

# A CRITICAL ANALYSIS OF OFFENCES AND PENALTIES UNDER KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959

**P. Sumana\***

Research scholar

## *Abstract*

*Dushta Shikshana Shishtha Rakshana* the phrase from Bhagavad Gita is just not a simple line but a theory in itself. This theory which conveys that the bad shall be punished and the good shall be protected is the jurisprudence behind every law. The law is made to safeguard the righteous person, protect him from bad elements. This article is an effort to look into the chapter of offences and penalties under Karnataka Co-operative Societies Act 1959 from the angle whether the penalties are consistent with theory of punishment and also the available alternative if an offence has no mention under this Act. The offences and penalties have been looked from the angles of Jurisprudence as well as criminal legislations.

## **1. Introduction**

Like many other enactments Karnataka Co-operative societies Act 1959 also has in it provision for offences and penalties under chapter 14. It categorizes as to what practice amounts to an offence and what is the penalty for the same.

In this article an effort is made to look into those provisions from the perspective whether the penalties have the expected impact on the wrong doer.

First and foremost the word offences and penalties need some analysis. When we say offence, it is defined “an offence denotes a thing made punishable by this code”<sup>1</sup> under section 40 of IPC. It also offers an explanation that whatever is punishable is the effect or consequence of the act committed or omitted.

We could possibly say that an offence is an act of commission or omission entailing punishment under the act. Any act of a human being which is prohibited by law is deliberately or unknowingly done; it amounts to an offence through commission. Whenever a certain behaviour or act is supposed to be done by law and if it is omitted that also is categorized as an offence.

Definition of offence given in the legal dictionary is “a violation of law including all crimes and misdemeanour as well as every kind of contravention and also a violation of established rules of morality or proper conduct”.<sup>2</sup> The word offence is derived from the Latin word ‘Offendere’, which means “Strike against”. Whenever anybody breaks a law or a rule, it is an offence against that law or rule.<sup>3</sup> Offence is doing that which a penal law forbids to be done or omitting to do what it commands, in the sense that is nearly synonymous with crime. In a more confined sense, it may be considered as having the same meaning with

---

\*Research scholar pursuing Ph.D under the guidance of Prof. Dr. P. Ishwara Bhat from University of Mysore

<sup>1</sup> B M Gandhi ;Indian penal code; Chapter on general explanation Section 40,(3 Eastern book company) at 63 and 64

<sup>2</sup> Harimohan Sinha ; Legal Dictionary (Pioneer Books 1995) at 142

<sup>3</sup> WWW Vocabulary.com /Dictionary

misdemeanour<sup>4</sup> Offence as per the Black's law dictionary is a "crime or misdemeanour", a breach of the criminal laws.<sup>5</sup>

When we look at the definitions of law, the most appropriate one is that which says that it is a set of rules made by man to regulate the behaviour of the individual coupled with penalty. Any law which does not speak about the repercussions of its violation will not perpetuate. Any law if, simply made without sanctions will not have the desired effect, as its violators will walk scot free.

As rightly said in one of the decisions of Bombay High Court in the case, High Court of Judicature at Bombay V/S S. R. Patil<sup>6</sup>, "law is a means to an end and Justice is that end. But in actuality, law and justice are distant neighbours, sometimes even hostile. If law shoots down justice, the person shoot down the law and the lawlessness paralyses development, disrupts order and retards progress."<sup>7</sup> Penalty is the effect of committing an offence. Whenever an offence is committed the ultimate justice will be the penalties slapped on the offender. It is the price what is paid for an act or omission which could be called as liability. Liability or responsibility is the bond of necessity that exists between the wrong doer and remedy of the wrong. Where the remedy is civil, the party who has been victim has the right to demand the redress allowed by law and the wrong doer has a duty to comply with it. In case of a criminal remedy the wrong doer is under a duty to pay such penalty as the law through the agency of the Court prescribes.<sup>8</sup>

While researching on the subject of co operative societies the obvious questions that arose was regarding the effectiveness of co operatives or the impact of them whether socially or economically. When looked in to the non effectiveness of the existing laws then the wrongs and the punishment for the same within the sphere of co operatives has to be looked in to.<sup>9</sup> This is where the need was felt to highlight the existing offences and penalties. Hence, this article on offences and penalties.

## **2. Methodology**

The analytical research method is adopted where the offences and penalties are analysed in the light of existing **law** on co operatives. The Karnataka co operative societies Act 1959 as well as the Souharda Sahakari Act 1997 has been analysed as to its effectiveness in terms of offences and penalties. The primary data being books, original gazette notifications and secondary data like articles, journals, internet sources have been utilised.

## **3. Analysis of offences and penalties under KCS Act 1959**

The birth of Karnataka co operative societies Act was more of a necessary action on the part of the legislature than a thoughtful one. Due to the re organization of states it was a requirement that the law on co operative societies shall be enacted as early as possible. It was done on the same lines of the central enactment which prevailed earlier and also on the recommendations of the rural credit survey committee. The principle of state partnership in co operative societies and state participation in their management has been accepted and incorporated in the legislation.

After these analysis of definition and meaning of offence and penalty coming to the

---

<sup>4</sup> www.legal. Dictionary. free dictionary.com

<sup>5</sup> The law dictionary.org featuring Black's law dictionary free online legal dictionary; ed 2

<sup>6</sup> (1997) 6 SCC 399

<sup>7</sup> B M Gandhi ;Indian penal code; Chapter on general introduction; third edition ; Eastern Book Company; p 1

<sup>8</sup> Salmond on jurisprudence, edited by P.J. Fitzgerald; ( 12, Sweet and Maxwell)at 349

<sup>9</sup> http:// legal crystal.com

Karnataka Co-operative Societies Act 1959 Chapter on offences and penalties, Section 109 speaks about offences.<sup>10</sup> The section has twenty one clauses defining the offence and prescribing the penalty for the same.

