

Under Rule 130 of the Tamil Nadu Legislative Assembly Rules, the following Bill which was introduced in the Legislative Assembly of the State of Tamil Nadu on 7th January, 2022 is published together with Statement of Objects and Reasons for general information:—

L.A. Bill No. 11 of 2022

A Bill further to amend the Tamil Nadu Co-operative Societies Act, 1983.

WHEREAS, the Parliament had enacted the Constitution (Ninety-seventh Amendment) Act, 2011 by which Article 43B and Part IXB were inserted in the Constitution and it came into force on the 15th day of February 2012;

AND WHEREAS in order to bring the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) in line with the provisions of the Constitution, amendments were made to certain sections of that Act, by the Tamil Nadu Co-operative Societies (Amendment) Act, 2013 (Tamil Nadu Act 4 of 2013);

AND WHEREAS in 2013, the Hon'ble High Court of Gujarat had declared that Part IXB of the Constitution inserted by the Constitution (Ninety-seventh Amendment) Act, 2011 as *ultra-vires* the Constitution for want of ratification by the State Legislatures, as required under the proviso to Article 368 (2) of the Constitution;

AND WHEREAS in Union of India Vs Rajendra N Shah and another (2021(8) SCALE 332), the Hon'ble Supreme Court upheld the judgement of the Hon'ble Gujarat High Court except to the extent that it strikes down the entirety of Part IXB of the Constitution and declared Part IXB of the Constitution is operative only insofar as it concerns Multi-State co-operative societies both within the various States and in the Union territories of India;

AND WHEREAS the Government also considers that, it is expedient to do away with many of the amendments made to the Tamil Nadu Co-operative Societies Act, 1983 pursuant to the Constitution (Ninety-seventh Amendment) Act, 2011, as these amendments have only impeded the growth of the co-operative societies in the State;

NOW, THEREFORE, the Government have decided to amend the said Tamil Nadu Act 30 of 1983 for the purpose.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Tamil Nadu Co-operative Societies (Second Amendment) Act, 2022.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

Amendment of Section 2.	<p>2. In section 2 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the principal Act),—</p> <p>(1) in clause (5), the expression “State level” shall be omitted;</p> <p>(2) for clause (18), the following clause shall be substituted, namely:—</p> <p>“(18) “office bearer” means a president or a vice-president of the board;”</p>	Tamil Nadu Act 30 of 1983.
Amendment of section 13.	<p>3. In section 13 of the principal Act,—</p> <p>(1) in sub-section (1), in clause (d), in sub-clause (ii), for the expression “six months”, the expression “one year” shall be substituted;</p> <p>(2) in sub-section (2), in clause (d), in sub-clause (ii), for the expression “six months”, the expression “one year” shall be substituted.</p>	
Omission of section 20-A.	<p>4. Section 20-A of the principal Act shall be omitted.</p>	
Amendment of section 23.	<p>5. In section 23 of the principal Act, in sub-section (2), clauses (h) and (i) shall be omitted.</p>	
Amendment of section 26.	<p>6. In section 26 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—</p> <p>“(4) Notwithstanding anything contained in this section, the nominee of the Government or of the Registrar or of the prescribed authority, if he is a Government servant, or the nominee of the financing bank or of the board of another registered society or of other interests (such as the Tamil Nadu State Agriculture Marketing Board), as the case may be, or the <i>ex-officio</i> member of the board shall not be entitled to vote at elections.”.</p>	
Amendment of section 27.	<p>7. In section 27 of the principal Act, the expression “and shall have access to the books, information and” shall be omitted.</p>	
Amendment of section 32.	<p>8. In section 32 of the principal Act, in sub-section (2), for the expression “shall be held within a period of six months from the close of the financial year”, the expression “shall be held in a co-operative year” shall be substituted.</p>	
Amendment of section 33.	<p>9. In section 33 of the principal Act,—</p> <p>(1) in sub-section (1), after clause (a), the following clause shall be inserted, namely:—</p>	

“(b) Notwithstanding anything contained in clause (a), where the rules or the by-laws so provide, the Government or the Registrar may nominate all or any of the members of the board including the president and vice-president from among the members of the registered society or from among the Government servants or both:

