Chapter – III

GROUP HOUSING
LAWS OF SOME
STATES IN INDIA
– A REVIEW
In India, each State has its own law relating to Group Housing in Co-operative Sector and Private Sector. In this Chapter, some of the Co-operative laws and some of the Apartment Ownership laws shall be discussed. Moreover, a brief points in a Model Co-operative Act formulated by Government of India shall also be discussed here under.

3.1 The Maharashtra Co-operative Societies Act, 1960 and its Rules, 1961:

The Maharashtra Co-operative Societies Act, 1960 does not provide for any special chapter on Co-operative Housing Societies. That means, such Group Housing Societies are guided by the general provisions as are applicable to all other categories of Co-operative Societies. Some salient features of this Act, which are relevant to Co-operative Housing Societies in the State of Maharashtra are reproduced in following clauses.

3.1.1 Definition of Co-operative Housing Society:

In Section 2(16) of the Maharashtra Co-operative Societies Act, 1960, the definition of “Housing Society” has been given. According to that Sub-section, “Housing Society” means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, dwelling houses or flats are already acquired, to provide its members common amenities and services.
In the Maharashtra Co-operative Societies Rules, 1961, societies have been classified and sub-classified. Housing Society has been classified on the basis of the principal object provided in its bye-laws.¹ Following are particulars of the class:

Class – Housing Society.

Sub Class – i) Tenant ownership Housing Society;

     ii) Tenant Co-partnership Housing Society;

     iii) Other Housing Societies.

Examples of Societies falling in the class or sub-classes:

i) Housing Societies where land is held either on lease hold or free-hold basis by societies and houses are owned or are to be owned by members.

ii) Housing Societies which hold both land and buildings either on lease-hold or free-hold basis and allot them to their members.

iii) House mortgage societies and House Construction Societies.

3.1.2 Criteria for Registration of a Co-operative Society including a Co-operative Housing Society:

a) Section 4 of the Maharashtra Co-operative Societies Act provides conditions under which a Co-operative Society may be
registered. By that Section, a society with object of promoting economic interests or general welfare of its members or the public on co-operative principles or for facilitating the operation of any such society may be registered.

b) Section 6 of the Maharashtra Act prescribes minimum number of members required for registration of a Co-operative Society including a housing society. A Co-operative Society except a federal society needs at least ten persons from different family, who are qualified to be members under the Act. This number is variable according to the objects and economically viability of the society and is fixed by the Registrar.  

For the purpose of the above provision, a family means a wife, husband, father, mother, sons and unmarried daughters.

c) No limited society is registered unless all members reside in the same town or village, or in the same group of villages.

d) Fee for registration of Co-operative Housing Societies of three categories has been prescribed as under: -

For housing Society (excluding societies of Backward Class persons)

i) Tenant Ownership Housing Societies Rs.500.00
ii) Tenant Co-operative Housing Societies Rs.500.00

iii) Other Housing Societies Rs.500.00

For Housing Societies of Backward Class persons Rs.5.00

3.1.3 Transfer of Share or Interest on Death of Member:

In Section 30, the intention is to provide for who has to deal with the society on death of a member and not to create a new rule of succession. The purpose of nomination is to make certain person with whom the society has to communicate and not to create interest in the nominee to the exclusion of those who in law will be entitled to the Estate. The purpose is to avoid confusion in case there are disputes between the heirs and legal representatives and to obviate the necessity of obtaining legal representation and to avoid uncertainties as to whom the society should deal with to get proper discharge.

The manner how a member shall make his nominee has been spelt out in the Rule. It is given below:

a) A member for the purpose of transfer of share or interest shall sign on a register kept by the society, making a statement for nomination in favour of a person or by a document signed by him he shall deposit to the society. The document shall be signed by a witness.
b) The nomination made by above manner may be revoked or varied by any other nomination in the same way.

c) In absence of nomination, on death of a member, the society shall exhibit a notice in its Notice Board inviting claims or objections to the proposed transfer of share or interest to be submitted within a specified time.

After examining any claim or objection and an inquiry, the Committee of the society shall decide as to the person to be the heir or legal representative of the deceased member.  

In the Act, Section 30 describes how transfer of interest on death of a member shall be made. The main provision is the following: -

i) On death of a member, the society shall transfer the share or interest of the deceased member to a person duly nominated or if there is no nomination to such person as stated in (c) above.

A minor or an unsound person shall also acquire the interest by inheritance or otherwise.

ii) The society shall pay all moneys due to the deceased member to such nominee, heir or legal representative.
iii) All above transfers shall be valid and effectual against any demand made upon the society by any other person.

3.1.4 Transfer of Share and Interest of a Member:

Section 29 read with Rule 24 of the Maharashtra Co-operative Societies Act, 1960 and the Rules, 1961 is the guiding law for transfer of share and interest of a member in the event of sale, resignation, expulsion, cessation or disqualification. The provision is in nutshell the following:

i) A member shall not transfer his share or interest unless he has held such share or interest for over one year.

ii) The transfer shall be made to an existing member or a person who has been accepted by the society as a prospective member or a person whose appeal under Section 23 has been allowed by the Registrar.  

iii) In the event of a member’s resignation, expulsion, cessation or disqualification, the society may acquire the share or interest of that member out of its own fund. That means, the society may get the flat or house of the member purchased.

The right to forfeit the share or interest of an expelled member shall not be affected by the aforesaid provision.
iv) A clear fifteen days' notice in writing is to be given to the society indicating the name of the proposed transferee, his consent, his application for membership, where necessary, and the value proposed to be paid by the transferee.

In this case, all liabilities of the transferor due to the society shall be discharged and the transfer is registered in the books of the society.

3.1.5 Who may become members in a Co-operative Society?

Under Section 22 of the Maharashtra Co-operative Societies Act, 1960 there is a prescription for person who are eligible to become members of Co-operative Societies including Co-operative Housing Societies:

a) Following persons, according to that Section, may become members:

1) An individual, who is competent to contract under the Indian Contract Act, 1872.

2) A firm, company or any other body corporate or a society registered under the Societies Registration Act, 1850.

3) A Co-operative Society.

4) The State Govt. 

5) A Local Authority.
6) A Public Trust.

However, in case of a Co-operative Housing Society, only an individual may become a member.

If a member has incurred disqualification to remain as a member, the Registrar or his Authorised Officer may, by order, remove such person from membership of a society and the person shall cease to be a member after expiry of one month from the date of receipt of such order by the person.  

b) Where a person applies to a Co-operative Housing Society and is refused admission as a member, the society shall communicate the decision of refusal to the person within 15 days of the date of the decision, or within 3 months from the date of receipt of the application for admission, whichever is earlier. If no communication is received by the applicant within 3 months from the date of receipt of the application, the applicant shall be deemed to have been admitted as a member of the society. In such case, if dispute arises, the Registrar shall decide after giving to the concerned parties reasonable opportunity of being heard.

c) Section 24 provides admission of a person in a Co-operative Society as a nominal, associate or sympathiser member. They are not entitled to any share in any form.
d) There is a provision for admission of joint members and minor and persons of unsound mind inheriting the share or interest of deceased member. In Section 20 of the Maharashtra Cooperative Societies Act, 1960, the following provisions are embodied –

i) The joint members shall submit to the Co-operative Society a declaration in writing that the person whose name stands first in the share certificate shall have the right to vote and all liabilities will be borne jointly and severally by them as provided in the Act, Rules and Bye-laws.

ii) A Co-operative Society may admit minors and persons of unsound mind inheriting share or interest of deceased members as its members through their legal representatives or guardians respectively. The members so admitted will enjoy such rights and liabilities through such legal representatives or guardians as are laid down in the Bye-laws of the society.

3.1.6 Expulsion of Members:

Expulsion of a member from a Co-operative Society including a Co-operative Housing Society in the State of Maharashtra is made for acts detrimental to the interest or proper working of the society. There are
procedures how a member may be expelled. The enabling Section is Section 35 and the Rules are 28 and 29.

a) A society may by resolution passed by a majority of not less than three-fourths of its members entitled to vote who are present at a General Meeting held for the purpose, expel a member for acts which are detrimental to the interest or proper working of the society.\footnote{11}

b) Before passing the resolution for expulsion, the concerned member shall be given an opportunity of representing his case to the general body. In this respect, when any member proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the Society. The society shall call a meeting of the general body and inform the member against whom such resolution is proposed to be brought, calling upon him to represent himself against the proposed expulsion. After hearing him, if present, or after taking into consideration any written representation, which he might have sent, the general body of members shall proceed to consider the resolution.

c) Any resolution of expulsion shall be placed before the Registrar for his approval. The Registrar after making such enquiries as he
may deem fit, give his approval and communicate the same to the society and the member concerned. The resolution shall be effective from the date of approval.

3.1.7 Annual General Meeting:

The Maharashtra Co-operative Societies Act, 1960 has given sole power and authority to the general body of members in general meeting. A Co-operative Society including a Co-operative Housing Society shall call Annual General Meeting by the statute compulsorily. Section 75 is the guiding provision of Annual General Meetings. Rule 60 supplements the provisions of Section 75 which is the following:

1. Every society shall call a General Meeting within a period of 3 months next after completion of accounts of the year. Of course, the Registrar may, by special or general order, extend the period for holding such meeting for a further period not exceeding three months.