This section goes to explain that without the approval of the State Government no person is supposed to use the word 'Co-Operative' as it sends a wrong signal to the public at large. Co-operative has a bigger and elaborate meaning attached and cannot be used casually with all kinds of business. This is an offence through commission, which means that offence is committed by doing something.

The latter part of the section speaks about the sanctions or the penalty for the offence. It says that the penalty shall be in the form of fine and the limit is also fixed at Rupees Two Thousand. But the question that arises is whether this penalty is sufficient to stop this kind of offence. The purpose of any punishment, according to the theory of Punishment should be the deterrence or the reform or doctrine of proportionality.<sup>11</sup>

But looking at the penalty or punishment under section 109(1), it is difficult to assure that it really helps in stopping the commission of the offence. The mere two thousand Rupees penalty probably is not sufficient to stop people from using Co-operative tag and thereby cheating people even though for a short time. When we analyze the section, a person has no reason other than to deceive people with the word 'Co-operative' attached to his business. Hence the doubt arises whether Rupees two thousand is enough to stop that person from committing this offence yet again or is it enough to bring in some repentance which does not allow him to do it again. Even if he has cheated five persons by using the word Co-operative what is the remedy for them, is not spoken about.

The next provision under clause (1A) of section 109 makes it mandatory for the office bearers of the co operative to give effect to any order made by the Registrar within a specified time of with regard to admission of members to the society. Here the sections 105A(3) comes in to picture where the Registrar has the authority to either grant or deny admission to new members where in the admission has been denied by the co operative at the first instance. But once the Registrar orders whether to grant or refuse admission. This is a provision which insists the execution of the order made by the Registrar. It is to avoid inordinate delay in execution of order pertaining to admission to co operative society.

Section 109(1A) specifies that in case of default on the part of office bearers of co operative society giving effect to the order of the Registrar within the period specified in subsection 3 of the section 105 A, the co-operative society and every office bearer of the society who is in default shall be punishable with fine which may extend to Rupees One thousand or further fine which may extend to One hundred Rupees for every day after the first, during which the default continues. This provision has to be read along with section 105 specifically clause (3).<sup>12</sup>

Section 109(1A) is rather an extension of section 105A (3) which penalizes for not giving effect to the order of the Registrar. It thereby casts duty upon the Co-operative Society or its office bearer to abide by the order of Registrar in matters of admission of members which has been challenged. The effect of not adhering to orders culminates in paying a fine of Rupees

---

<sup>10</sup> Karnataka Co-operative Societies Act 1959; Bare Act

<sup>11</sup> B M Gandhi; IPC; appendix 3, Penology a Brief outline edition no 3 Page 769

<sup>12</sup> Karnataka Co-operative Societies Act 1959 section 105A - Appeals relating to admission of members to societies clause (3) The Registrar shall after causing reasonable notice to be given to the co-operative society and also to the person seeking admission and giving them a reasonable opportunity to make their representations, if any in writing by order direct either that the person shall be admitted by the co-operative society or that he need not be admitted by the society and in the former case the co-operative society shall give effect to the decision within 10 days of the receipt of the order

One thousand or if there is an inordinate delay, every day a fine of Rupees One Hundred could be levied on the office bearers of whoever is responsible on behalf of the Co – operative. This penalty under 109(1A) seems justifiable as it pushes people work towards carrying of the orders of Registrar.

The next sub section puts a bar on disposal of property by a member which includes the legal heir, legal representative as well as nominee. Section 109(2) stops disposal of any such property belonging to member in the event where society has the first charge on it owing to the transaction between the member and co operative society.<sup>13</sup> The section is applicable when there is contravention with sections 32 and 33 of KCS Act wherein, 32 relates to first charge of co operative society on certain assets. Agricultural crops, cattle, agricultural or industrial machinery, land all these can be the assets on which the co operative may have the first charge. There is an exception also provided under section 32 that, if the co operative permits for such disposal then it is valid but otherwise such disposal would be void. , shall be punishable with fine which may extend to Rupees five thousand.

Section 32 Creates a charge on livestock as well as agricultural products or any Industrial asset which the member or past member or deceased member owns, in case of a loan taken by such member. This is nothing but a provision to secure the loan. But it also says in contrary, if such asset is transferred for any reasons in spite of having charge on it, then such transfer shall be void.

But in the event of the government through land revenue or any money recoverable as land revenue then the Government shall recover first from such asset belonging to the member of Co-operative Society and then the Co-operative Society shall recover the loan. Such loans from the government may be through Karnataka Land Improvement loan Act 1963 or Karnataka Agriculturist Loan act 1963. Once the charge is created on such assets, it shall not be transferred. Section 33 speaks exclusively about such charge on land. The proviso to section 33 also specify that such land on which charge is created can be mortgaged to Government or agricultural rural development bank or even the co operative may release the charge if the financing bank approves.

Both Section 32 and 33 speak about the circumstances in which charge on property of a member is created and such member may be present or past or even deceased, in the event of loan granted to him the property is charged as security for repayment of loan. Such property includes land, livestock, Agricultural products, Industrial raw materials, finished products. Once the property is charged, transfer of the same becomes impossible. In the event of fraudulent transfer it stands void.

Coming back to Section 109(2), it penalizes anyone who tries to alienate the property under charge due to loan granted by the Co-operative. But the fine levied is Rupees five thousand which is maximum. Again if we think of a hypothetical situation where someone transfers the charged property to someone who takes it for a price, the transfer no doubt will become void, but no mention as to remedy for the third party who has paid a price. If the member or his heir is not able to give back the money received under transactions, there is no remedy. The fine, Rupees Five thousand is probably is a meagre sum for such an offence.

Liability which means and implies responsibility for an act or omission, as the bond of necessity that exists between the wrong doer and the remedy for the wrong.<sup>14</sup>

But whether provisions under Karnataka Co-operative Societies Act 1959, are effective in affording the right and punishing the wrong adequately.

