

HARYANA VIDHAN SABHA
REPORT
OF
THE COMMITTEE
ON
SUBORDINATE LEGISLATION
(TWENTY FOURTH REPORT)
1992-93

(Presented to Haryana Vidhan Sabha on the 12th March, 1993)



HARYANA VIDHAN SABHA SECRETARIAT, CHANDIGARH
March, 1993

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**COMPOSITION OF THE COMMITTEE
(1992-93)**

Chairman

Mohammad Aslam Khan

Members

Shri Phool Chand Mullana

Shri Ja1 Parkash

Shri Hari Singh Nalwa

Shri Karan Singh Dalal

Shri Jaswinder Singh

Shri Kitab Singh Malik

Advocate General

Special Invitees

Shri Suraj Bhan

Shri Surjit Kumar

*Shri Amar Singh Dhanday

Secretariat

1. Shri Sumit Kumar, Secretary
2. Shri Janardhan Singh, Joint Secretary

The Committee was constituted vide Haryana Vidhan Sabha Secretariat Notification No. HVS-LA (Sub-Leg)-1/1992-93/27, dated the 1st May, 1992.

*Shri Amar Singh Dhanday, M L.A., was nominated by the Speaker as a Special Invitee of the Committee with effect from 3rd July, 1992 for the remaining period of the year 1992-93, vide Notification No. HVS-LA (Sub-Leg)-1/1992-93/37, dated the 6th July, 1992.

(v)

INTRODUCTION

1. I, the Chairman of the Committee on Subordinate Legislation having been authorised by the Committee to present the report on their behalf present this Twenty Fourth Report to the House.

2. The Committee consisting of eight members (including the Advocate General) and three Special Invitees was nominated by the Speaker, Haryana Vidhan Sabha under Rule 243 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 29th April, 1992, and was notified in the Official Gazette vide Notification No. HVS-LA (Sub-Leg)-1/1992-93/27, dated the 1st May, 1992.

3. A brief record of the proceedings of each meeting of the Committee has been kept on record of the Haryana Vidhan Sabha Secretariat.

4. The Committee place on record their appreciation for the valuable and willing assistance given by the Commissioner and Secretary to Government, Haryana, Cooperation Department and the representative of the Law Department in their deliberation.

5. The Committee also place on record their high appreciation for whole hearted co-operation and assistance given by the Secretary, Officers and Staff of the Legislation Branch.

CHANDIGARH :
The 17th February, 1993.

MOHAMMAD ASLAM KHAN
CHAIRMAN

REPORT

1. The Committee on Subordinate Legislation for the year 1992-93 consisting of eight members, including the Chairman and the Advocate General and three Special invitees was nominated by the Speaker, Haryana Vidhan Sabha under Rule 243 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly on the 29th April, 1992, and was notified in the official Gazette vide Notification No HVS-LA(Sub-Leg)-1/1992-93/27, dated the 1st May, 1992.

2. Shri Mohammad Aslam Khan was appointed as the Chairman of the Committee by the Speaker

3. The Committee held 42 sittings till the presentation of this Report. Before scrutinising the rules framed under section 131 of the Haryana Co-operative Societies Act, 1984, the Committee discussed its scope and functions and the procedure for scrutinising the Rules, Regulations, Order etc. Committee also orally examined the representatives of the Cooperation Department of the State Government.

SCOPE AND FUNCTIONS OF THE COMMITTEE

The scope and functions of the Committee are set down in rules 242, 250 and 251 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly. Rule 242 enjoins upon the Committee "to scrutinise and report to the House whether powers to make regulations, rules, sub-rules, bye-laws, etc. conferred by the Constitution or delegated by legislature are being properly exercised within such delegation and consider such other matters as may be referred to it by the Speaker". Further rule 250 of the said Rules lays down that while examining any such set of rules, bye-laws, etc., the Committee shall, in particular consider :—

- (i) whether it is in accord with the general objects of the Constitution or the Act pursuant to which it is made ;
- (ii) whether it contains matters, which in the opinion of the Committee should more properly be dealt within an Act of the Legislature ;
- (iii) whether it contains imposition of any tax ;
- (iv) whether it directly or indirectly bars the jurisdiction of the courts ;
- (v) whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power ;
- (vi) whether it involves expenditure from the Consolidated Fund of the State or the Public Revenues ;
- (vii) whether it appears to make some unusual or unexpected use of the powers conferred by the constitution or the Act pursuant to which it is made ;

- (viii) whether there appears to have been unjustifiable delay in the publication or laying it before Legislature ; and
- (ix) whether for any reason its form or purport calls for any elucidation.

Rule 251 lays down as follows :—

1. If the Committee is of opinion that any order should be annulled wholly or in part or should be amended in any respect, it shall report that opinion and the grounds thereof to the House.
2. If the Committee is of opinion that any other matter relating to any order should be brought to the notice of the House, it may report that opinion and matter to the House.

In short, the functions of the Committee are to see if the rules framed by the Executive are within the scope of the delegation made under the Act and do not go beyond the scope of such delegation. If the Committee finds that any rule is beyond the scope of the powers delegated under the Act by the Legislature, the committee can recommend that the rule be suitably amended or omitted.

There are certain rules which are required by the statute to be laid before the Legislature. But, the Committee is competent to examine all the Rules, Regulations etc., framed by the Government under various Acts irrespective of the fact whether these have been laid on the Table of the House or not.

The Committee is competent to send for persons, papers or records if such a course is considered necessary for the discharge of its duties. In this connection attention is invited to rule 248 of the rules of Procedure and Conduct of Business in the Haryana Legislative Assembly, which reads as under :—

“248 (1) The Committee on Subordinate Legislation shall have power to require the attendance of persons or the production of papers or records, if such a course is considered necessary for the discharge of its duties :

Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the speaker, whose decision shall be final :

Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.

