



NINTH REPORT

SECOND ADMINISTRATIVE REFORMS COMMISSION

SOCIAL CAPITAL *- A Shared Destiny*

AUGUST 2008



GOVERNMENT OF INDIA

SECOND ADMINISTRATIVE REFORMS COMMISSION

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– A Shared Destiny

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PREFACE

“A government builds its prestige upon the apparently voluntary association of the governed.”

– Mahatma Gandhi

“Government control gives rise to fraud, suppression of truth, intensification of the black market and artificial scarcity. Above all, it unmans the people and deprives them of initiative; it undoes the teaching of self-help.”

– Mahatma Gandhi

Robert Putnam, one of the pioneers in the use of the term “social capital”, has defined it thus:

“Whereas physical capital refers to physical objects and human capital refers to the properties of individuals, social capital refers to connections among individuals – social networks and the norms of reciprocity and trustworthiness that arise from them. In that sense social capital is closely related to what some have called “civic virtue”. The difference is that “social capital” calls attention to the fact that civic virtue is most powerful when embedded in a sense network of reciprocal social relations. A society of many virtuous but isolated individuals is not necessarily rich in social capital.”

– Putnam 2000

“Social capital is not just the sum of the institutions which underpin a society – it is the glue that holds them together.”

– (The World Bank 1999)

India has a rich history and tradition of both voluntary action and philanthropy as well as of Professional Bodies and cooperatives formed to promote the social and economic welfare of its members. While many of these traditional institutions declined under colonial rule, the Independence struggle saw a revival of interest in these Bodies under the strong influence of Gandhiji who was a lifelong advocate of voluntary action and small government, much before this became a paradigm espoused by leading economists in the West.

In the Indian context, the key institutions that can be said to contribute to the development of social capital range from grass roots level community based initiatives like Residents Welfare Associations and Self-Help Groups, and Cooperatives of various types to Voluntary Organisations, Charitable Societies and Trusts as well as Self-Regulating Professional Bodies such as the Medical Council of India, Bar Council etc. As far as the corporate sector is concerned, the alignment of business operations with social values, which is the essence of Corporate Social Responsibility (CSR), is at the heart of its ability to contribute to social development alongside economic development. It takes into account the interest of stakeholders in the company's business policies and actions. Corporate contribution to society, environment and business when guided by enlightened self-interest improves quality of life for all. CSR focuses on the social, environmental and financial success of a company – the so-called triple bottom line – with the aim to achieve social development while achieving business success.

Given the millions of Indians living below the poverty line – the ‘bottom of the pyramid’ – “the recent UNDP initiative focusing on companies that can provide services to the nearly 4 billion people who survive on a dollar a day, and in the process, also create new business opportunities for themselves is of great importance in India's fight against poverty”. The Report entitled ‘Creating value for all: strategies for doing business with the poor’ also offers strategies and tools for companies to expand beyond traditional business practices and bring in the world's poor as partners in growth and wealth creation.

The Report concludes that “The poor have a largely untapped potential for consumption, production, innovation, and entrepreneurial activity” and it offers significant insights for countries like India where approximately* 25% of the population is below the poverty line and the government is trying hard to promote inclusive growth in order to bring them into the mainstream.

The Report outlines five strategies that private businesses have successfully used to overcome obstacles while doing business with the poor. These include adapting products and services to the needs of the poor; investing in infrastructure or training to remove market constraints; leveraging the strengths of the poor; working with similarly minded businesses and non-profit organisations; and engaging in policy dialogues. These strategies acknowledge the need to tap the inherent strengths of the poor, their entrepreneurship as well as their traditional skills and

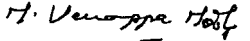
social networks, to help them stand on their own feet. In a sense this strategy seeks to leverage the social capital available in Indian society, particularly among these underprivileged groups, to lift them out of poverty.

In the corporate sector the concept of a shared destiny is increasingly used with the objective of bringing together all stakeholders and to move beyond the traditional management philosophy of strategy-structure-systems to purpose-process-people. In fact, the concept of a 'a shared destiny' must be infused in the society as a whole to generate a wave of social capital which can transform India not only into an economic powerhouse but also into an integrated, peaceful, caring and giving society.

The diverse strands that form the social capital of India underpin the material wealth and progress of the nation and contribute to the economic and social well being of its people in a broader, more real, sense. There is also some evidence in academic research which indicates that— within India, a State's endowment of social capital does affect the ability of that State to reduce poverty and successfully implement development programmes.

In this Report on Social Capital, the Commission has explored the evolution and growth of institutions that lie at the base of social capital in India; with particular reference to Societies, Trusts/ Charitable Institutions, Waqfs and Endowments, Voluntary Organisations at the grass roots levels such as Self-Help Groups, Self-Regulatory Authorities and Co-operatives. The Commission has examined these institutions in the context of their present legal underpinnings, their institutional designs, their interface with government and with other stakeholders; their respective roles and functions, their strengths and weaknesses and the reform agenda that should be charted out for these institutions. The recommendations made by the Commission spell out the changes required in the legal framework, as well as in the administrative structure and government policies to bring about independence, integrity, transparency, credibility and dynamism to these institutions.

New Delhi
August 08, 2008


(M. Veerappa Moily)
Chairman

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

Resolution

New Delhi, the 31 August, 2005

No. K-11022/9/2004-RC. — The President is pleased to set up a Commission of Inquiry to be called the Second Administrative Reforms Commission (ARC) to prepare a detailed blueprint for revamping the public administration system.

2. The Commission will consist of the following :

- (i) Shri Veerappa Moily - Chairperson
- (ii) Shri V. Ramachandran - Member
- (iii) Dr. A.P. Mukherjee - Member
- (iv) Dr. A.H. Kalro - Member
- (v) Dr. Jayaprakash Narayan - Member*
- (vi) Smt. Vineeta Rai - Member-Secretary

3. The Commission will suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government.

The Commission will, inter alia, consider the following :

- (i) Organisational structure of the Government of India
- (ii) Ethics in governance
- (iii) Refurbishing of Personnel Administration
- (iv) Strengthening of Financial Management Systems
- (v) Steps to ensure effective administration at the State level
- (vi) Steps to ensure effective District Administration
- (vii) Local Self-Government/Panchayati Raj Institutions
- (viii) Social Capital, Trust and Participative public service delivery
- (ix) Citizen-centric administration
- (x) Promoting e-governance
- (xi) Issues of Federal Polity
- (xii) Crisis Management
- (xiii) Public Order

Some of the issues to be examined under each head are given in the Terms of Reference attached as a Schedule to this Resolution.

4. The Commission may exclude from its purview the detailed examination of administration of Defence, Railways, External Affairs, Security and Intelligence, as also subjects such as Centre-State relations, judicial reforms etc. which are already being examined by other bodies. The Commission will, however, be free to take the problems of these sectors into account in recommending re-organisation of the machinery of the Government or of any of its service agencies.

5. The Commission will give due consideration to the need for consultation with the State Governments.

6. The Commission will devise its own procedures (including for consultations with the State Government as may be considered appropriate by the Commission), and may appoint committees, consultants/advisers to assist it. The Commission may take into account the existing material and reports available on the subject and consider building upon the same rather than attempting to address all the issues ab initio.

7. The Ministries and Departments of the Government of India will furnish such information and documents and provide other assistance as may be required by the Commission. The Government of India trusts that the State Governments and all others concerned will extend their fullest cooperation and assistance to the Commission.

8. The Commission will furnish its report(s) to the Ministry of Personnel, Public Grievances & Pensions, Government of India, within one year of its constitution.

Sd/-

(P.I. Suvrathan)

Additional Secretary to Government of India

*Dr. Jayaprakash Narayan – Member, resigned with effect from 1st September, 2007
(Resolution No. K.11022/26/207-AR, dated 17th August, 2007).

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

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RESOLUTION

New Delhi, the 24 July, 2006

No. K-11022/9/2004-RC (Vol.II) – The President is pleased to extend the term of the second Administrative Reforms Commission by one year upto 31.8.2007 for submission of its Reports to the Government.

Sd/-
(Rahul Sarin)
Additional Secretary to the Government of India

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

RESOLUTION

New Delhi, the 17 July, 2007

No.K-11022/26/2007-AR – The President is pleased to extend the term of the second Administrative Reforms Commission (ARC) by seven months upto 31.3.2008 for submission of its Reports to the Government.

Sd/-
(Shashi Kant Sharma)
Additional Secretary to the Government of India

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

RESOLUTION

New Delhi, the 14 February, 2008

No.K-11022/26/2007-AR – The President is pleased to extend the term of the second Administrative Reforms Commission (ARC) by six months upto 30.9.2008 for submission of its Reports to the Government.

Sd/-
(Dhruv Vijai Singh)
Additional Secretary to the Government of India

ORGANISATION

Second Administrative Reforms Commission

1. Shri M. Veerappa Moily, Chairman
2. Shri V. Ramachandran, Member
3. Dr. A.P. Mukherjee, Member
4. Dr. A.H. Kalro, Member
5. Smt. Vineeta Rai, Member-Secretary

Officers of the Commission

1. Shri A.B. Prasad, Joint Secretary
2. Shri P.S. Kharola, Joint Secretary
3. Shri R.K. Singh, PS to Chairman
4. Smt. Ruchika Choudhary Govil, Director*
5. Shri Sanjeev Kumar, Director
6. Shri Shahi Sanjay Kumar, Deputy Secretary

* This post of Director was temporarily transferred from the Department of Personnel & Training for a period 04.02.2008 to 08.10.2008.

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LIST OF ABBREVIATIONS

Abbreviation Full Form

ADS	Area Development Society
AICTE	All India Council for Technical Education
APL	Above Poverty Line
ARC	Administrative Reforms Commission
ASSEFA	Association of Sarva Seva Farms
ASSOCHAM	Associated Chambers of Commerce and Industry in India
BCI	Bar Council of India
BPL	Below Poverty Line
BRI	Bank Rakyat Indonesia
CA	Chartered Accountant
CAF	Charities Aid Foundation
CAPART	Council for Advancement of People's Action and Rural Technology
CBO	Community Based Organisation
CDS	Community Development Society
CF	Cohesion Foundation
CII	Confederation of Indian Industry
COA	The Council of Architecture
CPC	Civil Procedure Code
CPE	Continuing Professional Education
CRISIL	Credit Rating Information Services of India Limited
CSR	Corporate Social Responsibility
CSWB	Central Social Welfare Board
DANIDA	Danish International Development Agency
DCCBs	District Central Cooperative Banks

DFID	Department for International Development (of the UK)
DRDA	District Rural Development Agency
ECS	Electronic Clearing Services
FCRA	Foreign Contribution Regulation Act
FICCI	Federation of Indian Chambers of Commerce and Industry
FMSF	Financial Management Service Foundation
FWWB	Friends of Women's World Banking
GMC	General Medical Council (of the UK)
GOI	Government of India
GTZ	Deutsche Gesellschaft fur Technische Zusammenarbei
HDFC	Housing Development Finance Corporation
HUDCO	Housing and Urban Development Corporation
ICAI	Institute of Chartered Accountants of India
ICSI	Institute of Company Secretaries of India
ICWAI	Institute of Cost and Works Accountants of India
IFAD	International Fund for Agricultural Development
IRAHE	Independent Regulatory Authority for Higher Education
IRMA	Institute of Rural Management, Anand
IT	Information Technology
ITC	India Tobacco Company
JCS	Jan Chetna Sansthan
KVIC	Khadi and Village Industries Commission
LPG	Learning Guarantee Programme
MALAR	Mahalir Association for Literacy, Awareness and Rights
MCI	Medical Council of India
MFDEF	Micro Finance Development and Equity Fund

MFIs	Micro Finance Institutions
MOA	Memorandum of Association
MOU	Memorandum of Understanding
NABARD	National Bank for Agriculture and Rural Development
NAC	National Advisory Council
NBFC	Non-Banking Finance Company
NBJK	Nav Bharat Jagiriti Kendra
NBTA	National Board of Trial Advocacy (of the USA)
NGO	Non-Governmental Organisation
NHGs	Neighbourhood Groups
NIPCCD	National Institute of Public Cooperation and Child Development
NMFSP	National Micro Finance Support Programme
NORAD	Norwegian Agency for Development Cooperation
NPA	Non-Performing Assets
NPO	Non-Profit Organisation
NREGS	National Rural Employment Guarantee Scheme
NSSO	National Sample Survey Organisation
PACS	Primary Agriculture Credit Societies
PRADAN	Professional Assistance for Development Action
PRF	Portfolio Risk Fund
PRIA	Participatory Research in India
PTR	Public Trusts Register
RMK	Rashtriya Mahila Kosh
RRB	Regional Rural Bank
RTGS	Real Time Gross Settlement System
RTI	Right to Information

SCBs	State Cooperative Banks
SCs	Scheduled Castes
SERP	Society for Elimination of Rural Poverty
SEWA	Self Employed Women's Association
SFMC	SIDBI Foundation for Micro Credit
SGSY	Swarna Jayanti Gram Swarojgar Yojana
SHG	Self-Help Group
SHPI	Self-Help Promoting Institution
SIDA	Swedish International Development Cooperation Agency
SIDBI	Small Industries Development Bank of India
SKS	Swayam Krishi Sangam
SME	Small and Medium Enterprise
SRFS	Sanghamitra Rural Finance Services
STCCS	Short-term Rural Cooperative Credit Structure
STs	Scheduled Tribes
SUDA	State Urban Development Agency
TANWA	Tamilnadu Women in Agriculture Programme
TNWDP	Tamilnadu Women's Development Project
TSOs	Third Sector Organisations
UK	United Kingdom
USA	United States of America
VO	Voluntary Organisation
WTO	World Trade Organisation

INTRODUCTION

1.1 Collective efforts and cooperative action have been a part of human behaviour right from the early days of civilisation. Gradually such collective action led to formation of small habitations, communities, villages and thereafter large cities and metropolises. They in turn, created complex social groups and governmental organisations. In course of time, government and society became too big and formalized and somewhat distant from the common man. Thus evolved a need for mutual networking and interaction for solution of issues.

1.2 The term ‘Social Capital’ was first used by L.J. Hanifan, a State Supervisor for Rural Schools in Virginia in 1916. He used it in the context of the community’s involvement in the successful running of schools.¹ As a concept, it received entry in social science literature in the 1980s. Soon it assumed an economic connotation and came to be accepted as a factor of production in the development theory. It refers to those institutions, relationships, and norms that shape the quality and quantity of a society’s interaction. It consists of trust, mutual understanding, shared values and behaviour that bind together the members of a community and make cooperative action possible. The basic premise is that such interaction enables people to build communities, to commit themselves to each other, and to knit the social fabric. A sense of belonging and the concrete experience of social networking (and the relationships of trust and tolerance that evolve) can bring great benefits to people.

Social capital now stands accepted as a necessary element of development theory. In many cases it provides a cogent explanation for the failure of economic policies. The notion that a set of macro-economic policies supported by appropriate institutions would necessarily transform an economy often does not work in actual practice. Policies and institutions operate in an ensemble which is strongly conditioned by sociological parameters. Socio-cultural elements influence political and economic factors to behave in ways that considerably change the pace of the economic processes. Social Capital and Trust are elements of cohesion in society and entrepreneurship and are vital for setting in processes that expand social, economic and political opportunities. They lead to formation of specialised groups and organisations generally known as Social Capital Institutions or the third Sector.

¹Robert D Putnam – “Bowling Alone”

1.3 Theoretically, social capital organisations are supposed to play four crucial roles in society:²

- (i) **The Service Role:-** It encourages people to cope with a public problem at the primary level. People tend to let non-profit organisations lead the way in responding to critical public needs. The non-profit sector thus functions as a first line of defense, a flexible mechanism through which people concerned about a social or economic problem can begin to respond, without having to convince a majority of their fellow citizens that the problem deserves a more general, government response. Non-profit organisations are also available to sub-groups of the population who desire a range of public goods that exceeds what the government or society is willing to support. Non-profit organisations have a readymade role in planning hospitals, universities, social service agencies and civil organisations.
- (ii) **The Value Guardian Role:-** The role of the non-profit sector is to function as a “value guardian” in society, as exemplar and as embodiment of a fundamental value emphasizing individual initiative for the public good just as private economic enterprises serve as vehicles for promoting individual initiative for the private good. In the process, non-profit bodies foster pluralism, diversity and freedom. These values go much beyond purposes such as improving health or enhancing school enrolment. They are important as expressions of what has come to be regarded as a central feature of modern society – a sphere of private action through which individuals can take initiative, express their individuality, and exercise freedom of expression and action.
- (iii) **The Advocacy/Social Safety-Valve Role:-** Non-profit organisations also play a vital role in mobilizing public attention to societal problems and needs. They are the principal vehicle through which communities can give voice to their concerns. In fact, most of the social movements that have animated western society over the past century – the movement for women’s suffrage, protection of civil rights and the initiative to protect environment, all took shape within the non-profit sector. By highlighting social and political concerns, by giving voice to under-represented people and by integrating these perspectives into social and political life, these organisations function as a kind of safety-valve that helps to preserve democracy and maintain a degree of peace in the contemporary polity and society.
- (iv) **The Community Building Role:-** Finally, non-profit organisations play a vital role in creating and sustaining social cohesiveness through bonds of trust

and reciprocity that seem to be pivotal for a democratic society and a market economy to function effectively.

1.4 There are several ways in which social capital can improve government performance. First, it can broaden government accountability; government must be responsive to citizens at large rather than to narrow sectarian interests. Secondly, it can facilitate agreement where political preferences are polarized. Thirdly, it induces innovation in policymaking. Finally, it enhances the efficiency of delivery of many services at the local level through involvement of residents.

1.5 Accountability of the government is the most important means by which social capital influences performance. Trust and civic minded attitudes can improve governmental performance by affecting the level and character of political participation, reducing “rent-seeking” and enhancing public-interested behaviour.

1.6 Social capital can bring convergence among different players on important issues. Political leaders in the developed regions are more willing to compromise with the views of opponents. Where trust and norms of reciprocity are stronger, opposing sides are more likely to sit together and resolve their disputes. On the other hand, where fewer citizens are motivated by a sense of civic obligation to stay informed and to participate in political life, the chances of a dispute settlement between two opposite sides become weak.

1.7 Social capital also leads to greater innovation and flexibility in policymaking. The more civic regions are far more successful than the less civic regions in responding to problems and challenges of the community and the State.

1.8 Public service delivery can be efficiently administered, if social network groups are in operation and they mobilise people around common issues. Women’s Self-Help Groups / Micro-Credit Institutions in Andhra Pradesh and Tamil Nadu and Kudumbashri in Kerala are fine examples of collective participation which have led to better implementation of development programmes in these States.

1.9 In concrete terms, the growth of social capital leads to evolution of a healthy civil society manifesting as a distinct entity in the space between public sector (government) and the business (markets) – often called the third sector or non-profit sector. Depending on the strength and vivacity of civil society, third sector organisations can assume the following four major forms:-

- (a) Small community based initiatives with modest funding e.g. Resident Welfare Associations. Such a network is usually dependent on pure voluntary action of

the group. But, if the group seeks to expand its activities, it will need external financial support.

- (b) Large structured groups with well defined organisational patterns and goals. They do not have an apparent profit motive, but generally work on financially sustainable basis. Such an organisation does have a financial base of its own, but often gets considerable support from external agencies as well e.g. Societies, Trusts, and Waqfs.
- (c) There is a third category which is in business, but for certain well defined social objectives. In such organisations, surpluses are ploughed back and reinvested in the activity itself. They may need to interact with the government also e.g. Cooperatives.
- (d) The fourth set of social capital institutions are regulatory professional groups/ associations consisting of qualified people who join together to run their profession in accordance with certain laid down principles and policies e.g. the Bar Council of India and the Institute of Chartered Accountants.

1.10 Though, social capital as an element of human entrepreneurship came into focus in the western world only during the last two decades, cohesiveness and community institutions have been part of life and culture in our country right from the early days of Indian civilisation. The archeological remains at Mohenjodaro and Harappa indicate existence of an advanced form of community life where people were linked extensively both socially as well economically with one another. The management of village commons, streets, irrigation tanks, ponds etc. was based primarily on a spirit of cooperation and mutual assistance. The Maurya and Gupta empires saw emergence of effective community organisations in the form of Sabhas and Village Councils, where local citizens could sort out many of their problems through mutual understanding and consultation. In the far South, it was the Sangam era lasting for about seven centuries between 200 BC to 500 AD when the first signs of organised inter-community and intra-community systems and the concept of State sector appeared. During the later periods, under the rule of the Chalukyas, Pallavas, Cholas and Pandyas, merchants, artisans and peasants jointly participated in the activities of the 'nadu' and 'periyanaadu' and created new community and social formations that were explicitly visible till as late as the 15th century under the Vijayanagar rule.

1.10.1 Through the rise and fall of empires, this environment of mutual interaction and cooperative behaviour continued and to a large extent it may be given the credit of sowing the seeds of social and cultural nationalism across the sub-continent.

1.11 In its terms of reference pertaining to (TOR No. 8) “Social Capital, Trust and Participative public service delivery”, the Commission has been specifically required to look into the following:

- a) Ways of investing and promoting social capital at all levels of government as an instrument of enhancing governmental effectiveness.
- b) Improve and strengthen the capability of the administration to proactively partner with local community, particularly in remote areas.
- c) Better synergy between the government and the Civil Society Institutions.
- d) Increase the people-centric ness of the administrative approaches.
- e) Ensuring greater involvement of people’s representatives and community at large in the conceptualisation and execution of programmes.

1.12 The Commission has examined items (a), (b) and (c) in considerable detail in this Report. All forms of social capital institutions which are currently in existence on the basis of either State enactments or Union laws have been discussed in the context of their institutional design, regulatory environment and their interface with the government. Chapter 3 of this Report deals with issues concerning Societies and Trusts. The Commission has suggested drafting of a model law which could be enacted by the State Governments with minor modifications. The Report also suggests some changes with regard to registration and exemption of these Bodies under various provisions of the Income Tax Act. The Commission has also examined the Foreign Contribution Regulation Act (FCRA), 1976 and the Foreign Contribution Regulation Bill, 2006 in detail and has suggested amendments in the latter. One of the key recommendations stipulates that organisations receiving foreign contribution equivalent to less than Rs.10.0 lakh in a year (the figure to be reviewed from time to time) should be exempt from registration and other reporting requirements. The organisations, instead, should be asked to file an annual return of foreign contributions received by them and its utilisation at the end of the year. This step will allow the authorities to concentrate more on organisations receiving larger foreign funding. It is also proposed in this Chapter that there is need to set up an independent accreditation agency for the voluntary sector. Chapter 4 of the Report deals with the growth and expansion of SHG (Self-Help Group) movement in India. Here the Commission recommends stepping up efforts to form more and more such groups in the less financially included areas. It has to be accompanied by suitable expansion of the NABARD network. The Commission has also taken note of the sentiments expressed by various civil society/stakeholders groups on the Micro-Financial Sector (Development and Regulation) Bill, 2007 and suggests that there is need to modify some of its provisions. Chapter 5 of the

Report covers the functioning of Self-Regulatory Authorities like the Bar Council of India (BCI), the Medical Council of India (MCI), the Institute of Chartered Accountants of India (ICAI), the Institute of Cost and Works Accountants of India (ICWAI) etc. The Report has suggested that there is need to hive off professional education from their domain. In order to bring transparency and credibility in their functioning, there is a suggestion to nominate 'lay' members in the Governing Bodies of these organisations. In Chapter 6, the Commission has dealt with Cooperatives. The Report extends full support to various measures suggested by the Vaidyanathan Committee. The Commission has also gone into the issues of Producer Companies and suggested that they need to be strengthened so that more and more of existing cooperative societies and other joint venture organisations could convert themselves into Producers Companies in due course.

Items 8.3 and 8.4 of this TOR (d and e of Para 1.11) of the terms of reference primarily concern issues of citizens' involvement in governance; they will be dealt separately by the Commission in its Report on 'Citizen Centric Administration'.

1.13 In order to ascertain the views of various stakeholders on issues connected with the functioning of social capital institutions in India, the Commission organized a National Workshop on this subject in December, 2006 at Anand in collaboration with the Institute of Rural Management, Anand (IRMA), Gujarat. The details of this Workshop are at Annexure-1. The Commission was greatly benefited by the inputs provided by the participating academicians, intellectuals, activists and government representatives. The Commission would like to place on record its gratitude to all of them. Later, the Commission and its officials held separate discussions with the Medical Council of India, the Bar Council, Charity Commissioners of Maharashtra and Gujarat, and several representatives of charity organisations. Their views and suggestions have been of immense help to the Commission in formulating its recommendations. The Commission is thankful to the Secretary and officers of the Department of Financial Services, Ministry of Finance for their valuable inputs. The Commission also thanks the Ministry of Home Affairs for their inputs on the issue of foreign contribution to voluntary organisations. The Commission appreciates the efforts made by the two nodal institutions – (a) Institute of Rural Management, Anand and (b) Institute for Social and Economic Change, Bangalore in identifying the core issues which have been utilized in preparation of this Report. In this connection, the Commission would like to acknowledge the contributions of Mrs. Neelima Khetan and Prof. Debi Prasad Mishra (both from IRMA) and Dr. Satyanarayan Sangita (from ISEC, Bangalore). The Commission would also like to express its thanks to Shri Vijay Mahajan, BASIX, Shri Rama Reddy, Cooperative Development Foundation, Hyderabad and Shri N.V. Belavadi, National Dairy Development Board who provided significant inputs to the Commission on Micro-Finance, Cooperatives and Producer Companies respectively.

EVOLUTION AND GROWTH

2.1 As already stated, the term social capital came into the Western lexicon in the later half of the 20th century but, in some form, it has been a necessary element of agrarian life in India right from the early days of our civilisation. The Rigveda refers to some elements of collective social entrepreneurship which manifested in the form of charity / faith based philanthropy as a duty and responsibility of a conscious human being. During the reign of the Mauryas and Guptas (4th century BC to 5th century AD) and even later, a strong village community based on collective entrepreneurship and social cohesion was in existence across the country. The modern concept of social capital may partly be thought of as an offshoot of the above tradition of (i) charity / faith based philanthropy; and (ii) strong and cohesive community life.

2.2 Social Action Groups and Self-Help Movement

2.2.1 In later years, with the emergence of the Industrial Revolution in Europe, political ideas of equality, human rights and social welfare led to formation of intellectual groups and thereafter of organisations which started taking up issues of social concern. In India, such social action groups began taking shape in the early 19th century. The socio-cultural regeneration in 19th century India was occasioned by the colonial presence, but not created by it³. Ideas of social reform combined with national sentiment led to the formation of Societies and Sabhas such as the Brahmo Samaj, Arya Pratinidhi Sabha, Arya Samaj, Prathana Sabha, Indian National Social Conference etc. Important social figures like Raja Ram Mohan Roy, Keshav Sen, Dayanand Saraswati, Jyotiba Phule and Mahadev Govind Ranade provided leadership to this movement to take up issues to combat social bigotry, unequal status of women, the caste system, irrational beliefs and practices based on superstition. The Ahmediya and Aligarh movements, the Singh Sabha and the Rehnumai Mazdeyasana Sabha represented the spirit of reform among the Muslims, the Sikhs and the Parsees respectively. Religion being the dominant ideology of the period, to some extent, it influenced the growth of the reform movement in the country. But, by and large, contemporary social action groups were inherently driven by intellectual and rational intentions. They created organisational structures which were solidly based on social support and participation.

³Book titled "India's Struggle for Independence" by Shri Bipin Chandra

2.2.2 During the struggle for Independence the whole emphasis of the Gandhian movement was on self-help and cooperation. The cooperative movement gained momentum as a part of such self-help ethos embedded in the independence movement. To Gandhiji the swadeshi movement was “the greatest constructive and cooperative movement in the country”. In propagation of khadi and village industries, he found “the panacea for India’s growing pauperism” and “an object lesson in cooperation⁴”. Gandhiji looked at cooperation as a moral movement.

2.3 Corporate Foundations

2.3.1 Towards the end of the 19th century the corporate community in India also began setting up organisations dedicated to the welfare and development of the underprivileged. The J N Tata Endowment Trust was established in our country in 1892, much before Rockefeller and Carnegie set up their philanthropic foundations in the USA. A major contribution of this endowment was the establishment of the Indian Institute of Science at Bangalore. In the coming years, such business philanthropy led to substantial action in the field of art, social work and education and within a span of the next fifty years, a large number of Corporate Trusts and Societies came into existence at major industrial and business centres of the country. The JJ School of Arts, Tata Institute of Social Sciences, Tata Institute of Fundamental Research, Birla Institute of Technology, Sri Ram College of Commerce and many more such institutions were set up in metropolitan cities.

2.4. Socio-Political Movement and Growth of Constitutionalism and Equity

2.4.1 On the socio-political front, Vinoba Bhave’s Bhoodan and Jai Prakash Narain’s Sarvodaya movement were the two major voluntary action initiatives which caught the attention of people across the country in the 1950s and 60s. These movements were based on a large network of selfless and dedicated volunteers who were deeply impressed by the ideology of the above two great figures.

2.4.2 Towards the 1970s and 1980s, the growth of constitutionalism and the emergence of economic liberalisation fueled ideals of equity, human rights and expansion of economic opportunities. The environment of liberalism led to a recognition that people needed to be empowered through social action network. This supported emergence of newer categories of charities and voluntary action groups in our country. Currently, most of these organisations are active in sectors of social and community advancement; promotion of human rights, public health, maternal and child health care; expansion of education; scientific promotion, culture, arts and heritage; amateur sports; environmental protection; child rights and

improvement of service delivery in urban areas. These organisations have made a positive impact on all aspects of citizen-government interface in the country.

2.5 Cooperatives

2.5.1 In the early years of the 20th century, government thought of organizing farmers into voluntary groups which could secure cheap farm credit on a collective basis and thus save them from usurious practices of money lenders. Thus, cooperative societies were born. A legislation was enacted in 1904 titled the “Cooperative Credit Societies Act, 1904”. The inspiration for this Act had come from the success of the cooperative movement in Europe. Though, the first steps in this direction were initiated by the government, the concept received excellent response from rural India and within a few years a number of cooperative societies were in existence in large parts of the country. The Act was further refined in 1912. Provinces like Bombay, Madras, Bihar, Orissa and Bengal made all out efforts to expand cooperatives in their territory and made their own enactments on the pattern of the 1912 Act. The Reserve Bank of India which was established in 1934 had agriculture credit as one of its primary functions and by extending refinance facility to the village cooperative system it played an important role in spreading the cooperative movement to all corners of the country. After Independence, the reports of the All India Rural Credit Cooperative Survey Committee (1951-54) and formation of District and Apex Cooperative Banks in the 1960s provided further fillip to this sector.

2.5.2 In order to provide legal recognition to voluntary organisations, the then Government came up with legislative enactments in the later part of the 19th century. The first in the series was the Societies Registration Act of 1860; a soft law under which institutions, if they liked, could register themselves. This legislation was followed by the Religious Endowments Act of 1863, the Indian Trusts Act of 1882 and the Charitable Endowments Act of 1890. These enactments too were rather mild, as at that stage the intention of the government was just to register the presence of such institutions; imposing strong regulatory controls was not on their mind. Towards the beginning of the 20th century, the British Government added two more legislations to this list: (i) the Charitable and Religious Trusts Act, 1920; and (ii) the Trade Unions Act, 1926.

2.6 Existing Laws

2.6.1 After Independence the Union and State Governments enacted several laws with regard to Public Trusts, Waqfs, Producer Companies, other voluntary sector / civil society organisations and cooperative societies. As on date the existing major laws on the subject are as follows:

- The Societies Registration Act, 1860
- The Indian Trusts Act, 1882
- The Charitable Endowments Act, 1890
- The Trade Unions Act, 1926
- The Charitable and Religious Trusts Act, 1920
- The Bombay Public Trusts Act, 1950
- The Waqf Act, 1954
- Section 25 of the Companies Act, 1956
- The old State Co-operative Acts and the new Mutually Aided Co-operative Societies Acts (operative in nine States)
- The Multi-State Co-operative Societies Act, 2002
- Laws on Self-Regulatory Authorities such as the Indian Medical Council Act, 1956; the Advocates Act, 1961; the Chartered Accountants Act, 1949; the Cost and Works Accountants Act, 1959; and the Architects Act, 1972
- Acts / Amendments enacted by different States after 1947

In the post-Independence period, many of the States have amended / enacted their own laws on Societies, Trusts and Cooperatives.

2.6.2 In addition, laws applicable to provision of services such as education, health, recreation and sports etc., too are applicable to the organisations which operate in those areas.

2.7 Social Capital Organisations and India's Constitution

2.7.1 The Indian Constitution provides a distinct legal space to social capital / civil society institutions (a) through its Article on the right to form associations or unions – Article 19 (1)(c); (b) through Article 43 which talks of States making endeavour to promote cooperatives in rural areas; and (c) through explicit mention in entries made in Schedule 7.

The State list – Entry 32 – “Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies”.

The Union list – Entry 43 – “Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies”.

Entry 44 – “Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities”.

Concurrent List – Entry 10 – “Trusts and Trustees”.

Entry 28 – “Charities and charitable institutions, charitable and religious endowments and religious institutions”.

2.7.2 Since forming Associations is a Constitutional right under Article 19(1)(c) of the Indian Constitution, it is quite feasible to set up a non-profit/voluntary organisation without any kind of registration or recognition under any of the entries mentioned above. In fact, some of the community based organisations like village committees, small religious groups and many Resident Welfare Associations function in this manner. However, when it comes to claiming exemptions under the Income Tax Act and for availing of other benefits from the Government, there is insistence on formal registration.

2.8 Government Policy

2.8.1 The Union Government in its National Policy on the “Voluntary Sector” (formulated by the Planning Commission and approved by the Union Cabinet in May, 2007) stipulates that “Voluntary Organisations (VOs) mean to include organisations engaged in public service, based on ethical, cultural, social, economic, political, religious, spiritual, philanthropic or scientific and technological considerations. VOs include formal as well as informal groups, such as: Community-Based Organisations (CBOs); Non-Governmental Development Organisations (NGDOs); charitable organisations; support organisations; networks or federations of such organisations; as well as Professional Membership Associations”.

2.8.2 As a first step in this process, it is necessary to clarify what exactly the non-profit/third sector in India is. One can visualise different types of organisations which are eligible

for tax exemption, ranging from business associations to charitable organisations and social clubs. But behind this wide canvas under the definition of non-profit sector, lie five critical features that all these entities share. To be considered part of the non-profit sector, therefore, an entity must be:⁵

- organisational, i.e., an institution with some meaningful structure and permanence;
- non-governmental, i.e. not part of the apparatus of government;
- non-profit-distributing, i.e., not permitted to distribute profits to its owners or directors. They are required to be ploughed back in the organisation;
- self-governing, i.e., not controlled by some entity outside the organisation; and
- supportive of some public purpose.

2.8.3 While all organisations that meet these five criteria are part of the generic non-profit sector, they may formally be placed into two distinct categories. The first category consists of pure member-centric Bodies. While serving some public purpose, they primarily exist for taking care of the interests, needs and desires of their own members. The examples are social / welfare clubs, business associations, labour unions, Professional Bodies and political parties. The second category consists of public-serving organisations which are formed to serve the needs of the general public. The examples are charitable grant-making institutions, religious formations, and a wide range of educational, scientific and other related service organisations whose activities may range from running orphanages and old age homes to managing advocacy groups on current issues.

2.8.4 This distinction between the above two sets of organisation is recognized formally by law in most of the countries and they are guided by different taxation provisions. In the USA, public-serving organisations fall into a special legal category – Section 501(c) (3) of the US Tax Code – that makes them eligible not only for exemption from federal income taxation and most State and local taxation, but also for tax-deductible gifts from individuals and corporations. Under the Indian Income Tax Act too, there exist similar provisions for ‘public service centric voluntary sector’ in the form of Sections 10 and 11 of the Act.

2.9 Civil Society as a Major Economic Force

2.9.1 With liberalisation of the economy and globalisation, there has been a phenomenal growth in the number of non-governmental organisations across the world in the last few decades. Experts say that India has more than two million NGOs, Russia four lakhs and in Kenya some 240 NGOs are formed each year. The United States has an estimated two million non-profit organisations which employ more than eleven million workers – about eight per cent of the nation's total workforce⁶. They are further supported by a large number of unpaid volunteers (about six millions) who have strong individual initiative and commitment to social responsibility. The presence of NGOs ensures depth and resilience in civil society. It gives expression to citizens' voices. It enables them to take responsibility for how their society is performing and allows them to talk to their government in organised ways. In India too, this sector is emerging at a fast pace.

2.9.2 Since non-profit sector organisations in India do not have any apex organisation (a Federation or a Union) for collection and dissemination of information, it is quite difficult to assess the scale of their operations in terms of their number or the range of their activities. As already stated, there are more than two million such organisations registered under the Societies / Trusts Acts in the country. This includes a wide diversity of local youth clubs, mahila mandals, private schools, old age homes and hospitals. How many of these are actually functional is hard to estimate. In recent years, even government organisations like DRDA and District Health Society have been registered as Societies. From the data maintained by the Central Social Welfare Board (CSWB), KVIC, CAPART and Ministry of Social Justice and Empowerment, it appears that they have been funding an estimated 10,000 different voluntary organisations in the country. A government survey in 1994 (Economic Census, 1994), estimated that sixty per cent of these organisations were concentrated in the four States of West Bengal, Tamil Nadu, Maharashtra and Uttar Pradesh⁷.

2.9.3 It is equally difficult to estimate the quantum of resources being used by this sector. As on 31.3.2006, 32,144 Associations were registered under the Foreign Contribution (Regulation) Act, 1976, out of which, 18,570 organisations reported receipt of foreign contribution amounting to Rs. 7,877.57 crores during the year 2005-06 (source: Annual Report 2005-06, Ministry of Home Affairs, Government of India). Different Ministries and Departments of the Union and State Governments have floated a vast number of schemes which fund voluntary work (Report of the Steering Committee on Voluntary Sector for the 10th Five Year Plan prepared by the Planning Commission, in January 2002). The non-governmental sector receives a large sum from these government departments and agencies including large development projects funded by bilateral and multilateral agencies – (estimated to be Rs. 7,000 crores in the year 2000-01). In addition, India has

⁶Voice of America news 25th May, 2007

⁷http://www.pria.org/showarticles.php?article_id=6&allow=1

had a long tradition of volunteering and personal giving. The non-governmental sector receives substantially from this source also. A survey by PRIA in 2001-02 on philanthropy indicated that the total annual outlay of this vast and diverse civil society sector in India could add up to more than Rs.20,000 crores per year.

2.9.4 Such a vast network of socio-economic institutions has the potential to play an important role in many key governmental policy objectives:

- (i) it can help to scale up productivity and competitiveness.
- (ii) it can contribute to inclusive wealth creation.
- (iii) enhance the people centricity of the government.

2.10 Voluntary Sector – Its Classification

2.10.1 The third sector / civil society organisations promote cooperation between two or more individuals through mutual cohesion, common approach and networking. Democracies inherently encourage such cooperative behaviour. The Indian Constitution too explicitly recognizes “right to freedom of speech and expression and to form associations or unions” as one of the core rights of its citizens under Article 19(1) and hence encourages formation of civil society groups and community organisations.

2.10.2 In the current model of economic growth, the voluntary/ civil society sector has been recognized as a key player in achieving equitable, sustainable and inclusive development goals. Both the State as well as the market-led models of development have been found to be inadequate and there is an increasing realisation that active involvement of the voluntary sector is needed in the process of nation building. They are now viewed as partners in progress. Civil society organisations function outside the conventional space of both State and Market, but they have the potential to negotiate, persuade and pressurise both these institutions to make them more responsive to the needs and rights of the citizens.

2.10.3 Based on the law under which they operate and the kind of activities they take up, civil society groups in our country can be classified into following broad categories:-

- (a) Registered Societies formed for specific purposes
- (b) Charitable Organisations and Trusts
- (c) Local Stakeholders Groups, Microcredit and Thrift Enterprises, SHGs

- (d) Professional Self-Regulatory Bodies
- (e) Cooperatives
- (f) Bodies without having any formal organisational structure
- (g) Government promoted Third Sector Organisations

2.11 Legal Standing of Social Capital / Civil Society Institutions in other Countries

2.11.1 Social capital / third sector organisations have different legal standings across the world.

2.11.1.1 Under the US laws, the formation of non-profit organisations/ charities is considered a basic right that does not depend on governmental approval. Organisations are therefore not obliged to register with any governmental authority in order to claim non-profit status and the tax privileges to which it entitles them. The approximately 750,000 organisations that comprise this core, public-benefit service portion of the American non-profit sector had operating expenditures in 1996 of approximately \$433 billion. If this set of organisations were a nation, its economy would be larger than all but about ten national economies – larger than those of Australia, India, Mexico and the Netherlands. What is more, if we were to add the volunteer labour that these organisations utilise, the total economic activity these organisations represent in the US would rise by another \$80-\$100 billion.⁸

2.11.1.2 Laws in the UK too provide a conducive environment to the social capital / third sector organisations. In England and Wales, registration of charities is compulsory unless specifically exempt or excepted from registration. Exempt charities are those that Parliament has specifically decided to exempt. They do not need to be supervised by the Charity Commissioner because other arrangements already exist to supervise and regulate them. Examples include universities, maintained schools, museums and galleries. A charity is also exempted from registration if it does not have (a) a permanent endowment; (b) use or occupation of any land (including buildings); or (c) an annual income from all sources of more than a thousand pounds.

2.11.1.3 Registration means that while the organisation remains on the Public Register of Charities, it will be legally presumed to be a charity and must be accepted as a charity by agencies such as the Inland Revenue.

2.12 From small library clubs and schools in the villages, to charity homes and educational institutions in the smaller towns, to large non-governmental outfits operating in the metropolises

⁸Lester M.Salamon – Non-profit organizations – America's invisible sector (Centre for civil society studies, John Hopkins University)

and to high budget corporate foundations, the civil society sector has taken long strides in the past six decades. It has significantly supplemented government's efforts in areas like elementary education, expansion of rural technology, primary health care and issues of urban growth. As a consequence of the growth of economy and globalisation, the third sector in the country seems to be in a rapid expansion mode, trying to contribute positively to many more issues of public concern such as supply of drinking water, soil conservation, child care, gender equality, skill training, entrepreneurship development, micro-finance etc. What these organisations need for their further growth is an environment of support.

SOCIETIES, TRUSTS / CHARITABLE INSTITUTIONS, WAQFS AND ENDOWMENTS

3.1 Legal and Institutional Framework

3.1.1 Legal Context

3.1.1.1 The law concerning Societies, Trusts, Waqfs and other endowments in India can be placed in three broad groupings:

- (i) Societies registered under the Societies Registration Act, 1860 and various States amendments on it after 1947;
- (ii) Those engaged in pure religious and charitable work registered under the Religious Endowments Act, 1863; the Charitable and Religious Trusts Act, 1920; the Waqf Act, 1995 and similar other State Acts;
- (iii) Trusts and charitable institutions registered under the Indian Trusts Act, 1882; Charitable Endowments Act, 1890; the Bombay Public Trusts Act, 1950; and similar other State Acts.

The main features of these enactments are indicated in the Table at Annexure III (1).

3.1.1.2 In addition to meeting the requirements of legislation as listed in the Table at Annexure III (1), charitable organisations are also required to follow the provisions of law as applicable to their functional areas. For example, those working in the health sector need to follow the laws applicable to that sector. Similarly, organisations working on environment protection will have to abide by the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Forest (Conservation) Act, 1980 etc.

3.1.1.3 Societies

3.1.1.3.1 Modelled on the English Literary and Scientific Institutions Act, 1854, the Societies Registration Act was enacted in India in 1860. Towards the middle of the 19th century coinciding with the 1857 event, a number of organisations and groups were established

in the country on contemporary issues of politics, literature, arts and science. The above law was enacted partly to give such organisations a legal standing and partly, to enable the colonial government to maintain a watch on them. But, the Act was not intrusive at all and it gave full freedom to the Societies/organisations which chose to register with the government.

Purpose for formation of Societies under the Societies Registration Act, 1860 :

It provides for formation of a Society for any literary, scientific, or charitable purpose, or for any such purpose as is described under Section 20 of the Act. In terms of Section 20, the following Societies may be registered under this Act:

*“Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, *[the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.”*

3.1.1.3.2 Many States created separate authorities for registering and supervising such Societies. According to the Act, any seven persons who subscribe to a Memorandum of Association (MOA) can register a Society. The Memorandum should include the names of the Society, its objectives, the names, addresses and occupations of members subscribing to it as well as the first Governing Body to be constituted on registration. The MOA should be accompanied by a set of Rules and Regulations – this should include details such as the procedure for enrolment and removal of members, procedure for formation of the Governing Body, conduct of meetings, election and removal of office bearers, procedure for conducting annual General Body meetings, etc. The membership of the Society may be kept open (or by invitation) to anybody who subscribes to its aims and objectives, for which a fee may be charged. Although the Society can sue and can be sued, the liability of the members is limited, as no decree can be enforced against the members’ private assets. The Society has a perpetual existence and a common seal, and can sue or be sued in the name of the office bearer as prescribed under its rules. This enables its effective participation in public life.

3.1.1.3.3 A strong tenor of democracy runs through the entire Act. Alteration, extension, or abridgement of purpose of the association or any decision on amalgamation can be effected only when any such proposition is approved by three-fifth of the members present in the special meeting convened for this purpose with due notice. For dissolution of the

Society also, similar approval is required. All the documents filed by the Society with the Registrar are open to inspection by any person. This enables transparency and democratic control. Members guilty of offences against the property of the Society are punishable with imprisonment or fine.

3.1.1.3.4 Till 1947, this Act did not undergo any major change; registration remained largely a voluntary effort. Most of the Societies constituted during this period had a poor financial standing and were driven primarily by the strong intent and tenacity of the founding members. Occasionally, they could get financial support from some quarters but the overall health of such Societies stood nowhere in comparison with organisations which were set up as Trusts with considerable wealth and real estate endowments. After Independence, as a consequence of the adaptation orders 1948/50, the Act remained on the statute, but “Societies” being a subject under the State list, it came under the legislative competence of State Governments.

3.1.1.3.5 While the original Act was remarkably clear in not introducing any form of State interference into affairs of such institutions, except routine matters of filing annual statements, many of the State legislations (through post-Independence amendments) went for widespread governmental controls to deal with abuses, malfeasance and nonfeasance of Societies. The legal measures include: State’s power of enquiry and investigation; cancellation of registration and consequent dissolution of Societies; supersession of the Governing Body; appointment of administrator; dissolution; and deletion of defunct organisations. State legislations on this subject vary widely. Under Section 25 of the Karnataka Act and Section 32 of the Madhya Pradesh Act, the Registrar on his own motion, and on the application of the majority of the members of the Governing Body or of not less than one-third of the members of the Society, can hold or authorize an enquiry into the constitution, working and financial condition of the Society.

3.1.1.3.6 Some other States which have carried out major amendments in the original Act are Andhra Pradesh, Rajasthan, Tamil Nadu, West Bengal and Uttar Pradesh. The amendments mainly concern the following four issues:

1. Purpose for which Societies can be formed
2. Regulatory powers with regard to change in memorandum of association, bye-laws, alienation of property and investment, amalgamation and dissolution of the Body
3. Powers with regard to submission of annual returns

4. Powers of the State Government with regard to supersession, dissolution or cancellation of registration

3.1.1.3.7 In contrast to the original 1860 Act, the State amendments have considerably expanded the list of purposes for which Societies could be formed and the scope of State intervention in the affairs of the Societies. For example, the Karnataka Act goes much beyond the original purpose of promotion of science, literature, or the fine arts for instruction, diffusion of useful knowledge and includes many other activities connected with conservation and use of natural resources and scarce infrastructural facilities like land, power, water, forest etc. Similarly, with regard to change in the memorandum of association, bye-laws, alienation of property, investment, amalgamation and dissolution; submission of annual returns; and in matters of supersession, dissolution or cancellation of registration, the State has appropriated vast powers. Madhya Pradesh, Andhra Pradesh and Kerala are the other three States which have converted this enactment into a strongly State centric Act. A detailed comparative analysis of the State laws is given at Annexure III (2) of this Report.

3.1.1.4 Trusts, Religious Endowments and Waqfs

3.1.1.4.1 Trusts, Endowments and Waqfs are legally created as modes of property arrangement/settlement dedicated for definite charitable and religious purposes. The details with regard to their incorporation, organisational structure and distribution of functions and powers are governed by the provisions of the specific law under which they are registered. Broadly, such organisations can assume a legal personality in the following five ways:

1. By way of formal registration before the Charity Commissioner / Inspector General of Registration under the respective State Public Trusts Act e.g. the Bombay Public Trusts Act, 1950, the Gujarat Public Trusts Act, the Rajasthan Public Trusts Act etc;
2. By invoking interference of civil courts to lay down schemes for governing a Trust under Sections 92 and 93 of the Civil Procedure Code;
3. By registering the Trust deed of a Public Charitable Trust under the Registration Act, 1908;
4. By notifying an organisation in the list of Charitable Trusts and Religious Endowments which are supervised by the Endowments Commissioner of the State or by a Managing Committee formed under the Charitable Endowments Act, 1890 or under other State laws on Hindu Religious and Charitable Endowments; and

5. By creating a Waqf which could be managed under the provisions of the Waqf Act, 1995.

3.1.1.4.2 Trusts

3.1.1.4.2.1 Trust is a special form of organisation which emerges out of a will. The will maker exclusively transfers the ownership of a property to be used for a particular purpose. If the purpose is to benefit particular individuals, it becomes a Private Trust and if it concerns some purpose of the common public or the community at large, it is called a Public Trust.

3.1.1.4.2.2 The first law on Trusts came into force in India in 1882 known as the Indian Trusts Act, 1882; it was basically for management of Private Trusts.

3.1.1.4.2.3 The amended Civil Procedure Code, 1908 also took cognizance of the emerging charity scenario through Sections 92 and 93. In terms of Section 92 of the Civil Procedure Code, 1908, interference of Civil Courts could also be invoked for laying down schemes for governing a Trust, if a breach of original trust conditions is alleged. This can be done by way of a suit filed by either the Advocate-General or two or more persons having an interest in the Trust. While deciding such suits, the Court is empowered to alter the original purposes of the Trust and allow the property or income of such Trusts to be vested in the other person or Trustee for its effective utilisation in the manner laid down by the Court. Section 93 empowers the Collector to exercise these powers in a district with prior approval of the State Government.