2. The Registrar may, in the event of failure to call an Annual General Meeting by the society, call or authorise an officer to call the General Meeting. Expenditure incurred for such General Meeting shall be borned out of the fund of the society or any person who were responsible for the refusal or failure to convene the meeting.12
3. At every Annual General Meeting, the Committee shall lay before general members details of loans and the repayments thereof of members and income and expenditure account for the year detailing either excess of income or excess of expenditure.

3.1.8 Special General Meeting:

A Special General Meeting may be called under Section 76 of the Maharashtra Co-operative Societies Act, 1960, read with Rule 63 of the Rules, 1961. A Special General Meeting is an extra meeting than the General Meeting, which is Annual. This meeting can be called by a Co-operative Society at some instances. Hence, more than one Special General Meeting may be convened at specific circumstances:

a) A Special General Meeting may be convened in the following instances:

1) by the Chairman.

2) by a majority of members of the Committee.

3) on a requisition in writing of one-fifth of the members of the society or members the number of which is specified in the bye-laws for the purpose, whichever is lower;

4) at the instance of the Registrar;
5) in the case of a society, which is a member of a Federal Society, at the instance of the Committee of such Federal Society;

3.1.9 Dissolution of a Committee and Appointment of Administrator:

Where there is failure to elect members, to constitute committee or where committee does not enter upon office, the Registrar has been given power to dissolve the committee and appoint an Administrator in its place by Section 77A of the Maharashtra Co-operative Society Act, 1960.

A. Grounds for taking action under the said Section are:

1) A provisional committee has failed to hold election for the constitution of the first committee, before expiry of its terms.\textsuperscript{13}

2) At the first constitution of the committee of any society there is a failure to elect all or any of the members of the committee.

3) The term or extended term of the committee or of any member has expired or election is held but all or any member could not be elected.

4) Any committee is prevented from entering upon office.
5) A new committee has failed to enter upon office on the date of expiry of the existing committee.

6) Where more than one group of persons in a society is claiming to be elected as committee members and proceedings in respect thereof have been filed in the Cooperative Court.

B. Action of Registrar under Section 77A:

The Registrar may take action by this Section either suo moto or on the application of any officer of the society. He, before making an order, shall publish a notice on the notice board at the society’s head office inviting objections and suggestions in respect of the proposed order within a period specified in the notice. He shall consider all objections and suggestions received by him within that period. For immediate action, there is no necessity to publish such notice.

The Registrar may appoint:

i) any member(s) of the society to be the member(s) of the committee to fill the vacancies; or

ii) a committee consisting of more than three members of the society; or
iii) one or more Administrator who may or may not be a member of the society.

Any of (i), (ii) and (iii) shall manage the affairs of the society till a new committee enters upon office.

C. Functions of the appointed committee or Administrator:

i) The committee or the Administrator appointed by the Registrar shall act under general control of the Registrar, who may, from time to time, give instruction for discharging function of the society.

ii) The committee or the Administrator shall hold office for a period of six months initially within which period necessary arrangements for constitution of a new committee shall be made.

Where a new committee is not, or can not be constituted at the expiry of the permitted term for any reason beyond the control of the committee or the Administrator, the term of office of the committee or the Administrator, shall be deemed to be extended, until the new committee is duty constituted.

iii) The Registrar may change the committee or any or all members thereof or any of Administrators at his discretion even before the expiry of the period specified in the order.
iv) The remuneration of the committee members or the Administrator shall be fixed by the Registrar to be paid out of the fund of the society.¹⁷

3.1.10 Removal of Committee or any Member thereof:

Section 78 of Maharashtra Co-operative Society Act, 1960 empowers the Registrar to remove in case such a member has been disqualified from contesting the election. This bar is open to challenge by election petition. Even the election petition does not abrogate or bar the powers of the Registrar:

A. Grounds of removal of committee:

i) The committee makes default or is negligent in the performance of duties imposed on it.

ii) The committee commits any act which is prejudicial to the interests of the society or its members.

iii) It willfully disobeys direction issued by the State Govt. or the Registrar for proper implementation of co-operative policy and development programme approved or undertaken by the State Govt.

iv) It is otherwise not discharging its function properly and diligently.
v) Where a situation has arisen in which the committee or any member of such committee refused or has ceased to discharge its function diligently leaving the society’s business standstill.

B. Action of the Registrar under Section 78:

On any of the grounds at (A) above, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice and after consultation with the society to which the society is affiliated take following actions:

i) remove the committee; and

ii) appoint a committee consisting of three or more members in its place; or

iii) appoint one of more Administrators who shall not be members of the society.

The appointed committee or the Administrator shall manage the affairs of the society for a period not exceeding six months. Of course, the Registrar may extend the period upto a further period of three months. The aggregate period shall not exceed nine months.
The Registrar has power to change the committee or any member thereof or the Administrator before expiry of the period of six months or extended period of nine months.

iv) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed.\textsuperscript{18}

Where a member has been removed, he shall not be eligible to be re-elected, re-appointed, re-nominated or re-coopted, as a member of the committee till the expiry of the period of next one full term.\textsuperscript{19}

The Registrar’s notice shall be elapsed after two months. If within this time, a committee or member resigns, it shall not be valid or effective before expiry of this period of two months.\textsuperscript{20}

C. Function of the appointed Committee or Administrator:

i) The Appointed Committee or the Administrator shall have power to exercise all or any functions of the committee and take all such actions as may be required in the interest of the society. Of course, it or he shall act under the general control of the Registrar.

ii) This Committee or the Administrator shall have power to call a Special General Meeting of the society, review or to
consider the decision or the resolution taken or passed at the
general meeting called by the previous committee or to endorse action taken by it.\textsuperscript{21}

iii) The committee or the Administrator is entitled to remuneration and expenses to be met out of the fund of the society. The person in custody of the fund shall be liable to pay the remuneration and all expenses incurred by the committee or the Administrator for the functions of the society.\textsuperscript{22}

3.1.11 Appointment, Suspension and removal of members of the Committee and other officers:

Sometimes, it becomes necessary to appoint, suspend and remove some members of the committee and some officers in a Co-operative Society. The power is an unfettered one given to the Registrar as per Rule 64 of the Maharashtra Co-operative Societies Rules, 1961. For doing so, he shall state the reasons in the concerned order.

A. The three types of his actions are as below:

i) Removal of the committee of a society and appointment of a new committee in its place consisting of three or more members of the society to manage the affairs of the society.
ii) Removal of the committee and appointment of one or more Administrators, who need not be members of the society, to manage the affairs of the society.

iii) Removal of any member of the committee of a society and appointment in his place such other member as he may deem fit.

Before making an order under any of above clauses, the Registrar shall consult the Federal Society to which the society is affiliated and give an opportunity to the committee or the member concerned to show cause within 15 days from the date of issue of notice why such an order shall not be made.

3.1.12 Different notifications under Maharashtra Co-operative Societies Act, 1960 in respect of Co-operative Housing Societies:

It has been discussed earlier that the Maharashtra Co-operative Societies Act, 1960 has no special separate chapter dealing with Co-operative Housing Societies like the Co-operative law only in West Bengal. But the Govt. of Maharashtra in Co-operative and Textile Departments found it expedient to issue Notifications time to time to cover up lacunae in dealing with affairs of Co-operative Housing Societies. The Notifications are mainly on exemption of tax, eligibility of a firm or
company to be admitted as a member of Co-operative Housing Society, exemption of tax to Co-operative Housing Society formed of backward classes people. The Notifications are reproduced below in brief:

A. Power to exempt from taxation, power to refund in favour of Co-operative Housing Societies (under Section 42):

The Govt. of Maharashtra in exercise of the powers conferred by clauses (a) and (b) of Sub-Section (1) and (2) of Section 42 of the Maharashtra Co-operative Society Act remits the whole stamp duty and registration fee payable under the Bombay Stamp Act, 1958 (BOM.LX of 1958) and the Registration Act, 1908 (16 of 1908) respectively on conveyance relating to mortgage or sub-mortgage of immovable property consisting of an unit or building or buildings or open plots for residential use executed:

a) in case of members of Co-operative Housing Mortgage Society in favour of that society or by the Co-operative House Mortgage Society in favour of Maharashtra State Co-operative Housing Finance Corporation Ltd. With effect from the date of issue of the Notification.

b) Or to be executed between Co-operative Housing Society or Co-operative House Mortgage Society and the Maharashtra State Co-operative Housing Finance Corporation on one side and the
Housing and Urban Development Corporation on other side with effect from 11th November, 1986;

Unit means and includes a flat, apartment, tenement, block, house, open plot or any other unit by whatever name called.23

B. Eligibility of a Firm or Company to be admitted as a member of Cooperative Housing Society.

The Govt. of Maharashtra lays down following terms and conditions subject to which a firm or a company may be admitted as a member only of a society which is a Federal or Urban Society or which conducts or intends to conduct in industrial undertaking:

1) The authorised person of the firm or company signs the application for admission to the membership of the society as provided by Rule 19.