(2) A witness may be summoned by an order signed by the Secretary and shall produce such documents as are required for the use of Committee.

(3) It shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential.

(4) No document submitted to the Committee shall be withdrawn or altered without the knowledge and approval of the Committee."

The Committee has framed the working rules wherein the detailed procedure has been laid down. Generally the Committee from time to time select set of rules framed under the various Acts for their scrutiny and examine these at the first instance at their own level with the assistance of the Law Department and the Vidhan Sabha Secretariat. The Committee then invites the Administrative Secretary concerned for oral examination to explain the discrepancies found in the various rules/orders. After the rules/orders and the departmental representatives have been examined the Committee prepares the report and presents it to the House.

Some of the Parliamentary conventions established in connection with the scrutiny of Rules, Regulations, Bye-laws etc., are given below :—

1. The Committee would scrutinise only such rules as have already been framed and published in the Gazette and not the draft rules.
2. The Committee should see that rules are framed under an Act as early as possible after the enactment of the Act and in no case this period should exceed six months. If the rules are not framed within six months, the Committee may ask the Department about the reasons for the delay in framing the rules. This is only by convention.
3. Executive should ensure that no rules goes beyond the power delegated by legislature. If the rules go beyond the powers delegated by legislature, the Committee may examine the same and report to the House.
4. The Executive should be impressed upon that whenever rules are framed or amendments are made in the existing rules, these should be serially and centrally numbered and should indicate in the margin of each rule the reference of the section under which the rules are framed.

However, some of the broad principles established by the Committee for the guidance of the Executive are given below .—

- (i) As far as possible, guidelines criteria to be followed by the authority concerned for the exercise of discretionary power vested in it should be laid down in the rules.
- (ii) In cases where the authority concerned deviates from a norm it should be required to record in writing the reasons for such deviation.
- (iii) Before any adverse action is taken against a party, it should be given a reasonable opportunity of being heard; and after a decision adversely affecting a party has been taken it should have the right of appeal or representation, as the case may be.
- (iv) In order that the persons similarly placed are not treated differently, the powers of exemption/relaxation should be exercisable in respect of categories or classes of persons, as contra distinguished from individuals.

- (v) In cases where an authority concerned is vested with the power to suspend a licence or supplies, pending institution of regular proceedings, a maximum time-limit for suspension should be laid down in the rules.
- (vi) The provisions of rules which may make a citizen liable to a penalty should be well-defined and not worded vaguely.
- (vii) In case of seizures and searches, suitable safeguards like the presence of witness, preparation of inventories of seized goods and giving a copy thereof to the persons concerned should be provided.
- (viii) In case of rules relating to disciplinary proceedings not only the punishing powers of the competent authority should be precisely defined but the procedure to be followed by the competent authority be also laid down in the rules.
- (ix) Statutory rules should be amended by statutory rules only and not by executive orders.
- (x) The rules made in exercise of powers delegated under statute are precise and free from ambiguity instead of being cryptic, sketchy or skeleton or needing further interpretations. It should be in simple language so that different people cannot put different interpretations. For example, expressions like 'unreasonably, large quantity', 'reasonable interval' or 'frequent intervals' etc., should be avoided.

GENERAL OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

1. Delay in framing the Rules

The Committee reiterates the recommendations made in its previous twenty three Reports and observes that ordinarily Rules should be framed as early as possible after the enactment of an Act and in no case the period should exceed six months. If no rules are framed within the said period after the enactment of the Act, the department concerned should bring in each case this fact to the notice of the Committee stating the reasons to the satisfaction of the Committee for not framing the rules within that period.

The Committee further recommends that whenever an Ordinance is promulgated, the rules should be prepared simultaneously so that there should not be wide gap between the Ordinance/Act and the Rules.

2. Reference of Section under which Rules are framed

The main function of the Committee on Subordinate Legislation is to scrutinise and report to the House whether the powers to make regulations, rules etc., conferred by the Constitution or delegated by Legislature are being properly exercised by the Executive within the delegation. The Committee observes that the Government Department generally supply the copies of rules without the preamble or note above

the rules with the result that it becomes rather difficult for Committee to know under what precise authority the rules have been framed. The Committee further observes that reference of the section under which each rule or order was framed is not indicated generally in the margin of each rule. The Committee is of the view that giving of reference of the section under which each rule has been framed in the margin of each rule is essential to enable the Committee and all concerned to know under what precise authority each rule has been framed.

The Committee reiterates the recommendations made in its earlier Reports that whenever rules are supplied to it the authority or the relevant section under which a particular rule or set of rules has/have been framed should also be mentioned in the margin of each rule.

If in the margin of each set of rules there is no reference of the section (s) under which each rule has been framed Government Departments may invariably supply a memorandum containing the reference to the relevant section of the Act under which each rule has been framed so that the Committee may be able to understand under what precise authority each rule has been framed and whether in any case the Government has transgressed the powers delegated by the Legislature.

The Committee further recommends that whenever several amendments are made in a set of rules the same may be republished after incorporating all the amendments made from time to time. This recommendation of the Committee should be observed meticulously.

3. (i) Supply of printed and up-to-date corrected copies of the Rules

The Committee observed that certain Departments supplied cyclo-styled copies of the rules for its scrutiny. During the scrutiny of the rules the Committee came across a large number of typographical/spelling mistakes in those copies, with the result that it was difficult for it to determine whether the errors were typographical or they actually existed in the rules, as originally published in the Gazettee. The Committee, therefore, recommends that copies of the rules to be supplied to it by the Department should be in the printed form or in the form of Gazettee in which they are published if, however, it is not possible for the Department to do so, it should be ensured that the copies of the rules, orders etc are up-to-date, meticulously compared and duly corrected before supplying these to the Committee to save its valuable time in pointing out such mistakes.