3.1.1.4.2.4 Under Schedule 7 of the Indian Constitution, the subject 'Trust and Trustees' finds mention at Entry No.10 in the Concurrent List. 'Charities & Charitable Institutions, Charitable and religious endowments and religious institutions' find place at Entry No.28 of this list. The first legislation on this subject was enacted by the then State of Bombay in 1950. Known as the Bombay Public Trusts Act, 1950, it was meant to deal with an express or constructive Trust for either public, religious or charitable purposes or both and included a temple, a math, a Waqf, or any other religious or charitable endowment and a Society formed either for a religious or a charitable purpose or for both and registered under the Societies Registration Act, 1860 – Section 2(13).

3.1.1.4.2.5 When the erstwhile Bombay province was bifurcated into Maharashtra and Gujarat, in 1960, both the States adopted this very law to govern Trusts and other charitable institutions falling in their jurisdiction. Madhya Pradesh and Rajasthan are the other two States in the country which have enacted their own Public Trusts laws. Other States do not have such specific Public Trusts legislations. Andhra Pradesh, Tamil Nadu and Kerala

have separate Religious Endowments Acts to govern temple properties. Many States have specific legislations to manage particular endowments / charities. In all other cases, Section 92 of the Civil Procedure Code dealing with public charities prevails.

3.1.1.4.3 Religious Endowments

3.1.1.4.3.1 Religious Endowments and Waqfs are variants of Trusts which are formed for specific religious purposes e.g. for providing support functions relating to the deity, charity and religion amongst Hindus and Muslims respectively. Unlike Public Trusts, they may not necessarily originate from formal registration, nor do they specifically emphasise on a triangular relationship among the donor, Trustee and the beneficiary. Religious endowments arise from dedication of property for religious purposes. The corresponding action among the Muslim community leads to the creation of Waqfs. Waqfs tie up the property and devote the usufruct to people.

3.1.1.4.3.2 The first legislation in this direction came up in the later half of the nineteenth century. The Religious Endowments Act, 1863 was basically a law on private endowments which placed a property under the management of Trustee/Trustees under a will for a predefined set of beneficiaries. It was a type of contract between the will maker and the Trustee. During the later part of the British Rule, many Zamindars and merchants created such endowments. In many cases, with the passage of time, such arrangements became hazy and generated a series of civil disputes. The government intervened by introducing a new law called Charitable Endowments Act, 1890. This enactment brought in some element of regulation by establishing a post of treasurer in each State to oversee the functioning of charitable endowments. It was the first step in the direction of State regulation over charities. Towards the beginning of the 20th century, many of the temples and mathas across the country had acquired considerable landed property and funds; often comparable to the holdings of a zamindari. It led to incidents of social tension and civil disputes in the adjoining areas. To deal with this situation, the government enacted a new law in the form of the “Charitable and Religious Trusts Act, 1920” which recognised the existence of such religious bodies as entities different from Endowment Trusts formed for social and charitable purposes. Trustees of such bodies were made accountable for disclosure of the income and the values of the Trust. Civil courts were given proactive powers with regard to management of the property. But any direct intervention of the government through its own functionaries viz. Deputy Commissioners/Collectors and other officials was not yet on the cards.

3.1.1.4.3.3 The scenario changed after 1947. With a view to preventing abuse of funds and to ensure uniform organisational framework for the management of such religious and charitable institutions, many State Governments enacted their own Endowments Acts and virtually took over their management installing government officials as Trustees and managers. The examples are the Madras Hindu Religious and Charitable Endowments Act, 1951; the Travancore-Cochin Hindu Religious Institutions Act 1950; the Bodh Gaya Temple Act, 1949, the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966; and the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997.

3.1.1.4.3.4 The Indian Constitution recognizes freedom to manage religious affairs as one of the fundamental rights of its citizen. According to Article 26 - "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

Though, the above provision gives freedom to create Trusts / charitable institutions for religious purposes, it puts some rider on administration of such property "in accordance with law" – Article 26(d).

3.1.1.4.4 Waqfs in India

3.1.1.4.4.1 Under Muslim rule in India, the concept of Waqf was more widely comprehended as aligned with the spirit of charity endorsed by the Quran. Waqf implies the endowment of property, moveable or immovable, tangible or intangible to God by a Muslim, under the premise that the transfer will benefit the needy. As a legal transaction, the Waqif (settler) appoints himself or another trustworthy person as Mutawalli (manager) in an endowment deed (Waqfnamah) to administer the Waqf (charitable Trust).

3.1.1.4.4.2 As it implies a surrender of properties to God, a Waqf deed is irrevocable and perpetual.

3.1.1.4.4.3 In consonance with the spirit of Islam, Indian Muslim rulers generously dedicated property such as land and its revenue rights to Waqf created with the purpose of maintaining mosques, tombs, orphanages (yatimkhanas), madrasas etc. Land could also be Waqfed for the creation of a graveyard. In many cases, donations to a Waqf were made with the intent of promoting the tenets of Islam. Under Muslim rule, the presence of Islamic courts overseen by Qazis ensured that the Mutawallis discharged their duties fairly. Mismanagement of Waqf property was considered breach of the trust reposed in them for which they were duly punished.

3.1.1.4.4.4 In the 14th century, Sultan Allauddin Khilji came down heavily on a number of Mutawallis. During the Mughal rule, Akbar appointed an Inquiry Officer to go into the allegations of misappropriation of Waqf funds by Shaikh Hassan and removed him from Mutawalliship. Ain-e-Akbari records an instance when Akbar dismissed many Qazis who had taken bribes from the holders of Waqf lands⁹.

3.1.1.4.4.5 After the collapse of the Mughal Empire, for a long period, the Waqf administration remained loosely controlled. During the first phase of the British Rule in India, the colonial administration too, apart from maintaining oversight over endowments, did not give much attention to this issue as they had a very scanty knowledge of the Islamic legal system. After 1857, when the British started expanding the Common law regime in the country, they began exercising control over Waqfs. Their interference was mostly on charges of corruption in management of Waqf properties. Immediately after the revolt of 1857, the British Government confiscated Waqf properties such as the Jama Masjid and the Fatehpuri Mosque in Delhi. They were restored to the Trustees (Mutawallis) only after the enactment of the Charitable and Religious Endowments Act by the government in 1863. Another practice the British came down heavily on was the attempt to create family Waqfs by wealthy Muslim families desirous of keeping their property within the family yet safe from future sell-off by irresponsible progeny. In 1894, the Privy Council spoke of such efforts as concealed means for the aggrandizement of family, and noted that their provision for charity is so illusory that as long as the lineage of the donor family continues, the poor do not have any chance of receiving even a rupee from the Waqf.

3.1.1.4.4.6 The first specific law on the subject came only in 1913 when the British Government enacted the Mussalman Waqf Validating Act, 1913. Thereafter, a succession of laws came up to streamline Waqf management in India. The following is the list of important legislations enacted on the subject between 1913 and 1995:

(i) Mussalman Waqf Validating Act, 1913, (ii) Mussalman Waqf Act 1923, (iii) Bengal Waqf Act 1934, (iv) The Hyderabad Endowment Regulation, 1939, (v) U.P. Muslim Waqf

Act, 1936, (vi) Delhi Muslim Waqf Act, 1943, (vii) Bihar Waqf Act, 1947, (viii) Bombay Public Trusts Act, 1950, (ix) Dargah Khwaja Saheb Act, 1955, (x) Central Waqf Act, 1954, (xi) Waqf Amendment Act, 1959, (xii) U.P. Muslim Act, 1960, (xiii) Dargah Kwaja Saheb Waqf Amendment Act, 1964, (xiv) Waqf Amendment Act, 1969, (xv) Waqf Amendment Act, 1984 and (xvi) The Waqf Act, 1995.

3.1.1.4.7 Currently, 300000 Waqfs in India are being administered under various provisions of the Waqf Act, 1995. This Act is applicable throughout the country except for Jammu and Kashmir and Dargah Khwaja Saheb, Ajmer. The management structure under the Act consists of a Waqf Board as an apex body in each State. Every Waqf Board is a quasi-judicial body empowered to rule over Waqf-related disputes. At the national level, there is Central Waqf Council which acts in an advisory capacity.

3.1.1.5 Non-Profit Companies (Section 25 of the Companies Act, 1956)

3.1.1.5.1 Section 25 of the Companies Act, 1956 provides for a mechanism through which an Association can be registered as a Company with a limited liability, if such association is formed for promoting commerce, art, science, religion or any other useful object and intends to apply its profits/income in promoting its objects. The objective of this provision is to provide corporate personality to such Associations but at the same time exempting them from some of the cumbersome legal requirements. This Section reads as –

“25(1) Where it is proved to the satisfaction of the Central Government that an association:

Is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object,

Intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

The Central Government may, by license, direct that the association may be registered as a company with limited liability, without addition to its name of the word “Limited” or the words ‘Private Limited’.”

3.1.1.5.2 An Association registered under the above provision shall enjoy all the privileges and would be subject to all the obligations of limited companies. However, these entities will be exempted from such of the provisions of the Companies Act as notified by the Union Government under the provisions of Section 25(6) of the Act. The existing limited

companies can also be transformed to a non-profit company under Section 25(3). The companies registered under this provision are subject to such conditions and regulations as the Government thinks fit and on being directed, they would be required to insert such conditions in their memoranda. Their memoranda can not be altered without the prior approval of the Union Government. The Union Government also has the powers to revoke the registration granted under this section after giving an opportunity of being heard [Section 25(7)].

3.1.1.5.3 The non-profit companies registered under this provision have been exempted from several provisions of the Companies Act by way of notification issued under Section 25(6) of the Act which inter alia covers the following:-

- exemptions from publication of names etc. (Section 147);
- liberty to hold general body meetings on public holidays or outside business hours [Section 166(2)];
- reduction of time length of meeting notice to fourteen days instead of twenty one days [Section 171(1)];
- requirement to keep books of account of the past four years instead of eight years [Section 209(4A)];
- exemption from the requirement of government's permission for enhancing the number of directors (Section 259);
- relaxation in holding Board meetings once in six months instead of three months (Section 285) and its quorum (Section 287);
- competence of the Board to decide about borrowing of money, investing of funds or granting of loans by circulation (Section 292);
- exemption from the requirement of intimating to the Registrar the particulars of change in the composition of the Board (Section 303);
- relaxation in matters regarding the amount of loan or purchase of shares that can be made by the company without the government's prior approval (Sections 370 and 372).

3.1.1.6 The main difference between a Trust, a Society and a Section 25 Company can be summarised in the following manner and as indicated in Table 3.1.

3.1.1.6.1 A Society is basically an association formed by seven or more persons with some common objectives for promotion of literature, fine arts, science etc. There may or may not be some common asset to start with but, in course of time, the Society can acquire assets.

Table 3.1: Comparison between Trust, Society and Section 25 Company

	Public Trust	Society	Section 25 Company
Statute/Legislation	Public Trusts Act like the Bombay Public Trusts Act of 1950	Societies Registration Act of 1860	Companies Act of 1956
Jurisdiction of the Act	Concerned State where registered	Concerned State where registered	Concerned State where registered
Authority	Charity Commissioner	Registrar of Societies	Registrar of Companies
Registration	As Trust	As Society (and by default also as Trust in Maharashtra and Gujarat)	Memorandum and Articles of Association
Stamp Duty	Trust deed to be executed on non-judicial stamp paper of prescribed value	No stamp paper required for Memorandum of Associations and Rules and Regulations	No stamp paper required for Memorandum and Articles of Association
Number of persons needed to register	Minimum two Trustees; no upper limit	Minimum seven; no upper limit	Minimum seven; no upper limit
Board of Management	Trustees	Governing Body or Council / Managing or Executive Committee	Board of Directors/ Managing Committee
Mode of succession on Board of Management	Usually by appointment	Usually election by members of the General Body	Usually election by members of the General Body

Source : www.asianphilanthropy.org

In the case of a Trust, the very basis of its formation is the existence of an asset/ property which has been donated by the will maker for a particular purpose, social or religious. Charitable and religious institutions are special kinds of Trusts which have clear ecclesiastical intent. Waqf is another variant of Trust where the donor is a Muslim. The subjects on which an institution can be registered under the Societies Registration Act, 1860 are practically the same as those on which a Trust could also be formed. The Society, prima facie, is a

democratic entity, as all its members (at least seven in number) have an equal say in its running whereas in a Trust, control over the property remains fully in the hands of the Trustees and depending on the clarity of the will, such a management continues to be in existence for a long time. Government intervenes only when Trustees change or the Trust becomes too old to be managed as per stipulations (cypres) of the original will, or on grounds of malfeasance or abuse of trust.

3.1.1.7 Trade Unions

3.1.1.7.1 In terms of Section 2 of the Trade Unions Act, 1926, a “Trade Union means a combination, whether temporary or permanent, formed primarily for the purpose of regulating relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.”

3.1.1.7.2 The objective of the Trade Unions Act is to provide a legal existence and protection to the Trade Unions as defined above. A Trade Union can be registered under this Act along with the rules formed by them with regard to its objects, use of funds, maintenance of a list of members, manner of appointment of its members and executives, manner of dissolution etc. The concerned Registrar can not refuse registration if all the technical requirements have been fulfilled at the time of filing application and the Union is not held to be unlawful.

3.1.1.7.3 In the original Act, any seven or more members of a Trade Union were eligible to apply for registration under this Act. This however led to multiplicity of Trade Unions in the same establishment over a period of time. In order to address this problem an amendment was made in 2001 and it was provided that no Trade Union of workmen shall be registered unless at least ten per cent, or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration. A new Section 9A regarding minimum requirement about membership of a Trade Union was also inserted according to which a registered Trade Union shall at all times continue to have not less than ten per cent, or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected as its members.

3.1.1.7.4 The office bearers and members of the Trade Unions have been given immunity from criminal and civil liabilities for their activities undertaken in order to further the objectives of a Trade Union. However, in case of willful contravention of the provisions of the Act, or fraud or mistake in obtaining registration penal provisions could be invoked and

the registration certificate can be withdrawn and cancelled by the Registrar. The Registrar is appointed by the appropriate government (both Union and State) in respect of each State. He is assisted by Additional and Deputy Registrars.

3.1.1.7.5 A major provision of the Act pertains to the proportion of office bearers to be concerned with a particular industry where the Trade Union has been formed. In terms of Section 22 of the Trade Unions Act inserted in 2001, not less than half of the total number of office bearers of every registered Trade Union in an unorganized sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected. In other cases, all office bearers of a registered Trade Union, except not more than one third of the total number of the office bearers or five, whichever is less, shall be persons actually engaged in the establishment with which the Trade Union is connected. Importantly, it is also provided that no member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected), in the Union or a State, shall be a member of the executive or other office bearer of a registered Trade Union.

3.1.1.8 International Perspective on Charities

3.1.1.8.1 Beginning with small tuckshops in the early settlements of the USA, voluntary organisations have been in existence in some form or the other in the entire western world over the last two hundred years. During this period, an active relationship developed between the government and the voluntary sector. The United Kingdom, the USA, Canada, France and other countries of Europe have a fairly well developed system for regulation and promotion of this sector.¹⁰

- In a majority of these countries, revenue officials initially decide whether an organisation is charitable. This approach is based on the assertion that revenue officials are non-partisan in their determination of charity registrations and that the tax authority is in the best position to administer the system of tax deductibility, including determining which organisations are eligible for tax exemption.
- The Charity Commission administers the Charities Act in England and Wales. The Act empowers the Commission to exercise regulatory jurisdiction over all matters concerning charities.
- In the USA and Canada, registration of a charity is a State responsibility but financial and tax regulation is through the Inland Revenue, which is a federal agency.

¹⁰A Review of Charity Administration in India: Report of Sampradan sponsored by the Planning Commission

- There is easy access to data on charities: (i) there is a Public Register of charities and (ii) it is mandatory for a voluntary organisation to supply information on demand.
- An effective grievance redressal system is in place. There are provisions for appeals against decisions, and graded sanctions for violation of laws.

3.1.1.8.2 Charity Laws in the USA

3.1.1.8.2.1 In the United States, charities are created under the State Law but they are subject to control by both Federal and the State Governments. The charity administration is managed at the Federal level under the Federal Tax Code by way of preferential tax treatment. Charities are granted tax exemption status under Section 501(c)(3) of the Federal Tax Code subject to organisational and operational conditions. Organisations claiming tax exemption must adhere strictly to their intended charitable objectives as provided in the governing document. The Tax Code makes a distinction between Public Charities and Private Foundations for the purpose of regulations. Private Foundations are more strictly regulated as compared to the Public Charities. The Internal Revenue Service (IRS) is responsible for enforcing federal regulations with regard to the administration and governance of charitable organisations.

3.1.1.8.2.2 As stated above, charities are created under State laws which provide detailed guidelines for their incorporation and regulation (Provisions may vary from State to State). The State laws are mainly concerned with (a) the purpose of charities, (b) their organisational structure, and (c) their internal governance. The definition of charitable purposes under State laws is by and large aligned with the definition provided under the Federal Tax Code. State Attorney Generals have been given powers to enforce laws relating to charitable organisations.

3.1.1.8.3 The U.K. Law¹¹

3.1.1.8.3.1 The Charities Act, 2006 has completely changed the government-voluntary sector interface in the United Kingdom. The Act provides for the establishment of an autonomous body called Charity Commission to regulate and support the functioning of Charity organisations across England and Wales. There is also a Charity Tribunal to entertain appeals against the orders of the Charity Commission. The law has prescribed guidelines with regard to formation and registration of charities, their fund raising

¹¹Based on a document titled, "Charities Act, 2006 – What trustees need to know", published by the Cabinet Office, Office of the Third Sector, United Kingdom.

activities, accounting procedures and submissions of returns. The salient features of the law are discussed below:

Charity, charitable purpose and public benefit, registration, audit, accounts, and returns:

(A) Charity

- (i) The UK Act defines a 'Charity' as a 'body or trust which is for a charitable purpose that provides benefit to the public'. It lists 13 activities which come under the definition of a charitable purpose.
- (ii) The purposes (or aims) of a Charity are usually set out in its own governing document. In the past, there were four types of charitable purpose (known as 'heads'). These were the relief of poverty; the advancement of education; the advancement of religion; and other purposes for the benefit of the community. Charities relieving poverty or advancing education or religion were presumed to benefit the public. The 2006 Act removes this presumption. Now every Charity needs to demonstrate how it will benefit the public.

(B) Charitable Purpose

- (i) The list describes the following activities as charitable :
 - prevention or relief of poverty;
 - advancement of education;
 - advancement of religion;
 - advancement of health or the saving of lives;
 - advancement of citizenship or community development;
 - advancement of the arts, culture, heritage or science;
 - advancement of amateur sport;

- advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity;
- advancement of environmental protection or improvement;
- relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- advancement of animal welfare;
- promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services; and
- other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognized as charitable.

(C) Registration

- (i) Generally, only Charities with an annual income above £5,000 need to register with the Commission. This threshold has gone up from its previous level of £1,000. The registration requirements for ‘exempt’ and ‘excepted’ Charities have also undergone change.
- (ii) The existing registered Charities with an annual income below the £5,000 threshold can ask to be removed from the register, but they will still remain Charities and will have to abide by Charity Law.

(D) Audit, Accounts and Annual Returns

- (i) A Charity that is not a company must have a professional audit of its accounts if the following conditions apply:
 - its gross annual income is above £500,000; or
 - it has an annual income over £100,000 and assets exceeding £2.8 million;or, regardless of these conditions, if:
 - its governing document states that it must have a professional audit; or

- the Commission orders the accounts of the Charity to be professionally audited.
- (ii) A charitable company with an annual income of more than £500,000 or assets of more than £ 2.8 million must have a professional audit.
- (iii) All registered Charities that have to submit annual returns to the Commission must do so within ten months of the end of the Charity's financial year. Previously, Trustees of such Charities who persistently failed to submit annual returns; annual reports or accounts to the Commission could be convicted of an offence and fined. The Act changes the definition of the offence to apply to any Trustee who fails to send in one or more of these documents, whether or not the failure is persistent, and increases the penalty for that offence. The offence is condoned if the Trustees are able to show that they have taken all reasonable steps to meet the deadline.
- (iv) The auditors of unincorporated Charities have a specific duty to report abuse or significant breaches of Charity Law to the Commission. They already have statutory protection against legal action for breach of confidence or defamation where they do so. The new Act recognises that duty and extends both the duty and the associated protection to auditors of unincorporated charities' and charitable companies' accounts, as well as to reporting accountants and independent examiners of charity accounts.

(E) Institutional Arrangements

(a) The Charity Commission

- (i) Under the provisions of Charities Act, 1992, the Charity Commission of the U.K. was able to develop its role as a modern regulator. The Charities Act, 2006 further supports this by establishing a framework which clarifies its objectives and how it should operate. The Commission is now led by a larger and more diverse Board that can better reflect the sector it works with.
- (ii) The 2006 Act defines the Commission's objectives and functions, and gives it some general duties which are meant to guide it when performing its functions.

- (iii) The Commission has the following objectives:
1. **The public confidence objective:** To increase public trust and confidence in Charities.
 2. **The public benefit objective:** To promote awareness and understanding of the operation of the public benefit requirement.
 3. **The compliance objective:** To encourage Charity Trustees to comply with their legal obligations in exercising control and management of the administration of their Charities.
 4. **The charitable resources objective:** To promote the effective use of charitable resources.
 5. **The accountability objective:** To make Charities more accountable to donors, beneficiaries and the public.
- (iv) The Commission has been assigned with the following general functions:
- decide whether institutions are, or are not, Charities;
 - encourage and facilitate the better administration of Charities;
 - identify and investigate when Charities are being mismanaged or misused and take action to put things right or to protect Charity property;
 - carry out its new role in issuing public collections certificates;
 - maintain an accurate and up-to-date register of Charities, and use this and other information to support its work and help achieve its objectives; and
 - provide information and advice or make proposals to the Minister concerned on matters relating to its objectives and functions.

- (v) **The duties:** In its work, the Commission must comply with certain duties, as follows:
- the Commission must, as far as is practicable, act in a way which is compatible:
 - with its objectives and which is appropriate for achieving those objectives; and
 - with encouraging charitable giving and voluntary participation in charity work.
 - The Commission must, in appropriate cases, consider the need for Charities to be able to innovate or to support innovation which affects Charities generally.
 - The Commission must have regard to best regulatory practice. This includes applying the principles that regulatory activities should be proportionate, accountable, consistent and transparent, and targeted only at cases in which action is needed.
 - As an organisation, the Commission must have regard to the principles of good corporate governance and to the need to use its resources in the most efficient, effective and economical way.
- (vi) The Commission has become a new Body Corporate, with an expanded Board. There is a clear statement of its independence from the Minister.
- (vii) The Act allows the Commission to recruit up to four new non-executive Board members. The Act also requires that the Board as a whole has a broad range of knowledge and experience of the operation and regulation of Charities and of the legal framework in which it works. At least one of the Board members must have specialised knowledge of conditions in Wales. This will help to ensure that the Board reflects the diversity of the charitable sector.
- (viii) The Act makes it a statutory requirement that it must hold a public Annual General Meeting during which its annual report to Parliament is discussed.

- (ix) The Commission must report annually to Parliament on its work, its progress in meeting objectives, the performance of its general duties and the management of its affairs.
- (x) The Act preserves the Commission's independence from Ministers and government departments. This contributes to public confidence in Charities.

(b) Its Management

Currently, the governance responsibilities for the Commission in the UK rest with a Board consisting of 9 non-executive members. Corporate decision-making that affects the day-to-day operations of the Commission has been delegated to the Executive group consisting of a Chief Executive who in turn is assisted by four Directors and Functional Heads.

(c) The Charity Tribunal

In the past, the Charities, if dissatisfied with some decision of the Charity Commission, could go in appeal to the High Court. This was prohibitively expensive and complicated, particularly for small organisations. The 2006 Act has established a Charity Tribunal as a first level of appeal. It is convenient, cheaper and less formal. This arrangement allows smaller Charities an accessible means of grievance redressal. Access to the High Court is still possible as second appeal.

3.1.2 Need for a New Legal Framework for Charities in India

3.1.2.1 The multiplicity of charity laws in India has prevented evolution and growth of a proper institutional framework in this sector. While, voluntary organisations often feel harassed in complying with various legal obligations, institutions of the government too have not been effective in regulating the sector and securing legal compliance. Instances of misuse of tax provisions, fraud and poor governance have become frequent. There is need to create an effective institutional mechanism which would provide a supportive environment for the growth and development of charities in this country. In this respect, one could learn from the governance structures as described at Para 3.1.1.8. India being a federal Union, a decentralized institutional setup for charities similar to that existing in the USA, seems to be appropriate. The power of registration and oversight needs to lie with the State Governments.

3.1.2.2 In 2004, the Sampradan Indian Centre for Philanthropy conducted a study on charities administration in India under the sponsorship of the Planning Commission. The study suggested following four models in this regard:

- ***Model 1 – Maintain the status quo, keeping the existing institutional arrangements as they are, but enhancing their performance by adopting certain recommendations for a more facilitative interface with the public, greater transparency of the regulatory process, measures for securing better compliance, and a better appeals process.***
- ***Model 2 – Create a functionally enhanced Charities Directorate in the Income Tax department, plus State level registering agencies, plus a NPO Sector Agency. The Charities Directorate would be the main regulatory agency, looking after monitoring and compliance, as in Canada and the USA, while the State level registering agencies would exist only for registration function. In addition, there would be an NPO Agency to advise the Charities Directorate. It will comprise of the representatives of the NPO sector, and professionals such as lawyers and Chartered Accountants. It would provide policy guidance, obtain feedback from the sector and set up review mechanism for achieving compliance.***
- ***Model 3 – Create a Charities Directorate and a mandatory NPO Sector Agency. The difference between this model and the one mentioned above is that the NPO Sector agency would be created by the government as an autonomous Body. It would have its own Governing Body, and professional staff, and would have the general function of promoting effective use of charitable resources by encouraging better management of organisations, and improving governance by providing Trustees with information and advice. It would also be responsible for compliance education function. It would be a permanent forum for dialogue that this sector has been demanding and would be the interface between the government and the sector.***
- ***Model 4 – Create State level Charity Commissions supported by a NPO Sector Agency. There would be an Appeals Tribunal too. This model suggests setting up a Charities Commission on the UK model. It would be concerned not only with financial regulation but also with the promotion and development of the sector.***

3.1.2.3 A Model law for Societies and Trusts

3.1.2.3.1 Non-Profit / Voluntary Organisations in our country operate on a wide variety of issues covering almost all aspects of socio-economic development and polity. There are separate laws under which Societies, Trusts, charitable institutions, religious endowments and Waqf etc. can be set up. For illustration, the Societies Registration Act, 1860 is the law under which Societies of different hues are registered in India. ‘Societies’ being a State subject, the 1860 law has been adopted with some amendments by twelve States. The States such as Rajasthan, Karnataka, West Bengal, Madhya Pradesh, Tamil Nadu, Manipur, Meghalaya, Jammu and Kashmir and Andhra Pradesh etc. have enacted their own law on this subject. Kerala, Andhra Pradesh and Tamil Nadu and many other States have exclusive laws for governing religious endowments. Maharashtra, Gujarat, Rajasthan and Madhya Pradesh have specific Public Trusts laws to govern all kinds of Trusts and endowments (religious / non-religious) under their jurisdiction. Then, there are endowment specific laws such as the Bodh Gaya Temple Act, 1949. In spite of all the above legislations, if any ambiguity crops up, the Courts take recourse to Section 92 of the CPC.

3.1.2.3.2 Diversity of laws across the States has given rise to emergence of non-uniform practices in the management of voluntary organisations. If an institution registered in one State desires to expand its activities to any other area, it needs to comply with a different set of legal requirements. The Commission is of the view that the management of civil society organisations will be far less complicated if a uniform legal regime for regulation of charity institutions is put in place for the entire country. Currently, ‘Societies’ is a subject under the State list (Entry 32) of Schedule 7 of the Constitution, whereas ‘Trust’ is in the Concurrent list (Entry 10). “Charities and charitable institutions” are also covered under the concurrent list (Entry 28). In order to create a uniform legal environment across States, the Commission suggests that the Union Government should formulate a comprehensive model law covering both Societies as well as Trusts. This model law could be sent to the States who could adopt it with suitable modifications. While, it will not be possible here to suggest a detailed draft, the broad framework and the views of the Commission on some illustrative issues are indicated in the following paragraphs.

3.1.2.4 Key Elements of the New Law

3.1.2.4.1 The following three key elements would need to be explained in the proposed law:

- (i) Defining Charity and Charitable Purpose
- (ii) Institutional Mechanism
- (iii) Interface with the State Government

(i) Defining Charity and Charitable Purpose

The new law will need to draft a composite definition based on the contents of the original Societies Registration Act, 1860, various amended State Acts, the Bombay Public Trusts Act, 1950, Section 92 of the Civil Procedure Code and Section 2(15) of the Income Tax Act, 1961. The definition of “Charity” and “Charitable Purpose” provided in the UK Law as indicated in paragraph 3.1.1.8.3.1 covers almost all the objectives listed in the extant Union and State laws and the same can be kept in mind while formulating the new legislation. Experience across the world shows that defining ‘Charity’ and ‘Charitable Purpose’ is a complex issue. The Commission is of the view that there is need to set up an Inclusive Committee which will examine this issue comprehensively and suggest an appropriate definition which would inter-alia soften charities-government relationship, particularly in tax matters.

(ii) Institutional Mechanism

In place of the present charity administration consisting of a Charity Commissioner / Inspector General of Registrations as existing in the States, the proposed law would provide for a new governance structure in the form of a three-member Charities Commission in each State with necessary support staff. It will be an autonomous Body created by law. It will have laid down functions and responsibilities and will be accountable to the State assembly through a nodal Minister. The Chairman of the Commission should be a law officer drawn from the cadre of District Judges. Out of the other two members, one should be drawn from the voluntary sector and the other should be an officer of the State Government. The functions of this Commission would be to regulate and support the sector. The law would also provide for creation of a Charities Tribunal in each State which will have appellate jurisdiction over the orders of the Charities Commission.

The functions of the Charities Commission would include:

- Registration of Non-Profit Organisations (NPOs).
- Maintaining a public register of NPOs.
- Receiving reports from NPOs.
- Audit and monitoring.
- Disseminating information on good practices / methods of management among voluntary organisations.
- Holding public discussions / consultations.
- Bringing out simple publications to educate the public about NPOs.
- To review periodically the social and economic environment of the charities.
- Acting as a permanent forum for dialogue with the sector on issues of policy and regulation.
- Administering sanctions and penalties for non-compliance.
- Resolving grievances.

The Charities Commission should be free to recruit its own staff like any other non-profit corporation and train them, and pay remuneration according to non-profit sector practices. This will give stability to the organisation and also make it possible to hire staff who have a commitment to non-profit work.

(iii) Interface with the State Government

At present, a non-profit organisation's interaction with the State authorities consists of the following – (a) Government's power with regard to grant of permission for alteration of the memorandum, alienation of property or inclusion of the change report; (b) Government's powers of inspection; (c) Powers to cancel registration; (d) Powers to appoint an administrator; (e) Powers to modify / annul a decision of the Governing Body; (f) Powers to dissolve the institution; and (g) Powers to impose penalty. In view of such vast powers available to the State machinery, there is a feeling among the NPOs that the sector has virtually become a subordinate formation of the State Government. The Commission is of the view that the NPO sector should have freedom in their functioning (as per the intent of their memorandum). Government's interface with these organisations should be minimal and the government should work only as a facilitator and developer.

The discretionary powers acquired by various State Governments during the course of time need to be dispensed with.

3.1.2.4.2 In addition to the above, the proposed law will need to take care of the following important functional issues which are critical to a voluntary organisation's working:

(a) Alteration in the memorandum – As per the provisions of the Societies Registration Act (as applicable to Gujarat and various other States), the memorandum of association of a Society can be altered only through a special resolution supported by a majority of not less than 3/5th of the total membership of the Society. It was brought to the notice of the Commission that this provision is highly impractical. If a Society has a large and diverse membership spread over a large geographical area, seeking attendance of 3/5th of the total membership is very difficult. The Commission is of the view that the proposed legislation should take care of this issue. A more practical approach would be to insist that such a special resolution is passed by a majority of not less than 3/5th of the total members of the Society present at the meeting. It would be in line with the provisions of the Companies Act, 1956, where a special resolution can be passed by 3/4th of the shareholders present at the meeting.

(b) Approval on change report – Section 22 of the Bombay Public Trusts Act (BPT Act), 1950 deals with 'change' in the entries of the Public Trusts Register (PTR) pertaining to name, composition, organisational structure, immovable property etc. Whenever an institution applies for a change in the PTR, it has to face a cumbersome and time taking process. It may often take months before the applicant gets the approval letter from the office of the Charity Commissioner. The Commission is of the view that the process needs to be simplified and made time bound. The proposed new legislation should have a provision under which the approval on change report would need to be given within a prescribed reasonable time limit (say 60 days).

(c) Alienation of immovable property – Section 36 of the BPT Act, 1950 deals with 'alienation of immovable property of a Public Trust'. When a Public Trust submits a proposal for transfer of its property for approval of the Charity Commissioner, its disposal takes time. There is a view that the Trustees should have full powers to manage the properties in the best interests of the organisation. But the contrary argument emphasises that the delay in such cases is not only because of the intractable attitude of the authority, but it is also on account of the Trustees' attempt to undervalue the property for private gains. The Commission is of the view that in the new enactment there needs to be a balance between the two approaches. The Authority must have reasonable opportunity to critically examine

such proposals in order to check misuse. At the same time, there is need to make the disposal of such matters time bound.

(d) Contribution by Public Trusts to the State Government – Section 58 of the currently applicable Bombay Public Trusts Act deals with ‘contribution by Public Trusts to Public Trusts Administration Fund.’ Currently, Trusts have to pay 2% to 5% of their gross revenue to the State Government under this clause. For many of the organisations, this amount appears to be excessive. The Commission is of the view that there is need to have a relook at this issue.

3.1.2.5 Issue of giving priority attention to larger Organisations – India has a large number of voluntary sector organisations, a majority of whom are very small in terms of their scale of operations. Currently, the overseeing authorities spend a disproportionately large amount of time and staff on routine matters relating to smaller charities and the attention given to larger organisations is inadequate and ineffective. Thus, many important and urgent matters of such institutions remain unattended or take inordinately long to get settled. Such delays often stifle fundflow to ongoing projects. The Commission is of the view that there is need to introduce provisions which would take away the burden of routine work relating to smaller charities from the authorities. This could be in the form of prescribing a threshold annual income for the voluntary sector. Charities having incomes below this level will have fewer compliance requirements with regard to submission of returns, reports, permissions etc. However, in case any irregularity is detected, they will be liable for punitive action as prescribed under the law. To start with, the cut off limit could be set at Rs. 10 lakhs which could be reviewed for upward revision once in five years. Such a provision, on the one hand, would create a conducive atmosphere for smaller charities and on the other, would enable the authorities to find time to attend to the needs of institutions engaged in major works.

3.1.2.6 Recommendations:

- a) **The Union Government should draft a comprehensive model legislation covering both Trusts and Societies in lieu of the existing laws on Societies, Trusts, Endowments and Charitable Institutions etc.**
- b) **In place of the present charity administration consisting of a Charity Commissioner / Inspector General of Registrations as existing in the States, the proposed law should provide for a new governance structure in the form of a three member Charities Commission in each State with necessary support staff for incorporation, regulation and development of**

Charitable Organisations. The Chairman of the Commission should be a law officer drawn from the cadre of District Judges. Out of the other two members, one should be drawn from the voluntary sector and the other would be an officer of the State Government. In addition, the State should also have a Charities Tribunal which would exercise appellate powers over the orders of the Charities Commission.

- c) The proposed model legislation should indicate a cut off limit with regard to the annual revenue of a Charity. Organisations having an annual income below this threshold will have lighter compliance requirements with respect to submission of returns / reports / permission etc. However, if irregularities are detected in their functioning, the organisations will be liable for legal and penal action. To start with, the cut off limit could be set at Rs.10 lakhs which could be reviewed for upward revision once in five years.
- d) The government should set up an Inclusive Committee which will comprehensively examine the issue of defining ‘Charity’ and ‘Charitable Purpose’ and suggest measures to “soften” charities-government relationship, particularly in tax matters.
- e) The model legislation should take into consideration the views and suggestions made above with regard to the following issues of charity administration:
 - i. Interface with the State Government
 - ii. Alteration in the memorandum
 - iii. Approval on change report
 - iv. Alienation of immovable property
 - v. Contribution by Public Trusts to the State Government

3.2 Revenues of the Third Sector

3.2.1 Third Sector Organisations in India raise funds primarily from four major sources viz. individuals, private foundations (national as well global), business houses and government. In recent years, the diaspora is also playing a leading role in contributing to social causes.

3.2.2 The character of funding to voluntary organisations is highly skewed. Organisations which take up contemporary issues and are able to project their requirements articulately through the media are able to secure the bulk of funding, leaving the residue for smaller and not-so-savvy organisations.

3.2.3 Funding also depends on the nature of activity - some sectors like conservation of environment, nutrition supplement and creation of urban facilities are more popular and “glamorous” and therefore attract more funds, while others like human rights, gender equality and cultural preservation often have to suffer for want of resources. A survey conducted by the Consumer Education and Research Centre in Ahmedabad in the early 90s found that out of over 8,000 Trusts and 2,000 Charitable Societies registered in the city, only 144 had annual incomes of over Rs. 100,000 (US\$2,173) whereas the combined total was Rs.1,440 million.¹²

3.2.4 Individual Donations

3.2.4.1 In India, individual donations to charity organisations has been meagre. While the quantum of donation to the voluntary sector from government and foreign donor sources has increased considerably during the past decade, private philanthropy by individuals, Trusts, foundations, and corporates has not expanded commensurately. This kind of fund raising consists of direct donations by the public (either a one time act or a recurring transaction). Donations may also come through by patronizing sales of items like greeting cards, diaries, handlooms and handicraft products and by organizing events like art auctions, music programmes etc.

3.2.4.2 Individual donation is more prevalent during major crisis situations. During the earthquakes in Gujarat and Maharashtra, and the cyclone in Orissa, there were generous donations from individuals as well as corporate organisations.

3.2.5 International Aid

3.2.5.1 Bilateral Assistance

3.2.5.1.1 Many agencies such as the Department for International Development (DFID) (British Government), Swedish International Development Cooperation Agency (SIDA) (Swedish), Norwegian Agency for Development Cooperation (NORAD) (Norway), and Danish International Development Agency (DANIDA) (Denmark) are permitted to support NGOs directly without seeking specific project approval from the Government of India. However, some of the agencies need specific project approval of the Government before they can finance an NGO. In addition, bilateral fund support to the Government of India

or to a State Government or to other government agencies, often, specifies the percentage of funds that must be spent through non-governmental organisations. The recent increase in bilateral funding to the government has increased the flow of funds to NGOs.

3.2.6 Corporate Philanthropy

3.2.6.1 Donations

3.2.6.1.1 The system of corporate donation for philanthropic activities has a history in India. In earlier times, merchants supported relief activities during the times of flood or famine. They built temples, promoted schools, and encouraged artistic pursuits. In the pre-Independence era, many big business houses set up Trusts and Foundations to support schools, colleges and charitable hospitals. Later, some of the multinationals also joined in.

3.2.6.1.2 An Action Aid study found that, on the corporate front, only 36% of the 647 companies surveyed had some sort of policy (21% of these or 8% of the total companies had a written policy) to get involved in social development activities. The companies which were involved in developmental activities, primarily made cash contributions, followed by helping the disadvantaged with employment opportunities. Other activities included donation of company assets, donating staff time and purchasing materials produced by NGOs. Only 16% had some kind of partnership with the NGOs, while 80% dealt directly with the beneficiary community. Most of these partnerships existed in the urban areas. The partnerships were also not with developmental NGOs, but were more often with institutions like Rotary and Lions Clubs.

3.2.6.2 Corporate Social Responsibility (CSR)

3.2.6.2.1 'Corporate Social Responsibility' may be defined as a corporate entity's commitment to welfare of society and community and its adherence to ethical values. The term may be relatively new in the Indian lexicon but the concept is certainly not. Traditions of "trusteeship", "giving" and "welfare" have existed since long in our society. The concept of social good has always been part of the Indian psyche. From the beginning of the 20th century, business and industry in India have in different ways been paying attention to their obligation and commitment towards society and the community. The large number of schools, colleges, hospitals and other charitable establishments, which were set up in the 20th century in different parts of the country, are fine examples of such social commitment.

3.2.6.2.2 In recent years, CSR has shifted from the domain of charity to the domain of standard business practices. Together with 'profit' and 'growth', it is one of the essential

parameters which define a business. Stakeholder awareness, increasing power of civil society, intensity of competition and environmental challenges are some of the factors which have increased the emphasis on CSR in recent times.

3.2.6.2.3 Companies in India now explicitly recognize their social responsibility and many of them allocate sizable resources to it. The TATAs, ITC and the Azim Premji Foundation are among major corporate entities which have linked their business plans with ethical

Box 3.1: Definition of CSR

The World Bank defines corporate social responsibility (CSR) as, “the commitment of business to contribute to sustainable economic development working with employees and their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for development”.

and social commitment. The TATAs have fully dedicated Foundations / philanthropic establishments through which they take up important issues of social / economic empowerment of the community and society as a manifestation of their commitment towards citizens. Besides, their manufacturing units too take up development work in the local areas. ITC has a dedicated social development team which anchors all corporate social responsibility initiatives. Instead of having a separate Foundation for taking up standalone philanthropic activities; ITC integrates it with its regular business plans. It fulfils its social responsibility by forging public-private partnership as a business link in the areas of social forestry, integrated watershed development, web enablement of the tobacco farmers, e-choupal’s farm extension services and livestock development. Another notable example is the Azim Premji Foundation started in the year 2001. It is a non-profit organisation which works extensively on “enhancing the quality of primary education being imparted in the government schools in the rural areas”. The Foundation firmly believes that merely creating islands of excellence in few pockets is not of much consequence and hence it aims at bringing multi-dimensional systemic changes in the whole environment of primary education across the country. Currently, it is carrying out a Learning Guarantee Programme (LPG) in five States viz. Karnataka, Madhya Pradesh, Gujarat, Rajasthan and Uttarakhand. It also provides technology support to 16,017 primary schools located in 13 States of the country.

3.2.6.2.4 The Commission acknowledges that over the years, many of the corporate houses have undertaken significant work in sectors like primary/adult education, livestock development, tank irrigation, sanitation, women and child nutrition and provision of drinking water. The Commission feels that while taking up such activities, the Corporates should take into account the prevailing needs of the local people. It also needs to be ensured that there is no overlap/clash with other similar programmes in the area.

3.2.6.2.5 Recommendations:

- a) **When a community benefit project is taken up by a corporate entity, there should be some mutual consultation between the company and the local government so that there is no unnecessary overlap with other similar development programmes in the area.**
- b) **Government should act as a facilitator and create an environment which encourages business and industry to take up projects and activities which are likely to have an impact on the quality of life of the local community.**

3.2.7 Government Funding

3.2.7.1 Both the Union and State Governments provide considerable budgetary support to voluntary organisations on a wide range of activities like rural technology, concerns of social welfare, primary education, maternal and child health care, adult education, empowerment of women and rehabilitation of the disabled. Apart from making direct disbursement of grants to voluntary agencies, Government of India has also set up especially empowered Autonomous Bodies to provide support to the activities of the Third Sector Organisations (TSOs). The Central Social Welfare Board (CSWB) and National Institute of Public Cooperation and Child Development (NIPCCD) are two such prominent Bodies dealing with Government – NGO interface in the social welfare sector, while the Council for Advancement of People's Action and Rural Technology (CAPART) is an agency which finances voluntary organisations to stimulate grass roots participation and encouragement of rural technology. There are more than 437 such autonomous organisations functioning under various Ministries of the Government of India excluding those under Scientific Departments. The Commission will examine this issue in its report on TOR No.1 i.e. "Organisational Structure of the Government of India".

Another way by which the State provides support to the charity sector is through tax concessions of various kinds. This issue has been discussed in detail at paragraph 3.3.

3.2.7.2 Accreditation of Voluntary Organisations

3.2.7.2.1 Accreditation is a formal recognition of the achievements of an organisation, linked to some internal / external norms such as commitment to long term aims and objectives, organisational ability, adherence to financial norms, transparency and accountability etc.

3.2.7.2.2 A large number of voluntary organisations receive grants from government for a variety of purposes such as social and welfare services, surveys, studies, monitoring, evaluation etc. These organisations vary greatly in their capability and credibility. In the absence of any system of accreditation / certification, the government agency at both Union and State level have found it extremely difficult to distinguish between organisations who value for quality and those which have been set up almost solely for the purpose of receiving government grants. In this context, it is widely recognized that there is need to have a system of accreditation and certification for Voluntary Organisations, which would facilitate and bring transparency in the Government-NGO partnership, particularly in the work of funding agencies. The procedure adopted for accreditation / certification should not be so complex as to lead to harassment, delay and corruption.

3.2.7.2.3 It is generally agreed that accreditation could be best done by the voluntary sector itself. However, attempts to form a Self-Regulatory Body of voluntary organisations in the country have not succeeded so far. There is a feeling that government needs to be involved in this process.

3.2.7.2.4 The process of accreditation and certification undertaken for the voluntary sector should be based on the following principles:-

- a. Accountability and transparency
- b. No ranking or ratings
- c. Norms will have to be compatible to the sector

3.2.7.2.5 The Steering Committee on the voluntary sector for the Eleventh Five Year Plan set up by the Planning Commission considered this issue and recommended setting up of a National Accreditation Council (NAC) with five regional centres in the West, North, East, North-East and South India and major metros in due course. The NAC could consist of academics from schools of social work, leaders of the voluntary sector networks, retired bureaucrats who have worked in NGOs after retirement for at least five years and corporate association members from CII, ASSOCHAM, FICCI etc. and NGO leaders of repute. The Assessors would be invited from different fields such as schools of social work, the schools of management like Institute of Rural Management, Anand (IRMA), accounting firms like Grant Thornton, CRISIL, Deloitte and Price Waterhouse Coopers, or Financial Management Service Foundation (FMSF) or Account Aid or Foundations such as GIVE INDIA etc. Audit firms cannot accredit their own clients as this would lead to a conflict of interest. The National Accreditation Council would empanel them on the basis of criteria such as organisational assessment capacity, exposure to voluntary sector and reputation for

independence and credibility. The National Accreditation Council would award accreditation to Voluntary Organisations based on documentation and evaluation of the assessors.

3.2.7.2.6 It has been further recommended that in the initial pilot phase, when the concept of accreditation is sought to be popularized, the cost should be borne by the National Accreditation Council out of its own corpus, which could be supplemented by contributions from large donors. Later on when it is firmly established, there could be two broad options for meeting the expenses of the social auditors: (i) charge an accreditation fee linked to the size of the annual budget of the NGO, based on a slab system (for very small VOs, the NAC could consider subsidizing the expenses completely); and (ii) charge the expenses on a pro-rata basis on the donors.

3.2.7.2.7 The Commission has carefully considered the whole issue and agrees with the view that:

- (a) Accountability to stakeholders and transparency in the functioning of the voluntary sector is essential; therefore, there is a need for accreditation of VOs through an independent agency like the National Accreditation Council. This Body could be set up by law.
- (b) Accreditation does not amount to ranking or rating of VOs. It is a stamp of transparency, accountability and credibility.
- (c) To start with, the government needs to place an appropriate corpus of fund at the disposal of the NAC, which could be supplemented by donations. Thereafter, the Council could finance its activities by charging fees from its clients. Such system of accreditation/certification should be applicable only to those organisations which seek funding from government agencies. In order that the parameters adopted are clear and transparent and the actions taken by NAC are independent, it is advisable that the constitution of the Council, its functions and procedures are clearly spelt out in the law.

3.2.7.2.8 Recommendations:

- a) **There should be a system of accreditation / certification of voluntary organisations which seek funding from government agencies.**
- b) **Government should take initiative to enact a law to set up an independent Body – National Accreditation Council – to take up this work. In the beginning, Government may need to provide a one time corpus of funds to this organisation.**

- c) The above law should provide details with regard to the constitution of the Council, its functions, its powers to levy appropriate fees from the applicants, and other related matters.**

3.3 Charitable Organisations and Tax Laws

3.3.1 The Income Tax Act, 1961 is a Union legislation, which applies to all voluntary organisations (Trust, Society or Company) uniformly throughout India. Any voluntary (non-profit) organisation engaged in a charitable work, defined as “relief for the poor, education, medical relief, and the advancement of any objects of general public utility not involving any activity for profit”, can claim tax exemptions and other benefits under the Income Tax Act, 1961 subject to the conditions and restrictions contained therein.

3.3.2 Broadly, the Income Tax Act provides benefits to charitable organisations in the following three ways:

I. Certain incomes are not included in the total income

1. Section 10 describes incomes which do not form part of the total income; the sub-sections related to charitable organisations are as under:

Section 10(23C) (iv) and (v) states that income of institutions established for charitable purposes, which are approved by the prescribed authority, shall not to be included in the computation of total income of the institution and shall not be subject to tax.

Prior to June 2007, approval for grant of exemption under these Sections was being given by the Union Government by way of notification, for a period of three years. After June, 2007 to streamline the procedure, these powers have been delegated, and the Chief Commissioners / Director Generals concerned are now the prescribed authority to approve grant of such exemptions. Approval for exemption under the above provision shall be granted or an order rejecting the application shall be passed within twelve months from the end of the month in which such application was received. The order shall be valid for the life-time of the Trust so long as there is no violation of the statute.

2. Sections 11 to 13 provide for the assessment of Trusts that are wholly for charitable or religious purposes. Under these provisions, Section 11 provides that income from property held for charitable or religious purposes shall not be included in the total

income of the Trust etc. if the income is applied as per the provisions of the Act. This shall apply if the income derived from property held under a Trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application later, the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property.