2) The number of firms and companies admitted to the membership of any such society not being an industrial Estate Co-operative Society which the State Government may by an order in this behalf specify does not exceed 40 per cent of the total membership of the society.

3) The Head Office of the firm or company (including a Govt. Company) or its any regional or branch office is within the area of operation of the society and carries on business in the area.
4) The aims and the objects of the firm or the company are not contrary to those of the society.

There are certain other terms and conditions in the case of an Urban Society which is a Housing Society and intends to construct or has constructed a multi-storied building or buildings to which a firm or a company may be admitted as a member of such society.

C. Power to exempt taxation in favour of a member of a Co-operative Housing Society (formed of persons belonging to classes other than agriculturists or backward communities). (Under Section 42)

The Government of Maharashtra exempts taxation in following cases for a Co-operative Housing society which is formed of persons who do not belong to classes of agriculturists or back-ward communities:

1) The amount of Stamp Duty and Registration fee payable under the Bombay Stamp Act, 1958 and the Registration Act, 1908 respectively are exempted on a conveyance executed by or on behalf of such societies on the basis of the proportion which shall consist of two components, namely residential component and non-residential component to be classified on the basis of carpet area.

2) The remission of Stamp Duty and Registration fee is effective from 24th March, 1980 on a Conveyance Deed. The remission is
in full in cases where carpet area of such unit under residential uses does not exceed 650 sq.ft. or 198.12 square metres. The remission is 60 per cent where in the carpet area of each unit of residential component exceeds 1000 square feet or 309.30 square metres.

3) Where a conveyance relating to purchase or lease of land only has been executed by or on behalf of a society, such society may, on completing the construction of a building on the said land, make an application along with the relevant document to the Collector of the District or to any other officer appointed by Govt. for claiming remission of Stamp Duty and Registration Fee according to the provisions of Clause 2 in respect of units the State Govt. may refund the amount of the Stamp Duty or Registration Fee or both on some specific ground.25

D. Power for exemption of Taxation in favour of members of Co-operative Housing Societies in Metropolitan and Municipal Areas. (Under Section 42(1).

The Govt. of Maharashtra in case of the Co-operative Housing Societies in Metropolitan and Municipal Areas exempts Stamp Duty and Registration fee respectively in following manner:
1) Reduction on a conveyance relating to purchase of immovable property consisting of a unit or building for residential purposes executed by or on behalf of the society.

a) by 15 per cent in the Bombay Metropolitan Region, Pune Metropolitan Region, Municipal Corporation Area, Cantonment Board Area, Hill Station of Mahabaleswar, Panchla, Lonavala and Khandula;

b) by 30 per cent in 'A' class Municipal Area;

c) by 50 per cent in 'B' class Municipal Area;

d) i) in full where carpet area of each unit under residential use does not exceed 650 sq. ft.

ii) by 60 per cent where the carpet area of each unit exceeds 650 square feet but does not exceed 1000 square feet; and

iii) by 50 per cent where the carpet of each unit of residential use exceeds 1000 square feet.

2) Other than the cases as provided in Clause (1) above, reduction of Stamp Duty and Registration fee shall also apply in the case of flats for residential purposes under the provisions of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.
3) Other than the cases as under clauses (1) and (2) above:

a) no reduction on the conveyance shall be available for non-residential use of such Co-operative Housing Societies.

b) no fresh Stamp Duty is payable where it is paid by members as individuals for their respective flats.

c) no reduction shall be available on resale of flats by members of such Co-operative Housing Societies.

d) no reduction shall be available for purchase of land only by or on behalf of Co-operative Housing Societies.

E. Power for exemption of taxation in favour of Co-operative Housing Society for mortgage or Sub-mortgage of immovable property. (under Section 42)

By this Notification the Govt. of Maharashtra remits the whole Stamp Duty and Registration Fee payable under the Bombay Stamps Act, 1958 and the Registration Act, 1908 on conveyance relating to mortgage or sub-mortgage of immovable property consisting of a unit or buildings or open plots for residential use executed in following two cases:

1) In case of members of the Co-operative House Mortgage Society in favour of that society or by the Co-operative House Mortgage Society in favour of the Maharashtra State Co-operative Housing
Finance Corporation Limited with effect from 22.7.1993, the date of issue of the Notification.

2) In case of any conveyance executed between Co-operative Housing Society and the Maharashtra State Co-operative Finance Corporation on one side and the Housing and the Urban Development Corporation on other side with effect from 11.11.1986.27

3.2 The Andhra Pradesh Co-operative Societies Act, 1964 and its Rules, 1964:

The Andhra Pradesh Co-operative Societies Act, 1964 as amended time to time and the Rules made there under do not provide for any special allocation of a chapter solely meant for Co-operative Housing Societies. But there are in the Act and the Rules all relevant provisions for control and function of all types of Co-operative Societies. Hence, these provisions are also equally applicable to Co-operative Housing Societies in the State of Andhra Pradesh. Some salient features of this Act, which apply to the Housing Societies in that State are reproduced in brief below:

3.2.1 Types of Co-operative Housing Societies:

a) Co-operative Housing Societies … Long term Loans:

This is one kind of Consumers’ Society or strictly speaking a Credit Co-operative Society. This deals with the provisions of houses to its
members. This provides long-term loans to its members for construction of houses. The period of repayment extends to 20 years. So, this society can be termed as a Long Term Credit Organisation. Willing persons become its members by taking shares in the society and borrow from it the funds upon mortgage of house site and building proposed to be erected on the sites. When every member has repaid his loan, the society’s need ends and may be dissolved. If fresh members join for the above purpose in the society, the society remains alive and is not dissolved.

b) Co-operative Housing Societies – Partnership System:

The second type of Co-operative Housing Society is based on the Co-operative system, which has been developed in two directions. Such Co-operative Society purchases land and construct houses with the share capital subscribed by members and funds borrowed from the Government or a Financing Agency. In one of them, a tenement is leased out to each member and he remains a tenant of the society, paying as monthly rent. The rent collected from all the members is utilised for the running expenses of the society and for repairs to the buildings. What is left is paid to the creditor. When the borrowed capital is paid off in full, shares upto the value of the borrowed capital are issued to the members in proportion to the rent paid by each.
In another system of Co-partnership of Co-operative Housing Society, the tenant who has been leased the house from the society for a definite period of years becomes subsequently the virtual owner of the house after payment of regular prescribed monthly rent for the contracted period. He is still required to pay a nominal rent to the society, which imposes restrictions regarding the assignment of alienation or sub-letting of the property. This hire-purchase system is the nature of such Co-operative Housing Society.

3.2.2 Criteria for registration of a Co-operative society including a Co-operative Housing Society:

Section 4 of the Andhra Pradesh Co-operative Societies Act, 1964 lays down what sort of societies can be registered. According to its Sub-Section (1) a society which has, as its main objects, the promotion of the economic interests of its member in accordance with the Co-operative principles, or a society established with the object of facilitating the operation of such a society, may be registered. As decided in a case regarding implication of this Section 4, two societies are permissible to be registered in the same area of operation.  

The minimum number of persons required to form a Co-operative Society is specified in Section 6(2)(b) and this number shall be not less than ten, each being a member of different family, and every one of them
shall possess eligibility to become a member as required under Sub-Section (1) of Section 19. Family means and includes a wife, husband, father, sister, son, daughter, step-son, step-daughter, grand-son, grandfather, brother, half-brother, half-sister and wife of brother or half-brother.

There is nothing in the Act or the rules which prohibit any Co-operative House Building Society from having the object of acquiring land and building houses for its members in any part of the country. In the case: H.M.T. Employees Co-operative House Building Society Ltd. Vs. Govt. of Andhra Pradesh, Hyderabad and others, it has been held that Govt. Servants who may be spread over several parts of the country may come together to form a society for acquiring house accommodation in a particular place where they propose to settle down. There can be no objection to such an objective. Any such objection to such an objective would not make the society viable and would not enable all the members to acquire housing accommodation in the place of their choice even in the locality in which the society operates.29

There is no separate model bye-laws for a Co-operative House Building Society. But in the Andhra Pradesh Co-operative Societies Rules, 1964, subject matters of bye-laws have been prescribed. Rule 5 prescribes 30 items whichever applicable to a particular type of Co-operative society. A question came up, in the said case of H.M.T. Employees’ Co-operative Housing Building Society Ltd. for consideration whether a bye-law could
provide for auction of corner plots of land belonging to such a society instead of allotment of plots by lots. The Hon'ble High Court held as follows:

It is well known that corner plots are very much in demand and even if they are allotted by lots, there is bound to be some bickering among the members. If such corner plots are sold by auction among the members, the society definitely benefits. There is no question of profit motive in as much as the additional amount so derived would again be ploughed back into the project for the benefit of all the members. Similarly, the proposal to auction the surplus plots, among the members, instead of running them for future applicants, can not be also considered to be against the principles of the Co-operative movement.

Eligibility of being member of a Co-operative Society is stated in Section 19 according to which an individual who attained majority and is of sound mind and who belongs to a class of persons, if any, for whom the society is formed as per its bye-laws.