The Committee further recommends that it is the duty of the Department concerned to see that the rules supplied to the Committee are amended up-to-date and ensure that the suggestions/recommendations/observations made by the Committee from time to time and agreed to by the concerned Department are implemented by the Department and incorporated in the rules.

The Committee further recommends that whenever any Act is amended, it should be looked that the relevant rules and forms are also amended so as to bring them in consonance with the change in the Act.

(ii) Footnote in the Act and Rules

It came to the notice of the Committee that some times it is laid down in the Act and Rules that such Act and Rules shall come into force on such date as may be specified in the notification by the State Government. The Committee is of the view that in such circumstances the date of commencement of the Act and Rules should invariably be given in the footnote so that legislators in particular and the public in general may come to know as to from which date the Act and Rules had come into force.

The Committee further recommends that whenever any amendment is made in an Act or Rules framed thereunder, it should also invariably be stated in the footnote the reference of the Act or Rules by which amendment has been made.

4. Publishing the Acts and Rules in Hindi

The Committee observes that at present Acts and Rules are available in English language only. The Regional language of the State as well as National Language is Hindi. Under the Haryana Official Language Act, 1969 at present, whenever any Bill is introduced in the State Legislature, its authenticated Hindi translated version is also supplied to the Members. The Committee reiterates its earlier recommendation and recommends that all the Acts and Rules be translated into Hindi and made available to the legislators in particular and the public in general so that everybody may be able to know the law of the land.

5. Laying of Rules on the Table of the House

The Committee has observed that a majority of the Acts contain provisions requiring the Government merely to publish the Rules framed thereunder in the Official Gazette. There is no provision for laying the same on the Table of the House, with the result that the House can exercise no direct check over them. The Committee is of the view that there should be uniformity in the provisions of the Acts, delegating legislative powers and recommends that in future all the Acts, enacted by the State Legislature whether falling in the State List or Concurrent List of Seventh Schedule of the Constitution of India, which contain provisions for making rules, should also invariably lay down provisions for laying of rules on the Table of the House as soon as possible.

6. Delay in laying Rules on the Table of the House

The Committee recommends that where the rules, orders etc., are required to be laid on the Table of the House/before the State Legislature under any statute, the same should be laid on the Table of the House as early as possible immediately following such publication in the Gazettee, so that the House may statutorily modify or annul such rules. If such rules are published, while the Assembly is in Session, the rules should be laid on the Table of the House during that Session.

The Committee also recommends that in future each Government Department concerned should invariably forward with each set of "Orders" such as rules, regulations, byelaws, etc., the following Statement of

"Orders" in respect of which there has been delay in framing the orders and laying them on the Table for the information of the Committee.—

Statement of "Orders" such as rules, orders, regulations, etc., in respect of which there has been delay in framing the "Orders" and laying them on the Table :—

Sr. No.	Name of order	Description of "Order"	Date of publication in the Gazette	Date of laying on the Table	Approximate delay and reasons of delay, if any	Department concerned
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7. Implementation of recommendations of the Committee

The Committee observes with great regret that the work regarding the implementation of recommendations/observations is very slow. The Committee, which works on behalf of the House, felt that the object with which it was constituted would be defeated if its recommendations are either not implemented at all or are implemented after a long time.

The Committee, therefore, recommends that the action on the outstanding recommendations and observations contained in its earlier reports should be given top priority and expedited. The Committee also recommends that when a recommendation is implemented by the Government, the Department concerned should supply a copy of the notification containing the amendment in the rules alongwith the statement showing the action taken by the Government in the implementation of its recommendations/observations.

8. Availability of Copies of Acts and Rules to Public

The Committee is of the view that copies of all the Acts and Rules framed thereunder, as amended up-to-date, are generally not available in the Government Press for the use of the Public. The Committee, therefore, recommends that copies of all the Acts and Rules made thereunder should be kept up-to-date in the Press for sale to the Public.

Cooperation

**SCRUTINY OF THE HARYANA COOPERATIVE SOCIETIES RULES,
1989 FRAMED UNDER SECTION 131 OF THE HARYANA COOPER-
ATIVE SOCIETIES ACT, 1984.**

The Committee scrutinized the Haryana Cooperative Societies Rules, 1989 framed under section 131 of the Haryana Cooperative Societies Act, 1984 and made the following observations/recommendations thereon:—

General

The Haryana Co-operative Societies Act was enacted in the year of 1984 and the Rules were framed under the said Act in the year of 1989. The Committee observes that the Department should have not taken 5 years to frame the said Rules. The standing recommendation of the Committee in this behalf is that the Rules should be framed within six months of the enactment of the relevant Act. The delay in framing the Rules defeats the very purpose of the Act. The Committee observes that in future the work of framing of Rules should not be unnecessarily delayed and these should be framed within the shortest possible time

The Committee further recommends that the Rules be reprinted afresh after carrying out the printing mistakes therein and implementing the recommendations/observations of the Committee thereon.

Rule—2

“2. In these rules, unless the context otherwise requires,—

(a) * * * * *

* * * * *

(b) “Appendix” means an appendix to these rules ;

* * * * *

* * * * *

The Committee recommends that in Rule 2(b) between the words ‘appendix’ and ‘to’ the word “appended” be inserted.

Rule—4

“4. No society other than a society, of which a member is a co-operative society, shall be registered unless it consists of individuals belonging to not less than five families.”.