Provided that no nomination shall be made in respect of all the members of the board for more than three years from the date of nomination.”;

(2) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The board shall consist of—

(a) in the case of an apex society, not less than eleven and not more than twenty nine members as may be specified in the rules or bye-laws;

(b) in the case of a central society, not less than eleven and not more than twenty seven members, as may be specified in the rules or bye-laws; and

(c) in the case of a primary society, not less than seven and not more than seventeen members as may be specified in the rules or bye-laws.”;

(3) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The Registrar may, by order, depute one or more officers subordinate to him to attend any meeting of a board and to take part in the proceedings of the board, but such officer or officers shall not have the right to vote.”;

(4) in sub-section (7), for the expression, “managing director or chief executive officer” in three places where it occurs, the expression “managing director” shall be substituted;

(5) in sub-section (8),—

(i) for the expression “functional director”, the expression “member” shall be substituted;

(ii) for the expression “functional directors” in two places where it occurs, the expression “members” shall be substituted;

(6) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) Every *ex-officio* member referred to in sub-section (2) and every Government servant nominated to a board of a registered society under clause (b) of sub-section (1) or under sub-section (8) shall refer to the Government in the case of an apex society, and to the Registrar in the case of any other registered society, any resolution of the board of such apex society or other registered society, as the case may be, which is not in accordance with this Act, the rules and the bye-laws or which is against the interests of such apex society or such other registered society, as the case may be.”;

(7) in sub-section (10),—

(i) in clause (a), for the expression “five years”, the expression “three years” shall be substituted;

(ii) after clause (a), the following clause shall be substituted, namely:—

(aa) Every person holding the office of member of any board constituted under this Act on the date of commencement of the Tamil Nadu Co-operative Societies (Second Amendment) Act, 2022, who has completed a term of three years on that date shall cease to hold office forthwith and who completes a term of office of three years after that date shall cease to hold office on such completion;

(8) after sub-section (11), the following sub-section shall be inserted, namely:—

“(12) Notwithstanding anything contained in this Act, where the bye-laws of a registered society so provide, the general body of such society may, with the approval of the Registrar, entrust the management of the affairs of the society for a period not exceeding three years at a time to an administrator who shall be a Government servant or an employee of the financing bank or an employee of anybody corporate owned or controlled by the Government. The administrator shall have power to exercise all or any of the functions of the board or of any officer of the society and to take such action as may be required in the interest of the society.”;

(9) for sub-section (13), the following sub-section shall be substituted, namely:—

“(13) The ordinary meetings of a board shall be held at least once in every three months for which a notice of not less than three clear days shall be given. The managing director, in consultation with the president or in his absence, the vice-president of such board, or where there is no managing director, the president shall convene the meeting of such board.”;

(10) in sub-section (14), —

(a) the expression “or the Chief Executive Officer” in two places where it occurs shall be omitted;

(b) the expression “or the Chairperson” in two places where it occurs shall be omitted;

(c) the expression “or the vice-chairperson” shall be omitted;

(11) in sub-section (15), the expressions, “or the chief executive officer” and “or the chairperson” shall be omitted;

(12) after sub-section (15), the following sub-section shall be substituted, namely:—

“(16) Notwithstanding anything contained in this Act, the nominee of the Government or of the Registrar or of the prescribed authority, if he is a Government servant or the nominee of the financing bank to a board of a registered society or the nominee of the board of another registered society or other interests (such as the Tamil Nadu State Agricultural Marketing Board), or the *ex-officio* member of the board shall not be eligible to contest for any election in any registered society in his capacity as such member of that board.”.

10. In section 33-A of the principal Act,—

Amendment
of section
33-A.

(1) in sub-section (4), for the expression “five years”, the expression “three years” shall be substituted;

(2) in sub-section (4), after the proviso, the following proviso shall be added, namely:—

“Provided further that, if the holder of the post of the Tamil Nadu State Co-operative Societies Election Commissioner on the date of commencement of the Tamil Nadu Co-operative Societies (Second Amendment) Act, 2022 has already completed three years of term, he shall cease to hold office on the said date;”.

11. In section 48 of the principal Act,—

Amendment
of section 48.