---

<sup>13</sup> [www.souharda.coop/co\\_kar.html](http://www.souharda.coop/co_kar.html)

<sup>14</sup> Salmond on jurisprudence; edited by P.J. Fitzgerald ; ( 12, Sweet and Maxwell) at 349

The next clause under section 109 is the duty cast upon the co operative society to always furnish the correct information whether it is connected to filing of return or any information required by any authority. It also insists that no summons or requisition or order issued shall be disobeyed. This provision of law is a moral obligation covered with legal wrapper. It is a moral duty for everyone not to lie either by words or document, the same holds good for even co operative management. The section prescribes the punishment for such act of office bearers with imprisonment which may extend to two years but shall not be less than three months and with fine which may extend to Rupees three thousand but shall not be less than Rupees Five hundred. This provision is nothing but the one which insists on the duty that needs to be carried out as the office bearer or member of the Co-operative society.<sup>15</sup> When a person is expected to act upon some orders or summons or requests, he cannot simply sleep over it. If he fails to act at that time he shall face the consequences for the same. But this section is quite tough in imposing the punishment with fine as well as imprisonment. Humans may not be disturbed by the fine at times but imprisonment definitely has certain impact. Imprisonment brings along with the permanent black mark on a person's Character as well as his career.

The next clause deals with a situation where the third person along with co operative society and member is also duty bound to abide by law. Under section 109(4) a duty is cast upon an employer to make deductions from the salary of the employee if such employee is obligated to pay the co operative society. Such third person the employer is not only bound to make deductions but also deposit the same with the co operative within fourteen days of such deduction. Section 34 relate to deduction from salary to meet society's claim. This section 109(4) also prescribes punishment with imprisonment for a term which may extend to three months or with fine which may extend to Rupees three thousand. The situation could be either, the member has taken a loan from the Co-operative or has to pay for certain services and he is employed in any other office. Then an agreement can be made between employer and member in favour of the society. Instead of the member collecting his salary and then paying up the amount to the Co-operative, it can be directly deducted by the employer or the agency which pays his salary and such deduction should be directly transferred to the Co-operative. In fact this provision strengthens the process of repayment of loan or any advance or debt or any other financial transaction between the members towards the Co-operative society. It makes the member more responsible towards the repayment. Section 109(4) further enforces the penalty that such employer who is bound by the agreement to deduct, if fails to deduct or more so deducts but fails to transfer to society within fourteen days shall be punishable with imprisonment or with fine. It seems like employer is taking an additional responsibility if he enters into such agreement. Along with the member his employer also owes a duty towards the Co-operative Society. In a way this provision ensures the repayment of the money to the society utilized by the member but also makes a third party guarantee the same.

---

<sup>15</sup> Sahakara.kar.gov.in

#### 4. Case law analysis:

*Sudhir Vishnu Panvalkar v. Bank of India*<sup>16</sup>

The appellant on February 9, 1961 was appointed as an Officer in Grade III in the respondent Bank. He was promoted on April 1, 1968 to the Grade officer in the Foreign Exchange Department in the Head Office of the Bank. In 1964, Manoj Co-operative Housing Society was formed of which the appellant was one of the chief promoters and thereafter its Secretary. The object of the Society was to construct residential premises for the employees of the Bank and its other members. A complaint was received in respect of the affairs of the Society relating to misappropriation of the funds of the Society and consequently, in exercise of the powers under Section 83 of the Maharashtra Co-operative Societies Act, the Registrar on April 23, 1969 instituted an inquiry. The report holding the appellant and two other office bearers of the Society negligent in dealing with the funds of the Society causing a loss to the tune of Rs. 3, 59,000 was submitted to the Registrar. The Government initiated a fresh inquiry annulling the report of the Registrar. At the same time criminal complaints in the Court of Addl. Chief Presidency Magistrate, Bombay alleging that the appellant and two other office bearers of the society had dishonestly misappropriated a sum of Rs. 51,000/ and Rs. 80,000/- respectively which was entrusted to the appellant in his capacity as Promoter and Secretary of the Society and thereby committed criminal breach of trust were initiated. The Magistrate framed the charges against the appellant under Sections 409 and 109 of the Indian Penal Code. The Bank having regard to the serious misconduct of the appellant involving moral turpitude on 3rd November, 1970 suspended the appellant while the case was pending. Mean while the enquiry report submitted to the Registrar made the appellant liable to the tune of Rs. 430,000. There were parallel cases going on for misappropriation and criminal breach of trust. The appellant was terminated from services of the bank. He challenged the same before the single Judge at High Court of Bombay and the decision was in his favour and his re instatement was ordered. Then an appeal was filed by the bank where the earlier decision was over ruled. So the appellant approached the Supreme court but, the Apex court upheld the decision of the division bench of High court which held that the appellant was guilty and his termination was right according to law.

What we need to understand is that the issue of misappropriation is taken as a serious offence and the remedy may not be restricted to co operative law only but can be sought under Indian penal code also.

The clause (5) under section 109 mandates that any violation in terms of persons who qualify to be members as stipulated under section 16, where there is transfer of interest on death of a member as stated under section 24(1)(b)(ii), requisition by the Registrar to hold a special meeting [sec 28] , in matters of funds other than net profit not to be divided [sec 56], regarding investment of funds in specified financial institutions [sec 58], restrictions on borrowing [sec 59], restrictions on taking loan loan[sec 60] shall be punishable with a fine up to three hundred rupees. This probably is not at all a effective penalty looking at the consequences of such violation. All the above mentioned violations have effect on the economic situation of the co operative but the penalty is no way near to deter such offenders.

---

<sup>16</sup> [1997] SC 510

In the next clause under section 109 violations regarding admissibility as stated under section 17, members exercising rights without the due amount being paid to the co operative as under section 19, wilful misrepresentation as per section 87(3), grants a lease of already mortgaged property stipulated under section 95(1) are punishable with imprisonment up to three months or fine up to three thousand rupees.

