence produced by the parties, a decision, award or order as the case may be, should be given. The decision, award or order given should be reduced in writing and should also contain an order as to costs.

15.2.Where a decision, award or order is for payment of money, it shall also contain an order as to further interest, which shall be a percentage per annum from the date immedialely following the date upto which interest was allowed and included in the decree amount.

15.3. After hearing the parties and recording their depositions in the manner laid down above and satisfying himself on points of law such as limitation, etc., the Deputy Registrar or the person deciding the dispute or the arbitrator should write out a judgement in all cases giving the reasons for the decision award or order, irrespective of the fact whether the case is simple or complicated.The Deputy Registrar or the person deciding the dispute or the arbitrator should either write the judgement in his own hand or dictate the judgement and get it recorded correctly. A decision award or order shall also be issued in conformity with the judgement on the same day. The judgement should be pronounced to the parties, if they are present. A copy of the decision award or order should be given to the parties to the dispute free of cost by personal delivery under acknowledgement or under certificate of posting as required under rule 107 (8) (c). But a copy of the judgement should be supplied to the parties (including the plaintiff) only at their request and on payment of the prescribed copying fees. In all simple monetary disputes supported by surety or mortgage bonds, decrees or awards may be pronounced by arbitrators on the spot. If the plaintiff and the defendant are present, the arbitrator should record the fact of having pronounced the award in their presence in the office copies of the awards and obtain therein the attestation of both the plaintiff and the defendants.

15.4. In the case of non-monetary disputes, where it is not possible to pronounce the judgement on the spot, the person deciding the dispute should communicate free of cost the decision or order within a reasonable time, at any rate, not later than 10 days from the date of final hearing to the parties to the dispute by personal delivery under acknowledgement or under certificate or posting. But, copies of the judgement written in such cases need be furnished to the parties concerned only at their request and on payment of the prescribed copying fees.

15.5. Deputy Registrars, other persons deciding disputes and arbitrators can give not only ordinary money decrees, but also mortgage decrees. In cases, where immovable properties have been mortgaged to societies as security, decrees may be given against such properties. Personal decrees should not be given against the heirs of deceased borrowers. The liability of the legal representative of a deceased person in respect of debts due by the latter extends only to the property of the deceased which has come into his hands and has not been duly disposed of. Decrees can, therefore, be passed against the heirs of deceased borrowers only to the extent of the

assets of the deceased left in their hands. While passing the decrees, the rate of interest as per the loan bond should be adopted. It should be noted that this rate in the loan bond will always be subject to the ceiling prescribed in the by-laws of the societies in force.

15.6. When mortgage decrees are given, it is not essential that the decree holders should proceed against the mortgaged properties in the first instance. In the decree it is usually stated as follows: " In default the plaintiff may recover the amount due together with further interest at the contractual rate until realization and together with further costs from the defendants personaly or the mortgaged properties or his other properties in any order he pleases". Awards in the above form can, however, be given only in cases where the mortgage bonds contain a covenant empowering the mortgages (societies) to recover the loan amounts in any manner they choose.

15.7. When members who are managers of joint Hindu families take mortgage loans for the benefit of their families, persons who are not members but who have an interest in the properties mortgaged sometimes join in the execution of the mortgage deeds. In arbitration proceedings against these members, it is not necessary to implead as defendants such co-executants who are not members. The manager of a joint Hindu family has got powers to mortgage not only his own interest in the family property but also the interests of the other members, if the debts contracted were for the benefit of the family. Whether or not the member has described himself in the morgage deed as the manager of the family, it is open to the soceity to proceed against the mortgaged property in the execution of a decree obtained against him provided it is recited in the mortgage deed that the debts were contracted for the benefit of the family. The decrees obtained by the societies should not be made over to other parties. It should be executed only against the defaulters and the amounts recovered.

15.8. The arbitrators or the persons deciding the disputes cease to exercise their powers after they make a decision, award or order; they have no powers thereafter to amend it. However, clerical, or arithmetical mistakes in decisions, award or orders or errors arising therein from any accidental slip or omission, may at any time be corrected or caused to be corrected by them either *sumoto* or on the application of any of the party to the dispute.

15.9. Arbitration proceedings can be continued even during the course of the winding up of a society which filed the claim. The liquidator can represent the society ordered to be wound up in

such proceedings. if the Deputy Registrar or the Co-operative Sub-Registrar hearing the case is appointed as the liquidator of the society ordered to be wound up, they should arrange for the disposal of the case by some other officer, as no person can be a judge in his own case.

Issue of instalment decrees not provided.

16. In the case of money dispute, if the debtor admits the claim and asks to be allowed to pay in instalments, the Deputy Registrar or arbitrator should pass a decree in favour of the society and leave it to the society to exercise what clemency it may see fit in executing the decree. Such a procedure is essential as the societies generally file references only after having exhausted all persuasive means of recovery.

Power to issue interlocutory orders

17. Sub-section (6) of section 90 provides that the Registrar may pass such interlocutory orders as he may deem fit in the interests of justice. This power can be exercised only by the Registrar or any officer functioning as 'Registrar' under section 90 and not by any person to whom a reference is transferred under section 90 (2) (b). The powers conferred under sub-section (6) of section 90 are discretionary powers and should not be exercised as a matter of routine. Before passing any interlocutory order, it should be ensured that such an order is necessary in the interests of justice and that by not passing that order, the parties will be prejudicially affected.

No power to appoint guardians.

18. In the course of arbitration proceedings, the natural guardians of the minor legal heirs of deceased borrowers sometimes refuse to be appointed as guardians. In similar circumstances, civil courts appoint one of the officers to be the guardian. Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 does not however confer such powers on the Registrar or the arbitrators appointed by him, t hough they can recognise the guardians appointed by the civil courts. Where guardians have to be appointed, the parties should go to civil courts.

Awards to be in accordance with justice, equity and good conscience.

19.1. The rules require the Registrar or the persons to whom the disputes are referred or the arbitrators to decide disputes in accordance with justice, equity and good conscience. In other words, the officer in deciding a dispute has a greater latitude than the court. In order to do complete justice between the parties, he may take the moral aspect of all questions into consideration and base his decision on equity, justice and good conscience.

19.2.The rules of the Indian Evidence Act, 1872 (vide section 1) do not apply to proceedings before an arbitrator. Although the arbitrator should endeavour to follow the general rules in admitting evidence, he is not required to comply strictly with them and any failure in this regard is not a valid objection to the award.

19.3.The Deputy Registrar or arbitrator or any person deciding a dispute should, however, follow the common laws of the land in so far as they are not inconsistent with the express provisions of the Tamil Nadu Cooperative Societies Act and the Tamil Nadu Coop. Societies Rules so that his decision, award or order is just, fair and proper.

Communication of Decision, award or order passed under section 90.

20.1. Clause (c) of 1 sub-rule (8) of rule 107 provides that a copy of the decision, award or order (Passed under sec-90) shall be communicated free of cost by the Registrar, the arbitrator, arbitrators or the other person deciding the dispute, to the parties to the dispute by personal delivery under acknowledgement or under certificate of posting.

20.2. Non compliance of this statutory provision will later become a valid ground to vitiate the execution proceedings, though in all other respects the decision, award or order may be in order. It is therefore instructed that whenever a dispute under section 90 is decided, the decision, award or order shall be reduced in writing and a copy of the decision, award or order is communicated to the parties concerned without fail either by serving it personally under acknowledgement or by sending it by post under certificate of posting. It is also instructed that there should not be any undue delay in sending the above.

20.3. Whenever artbitration cases are referred to arbitrator or arbitrators or other person for deciding the dispute, the Circle Deputy Registrars should invariably instruct them that as soon as the dispute is decided upon they should send a copy of the decision, award or order duly signed by them to the parties to the dispute either by giving it personally under acknowledgement or by sending it by post under certificate of posting. Whenever arbitration files are received back from the arbitrator or arbitrators or person authorised to decide the dispute after disposal, the Circle Deputy Registrars should verify and satisfy themselves that the clause (c) of sub rule (8) of rule 107 is complied with. If it is found that it has not been complied with, the Deputy Registrars should immediately arrange to serve a copy of the decision, award or order to the parties concerned in any one of the two modes specified in clause (c) of sub rule (8) of Rule 107.

Law of limitation

21.1. The points of common law likely to come up before the arbitrators frequently relate to the law of limitation. The period of limitation for referring a dispute to the Registrar for decision is regulated by the provisions of the Limitation Act, 1963. The relevant provisions of the Act which have to be borne in mind in disposing of arbitration references are dealt with below:—

(a) Section 3 of the Limitation Act requires a court to dismiss any case filed after the period of limitation prescribed therefor although limitation has not been set up as a defence.

(b) Under section 18 of the Act, a fresh period of limitation will count for a debt from the date on which the borrower acknowledges the debt in writing. The acknowledgement of the debt need not be expressed; it may be by implication. An acknowledgement made after the debt has become time-barred does not save limitation. In such cases, limitation could be saved and the claim revived only if the party enters into an agreement under section 25 of the Indian Contract Act, 1882, binding himself to pay the time barred debt.

(c) Under section 19 of the Limitation Act, a fresh period of limitation will count from the date on which the debtor or his duly authorised agent acknowledges in his hand writing or in a writing signed by him, the payment made towards principal or interest.

(d) In the case of bonds executed by two or more persons jointly, the acknowledgement of debt or payments made by one debtor does not save limitation running against the other parties to the bond. Societies should endeavour to get the required acknowledgement from all the parties to the bond and see that claims against all debtors are kept alive.

(e) Articles 34, 35 and 36 of the schedule to the Limitation Act prescribe the period of limitation in respect of pro-notes. The period of limitation is three years from (i) the date of pronote in the case of pronotes payable on demand. (ii) the due date for repayment in the case of pronotes payable in lump sum, and (iii) the due dates for repayment of each instalment in respect of that instalment in the case of pro-notes payable in instalments. In the case of a mortgage bond, the period of limitation for enforcing the mortgage right is 12 years from the due date (Article 62 of the said schedule). The period of limitation for any other application for which no period has been prescribed elsewhere is three years from the time when the right to apply accrues (Article 137 of the said schedule)

21.2. The provisions of the Limitation Act generally apply to disputes under section 90 of the Tamil Nadu Co-operative Societies Act, subejct to the following modifications namely:-

(a) When the dispute relates to a society in which a Special Officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of limitation shall be six years from the date of order issued under section 88 or section 137, as the case may be.

(b) When the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or (c) of sub-section (1) of section 90 the period of limitation shall be six years from the date on which the act or omission with reference to which the dispute arose took place. The period of limitation of six years does not apply to all disputes between a society or its board and its past board, past officer, past agent or past servant of the society. It applies only to dispute resulting from a breach of duty as against disputes for omission or failure to fulfil contract. Instances coming under the former category are (i) grant of loans in excess of the limits fixed in the by-law, (ii) use of funds for purposes not provided for in the bylaws, (iii) omission or failure to take timely action to recover loans, (iv) omission or failure to make proper arrangements to prevent malpractices on the part of the employees, or (v) such other act, neglect of duty which would result in loss to societies. The disputes coming under the latter category may be money disputes or claims for money which an employee or a former office bearer might have acknowledged or a suit for money had and received or as between principal and agent. These latter cases will be governed by the relevant provisions of the law of limitation. The six year period of limitation provided for in section 90 (9) (ii) should be computed from the date of the act or omission. Disputes in respect of or in connection with any election should be referred to the Registrar within two months from the date of declaration of the result of such election with reference to which the dispute arose. In calculating the two months period, the date of declaration of the result of the election should be omitted and only two calender months should be taken as the word 'month' is defind in the General clauses Act as the ' calendar month'. Thus, if the date of declaration of the results of the election is 14th September of the year, the period of two months will expire on 14th November of that year.

Power to inspect property.

22. Rule 107 (3) provides that the Registrar, the arbitrator or arbitrators or other persons deciding a dispute may either on their own motion or on the application of any party to the dispute, inspect any immovable property which is the subject-matter of such dispute provided that no such inspection shall be made without giving notice to both the parties to the dispute.

Attendance of legal practitioners.

23.There is no embargo on the appearance of the legal practitioners. However, nothing prevents the officer deciding a dispute from allowing the legal practitioners to represent the parties in any particular case, where such appearance is considered helpful to the disposal of the diispute. However, in cases falling under section 90 (1) (c) of the Act, which are generally of a complicated nature, permission should not be refused for the appearance of legal practitioners. In arbtration cases, in which legal practitioners are permitted to appear on behalf of the contending parties, they have to file a vakalathnama, affixing on it court-fee lables to the value of Rs.20/-. Two or three defendants in an arbitration case can be represented by one and the same advocate filing a single vakalathnama, if their defence is common. If the defences of various defendants are conflicting, one advocate should not be allowed to represent all such defendants. The application fee for permission to engage a lawyer is Rs.10/-

Previlages of arbitrators.

24. Arbitrators and other persons deciding the dispte under section 90 of the Act are entitled to use service postage stamps.The honorary arbitrators are also entitled to travelling allowance at the rates admissible to Government Servants in Grade III in annexure I to the Tamil Nadu Travelling Allowance Rules and Deputy Registrars are empowered to pass their travelling allowance claims. All awards issued are exempt form stamp duty and they can be issued on plain paper.

Cost of dispute.

25. Schedule III of the Rule 7 (a) of rule 107 prescribes the following fees for arbitration plaints: —

		Rate of Fees Rs. P.
(a)	Plaint relating to monetary dispute:	
	(i) When the amount or value of the subject matter in dispute is Rs.1,000/-or less.	20.00
	(ii) When the amount or value of the subject matter in dispute is more than Rs.1,000/- but does not exceed Rs.10,000/-	30.00

		Rate of Fees Rs. P.
	(iii) When the amount or value of the subject matter in dispute is more than Rs.10,000/- but does not exceed Rs.50,000/-	50.00
	(iv) When the amount or value of the subject matter in dispute is more than Rs.50,000/- but does not exceed Rs.1,00,000/-	100.00
	(v) When the amount or value of the subject matter in dispute is more than Rs.1,00,000/-	200.00
(b)	Plaint relating to possession of immovable property resumed by the society from a member for breach of conditions of assignment or allotment.	20.00
(c)	Plaint relating to non-monetary dispute	400.00

Delegation of the powers of a Registrar under section 90.

26.The powers of a Registrar under section 90 have been conferred on the Deputy Registrars without any restriction and on the Co-operative Sub-Registrars, subject to the restriction that they can exercise them under clause (c) of sub-section (1) of section 90 only in respect of cases involving a sum not exceeding Rs.2,00,000/-. Sub-section (2) and (3) of section 90 confer powers on the Cooperative Sub-Registrars to transfer the disputes to any person subordinate to and enpowered by them or refer them for disposal to an arbitrator or arbitrators. The Cooperative Sub-Registrars should not, however, refer the disputes entertained by them for disposal to any other person but should themselves dispose of the disputes in all cases. The Cooperative Sub-Registrar should maintain all the registers and accounts required to be maintained by them in the exercise of the powers conferred on them under section 90. They should furnish the necessary particulars connected with departmental revenues under arbitration to theDeputy Registrars concerned every month. They should also send monthly progress reports on the receipt and disposal of arbitration references by them to the Circle Deputy Registrar, who in turn will include these figures in the progress reports submitted by them to the Registrar. As the Cooperative Sub-Registrars have no independent offices of their own, after the completion of the proceedings relating to a dispute and after the decision award or order has been passed all such files should be handed over to the office of the Deputy Registrar under acknowledgement for safe custody.

Claims under section 90 (1) (d)

27. Arbitration claims filed by one registered society against other society will fall under section 90 (1) (d) and such claims should be taken on the files of the Deputy Registrars themselves and disposed of. Deputy Registrars should

report to the Registrar for his information all cases of arbitration references filed by one society against another except those filed by central banks against Primary Agricultural Cooperative Banks.

Disposal of arbitration claim relating to societies in which Deputy Registrars are Ex-officio Directors.

28. There may be instances,where arbitration claims pertaining to a society in which the Deputy Registrar is holding office as a nominee of the Government on the board of the society, may be refered to him for decision. In the disposal of such cases, the Deputy Registrars are expected to exercise the powers vested in them under the statute in a judicial manner and his position as a member of the board of the society has nothing to do in the matter. There is, therefore, no need for the transfer of such cases to other Deputy Registrars.

Disposal of arbitration claims relating to societies where the Deputy Registrars were the Chief Executive and the plaintiffs.

29. There may also be instances, where the Circle Deputy Registrar has to dispose of arbitration claims relating to a society which were earlier filed by him in his capacity as Chief Executive of the concerned society. In such cases the cooperative institution as such is the plaintiff and on behalf of the cooperative institution the Deputy Registrar working as Chief Executive had to file arbitration claims in pursuance of the bylaws of the Cooperative institution. Hence the Circle Deputy Registrar who had to file arbitration claim on behalf of the cooperative institution himself is personally not the plaintiff. The Circle Deputy Registrar may therefore dispose of the cases in a judicial manner without entertaining any doubt about the propriety of enquiry and disposing of the case since there can be no personal interest or bias influencing his decision. If the Circle Deputy Registrar still feels that it would not be normally proper on his part to dispose of the cases by himself, he can authorise some of his subordinates to dispose of them.

Exercise of powers under section 90 by Deputy Registrars working at Chief Revenue Officers of central banks.

30. With a view to expedite the disposal of arbitration references, Deputy Registrars working as Chief Revenue Officers of the Central Banks are also delegated with the powers of a Registrar under section 90 of the Act in respect of monetary disputes pertaining to the loans issued by Primary Agricultural Cooperative Banks indebted to the Central Banks subject to the conditions that the Deputy Registrars themselves should entertain and dispose of the claims. The Deputy Registrars working in Central

Banks delegated with the powers of a Registrar under section 90 should maintain all the registers and accounts pertaining to arbitration. Separate registers and accounts should be maintained for each Deputy Registrar's circle in the jurisdiction of the central bank. They should furnish every month, the particulars connected with departmental revenues under arbitration to the concerned Deputy Registrar with reference to the societies in their respective circles. They should also send a monthly progress report on the receipt and disposal of arbitration references to the concerned Deputy Registrar, who will include these particulars, in the monthly progress report due to the Registrar, besides enclosing it as a separate statement. The records pertaining to closed arbitration cases of a society should be transferred to the concerned Circle Deputy Registrar within whose jurisdiction that society lies. The transfer of cases should, however, take place only after the quarterly local and test audit of arbitration accounts are over.

Conditional attachment of properties before decree.

31. Provision for conditional attachment of properties before the passing of a decree has been made in section 167 and it is dealt with in detail in the chapter on "Execution".

Disputes relating to disciplinary action.

32. Section 90 (1) specifically excludes from its scope disputes relating to disciplinary action taken by a society or its board against its paid servant. Such disputes cannot, therefore, be adjudicated by the Deputy Registrar under this section.

Power to transfer arbitration reference from one officer to another officer.

33. Under section 90 (3), the Deputy Registrar is competent to withdraw any dispute referred to a subordinate officer or arbitrator and (i) decide the dispute him self; or (ii) transfer it for disposal to any person subordinate to and empowered by him; or (iii) refer if for disposal to an arbitrator or arbitrators; or (iv) re-transfer the same for disposal to the person from whom it was withdrawn; or (v) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn. The withdrawal and transfer of disputes under the above section may be made by the Deputy Registrar on his own motion or on an application made to him in this behalf by any party to the dispute. Such withdrawal and transfer should, however, be ordered only if it is necessary either in the interests of justice or to overcome any administrative difficulty in the disposal of the dispute. The disputes entertained by an Officer and transferred or referred to others for disposal, may also be withdrawn by them under section 90 (3).

Return of documents or records.

34. Any original document or record tendered by a party in connection with a dispute may be returned by the person hearing the dispute to the concerned party on requisition in writing after the decision, award or order is given. However, the bond or other document superseded with the passing of a decision, award or order shall not be returned to the party.

Safe custody of records relating to the dispute.

35. The records of the proceedings relating to a dispute and the connected file shall, after the decision, award or order has been passed, and also such records received from Co-operative Sub-Registrars or other persons deciding disputes be kept in safe custody of the Deputy Registrar for a period of 15 years from the date of such decision, award or order. Other miscellaneous arbitration files, such as those relating to election disputes, should be retained for a period of three years from the date of the order and destroyed thereafter.

Execution of awards.

36. The decision, award or order shall be enforced in the manner as provided for under section 143 of the Act, Rules 115 to 138 of the Rules and also as detailed under the Chapter 'Execution'.

Failure to give effect to a decision given in a non - monitory dispute.

37. According to section 160, the board of any registered society or an officer or an employee or a paid servant who fails to give effect to any decision or award under section 90 or where an appeal against such decision or award has been filed to the order passed by the appropriate appellate authority (such decision or award or order not being a money decree), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

Books and registers to be maintained

38. In regard to work connected with arbitration, the following books and registers should be maintained in the forms prescribed for the purpose:—

(a) *Arbitration register.*— All the arbitration claims received with the requisite fees should be entered in this register and assigned arbitration numbers. The numbering of arbitration references in this register should be one serial for each co-operative year. Columns 1 to 6 and 16 should be filled up immediately on receipt of the claims and columns 7 to 9 filled up, when the claims are referred to for arbitration. The remaining columns should be filled up when the claims have been disposed off. When an arbitration claim file is closed, the relevant arbitration number in

this register should be rounded off and the dated initials of the Co-operative Sub-Registrar concerned in the remarks column of the register. The arbitration register should be checked purposively, by the Co-operative Sub-Registrars once in a month and by the Deputy Registrars once in a quarter with a view to expedite the disposal of the pending cases. The certificate of the Co-operative Sub-Registrar for having checked the arbitration register should be submitted to the Regional Joint Registrar along with the monthly progress report on the progress and disposal of arbitration references. The certificate of the Deputy Registrar should be submitted every quarter along with the progress report pertaining to the last month of the quarter.

(b) *Arbitration suspense register:* — Society-wise arbitration suspense register should be maintained in the form prescribed, as in the case of execution suspense register, to know the balance remaining unappropriated in respect of each society. This register should be examined once a month and action taken to refund the unappropriated arbitration fees pending for a long time.

(c) *Arbitration cash book.*— Entries should be made in this cash book in respect of arbitration fees received on the date of receipt of the money in the office. The 'cash' column should be used for cash collections and the 'adjustment' column for moneys received through treasury remittance. Treasury remittances of arbitration fees should be transacted in the cash book only on receipt of triplicate chalans from the treasury. The cash book should be closed on each day on which there are transactions. In the receipts issued, the mode of receipt of money should be stated (i.e), by cash, in person or by money order, etc. No receipt should, however, be issued for arbitration fees remitted through the treasury, as the remitter will have the original chalan with him in token of the payment. In the case of money orders, the name of the remitter, the amount received and the purpose for which it was sent should be noted in the money order coupon by the receiving officer under his dated initials. Money order coupon must be pasted on the counterfoil of the receipt issued to the party. The arbitration fees received in office either in person or by money order should be transacted in the office main cash book also. The refund of the unappropriated arbitration fees should be transacted in the arbitration cash book on the date of receipt of intimation of encashment of the refund voucher.

Audit of arbitration accounts.

39. The audit of arbitration accounts should be done by the Auditors for departmental revenues every quarter before the 15th of the month succeeding each quarter. The audit report should be prepared and submitted in the form prescribed. As soon as the local audit is over, the accounts should be test audited by the Co-operative Sub-Registrars for the audit of departmental revenue accounts. The transactions pertaining to one month in each quarter should be completely checked during such test audit.

Certificate for recovery of sums due to societies.

40.1. Section 150 of the Tamil Nadu Cooperative Soceities Act, 1983 provides for the issue of a certificate by the Registrar for the recovery of any sum due to a society from any of its members. This certificate is a decree within the meaning of "decree" defined in rule 2 (b) of the Tamil Nadu Cooperative Societies Rules, 1988 and it can be executed by filing Execution Petition under section 143 (g) of the Act. This provision has been made irrespective of anything contained in this Act or in any other law for the time being inforce, and also without prejudice to any other mode of recovery which is being taken under the Act or any other law for the time being in force. For obtaining a certificate under this section the society has to make an application in Form No.37 prescribed in Schedule I of the Rules. This application shall be accompanied by a statement of accounts in respect of the sums to be recovered from the members and a chalan evidencing payment of the fee specified in Schedule III of the Rules . The Registrar shall issue a notice in Form No.38 to the member calling upon him to appear personally on the date specified in the notice or to make his written representation, if any, on or before the said date. The Registrar will, after taking into consideration the representation, if any, made by the member will issue the certificate in Form No.39. The certificate issued by the Registrar under this section shall be final and conclusive evidence of the sum due to the society from its members and the same may be recovered as if it were an arrears of land revenue and for the purpose of the recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

40.2. The above provision will enable the societies to collect the over due instalments without foreclosing the loans which are repayable in instalments. This will also enable the societies to collect the overdue instalments and to allow the borrowers to repay the remaining part of the loan on the due dates with normal rate of interest.

CHAPTER V.
EXECUTION

Preliminary -execution of decrees under the Cooperative Societies Acts of 1932, 1961 & 1983

1. Awards are generally obtained against defaulting members of co-operative societies through the machinery of arbitration provided under the Tamil Nadu Co-operative Societies Act. The enforcement of these awards is called execution. Originally, when execution work was not entrusted to the Co-operative Department, the societies used to execute the awards either through the Revenue Department, or through the civil court. This procedure proved to be dilatory and expensive in practice. The Tamil Nadu Co-operative Societies Act, 1932, was therefore amended on the recommendation of the Townsend Committee, providing for the execution of the awards through the Co-operative Department.

Under clause (a) of section 57-A of the Tamil Nadu Cooperative Societies Act, 1932, only a decree obtained by a registered, society including a financing bank or liquidator could be executed through the Department. An award obtained by a member against a registered society could be executed only through a civil court. This restrictive provision that only a decree or order obtained by a registered society could be executed through the Department has been removed in section 91 of the Tamil Nadu Cooperative Societies Act, 1961, which includes 'inter alia' provision for the recovery of the amount due from a registered society to the Government and for the recovery of any sum ordered to be paid towards the expense of a general meeting of a registered society called under section 26 or section 65 of that Act.

Apart from this, the Tamil Nadu Cooperative Societies Act, 1983, has some more new provision and features. Section 143 of the Act enlarges the scope of the Registrar so as to include the Registrar of the State having reciprocal arrangements with the State of Tamil Nadu and any arbitrator appointed by such Registrar. This Act also provides under section 145 for the publications of information regarding members or past or deceased members from whom any debt or outstanding demand is due to the society.Section 147 prohibits officers or servants of registered societies and sale-officers from bidding for, or acquiring or attempting to acquire any interest at sales. Sec 148 empowers the Registrar with the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 for the purposes of recovery under the Act. Under section 149 the financing bank is vested with the powers to proceed against members of registered society in certain cases of default.

Omission of the term Registrar of the district.

2. The rules framed under the Tamil Nadu Co-operative Societies Act, 1932, defined the term 'Registrar of the district as a person subordinate to the Registrar who is empowered to exercise in that district the powers of a Registrar under sections 57-A and 57-AA of that Act. Rules 2 (*h*) of the Tamil Nadu Co-operative Societies Rules, 1963, defined the term 'Registrar of the district' as a person subordinate to the Registar and empowered by him to exercise within a district the powers under section 91 or 92 of the Act. According to this definition no person could function as the Registrar of the district unless he was empowered by the Registrar to function as such. All the Deputy Registrars on general duty and the Co -operative Sub-Registars in charge of execution, working under them had been empowered to function as the "Registrars of the district" within their respective jurisdiction . The Co-operative Sub-Registrars could not function as the Registrars of the district under those rules where the powers of a Registrar had not been conferred on them by the Government. In order to induce more clarity and purpose, the term 'Registrar of the District' has been omitted in the Tamil Nadu Cooperative Societies Rules, 1988. Hence the Deputy Registrars and Cooperative Sub-Registrars on whom the powers of the Registrar under section 143 & 144 have been conferred and who were previously using the term the ' Registrar of the District ' should not now use such term as per the provisions under the sections.

Entertainment of execution applications.

3.1. Every decree-holder seeking recovery under section 143 of the Tamil Nadu Cooperative Societies Act , 1983 of any sum due under a decree should apply in Form No.1 under Annexure IV to the Registrar having jurisdiction over the area, where the cause of action arose and should deposit the necessary costs on a scale prescribed by the Registrar. The application must be signed by the decree-holder and the award which is sought to be executed must accompany the application. If the decree-holder is a co-operative society, the application should be signed by the person authorised in this behalf under its by-laws and it should bear the seal of the society. The decree-holder may indicate in the application the order as to whether he wishes to proceed in the first instance, against immovable property mortgaged to the decree holder or other immovable property or against the movable property of the judgement debtor or against both his movable and immovable properties simultaneously.

3.2. If the judgement debtor resides or the property to be proceeded against is situated in a Deputy Registrar's circle other than that in which the cause of action arose, the Deputy Registrar to whom the application is made should transfer the application to the Deputy Registrar having jurisdiction over the area, where the judgement debtor resides or the property is situated. The former should collect the necessary fees in advance, as in the other cases and forward the application together with a demand notice and a note regarding the fees collected, to the Deputy Registrar concerned for further action.

3.3.If an excution petition has been received with the requisite fees, it should be entered in the execution petitions register and assigned an execution petition number. Execution petitions received without fees should not be entered in that register but should be returned with personal register numbers. All the execution petitions received on a particular day should be scrutinised before the close of the next day or the next day following, regarding the correctness and genuineness of the particulars set forth in the applications or petitions with the records, if any, in the office. While scruitinising the petitions the following points should be particularly examined:-

(a) whether application is in the prescribed form (Form No.1);
(b) whether it is addressed to the Deputy Registrar having jurisdiction over the area where the cause of action arose;
(c) whether it is accompanied by the decree, award, decision, order of certificate (mortgage or surety);
(d) whether the decree, award, decision, order or certificate is within the period of limitation (vide paragraph 60 of this chapter);
(e) whether the prayer of the party is consistent with the decree award, decision order or certificate; and
(f) whether the application is affixed with the seal of the society and signed by the persons authorised for the purpose.

3.4. When the application is for the recovery of any amount due, under a decree,or an order of a Civil Court, the Deputy Registrar should apply to the Civil Court which passed the decree or order for the transfer of the said decree or order and the records specified in rule 6 of order XXI in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908) and on receipt of such application, the Civil Court shall transfer them to the Deputy Registrar.

3.5. After such scrutiny, each petition, which is free from defects and filed in time should be submitted with the necessary initial notices to the Deputy Registrar for admitting it and for approval of the demand notices. After approval, the demand notices should be forwarded to the sale officer. Execution petitions, which are either defective or clearly barred by limitation, etc., should be returned or rejected, as the case may be, with a covering letter, of which a copy should be kept in the records under the execution petition numbers borne by such references. If petition is returned for rectification of any defects or omissions, the order returning it should specify the date by which it should be re-presented. If such a petition is re-presented on rectification after the expiry of the time allowed for the purpose, the option lies with the executing authority to return it to the decree-holder asking him to file an application to excuse the delay in re-presentation and it is within the discretion of the executing authority either to execuse the delay or to reject the application. If the delay in re-presentation is excused, the petition can be proceeded within the original execution petition number. If the delay is not excused and if there is no undue delay in re-presentation, the original petition filed by the decree-holder will, however, operate as a step-in-aid of execution and will entitle the decree-holder to file a fresh execution petition within three years from the date of the final order of rejection. Fee should be charged according to the sheduled rate for all the petitions, whether admitted or returned. If emergent action is prayed for, societies should state this fact clearly in the application specifying also the stage up to which such emergent action is necessary. The Deputy Registrar while admitting petitions should pass specific orders on the prayer for emergent action.

3.6. In cases, where a defaulter dies before the decree has been fully satisfied, an application under sub-rule (1) of rule 116, for execution may be made against the legal representatives of the deceased. Action will then be taken, as if such legal representatives were the judgement debtors as stated below :—

3.7.Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased, which has come into his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Deputy Registrar executing the decree may, of his own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as he things fit.

3.8. Property in the hands of son or other descendant, who is liable under the Hindu Law for the payment of the debt of a deceased ancestor in respect of which a decree has been passed, shall be deemed to be property, which has come into the hands of the son or other descendant as his legal representative.

Execution fees.

4. Under the rules issued by Government, the decree-holder, who applies for execution, must deposit the necessary cost on a scale prescribed by the Registrar. The fees chargeable for the processes of execution shall be at the rates specified in schedule IV or the Tamil Nadu Cooperative Societies Rules 1988. When it is found that society has remitted costs in excess of the scale prescribed, it may apply to the Deputy Registrar concerned for the necessary refund and he will, after due verification, order the refund of the excess fee paid, without references to limitation. If in connection with the proceedings under section 143, any person requires the issue of any process or objects to any process issued or proposed to be issued or requires the adjournment of any proceedings or objects to any order passed he should pay the prescribed fee. Persons employed in serving notices or other processes under the rules should be paid Batta at the rates fixed by the Registrar from time-to-time.

Order in which proceedings shall be taken.

5. Rule 120 provides that unless the decree-holder has expressed a desire that proceedings should be taken in a particular order, execution shall ordinarily be taken in the following manner:—

(a) Movable property of the judgement debtors shall be first proceeded against, but this shall not preclude the immovable property being proceeded against; simultaneously in case of necessity.

(b) If there is no movable property, or if the sale proceeds of the movable property, or properties attached and sold are insufficient to meet in full the demand of the decree-holder, the immovable property mortgaged to the decree-holder, or other immovable property belonging to the judgement debtor may be proceeded against.

Procedure in attachment and sale of movable property.

Procedure in distraint of movables.

6. Rule 121 sets forth the procedure to be observed in the distraint of movable property. The (Form No.2) demand notice (order to distraint) should be signed by the Registrar (Deputy Registrar or the Co-operative Sub-Registrar) affixed with his seal and forwarded to the sale officer, who is empowered by him. The sale officer who should render the process may be named in the demand notice by his office and not by his name. The demand notice, in which the name of the judgement debtor and the amount due should be set forth, constitutes the authority for the sale officer for making the distress. If the number of judgement debtors to be proceeded against in an execution petition is more than one, as many number of demand notices as there are judgement debtors plus one copy of the notice for office use will be necessary. The particulars given in the demand notice should be identical in all the copies of the notice; for instance, the names of all the judgement debtors to be proceeded against must be noted in each copy of the notice. No date need be fixed for the service and return of this notice as the rules do not prescribe that a date should be fixed for this purpose.

Initimation to the decree holder.

7. The previous notice to the decree-holder mentioned in rule 121 (1), should be signed and issued by the sale officer in the prescribed form (Form No.3). The date on which the distraint is propsoed to be made should be clearly specified in the notice. Only one date must be specified for the purpose. The names of the judgement debtors whose properties will be distrained, and the execution petition number should be mentioned in the notice. This notice should be sent sufficiently in advance, if the place of distraint is diffierent from the headquarters of the soceity. If, in an execution petition there is more than one judgement debtor to be proceeded against and if the sale officer proposes to take up the distraint of the properties of all the judgement debtors on the same day, only a single notice should be issued by him to the decree-holder, noting therein the names of all the judgement debtor concerned. Separate notices should be sent only if the distraint of the properties of the several judgement debtor in the same execution petition is proposed to be taken up on different dates. A separate notice should ordinarily be sent to the decree-holder, when distraint in respect of each execution petition filed by him is proposed to be made; but, if

distraints are proposed to be made on the same day, in respect of all the execution petitions filed by him, it is enough if a single notice is issued. The following table will make the position clear, as to the number of notices to be issued and the fee to be levied for them:—

Distraint details	Number of notice in Form No.2 to be issued.	Fee to be charged.
	(1)	(2)
If the distraint of movables of several judgement debtors in one and the same execution petition is to be taken out on the same date.	A single Notice	(i) A Single fee for the service of notice No.3 if served before hand. (ii) No fee if served on the date of distraint.
If the distraint of movables of several judgement debtors in one and the same execution petition is to be taken out on different dates.	Separate notice for each date of distraint.	Do
If the distraint of movables of judgement debtors in several execution petitions of the same decree-holder is to be taken out on the same date.	A single notice (the fact of service of this notice should be noted in all the execution petitions).	(i)Seperate fee for the service should be charged for each execution petition mentioned in notice No.3, if served beforehand. (ii) No fee, if served on the date of distraint.
If the distraint of movables of judgement debtors in several execution petitions of the same decree-holder is to be taken out on different dates.	Separate notice for each date of distraint.	Do

7.2. On the day notified to the decree-holder, the sale officer should proceed to the village for distraining the property of the judgement debtors and serve the demand notice upon him, if he is present. If the judgement debtors is absent, the sale officer should serve the demand notice on some adult member of his family, or on his authorised agent, or where such service cannot be effected, should affix the notice on some conspicuous part of his residence. This notice must be served by the sale officer only and not by his office assistant. The sale officer must note, under his initials and date, on the reverse of the notice, the mode of service, date of service and the

result of the service of the demand notice. If the amount due together with expenses be not at once paid, the sale officer should make the distress. Such distress should be made only after sunrise and before sunset and not at any other time and it should be proportionate to the sum due by the judgement debtor together with interest and all expenses incidental to the distraint, detention and sale. The sale officer should not distraint the movable properties mentioned as exempt from attachment in the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Central Act V of 1908). (Annexure II)

7.3. The distraint should not be adjourned at the instance of any agent of the decree-holder society, unless the latter is authorised in writing in this behalf. Such authorisation letter in favour of an agent should invariably be filed along with the execution petition.

7.4. The sale officer will then list out the articles distrained in form No.4 and serve one copy thereof to the judgement debtor and obtain his acknowledgement. He will also issue to the judgement debtor a notice of sale in form No.5 intimating the place, the date and the hour at which the property attached will be sold, if the amounts due are not previously paid. A copy of this notice should be submitted to the Deputy Registrar along with the report of attachment. In the absence of the judgement debtor or his authorised agent or any adult member of his family, the sale officer should a fix the list of properties attached on the usual place of residence of the judgement debtor endorsing thereon, the place where the property will be lodged or kept and an intimation of the place, day and hour of sale. Ordinarily fifteen days should elapse between the date of service of this notice and the date of sale. Where, however, the articles attached are subject to speedy and natural decay, or when the expenses of keeping it in custody are likely to exceed its value, the sale officer may arrange to sell it at any time before the expiry of the time limit of fifteen days, after duly informing the judgement debtor and the decree-holder about the sale. Further, if such articles are attached under section 167, the sale officer may sell it any time before the expiry of the said period of fifteen days or before an order is made under sub-section (1) of secton 87, or decision is passed or order is made or an award is given under section 90 or contribution is determined under clause (b) of sub-section (2) of section 139 and deposit the sale proceeds less costs in the nearest Government treasury, unless the amount specified in the order or attachment is paid earlier. Where the property attached comprises crops or

ungathered produce, the date of sale should be fixed sufficiently late, so as to allow time for reaping and gathering.

Entrustment of property and execution of trust deed.

8.1. The sale officer should arrange for the custody of the property distrained with the decree-holder or otherwise. If the sale officer requires the decree-holder to undertake the custody of the property, he shall be bound to do so and any loss incurred by his negligence should be made good by him. If the attached property is live stock, the decree-holder shall therefor be responsible for providing the necessary food. The sale officer may, at the instance of the judgement debtor or of any person claiming an interest in the property attached, leave it in the village or place where it was attached in the charge of the judgement debtor or person at whose instance the property is retained in such village or place, provided that such person executes a bond with one or more sufficient sureties for the production of the property at the place of sale when called for. Such bond is exempt from stamp duty under the Tamil Nadu Stamp Act. If the distrained property is not sold or if the dues are yet to be recovered, the bond should generally be assigned in the name of the society (decree-holder). Deed assigning security bonds to decree-holders or others are exempt from stamp duty. If, such person, on the day appointed, fails to produce the attached property, the remedy lies in taking action on the security bond executed by him. As the bonds are subject to limitation, action will have to be taken in a civil court, to enforce them within three years of their execution. The Deputy Registrars may furnish the central banks concerned with quarterly statements giving details of security bonds pending enforcements so that the latter may take action to enforce them, before they get time-barred.

8.2. In the intimation sent to the decree-holder society in regard to the closure of an execution petition, the value of the bond assigned should be certified as part satisfaction of the decree. A corresponding entry should also be made in the execution petition register. No set-off receipt need be obtained from the society before making the assignment; nor need the Deputy Registrar insist on the decree-holder crediting the value of the bond forthwith to the loan account of the defaulter. The matter may be left to be settled by the parties themselves. But, should the decree-holder file a fresh execution petition in respect of the same decree, the Deputy Registrar should, before admitting it, insist on the value of the bond assigned in the previous execution petition being credited to the

loan account of the judgement debtor. If the decree-holder applies for transfer of the decree to a civil court for further execution, the amount of the bond should be certified as part satisfaction.

Distrained cattle or property not to be used.

9. The sale officer should not work the bullocks or cattle, or make use of the goods or effects distrained; and he should provide necessary food for the cattle or livestock, the expense of attending which shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of their being sold.

Distrained crops-how dealt with.

10. If crops or ungathered produce of the land belonging to defaulter are attached, the sale officer may cause them to be sold when fit for reaping or gathering, or at his option may cause them to be reaped or gathered in due season and stored in proper places until sold. In the latter case, the expenses of reaping or gathering and storing such crops or products should be defrayed by the owner upon his redeeming the property or from the proceeds of the sale in the event of its being sold.

What places sale officer may force open.

11. It is lawful for the sale officer to force open any stable, cow house, granary, godown, out-house or other building and he may also enter any dwelling house, the outer door of which may be open, and may break open the door of any room in such dwelling house for the purpose of attaching property belonging to a judgement debtor and lodged therein. It is not lawful for the sale officer to break open or enter any apartment in such dwelling house appropriated for the occupation of women, except as mentioned in the following paragraph.

Powers of sale officer to force open doors, in the presence of police officer.

12.1. Where the sale officer may have reason to suppose that the property of a judgement debtor is lodged within a dwelling house, the outer door of which may be shut, or within any apartments appropriated to woman which, by the usage of the country, are considered private, the sale officer should represent the fact to the officer in charge of the nearest police station.

12.2. On such representation, the officer in charge of the said station will send a police officer to the spot, in the presence of whom the sale officer may force open the outer door of such dwelling house. The sale officer may also in the presence of the police officer, after due notice given fo/r the removal of women and after

furnishing means for their removal in a suitable manner (if they be women of rank who according to the customs of the country cannot appear in public), enter the rooms for the purpose of distraining the judgement debtor property, if any, deposited therein, but such property, if found, should be immediately removed from such room, after which they should be left free to the former occupants.

Penalty for forcibly or clandestinely taking away distrained property.

13. Where it is proved to the satisfaction of any civil court of competent jurisdiction that any person has forcibly or clandestinely taken away property once distrained, the court may on being satisfied that such fraudulent conveyance has been made, order that the property shall be delivered forthwith to the sale officer.

Proclamation of time and place of sale and of property to be sold.

14. The sale officer shall on the day previous to and on the day of sale cause proclamation of the time and place of the intended sale to be made by beat of *tom-tom* in the village, in which the defaulter resides and in such other place or places as the Registrar (Deputy Registar or Co-operative Sub-Registrar) may consider necessary to give due publicity to the sale. The charges for proclamation of sale by *tom-tom* should be paid in the manner indicated in paragraph 33 of this chapter.

Conduct of sale

15. At the appointed time, the property should be put up in one or more lots, as the sale officer may consider advisable, and shall be disposed of to the highest bidder. Unless the Registrar (Deputy Registrar or Cooperative Sub-Registrar) otherwise directs all sales of livestock, agricultural produce, articles of local manufacture and other things commonly sold at the country markets shall be held at such markets in the neighbourhood of the place where the goods were attached, as may appear to be for the greatest advantage of the judgement debtor, regard being had to the prospect of good prices and the saving of the expenses in conveyance and carriage. The sale officers should carefully exercise their discretion in this matter.

Discretion of sale officer to refuse to accept bids.

16.1. It is the duty of the Deputy Registrar to see that the sales are conducted under such supervision as will prevent collusion. In the notices issued by the sale officer, power is reserved to him not to accept a bid even though it may happen to be the highest bid, if, in his opinion, the price offered appears unduly low or for other reasons. The sale officer should exercise this power with very great care and in the best interests of the parties concerned.

16.2.When the highest bid is not accepted, the sale should be postponed to a convenient future date. The Deputy Registrar or the sale officer may in his discretion adjourn the sale to a specified day and hour recording his reasons for such adjournment. Where a sale is so adjorned for a longer period than seven days, a fresh proclamation of the time and place of the intended sale should be made by beat of tom-tom in the village in which the defaulter resides, and in such other place or places as the Registrar (Deputy Registrar or Co-operative Sub-Registrar) may consider necessary to give due publicity to the sale, unless the judgement-debtor consents to waive it. The sale officer acts judicially in passing the order for postponement of the sale and he is, therefore, entitled to the protection given by the Judicial Officers Protection Act, 1850.

Payment on purchase of distrained property.

17. The property shall be paid for in cash at the time of sale or as soon thereafter as the officer holding the sale shall appoint and the purchaser shall not be permitted to carry away any part of the property untill he has paid for it in full. The poundage due to the Government on account of the sale of movables should be appropriated from the sale proceeds and the balance, if any, after paying the amount due (including interest, court cost and other charges) to the decree-holder, shall be paid to the judgement debtor.

Where the purchaser may fail in the payment of the money the property shall be resold and the earnest money deposit of the defaulting purchaser shall be forfeited to Government after defraying there from the expenses of re-sale.

Withdrawal of distress on payment of moneys due

18.1. Where prior to the day fixed for sale, the defaulter or any person acting on his behalf or claiming an interest in the property attached, pays the full amount due including interest, batta and other costs incurred in attaching the property, the sale officer shall cancel the order of attachment and release the property forthwith.

18.2. A sale can be stopped at any time before its conclusion (that is, even after it has been commenced) if the judgement-debtor comes forward to pay the amount due on the execution petition before the sale is knocked down to the highest bidder. In such cases, the sale officer has to order an adjournment of the sale, receive payment and submit the papers to the Deputy Registrar recommending the closure of the execution petition on the ground that there was no need to hold the sale and it was not

therefore held. The order of attachment should then be cancelled and the property released forthwith.

18.3. The order of release should be in writing and the prescribed fee for it should be collected. The order may be served by post or in person, whichever is found economical or convenient. If the parties in custody of the property refuse or fail to release the property, any civil court of competent jurisdiction may, on an application made to it, enforce the order of the sale officer for release of the property, as if it were an order passed by that court.

18.4. Execution files are closed (1) after the action prayed for is over, or (2) if withdrawn by the decree-holder in the meantime, or (3) if dismissed for any act of default on the part of the decree-holder. Full payment of arrears by the judgement-debtor to the Deputy Registrar or to the decree-holder comes under the first category. Withdrawal for any reason except complete or partial satisfaction of the decree would constitute an act of default on the part of the decree-holder attracting the provisions of rule 136. Hence, in all cases coming under the first category, release orders should be issued, wherever the attachment is in force. In all other cases coming under the second and third categories, formal orders should be issued dismissing the execution petitions under rule 136, but no release order is necessary. The release order in cases coming under second and third categories should, however, be followed up by the restoration of the movable peroperty to the defaulter and obtaining his acknowledgement.

Attachment of salary or allowances of Public Officer or servant of railway administration or local authority or Co-operative Society or firm or company.

19.1.Rule 122 prescribes the procedure in regard to the attachment of salary or allowances of employees of the kind referred to and should be strictly followed by sale officers.

19.2. Before proceeding to attach the salary or allowance or wages of a judgement debtor (public officer or servant of railway administration,etc.) the Registrar (Deputy Registrar) should issue a notice in Form No.14(a) asking him to pay the arrears within a reasonable time and recover the usual notice fee. If payment is not made within the time fixed, the Registrar (Deputy Registrar) should issue a salary attachment order in Form No.14 (b) to the pay disbursing officer concerned directing that the amount due shall be withheld from the salary either in one payment or by monthly instalments, as he may direct. In the case of self-drawing officers, this order

should be sent to the Treasury Officers concerned. It should be noted that as per the provisions of section 60 of the Civil Procedure Code, salary to the extent of the first one thousand rupees and two third of the remainder and stipends and gratuties allowed to pensioners of the Governmnet or of a local authority or any other employer are exempt from attachment. The following allowances payable to a person in the service of the Government of Tamil Nadu are also exempt from attachment: — (a) all kinds of travelling allowance: (b) all kinds of conveyance allowance: (c) all allowances granted to meet the cost of (i) uniform and (ii) rations, (d) all allowances accepted as compensation for high cost of living in localities considered by Government as expensive, including hill stations: (e) all house-rent allowances; and (f) all allowances granted to provide relief against the increase in the cost of living caused by war conditions.

19.3.On receipt of the salary attachment order, the pay disbursing officer or the Treasury Officer concerned, as the case may be should withhold and remit the amount due under the order or the monthly instalment, as the case may be, to the office of the Deputy Registrar, who issued the order. Execution fees should be collected only up to the stage of attachment as no sale is held. The order attaching a salary is a self-vacating order and automatically ceases to be effective as soon as its terms have been complied with. Hence, no release order is necessary, if the order attaching salary has been complied with and the loan is discharged. If, however, the loan is discharged by the judgement debtor outside the terms of the attachment order, for example, by making payments direct to the decree -holder, an order releasing the attachment should be issued and necessary release fee charged therefor.

Attachment of debt; share and other property not in possession of judgement debtor.

20.1. Where the movable property to be attached is : (a) a debt due to the judgement debtor in question, or, (b) a share in the capital of a corporation including a bank or a deposit invested, therein, or (c) other movable property not in the possession of the judgement debtor except property deposited in, or in the custody of any Civil Court, the attachment shall be made by a written order signed by the Registrar (Deputy Registrar) prohibiting, (i) in the case of the debt, the creditor from recovering the debt and debtor from making payment thereof; (ii) in the case of the share or deposit, the person in whose name the share or the deposit may be standing, from withdrawing or transferring the share or deposit or receiving any

dividend or interest thereon; (iii) in the case of the other movable property except as aforesaid, the person in possession of it from giving it over to the judgement debtor.

20.2. A copy of such order shall be sent in the case of the debt, to the debtor, in the case of the share or deposit, to the proper officer of the corporation and in the case of the other movable property (except as aforesaid) to the person in possession of such property. As soon as the debt referred to under (a), or the deposit referred to under (b) above matures, the Deputy Registrar may, direct the person concerned to pay the amount to him. Where the share is not withdrawable, the Deputy Registrar shall arrange for its sale through a broker. Where the share is withdrawable, its value shall be paid to the Deputy Registrar or to the party concerned as soon as it becomes payable. In the cases of the other movable property referred to under (c) above the person concerned shall place it in the hands of the Deputy Registrar , as soon as it becomes deliverable to the judgement debtor.

The prohibitory order should be in the prescribed form (*vide Annexure* I*)* and served both on the judgement-debtor and the company, who is in the position of a *garnishee* holding the assets of the judgement-debtor and separate full fees should be charged for the purpose.

Attachment of share or interest in movables.

21. Where the property to be attached consists of the share or interest of the judgement debtor in movable property belonging to him and another as co-owners, the attachment shall be made by the Deputy Registrar by a notice to the judgement debtor, prohibiting him from transferring the share or interest or from charging it in any way.

Attachment of negotiable instruments.

22. Where the property to be attached is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure and the instrument shall be brought to the office of the Deputy Registrar ordering the attachment and be held subject to his further orders.

Attachment of property in custody of Court or Public Officer.

23. Where the property to be attached is in the custody of any Court or Public Officer, the attachment shall be made by a notice to such Court or Officer requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the Deputy Registrar issuing the notice.