The non-profit organisation must utilize 85% of its income in any financial year, on the objects of the organisation. In case the organisation is unable to spend 85% of its income in the financial year due to late receipt of income or any other reason, the Trustees may exercise the option to spend the income during the immediately following twelve months. Income can also be accumulated for a period ranging from one to five years (prior to 1-4-2002 the maximum period for which the income is to be accumulated or set apart was ten years), for specific projects, subject to the following conditions:

- i. The funds of the organisation are invested / deposited only in approved securities specified under Section 11(5) of the Income Tax Act.
- ii. No part of the income or property of the organisation is used or applied directly or indirectly for the benefit of the Founder, Trustee, relative of the Founder or Trustee, or a person who has contributed in excess of Rs.50,000/- to the organisation in a financial year.
- iii. The organisation files its return of income annually within the prescribed time limit.

Section 11 also provides that income of the Trust etc. in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the Trust or institution shall not be treated as income of the Trust etc.

Section 12 provides that voluntary contributions received by a Trust/Institution created wholly for charitable or religious purposes shall be deemed to be income derived from property held under Trust and shall not be included in the income of the Trust as provided in Section 11.

Section 12A (1) (aa) importantly provides that the provisions of Section 11 and Section 12 are applicable to the income of any Trust or Institution only if the Trust has made an application for registration of the Trust or Institution in the prescribed form and manner to the Commissioner and such Trust or Institution is registered under Section 12AA.

Under Section 12AA, the authority for grant/ rejection of the registration is the Commissioner of Income-tax. Every order granting or refusing registration is by statute required to be passed before the expiry of six months from the end of the month in which the application was received. No order refusing the permission shall be passed unless the applicant has been given a reasonable opportunity of being heard. The Commissioner may examine the documents submitted and conduct an inquiry on the objects and activities of the Body. The following documents are required to be submitted for obtaining registration under this Section:

- i. Copy of the instrument by which the Institution has been created;
- ii. Other documents in support of the above.
- iii. Copies of accounts of the Institution since its inception or for the last three years whichever is less.

II. Deductions to be allowed from the profit and gains of business and profession

1. To encourage expenditure on scientific research, Section 35 of the Income Tax Act provides for weighted deductions to a tax payer to the extent of 125 per cent of the sum paid by him to an approved scientific research association, approved university, college, company doing research or other institution to be used for scientific research subject to certain specified conditions. The Union Government is the authority that approves the companies, institutions, universities etc. An order approving/rejecting the application under this Section is required to be issued by the Union Government within the period of twelve months from the end of the month in which such application was received. With effect from 1st April, 2006, recognition granted to the organisation, institution etc. is valid till its existence, unless withdrawn by the Union Government.

2. Section 35 AC of the Income Tax Act also provides for deductions to be allowed to a tax payer in respect of expenditure on eligible projects or schemes from the business incomes of the assessee where the assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme. Approval for the project or scheme is given by the Union Government, on the recommendation of a National Committee.

The Income Tax Rules have specific provisions with regard to a fourteen-member National Committee and the manner of its functioning under Rules 11-F to 11-O. The provisions also specify the types of projects which qualify for benefits under this section. Approvals are granted by Government (Ministry of Finance) on the recommendation of the National Committee for a maximum period of three years. It can be further extended subject to the satisfaction of the Committee and the approval thereafter by the Union Government.

3. Section 35 CCA of the Income Tax Act also provides for deductions to be allowed in respect of expenditure for carrying out rural development programmes from the business incomes of assessee. Section 35 CCA broadly states, where an assessee incurs any expenditure by way of payment of any sum to an association or institution, which has as its object the undertaking of any programme of rural development, the assessee shall be allowed a deduction of the amount of such expenditure incurred during the previous year.

III. Deductions to be made in computing total income for the purposes of calculating tax liability on the total income

1. Donors (individuals, associations, companies, etc) are entitled for a deduction of 50% of donations made to the registered charitable organisations enjoying tax exemption status under Section 80G of the Income Tax Act. However, there is a limit up to which the benefit can be availed by the donor as provided in the Act. This benefit is subject to conditions imposed under sub-section 5 of Section 80G of the Income Tax Act.

In order to enable the donor to avail benefits under this Section, a charitable organisation requires approval by the Commissioner of Income Tax in accordance with Rule 11AA of the Income Tax Rules. The applicant needs to submit the following documents for obtaining such approval:

- i. Cost of registration granted under Section 12A or copy of notification issued under Sections 10(23) or 10(23C);
- ii. Notes on activities of institution since its inception or during the last three years, whichever is less;
- iii. Copies of accounts of the institution since its inception or for the last three years, whichever is less.

On being satisfied, the approval will be granted by the Commissioner and no order of rejection shall be passed without giving an opportunity of being heard. The validity of such approval is for a maximum period of five years. Rule 11AA provides time limit for decision on the application which should not exceed six months from the date of application. However, in computing the period of six months, time taken by the applicant in complying with the directions of the Commissioner is excluded.

3.3.3 To sum up, there are four areas of interface between voluntary organisations and the Income Tax Act. First is getting the exemption approved by the prescribed authority under Section 10(23C) of the Income Tax Act. Second is the process of getting registered as a charitable institution under Sections 12A and 12AA (in order to claim benefits under Sections 11 and 12). Third is getting 80G exemption certificate status. And fourth is claiming deductions under Sections 35, 35 AC, and 35 CCA. The procedures to be followed for availing of the benefits under the respective provisions of the Income Tax Act have been discussed briefly in the above paragraphs.

3.3.4 Simplification of Procedure under Section 12AA and Section 80G

3.3.4.1 As indicated above, approval under Section 80G needs to be granted within six months provided that in computing the period of six months, the time taken by the applicant in complying with the directions of the Commissioner shall be excluded. Several organisations brought to the notice of the Commission that the actual grant of an 80G exemption certificate sometimes takes longer due to this proviso. In fact, there have been instances where, by the time a certificate is made available to the applicant, the case becomes due for seeking renewal. Suggestions have been made that under Section 80G the exemption certificate should be granted to a Charity in perpetuity; there should be no need for its renewal. The tax authorities in any case have the powers to cancel the registration if any misuse/malfeasance is detected. The contrary argument is that as there are a large number of such institutions in the country (with many of them obtaining substantial donations every year), and as only a limited number of cases are now being taken up for scrutiny, it may not be physically possible for the Income Tax Department to keep a continuous track of their transactions. The necessity of securing renewal of the 80G certificate at a prescribed interval would require an organisation to apply afresh to the department with all details. A periodic revalidation clause is thus necessary to keep the organisation on the radar of the income tax authorities.

3.3.4.2 The Commission recognizes the need for simplifying the administrative procedure. To reduce the time taken for granting registration to organisations under Sections 80G and 12AA, the Commission is of the view that the order giving approval or rejecting the

application under these sections could be passed within a time limit of ninety days by the prescribed authority. In case of rejection, the assessee has the option to go in appeal before the Appellate Tribunal, against an order passed by the Commissioner under Section 12AA and Section 80G of the Income Tax Act, 1961.

3.3.5 Extending Time Limit for Accumulation of Surplus Income

3.3.5.1 Under the existing provisions, surplus income can be accumulated for a maximum period of five years for specific projects. To avail this facility, the accumulated income, during the period of accumulation, has to be invested in a manner as prescribed under Section 11 (5) of the Income Tax Act.

3.3.5.2 It was brought to the notice of the Commission that many of the Trusts / charitable institutions are engaged in projects with significant outlay on infrastructure. It may, often, not be possible to complete such large projects within the given time limit. Restricting the accumulation of surplus from income to a period of five years may in fact impede the project's completion. The Commission is of the view that in modern times, buildings and infrastructure are critical components of a charity's functioning (hospitals, old age homes/orphanages, educational institutions etc.). Therefore, the period of accumulation needs to be enhanced.

3.3.6 Rationalisation of Procedure under Section 35AC

3.3.6.1 With regard to Section 35AC of the Income Tax Act as stated in earlier paragraphs, a deduction on expenditure is allowed for eligible projects if it is recommended by the National Committee to the Ministry of Finance. It has been represented before the Commission that this is a time consuming process especially for organisations situated in far off areas which wish to avail this deduction. They have to spend considerable time, energy and resources to put up their case before the National Committee.

3.3.6.2 The Commission is of the view that exemptions sought under this provision of the law could be expedited if the National Committee is replaced by four Regional National Committees to be located in Delhi, Mumbai, Chennai and Kolkata. The members of these Committees would be persons of eminence in public life (as in the present National Committee) but perhaps with fewer members. Having Committees at regional levels would expedite quick disposal and also ensure that State biases do not occur while making recommendations. The recommendations of the Regional Committees would continue to be forwarded to the Ministry of Finance for a final decision. It is further suggested that the recommendations of the Committees should be valid for a period of five years (instead

of the present three years). Subsequent approval if required, would be granted only if the National Committee is satisfied about the activities of the association or institution during the preceding period of approval but here also the final decision would be that of the Ministry of Finance. The necessary administrative support to these Regional Committees would be provided by the Office of the Chief Commissioner of the city in which the Committee has its headquarters. A Commissioner of Income Tax could act as Secretary of the Committee.

3.3.7 Recommendations:

- a) Under Section 12AA and Section 80G, the registration or approval should be granted or an order rejecting the application should be passed within a period of ninety days from the date of filing of the application instead of the present one hundred and eighty days.**
- b) In view of the fact that infrastructure projects are a critical component of charitable institutions, the period for accumulation of surplus which is currently five years needs to be further enhanced.**
- c) The present National Committee may be replaced by four Regional Committees to recommend “deduction on expenditure” to the Union Government under Section 35AC of the Income Tax Act.**

3.4 Regulation of Foreign Contribution

3.4.1 Legal Framework

3.4.1.1 The Foreign Contribution (Regulation) Act, (FCRA) 1976 has the primary objective of regulating the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that Parliamentary and political associations, academic and other institutions as well as individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic. The Act prohibits acceptance of foreign contribution by election candidates, journalists, public servants, members of the legislature, and political parties or their office bearers (Section 4), and allows Associations having definite cultural, economic, educational religious or social programme to accept such contributions after complying with certain requirements (Section 6).

3.4.1.2 The requirements are: (i) that the Association shall register itself with the Union Government in accordance with the Act; (ii) shall agree to receive such foreign

contribution only through a particular branch of a Bank as specified in the application for registration, and (iii) shall give an intimation to the Union Government as to the amount of each foreign contribution received, the source from which it was received, and the manner in which such foreign contributions was utilized. The Union Government may also require such Associations to obtain its prior permission before accepting any foreign contribution if it is satisfied that the acceptance of foreign contribution by such Association is likely to affect prejudicially the sovereignty and integrity of India or the public interest or free and fair elections to any legislature; or relation with foreign countries; or harmony between religious, racial, linguistic or regional groups, castes or communities (Section 10). Prior permission of the Union Government is also required for any organisation of political nature, not being a political party (Section 5) or for any Association not registered under FCRA [Section 6(1a)] for accepting any foreign contribution.

3.4.1.3 FCRA has a rigorous scheme for compelling the recipients of foreign contributions to adhere to the stated purpose for which such contribution has been obtained. It is mandatory to receive the fund only through an intimated branch of a Bank, to use the fund only through that intimated Bank branch, to file annual returns, to use the fund only for the Association's purpose and not to pay to political parties. Government has the power to inspect and seize accounts and records, audit associations that fail to furnish returns, and confiscate articles and currency received in contravention of the Act.

3.4.1.4 The clause (Section 10) under the existing FCR Act, 1976 that the Union Government may, under certain circumstances, require organisations to obtain its prior permission before accepting any foreign contribution gives a lot of subjective powers to the authorities. The process of inquiry involving verification by intelligence agencies leaves considerable scope for misuse of powers, delay and harassment.

3.4.1.5 The Union Government has introduced a new Bill called The Foreign Contribution (Regulation) Bill, 2006 on 18th December, 2006 in the Parliament. The proposed Bill seeks to replace the existing Foreign Contribution (Regulation) Act, 1976 to regulate the acceptance, utilisation and accounting of foreign contribution and acceptance of foreign hospitality by a person or an Association. As per the Statement of Objects, the significant development of the recent past such as – change in the internal scenario, increased influence of voluntary organisations, spread in use of communication and information technology, quantum jump in the amount of foreign contribution being received and large scale growth in the number of registered organisations have necessitated large scale changes in the existing Act.

3.4.1.5.1 The Foreign Contribution (Regulation) Bill, 2006 provides, inter alia, to -

- (i) consolidate the law to regulate, acceptance and utilisation of foreign contribution or foreign hospitality and prohibit the same for any activities detrimental to the national interests;
- (ii) prohibit organisations of political nature, not being political parties from receiving foreign contribution;
- (iii) bring Associations engaged in production or broadcast of audio news or audio visual news or current affairs through any electronic mode under the purview of the Bill;
- (iv) prohibit the use of foreign contribution for any speculative business;
- (v) cap administrative expenses at fifty per cent of the receipt of foreign contribution;
- (vi) exclude foreign funds received from relatives living abroad;
- (vii) make provision for intimating grounds for refusal of registration or prior permission under the Bill;
- (viii) provide arrangement for sharing of information on receipt of foreign remittances by the concerned agencies to strengthen monitoring;
- (ix) make registration to be valid for five years with a provision for renewal thereof, and also to provide for cancellation or suspension of registration; and
- (x) make provision for compounding of certain offences.

A critical comparison of the changes proposed in the existing legal framework by Foreign Contribution (Regulation) Bill, (FCRB) 2006 is given below:-

3.4.1.5.2 Salient features of the Foreign Contribution (Regulation) Bill, 2006 and the existing law (FCR Act 1976)

1. Purpose

- (a) The preamble of the proposed Bill reads as –

“to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or

companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.”

Whereas the preamble of the FCRA, 1976 reads as under:

“An Act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected therewith or incidental thereto.”

- (b) From a plain reading of the above, it is evident that the purpose of the FCR Bill, 2006 is prohibitive rather than regulatory. The expression “activities detrimental to the national interest” leaves scope for subjectivity.

2. Prohibition to Accept Foreign Contribution

- (a) Section 4 of the FCRA, 1976 contains a list of the organisations and individuals that are prohibited from accepting foreign contribution. In the proposed Bill, few additions have been made such as – (i) organisation of a political nature not being a political party as specified by the Union Government; (ii) Association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of Sub-section (1) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication.
- (b) The Bill however does not provide any guidelines or definition on the basis of which an organisation can be treated as “an organisation of a political nature not being a political party”. The Union Government has been empowered to notify such organisations and a provision for representation before the Union Government has been made. Apprehensions have been expressed in some quarters that in the absence of any specified criteria for this purpose, those organisations which articulate the concerns of the under-privileged and marginalised may suffer.

3. Restrictions on Utilizing Foreign Contribution

- (a) Under the proposed Bill, contributions shall be utilised only for the purpose for which the same have been received (provided that any foreign contribution or any income arising out of it shall not be used for speculative business). Also the receiver shall not defray, such sum not exceeding 50% of such contribution received in a financial year, to meet administrative expenses. The Union Government has been authorized to prescribe the element which shall be included in the administrative expenses. Such provisions were not there in the FCRA, 1976.
- (b) The Bill does not define “speculative business”. Incidentally the Income Tax Act, 1961 allows the voluntary sector to invest funds in the modes specified under Section 11(5) which include government securities and mutual funds. Trusts have also been allowed to invest through such modes under the Indian Trusts Act, 1882. Therefore, the term “speculative business” needs to be spelt out clearly.
- (c) As regards the administrative expenses, the Bill gives considerable discretionary powers to the government. One may visualise situations where it would be difficult to differentiate between the administrative and project related expenses. For example, for an organisation engaged in health care projects salaries and other expenses on doctors/paramedics should be treated as a part of the core project cost and not as administrative expenses. This should be ensured by issuing clear guidelines rather than leaving it to the discretion of individual officials.

4. Definitions

Apart from the ambiguity in the concepts of “speculative business” and “administrative expenses” the definition of the following two terms needs reconsideration:

- (i) Foreign Hospitality – “Foreign Hospitality” means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment. The term “purely casual” needs to be explained further.
- (ii) Foreign Source – The definition of “Foreign Source” includes a company within the meaning of the Companies Act, 1956 in which (i) more

than 1/2 of the nominal value of its share capital is held either singly or in the aggregate by the citizens of a foreign country, (ii) corporations incorporated in a foreign country or (iii) a foreign company. The first of these criteria will cover many Indian multi-national companies including banks such as ICICI Bank and therefore, there may be need for reconsideration of this provision.

5. Registration

- (a) Any organisation having a definite cultural, economic, educational, religious or social programme requires to be registered under the FCRA, 1976 and the proposed Bill before acceptance of any foreign contribution. In case, such organisations are not registered they will have to obtain prior permission from the Union Government for acceptance of any contribution.
- (b) Going beyond the provisions of the present Act, the FCR Bill, 2006 gives immense discretion to the Government in the matter of registration. The Government can refuse to grant registration or permission to an organisation if it is satisfied that the organisation has indulged in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another.
- (c) A necessary condition for securing registration/permission is that the applicant organisation should have undertaken meaningful activity in its chosen field or should have a meaningful project for the benefit of the people for whom the foreign contribution is proposed to be utilized. This again is a matter of subjective satisfaction and is open to misinterpretation.
- (d) The certificate granted under the proposed Bill will be valid for a period of five years and thereafter it will have to be renewed. The application for renewal must be made within six months of the expiration of certificate. The renewal also carries a fee. However, the existing FCRA, 1976 provides for one time registration only. The proposed provisions are likely to result in increased cost, effort and possible harassment to voluntary organisations.
- (e) No time limit has been prescribed in the proposed Bill for grant or refusal of a certificate of registration or its renewal or for prior permission required in certain cases. But, under the existing FCRA, 1976, a time limit of ninety days is prescribed for grant of prior permission, failing which the permission will be deemed to have been granted.

- (f) Government has also been given powers with regard to suspension and cancellation of the registration certificate in the proposed Bill. The cancellation of the certificate can be ordered, if the holder has made an incorrect or false statement at the time of application, has violated any of the conditions of the certificate, the Government considers that the cancellation is necessary in the public interest and the holder of certificate has violated any of the provisions of this Act or Rules or Order made thereunder. Once the certificate has been cancelled, the person / organisation shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

6. Finance

The FCR Bill, 2006 allows receipt of foreign contribution in a single account only through one such branch of a Bank as may be specified in the application for grant of certificate. However, the recipient has been allowed to open one or more accounts in one or more Banks for utilizing the foreign contribution received by him. This is an improvement over the provisions of FCRA, 1976.

7. Appeal

The proposed Bill contains provisions for appeal before the High Court / Court of Sessions against the order on adjudication of confiscation. (Section 31). This section provides that any person aggrieved by any order made under Section 29 (adjudication of confiscation) may prefer an appeal. However, no appellate provisions are there over government's powers to restrict acceptance of foreign hospitality, to prohibit receipt of foreign contribution in certain cases (Section 9 of the Bill), to grant registration under Section 12(3) of the Bill, or to order suspension / cancellation / renewal of certificate etc.

8. Offences and Penalties

- (a) The scope of punishable offences have been substantially enlarged to cover offences such as making of false statement, declaration of delivering false account, penalty for article or currency or security obtained in contravention of the provisions of the Bill etc. It is observed here that while prescribing the quantum of punishment, the element of mens-rea should be taken into account.

- (b) The Bill however provides for compounding of offences punishable with imprisonment only.

3.4.1.5.3 The Bill has become a subject of intense debate and is being perceived as an intrusive piece of legislation which intends to place charities, receiving foreign donation under the subjective scrutiny of the authorities. The main arguments are:

- The aim of the Bill, as stated in the preamble is to prohibit the acceptance and use of foreign contribution for activities detrimental to 'national interest'. The term "detrimental to national interest" leaves scope for subjective interpretation.
- There are several grounds on which a certificate of registration could be refused. The words like likelihood of diversion of funds for 'undesirable' purposes or not having undertaken 'meaningful' activity or not having prepared a meaningful project for the 'benefit' of the people admit subjectivity.
- The provision for renewal every five years could lead to harassment.
- The Bill gives the executive, wide discretionary powers to cancel a certificate of registration in the 'public interest'. This is too broad, and open to subjective interpretation. Cancellation of the certificate should only be permitted upon breach of specific legal obligations.
- The powers of inspection, search and seizures may be tools for causing harassment to NPOs and puts them virtually in a position of subordination to the authorities.
- The provision for a cap of 50% on 'administrative expenses' is arbitrary and in many cases will stifle organisations working on projects which have high human resource content.
- The proposed Bill tries to place unnecessary restrictions on resources and investment of an organisation.
- The provision of the Bill prohibiting some categories of individuals from receiving foreign contributions goes against the principle of natural justice.

3.4.2 Reform of Registration Procedure

3.4.2.1 In the context of development of social capital, the primary concern with regard to receipt of foreign contributions should be to ensure that genuine organisations are not harassed or their functioning impeded by byzantine procedures and red tapism.

3.4.2.2 The Commission is of the view that the process of registration under the proposed law on foreign contribution needs to be kept simple and there is a need to fix a time limit for issue of registration certificate / prior approval by the competent authority.

3.4.2.3 At the same time, the Commission is aware that a large number of voluntary organisations are receiving donations from foreign sources and it is quite possible that at times the funds could be used for purposes which could adversely affect national interest. Against this background, creating an effective monitoring system to track such funds becomes necessary. The Commission is of the view that there is a need to maintain a fine balance between ‘national interest’ on one side and free functioning of the voluntary sector on the other. To that extent, there is need to clarify and amend the proposed Bill and clear the misgivings which are agitating the voluntary sector.

3.4.2.4 The changes required in the proposed Bill to provide such a balance are discussed below:

3.4.2.4.1 An organisation working on cultural, economic, educational or religious programmes which intends receiving foreign donation will need to be registered or required to seek prior approval under Section 11 of the FCR Bill, 2006. Even after registration, it is mandatory to furnish returns and details which enable competent authority to examine and check whether funds have been utilized in accordance with the provisions of this law.

3.4.2.4.2 The Bill prescribes no time limit for a procedure under Section 11. This is far more stringent than the provisions of the existing FCRA, 1976 which provided an outer time limit of ninety days. There is a deemed clause as well. Having such an open ended law may lead to delay and harassment. In a similar provision under the Income Tax Act (Section 12AA) too, which deals with registration of charitable institutions, there is a time limit of six months. There, it has been recommended that the period of six months should be further reduced to ninety days.

3.4.2.4.3 The existing Act FCRA, 1976 primarily intended to regulate receipt of foreign contribution in a manner such that the funds are not used (a) against the sovereign interest of the State, (b) for supporting political activities and elections and (c) for personal benefits of public servants. But, the FCR Bill, 2006 goes much beyond and tends (i) to prohibit receipt of foreign contribution by certain class of individuals or organisations; and (ii) to regulate foreign contribution received by voluntary organisations. It places extensive emphasis on national interest and issues such as not taking up meaningful activity [Section 12(3) (b)]; or not preparing a meaningful project [Section 12(3) (c)]; have been placed under the domain of the proposed law. The Commission feels that the term “national

interest” or other requirements as enunciated in the Bill, if not defined properly, could lead to a wide subjective interpretation and create unnecessary difficulties for bona fide voluntary organisations.

3.4.3 Rationalisation of Procedures

3.4.3.1 As per the Annual Report for the year 2005-06 of Ministry of Home Affairs, FCRA Division as on 31st March, 2006, 32,144 associations were registered under FCRA out of which 18,570 associations (including 6,827 associations which have filed nil return) received a total foreign contribution of Rs.7,877.57 crores. The Table given below shows that for the last five years, the majority of the Associations registered with the Ministry of Home Affairs have received contribution below Rs.1.0 crore.

Table 3.2: Year-wise details of Foreign Contribution received by Organisations (2001-05)

Year	Below Rs. 1 crore	Between Rs. 1-5 crores	Between Rs. 5-10 crores	Above Rs. 10 crores
2001-02	14,761	721	77	59
2002-03	15,650	798	76	66
2003-04	16,187	818	83	57
2004-05	17,373	985	112	70
2005-06	17,258	1,070	143	99

3.4.3.2 The procedure for grant of a registration certificate under the FCR Act is long and cumbersome and causes harassment to applicants. The division in charge of the subject in the Home Ministry is grossly understaffed and thus ill-equipped to deal with the large number of applications it receives every year. For verification of antecedents of the applicant organisations, it relies primarily on inputs provided by the intelligence agencies. For these agencies, this work is a low priority item and hence, the whole process takes a lot of time. Further, as per the intent of the Act, the Authorities have to ensure that the recipients of foreign contribution adhere to the stated purpose for which such contribution has been obtained. But in practice, this mechanism is very weak. Once the registration is granted, the matter goes into the sidelines. Scrutiny of the returns filed subsequently by organisations is reported to be perfunctory. As a result, the FCR Act is not meeting the objectives for which it was enacted.

3.4.3.3 Often, cases are selected by the FCRA Division of the Home Ministry for inter-agency consultation. In the absence of transparent rules / guidelines with regard to the procedure to be adopted for such consultations, the inter-agency reference leaves considerable scope for harassment, delay and corruption. The Commission is of the view that provisions of the Act need further elaboration with regard to (a) the minimum amount of donation which would require inter-agency consultation, (b) the level of the Authority which would authorize it, and (c) setting up time limits for such procedures.

3.4.3.4 Currently, the entire work under the FCRA is being handled by a Division of the Home Ministry headquartered at New Delhi. The State Government and its machinery particularly the District Administration which are in a position to observe and monitor the activities of the NGOs in their areas are not involved in the process. The Commission is of the view that if some of the functions under FCRA are decentralized and delegated to the State Government/ District Administration, it will help in (a) speedy disposal of registration petitions, (b) close monitoring of their activities, and (c) scrutiny of returns.

3.4.3.5 Moreover, many organisations are in receipt of meagre funds but they have to undergo full compliance requirements under the provisions of FCRA, 1976. This leads to delay and harassment besides putting a strain on the administrative capacity of those charged with the task of scrutinising their returns. The Commission feels that a threshold limit with regard to the amount of foreign contribution received in a year by voluntary organisation needs to be fixed. Organisations receiving contribution below this limit in a year would be exempted from registration and other provisions of this law. At the end of the year, these organisations could simply file an annual intimation with the appropriate authority indicating the details of the amount of foreign contribution received and utilized by them during the period. If the authority has reasons to believe that the declarant has suppressed or misstated certain facts with the deliberate intention of remaining within the threshold limit, activities of such an organisation can be probed further. Such a scheme is operative in other enforcement laws e.g. the provisions regarding Small Scale Industries under the Central Excise Act, 1944. In the background of the Table 3.2, such a threshold at present could be fixed at Rs.10.00 lakh. This figure could be revised from time to time. This step will enable the Authorities to concentrate on larger contributions.

3.4.4 Recommendations:

- a) The Foreign Contribution (Regulation) Bill, 2006 needs to be amended to include inter-alia the following suggestions:**
 - i. There should be a fine balance between the purpose of the legislation on one side and smooth functioning of the voluntary sector on**

- the other. The objectives of such a regulatory legislation should be properly enunciated to avoid subjective interpretation of law and its possible misuse.
- ii. There should be a time limit for procedures falling under Section 11 (seeking registration or prior permission for receiving foreign contribution).
 - iii. Transparent rules/guidelines should be prescribed for inter-agency consultation particularly in respect of (a) the minimum amount of donation which would require inter-agency consultation, (b) the level of the Authority which would authorise it, and (c) setting up time limits for such procedures.
 - iv. To facilitate (a) speedy disposal of registration / prior permission petitions received from organisations, (b) effective monitoring of their activities, and (c) proper scrutiny of returns filed by them, some of the functions under the Foreign Contribution (Regulation) Act should be decentralised and delegated to State Governments / District Administration.
 - v. Other concerns as stated in paragraph 3.4.1.5.3 also need to be considered.
- b) Organisations receiving an annual foreign contribution equivalent to less than Rs.10.00 lakh in a year (the figure to be reviewed from time to time) should be exempted from registration and other reporting requirements of the law. They should be asked, instead, to file an annual return of the foreign contribution received by them and its utilisation at the end of the year. The law may provide that they may be liable to be investigated, if there is a reasonable suspicion of suppression / misrepresentation of facts, and penal provisions of the law will be used against them in case violation is established.

4.1 General

4.1.1 Self-Help Groups are informal associations of people who choose to come together to find ways to improve their living conditions. They help to build Social Capital among the poor, especially women. The most important functions of a Self-Help Groups are (a) to encourage and motivate its members to save, (b) to persuade them to make a collective plan for generation of additional income, and (c) to act as a conduit for formal banking services to reach them. Such groups work as a collective guarantee system for members who propose to borrow from organised sources. Consequently, Self-Help Groups have emerged as the most effective mechanism for delivery of micro-finance services to the poor. The range of financial services may include products such as deposits, loans, money transfer and insurance.

4.2 Financial Inclusion – Current Status in the Country

4.2.1 One of the reasons for rural poverty in our country is low access to credit and financial services. As per a survey report of the NSSO (59th round), 45.9 million farmer households in the country (51.4%) out of a total of 89.3 million households do not have access to any form of credit from institutional or non-institutional sources. Overall, 73% of the households do not have credit links with any financial institution. This apart, the overall credit linkage portfolio when taken as a whole for the country, appears to be highly skewed with the North-Eastern, Eastern and Central regions lagging far behind other parts of the country.

4.2.2 In 2006, the Reserve Bank of India set up a Committee under the chairmanship of Ms. Usha Thorat, its Deputy Governor, to suggest methods to expand the reach and content of financial sector services in the North-East. Submitted in July 2006; the Report of the Committee emphasized on large scale expansion of financial intermediation in the entire region. This could be done by (a) opening new branches of Commercial Banks in these areas; (b) increasing the number of accounts in the existing units; (c) adopting the business correspondent / facilitator model to increase the reach of Commercial Banks; (d) extensive use of Information Technology ; (e) improving currency management / availability of foreign exchange facility; (f) providing insurance and capital market products through Banks; (g) introducing Electronic Clearing Services (ECS) and Real Time Gross Settlement System

(RTGS); (h) strengthening the Regional Rural Banks; (i) converting well established SHGs into cooperatives; (j) implementing the Vaidyanathan Committee's recommendations; (k) relaxing insistence on collaterals; and (l) enhancing the recovery capacity of the Registrar cooperative societies in the States to collect cooperative dues.

4.2.3 Again, in 2007, a Committee was constituted under the chairmanship of Dr. C. Rangarajan to prepare a comprehensive report on 'Financial Inclusion in the Country'. The Committee went into a large number of issues connected with (a) banking in remote areas, (b) empowerment of Self-Help Groups and their linkages with financial institutions and (c) revitalization of the RRBs.

One of the main findings of this Committee was that the scenario of credit access showed wide inter-region and inter-State variations. The following Tables explain the position¹³:

Level of Non-indebtedness: Across Regions

4.2.4 Farm households not accessing credit from formal sources as a proportion to total farm households is especially high at 95.91%, 81.26% and 77.59% in the North-Eastern, Eastern and Central Regions respectively. In terms of absolute numbers, these regions taken together account for 64% of farm households not accessing credit from formal sources as detailed below:

Table 4.1: Number of Farmer Households (HH) in Lakhs not accessing Credit from formal Sources

Region	Total HHs	Indebted HHs	% to total HHs	Non-indebted HHs	% to total HHs	Indebted to formal sources	% to total HHs	Excluded by formal sources	% to total HHs
Northern	109.46	56.26	51.40	53.2	48.60	27.423	25.05	82.04	74.95
North Eastern	35.40	7.04	19.90	28.36	80.10	1.448	4.09	33.95	95.91
Eastern	210.61	84.22	40.00	126.39	60.00	39.467	18.74	171.14	81.26
Central	271.33	113.04	41.60	158.29	58.40	60.814	22.41	210.52	77.59
Western	103.66	55.74	53.70	47.92	46.30	45.586	43.98	58.07	56.02
Southern	161.56	117.45	72.70	44.11	27.30	69.072	42.75	92.49	57.25
Group of UTs	1.48	0.49	33.10	0.99	66.90	0.15	10.14	1.33	89.86
All India	893.50	434.24	48.60	459.26	51.40	243.96	27.30	649.54	72.70
NE, C & E Regions*	517.34	204.30	39.49	313.04	60.51	101.73	19.66	415.61	80.34
Share to All-India (%)	57.90	47.05		68.16		41.70		63.99	

*NE= North-Eastern Region, C= Central Region, E= Eastern Region

¹³Report of Rangarajan Committee on Financial Inclusion, Jan 2008.

The southern region, at the other end, exhibits relatively better levels of access to formal/non-formal sources (72.7%) mainly on account of the spread of banking habits and a more robust infrastructure.

Level of Non-indebtedness: Across States

4.2.5 The proportion of non-indebted farmer households was most pronounced in Jammu and Kashmir (68.2%) and Himachal Pradesh (66.6%) in the Northern Region, all States in the North-Eastern Region (61.2% to 95.9%) except Tripura, in Bihar (67%) and Jharkhand (79.1%) in the Eastern Region, and Chhattisgarh (59.8%), Uttar Pradesh (59.7%) and Uttarakhand (92.8%) in the Central Region, as per details given below:

Table 4.2: Proportion of Non-indebted Farmer Households (State-wise)					
State / Region	Non-indebted Farmer HHs@		State / Region	Non-indebted Farmer HHs @	
	Lakh	%		Lakh	%
Northern	53.21	48.7	West Bengal	34.53	49.9
Haryana	9.11	46.9	Central	158.29	58.4
Himachal Pradesh	6.03	66.6	Chhattisgarh	16.50	59.8
Jammu & Kashmir	6.43	68.2	Madhya Pradesh	31.09	49.2
Punjab	6.38	34.6	Uttar Pradesh	102.38	59.7
Rajasthan	25.26	47.6	Uttarakhand	8.32	92.8
North Eastern	28.36	80.4	Western	47.92	46.3
Arunachal Pradesh	1.15	94.1	Gujarat	18.20	48.1
Assam	20.51	81.9	Maharashtra	29.72	45.2
Manipur	1.61	75.2	Southern	44.11	27.3
Meghalaya	2.44	95.9	Andhra Pradesh	10.84	18.0
Mizoram	0.60	76.4	Karnataka	15.52	38.4
Nagaland	0.51	63.5	Kerala	7.82	35.6
Tripura	1.19	50.8	Tamil Nadu	9.93	25.5
Sikkim	0.36	61.2			
Eastern	126.39	60.0	Group of UTs	0.99	66.9
Bihar	47.42	67.0			
Jharkhand	22.34	79.1	All India	459.26	51.4
Orissa	22.09	52.2	@ refers to non-indebtedness to both		

Level of Indebtedness to Institutional Sources

4.2.6 Derived data indicate that only 27.3% of the total farm households were indebted to institutional sources as detailed below:

Table 4.3: Proportion of Indebted Farmer Households					
Region	Total no. of HHs (lakh)	Incidence of indebtedness to both formal and non-formal sources		Indebtedness to institutional sources	
		Lakh HHs	(% to total HHs)	Lakh HHs	(% to total HHs)
Northern	109.46	56.26	51.39	27.42	25.05
North Eastern	35.40	7.04	19.88	1.45	4.09
Eastern	210.61	84.22	40.01	39.47	18.74
Central	271.33	113.04	41.66	60.81	22.41
Western	103.66	55.74	53.77	45.59	43.98
Southern	161.56	117.45	72.70	69.07	42.75
Group of UTs	1.48	0.49	33.10	0.150	10.14
All India	893.50	434.24	48.60	243.96	27.30

4.2.7 The Rangarajan Committee came to a finding that currently there are 256 districts in the country (out of a total 617) spread across 17 States and 1 Union Territory which suffer from acute credit exclusion with a credit gap of over 95%. The Committee identified four major reasons for lack of financial inclusion:

- i. Inability to provide collateral security,
- ii. Poor credit absorption capacity,
- iii. Inadequate reach of the institutions, and
- iv. Weak community network.

The existence of sound community networks in villages is increasingly, being recognised by development experts as one of the most important elements of credit linkage in the rural areas. Participatory community organisations (Self-Help/Joint Liability Groups) can

be extremely effective in reaching credit to the poor and can thus, play a critical role in poverty alleviation.

4.3 Evolution of the SHG Movement in India

4.3.1 Community Networks (Self Help / Joint Liability Groups) – Beginning

4.3.1.1 The first organised initiative in this direction was taken in Gujarat in 1954 when the Textile Labour Association (TLA) of Ahmedabad formed its women's wing to organise the women belonging to households of mill workers in order to train them in primary skills like sewing, knitting embroidery, typesetting and stenography etc. In 1972, it was given a more systematized structure when Self Employed Women's Association (SEWA) was formed as a Trade Union under the leadership of Ela Bhatt. She organised women workers such as hawkers, vendors, home based operators like weavers, potters, papad / agarbatti makers, manual labourers, service providers and small producers like cattle rearers, salt workers, gum collectors, cooks and vendors with the primary objective of (a) increasing their income and assets; (b) enhancing their food and nutritional standards; and (c) increasing their organisational and leadership strength. The overall intention was to organise women for full employment. In order to broaden their access to market and technical inputs, these primary associations were encouraged to form federations like the Gujarat State Mahila SEWA Cooperative Federation, Banaskantha DWCRA, Mahila SEWA Association etc. Currently, SEWA has a membership strength of 9,59,000 which is predominantly urban. In the 1980s, MYRADA – a Karnataka based non-governmental organisation, promoted several locally formed groups to enable the members to secure credit collectively and use it along with their own savings for activities which could provide them economically gainful employment.

Box 4.1: SEWA's Eleven Questions:

- 1) Have more members obtained more employment?
- 2) Has their income increased?
- 3) Have they obtained food & nutrition?
- 4) Has their health been safeguarded?
- 5) Have they obtained childcare?
- 6) Have they obtained or improved their housing?
- 7) Have their assets increased? (e.g. their own savings, land, house, work-space, tools or work, licenses, identity cards, cattle and share in cooperatives; and all in their own name.)
- 8) Have the worker's organizational strength increased?
- 9) Has worker's leadership increased?
- 10) Have they become self-reliant both collectively and individually?
- 11) Have they become literate?

4.3.1.2 Major experiments in small group formation at the local level were initiated in Tamilnadu and Kerala about two decades ago through the Tamilnadu Women in Agriculture Programme (TANWA) 1986, Participatory Poverty Reduction Programme of Kerala, (Kudumbashree) 1995 and Tamilnadu Women's Development Project (TNWDP) 1989. These initiatives gave a firm footing to SHG movement in these States.

Today, around 44% of the total Bank-linked SHGs of the country are in the four southern States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala.

4.3.1.3 The positive experience gained from the above programmes has led to the emergence of a very strong consensus that the twin concepts of (a) small group organisation and (b) self-management are potent tools for economic and social empowerment of the rural poor. Efforts have been made almost in all parts of the country to adopt this model as a necessary component of the poverty alleviation programmes.

Table 4.4: SHG-Bank Linkage Programme-Regional Spread of Physical and Financial Progress as on 31 March 2007

<i>Rs. in millions</i>									
Sl. No.	Region/State	Cumulative no. of SHGs provided with bank upto 31 March 2006	No. of new SHGs provided with bank loan during 2006-07	No. of existing SHGs provided with repeat bank loan during 2006-07	Cumulative No. of SHGs provided with bank loan upto 31 March 2007 (3+4)	Cumulative bank loan upto 31 March 2006	Bank Loan during 2006-07	Of Col. 8, repeat bank loan to existing SHGs	Cumulative bank loan upto 31 March 2007 (7+8)
1	2	3	4	5	6	7	8	9	10
A Northern Region									
1	Himachal Pradesh	22,920	4,879	2,282	27,799	863.98	388.27	153.60	1,252.25
2	Rajasthan	98,171	39,666	3,692	137,837	2,447.94	1,447.40	191.53	3,895.34
3	Haryana	4,867	1,966	1,821	6,833	316.01	183.31	69.86	499.32
4	Punjab	4,561	1,893	517	6,454	238.86	117.74	29.24	356.60
5	Jammu & Kashmir	2,354	405	199	2,759	100.48	44.25	15.83	144.73
6	New Delhi	224	112		336	18.58	8.65		27.23
	TOTAL (A)	133,097	48,921	8,511	182,018	3,985.85	2,189.62	460.05	6,175.47
B North Eastern Region									
7	Assam	56,449	25,005	160	81,454	1,423.98	794.40	2.91	2,218.38
8	Meghalaya	735	476	0	1,211	16.19	17.40	0.00	33.59
9	Tripura	1,996	910	57	2,906	31.12	18.40	1.48	49.52
10	Sikkim	127	33	C	160	1.86	1.12	0.00	2.98
11	Manipur	1,468	1,215	0	2,683	71.85	40.80	0.00	112.65
12	Arunachal Pradesh	346	101	0	447	13.49	5.72	0.00	19.21
13	Nagaland	422	576	10	998	34.38	33.50	2.97	67.88
14	Mizoram	974	921	0	1,895	64.14	70.56	0.00	134.70
	TOTAL (B)	62,517	29,237	227	91,754	1,657.01	981.89	7.36	2,638.90

C Eastern Region									
15	Orissa	180,896	53,555	28,806	234,451	4,754.65	3,274.27	1,409.33	8,028.92
16	Bihar	46,221	26,118	1,306	72,339	1,052.19	960.28	211.15	2,012.47
17	Jharkhand	30,819	6,498	1,153	37,317	1,114.60	391.96	84.21	1306.56
18	West Bengal	136,251	45,312	22,014	181,563	2,424.52	2,060.64	888.40	4,485.16
19	UT of A & N Islands	164	47	30	211	8.23	4.58	3.40	12.81
	TOTAL (C)	394,351	131,530	53,309	525,881	9,354.19	6,691.72	2396.50	16,045.91
D Central Region									
20	Madhya Pradesh	57,125	13,787	1,726	70,912	1,666.86	499.23	65.12	2,166.09
21	Chhattisgarh	31,291	10,412	1,330	41,703	337.81	218.44	27.51	556.25
22	Uttar Pradesh	161,911	36,676	2373	198,587	5,153.54	1,778.48	192.43	6,932.02
23	Uttarakhand	17,588	3,939	1,268	21,527	891.86	382.69	225.64	1,274.55
	TOTAL (D)	267,915	64,814	7,217	332,729	8,050.07	2,878.84	510.69	10,928.91
E Western Region									
24	Gujarat	34,160	9,412	64	43,572	1,244.51	885.46	4.69	X\ 29.97
25	Maharashtra	131,470	94,386	19,382	225,856	3,951.67	2,983.86	841.01	6,935.53
26	Goa	624	395	142	1,019	55.21	28.28	9.03	83.49
	TOTAL (E)	166,254	104,193	19,583	270,447	5,251.39	3,897.60	854.72	9,148.99
F Southern Region									
27	Andhra Pradesh	587,238	96,381	262,895	683,619	43,455.18	27,754.55	23,536.74	71,209.73
28	Karnataka	224,928	92,708	56,717	317,636	9,927.53	8,163.89	3,239.26	18,091.42
29	Kerala	86,955	30,925	13,359	117,913	4,821.48	2,889.40	1,067.68	7,710.88
30	Tamil Nadu	312,778	87,699	35,387	400,477	27,121.87	10,984.48	3,721.55	38,106.35
31	UT of Pondicherry	2,499			2,499	350.86			350.86
	TOTAL (F)	1,214,431	307,713	368,558	1,522,144	85,676.92	49,792.32	31,565.24	135,469.24
	GRAND TOTAL	2,238,565	686,408	457,410	2,924,973	113,975.43	66,431.99	35,994.56	180,407.42

Source: NABARD

4.3.2 SHG Development since 1992 and NABARD

4.3.2.1 Forming small groups and linking them to bank branches for credit delivery has been the most important feature of the growth of the SHG movement in our country. The SHG-Bank linkage programme was started as a test project in 1989 when NABARD, the Apex Rural Development Bank in the country, sanctioned Rs.10.0 lakhs to MYRADA as seed money assistance for forming credit management groups. In the same year, the Ministry of Rural Development provided financial support to PRADAN to establish Self-Help Groups in some rural pockets of Rajasthan. On the basis of these experiences, a full-fledged project involving a partnership among SHGs, Banks and NGOs was launched by

NABARD in 1992. In 1995, acting on the report of a working group, the RBI streamlined the credit delivery procedure by issuing a set of guidelines to Commercial Banks. It enabled SHGs to open Bank Accounts based on a simple inter-se agreement. The scheme was further strengthened by a standing commitment given by NABARD to provide refinance and promotional support to Banks for credit disbursement under the SHG – Bank linkage programme. NABARD's corporate mission was to make available microfinance services to 20 million poor households, or one-third of the poor in the country, by the end of 2008. In the initial years, the progress in the programme was a slow; only 32995 groups could be credit linked during the period 1992-99. But, thereafter, the programme grew rapidly and the number of SHGs financed increased from 81780 in 1999-2000 to more than 6.20 lakhs in 2005-06 and 6.87 lakhs in 2006-07. Cumulatively, 32.98 million poor households in the country have been able to secure access to micro-finance from the formal banking system¹⁴.

Table 4.5: Details of SHGs Finance

Year	No. of SHGs financed during the year (in lakh)	Cumulative number of SHGs financed (in lakh)
2001-02	1.98	4.61
2002-03	2.56	7.17
2003-04	3.62	10.79
2004-05	5.39	16.18
2005-06	6.20	22.38
2006-07	6.87	29.25

Source: NABARD

4.3.2.2 NABARD, in association with Deutsche Gesellschaft fur Technische Zusammenarbeit (GTZ), conducted a study, in 2005, on the comparative performance of SHG – Bank linkage programme vis-à-vis other modes of priority sector lending. The findings are based on the data received from 27 Commercial Banks, 192 RRBs and 114 Cooperative Banks participating in the programme. One of the

Box 4.2: Some Features of the Self-Help Group Movement in the Country (year 2005-06)

- SHG model is the dominant vehicle for Micro Finance in India.
- 2.24 million SHGs under Bank linkage on 31.03.2006.
- Initially NGOs pioneered the SHG promotion processes.
- Government emerged as the largest SHG promoter.
- Various government subsidy programs linked to SHG.
- 9.64 lakh SHGs (6.20 lakh new and 3.44 lakh for repeat loan) got financed in 2005-06.
- Average loan size to a new SHG – Rs. 37,561 and average repeat loan per SHG – Rs. 62,918.
- Approximately 44% of the country's Bank-linked SHGs were in the southern States.

¹⁴NABARD Data 2005-06.

important observations of the study was that 1.44 million SHGs had loans outstanding of Rs.4,200 crore with the banking system. 2.63 million SHGs had saving accounts with the banks and the savings outstanding was Rs.2,391 crore.

Table 4.6: Trends and Progress of SHG - Bank Linkage Programme in India

(INR Rs. Million)

	March 1993	March 1996	March 2006	March 2007
SHGs linked	255	4,757	22,38,525	29,24,973
% women's groups	70	74	90	90
Families assisted (m)	0.005	0.08	32.98	40.95
Population covered (m)	0.025	0.40	164.90	204.75
Banks participating	14	95	501	498
SHG promoting partners	32	127	4,323	4,896
Districts covered	26	157	572	587
Cumulative bank loan	2.58	53.32	1,13,974.01	1,80,407

Source: NABARD

4.3.2.3 At first glance, the above figures; 40.95 million families and 204.75 million people having been covered under this programme and the cumulative loan figure standing at 18040 crores as on 31-03-2007 appear to be impressive. But in the context of the magnitude of poverty prevailing in the country and the overall quantum of the fundflow available under various anti-poverty programmes of the Government, the size of the SHG movement could be described only as modest. In the years 2003-04, 2004-05 and 2005-06, the average loan available to newly formed groups from external financial institutions was Rs.32005, Rs.32012 and Rs.37581 respectively. The figure for per capita disbursement works out to be less than Rs.4,000/-; whereas under Swarna Jayanti Gram Swarajgar Yojana (SJGSY) (a scheme meant exclusively for BPL families in the rural areas), it stood at Rs.21,818 (2005-06).

4.3.3 Other Agencies Involved in SHG Development

4.3.3.1 Apart from NABARD, there are four other major organisations in the public sector which too provide loans to financial intermediaries for onward lending to SHGs. They are (a) Small Industries Development Bank of India (SIDBI), (b) Rashtriya Mahila Kosh (RMK), and (c) Housing and Urban Development Corporation (HUDCO). Then, there

are public sector/other commercial banks which are free to take up any lending as per their policy and RBI guidelines.

4.3.3.2 Rashtriya Mahila Kosh (RMK)

4.3.3.2.1 The Rashtriya Mahila Kosh was set up by the Government of India in March 1993 as an Autonomous Body registered under Societies Registration Act, 1860 under the Department (now Ministry) of Women and Child Development. The objective was to facilitate credit support to poor women for their socio-economic upliftment.

4.3.3.2.2 It was felt that the credit needs of poor women, specially those in the unorganized sector, were not adequately addressed by the formal financial institutions of the country. Thus RMK was established to provide loans in a quasi formal credit delivery mechanism, which is client-friendly, has simple and minimal procedure, disburses quickly and repeatedly, has flexible repayment schedules, links thrifts and savings with credit and has relatively low transaction costs both for the borrower and the lender. The maximum amount of loan that can be given to a beneficiary at a time is Rs. 25,000 for income generation, Rs.50,000 for house building and Rs. 10,000 for a family purpose.

4.3.3.2.3 The Kosh lends with a unique credit delivery model “RMK – NGO-SHG-Beneficiaries”. The support is extended through NGO’s, Women Development Corporations, State Government agencies like DRDA’s, Dairy Federations, Municipal Councils etc.

Table 4.7: RMK Performance - A Bird’s Eye View
(As on 31.03.2008)

Loans sanctioned	Rs.250 crores
Loans disbursed	Rs.197 crores
Recovery percentage	Above 90%
IMOs (Intermediary Organisations)	1375
SHGs	61,600
Women benefited	6,19,230
No. of nodal agencies	31
Franchises	5
States / UTs covered	25
Ceiling of loan to an individual	Rs.25,000/- Income generation Rs.50,000/- Housing loan Rs.10,000/- Family consumption loan

Source : Rashtriya Mahila Kosh.