The Committee recommends that the expression “family” be defined in Rule 2.

Rule—8

"8. The order passed by the Registrar under sub-section (2) of Section 8 shall be communicated by registered post to the applicant specified in the application for registration."

The Committee recommends that in Rule 8 after the words "registered post" appearing in line 2, the words "with A.D." be added. 5

Rule—12**"12 (1)**

* * * * *

(2) The order of the Registrar passed under sub-section (4) of Section 10 shall be communicated by registered post to the co-operative society".

The Committee recommends that in Rule 12(2) after the words "registered post" appearing in line 2, the words "with A.D." be added. 6

Rule—14

"14. (1) No person shall be eligible for admission as a member of a co-operative society, if he:—

(a) * * * *

(b) he has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence.

* * * * *

The Committee recommends that in line 1 of Rule 14(1) (b), the word 'he' be deleted. 7

Rule—15

"15. (1) No individual, being a member of a primary co-operative society having one of the objects the creation of the funds to be lent to its members, shall be a member of any other such co-operative society without the general or special permission of the Registrar, and where an individual has become a member of two such co-operative societies, either or both of the co-operative societies shall be bound to remove him from membership upon a written requisition from the Registrar to that effect.

(2) No individual who is an officer of any co-operative society shall without the general or special permission of the Registrar, be a member of any other co-operative society whose objects are similar to the objects of which he is an officer, and where such an individual has become a member of another society with similar objects, either or both of the co-operative societies, shall be bound to remove him from membership upon written requisition from the Registrar to this effect. If any question arises as to whether or not two societies have similar objects the decision of the Registrar on the point shall be final."

The Committee recommends that in line 1 of rule 15(1) for the word "being" the words "who is" be substituted and sign "," after the word "individual" in the same line be deleted.

The Committee further recommends that in line 2 of rule 15(1) between the words "object" and "the" the words "i.e." be inserted.

The Committee also observes that in line 4 of rule 15(1) the expression "general or special" appears to be vague and recommends that these words be deleted.

1) The Committee observes that in line 2 of rule 15(2) the expression "general or special" appears to be vague and recommends that these words be deleted.

Rule—16

"16. No co-operative society shall admit members within fourteen days prior to the date of its annual general meeting".

12) The Committee recommends that for the word "members" the words "any member" be substituted.

Rule—17

"17. A co-operative society other than a producer society, shall dispose of an application received for admission as a member as early as possible and in no case later than the expiration of a period of one month from the date of receipt of the application by the society. In case of refusal to admit such society shall communicate its decision together with reasons thereof, to the applicant."

13) The Committee recommends that in line 5 between the words "admit" and "such" the sign "," be inserted.

Rule—18

"18(1) and (2)

*	*	*	*	*	*	*
*	*	*	*	*	*	*

(3) No member of a cooperative society with limited liability shall ordinarily be permitted to seek withdrawal or refund of his shares :

Provided that where the society has created a share-transfer fund out of its earned profits, its managing committee may keeping in view the overall interest of the society, allow withdrawal of shares :

Provided further that such withdrawal of share any time shall not exceed five per cent of the aggregate paid up share capital of the society, excluding Government contributions as it stood on the 31st March of the preceding year."

* * * * *

The Committee recommends that in first proviso in line 2 for the word "may" the word "shall" be substituted

The Committee further recommends that in second proviso, in line 1 between the words "shares" and "any" the word "at" be inserted.

Rule—20.

"20. (1) Subject to the provision of sub-rule (2), no member of a Committee of a Cooperative Society which is a member of another Co-operative Society shall be appointed to vote on its behalf in the affairs of the other society unless a resolution is passed by two-third members of the committee present and voting ;

(2) No member of a primary society which is a member of another cooperative society shall be appointed to vote on behalf of the society in the affairs of the other society unless a resolution is passed by two-third members of the committee of a primary society."

The Committee recommends that in line 2 of rule 20(1) for the word "which" the word "who" be substituted.

The Committee recommends that in line 1 of rule 20(2) for the word "which" the word "who" be substituted.

Rule—21.

"21. (1) Every member of a co-operative society shall nominate a person or persons to whom his share or interest referred to in Section 23 or such sums out of share or interest as may be specified by the member, shall on the death of the member, be transferred or paid as laid down in the by-laws.

(2) * * * * *

(3) The number of persons who may be nominated by a member shall not exceed the number of shares held by the member.

(4) * * * * *

(5) The record of nomination shall be kept by a cooperative society in such manner as may be laid down in the by-laws.

* * * * *

18 The Committee recommends that in line 2 of rule 21(3) for the words "the member" the word "him" be substituted.

19 The Committee recommends that in line 1 of rule 21(5) for the word "nomination" the word "nominations" be substituted

Rule—23

"23. A general body's meeting or a meeting of a committee of a co-operative society shall be called by the Chief Executive Officer of a society, by what-so-ever name called on the direction of such authority as may be specified in the bye-laws."

26 The Committee recommends that in line 2 between the words "Chief Executive Officer" and "of" the words "any other Officer authorised by him" be inserted.

21 The Committee further recommends that after Rule 23, the following proviso be added:—

"Provided that a meeting of the Committee of a Co-operative Society may be convened on the written request made by not less than one third members of the said Society."

Rule—25

"25. The members of the committee of a cooperative society shall be elected in accordance with the provisions contained in Appendix A."

It was pointed out to the departmental representative at the time of oral examination that the English and Hindi provisions of Rule 25 are not identical. The departmental representative stated that in Hindi version there is a proviso under Rule 25 but the same is missing in English version.