This provision again takes a very lenient approach towards the offences of wilful misrepresentation, knowingly mortgaging the property without the right to do so are all treated very lightly. There would be no impact of such penalty. When any person is disqualified to be a member owing to the conditions under section 17(2) then he cannot in any way become the member of a Co-operative and in case he does, then it has to be through a fraudulent manner which is unacceptable under law. Member cannot exercise any right as a member unless he has made payment to the society in respect of membership or has acquired such interest in the society, as may be specified in the bye-laws. So unless specified amount is paid to society, the member though has applied to be a member cannot in the true sense become a member. In spite of not paying of prescribed amount if he exercises his rights as member of Co-operative society he shall be penalized for the same.

Section 87(3) comes under the chapter Agricultural and Rural development Bank. It has to be understood that Agricultural and Rural development Banks mean a Co-operative Registered or deemed to be registered under KSCA 1959 and admitted as member of the state Agricultural and Rural development Bank and includes such class or classes of Co-operative societies as may be notified by the Registrar and admitted as members of state Agricultural and Rural development Bank. The whole of the chapter on Agricultural and Rural development Bank shall apply to Co-operative Banks advancing loan either on security or mortgage of the lands or by hypothecation of the agricultural Machinery or other assets created out the loans for the purposes as may be notified by the Government., in this behalf from time to time. **(Section 76A)**

Under this chapter section 87 speaks about right of Agricultural and Rural development Bank to pay prior debt of the mortgager.

It means that when a mortgage deed is executed in favour of Rural development Bank for payment of prior debts of the mortgager, the bank shall through a notice in writing, intimate such persons to whom such debt is due, receive payment of such debt from the proceedings of the transfer of such properties.

Section 87(3) is as follows

For the purpose of determining the particulars of prior debts referred to in subsection(1) any office of the state Agricultural and Rural development Bank or of the Agricultural and Rural development Bank authorized in this behalf by the state government., by notification in the official Gazette, may subject to such restriction, limitations and condition as may be prescribed, by order in writing require any person to whom any such prior debt may be due, to furnish any information or document relating to such debt and thereupon such persons shall furnish the information or document so required.

This section casts a duty on the authorized person of the Bank to procure necessary documents or information from the person to whom the prior debt is due and also binds such person to furnish the same.

So, Under section 109(6)(iii) if any one owing to the provisions under section 87(3) does not furnish the necessary details or information or documents, then such person shall be punished.

The next mention is of section 95(1) which permits the mortgager to lease the property mortgaged, but with a condition that such lease should be for a maximum of 5 years.

So if any member or person violates or acts in contradiction and does any of the above said provisions shall be liable for punishment with imprisonment or fine. But yet again the question arises that for an unlawful act involving transfer of property and repayment of debt, whether the imprisonment term is a deterrent or the fine with maximum limit of 3000 sufficient.

It is probably because of the reason that these penalties are not really stringent, that people do not find it a real deterrent and often repeat it to make some fast cash or escape liability. There is a category of persons who are not eligible to vote though they are members. They are categorised under section 20(2) which can be termed as restrictive provision. Such members include nominal member, defaulter and a member who has not completed even one year in the co operative society. If they are allowed to vote then it is an offence and attracts penalty of fine extending up to 3000 rupees. The violation stated above normally happens during elections where a candidate accumulates more votes by such unlawful method.

So, under this clause that is, section 20(2)(a)(a-i), (a-ii) and (a-iii) the defaulters are listed, it includes the nominator or associated member, an individual who is a defaulter, persons from Life Insurance Corporation of India, State Warehousing corporation and such other institutions which are approved by the state government who become defaulters, a firm, a company or anybody corporate constituted under the law for the time being in force including a society registered under Karnataka Societies Registration Act, who are defaulters, a market committee established under Karnataka Agricultural Produce Marketing (Regulation) Act 1966 who are defaulters and a local authority which for the purpose of this act means and includes a municipal corporation, Municipal council, Town Panchayat, Zilla Panchayat, Taluk Panchayat, Gram Panchayat who are defaulters.

Along with the above listed persons or body corporate who has no right to vote, a person who has not completed a year as a member also does not have the right to vote, but this cannot be applied to a co-operative society which is just one year old.

The financial situation of the co operative is very significant in analyzing the progress of the co operative. If a person collects money on behalf of co operative as share capital but does not deposit the same in the co operative bank specified is an offence under section 109(8) is punishable with an imprisonment for a term which may extend to three years or with fine which may extend to 3000 rupees. This is a very important aspect where there are umpteen number of chances that the public money can go to wrong hands, this is also a procedural aspect that is made mandatory. Thereby it is assured that money is not accumulated for a long time and it is deposited from time to time. Most of these frauds happen in the same way but looking at the penalty, it looks very meagre, in the event of a person who has cheated a co-operative society with crores of rupees, and he can always get away with three years of imprisonment or even through a fine of 3000 rupees. Once he is out of the prison, he can even enjoy that amount, or even if he has swindled rupees 50000 paying rupees 3000 as fine is not a difficult task.

It is a matter of hierarchical power that whenever there is a requirement to furnish official details the responsibility of the concerned person is to abide by it if not there arises a doubt if something is wrong or being hidden. The same is enunciated under section 109(9) which insists on office bearer or member of a co-operative society who is in possession of any information, books and records fails to furnish such information or produce such books or records or to give assistance to a person appointed or authorized by the state government or registrar or director of co-operative audit under section 30, 31, 63, 64, 65, 65B and 73, and

entitled to the possession thereof shall be punishable with fine which may extend to rupees 3000.

It is like disobeying the orders of the state or people authorised by the state if the information possessed by the co-operative is not furnished. In the above section there is a mention of sections 30, 31, 63, 64, 65, 65b and 73.