4.3.3.2.4 A corpus of Rs.31 crore was provided to the RMK at its inception. During the intervening period of 15 years, this corpus has been increased only marginally and as on 31.03.2008 it stood at Rs. 76.15 crore. The Kosh does not have Regional / branch offices anywhere in the country and operates only through its corporate office located at New Delhi.

4.3.3.2.5 The Kosh has a small organisational set up having a total staff strength of less than 30 with the Minister of Women and Child Development as the Chairman of the Governing Body and an Executive Director as its functional head. Its area of operation extends to the entire country. The process of loan sanction to voluntary organisations consists of five main steps viz. (i) issues of guidelines / inviting applications; (ii) desk evaluation of the proposal; (iii) pre-sanction visit / assessment; (iv) sanction and implementation, monitoring and (v) post- completion reporting. In the year 2006-07, the organisation provided credit of Rs. 30.71 crores benefiting 34,692 women. The cumulative figure for the last 15 years stands at 5,83,403.

4.3.3.2.6 The Commission is of the view that it is difficult for a small Delhi based organisation like RMK to function effectively and monitor projects spread over the entire country. If this organisation is required to play a significant role in this sector, then some urgent measures need to be taken by the government. The corpus of the Kosh should be enhanced substantially so that the coverage of its programmes goes up. In order to give it an enhanced geographical reach, the Kosh should be allowed to open regional offices with adequate staff at selected places in the country. It will help in speedy processing of applications and effective monitoring of the sanctioned schemes. Since the States of the North-East, Bihar, UP, Orissa, Jharkhand, Uttarakhand, Madhya Pradesh, Chhattisgarh and Rajasthan have been identified as credit deficient, the Kosh may be given a special mandate that the focus of its activities will be in these areas for a period of next five years.

4.3.3.3 Microfinance Programme of SIDBI

4.3.3.3.1 Small Industries Development Bank of India (SIDBI) launched its micro finance programme on a pilot basis in 1994 using the NGO / MFI model of credit delivery wherein such institutions were used as financial intermediaries for delivering credit to the poor and unreached, mainly women. Learning from the experience of the pilot phase, SIDBI reoriented and upscaled its micro finance programme in 1999. A specialised department viz. 'SIDBI Foundation for Micro Credit' (SFMC) was set up with the mission to create a national network of strong, viable and sustainable Micro Finance Institutions (MFIs) from the informal and formal financial sectors. SFMC serves as an apex wholesaler for micro finance in India providing a complete range of financial and non-financial services

to the MFIs so as to facilitate their development into financially sustainable entities, besides developing a network of service providers and advocating for appropriate policy framework for the sector.

4.3.3.3.2 SFMC is implementing the National Micro Finance Support Programme (NMFSP). The overall goal of NMFSP is to bring about substantial poverty elimination and reduced vulnerability in India amongst users of micro-finance services, particularly women. The NMFSP is being implemented in collaboration with the Government of India, the Department for International Development (DFID), UK and the International Fund for Agricultural Development (IFAD), Rome.

4.3.3.3.3 The cumulative assistance sanctioned under SIDBI's micro finance initiatives under its various products upto March 31, 2008 aggregates to Rs. 1946.82 crore while cumulative disbursements stand at Rs. 1661.77 crore.

Table 4.8: Assistance under Micro-Credit by SIDBI

<i>(Rs. crore)</i>							
Sr.	Particulars	2006-07		2007-08		Cumulative	
		Sanc.	Disb.	Sanc.	Disb.	Sanc.	Disb.
1	Term Loans	385.00	348.42	745.95	695.80	1820.63	1565.27
2	Liquidity Management Support (LMS)	3.20	3.07	0.00	0.00	6.60	6.47
3	Transformation Loan (TL) / Corpus Support for Transformation	1.40	1.40	0.00	0.00	15.05	14.05
4	Equity Support	0.00	0.00	13.71	5.71	15.71	6.71
5	Capacity Building Grant to MFIs	23.84	19.88	5.36	7.00	63.76	48.60
6	Risk Fund for Smaller MFIs	0.00	0.00	2.98	2.98	2.98	2.98
7	Other Capacity Building Grants	3.55	3.23	0.74	2.24	22.09	17.69
	Total	416.99	376.00	768.74	713.73	1946.82	1661.77
8	Loan Outstanding	548.44	950.38				
9	No. of Beneficiaries Assisted	8.60 lakh	12.88 lakh	46.33 lakh			

Source : SIDBI

4.3.3.3.4 SIDBI is also focusing on development of microfinance in the weaker States which have inadequate access to formal financial services such as Uttar Pradesh, Bihar, Jharkhand, Orissa, Chhattisgarh, Madhya Pradesh, Rajasthan and the North-Eastern States.

4.3.3.3.5 Government of India (GOI) has committed support of Rs. 150 crore under the Portfolio Risk Fund (PRF) Scheme which is being utilised by the Bank for meeting a part of the security cover requirements under the Micro Credit Scheme for providing loan assistance to MFIs. The PRF corpus is available for a period of five years with effect from the Financial Year 2007 and aims to cover an additional fifty lakh beneficiaries throughout the country. Cumulatively, as on March 31, 2008 disbursement to eligible MFIs under PRF stood at Rs. 709.37 crore covering 11.83 lakh clients.

4.3.4 Some Success Stories in States

4.3.4.1 Poverty eradication through social mobilization and empowerment of women in Andhra Pradesh:

4.3.4.1.1 The Government of Andhra Pradesh has been successfully implementing poverty alleviation programmes in the State through extensive social mobilization. Women have been placed in the fore-front of the development agenda through formation of women's Self-Help Groups. Multi-level SHG federations formed at the block and district levels have further benefited the growth of SHGs and institutionalized this mobilization. The State Government assists the groups by providing Revolving Fund / Matching Grant under various programmes. Society for Elimination of Rural Poverty (SERP), a registered autonomous Body, is playing a key role in this process by providing facilitation support to groups and by sensitizing line departments of the government, Banks and insurance companies towards the needs of the poor.

Box 4.3: SHG-Bank linkage in Andhra Pradesh

- Bank loans to SHGs – Rs.5900 crores in 2007/08
- Per member linkage : Rs.11000
- Repayment rates > 98.5 %
- From savings linked lending to lending based on micro credit planning by S.H.Gs
- Bank finance for debt swapping, social needs and income generation – 3000 villages covered, balance 32000 villages in 3 years
- From 2004 – interest subsidy for on-time repayment - 'Pavala vaddi' scheme: Rs.250.0 crores outlay for 2008/09

Key Impact

Leadership development:

- 14,00,000 women leaders
- 180,000 para-professionals working for SHGs and V.Os
- 20,000 community resource persons fuelling the social mobilisation process across the State

Savings and loaning:

- Accumulated corpus of Rs.3000 crores
- Bank loans to SHGs – Rs.200 crores in 01/02 to Rs.5900 crores in 07/08 – 30-fold increase in 8 years
- Low interest loans to SHGs – freedom from exploitative debt

Lessons from Andhra Pradesh Experience

- Role of State Government critical - long term poverty eradication strategy a must
- State wide support structure to induce social mobilisation
- Social capital critical – building institutions of the poor and best practitioners of the community
- Pro-poor orientation of service providers
- Faith in the capability of poor
- Learn from the poor
- Transfer ownership to institutions of poor as early as possible
- Role of community resource persons – critical

Source: Presentation made before the Commission by the Chief Executive Officer, Society for Eradication of Poverty (SERP), Department of Rural Development, Government of Andhra Pradesh

4.3.4.2 Self-Help Groups for Rural Development: the Tamil Nadu Experiment¹⁵

4.3.4.2.1 In Tamil Nadu, the Department of Rural Development has taken initiative to organise the rural poor into Self-Help Groups which collectively work for securing livelihood employment for the members. The members of the group agree to save regularly and convert their savings into a common fund known as the group corpus. This fund is used by the group through a common management strategy. The group keeps in view the following broad guidelines:

4.3.4.2.2 Generally, a Self-Help Group consists of 10 to 20 persons. However, in difficult areas having scattered and sparse population, the number may even go down to 5. But, the areas need to be identified by the State Level SGSY Committee. Similar relaxation is available to groups consisting of disabled persons as well as to groups which take up schemes of minor irrigation.

4.3.4.2.3 The essential condition is that the group should belong to families below the poverty line. However, if necessary, a maximum of 20% and in exceptional cases, where essentially required, upto a maximum of 30% of the members in a group may be taken from families marginally above the poverty line living contiguously with BPL families. It has to be with consent of the BPL members of the group. This helps the families of occupational groups like agricultural labourers, marginal farmers and artisans marginally above the poverty line, or who may have been excluded from the BPL list to become members of the Self-Help Group. However, the APL members are not eligible for the subsidy under the scheme. The group does not admit more than one member from the same family. It is also implied that the same person should not be a member of more than one group. The BPL families are actively encouraged to participate in the management and decision making of the group; APL members are not allowed to dominate. Further, APL members of the

¹⁵www.tn.gov.in/dtp/shg.htm

Self-Help Groups are not encouraged to become office bearers (Group Leader, Assistant Group Leader or Treasurer) of the group.

4.3.4.2.4 The group has its own code of conduct (group management norms) to bind itself. This is further strengthened by regular meetings (weekly or fortnightly), functioning in a democratic manner, allowing free exchange of views, participation by the members in the decision making process.

4.3.4.2.5 The group is expected to draw up an agenda for each meeting and take up discussions as per the agenda.

4.3.4.2.6 The members are required to build their corpus through regular savings. It is expected that a minimum voluntary saving amount from all the members will be collected in the group meetings. The savings so collected will be the group corpus fund.

4.3.4.2.7 The group corpus fund is used to advance loans to the members. The group tries to develop financial management norms covering the loan sanction procedure, repayment schedule and interest rates.

4.3.4.2.8 The members in the group meetings are encouraged to take all the loaning decisions through a participatory decision-making process.

4.3.4.2.9 The group prioritises the loan applications, fixes repayment schedules, determines appropriate rate of interest for the loans advanced and closely monitors the inflow of repayments from the loanees.

4.3.4.2.10 The group operates a group account in their service area Bank branch, so as to deposit the balance amounts left with the groups after disbursing loans to its members.

4.3.4.2.11 The group is encouraged to maintain simple basic records such as Minutes book, Attendance register, Loan ledger, General ledger, Cash book, Bank Passbook and Individual Passbooks. These could be used with changes/modifications wherever required.

4.3.4.2.12 As per government notification, 50% of the groups formed in each block should be for women. In the case of disabled persons, the groups formed should ideally be disability-specific wherever possible, however, in case sufficient number of people for formation of disability-specific groups are not available, a group may comprise of persons with diverse disabilities or a group may comprise of both disabled and non-disabled persons belonging to the BPL category.

4.3.4.3 Kudumbashree Mission in Kerala¹⁶

4.3.4.3.1 The State Poverty Eradication Mission - Kudumbashree was launched by the State Government of Kerala in 1998 with the active support of Government of India and NABARD. The objective was to eradicate absolute poverty in 10 years under the leadership of Local-Self Governments.

4.3.4.3.2 The motivation for launching the project was the successful experimentation of the community based approach of poverty alleviation in Alappuzha and Malappuram districts, through Urban Basic Services Programme. Kudumbashree emphasises that all developmental programmes relating to Nutrition, Poverty Alleviation, RCH, SC/ST Development, DPEP and SGSY should be run by community based organisations with support of Panchayati Raj/Local Governance Institutions.

4.3.4.3.3 Development of Grass Roots Level Community Based Organisation (CBO)

4.3.4.3.3.1 The women are organised into Neighbourhood Groups, (NHGs) consisting of 20-40 women with 5 functional volunteers- Community Health Volunteer, Income Generation Volunteer, Infrastructure Volunteer, Secretary and President. These groups are coordinated at the Ward level through Area Development Society (ADS), by federating 8-10 NHGs. The coordinating Apex Body at the Panchayat level is the Community Development Society (CDS), which is a registered Body under the Charitable Societies Registration Act.

4.3.4.3.3.2 The group meets once a week in the house of a member. The aspirations and genuine demands voiced in the NHG meetings form the “micro-plans”, and are scrutinized and prioritized to form a mini-plan at the level of ADS. A judicious prioritization process at the level of CDS leads to finalisation of a “CDS Plan”. It is the “anti-poverty sub-plan” of the Local-Self Government. Preparation of micro, mini and CDS plans facilitate effective participation of the poor in the planning process. The local body monitors the overall implementation of this plan.

4.3.4.3.4 Micro finance Operations in Kudumbashree

4.3.4.3.4.1 Thrift and Credit Societies are set up at NHG level to encourage the poor to save and to avail easy credits. These facilities have gradually grown into informal Doorstep Banks for Kudumbashree members.

¹⁶www.kudumbashree.org

Table 4.9: Status Report of NHGs and Thrift & Credit in Kerala*as on March 2008*

No	District	No. of GPs	No. of NHG	No. of ADS	Families Covered	Families Started Thrift	Thrift (Rs.)	Loan (Rs.)
1	Thiruvananthapuram	78	16744	1259	344225	341807	956242072	2105278878
2	Kollam	71	12163	1214	223550	223550	670675500	1488810077
3	Pathanamthitta	54	6447	730	136670	136405	327632000	603642523
4	Alappuzha	73	13245	1113	260592	260592	756129158	1724422132
5	Kottayam	75	10916	1153	220635	220609	534745569	1027567284
6	Idukki	52	9160	750	166607	166094	585814371	1464853768
7	Ernakulam	88	12998	1352	217430	217421	642370775	2062614492
8	Thrissur	92	15619	1350	283955	283955	866426339	3235712785
9	Palakkad	91	19848	1435	337539	337539	981074696	2627815553
10	Malappuram	102	14249	1845	321957	321957	772699191	1215523897
11	Kozhikkode	78	14394	1309	296677	293924	1011138135	2535422917
12	Wayanad	25	7316	434	120248	120248	318664638	1005784350
13	Kannur	81	10973	1264	216275	216275	651397195	2166560511
14	Kasargode	39	5561	646	118694	119118	346218198	1371418287
	Total	999	169633	15854	3265054	3259494	9421227837	24635427454
15	Urban (58 ULBs)		13329	1096	347971	347971	555276879	639794031
16	Tribal NHGs (9 Dist)		2347		40630	38266	57549343	122198761
	Grand Total		185309	16950	3653655	3645731	10034054059	25397420246

4.3.4.3.5 Linkage Banking

4.3.4.3.5.1 Groups which are mature enough to avail loans are linked with Banks under the Bank-linkage programme of the NABARD.

Table 4.10: Loans under Linkage Banking Programme of NABARD in Kerala*As on March, 2008*

No.	Name of District	NHGs Graded (Nos)	NHGs Linked (Nos)	Loan Disbursed (Rs. In Lakhs)
1	Thiruvananthapuram	13509	9874	3922.45
2	Kollam	9346	9318	7115.48
3	Pathanamthitta	4405	2694	3796.56

4	Alappuzha	10227	10160	5863.42
5	Kottayam	4338	4062	2792.07
6	Idukki	4680	4470	3241.78
7	Ernakulam	10272	8861	4331.64
8	Thrissur	8134	7546	4669.16
9	Palakkad	14240	11621	5380.08
10	Malappuram	5174	4593	1859.84
11	Kozhikkode	11666	6740	4680.35
12	Wayanad	6029	5429	4229.97
13	Kannur	8437	4551	1933.06
14	Kasaragode	4304	3059	1590.86
Total		114761	92978	55406.71

4.3.4.3.6 Micro Enterprise Development

4.3.4.3.6.1 Kudumbashree views micro enterprise development, which fosters the economic status of women as a powerful tool for poverty eradication. Both individual and group initiatives, which generate income to meet their livelihood needs, are promoted. Canteens/ Catering units, IT units, group farming, units of solar dried fruits etc. are some examples of micro-enterprise units initiated by the women.

4.3.4.3.7 Kudumbashree as State Urban Development Agency (SUDA)

4.3.4.3.7.1 Kudumbashree has also been associated with urban development projects in the State. Implementation of the Swarna Jayanti Sahari Rozgar Yojana SJSRY (an anti-poverty programme for urban areas), the National Slum Development Programme NSDP, (a programme of urban infrastructure development) and the Valmiki Ambedkar Awas Yojana VAMBAY (a programme of housing development in slum areas) is being done and monitored by Kudumbashree.

4.3.4.3.8 Special Interventions in Tribal Areas

4.3.4.3.8.1 Kudumbashree has organized 2340 NHGs among 5 primitive tribal groups, namely Koragas of Kasargod, Paniyas and Kattunaikans of Waynad and Malappuram, Kadar of Thrichur and Kurumbar of Attappadi-Palakkad Districts.

4.3.4.3.9 Women's Empowerment - A Route to Poverty Reduction

4.3.4.3.9.1 In the Kudumbashree model, Womens' Empowerment is being projected as a strategic route towards the ultimate goal of Poverty reduction. Because of their active involvement in various income generation activities, women who in the past, were regarded as voiceless and powerless, have now started asserting and articulating their innate power, their strengths, opportunities for growth and their role in poverty eradication. This empowerment is also getting transferred to their children (particularly the girl child), the family and ultimately to society.

4.3.5 Private Initiative in SHG Development

4.3.5.1 Though, government efforts have played a major role in advancing the SHG movement in the country, there have been a large number of voluntary organisations (NGOs) which too have facilitated and assisted SHGs in organizing savings and credit in different parts of India. SEWA in Ahmedabad, MYRADA in Karnataka, Nav Bharat Jagriti Kendra and Ramakrishna Mission in Jharkhand, and ADITHI in Bihar are some of the names which took the lead in promoting Self-Help Groups (mostly of women) around income generation activities using local skills. From organizing villagers into groups which could work on viable activities, to making a project and securing funds (own contribution or through a tie-up with the financial institution), these VOs have worked with involvement and dedication. PRADAN (Professional Assistance for Development Action), DHAN Foundation, ASSEFA (Association of Sarva Seva Farms, MALAR (Mahalir Association for Literacy, Awareness and Rights), SKS, Janodaya, Cohesion Foundation and Jan Chetna Sansthan are some of the other major non-governmental institutions which are promoting and nurturing a large number of SHGs of poor people, mostly women into effective organisations which could leverage credit from formal sources, and develop local resources and skills to increase productivity and income. It is thus, due to the combined efforts of the government and these private voluntary agencies that the SHGs have come to occupy a place of prominence in the socio-economic fabric of rural India.

4.4 International Experience

4.4.1 A major micro-finance experiment was initiated in Bangladesh by Mohd. Yunus in 1974-76 when he began lending to groups of poor people in areas neighbouring Chittagong. That was the period when the country was in the grip of a major famine. He realised that the only way out of poverty lay in going beyond the existing norm of the market and providing the very poor with non-guaranteed solidarity-based loans which could enable them to develop gainful economic activities. In 1976, after repeated resistance and refusals

by Bangladeshi banks, Yunus succeeded in founding the 'Grameen Bank' which achieved the status of an independent bank in 1983. By 1994, this poor people's bank was directly serving two million people. The owners of the bank were women (94%) organised into solidarity-based groups of five. Contrary to expectations, these groups were prompt in paying back their loan instalments. The success encouraged the Grameen Bank to expand its group lending programme further and also to diversify into other activities like construction of schools and rural dwellings.¹⁷

4.4.2 Currently, the Grameen Bank is in a credit relationship with nearly 7.0 million poor people spread across 73,000 villages in Bangladesh, 97% of whom are women. Advancing collateral-free loans for income generation schemes remains the core activity of the bank. But, it also gives housing, student and micro-enterprise loans to the poor families. Besides, it offers a host of attractive savings, pension funds and insurance products to its members. Since 1984, housing loans have been used to construct 640,000 houses where the legal ownership rests with the women; a major step towards their empowerment and increased benefits to the family.

4.4.3 Cumulatively, the total disbursement of loan has been to the tune of US \$ 6.0 billion with a repayment rate is 99%; the Grameen Bank routinely makes profit. Financially, it is self-reliant and has not taken donor money since 1995. Its deposits and own resources today amount to 143 per cent of all outstanding loans. According to the Bank's internal survey, 58 per cent of the borrowers have crossed the poverty line. The Bank has also initiated a student loan programme. At present, there are 13,000 students who have been financed under this scheme; about 7,000 more are being added to this number every year.

4.4.4 So far, 80% of the poor families have, in some form, received micro-credit from the Grameen Bank and the Bank claims that the coverage is likely to be 100% by 2010.

4.4.5 The efforts of the Grameen Bank have generated a huge multiplier effect in the country with regard to women's organisational abilities and their overall empowerment. It has enabled them to build assets, increase family income, and reduce their vulnerability to economic stress, violence and exploitation.

4.4.6 The success of SHGs programme has also led to considerable improvement in the health and nutritional status of women and children. In order to update women's knowledge on issues like dowry, family planning, primary healthcare, nutritional status, clean drink water, sanitation and children's education, the Grameen Bank organises regular workshops in the interior areas of the country. These workshops have been helpful in altering the attitudes and behaviour of rural women.

¹⁷www.grameen-info.org

4.4.7 Apart from Bangladesh, Bolivia, Indonesia and Mexico are some of the other developing countries which have a mature MFI sector. In all these countries, micro-finance is used as a synonym for providing financial services to the poor. The goal is to help the poor gain more control over their lives by giving them the same financial services which middle and upper class individuals enjoy. In Indonesia, which has a long history of informal village banking through the rural units (Unit Desas) of BRI, the official definition of microcredit covers all loans of less than Rp.50 million (approx US \$ 5500), regardless of the conditions attached to these loans. This definition also covers a range of loans that are more commonly considered small and medium enterprise (SME) lending. In comparison, first-time loans from a non-bank microfinance institution (MFI) are usually less than Rp.800,000 (US \$ 90). The Bank Rakyat at Indonesia (BRI) has been providing rural credit since the 1970s. But the sanction of credit is dependent on submission of an appropriate collateral and this, in effect, precludes the poorest of the poor from the domain of microfinance.

4.4.8 Bolivia has been one of the leaders of the micro-finance movement in South America. In 2005, their MFIs had 544,544 clients and their portfolio stood at US \$ 620,878,160. The informal sector in this country is a source of major employment for the impoverished population (63%) and for them, the microcredit institutions are of great value. The State has put in place an adequately empowered financial regulatory authority called 'Superintendencia de Bancos y Entidades Financieras' (SIBEF) to develop and govern this sector. It regulates institutions like private financial funds, cooperatives, mutual funds and banks which operate in this field.

4.4.9 Micro-finance in Mexico has adopted an altogether different model which works competently in both rural as well as urban areas, which does not insist on collaterals but operates on high interest rates. Compartamos, the most prominent MFI of the country, was born out of the same social concern that inspired Mr. Yunus in Bangladesh. It uses a group-lending model similar to Grameen's. But it believes in the principle that by pursuing profits, it will be able to provide financial services to many poor people far more quickly than it would if it had continued to act as a charity. As a result, the micro-finance facility is provided to the borrowers at a high rate of interest (at least 79% per annum).

4.5 Impact on Rural Life

4.5.1 A random impact evaluation study covering 560 members of 223 SHGs linked to Banks located in 11 States was carried out by NABARD. A three year period was selected for this study. The results of this survey released in 2000¹⁸ indicated that (a) 58% of the households covered under SHGs reported an increase in assets; (b) the average value of assets per household increased by 72% from Rs.6,843 to Rs.11,793; (c) majority of the

members developed savings habit against 23% earlier; (d) there was a threefold increase in savings and a doubling of borrowings per household; (e) the share of consumption loan in the borrowing went down from 50% to 25%; (f) 70% of the loans taken in post-SHG period went towards income generation ventures; (g) employment expanded by 18%; (h) the average net income per household before joining a SHG was Rs.20,177 which rose by 33% to 26,889; and (i) about 41.5% of the household studied were below their State specific poverty line in the pre-SHG enrolment stage; it came down to 22%. Participation in group activity significantly contributed to improvement of self-confidence among the members. In general, group members and particularly women became more vocal and assertive on social and family issues.

4.5.2 The structure of the SHG is meant to provide mutual support to the participants in saving money, preparing a common plan for additional income generation and opening bank accounts that would help them in developing credit relationship with a lending institution. It ultimately supports them in setting up micro-enterprises e.g. personalised business ventures like tailoring, grocery, and tool repair shops. It promotes the concept of group accountability ensuring that the loans are paid back. It provides a platform to the community where the members can discuss and resolve important issues of mutual concern.

4.5.3 While some of the SHGs have been initiated by the local communities themselves, many of them have come through the help of a mentor Body (either government or an NGO) which provided initial information and guidance to them. Such support often consists of training people on how to manage Bank accounts, how to assess small business potential of the local markets and how to upgrade their skills. In the end, it creates a local team of resource persons.

4.5.4 Group formation becomes a convenient vehicle for credit delivery in rural areas. Commercial Banks and other institutions which are otherwise not receptive to the demands of marginalized individuals, start considering such groups as their potential customers. Overall such Joint-Liability Groups expand the outreach of the micro-finance programme in an effective way, reaching out to the excluded segments e.g. landless, sharecroppers, small and marginal farmers, women, SCs/STs etc.

4.5.5 The majority of Self-Help Groups comprise of women members. There is evidence in this country as well as elsewhere that formation of Self-Help Groups has a multiplier effect in improving women's status in society as well as in the family. Their active involvement in micro-finance and related entrepreneurial activities not only leads to improvement in their socio-economic condition but also enhances their self-esteem. Women in a group

environment become more articulate in voicing their concerns and a change occurs in their self-perception. They start to see themselves not only as beneficiaries but also as clients / informed citizens seeking better services. On the home front, their new found awareness and the confidence generated out of their entrepreneurial skills make them more confident vis-à-vis their menfolk.

4.5.6 The SHG programme has contributed to a reduced dependency on informal money lenders and other non-institutional sources.

4.5.7 It has enabled the participating households to spend more on education than non-client households. Families participating in the programme have reported better school attendance and lower drop-out rates.

4.5.8 The financial inclusion attained through SHGs has led to reduced child mortality, improved maternal health and the ability of the poor to combat disease through better nutrition, housing and health – especially among women and children.

4.5.9 But the SHG movement has certain weaknesses as well:

- contrary to the vision for SHG development, members of a group do not come necessarily from the poorest families;
- the SHG model has led to definite social empowerment of the poor but whether the economic gains are adequate to bring a qualitative change in their life is a matter of debate;
- many of the activities undertaken by the SHGs are still based on primitive skills related mostly to primary sector enterprises. With poor value addition per worker and prevalence of subsistence level wages, such activities often do not lead to any substantial increase in the income of group members.
- there is lack of qualified resource personnel in the rural areas who could help in skill upgradation / acquisition of new skills by group members.

Box 4.4: SHG and Empowerment of Women

In 2005, 45% of the total women SHGs in the country were based in Andhra Pradesh. The revolving corpus in the year 2005 of these SHGs was estimated to be around Rs.2,000 crores. The members of the SHGs are innovatively seeking ways to change their lives as well as their status in the family through such collective efforts. The SHGs experience has taught them to become independent. One of the most visible impacts of this empowerment is that now the women insist on sending their children to school as against the earlier practice of training them as wage earners.

4.6 Issues of SHG Movement

4.6.1 Though, during a short span of fifteen years the SHG movement has recorded remarkable progress (29.24 lakhs SHGs in operation on 31.03.2007 with a cumulative loan of 180,407,42 millions), much still remains to be done. Even if we consider only the BPL population of the country (24.2% - 26 crores), the above achievement seems to be minuscule. The movement shows steep territorial variations. Many areas of the country lack adequate banking structure. Urban and semi-urban areas, to a large extent, stand excluded from this mode of credit delivery. Further growth of this movement faces threat from inadequacy of skills in the rural areas. And finally the pace of the movement needs to be accelerated. The Commission has comprehensively considered the strength and weaknesses of this movement and it feels that the following eight issues of this sector deserve priority attention:

- Maintaining the participatory character
- Need to expand the SHG movement to States such as Bihar, Uttar Pradesh, Madhya Pradesh, Orissa, Rajasthan and in the North-East (where the SHG movement and micro-finance entrepreneurship is weak)
- Need to extend small group organisations (SHGs) to peri-urban and urban areas
- Mode of SHG development and financial intermediation
- Self-Help Groups and Regional Rural Banks
- Issues of sustainability
- Financial assistance to SHPIs and other support institutions
- Role of Micro-Finance Institutions

4.6.2 Maintaining the Participatory Character of SHGs

4.6.2.1 The strength of a Self-Help Group lies primarily in its solidarity-based participatory character, and in its ability to survive without any significant external support or involvement. In the early phases of its existence, the intent behind the cooperative movement too focused on stakeholders' participation. The government and banking institutions were thought of as some sort of catalyst which would provide support to the sector. But gradually these primary institutions became subordinate to

Cooperative Banks, Apex Unions, and Marketing Federations. Election of the office bearers of these large organisations became big ticket events. Very soon, the cooperative sector became a springboard for political aspirants. Though the SHG movement is relatively new, government interventions and subsidies have already started showing negative results. The patronage and subsidies provided to the SHGs by government and the Panchayats often lead to their politicization. Therefore, due care must be taken to ensure that government initiatives do not erode the fundamental principles of self-help and empowerment of the poor.

4.6.2.2 The Commission is of the view that there is need to learn from the experience of the cooperative sector. The mutually participatory, solidarity-based character of SHG movement needs to be retained and protected. SHG movement should be recognized as a people's movement and the role of government should be only to facilitate and create a supportive environment, rather than 'manage' the movement directly.

4.6.3 Expanding SHG Movement to Credit Deficient Areas of the Country

4.6.3.1 As already discussed in para 4.2.5, overall 73% of the farmer household (in rural areas) have no access to any formal source of credit. In March, 2001, 71% of the total linked SHGs of the country were in just four States of the southern region viz. Andhra Pradesh, Karnataka, Kerala and Tamil Nadu. The figure went down to 58% in 2005, 54% in 2006 and to 44% in 2007. But even the current figure is a cause of concern when one talks of financial inclusion for the whole country. The States which are particularly deficient in this respect are Bihar, Uttar Pradesh, Madhya Pradesh, Orissa, Rajasthan and those in the North-East. NABARD itself has identified 13 States which have large rural population but are performing unsatisfactorily in utilization of Micro Finance Development and Equity Fund (MFDEF). Currently, the Bank has 28 regional offices which are located at the State headquarters, but its presence at the district level is skewed with only 391 branches in the whole country. The density of such offices in Madhya Pradesh, Rajasthan, Bihar, Jharkhand, West Bengal and Assam is inadequate.

Table 4.11: Expanding SHG Movement to Credit Deficient Areas of the Country

Region/State	No. of SHGs financed						
	March 2001	March 2002	March 2003	March 2004	March 2005	March 2006	March 2007
NE Region	477	1490	4069	12278	34238	62517	91734
KBK Region	4192	9869	18934	31372	45976	64550	N.A.
Orissa	8888	20553	42272	77588	123256	180896	234451

West Bengal	8739	17143	32647	51685	92698	136251	181563
Bihar	4592	3957	8161	16246	28015	48138	72339
Jharkhand	0*	4198	7765	12647	21531	28902	37317
Uttar Pradesh	23152	33114	53696	79210	119648	163439	198587
Uttarakhand	0*	3323	5853	10908	14043	16060	21527
Rajasthan	5616	12564	22742	33846	60006	98171	137837
Himachal Pradesh	2545	5069	8875	13228	17798	22920	27799
Madhya Pradesh	5699	7981	15271	27095	45105	58912	70912
Chhattisgarh	0*	3763	6763	9796	18569	29504	41703
Maharashtra	10468	19619	28065	38535	71146	131470	225856
Gujarat	4929	9496	13875	15974	24712	34160	43572
All India	263825	461478	717360	1079091	1618456	2238565	2924973
NE = North-East, KBK= Kalahandi-Bolangir-Koraput *included in the undivided State							
Source : NABARD							

4.6.3.2 Availability of financial services is one of the critical determinants of employment, economic well being and social empowerment in rural areas especially for the marginalized poor. Their access to credit delivery and related services broadly depends on two factors – (a) the reach and expansion of the financial infrastructure; and (b) the presence of social organisations and cultural attitudes which are in readiness to receive the benefits offered by the infrastructure.

4.6.3.3 Building financial infrastructure is an important step towards expansion of economic opportunities in a backward area. But, it needs to be firmly supported by cooperative action and social mobilization on the part of local stakeholders. India has a rich history of economic systems and traditions based on cooperative action, exchange labour, village irrigation network and participatory management of village commons. The Commission is of the view that expansion of social cooperation should be regarded as a central feature of the development process and hence, people's organisations like Self-Help / other Joint-Liability Groups need to be encouraged.

4.6.3.4 The National Rural Employment Guarantee Scheme (NREGS), currently, is the most important livelihood programme of the government in the rural sector. The scheme can be handled more effectively through formation of village Self-Help Groups. Right from the stage of job card making, to selection of a scheme in the village, to its implementation and to payment of wages to labourers through a post office or a Bank, the members of

the identified group can take up execution of the NREGS projects with competence and responsibility. If needed, the local Self-Help Groups can even take up impact assessment / social audit of such programmes. Such local Self-Help Groups can also be encouraged to take up programmes of horticulture and development of assigned lands.

4.6.3.5 The Commission is of the view that the pace of SHG movement needs to be accelerated in the credit deficient areas of the country such as - Madhya Pradesh, Rajasthan, Bihar, Jharkhand, Orissa, West Bengal and States of the North-East. This is possible only by rapid expansion of financial infrastructure (including that of NABARD) and by adopting extensive IEC and capacity building measures in these States.

4.6.4 Extension of Self-Help Groups to Urban / Peri-Urban Areas

4.6.4.1 According to the 2001 census, 314.54 million persons changed their place of residence (vis-à-vis the situation in the 1991 census) within the country and out of this 29.90 million or 9% changed their place of residence in search of better prospects elsewhere. This migration can be divided into two broad categories: (i) movement from villages to the neighbouring middle grade towns; and (ii) movement to metropolitan cities. The first category, often called transient migration is in the nature of temporary movement where the worker stays in the new location intermittently for shorter periods and maintains close links with his home village through his colleagues, relatives or through his own frequent visits. But when he moves to a metropolitan city, his stay in the new location is for longer durations. This class of workers mostly stays in tenements and slums. Since issue of any form of identity card is invariably linked with the possession of an immovable property, such migrant workers do not have any formal document to prove their domicile in the city. But the overall economic and social well being of the city is closely linked with the condition of this section of the city dwellers.

4.6.4.2 Taking the case of Delhi as an illustration, in 2006 the city saw an increase of 2.33 lakhs in its population on account of migration.

4.6.4.3 The estimates of migration in Delhi are based on birth and death rates and total increase in population. It is revealed from the estimates that percentage of migration was 47.61% in 2005 whereas percentage of natural growth in 2005 was 52.39%. In absolute terms, natural increase in population during 2006 was 2.24 lakhs whereas migration has been estimated at 2.33 lakhs. The trend of migration from 1991 to 2006 is given in the following Table.

Table 4.12: Estimates of Migration in Delhi based on Birth and Death Rates and Total Increase in Population

Year	Population as on 1st July (lakhs)	Increase in Population over previous year (lakhs)	Total Birth	Total Death	Natural increase (col. 4-5)	Increased Migration (Col. 3-6)
1	2	3	4	5	6	7
1991	95.50	3.89	2.72	0.61	2.11	1.78
1992	99.37	3.87	2.74	0.62	2.12	1.75
1993	103.38	4.01	2.70	0.64	2.06	1.95
1994	107.50	4.12	2.62	0.68	1.94	2.18
1995	111.74	4.24	2.75	0.69	2.06	2.18
1996	116.10	4.36	2.83	0.76	2.07	2.29
1997	120.57	4.47	2.89	0.71	2.18	2.29
1998	125.14	4.57	2.84	0.80	2.04	2.52
1999	129.82	4.68	2.88	0.79	2.09	2.59
2000	134.60	4.78	3.17	0.80	2.37	2.41
2001	139.50	4.90	2.96	0.81	2.15	2.75
2002	143.83	4.33	3.01	0.86	2.15	2.18
2003	148.53	4.60	3.01	0.88	2.13	2.47
2004	152.79	4.36	3.06	0.85	2.21	2.15
2005	157.18	4.39	3.24	0.94	2.30	2.09
2006	161.75	4.57	3.23	0.99	2.24	2.33

Source: Delhi Government's Annual Report 2006-07

4.6.4.4 The migration data released by the Registrar General of India for the census 2001 indicates that the total population of Delhi is 138.50 lakhs and consists of 82.04 lakhs from within Delhi and 53.18 lakhs as migrant population from various States. The percentage of migration from various States is as indicated in Table 4.13.

Table 4.13: Composition of Migrants in Delhi (2006-07)

1. Uttar Pradesh	43.56%
2. Haryana	10.26%
3. Bihar	13.87%
4. Rajasthan	5.16%
5. Punjab	4.72%
6. West Bengal	3.18%
7. Madhya Pradesh	1.85%
8. Other States	17.39%

Source: Delhi Government's Annual Report 2006-07

4.6.4.5 In the absence of any documentary proof, it appears that this class of people do not have access to organised financial services. As per the existing statutory provisions, NABARD's mandate is to provide micro-finance facilities only to rural and semi-urban areas. Branches of the mainstream Banks too, though, equipped with manpower and technology, are not keen to service this sector. Even money lenders are reluctant to lend to them. The net result is that this segment of the urban population e.g. pavement sellers, street hawkers, construction workers etc. remains financially excluded. In neighbouring Bangladesh, the Grameen Bank does not make any distinction between urban and rural borrowers. As long as the groups are ready to satisfy the basic conditions with regard to poverty and participation of women, they are encouraged to participate in its credit programme. In the Latin American model too, micro-financial institutions are run on purely commercial considerations. If a group satisfies certain conditions, it becomes entitled for loans.

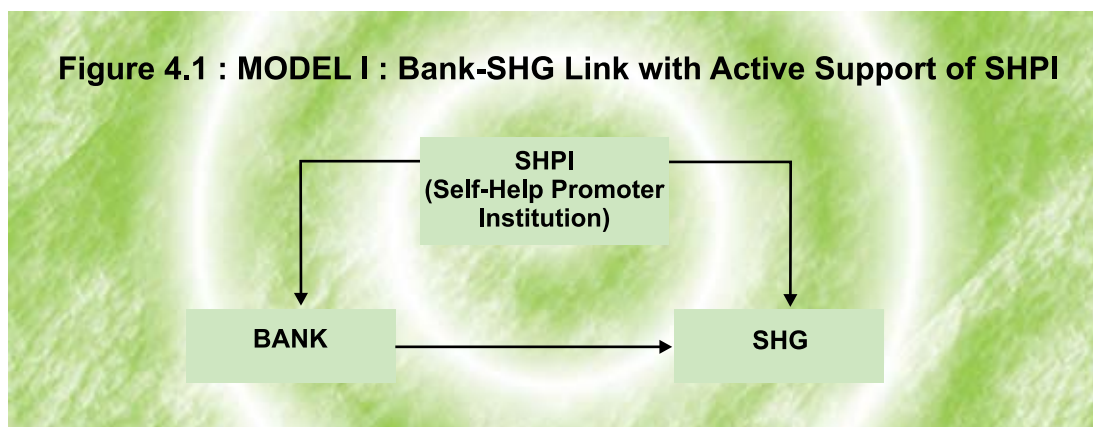
4.6.4.6 This issue has also been considered by the Committee on Financial Inclusion headed by Dr. C. Rangarajan. The Commission is of the view that in the current scenario of ever increasing urbanization (27.8% in 2001, likely to be 50% by 2040), for a holistic development of urban areas, all round efforts should be made to increase income generation abilities of the urban poor. The Commission agrees with the recommendations of the Rangarajan Committee that there is need to organize this class of people into Neighbourhood Groups (NHGs) on the same pattern as has been adopted for the rural poor. Since NABARD has the necessary expertise in this sector, it would be best if it plays a promotional role for Self-Help Groups and micro-finance activities in urban / peri-urban areas too. This will require an amendment of the Act, as the current mandate of NABARD allows it to function only in rural and semi-urban areas.

4.6.5 Mode of SHG Development and Financial Intermediation

4.6.5.1 Establishing stable linkage between a SHG and a local financial institution is one of the key elements of the SHG movement. Currently, four distinct models of financial intermediation are in operation in various parts of the country namely;

1. SHG-Bank linkage promoted by a mentor institute
2. SHG-Bank direct linkage
3. SHG-Mentor Institution linkage; and
4. SHG-Federation model

Figure 4.1 : MODEL I : Bank-SHG Link with Active Support of SHPI



4.6.5.2 Linking SHGs to Banks for credit requirement is the most effective model of financial intermediation which allows an SHG, promoted either by a third sector organisation (NGO) or by a government agency, to obtain loan funds or a cash credit limit, without giving any collateral, from a local rural/commercial Bank – often in multiples of its own savings. The fund that the SHG secures from the Bank is transferred to its members for a commonly identified and accepted gainful purpose on explicitly settled terms. The bank linkage model is a savings-led mechanism, which insists on a minimum savings of

Box 4.5: Role of SHPI

Usually, a SHPI provides initial training and guidance to the participating members before launching them into a formal thrift and credit management group (SHG). In some cases, the members of the group may be economically too weak to contribute even the initial seed money to the group funds to start an activity. The promoter institution in such cases may have to provide financial support to the groups. MYRADA was effective in setting up several Self-Help Groups in rural areas of Karnataka in 1989 by providing (a) sustained guidance and (b) by granting seed money to them from the corpus of 10 lakhs which was given to it by NABARD under a demonstration project.

six to twelve months before the group becomes eligible for external credit. The tranche of credit given to a SHG starts initially at a low ratio vis-à-vis its savings and gradually increases to a much higher level (may be several times the amount of the SHG's own savings subject to a ceiling). In India, this form of credit interaction, where the Banks deal directly with individual SHGs has been one of the most successful models.

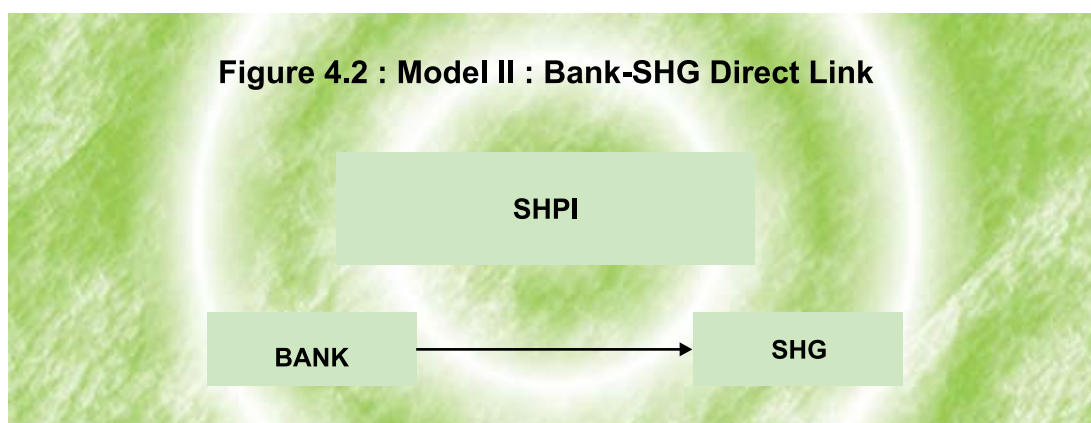
Table 4.14: Quantum of Credit Made Available to SHGs

Year	India (cum.)		Andhra Pradesh	
	SHGs	Amount*	SHGs	Amount*
1992-1999	32,995	57	8,482	18
1999-2000	114,775	193	29,242	55
2000-2001	263,825	481	84,939	143
2001-2002	461478	1026	117352	267
2002-2003	717360	2049	165429	454
2003-2004	1079091	3900	231000	750
2004-2005	1618456	6800	261254	1018

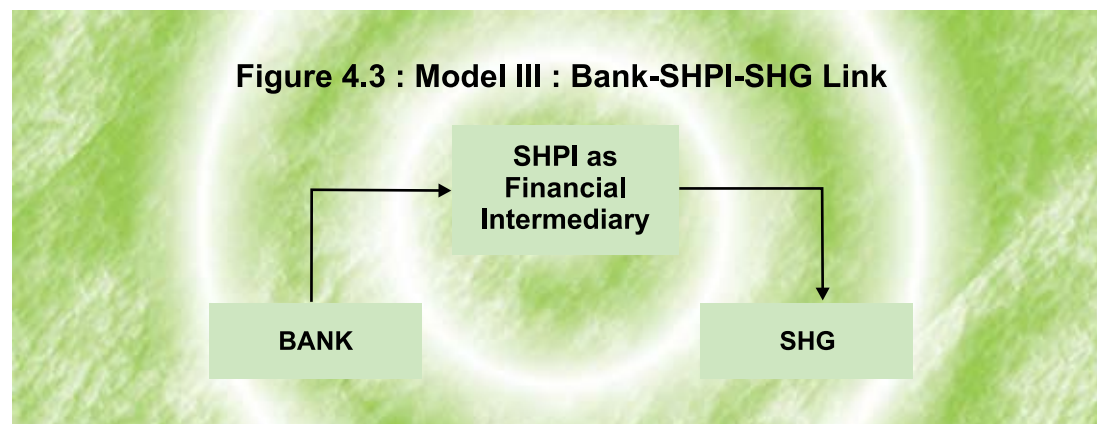
As on 4.08.2005; Amount in Crores.

4.6.5.3 So far, the SHG-Bank linkage model has been a preferred mechanism for securing funds for local SHGs. However, the total outflow from this channel has been rather low because it is inherently linked with the magnitude of the SHG's own savings. Further, a SHG consisting mostly of poor and marginalized members often, may not be an appropriate agency to handle many of the community's needs for financial and non-financial services. In some cases, in order to obtain economic sustainability a cluster of SHGs have gathered together to form a federation. This scales up their activities and also enables them to have access to increased resources from funding institutions.

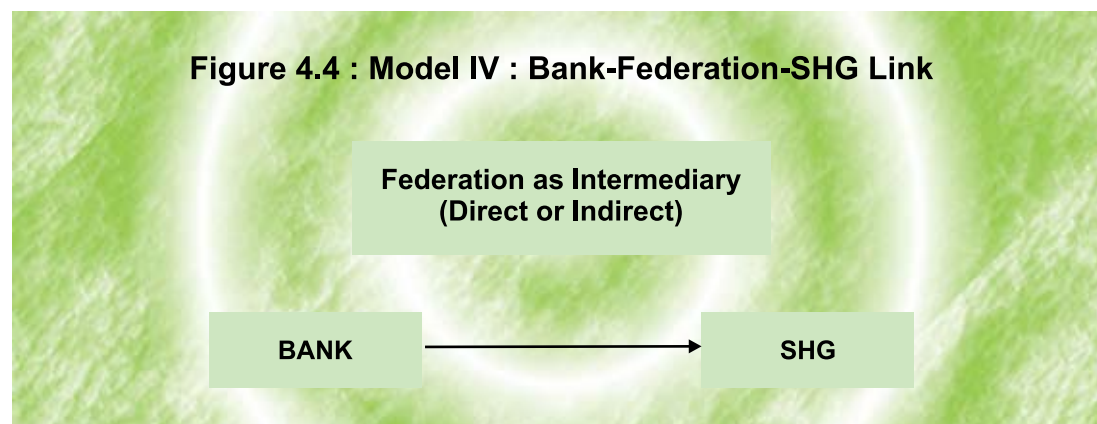
Figure 4.2 : Model II : Bank-SHG Direct Link



4.6.5.4 A somewhat modified form of Model 1 also exists in which Banks provide financial support directly to SHGs which have grown without help of any promoter institution. Such SHGs are usually formed on the basis of some common activities. The cases of such financial intermediation are of course not very common.



4.6.5.5 In the third model, the SHPI takes the role of a financial intermediary between a Banks and the SHG. Usually, a SHPI (Self-Help Promoter Institution) takes up this responsibility only in respect of the groups promoted / nurtured by it and not for others. The SHPI accepts the contractual responsibility for repayment of the loan to the Bank. In this respect, it is an example of indirect linkage between the SHG and the Bank.



4.6.5.6 There is yet another model in which a federation provides financial intermediation to the SHG.¹⁹ An examination of some of the SHG federation models reveals a variety of innovations. These include linkage to the parent NGO-MFI linkage with external MFIs, community ownership of a Non-Banking Finance Company (NBFC) and SHGs being reconstituted into mutually aided credit and thrift cooperatives. Some of the federations are

¹⁹Reference: India APRACA-GTZ regional workshop 1994, the linkage programme – Y.C. Nanda

now in a position to access funds even from large MFIs. However, many of these innovations are stand alone initiatives, not capable of easy replication or, as in the case of the mutually-aided cooperatives, are specific to the State in which they have been introduced.

4.6.5.7 Another model that has emerged is a combination of the SHG-Bank linkage concept and credit programmes where loan assistance is given to the individual members of the group and not to the group per se. It is also not directly connected to the savings of the group. The loans in these cases are usually given only for income generation and investment activities. The SHG and the SHPI help the Bank in identification, preparation of loan application, monitoring, supervision and recovery of loans.

4.6.5.8 Since the borrowing SHGs consist mainly of low income members who cannot afford to miss even a day's wages, a hassle-free transaction with a Bank which is ready to come to their doorsteps with appropriate credit products is of great value to them. The Commission is of the view that the SHG – Bank Linkage Model with a mentor SHPI in tow (Model I above) would be the most appropriate one for delivery of financial services to the SHGs.

4.6.5.9 *Innovation:* Innovation is critical for financial inclusion. This would mean developing newer financial products in terms of loans, savings, insurance services etc. which are tailored to the needs of the poor. Currently, most public sector Banks and micro-finance institutions have a narrow product offering, which limits the choice of the SHGs and also constrains them in terms of utilizing the loans productively.