22 The Committee recommends that the proviso to Rule 25 be added in the English version also.

Rule—27

"27. No person shall be eligible for election as member of the committee if :—

(a) to (c) * * * * *

(d) he has committed any offence involving dis-honesty or moral turpitude during a period of five years prior to the date of scrutiny of nomination papers ,

* * * * *

The Committee recommends that in line 1 of Rule 27(d) for the word "committed" the words "been convicted for" be substituted. 23

Rule—29.

"29. Subject to the provisions of Section 37 of the Act, every society shall make rules to regulate the recruitment and conditions of service of its employees with the approval of the Registrar".

The Committee recommends that in line 2 between the words "rules" and "to" the words "in the light of model service rules" be inserted. 23

Rule—31.

"31. (1) The Chief Executive Officer of a Cadre Society, by whatever name called, shall prepare an annual review of its working and of its member societies within three months of the close of the co-operative year and shall place the same before the committee of the society.

(2) The Committee shall submit such annual review with its comments to the Registrar within the next three months but not later than the 31st December of the year."

The Committee observes that the following be added in the end of sub-rule (2) of Rule 31 — 25

"The Registrar shall submit the annual review of the Apex Society with remarks, if any, to the Government"

Rule—64

"64 Any deficiency of price which may happen on a resale by reason of purchaser's default and all expenses attending such resale shall, at the instance of either the applicant or the mortgager, be recoverable from the defaulting purchaser".

The committee observes that the expression "at the instance of either the applicant or the mortgager" in lines 2—3, is not required and should be deleted as it violates the basic concept of the scheme of rule. 26

The Committee further recommends that the words "as an arrears of land revenue" be added in the end of rule 64. 27

Rule—67

"67. Where prior to the day fixed for sale the mortgager or any person acting on his behalf or any person claiming an interest in the mortgaged property tenders payment of the full amount due including interest, travelling allowance, other costs charges and expenses incurred in connection with the sale, the officer shall not proceed with the sale and shall release the property forthwith".

- 29 The Committee recommends that in line 5, between the words "the" and "officer" the word "Sale" be inserted

Rule—68

"68. The sale officer shall on the conclusion of the sale make a report to the society at whose instance the property was brought to the sale regarding the results of the sale."

- 27 The Committee recommends that in the end of this rule the following expression be added —

"A copy of the said report shall also be forwarded to the registrar for necessary action".

Rule—71

"71 (1) Besides the modes provided in Section 85 of the Act, a co-operative society may invest or deposit funds or any portion thereof,—

(2) * * * * *

(3) The provisions of clause (c) of sub-clause (1) shall not apply."

- 30 The Committee recommends that in sub-rule (3) for the words "sub-clause" the words "sub-rule" be substituted.

Rule—73

"73. Every co-operative society shall contribute such amount not exceeding two per cent as may be directed by the Registrar, from time to time, out of its net profits of the year to the Co-op. education fund to be administered by the State Co-operative Federation. The contribution payable by a cooperative society shall be charged on the funds of the co-operative society and shall be recoverable in the manner provided in Section 110. The State Cooperative Federation shall prepare regulations with the approval of the Registrar for the utilisation and administration of the fund."

The Departmental representative informed the Committee during the oral examination that the regulations had not so far been framed. However, these will be framed within six month.

- 29 The Committee recommends that regulations be framed within six month.

Rule—74

"74. (1) The Registrar may, from time to time by a general or special order, raise the proportion of profits to be carried to reserve fund under Section 87 from one-tenth of the net profits to a limit not exceeding one fourth of the net profits

(2) The reserve fund shall be indivisible and no member shall be entitled to claim a specified share in it.

Provided that in exceptional circumstances and with the prior approval of the Registrar, the reserve fund may be utilised in meeting losses.

* * * * *

The Committee recommends that in the end of the proviso to sub-rule (2) of rule 74, after the word "losses" the words "to the Society" be added. 32

Rule—75

"75. (1) Where the Government decides to constitute a guarantee fund under sub-section (1) of Section 88 of the Act for a Co-operative Society or a class of co-operative societies, then such a society or class of societies shall not contribute to this fund less than two per cent of the remainder of the profits after contribution towards the reserve fund under section 87 of the Act.

(2) Notwithstanding anything contained in the rules, a guarantee fund shall not be utilised in the business of a society and shall be kept in the State Co-operative Bank.

* * * * *

The Committee recommends that in rule 75(2) for the words "State Co-operative Bank" the words "in any Co-operative Bank" be substituted. 33

Rule—85

"85. The Registrar or the arbitrator as the case may be, shall hear the parties and witnesses who attend. On the basis of such evidence and after consideration of any documentary evidence that may be, produced by either party, he shall give award, in accordance with justice, equity and good conscience. The award shall be reduced to writing announced to the parties and filed in the office of the Registrar. In the absence of any party duly summoned to attend, the dispute may be decided *ex-parte*."

The Committee recommends that in line 2 of rule 85 for the words "and witnesses" the following be substituted — 34

"their legal representatives and witnesses".

- 35 The Committee further recommends that in line 6 for the words "the absence" the words "case of wilfull absence" be substituted.

Rule—89

"89. (1) * * * * *

(2) The liquidator shall, after settling the assets and liabilities of the Co-operative Society as they stood on the date on which the order for winding up is made, proceed next to determine the contribution to be made by each of its members, past member or by the estates of nominee, heirs, or legal representatives of the deceased members or by any officer or any former officer to the assets of the society under clauses (b) and (c) of subsection (2) of section 107. Should necessity arise, he may make a supplementary order regarding such contributions and such order shall be enforce in the same manner as the original order.