Minors may be admitted also as associated members of such class of societies as:

a) Multi-purpose Co-operative Societies.

b) Land Colonisation Societies.

c) Student Co-operative Stores.
d) Housing Societies.

By Section 21, Andhra Pradesh Co-operative Societies Act, 1964, a person shall be disqualified to be a member if he:

a) is an applicant to be adjudicated an insolvent.

b) has been sentenced for any offence involving moral turpitude.

c) is a paid employee of the society or of its financing Bank or Society for which it is the Financial Bank.

d) has been expelled from membership and a period of one year has not been elapsed from the date of such expulsion.

e) is carrying on business of such kind which is in conflict with the objects or interests of the society.

If in violation of the above criteria a person has been admitted as a member of a Co-operative Society, he may be removed by the Registrar or the society subject to approval of the Registrar. But before the proposed removal, the person shall be given opportunity of making representation against the action. After due communication of the order to him, he shall be deemed to have ceased to be a member.30

Rule 12 has classified societies into thirteen categories of which “Housing Society” is one with its principal object being construction of
houses for its members or the financing or facilitating the construction of houses by its members.\textsuperscript{31}

According to the Bye-laws of a Co-operative House-Building Society Ltd. a person who is already a member of any other society with the same or similar objects and who avails himself of the services of such other society shall not be entitled to similar services by the society except with the permission in writing of the Registrar.

More restrictions than those in the Act and Rules have been put in the bye-laws. A person who has any house in city in his name or in the name of his wife, or minor child shall not be eligible for admission as member. A minor may be admitted as associate member through their legal guardians, but they shall not be eligible to vote or have any interest in profit.\textsuperscript{32}

Manner of disposal of an application of membership has been provided in Section 19 and 76 in following steps:

a) An application for admission as a member shall be made to the Secretary in prescribed form. He is to disclose any association with any other such society.

b) The Managing Committee of the society shall have power to grant admission or to refuse it with reasons. In case of refusal, the decision with reasons shall be communicated by registered
post to the applicant within 15 days of the date of the decision or within 60 days from the date of application which ever is earlier, if no answer is communicated within 50 days, the society shall be deemed to have admitted the applicant as a member.

c) In case of refusal under above clause (b), an appeal shall lie by the aggrieved applicant to the Registrar within 60 days from the date of communication of the refusal to the applicant.^^

Of course, the Registrar, the Appellate Authority may admit an appeal preferred after the said period of 60 days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period.

3.2.3 Transfer of share or interest vis-à-vis the flat or house of a member:

Transfer of shares or interest of a member in a Co-operative House Building Society is guided by Section 27 of the Andhra Pradesh Co-operative Societies Act, 1964 and the bye-laws of the society. According to it:

a) The member shall be permitted to transfer any share or interest held by him unless –

i) The member has held such share or interest for not less than a Co-operative year;
ii) The transfer is made to the person who has been admitted as a member by the Managing Committee of the society; and

b) The transfer shall not be operative unless and until -

i) It is sanctioned by the Managing Committee; and

ii) Until the name of the transferee has been entered in the share transfer register or admission register.

Every endorsement upon the share certificate for transfer shall be signed by the President and Secretary or any other officer authorised by the Managing Committee in their behalf.\(^{34}\)

There is a restriction imposed in the bye-laws on withdrawal of share capital. By that restriction, no member shall be permitted to withdraw any of the shares held by him in the society or resign his membership within 3 years from the date of his admission as a member. After this period, he may withdraw any of his shares with the consent of the Managing Committee or resign his membership provided that there are no doubts or any amount due from him to the society. A member whose liability to the society have been reduced to an amount less than his paid up share capital may also be permitted to withdraw such portion of his share capital as is in excess of his liability, but in either case, the share capital of the society after withdrawal plus the value of sites and buildings of the remaining members according to the calculation made on behalf of the
Govt. as on 30th June, preceding should be at least 50 per cent in excess of
the outside liability of the society including liability to the Govt. on the
date of withdrawal.35

3.2.4 Expulsion of a member of a Co-operative House Building
Society:

Any member at certain circumstances may be expelled from the
membership of a Co-operative Society including a Co-operative Housing
Society according to Section 23 of the Andhra Pradesh Co-operative
Societies Act, 1964. The General Body of members passes a resolution
expelling a member and this requires approval of the Registrar. The
Registrar examines the proposal of expulsion whether it is motivated by
extraneous consideration. But he has no power to take any action suo-
mote. In the case: Grij Gopal vs State of Madhya Pradesh, the Madhya
Pradesh High Court upheld the constitutional validity of the provision that
the General Body in case of expulsion initiates the action and the Registrar
approves the action.36

Specific grounds for expulsion have been given in the bye-laws of
the society such as :

a) When a member deceives the society in any way;

b) When he has acted adversely to the interest of the society;
c) When his general conduct is such as to render his removal necessary in the interest of the society; and

d) When he drives the society to Court to recover the money due from him.  

The Act is silent what the next course of action the society shall take after getting approval of the Registrar of expulsion of a member. But in the Bye-laws, it is stated that an expelled member shall be paid monies due to him from the society. An expelled member shall be liable for the debts due by the society as they stood on the date of his expulsion for two years after such expulsion. But the Act, Rule or the Bye-laws are silent how the expelled member shall quit the society vis-à-vis the house or flat and within what period of time.

3.2.5 Transfer of Share or interest on the death of a member:

On the death of a member, his interest shall be transferred to his legal representative who is qualified under this Act. The representative or legal heir shall substitute the deceased member. The Andhra Pradesh Cooperative Societies Act, 1964 in its Section 28 provides for transfer of interest on death of a member. Rule 16 and 17 supplement this section. In the model bye-laws of a Co-operative House Building Society there is a clause on nomination. This clause is borrowed from the content of Section 28, Rule 16 and 17.
a) According to above law, on the death of a member, the society shall transfer his share or interest to the person or persons nominated or if no person or persons have been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member. The nominee or heir or legal representative shall become a member of the society if he desires and has requisite qualifications:

The minor or a person of unsound mind shall not be prevented from acquiring the share or interest by inheritance.

b) While nominating a person or persons, a member has to fill the Form 1 as appended in the Rules. Such member may, from time to time revoke or vary such nomination. When a member nominates more than one person in respect of any shares held by him, he shall, as far as practicable specify the amount to be paid or transferred to each nominee. At the time of revocation of a nomination, it must be made in writing and is signed by the member in presence of two witnesses. This revocation shall be entered in the books of the society kept for the purpose within 15 days from the date of the receipt of the nomination papers. The nomination or any variation or revocation shall be recorded on the share certificate.
The provisions as stated above are for all types of co-operative societies. The application of these provisions in case of a Co-operative House Building Society, is not clear and specific. A member of a House Building Society possesses house or flat unlike other co-operative societies. So, after such a situation arising out of death of a member, there should be specific procedure how the house or flat shall be transferred in the name of legal heir or nominee or legal representative, when they do not intend to become a member or otherwise are not eligible to become member. Moreover, a flat being indivisible can not be sub-divided among several persons as nominee. Rather the value of the flat may be sub-divided.

3.2.6. General Meetings and Committee Meetings:

A General Meeting provides opportunity to General members to review the functioning of the committee who are authorised by them to discharge duties and rights in respect of the society. General members get opportunity also to ventilate their grievances and to suggest for development of the society. In such General Meeting, future policy of functioning of the society is also determined. Section 32 of the Andhra Pradesh Co-operative Societies Act, 1964 provides for the whole phenomenon of the General Meetings and Committee Meetings.

The provisions of Section 32 are the following:
1) The Committee at any time call a General Meeting of a society, but such meeting shall be held within six months of the end of the Co-operative year.\textsuperscript{41}

If the General meeting is convened, the members of the committee shall cease to hold office on the day next after the 1\textsuperscript{st} day on which meeting should have been held, and it shall be competent for the Registrar to call such meeting.

2) A requisition General Meeting shall be called by the Committee within thirty days if a requisition comes in writing with specific purpose from any of the following:

i) Such number of members as specified in the bye-laws

ii) Financing Bank.

iii) A Federal Society.

iv) The Registrar.

3) A Committee’s Meeting shall be called by the President at least once in every three months. If within four months, he fails to call, he shall cease to be the President with effect from the date of expiration of 4 months. On having requisition, the President shall call committee’s meeting within 15 days.\textsuperscript{42}
4) In the event when no meeting as stated in (1), (2) and (3), has not been called on any reason, the Registrar shall have power to call such meeting. The Registrar or his authorised person shall preside at such meeting, but shall not be entitled to vote.

If at any General meeting called suo moto by the Registrar or his authorised person, no quorum is formed, the meeting shall stand adjourned to such other date and time as he may determine. If there is no quorum at the adjourned date, the members present shall constitute the quorum.

But if at any General Meeting called by the Registrar on requisition, there is no quorum, the requisition shall lapse.

5) If Govt. thinks that it is necessary to call a General Meeting for election of members of the committee of a society, the Govt. by an authorised person may call such meeting in the same manner as specified in (4) above.