4.6.6 Self-Help Groups and Regional Rural Banks (RRBs)

4.6.6.1 As on 1st April, 2007, out of a total of 622 districts in the country, 535 have a network of Regional Rural Banks; the rest 87 districts have no RRB presence. Currently, 14494 branches, in all, are operating in rural areas of these 535 districts. These branches have been created by the Regional Rural Banks Act, 1976 primarily for providing institutional credit to the marginalized sector of the rural economy (small, marginal farmers, landless labour and rural artisans). The Commission is of the view that extension of the RRB network to the remaining 87 districts would considerably speed up the process of inclusive banking and help in extending micro-finance to local SHGs.

4.6.7 Issues of Sustainability, Capacity Building and use of Technology

4.6.7.1 The institutional sustainability and the quality of operations of the SHGs are matters of considerable debate. It is generally held that only a minority of the Self-Help Groups are able to raise themselves from a level of micro-finance to that of micro-entrepreneurship. Neither do such Bank linkages lead to sanction of larger individual loans under the Bank's normal lending programmes. The ultimate objective of such a tie-up is to impart financial strength to the SHGs so that they can enter into a stable relationship with the local financial institutions - without any external support. Even after many years of existence, by and large, SHGs are heavily dependent on their promoter NGOs or government agencies. The withdrawal of NGOs / government agencies even from areas where SHGs have been federated, has often led to their collapse. The leadership and management of most SHG federations continue to be in the hands of NGOs.

4.6.7.2 Capacity building of small groups / members is an important component of organisational effectiveness. It consists of participatory training methods covering issues such as SHG formation, its strengthening, book keeping and some elementary techniques of financial management. Capacity building of government functionaries and Bank personnel is a necessary element of an equitable triangular relationship involving the SHGs, government functionaries and the local Banks and there is a positive correlation between the training received by government functionaries/Bank personnel and their overall attitude towards local organisations. The Commission is of the view that for success of such cooperative / social capital ventures, there is need to provide extensive training to all the three pillars of the self-help movement.

4.6.7.3 *Utilization of Technology:* Currently, many public sector banks and micro-finance institutions are unwilling to provide financial services to the poor as the cost of servicing remains high. Use of appropriate technology can reduce it. The Commission is of the view that high penetration of telecom connectivity in India, together with the latest mobile technology could be used to enhance financial inclusion in the country.

4.6.8 Financial Assistance to SHPIs and other Support Institutions

4.6.8.1 Forty-five per cent of the total number of women's SHGs of the country are located in Andhra Pradesh. This enviable position of the State is primarily due to the initiative shown

by promoter NGOs often known as Self-Help Promoting Institutions (SHPIs) / mentor organisations. The Commission is of the view that if the SHG movement is to spread across the entire country, there is need to provide major incentives to SHPIs / promoter NGOs. Currently, the financial support to SHPIs comes from the Micro Finance Development and Equity Fund (MFDEF) of NABARD. It is limited to an amount of Rs.1500 per SHG (formed and activated). To attract more and more SHPIs to the rural areas, this quantum of support needs to be revised.

4.6.9 Role of Micro Finance Institutions (MFIs)

4.6.9.1 As mentioned earlier, (a) organizing thrift and savings and (b) leveraging it to obtain funds without formal collaterals are the two most important activities of the SHGs. Since large commercial Banks, due to their complex operational structure and other management constraints, are usually not able to meet the needs of this sector, a large number of private micro-finance institutions have been set up in recent years in various parts of the country to fill this void. Certain important issues relating to the activities of the MFIs in the country have been examined in the succeeding paragraphs.

4.6.9.2 Micro-credit is defined as provision of thrift, credit, and other financial services (such as deposits, loans, payment services, money transfer, insurance and related products) of very small amounts to the poor in rural, semi-urban and urban areas for enabling them to raise their income levels and improve living standards. Micro-finance institutions are those which provide such micro-credit facilities. Leaving aside the commercial Banks, the needs of this sector are currently being handled by the following four major players:

- (i) Rural Banks
- (ii) Cooperatives
- (iii) Institutions which have been registered as Societies, Public Trusts, and Section 25 Companies or as NBFCs to take up the work of micro-finance on operational/financial sustainability
- (iv) Individual money-lenders.

4.6.9.3 Micro-credit is an instrument of both social as well as economic policy. It opens up integral development processes such as use of financial and technical resources, basic

services and training opportunities to the unprivileged. Access to savings, credit, money-transfer, payment, and insurance can help poor people take control of their financial life. It also empowers them to make critical choices about investing in business, sending children to school, improving health care of the family, covering the cost of key social obligations and unforeseen situations. But the most important of all, an access to finance generates self esteem among them. In the Indian context, the concept of micro-credit has an ancient origin, prevalent in the form of credit to the poor by the traders and money-lenders at exorbitant interest rates. This resulted in hardship to the borrowers often leading to illegal practices like bonded labour. However, in modern times, microcredit implies lending to the poor at reasonable but sustainable interest rates.

4.6.9.4 The Raghuram Rajan Committee which was set up in August 2007 to outline a comprehensive agenda for the evolution of the financial sector in the country has deeply analysed the issue “Broadening of Access to Finance”. In this context, one of its suggestions is to ‘alter the emphasis somewhat from the large Bank led, public sector dominated, mandate ridden and branch-expansion-focused strategy (to Micro Banks). The poor need efficiency, innovation and value for money which can come from motivated financiers who have a low cost structure and who can see the poor as profitable. They also have the capacity of making decisions quickly and with minimum paper work.

4.6.9.5 The Committee recommended²⁰ “(a) allowing more entry to private well-governed deposit-taking small finance banks offsetting their higher risk from being geographically focused by requiring higher capital adequacy norms, a strict prohibition on related party transactions, and lower allowable concentration norms (loans as a share of capital that can be made to one party), and (b) making significant efforts to create the supervisory capacity to deliver the greater monitoring these banks will need initially, and (c) putting in place a tough prompt corrective action regime that ensures that these banks do not become public charges.”

4.6.9.6 Micro-Finance Institutions in the Formal Sector

4.6.9.6.1 Currently, a major share of the micro-financial services such as handling thrift and providing credit to the economically active low-income segments of society, especially women, poor households and their micro enterprises is being collectively handled by public sector institutions like NABARD, Small Industries Development Bank of India (SIDBI), Rashtriya Mahila Kosh, rural branches of Commercial Banks and Regional Rural Banks (RRBs).

²⁰Report of the Raghuram Rajan Committee on Financial Sector Reforms (April 2008)

4.6.9.7 Private/NGO Initiative in Micro-finance

4.6.9.7.1 Apart from the formal sector organisations, private/NGO initiative too has played an important role in expanding micro-finance in the country. This expansion has happened in two ways. Some of the NGOs which actively promoted Self-Help Groups in the early years of the SHG movement themselves diversified into micro-credit lending (such as SEWA in Gujarat, Nav Bharat Jagirity Kendra (NBJK) in Jharkhand and Shramik Bharati in Uttar Pradesh). The second set of institutions consists of those which came on the scene later (when the presence of SHGs had already reached a significant level) by registering as pure MFIs such as Bandhan, BASIX and SKS. In 2006, there were 800 NGOs in the country engaged in delivery of micro-credit with an outreach of 7.3 million households.²¹

4.6.9.7.2 Their form varies; some of these MFIs have been registered as Societies, some as Trusts and some as NBFCs. There are some which got registered under Section 25 of the Companies Act. Some Cooperative and Mutually aided societies too, are engaged in this business.

4.6.9.7.3 Over the years, these institutions have shown tremendous growth in terms of number as well as the spread of their activities. As per the Forbes List-2007 prepared on indices of gross loan portfolio, efficiency of operations, quality of advances and return on equity and assets, there are 7 Indian Micro-Finance Institutions in the list of world's top 50. Bandhan (at No.2), Micro-credit Foundation of India (at No.13) and Sadhna Microfin Society (at No.15) find place above Bangladesh's Grameen Bank which ranks at 17. Other important MFIs which are providing micro-credit to people in different parts of the country are the Aga Khan Agency for Microfinance; Association for Sarva Seva Farms (ASSEFA); MYRADA; SADHAN - The Association of Community Development Finance Institutions; SEWA; SKS Micro-finance (AP); BASIX; SAMPADA; Streedhan; and Working Women's Forum, Madras, Spandana (AP), Friends of Women's World Banking (FWWB); Sanghamitra Rural Finance Services (SRFS) and Nav Bharat Jagriti Kendra (NBJK). Then, there are organisations like APMAS, Mitrabharati and The Indian Microfinance Information Hub which provide support to these MFIs in human resource development, quality assessment / enhancement and research and advocacy. While a large proportion of the micro-credit institutions in India work as non-profit organisations, many bigger players (SKS, BASIX, Share Microfin, Spandana) function on a model of financial sustainability. Many of these MFIs derive their working capital from private equity whereas some thrive on the support of new generation private Banks and venture

capital funds. The sector broadly identifies the following nine issues which confront its functioning: (i) operational/ financial sustainability, (ii) restrictions on handling thrift / savings (iii) lack of well developed MIS, human resource capacity and its retention, (iv) marketing of borrowers' products, (v) relationship with other NGOs and formal sector institutions, (vi) tackling default, (vii) relationship with commercial Banks, (viii) capital inflow and (ix) interaction with the government. It is widely recognized that installing a uniform regulatory mechanism will go a long way in facilitating further growth and development of private initiative in this sector.

4.6.9.8 MFIs and Money-lenders' Act

4.6.9.8.1 An important issue which has become the subject of intense debate, concerns the rate of interest and recovery practices of MFIs. Currently, there are 22 States in the country which have Money-lenders' Act in place. Tamil Nadu and Karnataka have gone a step further and also enacted a new legislation called Prohibition of Charging Exorbitant Interest Act. In several cases, they have applied the provisions of these two Acts on activities of the MFIs and forced them to stop their business. Recently, the Kerala Government announced that the Money-lenders' Act would be amended to include stringent provisions to

deal with private Banks and institutions which function in violation of rules. This has been supported by a Kerala High Court Judgment that provisions of the Kerala Money-lenders Act would be applicable to the non-banking financial institutions. The Judgment also laid down that the government notification fixing the rate of interest at the maximum limit of 12% would apply to all types of loans for which the interest rate levied by the commercial Banks was around 10%. In Andhra Pradesh, an enquiry commission set up to probe the excesses of MFIs also made a series of recommendations with regard to the rate of interest, duration of the loan, recovery procedure and monitoring of there activities by District Magistrate and Superintendent of Police. Cases were registered at Vijayawada against an MFI under Section 384, 420 of the IPC and for violation of various provisions of the Andhra Pradesh Money-lenders' Act. It was challenged by the MFI concerned through a

Box 4.6: Rate of Interest and Recovery Practices of MFIs

In 2006, the authorities closed down about 50 branches of two major MFIs in Krishna District on the grounds that they were charging usurious interest rates, demanding illegal collaterals and adopting high handed / coercive loan recovery practices. The matter could be sorted out only after the MFIs agreed to adopt a voluntary mutual code of conduct covering issues like interest rate, savings, recovery practices and sanction procedures. MFIs also released an indicative schedule of interest rates (21 to 24%) which should be charged from the borrowers on the prevailing cost structure of these organizations.

Source: EPW, May 20-26, 2006, Vol. XLI.

writ petition in the Andhra Pradesh High Court. The Court held the view that the State was within its rights to investigate the matter and file a chargesheet under the provisions of the IPC and the Money-lenders' Act.

4.6.9.8.2 The Commission is of the view that the scope and activities of MFIs need to be clarified vis-à-vis the Money-lenders' and Prohibition of Charging Exorbitant Interest Acts as prevalent in various States. In 2006, the RBI set up a working group under Shri S.C. Gupta to review State money-lending legislations. The group submitted its Report in July 2007. It suggested major changes in the State Money-lenders' Acts and drafted a model legislation which could be enacted by the States in place of their existing law. It recommended that lending transactions by NBFCs, registered Charitable Societies and Public Trusts should be exempted from the provisions of the State money lending legislations. The Commission feels that there is need to further look into the issues of MFI – State Money-lending legislations interface and take all categories of MFIs; Societies, Public Trusts, Cooperative Societies, Section 25 Companies and NBFCs out of the purview of these laws. The Commission also feels that the issue of interest rate charged by the MFIs should be left to the Regulatory Authority which is being proposed under the Micro-Financial Sector (Development and Regulation) Bill 2007. (Para 4.6.9.9)

4.6.9.9 Micro-Financial Sector (Development and Regulation) Bill, 2007

4.6.9.9.1 At present, except for those registered as NBFCs, the lending activities of MFIs are not being covered by any regulation. In order to regulate this sector, the Union Government introduced 'the Micro Financial Sector (Development and Regulation) Bill, 2007' in Lok Sabha on 20th March, 2007. The proposed legislation seeks *"to provide for promotion, development and orderly growth of the micro finance sector in rural and urban areas for providing an enabling environment for ensuring universal access to integrated financial services, especially to women and certain disadvantaged sections of the people, and thereby securing prosperity of such areas and regulation of the micro finance organisations not being regulated by any law for the time being in force and for matters connected therewith or incidental thereto."* The salient features of the Bill are as follows:

- (a) It identifies the National Bank for Agriculture and Rural Development (NABARD) as the agency responsible for development and regulation of this sector.

- (b) It seeks to constitute a Micro Finance Development Council to advise NABARD on formulation of policies, schemes and other measures required in the interest of orderly growth and development of the micro finance sector.
- (c) It defines various entities engaged in the activity of micro finance such as co-operative societies, mutual benefit societies or mutually aided societies registered under State enactments or multi-State Co-operative Societies registered under the Multi-State Co-operative Societies Act, 2002, Societies Registered under the Societies Registration Act, 1860 or other State enactments governing such societies and a trust created under the Indian Trusts Act, 1882 or a Public Trust registered under any State enactment, that will be governed by the regulatory framework proposed to be set up.
- (d) It defines various categories of clients such as SHGs / Joint Liability Groups who will benefit from micro financial services.
- (e) It seeks to extend micro financial services to eligible clients by way of financial assistance subject to ceilings as prescribed by NABARD.
- (f) It provides for acceptance of thrift, i.e., savings of eligible clients other than in the form of current account or demand deposit account by micro finance organisations registered by the National Bank, subject to such terms and conditions as may be prescribed.
- (g) It provides for creation of a reserve fund and maintenance of accounts and periodical returns to be submitted by micro-finance organisations.
- (h) It provides for constitution of Micro Finance Development and Equity Fund to be utilised for the development of the micro finance sector (for promotional activities, equity participation or for granting loans).
- (i) It empowers the National Bank to frame a scheme for appointment of one or more Micro Finance Ombudsman for settlement of disputes between eligible clients and micro-finance organisations.

- (j) It provides for offences and penalties for non-compliance with the regulatory requirements of the Bill.
- (k) It empowers the Union Government to prescribe Rules for carrying out the purposes of the Bill.
- (l) It empowers the National Bank to make regulations with the previous approval of the Union Government for carrying out the purposes of the Bill.

4.6.9.9.2 The proposed Bill has generated fierce debate among stakeholders and civil society organisations. Resistance to the Bill is based on the following arguments:

- a) The Constitutional propriety of the Bill may be questionable in as much as the objective and scope of an entity created by a State Act (Societies, Trusts and Cooperatives) cannot be extended/overridden by a Central legislation.
- b) Societies, Trusts and Companies formed under Section 25 of the Companies Act etc. are part of civil society, whereas companies, cooperatives, partnership firms, nidhis etc. are part of market and therefore, it may not be appropriate to put these two sets of institutions in the same basket for the purpose of providing micro-financial services.
- c) Nominating NABARD as the primary regulator appears to go against the basic principles of natural justice, equity and autonomy as NABARD is itself a major player in this sector.
- (d) There is some ambiguity with regard to the definition of Micro Finance Services, service providers, service receivers etc. in the proposed Bill. This needs to be removed.
- (e) The Bill defeats the intended purpose of providing affordable credit to the disadvantaged sections of the society by not addressing the issues of interest rates and fees to be charged by the MFIs.
- (f) The Bill does not cover Non-Banking Financial Companies (NBFCs) and Section 25 Companies which too operate in this sector. They are handling a major share of the micro-finance market.

4.6.9.9.3 The Rangarajan Committee on ‘Financial Inclusion’ too examined the proposed Bill and made the following suggestions:

- (i) Companies formed under Section 25 of the Companies Act, 1956 need to be brought under the purview of this Bill.
- (ii) Cooperatives should be taken out of the purview of the proposed Bill in order to avoid duality of control between the State Acts and the Union Legislation.

4.6.9.9.4 With the emergence of new forms of social capital institutions viz. SHGs / other Joint Liability Formations, a large space has been created in the rural economy for micro-finance institutions. The Commission feels that there is need to have a comprehensive legislation for promotion, development and orderly growth of the micro-finance sector in the country. It would cover a whole range of products needed by the poor such as micro-credit, savings, insurance and money transfer. The Commission has also considered the views of various stakeholders on the proposed Bill. While agreeing with some of the concerns expressed in this regard, the Commission is of the view that since NABARD has been supervising RRBs and Cooperative Banks for the past twenty five years and has acquired adequate expertise in development of micro-credit, it can be given the task of supervising and regulating MFIs as proposed in the Bill. This has also been recommended by the Rangarajan Committee. The Commission has also taken note of the fact that NABARD provides only refinance facility to primary lenders and does not lend directly. It is primarily a facilitator and not a service provider. There appears to be no scope of conflict between the supervisory and regulatory functions of NABARD.

4.6.9.9.5 As far as the question of allowing MFIs to handle thrift / saving and money transfer is concerned, the Commission would like to adopt a path of caution. Since it will involve hard earned savings of the poorest of the society, the Commission is of the view that MFIs should be allowed to accept savings only as business correspondents of Scheduled Banks and not in their individual capacity as a micro-finance lender. Other provisions with regard to monitoring, auditing and penalty clauses as suggested in the Bill may remain.

Hence, the Micro Financial Sector (Development and Regulation) Bill, 2007 needs to be reconsidered on the following lines:

- (i) The scope of micro-finance services should be substantially widened to cover credit / savings, insurance, pension services, money transfer, issue / discount of warehouse receipts and future / option contracts for agricultural commodities and forest produce.
- (ii) NBFCs are already regulated by the RBI. However, Nidhis registered under Section 620A of the Companies Act, and Producer Companies should also be brought under the new legislation.
- (iii) The activities of Section 25 Companies to the extent they concern micro-financial services as described under the proposed Bill also need to be brought under purview of this legislation. However, for their management and other functions, they will continue to be governed by the provisions of the Companies Act.
- (iv) Savings, in general, is a low cost source for onward lending. But there is need to protect the savings of the poor people. Steps should be taken to ensure that if MFIs are allowed to handle thrift / savings and money transfer services, they would do so only as business correspondents of Commercial Banks.

4.6.10 Recommendations:

- a) **The role of the Government in the growth and development of the SHG movement should be that of a facilitator and promoter. The objective should be to create a supportive environment for this movement.**
- b) **Since a large number of rural households in the North-Eastern States and Central-Eastern parts of the country (Bihar, Jharkhand, Uttar Pradesh, Uttarakhand, Orissa, Madhya Pradesh, Chhattisgarh and Rajasthan) do not have adequate access to formal sources of credit, a major thrust on the expansion of the SHG movement in these areas should be facilitated. The presence of NABARD should be much more pronounced in these places.**
- c) **The SHG movement needs to be extended to urban and peri-urban areas. State Governments, NABARD and commercial Banks should join together to prepare a directory of activities and financial products relevant to such areas.**

- d) **Currently, the commercial Banks, on the basis of a project's financial viability can disburse microcredit in urban and semi-urban areas on their own but such micro-credit disbursements are not entitled to refinance from NABARD. If necessary, the NABARD Act, 1981 may be amended suitably to bring urban / semi-urban areas under its refinance mandate.**
- e) **The SHG – Bank Linkage model with a mentor SHPI in tow deserves to be encouraged as the preferred mode for financial intermediation throughout the country.**
- f) **Commercial Banks and NABARD in collaboration with the State Government need to continuously innovate and design new financial products for these groups.**
- g) **There should be a planned effort to establish RRB networks in the 87 districts of the country which currently do not have RRB presence.**
- h) **Special steps should be taken for training / capacity building of government functionaries so that they develop a positive attitude and treat the poor and marginalized as viable and responsible customers and as possible entrepreneurs.**
- i) **Rural credit is often viewed as a potential Non Performing Asset. There is need to educate government employees and Bank personnel in this regard. Technology may be leveraged to reduce the cost of reaching out to the poorest of the poor.**
- j) **There is need to review the scale of the promotional grant given to SHPIs by NABARD (currently Rs.1500/- per SHG formed and activated).**
- k) **In order to scale up the operations of the Rashtriya Mahila Kosh, its corpus should be enhanced substantially. RMK's geographical reach should be expanded to help quick processing of loan applications and effective monitoring of the sanctioned projects in far off areas. The Kosh may open adequately staffed regional offices at selected places in the country and give greater attention to the credit deficient States.**

- l) The Micro Financial Sector (Development and Regulation) Bill, 2007 needs to be amended to include the following suggestions:-**
- i. The scope of Micro-finance Services should be substantially widened to cover credit / savings, insurance, pension services, money transfer, issue / discount of warehouse receipts and future / option contracts for agricultural commodities and forest produce.**
 - ii. 'Nidhis' registered under Section 620A of the Companies Act, and Producer Companies should be brought under the new legislation.**
 - iii. The activities of Section 25 Companies to the extent they concern micro-financial services as described under the proposed Bill should also be brought under the purview of this legislation. However, for their management and other functions, they will continue to be governed by the provisions of the Companies Act.**
 - iv. The issue of interest rate charged by the MFIs should be left to the Regulatory Authority which is being created under the proposed Bill.**
 - iv. It should be ensured that if MFIs are allowed to handle thrift / savings and money transfer services, they would do so only as business correspondents of commercial Banks. Other concerns as stated in Para 4.6.9.9.2 also need to be considered.**
- m) Micro-finance institutions covered under the proposed law should be kept out of the purview of the State laws on money-lending.**

SELF-REGULATORY AUTHORITIES

5.1 Introduction

5.1.1 The Self-Regulatory Authority of a profession means a select Body of its members which is responsible for growth and development of the profession in the background of its responsibility towards society and State. The functions of such a Self-Regulatory Body may include: (i) issues of professional education: development of curriculum, setting up of teaching standards, institutional infrastructure, recognition of degrees etc. and (ii) matters connected with licensing, and ethical conduct of the practitioners.

5.1.2 Currently, there are six major professional Bodies operating in India each having been formed under a specific law.

Bar Council of India (BCI) – formed under the Advocates Act, 1961

Medical Council of India (MCI) – formed under the Indian Medical Council Act, 1956

Institute of Chartered Accountants of India (ICAI) – formed under the Chartered Accountants Act, 1949

Institute of Cost and Works Accountants of India (ICWAI) – formed under the Cost and Works Accountants Act, 1959

Institute of Company Secretaries of India (ICSI) – formed under the Company Secretaries Act, 1980

Council of Architecture (COA) – formed under the Architects Act, 1972

5.1.3 Then, there are organisations like the Institution of Engineers which have been formed purely by voluntary action by respective members of the profession. They do not have any statutory background.

5.1.4 All the above professions are vital for society and the economy of a country. In fact, the number of medical practitioners, lawyers, chartered accountants, engineers and other

professionals in a society per one lakh population is one of the indices on which the status of a nation's advancement is measured. As per an estimate, the number of registered lawyers in the country in 2006 was 8.47 lakhs, while the corresponding figures for doctors, engineers, chartered accounts, company secretaries, cost accountants and architects were 6.59 lakhs, 4.0 lakhs, 1.30 lakhs, 0.17 lakh, 0.13 lakh and 0.02 lakh²² respectively.

5.1.5 In the Indian context, besides regulating the domain of professional education and setting standards for the conduct and behaviour of the members, these Self-Regulatory Bodies have often played a significant role as technical advisers to the government in conceptualizing, formulating and implementing policies and standards for providing important public services to the citizens (e.g. on health care and justice delivery).

5.1.6 Trust between Professionals and Citizens

5.1.6.1 In general, there is a relationship of deep trust between a professional and his client. A professional practitioner is in a position to have access to the most personal details of a person and hence he is obliged to act in consonance with the principles of beneficence and justice to justify this trust. The professionals need to maintain high standards of practice and show respect for professional ethical values. The trust also implies that they update their knowledge, skill and ability at periodic intervals in order to deliver their services competently.

5.1.6.2 Formed with enthusiasm and vision, the Regulatory Authorities worked with zeal and interest in the initial years of their existence. Though, commitment to self-interest may have been there in some form or the other on their agenda, the level of professional competence and conduct was adequately high in the early years of Independence and by and large, the medical profession, engineers, lawyers and others conducted themselves with great responsibility and professionalism. But in recent years, the drift in almost all professions towards self-interest has become markedly pronounced. The general perception is that instead of being self-regulatory, Regulatory Bodies have become “self-promoting lobbies running to the rescue of delinquents, starting agitations against any action that is taken, organising strikes and hardly taking steps to uphold standards or action against professional misconduct”.

“Lawyers are the only persons in whom ignorance of the law is not punished”.

– Jeremy Bentham

5.2 Separating Professional Education from Self-Regulatory Authorities

5.2.1 Currently, one of the major tasks of Self-Regulatory Authorities is to manage and regulate professional education. The National Knowledge Commission (NKC) which

was constituted in 2005 with a mandate to prepare a blueprint for transforming the country into a knowledge society has gone into issues of higher education in the country (e.g. management, law, and medicine). One of its major recommendations is that professional education should be taken away from the domain of the existing Regulatory Bodies. The NKC has observed that,

“The present regulatory system in higher education is flawed in many respects. The barriers to entry are too high. The system of authorizing entry is cumbersome. And there are extensive rules after entry, as almost every aspect of an institution is regulated from fees to curriculum. The other regulators, say in the sphere of professional education, are often inconsistent in their adherence to principles. The existing regulatory framework constrains the supply of good institutions, excessively regulates existing institutions in the wrong places, and is not conducive to innovation or creativity in higher education. The challenge is therefore to design a regulatory system that increases the supply of good institutions and fosters accountability in those institutions. An independent regulator has to be the cornerstone of such a system. The system as a whole is over regulated and under-governed”.

5.2.2 In this sequence, the National Knowledge Commission has recommended establishment of an Independent Regulatory Authority for Higher Education (IRAHE). The IRAHE must be at an arm’s length from the government and independent of all stakeholders including the concerned Ministries of the government.

- The IRAHE would have to be established by an Act of Parliament, and would be responsible for setting the criteria and deciding on entry.
- It would be the only agency that would be authorized to accord degree-granting power to higher education institutions.
- It would be responsible for monitoring standards and settling disputes.
- It would apply exactly the same norms to public and private institutions, as it would to domestic and international institutions.
- It would be the authority for licensing accreditation agencies.

5.2.3 In the proposed new environment, the role of the UGC would need to be re-defined, so that it remain confined to (a) disbursement of grants, and (b) maintenance of public institutions. The All India Council for Technical Education (AICTE) will need to be abolished while the functions of the Medical Council of India (MCI) and the Bar Council of India (BCI) will be limited to their role as Professional Associations. Separate Standing

Committees will be constituted within the structure of the IRAHE to take care of the above functions in different streams.

5.2.4 The subject of legal education was discussed in detail by the Law Commission of India in its 184th Report on *“The legal education and professional training and proposals for amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956, December 2002”*. The Law Commission had discussed the suggestion to form an All India Legal Education Council on the model of All India Council for Technical Education (AICTE). In the new dispensation, the BCI would be responsible only for regulating entry into the profession and maintenance of standards.

5.2.5 Section 7(1)(h) of the Advocates Act, 1961 enables the Bar Council to lay down standards of legal education in the country in consultation with the Universities. The Law Commission was of the view that generally in the matter of standards of legal education, the UGC or the Universities may have primacy but in the matter of standards of legal education for those who will practice in courts, the primacy of the Bar and the Judiciary remained undisputed. The Commission also quoted a similar view expressed by Shri M.C. Setalvad in the 14th Report of the Law Commission (1958). If legal education is kept totally out of the purview of the BCI, it may not be able to prescribe a definite course of legal education which can meet the needs of the Bar.

“We have already seen how in England, professional legal education and the admission to the profession are controlled by a body consisting exclusively of professional men. There is no reason why a similar control and regulation should not be vested in the profession in India. Co-ordination between the bodies regulating professional training and the Universities with a view to ensuring minimal standards can be achieved in the manner indicated above. In our view, the Legal Education Committee of the All India Bar Council may be empowered to keep itself in touch with the standards of legal education imparted at the various Universities by visits and inspection as in the case of the medical and dental professions or as is done by the American Bar Association in the case of the American Law Schools. If the Council or its Committee is of the view that the standards prescribed by a particular University in legal education are not adequate or that institutions established by it or affiliated to it for imparting legal education are not well-equipped or properly run, it may decide to refuse admission of the graduates of that University, to the professional examination till the University has taken steps to reach the minimum standards.”

– *The 14th Report of the Law Commission (1958) presided over by Shri M.C. Setalvad*

5.2.6 The main argument behind the recommendations of the National Knowledge Commission is that in the current era, the curriculum of a particular stream does not cater only to the traditional sector of the profession, but also meets the needs of other competence areas. For example, our law colleges / institutes do not prepare students only for careers in the Bar or in the judiciary. The curriculum also trains them for other equally important functions in society such as those of policy makers, business advisers, academicians, activists and public officials. The expansion of trade and commerce and the resulting environment of global integration have brought into the picture a variety of complex commercial issues which require ability and knowledge of the highest calibre.

5.2.7 The overall tenor of law and practice now, calls for serious academic research and enquiry.

5.2.8 Medical education too is a field in which the standard of research and knowledge has reached a high level. Designing curriculum, setting standards and managing research has become an area of high scientific pursuit which can be managed only by people of excellence. The current system of elections discourages the entry of high calibre individuals into the Professional Bodies. There seems to be strong merit in the argument that a separate Body dominated largely by persons with specialized knowledge in their respective field should be put in charge of medical education.

5.2.9 In view of the above, the Commission agrees with the stand of the National Knowledge Commission that the subject of professional education should be separated from the domain of the existing Regulators. However, it is felt that creating a high powered monolith at the national level, IRAHE, in overall command of all the streams of professional education, will go against the very principle of decentralisation – an essential element of good governance. Secondly, the NKC has proposed to create separate Standing Committees in IRAHE to look after different streams, one each for law, medicine, management, chartered accountancy, pharmacy, nursing etc. They will be doing the same work as is currently being done by BCI, MCI, AICTE and others (planning, formulation and maintenance of norms and standards, quality assurance through accreditation, funding in priority areas, monitoring and evaluation, maintaining parity of certification / awards and ensuring coordinated and integrated development and management of the stream). The Commission believes that the interests of higher education will be better served, if instead of creating one monolithic body, separate institutions are created for each of the professional field of study (medicine, law, management, technology etc.).

5.2.10 The apex regulatory agencies – one for each of the professional education streams – should be created by law. They could be called the National Standards and

Quality Council for Law, National Standards and Quality Council for Medicine, National Standards and Quality Council for Management and so on. It needs to be ensured that there is uniformity in their composition and structure. In order to ensure transparency and objectivity in the functions of these Councils, the law should provide a clear description of their functions, powers and procedures to be adopted. The Commission is also of the view that these Councils need not act as Regulators in the classical sense as they will have no licensing functions. They should be entrusted only with the task of laying down norms, standards and parameters for (a) setting up new institutions, (b) designing / updating curriculum, (c) faculty improvement, (d) carrying out research / innovation, and (e) other key issues concerning the stream. While constituting these Councils, the law should take into consideration the following guiding principles:

- (1) Such Councils should have full autonomy.
- (2) The highest policy and decision making Body of these Councils should have a majority of independent members, and preferably no more than 2 or 3 drawn from government, who could be there in ex-officio capacity.
- (3) These Councils should have a strong and effective grievance redressal mechanism.
- (4) The Councils should be accountable to Parliament and their Reports, should be placed before the House annually. In addition, there should be strong norms for suo-motu disclosures under the RTI Act.
- (5) One important function of these Councils will concern accreditation / certification of institutions falling under their jurisdiction. Hence, each of these National Councils should have a body of experts to advise it on these matters.
- (6) Some of the members of such Councils can be elected from among office bearers of speciality Associations (e.g. Indian Medical Association), as these members are elected by the practicing professionals in their individual specialty.

Subject to the laid down norms, standards and parameters, the Universities/ Autonomous Institutions would be free to take decision in all the above matters.

With enactment of a new law as proposed above and creation of separate National Standards and Quality Councils for technology and management, the AICTE will need to be abolished.

5.2.11 With an enhanced role for the Universities, as proposed in paragraph 5.2.10 above, there will be need to introduce substantial reforms in the higher education sector particularly with regard to – number and size of the Universities, curriculum, assessment, research, faculty, finances, infrastructure and governance. The National Knowledge Commission has made important recommendations in this regard which should be examined by the government and implemented on priority. The Commission would like to particularly highlight and endorse the recommendation of the NKC regarding appointment of Vice Chancellors. The process of appointment should be free from direct or indirect interference of the government. Once appointed, Vice Chancellors need to have a tenure of six years. They should have adequate authority and flexibility to govern the Universities with the advice and consent of the Executive Council.

5.2.12 There has been an emergence of strong private initiative in the education sector and several institutions of learning have been set up for providing high quality education. This underscores the need for establishment of stronger ties between educational institutions in the private and public sectors through appropriate mechanism including exchange of faculty. This would mutually reinforce the comparative strength of these two sectors.

5.2.13 Recommendations:

- a) **Professional education should be taken away from the domain of the existing Regulatory Bodies and handed over to specially created agencies – one for each of the streams of higher/professional education. These Bodies may be called National Standards and Quality Council for Medicine, National Standards and Quality Council for Management etc. After this bifurcation, the work of the existing Regulatory Bodies' would remain confined to issues concerning registration, skill upgradation and management of professional standards and ethics. On creation of these separate Councils, the AICTE will stand abolished.**
- b) **Such Councils should be created by law and their role should be to lay down norms, standards and parameters on issues concerning growth and development of their stream viz. (a) setting up new institutions, (b) designing/ updating curriculum, (c) faculty improvement, (d) carrying out research / innovation, and (e) other key issues concerning the stream.**
- c) **The proposed law should take into consideration the following guiding principles while constituting these Councils:**

- i. Such Councils should have full autonomy.
 - ii. The highest policy and decision making Body of these Councils should have a majority of independent members, and preferably no more than 2 or 3 drawn from government, who could be there in an ex-officio capacity.
 - iii. These Councils should have a strong and effective grievance redressal mechanism.
 - iv. The Councils should be accountable to Parliament and their Report should be placed before the House annually. In addition, there should be strong norms for suo-motu disclosures under the RTI Act.
 - v. Each of these Councils should have a body of experts to advise it on accreditation / certification of institutions falling under their jurisdiction.
 - vi. Some of the members of such Councils can be elected from office bearers of specialty Associations (e.g. Indian Medical Association), as these members are elected by the practicing professionals in their individual speciality.
- d) Within such norms, standards and parameters, the Universities/ Autonomous Institutions should be given full autonomy for setting up and running institutions under their jurisdiction.
- e) The recommendations of the National Knowledge Commission regarding reforms in the structure, governance and functioning of Universities should be examined and implemented on priority. The process of appointment of Vice Chancellors should be free from direct or indirect interference of the government. Vice Chancellors should be given a fixed tenure and they should have adequate authority and flexibility to govern the Universities with the advice and consent of the Executive Council.
- f) There should be stronger ties between educational institutions in the public and private sectors through mechanisms such as exchange of faculty.

5.3 Professional Updation

5.3.1 In the present era when technology and skills are changing rapidly, there is need for professionals to update their knowledge and technical skills.

5.3.2 In order to provide specialised knowledge, ICAI offers short term post-qualification courses in management accountancy, corporate affairs and tax management. It has also introduced courses in information system audit, insurance and risk management, international trade laws and WTO. It conducts periodic programmes on computer aided auditing techniques.

5.3.3 ICAI through its Continuing Professional Education Directorate assumes the responsibility of updating its members on professional issues arising out of new legislations, technological changes and latest policies and pronouncements of the government and other agencies / organisations. Continuing Professional Education (CPE) has been made mandatory for ICAI members since 2003. Now, members will have to earn CPE credit by undergoing such trainings. The MCI too is now facilitating CPE programmes being hosted by some of the reputed medical institutions. It is providing financial assistance to them.

5.3.4 But, many professions do not offer such quality enhancement programmes to their members. For example, the only option available to a practicing lawyer is to join a two-year Master's course in a University. The Commission is of the view that the Professional Regulatory Bodies in conjunction with the respective National Quality and Standards Council and the academic institutions should offer short duration courses of 4 to 6 weeks to practicing professionals for updation and enhancement of skills. Such courses would acquaint them with the latest trends and developments occurring in their respective field and update them on clinical and professional issues arising out of new legislation, technological changes and government policies / pronouncements.

5.3.5 Recommendation:

- a) **Every Professional Regulatory Body in coordination with the respective National Quality and Standards Council and Academic Institutions should conduct Continuing Professional Education programmes periodically for updation and skill enhancement of its members.**

5.4 Ethical Education and Training

5.4.1 Decline of ethics among professionals can be attributed to two primary factors: (i) the tenor of the overall educational system; and (ii) impact of the environment. While behavioral changes can be brought about through carefully designed training programmes, trying to change entrenched mindsets is more difficult. It needs sustained efforts from all concerned. Ethics finds a very small space in our current academic content. There is need to give it a prominent place in the curricula being followed by professional institutions throughout the country.

5.4.2 Once the education part of a profession is hived off to a different machinery, the currently existing regulatory structure would be free to devote time and energy to issues of entry and maintenance of professional ethics and standards. In this context, holding workshops, seminars and interactive sessions periodically would be of great value.

5.4.3 Recommendation:

- a) **After separation of professional education, the agenda of the Professional Regulatory Authorities should be to focus on (i) procedure for registration of new members / renewal of registration; and (ii) matters concerning professional ethics, standards and behavior. The Regulatory Authorities should also pay greater attention to conducting workshops, seminars and training programmes on such issues.**

5.5 Enrolment in the Profession

5.5.1 As per the current practice, once a person successfully obtains a professional degree, getting registered as a member of the profession is almost a matter of routine. The candidate is asked to fill up certain forms, deposit a prescribed fee and thereafter he is enrolled as a practitioner. Such a perfunctory procedure is not in the interest of the profession. There is need to put in place a stricter procedure for enrolment / registration of new members.

5.5.2 The Law Commission, in its 184th Report submitted to the Government in 2002, had recommended that an apprenticeship of six months followed by a test should be made mandatory for registration at the Bar. In this connection, it had quoted the report of the “Ahmedi Commission on Legal Education” submitted in 1999. The National Knowledge Commission recommended that entry into a profession should be based on an examination conducted by the respective Professional Regulatory Body at the national level.

5.5.3 Currently, two kinds of law syllabi are being followed in the country; one is the three year degree course for graduates, and the second is the five-year integrated course

for senior school passouts. Both these courses provide some kind of practical training to students through organisation of moot courts, interactive sessions with Judges and lawyers and short attachment with institutions / industries. For a medical course, internship is an integral component of the syllabus. For Chartered Accountants and Company Secretaries too, there is considerable emphasis on practical learning. Hence, the Commission is of the view that any further requirement of practical training / internship or a separate set of entrance examinations may not be needed for enrolment of new members. However, in order to ensure a healthy growth of the profession, the respective Professional Regulatory Authority should be empowered to prescribe basic guidelines for enrolment of new members.

5.5.4 Recommendation:

- a) **Within the parameters of the Act, the respective Regulatory Authority should be empowered to prescribe guidelines for enrolment of new members.**

5.6 Renewal/Revalidation of Registration

5.6.1 As per the prevailing practice in our country, in all professions, once a person is registered as an entrant, he acquires a lifetime membership. No process of renewal or re-registration is needed thereafter. The only ground on which a professional could lose his membership would be a case of extreme deviant behaviour.

5.6.2 The Commission is of the view that when technology, standards of skills and the

Box. 5.1: Professional Revalidation in USA and UK

Certification in USA

In the United States, many hospitals forbid doctors to practice without proof of a valid board certification in their specialty. National Board of Trial Advocacy (NBTA) is a non-profit organization of Attorneys set up with the aim of bettering the quality of trial advocacy and establishing objective standards by which to measure experience and expertise of trial lawyers. NBTA has been accredited by the American Bar Association to certify lawyers in the speciality areas of civil, criminal and family laws. Certificate holders undergo a thorough screening of their credentials, documentation of experience, a formal examination and a comprehensive checking of disciplinary matters raised against them. Possessing the NBTA certificate means that the Attorney holds a higher level of professional and personal conduct.

Source: www.nbtanet.org

Revalidation in Medical Profession in the UK

The revalidation process involves two processes: (i) Doctor shows practice in line with “good medical practice” (GMP) and (ii) the GMC confirms that the licence will continue.

Appraisal and Clinic Governance and Independent or Outside Clinic Governance are two routes to obtain revalidation. For revalidation through Appraisal/ Clinic Governance, the doctors should have:

- Worked under clinical governance during the revalidation period
- Participated in annual appraisal
- Kept the supporting documentation

Whereas for revalidation through outside Clinical Governance route, the doctors must show:-

- They have followed GMP during the revalidation period
- Evidence of participation in quality assured appraisal
- Analysed outcomes from questionnaire tools

“Good Medical Practice” involves the following:

- Good clinical care
- Maintaining good medical practice
- Teaching and training
- Relationships with patients
- Working with colleagues
- Probity
- Health

Subject to the satisfactory evidence, revalidation is granted to the registered medical professionals by the General Medical Council, every five years.

Source : www.gmc-uk.org

functional environment are changing rapidly, obtaining just a degree at some point of time is not enough to sustain professional competence for a lifetime. There needs to be a statutory provision that a registration / license will require revalidation / recertification at specified intervals.

5.6.3 Recommendation:

- a) **There should be a provision in the relevant laws that a professional registration/license will need revalidation after a prescribed number of years. It could be done after successful completion of a course prescribed by the respective Professional Regulatory Authority.**

5.7 Disciplinary Mechanism

5.7.1 A Professional Regulatory Authority sets and enforces standards in a profession so that its practitioners can earn the trust of their clients. The autonomy given to a Regulatory Authority in matters of discipline obliges it to preserve professional purity. For instance, in the legal profession, it is society's expectation from the legal fraternity that it shall objectively and diligently provide inexpensive legal aid and advice to all who are obliged to take recourse to legal remedies. It must remain vigilant and keep strict disciplinary control over breaches of ethics by its members. This is so with the other professions as well.

5.7.2 Though, the Regulatory Acts prescribe a mechanism for disciplining professional practitioners, in actual practice, the enforcement of ethical conduct among them remains weak. It is primarily because of two reasons: (a) there is reluctance on the part of the public to report cases of deviant behaviour because of (i) ignorance, (ii) respect for the profession or (iii) for fear of reprisal; and (b) many of these Bodies have not been able to develop a proactive attitude which could suo motu take cognizance of unprofessional / unethical behaviour of practitioners. The statutes need to be strengthened on these aspects.

5.7.3 ICAI has an innovative mechanism to punish errant members and prevent unethical practices. It has a pro-active disciplinary cell which speedily investigates complaints against its members. ICAI entertains complaints not only from stakeholders or user-groups but also takes suo-motu action on the basis of its in-house information. The provisions contained in the code of conduct of ICAI are very stringent and the agency is equally effective in taking action against its defaulting members. Peer review is undertaken to ensure compliance with technical standards and adherence to quality control policies and procedures. Often, ICAI on its own, looks into public accounts of different organisations including Banks and financial institutions. Disciplinary actions is taken if there is any deficiency in reporting. Quality control among Chartered Accountants is ensured by peer pressure and financial reporting review.

Table 5.1: Disciplinary Committee Meetings held, Cases Disposed of, and the Nature of Orders from 1st April, 2006 to 31st March, 2007 (Bar Council of India)

Sl. No.	Date of Meeting	Place of Meeting	No. of Committees	No. of Cases	Disposed of	Dismissed	Repri-manded	Suspen-ded	Appeal Allowed	Repri-manded	Judgement reserved
1.	29/30.5.2006	Delhi	2	28	14	12	—	1	—	—	1
2.	6/7.5.06	Ernakulam	3	38	11	5	—	—	—	—	6
3.	13/14.5.2006	Delhi	2	19	5	3	—	1	—	—	1
4.	20/21.5.2006	Mumbai	3	46	12	8	1	2	—	1	—
5.	27/28.5.2006	Chandigarh	2	35	13	8	—	1	—	2	2
6.	3/4.6.06	Jaipur	2	36	13	6	2	1	—	2	2
7.	19/20.6.2006	Delhi	2	23	6	3	2	—	1	—	—
8.	8/9.7.06	Hyderabad	3	52	34	18	2	2	1	2	9
9.	15/16/7.2006	Delhi	1	24	6	3	—	1	1	—	1
10.	24/25.6.2006	Delhi	1	12	2	1	—	—	—	—	1
11.	12/13.8.2006	Delhi	1	20	4	2	—	—	1	—	1
12.	18.8.06	Kolkata	2	18	6	5	—	—	—	1	—
13.	26/27.8.2006	Bangalore	3	24	10	3	3	—	3	1	—
14.	23/24.9.2006	Delhi	1	20	1	1	—	—	—	—	1
15.	7/8/10. 2006	Delhi	1	22	2	2	—	—	—	—	—
16.	14/15.10.2006	Ernakulam	4	55	31	13	2	2	4	2	8
17.	4/5/11.2006	Delhi	1	19	3	1	—	1	1	—	—
18.	11/12.11.2006	Hyderabad	4	56	20	8	—	—	—	—	12
19.	24/25.11.2006	Delhi	2	14	3	2	—	1	—	—	—
20.	2/3.12.2006	Bhopal	4	64	30	9	1	—	5	5	10
21.	9/10.12.2006	Delhi	1	22	—	—	—	—	—	—	—
22.	23/24.12.2006	Chennai	3	59	28	16	—	—	—	—	12

Source: Annual Report, 2006-07 Bar Council of India

5.7.4 For advocates, the State Bar Council gets a period of one year to decide on a disciplinary proceeding, but there is no time limit for disposal of the case when it comes in appeal to the Apex Body (the Bar Council of India). For medical professionals, the respective State Medical Council has been given a period of six months to decide on a disciplinary matter but again there is no time limit for deciding an appeal filed before the Apex Body (the MCI). Further it will be evident from the Table 5.1 that only a small percentage of the complaints result into penalty.

5.7.5 The Commission feels that the existing in-house mechanisms of the Professional Bodies have not acted in the best interest of the people or the profession. The Commission is of the view that the participation of the stakeholders is needed to bring objectivity in the system. Hence, every Disciplinary Panel should have a membership consisting of senior professionals as well as outsiders (lay persons) in the ratio 60:40. Whenever a complaint is received, it should be disposed of within a given time limit (say 90 days). An appeal against a decision of the State Panel would lie before the Apex Body which again would be required to dispose of the matter within the same time limit.

5.7.6 Recommendations:

- a) **There should be provision in the relevant laws that in order to bring objectivity in their working, the Disciplinary Committees of the Regulatory Authorities at both the State as well as the national level should consist of professional and non-professional members. They could be inducted in the Committee in the ratio of 60:40 respectively.**
- b) **The law should provide that such Bodies should be required to complete the entire disciplinary proceeding within a prescribed time span (say 90 days).**
- c) **The law should also have a provision that anybody aggrieved with the findings of the State Panel could go in appeal to the National (Apex) Body which too will have to dispose of the matter within the prescribed time limit (say 90 days).**

5.8 Composition of the Self-Regulatory Authorities

5.8.1 Interface between the Government and the Regulatory Bodies

5.8.1.1 Regulatory Authorities have been given considerable autonomy by law. The intent of the law is to reassure the public that these Bodies will function without any constraint and provide quality service to them. But in actual practice, there are variations in the extent of autonomy which such Bodies enjoy. For example, the BCI enjoys more autonomy as compared to the AICTE in terms of setting the agenda for education, training and practice. There are only two government representatives (both ex-officio members) out of a total strength of 21 in the BCI General Council (Attorney General and Solicitor General), while in the AICTE, 19 out of 21 are government representatives.

5.8.2 Governing Structure

5.8.2.1 In general, the Regulatory Authorities have been modelled on the Parliamentary form of government with an elected General Body and a smaller Executive outfit having nominated members. Structures like the General Council, the Executive Committee (EC), the Educational, Examination, Ethical and Finance Committees are common to all the six SRAs. However, there is considerable variation in their size, composition and number. The ICAI has the largest number of Standing Committees (37). It is followed by ICSI (20), ICWAI (18), MCI (16), and BCI (10). As per the size of the General Body, the MCI tops the list with 119 members followed by COA 41, ICAI 40, BCI 21, ICWAI and ICSI with 20 members each. Also, there is variation in the strength of the Executive Committees. MCI has 10 members, followed by BCI 9, ICWAI 7, COA 7, ICAI 6 and ICSI 5.

Table 5.2: Structure and Composition of the Regulatory Authorities

Name of the Organisation	Size of the General Body	Size of the Executive Committee	No. of Subject Standing Committees
BCI	21	9	10
MCI	119	10	16
ICAI	40	6	37
ICWAI	20	7	18
ICSI	20	5	20
COA	41	7	5

Source : Compiled from the websites of these agencies.

5.8.3 Membership of the Governing Bodies

5.8.3.1 Generally, there are four routes through which a professional can become a member of the Governing Council of a Professional Body (at both the State as well as the apex level) i.e. by election, by nomination, by co-option or by ex-officio membership. Some seats are reserved for teaching faculties of Universities / Colleges. The challenge is to find a model that will promote inclusiveness and transparency, and which will enjoy the confidence of the profession as of well as of the citizens.