* * * * *
* * * * *

- 36 The Committee recommends that in line 7 of rule 89(2) for the word "Should" the word "If" be substituted.

Rule—92

"92. All funds in charge of the liquidator shall be deposited with such institution or person as the Registrar may approve."

- 37 The Committee recommends that in line 1 of rule 92, the word "the" be inserted between the words "in" and "charge."

Rule—98

"98. A liquidator may, at any time, be removed by the Registrar and he shall on such removal hand over all the property and documents relating to the society under liquidation to such persons as the Registrar may direct."

- 38 The Committee recommends that in line 2 of rule 98 between the words "removal" and "hand" the sign "," be inserted.

Rule—102

"102 (1) Without prejudice to any other mode of recovery provided in the Act or these Rules, the Registrar or any person subordinate to him empowered by the Registrar in this behalf on the application of a Co-operative society make an order directing the payment of any debt or outstanding demand due to the society by any member or past or deceased member, by sale of the property or any interest therein, which is subject to a charge under section 52 or Section 53

Provided that no order issued under this rule unless the member, past member or the nominee, heir or legal representative of the deceased member has been served with a notice in a manner given in rule 103.

* * * * *

The Committee recommends that in line 5 of rule 102(1), and line of proviso to rule 102(1), the word "past" be substituted by the word "Ex-member". 39

The Committee further recommends that in line 6 of rule 102(1), the word "therein" be substituted by the word "thereon". 40

Rule—104

"104 (1) Any decree holder requiring the provisions of clause (b) of section 110 to be applied shall apply to the Recovery Officer within whose jurisdiction, defaulter resides or the property of the defaulter is situated.

(2) and (3)	*	*	*	*	*
	*	*	*	*	*
	*	*	*	*	*

(4) Unless the decree holder has expressed a desire that proceedings shall be taken in particulars order as laid down in sub-rule (2) execution shall ordinarily be taken in the following manner :—

(1) Movable property of the defaulter shall be first proceeded against, but this shall not preclude the immovable property being proceeded against simultaneously in case of necessity

(11)	*	*	*	*	*	*
	*	*	*	*	*	*

(5) In the seizure and sale of movable property, the following procedure shall be observed :—

(a) The Sale Officer shall, after giving previous notice to the decree holder, proceed to the village or locality where the defaulter resides or the property to be distrained is situated and serve a demand notice to the defaulter if he is present. If the amount due together with the expenses is not at once paid, the Sale Officer 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 and day and hour at which the distrained property will be brought to sale if the amounts due are not discharged by them. If the defaulter is absent, the Sale Officer shall serve the demand notice on some adult member of his family, or on his authorised agent or when such service cannot be affected, shall affix a copy of the demand notice on some conspicuous part of his residence. He shall then proceed to make the distress and shall fix, the list of the property attached, on the usual place of residence of the defaulter endorsing thereon the place where the property may be lodged or kept and place, day and hour of sale.

(b) to (i)	*	*	*	*	*
	*	*	*	*	*
	*	*	*	*	*

- (j) At the appointed time the property shall be put up in one or more lots as the Sale Officer may consider advisable and shall be disposed of to the highest bidder :

Provided that it shall be open the Sale Officer to decline to accept the highest bid where the price offered appears to be unduly or for other reasons. Where the property is sold for more than the amount due, the excess amount, after deducting the interest and the expenses of process and the charges shall be paid to the defaulter :

*	*	*	*	*	*
*	*	*	*	*	*

(7)(i) Where the property to be attached consists of the share* or interest of the defaulter in movable property belonging to him and another as co-owners, the attachments shall be made by a notice to the defaulter, prohibiting him from transferring the share or interest or charging it in any way.

(ii) 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 Recovery Officer ordering the attachment and he held subject to his further orders.

(iii)	*	*	*	*	*	*
	*	*	*	*	*	*

(8)(i) Where the property to be attached is a decree either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made by the order of the Registrar if the decree sought to be attached was passed by the Registrar under section 103 or by an arbitrator.

(ii)	*	*	*	*	*	*
	*	*	*	*	*	*

(iii) The holder of a decree attached under sub-rule (ii) shall give the Recovery Officer executing, the decree such information and aid as may reasonably be required.

(iv)	*	*	*	*	*	*
------	---	---	---	---	---	---

(11)	*	*	*	*	*	*
------	---	---	---	---	---	---

	*	*	*	*	*	*
(a)	*	*	*	*	*	*
	*	*	*	*	*	*

(b) The demand notice issued by the Recovery Officer under sub-rule (3) shall contain the name of the defaulter, the amount due,

including the expenses, if any the time allowed for payment and in the 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. After receiving the demand notice the Sale Officer shall serve or cause to be served a copy of the demand notice upon the defaulter or upon some adult male member of his family at his usual place of residence, or upon his authorised agent or if such personal service is not possible shall affix a copy thereof on some conspicuous part of the immovable property about to be attached and sold or sold without attachment as the case may be :

*	*	*	*	*	*
*	*	*	*	*	*

(12) Where prior to the date fixed for a sale, the defaulter or any person acting on his behalf or any person claiming interest in the property sought to be sold tenders payments of the full amount due together with interest, travelling and other expenses incurred in bringing the property to sale including the expenses of attachment if any, the Sale Officer shall forthwith release the property after cancelling, where the property has been attached, the order of an attachment.

(14) (i) and (ii)	*	*	*	*	*	*
	*	*	*	*	*	*

(iii) On the expiration of thirty days from the date of sale if no application to have the sale set aside is made or if such application has been made and rejected, the said Recovery Officer shall make order confirming the sale :

Provided that if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected he may, after recording his reasons in writing set aside the sale ;

*	*	*	*	*
*	*	*	*	*

(17) Where an attachment has been made under these rules any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other money contrary to such attachment shall be void as against all claims enforceable under the attachment.