Where, such property is in the custody of a Court or the Deputy Registrar of another circle, any question of title or priority arising between the decree-holder and any other person not being the defaulter claiming to be interest in such property by virtue of any assignment, attachment or otherwise shall be determined by such Court or Registrar.

The "Public Officer" referred to above includes a liquidator appointed under section 138 (1) of the Act.

Attachment before decrees.

24. The Deputy Registrar is empowered to attach decrees either for the payment of money or for sale in enforcement of a mortgage or charge. The attachment in these cases should be made in the manner laid down in rule 124.

Procedure in attachment and sale of immovable property

Attachment before sale.

25. Immovable property should not be sold in execution of a decree unless such property has been previously attached; where, however, the decree has been obtained on the basis of a mortgage of such property, it is not necessary to attach it before sale.

Description of immovable property to be given in the application.

26. The decree-holder should give in his application (Form No.1) to the best of his belief and so far as he has been able to ascertain, a description of the immovable property to be proceeded against, sufficient for its identification (that is, specification of boudaries, survey numbers, specification of the judgement debtors share or interest in such property, etc.).

Service of demand notice.

27.1. Before the property is attached for sale or is sold without attachment, a demand notice in the prescribed form (Form No.6) must be served or caused to be served upon the judgement debtor or upon some adult member of his family at his usual place of residence or upon his authorised agent; if such personal service is not possible, a copy thereof should be affixed on some conspicuous part of his last known residence, or on some conspicuous part of the immovable property to be attached and sold or to be sold without attachment, as the case may be. The demand notice should contain the name of the judgement debtor, the amount due including the expenses, if any, the time allowed for payment and in case of non-payment, the particulars of the properties to be attached and sold or to be sold without attachment, as the case may be. The instructions given in paragraph 6 in regard to the

preparation and service of the demand notices prior to the distress of movable properties generally apply to the service of this notice also. But this demand notice can be served even by the Office Assistant of the Sale Officer. If the notice is served by such Office Assistant independently of the Sale Officer, the Office Assistant should endorse on the back of the original notice, the mode of service with his signature and date. On receipt of the original notice from the Office Assistant, the Sale Officer should certify on the back of it the fact of service by the Office Assistant.

27.2. In cases, where the Registrar (Deputy Registrar or Co-operative Sub-Registrar) is satisfied that a judgement debtor, with intent to defeat or delay the execution proceedings against him, is about to dispose of the whole or any part of his property, he should not allow any time to the judgement debtor for payment of the amount due by him and the property of the judgement debtor should be ordered to be attached simultaneously with the service of the demand notice.

27.3. If the judgement debtor fails to pay the amount specified in the demand notice within the time fixed, the sale officer should proceed to attach and sell or sell without attachment, as the case may be the immovable property mentioned in the execution application.

Attachment of property .

28. Where the attachment is required before sale, the Sale Officer should, if possible, cause a notice of attachment in the prescribed form *(Form No.7-Annexure -IV*) to be served on the judgement debtor personally. Where personal service is not possible, the notice should be affixed in some conspicuous part of the defaulter's last known residence, if any. The fact of attachment should also be proclaimed by beat of *tom tom* or other customary mode at some place on or adjacent to such property, in the place of residence of the judgement debtor and at such other place or places as the Registrar (Deputy Registrar or Cooperative Sub- Registrar) may consider necessary to give due publicity to it. The attachment notice (Form No.7) should be prepared and signed by the Sale Officer and should contain the correct description of the property as found in the demand notice, application, etc., and shall set forth that unless the amount due with interest and expenses be paid within the date therein mentioned, the property will be brought to sale. A Copy of this notice should be sent to the decree-holder. Ordinarily ten days' time

may be allowed to the judgement debtor for the payment of the amount due. If the notice is served by the Office Assistant to the Sale Officer he shall endorse on the back of it, the mode of service and the fact of proclamation by *tom tom* with his signature and date. The Sale Officer should also make a note under his initial and date on the back of the notice, the mode of service, by whom served and the date of *tom tom,* etc. The certificate of the Village Administrative Officer of the village or in his absence, some of the respectable residents of the village must be obtained on his notice itself in token of the proclamation made by *tomtom.*

Publication of the notice of attachment in the District Gazette.

29. Where the Sale Officer, at his discretion, so directs, the attachment of property should be notified in the District Gazette.Such notification should be restricted to absolutely necessary cases.

Release of property attached on payment of amount due.

30.1. When prior to the date, fixed for sale, the judgement debtor or any person acting on his behalf or any person claiming an interest in the property sought to be sold, tenders payment of the full amount due together with interest, batta and other expenses incurred in bringing the property to sale, including the expenses of attachment, etc. the Sale Officer, should forthwith release the property after cancelling, where the property has been attached, the order of attachment.

30.2. A sale may be stopped at any time before its conclusion, if the judgement debtor comes forward to pay the amount due on the execution petition before the sale is knocked down in favour of the highest bidder. The instructions in paragraph 18 should be followed in such cases. When the arrears are paid in full by the judgement debtor to the Deputy Registrar, release orders should be issued if any attachment is in force. When an execution petition is dismissed on account of default by the decree-holder, formal orders should be issued dismissing the execution petition under rule 136 but no release order is necessary.

30.3.The order of release should be in writing and may be sent in the manner indicated in paragraph 18 of this chapter.

Sale of immovable property to be proportionate to amount due.

31. It is lawful for the Sale Officer to sell the whole or any portion of the immovable property of a defaulter in discharge of money due, provided always that, so for as may be practicable, no larger section or portion of immovable property shall be sold than may be sufficient to discharge the amount due with interest, and expenses of attachment, if any, and sale.

Production of Encumbrance Certificate.

32.1. Rule 126 (e) (iv)(E) requires the decree-holder to produce an encumbrance certificate from the Registration Department in cases in which immovable property is proceeded against for the realisation of sums in excess of Rs.100 within such time as may be fixed by the Sale Officer or the Deputy Registrar. The encumbrance certificate should be for a period of not less than twelve years prior to the date of attachment of the property sought to be sold. In cases, where property is sought to be sold without attachment, the certificate should be for a period of not less than twelve years prior to the date of the application for execution. The intimation to the decree-holder to furnish the encumbrance certificate should be sent by the Sale Officer immediately after the service of the demand notice in cases where attachment of property is not necessary before sale and immediately after attachment of the property in cases where such attachment is necessary before sale. The correct period for which the certificate is necessary must invariably be furnished to the decree-holder. Ordinarily, *ten* days may be allowed for the production of the encumbrance certificate; but the period may be extended at the discretion of the Deputy Registrar. Where an encumbrance certificate is not obtainable owing to the destruction of the connected records, an affidavit from the Village Administrative Officer in regard to the encumbrance known to him supported by a certificate from the Registration Department that an encumbrance certificate cannot be granted owing to the destruction of the connected records, should be accepted in the place of an encumbrance certificate. Where the amount to be realised is Rs.100 or less, no encumbrance certificate need be obtained; but the decree-holder may be asked by the Sale Officer to furnish a list of alienees or persons having interest in the properties, with their full addresses as far as is known to the decree-holder.

32.2. The sale of any immovable property under the rules is subject to the prior encumbrance, if any, on the property.

Proclamation of sale.

33.1. After the receipt of the encumbrance certificate, the Sale Officer should submit a report (*Part I report*) for fixing a date for the sale of the property. The Registrar (Deputy Registrar or Co-operative Sub-Registrar) will fix the date of the sale and sign the proclamation of the sale (Form No.8-Annexure IV). Three copies of the proclamation should be prepared one for publication on the notice board in the office of the

Deputy Registrar, the second for publication in the notice board of the Taluk Office concerned and the third to be kept in the file as office copy. The proclamation should be got affixed on the notice board of the office of the Deputy Registrar and in the Taluk Office, in the jurisdiction of which the sale is to be held, at least 30 days before the date fixed for the sale. The proclamation copy should be sent to the Taluk Office concerned sufficiently early to ensure its publication in the notice board 30 days prior to the date of sale. The intimation of the Taluk Office regarding the publication should be filed in the execution petition file. One copy of the proclamation should also be got affixed on the notice board of the office of the Deputy Registrar immediately after the proclamtion is signed and the signature of the persons affixing it on the notice board must be obtained in the office copy of the proclamation in the file with his certificate of having affixed the proclamation.

33.2. The proclamation should state the time and place of sale and specify as fairly and accurately as possible (a) the property to be sold; (b) any encumbrance, to which the property is liable; (c) the amount, for the recovery of which the sale is ordered; and (d) every other matter, which the Sale Officer considers material for a purchaser to know, in order to judge the nature and value of the property.

33.3. The description of property in the proclamation of sale is conclusive as to the subject-matter of sale. Hence, the property brought to sale must be clearly specified in the schedule given in the proclamation.

33.4. The proclamation of sale should also be published by beat of *tom tom* in the village on two consecutive days previous to the date of sale and on the day of sale prior to the commencement of the sale. Such proclamation, where attachment is required before sale, should also be made after the attachment has been effected.

33.5. The publication of the sale proclamation by beat of *tom tom* in the village should invariably be entrusted to the decree-holder society with instructions that on the date of sale, the Sale Officer should be furnished with (a) a voucher from the village *vetti* claiming the charges due to him for the *tom tom* made by him on two consecutive days previous to the date of sale and on the day of sale prior to the commencement of the sale; and (b) a statement from him showing the dates and the places, wherein the publication was made by him duly attested to be correct by either the

Village Administrative Officer or by at least three respectable villagers, where the Village Administrative Officer happen to be absent. The Sale Officer may stop the sale if he is not satisfied on this point. If satisfied, he should pay the *vetti* and take his voucher. The charges should be met from a cash advance given to the Sale Officer for the purpose on the imprest system. The rate of *tom tom* charges paid by the Sale Officer may vary according to local conditions; but should not exceed the rate prescribed for the purpose. Fees for the proclamation by *tom tom* should be appropriated at the prescribed rate from the execution fees paid by the decree-holder societies. They should never be paid by the decree-holder societies direct to the persons making proclamation.

33.6. A notice of sale (in Form No.9 -Annexure IV)should also be issued by registered post-acknowledgement due to the decree-holder, judgement debtor and all other persons interested in the property. This notice should be signed by the Deputy Registrar or the Co-operative Sub-Registrar, with his seal. The names of all the judgement debtor and other persons interested in the property must be specified in the notice. It should be ensured that these sale notices reach the judgement debtor and the decree-holder to their right addresses well in time before the conduct of the sale.

Sale by public auction.

34.1. The sale of immovable property should be by public auction to the highest bidder at the time and place fixed for the purpose. Place of sale should be the village, where the property to be sold is situated or such adjoining prominent place of public resort as may be specified. The Sale Officer has discretion to decline to accept the highest bid, where the price offered appearse to be unduly low or for other reasons. The Deputy Registrar or the Sale Officer may, at his discretion adjourn the sale to a specified day and hour, recording his reasons for such adjournment. When a sale is so adjourned for a longer period than seven days, a fresh proclamation as stated in paragraph 33 shall be made, unless the judgement-debtor agrees to waive it. In case of short adjournment of less than seven days, fresh proclamation of sale by beat of *tom tom* is not necessary, but a written notice of the adjournment should be issued by the Sale Officer to the judgement debtor and the decree-holder. The sale shall be held after the expiry of not less than 30 days calculated from the date on which notice of the proclamation was affixed on the notice board of the office of the Deputy Registrar, and of the Taluk Office, whichever is later.

34.2.It is not necessary that each plot or survey number should be put up for sale separately; the plots may be grouped into convenient lots and put up for sale one after the other. Adjacent survey numbers should as far as possible be grouped together. Wetlands, drylands and house properties may be sold in separate lots. The proclamation of sale must be read out in full at the time of sale and initialled publicly as so read by the Sale Officer, who should certify to the fact in his report of sale.

Who may bid.

35.1. Any person, including the judgement debtor, may bid at a sale of property (movable or immovable); but public servants can do so only in conformity with the rules for their personal conduct prescribed by Government. The members of the staff of the Co-operative Department should not bid at such auction.

35.2.The sale officer should not allow any person to bid in the auction unless he remits with the sale officer such amount as may be fixed by him towards earnest money deposit. However, where the decree holder is the bidder and is entitled to set off the purchase money, this requirement should be dispensed with by the sale officer. Immediately after the sale is over, the earnest money deposit of unsucessful bidders should be refunded to them and that of the successful bidders should be adjusted towards the purchase money.

Initial deposit by purchaser and resale on default.

36. A sum of money equal to fifteen per cent of the price of the immovable property must be deposited by the purchaser, in the hands of the Sale Officer at the time of the purchase; in default of such deposit, the property should forthwith be resold and the earnest money deposit of the defaulting purchaser should be forfeited to Government after defraying there from the expenses of the resale. The Sale Officer should dispense with these requirements, when the decree-holder is the purchaser and is entitled to set off the purchase money under the rules.

Time for payment of the balance of purchase money.

37. The remainder of the purchase money and the amount required for the stamp-paper for the certificate of sale should be paid within fifteen days from the date of sale and this fact should be intimated to the auction purchaser by the Sale Officer. In calculating the number of days, the date of sale should be excluded. If the last day fixed for payment happens to be a holiday, the next day on which the office is open should be taken as the last day for payment. The amount required for

the stamp-papers should be remitted in cash only. Deposit of stamp-paper, cannot be construed as a payment of the amount. The time for payment of the cost of the stamp-paper may, for good and sufficient reasons, be extended at the discretion of the Deputy Registrar up to 30 days from the date of sale. In calculating the amounts to be paid, the purchaser, if he is the decree-holder, shall have the advantage of any set off to which he is entitled.

Set off of purchase money.

38. Where the decree-holder is the purchaser of the immovable property, the purchase money and the amounts due on the decree should be set off against one another and the Sale Officer should accordingly enter up satisfaction of the decree on whole or in part. To prevent the office-bearers of the societies from enjoying the produce of the properties purchased in auction, it is necessary that the transactions should be recorded, in the books of the societies promptly. As soon as the sale is held, the Sale Officer should obtain a set-off receipt from the society, which should make a suspense entry for the purchase amount crediting the defaulter and debiting the property account. When the sale is confirmed, adjustment entries should be made crediting the concerned loan account and debiting the defaulter. In the event of the cancellation of sale, the initial entries will have to be reversed.

Forfeiture in default of payment.

39. If the purchaser fails to pay the balance of the purchase money and the cost of the stamped paper within the period mentioned in paragraph 37, the deposit may, if the Deputy Registrar thinks fit, after defraying the expenses of the sale be forfeited to Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold. Anything paid by the auction-purchaser in excess of 15 per cent of the purchase money shall not, however, be liable to be forfeited to Government.

39.1. It is not obligatory on the part of the Deputy Registrar to forfeit the deposit. There may be cases in which the purchase money or the cost of the stamp is paid after the expiry of the period mentioned in paragraph 37 on account of circumstances over which the purchaser had no control or for other good reasons. The Deputy Registrar may, if he thinks fit, condone the delay in payment of the balance and accept the payment. provided the judgement-debtor, the purchaser and the decree-holder agree in writing to the procedure. In such cases. The original sale itself will be deemed to be a resale.

Resale-recovery of deficiency of price.

40.1. Any deficiency of price, which may result by reason of the purchaser's default and all expenses attending such resale shall be certified by the Sale Officer to the Deputy Registrar and shall, at the instance of either the decree-holder or the judgement debtor be recoverable from the defaulting purchaser under the provisions of rule 135 (4) . The costs, if any, incidental to such recovery shall also be borne by the defaulting purchaser. Form No. 31, Schedule I of Appendix E of the Civil Procedure Code should be adopted in drawing up the certificate referred to above. The certificate should invariably be given by the Sale Officer, who holds the resale at the time of the submission of the sale report. If the decree-holder or the judgement-debtor requires the deficiency of purchase money to be recovered from the defaulting purchaser, he should file an execution petition before the Deputy Registrar with the necessary fees.

40.2. Where the property, on the second sale, fetches a higher price than at the first sale, the defaulting purchaser at the first sale, shall have no claim to the difference or increase. A copy of the notice in Form No.9 issued prior to the conduct of such resale should be sent to the defaulting purchaser also.

Need for fresh proclamation for resale.

41. Every resale of immovable property, in default of payment of the amounts mentioned in paragraph 37 within the period allowed for such payment, should be made after the issue of a fresh proclamation in the manner and for the period mentioned in paragraph 33.

Application to set aside sale on deposits.

42.1. Where immovable property has been sold by the Sale Officer, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply under rule 127 to have the sale set aside, on his depositing with the Deputy Registrar (a) a sum equal to 5 per cent of the purchase money for payment to the purchaser, and (b) for payment to the decree-holder, the amount of arrears specified in the proclamation of sale for the recovery of which the sale was ordered together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount less any amount which may, since the date of such proclamation have been received by the decree-holder.

4.2.2. If such deposit and application are made within 30 days from the date of sale, the Deputy Registrar shall pass an order setting aside the sale and shall repay to the purchaser the purchase money so far it has been deposited, together with the 5 per cent of the purchase money deposited by the applicant. If more persons than one have made deposit and applied as stated above the application of the first depositor to the officer authorised to set aside the sale (Deputy Registrar) shall be accepted.

42.3. The mere depositing of the amount will not, however, be sufficient to cancel the sale; the necessary application has also to be made therefor, as under the rule, and it is imperative that both the deposit and the application should be made within thirty days from the date of sale. In cases, where properties are sold in lots under the same proclamation of sale, the payment of the sale amount of one lot alone (with compensation to the purchaser, further interest, etc.) does not constitute sufficient compliance with the requirements of rule 127.

42.4. If a person applies to set aside the sale of immovable property on the ground mentioned in the next paragraph, he shall not be entitled to make an application under rule 127.

Application to set aside sale on ground if irregularity or fraud.

43. Under rule 128 the decree-holder or any person entitled to share in a rateable distribution of the assets or whose interests are affected by the sale may, at any time within 30 days from the date of the sale of the immovable property apply to the Deputy Registrar to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it; provided that no sale shall be set aside on the ground of irregularity or fraud unless the Deputy Registrar is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud. Such applications or objection petitions should not be entertained without the payment of the prescribed objection fees. The enquiry into such petitions should be conducted by the Deputy Registrar himself and not by the Sale Officer, who conducted the sale. If the application is allowed the Deputy Registrar should set aside the sale and may direct a fresh one.

Power of the Registrar to set aside sale *suo motu*.

44. If the Deputy Registrar has reason to think that the sale ought to be set aside, notwithstanding that no application has been made or on grounds other than those alleged in any application, which has been made and rejected, he may, after, in writing set aside the sale.

Return of deposit or purchase money.

45. Whenever the sale of any immovable property is set aside, or not confirmed, the deposit, or the purchase money, as the case may be, must be returned to the purchaser.

Confirmation of sale and issue of sale certificate.

46.1. On the expiry of thirty days from the date of sale, if no application to set aside the sale is made (or if such application has been made and rejected) the Sale Offcer should submit the execution file to the Deputy Registrar with his report; in the prescribed form. (Part I A proceedings of the sale and Part II - Annexure IV). If a resale is conducted consequent on the cancellation of the original sale, a report in Part III should also be submitted by the Sale Officer. The questions in these reports should be fully and properly answered by the Sale Officers. References to the pages in the execution file should be made to enable the Deputy Registrar to pass orders in the matter quickly. After satisfying himself that the sale has been conducted properly and in accordance with the rules, the Deputy Registrar should confirm the sale and issue an order to that effect. It should be noted that the decree-holder is entitled to payment of interest on the amount due up to the date of confirmation of the sale. Immediately thereafter, a sale certificate in the prescribed form (Form No.10) should be granted to the purchaser by the Deputy Registrar.

46.2. This certificate should be on a stamped paper bearing the seal and signature of the Deputy Registrar. The stamp duty payable on this certificate is the same as that charged on similar certificates issued by the civil courts and the Revenue Department. No certificate should be issued on a plain paper. The cost of stamped paper collected should be kept in the treasury under revenue deposit and when the sale is confirmed, the necessary non-judicial stamped paper should be obtained officially from the treasury for the issue of the certificate. The certificate granted shall state the property sold and the name of the purchaser and it shall be conclusive evidence of the fact of the purchase, in all courts and tribunals, where it may be necessary to prove it and no proof of the seal or signature of the Deputy Registrar shall be necessary unless the authority, before whom it is produced, shall have reasons to doubt its genuineness. In the description of property to be given in the certificate, the properties sold under different lots should be mentioned separately with the purchase money of each lot noted against it.

46.3. An order of confirmation or cancellation of sale made under rule 129 shall, subject only to the provisions of section 153 of the Act, be final and shall not be liable to be questioned in any suit or other legal proceedings.

46.4. If due to clerical error, an item of immovable property has been wrongly described in survey number or extent in the notices issued under rule 126 and in the sale certificate issued under section 129 an erratum or amendment to the sale certificate cannot be issued straightaway. Whenever such defects are noticed, the Deputy Registrar should call for a requisition from the decree-holder for the change or correction proposed to be effected in the sale certificate. On receipt of such a requisition, they should give a notice to the auction purchaser of the property about the change that is proposed to be effected in the sale certificate. If the parties agree to giving effect to the change or correction, the sale certificate may be called back, necessary corrections made and issued under intimation to the Sub-Registrar concerned who will make necessary corrections in the copy of the sale certificate filed in his office. If the parties do not agree to the change, the only remedy in such cases for the Deputy Registrars will be to report the matter to the Registrar to set aside the order confirming the sale, under section 153 of the Act.

46.5. No sale certificate should be issued to a person claiming to be the legal representative of an auction purchaser unless such person produces a succession certificate given by a competent civil court.

46.6. When a property is purchased jointly by two or more persons, only one sale certificate should be issued.

Registration of the certificates of sale of immovable property.

47. Sub-sections (3) and (4) of section 89 of the Indian Registration Act, 1908 require that certificates of sale of immovable property granted by Courts, Revenue Officers and Officers of Cooperative Department should be sent to the registering officer and that he should file them in his Book No.I so that the completeness and continuity of the record of title to immovable property kept in registration offices may be ensured. Every officer granting a certificate of sale of immovable property under the provisions referred to above should therefore send a copy o f such certificate to the registering officer or officers within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is

situate, and such registering officers shall under the Indian Registration Act, file the copy in their Book No.1. Sale certificate relating to immovable property of less than Rs.100 in value are exempt from registration.

Delivery of possession of immovable property by a court of competent jurisdiction in case of resistance.

48.1. Where any lawful purchaser of immovable property is resisted and prevented by any person other than a person (not being the judgement debtor) claiming in good faith to be in possession of the property on his own account, from obtaining possession of the immovable property purchased, any court of competent jurisdiction, on application and production of the relevant certificate of sale, shall cause the propere process to be issued for the purpose of putting such purchaser in possession, in the same manner as if the immovable property purchased had been decreed to the purchaser by a decision of the Court.

48.2. The period of limitation for the purposes of sub-rule (1) shall be regulated by article 134 of the schedule to limitation Act ,1963 (Central Act 36 of 1963) as if the purchase of immovable property is at a public auction sale in execution of a decree of a Civil Court.

Investigation of claimes and objections to attachment of property.

49.1.Where any claim is preferred, or any objection is made, to the attachment of any property on the ground that such property is not liable to such attachment, the Sale Officer should investigate the claim or objection and dispose of it on merits. No such, investigation should, however, be made when the Sale Officer considers that the claim or objection is frivolous. In such cases, he should, however, record the reasons as to why the objection is considered frivolous. No claim or objection petition by any person questioning the right of the decree-holder society to bring the mortgaged properties to sale or claiming an interest or title in them can be entertained by the Sale Officer as it would amount to permitting an attack on the validity of the decree in execution proceedings at the stage of sale.

49.2. Where the property, to which the claim or objection relates, has already been proclaimed for sale, the Sale Officer may postpone the sale pending investigation of the claim or objection.

49.3. Where a claim or an objection is preferred, the party against whom an order is made by the Sale Officer may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if, any, the order by the Sale Officer shall be conclusive.

49.4. When an attachment is released as a result of allowing a petition objecting to such attachment, the order of release should be embodied in the order passed by the Sale Officer under rule 135. No separate release order should be issued, nor should a separate fee be charged for the purpose.

49.5. It should be noted that objection petition under rule 135 is different from the objection petition under rule 128. Both the objection petitions should of course be in writing accompanied by the prescribed fees. But, the objection petition under rule 135 against the attachment made before the sale, whereas the objection petition under rule 128 is made after the sale on the ground of any material irregularity or mistake or fraud in publishing of conducting the sale. While the sale officer is competent to dispose of objection petitions under rule 135, the Deputy Registrar alone is competent to dispose of petitions under rule 128. The party aggrieved by any decision under rule 135 may institute a suit within six months from the date of the order, whereas the party aggrieved by any decision under rule 128 can only seek revision under section 153 of the Act.

Attachment in execution of decrees of several Courts and rateable distribution of assets.

50.1.Rule137 provides for he attachment in execution of decrees of several courts and rateable distribution of the assets. According to this rule where the Sale Officer attaches or has attached any property, not in the custody of any court, which is already under attachment made in execution of a decree of any court, such court shall receive and realise such property and shall determine claims thereto and any objections to the attachment thereof.

50.2.Where the property is under attachment in the execution of decrees of more courts than one, the court, which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the court of the highest grade, or where there is no difference in grade between such courts, the court under whose orders the property was first attached.

50.3. Where assets are held by the Sale Officer and before the receipt of such assets, demand notices in pursuance of applications for execution of decrees against the same judgement debtor have been received from more than one decree-holder and the decree-holders have not obtained satisfaction, the assets, after deducting the costs of realisation, should be rateably distributed by the Sale Officer among all such decree-holders in the manner provided in section 73 of the Code of Civil Procedure, 1908.

The said section 73 is reproduced below: —

73. (1) Where assets are held by a court and more persons than one have, before the receipt of such assets, made applications to the court for the execution of decrees for the payment of money passed against the same judgement-debtor and have not obtained satisfaction thereof, the assets, after deducting the cost of realisation shall be rateably distributed among all such persons; provided as follows: —

(a) Where any property is sold subject to a mortgage or charge, the mortgagee or encumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) Where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the court may, with the consent of the mortgagee or encumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or encumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) Where any immovable property is sold in execution of a decree ordering its sale for the discharge of an encumbrance thereon, the proceeds of the sale shall be applied: firstly in defraying the expenses of the sale; secondly in discharging the amount due under the decree; thirdly in discharging the interest and principal monies dues on subsequent encumbrances (if any), and fourthly, rateably among the holders of decree for the payment of money against the judgement-debtor, who have prior to the sale of the property applied to the court which passed the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of Government".

NOTE: — Application for rateable distribution of assets need not be treated as separate applications; nor should any fresh process be issued. Processes are issued only in respect of the original execution petition filed.

50.4. The following procedure should be followed in cases where proceedings are taken against the same defaulter by the department as well as by the civil court, the person proceeding through the civil court being a private creditor of the borrower: —

(a) In the case of mortgage awards held by societies, the Sale Officer can proceed with the sale of the mortgaged properties even though they might have been attached by the civil court at the instance of a private creditor. In such cases, the remedy available to the private creditor is only against the surplus, if any, in the sale proceeds of the hypotheca after discharging the loan due to the society. The outside creditor should, therefore, move the civil court for attachment of the excess sale-proceeds, if any;

(b) In the case of simple money awards held by societies, if the properties have been first attached by the civil court at the instance of another creditor, further proceedings should be left to that court and the decree-holder society should be advised to apply to the court for rateable distribution of assets. The execution petition should not be closed. The decree-holder society should be furnished with copies of the decrees, etc., to enable it to prefer its claim before the court. If , on the other hand, the Sale Officer has first attached the properties, but received intimation of the attachment by the civil court before the sale is conducted by him, the sale should not be conducted by the Sale Officer, further proceedings should be left to the civil court. The society should in this case also be advised to apply to the court for rateable distribution, furnishing it for this purpose with copies of the award, etc. The execution petition should not be closed, as the attachment will have to be kept subsisting. If, for any reason, the execution before the civil court is not proceeded with, the sale should be conducted by the Sale Officer.

(c) If the existence of subsequent attachment by the civil court is brought to the notice of the Deputy Registrar after the sale by the Sale Officer is over, the court should be informed of this fact and requested to instruct the private creditor (decree-holder) to apply to him (Deputy Registrar) for rateable distribution.

50.5. In cases, where a decree-holder files more than one execution petition against a judgement debtor seeking the attachment and sale of the same immovable property or properties, a single sale purporting to be in execution of all the execution petitions cannot be done. A sale can be held in pursuance of only one execution

petition at a time. If the decree-holder desires to participate in the proceeds of the sale in satisfaction of all the decrees obtained by him against the same defaulter, the only valid and proper course for him will be to get the property concerned attached in one execution petition as a precedent to its sale and have the same property simultaneously attached in the other execution petitions for the purpose of a rateable distribution of the sale proceeds under rule 137. It should be noted that simultaneous attachment in all execution petitions is necessary and only the simultaneous sale in more than one execution petition should not be held. The order of attachment should be clear and specific and there should be no proclamation of sale or notices of sale in the execution petitions in which rateable distribution alone is sought. This is, however, possible only if all such execution petition are filed simultaneously or at any rate before the issue of No.6 notice in the principal execution petition. If No.6 notice has already been served on the judgement debtor in one execution petition, then the course open to the decree-holder is to apply in the other execution petitions for the attachment of surplus sale proceeds, if any in the first execution petition.

50.6. If the decree-holder happens to be the auction purchaser in the sale and desires a set-off against the purchase price, such set-off can be permitted to the extent of the sum due in the particular execution petition in which the sale had been held. If there is any balance due after such set-off, it must be collected in cash and deposited in the treasury in the usual way, within 15 days from the date of sale. The sale-proceeds so realised shall be available for payment in satisfaction of the rateable claims in the other execution petitions by the same decree-holder. But if other outside decree-holders enter the field with applications for rateable, the procedure already indicated should be followed.

Reconveyance of immovable property by a society.

51.1.Where an immovable property purchased by a society as decree-holder is in its possession, the society may with the prior approval of the Registrar reconvey such property to the original owner subject to such conditions as may be imposed by the Registrar. In such cases the original owner should have applied for reconveyance in writing and deposited with the society (a) the amount at which the property was purchased by the society including stamp duty and other charges paid upto the confirmation of sale (b) the interest on the above amount calculated at the maximum lending rate in the case of a credit society and at the maximum borrowing rate in the case of any other society from

the date of purchase till the date of deposit of the amount; and (c) other expenses incurred in relation to such property.

51.2. As the powers of the Registrar under Rule 131 have been conferred on the Regional Joint Registrars in respect of Primary Agricultural Cooperative Banks, such proposals received from the Circle Deputy Registrars for the reconveyance of immovable properties, should be enquired by the Regional Joint Registrars themselves and appropriate decision taken at their level and need not be sent for Registrar's orders.

Private alienation of property after attachment to be void.

52. Where an attachment has been made under the rules, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgement debtor of any debt, dividend or other moneys contrary to such attachment, shall under rule 132 be void as against all claims enforceable under the attachment.

Explanation:- For the purpose of rule 132, claims enforceable under an attachment include claims for the rateable distribution of assets under rule 137.

Dismissal of execution petition or adjornment of proceedings on decree-holder's default.

53. Where any property has been attached in excution of a decree, but by reason of the decree-holder's default the Deputy Registrar is unable to proceed further with the application for execution, he should either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application, the attachment shall cease.

Mode of service of notices.

54. Every notice of process should be in writing, should be authenticated by the seal, if any, of the officer by whom it is issued and should be signed by such officer or by any person authorised by him in that behalf. The service of notices on any judgement debtor should be effected in the manner prescribed in chapter XI of the Rules; or where the mode of service is not prescribed in that chapter, the procedure laid down in rule 112 of the Rules should be followed.

Process Servers to be paid batta.

55. According to rule 117(3) persons employed in having notices or other processes involved in excecution shall be entitled to batta at such rates, as may from time to time, be fixed by the Registrar. The powers of Registrar under this rule has not been delegated to the Joint Registrars or Circle Deputy Registrars.

Contingent charges incurred in execution work.

56. Sale officers may incur contingent expenditure on such items as *tom tom* charges, feeding charges for live stock, cost of conveyance of distrained property, etc.

Cost and charges recoverable from sale proceeds.

57. Where the cost and charges incurred in connection with attachment and sale of movable property or the attachment and sale, or sale without attachment, of immovable property exceed the amount of the cost deposited by the decree-holder under rule 116 such excess shall be deducted from the sale-proceeds of the property sold or the moneys paid by the judgement debtor as the case may be and the balance shall be made available to the decree-holder.

Recovery of costs incurred in civil courts.

58. Cases happen in which decree-holders resort to departmental execution after having proceded against judge ment debtor through the civil courts. In such cases, a request is generally made in the execution applications that the cost incurred by them on the execution through civil courts may also be recovered along with the decretal amounts and paid to them. These may be collected from judgement debtor by the Deputy Registrar as the words *"costs of process"* occuring in section 143 of the Ac t cover such cases. It is, however, within the discretion of the Deputy Registrar to collect the entire costs or a portion of a such costs after satisfying himself with reference to the details of expenditure incurred that the costs sought to be recovered are reasonable and are in accordance with the rules obtaining in civil courts. It should be particularly noted that the travelling allowance and other cost of the agent deputed by the society to represent it at the time of distraint, etc., is not recoverable from the judgement debtor.

Execution of decrees obtained from civil Courts.

59. Decrees of civil courts held by societies can be executed through the department under section 143 of the Act, though such decrees may be against non-members.

Execution of time-barred decrees.

60. According to article 136 of the schedule to the Limitation Act, 1963, which has come into force on 1st January 1964, any decree or order of any court should be sent up for execution wihtin twelve years from the date on which the decree on order becomes enforceable. The date on which the decree or order becomes enforceable need not be the date of the decree or order. Where there has been no appeal, the date of the final decree or the order of the appellate court, (if favourable to the decree-holder) or the date of withdrawal of the appeal will be the date

on which the decree or order becomes enforceable. If a decree was filed for execution within time, but execution petition was for some reason or other closed before it was fully satisfied the decree should be filed again for execution before the expiry of the three years from the date on which the previous execution petition was closed; otherwise, the decree will get time-barred. To keep a decree alive, execution petitions will have to be filed from time to time within three years of the date of closure of the previous petition. Even if action is taken as above from time to time, a decree gets completely timebared on the expiry of twelve years from the date on which the decree or order becomes enforceable, unless at the time of expiry of twelve years it is actually under execution. In which case it retains life till the execution petition is withdrawn, closed or dismissed. An execution petition can, however, be entertained even beyond this period of twelve years if it falls under the scope of section 17(2) of the Limitation Act, 1963. This section provides that where a judgement debtor has by fraud or force prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgement-creditor made after the expiry of the said period, extend the period for execution of the decree or order provided that such application is made within one year from the date of the discovery of the fraud or the cessation of the force, as the case may be.

60.2. When once a decree becomes time-barred, further acknowledgement of debt on the decree cannot give it a fresh life. After a debt is time-barred, there can be no acknowledgement of the debt; there can only be a promise to pay a sum. Such promise will amount to a new contract and a fresh decree will have to be obtained in such a case. The Deputy Registrar will have to examine the question of limitation carefully on receipt of execution petitions and he should himself dispose of any objection received in this regard.

Prompt disposal of execution petitions and their closure.

61.1. Execution petitions admitted by the Deputy Registrar should be disposed of promptly then and there. If the decree- holder societies are not anxious to pursue action, the petitions will have either to be withdrawn by them or they will have to be dismissed by the Deputy Registrar for default. Petitions should not also be kept pending indefinetly for the production of encumbrance certificate. If the encumbrance certificate is not received within the time fixed, the petitions may either be dismissed or the proceedings thereon adjourned to a future date as required under rule 136.

61.2. Execution petitions should be closed only after all costs of execution have been realised in full and all sums collected have been remitted to the proper parties. Closure of an execution petition is not a statutory function and Co-operative Sub-Registrar can attend to it. While doing so, they should satisfy themselves that no further action is pending in them.

Disposal of sale proceeds.

62.1.Where decree-holder societies are indebted to central banks, it is desirable that the sale-proceeds are remitted direct to such banks to the credit of the societies concerned in order to prevent the office-bearers of the latter from re-loaing them to members. The Deputy Registrar should, therefore, instruct societies to state in their execution application that the sale proceeds and other moneys recovered on their behalf may be remitted to the financing banks to the credit of their accounts.

62.2. If a judgement debtor refuses to accept the surplus sale proceeds, if any, the amount should be remitted into the treasury as a revenue deposit and a notice may be issued by registered post informing him that the amount due to him has been deposited in the treasury and that if he does not claim it, within a period to be specified in the notice, it will lapse to Government.

Procedure regarding payment of costs of notification.

63. Whenever any notification is published in the District Gazette, the cost of publication should be ascertained and appropriated from out of the execution fees collected in advance. If the fees paid in advance be not sufficient to cover the cost of publication, the balance should be collected promptly. The fees so appropriated are treated as a revenue to the Co-operative Department like execution fees, while the cost of printing is borne by the Stationery and Printing Department as in the case of non-commercial departments of the Government.

Receipts for payment of amount due.

64. Every person making a payment towards any money dues for the recovery of which application has been made under rule116, shall be entitled to receipt for the amount, signed by the Sale Officer or other officer empowered by the Registrar in that behalf; such receipt shall state the name of the persons making the payment and the subject matter, in respect of which the payment is made. Sale Officers should, therefore, generally issue the receipts and when moneys are paid by the parties in the office of the Deputy Registrar, the Deputy Registrar, or in his absence the Co-operative Sub-Registrar, should issue receipts.

Procedure for recovery of sums due to Government.

65. In regard to the recovery of sums due to Government, the provisions of rules 115 to 137 shall apply subject to the modification provided in rule 139. This rule provides for the recovery of the amounts due to Government in pursuance of the demand issued by the Registrar or other competent authority inclduing the cost awarded to the Government in any proceedings under the Act, as if the Government were a decree-holder and the society or officer or past officer, as the case may be, was a judgement debtor. In all such cases the Deputy Registrars should act in the manner as laid down under rule 139.

Return of transfer of decrees, orders, etc. filed before the Deputy Registrar.

66. Decrees, which have been filed before the Deputy Registrar and which have been satisfied completely, are not required by societies and they should not, therefore, be returned. Decrees,etc.,the execution of which has been stayed after partial collections have been made, may be required by societies when execution proceedings are sought to be renewed. If fresh process is proposed to be taken through the Department, the society may be asked to furnish the execution petition number and the year in which execution was last pursued. The Deputy Registrar should then proceed with the execution of the decree with reference to the previous file.

Help of the VillageOfficer.

67. There are instructions of the Board of Revenue that village officers should render all possible help to sale officers of the Department in carrying out their duties in the villages in connection with execution work. The officers of the Department may, therefore, requistion their help whenever necessary, but they must see that their help is indented on only when necessary.

Procedure in attachment and sale in respect of Agriculture and Rural Development Banks

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Tamil Nadu Land Development Banks Act 1934 Repealed.

68.1. TheTamil Nadu Land Development Banks Act 1934, was repealed and replaced by Tamil Nadu Co-operative Societies Act 1983 and the rules framed there under. A separate Chapter XIV of the Act under the head Agriculture And Rural Development Banks (the term Land Development Banks substituted by the term Agriculture and Rural Development Bank by Tamil Nadu Cooperative Societies (Amendment) Act 50 of 1999 w.e.f. 15.12.1999) from section 111 to section 136 and Chapter XV under the rules from rule 161 to rule 166 deal with these Banks.

68.2. These chapters contain special and supplementary provisions for the quicker recovery of arrears due to these Banks under section 119 where a power of sale without the intervention of the Court is expressly conferred on these banks by the mortgage deed or any other document.

Distraint and sale of produce of the mortgaged lands including standing crops.

69.1. The application for distraint and sale of produce of the mortgaged land may be made by the board of Primary Agriculture and Rural Development Bank for the recovery of any instalment or part of an instalment, which has been overdue for more than a month. In the special circumstances stated in section 123 of the Act, and Rule 165 of the Rules the board of the State Agriculture and Rural Development Bank or the Trustee may also take similar coercive action against a defaulter. The application should be made in form No. I under Annexure VI to this chapter to the Circle Deputy Registrar concerned and it should be signed by a person authorised by the board of the bank. No application should be received unless the costs of distraint and sale are deposited in advance. The fees prescribed for the purpose and instructions regarding their levy are given under Part I to and with some additional details to these banks under part VII in Annexure VII to this chapter. The applications as they are received should be entered in the register of applications maintained in the offices of the Circle Deputy Registrars. A demand notice in form No.II will be prepared in the office signed by the Deputy Registrar concerned and forwarded to the sale officer concerned. The sale officer who should render the process may be named in the demand notice by his office and not by his name. This notice is the authority to the sale officer for making the distress.

69.2. The procedure laid down in rules 116, 117, 119, 121, 132, to 137 shall apply to the distraint and sale under section 118 of the produce of the mortgaged land including the standing crop thereon, as if the Primary Agriculture and Rural Development Bank is a decree-holder and the mortgager, a judgement debtor.

69.3. As soon as the Sale Officer gets the demand notice, he will issue notice in form No. III to the applicant intimating him of the date on which the distress is proposed to be made. On the date fixed for distress, he shall proceed to the village for distraining the property of the judgement debtor. Before a distraint is made, he shall serve or cause to be served upon the judgement debtor, one copy of the demand notice and retain the other with him. The service shall be effected in the manner described in rule 121(2) of the

Rules. There should be no time lag between the service of demand notice (form No.II) and the actual distraint. Immediately after distraint, the distrainer, shall also deliver to the defaulter a list of the property distrained and should give him intimation in form No.IV of the place, the day and the hour at which the distrained property will be sold. If the mortgager does not live in the village where the land is situated and the demand notice cannot be served on the judgement debtor or on some adult member of his family or his authorised agent, a copy of the demand notice shall be affixed on some conspicuous part of the land. A copy of the list of produce distrained together with intimation as to the place and the day and hour at which the produce distrained will be sold should be affixed on the land and a copy of it sent by registered post to the mortgagor to his last known place of residence. Under section 118 of the Act only the produce of the mortgaged land, including the standing crop thereon, can be distrained and that too within a period of one month from the date on which the instalments fell due. The provisions of this section cannot be availed of to distrain the other properties of the borrower. The Sale Officer should make proper arrangements for the custody and preservation of the distrained property till it is sold. He should leave it ordinarily with the applicant bank which is bound to undertake the custody if required by him under rule 121(2) (b) of the rules. He may, at the instant of the defaulter, or of any person claiming an interest in such peroperty, leave it in the village or place where it was distrained, in charge of the person at whose instance, the property is retained in such village or place, provided such person enters into a bond in Form No.V with one or more sureties for the production of the property when called for.

69.4. Under rule 121 (10) of the Rules, fifteen days must elapse before the sale can take place, unless the distrained property is subject to speedy and natural decay, in which case the Sale Officer may sell it at any time before the expiry of the said period of fifteen days. The distrained property must, under rule 121 (18) be released forthwith if, before sunset prior to the day fixed for sale the full amount due, including interest, batta and other expenses incurred in distraining and proclaiming the sale are paid by the defaulter or any person acting in his behalf or any person claiming an interest in the distrained property. Even if the amount is paid on the date fixed for the sale but before the actual conduct of it, the sale need not be held and the procedure outlined in paragraph 18 of this chapter should be followed. The sale should be conducted in

the manner described in section 118 of the Act and sub-rules 9 to 15 of rule 121. If the purchaser fails in the payment of the purchase money the property should be resold in the manner laid down in rule 121 (16).

Sale of immovable property.

70.1.Where a power of sale without the intervention of the court is expressly conferred on the mortgaged banks by the mortgage deed or any other document, section 119 of the Act, in addition to any other remedy available to the Bank confers on the Primary Agriculture and Rural Development Bank, the power of bringing the mortgaged property to sale, without the intervention of the civil court for the recovey of he morgage money or any part thereof or in case of default in utilisation of loan or part thereof or in case of default of payment of the mortgage money or any part thereof. Under Section 123 the Act, the board of the Tamil Nadu Cooperative State Agriculture and Rural Development Bank or the Trustee may direct the board of a Primary Agriculture and Rural Development Bank to take action for the recovery of moneys due to that Primary bank against a defaulter under section 118, 119 or 120 of the Act and if the board neglects or fails to do so, the Board or the Trustee may take such action (section 122 of the Act deals with those cases, where the mortgaged property is wholly or partially destroyed or the security is rendered insufficient and the mortgager has failed to provide such additional security or to repay such portion of the loan as may be determined by the board of the mortgage bank). Before taking action under section 123 the Board of the State Agriculture and Rural Development Bank or the Trustee, as the case may be, should direct the board of the Primary Agriculture and Rural Development Bank to take action for the recovery of moneys due and to report compliance within fifteen days from the date of receipt of such direction.

70.2. Applications for sale of immovable property shall be made in Form No.VI to the Deputy Registrars concerned. The Deputy Registrars should arrange to enter the applications as they are received in the register of applications. No application should be received unless the prescribed costs of proclamation and sale are paid in advance. The Sale Officers should satisfy themselves that the particulars set forth in the application are correct and that the power of sale has been properly authorised.

70.3. The procedures laid down in rules 116, 117, 119 and 126 to 137 shall apply in bringing the mortgaged property to sale under section 119, as if the Primary Agriculture and Rural Development Bank

were a decree holder and the mortgagor a judgement debtor and subject to the modification contained under rule 162 (3) (a) to (c) of the Rules.

70.4. Application under section 119 can be made only after

(a) a notice in wirting requiring utilisation of loan or part thereof, or the payment of such mortgage money or part thereof has been served upon: — (i) the mortgager or each of the mortgagers; (ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same; (iii) any surety for the payment of the mortgaged debt or any part thereof; and (iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(b) default has been made in the utilisation of loan or part thereof in the payment of such mortgage money or part thereof for more than three months after such service.

70.5. On receipt of the application, the Sale Officer should give a notice in writing in Form No.VII to the applicant and to all the persons on whom a notice has been previously served under clause 119 of the Act. He should ordinarily allow a period of fifteen days and shall mention this in Form No. VII. If the amount is not paid within that period, he should issue a proclamation of sale in Form No. VII and publish it in the manner described in rule 126 (2) (e) . The copy intended to be affixed in the taluk office may be sent for compliance to the Tahsildar concerned with a request to report the fact of such affixture. A copy of the proclamation of sale should also be sent to the applicant bank and the defaulter. The Sale should be conducted in the manner prescribed in sub rules 2 (g) to (k) of rule 126 of the Rules.

70.6. Immediately after sale, the sale officer should send all the papers to the Deputy Registrar concerned with his report of the sale, the Deputy Registrar alone has the power to confirm the sales. He should also make a report to the mortgage bank, at whose instance the property was brought to sale, regarding the results of the sale. When the sale has been confirmed and it has become absolute, the Deputy Registrar should under rule 129 of the Rules, grant a sale certificate in Form No. IX to the purchaser of the mortgaged property.

Recovery of moneys due to Agriculture and Rural Development Bank as arrears of land revenue.

71.1. Any money due to a Primary Agriculture and Rural Development Bank or State Agriculture and Rural Development Bank may be recovered as if it were an arrear of land revenue. For the purpose of such recovery, the Registrar or any officer of the State Agriculture and Rural Development Bank or Primary Agriculture and Rural Development Bank authorised by the Registrar in this behalf, shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864.

71.2. If the immovable property of a debtor is brought to sale under the provisions of the Tamil Nadu Revenue Recovery Act, 1864 and if the Primary Agriculture and Rural Development Bank or the State Agriculture and Rural Development Bank is the purchaser at such sale, it need not remit the deposit of 15% of the price as required under clause three of Section 36 of the Revenue Recovery Act. Similarly re-sale in default of payment of deposit or the entire purchase money within the stipulated period provided for in clause four of Section 36 of the Revenue Recovery Act is not applicable to the Primary Agriculture and Rural Development Bank or State Agriculture and Rural Development Bank when purchasing the property brought to sale.

71.3. For any such action under section 120 such bank may apply to the Registrar in Form No. X which shall be accompanied by an extract of the loan ledger and a copy of the Board's resolution requesting action under the Tamil Nadu Revenue Recovery Act 1864.

Attachment before judgement.

72.1. Section 167 of the Tamil Nadu Cooperative Societies Act, provides for the conditional attachment of property before judgement in the following cases:

(a) On the application of a registered society in respect of a reference made to him under sub-section (1) of section 90.

(b) On the application of a liquidator appointed under section 138 in respect of proceedings of such liquidator for determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of section 139.

(c) On the application of the board or liquidator or any creditor to the society or otherwise in respect of any enquiry ordered into the conduct of a person under section 87.

72.2. The Registrar may pass an order for conditional attachment only if he is satisfied for the reasons to be recorded in writing that any party to the reference or the person as the case

may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed. The attachment before judgement under section 167 shall be made in the manner provided in rule 126 of the Tamil Nadu Co-operative Societies Rules, 1988. An order of attachment under section 167 shall have the same effect as if it had been made by a competent Civil Court.

Attachment before judgement not to affect rights of strangers or bar decree-holders from applying for sale.

72.3.Attachment made under sub-rule (1) of rule 140 will not affect the rights existing prior to the attachment of persons, not parties to the proceedings in connection with which attachment was made, nor bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.

72.4. Where property is under attachment by virtue of the provisions of rule 140 and a decree is subsequently passed against the person whose property is attached, it shall not be necessary to apply for re-attachment of the property. The attachment made before judgement will become absolute on passing the award.

72.5. In the case of attachment before judgement, the Registrar has to be satisfied that the apprehension of the society as to the intention of the defaulter to dispose of his properties are real. Where, afer a careful examination, attachment is found to be urgently necessary, the officers may issue the notice prior to attachment requiring the party or the person to furnish security in such sum and within such time and if the security required in the notice is not furnished before such time fixed, the conditional attachment order may be issued. Where the Registrar is satisfied that a judgement-debtor with intent to defeat or delay the execution proceedings against him is about to dispose of the whole or any part of his property, the demand notice issued by the Registrar under rule 119 shall not allow any time to the judgement-debtor for the payment of the amount due by him and the property of the judgement-debtor shall be attached forthwith. A date should be fixed in the warrant itself for the service and return of this order, as otherwise, the sale officer will take his own time to take action in the file. The sale officer should be instructed to serve the order on the party before the date fixed without fail. If, for any reason, the warrant could not be

executed on or before the date, fixed, a fresh warrant will have to be issued. No fee need, however, be charged for its issue.

72.7. The powers of a Registrar under this section have been conferred on the Deputy Registrars; but not on the Co-operative Sub-Registrars. Therefore, only the Deputy Registrars are competent to pass orders of conditional attachment under section 167. Where the Deputy Registrars themselves institute surcharge proceedings on their own motion under section 87, they are competent also to make an order of conditional attachment suo moto under section 167 the Act.

72.8. Where the societies pray for conditional attachment in anticipation of judgement under section 90, they should submit along with the arbitration claim an execution petition, specifying the properties to be attached has to be made before judgement. The arbitration claim should be accompanied by the chalan for the remittance of necessary arbitration fees, whereas the execution petition should similarly be submitted with the chalan for the remittance of execution fees. The arbitration section will first receive the papers and after obtaining orders of the Deputy Registrar for the admission of the claim and for compliance with the prayer for conditional attachment, transfer the execution petition alone with the chalan for execution fees, to the execution section. The execution section should then register the execution petition and issue the orders for conditional attachment.If and when a decree is passed on the arbitration reference file, it should be transferred to the execution petition for further action and should not be issued to the society.