Section 30 deals with supersession of committee in case of default or negligence in the performance of the duties imposed on it by the act or rules or by-laws or commits anything in contrary to public interest or not functioning, then after giving sufficient opportunity to state its objection the Registrar then by order in writing, remove the head committee and appoint an administrator to manage the affairs but for a period not exceeding 6 months. Such administrator shall be controlled by the registrar. The administrator shall also arrange for the constitution of a new committee after holding an election in accordance with this act. The govt. holds the power to specially give direction with regard to reservation for backward classes for the purposes of securing proper implementation of any development programs if such services come under any co-operative society. Under section 31, registrar if convinced that co-operative is not functioning in accordance with the provision of the act or by-laws, on account of shortage of members in the committee to form a quorum for reasons like death, resignation, removal or any other reason then he can appoint a special officer for such a co-operative society for a period not exceeding 6 months. Section 63 speaks about audit which makes it mandatory for every co-operative to be audited once a year. Such audit includes examination of overdue debts, verification of cash balance and securities, violation of assets and liabilities. It also includes inspection of books of accounts, documents, papers, properties under the guidelines of the audit. All the documents required by the director of audit or his authorized person shall be furnished by the office bearers of the co-operative within two months from the end of financial year, the co-operative shall prepare the balance sheet of the year passed by. Section 64 deals with inquiry by the registrar. The registrar may by his own motion or his authorized person holds an enquiry into the issues of constitution, working and financial condition of the co-operative. Under section 65 registrar may on his own motion or on application of a creditor of a co-operative society to inspect or direct any authorized person to inspect the books of the society under section 65b, the credit agency to whom the co-operative is indebted or a request of financial assistance has been applied to can also have the rights to inspect the books of such co-operative. Section 73 discusses about liquidator who comes into picture while winding up and dissolution of co-operative societies. Where the registrar has already passed an order for winding up under section 72, he may appoint a liquidator for the purpose and also fix remuneration for him. For disobedience for all these records, information, books to be furnished, the office bearers shall be liable for punishment.

*State of M.P. and Others v. Sanjay Nagayach and Others*<sup>17</sup>

In this case the subject of supersession was discussed in detail by the Supreme Court. The issue here was the supersession of the Board of a bank. The factors to be considered was that the board was superseded after two and a half years of giving show cause notice. When it relates to the banking co operative the Madhya Pradesh co operative societies Act specified that meaningful consultation shall happen with RBI before ordering supersession. At the same time the proviso to section 53 of the Madhya Pradesh co operative societies act also

---

<sup>17</sup> Civil Appeal NO. 4692 of 2013

provided that if the RBI does not reply within one month regarding the supersession then it is deemed to have accepted the same.

While ruling the Judgment in favour of the Board Supreme Court also discussed at length the meaning of meaningful consultation and supersession in detail. Supreme Court came up with certain guidelines with regard to supersession. Those were

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

Section 109(10) deals with office bearers who fail to handover the custody of books records, cash securities and other properties belonging to the co-operative. This is a kind of continuation of section 109(9) which speaks about furnishing any information or books when ordered. In this connection if any books, documents or records are ordered to be handed over then it must be complied with and also such office bearer could be punished with imprisonment of three years or a fine of rupees 3000.

In continuation of the same line of behaviour under section 109(11) , If any member or office bearer wilfully fails to comply with any decision, award or order passed by the registrar or arbitrator or tribunal, shall be punished with Imprisonment for a term which may extend up to one year or a fine of rupees 3000.

Under section 109(12) any office bearer or a member of co-operative society who wilfully recommends or sanctions for his own personal use or benefit or for the use or benefit of a person in whom he has interest, a loan in the name of any other person, shall be punishable with imprisonment for a term of one year or with a fine with an extent to rupees 3000 or with both.

Section 109(12A) this section makes the person conducting audit or inspection or enquiry under section 63, 64 and 65 respectively, responsible or liable for punishment if they omit wilfully some defect or irregularity or even report something false. So the responsibility of filing a proper audit lies on both the co-operative as well as the authority conducting it. The punishment could be imprisonment up to 6 months or a fine up to Rupees 3000 or both.

Section 109(12) Casts responsibility on a chief executive of the co-operative who has to periodically file extracts of the cash book, certified copies of the proceedings of the general meeting and committee meeting to registrar financing bank or credit agency within the specified time under section 29G (6) which prescribes that the monthly report shall be sent

within 15 days of the next following month and the proceeding of the meeting shall be sent within 15 days of such meetings being held. In the event of the chief executive not performing his duties then he shall be liable for punishment with imprisonment up to 6 months and fine up to 3000 rupees or both.

As per clause (13) of section 109 any co-operative society or any office bearer or employee or any paid servant thereof who fails to give effect to any such decision or award under section 71 including order if any, passed by the appropriate appellate authority, such decision or award not being a money decree, shall if such failure is by the board, be punishable with fine which may extend to 5000 rupees. Section 71 deals with disposal of disputes, which has to be executed. When the disputes are disposed it is the duty of the office bearers or paid employees of co-operatives to execute it, as ordered. The board collectively, as well as office bearers individually become liable for not executing the order. When the order is not carried out it simply means that there is no meaning for such order. Such order is passed by an agency equivalent to the court hence the respect or binding it has shall be treated as a court order, if by any reason it is not given to effect then the penalty is obvious.

Under clause (14) of section 109 a member of the committee of the co-operative society who uses or allows the use of properties or funds of any co-operative society otherwise than in accordance with the provisions of this act, the rule or by-laws of the society shall be punishable with a fine which may extend to Rupees five thousand.

The co-operative society is formed and run by group of people because they are like-minded. The bye-laws are formed so that it stands as guide line to every member as to what can be done and what cannot be done. The committee is formed so that day to day activities can be carried out without any trouble. When it comes to the property of the co-operative society, the committee members should never think that it is their own or resembles personal. The property for instance, is a wedding hall which shall be given to a particular group or say only the members of co-operative according to bye-law it shall be done in the same manner. The wedding hall cannot be given to anybody else who do not come under the categories mentioned in the bye-law. If such a thing happens, then it obviously raises a doubt if such committee member is taking undue advantage of his position and also trying to do some favours to someone for certain gain. Therefore such acts are also brought under the heading of offence.