*	*	*	*	*
*	*	*	*	*

22 (i)

*	*	*	*	*
*	*	*	*	*

(ii) Where the property may, on the second sale, sell for a higher price than the first sale, the defaulting purchaser at the first sale shall have no claim to the difference or increase."

4) The Committee recommends that in line 2 of Rule 104 (1), the sign, ",", be inserted between the words "applied" and "shall."

The Committee recommends that in line 2 of Rule 104 (4) the word "particulars" be substituted by the word "particular."

The Committee recommends that in line 2 of Rule 104 (5) (a) between the words "holder" and "proceed", the words "and the defaulter" be inserted.

The Committee recommends that in line 10 of Rule 104 (5) (a), the word "them" be substituted by the word "him".

The Committee recommends that in line 1 of Proviso to Rule 104 (5) (j), between the words "open" and "the", the word "to" be inserted.

The Committee recommends that in line 2 of Proviso to Rule 104 (5) (j) after the word "unduly", the word "low" be added.

The Committee recommends that in rule 104 (7) (u) for the words "shall be brought to the office of the Recovery Officer ordering the attachment and he held subject to the further orders" the following words shall be substituted :—

"shall be deposited with the recovery officer ordering the attachment subject to further orders".

The Committee recommends that in line 2 of rule 104 (8) (i) for the word "in" appearing between the words "sale" and "enforcement" the word "or" be substituted.

The Committee recommends that in line 2 of rule 104(8)(iii) after the word "executing" the sign ",", be deleted being superfluous

The Committee recommends that in line 3 of rule 104(11) (b) after the words "if any" the sign ",", be inserted.

The Committee further recommends that in line 11 the word "about" be substituted by the word "required".

The Committee recommends that in lines 6—7 of rule 104(12) the expression "after cancelling, where the property has been attached, the order of an attachment", be recast as under :—

"after cancelling the order of an attachment in case the property has already been attached."

The Committee recommends that in line 1 of proviso to Rule 104(14)(ii) for the word "think" the word "believe", be substituted.

The Committee recommends that in line 1 of rule 104(17) between the words "rules", and "any" the sign ",", be inserted.

The Committee recommends that in line 1 of Rule 104(22)(ii) for the word "sell", the words "is sold" be substituted. 55

Rule—105

"105. (1) Every summon issued under the Act shall be in writing, shall be authenticated by 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. 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 purposes, and any particular document the production of which is required shall be described in the summons with reasonable accuracy

(2) * * * * *

(3) The service of summons under the Act on any person may be effected in any of the following ways —

(a) and (b) * * * * *

(c) if the address of such person is known to the Registrar or other authorised person, by sending it to him by registered post, or ;

* * * * *

(4) 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.

* * * * *

The Committee recommends that in lines 2 of rule 105(1) the words "shall be" be substituted by the word "duly". 56

The Committee further recommends that in line 2 the sign and words "if any," be deleted. 57

The Committee also recommends that in line 5 between the words "stated" and "time" the sign and word "date" be inserted. 58

The Committee also recommends that in the last two line the words "with reasonable accuracy" be deleted and the sign "." be added after the word "summons". 59

60 .

The Committee recommends that in the last line of rule 105 (3) (c) for the words "registered post", the words "registered post, with A D." be substituted.

61

The Committee recommends that in line 3 of rule 105 (4) for the word "require" the word "obtain" be substituted

62

The Committee further recommends that in line 4 for the words "to an" the words "as a token of" be substituted.

Rule—110

"110. Notwithstanding anything contained in these rules, the procedure laid down in this rule shall apply to a society where the Government has :—

(a) * * * * *

(b) guaranteed the principal and intt. in respect of debentures issued by the society, or

* * * * *

63

The Committee recommends that in line 1, of Rule 110 (b), for the expression "intt." the expression "interest" be substituted.

APPENDIX 'A'

(See Rule 25)

PART II

"Rules for election for Apex or Central Cooperative Societies, the Primary Cooperative Land Development Banks, Cane Growers Cooperative Societies, the Marketing or Marketing-cum-Processing Societies, Sugar Mills and Urban Banks

(3) and (4) * * * * *

(5) Election Programme. (1) The Returning Officer shall, within a period of three days of the receipt of the communication in respect of the date fixed for conducting the election, frame an election programme, specifying the date, time and place as under :—

S. No.	Programme	Date	Time	Place
1	2	3	4	5
(i)	filing of nomination papers;			
(ii)	scrutiny of nomination papers ;			
(iii)	withdrawal of nomination papers;			
(iv)	display of the list of candidates,			
(v)	allocation of symbols;			
(vi)	display of the list of contesting candidates; and			
(vii)	taking of poll, if necessary.			
(6)	* * *	*	*	*
	* * *	*	*	*

(7) Scrutiny of the nomination papers. (1) The Returning Officer shall specified scrutinise the nomination papers at the place, date and time in this behalf in the election programme, hear the objections presented if any by the objectors in person to the eligibility of any candidate and dispose of the objections after such enquiry as he may consider necessary. The decision of rejecting or accepting the nomination papers, and a brief statement of reasons thereof shall be recorded on the nomination papers and signed by the Returning Officer. While scrutinising the nomination papers, the Returning Officer may :—

(8) Withdrawal of the nomination papers :—(1) Any candidate may withdraw his nomination by a notice in writing which shall be subscribed by him and delivered to the Returning Officer before the expiry of the period of forty-eight hours after the scrutiny of nomination papers is finalised.