72.6. Where the property conditionally attached is subject to speedy and natural decay or where the expenses of keeping it in custody are likely to exceed its value, the sale officer may sell it at any time before the expiry of fifteen days prescribed in rule 121 (10) or before an order is made under sub-section (1) of section 87 or decision is passed or order is made or an award is given under section 90 or contribution is determined under clause (b) of sub-section (2) of section 120 and deposit the sale proceeds less costs in the nearest Government treasury, unless the amount specified in the order or attachment is paid earlier.

Investigation of claim to property attached before judgement.

73. Where a claim is preferred to property attached under section 167, such claim should be investigated, in the manner and by the authority specified in rule 135.

Removal of attachment when security is furnished or suit dismissed.

74. Where a direction is made for the attachment of any property, the Registrar shall order the attachment to be withdrawn: (a) when the party concerened furnishes the security required together with security for cost of attachment; or (b) when the Registrar makes an order under sub-section (1) of section 87 that the party concerned need not repay or restore any money or property or contribute any sum to the assets of the society by way of compensation; or (c) when the dispute referred to in sub-section (1) of section 90 has been decided against the party at whose instance the attachment was made; or (d) when the liquidator determines under clause (b) of sub-section (2) of section 139 that no contribution need be made by the party concerned.

Recovery of debt.

75. Section 40 (1) of the Tamil Nadu Co-operative Societies Act gives a first charge to a society upon the crops or other agricultural produce or other movables of a member for the raising or purchase of which, a loan was taken from the society by such member. Section 144 provides for the recovery of any debt or outstanding demand due to a society from a member by the sale of the property or interest in property which is subject to a charge under section 40 (1) of the Act. The procedure laid down in rules 141 and 142 should be followed for the recovery of debts under section 144. The powers of a Registrar under section 144 read with rule 141 have been conferred on the Cooperative Sub-Registrars subject to restriction that they will be competent to dispose of applications filed by the Primary Agricultural Cooperative Bank only and that too in respect of cases involving a sum not exceeding Rs.1,00,000/- and with the Deputy Registrar concerned in other cases. It should be noted that the powers of a Registrar under section 144 are distinctly different from those under section 143. While the power under section 143 of the Act relates to the enforcement of a decree, order, decision or award referred to in that section in accordance with the procedure laid down in rules 115 to 137, the power under section 144 relates to the recovery of any debt due to a society by the sale of the property, which is subject to a charge under section 40 (1) of the Act in accordance with the procedure laid down in rules 141 and 142. The forms to be used in connection with the processes under section 144 are furnished in annexure V to this Chapter. The provisions of rules 115 to 139 will, in so far as they are not repugnant to the subject or context, apply to the sale of the property under section 144 as if the society which

made the application is a decree-holder and the member is a judgement debtor { vide rule 141(b)}. The Forms Nos. (4) and (5) (viz., the schedule of articles distrained and the sale notice) used in connection with the sale of movables under section 143 may be used with suitable changes for preparing the schedule of properties seized and for the issue or sale notice under section 144 also.

Publication of information regarding members or past or deceased members from whom any debt or outstanding demand is due to the society.

76.1. In order to induce the members to avoid default in repayment of debts due, a new provision is introduced in the Tamil Nadu Cooperative Societies Act 1963 under section 145 read with rule 143. According to this section, if the financing bank is of opinion that it is necessary or expedient in the public interest or for the purpose of securing the recovery of any debt or outstanding demand due to any society affiliated to the financing bank to publish the names of any present or past or deceased members from whom any debt or demand is due to the society, the names of such members may be caused to be published in such manner as it thinks fit.

76.2. Conditions governing such publication are laid down in Rule 143 which are briefly as follows:-

(a) Prior approval of the Registrar is necessary for publication of names of such defaulting members.

(b) The period of default should exceed six months.

(c) The outstanding debt due should be more than Rs.10,000/- in respect of primary land development bank or Rs.5,000/- in respect of any other credit society.

(d) The list should contain the names of every member from whom the debt is due in excess of the afore-said amounts as on a particular date.

(e) The publication of names shall be by one or more of the following modes:-

(i) by affixing the list in the notice board of the society or of the financing bank or its branches or in any public place or places within the area of operations of the society concerned as the financing bank may consider it necessary to give due publicity.

(ii) by publication through the local dailies and coop. journal in the district approved by the Government.

(f) Every publication shall contain the following information:-

(i) name of the society to which the debt is due;

(ii) particulars of the member or past or deceased member from whom the debt is due(Member's number and name, address, profession or occupation, office held in the society or any other society, if any,extent of land owned or cultivated and the annual income from the profession or occupation as furnished in the loan application); and

(iii) Particulars of the amount due to the society (Loan No., loan amount, amount due date from which due and arbitration claims and execution petition filed, if any),

(g) No member or past or deceased member shall be required to meet any expenses towards the cost of such publication.The financing bank may,however,require the society concerned to pay the cost of publication wholly or partly as may be determined by it.

Power of financing bank to proceed against members of registered society.

77.1. According to section149 and as provided under rule 144, the financing bank may directly proceed against the members of a registered society for the recovery of any debts due by him.

77.2. Where a member of a society has committed default in the payment of any debt due by him to the society, the society shall take action for recovery of the debt within 90 days from the date on which the debt has fallen due.

77.3. When any society is unable to pay its debts due to the financing bank by reason of its members committing default and if such society fails to take action for recovery or in the opinion of the bank, the action taken is not adequate, the financing bank may, after giving an opportunity for making its representations, take action against such defaulting members for the recovery of the debts.

Sale of properties worth Rs.10,000 and above.

78. The sale of properties (movable and immovable), whose upset value is Rs,10,000/- or above, should be conducted by the Co-operative Sub-Registrars incharge of execution work. The Deputy Registrars should appoint the Cooperative Sub-Registrars concerned as the Sale Officers by a specific written order in every case, where the Co-operative Sub-Registrars have to conduct the sales and act as the Sale Officers.

Books and Registers to be maintained.

79. In regard to work connected with execution, the following books and registers should be maintained in the forms prescribed for the purpose: —

(1) Execution cash book : — Moneys received in connection with the execution may be of the following kind: —

(a) fees for execution,

(b) payments towards the decretal debts such as sale proceeds of properties o r voluntary payments made by the parties etc., and

(c) deposits made under rule 127.

In the case of execution fees received, the money should be remitted into the treasury under the head of accounts: —" 0425 Cooperation 00 Cooperation 800 other Receipts AA Eexecution Fees 1 Registrar of Coop.Societies DP Code 0425-00 800 AA 010-SA 18C". Societies should, however, be encouraged to remit execution fees direct into the treasuries. Other moneys received are either disbursed to the parties concerned immediately where it is necessary, or are lodged in the treasury as revenue deposits and withdrawn as and when necessary. It should be noted that purchase money paid by the auction purchaser, amounts attached conditionally, etc., should not be passed on to the decree-holder society immediately, but should be lodged in the treasury as revenue deposit, till the sale is confirmed or cancelled or till the conditional attachment order is lifted or made absolute.

An execution cash book should be maintained by each Deputy Registrar for recording all cash transaction relating to execution work. The transactions should be recorded in this book chronologically. The details for the amounts received and payments made must be clearly stated in the respective columns, showing the particulars of receipts and payments in the cash book. The

classification should as far as possible, be in the terms used below, so as to facilitate correct classification of receipts and disbursements for a given period: —

Receipts **(1)**	**Disbursements** **(2)**
1. Sale proceeds of movable properties.	1. Payments to decree-holder societies directly made.
2. (a) Initial deposits of purchase money in the sale of immovable properties. (b) Balance of purchase money in the sale of immovable properties.	2. Remittance to Central Banks on behalf of decree-holder societies.
3. Part colletions from judgement debtors.	3. Remittances into the treasury under: — (a) execution fees of living societies (b) execution fees of liquidated societies. (c) other receipts, deposits forfeited, etc.
4. Execution fees received — (a) as advance from decree-holder societies. (b) towards poundage in case where decree-holders purchase immovable properties. (c) towards objection fee from petitioners.	4. Refunds to parties like unsuccessfull auction purchases.
5. Revenue deposits withdrawn from the treasury.	5. Stamp paper for issue of sale certificates.
6. Collection by attachment of salary etc.	6. Contingencies.
7. Other items	7. Other items.

Amount received in the office should be remitted into the treasury or central bank, or the society as the case may be, on the same day on which they are received or at least on the next working day. If for any reason this is not done, a note showing the reasons for the delay in remittance should be recorded in the cash book and attested by a responsible officer. Withdrawal of revenue deposits from the treasury and their refund to the parties must be entered in the cash book in the following manner on the dates on which intimation of encashment of refund vouchers is received in the office:—

Receipts (1)	Disbursements (2)
1. Withdrawn from treasury . . . . . R.D. item No.	1.Refund of R.D. item No.
2. Received collection in E.P. No. . . . . of society.	2.Remittance to the decree-holder in E.P. No. . . . .
Received towards cost of stamp paper.	Remitted to the central bank on behalf of decree-holder.
Received towards execution fees (poundage).	Remitted to the treasury towards execution fees.
	Remitted to the unsuccessful auction purchaser.

Chalans relating to execution fees remitted by societies direct into the treasury need not be entered in this cash book; they have to be entered in the subsidiary cash book referred to below. Government subsidy granted to societies working at a loss to meet stamp duty paid by them on sale certificates should not be transacted in this cash book but should be transacted in the office main cash book. Vouchers of the execution cash book may be numbered serially for each quarter to facilitate the quarterly audit of execution accounts. Postings from the main cash book to the other registers should be duly referenced.

At the end of each month, a classified abstract of the transactions during the month should be entered in the cash book together with the abstracts of the sale officers cash book and of the subsidiary cash book. This will be helpful in preparing receipt and disbursement statements for the whole circle and in ascertaining from time to time the total receipts and disbursements under the various heads such as excecution fees, revenue deposits, etc.

(ii) Subsidiary cash book: — All chalans for remittances for execution fees into the treasuries made by the societies direct should be entered in this register; chalans for remittances other than execution fees should not be entered. The details of the triplicate chalans, received from the treasuries, should be entered in this book in the appropriate columns on the dates of their receipt in the office. The triplicate chalans (received from the treasury) should be filed in the voucher file relating to the subsidiary cash book.

Credit for the fees remitted in the chalans should be taken in the month in which the triplicate chalans were first received in the office. No receipt should be issued to the party in such cases as he will have the original chalan with him in token of the remittance.

The subsidiary cash book should be maintained treasurywise, (i.e), a few pages in this register should be allotted to each treasury in the circle for recording receipts in that treasury. The folios of the suspense register (described later) must be entered in the remarks column of this book to facilitate checking.

(iii) *Cash book of the sale officers:*— Each sale officer should maintain a cash book, in the form prescribed, for recording all his cash transactions. The collections received by sale officer should be remitted by him into the treasury or the central bank or the decree-holder societies concerned on the same day on which they are received or if it happens to be a holiday, on the next day without fail. Where it is not possible to do so, the reasons that necessitated the retention of the cash balance must be invariably noted in the cash book. An abstract of the monthly receipts and disbursements in the form prescribed must be entered in the cash book at the end of each month's transaction and a copy of such abstract should be sent to the Deputy Registrar.

In the counter foils of the receipts issued to the parties making payments to the sale officer, the signatures of the parties concerned should be invariably obtained.

(iv) *Execution petition register* :— The appropriate columns in this register should be filled up as soon as each execution petition is received in the office, when the execution petition file is forwarded to the sale officer and when the file is received back from him. The Co-operative Sub-Registrar in charge of execution work should check this register once a month before the 10th and see that it is maintained properly.

There is no need to maintain separate registers to watch the cases in which vakalaths have been filed by advocates appearing before sale officers on the cases in which security bonds have been assigned in favour of decree-holder societies. It is enough if in the "Remarks" column of the execution petition register, a note is made against the particular exeuction petition that a vakalath has been filed or that a security bond has been assigned to a decree-holder, etc. A list of such items should, however, be made out on the first or last page of the execution petition register to facilitate the checking of the items.

(v) *Cost appropriation register:* — This register is mainly intended to watch how the execution fees collected from societies are appropriated towards the value of services rendered in

respect of each execution petition. In the register, a separate page is set apart to note the execution fees received in respect of each execution petition (by appropriation from the suspense register described later) and the value of services rendered from time to time as recorded on the fee slip (in the prescribed form) attached to each execution petition. Any surplus fee available after the closer of each execution petition should be credited back to the concerned society's account in the suspense register; it should not be transferred to another execution petition without passing through the suspense register. No transfer of the surplus fees from one pending execution petition to another pending execution petition should ordinarily be resorted to. As both the section assistant and the sale officer post this register, entries made should be attested by the person making the entries. A red ink line may be drawn in this register at the end of each quarter to facilitate quarterly audit of execution accounts. The Co-operative Sub-Registrar in charge of execution work should check this register once a month.

(vi) *Suspense register:* — Often societies remit execution fees into the treasuries, but do not at the same time send the execution petitions to the Deputy Registrars. The fees remitted are at times either far in excess of or far less than the required amounts. To watch disposal of the execution fees received from the societies and to see whether the fees collected from each society are adequate to meet the value of services rendered or to be rendered or in respect of the execution petitions sent by it, a suspense register is maintained in each Deputy Registrar's office. In this register, a separate page is alloted to each society to note the fees received from it form time to time and how they have been appropriated towards its several execution petitions. An index of societies having amount in execution suspense should be prepared alphabetically for each register. References to the cash book folio should also be made in this register at the appropriate places. A red ink line may be drawn in this register at the end of each quarter to facilitate quarterly audit of execution accounts.

All amounts received towards execution fees from societies should be treated by the Deputy Registrars as suspense received and entered in the suspense register. Execution fees paid by societies direct to sale officers should also be passed through this register. For the amounts received by sale officers, no receipts need be issued by the Deputy Registrar; the sale officers themselves should issue cash receipts to societies when they receive execution fees in cash from them.

From the amount to the credit of each society in the suspense register, appropriation should be made to the several execution petitions received from it. Such appropriations should be noted in the costs appropriation register as explained already.

Societies also should maintain suspense registers in the same form in which they are maintained by Deputy Registrars. All execution fees paid by them to the Deputy Registrars or to the sale officers direct should be treated by them as suspense and recorded in the suspense registers. At the end of each month, the Deputy Registrars should issue intimation slips to all the societies concerned including the Primary Agricultural Cooperative Banks, specifying the execution petition number, the amount utilised and the balance with instructions to make necessary entries in their accounts. The Deputy Registrars should furnish every month a certificate to the Registrar in the following form on or before 10th of the succeeding month: —

"Certified that entries have been made in the relevant registers maintained in my office in respect of all transactions relating to receipt and utilisation of execution suspense accounts and that intimation slips have been promptly issued for the amounts utilised during the month"

On receipt of intimation slips from the Deputy Registrar's Office, the society should make the necessary entries in its books; the staff in charge of the supervision of the societies should see that this is done. As soon as an execution petition is closed, the excess fees collected in respect of it should be transferred to the suspense register maintained in the Deputy Registrar's office as well as by the society concerned.

The Circle Deputy Registrars should check up the figures under suspense balances to the credit of each society at the end of each co-operative year as per the accounts of their officers and, before the end of the April following the co-operative year, furnish an abstract of suspense ledger and an extract of cost register (in duplicate) in respect of each society having execution suspense account with the Deputy Registrars to the Assistant Director of Co-operative Audit concerned for forwarding the lists to the auditors concerned, for verification with the accounts of the societies concerned. As and when the final audit of a particular society is done, the auditor should examine these extracts, reconcile the figures as in the case of other items of accounts, note the difference, if any, indicate the reconciliation and forward one copy with his report to

the Deputy Registrars concerned through the Assistant Director of Co-operative Audit and append another copy to the audit report. On receipt of the report, the Deputy Registrar should examine it in detail and file it, if the figures have been tallied. If there is difference between his figures and those of the society, the concerned administrative staff should be asked to reconcile the differences with reference to closed and pending execution petitions and cause necessary entries to be made in the relevant books of the Deputy Registrar or in the books of the societies, as the case may be.

(vii) Revenue deposit register (current).:— As has already been explained, monyes received in the course of execution proceedings are lodged in the treasuries as revenue deposits in cases where they cannot be disbursed immediately to the parties concerned. Revenue deposit registers are maintained in the Deputy Registrar's offices, in the form prescribed to watch the deposits and refunds of these moneys.

Each deposit made in the treasury should be recorded in the register with particulars regarding the execution petition number, challan number and date, the name of the person from whom the money was collected, the purpose for which the deposit has been made, etc. When deposits are withdrawn, the name of person in whose favour the refund vouchers have been drawn, the amounts of such vouchers and the balance, if any, in the deposits, should be noted in the register in the appropriate columns. The relevant columns in this register should be attested by the Deputy Registrar while signing the refund vouchers. When the refund vouchers have been encashed, the dates of such encashment should be entered in the register noting also the execution cash book folio. The following procedure should be adopted in the withdrawal and disposal of revenue deposits.

1. Amounts in deposit at the Headquarters of the Deputy Registrars: —

(a) When the amount has to be remitted to the Central Bank to the credit of the society which has filed the execution petition, the refund bill should be drawn by the Deputy Registrar and the proceeds paid in cash into the bank to which the remittance is to be made. If the bank or its branch is not situtated at the Headquarters of the Deputy Registrar, the amount should be remitted into the local urban bank to the credit of the Central Bank and proper advice issued to the Central Bank regarding the particulars of the remittance. If there is no such facility available at the Headquarters of the Deputy Registrar, the procedure laid down in the following sub-paragraph should be adopted.

(b) When the amount has to be remitted to the decree holder society directly and if the society is not situate at the Headquarters of the Deputy Registrar, the refund bills should be drawn by transfer of credit to Post Office, and money order issued by adjustment of the proceeds from the treasury itself, the cost of the remittance being borne by the society.

(c) When the amount has to be remitted to third parties like unsuccessful auction-purchaser, etc., the party concerned should be asked to send, in advance, a stamped voucher for the amount to be refunded specifying therein whether he prefers to receive the amount by money order at his cost or to receive a bill for the amount drawn in his favour. The party may choose either method with reference to the cost involved in the journey for the encashment of the bill, as compared to the cost of remittance by money order. On receipt of the voucher, if he chooses to receive the amount by money order, the procedure prescribed in the previous sub-paragraph (b) should be adopted. If he elects to have a bill drawn in his favour, then a refund bill should be given to the treasury officer with the request to intimate the date of encashment of the bill. On receipt of such intimation, necessary adjustment entries should be passed in the cash book and the concerned item should be rounded off in the revenue deposit register. The intimation from the treasury of the date of encashment should be filed with the original voucher furnished by the party so as to make it complete. So also, in the case of amounts sent by money order, the intimation from the treasury for the issue of the money order should be filed with the original voucher. Entries in the cash book should be made only on receipt of intimation from the treasury that the money order has been issued. Only then should the concerned item of revenue deposit be rounded off.

(d) When the deposit consists of an amount to be remitted to Government, as in the case of initial deposits forfeited for non-paymment of the balance of purchase money in time, the bill should be drawn by transfer of credit to the proper head of account and sent with a challan to the Treasury Officer with the request to intimate the date of adjustment. On receipt of such intimation, necessary entries should be made in the cash book and the revenue deposit register.

(e) When the deposit consists of an amount which has to be disposed of in more than one of the several ways noted above or to more parties than one, separate bills should be drawn for the amount

due to each institution or party or the Government, as the case may be, and disposed of in the manner prescribed for each kind of remittance. Only when intimation has been received for the encashment or the adjustment of all the bills drawn, the item of revenue deposit should be rounded off in the register.

2. Amounts in deposit in treasuries not situate at the Head-quarters of the Deputy Registrar: —

(a) When the amount has to be remitted to the credit of the decree-holder society in the Central Bank, if the Central Bank is also situate at the place of the treasury, the bill may be drawn in favour of the secretary of the bank and sent to the bank by registered post. The Treasury Officer should as usual be advised of the drawal and be asked to intimate the date of encashment. This intimation together with the printed receipt of the Central Bank should be filed as voucher for remittance. The entries in the cash book in the adjustment column should be made as soon as either of the two are received in the office from the bank or the treasury, as the case may be. If the treasury and the bank are at different places, the procedure laid down in paragraph 1 (b) above should be adopted. The bill should be enclosed to a letter requesting the Treasury Officer to issue the money order and should be accompanied by a money order form duly filled up in the office of the Deputy Registrar for the amount to be remitted less commission. The Treasury Officer will put his signature as remitter in the money order form. The money order acknowledgement should be in favour of the Treasury Officer and will not be received by the Deputy Registrar. In the money order coupon, particulars of the remittance should be given for the benefit of the institution or the person who receives the amount. Societies and Central Banks should be asked to furnish their printed receipts direct to the Deputy Registrars and these, on receipt, should be filed with the intimation received from the treasury so as to constitute a complete voucher.

(b) When the amount has to be remitted to societies direct, the same procedure as in sub-paragraph (a) above should be adopted.

(c) When the amount has to be remitted to parties other than societies, the same procedure as in sub-paragraph (b) and (c) above should be adopted.

Note:- When the banks or societies prefer to have the bills drawn in their favour to avoid excessive cost by way of money order commisison, such request may be complied with. In the absence of specific instructions, the refund should be made only by money order.

The Revenue deposits outstanding should be reconciled with the treasury figures at the end of each quarter. Each Deputy Registrar should prepare a list of such deposits outstanding at the end of each quarter as shown in the revenue deposit register maintained in his office and depute an experienced assistant with the list to the treasury with instruction that he should verify the departmental figures with the treasury figures and reconcile the discrepancies, if any , and furnish a certificate to that effect. The assistant so deputed should see that all deposits, including those made by parties direct into the treasuries without the knowledge of the Deputy Registrar, are brought to account. On the basis of such verification the Co-operative Sub-Registrar in charge of execution work should record a certificate at the end of each quarter that the revenue deposits have been verified with the treasury figures and the discrepancies, if any reconciled.

(viii) *Register of lapsed deposits:*— The procedure for the treatment of lapsed deposits is laid down in article 271 of the Tamil Nadu Financial Code. Volume I. according to which deposits not exceeding five rupees made in a financial year and unclaimed will lapse to Government only after the expiry of one complete financial year. Balances not exceeding five rupees in each case of deposits partly repaid during the year then closing and all deposits unclaimed for more than four complete financial years, should be credited to the Government at the close of March in each year under the appropriate revenue head of account. Such items are entered in the register of lapsed deposits. These lapsed deposits can be got refunded only with the previous sanction of the Accountant-General, who will authorise payment on being satisfied that the item was really received, that it is claimed by a person, who might have drawn it before it lapsed; and that the competent departmental authority has signed the refund application and furnished the necessary certificates as to the claimant's identity and title to the amount.

(ix) *Transfer of award register:*— Particulars about the applications for the transfer of award pending with the department to the civil court for execution should be entered in this register. In column (8) of this register (mode of remittance) the number and date of challan for remittance into treasury should be specified. In column (11) (action sought to be taken), it should be stated briefly whether action against movables immovables or arrest of judgement debtor, or rateable distribution of assets in civil courts, or execution after impleading non-member subsequent alienees, etc., is required.

(x) *Salary attachment register.* — Particulars regarding the name of the pay disbursing officer, who is required to deduct the amounts from the pay of the judgement-debtor, the amount due as per the execution petition and the number and amount of instalments to be recovered should be posted in this register promptly after the issue of the salary attachment order in each case. The monthly recoveries and their transmission to the decree-holder should also be entered in this register systematically.

(xi) *Register to watch movement of files from office to sale offier and vice versa.* — When execution petition are handed over to sale officer in person, their acknowledgement should be obtained in this register in the column prescribed for the purpose. Where the execution petition is sent by post, the page number in the file at which the acknowledgement is filed should be noted in this column. The entries in this register will facilitate the Co-operative Sub-Registrar in charge of execution work, to give his quarterly certificate on the availability of all the pending execution petition files.

Audit of execution accounts.

80.1. The accounts relating to execution work should be audited every quarter by the Senior Inspector for the audit of departmental revenue accounts. Among other things, the report should refer to the correctness of fees charged and collected in accordance with the prescribed schedule, the delay, if any, in remitting the fees into the treasuries and the delay, if any, in receiving and disposing of purchase money and other moneys received by the Deputy Registrar or by the sale officer. The Senior Inspector Department Revenue should furnish the following certificate as certificate No.I in part II of the Audit Report:—

"Certified that the cash books of all the sale officers and the execution section of the Deputy Registrar's office were duly checked by me. Certified also that the extracts of the execution cash books maintained by the sale officers were regularly checked by the auditors and submitted every month and that the extracts supported by proper receipts and vouchers and that the total receipts under execution fees have been verified with the treasury figures and reconciled".

80.2. The audit report on execution accounts need not be submitted to the Registrar by the Regional Joint Registrars. They should, however, send a copy of the audit report to the Deputy Registrars concerned. The Deputy Registrars should scrutinise closely

the defects pointed out therein and take immediate action. They should also submit special reports to the Registrar on such serious defects. The Deputy Registrars should take systematic and prompt action to rectify all the defects pointed out by the Senior Inspector (Department Revenue).In particular, they should pay special attention to (a) reducing the number of over one year execution petitions, (b) digestion or refund of unappropriated execution fees, (c) refund of revenue deposits, (d) reconciliation of revenue deposites with treasury figures, (e) communication of suspense balances to the Assistant Director of Co-operative Audit Officers for reconciliation, (f) disposal of execution petitions as per the standard prescribed for the staff, viz., disposal of 50 execution petitions per month by each sale officer, (g) earning sufficient execution fees to meet the cost of execution staff and (h) collection of fees covered by unauthorised credit services, if any. TheCo-operative Sub-Registrars for the test-audit of departmental revenue should thoroughly check the execution accounts, closely scrutinize the rectification reports and incorporate in their test-audit reports the defects pointed out by the Senior Inspectors (Auditors).

Staff of execution of decrees and control of their work.

81.1. To carry out the work connected with the execution of decrees, the Government have sanctioned a special staff of Junior Inspectors and Office Assistants and have ordered that the fees realised for execution work should cover the pay and travelling allowances of this staff and other items of expenditure under contingencies, etc. The Junior Inspectors, who are entrusted with this work, should be authorised by the Registrar to do the duties of Sale Officers under the Co-operative Societies Act. The Office Assistant attached to each sale officer assist him in serving the various notices during the course of execution proceedings and in rendering such other aid as may be necessary in the discharge of his duties.The Sale Officers and their Office Assistant are public servants within the meaning of section 21 of he Indian Penal Code.

81.2. The Sale Officers work under the general control and supervision of Deputy Registrars. These officers should regulate their tours in order to ensure the maximum out turn of work with the minimum cost. The following instructions are given for the guidance of officers in this connection:—

(a) Rapid marches, frequent returns to headquarters and simultaneous and hurried attention to work in all parts of a circle

should be prevented; for this purpose, the Sale Officers should arrange their programme (and that of their Office Assistant) in consultation with Deputy Registrars or the Co-operative Sub-Registrars concerned, with due regard to the work on hand, the number of societies to be visited and the area in which such work has to be done. One compact area after another may be selected and a Office Assistant or a Sale Officer may be deputed to that area with about a fortnight's work.

(b) The Sale Officers should, for all practical purposes be considered as members of the staff of the Deputy Registrar's office and should attend office while at headquarters. Instructions, if any, may be given to them by means of a note; they should have access to all execution files in office. Correspondence with the Sale Officers should be minimised or avoided. They are required to send to the Deputy Registrar's office every month their cash book extracts and other statements in the prescribed forms showing particulars of treasury remittances, processes issued, services rendered, etc., to enable the office to post the necessary registers. The Deputy Registrars should get all the pending execution petitions physically verified at least once a quarter by their Co-operative Sub-Registrars. They should themselves physically verify all the execution petitions pending for over one year and furnish a certificate to this effect in the quarterly progress report on the subject due to the Registrar.

Exercise of powers of the Registrar by the Deputy Registrars working in Central banks.

82. The Deputy Registrars working as Chief Recovery Officers of the Central Banks are also permitted, at the request of the banks concerned, to exercise the powers of a Registrar under section 143 and 144, so as to enable them to entertain and dispose of execution petitions filed by Primary Cooperative Agricultural Banks indebted to the central banks. In these cases, the central banks concerned are taking the services of the required number of Sale Officers and Office Assistants under Fundamental Rulel 127 terms. The Deputy Registrars working in these banks should maintain all the registers and accounts pertaining to execution. Separate accounts and registers should be maintained for societies in each Deputy Registrar's circle and the necessary particulars connected with the departmental revenues under execution should be furnished to the concerned Deputy Registrars every month in respect of the soceities in their respective circles. They should also send a monthly report showing the progress in the receipt and

disposal of execution petitions to the Registrar under copy to the Deputy Registrars concerned, who will include these particulars in the return due to the Registrar. The execution petition files relating to a society closed during the quarter should be transferred to the Deputy Registrar of the circle, in which that society lies, for safe custody after the audit and test-audit of execution accounts for that quarter are over.

Recovery of deficit cost.

83. Of late, a number of Co-operative Institutions have taken the services of Senior Inspectors or Junior Inspectors under Fundamental Rule 127 terms for work connected with the execution of decrees subject to the condition that the deficit in income under execution fees to cover the cost of the staff is recovered from them. The following instructions should be borne in mind in arriving at the deficit income and the remittance of cost to Government:-

(a) The cost of the staff sanctioned under Fundamental Rule 127 represents the gross sanctioned cost, viz., average pay, dearness allowance, house rent allowances, travelling allowances, contributions for leave salary and pension and the cost of the medical and educational concessions, etc., availed of by the staff during the period of sanction, besides transit cost and travelling allowance. The income earned by the staff represents the total value of the services rendered by the staff during the period of sanction in respect of all execution petitions filed by the instituions concerned, which have taken the services of the staff under Fundamental Rule 127 including the cost of the processes issued from the office, poundage, objection fees, adjournment fees, etc. The deficit is the excess of the first item over the second. If the income earned is in excess or equal to the cost of staff, no amount need be collected from the institution or the institutions concerned.

(b)The Deputy Registrars should maintain a separate register showing the cost of staff incurred, execution fees realised and cost appropriated actually and the deficit in cost to be recovered. This register should be posted at least once a month and got checked by the Co-operative Sub-Registrar concerned. A demand, collection and balance statement should be prepared at the end of every quarter and sent to the Accountant-General, Chennai. The actual levy for the recovery of the deficit cost need, however, be made only at the end of the sanctioned period or financial year, if the period of sanction extends to more than a year.The deficit collected should be remitted into the treasury under the head.

(c) Where the staff have been employed by societies in a group, the cost should be reckoned on the basis of the time spent for each society, as in the case of audit staff, and the deficit, if any, should be recovered in proportion to the time taken for attending to the execution petitions filed by the societies in the group. There is, however, no need to levy any overhead charges.

(d) In the case of the posts of Co-operative Sub-Registrars sanctioned for execution work under Fundamental Rule 127 terms for the circle as a whole, the amount of execution fees earned on account of services rendered as arrived at in the quarterly audit report less cost of regular staff engaged in execution work should be taken as the fees earned by the Co-operative Sub-Registrar and deficit arrived at accordingly.

Destruction of records.

83. Files relating to execution applications under sections 143 and 144 may be destroyed on the expiry of six years after the complete satisfaction of the decree, award, etc, has been recorded in the file or on the expiry of fifteen years from the date of the decree, etc., sought to be executed, whichever is earlier.

CHAPTER VI

LIQUIDATION

Winding up of Societies.

1. Under the Tamil Nadu Co-operative Societies Act VI of 1932, the procedure followed for liquidating the affairs of a society was to cancel its registration first and to take steps to wind up its affairs later. This method did not give an opportunity for revival of the society, which might be possible in some cases. Further, under this scheme of dissolution, the order of cancellation of registration took effect on the expiry of a period of two months allowed for appeal and if an appeal was presented, only on the rejection of the appeal. The board, which continued to be in charge of the assets of the society, did not evince any interest in its affairs and in some cases even dissipated its resources. In order to get over these short-comings, provision had been made in section 85 and 86 of the Tamilnadu Cooperative Societies Act, 1961 and now being incorporated in sections 137 and 138 of the Tamilnadu Cooperative Societies Act, 1983 empowering the Registrar to pass an order directing the winding up a soceity and to appoint a liquidator forthwith. The liquidator can take charge of the assets of the society immediately even though an appeal may be preferred against the order of winding up and will continue to function more or less as a trustee on behalf of the creditors and members till the appeal is disposed of. The registration of the society will be cancelled only after the affairs of the society have been completely wound up.

Delegation of powers

2.1. Powers of the Registrar under section 137 (1) have been delegated to Regional Joint Registrars in respect of all societies other than Apex Societies. If the society to be wound up under section 137(1) falls in the category of Apex Society, the Regional Joint Registrar should send necessary proposals with all the required particulars to the Registrar. The Powers under section 137(2) have been delegated to the Circle Deputy Registrars. The Circle Deputy Registrars may themselves direct the winding up of the societies which fall in the categories referred under class (a) and (b) of section 137(2) as they have been vested with the powers. If the societies to be wound up fall in the categories under section 85(1) the Circle Deputy Registrar should send necessary proposals with all the particulars to the Regional Joint Registrar.

2.2. Before instituting action for winding up of a soceity under section 137 (1) & (2) of the Tamil Nadu Cooperative Societies Act, 1983 one of the following conditions must have been complied with:—

(a) Under Section 137(1)

(i) in the course of an audit under section 80 ; or

(ii) an enquiry under section 81 of the Act into the affairs of the society should have been held by the Registrar or a person authorised by him for that purpose; or

(iii) an inspection or investigation under section 82 should have been made by the Registrar or by any person authorised by him for that purpose

(iv) an inspection of books should have been made under section 83,or

(v) an application for winding up should have been made by not less than three fourths of the members of the society; or

(vi) a resolution should have been passed by the general body of the society;

(b) Under Section 137(2)

(i) the number of members of the society should have fallen below the statutory minimum; or

(ii) the society as stated under rule 8 of the Rules should have failed to commence working within the prescribed period of three months from the date of Registration or for such further period or periods as may be extended by the Registrar and the total period not exceeding one year in the aggregate from the date of registration; or

(iii) the society should have ceased to work, which means the cessation of the primary activities by the society for at least two consecutive years.

2.3. In all the above cases an opportunity to the society concerned should also be given in the form of a notice to make its representations, if any, to the Registrar within one month from the date of issue of such notice. A copy of the notice so issued to the society should be communicated in the manner prescribed under Rule 113 of the Rules to every member of the society calling upon such members to send their representation if any, direct to the Registrar within a period of 15 days from the date of receipt of the communication. The representation, if any, received from the society

or from any member should be considered by the Registrar and on being satisfied that the society ought to be wound up, the Registrar may issue an order to that effect. A copy of such an order made under sub section (1) or sub section (2) should be communicated by Registered post to the society and to the financing bank, if any, of which the society is a member. It should be borne in mind that order of winding up can be issued only on being satisfied that the society ought to be wound up.

Attempts to revive bad or moribund societies-liquidation should be the last resort.

3.1. Liquidation should be resorted to with care and circumspection. When it comes to notice that a society is not working satisfactorily, all attempts should be made by the department and the central bank or the central or apex society, to which the said society is affiliated, to set it right. It is the duty of these agencies to see that good societies are not allowed to deteriorate, that dormant societies are reviewed and pulled up and that bad societies are rectified and reformed. If a board is not functioning properly attempts should be made, if possible, to reconstitute the board. If no dependable directorate can be put in or if the affairs of the society cannot be entrusted to a Special Officer appointed by the Registrar under section 88 of the Act, liquidation may then be considered.

3.2. Similarly, if there has been fraud, or misappropriation of funds or other abuses such as the grant of binami loans or the concentration of funds in the hands of the directors and their relatives, the possibilities of prosecution should be examined. If the general body and the directors cannot be induced to set matters right, or if other remedies such as supersession of the board fail, liquidation is the only course.

4.1. Winding up should ordinarily be recommended urgently in the following cases: —

When a winding up should be recommended urgently.

(a) when the entire sum borrowed from the financing bank or a major portion of it has been lent to persons in a few families and when the arrears are not recoverable except through coercion and when there is a reasonable apprehension as regards the solvency of the borrowers;

(b) when in the case of a society with unlimited liability, it is found that well-to-do non-borrowing members have withdrawn with a view to escape unlimited liability on account of the bad working of the society or for other reasons;

(c) when the chief office-bearer or office bearers of the society has or have misappropriated considerable sums of the soicety's moneys and is or are about to allienate his or their property or properties so as to cause loss to the societies; and

(d) when any delay in the matter of revival or liquidation will result in deterioration of stocks and increase the loss in business institutions such as stores societies, which have become dormant and ceased to do business.

4.2. But, liquidation must never be recommended as a matter of course. It should be recommended only if all attempts of rectification and revival fail. Before recommending winding up, the Deputy Registrars should satisify themselves that all possible attempts of revival have been made. In their proposals recommending winding up, the Deputy Registrars should invariably furnish the name and correct address of the person, to whom the order directing the winding up has to be sent, the designation of the officer who is to be appointed as liquidator and the registration district in which the society is situated.

Inquiry (under section 81 of the Act) Preliminary to winding up of societies and details to be furnished in the report of inquiry.

5.1. Section 137 deals with the conditions to be satisfied before ordering the winding up of a society. However an inquiry under section 81 is invariably conducted preliminary to ordering the winding up under section 137(1). Even for ordering the winding up under section 137(2).

5.2.Recommendations for the winding up of societies should not be based generally on old reports of inquiry. The reports of inquiries which are conducted prior to the winding up of societies should generally give the following information: —

(a) the correct number and name of the society according to its by-laws, the name should be verified with the certificate of registration.

(b) the dates of registration and starting;

(c) the classification of the society;

(d) name of the village and taluk in which the society is situated;

(e) the postal address of the office bearer to whom the order of winding up is to be sent;

(f) the number of members on rolls at the time of inquiry;

(g) a brief account of the conditions of the society and of the attempts made by the central bank or apex society as the case may be or departmental officers to improve its working with reasons for the failure.

(h) the dates of successive visits paid by Inspectors, Co-operative Sub-Registrars or Deputy Registrars;

(i) whether the central bank and the concerned central or apex society, if any, have been consulted in regard to its liquidation and what their opinion is;

(j) a statement of assets and liabilities (balance sheet) as on the date of the report indicating whether any items will prove bad.

(k) a statement showing details of the amounts due and overedue to the financing bank and other creditors.

(l) a statement showing in detail the amounts due and overdue by members;

(m) whether any of the debts shown in the statement referred to in item (l) is likely to prove irrecoverable, and if so, full particulars regarding each;

(n) Whether assets after realisation will be sufficient to meet all liabilities.

5.3.The report must not be delayed if there is difficulty in obtaining information on some of these points. The facts should be referred to and if necessary, a supplemental report submitted at a later date. When sending up proposals for the winding up of a society, the report of inquiry or inspection or investigation of books by the financing bank should be sent invariably.

5.4. A copy of the opinion of the financing bank and of the concerned central or apex society, if any should be invariably submitted to the Registrar/Joint Registrar along with the proposals of winding up.

Winding up under section 137(2) of the Act.

6.1. In cases coming under section 137 (2) of the Act, the Deputy Registars may themselves direct the winding up of the societies, as they have been invested with the powers of a Registrar under that sub-section. In doing so, they should observe the following instructions:—

(a) the order of winding up intended for the society should be sent by registered post acknowledgement due,

(b) a notification regarding the winding up of the society and the appointment of the liquidator for it should be sent direct to the Director of Stationery and Printing, Chennai for publication in the *Tamil Nadu Government Gazette.*

(c) Opportunity should be given to the society to make its representations before issuing an order to wind up its affairs under section 137 (2) of the Act.

(d) The file in the Deputy Registrar's; Office should not be closed before obtaining the acknowledgement from the society and before verifying the correct issue of the notification in the Gazette.

(e) The figures relating to these societies should also be included in the periodical returns regarding liquidated societies submitted to the Registrar.

6.2.The information on the following points should be invariably incorporated in the order of winding up issued by the Deputy Registrars under section 137 (2) of the Act: —

(a) date of registration of the society,

(b) name of the taluk and district in which the society is situated;

(c) date or dates on which inquiry under section 81 or inspection or investigation under section 82 or inspection of books by the financing bank under section 83 of the Act, if any, was conducted;

(d) Number of members on the rolls of the society and paid up share capital on the date of inquiry;

(e) particulars of realiable assets and dischargeable liabilities on the date of inquiry;

(f) financial soundness of the society;

(g) details of misappropriation or mismanagement, if any;

(h) details of misappropriation or mismanagment, if any;

(i) condition of the society in its business and working;

(j) whether the board of directors or members evince any interest in the proper working of the society;

(k) loss, if any, incurred by the society during the previous years of its working;

(l) steps taken by the departmental staff to revive the affairs of the society; and

(m) opinion of the financing bank and central or apex federation, if any.

6.3.The above particulars should also be furnished by the Deputy Registrars without omission in their proposals for winding up under section 137(1) of the Act, submitted to the Registrar.

6.4. The Deputy Registrars should submit to the Joint Registrar every quarter, a list of societies directed to be wound up by them under section 137 (2) of the Act. As the powers of a Registrar under section 140 have been conferred on the Deputy Registrars in respect of the societies wound up by them under section 137 (2), they may themselves cancel the registration of these societes after their affairs have been completely wound up. The final closoing reports need not therefore be submitted to the Joint Registrar.

Procedure to be followed for winding up.

7.1.The procedure to be followed before the winding up of a society under section 137 (1) of the Act is outlined in rule 113 of the Tamil Nadu Cooperative Societies rules, 1988. The important provisions of sub-rule (1) of the said rule are as follows:

(a) the society shall, within 10 days of receipt of the notice issued by the Registrar under sub-section (1) of section 137 of the Act, call a special meeting of the general body for consideration of the notice;

(b) the said special meeting of the general body shall be held within 25 days from the date of receipt of the notice issued under section 137 (1);

(c) seven clear days notice shall be given for the above special general body meeting;

(d) the soceity shall. along with the notice issued for the special general body meeting communicate a copy of the notice issued by the Registrar to every member of the society;

(e) the members may send their representations, if any, direct to the Registrar; and

(f) the society shall send a copy of the resolution of the special general body meeting together with its representations, if any, to the Registrar within one month from the date of receipt of the notice from the Registrar.

7.2.Sub-rule (2) of rule113 provides that where a society fails or refuses to call a special meeting or communicate a copy of the notice under section 137 (1) of the Act issued by the Registrar to its members, the Registrar may himself communicate or authorise the financing bank or the federal society or any person subordinate to him or an employee

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of the society concerned to communicate a copy of the said notice to the members of the society calling upon such members to send their representations, if any, direct to the Registrar within a period of 15 days from the date of receipt or publication of communication.

7.3. The Registrar may, by order, determine the cost to be paid to the Government or to the society or person authorised by the Registrar and direct its recovery from the society concerned.

Communication of notice.

8.1. Sub-rule (3) of rule 113 deals with the procedure to be followed in the communication of copy of the notice of the Registrar under secton 137(1) to the members. According to the said sub-rule, it shall be communicated in any one or more of the following manner:—

(a) where the addresses of the members are available, by (i) giving or tendering it to every such member or in his absence to some adult member of his family under acknowledgement; or (ii) sending it by post under certificate of posting to every such member; or

(b) where the address of any member of the society is not available, by affixing it on the notice board or any other conspicuous place in the premises of the society; or

(c) where the address of the society is not available, by publishing it in one or more of the local news papers having circulation in the area of operation of the society and approved by the Govt. for issue of Govt. advertisement and by displaying it in one or more prominent public places within the area of operation of the society.

Appointment of liquidator.

9.1. When a society is ordered to be wound up under section 137 (1) or 137 (2) of the Act, the Joint Registrar or the Deputy Registrar, as the case may be, may appoint any person to be the liquidator of the society and fix his remuneration under section 138 of the Act. Usually, Deputy Registrars are appointed as liquidators of district level or state level societies, while Co-operative Sub-Registrars are appointed as liquidators of other societies.

9.2. Under rule 114 of the Tamil Nadu Co-operative Societies Rules, the appointment of the liquidator must be notified in the Tamil Nadu Government Gazette. The notification regarding the winding up of a society and the appointment of a liquidator shall be published in the *Tamil Nadu Government Gazette* free of cost.

9.3. All Regional Joint Registrars and Circle Deputy Registrars should arrange for publishing the winding up procedures in the Gazette in the form prescribed by the Registrar. The complete and entire proceedings of winding up need not be published.

9.4.Whenever a Cooperative Bank, which is an Insured Bank under the provision of the Deposit Insurance and Credit Guarantee Corporation Act 1961 is ordered to be woundup and a liquidator is appointed, the Regional Joint Registrars should immediately send copies of the order of winding up of the Cooperative Bank and of the appointment of liquidator to the DICGC RBI, Mumbai.

9.5. As soon as the liquidator takes charge, the Regional Joint Registrars should also send a report to the DICGC intimating the name and designation of the liquidator and the date on which he took charge of the liquidated Cooperative Bank together with duly attested signature of the liquidator. Whenever there is a change of personnel in the liquidator of an Insured Cooperative Bank the Regional Joint Registrars should duly inform the same and also send a duly attested signature of that liquidator to the Deposit Insurance and Credit Guarantee Corporation.

9.6. When a society, which has not started work, is wound up, its affairs should be deemed to have been finally closed on the expiry of the appeal period of two months as provided under section 152 and its registration should be cancelled immediately after the appeal period. No liquidator need be appointed for such societies.

Finality of liquidation order.

10.1.Under the Tamilnadu Co-operative Societies Act, 1983, the winding up of affairs of a society precedes the cancellation of its registration under section 140, and a societyordered to be wound up may also be restored to normal constitution under section 142 of the Act. The liquidator appointed under section 138 of the Act pursuant to an order made under section 137 immediately on such appointment, should take into his custody or under his control all the property, and assets of the society, effects and actionable claims to which the society is or appears to be entitled and take such steps as he may deem necessary or expedient to prevent loss or deterioration or damage to such property etc, even though an appeal may be preferred against the order of winding up. Where an appeal is preferred under section 152 (2) of the Act in time, viz., within two months from the date of order of winding up, the order will not operate thereafter until it is confirmed in appeal. In such cass, the liquidator will continue to have custody and control of the property,

etc., and should also continue such steps as already taken by him to prevent loss or deterioration or damage to such assets and function more or less as a trustee on behalf of the creditors and members till the appeal is disposed off. For instance the liquidator may take steps either to recover or to secure a loan, which will get time barred during the period allowed for appeal or till the appeal is dispossed off. The entire assets of the society ordered to be wound up will, however, vest in the liquidator only from the date of which the order takes effect (i.e) on the expiry of the period of two months allowed for the appeal and if an appeal is preferred within the time limit, on the confirmation of the order on appeal. The liquidator can exercise the powers vested in him under section 139 of the Act read with rule 114 and initiate proceedings for the actual winding up of the affairs of the society only from this date (i.e.) the date on which the order of winding up takes effect. Where an order of winding up is set aside on appeal, the properties etc shall revest in the society.

10.2. The registration of a society has to be cancelled by an order under section 140 of the Act, only after the affairs of the society have been completely wound up. Where it is considered that a society, which has been ordered to be wound up, may be restored to a board, section 142 of the Act provides for the cancellation or withdrawal of the order of winding up at any time before the affairs of the society have been completely wound up and for the constitution of the board by the liquidator and the restoration of normal management of the society.

Powers of the liquidator.

11.1. The powers of a liquidator are defined under section 139 (1) and (2) of the Act. For easy reference, they are extracted below: —

11.2. Section 139 (1): Subject to any rules made in this behalf the whole of the assets of a registered society in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 139 from the date on which the order takes effect and the liquidator shall have power to realize such assets by sale or otherwise.

11.3. 139 (2): Subject to the control of the Registrar such liquidator shall also have power: —

(a) to institute and defend suits and other legal proceedings on behalf of the registered society by his name of office;

(b) to determine from time to time the contribution (including debts due) to be made or remaining to be made by the members or

past members or by any officer or servant or former officer or servant or by the estates or nominees, heirs or legal representatives of deceased members, officers or servants, to the assets of the society; Contribution to be made by nominees, heirs or legal representatives of the deceased shall be limited to the extent of the assets of the deceased in the hands of such nominees, heirs or legal representatives.

(c) to investigate all claims against the registered society and subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) 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 so far as may be in the same manner as is provided in the case of Civil Court under the Code of Civil Procedure, 1908 (Central Act V of 1908)

(e) subject to any rules made in this behalf, to pay claims against the registered society including interest up to the date of winding up according to their respective priorities, if any in full or rateably, as the assets of the society may permit; to apply the surplus, if any, remaining after payment of the claims for the payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case.

(f) to determine by what persons and in what proportions the cost of the liquidation are to be borne;

(g) to determine whether any person is a member, past member or nominee of deceased member;

(h) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

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

(j) with the previous approval of the prescribed authority, to make any compromise or arrangement with creditors or persons having any claim, present or future, whereby the society may be rendered liable;

(k) with the previous approval of the prescribed authority, to compromise all calls or liabilities to any calls and debts and liabilities capable or resulting in debts and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and alleged contributory or other debtor or a contibutory or persons

apprehending liability to the society and all questions in any way relating to or affecting the assets or 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.

(l) to specify the time or times within which the creditors shall prove their claims against the registered society or be included for the benefit of any distribution made before those claims are proved.

11.4. Rule 114 (i) of the Rules, lays down that the authority competent to accord previous approval for the purposes of clause (j) or (k) of sub-section (2) of section 139 shall be the Registrar. The powers of a Registrar under this rule have been delegated to the Deputy Registrars also in respect of societies ordered to be wound up by them under section 137 (2)

11.5. According to clauses (j) and (k) of sub-section (2) of Section 139, read with rule 114 the liquidator shall have powers among others, to make any compromise or arrangement with the creditors in respect of their claims and with the members and others in respect of debt, liability or claim due by them, subject to the approval of the Joint Registrar or Deputy Registrar in the case of societies ordered to be wound up under section 137 (2) of the Act. It should be noted, however, that the question of making any compromise will arise only if the liquidator, who may otherwise be able to realise the assets and pay off the liabilities in the course of liquidation proceedings chooses, with a view to facilitate expeditious winding up of the affairs of the society, to enter into an agreement with the members to drop further action against them on their paying a specified amount towards to discharge of their debt or liability or with the creditors to receive an agreed amount towards the full settlement of entire liability due to them. Cases where the assets have to be written off after exhausting all possible means of their realisation and the liabilities dropped for want of funds will not amount to a compromise within the meaning of section 139(2) of the Act.

Assumption of duties by liquidator and procedure to be followed.

12. As soon as a society has been ordered to be wound up, the Deputy Registrar or the Co-operative Sub-Registrar, as the case may be,should note the fact in the register of societies ordered to be wound up. The liquidator should proceed to take charge of cash, accounts, records, bonds and other documents of the society as soon as possible after the society has been ordered to be wound up. The liquidator may even authorise one of his inspectors to take charge of the cash, etc., of the society

and be in charge of the accounts on his behalf. Any cash taken charge should be arranged to be remitted to the central bank, if the society is indebted to it. Other property including valuable securities should be placed in safe custody. The liquidation Inspector should give a precise receipt for everything he has taken charge. He should also prepare atonce an initial report giving the particulars regarding (i) members on the roll (details of members who died or withdrew from membership within two years from the date on which the order took effect should also be furnished in the case of unlimited liability societies), (ii) the address of these members, and (iii) details of property owned by them, such as, survey number, dry, wet or garden; assessment; value of each field; encumbrances, if any, known in the village; sums due to the society under loans as principal borrower or surety, court costs etc., and sums due to the members by the society. The Inspector should also obtain an account of the soceity's transactions with the central bank since the date of last audit and carefully compare it with society's books and reconcile discrepancies, if any.