The corrupt practices in co operatives are dealt under Section 109(15). This section speaks about corrupt practices in co-operatives. Receiving or sanctioning a benami loan, accepting or obtaining or agreeing to accept or attempting to obtain from any person for himself or for any other person, any gratification other than the legal remuneration or a motive or reward for doing or for bearing to do any official Act, is considered as corrupt practice. Favouring or disfavours any person which is not according to Act, rules and bye-laws is also considered as corrupt practice. Using of co-operative society's funds in any other manner not according to Act, rules and bye-laws also amounts to corrupt practice.

Such corrupt practices are punishable with imprisonment up to one year and fine up to five thousand rupees. But, the disqualification of such persons from entering any other co-operative society is the much stringent penalization than the punishment of fine and imprisonment.

In yet another case *Chief executive officer, Krishna district Co operative central bank ltd and another v. K. Hanumantha Rao and another* <sup>18</sup>The Supreme court upheld the punishment awarded to the respondent for misappropriation of public money to the tune of forty six lakh of rupees. Here the wrong on the part of the offender was that, he did not discharge his duty

---

<sup>18</sup> Civil Appeal NO. 11975 OF 2016

properly which led to such swindling of the money. The doctrine of proportionality was explained. The apex court rightly upheld that the punishment should be proportionate to the offence committed.

Section 109(16) is perhaps the widest in application as it prescribes penalty for any other kind of offence which has not been referred to in the Act and offence shall be punishable with imprisonment up to three months or a fine up to five thousand rupees.

The amendments made to Karnataka co operative societies Act 1959 during 2012 added five more clauses to section 109. Clause (17) specifies that the members of the board who fails and the chief executive who fail to submit the accounts and the information required by the auditor as per section 63 within the stipulated time shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to five thousand rupees or with both.

Clause (18) specifies that failure to conduct audit and present the report at the annual general body meeting attracts penalty of imprisonment up to six months or fine up to ten thousand rupees.

Clause (19) stipulates that failure to file annual returns with Registrar would be punishable with imprisonment or fine up to five thousand rupees.

Clause (20) relates to failure to furnish the necessary books, records to election commission when the elections are to be held is treated as an offence with imprisonment and fine to the tune of ten thousand rupees.

Clause (21) penalises those who resort to corrupt practices during elections which may be imprisonment or fine up to ten thousand rupees.

When section 109 is looked at in total, from subsection 1 to 21, the offences fall under both commission as well as omission.

Section 110 deals with offences by companies:

Where an offence under 109(1) or (4) is committed by a company. Every person who, at the time the offence was committed being in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

But there is also an exception, that if proven that the offence was committed without his knowledge or that in spite of exercising due diligence, things have gone wrong, then such persons may not be penalised.

Under section 110(2) if proven that the offence was committed due to the negligence of any director, manager or any other officer of the company then such persons shall be penalised.

When we look at some of the cases, with regard to offences committed in co-operative societies we can clearly make out that though the penalty prescribed under the KCSA 1959 is not very harsh or even lacks deterrence, the courts have gone ahead and penalised them under Indian Penal Code. There by it is proved that the offender does not take shelter under the co-operative societies Act and get away with it. These cases provide the answer to question raised in this article while discussing the offences.

*Waman Sambaji Duka v/s Narahari Sambaji Rao Phatala*<sup>19</sup>

In this case the accused was an officer of co-operative societies and the offences which are alleged against him are supposed to have been committed by him during the course

---

<sup>19</sup> AIR 1968 Bom 124

of his duty as an officer of co-operative society. The accused was prosecuted under sections 406, 467, and 420 of the IPC, punishment for criminal breach of trust, forgery, of valuable security, wills etc. and cheating and dishonestly inducing delivery of property respectively. Though the accused was prosecuted under IPC, the wrong committed by him fell under Maharashtra co-operative societies Act, as he committed the offence during the course of his duty. The accused filed a revision petition to stay the criminal proceedings and try him under co-operative societies Act, for which the offences had to be first tried by the Registrar of co-operative society and then further appealed.

The accused was charged with the offence of forging of a loan bond which could be tried under Section 146(p) of Maharashtra co-operative societies Act 1960, but the other two offences misappropriation and cheating are not covered by the Maharashtra co-operative societies Act.

Now the interesting question that arose was, if the accused is tried under co-operative societies Act then his punishment would be far less than the punishment under IPC, but then, he committed all the offences while holding the position of officer in a co-operative society. But then the court rightly came to the conclusion that no provision under co-operative societies Act suggests that an offence which does not have a mention in the co-operative society Act shall not be tried under any provision of laws of the land. The Bombay general clauses Act even suggest that the accused shall not be made liable for the same offence twice. If an Act constitutes offence under IPC and co-operative societies Act, it is open and permissible for the prosecution to choose to prosecute under provisions of IPC alone. When that is the case there arises no necessity of obtaining any sanction from Registrar of co-operative society or the State Govt.

Hence in this case, the accused was tried under IPC relying on Supreme Court decision in case *Chandrika Sao v/s State of Bihar*,<sup>20</sup> where the Apex court held, the appellant had committed the offence under Bihar sales Tax Act 1947 as well as IPC. He could be prosecuted for either or both at the discretion of prosecution. When he was prosecuted under IPC it could not be said to have done something which was unwarranted by law. If an offence under IPC was a grave one than the one under Tax Law, in choosing to prosecute the appellant for a graver offence under general law is said to be absolutely right. If the prosecution were to be so restricted, graver offences would go unpunished.