(1) in sub-section (2), in clause (a), for the expression “within a period of fourteen days from the date on which such deduction is made”, the expression “within such time as may be prescribed” shall be substituted;

(2) in sub-section (8), for the expression “within a period of fourteen days on which such deduction is made”, the expression “within the prescribed time” shall be substituted.

12. In section 80 of the principal Act,—

Amendment
of section 80.

(1) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) The Registrar shall audit or cause to be audited by a person authorised by him by general or special order in writing in this behalf, the accounts of every registered society once at least in every cooperative year. The Registrar shall communicate the result of the audit to the registered society concerned.

(1A) Where the audit referred to in sub-section (1) is caused to be made once in every cooperative year—

(i) the registered society shall prepare the financial statements and other details required for the completion of audit within three months from the close of its co-operative year or such further period or periods as the Registrar may permit provided that such extended period or periods shall not exceed six months in the aggregate; and

(ii) the audit shall be completed within a period of six months from the close of the co-operative year of the registered society concerned or such further period or periods as the Registrar may permit for reasons to be recorded in writing provided that such extended period or periods shall not exceed six months in the aggregate.”.

(2) in sub-section (3), for the expression, “The auditor of the Government or the auditing firms appointed”, the expression “The Registrar or the persons authorised by him” shall be substituted;

(3) in sub-section (4), for the expression “as the auditors of the Government or auditing firms appointed under sub-section (1)”, the expression “as the Registrar or the person authorised by him” shall be substituted;

(4) sub-section (9) shall be omitted.

13. Section 84-A of the principal Act shall be omitted.

Omission of section 84-A.

14. In section 88 of the principal Act,—

Amendment of section 88.

(1) for sub-section (1), the following sub -section shall be substituted, namely:—

“(1) The Registrar,—

(i) may, if he is of the opinion that the board of any registered society is not functioning properly or willfully disobeys or willfully fails to comply with any order or direction issued by the Registrar under this Act or the rules;

(ii) shall, where for two consecutive co-operative years—

(a) in the case of a financing bank, more than sixty per cent of the total dues of the financing bank from its members remain unpaid or the number of defaulting members of such financing bank exceeds sixty per cent of the total number of members indebted to such bank, and

(b) in the case of other registered societies, more than seventy per cent of the total dues to the registered society from its members remain unpaid or the number of defaulting members of such registered society exceeds seventy per cent of the total number of members indebted to such society, after giving the board of the registered society or the financing bank, as the case may be, an opportunity of making its representations,

by order in writing, supersede the board and appoint a Government servant or an employee of anybody corporate owned or controlled by the Government (hereinafter referred to as 'the special officer') to manage the affairs of the society for a specified period not exceeding one year:

Provided that an order under this sub-section shall 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 shall not exceed six months in the aggregate:

Provided further that in computing the total dues remaining unpaid for the purpose of item (ii), 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:

Provided also that for the purpose of computing the number of defaulting members referred to in item (ii), any member who is not liable to pay any instalment 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.

(1A) The period specified in the order referred to in sub-section (1) may, at the discretion of the Registrar, be extended, from time to time, provided that such order shall not remain in force for more than two years in the aggregate."

(2) in sub-section (2),—

(a) for the expression "an administrator", the expression "a special officer" shall be substituted;

(b) for the expression "administrator", the expression "special officer" shall be substituted;

(3) in sub-section (3), for the expression "administrator", the expression "special officer" shall be substituted;

(4) in sub-section (4), for the expression "administrator", the expression "special officer" shall be substituted;

(5) in sub-section (5), for the expression "administrator", the expression "special officer" shall be substituted;

(6) in sub-section (8), for the expression "administrator", the expression "special officer" shall be substituted;

15. In section 89 of the principal Act,—

Amendment of
section 89.