Publication of notice under rule 114 regarding claims against societies ordered to be wound up.

13. The liquidator should publish by such means, as he may think proper, a notice requiring all claims against the society ordered to be wound up, to be submitted to him within two months of the publication of such notice. All liabilities recorded in the account books of a society shall be deemed *ipso facto* to have been duly submitted to him under rule 114(b).

Realisation of assests and procedure regarding the passing of contribution orders.

14.1. The liquidator should next take immediate steps to have the assets collected and liabilities paid off. Under the Act and the Rules, he has to determine from time to time the contributions to be made or remaining to be made to the assets of the society by each of its members, past members or by any officer, or servant or former officer or servant by the estates or nominees, heirs or legal representatives of deceased members, officers, oor servants, such contributions including debts due to the society. Contributions can be levied against officer or former officers of the society, who have misapplied the property of the society, or have become liable or accountable to the society for any money or property of the society. Finally, contribution orders enforcing unlimited liability to make good any deficiency in assets can also be passed by the liquidator.

14.2. The liquidator may proceed or depute the Liquidation Inspector to the liquidated society, enquire of the members and call upon the debtors to pay and collect the assets as quickly as possible by persuation. If it is found that the loans cannot be recovered easily, he may proceed to pass contribution orders. Before a contribution order is issued, a notice should be given to the party concerned intimating him the amount of contribution proposed to be levied, the grounds for the levy and the date, time and place at which the contributory may represent his case, if any. Such notice or summons should be served on the party direct if possible and if this cannot be done, it should be sent by registered post aknowledgement due. Service by affixture on the door of his house though legal, should be an exemption and not the rule. Notice or summons against the legal representatives of a deceased member should indicate that they are called upon to show cause why they should not contribute towards the assets of the society a specified sum from the estates of the deceased member. All procoeedings should be held as far as practicable within the area of operation of the society. On the day fixed, the party should be heard, if he is present, and after taking into consideration his representation, the liquidator should proceed to pass an order according to the merits of the case. He should record a separate written order in regard to each contributory, stating the amount due including interest, the rate at which subsequent interest will accrue and setting out very briefly the grounds for his decision. When a contribution order is passed, it should forthwith be communicated to the party by registered post acknowledgement due. The postal charges should be met from the general funds of the society and should not be recovered from the party concerned. It is essential that there should be no delay in the communication of the orders, as the party, may, if he chooses, file an appeal before the expiry of two months from the date of the order.

14.3. The liquidator should then inform each member, against whom contribution order was passed, that the amount as narrated in the contribution order should be remitted within a specified period. If the amount is not paid within that time, immediate steps should be taken to execute the contribution orders. In the case of an order relating to a deceased member, the notice forwarding the contribution order by registered post and demanding payment from the legal representatives before a particular date should state that the amount is recoverable from the estate of the deceased member. When such contribution orders are sent up for execution, only the

estates of the deceased member, which have come into the hands of the legal representatives and have not been disposed of, should be proceded against; personal remedy against the legal representatives is inadmissible.

14.4. All loans due from members, which have not been decreed, should be superseded by contribution orders. The liquidator can pass mortgage contribution orders to cover mortgage debts. Loans, in which decrees have been obtained, but which have not been sent up for execution, may, if the circumstances of the case justify it, be superseded by contribution orders; otherwise, they may be executed as they are and separate contribution orders for the costs of liquidation may be passed, if and when necessary. Similarly, in the case of decrees already under execution, execution proceedings may be continued and separate contribution orders for the recovery of costs of liquidation may be passed, if and when necessary.

14.5. The liquidator may also avail, himself of section 87 of the Act, if in the course of winding up of a society, he finds that any person, who is or was, entrusted with the organisation or mangement of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or the other property or has been guilty of breach of trust in relation to the soicety or has made any payment contrary to the Act, rules or the by-laws or has caused any deficiency in the assets of the society or breach of trust or wilful negligence. In such cases, he may apply to the Deputy Registrar to enquire into the conduct of such person or officer or servant and to order him and in the case of a deceased person, to his representative who inherits his estate, to contribute to the assets of the society by way of compensation in respect of the misappropriation, fraudulent retention, breach of trust or wilful negligence, as the case may be. It should however, be noted that no enquiry under section 87 can be instituted after the expiry of seven years from the date of any act or omission complained of.

Realisation of Assets - disposal of godown.

15.1. As per section 139 (1) of the Tamil Nadu Cooperative Societies Act, 1961, the liquidator has got power to realise the assets of the society in resect of which an order for winding up has been made by sale or otherwise. The nearest or neighbouring society may apply to the liquidator for transfer of any godown of the liquidated society constructed with Government financial assistance, by way of sale and the liquidator may dispose of the godown to such society after collecting the full amount of the sale. The liquidator should obtain the

Registrar's prior approval for fixing the sale price of the godwn. When the amount is realised by the sale of the godown the liquidator should utilise the sale proceeds in the first instance towards the repayment of the Government loan sanctioned by the Government for construction of the godown. The permission of the Registrar under rule 9 (C) of the rules governing the grant of state loans to cooperatives for construction of godowns has also to be obtained for the transfer of the godown.

15.2. If the nearest or neighbouring living society is not in a position to remit the sale price of the godown proposed to be purchased from the liquidated society, it may apply to the Registrar for the sanction of Government loan for the purpose for which there is provision in the said rules.

Contributions by members beyond their debts due and priciples to observed in enforcing unlimited liability

16.1. The act, under section (4), provides for the registration of a society with limited or unlimited liability; under section (5) of the Act, any such society with un-limited liability may change its liability to limited liability. However, at present, societies are registered with limited liability only. The Primary Agricultural Co-operative Banks which were formerly of unlimited liability are now only limited liability societies, and the liability of their members are limited to ten times of their paid up share capital and as provided under the bylaws of such societies. Even now there may be societies continuing with unlimited liability, either working or under liquidation. There is also the possibility of registering any new society opting for unlimited liability as provided for under section (4) of the Act. In view of this, the procedure for enforcing unlimited liability, in case of liquidation, has to be taken note of.

16.2. When the assets realisable from the borrowers of a society ordered to be wound up are found inadequate to its outside liabilities, the deficiency must be made good by contributions from (i) members on the rolls of the society on the date of the order to wind up the society, (ii) past members who ceased to be members within two years of the date of order to wind up the society; and (iii) estates of deceased members who died within two years of the date of order to wind up the society.

NOTE.— I*n the case of a past member or a deceased member, his liability to contribute is only in respect of the debts of the society as they existed on the date of his ceasing to be a member or of his death. The liability does not extends to any debts or liabilities of the society constructed after he ceased to be member or after his death.*

16.3. Under section 31(2) the liability of a past member or of the estate of a deceased member for the debts of a registed society, as they existed on the date of his ceasing to be a member, or on the date of his death, as the case may be, shall continue for a period

of two years from such date. The period of two years refers to the emergence of the liability and not to its cessation. If a society is directed to be wound up and the order of winding up takes effect during the period of two years, in which the liability of a past member or deceased member subsists, here is no period of limitation to the enforcement of the liability. A past member or the estate of a deceased member cannot, however, be made liable for the debts of a society, if he ceased to be a member or died two years prior to the date on which the order of winding up takes effect. Where shares are purchased in a registered society by the Government or an apex society or a central society from the Principal State Partnership Fund or the Subsidiary State Partnership Fund, as the case may be, the liability of such shares, shall, however, be limited to the amount paid in respect of such shares.

16.4. In the case of a society, where the liability of a member is limited by shares, no contribution can be levied from any member or past member or the estate of deceased member, exceeding the amount of his subscribed but unpaid share capital, if any or to the extent of the liability as may be provided for in the bylaws of the society.

16.5. In the case of a society based on unlimited liability, the liquidator can pass contribution orders to any extent; that is to say, the liquidator can pass contribution orders against members or past members or the estates of deceased members to the extent of their properties.

16.6. Before proceeding to determine the contributions to be made by members, the liquidator should draw up a list of all loans outstanding against members and with reference to their solvency or otherwise, estimate the amount of debts, which may prove bad or irrecoverable. The amount so arrived at should be deducted from the total of the outstanding loans and it should be seen whether the balance of the recoverable debts would be enough to pay off the liabilities. If the liabilities exceed the sound assets so arrived at, the latter should be deducted from the liabilities to be discharged and then the share capital and reserve fund invested by the society in the central bank should be set off against the balance of liabilites to be discharged. If still there should be a deficit to be made good, the liquidator should proceed to levy contributions from members enforcing unlimited liability.

16.7. Contribution orders should not be enforced until all steps have been exhausted against the debtors. Meanwhile, the liquidator can take sufficient security from the contributories either voluntarily or

by availing himself of section 167 of the Act, to prevent any possible alienation or sale of properties with a view to evade payment. If, after exhausting all steps against the debtors, the full amount due to the creditors is not realised, then the liquidator should execute the unlimited liability contribution orders and recover the money.

16.8. The broad principles, which should guide the officers in passing contribution orders enforcing unlimited liability, should be the financial condition of the society, the solvency of the ex-members and the nature and amount of outside debts to be discharged. It is necessary that, before such orders are passed, a thorough and ehaustive inquiry should be made into the solvency of all the ex-members, so that the levey may be distributed over all the members equitably and that it is not excessive in the case of any particular member. The enforcement of unlimited liability, after a society is ordered to be wound up, should not generally cause severe hardship to contributories. With a view to mitigate the rigour of unlimited liability and to enforce it on an equitable basis, the following points should be borne in mind by the liquidators:—

(a) In cases of time-barred loans, unlimited liability should be enforced against the borrowers to the extent of the amounts due from them. They have a moral duty to pay.

(b) Those who have proved to have mismanaged a society's affairs either by taking benami loans, by not properly accounting for the collections effected by them, by indiscriminately distributing loans to their friends and relatives or by fraudulently alienating their properties with a view to deceive the society, should be asked to contribute to the assets of the society to the extent of loss caused by them.

(c) Even after adopting the above two modes of recovery, if there is still a deficit in the amount to be paid to (outside) creditors, it should be distributed, among those members, who are solvent. In estimating the deficiency to be made good, the liquidators should also take into consideration the cost of liquidation, execution charges and other expenses, that they may have to meet. This should be payable from the funds of the society in priority to all other claims. A second contribution orders should not ordinarily be passed against a member. If exhaustive inquiries are made and the deficits are properly assessed at the outset, there will be no need to issue more than one contribution order against any member.

(d) A reasonable time, say, two or three months, and opportunity should be given to a member either (i) to give security or (ii) to pay off the amount. If payments made within the time specified, the liquidator may grant a reasonable remission subject to a maximum of 25 per cent of the contribution order. This sort of clemancy should be specifically shown to non-borrower contributories. If payment is not made, or sufficient security is not furnished, execution proceedings may be resorted to.

(e) If a second series of contribution orders is found necessary, this should be passed against those, who had at one time borrowed and derived some benefit from the society and against whom unlimited liability contribution orders were not passed in the first instance.

(f) If even after taking action in the manner indicated above, there is still deficit, the financing bank concerned may be advised to write off the balance of dues. However, great discretion should be exercised before making such recommendation.

16.9.The Law of Limitation applies to decrees and contribution orders in liquidated societies. Liquidators should therefore take steps -in-aid of execution during the period of limitation to prevent the contribution orders, etc., from getting time-barred. Where contribution orders have become time-barred, the liquidator can of course pass fresh contribution orders (without reference to the time-barred contribution orders), on the ground that they are justified because of the deficits in the assets of the society, but such cases should be rare. In the case of mortgage debts, however, the charge on the property ceases to exist when the original decree becomes time-barred and a fresh contribution order cannot create a charge on the hypotheca. The liquidators should therefore be alert and see that no claim gets time-barred. The Deputy Registrars should obtain quarterly certificate from the liquidators (Co-operative Sub-Registrars) and liquidation inspectors to the effect that none of the claims in the societies in their charge is barred by limitation. The liquidators should also submit a quarterly report specifying the progress made in the winding up of the society to the Circle Deputy Registrars.

16.10.The normal procedure of levying contribution will be as above. But when, after a thorough enquiry, the liquidator finds that the realisable assets will be insufficient to meet all the liabilities of the society and that the members, whether borrowers or not, will have to contibute towards the assets of the society to make good

deficiency and when there is reason to believe that some of the members would alienate their property with a view to escape the liability of the society, the liquidator may pass contribution orders against such members for reasonable amounts even at the commencement of liquidation proceedings or at any stage thereafter without waiting till all the assets are realised. If, the liquidator considers that a contributory intends to defeat or delay the execution of the order that may be passed against him by disposing of the whole or any part of his property, or by removing it from the local limits of the jurisdiction of the Deputy Registrar he may apply to the Deputy Registrar under section 167 of the Act for the conditional attachment of his property. If these members are willing to furnish security for the amounts ordered to be contributed, the liquidator may postpone executing his orders till all the assests of the society are realised. Otherwise, he will have to execute his orders against them and use the money at his discretion in liquidating the debts of the society.

16.11. Conditional attachment of properties should not be allowed to be in force for unduly long periods as it may result in great hardship to the individuals concerned. Normally, it should be possible for the liquidators to pass a final contribution order within a period of about six months from the date of the order of conditional attachment. As soon as the contribution order is passed and the conditional attachment is confirmed, it becomes a case of regular attachment and the liquidator can realise the amount covered by the contribution order by bringing the properties for sale.

16.12. There is no objection to the liquidators accepting voluntary contribution towards the assets of societies and issuing receipts for the amounts so received. These contributions are usually paid by members in pursuance of an informal arrangements or understaning under which each of them promises to contribute a specified sum towards the assets of the society and save the liquidator the trouble involved in passing contribution orders, etc. Such arrangements should be reduced to writing and the signatures of members should be obtained.

16.13. In societies, where unlimited liability has been enforced, the balance left over after discharging the debts is not really surplus. It is the unspent portion of the over-estimated contributions made by the members and the amount cannot, therefore be utilised for paying interest accrued to the financing bank after the date of order to wind up or for the repayment of the share capital of members , etc. The excess amount should be returned rateably or in full to the members against

whom unlimited liability was enforced. If after this is done, there is still any balance left it may be treated as surplus and disposed of in the manner laid down in paragraph 19 of this chapter. In their final closing reports, the liqudators should also report whether unlimited liability was enforced, whether it resulted in suplus funds and whether the surplus has been disposed of in the manner specified above.

16.14. In all cases, where unlimited liability is enforced, the necessity for it should be discussed and proceedings drawn up giving reasons for the action. The list of persons, with the amount each has to contribute, should be mentioned in the proceedings. When necessary, these may be revised from time to time and subsidiary orders issued, as and when it is ascertained that the assets are irrecoverable and are not adquate to pay off liabilities and such orders are enforceable in the same manner as the original orders themselves.

Writing off the dues to the Central Cooperative Banks.

17.1. Where the liquidator has exhausted all action to collect the dues in a society and advised the Central Cooperative Bank drop the liabilities there is no need to weight for the concurrence of the Central Cooperative Bank and he can submit proposals for final closure of the society.

17.2. Where the liquidator has not exhausted all action to realise the dues, he cannot proceed to finally close the affairs of the society as the creditors who will be affected by his action can appeal to the Registrar for suitable redress under sec 152 (2) (b) of the Act. In such cases it is quite necessary to get the concurrence of the creditor or creditors, as the case may be, before proceeding with the final closure of the society. Section 139 (2)(j) read with rule 114 provide that the liquidator can make any compromise or arrangements with the creditors with the previous approval of the Registrar. The powers of the Registrar in this regard have been delegated to the Joint Registrars. This provision may be availed of by the liquidators in the above cases. The Regional Joint Registrars may accord approval under sec. 139(2) (j) read with rule 114 on the merits of each case. It is not desirable to accord any general authorisation to the liquidators in this regard.

17.3. The bylaws of most of the societies provide that any irrecoverable dues to the society can be written off by the general body of the society after getting the permission of the Registrar. When the liquidators approach the Central Cooperative Bank for their concurrence or consent for any compromise arrangements in the interest of expeditious winding up of the affairs of a society, the

board of Central Cooperative Banks or Special Officers (if there is no board) can give their consent or concurrence on the merits of the proposal without placing the matter before the general body. The final proposal for the write off of the amount should however be placed before the general body as per the provisions in the bylaws of the Central Cooperative banks concerned. But the liquidator can proceed with the final closure of the society based on the consent given by the Special officer or the board of the Central Cooperative Bank for the compromise arrangement.

Interest on loans

18.1. No useful purpose is served by adding interest to the case of loans covered by decrees and contribution orders, if the loans are definitely bad. Accrued interest in such cases should be taken into accounts only when the interest has been actually collected in cash or by adjustment.

18.2. In societies, where the realisable assets, after waiving the interest accured, are sufficient to pay all liabilities, including further interest to creditors, interest need not be charged after the date of the order to wind up as collection of further interest in such cases will only increase the surplus funds. But, in societies, where assets may not be sufficient to disicharge the liabilities and unlimited liability may have to be enforced, the interest should not be waived on realisable loans, as it will affect the creditors adversely.

Interest and Cost of liquidation on contribution orders.

19. Interest and cost of liquidation need not be charged on contribution orders enforcing unlimited liability. In the case of other contribution orders, interest was formerly charged at 12 1/2 per cent per annum and later at 9 per cent from the date of liquidation. Under the instructions now in force, however, interest on the amount of contribution orders need be charged only at 7 1/2 per cent per annum. The rate of interest leviable on contribution orders as subject to alteration from time to time in accordance with the instructions of the Registrar.

Levy of liquidation cost.

20. Liquidation cost should be levied on all assessable collections effected from liquidated societies. Fifteen per cent of the total collection is appropriated towards the liquidation costs. Items of collections, which are, however, exempt from the levy of liquidation cost, are (a) court cost incurred by the liquidator when realised; (b) written off assets; and (c) when properties purchased by the liquidator are sold, the amount realised, so long as it does not exceed the purchase value of the property.

20.2. Liquidation cost is leviable on the following items among others:

(a) cash balance taken charge by liquidators from the ex-office bearers;

(b) dividend received on share capital invested;

(c) dues of the defaulters collected by set off against the value of their properties purchased by liquidators;

(d) voluntary contributions received by liquidators;

(e) in the case of societies indebted to the financing bank or the wholesale stores, the share capital and other investments realised from them irrespective of their indebtedness to such central institutions;

(f) interest realised on reserve fund investments in the the central banks;

(g) all suspense items collected;

(h) the collection effected even if the Government happens to be the only creditor;

(i) the court cost shown as an asset on the date of order to wind up the society, when realised;

(j) when the properties purchased by the liquidator are sold, the amount realised in excess of the purchase value:

(k) collections realised by the enforcement of unlimited liability contribution orders.

20.3.When the share capital of members is adjusted towards their loan dues, liquidation cost should be levied on the amounts so adjusted.

20.4. Liquidation costs should be collected regularly once a month and on no account should there be arrears for want of funds, since liquidation costs form the first charge on collections. Liquidation costs cannot be written off. If for any reason, they have been left uncollected, when finally closing the affairs of a society, they should be recovered from the persons responsible for the omission.

20.5. Deputy Registrars have been permitted by Government to withdraw excess liquidation costs remitted to Government and disburse them to the societies concerned.

Payment of liabilities.

21.1.Clauses (c) and (e) of section 139 of the Act empower the liquidator to investigate and pay all claims against the society and also decide questions of priority arising among creditors. Assets should be utilised from time to time, as they are realised for payment to the creditors; and payments should ordinarily be distributed *pro rata* among the various creditors, whose claims are equal in point of priority. Interest on all loans and deposits due by the society is payable only up to the date of order to wind up, unless there be surplus funds to pay interest accrued subsequent to that date. In case of most of the societies, the central banks happen to be the sole creditors; but in a few cases, there may also be liabilities to individuals and institutions, co-operative and non-co-operative. In the case of payments made to central banks, the amount should be appropriated by them towards principal and interest (penal interest, if any should be added to interest) in proportion to the amount due under such items as on the date when the order to wind up took effect. In the absence of such proportionate appropriation, the bulk of the amount realised and remitted by the liquidator is likely to be credited to interest and treated as a divisible profit of the central bank, while there is an element of uncertainity about the realisation of the remaining assets. It is not also desirable to keep in abeyance the appropriation of the amount realised and interest till the liquidation proceedings are over. There is, however, no objection to the central banks crediting the entire remittance to principal until it is realised in full and proceed to appropriate further remittance to interest. But, in the case of loans due to Government, there is no question of distribution of profit and therefore the payments made have to be credited first to interest and then to principal.

21.2. When societies bring to sale the properties of their defaulting members, central banks sometimes purchase them for nominal prices. When profits are realised in the resale of any properties, they are taken to a special reserve, so that in cases where losses arise in the disposal of any other properties, such losses may be recouped from the reserve. This procedure, should however, be adopted only when properties are brought to sale by living societies and not by liquidated societies. The profits realised by the resale of properties purchased from liquidated societies should be credited towards the balance, if any, due in the loan account of the societies concerned. If any balance is left after such adjustment, it may be taken to the reserve.

Appeal, against liquidators order.

22. Any person aggrieved by any order of liquidator under section 139 may appeal to the Registrar under section 152 (2) (b) of the Act within two months from the date of the order. The powers of a Registrar under section 152 (2) (b) have been conferred on the Deputy Registrars also.

Bar of suit in Civil Courts in certain cases.

23.The liquidator disposes of all matters connected with the winding up or dissolution of a society. Under section 141 of the Act, no Civil Court shall, save in so far as is expressly provided in the Act, take cognizance of any matter connected with the winding up or cancellation of the registration of a society, and when a liquidator has been appointed, no suit or other legal proceedings, shall lie or be proceeded with against the liquidator as such or against the soicety or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose. If, at the time when a society is ordered to be wound up, any suit is pending against the society, such suit cannot be proceeded with, without the leave of the Registrar. Again, without such permission of the Registrar, no suit can be instituted against the society or any member thereof, after the society has been ordered to be wound up. The powers of a Registrar under section 141 have been conferred on the Deputy Registrars also. But the Deputy Registrars should not exercise these powers in respect of those societies for which they are the liquidators. The Registrar will grant the necessary permission in such cases.

Final closing and disposal of surplus funds.

24.1. Any balance of assets remaining after meeting the debt of the society shall be credited to the Government in proportion to the amount of money granted by them excluding the money granted by the Government towards the establishment and contingent charges of the society. The balance of assets should be utilised in paying off the share capital of members and dividend due to them in the manner laid down in clause (2) of rule 100 . The share capital of members should not be dropped from liabilities till all other items of outside liabilities such as loans to central banks, etc., are disposed of. The payment of dividend is subject to the maximum rate of 14 per cent specified under section 72(2). If the ex-members of a liquidated society are prepared to forego the dividend due to them so that it may be utilised for any purpose of public utility, the liquidator should obtain in writing the consent of each ex-member, agreeing to forego his claim for dividend. Any decision on

the matter by the majority of ex-members will not be binding on all the ex-members. Any surplus funds remaining after the payments mentioned in sub-rule (2) of rule 100 may, with the previous approval of the Registrar be applied by the general body for making conributions to the National Defence Fund or any other fund approved by the Government, and any surplus fund not so applied shall be utilised in the following manner:

24.2. In the case of a society, other than a financing bank the surplus funds shall be applied to such object of public utility as may be selected by the general body of the members of the society ordered to be wound up at a meeting and approved by the Registrar (Deputy Registrar). The approval of the Registar (Deputy Registrar) is necessary even in cases where the Co-operative Sub-Registrar is the liquidator. It shall be competent for the liquidator to constitute a trust to carry out such object and to require the general body to select a trustee or trustees from among the ex-members and or others. If the general body does not select a trustee or trustees, or if the selection of a trustee or trustees by the general body is not acceptable to the liquidator, the liquidator may himself appoint a trustee or trustees, as the case may be. The trustee or trustees, as the case may be, shall execute a deed in the form prescribed by the Registrar and shall utilise the said funds for the said purpose within a period of three years from the date of execution of the deed. If the trustee or trustees fails or fail to utilise the amount within the aforesaid period in accordance with the terms of the trust deed, it shall be competent for the Deputy Registrar, after giving an opportunity to the trustee or trustees, to state his or their objections, if any, to assign the amount to the reserve fund of the financing bank working in the area, in which the society ordered to be wound up carried on its operations or to the Cooperative Research and Development Fund or Cooperative Education Fund. A trust so created shall be governed by the provisions of the Indian Trust Act , 1882 (Central Act II of 1882).

24.3. If within 30 days after the issue of notice by the liquidator appointed to wind up the affairs of the society, the general body fails to make any selection that is approved by the Deputy Registrar, the Deputy Registrar may place the surplus funds on deposit or otherwise with the financing bank having jurisdiction over the area, in which the society ordered to be wound up carried on its operations until a new co-operative soceity with similar objects is registered in such area, in which case the funds shall be credited to

the reserve fund of such new soceity. If, in the opinion of the Deputy Registrar, there is no prospect of a new society being formed in such area within a reasonable time, the Deputy Registrar shall assign the amount to the bad debt reserve or the reserve fund of the financing bank working in such area or to the Cooperative Research and Development Fund or Co-operative Education fund.

24.4. Under sub-rule 2 (a) (ii) of rule 100 the general body has 30 days' grace time after notice from the Registrar within which to make a choice with regard to the disposal of surplus; thereafter, the general body is **functus** officio, as it were and it cannot make a fresh choice.

24.5. In the case of a financing bank, the surplus funds shall be assigned by the Registrar to the reserve fund or funds of any other financing bank or banks, to which the societies working in the area in which the financing bank ordered to be wound up carried on its operations, are affiliated or transferred. If there is no financing bank working in such area, the Registrar shall invest the amount on interest in the Tamil Nadu State Apex Co-operative Bank, until a new financing bank is formed in such area, in which case the funds shall be credited to the reserve fund of such new financing bank.

24.6.The trustees appointed by the general body of a soicety to carry out the purpose decided upon by them, should execute a trust deed on stamp paper in the form appended to this chapter *(Annexure I).* It is desirable that it should be registered. In cases, where the trust funds do not exceed Rs.100, the liquidators may use their discretion as to the registration of the documents according to the circumstances of each case. Where local bodieis or other public institutions are appointed as trustees, the execution of the trust deed may be dispensed with. All the trust deeds obtained in a Deputy Registrar's Circle should be filed in a single permanent record (R. Disposal). A register in the form shown in Annexure II at the end of this chapter should be maintained by the liquidators in order to show the manner in which surplus funds have been disposed of in each Deputy Registrar's Circle.

24.7.Under Rule 114 (k), if any liability cannot be discharged by a liquidator, owing to the where abouts of the claimants not being known or for any other cause, such as the non-availability of relevant books and details, the amounts covered by such undischarged liability may be deposited in the financing bank and shall be made available for meeting the claims of the persons or

persons concerned. On the expiry of three years from the date of deposit of such amount, the Registrar may, on his own motion or on the application of the financing bank, pass an order directing that the said amount shall be added to the bad debt reserve of the financing bank, provided that no such order shall be passed by the Registrar, unless he has published a notice of his intention to pass such an order by beat of *tom tom* in the village or villages comprised with the area of operations of the society or by publication in the *District Gazette* concerned or by any other means, which he may consider suitable and a period of 30 days has expired from the date of such publication. The powers of a Registrar under this rule have been conferred on the Deputy Registrars in respect of societies ordered to be wound up by them under section 137 (2) of the Act.

24.8. After completing the work in each society, the liquidator should submit a final closing report to the Registrar summarising briefly the steps taken to collect the assets and to discharge the liabilities, enforcement of unlimited liability, if any, against members, reasons for writing off of irrecoverable debts, whether any dividend in accordance with Rule 100 (1) was paid, how the surplus funds were disposed of, whether a final meeting of the general body was convened, etc. A statement showing the cash receipts and cash payments from the date of liquidation to the date of final closing should accompany the final closing report. The assets (interest on investments, etc.) and liabilities (further interest to creditors, liquidation charges, cost of stationery, etc.) that have accrued should be specifically mentioned in the report. The audit report of the society from the date of the last audit up to the date of final closing should also be submitted along with the final closing report. A certificate from the Assistant Director of Co-operative Audit concerned that no audit fee is pending recovery from the society should be obtained by the liquidator and the fact reported in the final closing report submitted to the Registrar. The liquidator should also satisfy himself that there is no amount standing to the credit of the society in the execution suspense, etc., of the Deputy Registrar and should certify to that effect in the final closing report submitted to the Registrar.

Cancellation of Registration.

25.The Registrar after satisfying himself that the liquidation proceedings are in order, that the liquidator has followed the proceedure laid down in the Rules and that the affairs of the society have been completely wound up, shall make an order cancelling the registration of the society under section 140 of the Act. On the cancellation of its registration, the society

shall cease to exist as a corporate body from the date of such order of cancellatiion of registration. An order of such cancellation should be communicated by registered post to the society and to the financing bank, if any, of which the society was a member. The powers of a Registrar under this section have been conferred on the Deputy Registrars in respect of societies ordered to be wound up by them under section 137(2) of the Act,

Removal of Liquidator

26. Under rule 114(l), a liquidator may at any time be removed by the Registrar and he shall on such removal be bound to hand over all the properties and documents relating to the society ordered to be wound up to such person as Registrar may direct.

Disposal of records of a soiceity which is finally wound up.

27.1. According to rule 114 (m), all the books and records of a society whose registration has been cancelled and the proceedings of liquidation are completed may be destroyed by the Registrar after the expiry of three years from the completion or conclusion of the liquidation.

27.2. Unused receipts in receipt book relating to finally closed societies should be cancelled under the initials of the liquidator before they are sent to records.

Restoration of society ordered to be wound up under section 142 of the Act

28.Where in the opinion of the Registrar, a society which has been ordered to be wound up may be restored to a board constituted in accordance with the provisions of the Act, rules and bylaws, he may, at any time before the affairs of the society are completely wound up, cancel or withdraw the order of winding up in consultation with the board of the financing bank and direct the liquidator to constitute a board and handover the management to such board. He shall not however cancel or withdraw the winding up of any insured bank without the prior permission of the Reserve Bank of India.

Maintenance of books.

29. The accounts of liquidated societies should be carefully maintained and checked by the liquidators. The books maintained by societies may be continued, wherever necessary, even after the order of winding up. The loan ledger to be maintained should, however, be in the form prescribed by the Registrar for the purpose. The liquidators should also keep such other books or registers, as may be prescribed by the Registrar from time to time.

(a) General liquidaion cash book:— In districts, where there are separate liquidation inspectors, the records of the societies are

kept in the Deputy Registrars' offices; but, when the Inspectors go on tour, they take with them the cash books of the societies they visit. Therefore, the cash books of liquidated societies will not generally be available in the offices of the Deputy Registrars. To enable the issue of receipts to members, who make payments direct into their offices, a general liquidation cash book and a receipt book should be maintained in the offices of the Deputy Registrars. The general instructions issued by the Registrar in regard to the maintenance of subsidiary cash books should be observed in the maintenance of this general liquidation cash book also. All collections received in office towards the dues to liquidated societies should be entered in the office main cash book and in the general liquidation cash book and thereafter remitted into the treasury to the credit of the personal deposit account of the liquidator concerned. Besides the collections received direct in the office, all other cash transactions relating to liquidation except those relating to the district liquidation fund account should find a place in this cash book and in the office main cash book. The other transactions referred to, are the drawal in cash from the personal deposit accounts of the liquidator and money orders sent to ex-members and returned undelivered. In the case of all cash receipts in the office, in respect of collection of assets of liquidated societies, full particulars regarding the name of the society and the nature of the collection, with the names of the members should be entered in the cash book. If details of credit for these remittances could not be ascertained due to the absence of the liquidation staff, the amount so received should be kept under suspense and receipts issued accordingly. Receipts should be issued from a separate receipt book maintained for the purpose. The receipts should be issued under the signature of the Co-operative Sub-Registrar or the Deputy Registrar promptly on the same day of receipt of cash and the receipt number entered in the cash book. All collections should be remitted into the treasury to the credit of the personal deposit account of the liquidator concerned and the chalan number entered in the cash book. The vouchers in respect of remittances into the treasury should be retained in the Deputy Registrar's office. The chalans for remittances should be filed in the voucher files of the societies concerned, serially numbered and also noting the numbers in the general liquidation cash book to facilitate audit. The entries in this cash book should be directly incorporated in the cash books of the societies and separate adjustment receipts should be issued from the receipt book of the

concerned society with a note indicating that the previous supense receipts (mentioning number and date) stand cancelled. The receipt number of the general liquidation cash book should however, be entered against the corresponding entry in the society's cash book. The annual audit of the society's accounts should therefore include a complete check of all receipts and remittances into the treasury in the general liquidation cash book. The liquidation inspectors, who will be in the headquarters of the Deputy Registrar, should make adjustment entries in the cash books of the societies directly from the general liquidation cash book maintained in the office. The cash book, the receipt book and the vouchers maintained in the Deputy Registrar's office should be audited by the auditor for liquidated societies. All items of receipts by drawals in cash from the personal deposit accounts (other than drawals from district liquidation fund account) by the liquidators (which should be rare) should be entered in the office main cash book and in the general liquidation cash book, with the particulars of cheques number and names of societies, from whose personal deposit accounts, the amounts are drawn. As details of expenditure or disbursements made out of the amount drawn are accounted for with necessary vouchers in the cash book of the liquidated society concerned, it is enough if the following debit entry "Transferred to the cash book of the . . . . . co-operative society under liquidation" is made on the payment side of the general liquidation cash book. But the cash balances, if any, at the end of the day, in the cash books of any of the societies should, however, be exhibited both in this cash book as well as in the office main cash book. The liquidators should also hand over the cash balances with them at the end of the day to the head clerk for safe custody. Receipts should, however, be issued to liquidation inspectors for remittances received from them in the Deputy Registrar's office. The general liquidation cash book should be maintained by the Assistant in charge of the liquidation section in the office and no case by the liquidation inspector or any other executive staff incharge of liquidation work. It should be checked by the head clerk and the Co-operative Sub-Registrar on all days on which there are transactions and both of them should attest it with their full signatures in token of their check. In order to watch the proper observance of these instructions, the following additional certificates have been prescribed to be furnished by the Senior Inspector, who audits the district liquidation fund once a half-year and by the auditor, who audits the accounts of the liquidated societies once a year.

(i) Certificate to be furnished by the Senior Inspector-Auditor of the district liquidation fund account:— "Certified that all items of cash relating to liquidated societies received in the office during the year have been duly entered in the general liquidation cash book and properly accounted for and incorporated in the cash books of the liquidated societies and that Registrar's instructions in Rc.No.172956/55-F, dated 13th November 1955 have been observed".

(ii) Certificate to be furnished by the auditor of the liquidated society: — "Certified that I have checked the general liquidation cash book for the year and have satisfied myself that all the transactions relating to this society have been properly incorporated in its cash book and that Registrar's instruction in Rc.No.1729656/55 F, dated 13th November 1955 have been observed.

(b) Personal deposit accounts. — Moneys received by Government servants in their official capacity as liquidators should be deposited with Government in a personal deposit account and withdrawn as and when required. In circles where the Deputy Registrars and the Co-operative Sub-Registrars are both liquidators for societies, two deposit accounts should be opened-one for the Deputy Registrar and the other for the Co-operative Sub-Registrar. The treasury will maintain only one account of all societies in charge of a liquidator, while the liquidator will have to maintain separate accounts for each society. A society-wise personal deposit register should be opened by the liquidator and all deposits in the treasury and withdrawals from it in respect of each society should be recorded in it chronologically, as done in a pass book. Before drawing on behalf of a soicety any amount from the personal deposit account in the treasury, the balance to the credit of the society as shown in this register should be verified. This will help to prevent over drawals in any individual society's personal deposit account. The treasuries will issue a pass book in respect of each personal deposit account (i.e), one for each liquidator.

(c) Register for remittances into and withdrawals from the personal deposit accounts in the treasury.-(i) Full details of all remittances into and withdrawals from the personal deposit accounts in the treasury should be entered in this register from day-to-day. Remittances should be made in triplicate chalans and the register should be written up as and when the chalans are received. The total amount remitted into the treasury each day, the number and date of the chalan for the payment and details of the amount remitted on behalf of each society should be entered in

this register. Similar particulars should be given in respect of withdrawals also. The balance on each day of transactions must be struck so as to enable the liquidator to know the amount available in the personal deposit account whenever he wants to draw money from the treasury. From this register, postings should be made in the accounts of the societies concerned in the society-wise personal deposit register. The total of balances in the account of the societies should be struck at the end of each month and tallied with the balances in the register. The auditor, who attends to the half-yearly audit of the district liquidation fund account, should certify that the total of the amounts outstanding in the personal deposit accounts of the societies for the half year agrees with the balance under personal deposit account as shown in the register of remittances and withdrawals relating to the personal deposit account.

(ii) On the last day of each month, the balance in the register should be reconciled with the treasury figures also. The reconciliation should be entered in the register after the transactions of the last day of the month. The treasury pass book must be got posted regularly at the beginning of each month.

(iii) The auditor, who attends to the half-yearly audit of the district liquidation fund, should verify all the chalans and counterfoils of cheques relating to the personal deposit accounts and append a certificate to that effect to the half-yearly audit report. He should also certify (i) that the balances under personal deposit accounts have been verified every month with the entries in the pass books supplied by the treasury and reconciled with the accounts maintained by the liquidators, and (ii) that the balances under the personal deposit accounts as shown in the register of remittances and withdrawals on the closing day of the half-year were verified by him with reference to the entries in the pass books given by the treasury and found to be correct.

(d) Register to tally the total of individual personal deposit balances with the balance shown in the register for remittances into and withdrawals from the personal deposit accouts in the treasury: — The balances in the society-wise personal deposit register should be posted in this register once a month and totalled. The totals struck in this register must agree with the balances shown in the register for remittances into and withdrawals from the personal deposit accounts in the treasury. Discrepancies will arise only, if the amounts relating to the Co-operative Sub-Registrar's personal deposit accounts are wrongly credited or debited to the

Deputy Registrar's personal deposit account or vice versa. In such cases, the discrepancies must be reconciled and the treasury officers asked to make the necessary adjustments in the accounts.

(e) The district liquidation fund.— (i) The liquidation charges collected from liquidated societies in each district are constiuted into a separate fund called the district liquidation fund and from this all items of expenditure incidental to liquidation work in the district, such as, maintenance of non-official staff and printing of forms, are met. Liquidation charges are levied at the rate of 15 per cent of the assets collected and out of this 12 1/2 per cent of the collections should be credited to Government. The entire liquidation charges collected should be credited to Government, retaining in the district liquidation fund only what is absolutely necessary to meet the expenditure connected with liquidation work. Deputy Registrars may incur expenditure out of district liquidation funds towards non-official staff, contingencies, purchase of furniture, etc., but such expenditure should not exceed one-fourth of the total liquidation costs collected. The expenditure on the employment of non-official staff and furniture should not, however, be incurred by the Deputy Registrars, without the prior sanction of the Registrar. The number and date of Registrar's sanction should be quoted invariably in the cash book against such expenses. Under no circumstances, the amount under district liquidation fund can be utilised for the purchase of stationery, printing of forms, furniture, etc., required for office use. The minimum amount that is absolutely necessary for liquidation work alone should be utilised from the fund.

(ii) The powers of the Registrar for utilisation of the district liquidation fund on matters like the purchase of furniture etc have not been delegated to the Joint Registrars. Hence they should not issue orders on such matters. Whenever they get proposals from the Circle Deputy Registrars for the utilisation of the district liquidation fund, the Regional Joint Registrars should examine whether the proposed expenditure is in connection wiith the liquidation work and should submit proposals for Registrar's sanction with the necessary details of the proposed expenditure, estimated costs, the source from which the articles are to be purchased, the amount at credit with the district liquidation fund, period upto which the district liquidation fund account has been audited etc. The Circle Deputy Registrars should not incur any expenditure from the District Liquidation Fund on the purchase of furniture etc without Registrar's prior sanction.

(iii) The liquidation charges to be collected from each society should be calculated once a month and the amount found due should be collected and remitted to the fund account at the beginning of each month.

(iv) All transactions relating to the fund should be passed through the fund cash book. Receipts should be issued for all sums received into the fund and the receipt numbers and vouchers numbers noted in the cash book. The receipts issued to societies for liquidation costs paid by them need not, however, be stamped, whatever may be the amount. In respect of the collection of liquidation charges, the month to which the collection relates must be entered both in the receipt issued to the liquidated societies and in the district liquidation fund cash book. The cheques drawn must be entered in the cash book on the dates of drawal and not on the date of encashment of the cheques. Drawals in cash from the district liquidation fund account should be passed through the office main cash book and the district liquidation fund cash book and not through the general liquidation cash book.

(v) The amount payable to Government should be remitted to Government out of the district liquidation fund by adjustment at the beginning of each month; the treasury officers should be asked to transfer from the personal deposit account, to the appropriate head of account, the amount due.

(vi) Liquidators may retain a small cash balance with them out of the district liquidation fund to meet contingencies. They have been permitted to keep not more than Rs.25 at a time in circles where the number of liquidated societies exceeds 100 and not more than Rs.15 in other circles.

(vii) The distrct liquidation fund account should be audited by a Senior Inspector every half year (for the half years ending 30th September and 31st March) and the audit report submitted in the form prescribed. He should examine the books of original entry and prepare his report with reference to the cash books of the liquidated societies. He should verify with reference to the cash books of the soceities whether the amounts trasferred to the district liquidation fund account and the amounts credited to Government are in accordance with the instructions on the subject and mention the fact in the audit report. He should certify that he checked all chalans and counterfoils of cheques relating to the fund account and all vouchers fo payments made out of the fund and that the receipts and vouchers are in order.

(viii) When the registration of a society is cancelled, all undisbursable surplus, such as excess liquidation costs and collections from defaulters through official receivers of Civil Courts after the final closing of societies should be added to the reserve fund or bad debts reserve of the financing bank or to the Co-operative Research and Development Fund or Cooperative Education Fund and not to the district liquidation fund account.

(f) Demand, collection and balance register of liquidation, costs. — This register should show in respect of each society the total collections (excluding withdrawals from personal deposit account) during each month, the assessable collections during the month, the liquidation costs payable to Government (both current and arrears), the amount paid to Government, the date of payment, the balance yet to be paid, etc., The entries relating to each month must be posted regularly and it should be checked by the Co-operative Sub-Registrar every month and by the Deputy Registrar atleast once a quarter. The proper maintenance of this register will facilitate the work of auditors and of the office in preparing the quarterly statements showing the liquidation costs collected and the expenditure incurred.

(g) Suspense register.— Advances are at times made from the district liquidation fund to meet expenses, such as, execution fees and court costs, connected with liquidation work in societies which have no funds to their credit. Such advances should be recovered as soon as funds become available; no creditor should be paid before this is done. A suspense register should be maintained to show the advances made to societies and the recoveries effected from them. The auditors should verify whether the advances given have been recovered promptly. Advances pending recovery for over three months should be specifically mentioned in the audit reports. The balance on the last day of each half-year should be verified with the figures shown in the asset side of the half-yearly audit report.

(h) Furniture register. — A register should be maintained to record therein the furniture bought out of the district liquidation fund. The furniture held should be verified by the Deputy Registrar at least once a year and by the auditor, who audits the district liquidation fund accounts every half year.

29.3. The Deputy Registrars whenever they check their office main cash books should also check the general liquidation cash books among other subsidiary cash books. They should submit a certificate every month to the Registrar on or before 10th of the succeeding month in the following form:

" Certified that I have checked my personal deposit account cheque books and also those of the Co-operative Sub-Registrar liquidators and am satisfied that the cheques drawn from the personal deposit accounts during the month of . . . . . have been properly accounted for in the office main cash book and also in the general liquidation cash book and the cash books of the concerned liquidated societies then and there and that the expenditure incurred out of the moneys drawn has been properly vouched."

Instructions regarding the custody under drawal of cheques and the mode of disbursement.

30.1. According to instruction 41 under treasury rule 16, Tamil Nadu Treasury Code Volume I,cheque books should invariably be kept under lock and key in the personal custody of the drawing officer. These instructions should be scrupulously observed by the Deputy Registrars and Co-operative Sub-Registrars supplied with cheque books for the operation of their personal deposit accounts. The cheques should be written either by the liquidators themselves or by the liquidation Inspector or the Assistant concerned in their presence. Cheques for meeting expenditure should as a general rule be drawn in favour of the head Assistant. This will ensure proper entry in the office main cash book by the head Assistant. As regards the payment to the financing bank towards loan accounts of societies under liquidation, crossed cheques should be issued as a rule. Similarly for remittances through post offices, crossed cheques on the treasury may be drawn for adjustment to postal account. This will obviate the need for encashment of cheques by the liquidator for remittance by money order and will also facilitate the work of the postal department. Whenever cheques are sent to the Co-operative Central Bank or to the treasury a note should be made on the counterfoils of the cheques, of the number and date of the letter with which, the cheques have been sent.

30.2. Whenever there is a change in the personnel of the liquidator, the cheque book number and the number of unused leaves in the book should be indicated in the transfer of charge list. Whenever cheques are drawn the amount should also be written in words in the counterfoil of the cheques. No space should be left after the letters Rs. in the cheques. This will obviate any fradulent insertion of figures. In short all the usual and reasonable precautions should be taken when drawing the cheques.

30.3. Larger amount withdrawn from personal deposit account should not be entrusted to the liquidation inspectors for

disbursement to the ex-members of societies in liquidation towards their share capital and dividend. The liquidation inspectors should have as little opportunity as possible for handling cash. The usual method should be to remit the amounts by money order. If, for any reason, the amounts have to be disbursed in cash, the liquidator should himself be present at the time of disbursement. In cases, where sums involved for transmission are small and negligible, they may be classified as undisbursable items and added to surplus.

Audit of accounts of societies under liquidation.

31. The audit of accounts of liquidated societies is done by the auditors, working under the administrative control of the Assistant Director of Cooperative Audit. The audit is of two kinds, viz., (i) annual audit, and (ii) final closing audit done before cancellation of registration of a society. The principles governing the audit of the societies under liquidation are much the same as for the audit of living societies, but there is no necessity to draw up trading, and profit and loss accounts while finalising the accounts. If the winding up orders take effect in the middle of the audit year, the auditor has to finalise the accounts separately (a) for the period from Ist April while it was functioning upto the date of effect of order to wind up; and (b) for the period from such date to 31st March.

31.2.The final audit memorandum for the former period has to be prepared in the forms intended for living societies and for the latter period in the form relating to liquidated societies. While there are different forms in use for different types of living societies, the form of the final audit memorandum of all liquidated societies is the same, whatever might have been its type while it functioned. The accounts of the liquidator relate purely to the process of winding up the society and do not aim at profit or loss, as in the case when the society lives and carries on trading or banking activities in accordance with its bylaws. Winding up involves the realisation of assets and the payment of liabilities, incidentally incurring such expenses as may be necessary for the process of winding up, including the statutory cost of liquidation due to the Government at 12.5 per cent of the collections effected by the liquidator. The liquidators are assisted by the staff for liqudation work, who write up the accounts and get them attested by the liquidators. The form of the audit memorandum provides, among certain other items, for the preparation of a statement of receipt and disbursement and a balance sheet. The balance sheet is provided with two money columns to exhibit the assets and liabilities as on the date of order to wind up

and the other as on the last day of the year to which the final audit memorandum relates. By comparing the figures in the second column with those in the first, it will be possible for any one to assess how far the process of winding up has progressed up to the close of the year under audit. In the audit memorandum prepared for the purpose of enabling the liquidator to submit his final closing report to the Registrar for cancelling the registration of society under section 140 the second column of the balance sheet will be blank from beginning to end, indicating thereby that there are no more assets to be realised and no further liabilities to be discharged.

31.3. The person taking up the audit of liquidated societies should be thoroughly conversant with the instructions to liquidators in this chapter and with all the circulars issued by the Registrar from time to time on the subject of liquidation. He should study section 139 and rules 100 and 114. The powers of the liquidator are defined in section 139 while the procedure for winding up and disolution of societies is set forth in the said rules.

31.4. Two copies of the audit memorandum should be prepared in respect of each society under liquidation, one copy to be sent to the administrative authority and the second to be retained in the office of the Assistant Director of Co-operative Audit. Like the audit report of the living societies, the audit report of the liquidated societies also should be checked in the office of the Assistant Director of Co-operative Audit and forwarded to the administrative authority concerned with the following endorsement "Forwarded after scrutiny." It is enough if these reports are scrutinised and forwarded by the Co-operative Audit Offcer in the office of the Assistant Director of Co-operative Audit, on behalf of the Assistant Director of Co-operative Audit.

31.5. Auditors, who conduct the final closing audit, should furnish, a certificate to the effect that the ledger balances were checked and found to agree with the figures shown in the balance sheet.

Final Audit of societies ordered to be wound up where books accounts etc were not taken charge by the Liquidation Inspector.

32. There may be instances wherein the Liquidation Inspector due to efflux of time and or the dormant condition of the society for long, may not be in a position to ascertain or find out the person, who was in custody of books, accounts, documents, securites, cash etc; or perhaps such person would have died and/or his where abouts not known. In certain cases these books, documents etc would have been destroyed. In such an event the Liquidation Inspector may not be able to take charge of the books and accounts

etc of the societies ordered to be wound up. For the Final Audit of such societies, ordered to be wound up, but not taken charge of by the the Liquidation Inspectors, the following procedure has to be followed: —

(a) The Liquidation Inspector should visit the office of the concerned Assistant Director of Cooperative Audit and ascertain the period upto which the last Final Audit has been done and Audit Certificate issued. He should then find out, whether there are any transactions or not subsequent to this period and submit a certificate to this effect to the Circle Deputy Registrar, along with the details of bank balances, if any, in the name of the society. Before furnishing such certificate, the Liquidation Inspector should issue notice to the members and creditors of such society, in the manner as may be decided by him as for and proper in the circumstances, requiring them to inform him about any transactions that they had with the society, within two months from the date of such notice and failing which, it would be construed that they had no such transactions to inform. Liquidation Inspector, should also submit a report along with this certificate stating the reasons for not taking charge of books, accounts etc of such society and the steps taken by him in this respect.

(b) The Circle Deputy Registrar after satisfying himself that the Liquidation Inspector has taken adequate steps in this respect, should send the certificate of the Liquidation Inspector with his endoresement thereon to the concerned Assistant Director of Cooperative Audit, requesting him for the completion of Final Audit of the period subsequent to the period for which the Final Audit has been completed till the date of order of winding up.

(c) The Assistant Director of Cooperative Audit on the basis of the certificate furnished by the Liquidation Inspector with the endorsement of Circle Deputy Registrar thereon should arrange for the completion of the Final Audit for such period and issue the Audit Certificate.

Returns to be submitted by the liquidator.

33. Clause (d) of rule 114 requires the liquidator to submit to the Registrar in such form as he may prescribe a quarterly report showing the progress made in the liquidation. The report should be submitted to the Registrar by the Deputy Registrars. Quarterly reports should be submitted for the quarters ending 30th June and 31st December and half yearly reports for the period ending with 31st March and 30th September, on or before the 15th of the month succeeding the quarter or the half year, as the case may be.

Liquidation staff and their work.

34.1. The collection of assets and payments of liabilities are important duties of a liquidator and in order to assist him in the discharge of these duties the Government have sanctioned a special staff of Inspectors. The intention of Government is that the cost of the staff should, as far as possible, be covered by the costs of liquidation collected from societies. The liquidation Inspectors are distributed according to the requirements of each circle, the rough standard being one Inspector for every 28 societies.