5.8.4 Tenure of Office and Collective Leadership

5.8.4.1 Free and fair periodic elections together with a short tenure for office bearers can promote collective and honest leadership. The control of an institution by a few individuals for a long period is not a healthy practice and invariably leads to growth of vested interests. For instance, one individual remained as President of the Council of Architects of India for 21 years (1973-1997) with just a two-year break. The tenure of the President in the MCI is five years and there is no bar on seeking re-election. An incumbent thus remained in office for ten long years till he was advised to step down by the Delhi High Court on corruption charges. Such long tenures also deny entry to younger professionals who could bring new ideas to such Bodies. The tenure of the President in the ICAI and the ICWAI is just one year.

5.8.4.2 It is felt that the existing governing structures of the Professional Regulatory Bodies do not have an inclusive character. There is no client representation (unlike in the UK and the USA). Secondly, the ratio of elected and nominated members too is highly skewed. In the BCI, 19 out of 21 members are elected and the remaining two are there in ex-officio capacity. On the other hand, in the AICTE, 19 out of a membership of 21 are government nominees or ex-officio members. While in the ICAI, only 6 out of 40 members are ex-officio/ government nominees. Thirdly, there is no provision for sectoral representation (i.e. from various sub-specialisations; dentistry, pharmacy, neurology and bio-sciences in the MCI or corporate, human rights or businesses law in the BCI) in important functional committees. Often, the Committees appear to be biased towards a particular region, class, group / community. An organisation like the BCI with just 21 members is too small to be genuinely inclusive.

5.8.5 Any attempt to reform these Authorities would require adherence to the following four core principles:

Effectiveness – the need for the Regulatory Body to discharge its statutory functions as effectively as possible. These Bodies could operate effectively and speedily with inputs from key stakeholders and with much clearer lines of accountability, if the organisational structures are of appropriate size, simple and task oriented.

Inclusiveness – the need to have the confidence and participation of key stakeholders.

Accountability – the need to be accountable to stakeholders.

Transparency – the need to be open about the decisions and actions they take.

5.8.6 The following factors should be taken into consideration with regard to constitution of these Regulatory Bodies. First, there should be an overall majority of elected professionals (in keeping with the principle of professionally-led regulators). Secondly, there should be a significant proportion of lay members in them (say in the ratio of 60:40), in keeping with the principle that professionally-led regulators are required to work in partnership with the general public. Thirdly, nominated/ government appointed members should also be on the Board. The Body's accountability to the public and to the profession should be renewed and strengthened. Lastly, there should be an explicit accountability to Parliament.

5.8.7 The Commission is of the view that the Regulatory Bodies should consist of a large General Council and a small Executive Committee (EC), each with well defined statutory powers and responsibilities. For instance, the General Council with 50-60 members would strike a right balance between the requirements of effectiveness and those of inclusiveness and accountability. Such a Body could meet frequently to discharge business. Its size would offer a wide perspective on matters under debate. On the other hand, a smaller General Council of 20-25 members could run the risk of being non-representative. The creation of a larger Body enables the model to be inclusive as well as effective. It would permit stakeholder participation in policy formulation, and provide opportunity for people to involve in other activities of the Body. The statutory functions of the General Council would include electing members of the Executive Committee, electing / nominating to other statutory or non- statutory policy Committees, requiring the Executive Committee and other Committees to submit Reports and scrutinising / analysing those documents.

5.8.8 A small Executive Committee consisting of 10-15 members would be suitable for preparing policy papers, for implementing and monitoring policies, and taking urgent executive action. This Body would be required to work within the boundaries of transparent standing orders issued by the General Council. The overall responsibility for discharging the main statutory functions such as registration, setting standards of practice, and acting on complaints against professionals should lie with the Executive Committee.

5.8.9 As regards the tenure of the Members and the office bearers, the Commission feels that no office bearer should be allowed to continue beyond one term. However, in case of members of the Council, there should be a limit of a maximum of two terms.

5.8.10 Recommendations:

- a) **The structure and composition of the General Council and the Executive Committee of Professional Regulatory Authorities should be rationalised. As far as practicable, it should be uniform for all of them.**
- b) **Every Authority should have a fairly large and representative General Council (the ideal number could be around 50; such a Body encourages a wider perspective and diversity of opinions).**
- c) **The Executive Committee should be a small Body consisting of 10 to 15 members (a compact forum supports administrative efficiency and accountability).**
- d) **There should be an explicit provision that a person cannot be elected to the post of President / Vice-President or General Secretary for more than one term. However, a person could be elected as a member of a Body for a maximum of two terms.**

5.8.11 Committees and Working Groups

5.8.11.1 Though, the Executive Council / Committee is generally responsible for the overall day-to-day functioning of the Regulatory Body, it needs to be supported by specialist Committees / Working Groups. These specialist Committees and Working Groups should remain accountable to the Executive Council for the discharge of their functions. People from outside the Council could also be co-opted to such Bodies wherever found appropriate.

5.8.12 Clients / Users – as Lay Members in Regulatory Authorities

5.8.12.1 Professional regulation cannot function effectively without involvement of key stakeholders from outside the profession. The involvement of such stakeholders (lay members) has been a fundamental feature of Professional Bodies in many developed countries. To ensure that the balance between the profession and the wider community is maintained, in many such organisations half of the strength comes from lay members. (Lay members are currently defined as those individuals who are not eligible to be registered as members of the concerned Regulatory Authority). A large stakeholder representation gives the authority an opportunity to embrace diversity, whether it is expressed in terms of gender, region or socio-economic groupings.

5.8.12.2 The method adopted by the General Medical Council (GMC) in UK in the appointment of lay members provides some guidance in this direction. The Privy Council, on the recommendation of the UK Health Department, currently appoints lay members in the GMC.

5.8.12.3 The Commission is of the view that in order to secure involvement of stakeholders and to encourage diversity of opinions, there should be representation of lay persons in every forum of a Regulatory Authority. There should be an impartial mechanism to make appointment of such lay members on pre-determined criteria. This can be ensured if the government makes the appointments in consultation with the Regulatory Authority concerned.

5.8.12.4 Recommendations:

- a) **The composition of the General Council as well as the Executive Committee should be such that 40% of the strength consists of lay members.**
- b) **The nomination of lay members should be done by the Ministry / Department concerned in consultation with the appropriate Regulatory Authority.**

5.9 Accountability and Parliamentary Oversight

5.9.1 Self-Regulatory Authorities enjoy considerable functional autonomy. Though, they are creatures of the law, their accountability is currently ambiguous and incomplete. The law does not provide for an explicit mechanism which can hold them responsible for their performance. The Public, Parliament, Government and the profession have a right to know how a Self-Regulatory Authority discharges its functions and to hold them accountable.

5.9.2 It would be pertinent to quote here from the report of the Committee of Inquiry into the Regulation of the Medical Profession (the Merrison Report) published in UK. The Report says that the professional regulation is:

'A contract between the public and the profession...the legislature – that is, Parliament – acts in this context for the public and it is for Parliament to decide the nature of this contract and the way it is to be executed'.

5.9.3 The Commission is of the view that a Self-Regulatory Authority's primary accountability as a statutory Body must be to Parliament, which, on behalf of the public, defines its powers and responsibilities.

5.9.4 Recommendation:

- a) **The laws governing the Self-Regulatory Authorities should have a provision under which the Regulatory Authority should be required to present an Annual Report to the Parliament for scrutiny.**

COOPERATIVES

6.1 Introduction

6.1.1 “A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”. Cooperatives as business enterprise possess some basic interests such as ownership and control but these interests are directly vested in the hands of the user. Therefore, they follow certain broad values other than those associated purely with profit making. Need for profitability is balanced by the needs of the members and the wider interest of the community. The values universally recognized as cornerstones of cooperative behaviour are self-help, democracy, equality, equity and solidarity. Voluntary and open membership, democratic control, economic participation, autonomy, training and information and concern for community are the overarching features by which the cooperatives put their values into practice.

6.2 History of Cooperatives in India

6.2.1 The Indian cooperative sector completed 103 years of its existence in 2007. It was born during the later part of the colonial era’ predominantly as a Government initiative to address the twin issues of farmers’ indebtedness and poverty. This initiative was formalized in a legislation enacted in 1904 entitled the “Cooperative Credit Societies Act, 1904”. During a century of its existence, this sector has built a network consisting of more than 5.45 lakh individual cooperative organisations and over 236 million members. It is numerically the largest movement of its kind in the world. With a working capital base of Rs. 34,00,555 millions, presence in practically all walks of rural life and a coverage spanning almost all villages of the country, the cooperatives have come to be recognized as one of the most important economic and social organisations in the nation’s life. Cooperatives are meant to be enterprises of the citizens and it is envisaged that a vibrant and robust cooperative movement can significantly contribute in harnessing the positive potential of social capital for the greater good of society.

6.2.2 The Cooperative Credit Societies Act of 1904 was followed by a number of supporting legislations including the Cooperative Societies Act, 1912 which provided for the formation

of non-credit societies and federal cooperative organisations. Provinces like Bombay, Madras, Bihar, Orissa and Bengal enacted their own cooperative laws on the lines of the 1912 Act. In 1928, the Royal Commission on Agriculture submitted a report emphasizing the importance of cooperative sector and observed that “if cooperation fails, there will fail the best hope of Rural India”. In 1942, the government enacted the Multi Unit Cooperative Societies Act which was an enabling instrument for incorporation and winding up of cooperative societies. The Reserve Bank of India formed in 1934, had agriculture credit as a part of its basic mandate. By extending refinance facilities to the cooperative credit system it played an important role in spreading the cooperative movement to far corners of the country.

6.2.3 Post-Independence, cooperatives were considered to be the part of the strategy of planned economic development. Pandit Nehru visualized an India in which each village would have a panchayat, a co-operative and a school²³. Rapid and equitable economic development became the focus of the State policy. In the early 1960s, cooperative legislation all over the country underwent a major change on the basis of the findings of the All India Rural Credit Survey Committee (1951-54) formed under the Chairmanship of Shri A.D. Gorwala. The crux of the Committee’s recommendations was that the State should play an active role in the spread of the cooperative movement. Based on these recommendations, States enacted new laws / amended the existing ones under Entry No. 32 of List II, Schedule 7 of the Constitution. The new legislations gave them a major role in the functioning of the cooperative institutions. Cooperative Societies having jurisdiction over more than one State had to encounter different laws and therefore a need was felt to introduce a separate consolidated legislation for them. Parliament accordingly enacted a Multi-State Cooperative Societies Act in 1984 under Entry No. 44, of the List I of the Schedule 7 of the Constitution.

6.2.4 Over the years, there has been a growing realisation that undue interference from the State, lack of autonomy and widespread politicisation has severely impaired the functioning of these institutions and there is need to introduce urgent reforms in the sector. During the last two decades, a number of Committees were appointed to go into various issues of cooperatives. Choudhary Brahm Prakash Committee (which proposed a model law) (1990), Mirdha Ccommittee (1996), Jagdish Kapoor Committee (2000), Vikhe Patil Committee (2001) and V. S. Vyas Committee (2001 and 2004) went for a complete dissection of the sector and made a number of valuable suggestions to turn cooperatives into self-reliant, autonomous and democratised institutions. These Committees strongly advocated the need to replace the existing government dominated cooperative laws by a new people centric legislation.

²³Speech of the Hon’ble Prime Minister of India, while announcing setting up of Task Force on rural cooperatives, November 2004.

6.2.5 As a consequence of these recommendations and on support of a sizable section of the cooperative community, two major events took place on the cooperative scene of the country.

- (a) The Government of Andhra Pradesh passed the A.P. Mutually Aided Cooperative Societies Act 1995. This was followed by similar enactments in eight other States; Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Jammu and Kashmir, Karnataka, Orissa and Uttarakhand.
- (b) The Union Government replaced the existing Multi-State Co-operative Law by a fresh statute – the Multi-State Cooperative Societies (MSCS) Act, 2002.

6.2.6 Government of India announced a National Policy on Co-operatives in 2002. The ultimate objective of the National Policy is to provide support for promotion and development of cooperatives as autonomous, independent and democratic organisations so that they can play their due role in the socio-economic development of the country. The Policy further aims at reduction of regional imbalances and strengthening of cooperative education, training and human resource development for professionalisation of cooperative management. It recognizes the distinct identity of cooperatives and seeks to support their values and principles by catalysing States to provide them an appropriate administrative and legislative environment.

6.2.7 Co-operatives in India have had a chequered history. During the first few decades after Independence, this sector played a pivotal role in the economy by making significant contribution to our primary sector production. It had an important role in bringing food sufficiency through the green revolution, in building up a network for distribution of new varieties of seeds, fertilizers and cash credit and in creating an environment of participation and hope among the people. Beginning with Amul in Gujarat, it took extraordinary strides in the dairy sector too. Currently, 170 District Cooperative Milk Producer Unions and 22 State Dairy Federations deserve credit for (a) turning India into the largest milk producing nation of the world, and (b) bringing substantial raise in the family income of millions of milk producers across the country. But, even this sector has now begun showing some signs of fatigue. In many areas, production has reached a plateau and the rate of capital formation is inadequate.

6.3 Existing Weaknesses

6.3.1 The above achievements notwithstanding, the cooperative sector, as it exists today in most of the States, is weak and inactive. A majority of the cooperatives look towards

government patronage both for business as well as for their capital requirement. In this regard, two areas of concern stand out prominently:

- (i) *Bureaucratisation and Government control* – When the colonial rulers officially brought the cooperatives to India, they created the post of the “omnipotent” Registrar of Cooperative Societies, a position specially designed by the government with a view to operating the final levers of control over these institutions and not allowing the cooperative sector to blossom as a people’s movement. The government of Independent India, while championing the cause of cooperatives, not only retained this key position but also further added a complex hierarchy of bureaucratic power centres to the existing structure. Existence of such a government controlled cooperative infrastructure has gone against the very logic of the cooperative movement.
- (ii) *Politicisation of cooperative leadership* – The Boards of a majority of cooperative Bodies are dominated by politicians. They are cooperators by default. Many of them are in cooperatives because they want to use this position as a stepping stone for their political ambitions. And there are some who join this sector because their current political standing has gone down. Movement of the first kind may be a normal phenomenon, but politicians joining cooperatives introduces decay in the system.

6.3.2 Further, the Indian cooperative sector has failed to inculcate two of the very essential cooperative values. The first is that of self-help. Self-help has been envisaged as a basic tenet of cooperatives. In its very genesis the movement is opposed to both Market as well as State. It is widely perceived that these two institutions have failed to protect the interest of the common man. Both are, in a sense, forces which the cooperators inherently need to resist. Drawing support from such sources is essentially a result of the modern day political complexities. It needs to be understood that governments both in centrally planned economies and free market regimes have generally, been too eager to provide financial and other support to cooperatives and the sector has very often fallen prey to this temptation. The government thus, succeeds in establishing its dominance over them. This trend needs to be reversed. A cooperative endeavour should necessarily depend on its own resources, however small they may be. Its growth and expansion should be evolutionary.

6.3.3 The other important missing value is the member-centrality. Cooperatives by their very nature are inward looking organisations. They are meant to serve the member community unlike outward looking organisations such as the corporates which operate for profits. The focus of the activities of a cooperative organisation needs to be on its members. Its business

is to be developed around their needs, policies are to be designed according to their views and administration is to be carried out through member participation. But, in practice, cooperatives in India have not adhered to the above norms. In the context of the emerging global integration, it is being felt that the pressures of globalisation in the country will have to be addressed to a large extent through upscaling of self-help / cooperative initiatives. The issue of social capital as an input for development and self-help / cooperative groups as instruments of economic growth are therefore now being widely discussed.

6.3.4 There is a definite credibility crisis in the cooperative sector. The process of withdrawal of the State from certain service areas should have in the ordinary course opened up the doors for cooperativisation instead of privatisation but, this has not happened. The prevailing perception is that the cooperative sector in its present form, has neither values nor competence to accept this challenge. Therefore, there is need to inculcate values of self-help and member centrality in our cooperative organisations so that they not only function as 'enterprises' but also as units of larger 'cooperative communities'.

6.3.5 Recognising the importance of cooperatives, the Union Government has taken several initiatives in the recent past (forming Expert Committees on short and long term credit structures, preparing a draft model law, entering into reform agreement with the State Governments and announcing revival packages). However, a lot more still remains to be done, particularly, in States where there is reluctance to move ahead. It may be pertinent to quote the concerns of the Hon'ble Prime Minister which he expressed in 2004, while announcing the formation of the Task Force on revival of rural cooperatives. *"In spite of the large coverage of the co-operative movement, there are many challenges that face this sector and these will have to be faced. There is, for example, a great degree of viability in the spread and depth of coverage of the cooperative movement. In some places and in some States, one notices an intense and active presence of cooperatives whereas in others, they have not even scratched the surface of their potential. Many places, unfortunately, have cooperatives only on paper, with a complete absence of the cooperative spirit. Even where they exist, their financial and business strength varies substantially. This leads one to wonder- why do cooperatives not succeed and blossom in the climate and the soil of some of our States? Why is the performance of cooperatives so variable across activities, across sectors, and across regions? In the answer to these questions lie the seeds for future productive and creative action."*

6.3.6 It is also important to recognize that the circumstances and situation that gave rise to the cooperative movement about hundred years ago are still in existence in large parts of rural India. Eighty-four per cent of our farmers fall in the category of landless, marginal and small landholders, they do not have access to organised markets for their produce and the availability of agriculture credit is far too inadequate. Non-agriculture activities in rural areas

are equally credit starved. In this background, the most appropriate institutional structure which has the capacity to tackle these problems is cooperatives. They can provide credit to the rural people at affordable rates. They can also play a major role in other primary sector activities such as livestock development, dairy production, fisheries and agro-forestry. Cooperatives can establish linkages between credit and market and thus develop into multi-purpose rural institutions. The role of cooperatives could be very important in other related operations as well such as sale of consumer goods, sugar production and housing. There is need to comprehensively revive and strengthen this sector by adopting a multi-dimensional reform agenda covering all aspects of legal, institutional and policy changes.

6.4 Constitutional Context

6.4.1 Cooperatives find mention in the Indian Constitution explicitly at two places: (i) in Part IV, Article 43 as a Directive Principle which enjoins the State Government to promote cottage industry on an individual or cooperative basis in rural areas, and (ii) in Schedule 7 as Entries 43 and 44 in the Union list and Entry 32 in the State list.

6.4.2 In addition, the Right to form cooperatives can also be construed as a Fundamental Right emanating out of Article 14 – (Right to Equality) and Article 19(1)(c) as ‘Right to form Associations or Unions’. Theoretically, when a cooperative is formed by a set of people to serve some common needs of the members, it inherently falls under Article 19(1)(C). To that extent, even if the State is providing financial and other support to such an institution, Constitutionally it is not permitted to exercise any control over it. Any law made by the State to regulate or control cooperatives is prima facie an infringement of the Constitution and the Fundamental Right. However, in practice the growth of the cooperative sector has taken a different route and government has always taken it for granted that it can make laws for regulation of the cooperative sector just as it does with the other subjects in the State list.

6.4.3 In this background and on the basis of the recommendations of the Task Force on Revival of Cooperative Credit Institutions, the Union Government has introduced The Constitutional (One Hundred and Sixth Amendment) Bill, 2006 in the Parliament on 22nd May, 2006. The Statement of Objects and Reasons for the introduction of the proposed Bill states that:

“The Central Government is committed to ensure that the co-operative societies in the country are functioning in a democratic, professional, autonomous and economically sound manner. With a view to bring the necessary reforms, it is proposed to incorporate a new Part in the Constitution so as to provide for certain provisions covering the

vital aspects of working of co-operative societies like democratic, autonomous and professional functioning. The proposed new Part in the Constitution, inter alia, seeks to empower the Parliament in respect of multi-State co-operative societies and the State Legislatures in case of other co-operative societies to make appropriate law laying down the following matters, namely:--

- (a) provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;*
- (b) specifying the maximum number of directors of a co-operative society (not exceeding twenty-one members);*
- (c) providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;*
- (d) providing for a maximum time limit of six months during which a board of directors of a co-operative society could be kept under suspension;*
- (e) providing for independent professional audit;*
- (f) providing for right of information access to the members of the co-operative societies;*
- (g) empowering the State Governments to obtain periodic reports of activities and accounts of co-operative societies;*
- (h) providing for offences relating to co-operative societies and penalties in respect of such offences.*

It is expected that these provisions will not only ensure the autonomous and democratic functioning of co-operatives, but also ensure the accountability of management to the members and other stakeholders and also to provide for deterrence for violation of the provisions of the law”.

6.4.4 The Commission has examined the views expressed by various stakeholders and cooperative leaders/activists on the merits and demerits of the proposed Constitutional Amendment Bill. It has been strongly argued by some of them that if the objective of the Bill is to promote voluntary, democratic, professional, member-controlled cooperative, the amendment seeks to do exactly the opposite and will de-facto make these organisations a

part of the government machinery by making them more dependent on the government, thus defeating the whole purpose of their existence. The National Advisory Council also felt that *“cooperatives, associations, unions and business enterprises are not part of the State. A detailed provision in the constitutions in respect of their functioning is inelegant, unwarranted and counter productive as it leads to restrictions on citizens liberties”*.²⁴

6.4.5 The Commission appreciates the stated objective of the proposed Constitutional Amendment Bill which seeks to promote and build cooperative societies on the principles of voluntary and open membership, democratic and member-centric participation and autonomous functioning. However, the moot question is whether the proposed amendment is the most suitable mechanism to achieve this goal. It needs to be understood that cooperative societies are meant to be autonomous Associations of persons united voluntarily to meet their common economic, social and cultural needs and aspirations. They must not be treated as a part of the government machinery - like the institutions of local governance which have been established as the third tier of the government following the 73rd Constitutional amendment. The Constitution is meant to define the role of the State, provide for mechanisms for proper functioning of the different organs of the State and protect citizens from undue encroachments on their liberty. As such, the Constitution needs to contain detailed provisions only to this extent. In fact, the Directive Principles of State Policy lay down the fundamental principles for the governance of the country and it is the duty of the State to apply these principles in making laws.

6.4.6 The Parliamentary Standing Committee on Agriculture in its Thirty Second Report on the proposed Amendment Bill has also opined that a comprehensive amendment to the Constitution on cooperatives is not necessary. The Committee further recommended that “the Bill should be converted into a comprehensive central model law for voluntary formation, autonomous functioning, democratic control and professional management of the cooperatives with certain incentives and disincentives to the States that implement or not implement the model law”. As regards the amendment in the Constitution, the Committee recommended that a new Article 43B on empowerment of cooperatives may be added in Part IV of the Constitution that contains the Directive Principles of State Policy and which may read as under:-

“43B Empowerment of Co-operatives: The State shall endeavour to promote voluntary formation, autonomous functions, democratic control and professional management of the co-operatives.”

It is learnt that the Union Cabinet has already given its approval to the above by suitably amending the proposed 106th Constitutional Amendment Bill.

6.4.7 The Commission agrees with the above recommendations of the Standing Committee and is of the view that the objective of the proposed amendment can be better achieved by simply adding an Article as a Directive Principle where the State could be made responsible for making laws which will ensure autonomous, democratic, member driven and professional cooperative institutions. This could be in the form of a new Article 43B as recommended by the Standing Committee. The Commission has also recommended enactment of a model law on cooperatives subsequently at paragraph 6.5.6.

6.4.8 At the same time, the right to form and run cooperatives, for economic or non-economic purposes, and free from State control, must be recognized as a fundamental right in unequivocal terms. This could be done in the following two ways:

Option-A

By incorporating a minor change in the Article 19(1)(c) of the Constitution to make it clear that the right to form associations or unions includes the right to form cooperatives.

At present 19(1)(C) reads, *“All citizens shall have the right “to form associations or unions”.*

After the above proposed amendment, it will read, *“All citizens shall have the right “to form associations, unions or cooperatives.”*

Option-B

Alternatively, this could also be done by adding a separate entry for the ‘right to form cooperatives’ as Article 19(1)(h). The National Advisory Council has suggested that the following amendment could be made by incorporating 19(1)(h) after 19(1)(g).

“(h) to form and run cooperatives based on principles of voluntary and open membership, democratic member control, member economic participation, and autonomous functioning free from state control.”

Correspondingly, Article 19(4) needs to be amended, so that enabling laws can be made by the legislatures. Article 19(4) at present reads as follows:

“(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

The amended Article 19(4) would read:

“(4) Nothing in sub-clauses (c) and (h) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause”.

6.4.9 The Commission endorses the amendment suggested by the National Advisory Council. A new Article 19(1)(h) may be inserted to make the right to form and run cooperatives as a Fundamental Right. Article 19(4) may be correspondingly amended so that enabling laws on cooperatives can be enacted by the legislatures. Also, an Article in the form of 43B should be added to Part IV of the Constitution making the State responsible for making such laws that will ensure autonomous, democratic, member driven and professional cooperative institutions. The Commission feels that with these changes, a large scale Constitutional amendment on the pattern of the 73rd and 74th Amendments may not be necessary.

6.4.10 Recommendations:

- a) **An Article should be added to Part-IV of the Constitution in the form of 43B where the State should be made responsible for making such laws that will ensure autonomous, democratic, member driven and professional cooperative institutions. In that case, a large scale Constitutional amendment on the pattern of Parts-IX and IX-A which was introduced by the 73rd and 74th Amendments, will not be necessary. The proposed Article 43B may read as follows:**

Article 43B: Empowerment of Co-operatives: “The State shall endeavour to secure by suitable legislation or economic organisation or any other way autonomous, democratic, member driven and professional cooperative institutions in different areas of economic activity particularly those relating to agriculture.”

b) The Commission endorses the amendments suggested by the National Advisory Council and feels that this coupled with the amendment suggested in the Directive Principles would be a step in the right direction to make the cooperative institutions voluntary, democratic, professional, member-driven and member-centric enterprises. Accordingly, the following amendments may be made in the Constitution:

i. Under Article 19, 19(1)(h) may be added as follows:

“(h) to form and run cooperatives based on principles of voluntary and open membership, democratic member control, member economic participation, and autonomous functioning free from State control.”

ii. Correspondingly, Article 19(4) should be amended as follows:

“(4) Nothing in sub-clauses (c) and (h) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause”.

6.5 Legislative Framework

6.5.1 The legislative environment and framework is one of the most important dimensions of cooperative reforms. It is strongly felt that the cooperative legislations prevalent in the country have been one the major factors behind the not so successful cooperative movement in India. Most of the laws governing cooperatives suffer from control and accountability related problems. As discussed earlier, the enactment of the MSCS Act, 2002 and the Mutually Aided/Self-Reliant/Self-Sufficient Societies Acts by nine States have paved the way for reengineering and remoulding the cooperative societies but as of now the impact of these legislations has remained subdued. These legislations have incorporated all the cooperative values and principles and contain adequate provisions to preserve and strengthen cooperative identity. The provisions of the Companies Act were also amended in 2002 to allow a cooperative enterprise to register under the Companies Act as a Producer Company. However, the issue of duality of control still remains.

6.5.2 The MSCS Act, 2002 applies to cooperative societies whose objects are not confined to only one State (having been formed to serve the interest of members in more than one

State). The other essential condition for registration of a society under this Act is that its bye-laws should provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles. The MSCS Act seeks to reform the governance of the cooperative society by removing the restrictive provisions which conferred excessive power on Registrar and the Government (such as powers of issuing directions, making rules, appointing nominees, conducting elections, directing special audit etc.). The Act also contains provisions relating to cooperation among cooperatives, strategic alliance with companies, private and public sector entities and equity participation in other cooperatives. In a nutshell, the important changes brought out by this Act can be listed as follows:²⁵

- 1) The objective of the Act is enlarged (preamble of the Act).
- 2) Simplification of procedure for registration i.e. provision for deemed registration.
- 3) Bye-laws: The matters to be covered under bye-laws have been elaborately codified.
- 4) Provision for promotion of subsidiary organisations.
- 5) Separate chapter for federal cooperatives duly making provision for registration and codification of their enlarged duties and functions.
- 6) Conferment of affirmative duty upon cooperatives for organizing cooperative education programmes for its members, directors and employees.
- 7) Prescribing express grounds for disqualification of members.
- 8) Provision for redemption of shares on their face value.
- 9) Prohibition to hold office of Chairman or President, etc. by members after becoming Ministers, Members of Parliament and Members of Legislative Assembly.
- 10) Elections: The responsibility to conduct timely elections is cast upon the society. If the society fails to do so, the Registrar can conduct elections at the cost of the society.
- 11) The nomination of the Union or State Government on the board of cooperative society is restricted to a minimum of one where the share capital of government is less than 26 per cent and to a maximum of three where the same is 51 per cent or more.

- 12) The powers and functions of the Board and Chief Executive have been elaborately codified.
- 13) Investment of funds by a cooperative in other cooperatives has been allowed.
- 14) Contribution of funds of any kind to any political party is totally prohibited.
- 15) Restrictions on loans and borrowings have been imposed.
- 16) The societies have been vested with powers to appoint auditors and ensure timely conduct of audit by qualified Chartered Accountants, Certified / Departmental Auditors. Provision for drawing auditors from the panel of auditors prepared by the society and approved by the Registrar has been made.
- 17) Conferment of power upon the Union Government to direct special audit in specific cases of societies having government share capital contribution upto 51 per cent or more.
- 18) The suo motu power of the Registrar to conduct audit and carry out inspection has been deleted. The Registrar has been vested with powers to conduct inquiry and carry out inspection, but on specific request of a prescribed majority of members, creditors, etc.
- 19) Provision for the settlement of disputes by arbitrators.
- 20) Government has been vested with the power to supersede the duly elected management committee of only those cooperatives where the government holds 50 per cent or more of the total share capital. The reasons could be (a) persistently making default, and (b) negligence in performance of duties imposed or the society has committed any act which is prejudicial to the interest of the society or its members or failed or omitted to comply with the directions issued etc.

6.5.3 Similar provisions also find place in the Mutually Aided/Self-Reliant Societies Acts passed by the nine States namely Andhra Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Orissa, Uttarakhand, Karnataka and Jammu and Kashmir. Other States are still contemplating over this issue and in the process are losing precious time in reviving the cooperative sector. Even in these nine States, the desired impact has not been felt so far, primarily, because most of the societies still continue to be governed by the old Act. There has not been much effort to encourage them to come under the umbrella of the new enactment. One of the reasons lies in the financial capacity of the societies; they do not have resources to settle their dues and move to the new system. The related issue is whether two parallel cooperative laws are necessary or can there be a single combined legislation to

govern both sets of institutions. Functionally, there are two distinct kinds of cooperative institutions which operate in our country. One consists of those which have come into existence as a result of conscious government policies and interventions as channels for distribution of scarce sources. These enterprises are neither competitive nor fully business oriented. Because of considerable financial involvement of the government, the ownership, management and controls of these bodies do not rest fully with their members. The other kind of cooperatives are those which essentially cater to the needs of their members. Such cooperatives are formed as autonomous Associations of persons united voluntarily to meet their common need through a jointly owned and democratically controlled enterprise. The Commission is of the view that the first kind of cooperative organisations too perform important public functions and therefore they should not be closed down unless they become totally unviable. Since they primarily deal with scarce public resources, they cannot be given total freedom as well. At the same time, the mutually aided / self reliant and member-driven societies will have to be made fully autonomous to enable them to achieve the desired results. Thus, there has to be two different sets of legislations which enable the above two to function in their respective jurisdictions. Incorporating features of both public service cooperatives and member-driven cooperatives in a single law would be legally clumsy. However, the cooperative structure has to be reformed in such a way that the government control on this sector gradually fades away.

6.5.4 The Task Force on the Revival of Cooperative Credit Institutions in its Report (December, 2004) examined the enabling legislations for cooperatives in detail and suggested a Model Mutually Aided Cooperative Societies Act to be adopted by all the States. The salient features of the draft model law suggested by the Task Force are as under:

- (i) The law is based on internationally accepted principles of cooperation and ensures that cooperatives function in a democratic manner.
- (ii) The model law is member-centric. It ensures that members are in control of their organisation, and that they can hold accountable those they elect. It places responsibilities on members, and it gives them the right to manage their own affairs, based on the responsibilities that they choose to fix for themselves.
- (iii) It places responsibilities on elected Directors in such a manner, that elected positions are positions of responsibility and not only of power and authority. Accountability of the Directors to the General Body is in-built, and any lapse is treated seriously. A Director's behaviour is expected to be reported to the General Body for its scrutiny.

- (iv) The Model Law makes it clear that cooperative societies are not the creatures of the State—nor are they statutory creatures. Membership in these societies is voluntary and therefore as in the case of Companies, Societies, Trade Unions, and unincorporated Associations, elections should be an internal affair of each organisation.
- (v) For similar reasons, an Audit Board is not envisaged under this law. The General Body of each cooperative society will appoint an auditor, and the responsibilities of the auditor have been made explicit. Presentation of copies of the audited statements of accounts for the previous year, along with audit objections, to each member has been made compulsory.
- (vi) Recruitment of staff will be the responsibility of each cooperative society. Common cadres and recruitment boards are not envisaged. Just as other forms of citizens’-organisations (Companies, Societies, Trade Unions, unincorporated Associations) take responsibility for staff recruitment and personnel management, cooperative societies too should have the right to make all staff related decisions. Labour laws are expected to apply.
- (vii) Profit (surplus) and loss (deficit) are to be shared among members. Cooperatives are expected to be professionally managed in the truest sense of the phrase, as Directors have to face their General Body each year and recommend surplus/deficit sharing to members.
- (viii) The law envisages creation of cooperative societies based on mutual aid and trust amongst members. While cooperative societies are permitted to accept member savings and deposits, and borrowings from others, they are not permitted to accept savings from non-members. In case a cooperative wishes to accept public (non-voting member) deposits, it will need to be licensed by the RBI and follow such other regulatory norms as prescribed by the RBI.
- (ix) The manner of recovery of dues from members is required to be in-built in the Articles of Association.

6.5.5 The Commission is of the view that the Model Law suggested by the Task Force comprehensively addresses all the issues relevant to cooperative societies and will enable these institutions to function as autonomous, voluntary, self-reliant, and democratic business enterprises which can serve the economic needs and aspirations of their members.

Incidentally, the Union Government has already accepted the report of the Task Force and efforts are being made for its implementation. The Action Plan to implement the National Policy on Cooperatives also aims to achieve this goal.

6.5.6 Recommendations:

- a) **All States (other than Andhra Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chhatisgarh, Orissa, Uttarakhand, Karnataka and Jammu and Kashmir) should immediately take steps to enact their own Mutually Aided / Self-Reliant Cooperative Societies Act on the pattern of the Model Law suggested by the Task Force on Revival of Cooperative Credit Institutions. The States where such Acts are already in existence should also examine the Model Law suggested by the Task Force and amendments in the existing legislations may be made, if so required.**
- b) **For the next few years, there is need to have parallel laws to deal separately with (i) the Mutually Aided / Self-Reliant cooperative societies formed under the recent enactments (post 1995), and (ii) societies formed under the old laws in which the government still has financial stakes. The societies referred at (ii) above should gradually be encouraged to clear off their liabilities and convert into Mutually Aided Societies.**

6.6 Producer Companies

6.6.1 Economic liberalisation has opened up co-operatives to global competition. When most of the Indian industries have been deregulated and de-licensed, it undoubtedly makes sense to put co-operatives on the same level playing field. One of the reasons why cooperatives have not been able to meet the needs of their members is because, by and large, they continue to be governed by restrictive cooperative laws. These laws allow little or no freedom to them to operate as autonomous business entities. The members of co-operatives in India, who are largely rural, are at a potential disadvantage given their generally limited assets, resources, education and access to advanced technology. In the present competitive scenario, if cooperative enterprises are to serve rural producers, they require an alternative to the present institutional form.

6.6.2 Keeping this in view, Government of India constituted a Committee consisting of experts led by Dr. Y.K. Alagh, an eminent economist and former Union Minister, to examine and make recommendations with regard to (a) framing a legislation which would enable incorporation of cooperatives as companies and (b) ensuring that the proposed legislation accommodates the unique elements of cooperative business within a regulatory framework

similar to that of companies. On the basis of recommendations of the Committee, a new Part IXA was inserted in the Companies Act, 1956 through “The Companies (Amendment) Act, 2002”. The legislation came into force from 6th February, 2003.

6.6.3 The law clearly stipulates that provisions of Part IXA shall override other provisions of the Companies Act and other laws (Section 581ZQ). The Companies Act keeps Producer Companies under the category of private companies but does not impose any restriction on the number of members. It stipulates that a Producer Company shall not, under any circumstance, become or be deemed to become a public limited company. Its share cannot be traded in the Stock Exchanges. The legislation combines the institutional and philosophical strengths of cooperatives (ownership limited to users; limited interest on shares; absence of equity trading, patronage and not capital based) with the flexibility and autonomy of company law.

6.6.4 Important Features of Producer Company Legislation

6.6.4.1 Following are some of the important features of the Producer Company Legislation contained under Part IXA of the Companies Act, 1956:

- Any ten or more individuals, each of them being a producer or any two or more producer institutions, or a combination of ten or more individuals and producer institutions, desirous of forming a Producer Company having its objects as specified in the legislation may form an incorporated Company as a Producer Company under Part IXA of the Companies Act, 1956. A Producer Company can also be formed by conversion of co-operatives which are inter-State in nature, with objects extending to more than one State.
- The law provides that the Articles of Association of the Company may establish minimum levels of participation and may provide conditions under which those who do not meet those levels, or who cease to participate, may be made ineligible to hold office, to vote or to continue their membership.
- In case of a Producer Company formed by individual members or by a combination of individuals and institutions, each member shall have one vote irrespective of his share holding. In case of a Producer Company formed exclusively by producer institutions, the voting right may be computed on the basis of participation in the business.
- Consistent with internationally accepted cooperative principles, the Producer Company Legislation has incorporated a set of principles termed as ‘Mutual

Assistance Principles. Accordingly, the law stipulates that the Articles of Association of the Company shall contain the following Mutual Assistance Principles:

- a) The membership shall be voluntary and available to all eligible persons who can avail of the services of the company and are willing to accept the duties of membership.
 - b) There shall be a limited return on share capital.
 - c) Surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by providing for- the development of the business of the Producer Company; common facilities; and distributing amongst the Members, as may be admissible in proportion to their respective participation in the business.
 - d) Provision shall be made for education of members, employees and others on the principles of mutuality and techniques of mutual assistance.
 - e) The Producer Company shall actively cooperate with other Producer Companies (and other organisations following similar principles) at local, national or international levels so as to best serve the interests of their members.
- The law enables the Articles of association of a Producer Company to provide for division, amalgamation, and merger, creation of subsidiaries, entering into joint ventures etc.
 - The shares or any other rights of the Producer Company cannot be traded on the stock exchange thus ensuring that they are not taken over by multinationals or other companies.
 - The law provides for co-option of expert Directors up to one-fifth of the total number of Directors on the Board keeping in view the expert/professional assistance needed for the Board.
 - The Board of Directors shall appoint the Chief Executive of the Producer Company. Other employees of the Producer Company will be appointed by the Chief Executive as per the powers delegated to him by the Board.
 - The Board of Directors of the Producer Company shall be responsible and accountable to conduct; timely audit, election and General Body meetings.
 - Dispute settlement shall be by a simple process of Arbitration and Reconciliation.

6.6.5 Examples from other Countries

6.6.5.1 In most parts of the world where cooperatives play a major economic role as successful, producer-owned businesses, they operate within the same legal framework as corporations. This is true in countries like the Netherlands, United States, Switzerland, Italy, Denmark, Norway, etc. In New Zealand, with one of the world's most productive dairy industries, most of the dairying is carried out by cooperatives, which, in turn, are registered under the Co-operative Companies Act, 1996. The Act allows cooperatives to serve producers while competing successfully in the international market.

6.6.6 Implications of the Irani Committee Recommendations

6.6.6.1 The J.J. Irani Committee constituted by the Government of India for revamping the Companies Act, 1956 has recommended that since the management of Producer Companies is not in consonance with the tenets of the free market determined company structure, the Part IX A (dealing with Producer Companies) should be delinked from the proposed Companies Act and a new law should be enacted to regulate them. The Committee observed that,

“The administration and management of ‘Producer Companies’ is not in tune with the general framework for companies with liabilities limited by shares / guarantees. The shareholding of a ‘Producer Company’ imposed restrictions on its transferability, thereby preventing the shareholders from exercising their exit options through a market determined structure. It was also not feasible to make this structure amenable to a competitive market for corporate control.

If it is felt that Producer Companies are unable to function within the framework and liability structure of limited liability companies. The corporate governance regime applicable to companies could not be properly imposed on this form. Government may consider introduction of a separate Act to deal with the regulation of such ‘Producer Companies’. Part IX A in the present Companies Act, which has hardly been resorted to and is more likely to create disputes of interpretation and may, therefore, be excluded from the Companies Act.”

6.6.7 Changes Proposed in the Producer Companies Legislation

6.6.7.1 Overall, the introduction of a new Chapter IXA on Producer Companies, in line with the current free business environment pervading our economy, has given an independent playing field to the cooperative sector institutions. Except for certain conditionalities which

have been included in the Act in the interest of members, government intervention in their activities is now minimal.

6.6.7.2 The Commission has been given to understand that based on the recommendations of the Irani Committee, the Union Government is in the process of drafting a new Company Law.

6.6.7.3 The Commission is of the view that there is need to review the existing provisions in Part IX A of the Companies Act and to bring about changes that are felt necessary for improved governance and management of Producer Companies. For this purpose, enactment of a separate law on Producer Companies is desirable, as recommended by the Irani Committee. On the basis of the feedback received by the Commission from various stakeholders, it is of the opinion that the following changes need to be incorporated in the proposed new legislation:

- Currently, the objects of the Producer Companies relate to only eleven items dealing with production, processing, manufacture of primary products and other related activities. In the interest of their growth and development, the Producer Companies need to be given a liberal charter of functions; they should be allowed to take up any primary activity as per their technical and financial capability.
- Depending on their functional requirement and financial strength, a Producer Company should have full flexibility in creating / abolishing executive and managerial posts.
- The compliance requirements with regard to the company's audit and accounts should also be in tune with the size of its operations.
- The law should provide for flexibility in investment of funds, surpluses / reserves.
- The law should also have provision for proxy voting in order to facilitate smooth conduct of elections and general meetings.

6.6.8 Recommendations:

- a) **A new law regarding Producer Companies should be enacted on the basis of the following broad principles:**
 - i. **Producer Companies should be given a liberal charter of functions to take up any primary activity as per their technical and financial capability;**

- ii. **The law should provide for flexibility in investment of funds, surpluses / reserves;**
 - iii. **Depending on their functional requirement and financial strength, a Producer Company should have full flexibility in creating / abolishing executive and managerial posts;**
 - iv. **The compliance requirements with regard to the Company's audit and accounts should be in tune with the size of its operations; and**
 - v. **The law should have provision for proxy voting in order to facilitate smooth conduct of elections and general meetings.**
- b) **Co-operatives should be encouraged to incorporate themselves as Producer Companies under the existing provisions of Part IXA of the Companies Act, 1956 and subsequently under the new law, as and when enacted, as this would be a more viable option in the present environment. The existing inter-State cooperative societies may also explore the possibility of getting themselves converted into Producer Companies.**

6.7 Cooperative Credit and Banking Institutions

6.7.1 Cooperative credit institutions came into existence as a mechanism for pooling of resources in rural areas and for providing easy credit access to the rural people. But in course of time their financial health has declined considerably. The primary reasons are (a) undue State interference and politicisation, and (b) poor quality of management. At present, these institutions are facing a host of problems such as - poor resource base, dependence on external funding, excessive State intrusion, multiplicity of control, huge accumulated losses, low recovery, lack of business initiatives and regional disparity. Around half of the Primary Agriculture Credit Societies (PACS), a fourth of the intermediate tier, viz., the District Central Cooperative Banks (DCCBs), and under a sixth of the State-level apex institutions, viz., the State Cooperative Banks (SCBs) are loss-making. The accumulated losses of the system aggregate over Rs. 9,100 crore. Non-Performing Assets (NPA), as a percentage of loans outstanding at the level of SCBs and DCCBs, at the end of March 2006 were around 16% and 20% respectively. These institutions do not, therefore, inspire confidence among existing and potential members, depositors, borrowers and lenders.²⁶ Further, the Task Force on Revival of Rural Credit Institutions (Vaidyanathan Committee) observed that, *"the financial position of the system is weak and deteriorating. The accumulated loss of PACs is estimated roughly on the basis of available incomplete data at Rs.4595 crore as on 31st March, 2003. The position of DCCBs is also equally*

²⁶Report of the Dr. C. Rangarajan Committee on Financial Inclusion, January 2008.

unsatisfactory; with accumulated losses aggregating Rs.4401 crore and erosion in deposits being Rs. 3100 crore. In the early 1990s, they accounted for over 60 per cent of the total institutional credit to agriculture, while currently their share has fallen to about one-third". In order to regain their health these institutions need (a) massive financial support and (b) wide ranging legal and institutional reforms.

6.7.2 The cooperative credit institutions in spite of their weaknesses still remain one of the major instruments of credit and banking requirements in rural India [along with Commercial Banks (CBs) and Regional Rural Banks (RRBs)]. As per a recent NABARD statistics, during the year 2006-07, the total credit flow to the agriculture sector stood at Rs.2,03,297 crore (provisional figure), out of which the share of cooperative credit institutions was Rs.42,480 crore. How to expand this credit flow further has been one of the major concerns of the government in recent years. Though, there have been vigorous and determined efforts in this direction, the outcome has remained disappointing. The crisis is not confined to the agriculture sector alone. The largely unorganized non-farm enterprises which play a major role in providing employment also face severe financial exclusion. As per 59th round NSSO survey, about 59.98% of all rural households, about 51.4% of the farm households and 78.2% of rural non-farm households do not have access to banking services.²⁷ The target fixed in the National Credit Policy, 2004 is being met since then but it must also be ensured that such lending does not get converted in non-performing assets.

6.7.3 The structure of the cooperative credit institutions includes both Short-Term Rural Cooperative Credit Structure (STCCS) and the Long-Term Cooperative Credit Structure (LTCCS). The STCCS providing short-and medium-term credit is highly relevant for financial inclusion of the rural people. At present, there are approximately one lakh village level Primary Agriculture Credit Societies (PACs), 368 District Central Cooperative Banks (DCCBs) with 12,858 branches and 30 State Cooperative Banks (SCBs) with 953 branches providing primarily short-and medium-term agriculture credit to people in the rural areas. The long-term cooperative structure consists of 19 State Cooperative Agriculture and Rural Cooperative Banks (SCARDBs), with 2609 operational units as on 31st March, 2005 comprising 788 branches and 772 Primary Cooperative Agriculture and Rural Cooperative Banks (PCARDBs) with 1049 branches.²⁸ As such, there is one PACS for every six villages and the total membership of more than 12 crore rural people makes it one of the largest rural financial system in the world. Though, the network of commercial banks and RRBs too, has spread rapidly and they now

²⁷"Rural Credit Structures Needs Genuine Revitalisation", Economic and Political Weekly, May 19, 2007.

²⁸Annual Report 2006-07, Department of Agriculture and Cooperation.

have nearly 50,000 branches, their reach in the countryside both in terms of the number of clients and accessibility to the small and marginal farmers and other poorer segments is far less than that of cooperatives. In terms of number of agricultural credit accounts, the STCCS has 50% more accounts than the commercial banks and RRBs put together. Directly or indirectly, it covers nearly half of India's total population.²⁹

6.7.4 On the basis of the above indicators, cooperative institutions on account of their reach in villages both in terms of the number of clients and accessibility to the small and marginal farmers will remain one of the most important institutions for revival of rural finances. However, the cooperative credit and banking structure today face critical impairment on both managerial as well as financial fronts. There is an urgent need to tackle their weaknesses and reform them into well governed and vibrant instruments of rural credit and banking infrastructure.

6.7.5 As already stated in Paragraph 6.2.4, several committees have been constituted in the past to suggest reform measures for these institutions such as the Capoor Committee in 2000, the Vyas Committee in 2001, Vikhe Patil Committee in 2001, Vyas Committee again in 2004, Vaidyanathan Committee on short-term credit in 2004 and a similar Committee on long-term credit in 2006. The Reports of the Task Force on the Revival of Short-term and Long-term Cooperative Credit Structure (Prof. Vaidyanathan Committee) has suggested an implementable action plan which offers substantial financial assistance to States for recapitalisation of their cooperative institutions. It is subject to acceptance of a few vital legal and institutional reforms at their end. The recommendations of the Task Force have been accepted by the Union Government and efforts are being made to implement them in a time-bound manner across the country. The main recommendations are:

- I. A one time financial assistant package of Rs.14,839 crores for the short-term and Rs.4,837 crores for the long-term Rural Cooperative Credit Institutions. The package is to be shared between the Union and the States.
- II. The revival package seeks to (a) introduce legal and financial assistance to bring the system to an acceptable level of health; (b) introduce legal and institutional reforms necessary for its democratic, self-reliant and efficient functioning; and (c) take measures to improve management quality of the cooperative institutions.
- III. The Banking Regulation Act and the Cooperative Societies Acts of the States should be suitably amended to empower the RBI to lay down regulations and guidelines for a Cooperative Bank which accepts deposit.
- IV. Further wide-spread amendments have been suggested in the Cooperative Societies Acts of the States, Banking Regulation Act, and NABARD Act to improve the management of the cooperative credit institutions.

²⁹Report of the Dr. C. Rangarajan Committee on Financial Inclusion, January 2008.

- V. A model Cooperative Law is to be enacted by the States. If a State decides not to pass the Model Act, a separate chapter for Agricultural and Rural Credit Societies containing the salient provision of the model law may be incorporated in the existing Cooperative legislations of the State.
- VI. The revival package will be conditional and released only on implementation of the accompanying legal and institutional reforms. The States have been given a time period of two years for it.