(1) in the marginal heading, for the expression "administrator" the expression "special officer" shall be substituted;

(2) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where,—

(i) the term of office of the board of any registered society has expired and a new board cannot be constituted in accordance with the provisions of this Act, the rules and bye-laws; or

(ii) the new board constituted fails to enter, or is prevented from entering upon office on the expiration of the term of office of the earlier board; or

(iii) the existing board has tendered resignation en-bloc; or

(iv) (a) vacancies have arisen for any reason, or

(b) one or more members of the board have tendered resignation and the number of remaining members cannot form the quorum for the meeting of the board,

the Registrar may, of his own motion or on application of any member of the registered society, and in the case of a new board which has failed to enter, or prevented from entering, upon office, after giving the members of the said board an opportunity of making their representations, by order, appoint a Government servant or an employee of any body corporate owned or controlled by the Government (hereinafter referred to as the special officer) for a specified period not exceeding six months to manage the affairs of the registered society pending the constitution of a new board, or as the case may be, the entering upon office by the new board:

Provided that the period specified in such order may, for special reasons to be recorded in writing by the Registrar, be extended from time to time, but such period as extended, shall not exceed one year in the aggregate.”;

(3) in sub-section (2), for the expression “an administrator”, in two places where it occurs, the expression “a special officer” shall be substituted.

16. After section 89 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 89-A.

“89-A.Exclusion of time in certain cases.— In computing the period referred to in sub-section (1A) of section 80, sub-section (4) of section 81, sub-section (4) of section 82, the second proviso to sub-section (1) of section 87, the first proviso to sub-section (1) of section 88 or sub-section (1) of section 89, any period or periods during which any proceeding was held up on account of any stay or injunction by an order of any court shall be excluded.”

17. In section 91 of the principal Act, in clause (iii), for the expression "one year" the expression "five years" shall be substituted. Amendment of section 91.

18. In section 161 of the principal Act,— Amendment of section 161.

(1) for sub-section (1), the following sub-section shall be substituted namely:—

"(1) Any officer of a registered society or an employee or paid servant or any member of such society, who uses or allows the use of the properties, other than funds of any society otherwise than in accordance with the provisions of this Act, the rules or the bye-laws of the society, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both."

(2) in sub-section (2), for the expression "administrator", the expression "special officer" shall be substituted.

19. In section 165 of the principal Act,— Amendment of section 165.

(1) for the expression "an administrator", the expression "a special officer" shall be substituted;

(2) for the expression "administrator" in three places where it occurs, the expression "special officer" shall be substituted.

20. In section 169 of the principal Act, for the expression "sub-section (8) of section 33", the expression "clause (b) of sub-section (1) of section 33 or sub-section (8) thereof" shall be substituted. Amendment of section 169.

21. In section 170 of the principal Act, in clause (a), for the expression "sub-section (1) of section 88", the expression "sub-section (1A) of section 88" shall be substituted. Amendment of section 170.

STATEMENT OF OBJECTS AND REASONS

Article 43-B and Part IX-B were inserted in the Constitution by the Constitution (Ninety-seventh Amendment) Act, 2011 and came into force on the 15 day of February 2012. The Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) was amended on the lines of the constitutional provisions as amended by the Constitution (Ninety-seventh Amendment) Act 2011 vide Tamil Nadu Act 4 of 2013. The Supreme Court in Union of India Vs. Rajendra N Shah and another [2021 (8) SCALE 332] has upheld the Gujarat High Court's decision in W.P.(PIL)No.166 of 2012, dated the 22nd April 2013, declaring the said Part IX-B as ultra vires of the Constitution of India, in so far as it concerns the Co-operative societies.

2. Several complaints have been received from the public and members of co-operative societies alleging financial irregularities and frauds in co-operative societies. A review of the functioning of co-operative societies has revealed large scale misappropriation of funds, issue of loans on fake jewels and issue of bogus loans of several crores of rupees, etc.

3. The Government, therefore, with a view to protect the interests of the Co-operative Societies, to streamline their administration, ensure proper governance and to increase the efficacy of the functioning of Co-operative Societies have decided to reduce the term of office of the Board of directors of the societies from five years to three years and to restore some of the provisions that existed in the said Tamil Nadu Co-operative Societies Act, 1983 prior to the amendments made in consonance with the provisions in Part IX-B of the Constitution by undertaking legislation.

4. The Bill seeks to give effect to the above decision.

I. PERIYASAMY,
Minister for Co-operation.

Secretariat,
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7th January 2022.

K. SRINIVASAN,
Secretary.