34.2. The liquidators may, with the previous sanction of the Registrar, appoint non-official staff, scuh as agents, to assist them in special circumstances, as the "man on the spot" may be better equipped and better fitted for the task of collection than an outsider. Such persons who are appointed as collection agents cannot, however, be left to themselves; they may be required only to assist the liquidation Inspectors in their work by furnishing them with necessary information and taking action according to the directions of the liquidation inspectors. The collection agents may be paid ordinarily a small amount of commission, say, 2 1/2 per cent of the collections effected. The permission of the Registrar is not necessary for the appointment of collection agents. The payments of commission to the agents should be met from the funds of the society concerned and not from the district liquidation fund. In exceptional cases, however, the expenditure on commission to collection agents may be met from the district liquidation fund with the special sanction of the Registrar. Adequate security should be taken f rom those persons if they have to handle moneys in the course of their duties.

34.3.As the inspectors employed on liquidation work have to make collection in cash, Government have permitted them to do so. These inspectors should be authorised in writing by the liquidator to collect money from members and to issue receipts on behalf of the liquidator. Every time there is a change in the personnel of the inspector, there should be a written order to the above effect. The moneys collected should be promptly handed over to the liquidator or paid to the treasury, in accordance with the instructions issued to them from time to time.

34.4. Cash books of societies under liquidation are writiten up by the liquidation inspectors and all the records are kept in the Deputy Registrar's office. All records relating to the district liquidation fund account and the demand, collection and balance register of liquidation costs will be maintained in the Deputy Registrar's office.

Production of guarantee Bonds by Liquidation Inspectors.

35.The liquidation Inspectors are incharge of collection and remittances the amount due from and to the societies and they are not recruited against security post. Hence the Government have directed that the Junior Inspectors/ Senior Inspectors etc of the Cooperative Department, appointed as Liquidation Inspectors in respect of the liquidated societies, should hence forth produce fidelity guarantee bonds to the extent of Rs.1,000/- (Rupees one thousand only) each and the premium for such fidelity guarantee bonds, be met from office contingencies.

Need for division of liquidation work and control of the staff and their work.

36. Liquidation needs urgent and personal attention of departmental officers and it should, therefore, be speeded up through a proper division of labour among the staff and a strict control over their work. Liquidation Inspectors may generaly be given 28 societies each or such other number, as the Deputy Registrar may consider necessary in view of the volume of work in the societies allotted to them. The work of the inspectors should be carefully watched and regulated. Fortnightly diaries and brief reports of work done by them should be obtained and reviewed. Deputy Registrars should, draw up a quarterly programme of work for them and see that they adhere to the programme. A rotation register should be maintained for each of the Inspectors to watch whether he visits every society in his charage atleast once in a quarter.

36.1.The liquidation Inspectors have been empowered to act as Sale Officers and this should facilitate speedy recovery of dues. The Inspectors should not be content with filing the execution petitions nor should they carry the processes to the finish and take land or properties in possession except in very necessary cases. The proceedings should be so conducted as to yield the maximum of collections. The sale powers should be exercised as an aid to collections and not as a matter of routine.

36.2.According to the instructions of the Inspector-General of Registration, liquidation Inspectors, who are Government servants are permitted to search registration records free of cost. The search should be restricted to the minimum and should be under-taken only in absolutely necessary cases.

36.3.Deputy Registrars should have a regular plan of work in regard to societies ordered to be wound up. It is very essential that the officers should have a personal knowledge of these societies and particularly of those, which are either indebted to the financing bank

or have outside creditors. For this, they should draw up a programme and visit all the liquidated societies within a period of, say six months. Societies, which are indebted to Government, or in which the deficit is estimated to exceed Rs.2,000, or which have been under liquidation for over five years should receive the special attention of the Deputy Registrars.

Deputy Registrar and liquidation Inspectors should summon as many meetings as possible of the ex-members with a view to find out the possible methods of recovery. A representative of the central bank may be invited to be present at such informal meetings so that the central bank also may be in the know of things and it might, if possible, exert its influence, to the extent that it can, in finding out the methods of recovery. If it is found necessary to write off any portion of the dues to the central bank, it will also be easier to convince the central bank, of the need for it.

An important item of work in liquidated societies is the disposal of lands and buildings in the possession of liquidator. It is admittedly a difficult task for the liquidator to manage the properties, which have come into his possession. Ordinarily, the lands and buildings should not be taken by the liquidator and in those cases, where they come into his possession, attempts should be made to dispose of them to the original owners themselves or to their next of kin, if they are agreeable to pay the market value or somewhere near about it within a period of, say, six months or one year. In cases, where there are no outside debts to be paid, the land may be restored to the original defaulters even at less than the market value. If such a procedure is not possible, the liquidator should consider the alternative method of disposing of the land in public auction. When once a sale has been held and knocked down in favour of a third party, it should not ordinarily be set aside later merely because the orignal owner or any of his relative, subsequently offers to purchase the properties, either for the same price or for a higher amount; unless the bid was much below the market value of the properties, the sale should ordinarily be confirmed. The liquidators should make it a point to dispossess themselves of the lands and buildings, if any, as quickly as possible so that more attention may be paid to other items of work in liquidated societies.

ANNEXURE I

Form of deed to be executed by the trustees appointed to administer the utilisation of surplus funds in liquidated societies.
(Rule 100 (2) (a) (i) of the TNCS Rules 1988)

Deed of trust executed this day of (month) year

1. aged

of profession
residing in village,
taluk, district.

2.
3.

Whereas under the orders of the Registrar of Cooperative Societies, Chennai, No. dated the registration of Society No. village taluk district has been wound up by the official liquidator and where we, the said

(1)
(2)
(3) hereinafter described as trustees have been appointed as trustees under the resolution of the general body meeting of the village, taluk, district held on (date) in the manner hereinafter described ,viz.,
(here enter all the resolutions in order)

Whereas it has been decided under the resolutions above referred to that the said fund amounting to Rs.
(figures) (in words) should be utilised for (purposes), and whereas we, the said trustees, are appointed for
and whereas it shall be competent for the District Court on the application to be made in this behalf by two or more of persons interested in the public purpose or by the remaining trustees to remove us and appoint new trustees as well as for filling up vacancies.

And whereas we the said trustees have agreed to utilise the said fund for the said purposes within a period of three years from the date of execution of this deed failing which it shall be competent for the Registrar after giving an opportunity to us to state our objections if any, to assign the said amount to the reserve fund of the financing bank working in the area in which the dissolved society carried on its operations or to the Cooperative Research & Development Fund or Cooperative Education Fund.

We, the said 1,2,3 trustees, hereby signify our willingness and undertaking to administer faithfully the said trust in the manner above set forth to the best of our knowledge and ability and also to render such faithful account of the statement of affairs and properties of the trust as we may be required to do under the terms above set forth in witness hereof we have affixed our signature to this deed the

day of (month) (year)

(1)
(2)
(3)

Witnesses

(1)
(2)
(3)

ANNUEXURE II

Register showing the disposal of surplus funds of societies under liquidation in . . . . . Circle.

Name of the society under liquidation.	Surplus funds disbursed. ---------- Date Amount	Name of the trustee to whom disbursed.	Has a trust deed been obtained and if so, has it been registered (Note number and date of registration of the deed and the name of the Sub-Registrar's Office)	Purpose for which surplus funds were resolved to be utilised.
(1)	**(2)**	**(3)**	**(4)**	**(5)**

CHAPTER VII
APPEALS, REVISION AND REVIEW

Co-operative Tribunal

1.1.Section 151 of the Tamil Co-operative Soceities Act, 1983 provides for the constitution of as many tribunals as may be necessary to serve as an independent appellate forum in respect of certain matters specified in sub-section (1) of section 152. Each tribunal will consist of a person, who will be a judicial officer not below the rank of a Subordinate Judge having such jurisdiction and over such area as the Government may, by notification from time to time, determine. According to the existing orders of the Government, the Chief Judge, Court of Small Causes will constitute the tribunal for the City of Chennai while the presiding Judge of the District Court, and when there are two or more such Judges, the senior among them, will constitute the tribunal in the district concerned.

1.2. The provisions relating to appeals, which were spread over in several sections of the Act have now been consolidated and included in one section (section 152) in the Act . The provisions for appeal has been drawn up on the following basis: —

(a) There are two tiers of original authorities the subordinate officers empowered as Registrar and the State Registrar. No appeal will lie with the Government in respect of orders passed by either of them and appealable to the tribunal.

(b) In respect of specific proceedings or orders of the subordinate officers empowered as Registrar, against which appeal is provided to the tribunal, no appeal will lie with the State Registrar.

(c) In respect of proceedings or orders of the subordinate officers not falling under category (b) an appeal will lie with the Registrar of Co-operative Societies for the State.

(d) In respect of original orders passed by the State Registrar, an appeal will lie with the Government.

1.3. According to section152 (1) of the Tamil Nadu Co-operative Societies Act, 1983, an appeal will lie with the tribunal in respect of (a) an order of surcharge made under section 87 (1); (b) a decision or an order passed under sub-sections (2), (3) or 144 of section 90, section 118, section 119, section 143, section 144 or section 167; (c) any award of an arbitrator or arbitrators made in a dispupte under sub -section (2), or (3) of section 90; (d) award passed by an arbitrator under section 100 deciding the amount of compensation payable by a joint farming society in respect of a land acquired under section 99.

1.4. According to the proviso to sub-section (1) of section 152, no appeal will, however, lie with the tribunal in respect of: — (a) any decision, order or award under sub-section (2), (3) or sub-section (4) of section 90 pertaining to any matter relating to or in connection with the constitution of a board including any election thereto, (b) any decision, order or award under sub-section (2) or sub-section (3) or sub-section (4) of section 90, in respect of any matter relating to, or in connection with any matter not being money claim; or (c) any order or transfer, reference, withdrawal or retransfer of a dispute under sub-section (2) or sub-section (3) of section 90.

Procedure regarding the disposal of appeals by the Tribunal.

3. The proceedings of a cooperative tribunal shall be summary and shall be governed as far practicable by the provisions of Code of Civil Procedure, 1908 (Central Act V of 1908).

Fees payable to the Tribunal.

4. The fees payable in respect of every appeal to the tribunal shall be at the rates specified in schedule III appended to the Tamil Nadu Cooperative Societies Rules 1988.

Appeal to the Government or Registrar.

5.1. Under section 152 (2) (a) an appeal will lie with the Government or the State Registrar, as the case may be, in respect of the following matters: —

(a) any decision, under section 7 on the question whether a person is an independent person or is a resident of, or owns immovable property in the area of operation of a society.

(b) any decision under sub-section (4) of section 23, whether an applicant for admission as a member of a society was ,or has become subject to any of the disqualifications mentioned in the section.

(c) an order of refusal to register a society under section (9);

(d) an order of refusal to register an amendment of the by laws under section 11;

(e) registration of an amendment of the by-laws under section 12 (2);

(f) approval of, or refusal to approve the expulsion of member under section 25 (2), the proposal to take a loan under section 105(1) (c), the decision of the board under section 106 (1) (ii), the regulations under section 108 or the removal of a member under the proviso to section 109;

(g) any decision of the Registrar under section 34 (6) as to whether a member of a board was or has become subject to any of the disqualifications mentioned in the section;

(h) an order superseding the board of a soceity under section 88(1); or appointing a Special Officer under section 89 (1);

(i) an order directing the winding up of a registered society under section 137.

(j) a direction issued under section 181;

(k) an order under section 14 providing for the amalgamation of two or more societies. or

(i) an order under section 21 (2) (ii) removing any individual deemed to have been admitted as a member of a society.

5.2.If the order or decision in the above cases is that of the Registrar of Co-operative Societies of the State, the appeal will lie with the Government and if the order or decision is that of any other persons, the appeal will lie with the Registrar for the State.

5.3. Any person who is refused admission to a registered society under clause (i) of sub-section (2) of section 21; or who is aggrieved by any order of the liquidator under section 139 may appeal to the Registrar under section 152 (2) (b). The powers of a Registrar under section 152 (2) (b) have been conferred on the Deputy Registrars also.

Time-limit for filing appeals to the Tribunal Government,Registrar, etc.

6.1. Any appeal under sub-section (1) or sub-section (2) of section 152 shall subject to the other provisions of the Act be preferred within sixty days from the date of communication.The date of communication should be taken to mean the date of receipt by the appellant. The appellate authority may admit an appeal preferred after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

6.2. Where an appeal is preferred after the expiry of sixty days, it shall be accompanied by a petition supported by an affidavit setting forth the facts on which the appellant relies to satisfy the appellate authority that he had sufficient cause for not preferring the appeal within the said period of sixty days.

Powers of the appellate authority to pass interlocutory and final orders.

7.1. The appellate authority (the Tribunal, Government or Registrar) may pass such interlocutory order pending the decision on the appeal as it may deem fit. In disposing of an appeal under section 152, the appellate authority may, after giving the parties an opportunity of making their representations, pass such order thereon, as it may deem fit. Its decision or order on appeal shall be final subject to the provisions of Section 153 and 154. It may award costs in any

proceedings before it, to be paid either out of the funds of the registered society or by such party to the appeal, as it may deem fit.

Procedure regarding appeals other than those to the Tribunal.

8. Procedure regarding appeals other than those to Cooperative Tribunal and application for revision have been detailed under rule 169 of the Rules. Procedure regarding appeals other than those to Cooperative Tribunal and application for revision have been detailed under rule 169 of the Rules. The appeal under sub-section (2) of section 152 shall be in the form of a memorandum and shall be accompanied by the original, or a copy certified in accordance with rule 173 of the Rules of the decision, order, award, refusal, registration or approval complained of or any other proceedings appealed against. It shall be either presented in person or sent by registered post to the appellate authority. The fees payable for such appeals are as specified in schedule III appended to the Rules. Every appeal shall (a) specify the name and address of the appellant and also the name and address of the respondent or names and address of respondents, as the case may be; (b) state by whom the order appealed against was made; (c) set forth concisely and under distinct heads the grounds of objection to the order appealed against together with a memorandum of evidence; (d) state precisely the relief which the appellant claims; and (e) give the date of the order appealed against and the date of receipt thereof; and (f) accompany a receipted chalan or record to evidence payment towards the fees specified in Schedule III of the Rules.

8.3. Where an appeal under sub-section (2) of section 152 is preferred after the expiry of sixty days specified in sub-section (3) of the said section, it should be accompanied by a petition supported by an affidavit setting forth the facts on which the appellant relies to satisfy the appellate authority that he had sufficient cause for not preferring the appeal within the said period of sixty days

8.4. On receipt of the appeal, the appellate authority shall as soon as possible examine it and ensure that (a) the person presenting the appeal has the *locus standi* to do so; (b) it is made within the prescribed time-limit; and (c) it conforms to all the provisions of the Act and the Rules.

8.5. The appellate authority may call upon the appellant to remedy the defects, if any, or furnish such additional information as may be necessary, within a period of fifteen days of the receipt of the notice, to do so. If the appellant fails to remedy the defects or furnish the additional information called for within the said period, the appeal may be dismissed. It shall be open to the appellate

authority to permit at its discretion the appearance of legal practitoners in any particular case of appeal. In such cases an application with the necessary court fee stamps should be made to the appellate authority to engage legal practioners and if permitted a *vakalat* with court-fee stamps of Rs.5/- affixed on it, should be filed by such legal practitioners. The appellate authority shall, on the basis of the inquiry conducted and with reference to the records examined, pass such order on the appeal as may seem just and reasonable. Such order shall be in writing and shall also contain an order as to costs. The order shall be communicated free of cost by personal delivery under acknowledgement or under certificate of posting to parties to the appeal.

Revision by the Government or Registrar.

9.1. Under section 153, the Registrar may, of his own motion or on application, call for and examine the records of any officer subordinate to him or of the board or any officer of a society or of the competent authority constituted under sub-section (3) of section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under the Act or the rules or the by laws, not being a proceeding in respect of which an appeal to the Tribunal is provided by sub-section (1) of section 152, to satisfy himself or themselves as to the regularity of such proceeding and or the correctness, legality or propriety of any decision passed or order made therein; and, if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly. Under this section, the Government and the Registrar have got powers to call for and examine the records of their subordinates either on application or *suo motu*

9.2. An application for revision under section 153 should be made within ninety days from the date on which the proceedings, decision or order sought to be revised, was communicated to the applicant. The date of communication should be taken to mean the date on which it was received by the applicant. The application for revision should accompany a, receipted chalan to evidence payment of fees specified in schedule III appended to the Tamil Nadu Cooperative Societies Rules 1988. Proceedings in respect of which an appeal to the Tribunal is provided, under sub section (1) of section 152 have been specifically excluded from the scope of this section.

Power of the revising authority to pass interim and final orders.

10. The Registrar or the Government under section 153 (3), may suspend the execution of the decision or order pending the exercise of his or their power under section 153 (1). The Registrar or Government may award costs in proceedings under this section to be paid either out of the funds of the society concerned or by such party to the application for revision, as the Registrar or the Government may deem fit. No order prejudicial to any person shall, however, be passed under section 153 (1) unless such person has been given an opportunity of making his representation.

Fees to be Charged and other matters of procedure pertaining to application for revision.

11.1. An application for revision shall be in the form of a memorandum and shall be accompanied by the original or a certified copy of the order sought to be revised. Each revision petition shall be accompanied by such additional number of copies, as there are respondents. An application for revision shall be either presented in person or sent by registered post to the revising authoirty.

11.2. Every application for revision shall (a) specify the name and address of the applicant and also the name and address of the respondent or the names and addresses of the respondents, as the case may be; (b) state by whom the order to be revised was made; (c) set forth concisely and under distinct heads the grounds of objection to the decision, order, award, refusal, registration or approval complained of or other proceedings sought to be revised together with a memorandum of evidence; (d) state precisely the relief which the applicant claims; and (e) give the date of the decision, order, award, refusal, registration or approval complained of or other proceedings sought to be revised and the date of receipt thereof; and (f) accompany a receipted chalan or record to evidence payment towards the fees specified in Schedule III of the Rules.

11.3. On receipt of the application for revision, the revision authority shall, as soon as possible, examine it and ensure that (a) the person presenting the application for revision has the locus standi to do so; (b) it is made within the prescribed time-limit of ninety days ; and (c) it conforms to all the provisions of the Act and Rules.

11.4. The revising authority may call upon the applicant for revision to remedy the defects, if any or furnish such additional information as may be necessary, within a period of 15 days from the date of receipt of the notice to do so. If the applicant for revision fails to remedy the defects or furnish the additional information called for within the said period, the revision petition may be dismissed.

11.5. The revising authority may, before passing orders under section 153, obtain from any subordinate officer such further information in regard to the inquiry or the proceedings for the purpose of verifying the regularity of such proceedings or the correctness, legality or properiety of any decision passed or order made therein. The revising authority may also call for and obtain from the parties connected with such inquiry or proceedings, such information as is necessary with reference to the examination of the records of inquiry or proceedings and the information obtained from the subordinate officer. In the proceedings before the revising authority, it is open to the revising authority to permit legal practitioners to represent parties in any particular case of revision. In such cases an application with the necessary court fee stamps should be made to the revising authority to engage legal practitioners and if permited a *vakalat* with a court-fee stamps of Rs.5/- affixed on it, should be filed by the legal practitioner concerned in such cases.

11.6.The revising authority shall, on the basis of the inquiry conducted and with reference to the records examined, pass such order on the application for revision, as may seem just and reasonable. Such order shall be in writing and shall also contain an order as to costs. The order shall be communicated free of cost to the parties to the revision by personal delivery under acknowledgement or under certificate of posting.

Correction of errors and mistakes.

12. The clerical or arithmetical mistakes in the order or errors arising therein from any accidental slip or omission may at any time be corrected or caused to be corrected by the appellate or revising authority either *suo-motu* or on application of any of the parties to the appeal or revision.

Review

13. The Government, the Registrar and the Tribunal, as provided under section 154, may, on application made by the appellant or the applicant for revision or respondent review any order passed under section 152 or section 153. An application for review may be made only on the basis of the discovery of new and important facts, which, after the exercise of due diligence, were not within the knowledge of the persons making the application, or could not be produced by him when the order was made or on the basis of some mistakes or errors apparent on the face of the record, or for any other good and sufficient reason. The authority competent to pass orders on the application for review may pass interlocutory orders pending the decision on the application for review. No application for review can be made more than once in respect of the

same order. An application for review should be preferred within ninety days from the date of the communication to the applicant for review of the order to which the application relates. The application for review shall be in the form of memorandum setting forth concisely and under distinct heads the new and important facts which, after the exercise of due diligence, were not then within the knowledge of the applicant, or could not be produced by him when the order was made, or mistakes or errors apparent on the face of the record or other good and sufficient reasons on the basis of which the review is sought. It shall be accompanied by (a) a memorandum of evidence; (b) the original or certified copy of the order sought to be reviewed; (c) as many additional number of copies as there are parties to the original order, and (d) a receipted chalan or records to evidence payment towards the fees specified. The fee payable for every application for review shall be as specified in schedule III of the Rules whether it is made to the Tribunal, the Government or the Registrar. The application for review shall, so far as it may be necessary, be disposed of by the Tribunal or the Government or the Registrar in such manner as may be deemed fit, provided that no order prejudicial to any person shall be passed unless such person has been given an opportunity of making his representation. The decision or order passed on the application in review shall be final. The authority competent to pass such orders may award costs in any proceedings before it, to be paid either out of the funds of the registered soceity or such party to the application for review as it may deem fit. Every order of the reveiwing authority shall be reduced in writing and a copy thereof shall be communicated free of cost by the reviewing authority to the parties to the review by personal delivery under acknowledgement or under certificate of posting.

Execution of orders passed in an appeal, revision or review.

14. Any order passed by the Tribunal, the Registrar and the Government under sections 152, 153 or 154 shall be enforced by the Registrar as if it were an order passed by him. Orders passed by the Government under section 152, 153 and 154 are sent to the Special Officers/Chief Executive Officers of the Societies concerned under copy to the Regional Joint Registrars. Following this the Registrar issues direction under section 155 of the Act to the Special Officer/Chief Executive Officers; of the societies concerned for enforcement of such orders and under copy to the concerned Regional Joint Registrar. It is the duty and responsibility of the Special Officer/Chief Executive Officers to implement such orders immediately on receipt and send compliance reports to the

Registrar within seven days and the Regional Joint Registrars should watch the compliance without fail. If they feel so, the Special Officer/ Chief Executive Officers may file review petition under section 154 against such orders passed by the Government and they should not approach courts directly without the permission of the Registrar or the Government. And when personal hearing are concluded on petitions filed under section 152,153 & 154 of the Act before the Govt. the concerned Special Officer/Chief Executive Officer should attend such proceedings with all the relevant documents. The concerned Circle Deputy Registrars and Regional Joint Registrars should also attend these proceedings along with the Special Officer/Chief Executive Officers.

CHAPTER VIII.
COPYING FEES

1.1. Rule 173 of the Tamil Nadu Co-operative Societies Rules provides that any person may, on payment of the fees at the rates specified in Schedule V obtain certified copies of any document, {(not being a document privileged under section 123, 124, 129 and 131 of the Indian Evidence Act, 1872 (Central Act I of 1872)} filed in the office of the Registrar. For the grant of copies under Rule 173 the following conditions must be fulfilled:—

(a) the prescribed copying fees should be remitted;

(b) documents for which copies are required should be documents not being documents privileged under sections 123, 124, 129 and 131 of the Indian Evidence Act, 1872 filed in the office of the Registrar.

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1.2. Section 74 of the Indian Evidence Act provides that the following documents are public documents:—

(a) documents forming the acts or records of the acts: —

(i) of the sovereign authority,

(ii) of the official bodies and tribunals,and

(iii) of public officers, legislative, judicial and executive of any part of India or of the Commonwealth, or of a foreign country;

(b) Public records kept in any State of private documents. Section 75 of the Indian Evidence Act provides that all other documents are private.

1.3. If a document is an unpublished official record, relating to any affairs of State, privilege under section 123 of the Indian Evidence Act can be claimed. If the document is such that privilege under the said section 123 could not be claimed, but if the Government servant considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he can claim privilege under section 124 of the Indian Evidence Act.

1.4.The Deputy Registrars should furnish copies of judgement, depositions, statements, etc., recorded or filed in arbitration cases to the contending parties whenever they apply for them for a lawful purpose with the prescribed fees. Similarly, copies of execution petitions, affidavits and resolution of the society to file the execution petitions should be given to the contending parties, whenever they apply for them with the necessary copying fees either to seek redress in any matter in which they are aggrieved or for any other lawful purpose. But, copies of note orders passed in these files should not be furnished to the parties. Copies of an inquiry report under section 81 may also be granted to the parties when they apply for them with the prescribed fees provided they satisfy the Registrar that the copies are required to seek redress in any matter in which they are aggrieved or for any other lawful purpose. Such copies need be furnished only after the receipt of the inquiry report and not during the course of an inquiry. However, if the inquiry report is of a confidential nature and public interest would suffer by its disclosure, copies of it need not be furnished as under section 124 of the Indian Evidence Act, no public officer can be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by such disclosure. Copies of registered documents and encumbrance certificates should not be granted to the parties, as the Registration Department alone is competent to grant such copies in collecting fees at prescribed rates.

Fees for granting Copies

2.1.The following is the schedule of fees prescribed in rule 173 for the grant of copies: —

	Fees payable. Rs. P.
Application for the supply of copies of documents.	10.00
Fees for copying —	
(i) for every 175 words or fraction thereof of written or typed matter.	4.00
(ii) where copies of documents are supplied in printed forms.	The cost of form fixed by the Registrar in consultation with the Director of Stationery and Printing, Chennai. plus the fees calculated at the rates, specified in item(i) in respect of the written or typed matter.

2.2. The fees prescribed should be collected only in the shape of court fee stamps. When the exact fees payable cannot be computed in advance by the parties, they can make an application for copies with the application fees of Rs.10.00 by way of court-fee stamps affixed on the application. The exact amount of copying fees required based on the number of words in the document copy applied for should be worked out in office and intimated to the applicant for remittance by way of court-fee stamps. This will prevent the need for the refund of the excess copying fee remitted. The application fee of Rs.10.00 should be affixed to every application if the copy applied for pertains to a single subject matter other than those relating to arbitration decrees and execution petitions. In the case of copies relating to arbitration decrees and execution petitions, if the application is for copies of records relating to more than one decree or award, as many application fees as the number of decrees or awards specified in that application must be affixed (i.e), each decree or award irrespective of the number of records pertaining to that decree or award should be treated as one unit for the purpose of affixing application fees. If, in an application, copies of more than one record are applied for, fee for copying should be charged for the number of words covered by each copy and not for the aggregate number of words of all the copies applied for.

How to compute the number of words for the purpose of charging copying fees.

3. The following instructions should be borne in mind while computing the number of words for charging copying fees: —

(a)Dates. — The date as a whole, e.g., Ist February 2006 or 4th June 2007 should be taken as one word.

Numbers relating to files, petitions, etc., e.g., E.P. 14/'07, Rc.No.144/'08, ARC No.62/'07-08, R.Dis. No.500/'08, etc. These numbers should be counted as one word.

(b)Figures. — Four figures (digits) should be taken as equivalent to one word. For instance, figures upto three digits can be ignored, figures with four to seven digits counted as one word, figures with eight to eleven digits counted as two words and so on.

(c)Initials before proper nouns. — E.g., P. Ravichandran, K.C. Arun etc., The initials should be taken as part of the word following them. They need not be counted as separate words. Printed matter in the forms should be excluded from the count. Only words in manuscript or in type should be counted for charging copying fees.

Supply of by-law copies

4. If societies apply for copies of their by-laws, they may be supplied with them after collecting by way of court-fee stamps, an application fee of Rs.10.00 plus the actual copying fees calculated as per the existing schedule for the manuscript work done by the copyist (i.e) Rs.4.00 for every 175 words or part thereof in manuscript or in type plus the cost of form or by-law copy fixed by the Registrar.The cost of various *types* of forms is fixed by the Registrar from time to time in consultation with the Director of Stationery and Printing, Chennai.

Mode of despatch of copies.

5. Copies applied for should not be sent to the parties concerned at State Cost. Certified copies of documents should be sent in envelopes superscribed "Certified copies Services unpaid" under exception 1 to rule 357 of the Post and Telegraph Guide.

Maintenance of accounts pertaining to copying fees.

6. As the copying fees are collected by way of court-fee stamps, there is no need now to maintain any cash book for copying fees. It is enough if a copying fee register is maintained in the prescribed form.

Audit of accounts relatingto the copying fees.

7. The accounts relating to the copying fees should be audited every quarter before 15th of the month succeeding each quarter by the Senior Inspectors for the audit of departmental revenues. The audit report should be prepared and submitted in the prescribed form. As soon as the local audit is over, the accounts should be test audited by the Co-operative Sub-Registrar for the audit of departmental revenue accounts. The transactions pertaining to one month in each quarter should be completely checked during such test audit.

CHAPTER IX

OFFENCES AND PROSECUTION

I. Offences under the Tamil Nadu Cooperative Societies Act, 1983.

Offences and penalities under the Tamil Nadu Cooperative Societies Act, 1983.

1. Prosecutions are generally launched by the Co-operative Department for offences either under the Tamil Nadu Co-operative Societies Act, 1989, or under the Indian Penal Code. The following are the offences under the Tamil Nadu Co-operative Societies Act, 1983 **:—**

(a) Furnishing false information or disobeying summons or other lawful order, requisition or direction:— Section 157 provides that (i) the board of a registered society which wilfully makes a false return or furnishes false information shall be punishable with fine which may extend to five hundred rupees; and (ii) any officer, employee, or a paid servant or any member of the society who, wilfully makes a false return or furnishes a false information, or any person who wilfully or without any reasonable excuse, disobeys any summons, requisition or other lawful order or direction issued under the provisions of this Act, or who wilfully with-holds or fails to furnish any information lawfully required from him by a person authorised in this behalf under the provisions of this Act, shall be punishable with imprisonment or with fine, which may extend to five hundred rupees or with both. Prosecution for disobedience of summons, etc. will come under this section. Before instituting prosecution for disobedience of summons under this section, it should be ensured that the summons have been prepared and served properly on the person concerned in the manner laid down in rules 111 and 112 and that the person disobeyed the summons wilfully or without any reasonable excuse.

(b) Acting in Contravention of sections 40, 41, 95, 105, 124, or 124-A: — Section 158 provides that any person, who acts in contravention of sub-section (2) of section 40 or fails to deposit or entrust to custody, property subject to a prior charge in favour of any registered society when required to do so by the society under sub-section (3) of that section, or who acts in contravention of clause (iii) of section 41 or sub-section (3) of section 95, or sub section (3) of section 105, or sub section (1) of section 124 or section 124-A shall be punishable with imprisonment for a term, which may extend to six months, or with fine, which may extend to five hundred rupees or with both.

(c) Using the word "Co-operative" or its equivalent:— Sub-section (1) of section 159 provides that no person other than a registered society shall trade or carry on business under any name or title of which the word ' Co-operative' or its equivalent in any regional language is a part, without the sanction of the Government. The proviso to this sub-section also provides that this sub-section will not apply to any person or his successor in interest of any name or title under which he traded or carried on business at the date on which the Tamil Nadu Cooperative Societies Act, 1912 came into force. It should be noted that prosecution under this section can be launched only against a person who trades or carries on business under any name or title, of which the word 'Co-operative' forms part. Whoever contravenes the above mentioned provisions shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing offence with further fine of fifty rupees for each day on which the offence is continued after conviction therefor.

(d) Failure to give effect to decision, award or order:- Section 160 provides that the board of any registered society or an officer or an employee or a paid servant thereof, who fails to give effect to any decision or award under Section 90 or where an appeal against such decision or award has been filed, to the order passed, by the appellate authority, such decision or award or order not being a money decree, if such failure is by the board shall be punishable with fine, which may extend to five hundred rupees, and in case by an officer or an employee or paid servant of such society, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

(e) Misuse of properties of the Society:— Section 161 provides that (i) any officer of a registered society or any employee or paid servant or any member of such society, who uses or allows the use of properties, other than funds of any society otherwise than in accordance with the provisions of this Act, the rules or the bylaws of the society, shall be punishable with fine which may extend to five hundred rupees and (ii) whoever not entitled to be in possession of any of the records and properties of the society referred to in sub section (1) of section 165 prevents the re-constituted board, Special Officer or liquidator, as the case may be, from obtaining the possession of the said records and properties of the society shall be punishable with imprisonment for a

term which may extend to one year or with fine which may extend to two thousand rupees or with both and also be liable to fine which may extend to one hundred rupees for every day of such prevention until seizure of such records and properties of the society.

(f) Punishment for offences not otherwise povided for: — Sec 163 clearly states that any officer or member thereof or any other person guilty of an offence under this Act for which no punishments is expressly provided herein shall be punishable with fine not exceeding fifty rupees.

(g) Failure to comply with provisions of section 48: — Sub-section (6) of section 48 provides that if any employer, or the officer disbursing the salary or wages of any member, fails to comply with any of the provisions of this section, he shall be punishable with fine, which may extend to five hundred rupees and in the case of a continuing offence with a further fine of fifty rupees for each day on which the offences is continued after conviction therefor.

1.2. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate, shall try the offences under the Act. All the offences under the Act are *non-cognizable.* The term *cognizable* and *non-cognizable* have been defined in clauses (f) and (n) of section 4 of the Criminal Procedure Code, as follows:—

(a) *Congnizable* offence means a case in which a Police Officer, within or without the Metropolitan town may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant.

(b) *Non-cognizable* offence means a case in which a Police Officer, within or without a Metropolitan town, may not arrest without warrant.

1.3. Sections 154 to 156 of the Criminal Procedure code dealing with *cognizable and non-cognizable* offences are reproduced below:—

(a) Section 154.— "Every information relating to the commission of a cognizable offence, if given orally to an officer in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it and that substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf".

(b) Section. 155.— (i) When information is given to an officer-in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(ii) No Police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the same for trial, or of a Metropolitan Magistrate.

(iii) Any Police officer receiving such order may exercise the same powers in respect of the investigation except the power to arrest without warrant as an officer-in-charge of a police station may exercise in a congnizable case.

(c) Section 156. — (1) Any officer-in-charge of a Police station may, without the order of a Magistrate, investigate any congnizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of the Chapter XV I.P.C. relating to the place of inquiry or trial.

(d) Section 164 (3) of the Tamil Nadu Cooperative Societies Act, 1983 provides that no prosecution shall be instituted for offences under the Act without the previous sanction of the Registrar. The Deputy Registrars themselves are competent to accord sanction for prosecution under section 164 (3) of the Act, as the powers of Registrar under the said section have been conferred on them. They need not therefore refer such cases to the Registrar for sanction of prosecution. Orders sanctioning prosecution should be recorded in the form of proceedings in the respective files. Such order should briefly refer to the facts of the case warranting the sanction of prosecution. As required under this section no sanction shall be given without giving to the person concerned a reasonable opportunity to represent his case. Since the offences under the Tamil Nadu Cooperative Societies Act are non-cognizable, the cases should not be reported to the Police for action. In such cases, the Deputy Registrars may consult the concerned Public Prosecutor or the Assistant Public Prosecutor, get the charge-sheet prepared and file it through him in a Court of a Judicial Magistrate cooncerned. The conduct of the case should be watched until it is disposed of.

1.4. As soon as a prosecution under section 164 (3) is sanctioned and a complaint is filed in the Court, the Deputy Registrars should report the matter to the Registrar together with a copy of the complaint. They should also submit in due course a copy of the judgement with their remarks on any comment made in the judgement.

1.5. Prosecution for disobedience of summons, etc. should be restricted to cases where a person has, without a reasonable excuse, disobeyed the summons issued under section 80 or section 81 or Section 82 or Section 83 of the Act or has failed to produce the cash balance or the account books, etc., in accordance with such summons or failed to comply with any lawful direction, order or requisition made under the provisions of the Act. Disobedience or failure to comply with the summons for the production of cash balance will not arise, if the person summoned for the production of cash balance has appeared in person and has pleaded his inability to produce the cash balance. In such cases, the Deputy Registrar or the officer concerned should record immediately a deposition from the person concerned for the non-production of cash balance as *primafacie* it would be a case of misappropriation or breach of trust, falling within the scope of offences under Indian Penal Code, cognizable by the Police. Such cases should be investigated further, if necessary, by examining the parties who have made the payments to the society, which have gone to make the cash balance, and action should be taken to prosecute the delinquent after obtaining the permission (administrative sanction) of the Registrar.

1.6.Similarly, non-prodution of account books, when summoned under section 80, 81, 82 or 83 should be distinguished from tampering of account books and records, which is an offence punishable under section 477-A of the Indian Penal Code. When tampering of records or fraud is suspected and if the books and other records are not readily forthcoming when summoned under section 80, 81, 82 or 83 it is always expedient to make out a *primafacie* case for prosecution under the Indian Penal Code with the available records and evidences and place the matter in the hands of the Police, who have got powers to conduct searches and seize the records in the course of their investigation.

Deletion of Sec 162 and insertion of new section 164 A of the TNCS Act 1983

2.1. In certain cases the Trial / Appellate courts have held that the Tamil Nadu Cooperative Societies Act, 1983 is a self contained Special Act with various offences

and punishment thereof and procedure for taking cognizance of the offences as provided for under section 162 of the Act and where sanction of prosecution from the Registrar under section 164 (3) of the Act is a pre-requisite for launching prosecution and is also hit by the one year period of limitation. In order to tackle the situation, the Government have enacted Tamil Nadu Cooperative Societies (Second Amendment) Act 2004 removing section 162 and inserting a new section 164 A, and which came into effect from 1.9.2004.

2.2. Section 164-A provides: — "Any Action taken against any person under this Act shall not affect, and shall be in addition to, any other proceedings by way of investigation or otherwise which might apart from this be instituted against him".

2.3. In view of this the Regional Joint Registrars and Circle Deputy Registrars should ensure that all the Police & Law officers attending the courts on behalf of the state in criminal cases relating to cooperative societies move the respective courts to dismiss all the pending cases/appeals in which the main ground is "that no criminal action under the IPC could be taken when penal provision under sec 162 of the Tamil Nadu Cooperative Societies Act, 1983 which is a self_contained_ code is available" as infructuous and (2) oppose at the admission stage itself, all the cases that may be filed in future against the FIRs registered by the Police Officers on the ground that no action under I.P.C. could be taken when penal provision under the Tamil Nadu Cooperative Societies Act, 1983 which is a self contained code, is available and see that they are not admitted because of the deletion of section 162 from the Tamil Nadu Cooperative Societies Act, 1983.

2.4. The Regional Joint Registrars and Circle Deputy Registrars should see that as the I.P.C. provides higher punishment for offences relating to misappropriation of property or funds, forgery, falsification, corrupt practices etc. and the cases for such offences under the I.P.C. will not be hit by one year period of limitation, all such cases in cooperative societies should invariably be dealt with by them only under the IPC and not under the Tamil Nadu Cooperative Societies Act, 1983.

II. Offences under the Indian Penal Code.

Offences under the Indian Penal Code.

3.1. Offences under the Indian Penal Code, for which prosecutions are launched by the Co-operative Department, generally relate to offences against property such as criminal misappropriation and breach of trust, or

offences relating to documents such as forgery and falsification of accounts.The general law of crimes and punishments is contained in the said Code. The code classifies crimes on the basis of the nature of the rights violated. Chapter XVII of the Code deals with offences a gainst property and Chapter XVIII deals with offences relating to documents.

(a) *OFFENCE AGAINST PROPERTY:* — Generally speaking, in every crime there is an act or illegal omission of the offender, whcih harms another in his body, property, etc. In addition, the wrong doer must be shown to have acted in a culpable state of mind *(Mens rea*). In the cases of offences against property, the *mens rea* that is usually required to be proved is either a dishonest intention or a fraudulent intention.

(i) *Criminal misappropriation:*— Misappropiration means the wrongful setting apart or allocation of the thing to the use of some one other than a true owner and includes every kind of dealing with the property, which is inconsistent with the true owner's right.

Section 403 of the Indian Penal Code reads " Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. " This section does not make any distinction between temporary and permanent misappropriation. Explanation I under section 403 specifically provides that a dishonest misappropriation for a time only is a misappropriation within the meaning of section 403. The ingredients of criminal misappropriation are (1) the property should be movable property, and (2) the offender should have converted it to his own use or misappropriated it with a dishonest intention. The acts of misappropriation and conversion are only possible, where the property happens to be in the possession and subject to the control of the offender, it is immaterial how he acquired possession, whether as bailee, finder, etc.,

(ii) *Criminal breach of trust:* — According to section 405 of the Indian Penal Code, if a person who is entrusted with property or with any dominion over property, dishonestly misappropriates, or converts to his own use or disposes it in violation of the trust, or wilfully suffers any other person to do so, commits criminal breach of trust. Criminal breach of trust differs from cirminal misappropriation chiefly in that, the offender in the former case should have been

entrusted with the property whereas in the latter it is immaterial in what manner the offender acquired possession of or dominion over. the property. Further, property in the case of misapproapriation should be movable property wheareas breach of trust may be committed of any property, which may be dealt with in the manner specified and includes any fund or actionable claim, subject to the control of the offender.

The first ingredient of the criminal breach of trust is that the offender must be entrusted with property or dominion over property. The second ingredient is that the offender must dishonestly (1) misappropriate or convert to his own use or (2) use or dispose of the property contrary to the terms of the trust or any contract governing the trust or (3) wilfully suffers another person to do so.

Criminal breach of trust is aggravated by the capacity of the wrong doer, i.e. if he happens to be a carrier, or ware house keeper, or clerk or servant or a public servant, banker, broker, attorney or agent entrusted with the property in that capacity and if he commits criminal breach of trust in respect of the same (Section 408 and 409 of the Indian Penal Code).

(b) *OFFENCES RELATING TO DOCUMENTS:—* (i) *Forgery:* Forgery and falsification of accounts generally come under offences relating to documents . Forgery consists in making a false document with any of the intentions specified in section 463 of the Indian Penal Code. The expresssion false document is to be understood in a technical sense, as explained in section 464 of said code and is of three types. In the first type, the document should be executed, i.e., made, signed, etc., dishonestly or fraudulently and it should be false either as to the identity of the executant or the time of its execution. A person may be guilty of executing a false document by signing his own name or by signing the name of a dead person or even a fictitious person. In the second type there should be alteration of a document by cancellation or otherwise, done dishonestly or fraudulently in any material part of the document. In the third type, another person must be induced by the wrong doer dishonestly or fraudulently to execute or alter the document and such person must be known to be of unsound mind or intoxicated or to have been under a misconception and therefore incapable of understanding the nature of the transaction.

To constitute forgery, the false document should be made with an intention (1) to cause damage or injury to any person or to the public, or (2) to support any claim or title, or (3) to cause any person to part with property, or (4) to induce a person to enter into any contract, or (5) to commit fraud or that fraud may be committed.

Forgery is aggravated on the basis of the object accompanying and the type of the document (Public documents, etc.) forged. A person, who knowing that a document is forged, dishonestly or fraudulently uses the same as genuine is also liable to be punished. Likewise, the dishonest possession of forged document with a view to use them as genuine is punishable. A person, who dishonestly or fraudulently or with intent to cause damage or injury to any one, cancels, detroys, or defaces any document, or commits mischief in respect of it, is also liable to punishment (Section 477).

(ii) *Falsification of accounts.* — An allied offence to forgery is the offence of falsification of accounts dealt with by section 477-A of the Indian Penal Code. The ingredients of the offences are: (1) the offender should be an officer, clerk or servant or acting in those capacities; (2) he should destroy, alter or mutilate or falsify any book, paper, writing, valuable security or account; (3) such book, etc., should be in the possession of the employer or held by him or received by him on behalf of the employer; (4) he should have acted wilfully and with intent to defraud or he should wilfully make or abet the making of any false entry, in or alter or abet the alteration of material particulars in such books, paper, account, etc., with intent to defraud.

(iii) The term 'fraud' defined: —

Section 17 of the contract defines fraud as follows:

Fruad means and includes any of the acts committed by a party to a contract or with his connivance or by his agent, with intent to deceive another party or his agent or to induce him to enter into contract.

Filling of Police complaints without Section 81 inquiry or Section 82 Inspection or Investigation report.

4.1. In the case of misappropriation of funds in cooperative societies, complaints are usually made to the police by the Circle Deputy Registrars after a thorough probe by ordering an inquiry under section 81 or inspection or investigation under section 82 of the Tamil Nadu Cooperative Societies Act, 1983. In many cases there are undue delays in filing complaint with the

Police for investigation and prosecution under I.P.C. In the case of misappropriation of funds in cooperative societies, delay in filing complaints results in (1) the memory of witnesses is likely to fade away by passage of time and (2) valuable links of evidence may disappear eg. death of witness, destruction of records/property etc. Such undue delay would only help the accused to go scot free from punishment for the offences committed by them. These delays could considerably be avoided if the filing of complaints with the Police are made straightaway without resorting to statutory inquiry or inspection or investigation. The Government have also directed that the criminal cases might be entertained without the statutory enquiry report of the officials of the Cooperative Department. The following procedure may therefore be followed.

(a) When a Circle Deputy Registrar is of the opinion that *primafacie* a cognizable offence i.e. an offence which a police officer may in accordance with the First Schedule under the Code of Criminal Procedure, 1973 or under any law for the time being in force, arrest without warrant, has been committed in a cooperative society and when the Circle Deputy Registrar could identify the person who has committed the offence, the Deputy Registrar, shall straight away after obtaining the sanction from the Regional Joint Registrar in case of primary societies and Registrar in the case of Central and Apex Societies file a criminal complaint with the Police for investigation under the provision of I.P.C.

(b) In respect of straight cases of misappropiration like cash balance or stock, which come to light during the course of audit, inspection, stock verification, surprise visit or petition enquiry etc. the Circle Deputy Registrar should after obtaining permission immediately from the Regional Joint Registrar, or the Registrar as the case may be, make a complaint to the Police for investigation and filing a cirminal case under the I.P.C.

(c) When a Regional Joint Registrar is of the opinion that *primafacie* a cognizable offence has been committed in a cooperative society and when the Joint Registrar could identify the person who has committed the offence or when a straight case of misappropriation of cash or stock which comes to the notice of the Joint Registrar during the course of audit, inspection, stock verification, surprise visit or petition enquiry, the Joint Registrar shall straightaway, direct the Circle Deputy Registrar concerned to file a criminal complaint with the Police for investigation and filing

a criminal case under the IPC in the case of primary societies, and obtain Registrar's permission immediately in the case of central/ Apex societies and file criminal case under the IPC.

(d) In sensitive/public interest cases, the Regional Joint Registrars/Circle Deputy Registrars should immediately file complaint with the Police giving the details of the offences committed and see that the accused are apprehended and arrested by the Police without delay.

(e) The criminal complaint should contain a preliminary report with the following particulars.

(i) details regarding the period of incidences.

(ii) quantum of amount involved.

(iii) nature of offence.

(iv) details of names and addresses of the *primafacie* delinquents.

4.2.In all the above said cases, neither an inquiry under section 81 nor an inspection or investigation under section 82 is a pre-requisite for filing a criminal complaint straight away. However it should be clearly noted that the intention of such an action is only to speed up the filing of the complaint, and the accused are apprehended and arrested by the police without delay, and certainly not to do away with such an inquiry, inspection or investigation. The Joint Registrars/Circle Deputy Registrars should bear in mind that the documents, records, and books of accounts etc. that may be required as evidences to prove the offences have to be seized or secured, kept in safe custody so that the delinquents may not tamper with or destroy or remove such evidences. Moreover, apart from instituting prosecution, other statutory proceedings like disqualification under section 36, suspension of paid officer or servant of a society under section 76, surcharge under action 87, or winding up of a registered society under section 137 have to be initiated on the basis of the reports of inquiry under section 81, inspection or investigation under section 82. Hence the Regional Joint Registrars / Circle Deputy Registrar should examine each case on merits and, if necessary, after filing the complaint with the Police, order for an inquiry under section 81, or inspection or investigation under section 82. In such a case the fact of ordering the inquiry, inspection or investigation should be reported to the Police and the Police should be associated with such inquiry inspepction or investigation. The inquiry, inspection or the investigation report, as the case may be on

receipt, should be subsequently made available to the Police Officials for their use. If there is any problem the Regional Joint Registrar/ Circle Deputy Registrar should bring it to the notice of the Registrar for taking up the matter with the Additional Director General of Police (Economic offences) Chennai for appropriate action.

Conduct of inquiry, inspection or investigation when frauds are brought to light in Co-operatives.

5.1. Generally, frauds in co-operative societies come to light (a) in the course of audit or inspection or supervision by the departmental staff or (b) in the course of inspection or supervision by the staff of the financing banks or (c) through petitions to the officers of the Department. Where any fraud comes to light in the course of a casual or periodical inspection by the Deputy Registrar or Co-operative Sub-Registrars, the inspecting officers should complete the investigation of such fraud and take appropriate further action in the matter. In such cases, inquiry under section 81 will be superfluous as the officer conducting an inspection under section 82 has got all the powers of a Registrar when holding an inquiry under section 81. Wherever the provisions of Sec 82 are availed of, the inspecting officer should, however, make it clear in the process issued, statements obtained etc. that they are functioning under the said section. In other cases covered by items (a) and (b) above, instance of fraud are brought to the notice of the Deputy Registrars through special reports. The Deputy Registrars should immediately on receipt of a special report examine whether the report is self-contained and discloses a *prima facie* case of fraud and if so they should without resorting to the statutory inquiry, inspection, investigation take appropriate further action, in the matter. In cases, where the special report warrants a further probe into the affairs of a society, an inquiry under section 81, or inspection or investigation under section 82 as the case may be should be ordered. Even in cases of alleged frauds brought to notice through petitions, a statutory inquiry may be necessary only if specific instances of fruad are reported or if there is any substance in the allegations. It is, therefore, necessary that the Deputy Registrars should examine the contents of the petitions carefully and decide on the merits of each case, the course of action that should be taken. Where an inquiry inspection or investigation should be held in every case warranting such a course, it should not be resorted to in each and every case as a matter of routine.

5.2. There may be instances where certain serious irregularities may come to the notice of the Deputy Registrars in the case of apex, central and other bigger primary societies, such as district supply and marketing societies, wholesale stores and urban banks. In such cases a statutory inquiry, inspection or investigation even at the outset may not be desirable, as such a course may impair the confidence of the public in the institutions. The Deputy Registrars should themselves investigate these complaints (or authorise their subordinates to investigate according to the gravity of their irregularities) by taking up the inspection of these institutions and submit a special report to the Registrar on the further course of action necessary in the matter.

Submission of preliminary report to the Registrar.

6. In every case of misappropriation detected or brought to their notice whether a complaint was straight away filed with the police without ordering for a statutory inquiry, inspection or investigation or otherwise the Deputy Registrars should invariably submit a preliminary report to the concerned Regional Joint Registrar under copy to the Registrar.This report should indicate briefly the circumstances that led to the filing of complaint to the Police straight away, the details regarding the period of incidences, quantum of amount involved, nature of offence, details of names and addresses of the prime deliquents and in cases where inquiry, inspection or investigation ordered, the nature of frauds brought to light and steps taken to complete the inquiry, inspection or investigation expedetiously and the date by which the final report will be sent to final report the Joint Registrar of the Region concerned.

Prompt investigation of cases fraud.