6.7.6 It is further stipulated that as carrying out amendments to laws is time consuming, the State Governments may hasten up the process of reforms by :³⁰

- i) Ensuring full voting membership rights on all users of financial services including depositors in cooperatives other than Cooperative Banks.
- ii) Removing State intervention in all financial and internal administrative matters of cooperatives.
- iii) Providing a cap of 25% on State Government equity in cooperatives and limiting participation in the Boards of Cooperative Banks to one nominee. Any State Government or a cooperative wishing to reduce the State Government's equity further would be free to do so and the cooperative will not be prevented from doing so.
- iv) Allowing cooperatives registered under the State Cooperative Societies Act to migrate to the Parallel Act (wherever enacted).
- v) Withdrawing restrictive orders on financial matters.
- vi) Permitting cooperatives in all the three tiers freedom to take loans from any regulated financial institution and not necessarily from only the upper tier and similarly, placing their deposits with any regulated financial institution of their choice (beyond a threshold). The threshold limit may be determined by the State Government/Registrar of Cooperative Societies concerned for each entity or class of entities.
- vii) Permitting cooperatives registered under the Parallel Act (wherever enacted) to become members of upper tiers under the old Cooperative Societies Act and vice-versa.
- viii) Limiting the powers of the State Government to supersede the Board.

- ix) Ensuring timely election before the expiry of the term of the existing Board.
- x) Facilitating the RBI to have regulatory powers over Cooperative Banks.
- xi) Prudential norms including Capital to Risk-weighted Assets Ratio (CRAR), for all financial cooperatives including PACS, as per the directions of RBI.

6.7.7 The important amendments suggested in the Banking Regulation Act, 1949 are as follows:

- (i) All Cooperative Banks would be at par with the Commercial Banks as far as regulatory norms are concerned.
- (ii) RBI will prescribe fit and proper criteria for election to Boards of Cooperative Banks. Such criteria would however not be at variance with the nature of membership of primary cooperatives which constitute the membership of the DCCBs and SCBs.
- (iii) However, as financial institutions, they will need some kind of support at the Board level. Hence, the RBI will prescribe criteria for professionals to be on the Boards of Cooperative Banks. In case, members with such professional qualifications or experience do not get elected in the normal electoral process, then the Board will be required to co-opt such professionals to the Board and they would have full voting rights.
- (iv) The Chief Executive Officers (CEOs) of Cooperative Banks would be appointed by the respective Banks themselves and not by the State Government. However, as these are banking institutions, RBI will prescribe the minimum qualifications of the CEO to be appointed and the name proposed by the Cooperative Bank for the position of CEO would have to be approved by RBI.
- (v) Cooperatives other than Cooperative Banks as approved by the RBI shall not accept non-voting member deposits. Such cooperatives would also not use words like “Bank”, “Banking”, “Banker” or any other derivative of the word “Bank” in their registered name.

6.7.8 After extensive discussions with the State Governments and other stakeholders on the report of the Task Force on STCCS, the Union Government has formulated a consensus revival package and sent it to the States for implementation. The recommendations of the Task Force on the Long Term Cooperative Credit Structure (LTCCS) are also being discussed on the same pattern and a revival package for long term lending institutions is also underway.

6.7.9 The above package for STCCS focuses on introducing legal and institutional reforms, which will enable the cooperatives to function as autonomous, member-centric and member-governed institutions. These reforms will enable wider access to financial resources and investment opportunities, remove geographical restrictions in operations as well as mandated affiliations to federal structures, and provide administrative autonomy to cooperatives at all levels. In addition to providing resources for covering the accumulated losses in the STCCS as on 31st March 2004, the package also provides for taking cooperatives to a minimum level of CRAR of 7%, and for meeting the costs of computerisation of the accounting and monitoring system and specific human resource development initiatives at all levels of the STCCS. The sharing of the accumulated losses among Government of India, State Governments and the Cooperative Credit Societies is based on the concept of origin of losses rather than any arbitrary proportions.

6.7.10 NABARD has been designated as the Implementing Agency responsible for implementing the revival package in all the States. A special department called the Department for Cooperative Revival and Reforms (DCRR) has been created in NABARD for this purpose. NABARD is also providing dedicated manpower at the National, State and District levels for working out the details. A National Implementing and Monitoring Committee (NIMC) not only monitors the implementation of the Package regularly, but also takes necessary decisions on policy and operational matters.

6.7.11 The process of implementing the Revival Package in any State begins with the signing of the Memorandum of Understanding (MOU) among the Government of India, the participating State Government and NABARD. The draft of this MoU has been prepared by the NIMC. Any new suggestion on policy or operational issues could be incorporated in the memorandum at the time of its execution. Such suggestions could also be given effect while making amendments to the various Acts, Rules, Bye-Laws etc. State specific issues which are not common to other States and are not against the spirit of the MoU or the revival package may be included in the memorandum at the option of the State Government. Implementation of the package has begun in fifteen States viz., Andhra Pradesh, Arunachal Pradesh, Bihar, Chhattisgarh, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Nagaland, Orissa, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal which have signed the tripartite memorandum.³¹

6.7.12 There is also a strong view that conceptually ‘Cooperative’ and ‘Banking’ do not blend together. A cooperative has to be member-centered, member-oriented, and member-controlled. It is designed to exclusively serve its members who are all its patrons and user of services, meaning thereby that every user has to be a member and every member has

to be a user. On the contrary, a Banking Institution has a much wider clientele and is an organisation falling in the general public domain.

6.7.13 While appreciating the above concerns, the Commission feels that implementation of the package designed on the recommendations of the Vaidyanathan Committee Report on STCCS will go a long way in reviving and strengthening cooperative credit institutions. States which have not yet signed the MOU should be persuaded to do so without further loss of time. The Commission also feels that there needs to be a strong follow up of the above recommendations on the part of both the Union and the State Governments.

6.7.14 A similar exercise should be completed immediately in respect of the Report of the Task Force on LTCCS.

6.7.15 Recommendations:

- a) **The process of implementation of the revival package for Short-Term Rural Cooperative Credit Structure (STCCS) formulated on the basis of the Vaidyanathan Committee Report should be completed immediately. It consists of the following major steps :**
 - i. **States which have so far not signed the MOU for this purpose should be asked to do so without further loss of time.**
 - ii. **The Banking Regulation Act, NABARD Act and the State Cooperative Societies Acts need to be suitably amended in order to improve the management/governance of cooperative credit institutions.**
 - iii. **A model Cooperative Law needs to be enacted by the States. States which do not wish to pass the Model Act, should introduce a separate chapter on Agricultural and Rural Credit Societies containing the salient provisions of the Model Law in their existing Cooperative legislation.**
- b) **Similar steps should be taken in a time-bound manner in respect of the recommendations of the same Committee on Long-Term Cooperative Credit Structure (LTCCS).**

7.1 The people of India were fortunate to be guided in shaping their future by the principles enshrined in the Constitution of India by our founding fathers most of whom had been in the forefront of our freedom struggle. Their vision was articulated by Pandit Nehru's historic words to the people of India on August 15, 1947 that "*long years ago, we made a tryst with destiny and now the time has come when we shall redeem our pledge*". This was a message to the people of the country to dedicate themselves to the service of India and to the larger cause of humanity. It was a clarion call to all citizens "*to endeavour, to bring freedom and opportunity to the common man, to the peasants and workers of India; to fight and end poverty and ignorance and disease; to build up a prosperous, democratic and progressive nation, and to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman*." Specifically, the economic and social order envisaged for this country is incorporated in the Directive Principles of State Policy which is a unique feature of our Constitution. In fact, it has been described as a forerunner of the U.N. Convention on the right to development as an inalienable human right.

7.2 The following are some of the relevant and important Articles of the Directive Principles of State Policy impacting on the promotion of a just and fair socio-economic order :

Article 38 –State to secure a social order for the promotion of welfare of the people.

The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform the institutions of the national life.

The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39 – Certain principles of policy to be followed by the State

The State shall, in particular, direct its policy towards securing;

- a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- d) that there is equal pay for equal work for both men and women;
- e) that the health and strength of workers, men and women, and the tenders age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and
- f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41– Right to work, to education and to public assistance in certain cases.

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want.

Article 45 – Provision for free and compulsory education for children.

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

7.3 Based on these principles, India adopted a model of economic development and formulated Five Years Plan. The vision of the planners was to secure a socio-economic order in which the gains of the economy could reach the poor and the unprivileged in a

substantive way. The ultimate objective was to create an economy and a society which could offer adequate livelihood to all, where social practices like dowry, domestic violence and abuse of children were absent, and where people lived in social harmony. Over the years, we have made significant progress in many spheres, we have been able to build up an impressive infrastructure for industrial development, the tertiary sector has shown remarkable growth and many of the social and health sector indices have registered considerable improvement. But, there are still some areas which are cause of deep concern. Approximately 25% of our population continues to live in penury, below the poverty line, a large part of our work force is either unemployed or under-employed, and our social security measures continue to remain inadequate and cover only a fraction of the total population. Cases of child rights abuse come to notice almost regularly, domestic violence rocks and destroys many families and incidents of atrocities against the weaker sections are still reported aplenty. The primary reason behind this situation lies in the fact that our development process has tried to tackle issues in isolation; in bits and pieces. The government and the planners have not tried to craft a composite social policy which could take up all the above issues in a coordinated and complementary manner. The Commission is of the view that instead of adopting a fragmented development approach, there is need to lay stress on an integrated social policy which would work on these issues in a comprehensive manner. It will provide an appropriate focus for both our planners and development practitioners. A significant portion of the plan allocation should be earmarked for implementation of such a composite social policy.

7.4 This Social Policy should interalia include the following elements:

- Political elements like affirmative action for the socially excluded, special institutional arrangements to give ladders to the 'weaker sections'
- Economic elements, like
 1. right to work or an employment guarantee, or a protection of livelihoods.
 2. also a clear priority focus on the poorest of the poor, to be the first step for a development design.
 3. adequate allocation of resources for social amenities including a national social insurance policy which protects the unemployed.
- Social elements like
 1. stronger laws for child rights, anti-dowry, domestic violence, atrocities against the oppressed etc

2. social welfare provisions, amenities for child care services
3. take an over-view of all other policies, related to social sectors such as education, health, population, social welfare, water, decentralisation and make an integrated commitment to transformation for social justice and economic fulfillment.

7.6 The overall success of such a composite social policy in a polity would primarily depend on three factors viz. (a) the governance system, (b) quality of Human Capital, and (c) strength of collective action and cooperative behaviour among citizens that leads to creation of effective civil society / social capital institutions.

7.7 Recommendations:

- a) **Government should craft an integrated social policy which will ensure priority State action on the key issues relating to social justice and empowerment.**
- b) **Government should provide a significant portion of its plan allocation for implementation of this integrated social policy.**

CONCLUSION

People's participation in governance is recognized the world over as a prerequisite of good governance. The growth and development of society is critically dependent on its internal institutions, particularly those created by people's initiative and vigour. Some of these institutions are for non-profit, some for mutual benefit of a group and some for raising income levels of their members. Collectively they play a major role in contributing to good governance and to economic and social development.

In the sociological context, these institutions produce cohesiveness and mutual trust. In the economic sphere, these qualities together constitute the fourth essential factor of production; land, finance and entrepreneurship being the other three. And, in the field of public governance, such institutions represent people's participation and initiative which add strength to instruments of State. Realizing their growing importance in economic and social management and public administration, sociologists and development theorists now define them as 'Social Capital Institutions'.

A State with strong democratic norms and traditions allows greater opportunity to social capital institutions to organise and activate people around many key areas of public activity such as welfare and delivery of services. It leads to formation of a polyarchic society.

The Report has tried to comprehensively cover all categories of such institutions which are currently in existence in various parts of the country (Societies, Public Trusts, Cooperatives, Self-Help Groups, Producer Companies and Professional Self-Regulatory Bodies). The composition, functions and legislative environment of each of these have been analysed in detail and specific suggestions have been made to enhance their efficacy so that they play a greater role in development of India's polity and economy. The Report emphasizes the need to bring about 'attitudinal changes'. The Report also suggests direct involvement of people to increase openness and public sensitivity in functioning of these institutions. The Commission firmly believes that if the recommendations put forth in this Report are implemented, it will bring about far reaching changes in the working of the entire third sector. It will (a) bring charity organisations closer to public good, (b) improve conduct of professional practitioners, (c) lead to better governance of technical, management and other

professional education institutions, (d) rejuvenate cooperatives, (e) strengthen rural credit structure, and (f) provide opportunities of skill enhancement to the poor and enable them to earn more. The overall impact will be the emergence of a healthy, vibrant and responsive civil society. This would help in creating a caring society which would follow Mahatma Gandhi's vision as embodied in the following lines:

“I venture to suggest that it is the fundamental law of Nature, without exception, that Nature produces enough for our wants from day to day, and if only everybody took enough for himself and nothing more, there would be no pauperism in this world, there would be no man dying of starvation in this world. But so long as we have got this inequality, so long we are thieving.”

For many decades, these institutions have operated with considerable functional freedom. Many of the Professional Bodies have become politicized and have deviated from their original intent. A number of Societies and Trusts are perceived to have become pocketburroughs of a few who use them for their own benefits. The Cooperative sector across the country too stands in complete disarray. The Commission recognizes that people who are well entrenched in the current system will not readily agree to shedding their powers and privileges. What we need is an unwavering commitment to reform on the part of governments and an equally strong willingness on the part of civil society to work for these changes.

SUMMARY OF RECOMMENDATIONS

1. (Para 3.1.2.6) New Legal Framework for Charities in India

- a) The Union Government should draft a comprehensive model legislation covering both Trusts and Societies in lieu of the existing laws on Societies, Trusts, Endowments and Charitable Institutions etc.
- b) In place of the present charity administration consisting of a Charity Commissioner / Inspector General of Registrations as existing in the States, the proposed law should provide for a new governance structure in the form of a three member Charities Commission in each State with necessary support staff for incorporation, regulation and development of Charitable Organisations. The Chairman of the Commission should be a law officer drawn from the cadre of District Judges. Out of the other two members, one should be drawn from the voluntary sector and the other would be an officer of the State Government. In addition, the State should also have a Charities Tribunal which would exercise appellate powers over the orders of the Charities Commission.
- c) The proposed model legislation should indicate a cut off limit with regard to the annual revenue of a Charity. Organisations having an annual income below this threshold will have lighter compliance requirements with respect to submission of returns / reports / permission etc. However, if irregularities are detected in their functioning, the organisations will be liable for legal and penal action. To start with, the cut off limit could be set at Rs.10 lakhs which could be reviewed for upward revision once in five years.
- d) The government should set up an Inclusive Committee which will comprehensively examine the issue of defining 'Charity' and 'Charitable Purpose' and suggest measures to "soften" charities-government relationship, particularly in tax matters.

- e) **The model legislation should take into consideration the views and suggestions made above with regard to the following issues of charity administration:**
 - i. **Interface with the State Government**
 - ii. **Alteration in the memorandum**
 - iii. **Approval on change report**
 - iv. **Alienation of immovable property**
 - v. **Contribution by Public Trusts to the State Government**

2. (Para 3.2.6.2.5) Corporate Social Responsibility

- a) **When a community benefit project is taken up by a corporate entity, there should be some mutual consultation between the company and the local government so that there is no unnecessary overlap with other similar development programmes in the area.**
- b) **Government should act as a facilitator and create an environment which encourages business and industry to take up projects and activities which are likely to have an impact on the quality of life of the local community.**

3. (Para 3.2.7.2.8) Accreditation of Voluntary Organisations

- a) **There should be a system of accreditation / certification of voluntary organisations which seek funding from government agencies.**
- b) **Government should take initiative to enact a law to set up an independent Body – National Accreditation Council – to take up this work. In the beginning, Government may need to provide a one time corpus of funds to this organisation.**
- c) **The above law should provide details with regard to the constitution of the Council, its functions, its powers to levy appropriate fees from the applicants, and other related matters.**

4. (Para 3.3.7) Charitable Organisations and Tax Laws

- a) Under Section 12AA and Section 80G, the registration or approval should be granted or an order rejecting the application should be passed within a period of ninety days from the date of filing of the application instead of the present one hundred and eighty days.**
- b) In view of the fact that infrastructure projects are a critical component of charitable institutions, the period for accumulation of surplus which is currently five years needs to be further enhanced.**
- c) The present National Committee may be replaced by four Regional Committees to recommend “deduction on expenditure” to the Union Government under Section 35AC of the Income Tax Act.**

5. (Para 3.4.4) Regulation of Foreign Contribution

- a) The Foreign Contribution (Regulation) Bill, 2006 needs to be amended to include inter-alia the following suggestions:**
 - i. There should be a fine balance between the purpose of the legislation on one side and smooth functioning of the voluntary sector on the other. The objectives of such a regulatory legislation should be properly enunciated to avoid subjective interpretation of law and its possible misuse.**
 - ii. There should be a time limit for procedures falling under Section 11 (seeking registration or prior permission for receiving foreign contribution).**
 - iii. Transparent rules/guidelines should be prescribed for inter-agency consultation particularly in respect of (a) the minimum amount of donation which would require inter-agency consultation, (b) the level of the Authority which would authorise it, and (c) setting up time limits for such procedures.**
 - iv. To facilitate (a) speedy disposal of registration / prior permission petitions received from organisations, (b) effective monitoring of their activities, and (c) proper scrutiny of returns filed by them, some of the functions under the Foreign Contribution Regulation Act should be decentralised and delegated to State Governments/ District Administration.**

- v. Other concerns as stated in paragraph 3.4.1.5.3 also need to be considered.
- b) Organisations receiving an annual foreign contribution equivalent to less than Rs.10.00 lakh in a year (the figure to be reviewed from time to time) should be exempted from registration and other reporting requirements of the law. They should be asked, instead, to file an annual return of the foreign contribution received by them and its utilisation at the end of the year. The law may provide that they may be liable to be investigated, if there is a reasonable suspicion of suppression / misrepresentation of facts, and penal provisions of the law will be used against them in case violation is established.

6. (Para 4.6.10) Issues of Self-Help Group Movement

- a) The role of the Government in the growth and development of the SHG movement should be that of a facilitator and promoter. The objective should be to create a supportive environment for this movement.
- b) Since a large number of rural households in the North-Eastern States and Central-Eastern parts of the country (Bihar, Jharkhand, Uttar Pradesh, Uttarakhand, Orissa, Madhya Pradesh, Chhattisgarh and Rajasthan) do not have adequate access to formal sources of credit, a major thrust on the expansion of the SHG movement in these areas should be facilitated. The presence of NABARD should be much more pronounced in these places.
- c) The SHG movement needs to be extended to urban and peri-urban areas. State Governments, NABARD and commercial Banks should join together to prepare a directory of activities and financial products relevant to such areas.
- d) Currently, the commercial Banks, on the basis of a project's financial viability can disburse microcredit in urban and semi-urban areas on their own but such micro-credit disbursements are not entitled to refinance from NABARD. If necessary, the NABARD Act, 1981 may be amended suitably to bring urban / semi-urban areas under its refinance mandate.
- e) The SHG – Bank Linkage model with a mentor SHPI in tow deserves to be encouraged as the preferred mode for financial intermediation throughout the country.

- f) **Commercial Banks and NABARD in collaboration with the State Government need to continuously innovate and design new financial products for these groups.**
- g) **There should be a planned effort to establish RRB networks in the 87 districts of the country which currently do not have RRB presence.**
- h) **Special steps should be taken for training / capacity building of government functionaries so that they develop a positive attitude and treat the poor and marginalized as viable and responsible customers and as possible entrepreneurs.**
- i) **Rural credit is often viewed as a potential Non Performing Asset. There is need to educate government employees and Bank personnel in this regard. Technology may be leveraged to reduce the cost of reaching out to the poorest of the poor.**
- j) **There is need to review the scale of the promotional grant given to SHPIs by NABARD (currently Rs.1500/- per SHG formed and activated).**
- k) **In order to scale up the operations of the Rashtriya Mahila Kosh, its corpus should be enhanced substantially. RMK's geographical reach should be expanded to help quick processing of loan applications and effective monitoring of the sanctioned projects in far off areas. The Kosh may open adequately staffed regional offices at selected places in the country and give greater attention to the credit deficient States.**
- l) **The Micro Financial Sector (Development and Regulation) Bill, 2007 needs to be amended to include the following suggestions:-**
 - i. **The scope of Micro-finance Services should be substantially widened to cover credit / savings, insurance, pension services, money transfer, issue / discount of warehouse receipts and future / option contracts for agricultural commodities and forest produce.**
 - ii. **'Nidhis' registered under Section 620A of the Companies Act, and Producer Companies should be brought under the new legislation.**

- iii. The activities of Section 25 Companies to the extent they concern micro-financial services as described under the proposed Bill should also be brought under the purview of this legislation. However, for their management and other functions, they will continue to be governed by the provisions of the Companies Act.
- iv. The issue of interest rate charged by the MFIs should be left to the Regulatory Authority which is being created under the proposed Bill.
- v. It should be ensured that if MFIs are allowed to handle thrift / savings and money transfer services, they would do so only as business correspondents of commercial Banks. Other concerns as stated in Para 4.6.9.9.2 also need to be considered.
- m) Micro-finance institutions covered under the proposed law should be kept out of the purview of the State laws on money-lending.

7. (Para 5.2.13) Separating Professional Education from Self-Regulatory Authorities

- a) Professional education should be taken away from the domain of the existing Regulatory Bodies and handed over to specially created agencies – one for each of the streams of higher/professional education. These Bodies may be called National Standards and Quality Council for Medicine, National Standards and Quality Council for Management etc. After this bifurcation, the work of the existing Regulatory Bodies' would remain confined to issues concerning registration, skill upgradation and management of professional standards and ethics. On creation of these separate Councils, the AICTE will stand abolished.
- b) Such Councils should be created by law and their role should be to lay down norms, standards and parameters on issues concerning growth and development of their stream viz. (a) setting up new institutions, (b) designing/ updating curriculum, (c) faculty improvement, (d) carrying out research / innovation, and (e) other key issues concerning the stream.

- c) **The proposed law should take into consideration the following guiding principles while constituting these Councils:**
 - i. **Such Councils should have full autonomy.**
 - ii. **The highest policy and decision making Body of these Councils should have a majority of independent members, and preferably no more than 2 or 3 drawn from government, who could be there in an ex-officio capacity.**
 - iii. **These Councils should have a strong and effective grievance redressal mechanism.**
 - iv. **The Councils should be accountable to Parliament and their Report should be placed before the House annually. In addition, there should be strong norms for suo-motu disclosures under the RTI Act.**
 - v. **Each of these Councils should have a body of experts to advise it on accreditation / certification of institutions falling under their jurisdiction.**
 - vi. **Some of the members of such Councils can be elected from office bearers of specialty Associations (e.g. Indian Medical Association), as these members are elected by the practicing professionals in their individual speciality.**
- d) **Within such norms, standards and parameters, the Universities/ Autonomous Institutions should be given full autonomy for setting up and running institutions under their jurisdiction.**
- e) **The recommendations of the National Knowledge Commission regarding reforms in the structure, governance and functioning of Universities should be examined and implemented on priority. The process of appointment of Vice Chancellors should be free from direct or indirect interference of the government. Vice Chancellors should be given a fixed tenure and they should have adequate authority and flexibility to govern the Universities with the advice and consent of the Executive Council.**
- f) **There should be stronger ties between educational institutions in the public and private sectors through mechanisms such as exchange of faculty.**

8. (Para 5.3.5) Continuing Professional Education

- a) Every Professional Regulatory Body in coordination with the respective National Quality and Standards Council and Academic Institutions should conduct Continuing Professional Education programmes periodically for updation and skill enhancement of its members.

9. (Para 5.4.3) Ethical Education and Training

- a) After separation of professional education, the agenda of the Professional Regulatory Authorities should be to focus on (i) procedure for registration of new members / renewal of registration; and (ii) matters concerning professional ethics, standards and behavior. The Regulatory Authorities should also pay greater attention to conducting workshops, seminars and training programmes on such issues.

10. (Para 5.5.4) Enrolment in the Profession

- a) Within the parameters of the Act, the respective Regulatory Authority should be empowered to prescribe guidelines for enrolment of new members.

11. (Para 5.6.3) Renewal / Revalidation of Registration

- a) There should be a provision in the relevant laws that a professional registration/license will need revalidation after a prescribed number of years. It could be done after successful completion of a course prescribed by the respective Professional Regulatory Authority.

12. (Para 5.7.6) Disciplinary Mechanism

- a) There should be provision in the relevant laws that in order to bring objectivity in their working, the Disciplinary Committees of the Regulatory Authorities at both the State as well as the national level should consist of professional and non-professional members. They could be inducted in the Committee in the ratio of 60:40 respectively.
- b) The law should provide that such Bodies should be required to complete the entire disciplinary proceeding within a prescribed time span (say 90 days).

- c) The law should also have a provision that anybody aggrieved with the findings of the State Panel could go in appeal to the National (Apex) Body which too will have to dispose of the matter within the prescribed time limit (say 90 days).

13. (Para 5.8.10) Constitution and Composition of the Self-Regulatory Authorities

- a) The structure and composition of the General Council and the Executive Committee of Professional Regulatory Authorities should be rationalised. As far as practicable, it should be uniform for all of them.
- b) Every Authority should have a fairly large and representative General Council (the ideal number could be around 50; such a Body encourages a wider perspective and diversity of opinions).
- c) The Executive Committee should be a small Body consisting of 10 to 15 members (a compact forum supports administrative efficiency and accountability).
- d) There should be an explicit provision that a person cannot be elected to the post of President / Vice-President or General Secretary for more than one term. However, a person could be elected as a member of a Body for a maximum of two terms.

14. (Para 5.8.12.4) Clients / Users – as Lay Members in Regulatory Authorities

- a) The composition of the General Council as well as the Executive Committee should be such that 40% of the strength consists of lay members.
- b) The nomination of lay members should be done by the Ministry / Department concerned in consultation with the appropriate Regulatory Authority.

15. (Para 5.9.4) Accountability and Parliamentary Oversight

- a) The laws governing the Self-Regulatory Authorities should have a provision under which the Regulatory Authority should be required to present an Annual Report to the Parliament for scrutiny.

16. (Para 6.4.10) Cooperatives; Constitutional Context

- a) An Article should be added to Part-IV of the Constitution in the form of 43B where the State should be made responsible for making such laws that will ensure autonomous, democratic, member driven and professional cooperative institutions. In that case, a large scale Constitutional amendment on the pattern of Parts-IX and IX-A which was introduced by the 73rd and 74th Amendments, will not be necessary. The proposed Article 43B may read as follows:

Article 43B: Empowerment of Co-operatives: “The State shall endeavour to secure by suitable legislation or economic organisation or any other way autonomous, democratic, member driven and professional cooperative institutions in different areas of economic activity particularly those relating to agriculture.”

- b) The Commission endorses the amendments suggested by the National Advisory Council and feels that this coupled with the amendment suggested in the Directive Principles would be a step in the right direction to make the cooperative institutions voluntary, democratic, professional, member-driven and member-centric enterprises. Accordingly, the following amendments may be made in the Constitution:

- i. Under Article 19, 19(1)(h) may be added as follows:

“(h) to form and run cooperatives based on principles of voluntary and open membership, democratic member control, member economic participation, and autonomous functioning free from State control.”

- ii. Correspondingly, Article 19(4) should be amended as follows:

“(4) Nothing in sub-clauses (c) and (h) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause”.

17. (Para 6.5.6) Legislative Framework

- a) All States (other than Andhra Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chhatisgarh, Orissa, Uttarakhand, Karnataka and Jammu and Kashmir) should immediately take steps to enact their own Mutually Aided / Self-Reliant Cooperative Societies Act on the pattern of the Model Law suggested by the Task Force on Revival of Cooperative Credit Institutions. The States where such Acts are already in existence should also examine the Model Law suggested by the Task Force and amendments in the existing legislations may be made, if so required.**
- b) For the next few years, there is need to have parallel laws to deal separately with (i) the Mutually Aided / Self-Reliant cooperative societies formed under the recent enactments (post 1995), and (ii) societies formed under the old laws in which the government still has financial stakes. The societies referred at (ii) above should gradually be encouraged to clear off their liabilities and convert into Mutually Aided Societies.**

18. (Para 6.6.8) Producer Companies

- a) A new law regarding Producer Companies should be enacted on the basis of the following broad principles:**
 - i. Producer Companies should be given a liberal charter of functions to take up any primary activity as per their technical and financial capability;**
 - ii. The law should provide for flexibility in investment of funds, surpluses / reserves;**
 - iii. Depending on their functional requirement and financial strength, a Producer Company should have full flexibility in creating / abolishing executive and managerial posts;**
 - iv. The compliance requirements with regard to the Company's audit and accounts should be in tune with the size of its operations; and**
 - v. The law should have provision for proxy voting in order to facilitate smooth conduct of elections and general meetings.**
- b) Co-operatives should be encouraged to incorporate themselves as Producer Companies under the existing provisions of Part IXA of the Companies**

Act, 1956 and subsequently under the new law, as and when enacted, as this would be a more viable option in the present environment. The existing inter-State cooperative societies may also explore the possibility of getting themselves converted into Producer Companies.

19. (Para 6.7.15) Cooperative Credit and Banking Institutions

- a) The process of implementation of the revival package for Short-Term Rural Cooperative Credit Structure (STCCS) formulated on the basis of the Vaidyanathan Committee Report should be completed immediately. It consists of the following major steps :
 - i. States which have so far not signed the MOU for this purpose should be asked to do so without further loss of time.
 - ii. The Banking Regulation Act, NABARD Act and the State Cooperative Societies Acts need to be suitably amended in order to improve the management/governance of cooperative credit institutions.
 - iii. A model Cooperative Law needs to be enacted by the States. States which do not wish to pass the Model Act, should introduce a separate chapter on Agricultural and Rural Credit Societies containing the salient provisions of the Model Law in their existing Cooperative legislation.
- b) Similar steps should be taken in a time-bound manner in respect of the recommendations of the same Committee on Long-Term Cooperative Credit Structure (LTCCS).

20. (Para 7.7) Integrated Social Policy

- a) Government should craft an integrated social policy which will ensure priority State action on the key issues relating to social justice and empowerment.
- b) Government should provide a significant portion of its plan allocation for implementation of this integrated social policy.

**Speech of Shri M Veerappa Moily,
Chairman, Second Administrative Reforms Commission
at the
National Colloquium on Social Capital, Trust and
Participative public service delivery
19th December, 2006**

I am happy to be here with you all during discussions on ‘Social Capital, Trust and Participative public service delivery.’ I have been fascinated by the term ‘Social Capital’ ever since James Coleman adopted Glen Loury’s 1972 definition and popularized the concept in 1987 and Robert Putnam in his 2000 book, “Bowling Alone” raised public awareness about this concept. I think, the conception of social capital as it is understood today has been a very stimulating intellectual discovery in social sciences and development thinking in the last few decades. Even though its roots date back to the 19th century philosophers who emphasized the relation between pluralistic associations and democracy. An abundance of social capital is seen as a necessary condition for a modern liberal democracy whereas low levels of social capital imply rigid, unresponsive and often corrupt political systems.

As I understand it, by conceptualising in terms of social capital, we are adding a fourth one to the standard three categories of capital in economic analysis-physical, natural and human. It is interesting how this came about. Economists have traditionally been engaged in the study of the markets. The political scientists, in the study of the State. The anthropologists and sociologists, in the study of interpersonal networks. In the recent years, each of these groups started looking at the work of others to see if they can better understand the links connecting their particular objects of interest. One of these exercises led to the publication of the classic 1987 article by James Coleman on the development of social capital as an organising concept in the social sciences.

It is difficult to think of an academic notion that has entered the common vocabulary of social discourse more quickly than the idea of social capital. Not only do the academic journals devote special issues to discuss the concept, journalists make frequent references to it and politicians use the term regularly.

But there is a great deal of diversity in how people think of it. Some identify social capital with such features of social organizations as trust. There are others who think of it as an

aggregate of behavioural norms. Some view it as social networks and there are those who think of it as a combination of them all. So it would seem that social capital means different things to different people. Those who are enthusiastic about the concept use it as a peg on which they hang all those informal engagements they like, care for and approve of. So, it is quite common to hear the view that if a particular society harbours rent-seeking, bribery and corruption, it is because communities in that society have not invested sufficiently in the accumulation of social capital.

I will go with Robert Putnam, the Harvard Professor who wrote that very influential book, 'Making Democracy Work: Civic Traditions in Modern Italy' in 1993. Putnam looked at different regions of Italy to analyze how they have fared. The northern parts of Italy have been richer than the southern for several centuries, despite having been on a par at the beginning of the millennium. There were great differences between the two regions in the extent of civic community, citizen involvement and governmental efficiency. Putnam's conclusions were that the northern Italian regions were able to establish and maintain higher levels of output by virtue of greater endowments of social capital.

Robert Putnam identifies social capital with "those features of social organization, such as trust, norms and networks that can improve the efficiency of society by facilitating coordinated actions." To him the term also refers to "the collective value of all social networks and the inclinations that arise from such networks to do things for each other". While talking about social capital, most analysts have focused on trust. Some others have studied components of social organizations like Savings and Credit Organisations, Credit Cooperatives and Civic Associations, and Professional Bodies which make social capital a productive asset. Increasingly, Self-Regulatory Professional Bodies like Medical Council of India (MCI), Bar Councils, etc as well as Independent regulatory authorities (TRAI, etc) have become key elements in our socio-economic framework. Others have considered a broader sense of the notion by including extended kinship organisations, lobbying organisations and advocacy groups. Case studies have been made of the management systems of local common property resources in which mutually beneficial courses of action have been taken by recourse to self-management systems. In all these accounts, the engagements that rely on social capital occur somewhere between the individuals and the government; they are conducted within informal institutions. In other words, in respect of horizontal networks, social capital is identified with the working of the civil society. Present interest in the concept of social capital is driven also by the rise of knowledge based organizations as well as the emergence of the networked economy and society which requires the growth of strategic alliances, joint ventures and new organization types.

Of central importance in all this is the notion of trust. But how is trust to be defined? Is trust a public good? If created, how is trust to be maintained? Is trust a moral good in that it grows with use and decays with disuse? Is trust, at the interpersonal level, a substitute for the courts and the rule of law, or is it a complement? What are the links between Legislature, Judiciary and the Executive on the one hand, and the personal networks, which embody social capital? Do those institutions reinforce one another or does each type displace the other?

These questions need to be answered, but we have some indication of what social capital would mean in a country like India, and particularly with reference to the poor and marginalized. In India, caste-class segmentation as an important contextual variable in determining development of trust and social capital between different groups also needs to be recognized. Social capital, in our context, would mean the norms and networks that make possible collective action which will allow the poor and marginalised people to increase their access to resources and opportunities and participate in the process of governance. In this connection, one has to distinguish between different dimensions of social capital within and between communities. The strong ties connecting family members, neighbours and close friends are called “Bonding Social Capital”: these are the ties that connect people who share similar demographic characteristics. The weak ties connecting individuals from different ethnic and occupational backgrounds are referred to as “Bridging Social Capital”: this implies horizontal connections to people with broadly comparable economic status and political power. A third dimension - Linking Social Capital - consists of the vertical ties between poor people and people in formal organisations such as government departments and financial institutions. Linking Social Capital captures an important feature of the functioning of poor and marginalised communities in which the members are usually excluded from decision-making process affecting their lives.

As is our experience, poor people are good at bonding social capital. They do this by establishing close ties with others who share the same characteristics as themselves. Such bonding helps them to cope with their disempowerment. Sometimes, the groups to which poor people belong, bridge social capital by establishing ties with groups unlike themselves, but these ties are often unequal, tending to result in patron-client relationships. When poor people link with organisations of the State, civil society or the private sector, they are in a position to mobilize additional resources, and are able to participate in the societal processes. Social capital has been assessed as being associated with cooperative social problem solving, effective government and rapid economic development.

The most perplexing question that faces developmental practitioners like me is not what, but how. How can social capital be increased to improve effectiveness of development projects and service delivery mechanisms? How does one create the right institutional mechanisms whereby a society can provide itself with the basic services in a socially and politically sustainable and cost-effective manner? Once upon a time, the answer suggested was a government bureaucracy combined with a massive extension in supply. However, significant failure of this mode of providing basic services has led to widespread disillusionment with such institutional options for reaching the poor. Some recent successful experiments in provision of public services to the poor point to some basic themes such as community development, participation and the importance of local organisational capacity. All these themes, in one way or another, emphasize the role of social capital in creating effective public action. Even the success of micro-credit oriented Self-Help Groups of women, with their strong cooperative behaviour and mutually reinforcing sanctions, with the Grameen Bank of Bangladesh as the most stellar example illustrates the value of social capital in promoting employment and economic development.

One of the most important applications of social capital is the delivery of sustainable basic services to the poor, and local infrastructure and natural resource management. In the last several years, we have seen a resurgence of interest in community-driven development, with community groups in charge and the focus shifting to local initiative, self-help, and local organisational capacity. Community groups have been successful, in these cases, to initiate, organise and take action to further common interests or achieve common goals. Social capital has been the key component of these efforts.

Participatory management has characterised all these efforts. Participatory processes through which community groups are enabled to make informed decisions have led to strengthening of social capital or local organisational capacity and further problem solving beyond the life time of particular projects and programmes.

Local organisational capacity is the ability of people to work together, trust one another and organise to solve problems, mobilise and manage resources, resolve conflicts and network with others. When people cooperate and work together, they can overcome problems related to risk, information, and skills. There are two elements, which are critical to local organisation building. First, groups have to develop rules for self-governance. Second, the groups need to be embedded in the existing social organisation. Since the poor rarely have strong organisations to make their voices heard, projects that aim to reach the poor must invest in strengthening the capacity of local groups to take action. An increase in social

Annexure-I(1) Contd.

capital in development projects is reflected in improvements in indicators like cooperation and womens' participation.

The debate on what social capital is and what it is not, will continue for many years. But, what is clear is that the application of social capital facilitating collective action by community groups will remain a critical component in poverty alleviation strategies. The challenge for us is to formulate policies and the framework of rules that will allow and facilitate collective action that is instrumental in generating and managing local resources, and create conditions to support participatory decision-making and organisational capacity, especially among the poor.

**National Colloquium on Social Capital, Trust and
Participative public service delivery**

19th and 20th December, 2006

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- 49. Smt. Vineeta Rai, Member-Secretary

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- 50. Shri A.B. Prasad, Joint Secretary
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Recommendations Made by Working Groups

Participants at the Colloquium were divided into five groups to discuss various issues pertaining to Social Capital, Trust and Participative public service delivery. The issue-wise recommendations of the respective groups are as follows:

I. WAYS OF INVESTING AND PROMOTING SOCIAL CAPITAL AT ALL LEVELS OF GOVERNMENT

- Promoting social capital at different levels of government can be understood in terms of design of organisations, the authority allocated in organisations and education and the use of education and training for developing social capital.
- The objective of the discussion was understood in terms of arriving at broad indicators of future direction; but social capital being a productive asset which cannot be transferred, has to be understood as context and location specific.

(a) Institutional Issues in Social Capital in Government

- The key issue is change in attitudes. Merely creating new laws may not be sufficient for effective implementation because laws can provide only a direction. The focus lies in 'de-bureaucratization' which implies a reduction in the rigidities occurring due to a blind adherence to bureaucratic procedures in the Indian government system.
- One way of getting over the bureaucratic rigidities is adopting Citizens' Charters for each department. However Citizens' Charter in most departments remains a dead-letter document because people are not aware of it, and it is also introduced in top down manner. Hence the manner in which the Citizens' Charter should be brought about is also very important. There is also a need to increase awareness about the existence of the Citizens' Charter itself.
- In the context of implementation of government programmes, social capital can play a key role in monitoring and evaluation. For instance, use of joint citizen

forums for monitoring and evaluation at different levels can help in internalising the evaluation process and increase the effectiveness of the programmes. In creation of such forums it may be useful to map existing civil society organisations and forums, strengthen them and create them where they don't exist. The joint-citizen forums can also contribute to organizational design processes through provision of relevant feedback. However, creation of joint-citizen forums need appropriate institutions to take it forward.

- In order to create an environment of trust between the officials and the citizens, the Reports on actions taken by the departments need to be publicised and published. This could also include explanations for the actions that was, or was not taken. This could provide the social capital for fruitful interactions between the departments and citizens. For instance, the system of night-halt by senior officials in the villages had helped increase the confidence of the villagers in the system.
- One of the issues pertaining to effective programme implementation is the inadequate information availability at various levels owing to problems in sharing of information across levels and across departments. This could be resolved by structured systems for information sharing between different departments in order to make relevant information at each decision-making level. The current independent planning processes in different departments cause duplication of efforts and overlapping of plans. In this context there is a case for strengthening the integrated local planning mechanisms such as the District Planning Committee.
- The current appraisal systems followed in government agencies is that of confidential reports by superior officers. This could potentially create an environment of distrust as well as disregard for lower level employees and the consumers of the services. This situation could be partially resolved by using open appraisal systems and also including appraisal by other stakeholders. Open appraisal system can help to build trust through a combined system of self-assessment and seniors' assessment involving a negotiation process. Including other stakeholders in the appraisal process could help to make the officials more sensitive to the end users.
- Systems to provide better accountability including mechanisms such as stakeholder evaluation and joint-citizen forums as described above, needs to be introduced. This would help to provide proper incentives for the officials to act towards achieving

the organisational goals. The current system of evaluation and incentives tries to promote individual performance and competition. This could adversely affect the overall performance of the organisation by reducing the effectiveness of the teams. There is therefore a need to change the incentive systems from individual to group-based to promote efficiency at organisation / department / team level. As organisations and teams working at different working environments and different levels have varying evaluation needs, it could be better to introduce a system of evaluation in which the criteria are developed internally by the departments themselves.

- In the changing environment of increased responsibilities assigned to community groups, it may be useful to provide better role clarity of the officials along with a full job description of each individual, also providing the details of the task that he or she has to handle.
- In the current government organizations, there is a huge gap between the different levels and cadres. This can be partly bridged by creating informal forums like intra-institutional and inter-institutional sports and cultural programmes that can help promote social capital.
- The current government systems, by design, encourage distrust of subordinates as all the key decisions are centralised. The systems should be modified to allow for delegation of authority/decentralization of authority/responsibility to people at appropriate level. To build trust and capabilities at the decentralised level, it is necessary to provide positive experiences. It is only such positive experiences that would encourage social capital to develop at the grass roots level.
- When officials take decisions on a day-to-day basis, it may not be possible to have rules providing directions for taking each action. A certain amount of discretion is required to handle real life situations. A respect for discretion of all employees and in their abilities to take the appropriate decisions is essential to have an effective programme implementation mechanism.
- There needs to be built a general environment of democratisation such that continued pressure is exerted on the officials to perform, and the community and local organisations are able to perform complementary functions in the process. For this to happen, a conscious effort is required to strengthen Local Self Government, Panchayats, Municipalities and bottom-up planning.

- In the Indian government system, there is a general domination in each department by officers belonging to certain cadres. This is not necessarily due to expertise in the specific activities undertaken by the departments. In order to improve the efficiency of these organisations, it may be necessary to dilute the monopoly of positions by cadres. It may be necessary to have professionally trained managers working on fixed term contracts. This is especially relevant as the senior level officials get transferred on a frequent basis and these professional managers can help to maintain continuity in these departments. It may also be useful to ensure that IAS officers have specialisations in sectors and departments and their transfers/postings should take place within these sectors. This would also ensure that the social capital within these sectors is enhanced as there would be sustained interaction between the officials within a sector.
- It was also perceived that in a district, the District Collector is generally well informed about the status of activities and the direction of development projects but there is a communication gap with the next level of officers in the district. Hence it may be useful to increase the interactions between the officials across departments working on related aspects in a district.

(b) Training and Capacity Building for Creation of Social Capital

- Focused training can be a useful tool for creating a bridge between levels of Authorities. However, training as is undertaken currently – such as cadre based training – may not be useful for this. It may be better to have goal-specific and organisation-specific training programmes such that the different participants (belonging to different levels and even departments) are able to have shared perspectives about their common goals and issues. This would also in a way take care of the crucial problem of bridging the gap between the different levels of government officials in each department and project. However, this common training programme may need to devise mechanisms to get over the hierarchical mind-set which usually gets transferred even to training sessions. The varying skill and capacity across levels that may need to be trained together, also presents a challenge in terms of training tools and methods. Yet, there may not be any alternative to different levels being brought together in an intra-cadre training exercise.
- The training provided ought to be related to the requirements of the knowledge, skills and attitudes required by different functionaries in the workplace. Therefore

the training needs to be demand based which will facilitate the easy learning of skills, rules, and roles. Specific attention in training needs to be given to team and leadership building, and for changing attitudes and behaviours of government officials from the risk averse, to a proactive result oriented one.

II. IMPROVING AND STRENGTHENING THE CAPABILITY OF THE ADMINISTRATION TO PROACTIVELY PARTNER WITH LOCAL COMMUNITY, PARTICULARLY IN REMOTE AREAS

(a) Partnerships

- Partnerships are created with awareness, values of trust, mutual dignity, shared commitment, transparency, ownership and sharing of goals between administration and local communities.
- Partnership can be seen at three levels i.e. interaction, transaction and transcendental where the administration has to play a proactive role to involve the local communities. Its success lies in careful alignment of objectives of the parties involved with an aim at reaching the expected outcome. It is possible in such developmental initiatives where administrators and local communities complement each other and work in synergy.

(b) Understanding the Need for Partnerships

- Administration / administrator must be aware of the communities for whom they exist. At the same time, local communities need to be made aware of their Constitutional rights and responsibilities and of development programmes for effective partnerships to take root. Clarity on the aspect of why the partnership is needed and what purpose it serves, helps in establishing effective partnerships.
- Administration / administrator needs to respect the perceptions and identities of individuals involved at various levels from within and from local communities.
- While it is evident that this will never be a partnership of equals, efforts have to be made to make it more workable.

(c) Suggestions to Help Build Successful Partnerships with Local Communities

i. Administration

- System of incentives and dis-incentives needs to be developed keeping in mind the outcomes expected of the development initiatives.
- Mechanisms should be put in place to periodically expose personnel involved in administration to keep them abreast of the ground realities. This can be in the form of regular visits, dialogue and interface with local communities especially in remote areas.
- To facilitate regular dialogue and interaction with local communities, field officers need to be freed from routine administration responsibilities through simplification of procedures.
- *Transformational training at the individual level:* Camps such as Vipassana in Maharashtra and Karmayogi Abhiyan in Gujarat have helped administrators become more reflective and individually responsible. The training must aim at the development of individual than mere systems in which he functions. The training should help in internalisation of the feeling that the service delivery must be done in partnership with local communities.
- Asymmetry in information/ relationship between administrator and local communities is a critical barrier to successful partnerships. The asymmetry arises out of the gaps in knowledge and information between local communities and administrators. Administrators tend to control conduct of programmes and utilisation of resources without bringing local communities on board. It affects the attitude towards grass roots level planning in turn reducing the support of local communities for government initiatives. These critical gaps need to be bridged.
- Internal dispositions of administrators need to be taken care to improve their contribution. This can be done by encouraging individual's capacities to innovate and creating appropriate incentives for innovations.

- Creating an enabling environment to inculcate norms and values among the government servants.
- Civil society organizations can be engaged by the administration more effectively in building bridges with local communities.
- Evaluation of outputs on a more objective basis.

ii. Local Communities

- Training and capacity building at the grass roots especially to overcome information asymmetries is important.
- Strengthen Panchayati Raj by allotting more funds allotted for training. Special emphasis is needed in identifying the training needs of the women keeping in mind their position in society.
- Recognising the importance of indigenous knowledge helps build positive mindset among local communities towards the government initiatives is important.
- Decentralisation and allotment of funds for programme planning and implementation at appropriate levels of the Panchayat to make them functional and effective.
- Civil society organisations/ local communities should be encouraged to come up with alternative solutions for development.
- Involve other stakeholders such as media, formal, informal groups for identification of development issues and effective implementation of development initiatives.

III. BETTER SYNERGY BETWEEN THE GOVERNMENT AND THE CIVIL SOCIETY INSTITUTIONS AND INCREASING THE PEOPLE-CENTRICNESS OF THE ADMINISTRATIVE APPROACHES.

(a) Trusts / Societies

i. General Conditions to Enable Trusts, Societies to Function in an Independent and Self-Reliant Manner

- Trusts and Societies are forms of organization which generally involve in philanthropic activities. These voluntary sectors are numerous in number and participate in a wide range of activities, which includes

health, education and micro-finance. For these activities they mobilise funds from various funding agencies, but need a greater degree of self-reliance to fulfil its basic objective. One of the major issues is to enable conditions which need to be developed to make these organizations more independent and self-reliant.

- Government-owned NGOs - “GONGO” could be one option to reduce dependence on external funding. In the flip side, in case of “GONGO”, the notion of voluntary and the degree of independence and autonomy becomes a problem. Further, to maintain autonomy and self-reliance, there is a need to keep the NGOs far from the governments and it is important to educate NGOs about the norms they ought to follow.
- In India, voluntary sector is mainly considered as part of religious activity, but by promoting charity / philanthropy through industry and individuals, the issue of fund mobilisation can be minimized. Reformation in tax laws is important to make current operation more transparent mainly to reduce corruption in the revenue machinery.

ii. Regulatory Framework for Trusts and Societies

- The existing laws regulating voluntary sector are too vague and loose, when compared to the complex cooperative laws. Lack of proper screening mechanism at the initial stage results in the development of pseudo / paper organisations, which in turn compete for donor funds.
- There is a need for public audit for screening and accreditation of the NGOs, based on their activities. Mandatory accreditation of NGOs could be a means for tax exemption. Countries like Pakistan and Philippines have already adopted this practice to screen the NGOs.
- For accreditation of NGOs, “Panchsheel Approach” with the following components can be adopted:
 - (i) *Identity* – What is the identity of the organizations? For what purpose they are existing in the society? Documents should be in proper order.

- (ii) *Objectives* – What is the mission and vision of the organization?
 - (iii) *Internal System of Governance* – Robust operational policy, human resource management, regular meetings, strategies and direction.
 - (iv) *Operations* – Should be in line with objectives. Should not follow survival strategy all the time (going behind fund and changing the activities very often).
 - (v) *Transparency* – Accounts should be audited and Annual Report should be published latest within eight months of the close of the financial year and must be communicated to all stakeholders and made available to anybody for a price.
- Though few NGOs are already subjecting themselves to rating procedures in line with the above approach (micro-finance), there is a need for adopting higher norms and best practices.
 - There are flip sides of accreditation also, which could be identified as follows:
 - Absence / lack of resources available with the voluntary organisations / NGOs for accreditation
 - Lack of knowledge about the need for adopting accreditation

iii. Suggestions

- Government should educate and provide resources to the organisation for accreditation. On this line, NABARD is providing support to organisations involved in micro-finance.
- The importance of clearly distinguishing the government norms and government transaction between NGOs vs ‘Contractors’ was emphasized. ‘Hassle-free administration benefits’ should be provided for better performance of the organisation involved.
- There is a need for an independent National Regulator / Ombudsman to regulate the accrediting agencies at the State level.