(9) to (13) * * * * *

(14) **Appointment of Presiding Officer etc**—The Returning Officer shall appoint a Presiding Officer for each zone for conducting the poll.

(2) The Returning Officer shall also appoint polling Officers to assist the presiding officer, and if before or at the time of poll, the Presiding Officer or the Polling Officer refuses to act or becomes incapable of acting as such the Returning Officer shall appoint another person to act as Presiding Officer or Polling Officer, as the case may be

(15) to (16) * * * * *

(17) **Candidate and his agent to be allowed to enter the polling station.**—The Presiding Officer shall allow the candidates or his agents to enter the polling station during polling except the polling compartment.

(18) to (22) * * * * *

(23) **Procedure of recording the votes**—The voter having been issued ballot paper shall be required to proceed to the Polling Compartment and shall be required to affix the rubber seal of cross mark on the election symbol of a candidate in whose favour he wishes to cast the vote. He shall insert the ballot paper duly folded in the ballot box

(24) * * * * *

(25) **Challenged Vote.**—If any candidate or polling agent declares and undertakes to prove that any person applying for a ballot paper has committed the offence of impersonation, the Presiding Officer may require such person to enter in the list of challenged votes, his name and address or if he is unable to write, to affix his thumb-impression there to any may further require such person to produce evidence of identification. If the Presiding Officer is satisfied about his identity has a voter he shall be allowed to vote. The Presiding Officer shall in every case whether or not person challenged is allowed to vote, make a note of the circumstances in the list of challenged votes in Form E as appended.

(26) * * * * *

(27) **Fresh poll in case destruction of ballot boxes or due to natural calamity etc.**—(1) If at an election, any ballot box is unlawfully taken out of the custody of the Presiding Officer or is in any way tampered with or is accidentally destroyed or lost, the matter shall be reported by the Presiding Officer to the Returning Office immediately.

* * * * *

The Committee recommends that below part II and before provision 3 the expression should be printed in bold capital letters so that it may give a distinct impression. 67

The Committee recommends that the figure "(5)" be substituted as "5". 65

The Committee further recommends that the election table mentioned in provision 5 be recast as under:— 66

Serial No.	Programme	Date	Time	Place
1	2	3	4	5

- (i) filing of nomination papers ,
- (ii) scrutiny of nomination papers :
- (iii) display of list of validly nominated candidates ;
- (iv) withdrawal of nomination papers ;
- (v) allocation of symbols;
- (vi) display of the list of contesting candidates , and
- (vii) taking of poll, if necessary

The Committee recommends that in line 2 of the provision 7 the word "specified" be deleted .

The Committee further recommends that in lines 2-3 between the words "time" and "in" the word "specified" be inserted

The Committee recommends that in lines 4 & 5 of the provision 8 for the words "of forty-eight hours after the scrutiny of nomination papers is finalised" the words "prescribed for the purpose" be substituted.

The Committee recommends that in line 3 of sub-provision (2) of provision 14 the words "refuses to act or" be deleted.

The Committee recommends that in line 1 of the provision 17 for the word "his" the word "their" be substituted.

The Committee recommends that in line 4 of provision 23, for the word "case" the word "cast" be substituted.

The Committee further recommends that in line 5 of provision 23 for the word "folder" the word "folded" be substituted.

The Committee recommends that in line 5 of provision 25 for the word "any" the word "and" be substituted.

The Committee further recommends that in the same provision in line 7 for the word "has" the word "as" be substituted

The Committee recommends that in line 4 of provision 27 (1) for the word "office" the word "officer" be substituted.

PART—III

“Procedure for election to the committees of the Primary Cooperative Societies (other than the Primary Cooperative Land Development Banks) the Cane Growers Cooperative Societies, the Marketing or Marketing-cum-Processing Societies, Sugar Mills and Urban Banks having membership exceeding three hundred

Para (36)(1)

36 Election Programme —(1) The Returning Officer shall frame an election programme and intimate the same to the Manager, specifying the date, time and place as under .—

S. No.	Programme	Date	Time	Place
1	2	3	4	5
(i)	exhibition of the list of voters as required under sub-para (2) of rule 35;			
(ii)	hearing of the objections to the list of voters, as required under sub-para (4) of Para 35 ;			
(iii)	filing of nomination papers ;			
(iv)	scrutiny of the nomination papers;			
(v)	withdrawal of the nomination papers;			
(vi)	allocation of election symbols to the candidates and display of the list of validity nominated candidates ; and			
(vii)	taking of the poll, if necessary.”.			

The Committee recommends that below Part III and before Para 34, the expression should be printed in bold capital letters so that it may give a distinct impression

The Committee further recommends that the election table mentioned in para 36 be recast as under :—

Sr. No.	Programme	Date	Time	Place
1	2	3	4	5
(i)	exhibition of the list of voters as required under sub-para (2) of Para 35;			
(ii)	hearing of the objections to the list of voters, as required under sub-para (4) of para 35;			

1	2	3	4	5
	(iii)	filing of nomination papers;		
	(iv)	scrutiny of the nomination papers ;		
	(v)	display of list of validly nominated candidates,		
	(vi)	withdrawal of nomination papers;		
	(vii)	allocation of symbols ;		
	(viii)	display of the list of contesting candidates; and		
	(ix)	taking of poll. if necessary.		

PART IV

“Procedure for election to the Committees of the Primary Co-operative Societies (other than the Primary Co-operative Land Development Banks, the Cane Growers Cooperative Societies, the Marketing or Marketing-cum-processing Societies, Sugar Mills and Urban Banks) having membership not exceeding three hundred”.

The Committee recommends that below part IV and before para 38, the expression should be printed in bold capital letters so that it may give a distinct impression

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