7.1.Though a statutory inquiry under the Act involves a detailed review of the constitution, working and financial condition of the society, it will not be necessary to go into all aspects of the question in every case. The inquiry may be ordered to be confined to a particular irregularity or a specific purpose.The inquiry or inspection or investigation in cases where frauds are brought to light, should be primarily directed towards the investigation of the itmes of fraud and completed with utmost expedition. The investigation should be completed and the report submitted by the concerned officer within a month from the date on which it is ordered. If, however, the number of items of fraud is too many the concerned officer should in the first instance, complete the same in respect of major items of fraud and submit his first report in respect of these items within the said period of one

month. This report should deal with times of fraud disclosed by the inquiry or inspection or investigation, the witnesses examined the evidence gathered to prove the offence, whether there are more times of fraud to be investigated and the action taken to complete the investigation in these cases. It should be noted that the object of getting the first report is that where a case of misappropriation is made out, there should be no avoidable delay in taking criminal action against the delinquents and that it does not imply that the inquiry or inspection or investigation into the remaining cases of fraud may be done leisurely. Under no circumstances, should the time-limit of three months or the extended period of six months prescribed for completion of an inquiry or inspection or investigation be exceeded.

7.2.In all cases, where reports for prosecution have been received from the inquiry, inspection or investigation officer as the case may be, the Circle Deputy Registrars should carefully examine these reports as to whether the various items of fraud dealt with therein have been thoroughly exmined and whether the relevant records to prove the offences have been secured by such officers. After getting the report there should be no delay in taking criminal action against the delinquents.

7.3. The Circle Deputy Registrars should also observe that the question of launching of prosecution against the delinquints should be decided on merits of each case and not with reference to the quantum of amount involved. There should not be any lower or upper limits on value of defalcation.

Prosecution against the Departmental Officers.

8.Departmental Officers are working on foreign service in Co-operative organisation as Chief Executive Officers or otherwise and at times, in additions to their regular government post, they are also holding additional charge of the post of Special Officers in more than one cooperative society and functioning as such. They are holding supervisory posts also over such institution. The Act or the Bylaw of the society do not differentiate a regular or additional charge Chief Executive Officer/ Special Officer and both are the same in the eyes of law. These officers either in a regular capacity and more so in the additional capacity or in a supervisory capacity may not have the chance to scruitinise each and every transactions of the society. They would have failed to check and scruitinise the accounts and or excercise effective control over the subordinate staff resulting in the criminal irregularities, frauds and offences under I.P.C. committed by the staff.

Failure of such nature ie., failure to discharge their duties properly or negligence, or omissions, unless the inquiry, inspection or investigation officer finds it *prima facie,* that such officers with malafide criminal intention committed criminal breach of trust and or criminal misappropriation and or aided and abetted such criminal offences by the subordinate staff, will not fasten criminal liability on such officers. On the other hand, the failure of this nature, will be failure to discharge their duties properly or negligence and this may be dealt with through disciplinary proceedings. Hence the departmental officers who are not directly involved in the frauds or misappropriations need not be included as deliquents, in a routine manner, in the inquiry reports or complaints filed with the police.

Dispensation of obtaining legal opinion from Assistant Public Prosecutor or Deputy Director of prosecution before filing complaint with the Police.

9. Previously, to avoid indiscriminate filing of police complaints, it was insisted that the writtern opinion of the Assistant Public Prosecutor or the Assistant / Deputy Director of Prosecution regarding the existence of a *prima facie* case for launching prosecution had to be obtained. Though obtaining of such opinion is not a mandatory requirement and in all cases it is the Registrar who has to take a final decision in the matter, whether the opinion of the Assistant Public Prosecutor or the Assistant Deputy Director of Prosecution is in favour of prosecution or not, the practice of obtaining legal opinion was there in force. It was noticed that there were undue delay in obtaining such legal opinion, which ultimately procrastinated the filing of criminal complaint against the accused persons. And therefore, in order to avoid delay in filing complaint with Police, in all cases, the practice of obtaining legal opinion prior to preferring complaint to the Police which is not a legal requirement has now been dispensed with. The Regional Joint Registrars or Circle Deputy Registrar need not insist on obtaining legal opinion before prefering complaint to the Police. It can be done only in exceptional cases involving legal doubts.

Permission for lodging criminal complaints with the Police for offences falling under I.P.C.

10.1. Invariably, whether filing of complaints with the Police straight away, without resorting to statutory inquiry, inspection, investigation, or otherwise,as detailed under para (4), permission of the Registrar is necessary for lodging criminal complaints with the Police for prosecution against erring personnel for offences under the I.P.C. It is found that there is undue delay in lodging such complaints with the Police and in some cases the delay is due to the delay in

getting permission from the Regional Joint Registrar.

10.2.In order to avoid such delays to a greater extent, the following procedures are prescribed.

(a) Permission of the Registrar shall be necessary for lodging Criminal complaints with the Police in the following cases:-

(i) In respect of offences under the I.P.C in Apex Level Cooperative Institution, all employees/non-officials/ irrespective of the rank or grade of the personnel involved.

(ii) In respect of offences under the IPC in Central Societies where the personnel involved is, among others, if any, an officer of this Department in the rank of a Deputy Registrar and above or an officer of other Departments of the Government in the rank equivalent to the rank of Deputy Registrar and above of this Department.

(iii) In respect of offences under the I.P.C.in Primary Level Cooperative Institutions, only in the cases, where the personnel involveis, among others, if any, an officer of this Department in the rank of a Deputy Registrar and above or an officer of other Departments of the Govern ment in the rank of Deputy Registrar and above of this Department.

(b) In all other cases the Regional Joint Registrar shall grant necessary permisison to the Circle Deputy Registrars for lodging criminal complaints with the Police. In other words, the Regional Joint Registrars shall accord permission in the following cases:—

(i) In respect of offences under the IPC in all Central Societies, in all cases except the cases where the personnel involved is, among others, if any, an officer of this Department in the rank of a Deputy Registrar and above or an officer of other Departments of the Government in the rank equivalent to the rank of a Deputy Registrar and above of this Department or a common cadre employee.

(ii) In respect of offences under the I.P.C. in all Primary Level Cooperative Insitutions, in all cases except the cases where the personnel involved is among others, if any, is an officer of this Department in the rank of a Deputy Registrar and above or an officer of other Department of the Government in the rank equivalent

to the rank of a Deputy Registrar and above of the Department.

10.3.The Government have issued instructions in their letter No.71241/CA/91 Fin (CA) Department dated 10.10.91 and communicated in Registrar's Endt. R.C.No.112224/90/CP1 dated 20.11.91, that prior sanction to be obtained from the Director of Cooperative Audit or Government as the case may be before actually prosecuting the Cooperative Audit Department staff in a Court of Law.

10.4. Wherever the Regional Joint Registrars decide not to accord permission, or the Circle Deputy Registrars decide not to seek permission, to lodge criminal complaints with the Police, though the inquiry / inspection, or Investigation report suggests for prosecution, and wherever in a given complaint prosecution action has to be dropped based on the report of police refering the case as either mistake of fact or undetectable or otherwise the Regional Joint Registrars should send proposals to the Registrar and the Circle Deputy Registrars should send proposals to the Regional Joint Registrar concerned and get the administrative permission from the Registrar or the Regional Joint Registrar, as the case may be before dropping criminal action.

Submission of report to the Registrar.

11. The Deputy Registrars should submit their reports in the form as under Annexure I within a month of the submission of the preliminary report, refered to in paragraph 6 above. If the inquiry has been completed in respect of all the items of fraud, the report both under Parts A and B as under Annexure I to this chapter should be submitted. If full information for the submission of Part 'B' of the report is not available, the Deputy Registrars may submit that part subsequently and in any case within a period of three months from the date of submission of the first information report or within a month of the submission of the report in Part 'A'. The report of inquiry, inspection or investigation should be submitted to Registrar or the Regional Joint Registrar as the case may be in all cases, irrespective of the fact whether the Circle Deputy Registrar is in favour of prosecution or not, as it is the Registrar or the Regional Joint Registrar as the case may be who has to take a final decision in the matter. The Deputy Registrars should, therefore, discuss in their reports, the various items of fraud and state clearly whether they recommend prosecution or not with reasons therefor. They should not, however.

submit the original records of inquiry. It is enough if reference is made to them in the report while mentioning the facts. Where absolutely necessary, copies or extracts from the original records like entries in books, statements obtained etc. may be sent.

Sanction of Prosecution and complaint to the police.

12. In cases,where the Registrar or the Regional Joint Registrar, as the case may be accords permission to place the matter in the hands of the Police for investigation and action according to law, the Deputy Registrars should, within three days from the date of receipt of the permission, file a complaint with the Superintendent of Police concerned under copy to the Registrar. Complaints may be lodged with the respective wings of the Police Department ie., C.C.I.W., D.C.B., and Local Police, according to the amount involved and as per instruction that are inforce in this regard. In no case the time lag between the completion of the inquiry, inspection or investigation and the filing of complaint with the Police should be more than a fortnight. The complaint to the Police by the Circle Deputy Registrars is the FIR for the prosecution case. Hence this should not be in the form of lengthy documents running to several pages. It should be brief and to the point. While filing complaint the no.of copies of FIR as may be required must be sent. The complaint should give an account of the fraud committed, the names of the delinquents and the evidence gathered to prove the offences. It should also indicate the important records, if any, which the inquiry / inspection / investigation officer could not secure, or witnesses, if any who could not be examined by him, so that the Police may secure the records and inquire the witnesses concerned in the course of their investigation. A list of records pertaining to the case should be made out and sent along with the complaint. The records , with a list of witnesses to be examined for the prosecution, may be handed over to the Police when required by them after obtaining their acknowledgement.

Conduct of prosecution

13.1. After the complaint is made to the Police, the Deputy Registrars should watch further developments and ensure that the charge-sheet is filed quickly. The inquiry / inspection / Investigation officer should be required to keep himself in touch with the Police officer entrusted with the investigation of the case and to render necessary assistance to him. It should be ensured that the Police seize the records, which the officer concerned could not secure,and examine the witnesss, whom the officer concerned could not examine and that the charge-sheet filed by the Police is complete.

13.2.When cases are taken up for trial, the Deputy Registrars concerned should keep themselves in touch with the Assistant Public Prosecutor or the Public Prosecutor concerned and submit periodical reports to the Registrar on the progress of the cases. As soon as the cases are disposed of by the Court, the Deputy Registrars should immediately report the results of the cases to the Registrar and the Joint Registrar. They should obtain, as early as possible, a copy of the judgement and submit it to the Registrar and the Joint Registrar with their specific remarks on the adverse comments, if any, made in it against the working of the society or any officer of the department.

Attendance and assistance of the Cooperative Sub-Registrar (Prosecution) in cases under investigation/trial.

14.There are posts of Cooperative Sub-Registrars(Prosecution) attached to a Circle Deputy Registar and having territorial jurisdiction over two Deputy Registrar's Circles. As the very designation itself suggests, these posts are specially intended for assisting the Assistant Public Prosecutor in the criminal courts for the early and successful prosecution, apart from reporting to the Circle Deputy Registrars the progress and stages of the various cases both under investigation by the Police and under trial in the concerned criminal courts. There are instances, where the defence counsels in the courts object to the presence of the investigating officers in the Court hall during examinaton of witness. During the trial of cases in various courts numerous documents have to be filed by the prosecution as exhibits, and especially when the Cooperative cases are based almost on documentary evidences and exhibits. In such cases the Assistant Public Prosecutor find it very difficult to cullout and file the relevant record from the voluminous documents as exhibits through the witness examined. This will be over come if the Cooperative Sub-Registrar (Prosecution), who is very familiar with the books of accounts, registers, ledgers, document etc., of the cooperative society assist the Assistant Public Prosecutor in such an event. The Circle Deputy Registrars should therefore ensure that the Cooperative Sub-Registrars(Prosecution) attached to them, attend the concerned Courts promptly and regularly, whenever the cases are taken up for trial and assist the Assistant Public Prosecutor in the conduct of the trial of such cases, and also report to the Circle Deputy Registrars the progress in the cases under investigation/trial with the Police / Court as the case may be regarding the number of witness so far examined, number of witnesses to be examined date of next hearing, action taken to examine the remaining witnesses, and

for the early completion of the investigation / trial as the case may be in all such cases.

Procedure to be followed when cases are referred back by the Police as mistake of fact or law.

15. Sometimes the Police, after investigation, refer the cases back to the Deputy Registrars as mistake of fact or law. In such cases, the Deputy Registrars may oppose the Police report in court within the time limit specified therein, if they are convinced that there is a strong case for prosecution. If the contention of the Police is accepted by the Court or if there is no time for opposing the Police report, the Deputy Registrars, may consult the Public Prosecutor in the desirability of filing a private case against the delinquents and submit necessary proposals to the Registrar. If the Registrar permits the filing of a private case, they should move the Public Prosecutor to file the case direct in the Court and to conduct it. The progress in the disposal of the cases should be watched and final report submitted to the Registrar as in other cases where the charge-sheet is filed by the Police.

Filing of appeals against acquittal and revision petitions for enhancement of sentence.

16. Where a case filed in a Court ends in the acquittal of the accused, an appeal may be filed in the next higher Court, if there are sufficient grounds for the filling of such an appeal. Similarly, if sentence awarded is considered indequate, a criminal revision petition may be field in the next higher Court. The time limit, within which the appeal or the criminal revision petition should be filed, is 90 days from the date of judgement or order, which is sought to be appealed against or revised. According to the existing orders of the Government, all proposals for filing appeals against acquittals or revision of enhancement of sentence should be submitted to Government within a period of six weeks from the date of judgement sought to be appealed against. Government have prescribed a time schedule for the finalisation and submission of proposals for appeal. According to this time schedule the Assistant Public Prosecutor or the prosecuting official should apply to the Courts concerned for a certified copy of the judgement on the day of the judgement is pronounced and forward, within seven days from the date of receipt of the copy of the judgement, his proposals for filling an appeal against acquittal or revision for enhancement of sentence to the Deputy Registrars. On receipt of the proposals, the course open to the Deputy Registrars is to accept or reject the proposals or to invite the opinion of the Public Prosecutor of the district, if the proposal has not

come from him. Within a week from the date of receipt of the report of the prosecuting official and in cases where the Public Prosecutor is consulted, within a fortnight from the date of receipt of the report of the prosecuting official, the Deputy Registrars should submit necessary proposals to the Registrar, so that the orders of the Government may be obtained and the appeal or the revision petition filed in time.

Filing of complaints by socieities direct.

17. In some cases, where misappropriation or fraud is brought to light in societies, the office bearers of the societies themselves, have lodged complaints direct with the Police for criminal action, against the delinquents. In some cases, this is done without proper investigation or sufficient evidence to prove the guilt of the offenders and this has resulted in the failure of the cases. It is, therefore, necessary to ensure that prosecution is launched only in cases where the evidence gathered will secure a conviction. A proper and thorough investigation is possible only by the departmental officers, who are armed with adequate statutory powers to compel the attendance, the production of records and the examination of the witnesses on oath etc. It is, therefore desirable and necessary that prosecution for frauds committed in co-operative societies are launched by the department and that direct complaints by societies to the Police are discouraged. Where the office bearers of any society come across any case of misappropriation or fraud, they may make a report to the Deputy Registrar concerned, who will take appropriate action in the matter.

Register of misappropriation cases.

18. All cases involving misappropriation should be entered in a register of misappropriation cases as soon as they are brought to light and subsequent entries made in it, as and when further action is taken. The register should be maintained in the form (Annexure II). This register should be checked by the Deputy Registrars with the relevant files at least once in a month to see that there is no avoidable delay in any case at any stage.

III. Offences under the Essential Commodities Act 1955 & The Tamil Nadu Scheduled Commodities (Regulation of Distributions by Card System) Order 1982

Public Distribution System and Cooperatives.

19.1. The Co-operative Department plays a vital role in the distribution of essential commodities through the various channels and vast network under its control and purview. In addition to the regular Circle Deputy Registrar

and his subordinate staff, there are posts of Deputy Registrar(Public Distribution System) with necessary subordinate officers exclusively for each district for the proper implementation of the Public Distribution System, through effective and efficient supervision and control of the distribution network. For this purpose, apart from the periodical inspection of the Fair Price Shops run by the Co-operatives, surprise checks, squad verification and 100% verification etc., are being conducted regularly. During the course of such inspections certain very serious irregularities and malpractices, committed by the persons in charge of the distribution of the essential commodities have been noticed.

19.2.*The courts have in many cases, observed:-*

"The very fact of non accounting and disappearance of huge quantity of stock of essential commodities entrusted to the accused for the sole purpose of distribution to the ration card holders attached to the particular Fair Price shops itself clearly goes to prove that these perpetrators of social justice did not supply to the card holders and have made unlawful and fraudulent disposal of the commodities entrusted to them and when in these hard days of scarcity of essential commodities, and when the essential commodities fetches otherwise in the market price which is normally much higher than the fair price fixed, any reasonable person could feel satisfied that the above mentioned actions of the accused were directed towards making illegal gain by selling these commodities to unauthorized persons at a price much higher than that fixed for the purpose and also that the stock had been so disposed must have been disposed off after making illegal gain."

19.3. It is therefore very imperative on the part of the departmental officers that wherever irregularities and malpractices are noticed in the functioning of Fair Price shops they should not rest contend with actions such as collection of shortage in stock or sale proceeds, imposing fine, and initiating disciplinary action against the persons involved etc., In variably in all such cases deterrent criminal action against the persons responsible should be initiated. They should be punished severely so that it will have a salutary effect on the persons who indulge in such malpractices.

19.4. The procedures to be followed while such malpractices are brought to the notice of departmental officer and the details of action to be pursued are indicated below:—

1(a) OFFENCES:-

The serious irregularities noticed have to be categorised for taking different kinds of action. The following are such irregularities which are very often noticed in a fair price shop:-

(i) Illicit sale of kerosene, palmolein, rice, sugar etc. without bringing the stock to the account of the shop.
(ii) Illicit sale of commodities and preparing bogus bills thereafter.
(iii) Illicit sale of commodities after preparing bogus bills.
(iv) Illicit sale to non-card holders after making bogus entries on the family cards and bills.
(v) Illicit sale without preparing bills and by falsification of accounts.
(vi) Illicit sale noting the number of cancelled or stop supply cards.
(vii) Illicit sale by making issues over and above the eligibility of the card holder.
(viii) Misappropriation of cash and other property.
(ix) Keeping bogus cards in custody.
(x) Selling of commodities at rates exceeding the prices fixed by the Government with or without noting it in the bills.

(b) *PENAL PROVISIONS*

. An extract of the various provisions in the Essential Commodities Act 1955, the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 and the I.P.C. which are relevant to the above offences are furnished in the Annexure while some of the offences may attract the provisions of the Essential Commodities Act and the I.P.C. some of them will come only under the I.P.C. An attempt is made hereunder to bring the offences under these enactments. This should be taken only as illustrative and not exhaustive. The offences have to be taken cognizance of with reference to the merits of each case, if necessary, with the help of legal opinion.

Offences	***Penal Provisions***
I) Illicit sale of Kerosene, Palmolein, Rice, Sugar etc., without bringing the stock to the account of the shop.	Sub clauses (3), (4) of clause 6 of the Tamil Nadu Scheduled Commodities(Regulation of Distribution by Card System) Orders, 1982 read with Sec.7, 8 and 9 of the Essential Commodities Act 1955 and Sec. 405 of I.P.C.
II) Illicit sale of or attempt to sell the commodities and preparing bogus bills thereafter.	-do-
III) Illicit sale of or attempt to sell the commodities after preparing bogus bills.	-do-
IV) Illicit sale to non-card holders after making bogus entries on the family cards and preparing bills.	Sub-Clauses (3) and (4) of Clause 6 of the T.N.S.C. (Regulation of Distribution by Card System) order 1982.
V) Illicit sale without preparing bills and falsification of accounts.	Sub-Clause (3) and (4) of Clause 6 of the T.N.S.C. (Regulation of Distribution by Card System) order,1982.
VI) Illicit sale nothing the number of cancelled or stop supply cards.	-do-
VII)Illicit sale by making issues over and above the eligibility of the card holders.	Sub clause (2) and (4) of clause6 of the TNSC (Regulation of Distribution by card system) order,1982.
VIII)Misappropriation of cash and other property.	Section 403 and Section 405 of the I.P.C.
IX) Keeping bogus cards in custody.	Clause 10 of the TNSC (Regulation of Distribution by Card System) Order, 1982 read with Section 7 of the Essential commodities Act, 1955.
X) Selling of commodities at rates exceeding the prices fixed by the Government for personal gains.	Clause 13-A of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) order, 1982 read with Section 7 of the Essential Commodities Act, 1955.

(C) POWERS OF SUPERVISORY STAFF.

For the detection of the above irregularities , powers are vested on the departmental officers and without a fair knowledge about them, the exercise of these powers will not be possible. The above offences mainly relate to Tamil Nadu Scheduled Commodities (Regulation of distribution by Card System) order,1982. Clause 2(i)(b) of the said order defines the word “Inspection Officer” which term includes Cooperative Sub-Registrar (Public Distribution System). It should be noted that under the said order the Cooperative Sub-Registrar (Public Distribution System)

alone has got the power and not any other officer superior or inferior to the cadre of Co-operative Sub-Registrar (Public Distribution system) and not even the other Cooperative Sub-Registrars. The powers of the Cooperative Sub-Registrar (Public Distribution System) under this order are given in the Annexure. In addition to these powers a Cooperative Sub-Registrar (Public Distribution System) is already vested with powers under section 81 and section 82 of the Tamil Nadu Cooperative Societies Act in respect of Primary Societies which are considered adequate for dealing with the above offences. The Senior Inspector (Public Distribution System), if authorized by the Deputy Registrar (Public Distribution System) is competent to exercise the powers under section 82 of the Tamil Nadu Cooperative Societies Act.

(d) PROCEDURE FOR INVESTIGATING INTO THE OFFENCES:-

(i) OFFENCE No.I

(1) The inspecting officer should take an extract of the relevant entries in the books of accounts of the private wholesaler or the Tamil Nadu Civil Supplies Corporation or the Hindustan Vegetable Oil Corporation or Food Corporation of India or lead society, or any supplier for that matter. He should also note down the Invoice Number, Delivery Order Number, Cheque or Demand Draft Number (With bank name) and also the name of the person who signed in token of having received the stock. With this information, the inspecting officer should verify the accounts maintained in the shop to find out whether all the supplies have been brought in to the stock register of the shop. If any stocks are found to be not brought in to the accounts of the shop, the inspecting officer should note it in the stock register of the shop and he should rush back to the dealer or the supplier and serve a notice on him to the effect that such and such books of account will be necessary for prosecution of an offence under the said order read with the Essential Commodities Act and that it shall be obligatory on the part of the dealer and supplier to preserve and produce the accounts or books as and when required by the competent authorities or Court. In the shop, the inspecting officer should seize the stock register after giving an acknowledgement and he should also direct the salesman to offer a new stock register to record the subsequent entries. If the inspecting officer wants any record from the head office, he should go to the office and demand the production of the record through a written requisition. If the records are not forthcoming, the inspecting officer may resort to invoking the provisions of clause 13 of the Tamil Nadu S.C.(RDCS) Order, 1982.

(2) The inspecting officer should then record statements from the person who has signed in token of having received the stock, the salesman of the shop and any other person who has knowledge about the offence. If information about the private shop to which the stocks was sold the transport vehicle in which the stocks, were reportedly transported etc. are available, the inspecting officer should record statements from the private shop owner, lorry drivers and others. If the inspecting officer has gone to the spot at the time when the goods are being illicitly transported he should immediately seize the stocks and also the vehicle. For this purpose, the inspecting officer can requisition the services of any police officer or any other officer of the State Government, if necessary, under clause 13(2) of T.N.S.C. (RDCS) Order, 1982. The seizure of the stock and vehicle should immediately be reported to the Collector of the District, in writing so that he can confiscate them. If the stocks are found in any private shop and if the inspecting officer is satisfied that the commodity is intended for Public Distribution System, he may enter into the shop and seize those stocks also. The inspecting officer should also verify the accounts of the shop and the parent society, to find out whether the funds of the society have been utilized for lifting the commodities. He should also examine the gunny accounts to find out whether the empties of the commodities have been accounted for. After a through verification of all these facts, the inspecting officer should come to a conclusion as to who are all the persons involved in the irregularities and whether he has obtained statements from all of them. The statements should not be obtained in any cyclostyled form. It should be obtained from every individual in the language known to the deponent. The name, father's name, age, residential address and official designation if any of the deponent should be clearly noted in the statement. The inspecting officer should also sign beneath the statement to the effect that it has been deposed before him. The place, date and time of the deposition should also be recorded in the statement.

(ii) <u>OFFENCE No. II</u>

Apart from following the procedure enunciated under offence No.1, for this offence, it is very much important to seize the concerned bill book and certain family cards to establish that the transaction is a bogus one. The family card holders of those family cards should be required to give a statement to the effect that they have not obtained the commodities purported to have been supplied to them. The statements from these card holders have to be recorded separately with

the name and address of the card holders. Arrangements should be made for issuing duplicate family cards to them, so that they can continue to draw their supplies until the original family cards are returned to them. In cases where the original family cards could not be obtained from the card holders photostat copies should be obtained with necessary endorsement by the card holders to the effect that they will preserve and produce the original cards as and when required by the competent authorities or court and duly countersigned by the inspecting officer.

(iii) OFFENCE No III to VIII

The procedure to be followed is the same as for offence No. I and II.

The shortage in cash balance should be recorded in the cash book and a statement should be obtained from the sales man concerned. The cash book should be checked for 1 or 2 months and if any discrepancies are noticed it should be checked for longer periods also. For this offence the prosecution has to be sanctioned by the Regional Joint Registrar. If any departmental officer above the level of Co–operative Sub Registrar is involved, prosecution has to be sanctioned by the Registrar only. This offence should be charged only under the I.P.C.

(iv) OFFENCE No. IX

The bogus cards should be seized and they should be forthwith handed over to the District Supply Officer/ Assistant Commissioner concerned for the cancellation of the cards. An entry should be made in the 'A' register and drawl register rounding of the card number duly indicating that the card has been seized for cancellation. If this is committed along with the offences indicated in serial number I to IV, this should be included in the complaint to the Food Cell Police. If this offence is noticed in isolation, it is enough if action is taken as indicated in Registrar's circular No.257644/89 PDSG.2,dated 14.10.1990.

(v) OFFENCE NO X

If the offence is committed along with the offence in serial numbers I to IV this should also be included in the complaint to the Civil Supplies C.I.D. Unit. If this is the only offence noticed, the sales man should be suspended and after observing the formalities, like domestic enquiry etc., he should be dismissed from service.

(vi) SEIZURE OF BOOKS AND RECORDS

All the required books, records etc., should be seized on the very first day of such intensive verification or inspection by the intensive verification or inspecting officer. The records so seized should be kept in their own custody and handed over to the Civil Supplies C.I.D.at the time of filing of the complaint.

(e) PROCEDURE FOR TAKING CRIMINAL ACTION

A. Essential Commodities Act:

(i) for the offence committed which fall under the essential commodities act, read with the T. N. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982, no statutory enquiry under sec 81 of the Tamil Nadu Cooperative Societies Act is necessary. The mere report of the inspecting officer(who should be a Cooperative Sub Registrar(Public Distribution System)) is enough. If the irregularities were pointed out by a Senior Inspector (Public Distribution System) it should be got examined by a Cooperative Sub Registrar (Public Distribution System) who is vested with the powers of the inspecting officer. Based on the report of the inspecting officer the Deputy Registrar (Public Distribution System) should prefer a complaint to the respective jurisdiction Civil Supplies C.I.D. Unit. If the Regional Joint Registrar/ Circle Deputy Registrars, notice any irregularities in the working of the F.P.S. during the course of their inspection, warranting action under the Essential Commodities Act they may also prefer complaints with the respective Civil Supplies C.I.D. Units. Likewise if the irregularities noticed by the Special Officer of a society in respect of fair price shop run by that society, he may also prefer the complaint to the respective Civil Supplies C. I. D. unit. The fair copy of the complaint should be signed by the officer himself and it should not be signed by somebody else on behalf of the complainant. It should be noted here that any such complaint should relate to irregularities, the money value of which is Rs. 5000/- and above. If the money value is less than Rs. 5000/- the complaint should not be filed in a routine manner. If, however, the offence committed relate to persons or area who / which are prone to the irregularities of this kind and deterrent actions considered absolutely necessary as a preventive measure, where the cases relate to serious irregularities, like bogus bills and holding of bogus cards even though the value is less than Rs.5000/- may also be filed with the respective Civil Supplies C. I. D unit by the Deputy Registrar (Public Distribution System) after getting the permission of the Regional Joint Registrar.

(ii) The sanction of prosecution by the Joint Registrar or the Registrar of Cooperative Societies is not necessary for filing complaint under the essential commodities act. The respective Civil Supplies C. I. D. Unit after completing the investigation will obtain necessary sanction for prosecution from the District Collector. The complaint should be filed in respect of each and every shop and two or more shops should not be clubbed together. The following records should be furnished with the complaint.

1. Intensive verification/ inspection report in original.
2. Bill books for the sale of commodities for the offence period.
3. Sales registers for essential commodities such as PDS rice, Sugar, kerosene,etc (daily sales chitta/statement).
4. Drawal register for the commodities.
5 'A' Register
6. Stock registers for the above essential commodities.
7. (a) Statement of family card holders(in original) who have not received the commodities, but against whose cards the bills were prepared by the sales man/ packer.
   (b) Any other statements (in Original) given to the intensive verification / inspection officer and duly attested by such officer.
8. Photostat copies of the family cards of the above card holders (with the endorsement of the cards holder and attested by the intensive verification/inspection officer)
9. Name and address of the sales man / packer who committed the offence.
10. Photostat copies of the appointment order for the sales man/ packer.
11. Photostat copies of the office order of the society detailing the duties and responsibilities of the sales man/packer.
12. Photostat copies of the transfer order for the sales man / packer to the concerned FPS with date of joining.
13. Attendance register for the salesman/ packer for the offence period.
14. Name, designation and address of the officer who conducted the intensive verification/inspection.

The complaint should be sent to the respective Civil Supplies C.I.D. Unit by registered post with acknowledgement due and the inspection officer should be deputed to meet the investigation officer to whom the work was entrusted and discuss the case and furnish all materials necessary and submit periodical reports on the progress of the cases. A separate Register other than the 'Registrer for Misappropriation cases' should be maintained for the cases under the Essential Commodities Act and the progress reviewed. The implication in stressing that these offences should be booked under Essential Commodities Act is that the procedure is simple, fast and result oriented. There are special courts for the trial of offences under the Essential Commodities Act at Thanjavur, Tiruchi, Madurai Chennai, Salem and Pudukottai and therefore criminal action will also be speedier.

B. INDIAN PENAL CODE

For the offences which fall under Indian Penal Code, Section 81 inquiry or 82 investigation is necessary and the complaint should be filed with the C.C.I.W., D.C.B., Local Police as the case may

be in accordance with the usual procedure as contemplated by the Registrar.

ANNEXURE I

PROFORMA OF THE REPORT ON MISAPPROPRIATION

Part A

1. Preliminary.

State the full circumstances relating to the detection of the fraud. The date when the fraud was first noticed, the officer who noticed it whether it was done in the course of his routine duties such as audit or inspection or on information furnished by others if so, by whom, and what kind of information, the date on which the enquiry under section 81 or inspection or investigation under section 82 was ordered, the date on which the officer, submitted his final report, whether there was any undue delay in the submission of the report by the officer concerned and in case if the Public Prosecutor or the Assistant Public Prosecutor was consulted and the legal opinion obtained, etc., should be furnished under this head.

2. The delinquents.

Who are the delinquents? Give their names designation, their relationship in the society, the period for which they have been connected with the society, their present position and where abouts, if known.

3. The items of fraud.

Give all the items of fraud, whether supported by adequate evidence or not. The date, amount and nature of the fraud should be given briefly. The items should, however, be grouped conveninetly such (a) fraud through short crediting; (b) fraud through belated credit; (c) falsification of counterfoil receipts, etc., and so on. (amplify)

4. The legal offences

State the items of frauds in respect of which prosecution can be launched and the persons to be charged.

5. Investigation

Furnish the names and other details of the persons examined in the course of the enquiry under section 81 or /inspection / investigation under section 82 and whether statements were recorded from all of them; if not, state the reasons for the omission. Have the deliquents and all the necessary witnesses, including the auditors and other departmental staff, been examined and their written statements obtained? If not state the circumstances in which it could not be done. State the salient points of the depositions of each party and the extent to which they could be made use of for the prosecution.

6. "Mens rea"

It is "Mens rea" (Criminal intention) that is important for a successful prosecution. Misappropriation of fund will result in either wrongful gain to one or wrongful loss to another. As such the intention of the delinquent in regard to his wrongful gain by his criminal act should be examined and stated.

7.Evidence

Classify the evidence available into (a) circumstantial, (b) documentary; and (c) oral, and discuss briefly the reliability and the weaknesses in the evidence available from the point of view of prosecution and whether the evidence is adequate for a successful prosecution. It should be shown whether any material witnesses are likely to turn hostile during trial. It should be examined whether entrustment can be proved in the case of a charge of breach of trust. Whether office bearers other than the delinquents can be changed with the the abetment or conspiracy and if so, to what extent should be stated. Facts like, who was maintaining the cash book and other accounts, who is the office bearer responsible under the by-laws for the custody of the cash balances, whether the cash book was signed by the Secretary or the Accountant, together with the treasurer or the President and how far they are liable, responsible and accountable in respect of the enquiries on which the charges are to be framed, etc., should be stated. State whether all the documentary evidences have been seized and kept in safe custody.

Part B

1. Detail the course of investigation briefly, from the date of discovery of the fraud till the date of report.

2. Explain in detail the steps taken to make sure that there are no more items of fraud than those detailed in Part A.

3.What is the effect of the fraud on the financial condition and future of the society? Has the amount involved in the misappropriation been recovered? What action has been taken to ensure the recovery of the amounts lost? (The Deputy Registrars should not wait for the orders of the Registrar to instruct them in every case of misappropriation to institute legal proceedings . They should not also wait for the filing of arbitration claims by the society, where section 87 can be invoked straightaway. They should take quick action to recover the amount misappropriated and report the action taken to the Registrar even while seeking permission for launching prosecution).

4. State whether action has been taken for the removal of all the office bearers and others responsible for the fraud and if not, why.

ANNEXURE II

REGISTER OF MISAPPROPRIATION CASES IN ..... CIRCLE

(1)	Serial Number
(2)	Current Number
(3)	Name of society
(4)	Date of ordering the inquiry/ inspection/investigatiions and the officers authorised to conduct it.
(5)	Date of completion of the inquiry/ inspection/investigations
(6)	Date of submission of the report by the enquiry /inspection/ investigatiions officer.
(7)	Amount involved
(8)	Office bearers
(9)	Paid employees
(10)	Departmental Officers
(11)	Others
(12)	Date of sending first information report to the Registrar
(13)	Date of sending Part-A of the report to the Registrar
(14)	Date of receipt of Registrar's orders.

Names of delinquents

(15)	**Date Police Crime Wing No.**		Filing of complaint with the Police
(16)			Date of sending Part B of the report to the Registrar
(17)			Name of the Court and the C.C.Nos.
(18)		**Conviction** Rs. P. Disposal	Date
(19)			Office bearers
(20)			Paid employees
(21)			Departmental Officers
(22)			Others
(23)		**Acquital**	Office bearers
(24)			Paid employees
(25)			Departmental Officers
(26)			Others
(27)			Date of reporting disposal to the Registrar
(28)			Date of sending judgement copy to the Registrar
(29)		**Recovery of the amount involved**	ARC/Surcharge/E.P.No.
(30)			Date
(31)			Amount
(32)			Remarks (here details of appeals of any, may be noted)
(33)			
(34)			

Rs.P.

ANNEXURE

Register of Misappropriation Cases

(1) Serial Number :

(2) Current Number :

(3) Name of Society :

(4) Date of ordering the enquiry/ inspection/investigation and the officers authorised to conduct it. :

(5) Date of completion of the enquiry/inspection/investigation :

(6) Date of submission of the report by the enquiry / inspection/ investigation officer :

(7) Amount involved (Rs.) :

(8) Name of delinquents :

(a) Office bearers
(b) Paid employees
(c) Departmental Officers
(d) Others

(9).Date of sending preliminary report to the Joint Registrar/Registrar :

(10) Date of sending Part-A of the report to the Joint Registrar/ Registrar :

(11) Date of receipt of Joint Registrar/ Registrar's orders :

(12) Date of filing complaint with the superintendent of Police :

(13) Date of sending Part B of the report to the Joint Registrar/ Registrar :

(14) F.I.R. No and date,date ofcharge sheet, CC Numbers and the name of the court :

(15) If referred back by the Police as mistake of Fact or law, date :

(16) Date of Disposal and CC No.

A.Conviction

(a) Office bearers :
(b) Paid employees :
(c) Departmental Officers :
(d) Others :
(e) Nature of Punishment :

B. Acquital

(a)Officer bearers
(b)Paid employees
(c)Departmental Officers
(d)Others

(17) Date of reporting disposal to the Joint Registrar/Registrar :

(18) Date of sending judgment copy to the Registrar :

(19) Details of action initiated under section 87,90 etc. :

(20) Recovery of the amount involved :
a. Date
b. Amounts (Rs.)

(21) Remarks here be noted details of appeals,if any :

CHAPTER X

ALLIED LAWS

There are references to other Acts & Rules in the Tamil Nadu Cooperative Societies Act , 83 and Rules, 88 (Details Annexed). Further according to the type of service or business they have under taken, such as, Credit, Banking, Consumers, Marketing, Agriculture and Non-Agriculture etc, the Cooperative Societies, though registered and governed mainly under the Tamil Nadu Cooperative, Societies Act 1983 and Rules 1988, these societies also come under the purview of so many other laws related to such type of activities as they undertake. Departmental officers, who, as Special Officer or Managing Director or Chief Executive Officer of such an institution, may at times, as provided for under the respective laws in force, in their capacity as the 'Licensee of the Company' or 'A Body Corporate' or otherwise, may be held accountable, liable and responsible in certain respects and aspects for any act of omission by other officers and staff of the institutions. Hence in discharging such statutory obligation as a 'Licensee' as may be required under these Acts, they may have to delegate certain powers, functions and fix up duties and responsibilities accordingly to other officers and / or staff of the institutions. The departmental officers holding such positions in the Cooperative Societies, and also the Regional Joint Registrars, Circle Deputy Registrars and other departmental officers who are taking up inspection of such societies should keep themselves well informed of such allied laws up dated and act accordingly. They should also keep abreast of all current and latest judicial dictums and case laws of the various High Courts and Supreme Court, relating to the Tamil Nadu Cooperative Societies Act, Rules and Allied Acts.

Certain important provision of some such Acts, are briefly indicated. The departmental officers should take it only as a guidance and not complete. They should invariably refer to the fuller versions of relevant sections of the particular Act for better appreciation and understanding of the context.

1.INDIAN PENAL CODE

Section 34:

Acts done by several persons in furtherance of common intention:

Criminal act done by several persons, in furtherance of the common intention of all.

Section 107:

Abetement of a thing:

A person abets the doing of a thing, who:

Firstly :Instigated any person to do that thing; or

Secondly :Engages with one or more persons in any conspiracy for the doing of that thing; or

Thirdly :Intentionally aids, by any act or illegal omission.

Section 109:

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment:

Whoever abets any offence and no express provision is made by this code for the punishment of such abetment, he shall be punished with the punishment provided for the offence.

Section 120-A

When Two or more persons agreed to do, or casued to be done.

(1) an illegal act or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Section 174:

Non-attendance in obedience to an order from Public Servant:

Failure to attend in person, at a certain place and time in obedience to a summon, notice or order from any public servant.

Section 175:

Omission to produce document to Public Servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document to any public servant, omits so to produce or deliver up the same.

Section 177:

Furnishing false information:

Whoever, being legally bound to furnish information on any subject to any Public Servant, as such, furnishes as false information on the subject.

Section 178:

Refusing oath of affirmation when duly required by public servant to make it:

Refusal to give statement on oath.

Section 179:

Refusing to answer Public Servant authorised to question:

Refusal to reply to the questions of Public Servant

Section 180:

Refusing to sign statement:

Refusing to sign any statement, when required to sign that statement by a public servant.

Section 186:

Obstructing Public Servant in discharge of Public Functions:

Voluntarily obstructs to any Public Servant in the discharge of his public functions.

Section 381:

Theft by clerk or servant of property in possession of Master:

Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer.

Section 403:
Dishonest misappropriation of property:
Whoever, dishonestly misappropriates or converts to his own use any movable property.

Section 405:
Criminal breach of trust.
Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

Section 407:
Criminal breach of trust by carrier etc.
Whoever, being entrusted with property as a carrier, commits criminal breach of trust in respect of such property.

Section 408:
Criminal breach of trust by Clerk or servant:
Whoever, being a clerk or servant and being in any manner entrusted in such capacity with property or with any dominion over property, commits criminal breach of trust in respect of that property.

Section 409:
Criminal breach of trust by public servant, or by banker, merchant or agent.

Whoever, being a clerk or servant and being in any manner entrusted with property or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agents commits criminal breach of trust in respect of that property.

Section 415:
Cheating
Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person.

Section 418:
Cheating with knowledge that wrongful loss may ensure to person whose interest offender is bound to protect:

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to person whose interest in the transactions to which the cheating relates, he was bound either by law or by legal contract, to protect.

Section 420:
Cheating and dishonestly inducing delivery of property:

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 463:
Forgery:

Whoever makes any false document, with intent to cause damage or injury to the public or to any person.

Section 468:
Forgery for purpose of cheating :

Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating.

Section 477 – A:
Falsification of accounts:

Whoever being a clerk, officer or servant acting in that capacity wilfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or in the possession of his employer.

2.ESSENTIAL COMMODITIES ACT, 1955

Object:

The object of enacting the Act is to maintain or increase supplies of essential commodities and to secure their equal distribution, that is to say, to make the essential commodities available to all people at fair prices and to provide in the interest of general public power to control production, supply and distribution of and trade and commerce in essential commodities.

Essential Commodity:

Section 2 (a) of the Essential Commodities Act, 1955 lists out the classes of commodities which are classified as essential commodities. The Central Government may, by notified order declare any other class of commodity as essential commodity. If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices, or preventing the hoarding, of any food stuff in any locality, it may, by notification in the Official Gazette, direct the price at which the food stuff shall be sold in the locality in compliance with an order made. The powers under section 3 of the Act to make orders or issue notifications under the Act have been conferred upon the State Government.

The Government of Tamil Nadu in exercise of the powers conferred by section 3 of the Act, have made the **"Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order,1982"** which has been published in the Tamil Nadu Government Gazette, Extraordinary, dated 29.4.1982.

Inspecting Officer means -

(a) in relation to the city of Chennai including belt area comprising Saidapet Taluk and Avadi Township in Tiruvallur District, the Assistant Commissioner of Civil Supplies, the Cooperative Sub Registrars (Public Distribution System), Tahsildars or Special Tahsildars, Superintendents and Inspectors doing Civil Supplies work in Chennai City: and

(b) in relation to any other area, the District Supply Officer, the Tahsildar, Taluk Supply Officer, Special Tahsildar (Civil Supplies), Deputy Tahsildar (Flying Squads), Cooperative Sub Registrars (Public Distribution System) and Special Revenue Inspectors doing civil supplies work in the district.

Section 7 Penalties:

If any person contravenes any order made under section 3:

(a) He shall be punishable in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable for fine.

(b) Any property in respect of which the order has been contravened shall be forfeited to the Government

Section 8:

Attempts and Abetment

Any person who attempts to contravene or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

Section 9:

False statement:

If any person:

(i) When required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material, particular and which he knows or has reasonable cause to believe to be false or does not believe to be true; or

(ii) Makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish.

He shall be punishable with imprisonment for a term which may extend to five years or with fine or both.

Scheduled Commodity:

Scheduled commodity means the commodity specified in the Schedule to the Order and supplied by the Government or by an agency authorised by the Government in that behalf to any authorised dealer for issue to consumers. The Schedule is given at the end.

Power of entry, seizure, search etc.

(1)If any Inspecting Officer has reason to believe that any contravention of the Order has been committed or is being committed or is about to be committed such officer or any other officer authorised by the Collector in this behalf, may –

(a) in respect of any book, account, family card or other document or any stock of essential commodity in the possession or under the control of any person;

(b) seize any such account or stock or family cards;

(c) stop and search any such person, motor vehicle or any vehicle or receptacle used or intended to be used for the movement of the commodity

(d) enter and search any premises or place or godown; and

(e) seize the stock of any scheduled commodity along with the packages, coverings or receptacles in which such scheduled commodity is found or the animals, vehicles, vessels or other conveyances used in carrying such scheduled commodity and thereafter send to the Collector of the District concerned a report in writing as required under section 6 of the Act.

Provided that the officer conducting the inspection or search shall give a receipt for what is seized immediately after the seizure is effected.

(2) The competent officer or any other officer authorised by the Collector may requisition the services of any Police Officer or of any other officer of the State Government to assist such officer in the lawful exercise of any power vesting in him and it shall be the duty of every officer so requisitioned to comply with such requisition.

(3) Subject to the provisions of sub-clause (1) of this clause, the provisions of section 100 of the Code of Criminal Procedure (Central Act II of 1974) relating to search and seizure shall, so far as may be apply to searches and seizures under this clause.

Public Distribution System (Control) Order:

The Central Government in exercise of the powers vested in them under the Act have made the **"Public Distribution System (Control) Order, 2001.** The Public Distribution System (Control) Order, 2001 provides guide lines for identification of families living below poverty line, issue of distinctive family cards to Above Poverty Line, Below Poverty Line and Antyodaya families, scale of issue and issue price, procedure for distribution, licensing, monitoring, penalties, power of search, appeal, protection of action taken under the order and power of the Central Government to give directions. The provisions of this order shall have effect notwithstanding anything to the contrary contained in any order made by a State Government or by an officer of such State Government before the commencement of this order except as respects anything done, or omitted to be done there under before such commencement.

Offences by companies:

According to section 10 of the Essential Commodities Act 1955, if the person contravening an order made under section 3 of the Act is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2)However, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of,or is attributable to any negligence on the part of, any director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: “Company” means any body corporate and includes a firm or other association of individuals. Cooperative societies will also come under this definition.

Constitution of Special Courts:

The Government of Tamil Nadu have constituted Special Courts for trying the cases under the Essential Commodities Act, 1955 in accordance with the provisions of section 12-A of the Act.

Burden of proof:

Where any person is prosecuted for contravening any order made under section 3 of the Act which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit or licence or other document shall be on him.

SCHEDULE

[Sub-clause (2) (j) of clause 2 of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order,1982]

1.	Rice (including paddy).	]	
2.	Wheat.	]	
3.	Jowar including milo.	]	Whole or broken or the
4.	Bajra.	]	flour products thereof.
5.	Maize.	]	
6.	Ragi.	]	
7.	Sugar.		
8.	Gram.		
9.	Gram dhall.		
10.	Toor.		
11.	Toor dhall.		
12.	Green gram.		
13.	Urid.		
14.	Urid dhall.		
15.	Baby food.		
16.	Groundnut oil, gingelly oil, coconut oil and imported edible oil.		
17.	Toilet and washing soaps.		
18.	Kerosene.		

3.The Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) order, 1982.

Clause: 6

(1) . . . . . .

(2) The authorised dealer with whom the family card is registered, shall on production of such card by the holder, make necessary entries in the card and supply the scheduled commodities not exceeding the quantities for which he is eligible.

(3) The authorised dealer shall not supply the scheduled commodities against any family card not registered with him or to non-card holders.

(4) No person shall purchase any scheduled commodity obtained on a family card.

Clause: 9

(1) No holder of a family card shall transfer or pledge to any other person a family card issued to him and no other person shall use or dispose of or obtain such documents.

(2) No holder of a family card shall sell any scheduled commodities obtained on the said card.

Clause: 10

No person shall have in his possession, any family card not belonging to him.

Exception **:** This clause does not extent to a servant found in possession of family card on behalf of the card holder in the capacity of an employee and carrying the said card for the purpose of purchasing scheduled commodities on behalf of the card holders.

Clause: 14

(1)Every authorized dealer shall:

(a) Be held responsible for all the acts of commission and omission of his partners, agents, servants and other persons who are allowed to work in the shop.

(b) Not sell scheduled commodities obtained from source other than the Government or any agency appointed by the collector, except under and in accordance with the conditions, if any, of a special permission granted by the collector or any authorised officer from time to time.

(c) Always maintain adequate stocks of the scheduled commodities.

(d) Take adequate measures to ensure that the scheduled commodities stored by him are maintained in good condition and that damage to them due to ground moisture, rain, insects, rodents, birds, fire and such other causes is avoided.

(2) No authorised dealer shall, without reasonable cause, stop the working of the shop abruptly or allow the shop to remain closed during working hours on any working day without the prior approval of the Collector.

Powers of the Cooperative Sub–Registrar (Public Distribution System) under the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982

Clause:13
Powers of entry, seizure, search, etc.,

(1) If any inspecting officer has reason to believe that any contravention of this order has been committed or is being committed or is about to be committed such officer or any other officer authorised by the Collector in this behalf may :–

(2) (a) Inspect any book, account ,family card or other document or any stock of essential commodity in the possession or under the control of any person:

(b) Seize any such account or stocks or family cards:

(c) Stop and search any person, motor vehicle or any vehicle or receptacle used or intended to be used for the movement of the essential commodity.

(d) Enter and search any premises or place or godown.

(e) Seize the stock of any scheduled commodity along with the packages, coverings or receptacles in which such scheduled commodity is found or the animal, vehicles, vessels or other conveyance used in carrying such scheduled commodity and thereafter send to the Collector of the district concerned a report in writing as required under section 6 of the Essential Commodities Act, 1955 (Central Act 10 of 1955). Provided that the officer conducting the inspection or search shall give a receipt for what is seized immediately after the seizure is effected.

(2) The competent officer or any officer authorised or any officer authorised under the sub-clause-(1)

May requisition the services of any police officer or of any other officer of the State Government to assist such officer in the lawful exercise of any power vesting in him under this clause and it shall be the duty of every officer so requisitioned to comply with such requisition.

4.THE PAYMENT OF GRATUITY ACT, 1972

Gratuity, like provident fund and pension, is a kind of retirement benefit. It is a payment which is intended to help the employees after their retirement, whether their retirement is as a result of rules of superannuation or of some physical disability. The general principle underlying gratuity scheme is that by faithful service over a long period the employee is entitled to claim a certain amount as retirement benefit. Thus it is earned by an employee as a reward for long and meritorious service.

Application of the Act:

The Act applies to, among others, every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State in which ten or more persons are employed, or were employed on any day of the preceding twelve months. A shop or establishment once covered under the Act shall continue to be covered under the Act notwithstanding that the number of persons employed therein at any time falls below ten. The Act covers all persons employed in any establishment whose wages do not exceed Rs.3,500/- per month.

Continuous service:

An employee shall be said to be in continuous service for a period, if he has, for that period, been in uninterrupted service including service which may be interrupted on account of sickness, accident and leave. An employee shall be deemed to be in continuous service if he has worked under the employer for not less than 240 days in one year preceding the date with reference to which calculation has to be made.

Payment of gratuity:

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease.

Retirement means termination of the service of an employee otherwise than on superannuation and superannuation means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on attainment of which the employee shall vacate the employment.

Rate of gratuity:

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen day's wages based on the rate of wages last drawn by the employee concerned.

In Jeewanlal Ltd., v. Appellate Authority, (1984) Lab, I.C.1458, the Supreme Court has held that fifteen days' wages of monthly rated employees in working the gratuity amount payable under the Act will be ascertained by dividing the monthly wages last drawn by 26 (since there are 26 working days in a month) and multiplying this figure by 15. The maximum amount of gratuity payable to an employee shall not exceed the maximum amount fixed by the Government from time to time. This will not affect the right of an employee who is entitled to receive better terms of gratuity under any award or agreement or contract with the employer.