- The huge diversity among the voluntary sector requires a 'layered regulation', based on the size, region, operational form etc. For example, layered regulation include,
 - Peer audit for small NGOs
 - Public audit for large NGOs
- Financial soundness and functional strength of the organisation can be used as a base for accreditation. Other similar benchmarks should be decided by the National Regulator in consultation with various accreditation agencies.

iv. Regulation for Others

- A Bill providing regulatory framework for Trusts, Societies and NGOs working in the micro-finance area is under consideration of the Parliament. There is a need for developing similar regulatory framework for organisations working in other areas also like health, education etc. However, the Regulator must be outside the government sector.

v. Conflict Resolution

- Ways and means to resolve the intra-and inter-level conflicts in the voluntary sector was discussed.
 - Inter: between NGO and partner(s)
Example - Government of Gujarat and SEWA, Andhra Pradesh micro-finance conflicts
 - Intra: between one NGO and the other
Example - Competition between NGOs for funding.
- In this regard, there is a need for an independent regulatory mechanism, which can recognize the conflicts with clarity and equipped with independence to resolve the conflict without any bias.

(b) Self-Help Groups (SHGs)

- Self-Help Groups are informal organization of 10-20 homogenous members, who come together for the purpose of savings and availing credit from formal institutions.

i. Enabling Conditions for Greater Self-Reliance of SHGs in Mobilising Financial Resource

- SHGs are savings driven and their major strength lies in their autonomy, which needs to be retained. Though 'Joint-liability' is promoted as the basic principle of SHG, administration of the principle, is legally not possible. But in the recent years, partnership model based on the joint-liability of the members are adopted by organisations, which needs to be carefully examined to maintain / uphold the self-reliance of the SHG.
- Realising the relevance of the SHG in the current scenario, government is utilizing the SHG as an instrument in implementing various programmes, like Public Distribution System, Mid-Day Meals etc. But, before using the SHG as a tool, government should understand the lack / presence of available resources (capacity, capability) of the SHG.
- To make them viable agents, substantial investment in terms of capacity building, technical support and training of SHGs is important. Till now the major investment for capacity building of SHGs has come from private agencies and other donor organizations, as compared to government institutions. Also the need for proactive participation and investment of the Banks is important along with government institutions.

ii. Cooperatives

- First of all, it is necessary to understand that cooperatives are 'member' enterprises rather than being 'citizen' enterprises. In the current scenario, the cooperative are neither 'user owned' nor 'user controlled'.
- There is a critical need for creating awareness and advocacy on the following issues:

- What cooperatives are?
- What should cooperative be?
- The proposed Constitutional amendment (106th Constitutional Amendment Bill) on cooperatives and advocacy for better State cooperative law could provide a more enabling legal environment for functioning of cooperatives in India.
- The importance of adopting innovative solutions to tackle the complex cooperative law and its restriction was discussed by the Group and the following suggestions were made:
 - Adopting / exercising the choice of being regulated under more liberal cooperative laws. (Multi-State Cooperative Laws to avoid State intervention)
 - By zealously guarding their autonomy – if they already have it
 - By repatriating government equity - attain operational / organizational autonomy to manage their own affairs.
- Training is an important component of cooperative governance and investment in cooperatives training and education will continue to be a major driver for better performance of the cooperatives.

IV. BETTER SYNERGY BETWEEN THE GOVERNMENT AND CIVIL SOCIETY INSTITUTIONS: INDUSTRY ASSOCIATIONS AND PROFESSIONAL BODIES

- Industry Associations and Professional Bodies represent two different types of member-based civil society institutions. The issue is as to how social capital and trust within these institutions and in their partnership with the government can help in improving the delivery of public services to the citizens.
- Social capital within a Professional Body could be an important mechanism for dealing with un-professional conduct or dereliction of duty by a professional.

- Members of Professional Bodies are drawing associational benefits / collective benefits from these Bodies but they do not adhere to disciplinary norms. The reason partly being that the ability of these Bodies to enforce punishments is weak – as of now no professional has ever lost its license / practice even in face of ethical issues.
- In order to build social capital with regard to the Professional Bodies, following steps would be useful:
 - The charter of a particular associational Body can be modified so that the end goal is articulated more in terms of the larger interest of the society rather than that of its members.
 - Design incentives / mandatory requirements for the professionals to work for the common good.
 - Educate both the professionals and the citizens - lack of information both to the citizens and professionals about possible institutional / legal frameworks that can enforce better compliance and service delivery from professionals (e.g. Architect Law).
 - Build the capacity / secondary cadre of professionals to serve those who are not being serviced today.
- The government could pursue a combination of coercive and persuasive strategies for fostering social capital such as:
 - To consider Professional Bodies as normative arms (not an agent) of the State
 - To negotiate with Associations to change the nature of relationship between government and Professional Bodies from adversarial to collaborative relationship
 - To provide more teeth to the Professional Bodies so that they have the incentive to take action against erring professionals
 - To enact and provide for legal frameworks / deterrents (Consumer Act, RTI)

- The Professional Bodies should be made more accountable for the behaviour of their members. Some possible suggestions could be to make it mandatory for these Bodies to publish their records as in case of audits, strengthen provisions for sanctions, and put mechanism of public scrutiny e.g. direct reporting regularly to government in place.

V. HOW TO ENSURE GREATER INVOLVEMENT OF PEOPLE'S REPRESENTATIVES AND COMMUNITY AT LARGE IN THE CONCEPTUALISATION AND EXECUTION OF PROGRAMMES

- *Barriers to participation:* The most important barrier to people's participation is the colonial psyche which creates lack of respect in State employees for its citizens. The citizens also fear the State employees who, in turn, behave as masters. The result is that, citizens shy away from taking responsibilities which discourages them and their representatives to take active participation in programmes. The administrative reform must consciously make provisions for breaking the colonial psyche and promote institutions which are people-friendly and generate respect for the citizens. Secondly, people also should be informed about their role and the extent of participation in the reform process.
- *Enabling legal and institutional forms:* Presently there is an excess of State monopoly in the development process. The extent of monopoly is such that even genuine people's initiatives are hindered by administration on the pretext that the resource are State-owned and only the State can act upon it. There are also ambiguities in the laws which leave the interpretation to the bureaucrats who entrench the citizens' dependence on the State. This clearly shows the high level of insecurity in the administrative system. The reform should make provisions for encouraging people's initiatives and there should also be clarity in the law and the legal process.
- *Further ways of decentralisation and steps for proactive involvement of local governments:* The recent steps to promote Panchayati Raj Institutions in India is encouraging; however this has come along with a sense of restriction at another end. There has been a deliberate effort to limit the role of civil society to training and community organisation while the Panchayats undertake the executive role. The latter is a necessary condition for decentralised governance but not sufficient. There should be more space for autonomy of local initiatives and strengthening

civil society involvement. There should be equal acceptance of non-Panchayat institutions promoted by civil societies which has its own role.

- *Specific sectors for greater local participation:* The sectors needing immediate attention in this regard are: education, health care, transport, hygiene and sanitation, communication, and environment. Among the sectors (which may differ from place to place), some require mere consultation and others require strategic collaboration with institutions for long term benefits.
- It has been observed that the conceptualisation of civil society initiatives has not been adequate. More interfaces between academia, administrative system and civil society for design and execution of development programmes are required. However, reforms should not aim at developing an alternative to State but rather it should supplement and complement the State.
- *Social capital as a component of entrepreneurship:* It is inappropriate to say that social capital do not exist in our country. It exists and there are exemplary works; the need is to identify and appreciate such initiatives. However, it is true that there is a lack of professional skills and infrastructure – the reform should look for building this. Initiatives like supporting philanthropic infrastructure through Matching Grants and Block Grants can be useful. So far, it has been recognised that the rich should contribute to the poor, but there are also initiatives by people from middle-class who spend lifetimes for promoting social capital in society. Such initiatives should also be encouraged.
- The main reason behind low social capital in our society is lack of trust and morality in our day to day life. There is no deliberate attempt to educate people and impart values which were practised by Gandhiji, Jai Prakash Narayan and many others in the context of our society. Not only there is a need of moral education, principles of accountability and transparency should also be entrenched in every spare of social life particularly in the administrative process.

QUESTIONNAIRE ON SOCIAL CAPITAL, TRUST AND PARTICIPATIVE PUBLIC SERVICE DELIVERY

I WAYS OF INVESTING AND PROMOTING SOCIAL CAPITAL AT ALL LEVELS OF GOVERNMENT AS AN INSTRUMENT OF ENHANCING GOVERNMENTAL EFFECTIVENESS

Judging effectiveness of any organisation is difficult, more so when the organisation concerned is the government or a part of the governmental system. The difficulty arises on a number of counts. First, there are multiple stakeholders with different, sometimes even divergent, expectations. Second, governmental action is bound by the canons of public law; laws and rules framed under them often are not sufficiently versatile to enable customised responsiveness. Third, democratic governance works through multitudes of checks and balances, thus a democratic government's ability to be effective is limited by the design and operations of such processes.

However, it is widely accepted that 'one recognises effectiveness when one sees it'. Scholarship in the field of public management has established that most effective organisations tend to share common characteristics. Some of these are as follows:

- Anyone in the place can tell you the organisation's mission and values.
- It is always looking into something new.
- Its customers' satisfaction level is high.
- Its employees frequently work in teams.
- The leader is a partner to the staff members.
- A 'failure' is considered a learning experience.
- It can give relevant information on its programme results.

In short, effectiveness stems from certain ways of functioning wherein, there is emphasis on teamwork, hierarchy is used more as a coordinating mechanism and not as a tool for exercising control, leadership positions carry the basic burden of enabling team and individual efficacy, external stakeholders are considered as 'customers' and not simply 'recipients of goods and services (or largesse)', and the entire organisation is aware of the fundamental reason of its existence, remains 'goal focussed' and continually seeks to reinvent and renew itself.

All the above collapse into the notion of ‘organisational culture’ wherein the organisational members function in an interdependent and cooperative manner, exhibiting reciprocity and trust among themselves, and are continually seeking to serve the overall and specific goals of the organisation. This notion of culture fits in with some of the definitions of ‘social capital’; thus such organisations/agencies are said to possess high degrees of social capital.

If social capital was to be invested and promoted at all levels of government the following questions become relevant:

1. What would enable the government as a whole, and every part of it as separate entities, to function such that the foundational and operating goals inform its internal processes, decisions and actions?
2. What is required to be done such that the government, especially those parts that directly interface with the citizens, function in a manner as if they are dealing with the ‘customers’. There is a realisation that customer satisfaction is the key to the governmental entity’s survival.
3. What would enable the government functionaries to function as if they are a part of a ‘professional bureaucracy’ wherein primacy is attached to situation-specific knowledge and competence and not to positions in the hierarchy?
4. What would enable governmental organisations to rely more on trust and reciprocity for internal coordination than on positional authority?
5. What forms of education and / or training would enable individual functionaries to acquire ‘professional-like’ characteristics?
6. What would be the appropriate institutional infrastructure within which such training / education should occur?

II IMPROVE AND STRENGTHEN THE CAPABILITY OF THE ADMINISTRATION TO PROACTIVELY PARTNER WITH LOCAL COMMUNITY, PARTICULARLY IN REMOTE AREAS

An individual seeks out partnership when he/she recognises that tasks at hand are such that working alone it would either be impossible or, at the least, difficult to accomplish them. With the assumption that the individual in question has the motivation to accomplish such

tasks, such recognition leads her / him to search for mutuality and complementarities with others. Upon identification of such 'others' efforts are made to forge partnerships. With the further assumption that sought out 'others' also have the requisite motivation and need, partnerships get forged. The foregoing is also true for organisations.

Thus for improving the capability of the administration to proactively partner with local community, the first requirement would be the recognition of such a need on the part of the administration. If conditions set out earlier under the first TOR were to get created, it would become apparent for the administration to recognise such needs. Then the primary task would be how to enhance the capability of the administration to forge partnerships.

1. What additional norms and values are necessary for the 'administration' to recognise the need for forging partnership with local communities? How could these be inculcated?
2. Assuming such norms are internalised, what capabilities must exist to enable 'administration' to succeed in forging synergistic relationships with local communities? How could these capabilities be created?
3. Suitable re-orientation in the training of administrative personnel at the induction stage would be one mechanism to achieve the above. What other orientation/ training could be thought of for mid-career and senior administrative personnel?

III BETTER SYNERGY BETWEEN THE GOVERNMENT AND CIVIL SOCIETY INSTITUTIONS

(a) Relating to Trusts/ Societies and Self-Help Groups

Trusts, Societies and SHGs are forms organising through which a group of people create an organisation (or association) for furthering their purpose. Yet, they are excessively dependent upon external sources of funding which have the potential to cause reduced autonomy for them. It is felt desirable that they be enabled such that they retain their autonomous functioning and there is synergy with the government in furthering the cause of social development and civil society building.

1. What would be the general conditions that would enable Trusts, Societies and SHGs to function in an independent and self-reliant manner?
2. What would be an appropriate regulatory framework for Trusts, Societies and SHGs, such that their autonomy is maintained while also meeting minimal requirements of external accountability?
3. What enabling conditions could lead to greater self reliance of Trusts, Societies and SHGs insofar as financial resources are concerned?
4. Are there provisions in the tax laws that, if suitably amended, could lead to greater financial security? What are they?
5. What changes / modifications in the approach and / or manner of functioning of government / administration are likely to enhance the synergy between government / administration and Trusts, Societies and SHGs?

(b) Relating to Cooperatives

Cooperatives are meant to be the ‘enterprises of the citizens’. Yet, the role of government in the formation and functioning of cooperatives is so pervasive that a large majority of them fail to further the enterprising energies of members. A vast majority of SHGs and other community based organisations that have come up in recent decades should ideally be formed under the cooperative framework. Yet, due to the apprehensions of ‘governmental control/ interference’ they have taken recourse to other legal forms which are not most conducive to furthering their members’ interests.

1. What is the current scenario with respect to independent functioning of cooperatives as ‘citizens’ enterprises’?
2. What are the factors that constrain autonomous functioning of cooperatives? Are these different for cooperatives registered under the three different legislations pertaining to the cooperatives, i.e., State Cooperative Acts, Multi-State Cooperative Act, and the Mutually Aided Cooperative Acts (of different states)? If so, what are they?

3. What changes in the general framework of registration of cooperatives, and regulation / administration of the sector would enhance the autonomy of cooperatives?
4. What would be the conditions that would meet the external accountability requirements of cooperatives while enabling their autonomous functioning?

(c) Relating to Industry Associations

Industry Associations are vehicles through which common concerns and interests of members are furthered. They represent the cause of the members and mediate with the government and other Bodies in obtaining enabling conditions for the furtherance of industry. It has been argued by some that such associations have and could rightfully play a self-regulatory role such that the members emerge as true 'corporate citizens'.

1. What is the current image in terms of the role they play and efficacy, of Industry Associations?
2. What is the nature of relationship of Associations with the government/ regulatory institutions on one hand and the members on the other?
3. How efficacious has been the role of Industry Associations in enforcing certain agreed upon standards of functioning? What enabling conditions can the government create for such Associations to play a more efficacious role in ensuring the emergence of good 'corporate citizenry' among their members?

(d) Relating to Professional Bodies

Professions are said to have at least four key elements;³² (a) an accepted Body of knowledge, (b) a system of certifying that individuals have mastered that Body of knowledge before they are allowed to practice, (c) a commitment to the public good, and (d) an enforceable code of ethics. Professional Bodies not only play the role of furthering the knowledge and practice of the profession, they also have the enormously valuable role of 'regulating' the professionals.

³²Rakesh Khurana (Harvard University), quoted in Warren G Bennis, James O'Toole, How Business Schools Lost their Way, Harvard Business Review, May 2005, Vol 83, Issue 5.

This regulation of the professional practice and hence professionals is essential because the users of such professions / practices usually do not possess the knowledge or wherewithal to determine the quality / quantity of service they are receiving.

1. What is the current image in terms of the role they play and efficacy, of Professional Bodies, such as the Medical Council of India, Institution of Engineers, Institute of Chartered Accountants, Institute of Cost and Works Accountants, Council of Architecture, Institute of Town Planners of India, Bar Council/Bar Associations (etc.)?
2. What is the nature of relationship of Professional Bodies with the government on one hand and the individual professionals on the other?
3. How efficacious has been the role of Professional Bodies in furthering the knowledge and practice of profession?
4. How efficacious has been the role of Professional Bodies in enforcing the code of ethics among professionals?
5. What conditions would enable the Professional Bodies to move into a self-regulatory platform such that (i) the cause of furthering the knowledge and practice of the profession is served, and (ii) the role of the Body in ensuring ethical conduct of individual professionals is made more efficacious?
6. What could the government do, to enable such a role-playing or change in the role of Professional Bodies?

(ii) Professional Bodies as Self-Regulatory Authorities (SRAs)

A. Legitimacy (Confidence and Trust)

Citizen's confidence and trust in the Professional Body and professionals depend upon the service provision in terms of access, quality, reliability and cost.

- Does the citizen have a trust in the professionals in terms of competence and commitment? Do the professionals trust their own Professional Bodies?

- Which of the professionals are more trustworthy according to the public?
- Are Self-Regulatory Authorities (SRAs) more trustworthy in comparison to the government and independent Regulatory Authorities?
- How trustworthy and effective are SRAs in India when compared to similar institutions in other countries?
- If the professionals and SRAs fall short of the citizen's expectations, what are the factors responsible?

B. Autonomy (Interface between Government and SRAs)

The SRAs exercise independent powers in the public interest and to enjoy their confidence. The public must be assured that the SRAs will speak and act without being constrained by any sectional interest in setting standards for professional education (colleges / courses / teaching and evaluation methods) and practice (granting and withholding of registration) to provide quality services of international standards. At the same time, the government has responsibility to provide easy access of these services to all sections of society without exploitation and human rights violation.

- Do SRAs enjoy sufficient autonomy and independence in developing skills and inculcating values among the professionals to serve the society competently and honestly?
- Do the SRAs have adequate powers to regulate and maintain standards in education (permission for starting new institutions), training (curricula, methods, and faculty), and testing (evaluation) to develop professional skills?
- Do the existing government Laws/Regulations/Acts/Policies/Institutions facilitate independent functioning of SRAs?
- Whether any changes are to be brought in these policies and laws to enhance/reduce the government control to make SRAs inclusive and efficient?
- Do we need Super-Regulatory Authorities with eminent persons from different professions and interest groups in regulating all SRAs?

C. Governing Structures (Constitution, Composition, Powers, Functions and Efficiency)

The present governance structures were originally created in an era in which self-regulation really meant regulation by professionals like doctors alone, when patients were passive recipients of doctor's services and technological developments were very low. Now doctors and patients are partners with an agreed framework of expectations and standards to protect the interests of the patients, professional and public in the context of the global era and technological revolution. In order to strengthen the voice of the clients, representation has been given to the laymen in UK Medical Council. Forty per cent out of 104 members in UK Medical Council are non-professionals and it is chaired by the layperson. Similarly, the number of government nominees in the Indian Medical Council has been increased in recent years to represent public voice.

- Are the existing governance structures (number, composition and size of the General, Executive and other Bodies/Committees) of SRAs relevant in the present era of globalisation (competition, privatisation, quality) and technological revolution (information and communication technology)?
- Whether these governing structures (General Body/Executive Council/ Chapters/Federation) of SRAs are inclusive and efficient in terms of representation (professionals, clients, stakeholders, interest groups)?
- How effective and competent are the Committees for ensuring high ethical standards to perform functions like setting and enforcing of standards for education, practice, conduct and performance?
- Do you think that the SRAs have been able to influence government policies related to professional matters? What are your suggestions in this regard?

D. Inclusiveness and Internal Democracy

- 1 Whether competent people are selected to various Governing Bodies? How fair and transparent are the selection processes in these Bodies? Whether the elections in the SRAs are free and fair?

- 2 What should be the criteria to select competent professionals to head important committees like education and discipline?
- 3 What are the mechanisms for strengthening internal democracy in SRAs to facilitate the voice of the competent professionals and clients/citizens?

E. Transparency and Accountability

As a statutory Body, SRAs have the responsibility to account for what it does. The public, Parliament, government, the profession have right to know how SRAs are discharging their functions. Normally, the SRAs are primary accountable to the Parliament which, on behalf of the public, defines powers and responsibilities (by making Rules, nominating members and considering their decisions in regard to standards to regulate professional education and practice for the good of the society)

- How open and transparent are SRAs in formulating and enforcing standards? How transparent are the procedures for setting standards for starting colleges, institutions, new courses?
- How effective are the existing redressal grievance and complaint procedures? How to make them more transparent and accountable? Does the system have sound mechanisms for considering the complaints from the clients against the professional for wrong act and conduct?
- How effective are the mechanisms to ensure the accountability of professionals in relation to granting and withholding of licences/certificate/registration for professional practice in terms of competence/performance/conduct/physical fitness? How effective are the mechanisms to discipline the professionals, whose performance repeatedly falls below an acceptable standard?
- How to make professionals responsive and accountable to the community? How effective are the ethical codes for ensuring integrity and high ethical values in SRAs? How to ensure the accountability of SRAs to the clients, public, professionals and the government?

F. SRAs, Citizen/Client and Social Responsibilities

It is generally believed that the professionals exploit the clients, since they have monopoly over the knowledge and its application. Clients have very little say in deciding the cost and quality of service provided by the professionals. The illiterate and poor have no voice to obtain compensation for the deficiency in performance and conduct of professionals. In order to rectify these defects, advanced countries have taken initiatives such as representation by non-professional in Governing Bodies and laws protecting the rights of clients.

- Whether the professionals act as reliable agents for the well-being of their clients? How effectively the rights of the citizen are protected? (Rights of compensation for administrative wrongs and lower standards) How effective are the mechanisms to prevent exploitation of the more vulnerable consumers from the professionals?
- How effective are the social regulations in SRAs to protect the consumers? How effective are the consumer laws in ensuring the accountability of SRAs?
- How effective are they in fulfilling the social obligations like protection of environment and disadvantaged groups (children, old, women, SC/ST, poor)?

(e) Relating to Creation of Autonomous Domains and Synergy

Movements in two directions would be necessary if the associations and organisations in the civil society were to move onto a mode of self-regulation. First, such associations/organisations must re-invent their respective roles, and second, the government must enable such role-taking by them by way of appropriate legislative support and re-orientation of its own role vis-à-vis these domains of society.

1. What action could government initiate to help Professional Bodies and Industry/Trade Associations play a self-regulatory role?
2. What action could government initiate to help Societies, Trusts and Cooperatives play their respective roles of acting as associations of citizens in a democratic society?
3. What could be the initiatives that would assist government and its functionaries at various levels re-orient themselves and be able to strike

synergistic relationships with Associations of citizens and groups/ organisations?

4. Any other general suggestion regarding enhancing the government's ability to tap into 'social capital' such that the task of society building and development is enabled?

IV ENSURING GREATER INVOLVEMENT OF PEOPLE'S REPRESENTATIVES AND COMMUNITY AT LARGE IN THE CONCEPTUALISATION AND EXECUTION OF PROGRAMME

Most public services that touch the daily lives of the citizens and influence their experience of quality of life are created by the governments (and agencies) at the local level. Consequent to the 73rd and 74th Constitutional amendments, Local Governments have been vested with Constitutional status. This has enabled them to acquire a 'right to life'. The institutional framework mandates representation of weaker sections of society and women; it also stipulates convening of meetings of the 'General Body' (as in Gram Sabha and Ward Sabha) in operationalising the basic functions of the Local Governments. Articles 243 G and 243 W endow the responsibility of planning for economic development and social justice with the Local Governments. Thus, participatory planning, representation in the Local Government, and oversight through General Body processes are now Constitutionally mandated. The status of actual implementation of the provisions presents a mixed picture. There are some success stories yet, the realisation of the Constitutional scheme in this regard is still an evolving project.

1. What are the barriers to generating interest/ enthusiasm among communities, both in rural and urban areas, for participating in the Local Government processes? What steps could help overcome such barriers?
2. What forms of legal and institutional enablement would contribute to transforming the Local Government Bodies into true deliberative forums?
3. In what further ways could decentralisation be done such that people's representatives and community at large could meaningfully participate and own the programme planning and implementation processes?
4. What specific steps would galvanise the communities into more proactive involvement in the affairs of the Local Governments?

Laws for Societies, Trusts, Wakfs and other Endowments*(Source: www.asianphilanthropy.org)*

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
1. Societies Registration Act, 1860 Modelled on the English Literary and Scientific Institutions Act, 1854 Basic aim was (i) to maintain a register of such Associations functioning in the State and (ii) to make them a legal entity; (iii) element of any control / regulation was absent in the original Act. After Independence the subject came under the State list of Schedule 7. Under Indian Adaptations Order this legislation became virtually a Model Act which could be amended only by the State Government. In subsequent	Regulation, incorporation, improving the legal condition of Societies	Societies registered for the promotion of literature, science, fine arts, diffusion of knowledge, education, charity, political education, libraries. -Non-profit Bodies	-requirements for registrations. -annual returns about Governing Body; -legal personality of Society.	-purpose should be lawful. -alteration of purpose or dissolution only by General Body by special vote.	Least intervention by the State. -facilitative role of law recognized.	-loosely refers to democratic framework. -purpose compliance mechanism and financial discipline scheme ineffective.

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
years, many of the governments went on adding different degrees of teeth to this Act in form of (a) placing annual audit and other reports before the General Body as well as to the government; (b) Registrar's power of enquiry and investigation; (c) power of supersation; (d) take over of management.						
Andhra Pradesh Societies Registration (SR) Act, 1959 Karnataka SR Act, 1960 -M.P. SR Act, 1973 -Meghalaya SR Act, 1983 -Rajasthan SR Act, 1958 -Tamil Nadu SR Act, 1975 -Travancore-Cochin Literary, Scientific & Charitable Societies Act, 1955 -U.P. SR Act, 1976 -W.B. SR Act, 1963	Regulation, incorporation, improving the legal condition of Societies within the State.	Societies established for promotion of charity, education, science, literature, fine arts, sports, foundation or maintenance of libraries, reading room, collection of natural history. -Non-profit Bodies	-requirement for registration. -democratic framework of Managing Committee. -Authority vested with General Body. -control over transfer of property or use of funds. -extensive power of Registrar -financial discipline.	-General Bodies control and accountability. -annual audit and other reports to be placed before General Body. -Registrar's power of enquiry, investigation, surcharge and actions like superseding appointment of administrator. -Court's or Registrar's power of dissolution and cancellation of registration.	-systematic democratic organisation. -well conceived financial discipline. -effective scheme for purpose compliance. -laws role both facilitative and regulative	-excessive governmental intervention amounting to regimentation. -freedom to disassociate is difficult to exercise.

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
2. Religious Endowments Act, 1863 Basically a Private Endowment Act which placed the property under the management of Trustee/Trustees under a Will for religious and charitable purposes. It was some sort of a contract between the Will maker and the Trustee.	Management was solely in the hands of the Trustees.	Endowments of Mosques, Temples and other religious establishments.	Rights of Trustees; appointment of Regional Committees; Duties of the Trustees.	-Trustees to give accounts. -committee to supervise. Since it was a contract between the Will maker and the Trustees, the only intervention possible was through filing of a civil suit in a court of law. -suits for breach of trust.	-autonomy to Endowment. -concept of elected Body of the Committee. -control over Trustee.	-life tenure of Committee Member.
3. Charitable and Religious Trusts Act, 1920 Concept of Public Trust came to be established firmly. Trustees were made accountable for disclosure of the income and the value of the Trust. Civil courts given sue-motto powers to pass orders relating to proper management of Trust. But direct	Effective control over charitable and religious Trusts.	Charitable and Religious Trusts.	-Trustee under an obligation to disclose object, income and value of Trust. -court to pass orders relating to proper management.	-Court's interference for proper administration. -Remedies under civil procedure code for breach of trust.	-Transparency is ensured by disclosure of particulars. -Courts regulative role.	-Extensive institutional or administrative control is absent. -preventive mechanism is not adequate.

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
intervention of the government was not at all intended. After Independence, the situation changed drastically. Many of the State Government enacted their own Religious and Charitable Endowments Act in the areas of temple management. State Government officials appointed Trustees and functionaries) given widespread administrative and supervisory powers.						
a) Madras Hindu Religious and Charitable Endowments Act, 1951 b) Travancore-Cochin Hindu Religious Institutions Act, 1950	Administration and governance of all Hindu public religious institutions and endowments in the concerned State.	Hindu public religious institutions and endowments including Marthas.	Formation, rights and duties of Trustees, powers of Authorities such as -Commissioner, Deputy Commissioner, Assistant Commissioner, Accounts Committee etc.	-supervising powers of authorities. -religious qualifications and duties of Trustee and servants. -financial accountability for proper use.	-systematization in temple administration. -wide-ranging powers of State Authorities to ensure purpose compliance.	-lack of democratic framework for devotees participation.

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
c) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966	Administration and governance of all Hindu Public Religious Institution and Endowments in the State.	Hindu public religious institutions and endowments including Marthas.	-registration. -vesting of property in the institution. -appointment of Board of Trustees, rights, powers, duties, disqualifications of Trustees. -Powers of Authorities.	-requirement of giving accounts, audit, budget. -regulation on investment of funds and use of surplus funds.	-Chairman of the Board of Trustee is elected by the Board of Trustees. -elaborate measures about Tirupati Temple.	-lack of democratic framework for devotees' participation
d) Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997	Administration and governance of Hindu public religious institutions and endowments in Karnataka other than Marthas and Institutions of religious denominations.	Hindu religious institutions and Charitable Endowments other than Marthas and denomination institutions.	-formation of Committee of Management for each notified institution. -Advisory Committee at State level. -Powers of Authorities.	-requirement of giving accounts, audit, budget. -regulation on investment of funds and use of surplus funds. -power to suspend improperly Working Committee. -proper administration of common pool fund.	Extensive measures for financial discipline.	-exclusion of Marthas and religious denominations. -lack of democratic participation of devotees.
4. Wakf Act, 1995 Special kind of Charitable and Religious Endowments Act. To manage Muslim Trust properties (Wakf). This again	Better administration of Wakfs, superintendence and control of Wakfs.	Wakfs or permanent dedication by a Muslim, of any property for any purpose recognized by the Muslim law as pious, religious or charitable.	-formation of Wakf Board. -distribution of power between Wakf Board and Wakf Commissioner. -appointment of Executive Officer.	-restraints on powers of mutawalli. -restriction on misuse of property -Executive Officer's role. -Wakf Tribunal's interference	Semi-democratic composition of Wakf Board. -protection against misuse of mechanism for purpose compliance is effective.	Beneficiaries are not given any opportunity in decision making.

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
	guided by a Will. Little regulatory powers of the government. In case of any dispute, it could be settled only by a Civil Court.		-strengthening finance of Wakf Board. -restrictions on powers of Muttawalli -Wakf Tribunal. -prevention of misuse of improper transfer of property			
5. Charitable Endowments Act, 1890 The government introduced some elements of regulation by instituting a post of treasurer in each State to oversee the functioning of such charitable endowments. It was the first step towards State intervention in the field of charity.	Vesting administration of property held in Trust for charitable purpose	Public Trusts for charitable purpose.	-defines charitable purpose. -constitutes treasurer for charitable purpose. -vesting and administration of property.	Treasurer has the responsibility of using Trust's property for the purpose mentioned in the Trust Deed.	State's involvement in ensuring proper use of Trust property.	Skeleton like legislation without elaboration for peoples' participation.
6. Indian Trusts Act, 1882 beginning of charity laws in the country. Basically for management of	Registration/ incorporation. Rights and duties of Trustees and beneficiaries.	Private Trusts- either for charitable or other lawful purposes.	Creation of Trust, duties, liabilities, rights and powers of Trustees. Rights and liabilities of beneficiaries.	Beneficiaries can compel Trustee through legal proceeding to execute the trust and avoid breach of trust.	facilitates creation of Trusts. -codifies rights and duties of Trusts and beneficiaries	Lack of remedies outside the courts. -lack of State supervision.

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
a Private Trust created by a person through a Will, in the form of a contract between the Will-maker and the Trustees. The intended benefit was only for the family members as mentioned in the Will. The intervention could only be through Civil Court.					-does not involve extensive State control	
a) Bombay Public Trusts Act, 1950: The first Act for Public Endowments; Firmly established strong regulatory presence of the State Government (Charity Commissioner). Provision for suspension and dismissal of Trustees, special audit of accounts.	Detailed measures for governance of Public Trusts in the State of Maharashtra.	Public Trusts	-superintendence of Public Trusts by Charity Commissioner. -quasi-judicial adjudication by Charity Commissioner.	-suspension or dismissal of Trustee by Charity Commissioner for injurious acts. -prevention of waste, damage or improper transfer of Trust property. -special audit of accounts and inquiry about laws.	-transparency. -in-built checks by Charity Commissioner. -purpose compliance is effective. -economically more effective.	-not much insistence on democratic governance. -over work on Charity Commissioner. -over dependence on Charity Commissioner.
7. Trade Unions Act, 1926	Registration, rights and liabilities of Trade Unions.	Trade Unions	-arrangements and requirements about	-Registrar's power to cancel registration	-scope for election of office bearers.	-no check against outside /political interferences

Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
			- registration of Trade Unions. -immunity from civil suits and from criminal liability. -funds, amalgamation dissolution.	-annual returns. -access to Registrar.	- and democratic framework. -competence to involve in collective bargaining.	-purpose clause usually vague
8. Indian Companies Act, 1956, Section 25	Registration of Non-profit Companies/ Institutions	Not-for profit Companies	-arrangement and requirement about registration. -corporate entity -privileges of a Limited Company.	Acts done in violation of Memorandum of Associations are invalid, Directors are answerable	-enables a corporate personality. -General Body meetings controls, policies and leadership.	

Comparative Analysis between various State Legislations on Societies

1. Purpose for Formation of Societies

- (a) Societies Registration Act, 1860 provides for formation of a Society for any literary, scientific, or charitable purpose, or for any such purpose as is described under Section 20 of the Act. In terms of Section 20, the following Societies may be registered under this Act:

“Charitable Societies, the military orphan funds or Societies established at the several presidencies of India, Societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, [the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.”

- (b) State Amendments –

- (i) Andhra Pradesh - A Society can be registered for promotion of art, fine art, charity, crafts, religion, sports, literature, culture, science, political education, philosophy or diffusion of any knowledge, or any public purpose.
- (ii) Karnataka – Societies can be established for promotion of charity, education, science, literature, fine arts, or sports, diffusion of knowledge relating to commerce or industry or of any other useful knowledge, diffusion of political education, foundation or maintenance of libraries, reading rooms, public museums and galleries, the promotion of conservation and proper use of natural resources and scarce infrastructural facilities like – land, power, water, forest, etc. and the collection of natural history, mechanical and philosophical inventions, instruments or designs. This is subject to the provision that such Societies would intend to apply their profits or other income in promoting their objects and prohibit

the payment of any dividend or distribution of any income or profits among their members.

- (iii) Madhya Pradesh – Societies may be formed for promotion of science, education, literature or fine arts, diffusion of useful knowledge or political education, foundation or maintenance of libraries, galleries of paintings and arts, public museums, collection of natural history, mechanical and philosophical inventions, instruments or designs, promotion or social welfare, promotion or religious or charitable purpose including establishment of funds for welfare of military orphans, political sufferers and welfare of the like, promotion of gymnastics, promotion and implementation of the different schemes sponsored by the State Government or the Union Government and promotion of commerce, industries and khadi.
- (iv) Rajasthan – For any literary, scientific or charitable purpose, military orphan funds, promotion of literary, science or fine arts, diffusion of knowledge or political education, foundation or maintenance, libraries, reading rooms, museums, galleries, collections of natural history and for mechanical and philosophical inventions, instruments or designs.
- (v) Tamil Nadu – The objects for formation of a Society are interests of consumers in the supply and distribution of essential articles, interests of passengers using buses, taxies and similar public conveyance, welfare of the physical handicap, working women and the unemployed, interests of residents in the matter of provision of civic amenities, interest of pilgrims and tourists, welfare of animals, beards and similar living beings, welfare of displaced persons and downtrodden economically and socially backward classes.
- (vi) West Bengal – Promotion of literature, arts, science or religion; any charitable purpose, including the care or relief or orphans, or of aged, sick, helpless or indigent persons; the alleviation of the sufferings of the animals; the diffusion of knowledge; the dissemination of social, political or economic education; establishment and maintenance of libraries or reading-rooms for the members or for the public; the

collection and preservation of manuscripts, paintings, sculptures, works of art, antiquities, natural history specimens, mechanical and scientific instruments and designs; any other object as may be notified by the State Government as being beneficial to the public or to a section of the public.

- (vii) Uttar Pradesh – In addition to the objectives listed in the Societies Registration Act, Societies can also be formed for Khadi and Village Industry and Rural Development.

1. Registration

- (a) In terms of the Societies Registration Act, 1860, the Registrar will register a Society after the Memorandum of Association and certified copy of Rules and Regulations are filed with him.
- (b) State Amendments:
 - (i) Andhra Pradesh – A Society can be registered after the Memorandum of Association and Bye-laws are filed with the Registrar. If an application for registration complying with all the provisions of the Act is not disposed of within 60 days, the Society is deemed to have been registered and the Registrar shall issue a certificate to that effect. In case of refusal of registration, an appeal shall lie to the Registrar General.
 - (ii) Karnataka – Registration to be given on the basis of MOU and the Rules and Regulations filed with the Registrar. In case of refusal, an appeal shall lie to the Karnataka Appellate Tribunal.
 - (iii) Madhya Pradesh – Registration certificate to be issued on the basis of a copy of MOU and the Rules and Regulations.
 - (iv) Rajasthan – Registration is done on the basis of the certified copy of MOU.
 - (v) Tamil Nadu – Registration certificate to be issued on the basis of a copy of MOU and the Rules and Regulations.

- (vi) West Bengal – Registration certificate to be issued on the basis of a copy of MOU and the Rules and Regulation. An appeal shall lie to the State Government against an order of the Registrar refusing to certify the registration and the decision on such appeal shall be final.
- (vii) Uttar Pradesh – The certificate of registration shall remain enforce for a period of two years from the date of issue and will have to be renewed thereafter. If any question arises regarding entitlement of the Society for registration, the matter shall be referred to the State Government and the decision of the State Government shall be final.

2. Changes in the Memorandum of Association and Bye-laws

- (i) Gujarat – The MOU can be altered by special resolution passed by a majority of not less than 3/5th of the total membership of the Society and such alteration is sanctioned by the Registrar.
- (ii) Andhra Pradesh – By a “Special Resolution”, a Society may alter the provisions of the memorandum with respect to –
 - (a) Change of objectives of the Society;
 - (b) To amalgamate itself with any other Society; or
 - (c) To divide itself into two or more Society.

“Special resolution” means a resolution passed by a majority of the total members of the Society and not less than 3/5th of the members present and voting in a meeting.

The Bye-laws can be altered by an ordinary resolution passed by not less than half of the members present and voting.

- (iii) Karnataka – The MOU can be altered by a proposal agreed to by the votes caste in favour of the proposal and such votes are not less than three times the number of the votes, if any, caste against the resolution. The resolution will need to be confirmed by a simple majority of votes at a second special general meeting convened after an interval of thirty days after the former meeting.

- (iv) Madhya Pradesh – Any amendment to the MOU or Regulations of a registered Society will have to be registered with the Registrar. Alternately, if the Registrar considers that any such amendment is necessary, he will direct the Society to make the amendments within such time as may be specified in such order. If a Society fails to make such amendment within the specified time, the Registrar will himself register such amendment and these amendments shall be binding on the Society and its members.
- (v) Tamil Nadu – The MOU and Bye-laws can be amended by a special resolution by the Society and such amendments will have to be registered by the Registrar.
- (vi) West Bengal – A Society shall not alter its Memorandum except with the previous permission of the Registrar in writing and the votes of 3/4th of its members. The regulation of a Society can be altered by the votes of 3/4th of the members subject to the provisions of the Act and its Memorandum.

3. Filing of Annual Return

- (a) In terms of the Societies Registration Act, 1860, an annual list is supposed to be filed with the Registrar containing the names, addresses and occupations of the Governors, Councils, Directors, Committee or other Governing Body entrusted with the management affairs of the Society.
- (b) State Amendments:
 - (i) Karnataka – Along with the list indicated above, a society has to file a copy of the Balance Sheet and Income & Expenditure Account audited by a person authorized under Section 226 of the Companies Act to act as an auditor of companies registered in Karnataka.
 - (ii) Madhya Pradesh – In addition to the annual list of the Governing Body, every society shall send to the Registrar a statement of Income and Expenditure with full particulars duly audited by its auditor, audit report and balance sheet of the previous year along with details of all financial activities. Accounts of such Society having annual transaction exceeding Rs.1 lakh shall be submitted to the Registrar duly audited by Chartered Accountant. The Registrar is empowered to undertake a special

audit of the account of a Society either himself or by a person authorized by him.

- (iii) West Bengal – In addition to the list of the Governing Body, every Society shall file an annual report by the Governing Body on the working of the Society for the previous year and a copy of the balance sheet and the auditors report certified by a duly qualified auditor which means a Chartered Accountant or a person approved by the Registrar in this behalf.
- (iv) In almost all the States the Registrar has been empowered to call for any information from the Society, if he so desires.

4. Property of the Society

- (a) In terms of Section 5 of the Societies Registration Act, 1860, the property belonging to a Society, if not vested in Trustees, shall be deemed to be vested in the Governing Body of such Society.
- (b) State Amendments:
 - (i) Uttar Pradesh – It shall not be lawful for the Governing Body of a Society or any of its members to transfer without the previous approval of the Court, any immoveable property belonging to such Society.
 - (ii) Madhya Pradesh – No immoveable property shall be acquired or transferred by the Society without the prior permission of the Registrar and such property will not be used for any object other than the object of the Society without prior permission from the Registrar and in case of gift, written consent of the donor.

5. Amalgamation and Dissolution of Society

- (a) Under the Societies Registration Act, the dissolution of a Society shall be decided by not less than 3/5th of the members and the subsequent settlement of the property would be done according to the rules of the Society applicable thereto. In case no such rules are in existence, it may be done as per the decision of the Governing Body. In case of any dispute between the Governing Body and the members, the matter shall be referred to the Civil Court. Subsequent

assent will be required by vote of 3/5th of the members present in the general meeting convened for this purpose. Also, if the Government is a member or a contributor or otherwise interested in other Society, such Society shall not be dissolved without the consent of the government.

Upon dissolution, any property left after discharging debts and liabilities of the Society, the same shall not be paid or distributed among the members of the Society but shall be given to some other Society to be determined by the votes of not less than 3/5th of the members. However, this shall not apply to any Society which has been founded or established by the contribution of share holders in the nature of a Joint-Stock Company.

(b) State Amendments:

- (i) Uttar Pradesh – Apart from proposing the dissolution of a Society by its Governing Body, the Registrar or not less than 1/10th of the members may also move the Court seeking an order for dissolution on the grounds of contravention of the provisions of the Act, number of the members is reduced below seven, the Society has ceased to function for more than three years, the Society is unable to pay its debts or liability and the registration of the Society has been cancelled on the grounds that the activities of the Society constitute a public nuisance or are otherwise opposed to public policy.
- (ii) Karnataka – The proposal for amalgamation of Societies needs to be approved by votes of the members which are not less than three times the number of votes cast against the resolution. The proposal needs to be reconfirmed at a second special general meeting convened by Governing Body after an interval of thirty days. The dissolution requires approval of 3/4th of the members of a Society. However, if the State Government is a member or a contributor or otherwise interested in any Society, such Society shall not be dissolved without the consent of the State Government. The property which remains with the Society after the satisfaction of its debts and liabilities, shall be given to some other Society to be determined by the votes of not less than 3/5th of the members. The majority of the members may also decide to give such property to the State Government to be utilized for the purpose of formation of other Society.

- (iii) Madhya Pradesh – The dissolution to be decided by 3/5th of the members and to be confirmed by voting of equal number of members at a general meeting convened for the purpose. The provisions regarding property are the same as applicable in Karnataka, discussed above. However, the Registrar has also been given powers to cancel the registration on being satisfied that no useful purpose is likely to be served by continuing the Society and consequently the Society been deemed to have been dissolved. In such situation, the moveable and immoveable assets of the society shall vest in the State Governments to the extent of assistance/grant that the Society may have received from the Union or State Government or any of the statutory Bodies. It shall be the duty of the Collector of a District where the property is situated to take charge of the same on intimation of cancellation by the Registrar.
- (iv) Tamil Nadu – The amalgamation, division and dissolution of the registered Societies can be done by special dissolution and as per the Bye-laws. However, for amalgamation and division, prior approval of the registrar is required.
- (v) West Bengal – Two or more Societies can be amalgamated if so decided by the Governing Body of each such Society, if the proposal is approved by the votes of 3/4th of the Members of each of the Societies concerned and confirmed by like votes at a subsequent general meeting. However, prior approval of the Registrar would be required who can also order for modifications to be carried out in the proposal. An appeal against such orders of the Registrar lies with the State Government.

A Society may be dissolved by the votes of the 3/4th of the members at a general meeting convened for this purpose. No member to receive any profit upon dissolution and 3/4th of the members or in default thereof, by the Registrar, with the approval of the State Government can decide giving the surplus property to some other Society. The dissolution may also be ordered by the court on application of the Registrar or by not less than 1/10th of the members in case the Society contravenes any of the provisions of the Act, if the number of members is less than seven, if the society has ceased to function for more than three years, if the Society

is unable to pay its debt or meet its liabilities and if it is proper that the Society should be dissolved.

Also, where in the opinion of the Registrar, there are reasonable grounds to believe that a Society is not managing its affairs properly or is not functioning the Registrar may move the court for making an order for the dissolution of the Society.

6. Other Powers of the State Government and the Registrar

- (i) Karnataka – (a) The Registrar may on his own motion and shall on the application of the majority of the members of the Governing Body or of not less than 1/3rd of the members of the Society, hold an inquiry or direct some persons authorized by him to hold an inquiry into the constitution, working and financial condition of a registered Society. While doing so, he will have all the powers regarding inspection of the documents, issuing summons to any person, calling general meeting, etc. During the course of such enquiry if any person related to Society has been found guilty of misfeasance or breach of trust, the Registrar can make an order requiring him to repay or property along with the interest or to contribute such sum to the assets of the Society by way of compensation. This will be in addition to the criminal liability incurred under the Act.
- (b) The Registrar can also order for cancellation of registration and dissolution of certain societies if he satisfied that such society has been carrying on any unlawful activity or has allowed any unlawful activities within their premises.
- (c) The State Government is empowered to appoint an Administrator for such period not exceeding six months at a time (the aggregate period shall not extend beyond four years) in case a Society is unable to hold the General Meeting, the Governing Body has not been constituted and whether it is in the public interest to do so. The Administrator shall perform all duties and functions of the Society. He shall take necessary action to hold elections for the constitution of the Governing Body and convene the General Body meeting but for the reason beyond his control if is not able to do so, the State Government may order dissolution on his recommendations.

- (ii) Madhya Pradesh – (a) The Registrar has been given the powers to seize records, documents of the Society in case he is satisfied that these are likely to be tampered with or destroyed.
- (b) The Registrar may his own motion or an application made by a majority of the members of the Governing Body of the society or not less than 1/3rd of the total number members of the Society, either by himself or by a person authorized by him hold an enquiry into the constitution, working an financial condition of a Society.
- (c) The State Government may make order for supersession of Governing Body of any State aided society if it is not functioning properly or commits acts which are prejudicial to the interest of Society and appoint a person or persons to manage the affairs of the Society for a specified period not exceeding two years in the first instance. The period however can be extended from time to time at the discretion of the State level.
- (iii) Tamil Nadu – (a) The State Government has the power to order supersession of committee of any Society and appoint a person as the special officer to manage the affairs of the Society for a specified period not exceeding one year. The time period is extendable upto three years at the discretion of the State Government.
- (b) As is the case with the other States, the Registrar has the power to enquire into the constitution, working and financial conditions of a registered Society. Such enquiry can also be ordered on the basis an application moved by the District Collector. The Registrar has authority to cancel the registration on the basis of outcome of such enquiry.
- (c) The Registrar can also order cancellation of registration if any society is carrying on any unlawful activity or allow unlawful activity within its premises. After cancellation of registration, the society will be dissolved by special resolution and in case of failure to do so, the Registrar can appoint a liquidator to wind up the Society.

(d) The Registrar also has the power to remove the names of the defunct Societies from the register.

7. Offences and Penalties

Unlike the Societies Registration Act, almost all the State Acts contain provisions regarding offences and penalty on the office bearers and members of the society for contravention of the provisions of these Acts.

8. Appeal

Few State Acts such as Tamil Nadu and Madhya Pradesh contain the provisions regarding appeal against the order of the Registrar. In Madhya Pradesh, the appeal against the order of the Registrar lies with the State Government and appeal against the order of the subordinate officers lies with the Registrar. In case of Tamil Nadu, the appeal against the order of the Inspector General of Registration can be filed before the State Government. In case of the orders of any other person, the appeal would lie with the Inspector General of Registration and any person aggrieved by any order made by liquidator may appeal to the Court.

List of Reports Submitted by the Second Administrative Reforms Commission upto August 2008

1. First Report: *Right to Information: Master Key to Good Governance*
2. Second Report: *Unlocking Human Capital: Entitlements and Governance
– A Case Study*
3. Third Report: *Crisis Management: From Despair to Hope*
4. Fourth Report: *Ethics in Governance*
5. Fifth Report: *Public Order – Justice for All . . . Peace for All*
6. Sixth Report: *Local Governance – An Inspiring Journey into the Future*
7. Seventh Report: *Capacity Building for Conflict Resolution – Friction to Fusion*
8. Eighth Report: *Combatting Terrorism – Protecting by Righteousness*



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