6) If there is no committee or it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Govt. or the Registrar may appoint a person to manage the affair of the society for a period not exceeding six months which may be extended upto three years.\textsuperscript{43}
This appointed person shall have power to exercise all or any of the functions of the committee under general superintendence of the Registrar. The Registrar shall arrange for constitution of a new committee through a General Meeting.\textsuperscript{44}

Thus a committee has a great role in the functions of a Co-operative Society. In a case: Govt. of Andhra Pradesh – vs K. Sethuraman, the High Court of Andhra Pradesh observed the following:

The Committee is the Governing Body comprising of persons either elected, nominated or appointed to which the management of the affairs of the society is entrusted. Persons appointed by the Registrar manage the affairs of the society under Section 32(7)(a) subject to control of the Registrar. They have the power to exercise all or any of the functions of the committee. Having regard to provisions of Section 32(7)(a) and (b) and Section 2(b) giving rise to the definition of “Committee”, there can not be any hesitation in holding that a person appointed by the Registrar in conformity with Section 32(7)(a), is a committee.\textsuperscript{45}

3.2.7 Disqualification for membership of Committee:

Section 21A specifies disqualifications of a person for being a member of a Co-operative Society. The disqualifications in this Section are both pre-election and post-election disqualifications. If a member suffering from any of the disqualifications mentioned in this section on the date of
election to the membership of the committee, he is not entitled to contest to
the membership of the committee. Even, if he acquires disqualifications
after validly becoming a member of the committee he will cease to be a
member as a consequences of the acquisition of the disqualifications. This
section provides not only for disqualification in default, but also for
continuing him as a member of the committee. If a person is in default, he
can not be elected as a member, but if a person once elected falls into
arears, then he can be disqualified to continue as members. On the date of
disqualification, proceedings may be taken to disqualify him and expel him
from the committee during the period he was in default. However, in a
case: Arepalli Satyanarayan – vs – Deputy Registrar of Co-operative
Societies, Bhimavaran, it was held that if the arears are cleared before
action is initiated for removal, be can not be removed and thus a member
who could be validly elected after the debt is discharged cannot be
disqualified from continuing as a member for a default which occurred
earlier.\textsuperscript{46}

Ground of disqualification for being chosen as a member of the
committee if he:\textsuperscript{47}

a) is a near relative of paid employee of the society or its Financing
Bank.
b) is a person against whom any amount due under a decree, decision, award or order is pending recovery under the Act;

c) has any contrast with the society for its work;

d) is of unsound mind and stands so declared by Competent Court, a deaf-mute or a leper.

e) is appearing as legal practitioner on behalf or against the society.

f) is carrying on business conflicting with the objects, or interest of the society.\(^{48}\)

g) has been sentenced to imprisonment of an offence under the protection of Civil Rights Act, 1955.\(^{49}\)

h) is a village Administrative officer or an employee of the State or Central Govt. or an undertaking of any Govt.\(^{50}\)

i) is convicted by a Criminal Court for an offence involving moral delinquency.

j) has more than two children.

Apart from the above grounds, following restrictions have also been imposed for being a member of the committee:

a) An M.L.A. or M.P. or Mayor, Chairman of Municipality or elected member of Zilla Parishad / Mandal Parishad shall be
eligible to be elected as a member of the Committee on condition that he shall cease to be a member of the committee unless within 15 days from the date of becoming member he ceased to be an M.L.A. etc. by resignation or otherwise. Alternately, if a member of the committee is subsequently elected any one of M.L.A. etc. he shall cease to be the member of the committee.\textsuperscript{51}

b) No person shall be a member of two Apex or Central Co-operative Society’s Committee.

c) An officer of the Govt. who is nominated as a member of the Committee by the Govt. or the Registrar shall not come under above restrictions.

One important term in Section 21-A is the disqualification due to conviction by a Criminal Court for an offence involving moral delinquency, moral delinquency is a question of fact depending upon the public morals of the time. Moral turpitude means baseness of the character. In the case of Durga Singh-vs-State of Punjab, the Court observed that the term “moral turpitude” is rather vague one and it may have different meanings in different situations. It is a conduct contrary to justice, honesty, modesty or good morals and what a man owes to a fellowmen or to society in general, it has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral
turpitude or not. In the case of Kuldeep Singh-vs-State of Pubjab, act of killing a person is normally attributed to a feeling or hurt or revenge; an act of personal vendetta, per se an act of murder will not come within the broad concept of moral turpitude.

3.2.8 Super session (dissolution) of the Committee:

Section 34 of the Andhra Pradesh Co-operative societies Act, 1964 contemplates the extreme step of suppression with a view to punishing an erring committee. Before the Registrar initiates action for superseding a committee he should satisfy that prima facie one or more of some jurisdictional facts exist. Once the committee is superseded, the members of the committee cease to hold office and the person appointed by the Registrar functions in place of the superseded committee. Under Section 34, ground of suppression of a committee has been prescribed. The ground is that the committee is not functioning properly or willfully disobeys or fails to comply with any lawful order or direction issued by the Registrar under this Act or the Rules.

The Registrar, after hearing the committee supersedes the committee and appoints either a Special Officer or a Committee of two or more persons to manage the affairs of the society for a maximum period of three years. The Special Officer or the appointed committee shall exercise all or any of the functions of the society under general superintendence of the
Registrar. Before expiry of the term of three years the Special Officer or the Committee shall arrange for reconstitution of a Managing Committee to function as usual.

In case the subject society is indebted to any Financial Bank, the Registrar shall, before taking action under this Section consult the Bank.

In respect of supersession as contained in Section 34, it is a question whether the Registrar may supersede a committee when all members of the committee have resigned from office. In a case, K. S. Seetharamiah-vs-Deputy Registrar, Vijayawada, the Court held that the action taken by the Registrar superseding the Managing Committee is perfectly justified under Section 34(1) of the Act with withdrawal of 8 Committee Members, for want of quorum, the committee's meeting was not possible to be held. Without such a meeting of the committee, any general body's meeting could not be convened and no transaction can be performed and hence the society’s functions came to a standstill. Therefore, the Registrar came in an opinion that in the above circumstances the committee was not functioning properly and also that it could not function. The action of the Registrar under Section 34(1) of the Andhra Pradesh Co-operative Society Act was not unjustified.54

Consultation with the Financing Bank as required under Section 34(b) is a part in the process for super session of a committee, if the subject
society is indebted to the Bank. The requirement is to safeguard the interest of the Financing Bank. In other States also, there are identical provisions found in respective Acts. But, there is a conflict of judicial opinion whether the consultation should take place before issuing show cause notice or before issuing the final orders. The Madras High Court in a case held that consultation should be done before issue of final orders. The Orissa High Court in another similar case held that even before the show-cause notice is issued, the Financing Bank is preferable on the point that explanation to the show cause notice, if issued before consultation of the Financing Bank may be consulted with such Bank at the final stage of issuing order of supersession.

In formation of opinion by the Registrar in superseding a Committee of a Co-operative Society, the Registrar should carefully take steps without any partiality or caprices. So far as the question of non-functioning of the committee properly is concerned, that may depend upon what the Registrar discovers after a proper audit or inquiry or inspection. But he can form that opinion even on matters of fact. It is not compulsory to form opinion on the basis of audit or inquiry or inspection etc. Defects and irregularities detected in such report of audit or inquiry or inspection should be brought to the notice of the Committee. If the committee still remains aloof, the Registrar’s direction has not been complied with and the defects are not removed and irregularities are persistent in nature, the Registrar is a liberty
to take actions under Section 34 and may dissolve or supersede the committee for the interest of the general members of the society. However, in invoking this section, the Registrar has to form his opinion impartially that the society is not functioning properly in order to sustain action under this Section. The above similar observation has been made by the Supreme Court in the case: The Joint Registrar of Co-operative Societies, Madura-vs-Rajagopala Naidu.55

In another case, the Court held that the use of the words "if in the opinion of the Registrar, the society is not functioning properly" refers to the inefficiency of mismanagement of the Committee or of such a grave or irreparable nature that nothing sort of judgement of the normal and constitutional set up of functioning of the society will save it from collapse or total failure.

3.2.9 Directions for the effective and proper functioning of Co-operative Housing Societies in Andhra Pradesh:

1. In the State of Andhra Pradesh, more than 3500 Co-operative Housing Societies have been registered. But the promoters of many societies indulge in large scale irregularities in respect of acquisition of lands, admission of members and allotment of plots in blatant violation of the bye-laws, rules and provisions of the Act Admission of near relatives, family members and
allotment of plots to such members in regular manner have been observed rampant. Besides, the committees indulge in permitting large scale transfer of plots from members to members and non-members thereby indulging trading and profiteering. They also indulge in malpractice of admitting ineligible members just before elections even when the existing eligible members do not get required service from the societies.

2. To curb the above irregularities, the Govt. decided to appropriate statutory directions under Section 4(2) of the Act. Following directions were issued by the Registrar:

**A. Provisional Registration:**

**Cause** - At the time of provisional registration, some promoters of Co-operative House Building Societies are found to belong to the same family or having close relationship. These persons use provision of Act, Rules and Bye-laws to basically bring their real estates under the cover of Co-operative activities for trading and profiteering.