Protection of gratuity;

No gratuity payable under the Act to an employee shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Forfeiture of gratuity:

The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing damage to the property belonging to the employer, shall be forfeited to the extent of the loss so caused. The gratuity of an employee may be wholly or partially forfeited if the services of such employee have been terminated for –

(a) his riotous or disorderly conduct or any other act of violence on his part, or
(b) any act which constitute an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Provision relating to recovery from gratuity in the Tamil Nadu Cooperative Societies Act, 1983:

Section 48 of the Tamil Nadu Cooperative Societies Act, 1983 which relates to deduction from salary, wages or gratuity provides that where a member of a cooperative society has executed an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages shall be competent, on a requisition in writing from the society to deduct every month from the salary or wages payable to him such amount as may be specified in the requisition towards the amount, the employer or the officer disbursing the salary or wages of such member shall, on receipt of a requisition from the society, make the deduction from the salary or wages or the gratuity, as the case may be, payable to the member and pay to the society concerned. This provision makes it obligatory on the part of the employer or the officer disbursing the salary or wages of such member to make the deduction, on receipt of a requisition from the society, from the salary or wages or the **gratuity**, as the case may be, payable to the member and pay to the amount to the society.

5. THE LIMITATION ACT, 1963

The Limitation Act, 1963 indicates the specific point of time from which period of limitation begins to run.

The Act defines “period of limitation” as the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of the Act.

Some of the important provisions of the Act are given below:-

Section: 3. Bar of Limitation:

Subject to the exclusions provided in sections 4 to 24 of the Act, every suit instituted, appeal preferred and applications made after the prescribed period, shall be dismissed, although limitation has not been set up as a defence.

4. Expiry of period when court is closed:

Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

5. Extension of period in certain cases:

An appeal or an application other than an application under the provisions of Order XXI of the Civil Procedure Code, 1908 (Application for execution of decrees or orders) may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Section 90 (9) (b) of the Tamil Nadu Cooperative Societies Act,1983 provides for admitting a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient reasons for not referring the dispute within the period and that the dispute so admitted shall not be barred on the ground that the period of limitation has expired.

Similarly section 152 (3) of the Tamil Nadu Cooperative Societies Act, 1983 provides for admitting an appeal preferred after sixty days provided for in that section, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

Rule 170 of the Tamil Nadu Cooperative Societies Rules, 1988 provides for the time limit for preferring an application for review under section 154 of the Act as ninety days from the date of receipt by the applicant for review of the order to which the application relates. The above provision does not provide for condoning the delay in preferring the application for review.

12. Exclusion of time in legal proceedings:

(1) In computing the period of limitation, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time required for obtaining a copy of the decree,sentence or order appealed from or sought to be revised or reviewed shall

be excluded.

(3) In computing the period of limitation for an application to

set aside an award, the time requisite for obtaining a

copy of the award shall be excluded.

14. Exclusion of time of proceeding "bona fide" in court without jurisdiction:

In computing period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant shall be excluded, where the proceeding relate to the same matter in issue and is prosecuted in good faith in a court, which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

15. Exclusion of time in certain other cases:

In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction order the day on which it was issued or made and the day of which it was the time of the continuance of the injunction order, and the day on which it was withdrawn shall be excluded.

18. Effect of acknowledgement in writing:

Where, before the expiration of the prescribed period of limitation for a suit or application in respect of any property or right, an acknowledgement of liability has been made in writing signed by the party against whom such property or right is claimed, or by any other

person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

19. Effect of payment on account of debt or of interest:

Where payment on account of a debt or of interest is made before the expiration of the prescribed period by the person liable to pay the debt or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

THE SCHEDULE
Period of Limitation

S. No.	Description of suit	Period of limitation	Time from which period begins to run
1.	For the price of goods sold and delivered where no fixed period of credit is agreed upon	Three Years	The date of delivery of goods
2.	For the money lent under an Agreement that it shall be Payable on demand	Three Years	when the loan is made
3.	Where a day has been Specified for payment	Three Years	The day so specified
4.	Where no such day is specified	Three Years	The date of executing the bond
5.	On a bill of exchange or Promissory note payable At a fixed time	Three Years	When the bill or note falls due
6.	On a promissory note or Bond payable by instal-ments	Three Years	The expiration of the first term of payment as to the part then payable;and for other parts, the expiration of the respective terms of payment

7.	To enforce payment of money secured by mortgage or otherwise charged upon immovable property	Twelve Years	When the money used for becomes due
8.	Any suit for which no Period of limitation is Provided elsewhere	Three Years	When the right to sue accrues
9.	For delivery of possession By a purchaser of im-movable property at a sale in execution of a decree	One Year	When the sale becomes absolute
10.	For the execution of any decree or order of civil court	Twelve Years	When the decree or order becomes enforceable

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However, Section 90 (9) (a) of the Tamil Nadu Cooperative Societies Act, 1983 provides for modified period of limitation in the following cases;-

(i)When the dispute relates to a society in respect of which Special Officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of limitation shall be six years from the date of the order issued under section 88 or section 137, as the case may be;

(ii) When the dispute relates to any act or omission on the part of any of the parties referred to in clauses (b) or (c) of sub-section (1) the period of limitation shall be six years from the date on which the act or omission with reference which the dispute arose, took place;

(iii) When the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.

6.OATHS ACT , 1969

Sections 81, 82 and 87 of the T.N.C.S. Act, 1983 contain provision for examination of persons on oath by the Registrar or the person authorised by him during the course of inquiry/investigation, inspection or surcharge proceedings. But there is no provision in the TNCS Act, 1983 or in the TNCS Rules, 1988 specifying the procedure to be followed in the course of examination of a person on oath. The law relating to oaths are governed by the Oaths Act,1969. The important sections of the Oaths Act, 1969 are reproduced below:

Section 3:
Power to administer oaths

(1) The following courts and persons shall have power to administer, by themselves, or subject to the provisions of sub-section (2) of section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:

(a) All courts and persons having by law or consent of parties, authority to receive evidence;
(b) The commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

1) Without prejudice to the powers conferred by sub–section (1) or under any other law for the time being in force, any court, judge, magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf:

a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or
b) by the State Government, in respect of other affidavits.

Section 4:

Oaths or affirmations to be made by witnesses, interpreters and jurors.

1) oaths or affirmations shall be made by the following persons, namely

a) all witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give evidence by or before

any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

b) interpreters of questions put to, and evidence given by, witnesses; and
c) jurors,

provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and provisions of section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

Nothing in this section shall render it lawful to administer, in a criminal proceeding an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Section 5:
Affirmation by person desiring to affirm:

A witness, interpreter or juror may, instead of making an oath, make an affirmation.

Section 6:
Forms of oaths and affirmations:

All oaths and affirmations made under section 4 shall be administered in one of the forms given below as may be appropriate to the circumstances of the case

` **Form 1 (Witnesses**)

I do swear in the name of God–solemnly affirm that what I shall state shall be truth, the whole truth and nothing but the truth.

Form No. 2 (Jurors)

I do swear in the name of God / solemnly affirm that I will well and truly try and true deliverance make between the State and the prisoner(s) at the bar, whom I shall have in charge, and true verdict give according to the evidence.

Form No. 3 (interpreters)

I do swear in the name of God / solemnly affirm that I will well and truly interpret and explain all questions put to and evidence given by witness and translate correctly and accurately all documents given to me for translation.

Form No. 4 (Affidavits)

I do swear in the name of God /solemnly affirm that this is my name and signature (or mark) and that the contents of this affidavit are true.

If, however, a witness in any judicial proceeding desires to give evidence on oath or solemn affirmation in any form common amongst, or held binding by persons of the class to which he belongs and not repugnant to justice or decency, and not purporting to affect any third person, the court may, if it thinks fit, notwithstanding anything hereinbefore contained, allow him to give evidence on such oath or affirmation.

2) All such oaths and affirmations shall, in the case of all courts other than Supreme Court and the High Courts, be administered by the presiding officer of the court himself, or in the case of a Bench of Judges or Magistrate by any one of the Judges and Magistrates, as the case may be.

Section 8:

Persons giving evidence bound to state the truth. Every person giving evidence on any subject before any court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject.

Officer empowered under the provisions of TNCS Act, 1983 to examine a person on oath shall himself administer the oath and record the statement of the person given on oath.

7.CODE OF CIVIL PROCEDURE, 1908

Section 60 of the Code of Civil Procedure, 1908 (Act V of 1908) Property liable to attachment and sale in execution of decree –

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank–notes, cheques, bills of exchange, hundies, promissory notes, Government securities, bonds or other securities for money debts, shares in a corporation and save as hereinafter mentioned, all other saleable property, movable, or immovable, belonging to the judgment–debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of judgment–debtor or by another person in trust for him or on his behalf.

Provided that the following properties shall not be liable to such attachment or sale, namely:

(a) the necessary wearing apparel, cooking vessels, beds and beddings of the judgment–debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman:
(b) tools of artisans, and, where the judgment–debtor is an agriculturist; his implements of husbandry and such cattle and seed–grain as may, in the opinion of the court be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of the provision of the next following section:
(c) houses and other buildings (with the materials and sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him:
(d) books of account;
(e) a mere right to sue for damages:
(f) any right of personal service:
(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer or payable out of any service family pension fund notified in the official gazette by the Central Government or the State Government in this behalf, and political pension:
(h) the wages of labourers and domestic servants, whether payable in money or in kind:

(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance.

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree.

(ia) one third of the salary in execution of any decree for maintenance:

(j) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, applies:

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Fund Act, 1925, for the time being applies, in so far as they are declared by the said Act not to be liable to attachment:

(ka) all deposits and other sums in or derived form any fund to which the Public Provident Fund Act, 1963, for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(kc) the interest of a lessee of residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

(l) any allowance forming part of the emoluments of any servants of Government may by notification in the official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension:

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest:

(n) a right to future maintenance:

(o) any allowance declared by any Indian law, to be exempt from liability to attachment or sale in execution of a decree, and

(p) Where the judgment debtor is a person liable for the payment of land–revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation I:- The moneys payable in relation to the matters mentioned in clauses (g),(h),(i),(ia),(j),(i) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II:-

In clauses (i) and (i) (a) "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.

Explanation III:-

In clause (1) "appropriate Government" means:-

(i) as respects any person in the service of the Central Government or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, the Central Government;

(ii) Repealed by Act of 1948

(iii) As respects any other servant of the Government or a servant of any other local authority, the State Government.

Explanation IV:- For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled, unskilled or semi-skilled laborer.

Explanation V:- For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural laborer.

Explanation VI:- For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land:-

(a) by his own labour, or
(b) by the labour of any member of his family, or
(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce, or both)

(1) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt house and other buildings (with the materials and sites thereof and the lands immediately appurtenant there to and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building site or land.

Notes: All deposits in any fund to which the Public Provident Fund Act, 1968, applies are exempt from attachment under the provisions of the Code. It would be safer to provide in the code itself that the deposit under the said Act are exempt from attachment so that the provisions of that Act may not be lost sight of. An agriculturist for the purpose of being granted exemption from attachment under the provisions of the Code is a person, who cultivates land personally or through his labour or the labour of any member of his family or the servants or labourers on wages payable in cash or in kind, and who depends for his livelihood mainly on the income from agricultural land.

DISTRIBUTION OF ASSETS

Section 73 of the Code of Civil Procedure 1908.

Proceeds of execution sale to be ratably distributed among decree holders-

(1) Where assets are held by a court and more persons than one have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deduction the cost of realisation, shall be rateably distributed among all such persons.

Provided as follows:-

Where any property is sold subject to a mortgage or charge, the mortgagee or encumbrance shall not be entitled to share in any surplus arising from such sale;

(a) Where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may with the consent of the mortgagee or encumbrance order that the property be sold free from the mortgage or charge giving to the mortgage or encumbrance the same interest in the proceeds of the sale as he had in the property sold;

(b) Where any immovable property is sold in execution of a decree ordering its sale for the discharge of an encumbrance thereon, the proceeds of sale shall be applied:

Firstly, in defraying the expenses of the sale;

Secondly,in discharging the amount due under the decree;

Thirdly, in discharging the interest and principal moneys due on subsequent encumbrances (if any); and

Fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

8.TRANSFER OF PROPERTY ACT

Section 102:
Service or tender on or to agent:

Where the person on or to whom any notice or tender is to be served or made does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

Where no person or agent on whom such notice should be served can be found or is known to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court, in which the deposit has been made.

Where no person or agent to whom such tender should be made can be found or is known to the person desiring to make the tender, the latter person may deposit, in any Court in which a suit might be brought for redemption of the mortgaged property the amount, sought to be tendered and such deposit shall have the effect of a tender of such amount.

Section 103:
Notice, etc. to or by person incompetent to contract.

Where, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of court, by any person incompetent to contract, such notice may be served on or by, or tender or deposit made, accepted, or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interest, of such person that a notice should be served or a tender or deposit made under the provisions of this

chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian ***ad litem*** for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Order XXXII in the First Schedule to the Code of Civil Procedure, 1908 shall, so far as may be, apply to such application, and to the parties thereto and to the guardian appointed there under.

9.DEPOSIT INSURANCE AND CREDIT GUARANTEE CORPORATION ACT, 1961

Section 21:

(1) Where any amount has been paid under section 17 or section 18 or any provision therefor has been made under section 20, the Corporation shall furnish to the liquidator or to the insured bank or to the transferee bank, as the case may be, information as regards the amount so paid or provided for.

(2) On receipt of the information under sub-section (1), notwithstanding anything to the contrary contained in any other law for the time being in force:-

(a) the liquidator shall, within such time and in such manner as may be prescribed, repay to the corporation out of the amount, if any, payable by him in respect of any deposits such sum or sums as make up the amount paid or provided for by the corporation in respect of that deposit;

(b) the insured bank or, as the case may be, the transferee bank shall, within such time and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in section18, such sum or sums as make up the amount paid or provided for by the corporation in respect of that deposit.

10.CONCESSION TO CO-OPERATIVES FROM PAYMENT OF STAMP DUTY AND REGISTRATION FEES.

(1)Exemption from stamp Duty.

(G.O.Ms.No.2179- Co-operation 29th June 1966)

1. In exercise of the powers conferred by sub –section (1) of section 43 of the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) and in super session of the Notification II I No.4819 of 1963 dated the 12th September 1963 published at page 2185 of Part II Section of the Fort St.George Gazette dated the 18th September 1963 the Governor of Tamil Nadu hereby remits in the case of all Registered Societies stamp duty [not being the stamp duty referred to in clause (a) of sub section (2) of section 9 of the Indian Stamp Act 1899 (Central Act II of 1899) chargeable under the said Indian Stamp Act in respect of

(i) instrument executed by or on behalf of any such society or by an Officer or member thereof and relating to the business of such society.

Provided that in the case of a conveyance deed executed in respect of a house, constructed by the Co-operative House Construction Societies, the remission shall not operate unless such deed is in favour of a member to whom the property conveyed was allotted and a period of not less than five years has elapsed since the date of such allotment.

Provided further that in the case of a sale deed executed in favour of any such society that remission shall not operate unless the vendor has been a member of such society continuously for a period of not less than two years immediately before the date of the execution of the sale deed and

2. Decisions, awards, or orders of the Registrar or of the arbitrators under the Tamil Nadu Co-operative Societies Act 1961 (Tamil Nadu Act 53 of 1961)

(2) Exemption from Registration Fees.

(G.O.Ms.No.4(D)2 Cooperation, Food and Consumer Protection Department dated 18.06.1991.)

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In exercise of the powers conferred by clause (b) of section 51 of the Tamil Nadu Cooperative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) and in supersession of Cooperation Department Notification S.R.No.11 (2) FO/5526/80 dated 17-12-80 published at pages 900 in Part II Section 2 of the Tamil Nadu Government Gazette dated 17-12-80, the Governor of Tamil Nadu hereby remits in full of all the fees payable by any registered society under the law of registration for the time being in force, subject to the conditions.

a) that fees for registration and fees for search at the full rate shall be payable in respect of documents of the value exceeding Rs.10,000/- (Rupees Ten Thousand only) and applications for encumbrance certificates for loans exceeding Rs.10,000/- (Rupees ten thousand only) made by Cooperative Land Development Banks and

(b) that no fee shall be payable in respect of applications for encumbrance certificates for loans not exceeding Rs.10,000/- (Rupees Ten Thousand only) made by Cooperative Land Development Banks and

(c) that in cases not falling under clause (b) above, the fee payable in respect of each application for encumbrance certificate applied for by a Cooperative Land Development Bank in respect of properties situated in villages in one and the same registration sub-district be reduced to that chargeable for search for entries or documents relating to one and the same property or in favuor of one and the same individual; irrespective of the result of the search as regards the number of ownerships.

2.The above concessions shall be in force until further order.

CHAPTER XI

MISCELLANEOUS

1.POWERS OF THE REGISTRAR OF COOPERATIVE SOCIETIES – UNDER THE ACT - CONFERMENT ON OTHER OFFICERS.

COOPERATION, FOOD AND CONSUMER PROTECTION DEPARTMENT

G.O.(2D) NO.108 Dated: 31-8-2005

Act and Rules- Tamil Nadu Cooperative Societies Act, 1983 – powers of the Register of Co–operative Societies under the Act – conferment on other officers – revised orders – issued

READ :

1. G.O. Ms No.268, Cooperation Department, dated 8.6.1988.
2. G. O. Ms No269, Cooperation Department, dated 8.6.1988,
3. G. O. Ms No462, Cooperation, Food and Consumer Protection Department, Dated 5.6.1990
4. From the Registrar of Cooperative Societies, Letter no. 123049/2004
5. Government Letter No. 27340/C J2/2004 – 3, dated 4.10.2004
6. From the Registrar of Co – operative Societies, Letter Rc. No. 123049/2004

ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette:

NOTIFICATION

In exercise of powers conferred by section 3 of the Tamil Nadu Co-operative Societies Act,1983 (Tamil Nadu Act 30 of 1983) and in supersession of the orders issued in the Government orders read above, the Governor of Tamil Nadu hereby confers on the officers specified in column (1) of the table below , the powers of the Registrar specified in the corresponding entries in column (2) thereof under the Tamil Nadu Act 30 of 1983.

THE TABLE

OFFICIERS	POWERS
Additional Registrars of Cooperative Societies	All the powers of a Registrar under the said Act
Joint Registrar of Cooperative Societies	(i) In respect of any primary or central society, all the powers of a registrar under the said Act, (ii) in respect of any apex society, all the powers of a registrar under the said Act, except those referred to in sections 12,14, 18,32(2) (i) (a),33(4)33(6),33(12)35,36,66,68,69,75,76,77,88 89,91,115,137(1),140,142,152(2)(a),153,164,16 6,17 and 181.
Deputy Registrars of Cooperative Societies	(i) in respect any primary society all the powers of a registrar under the said Act, except those referred to in sections 12,14,18,33(4),33(7),35,36,68,69,75,76,77,88,89 91, 105,115,137(1),152(2)(a),153,173,178 and 181. (ii) in respect of any apex society or central society, all the powers of a registrar under the said Act, except those referred to in sections, 12,14,18,32(2)(i)(a),33(4),33(6),33(7)33(12), 35,36,66,68,69,75,76,77,88,89,91,105,115, 137(1), 152(2)(a),153,164,166,173,178 and 181 (iii) in respect of any society ordered to be wound up by the Deputy Registrar of Cooperative Societies, under section 137(2):- All the powers of a Registrar under section 140 & 142.
Cooperative Sub Registrars	(i) in respect of any primary, central or apex society, all the powers of a Registrar under sections,72,80,87,90,118,129,143 and 144 subject to the condition that the Cooperative Sub Registrars shall so exercise the powers under section 87 or under section 90 only in respect of monetary cases involving a sum not exceeding Rs. 2,00,000/- and under section 144 only in respect of cases involving a sum not exceeding Rs. 1,00,000/- (ii) in respect of any Primary Society, all the powers of a Registrar under sections 21,24,32(3),32(4), 32(5),81,82 and 85.

2.POWERS OF THE REGISTRAR OF COOPERATIVE SOCIETIES UNDER THE RULES- CONFERMENT ON OTHER OFFICERS.

ABSTRACT

Act and Rules- Tamil Nadu Cooperative Societies Rules, 1988 made under the Tamil Nadu Cooperative Societies Act,1983 – powers of the Registrar of Co–operative Societies under the rules – conferment on other officers – revised orders – issued

COOPERATION , FOOD AND CONSUMER PROTECTION DEPARTMENT

G.O. (2D) NO. 109 DATED :31.08.2005

READ :

1. G.O. Ms No.268, Cooperation Department, dated 8.6.1988.
2. G. O. Ms No,269, Cooperation Department, dated 8.6.1988.
3. From the Registrar of Cooperative Societies, Letter no. 123049/2004.
4. Government Letter No. 27340/C J2/2004 – 3, dated 4.10.2004.
5. From the Registrar of Co–operative Societies, Letter Rc. No. 123049/2004.

ORDER:

The following notification will be published in the Tamil Nadu Government Gazette:

NOTIFICATION

In exercise of the powers conferred by section 3 of the Tamil Nadu Cooperative Societies Act 1983, (Tamil Nadu Act 30 of 1983) and in supersession of the orders issued in the Government orders read above, the Governor of Tamil Nadu hereby confers on the officers specified in column (1) of the table below, the powers of the Registrar specified in the corresponding entries in column (2) thereof, under the Tamil Nadu Cooperative Societies Rules, 1988.

OFFICIERS	POWERS
Additional Registrars of Cooperative Soceities	All the powers of a Registrar under the said rules
Joint Registrar of Coop. Socs.	(i) In respect of any primary or central society, all of the powers of a Registrar under the said rules, in respect of any apex society, all the powers of a Registrar under the said rules, except those referred to in rules 11,17,21(2),54,67,71,75,76,77,78,79,80,82,83,84,85, 86,87,88,90,91,92,93,98,99,101,103,105,113,116(2), 117,131,142,143,146,147,148 and 173
Deputy Registrar of Coop. Societies	(i) In respect of any primary society all the powers of a Registrar under the said rules except those referred to in rules 8,11,14(4),17,21(2),23,32,54,67,71,75,76,77,78,79, 80,90,91,92,93,98,99,103,105,113,116(2),117,131, 142,143,146,148 and 173. (ii) In respect of any apex society or central society, all the powers of a Registrar under the said rules, except those referred to in rules 8,11,13(4),17,21(2),23,32,54,67,71,75,76,77,78,79, 80,82,83,84,85,86,87,88,90,91,92,93,98,99,101, 103,105,113,116(2),117,131,142,143,146,147, 148and 173.
Cooperative Sub-Registrars	All the powers of the Registrar in respect of primary, central and apex society under rules 22,28,35,36,102,104,107,109,115,116(1),118,119, 121,126,134,136,139,141,161,162 and 163

3.ALLIED ACTS TO WHICH REFERENCES HAVE BEEN MADE IN THE TNCS ACT,1983 AND RULES, 1988

		References under		Remarks with reference to the Acts mentioned under Col.No.(2)
S.No (1)	Name of the Act (2)	TNCS ACT1983 (3)	TNCS Rules, 1988 (4)	 (5)
1	Indian Contract Act,1872	21(1)(a)(i)	-	Competent to contract under section 21
2	Land Improvement Loans Act 1883	40(5)	-	
3	Presidency Towns Insolvency Act 1909	44,125	-	
4	Provincial Insolvency Act,1920	44,125	-	
5.	The Payment of Gratuity Act, 1978	48,79	69	
6	Registration Act 1908	49,130	-	Section 17(1)(b)&(c)
7	Tamil Nadu Revenue Recovery act 1864	50(1) 50(2) 75(10) 85(2) 87(2) 120	-	Powers of collector for the purpose of recovery Sec,36. -do- Powers of a collector for the purpose of recovery. -do- -do- Sec 36

		139(3) 148(1) 150(2) 166(2)		Powers of a collector for the purpose of recovery. -do- -do- -do-	
8	Indian Stamp Act 1999	51	-	Sec 9(2)(a)	
9	Indian Trust Act 1882	68(a)	82(3)(ii) 100(2)(a)(i)	Section 20 of the Act	
10	Payment of Bonus Act 1965	72(2)	97		
11	Tamil Nadu Shops and Establishment Act 1947	75(7)			
12	Employees Provident Funds & Miscellaneous Provisions Act 1952	78(1)	-		
13	Civil Procedure Code	87(4)(a) to (e) 90(8) 129(1) 139(2)(d) 171	---- --- --- --- ---	Powers in respect of certain matters like summoning etc., Sec 34 Powers when trying a suit. Powers when trying a suit to summon, enforce attendance etc.. - do -	

			119(3)	Transferring of decree or order and records specified in rule 6 of order XXI in the first schedule	
			122	Section 60 movable attachment	
			137(2)	Section 73 ratably distribution	
			156	Proceeding of Arbitrator as per the provision of the cpc	
			162(3)(c)	Procedure for sale of margaged property provisions of rules 97 to 103 of order XXI of the first schedule	
			168(1)	Proceedings of a tribunal as per the provisions of the cpc	
14	Arbitration Act 1940	90(7) 100(1)(g)		Nothing contained in the Arbitration Act shall apply - do -	
15	Deposit Insurance and Credit Guarantee Corporation Act 1961	91		Winding up circumstances as in sec 13 (d)	

16	Reserve Bank of India Act 1934	91		Meaning of Reserve Bank	
17	Land Acquisition Act 1894	102		No Land shall be acquired under that Act	
18	Transfer of Property Act 1882	118 119 124 124(a) 128 134		Distraint and Sale not with standing anything contained in the act - do - - do – - do – Not with standing the provisions of sec 83 and 84 of the Act Provisions of sec 102 & 103 and the Rules under section 104 of the Act shall apply	
19	Land Improvement Loans Act 1883	126(1)		Priority over any claim under the Act	
20	Limitation Act 1963	146	130(2)	Civil Court for the purposes of article 136 of the schedule to the Act Delivery of possession regulated by article 134 of the schedule to the Act	

21	Code of criminal Procedure, 1973	164(2) 165(5)		Offence non cognizable Search and seizure in accordance with the provisions of the Act
22	Companies Act 1956	175		Provisions of the Act shall not apply
23	Indian Evidence Act		173	Not being a document privileged under sec 123,124,129 and 131 of the Act
24	Banking Regulation Act 1949		80	Maintenance of fluid resources

4.CHART SHOWING THE SECTIONS OF THE TAMIL NADU COOPERATAIVE SOCIETIES ACT,1983 AND THE CORRESPONDING RULES 1988

SECTION	RULE	SECTION	RULE
1	-	32(1)	47
2(9)(B)	13	32(2)_	46
3	-	32(2)(d)	48
4	-	32(3)(a)(iii)	49
5	10	33	59
6	-	33(1)	50(1),50(2)
7	5	33(2)	50(1),50(2)
8	3	33(2),33(4)	55
9	6,7	33(4)(a),33(4)(a)(iv)	54
10	-	33(4)(b)	50(2)
11	9	33(7)	145,146
12	11	33(10)(b)	56
13(1)(c)	18(1)	33(11)(a)	52,52-A
13(2)(c)	18(2)	33(11)(b)	53
13(2)(e)	16	33(12)	24
14	17	33(14)(a)(iii)	49
15(3)	18(3)	34(1)(a)	63
16	14	34(2)	61,61-A
17	19	34(2)(d)	58
18	74	35(1)	64
19	-	36	-
20(2)	15	37	12(3)
21(1)(a)	26	38	-
21(1)(b)	29	39	-
21(2)(i)	27,30,31	40(3)	142
21(2)(ii)	28	41(i)	68
22(1)	32	42,43	-
23	35	44	45
23(3)(a)	33	45,46	-
23(4)	34	47(1)	24
24(2)	36	48	69
25(1)	37,39	49 to 65	-
26	38,51-A	66	75,76
26(2)(b)	53-A	67`	77
27	40	68	78,79
28	-	69	81,82,83
29	41	70	84,85,86
30(1)	42,43	71	87,88,89
30(2)	44	72(1)	90,91,92
31	-		

72(2)	93,94,95,96,97, 98,99,100	134 to 136	-
73	147,148,149	137	113,114
74(1)	150,151	137(2)(b)	8
75(3)	152	138	114
76 to79	-	138(1)	24
80	101,102,103	139	114
81(1),82	104	140	-
81(2)(d)	111	141	-
83	-	142	-
84	20,21,22,23	143	116,117
85	-	144	38,141
86	174	145	143
87	-	146,147	-
88(1)	106	148	139
88(6)	105	149(1)	144
88,89	24	150(1)	108
89	106	151	167
90(1)	107	152	168,169,172
91 to94	-	153(1)	169,172
95(1)	153	154(1)	170,172
96	-	155	172
97(1)	154	156 to 166	-
98,99	-	167	140
100(1)(b	156	168 to 184	-
101	-		
102	155		
103	-		
104(2)	157		
105(1)(a	158		
106(1)	159		
107	160		
108 to117	-		
118	38,161		
119	38,162		
120	38,163,164		
121,122	-		
123	165		
124 to128	-		
129(3)	166		
130 TO 132	-		
133	24		

5.PROCEDURE TO BE FOLLOWED IN COURT MATTERS

(i) Writ petitions-Filing of counter affidavit in cases where more than one officer is impleaded as respondent-Instructions-Issued.

(Govt.OrderNo.2772,Public(General–F)dated 30th Dec.1987)

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(1) In cases where the issue are multiple and more than one officer including the Secretary to Government, are impleaded as respondents in the legal proceedings, the counter-affidavit filed by the Secretary to Government should ordinarily contain only matters within his personal knowledge or for which he is responsible and for which relevant records are in his possession.

(2) Counter affidavits of the other co-respondents should also be prepared in the same manner and filed after getting the specific approval of the Administrative Department of the Secretariat, which should scrutinise it with reference to the facts contained in the connected counter-affidavits of other co-respondents in the case.

(3) There is, however, no objection to the inclusion in the counter-affidavits filed by the respondents, of facts which are true to the best of their knowledge and belief, provided that this is made clear in the counter affidavits and that these facts are sworn to similarly by officers who are directly responsible for the correctness of these facts or who have the relevant records in their possession in the counter affidavits filed on their behalf.

(4) The Government pleader and the other Law officers will ensure that the counter-affidavits severally prepared are inter consistent and tally with each other, and conform to the stipulations in the paragraphs 1,2, and 3 above so that an integrated argument could be built on these basis

(ii) writ Petitions- Defending of Writ Petitions filed against officer of the Cooperative Department.

Ref: (Registrar's Circular No.216962/75-S3 dt:23-12-1975)

The Government have ordered that:-

(1) The Government Pleader and other Law Officers are empowered to enter appearance on behalf of the Government in all writ cases without waiting for orders of the Government in this regard subject to the condition that the Law Officers should inform the Government and the Head of the Department concerned as the case may be immediately after entering appearance so as to enable them pursue further action.

(2)Even in writ petitions where the interests of the Government are not involved they are directed to inform the Government and the Head of Department about the institution of such a case.

(3)The Government will instruct the Law Officers as to whether to oppose the case or not. The above procedure should apply in all writ petitions even if a Head of Department alone is impleaded as respondent. It may be seen from the above Government orders, that in all writ petitions it is for the Government to decide whether a writ petition has to be defended at state cost or not. The subordinate officers are therefore instructed that whenever information about institution of writ petition wherein the Government are impleaded as respondent is received from the Government Pleader or other Law officers of the High Court, Madras they should immediately send a detailed report to the Registrar about the same.

Their report should contain the following:

(a) Two copies of the affidavit filed by the petitioner.
(b) Two copies of the High court order ……
(c) Brief history of the case.
(d) The reasons to defend the case at State cost.

The report on its receipt will be examined and the Government will be addressed for sanction of defence at State cost wherever the Registrar finds it necessary or merely for entering appearance of the Government Pleader on their

behalf and to produce the records before the court, if required. On no account the officers should take steps for defending the case at State cost without obtaining specific orders of the Government. In case of urgency i.e. for want of sufficient time they may furnish factual information relating to the case to the Government Pleader or other Law officers of the High Court, if called for by them directly under intimation to the Registrar. As soon as sanction of defence at State cost is made or on receipt of instructions from the Registrar they should furnish the para-wise remarks on the affidavit filed by the petitioner to the Government Pleader or other law officers along with the connected records so as to enable them to prepare the draft counter affidavit. A copy of the para-wise remarks furnished by them should invariably be sent to the Registrar soon on receipt of the counter affidavit from the Government Pleader. They shall scrutinise it and satisfy, themselves about the correct ness of the information furnished therein and send immediately two copies of the same to the Registrar for getting the approval of the Government. The Registrar will arrange to get the draft counter affidavit approved by the Government and transmit the same to the officers concerned for execution. The counter affidavit duly approved by the Government should be fair copied in thick paper on both sides with double line space and signed by the officer concerned in all pages and attested by a Gazetted Officer and should be sent to the Government Pleader, High Court with four additional copies. A copy of the counter so executed shall also be sent to the Registrar. In no case the counter affidavit shall be executed without getting the prior approval of the Government.

A list of cases where the defence at State cost is necessary and where the defence at State cost is not necessary is enclosed for the guidance of the officers.The above instructions shall apply mutatis-mutandis in all the civil suits and appeals filed before the civil courts.

It is also instructed that the subordinate officers should avoid delay in sending the bill for payment of legal fees claimed by the Law Officers. The fee bills should be sent to the Registrar in original within 7 days from the date of receipt by them. While sending the fee bill they should invariably report the reference No. and date in which Government sanctioned the defence or appearance of the Government Pleader in the said case and the Registrar's case No. in which the said sanction was communicated.

CASES WHICH CAN BE DEFENDED AT STATE COST

(a) All writ petitions relating to the service matters of Govt.servants.

(b) All writ petitions against the statutory orders relating to supersession of board under sec.88, disqualification of membership of the board under sec.36.

(c) Suits arising in the course of execution proceedings under sec.143 and 144 of the Tamil Nadu Co-op. Societies Act,1983 against the departmental officers including officers working in the institutions.

(e) Appeals, civil revision petitions pertaining to surcharge orders issued under sec.87 of the Act by the Deputy Registrar or Joint Registrar suo- motu.;

(d) Suits or writ petitions questioning the legality of any other lawful order issued under the name and seal of the departmental officer.

(f) Writ petitions questioning the validity of any of the provisions of the Act and Rules.

CASES WHICH NEED NOT BE DEFENDED AT STATE COST

(a) Petitions relating to conduct of elections in cooperatives unless the validity of any of the provisions of the Tamil Nadu Coop. Societies Act or the Rules is questioned.

(b) Any orders passed under sec.90 or 153 relating to election original petition / or revision petition.

(c) Orders passed under sec.87 of the Act on application from a coop. society and when the society itself is impleaded as a respondent.

(d) Appeal before the Tribunal against the orders in all monetary dispute under sec.152.

(e) Any other civil suit such as suit relating to non-refund of share capital, denial of service of a registered society, expulsion of members by the society, service matters relating to employees of co-op.societies in which the departmental officer is unnecessarily impleaded as a party to the suit etc.

(iii) **WRIT PETITIONS;-** Defending of writ petitions filing counter affidavit

(G.O.Ms.No.1129/Public (Law Officers)Dept. dt.27-9-96)

It have been pointed out that the Government Departments normally do not file counter Affidavits within the stipulated time limit of 3 months of service of Rule Nisi, as required under rule 3A of the Rule framed by the High Court under Article 226 of the Constitution of India.

The Government after careful consideration, have decided to prescribe the following time limit from the stage of admission up to the stage of filing counter affidavits in writ petitions / writ Appeal where the Counter Affidavit has not been filed at the writ Petition stage.

.No	Description	Time limit
1	After the admission of writ petitions/writ appeals where counter affidavit has not been filed at the writ petition stage, the government pleader's office shall send the affidavit copy to the respondent officer.	7 days from date of admission.
2	On receipt of the affidavit copy, the respondent officer, shall sent the para-wise remarks to the Government Pleader's office	15 days from the date of recipt of the affidavit copy.
3	On receipt of the parawise remarks the Government Pleader's Office shall get the draft counter affidavit prepared by the concerned Law Officer and send the same to the Respondent Officer.	1 month from the date of receipt of the parawise remarks.

4	On receipt of the Draft Counter affidavit The Respondent Officer concerned shall approve it or get it approved by the higher authority if necessary, get it fair typed,execute it and send it to Government Pleader's Office with required number of the Draft Fair copies	15 days from the date of receipt of the draft counter affidavit.
5	On receipt of the Fair Counter Affidavit the Government Pleaders Office shall file it into court	7 days from the date of receipt of fair counter affidavit.

(iv) WRIT PETITIONS:- Writ petitions-filed in the High Court, Chennai - Action to be taken on petitions / High court interim orders / final orders received.

(Registrar's Circular No.23/2005 dated: 15-5-2005.)

It is noticed that timely and appropriate actions are not being taken on the petitions received from the High Court and interim and final orders and notices received from the Advocates resulting in initiation of contempt proceedings against the Registrar of Cooperative Societies and others. In order to avert such contingencies the following instruction are issued to the administrative sections in the office.

1. All the petitions received in the office, particularly those received from individuals, should be examined and actions taken to redress the grievance which could not be redressed at Joint Registrar of Cooperative Societies / Deputy Registrar of Cooperative Societies / Registrar level, the proper authority to whom the petitioner should approach, should be intimated to the petitioner. If the petition is forwarded to the regional Joint Registrar / Circle Deputy Registrar, the fact should be informed to the petitioner and the petitioner may be requested to approach the concerned regional Joint Registrar / Circle Deputy Registrar.

2. Notices received from the Advocates may be examined. Though there is no absolute necessity to give a reply to the Advocates, wherever the matter is serious and reply to be given, the reply may be caused to be given by the Cooperative Societies concerned.

3. As soon as final orders and interim orders are communicated to the Regional Joint Registrar / Circle Deputy Registrars and the administrative sections, they should examine the Court orders and take action to comply with them. If the High Court Orders have to be complied with by the Cooperative Societies / Circle Deputy Registrars/ Regional Joint Registrars, they may be instructed to obey the High Court Orders and follow up action should be taken and compliance of High Court Orders within the time schedule should be ensured.

4. If the direction / orders are issued to all the respondents in general, action should be taken by the authority who has to comply with the High Court Order and the fact of compliance of the High Court Order by the concerned authority should be informed to the Writ Petitioner, and to the other respondents.

5. While passing orders on the direction of the High Court, the orders passed should be specific and unambiguous. If a direction is given to consider the representation of the petitioner and pass orders, in accordance with law, the order passed should be either negative or positive and it should not be evasive, the prayer of the petitioner should be either conceded or rejected. The reply should not be evasive. If the request cannot be complied with at the time of passing of the order, orders may be passed to the effect that the request of the petitioner cannot be complied with at present because of the given circumstances. The reply should not be in such a way that the request will be considered on satisfying certain conditions or on approval of the Government / administrative authorities etc., because such a reply will not be construed as a final order by the High Court and such an order may not prescribe a time limit for passing of final orders.

6. If the directions / orders, issued passed by the High Court cannot be complied with, action should be taken to file appeal against the orders of the High Court in time.

7. When notices alleging disobedience of High Court Orders, are received from the Advocate / writ Petitioners, informing that contempt proceedings will be initiated, such notices have to be examined immediately and timely actions taken. The actions taken and the fact of compliance of High Court Orders, should be immediately informed to the Writ Petitioners, and if necessary to the Advocates.

8. The Regional Joint Registrars and Circle Deputy Registrars should take timely and appropriate action on the petitions / notices received and also on the High court interim orders / final orders received. They should ensure compliance of High Court Orders, in true spirit and avoid the contingencies of initiation of contempt proceedings against the Registrar of Cooperative Societies. To monitor this a register should be maintained. The Circle Deputy Registrars and Regional Joint Registrars should review periodically on the action taken to ensure the timely compliance and avoid contempt.

(V) SUITS:- Defending of suits filed against officers of the Cooperative Department before the Courts Subordinate to High Courts.

(Registrar's Circular Rc.45170/77-S3, dated:25-2-77)

In defending cases filed against the officers of the Cooperative Department before the High Court or the Court Subordinate to High Court, the subordinate officers should send necessary proposals for sanction of defence at state cost if such defence is necessary as soon as the intimation of filing of such suit is received either from the court or from the pleader doing Government work. The Government now clarified that the Registrar or the Joint Registrar or the Deputy Registrars concerned may address the Government Pleader to enter appearance in all such cases filed before the Courts Subordinate to High court and then proposals may be sent to Government for sanction of defence. Such proposal may be sent along with the fee bill. Keeping in view of this clarifications by the Govt. the following instructions are issued regarding the disposal of references relating to court matters i.e., in any courts subordinate to High Court). Wherever a case against departmental officer is filed, the Deputy Registrar concerned should send a detailed report regarding the facts of the case, the need to defend the case etc. to the Regional Joint Registrars concerned. The Regional Joint Registrars should examine the report and address the law officers concerned directly and request them to enter appearance and to defend the case at State cost, if such defence is necessary. If, in a particular case defence at State cost is not required the Govt. Pleaders may be asked to enter appearance and to produce the connected records before the court, if required. In this connection, the guidelines prescribed earlier in Registrar's circular for deciding the cases which are to be defended and which are not to be defended at the State cost should be followed invariably. In respect of cases filed before the High court the Deputy Registrars should continue to follow the existing procedure. The Deputy Registrars should send the reports to the Registrar through the Regional Joint Registrar under advance intimation to the Registrar. The Registrar will examine the report and take up the matter with Government Pleader, High Court for appropriate action

Whenever the Regional Joint Registrars instruct the law officers to defend the case at State cost they should take follow up action to file the written statement by the defendant concerned within the time. Incidentally it is also mentioned that the written statements to be filed in such cases do not require the approval of the Government or the Registrar. The Joint Registrars should also watch the result of the cases and take appropriate further action wherever necessary. While sending the fee bill of the law officers for sanction the Joint Registrars should invariably send a comprehensive proposal to the Registrar enclosing (copies of affidavits, court summons, brief history of the case, certified copy of the order, fees bill and proforma particulars in original) for addressing the Government to sanction fees and defence simultaneously.

(VI) FILING OF APPEALS AGAINST ACQUITTAL AND REVISIOIN PETITIONS FOR ENHANCEMENT

Proposals of cases relating to filing of appeal against acquittal of accused or filing appeal for enhancement of sentence, should be submitted to the Government with a certified copy of the judgment and three clear typed copies of judgments of the concerned courts well before the expiry of the time prescribed, for filing an appeal in the High Court at Madras.(Govt. letter No.27830/Cts8/87-3 dated 29-6-87 Home (CTS VIII) Department).

When a case filed in a court ends in the acquittal of the accused, an appeal may be filed in the next higher court, if there are sufficient grounds for such an appeal. Similarly, if sentence awarded is considered inadequate, a criminal revision petition may be filed before the next higher court. The Registrar is the competent authority to decide whether an appeal is to be filed or not [G.O.MsNo.3070 Home (Courts VIII) Department dated 14-12-79], the time limit within which the appeal or the criminal revision petition should be filed is 90 days from the date of judgment or order, sought to be appealed against or revised.

Immediately after the judgment is pronounced, the Deputy Registrar should arrange to obtain copies of the judgment from the court with utmost expedition, consult the Public Prosecutor or Asst. Public Prosecutor and if it is opined that it is a fit case for preferring an appeal, the Deputy Registrars should at once submit their reports to the Registrar so that Govt. may be addressed in time (Registrar's Circular Rc.251193/63F2 dated 29-11-63)

In G.O.Ms.No.1903 Home (Courts-I) Department dated 4-8-76 Government have fixed a time schedule in filing appeals against acquittal and for enhancement of sentences.

The time schedule is:-

(i) Copy of the judgment to be obtained on the date of judgment or on the next working day.

(ii) The opinion of the Public Prosecutor or Assistant Public Prosecutor to be obtained and proposals sent within 7 days from the date of receipt of the judgment.

(iii) Proposals to be sent to the Government within 10 days from the date of receipt of the proposal.

(iv) Home Department to refer the case to the Public Prosecutor, High Court within 3 days from the date of receipt of proposals by the Government.

(v) Public Prosecutor, High court to send his opinion within 14 days from the date of receipt of proposals from the Home Department.

(vi) Final orders to be issued by Government within 14 days from the date of receipt of proposals from the Public Prosecutor.

Final orders have thus to be issued by Government within 48 days of receipt of the judgment.

Under Rule 196 of the Criminal Rules of Practice and circular orders, when an appeal against acquittal or for enhancement of sentence is presented after 90 days from the date of judgment, a petition to excuse delay, supported by an affidavit explaining the circumstances of such delay should be filed with it. The High Court had occasion to remark that delay in presenting appeals should not occur and that the High Court would be reluctant to condone such delays. It is therefore necessary that appeals against acquittal and appeals for enhancement of sentence should be presented in time. There should not be any occasion for offering any explanation for delays while filing the appeal.(G.O.Ms.Noi.1903 Home (Courts-I) Department dated 4-8-1976)

(VII) FILING OF AFFIDAVITS-GUIDE LINES

(Govt.Lr.No.46934/LO/2004-2 Public(LO)Dept. dt:24-12-2004)

The following are the steps to be adopted by the Public Servants in particular police officials while filing an affidavit in court.

1. The public servant swearing to an affidavit must go through the affidavit and the documents on the basis of which the affidavit is sworn.
2. Whole giving instructions to the Law Officers or Additional Public Prosecutor to prepare the affidavit when is necessary, the parawar remarks should be supplied by the public servant and the same must be based on the basis of the facts emerging from records.
3. The concerned Law Officer should be instructed to prepare the counter affidavit on the basis of the parawar remarks and he should not include any averment for which there is no written instruction.
4. The affidavit should be filed only after the approval by the Law Officer.
5. Whenever Law Officer represents on oral instructions in times of urgency, the Law Officer must ensure that the information placed before the court by him are based on written instructions duly signed.
6. It should be made clear through a circular that if a false affidavit is filed in court, then it would have serious consequences including. disciplinary proceedings which may result in major punishments besides by the court under the Contempt of Courts Act.
7. The affidavit should not be filed mechanically to get a disposal of the case and the deponent of the affidavit should be made responsible for the contents of the affidavit filed in court.

Note:-

(i) In step(2) above, the expression affidavit will include counter affidavits plaint or other statement to be filed before the Court.

(ii) In step(4) the term “approval” refers to preparation of draft affidavit etc. by the Law Officer concerned.

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16.SOME IMPORTANT HEAD OF ACCOUNTS

(1) 0425 – COOPERATION 800 - OTHER RECEIPTS
AA – EXECUTION FEES –RCS
DPC -0425-00-800-AA-0009 – 9

(2) 0425 – COOPERATION 800 - OTHER RECEIPTS - AP - LIQUIDATION FEES
DPC – 0425 – 00 – 800 – AP – 0009

(3) 0425 – COOPERATION 800 - OTHER RECEIPTS - AE- CONTRIBUTION TOWARDS LEAVE SALARY OF OFFICERS LENT ON FOREIGN SERVICE
DPC – 0425 – 00 – 800 – AE – 0007

(4) 0425 – COOPERATION 800 - OTHER RECEIPTS - AL RECOVERY OF CHARGES FOR USE OF GOVERNMENT VEHICLES
DPC – 0425 – 00 – 800 – AL – 0205

(5) 0425 – COOPERATION 800 - OTHER RECEIPTS AR- ARBITRATION FEES
DPC – 0425 – 00 – 800 – AR – 0003

(6) 0425 – COOPERATION 800 - OTHER RECEIPTS - AU – COLLECTION OF COST OF STAFF ETC UNDER FR 127-RCS
DPC – 0425 – 00 – 800 -– AU – 0009

(7) 0425 – COOPERATION 800 - OTHER RECEIPTS - AX – SUPERVISION FEES
DPC – 0425 – 00 – 800 – AX – 0005

(8) 0425 – COOPERATION 800 - OTHER RECEIPTS - AY – GRANT IN AID FROM THE NCDC-RCS
DPC – 0425 – 00 – 800 – AY – 0007

(9) 0425 – COOPERATION 800 - OTHER RECEIPTS - AZ – FEES FOR REGISTRATION OF COOPERATIVE SOCIETIES
DPC – 0425 – 00 – 800 – AZ – 0009

(10) 0425 – COOPERATION 800 - OTHER RECEIPTS - AG – OTHER MISCELLANEOUS RECEIPTS - RCS
DPC – 0425 – 00 – 800 – AG – 0001

(11) 0425 – COOPERATION 800 - OTHER RECEIPTS AD – RECOVERIES OF OVER PAYMENT
DPC – 0425 – 00 – 800 – AD – 0107

(12) 0425 – COOPERATION 800 - OTHER RECEIPTS DEPOSIT AND ADVANCES - DEPOSITS NOT BEARING INTEREST - 104 – CIVIL COURT DEPOSITS
DPC - 8443 – 00 – 104 – AA - 0009

CHAPTER XII

ANNEXURE I

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION OR A DEPOSIT INVESTE THEREIN.

(Under Rule 125 of the T.N.C.S.Rules 1988)

To

. . defendant and to

(Secretary,Manager,etc., specify) of (Corporation).

Whereas has failed to satisfy a decree passed against on the day of (month) 200 ,in A.R.C. No.

Of 200 , in favour of ……. for Rs. (in figure)…… (in words), it is ordered that you and/or the defendant (Secretary,Manager,etc.,specify) of the (corporation)

are hereby prohibited and restrained until the further order of this court, from making any transfer or refund of

Share/deposit or any kind of cash payment from the aforesaid (Corporation), namely

Or from receiving payment of any dividend, interest or any other cash payment from the said (corporation), you, the said corporation represented by its (Secretary, Manager,etc., specify) is hereby prohibited and restrained from permitting any such transfer or refund or making any such payment or part thereof, contrary to this prohibitory order.

Given under my hand and the seal of the Court, this the day of……. (month), 200 .

Deputy Registrar

(…… Circle)

ANNEXURE II

EXTRACT OF PROVISO TO SECTION 60 OF THE CIVIL PROCEDURE CODE, 1908.

Provided that the following properties shall not be liable to such attachment or Sale, namely;-

(a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and food grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment belonging to an agriculturist and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuity allowed to pensioners of the Government (or of a local authority) or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf and political pensions;

(h) the wages of labourers and domestic servants, whether payable in money or in kind; and

(i) salary to the extent of the first two hundred rupees and one half of the remainder (in execution of any decree other than a decree for maintenance):

Provided that where such salary is the salary of a servant of the Government or servant of a railway administration or local authority, and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

(i-a) one-third of the salary in execution of any decree for maintenance;

(j) the pay and allowance of persons to whom the Air Force Act, 1950 or (the Army Act, 1950) applies, or of persons other than commissioned officers to whom the Indian Navy (Discipline) Act, 1934, applies;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Fund Act,1925, for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway administration or local authority which the appropriate Government may by notification, in the Official Gazette, declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;

(m) an expectancy of succession by survivorship or their merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any Indian Law to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment-debtor is a person liable for the payment of land revenue, any movable property, which under any law for the time being applicable to him is exempt from sale for the recovery of an arrear of such revenue.

Explanation:- The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale. Whether before or after they are actually payable and in the case of salary, other than salary of a servant of the Government or a servant of a railway administration or local authority, the attachable portion thereof is exempt from attachment until it is actually payable.

Explanation.- In clauses (h) and (i) , " salary " means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1) derived by a person from his employment whether on duty or on leave.

Explanation.- In clause (1) "appropriate Government" means.-

(i) as respects any person in the service of the Central Government or any servant of a Railway administration or of a cantonment authority or of the port authority of a major port, the Central Government.

(ii)……

(iii) As respects any other servant of the Government or a servant of any other local authority, the State Government.

Nothing in this section shall be deemed.- To exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land .