The situation in *Waman Sambaji Duka*, case was more or less similar. Hence the Bombay HC dismissed the revision petition, with the justification. The Maharashtra co-operative societies Act is mainly interested in proper administration and functioning of the co-operative societies. Several offences have been created under the Act only with a view to see that the administration of the co-operative societies remain as clean as possible. There is a possibility that dishonest people may wantonly undertake prosecutions against officers. It is certainly not the function of the co-operative societies Act that the graver offence should go unpunished and the accused should be prosecuted only under the lesser offences.

This probably is an answer to the question whether the punishment under co-operative societies Act is sufficient. It is now settled that depending on the gravity of the case the courts can impose penalty which goes beyond the co-operative societies Act.

In a step further, a case was registered during 22-12-2005 by CBI against Registrar of co-operative societies, New Delhi, Asst Registrar (North –West Zone) and others in the Kandhari Co-operative group Housing Society, where they were charged with criminal conspiracy, cheating and forging for reviving the co-operative society<sup>21</sup> The punishment was three years rigorous imprisonment. So this only shows that if a more stringent

---

<sup>20</sup> AIR 1967 SC 170

<sup>21</sup>[http://cbi.nic.in/pressreleases/pr-2016-6-16\\_1.php](http://cbi.nic.in/pressreleases/pr-2016-6-16_1.php)

punishment is available in any other Act then the persons charged can be booked under the same and not compulsorily only under co operative enactment.

In 2006, the High court of Delhi directed the CBI to conduct investigation in the matter relating to 135 co-operative group housing societies owing to writ petition 10066/2004. It was alleged that during 2002-03, Narayan Diwakar the then Registrar of co-operative societies, Asst Registrar and others in the office of RCS Delhi entered in to criminal conspiracy with a private person Srichand and other unknown persons for reviving a defunct society namely SIEMENS co-operative group housing society. Here forged and false documents were submitted to RCS and the officials recommended for allotment of land on the basis of these fake documents, thereby giving undue pecuniary advantage.

Eight people including the registrar were sentenced to rigorous imprisonment. In yet other incident of CBI being brought in during 2013, rigorous imprisonment of seven years was pronounced along with fine to the tune of eleven lakhs. This was again relating to housing co-operative called Satyam.<sup>22</sup>

*M.G. Gangadharappa v. State by Lingadahalli Police*<sup>23</sup>

In this case which came before HC of Karnataka, the petitioner was employed as secretary of Vyasraya Seva Sahakara Sangha Niyamita, Lingadahall, from 1983 to 88. During the audit conducted for the year 1987-88, the purchase of rice to the tune of 50 quintals and 60kgs. Amounting to Rs. 9740/-was not taken into stock register and no mention was made in cash book. Another purchase of rice to the amount Rs.7700/-was also not recorded. So, according to the audit report there was misappropriation by the by the petitioner. As per the authorisation made by Asst. Registrar, the complaint was filed at Lingadahalli police station. But the defence in the court was taken under the definition of public servant as under section 21 of IPC and therefore charges under section 409 of IPC and cannot be levied. The court held that petitioner was a salaried employee as per KSCA1959, and also said that section 21 is very wide in its application and cannot be construed in a restricted manner and thereby it included officers and servants of co-operatives also. So, the petitioner is also a public servant as per 21A of KSCA1959. It held, Co-operative Society is meant for the members and it is also a social piece of legislation. But unfortunately, officers are involved in embezzlement and misappropriation and in this case not once but twice, there has been breach of trust. But the fact that after the audit the petitioner paid that amount shows he admitted the guilt. So the petitioner was confirmed conviction.

When we look at the offences and penalties prescribed under KCS Act 1959, it does give a picture of lenient or a liberal outlook. The maximum imprisonment is six months and the maximum fine is ten thousand rupees. Again we have to go back to the question whether it is sufficient or proportional to the wrong done. In comparison when looked in to the Souharda Act of 1997 section 68 discusses offences and penalties comprising of eight clauses under this section. In this parallel legislation the provisions are made on similar lines of KCS act of 1959. Here also failure to furnish any document, information, returns is an offence for which the penalty is imprisonment up to one year or fine up to five thousand or both. Here also failure to conduct audit is an offence. Misappropriation of funds, acts forbidden by law, corrupt practices are all offences. There are not many differences found between the two Enactments with regard to provisions on offences and penalties.

---

<sup>22</sup> [http://cbi.nic.in/pressreleases/pr-2013-12-06\\_1.php](http://cbi.nic.in/pressreleases/pr-2013-12-06_1.php)

<sup>23</sup> 2002 Cri LJ 2755

*B. Anjanappa v. Vyalikaval house building co operative society*<sup>24</sup>

The respondents in this appeal acquired land for the purpose of housing co operative society where in the government was involved notifying the acquisition in the pretext of public purpose under land acquisition Act 1894. But due to the petitions filed by some land owners alleging that acquisitions were not for public purpose and also it was arbitrary and mala fide in intention. In 1991 along with the respondent other eight co operatives were ordered by the High court of Karnataka in the judgment *Narayana Reddy v. State of Karnataka* that the acquisitions were violative of the provisions of KCS Act 1959 and hence the possession of land shall be returned to the owners. It was also found that including the respondents here had entered in to agreement with agents to influence the government in procuring the lands. This led to a policy decision in 1997 by the council of ministers of Karnataka where it was decided that co operatives should be discouraged to seek land acquisitions through state machinery. But the respondents here pursued the matter of acquisition of the same land with the help of revenue minister and proceeded further with acquisition. The whole issue was tainted and fraudulent.

This was a case in which the pretext of public purpose was used by the co operative to satisfy their malicious intentions of having large number of members with false promises and money collected as membership. But, the Supreme Court rightly held that the said acquisition was definitely not for public purpose because public purpose involves government scheme under which such society must perform. So it was held that, the land so acquired shall be returned to the owners irrespective of the fact whether they filed petitions or not.