**Direction** – The society shall not admit persons belonging to the same family or having close relationship to each other as members, as defined under explanation to Section 6(2)(b). Before admitting any person as member, the society shall obtain a sworn-in-affidavit
on non-judicial paper that he does not own any house or house-site in the area of operation of the society in his name or his family members and that he does not have any of his family members in the said society nor he has any close relationship with any of the members or applicants, intending to become members of the society. The societies shall cancel the membership of any existing members, if they are admitted in violation of the said provisions of the A. P. Co-operative Societies Act, 1964, Rules and bye-laws of the society.

**B. Final Registration:**

**Cause** – At the time of registration finally, it should be ensured that the society has procured land within a period of one year from the date of provisional registration. It is often noticed that societies enroll more members than could be actually served, especially just before the elections to the committee, so restrictions are necessary for keeping the number of membership equal to available member of plots of land. More often many co-operative societies approach the Govt. or Government Agencies for alienation or assignment of Govt. land at concessional rates. Govt. in this case stipulates certain condition as to the allotment of plots. But the societies blatantly violate Govt.'s directions and conditions. In order to wipe out gross irregulars following directions were given:
**Direction** – Final registration of the society shall not be entertained by any Competent Authority, unless the society is in possession of a reasonable extent of land to sub-serve the existing members. No new members shall be admitted by any society, unless the existing members are completely served through allotment of houses or house-sites. In case of necessity to admit any new member, prior clearance from Registrar of Co-operative Societies shall be obtained who shall look into the aspect of adequacy of service to the existing members.

The society shall amend its bye-laws strictly in accordance with the conditions laid down by the Govt. while alienating or assigning the site. It is also hereby directed that under no circumstances, the society shall admit more than 10% of the members already provided with the plots, as members in waiting for the service of the society, at any given time.

**C. Area of Operation:**

**Cause** – Promoters of Co-operative Housing Societies at the time of registration show a specific area of operation. Later on they try to amend the bye-laws to extend the area of operation with a view to facilitating admission of certain members who are otherwise ineligible to become members. Persons owning houses in twin cities
of Hyderabad and Secunderabad will be eligible to become members of the Co-operative Societies, when the area is restricted to peripheral urban agglomerations. Some time the area of operation is restricted limiting it to the just out-skirts of the cities and peripheral urban agglomeration to enable the residents of the cities who are otherwise ineligible to become member of the city is also included in the area of operation. It is also noticed that sometimes very large extents of plots are laid out and allotted to the members giving them undue advantage especially to circumvent the urban ceiling laws. Hence the following direction:

**Direction** – The area of operation of the societies in urban areas must include generally the entire urban agglomeration. The area of operation of any society in urban areas, on the other hand shall not be confined to only out-skirts and peripheral areas. Generally, the area of operation shall include Municipal area and surrounding urban agglomeration. In respect of twin cities it must necessarily include the limits of Hyderabad Municipal Corporation and Cantonment Board at least. In respect of area of operation of other societies, it may be confined to erstwhile taluk or present Mandal. Under no circumstances, the area of operation shall be later extended or curtailed with a view to get benefit in the surrounding urban areas. The extent of plots shall be so restricted as not to
exceed the urban ceiling limits if any or 1000 sq.ft. yards whichever is less.

**D. Residential Qualification:**

**Cause** – It is often noticed that Managing Committee of the societies indulge in admitting members who do not ordinarily reside in the area of operation or at least who do not have immovable properties or other business or other interests in the area of operation with an intention to settle there permanently. The result is that members who are from far away places including from other States and even Foreign countries acquire the sites through the society depriving the genuine members with a motive to only acquire property and to indulge in trading and profiteering at a later date. In order to curtail these malpractices the following direction has been given:

**Direction** – No society shall entertain any application for membership from persons who do not ordinarily reside in the area of its operation, or at least have immovable properties or business interests in the area of operation, with an intention to settle there permanently at a later date. A Sworn-in-affidavit in the appropriate form shall be taken on Non-Judicial Stamp Paper to this effect along with application.
All Deputy Registrars shall strictly enforce the residential and property qualifications as per provisions of bye-laws of the society and Section 6(2), 6(2)(cc), 19(2)(ii) read with Section 21(3) of the A. P. Co-operative Societies Act and relevant Rules. Membership of all members obtained in violation of the provisions of bye-laws, Rules and Act shall be cancelled forthwith following the due procedure.

E. Procedure for applying for Membership:

**Cause** – Societies are entertaining applications for membership in a prescribed form, but without admission fees and initial minimum share capital accompanying the application, without which the application is not valid. Bye-laws of some of the societies so framed as to permit paying of admission fees and initial share capital only after intimation from the society that the applicant is admitted as member. This procedure is leading to benami transactions and the Managing Committee is often admitting members enmass at their own will especially just before elections by paying cash themselves towards admission fees, share capital etc. In order to curb this malpractice and fraud, the following direction has been given:

**Direction** – No society shall entertain any application for membership, from any person unless the same is in the prescribed
form accompanied by a cheque or draft towards admission fees, share capital etc. and on receipt of the application, acknowledgement in the prescribed form shall be given to the applicant. Thereafter, the application shall be entered in the application register maintained for the purpose according to seniority of its time and date and receipt issued for the cheque or draft received.

F. Allotment of plots by Drawal of Lots:

Cause - Many of the societies while framing bye-laws do not provide for transparent, fair and democratic system of allotment of plots. Courts have often held that allotment should be on the basis of seniority of the membership. Further it is noticed that societies do not give equitable size of plots to all members. Therefore, it is necessary that the bye-laws of societies must provide for clear and transparent system to give fair opportunity to members to choose the size of their plots and witness drawing of lots in fair and transparent manner. Reasonable opportunity should be given to the members to pay necessary dues and charges. Hence the following direction:

Direction – Allotment of plots to the members must be done in an open and transparent manner with due and sufficient intimation to members. They shall give reasonable opportunity to choose the size
of the plots, to pay necessary dues and charges and also give them opportunity to participate and witness the drawal of lots. The society shall give advance intimation to the concerned Deputy Registrar about the drawal of lots for allotment of plots, to enable the latter to send his officers to supervise the drawal of lots.

**G. Transfer of Plots:**

**Cause** – Strictly speaking, allowing a member to transfer the plot to the members or non-members is against the spirit of Co-operative principles. Membership in a society is meant for persons who do not have house or house-site in the area of operation. Hence transfer of plot after getting the same through the society amounts to fraud, unless there are compelling reasons for such transfer. Under these circumstances the transfer shall be restricted that it shall go to the other member in waiting according to the seniority, or the society exercises its right to purchase the plot, for future allotment to its members. Transfer of plots by members for profiteering is assuming alarming proportions. Hence, the following direction:

**Direction** – Transfer of plot to any other member or non-member shall not be permitted by the society, except to the legal heirs by inheritance. For any compelling reasons, if the member wants to transfer the plot, he shall surrender the same to the society which
shall pay back to the member the fees and charges collected from him along with interest, from the date of possession of the plot by the member. The society shall accept such surrender of the plot and allot it to other eligible members, according to seniority and recover the costs and charges, if any, for such transfer from the transferor. If any member wants to transfer the plot within 15 years of possession, the society shall have the first right of conveyance. No member shall be allowed to transfer his plot without the concurrence of the Managing Committee and without registering the sale or transfer deed in his favour. Any transfer of plots in violation of the bye-laws shall be treated as illegal and the transferee shall be treated as trespasser or encroacher.

H. Acquisition of Land by Private Negotiations by the society:

Cause – It is noticed that societies when acquiring the land for house-sites either out of negligence or otherwise enter into transactions with the land owners of questionable titles. There are two aspects to this issue. The land owners who try to take advantage of disputed title by selling the lands to co-operative society, thereby either circumventing the law or creating trouble for others. This is also resulting in land grabbing of Government and Municipal lands by the unscrupulous elements. In order to curb the malpractice, the following direction has been given:
Direction – The society shall before entering into agreement with the land owners, invariably obtain the legal opinion and also the opinion of the Revenue, Municipal and Town Planning Authorities about the title of the land. The society shall also take prior permission of the Registrar of Co-operative Societies under Section 48 of the A. P. Co-operative Societies Act, before entering into such agreements. They shall also take prior permission of the Registrar of Co-operative Societies, before developing or undertaking any developmental work, by submitting plans and estimates for the approval of the Registrar of Co-operative Societies.

I. Admission of Ineligible Members:

Cause – It has often come to the notice that Central Co-operative Societies are registered for exclusive members of employees or certain class or category of members. But it is often noticed that they sometimes admit even members who do not belong to that class or category. Hence the following direction.