ANNEXURE III

APPLICATION FOR TRANSFER OF AWARD FROM THE CO-OPERATIVE DEPARTMENT TO THE CIVIL COURT UNDER RULE 121(20) TAMIL NADU CO-OPERATIVE SOCIETIS RULES, 1988.

Transfer application No. 20

From

Secretary/President.
……Co-operative Society,
……Taluk, ……District.

To

The Deputy Registrar,
…….Circle.

Sir,

I request that the Award in A.R.C.No. filed for Execution in C.E.P. NO. may be transmitted to the Court of the
With a certificate of non/part satisfaction for further execution. The fee for this application has been remitted as shown in column (5) of the statement below. The reasons for the transfer are furnished in column (6).

Statement.

(1) Name of the decree-holder.
(2) Name(s) of the defaulter(s).
(3) Amount due on the award as on the date of application for transfer.
(4) Date of closure of the departmental execution petition.
(5) Fees paid for this application and how remitted (whether by money order, payment into the treasury, etc., to be specified)
(6) Reasons for the transfer requested.

I declare that what is stated herein is true to the best of my knowledge and belief and I enclose the copy o the resolution of the board for the transfer requested.

Secretary/President.

ANNEXURE IV

Form No.1.
(Rule 116 of the Tamil Nadu Co-operative Societies Rules,1988)

FORM OF APPLICATION FOR EXECUTION

To

The ……
(Authority exercising the powers of Registrar)

Sir

I ……..on behalf of the ……Co-operative Society, holder of a decree, an award, a decision, an order or a certificate obtained by the said society for realisation of money hereby apply for execution of the decree, award, decision, order or certificate (copy enclosed) under the provisions of section 143 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983)

1. Name of parties.
   (a) Plaintiff.
   (b) Defendant (hereinafter called judgment – debtor)
   (c)In the case of an order, contributory (hereinafter called judgment-debtor)
2. Date of decree, award, decision, order or certificate.
3. Whether any payment or judgment has been made subsequent to the decree, award, decision, order or certificate. If so, furnish details.
4. Previous applications for execution, if any, with date and result.

5. Amount with interest due on the decree, award, decision, order or certificate.
6. Against whom to be executed?
7. Manner in which the assistance of the Registrar is required.

I pray that the total amount of Rs…… together with interest on the principal sum up to the date of payment and the costs of taking out the execution be realized by:-

(i) the sale of movable property of judgment-debtor.
(ii) attachment and sale of judgment-debtor's immovable property as per annexed schedule;
(iii) simultaneous attachment and sale of movable and immovable property of the judgment-debtor with reasons thereafor..

I declare that what is stated herein is true to the best of my knowledge and belief.

Place;
Date: Signature of applicant.

Schedule

***Statement showing particulars of decree, award, decision, order or certificate obtained by the applicant on behalf of the co-operative society*.**

……Taluk ……..District.

1. Admission No.
2. Name of member
3. Father's name
4. Residence of the member
5. Amount of decree, award, decision, order or certificate.
6. Interest from the date of decree, award, decision, order or certificate, to the date of filing the present application less any amount received during interval (give details).
7. Rate at which subsequent interest accrues
8. Relief prayed: Whether movable or immovable property is desired to be proceeded against first?
9. Description of immovable property to be proceeded against (set out full particulars of area, survey number, nature of land, rental value and capital value, etc.)
10. Interest of share of judgment-debtor in the immovable property.
11. Encumbrances
12. Remarks

Note.- Particulars for column 11 should be furnished when the amount for the realization of which the sale is held exceeds one hundred rupees where the particulars for column 11 are not filled up, the applicant shall furnish to the sale officer within twenty days of attachment of immovable property an encumbrance certificate from the Registration Department for a period of not less than twelve years prior to the date of the execution application on which the sale is ordered [Rule 126(2)(f) of the Tamil Nadu Co-operative Societies Rules, 1988]

Form No.2.

(Rule 121 if the Tamil Nadu Co-operative Societies Rules 1988)

. DEMAND NOTICE (DISTRAINT ORDER)

……(designation) Co-operative Department, is authorized to distrain the property of the under mentioned defaulter of moneys due by him to……. ……Co-operative society ……. …….(place).

1. Name of the village and taluk.
2. Name of the defaulter.
3. Amount due as per award /decree/decision/order.
4. Batta to distrainer.
5. Subsequent interest on the amount of the award/decree/decision/order up-to-date.
6. Interest rate, at which further interest will accrue.
7. Date of distress and delivery of copy to defaulter or if no distress is made, date of sum due.

The defaulter is hereby informed that if the amount due together with Distress be not previously discharged, the distrained property will be immediately brought to public sale.

Station :……. Signature of the Deputy Registrar.

Date…….

Note: (1) The defaulter is informed that, on presentation of the distraint order He should pay the amount due together with costs to the Sale Officer and obtain a receipt for it.

(2) The person distraining should produce this order, and if the sum Due be not at once paid, he shall make the distress and shall Immediately deliver to the defaulter a list or inventory of the Property distrained and an intimation of the place, day and hour At which the distrained property will be brought to sale if the Amounts due are not previously discharged.

Form No.3

(Rule 121 of the Tamil Nadu Co-operative Societies Rules,1988)

PRLIMINARY NOTICE TO DECREE-HOLDER.

To

……

……Village……Taluk……District.

Take notice that in pursuance of your application for execution filed on……20…., I shall proceed to……village for attaching the property of ……defaulter, and that you are hereby requested to be present on……..20…..,to render necessary aid to me for making the attachment and arranging or undertaking the safe custody of the property so attached as required by rule 121(1) of the Tamil Nadu Co-operative Societies Rules,1988.

Station:……

Date:……

Sale officer.

Form No.4.

(Rule 121 of the Tamil Nadu Co-operative Societies Rules,1988)

INVENTORY OF THE ATTACHED PROPERTY.

List of the movable property of ……in the village of ……..distrained by…….for monies due by the defaulter.

Serial Number	Description of articles.	Estimated value	Amount Due.	Date of distress and issue of copy to the defaulter.	Remarks.

Station:……..

Date:……..

Signature of the Sale Officer.

Form No.5

(Rule 121 of the Tamil Nadu Co-operative Societies Rules, 1988)

NOTICE OF SALE OIF DISTRAINED MOVABLE PROPERTY.

It is hereby notified that the movable property of ……..... In the village of……a defaulter, to the …… ……Co-operative Society, situated in the village of……. ……..of ……taluk, as detailed in the list hereunder has been distrained in satisfaction of monies due by him and that unless these arrears with interest and other charges shall be previously paid, the said property will be sold in public auction near the house of ….. ……at the said village, on……..day of……..…20…., or any other day to which the sale may be adjourned. The sale will commence at ……a.m./p.m. and the property will be knocked down to the highest bidder for ready cash. The purchaser will not be permitted to carry away any part of the property until he has paid for it in full.

Resale in case of default:- Where the purchaser may fail in the payment of the purchase money, the property shall be resold, and defaulting purchaser shall be liable for any loss arising as well as the expenses incurred on the resale.

This notice was affixed on the defaulter's house or premises (as the case may be) where property was distrained on the …….of……..20..

(Schedule of property distrained)

Station:……
Date:…… Sale Officer.

N.B.- Fifteen days must elapse from the date on which the notice was affixed to the premises before the sale takes place. Where the property seized is subject to speedy and natural decay the sale officer may sell that any time before the expiry of the period of fifteen days, unless the amount due is sooner paid.
(Rule 121(10) of the Tamil Nadu co-operative Societies Rules, 1988)

Note.- It shall be in the discretion of the officer conducting the sale to decline acceptance of the highest bid, when the price offered appears so clearly inadequate; as to make it advisable to do so or for other reasons.

Form No.6.

(Rules 119 and 126 of the Tamil Nadu Co-operative Societies Rules, 1988)

DEMAND NOTICE.

Notice of Demand to…….of……..Village in…. …….Taluk,……District.

Take notice that the Deputy Registrar of Co-operative Societies…… …….demands from you the sum of Rs……. (in figures)……..(in words) being the monies due by you under a decree/award/decision/order No… ……..dated…….obtained by…… ……Co-operative Society and costs and that you are required to pay the amount within ten days from the date of service of this notice. In case of non-payment, the properties specified in the schedules on the reverse shall be attached/sold and sold.

Deputy Registrar of Cooperative Societies.

Station:……..
Date:……..

(Particulars of service of the notice)

Schedule.

(Here set out particulars of the properties to be attached)

N.B.- The person entrusted to serve this notice should deliver a copy to the defaulter or to some adult male member of his family at his usual place of abode, or to his authorized agent, or if such personal service is not possible, shall affix copy thereof on some conspicuous part of his last known residence or of the immovable property to be attached / sold. The mode in which the notice has been served should be noted on it by the server of the process (Rule 126(2)(b)(ii) of the Tamil Nadu Co-operative Societies Rules, 1988).

Form No.7

.

(Rule 126(2)(d) of Tamil Nadu Co-Operative Societies Rules, 1988)

NOTICE OF ATTACHMENT OF IMMOVABLE PROPERTY

Notice of Attachment to…….in village of … ……of……..Taluk,……. District.

Take notice that as you have not paid or shown sufficient cause for the non-payment of Rs…….. although it was demanded in writing from you, the immovable property scheduled below and belonging to you is here by placed under attachment; and that unless the arrears due by you to ……..Co-operative Society, with interest and other charges be paid before ……20…., the immovable property will be brought to sale in due course of law.

Station:……

Date:…….

Sale Officer.

Schedule of immovable property.

N.B.- This notice also shall be served in the same way as demand notice No.6 Rule 126(2)(d) of the Tamil Nadu Co-operative Societies Rules, 1988.

FORM NO.8

[Rule 126(2)(e) of the Tamil Nadu co-operative Societies Rules, 1988]

NOTICE OF SALE OF IMMOVABLE PROPERTY

It is hereby notified that the under mentioned immovable property attached / mortgaged in satisfaction of monies amounting to Rs……. ..... (in figures and words) due by…….. ……..a defaulter to the Co-operative Society will be sold by public auction at the village of…… in…… ……taluk of the ……district on…… ……...the ……day of ……20……., or any other day to which the sale may be adjourned. The sale will commence at……..a.m./p.m.and the property will be knocked down to the highest bidder.

2. Purchasers will be required to deposit 15 percent of the purchase money at the time of sale and if they fail to pay the remainder of the purchase money within fifteen days from the date of sale, the money deposited by them shall be liable to forfeiture. They should also deposit along with the remainder of the remainder of the purchase money the cost of the stamp paper necessary for the issue of the sale certificate in the event of the sale being confirmed. Extension of time up to thirty days from the date of sale may, at the discretion of the Registrar of the district, be given for payment of cost of the stamp paper alone.

3. If the person declared to be the purchaser fails to pay immediately after such declaration the deposit of 15 percent of the purchase money referred to above to the officer conducting the sale, the property shall forthwith be put up again and resold. If the remaining purchase money and the cost of the stamp paper referred to in paragraph 2 are not paid within the stipulated time, the immovable property will be resold after issue of a fresh proclamation of sale. The resale in both cases will be at the expense and risk of the first purchaser.

4. Persons bidding at a sale may be required to state whether they did on their own account or as agents, and in the latter case to deposit a written authority signed by their principals: otherwise their bids may be rejected.

5. The sale shall be stopped if the defaulter or other person acting on his behalf or claiming an interest in the property attached, tenders payment of the full amount due including interest and other charges provided such payment be made before sunset on the day previous to that appointed for the sale.

6. The sale will not be final until confirmed by the Deputy Registrar and a period of thirty days will be allowed between sale and confirmation to admit of parties aggrieved by any proceedings in connection with such sales presenting appeals, on confirmation of the sale a certificate of sale signed and sealed by the Deputy Registrar will be granted to the purchaser.

7. It is to be distinctly understood that Government are not responsible for errors either in the description of the immovable property or in their estimated extent.

Taluk	Village	Name of the defaulter	Description of immovable property to be sold belonging to the defaulter with field number and latter.	Estimated extent	Assessment	Details of any encumbrances to which the property is liable	Remark
1	2	3	4	5	6	7	8

Station:……

Date:…… Deputy Registrar

N.B:-This notice shall be published by affixing in the office of the Deputy Registrar and the Taluk office at least thirty days before the date fixed for the sale and also by beat of “tom-tom” in the village on two consequtive days previous to the date of sale. Rule 126(2)(e) of the Tamil nadu Co-operative Societies Rules, 1988.

Note:-It shall be in the discretion of the officer, conducting the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so or for other reasons.

The title –deeds relating to the property have not been filed with the Deputy Registrar and the purchaser will take the property subject to the risk of their being mortgages by deposits of title-deeds or mortgages not disclosed in the encumbrance certificate.

Form No.9.

[Rule 126(2)(e) of the Tamil Nadu Co-operative Societies Rules 1988]

NOTICE OF SALE TO DECREE – HOLDER AND DEFAULTER.

To

The secretary,
…….
…….
…….

Take notice that the undermentioned immovable property attached/mortgaged in satisfaction of claim made by the …… holder of a decree / an award / a decision / an order on behalf of the ……. ……will be sold by public auction at the village of ……in taluk of the …….district on the ……...20…, or any other day to which the same may be adjourned. The sale will commence at……..a.m/p.m. and the property will be knocked down to the highest bidder, subject to the usual conditions of sale.

Deputy Registrar.

Schedule of Property to be Sold.

1. Taluk
2. village
3. Name of the defaulter
4. Description of immovable property to be sold
5. Estimated extent (Acres)
6. The amount for the recovery of which the sale is ordered
7. Remarks

Note.- This notice should be issued to the decree-holder and defaulter after the proclamation of sale is published as provided in rule 126(2)(e) of the TamilNadu Co-operative Societies Rules, 1988.

Form No.10.

CERTIFICATE OF SALE ISSUED UNDER RULE 129(3) ,OF THE TAMIL NADU CO-OPERATIVE SOC IETIES RULES, 1988.

(Name)
Deputy Registrar of Co-operative Societies.
Execution Petition No.

……decree-holder
……versus……. judgment Debtor..

This is to certify that ……
Son of ……(caste) ……(religion) ……..(profession) ……residing in ……street in the village of……. of……taluk in the ……district has purchased at a public auction held by one of the sale officers of.. ……..district the under mentioned immovable property sold for arrears due to …….. by……son of ……..(religion) ……(profession)residing in …….. Street, in the village of …….of …… Taluk in ……..district in execution of decree/award/decision order No. ……dated……on the file of …….and has paid the full amount of the purchase money, viz., Rs……(in figures and words) and that the sale has been duly confirmed by me on …….. day of……20……..

Deputy Registrar.
(…….Circle)

Schedule of Properties.

Registration District
Registration sub-district
Taluk
Village
Description of properties (boundaries)
Survey No.
Letter.
Name.
Estimated extent. Acs. Cents.
Assessment Rs.
Sale price for each lot Rs.
Date of sale
Given under my hand and seal, this…….day of……..20…..

Station:……

Date:…… Deputy Registrar.

Form No. 13.

[Rule 121(2)(c) of the Tamil Nadu Co-operative Societies Rules, 1988]

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURITIES.

Execution petition No……..of …….on the file of the Deputy Registrar .

…….(Name)

(Deputy Registrar of Co-operative Societies,……..District)

Name of the decree-holder

Name of the Judgment Debtor.

Know all men by these presents, that we, (1) Son of ……. (2) Son of……..and..(3) Son of ……..... are jointly and severally held and firmly bound to the Deputy Registrar, in the sum of Rs…….....to be paid to the Deputy Registrar, for which payment to be made we bind ourselves, and each of us in the whole, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Dated this …….day of……20……

And whereas the movable property in the schedule hereunto annexed has been attached under a warrant from the said Deputy Registrar, dated the .....day of ……..20…., in execution of decree in favour of the decree-holder in execution petition No……..

Of…….on the file of the said Deputy Registrar and the said property has been left in the charge of the said (1) .

Now, the condition of this obligation is that,…….

If the above bounden (i) …….shall duly account for and produce when required before the said Deputy Registrar or other officer authorized by him all and every property aforesaid and shall obey any further order of the said Deputy Registrar in respect thereof, then this obligation shall be void; otherwise it shall remain in force.

1.
2.
3.

Signed and delivered by the above bounden in the presence of

(1)…….son of

(2)…….son of

Schedule of attached property in the village of……

Taluk…….district.

Form No.14(a).

C.E.P.No……..

PRELIMINARY NOTICE UNDER RULE 122 OF THE TAMIL NADU CO-OPERATIVE SOCITIES RULES,1988.

Decree holder
Judgment Debtor……..son of ……..
Whereas the above named……..has made an application to the Deputy Registrar that sum of Rs…… ……..(in figure and words) with further interest from ……. at per cent and cost is due by you as principal debtor or surety in claim No…….. and that your salary should be attached towards the realization of the said amount, you are hereby directed to pay the amount before …… or to intimate to me in writing before……..and to show cause why a portion of the salary should not be attached for the realization of the dues contained in the decree, failing which steps will be taken to attach your pay.

Deputy Registrar.

Station:……..

Date:……..

Form No.14(b).

(Rule 122 of the Tamil Nadu Co-operative Societies Rules, 1988)

ORDER TO ATTACH SALARY OR ALLOWANCE OF PUBLIC OFFICER, OR SERVANT OF RAILWAY ADMINISTRATION OR LOCAL AUTHORITY OR FIRM

To.

Whereas…….Judgment Debtor. in decree/decision/award/order No…….dated……. Judgment Debtor is a …….receiving his salary (or allowance) at your hands; and whereas ……. decree-holder in the said case has applied to me for the attachment of the salary (or allowances) of the said Judgment Debtor to the extent of Rs.……(in figures and words) due to him under the decree ; you are hereby required in pursuance of the provisions of Rule 122 of the Tamil Nadu Co-operative Societies Rules,1988 to withhold the said sum of Rs……from the salary of the said defaulter in monthly instalments of Rs…….(in words…….. ……) and to remit the said sum/monthly instalments to me.

Station:……..
Date:…….. Deputy Registrar.

REPORT OF SALE OF IMMOVABLE PROPERTY UNDER THE TAMIL NADU CO-OPERATIVE SOCIETIESACT, 1983.

In…….Village in…….taluk, ……district.
Execution Petition No. of 20……

PART I

1. Number and name of the decree-holder.

2. Number and name of the judgment-debtor or debtors against whom the decree award, etc., has been obtained and their addresses.
3. If the judgment-debtor was dead at the time of application or at any stage of execution, name or names of legal representatives against whom the decree, etc.,is sought to be executed.
4. If the proceedings have been taken against the local representatives, have notices been issued to them and has the service of the notice been in accordance with the provisions of rule 112 of the Tamil Nadu Co-operative societies Rules?

5. (a) Number and date of decree.
   (b) Amount due under Principal as on date of application less collections, if any?
   (c)Amount due under interest on the date of application less collections, if any.
   (d)Costs.
   (e)Total.
   (f)Rate at which and amount on which further interest has to be calculated up to the date date of confirmation.

6. Has the application for execution been signed by the officer authorized by the bylaws of the society to apply for execution ?

7. Has the award been filed in the time before the expiry of the period if limitation ?

(i) Date of decree.
(ii) Date of receipt of the execution petition in the office of the Circle Deputy Registrar.

(iii)If the interval between the dates in items (i) and (ii) three years, has there been any acknowledgment of liability or part payment which would extend the period of limitation under sections 18 and 19 of the Limitation Act,1963? And if so, mention the dates of such acknowledgments?

(iv)If the answer to clause(iii) is in the negative, has there been any stop-in-aid of execution which would save limitation? And if so, mention the nature of the action taken and the date of the last order.

8. Is the prayer in the execution petition in accordance with the terms of the award, etc.,? if action has been started against properties not mortgage to the Society, has action against the mortgage property, if any, been exhausted?

9. Name and address of the person in possession, mortgage or other person claiming an interest in the land sold to whom a copy of notice No.9has to be furnished

10. Was the decree filed for execution for the first time or was it executed previously ? was it executed previously, was it executed through the department or through Civil Court ? If executed through the department, was the previous execution petition examined to see that the decree was not completely satisfied already ? if executed through the Civil Court was proper non-satisfaction certificate filed ?is the execution petition within three years from the date of “final order” of the previous execution petition?

11.(a) when was the demand notice No. 6 served ?
(b) How was it served ?

(c) If the service has been by affixture, has the endorsement of such service been attested by at least two respectable witnesses ? Has peon or the sale officer made on endorsement for service with date ?

12. Have the number and date of the award, etc., and the amount due been correctly mentioned in the Notice No.6. ?

13. Is the description of the property in accordance with the discretion in the application or the award etc.,? Please call for the arbitration file and verify the correctness of particulars with reference to the bond also.

14. Has the property been mortgaged to the decree-holder or is it necessary to attach it before sale ?

15.(a) If attachment is necessary under Rule 126 (1) of the Tamil Nadu Co-operative Societies Rules when was the attachment order (No.7 Notice) served on the defaulter?

(b) How was it served ? In person or by affixture, endorsement of service been attested by at least two witnesses ? Has the peon or sale officer made an endorsement for service with date ?

(c) Was a copy of the notice of attachment sent to the decree-holder ? If so, on what date ?

(d) Was the fact of attachment proclaimed in the village by beat of drum and if so, on what date?

(e) Has the statement of the Vetti (who made the tom-tom) stating dates on which and the places at which publication was made, duly been attested by the village officers or by at least three respectable villagers?

(f) If the publication has been ordered to be made in the District Gazette under Rule 126(2)(d)(i) of the Tamil Nadu Co-operative Societies Rules, cite the page and date of the Gazette in which the publication appeared.

(g) Was the attachment proportionate to the arrear as far as possible?

16.(a) Has there been an interval of at least ten days between the date of service of No.6 notice and service No.7 notice?

(b) If not, has the Circle Deputy Registrar authorized the simultaneous issue and service of the two notices ?

17. Is the description of the property in No.7 notice in accordance with the description in the application. if encumbrance certificate is unnecessary, how did the sale officer satisfy himself that the properties belong to the defaulter?

18. Name of the hamlet or village in which the property is situated. If sale is proposed to be posted in a place other than that village, describe the place at which the sale is proposed to be held and the advantages of holding the sale there giving an idea of the distance between the two places.

19. Is the defaulter's share in the property full or limited ? if he has right only over a part of it is such part ownership recognized by any document like a partition deed, etc., if there is no document or if the document does not specify the property by its boundaries, is the description of the defaulter's right over the property correctly given as ½ or 1/3 or ¼ , etc.,

20. (a) Is there any prior or subsequent attachment by any Civil Court brought to the notice of the sale officer or Circle Deputy Registrar in writing by the decree-holder or defaulter with proof ?

(b) If so, has permission of the Court been taken to sell the property ?

21. Has the decree-holder furnished the encumbrance certificate required in accordance with Rule 126(2)(f)(i) of the Co-operative Societies Rules? What is the period covered by the encumbrance Certificate? Does it cover the full period of 12 years prior to the date of application or of attachment as the case may be ?
specify the period from……to……..

22. Note the time, date and place of the proposed sale.

23. Is the description of the property in Notice No.8 in accordance with the description in the application award, etc., No.6 Notice, No.7 Notice and the encumbrance certificate ?

24. Does the proclamation of sale mention –

(a) Details of encumbrances over the property.

(b) Kist payable.

(c) Amount sought to be recovered.

(d) Share of the defaulter or defaulters in the property.

25. (a) was there any objection petition questioning the validity of attachment ?

(b) Mention the name of the person who objected to the attachment and the nature of the objection.

(c) Was the requisite fee paid by him ? Mention the date of remittance and the treasury in which the amount has been remitted.

(d) What was the nature of the orders passed by the Sale Officer ?

(e) Is the proposed sale regular in terms of the Sale officer's orders.

(f) Was any suit instituted under Rule 135(3) of the Tamil Nadu Co-operative Societies Rules against the order of the sale officer ? If so, specify the result of the suit.

(g) Is the proposed sale regular in terms of the orders of the Court ?

26. Has the sale of the Circle Deputy Registrar been affixed to all notices and processes issued by him ?

27. Are there any corrections to the notices, etc., issued and have the corrections been authenticated by the officer signing the notices ?

Certified that the execution proceedings up to this stage are regular.

(Signed)

Sale Officer.

Checked. The proceedings are regular. Notice Nos.8 and 9 put up by the sale officer may issue.

(Signed)

Section Clerk.

Approved. Issue the proclamation and notice of sale.

(Signed)

Deputy Registrar.

PART I-A.

Proceedings of the sale of immovable properties.

…….in C.E.P.No……20…….

1. Plaintiff :……Co-operative by its Secretary /President/Managing Director , Liquidator.
2. Defendants:
3. Suit number and date.
4. Date of Sale.
5. Place of sale.
6. Time of sale.
7. Name of officer conducting the sale.
8. Amount due for which properties are being sold.

Certified that I have satisfied myself that all payments made after the filing of the execution petition have been verified by me and that the sum for which the properties are sold has been arrived at after deducting all such payments.

Date Signature of the sale Officer.

Description of properties.

Registration Sub-district……
Taluk……
Village……..

Lot.No R.S.No Extent Name Assessment Upset price

PART II

1.When was notice 8 affixed ?
(a) In the taluk office.
(b) In the office of the Deputy Registrar.

2. Is there sufficient evidenced of the affixture of of the notices thirty days prior to the date of the sale ? was the proclamation of sale published by beat of drum in the village where the property is situated consecutively for two days prior to the date of sale and on the date of sale ? was a statement taken from the vetti (who made tom-tom) stating the date on which and the places at which the publication was made, duly attested by the village officers or by atleast three respectable villagers?

3. If the sale is one adjourned by the sale officer from a date fixed by the Deputy Registrar.
(a) Is the date of sale within a period of seven days from the date of sale as originally notified ?

(b) If the answer to clause (a) is in the affirmative, was there proper proclamation by beat of drum and by affixture of the notices in the office of the Circle Deputy Registrar and the taluk office on the necessary dates with reference to the date of the sale fixed by the Deputy Registrar ?

(c) If the answer to clause (a) be in the negative was fresh proclamation of sale issued or was it waived by the Judgment-debtor ?

(d) were the defaulter and the decree-holder notified in writing of the date of the adjourned sale ?

4. Was the proclamation of sale read out loudly ?

5. Was the sale conducted at the time and place mentioned in the proclamation ?

6. Was notice No.9 issued to the Judgment Debtor, Decree-holder and other persons interested in the property ? Mention their names and the dates on which the notices were sent ? Has a certificate of posting been obtained in support of the despatch of the notices ?

7.Particulars of land brought for sale -

Survey No.	Let ter.	Govt Or Inam	Dry or wet	Description And Boundries	Extent	Assessmnt	Est. Val.	Value realise

(Arrange according to lots.)

8. What is the procedure followed in fixing the upset price ?

(a) What is the valuation of the property according to the Decree-Holder.
(b) What is the valuation of the property according to the estimate of the Judgment Debtor or Judgment Debtors.

(c) Have the village officers or other prominent residents been consulted in the matter and if so, what is their estimate ?
(d) What is the valuation fixed by the sale officer and state the reasons for it ?
(e) What are the rates on which the above estimates are based ?
(f) Did the sale officer reduce the upset price ? If so, to, what extent and for what reasons ?

9. Was the value of the property sold in proportion to the amount sought to be recovered ?

10. Did the sale officer obtain particulars from the Decree-holder for collections effected after the filing Of the E.P. and a certificate for the balance due, before commencing the sale?

11. Were the lots properly arranged for sale so as to dispose of as few lots as possible to recover the entire amount due under the award, etc.,?

12. How many persons were present at the time of sale ?

13. Was there combination or collusion among the bidders ?

14. Name or names of the highest bidder in whose favour the sale has been knocked down, with father's name occupation and residence ?

15. Are any of them related to the sale officer or the office bearer of the decree-holder society?

16. Is the purchaser an agent acting on behalf of any one? If so, state whether he has filed an authorization from the principal.

17. What is the amount for which the properties have been sold? If there were more than one lot or more than one purchaser, mention the names of the purchasers and the amount for which each lot was purchased. How does the sale price compare with the upset price ? If the former is unduly low, explain the reasons.

18. Was the initial deposit collected for each lot ? Mention the date of collection and date or remittance into the treasury .

19. Did the sale officer intimate to the purchaser in writing that the balance of purchase money and cost oif stamp paper for sale certificate should be remitted within 15 days from the date of sale ?

20. If the property was purchased by the decree-holder, have the purchase money and the amount due in the award been set off against each other and has the sale officer entered satisfaction of the decree in part or in whole? Was the set off receipt from the decree-holder society obtained on the date of sale ?

21. If the decree-holder is the purchaser, was poundage and the cost of general stamp paper collected on the date of sale ? If so, furnish details of collections and remittance into the treasury ?

22. If the decree-holder has purchased the properties for a price higher than the amount due to it, was asked to remit the difference in cash with 15 days of the date of sale? Has the money been remitted by the society according to such direction.?

23. (a) In case outsiders have purchased the property, has the balance of purchase money been paid in time?

    (b) Furnish date of payment into the treasury or in the office of the Circle Deputy Registrar.

    (c) Furnish name of the treasury and the date on which the amount has been remitted.

    (d) If the balance of purchase money has been paid 15 days from the date of sale, has the purchaser obtained and filed letters of consent from the decree-holder and the defaulter to the effect that they have no objection to confirmation inspite of the belated payment?

24. (a) when was the cost of general stamp paper paid ?
    (b) If the interval between the date of receipt of the amount mentioned in clause (a) and the date of sale is more than 15 days, has the Circle Deputy Registrar extended the time for payment ?
    (c) Furnish the names of the treasuries into which and the dates on which the several amounts noted above have been remitted-

Serial Number.	Nature of the Amount Collected.	Name of Treasury.	Chalan Number.	Date.

25. (a) What is the total amount collected and kept in Revenue Deposit according to the particulars against questions 24 and 26 ? note here the manner in which the moneys have to be disposed of.

(b) Are there applications for rateables from the same Decree-holder and other decree-holders? If so, furnish full particulars of the amount due to each and the amount of rateable to be paid to each.

26. (a) Has the Judgment Debtor or other persons mentioned in Rule 127 of the Tamil Nadu Co-op. Societies Rule paid into the treasury within 30 days of the date of sale the amount due the award, etc.,

(b) If so,mention-

(i) Name of the person, who remitted the amount.
(ii) Date of remittance.
(iii) The amount remitted.
(iv) The nature of the interest or right that he claims over the properties.

(c) Is the amount sufficient to pay the items mentioned in Rule 127 of the Tamil Nadu Co-operative Societies Rules?

(i) What is the amount payable as compensation to the purchaser?(5% of the purchase money)
(ii) Amount due as per proclamation of sale
(iii) Further interest due on item(ii)
(iv) Expenses of attachment, if any, and cost of sale
(v) Total

(d) Has the person mentioned in class class (a) also applied for the cancellation of the sale under Rule 128 of the Tamil Nadu Co-op. Societies Rules ? If so, the petition under Rule 129 should be rejected.

27. Has there been any application under Rule 128 of the Tamil Nadu Co-operative Societies Rules to set aside the sale ? if so, mention the name of the person objecting to the sale and the nature of the interest he has in the property?

28. Has the application been received within 30 days of the date of sale ? Note the date of receipt of application.

29. Has the requisite objection fee been paid ? Mention the date of remittance and the treasury in which the amount has been remitted .

30. What is the nature of the objection ?

31. Has the Deputy Registrar enquired into the matter or has he authorized the Co-operative Sub-Registrar to conduct the enquiry.

32. What is the nature of the orders passed by Deputy Registrar?

33. Have notices been issued to the persons concerned to enable them to attend the enquiry ?

34. Has the seal of the Deputy Registrar been affixed to all notices and processes issued by him ?

35. Are there any corrections in the notices, etc issued and have the corrections been authenticated by the officer signing the notices?

36. What is the opinion of the sale officer, regarding the confirmation of the sale ?

37. If the defaulter dies after the issue of the proclamation, answer again Question Nos.3&4 part 1.

(signed)

(sale officer)

38. Note of the office regarding the confirmation of the sale.

Checked, the sale may be confirmed/ cancelled for the reasons noted below:-

(signed)

(section clerk)

Sales is confirmed / cancelled

(signed)

(Deputy Registrar)

PART III

(In case of resale consequent on the cancellation of original sale)

1. (a) What were the reasons for the cancellation of the original sale ?

   (b) If it was for default in the payment of balance purchase money, was notice of the re-sale given to the defaulting purchaser ? Mention the date of the despatch of notice to him.
   (c) What was the price fetched at the original sale and at the re-sale ?
   (d) If the price fetched at the re-sale is less than that fetched at the original sale, what is the deficiency ?
   (e) Has the sale officer issued a certificate under rule135(4)(a) of Tamil Nadu Co-operative Societies Rules with regard to the deficiency and the expenses of such re-sale ?
   (f) Has the defaulting purchaser been appraised of the deficiency, etc.,?
   (g) Was the initial deposit paid by him forfeited ? If so, to what extent ?
   (h) Where the properties sold at the re-sale the same as those sold originally ? If the extent sold is less, how was the deficiency in purchase money arrived at ?
2. If the original sale was cancelled for other reasons, who has to bear the poundage and why ?

(Sd). Section Clerk.

3. Deputy Registrar's orders.

Notice under section 167 of the Tamil Nadu Co-operative Societies Act, 1983.

C.A.M. No. 20……

Between . Society
_____ plaintiff
Liquidator Society

versus

Defendant
Society
Whereas _____ has
Liquidator Society

preferred the above reference / contribution claim against defendant for Rs….. (in figures)……..(in words) being the amount due by him to the said society

_____
proposed to be levied in view of the deficit
_____and where as the
In the case assets to meet the liabilities of the creditors
Plaintiff Society
_____ has
Liquidator, Society
proved to my satisfaction that the said……defendant with intent to defeat or delay execution of any other that may be passed against him is about to dispose of the whole or any of his property,
these are to command the said ……defendant calling on him……on or before the ……day of…….
(month) 20…., to furnish security for the sum of Rs……as may be sufficient to satisfy any decree/contribution order that may be passed against him, failing which the immovable property specified in the schedule hereunto attached will be conditionally attached under section 167 of the Tamil Nadu Co-operative Societies Act, 1983.

Given under my hand and seal of this office, this the…….. day of ……..(month), 20……

Deputy Registrar.

CONDITIONAL ATTACHMENT UNDER SECTION 167 OF THE TAMIL NADU CO-OPERATIVE SOCIETIES ACT, 1983.

C.E.P. NO. Dated……

Between

Plaintiff

And

Defendant

Whereas ……has to satisfy a decree to be passed against him in the claim in favour of the President,……(figures)……..(in words) and whereas the said society has applied on to me for execution of the said decree to be passed for Rs…….with further interest and cost from …… .It is ordered that you the said defendant be, you are hereby prohibited and restrained until further orders from transferring or charging the property specified in the schedule hereunto annexed by sale, gift or otherwise and that all persons be and that they are hereby prohibited from receiving the same by purchase, gift or otherwise.

Given under my hand and the seal of the office this day of…… ……20…….

Deputy Registrar.

(Schedule of property)

ANNEXURE V

Form No. 1

APPLICATION FORM

FORM OF APPLICATION UNDER SECTION 144 OF THE TAMIL NADU CO-OPERATIVE SOCIETIES ACT 1983 (SEE RULE 141 OF THE TAMIL NADU CO-OPERATIVE SOCIETIES RULES, 1988)

Application for sale of property which is subject to a charge under section 40 of the Tamil Nadu Co-operative Societies Act, 1983.

I, ……. on behalf of the …… ……..society hereby apply for sale under section 144 of the Tamil Nadu Co-operative Societies Act, 1983, of the property or interest in property which is subject to a charge under section 40 of the said Act, for recovering the debts due by the defaulter as below.

1. Name of the parties –
   (a) Plaintiff (creditor society)
   (b) Defendant (Borrowing member)
   (hereinafter called defaulter)
2. Date of the bond.
3. Whether any payment or adjustment has been made by the defaulter subsequent to the date of bond. If so, furnish details.
4. Amount with interest due on the bond.
5. (a) Against whom to be executed.
   (b) If the above person is not the defaulter his relationship to the defaulter.

6. Manner in which the assistance of the Registrar of the District is required-

7. Place at which the charge-property to be sold is kept under custody and name and address of the person having custody of the property to be sold.

8. Date of issue of registered notice by the society proposing sale of the charge property.

9. Date of acknowledgment of defaulter.

10. Name and addresses of the defaulter name, Father's Name, Residence.

11. Date of previous application and execution petition Number and date of closure

12. Description of the property to be proceeded as set out in the bond (Full particulars of movable or fixtures or machinery . etc., to be proceeded against should be furnished)
13. Interest or share of defaulter in the property.
14. Emcumbrances, if any prior to the date of creation of the charge of the property in favour of the society.
15. Remarks.

I declared that what is stated herein is true to the best of my knowledge and belief.

Station:
Date : Signature of applicant

N.B.- This form should be accompanied by the bond executed if any by the defaulter and the inventory of articles taken into custody by the society signed by the defaulter or his heirs, nominees, etc.,

Form No.2.

(Rule 141(4) of the Tamil Nadu Co-operative Societies Rules,1988)

DEMAND NOTICE

The defaulter ……of …… ……Co-operative Society shall on demand by …….. the Sale Officer……. Who is authorized in this behalf by the Deputy Registrar …….. to execute the demand, pay to the said Sale Officer the under mentioned dues to the society in the event of the dues having not been previously paid to the society in full and take official receipt from the Sale Officer in discharge of the amounts, due from him to the society, within seven days from the date of service of this notice on him.

1. Name of the member, past member of the nominee Heir, or legal representative of the deceased member having the right of possession of the property described in the schedule and description of the defaulter.

2. Date of deposit of the property to the plaintiff

3. Date of seizure of the property by the plaintiff in case of default to produce or surrender the property to the effective custody of the plaintiff as required by him.

4. Amount due on the date of application-
   Principal……
   Interest…….
   Cost……..

5. Name of the person having custody of the properties and place where it is kept.

6. Date of service of notice to the defaulter…….

The defaulter will take notice that if the aforesaid amounts, together with further interest and cost are not previously paid, he should pay the dues within seven days of service of this notice failing which the property described in the schedule shall be seized and sold in accordance with provisions under rule 141(6) of Tamil Nadu Co-operative Societies Rules,1988.

Schedule.

Place;

Date*:* *Deputy Registrar*.

Note- The Sale Officer should note the date, the time, place and manner of service of this notice to the defaulter and shall also intimate the place, date and time of sale of the properties.

Form No.3

(Rule 142 (1)(b) of the Tamil Nadu Co-operative Societies Rules, 1988.)

SECURITY BOND

BOND FOR THE SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURITIES.

Execution petition No……of ……on the file of the (Deputy Registrar of Co-operative Societies ……Circle)

Name of the decree holder:
Name of the Judgment Debtor:

Know all men by these presents, that we (1)……
Son of ……(2)…….....
Son of ……and (3)……
Son of…….are jointly and severely hold and firmly bound to the Circle Deputy Registrar in the sum of Rs…… to be paid to the said Registrar for which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severely, by these presents.

Dated this ……day of ……..20……

And whereas the movable property in the schedule hereinto annoxed has been attached under a warrant from the said Deputy Registrar, dated the ……. date of ……..20…… in execution of a decree in favour of the decree holder in execution petition No……..of on the file of the said Deputy Registrar and the said property has been left in the charge of the said (1).

Now the condition of this obligation is that, if the above bounden (1)…….. shall duly account for and produce when required before the said Deputy Registrar oir other officers authorized by him all and every the property aforesaid and shall obey any further order of the said Deputy Registrar in respect thereof, then this obligation shall be void; otherwise it shall remain in force.

(1)……
(2)……
(3)……

Signed and delivered by the above bounden in the presence of-

(1)……S/O…….
(2)……S/O…….

Schedule of attached property in the village of ……. Taluk……. District.

ANNEXURE VI

Form No.1

(Rule 161(1) of the Tamil Nadu Co-operative Societies Rules, 1988)

(APPLICATION FOR DISTRAINT AND SALE OF PRODUCE AND STANDING CROPS)

1. The ……Co-operative Primary Agriculture and Rural Development Bank Limited.----------*applicant*

2. ……..*defaulter*.

3. Date of mortgage deed and amount :

4. Amount due in respect of installment:

5. Day of default:

6. Interest thereon from the date of default:

7. Amount for which distraint is claimed:

8. Cost of distraint and sale:

I pray that the total amount of Rs……together with interest up to the date of payment and cost of distraint and sale be realized by distraint and sale of produce of the mortgaged land lying in the premises of the defaulter and standing crops on the mortgaged property.

I declare that what is stated herein is true to the best of my knowledge and belief.

Station: Signature of the person Authorized by the committee of the applicant.

Date :

Form No.II.

(Rule 161(2) of the Tamil Nadu Co-operative Societies Rules 1988.)

DEMAND NOTICE (DISTRAINT ORDER)

The ……..Co-operative Primary Agriculture and Rural Development Bank Limited……*applicant*.
……son of……
……Village (designation).

An officer of the Co-operative Department is authorized to distrain the property of the under mentioned defaulter for moneys due by him to the Co-operative Primary agriculture and Rural Development Band Limited.

a. Name of the village and taluk,

b. Name of the defaulter,

c. Amount of installment due as per mortgaged deed., Date of default.,

d. Batta to distrainer.,

e. Interest Due.

The defaulter is hereby informed that if the amount due together with costs of distress be not paid within 15 days from the date of service of this notice, the produce raised or/and standing crops on the mortgaged and immovable property shall be brought to sale.

Station: Signature of the Deputy Registrar.
Date :

Form No.III

(Rule 161(2) of the Tamil Nadu Co-operative Societies rules 1988)

PRILIMINARY NOTICE TO APPLICANT.

The ……Co-operative Primary Agriculture and Rural Development Bank Limited……*Applicant.*

…….Son of……
Of ……Village*.* *Defaulter.*
……Villlage…….Taluk……District.

Take notice that in pursuance of your application for distraint filed on ……. I shall proceed to ……. Village, for attaching to produce or/and the standing crops of……..defaulter, and that you are hereby requested to be present on …… to render necessary aid to me for making the distraint and arranging or under taking the safe custody of the property so attached as required by Rule 121(1) of the Tamil Nadu Co-operative Societies Rules 1988.

Station: Sale Officer.
Date :

Form No.IV.

(Rule161(2)(b) of the Tamil Nadu Co-operative Societies Rules 1988)

NOTICE OF SALE OF DISTRAINED PROPERTY

The ……Co-operative Primary Agriculture and Rural Development Bank Limited. *……..Applicant.*
……Son of ……
Village ……*...Defaulter*..

It is hereby notified that the produce/standing crops of the mortgaged land belonging to……..in the village of…….
a defaulter to the ……Co-operative Primary Agriculture and Rural Development Bank Limited situated in the village of ……..of……..of taluk, as detailed in the list hereunder has been distrained in satisfaction of moneys due to him and that unless those arrears with interest and other charges shall be previously paid the said property will be sold by public auction near the house of……
at the said village on ……..day of…….20…….
or any other day to which the sale my be adjourned. The sale will commence at……..O'clock a.m./p.m. and the property will be knocked down to the highest bidder for ready cash. The purchaser will not be permitted to carry away any part of the property until he has paid for it in full.

Resale in case of default: where the purchaser may fail in the payment of the purchase money, the property shall be resold and the defaulting purchaser shall be liable for any loss arising as well as the expenses incurred on the resale.

This notice was affixed on the defaulter's house or premises (as the case may be) where the property was distrained on the…….20……

Schedule of property distrained.

Station: Sale Officer.

Date :

N.B.- Fifteen days must elapse from the date on which the notice was affixed to the premises before the sale takes place, where the property seized is subject to speedy and natural decay, the sale officer may sell it at any time before the expiry of the period of fifteen days unless the amount due is sooner paid.

Note- It shall be in the discretion of the officer conducting the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so or for other reasons.

(Rule 3)

INVENTORY OF THE DISTRAINED PROPERTY.

LIST OF THE MOVABLE PROPERTY OF ……..IN THE VILLAGE OF……..DISTRAINED BY…….. FOR MONIES DUE BY THE DEFAULTER.

serial No.	*Description of articles.*	*Estimated value.*	*Amount due*	*Date of distress and of copy given to defaulter.*	*Remarks.*

Station*:* *Sale Officer.*

Date :

Form No.V

(Rule 121(2)(c) of the Tamil Nadu Co-operative Societies Rules 1988)

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY DISTRTAINED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURIETIES.

The ……..Co-operative Primary Agriculture and Rural Development Bank Limited----------Applicant

……..of……son of…….. ……of ……village.----------*Defaulter.*

Distress application No…….of……on the file of the ……..Principal officer of the Co-operative Department in charge of the district ……(Deputy Registrar of Co-operative Societies ……Circle)

Name of the applicant bank.

Name of the defaulter.

Know all men by these presents, that we (1)……. Son of …….. (2)……. Son of ……and (3)…….. Son of…… are jointly and severally hold and firmly bound to the Deputy Registrar in the sum of Rs……to be paid to the said Registrar, for which payment to be made, we bind ourselves, and each of us, on the whole, our and each of our heirs, executors and administrator, jointly and severally by these presents.

Dated this……day of……..20……

And where as the movable property in the schedule hereunto annexed has been distrained on……day of ……..20…… in pursuance of an application under Section 161 of the Tamil Nadu Co-operative Societies Act 1983 in distress application No…….of……. on the ……..file of the said officer and the said property has been left in the charge of the said……..

Now the condition of this obligation is that, if the above bounden

(1)……..son of…….

(2)……..son of…….

(3)……..son of…….

Shall duly account for and produce when required before the said officer or other officer authorized by him, all and every, the property aforesaid and shall obey any further order of the said officer in respect thereof, then this obligation shall be void, otherwise it shall remain in force.

(1)……

(2)……

(3)……

Signed and delivered by the above ……. bounden in the presence of…….

(1)…….son of……

(2)…….son of……

Schedule of distrained property in the village……. ……taluk……..district.

Form No.VI

(Rule 162 of the Tamil Nadu Co-operative Societies Rules, 1988)

APPLICATION FOR SALE OF MORTGAGED PROPERTIES

1. I ……Co-operative Primary Agriculture and Rural / Development Bank…….Applicant.
2. ……..S/o, W/o ……residing at…… Village …….Taluk……District….Mortgager.
3. Date of Mortgage bond and mortgage amount .
4. Mortgage amount due under loan foreclosed Rs……
5. Rate of interest chargeable on the loan foreclosed.
6. Date from which interest is chargeable on the loan fore closed.
7. Date of service of notice under sub-rule (2) of rule 162.
8. Expenses incurred for service of notice referred to under column 7.
9. Description of the person on whom and the address at which notice under column 7 have been served.
10. Description of the mortgaged immovable property (Survey numbers, extent, boundaries, classifications as dry or wet, kist etc.,)
11. Interest held by the mortgagor in the immovable property.
12. Prior encumbrances.

I/We request for recovery of Rs……with subsequent interest and expenses by sale of mortgaged properties.

I/We certify that the particulars furnished in this application are true to the best of my/our knowledge.

For…….Primary Land Development Bank.

Place:
Date :

Signature of the person authorized by the primary Land Development Bank.

Form No.VII

(Rule 126 (2)(e) of the Tamil Nadu Co-operative Societies Rules 1988)

Notice of sale to applicant bank, defaulter and others referred to in section 119 of the Tamil Nadu Co-operative Societies Act 1983.

The …….Co-operative Primary Agricultural and Rural Development Bank Limited…….*Applicant.*

…….son of …….

…….village……..Defaulter.

To

Take notice that in default of payment within ……..days from the date of service of this notice of the sums specified below the under mentioned immovable property mortgage to the…… Co-operative Primary Agricultural and Rural Development Bank Limited, will be sold by public auction at the village of ……in……. Taluk of the ……..District on the ……. day of ……..20…… or any other day to which the sale may be adjourned. The sale will commence at ……..O'clock a.m./p.m. and the property will be knocked down to the highest bidder subject to the usual conditions of sale.

Station:
Date: *Sale Officer*.

Schedule of property to be sold

Taluk	Village	Name of defaulter	Description of immovable property to be sold	Estimated Extent	The amount of the recovery of which the sale is ordered	Remarks
1	2	3	4	5	6	7

(Here enter mortgage amount, interest and expenses incurred in the service of notice under rule 162(2) of the Tamil Nadu Co-operative Societies Rules 1988.)

Form No. VIII

(Rule 126(2) of the Tamil Nadu Co-operative Societies Rules 1988)

NOTICE OF SALE OF IMMOVABLE PROPERTY

The ……..Co-operative Primary Agricultural and Rural Development Bank Limited,*……..Applicant.*

……son of …….
……village*……..Defaulter.*

It is hereby notified that the under mentioned immovable property mortgage to the …….Co-operative Primary Agricultural and Rural Development Bank Limited, will be sold by public auction at the village of……in…….
taluk of the ……..district on the ……day of ……20…… for any other day to which the sale may be adjourned. The sale will commence at ……O'clock a,m/p.m. and the property will be knocked down to the highest bidder.

2. Purchaser will be required to deposit 15 percent of the purchase money at the time of sale; in default of such deposit the property shall forthwith be resold.

3. The remaining purchase money shall be paid within 15 days from the date of sale in default of payment the property will be resold at the expense and risk of the first purchaser and after issue of a fresh proclamation of sale.

4. Persons bidding at a sale may be required to state whether they did on their own account or as agents, and in the latter case to deposit a written authority signed by their principals; otherwise their bids may be rejected.

5. The sale shall be stopped if the defaulting or other person acting on his behalf or claiming an interest in the property mortgaged tenders payment of the full amount due including interest and other charges, provided such payment be made before sunset on the day previous to that appointed for the sale.

6. The sale will not be final until confirmed by the Deputy Registrar and a period of thirty days will be allowed between sale and confirmation to admit of petitions to set aside the sale. On confirmation of the sale, a certificate of sale signed and sealed by the sale officer will be granted to him on payment of the stamp duty thereon.

7. It is to be distinctly understood that Government are not responsible for errors either in the description of the immovable property or in their estimated extent.

Taluk	Village	Nameof defaultr	Description of immovable property to be sold belonging to the defaulter with field number and letter.	Estimated extent.	Assessment	Details of any encu mbrances to which the property is liable.	Remarks (amount for the recovery of which the sale is ordered. etc)
1	2	3	4	5	6	7	8

Station:
Date*:* *Sale Officer*.

N.B.- This notice shall be published by affixing in the office of the Deputy Registrar and the taluk office at least thirty days before the date fixed for the sale and also by beat of tom-tom in the village on two consecutive days previous to the date of sale. (Rule 126(2) of the rules issued under the Tamil Nadu Co-operative Societies Act 1988.)

Note._ It shall be in the discretion of the officer conducting the sale to decline acceptance of the highest bid if the price offered appears clearly inadequate as to make it advisable to do so or for other reasons.

Form No. IX

(Rule129(3) of the Tamil Nadu Co-operative Societies Rules 1988)

CERTIFICATE OF SALE

This is to certify that……son of…… has been declared the purchaser at a sale by public auction held on the……..day of ……..20…… of the undermentioned immovable property in pursuance of an application made by the applicant under Rule 161 of the Tamil Nadu Co-operative Societies Rules 1988 and that the said sale has been duly confirmed by the Deputy Registrar of Co-operative Societies.

Dist. and Regn. Dist. 1	*Regn. Sub. Dist* 2	*Taluk & Village* 3	*Description of Immovable Property* 4.	*Particulars of Field*			*Estimt. Extent* 8.	*Assmnt.* 9	*Date of Sale* 10
				No 5	*Letter* 6	*Name* 7			

Seal of the Officer. *Sale Officer*.

Station:
Date :