*Dattaprasad Co-Operative housing society v. State Of Karnataka*<sup>25</sup>

The petitioners were the registered Co-operative Housing Societies under the provisions of the Karnataka Co-operative Societies Act, 1959. They were aggrieved of the amendment to Section 38 by inserting proviso to the KCS Act by Act No. 6 of 2001. They filed these petitions seeking for issuance of writ of certiorari to strike down the proviso to Section 38 of the KCS Act contending that the same was un-constitutional. It is the case of the petitioners that un-amended provision of Section 38 of the KCS Act had exempted the Co-operative Societies from the application of provisions of Section 17(1)(b) and (c) of the Indian Registration Act, 1908 for compulsory registration of the documents and payment of stamp duty and registration fee as provided under the provisions of the Karnataka Stamp Act, 1957 and Registration Rules. Provisions of un-amended Section 38 of the KCS Act verbatim incorporated from Section 27 of the Central Co-operative Societies Act, 1912. The provisions exempt applicability of the aforesaid provisions of the Registration Act, Stamp Act and Rules. It was further stated by them that the aforesaid provisions of the Registration Act and Stamp Act are exempted in all the States throughout the Country with regard to the registration and payment of stamp duty and registration fee upon the deeds to be executed by either Societies or on their behalf. Further, stated that Section 17(2)(iii) of the Registration Act itself gives such exemption to joint stock companies registered under the Indian Companies Act, 1956 from registering and payment of the stamp duty and registration fee to the conveyance deeds. The aforesaid relevant provisions of the Registration Act and Stamp Act are exempted its applicability to the Co-operative Societies by virtue of Section 38 of the KCS Act to the Co-operative Housing Societies in metropolitan cities, where acute housing problem is being faced. Further, it is stated that as early as in the year 1940, several housing Co-operative Societies were formed in Mumbai, Ahmedabad etc. Large number of people

---

<sup>24</sup> Civil appeal no. 1930/2012

<sup>25</sup> 2004 (3) KarLJ 310

with limited means were able to have flats for their residences. Subsequently, the movement attracted the people of other cities living in flats owned by Co-operative Housing Societies by becoming their members is a common feature in cities and metropolitan areas. In recent years, Co-operative Movement has extended to Banking, Farming Industries, Sugar Industries, Milk Ferations, Consumer products. It was further stated by the that there was certain procedural irregularities in inserting the proviso to Section 38 by way of amendment by the State as it has circumvented the legislative procedure and the State Legislature had targeted only the Housing Co-operative Societies in the State which amounts to hostile discrimination and further stated that the amendment to Section 38 introduced a new classification of Co-operative Societies by excluding the petitioners-Societies from the exemption granted earlier under the unamended provisions of Section 38 of the Act with regard to application of the provision of the Registration Act and Stamp Act and Rules, which action of State Legislature amounted to step motherly treatment to these petitioners. It was further urged that there was no rational basis for the classification of the Co-operative Housing Societies as distinct and separate from other Co-operative Societies

In answer the government pleaded

Para 213 of the Budget Speech of the Chief Minister dated 26th March, 2001 presented before the State Legislature explains clearly the object of amendment made to Section 38 by inserting proviso"

It is further stated that benefit of exemption granted in favour of the petitioners-Societies and other similarly placed Societies under Section 38 of the KCS Act were being misused by some of the House Building Co-operative Societies by making a person buying the immovable property from the House Building Co-operative Societies as shareholders of the Society, but not registering the conveyance deeds by paying stamp duty and registration fees as required in law, thus there was a huge loss of revenue to the State Government as a result of which the earlier grant of such exemption under the provision of section has been explained inserting the proviso.

But the High court rightly held that the amended proviso was compatible with the central legislation and was not specific to housing co operatives alone but applied to all types of co operatives. Payment of registration cost and stamp duty which was exempted earlier was being misused by the co operatives there by bringing an amendment to rectify the same was not unconstitutional.

## **5. Suggestions and Conclusion**

This was a case where the purpose of co operative is defeated. Misusing the privilege given or Cheating or misrepresentation practiced under the guise of co operatives amounts to offence. In such cases if the people found guilty are punished meagrely then there is no reason as to why they should not commit the same offence again. If they are punished according to the proportion of the offence committed then there could be deterrence to do something of that kind for others. Also the co operatives are not agencies to make fast money. By such acts of people there are chances that the trust is lost towards co operatives. People would think and rethink before becoming members of any co operative. The obvious conclusion that can be drawn by the above analysis is that the changes are the need of the hour as far as penalties are concerned. It is practically impossible to deter offenders unless the penalties are stringent. The question why the penalties are still not stringent after so many years of coming in to being of the legislation and also a parallel legislation running in the state of Karnataka. The change is inevitable for the sustenance of the co operatives. The

society has to be corrected if anything wrong is continuously happening and one section of such society bears the brunt. For this, it cannot be done by any other agency other than the legal system of the country or state. Here, it is the state government which has to take adequate measures so as to make the KCS act more effective. It is an enactment which is for social welfare purpose so the aim should be at any cost people should not suffer due to malicious actions of a few criminal minded persons. The purpose of having penalties is to stop people committing wrongs or offences but such penalties to result in putting an end to fraudulent practices must be more stringent. It must be such that once anyone is penalised then it should deter others from even thinking about it. So it is suggested that the imprisonment shall be increased as six months and one year prescribed in the Act seems too meagre. The fine shall be enhanced to such an extent that any person committing such offence must feel the financial strain. Unless that happens these penalties cannot become effective in stopping the commission of offences. Cooperatives should practice good corporate governance and social responsibility. These institutions should be purely 'member-driven' keeping the principle of cooperation in letter and spirit. Professionalism should be introduced in staffing and adequate training opportunities should be provided to the employees of cooperatives for skill up gradation. They should frame sound and prudent policies for loans and investments and conduct themselves in the larger interests of the depositors and the general public. Cooperatives should overcome their inertia and resistance to change and emerge as technology-driven, well-managed institutions to inspire confidence in the public and secure their survival.