Direction – Housing Societies which are exclusively registered for certain class or category of members, shall admit only that class or category of members but not others. They shall not amend their bye-laws at a later date to circumvent the rules and admit other class of members. The Deputy Registrars are directed to see that right class
of members alone are admitted and members who do not belong to that class or category shall be removed from the membership forthwith

_J. Deemed Membership:_

**Cause** – It has come to the notice that the Managing Committees are not considering the applications filed for membership of the societies within reasonable time keeping them pending for long. Some of the Managing Committees are admitting them en mass at a convenient time under “deemed provision”. In order to curtail this malpractices, the following direction has been given:

**Direction** – The Managing Committee of any society shall pass appropriate order on any application filed for membership in accordance with rules and bye-laws within two meetings of the Managing Committee after the application for admission is filed or within sixty days from the date of application, whichever is earlier and shall intimate the orders to the members immediately thereafter. If no such action is taken by the Managing Committee, the applicant shall approach the concerned Deputy Registrar for considering his application, upon which the later shall consider his application for admission for membership, as per the rules and bye-laws and admit him as member if found otherwise eligible under compulsory
provisions of A. P. Co-operative Societies Act. There shall not be any scope given by the society for admission of members under deemed provision, hereinafter. If no action is taken to place the admission of membership in the next two Managing Committee meetings or within 60 days, penal provision of superseding the committee under Section 34 simultaneously disqualification under Section 21 of the A. P. Co-operative Societies Act will be initiated by this Department.

**K. Eligibility of Members to Vote:**

**Cause** – It is often noticed that Managing Committees are admitting members on large scale even when there is no scope for serving the existing members, with a view to get elected through their Votes. This is resulting in injustice and undue hardship to the existing members and the unscrupulous Managing Committee trying to entrench themselves on the committee. In order to protect the interests of the existing members, the direction is as below:

**Direction** – No society shall admit any new members to be in waiting for service except to the extent of maximum of 10% of members provided with plots at any given time. No member of a society who is not allotted a house or house-site, shall be eligible to vote in the ensuing elections, unless he completes at least one year
as a member in the society. The Election Authorities shall take into consideration this aspect while preparing the electoral list of the members of the society.\textsuperscript{56}

3.3 Summing up of the Maharashtra Co-operative Societies Act, 1960 and the Andhra Pradesh Co-operative Societies Act, 1964 and Rules under the two Acts and other Co-operative laws in India:

In the Andhra Pradesh Co-operative Societies Act, 1964 as amended till recent time, there is no special chapter for Co-operative Societies except a special chapter on “Financing Bank / Primary Agricultural Co-operative Societies” at Chapter XIII, the Co-operative Housing Societies being totally different to any other type of Co-operative Society. Hence, the general provisions of the Act and Rules thereunder are in many cases very difficult to be applied. Of course, the Andhra Pradesh Co-operative Societies Act gives rise to an important provision in Section 4(2) empowering the Registrar to issue directions to any society from time to time in the interest of the Co-operative Movement for the public interest or in order to prevent the affairs of the society from being conducted in a manner detrimental to the interest of the members or of the depositors thereof, like Section 7 of the West Bengal Co-operative Societies Act, 1983. The Section 4(2) of the Andhra Pradesh Co-operative Societies 1964 has given an unlimited power to the Registrar. Section 7 of the West
Bengal Act confers power to the State Govt. to exempt any Co-operative Society or class of Co-operative Society to such extent from the application of any of the provisions of this Act or the Rules or to direct that any of the provisions of this Act or the rules shall apply to any Co-operative Society or class of Co-operative Societies to such extent as may be specified in the Notification. Like Section 4 of the Andhra Pradesh Co-operative Societies Act, Section 49 of the West Bengal Co-operative Societies Act empowers the State Govt. to issue directive at any time to any Co-operative Society or any class of Co-operative Societies to modify its policies in the manner specified in such directives or to take such other action as is expedient in the interest of such Co-operative Society or class of Co-operative Societies or the Co-operative movement in general.

The Maharashtra Co-operative Societies Act, 1960 gives in Section 77A, to appointment of member of committee, new committee or administrator where there is failure to elect member, to constitute committee or where committee does not enter upon office. In Section 78 of that Act, the committee or any member thereof may be removed. In Section 79A of the Act, the Govt. has a huge power to give directions in the public interest. Under Section 157, the State Govt. of Maharashtra has power to exempt societies from provisions of the Act like Section 7 of the West Bengal Co-operative Societies Act. Besides the State may issue Notification under Section 42 Thus though there are no special chapters
either in the Maharashtra Co-operative Societies Act or in the Andhra Pradesh Co-operative societies Act, the Govt. or the Registrar of Co-operative Societies have unfettered power to control any society's affairs including the affairs of the Co-operative Housing Societies.

The committee on Co-operative Law (Ardhanareeswaran Committee) in its report in 1987 have examined various State Co-operative Acts and makes the following observations:

a) The existing Co-operative Societies Acts contain provisions which militate against the democratic character and the autonomy of co-operatives.

b) Over the years, the Registrar has acquired undue powers over the Co-operative Societies.

c) Role of Registrar should be made more positive and he should be looked upon as a Development Agent.

d) The Federal Co-operative Societies should play a more active part in the developmental function.

The following are the restrictive provisions now in force in several states in India:

a) The Registrar has power to direct a Co-operative Society or a class of societies to amend bye-laws. This is an unfettered power
of the Registrar. Amendment of bye-laws should only be made by the General Body of members.

b) The State Govt. has power to nominate director / committee members in the Managing Committee of the societies where they have aided. Most of the societies except some Urban Co-operative Banks are State aided. Hence, political persons of the ruling party are inducted in Co-operative Societies. Even some State Governments have power to appoint Chairman and Managing Director in Co-operative Societies where the Govt. has contributed to their share capital. Such provisions negate, the principle of self-regulation, democratic leadership. The provisions convert Co-operative Societies into a playground of politics.

c) The Registrar or State Govt. has been given wide power of issuing directions to the Co-operative Societies in many States. The Registrar or the Governments may usurp the rightful jurisdiction of elected management of Co-operatives.

d) There are provisions for prosecuting mis-management for abuse of powers by the Managing Committee. The power has been given to the Registrar and the State Govt. The application of such
provisions in many cases is made with arbitrariness and for fulfilment of political gain.

But against the above observations, there are so many tangible grounds to retain the existing power of the Registrar and the State Govt. as we have seen in the directions issued by the Andhra Pradesh in respect of functioning of the Co-operative Housing Societies that in some compelling circumstances the Govt. of Andhra Pradesh was forced to issue many directions. The management of many Co-operative Housing Societies were indulging in trading and profiteering by malpractice with the help of the Act, Rules and bye-laws. In absence of specific provision in the law, they were getting their own bye-laws amended at sweet will to deceive others. They enrolled many more persons than the number of plots available in the project. Hence, necessity of withdrawing unfettered power of the Registrar and the State Govt. is experienced and side by side curbing of malpractices of some unscrupulous promoters and committee members in Co-operative Housing Societies is also essential.

So, a balance of laws is required, as unfettered power of the Registrar and the State Govt. leaves scopes of arbitrary application. On the other hand, absence of power to issue directions as and when necessary shall lead to expansion of malpractices, trading and undue profiteering.
3.4 Main Thrust of Model Co-operative Act:

A committee was constituted by the Planning Commission, Govt. of India in 1990 with the following terms of reference:

a) To make a broad rapid review of the States of the Co-operative Movement and suggest about future directions; and

b) To finalise the bill and submit the same to the Planning Commission by 30th September, 1990.

The committee comprising of 14 members handed over their report to the Planning Commission on 20.05.1991.

On the basis of the said Report, a Model Co-operative Societies Act has been drafted by the Planning Commission in the background of the prevailing situation of the Co-operative Movement in the country; existing nature of Co-operative Laws at the Central and the States Governing Co-operative Societies; persistent demands of the Co-operative Community to amend the laws and assurance, promises and commitments of the present and previous Governments to change the laws.

The Government of India intended to introduce new Co-operative Laws in every State on the outlines of the Model Co-operative Act, though the Co-operative Law is a subject in the State List under Article 246 of the Constitution of India. The approach is to give a genuine character to Co-operative Societies, to facilitate building of an integrated co-operative
structure so as to evolve a co-operative system, make the federal organisations at various levels more responsive and responsible towards their members, to minimise government control and interference to enable cooperators and co-operative societies develop self-reliance and self-confidence with power of decision making and to eliminate politicisation.

**Special features of the Model Co-operative Acts:**

A) State policy on Co-operative Societies and the principles of co-operation have been stated in the beginning of the Act as a guide to the remaining provisions of the Model Act and to facilitate the Govt. of conform to the basic ideology of co-operation.

B) Procedure for registration of a new Co-operative is simplified and all artificial restrictions by way of area of operation, economic viability etc. are removed.

C) The Model Act gives no rule making power to the Govt. The law itself lays down the broad parameters necessarily to be observed by co-operatives and leaves all other matters relating to constitution, management and business of the society to be conducted in accordance with its bye-laws.

D) The Model Act gives no power to the Registrar or the Govt. to order for any of the following in a Co-operative Society:

a) Supersession of the Board of Directors.
b) Compulsory amalgamation or division of societies.

c) Compulsory amendment of bye-laws.

d) Veto / rescind / annul the resolution of the Board of Directors of a Co-operative Society.

e) Issue Directives.

E) Co-operative Federations / Unions are to assume greater responsibility towards the member Co-operatives and in particular to ensure regular conduct to elections to the Board of Management and timely conduct of Annual Audit of Accounts.

F) The Role of the Registrar under the Model Act has been confined to the Registration and Liquidation of Co-operative Societies, conduct of inquiry and in case of default to conduct elections, audit and to convene meeting of general body.

G) The Model Act prohibits co-operative societies from accepting funds from the Government by way of equity.

H) To ensure the character of Co-operative Societies as a member user organisation, special obligations have been imposed on members.

I) Board of Directors have been made accountable for timely conduct of elections, regular convening of meetings of the Managing Committee and the general body and for participation therein and for the timely conduct of the audit of the books of accounts.

It was intended that all State government would take steps in promulgating new Co-operative Laws in the line of the Model Co-operative Act. Andhra Pradesh State Govt. promulgated an Act named by the Andhra Pradesh Mutually Aided Co-operative Societies act, 1995 (Act No.30 of 1995). But side by side the original Andhra Pradesh Co-operative Societies Act, 1964 has not been repealed. It is very much in existence as before. This new Act, 1995 is operative to Co-operative Societies optionally. Any already registered cooperative is at liberty to become a Co-operative Society registered under the new Act. The society shall mobilise their own funds and shall not take any share or grant from the Govt. But except Andhra Pradesh and some one or two States, the Model Co-operative Act has not been adopted or accepted by major States till today. The reasons included perhaps the difference of opinion on withdrawal of power of the Registrar and the State Govt. Even though the Central Government passed the Multi-State Co-operative Societies Act, 2002, Provision of power of the Central Registrar and the Central Govt. have not been withdrawn. There is no Co-operative Housing Society registered under the Central Act i.e. Multi-State Co-operative Act, because a society whose area of operation extends over more than one State, comes under the purview of this Central Act.
3.5 The Tamil Nadu Apartment Ownership Act, 1994^57:

The Tamil Nadu Apartment Ownership Act, 1994, has been promulgated to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable immovable property. The purpose of this Act is to secure that the ownership and control of the material resources of the community are distributed to subserve the common good. The Act intends to provide for the ownership of an individual apartment in a building and of an undivided interest in the common areas and facilities appurtenant to such apartment, and to make such apartment and interest heritable and transferable immovable property.^58

3.5.1 Definitions of Apartment, Flat, Ownership in Apartment Ownership Act:

a) Definition of Apartment has been given in every Apartment Ownership Act promulgated by individual States in India and all definitions are more or less the same. In some States, instead of the word "Apartment", the word "flat" has been used. As for example, in the U. P. Apartment Ownership Act, 1984, "flat" has been defined but not Apartment.

An Apartment means a part of any property, intended for any type of independent use, including one or more rooms or enclosed spaces
located on one or more floors or any part or parts thereof, in a multi-storied building to be used for residence, or office, or for the practice of any profession or for the carrying on of any occupation, trade or for business or such other type of independent use as may be prescribed, and with a direct exit to public street, road or highway, or to a common area leading to such street, road or highway and includes any garage or room (whether or not adjacent) provided by the promoter for the use by the owner of such apartment for parking any vehicle or as the case may be for the residence of any domestic aide employed in such Apartment.

b) When in lieu of the word apartment, the word flat is used or floor is used, definition of flat is to be carefully understood. Of course both apartment and flat are usually taken as a dwelling. In ordinary language, a flat according to Oxford Dictionary means a suite of rooms on one floor forming a complete residence. The word “flat” is derived from the word “floor” used in old English. The definition of flat given in several Apartment Ownership Acts and Municipal Corporation Acts is more or less the same. Generally a flat is an independent premise consisting of some rooms with facilities of lavatory and sanitation. It is a separate and self-contained set of premises used or intended to be used for residence or office, or shop or show room or godown and other spaces, all of which in a whole form a part of a building. Hence
premises like those utilised for bathing, lavatory, sanitation form a part of a building and it is deemed to be separate and self-contained. The definition of flat gathered from various relevant Acts may be summarised as the following:

A flat means a separate and self-contained set of premises used or intended to be sued for residence or office or showroom or shop or godown or for carrying on any industry or business and includes a garage, the premises forming part of a building and includes an apartment.

c) The word Ownership has been defined in various ways by many authors. In ancient time there was no distinction between ownership and possession. People thought in terms of “mine and thine”. But the distinction became clear in Roman Law, According to Austin “Ownership” means a right which avails against everyone who is subject to the law conferring the right to put thing to user of indefinite nature”. Full ownership is defined as “a right indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration”. It is a right in rem which is available against the whole world. There are two maxims that the owner can not be allowed to use the property in a way which is injurious to others though the thing owned by him may be used by him in very many ways. One maxim is “so use your own property as not to injure your neighbour’s”. The
second maxim is “It is not lawful to build upon your land to the injury of another”.

According to Salmond, “ownership in its most comprehensive signification, denotes the relation between a person and right that is vested in him. That which a man owns is in all cases a right. When, as is often the case, we speak of the ownership of a material object, this is merely a convenient figure of speech. To own a piece of land means in truth to own a particular kind of right in the land, namely, the fee simple of it. Ownership in generic sense, extends to all classes of rights, whether proprietary or personal in rem or in personam in repropria or in realiena. I may own a debt, or a mortgage or a share in a company, or money in the public funds, or a copy right or a lease or a right of way, or a a power of appointment, or the fee simple of land. Every man is the owner of the rights which are his”.

There are many definition of “ownership” as given by Holland, Markby, Hibbert, Paton, Buckland, Noyes, Pollak and some others. From all definitions of the above authors, essentials of ownership may be derived as the following:

**Essentials of Ownership:**

1) The first Essential of Ownership is that it is indefinite, in point of user. It is impossible to define or sum up exhaustively the wide
variety of ways in which the thing owned may be used by the person entitled to its ownership. The owner has actually a liberty to use the thing. He is under a duty not to use it. Others are under a duty not to use it or otherwise interfere with it.

2) Another essential of ownership is that it is unrestricted in point of disposition. The right of alienation is considered as necessary incident of ownership. An owner can effectively dispose of his property by a conveyance during his life time or by will after his death. A person who is not the owner can not normally transfer the right of ownership, even though he may have possession of the thing in question. This is based on the maxim that "he who has not can give not”.

3) The owner has a right to possess the thing which he owns. It is immaterial whether he has actual possession of it or not. What matters is that he should have right to possession.

4) Another essential of ownership is that the owner has the right to exhaust the thing while using it, if the nature of the thing owned is such.

5) It has a residuary character. An owner may part with several rights in respect of the thing owned by him. Inspite of that, he continues to be the owner of the thing in view of the residuary
character of ownership. X, an owner may give a lease of his property to Y and an easement to Z. His ownership of the land still consists of the residual rights.

6) Generally, the owner has the right to destroy or alienate the thing he owns.

On the basis of definitions under (a), (b) and (c) all States in India have promulgated Apartment Ownership Acts for the purpose of providing for the ownership of an individual apartment or flat in a building to make it heritable and transferable as in case of other immovable properties.

3.5.2 Applicability and Definitions of some important terms in the Tamil Nadu Apartment Ownership Act, 1994:

A) Applicability of some buildings:

A building containing five or more apartments or three or more floors constructed whether before or after the date of commencement of the Act is covered under the law. Of course such building should have been made in accordance with a planning permit and also a building plan should duly have been sanctioned by the appropriate authority concerned under the relevant law for the time being in force.
B) Common areas and facilities – Definition:

Definition of common areas and facilities has been given in this Act like other similar Acts of other States in India and that is as reproduced here under:

“Common areas and facilities” unless otherwise provided in the Deed of Apartment, means:

1) the land on which the building is located.

2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, terrace, compound walls, fire escapes, walls and pumps and entrance and exits of the building.

3) the basement, cars, yards, gardens, parking areas and storage spaces;

4) the premises for the lodging of caretakers or persons employed for the maintenance of the property.

5) water supply, sewerage and drainage connections and the installations of central services such as power, light, gas, hot and cold water, heating, refrigerations, air-conditioning and incinerating.
6) the elevator, tanks, pumps, motors, fans, composers, ducty and in general all apparatus and installations existing for common use.

7) automatic fire detecting and alarm facilities necessary to warn the occupants of the property of the existence of fire.

8) such other community and commercial facilities as may be prescribed.

9) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.  

C) Common expenses:

"Common expenses" means –

1) all sums lawfully assessed against the apartment owners by the society or the Association of Apartment owners;

2) expenses of administration, maintenance, repair or replacement of the common areas and facilities or the limited common areas and facilities.

3) all legal expenses as may be incurred by the society or the Association of Apartment owners for the enforcement of lawful claims of Apartment owners;

4) expenses resolved as common expenses by the society or the Association of Apartment Owners; and
5) expenses declared as common expenses by the provisions of this Act, or by the bye-laws;⁶¹

D) Declaration by owners of Apartments:

Tamil Nadu Apartment Ownership Act, 1994 makes it compulsory to a building of 5 or more apartments or 3 or more floors as to its applicability to the provisions contained therein the Act. Hence the buildings of less than 5 apartments or less than 3 floors are kept outside the purview of this Act. The owners of later types of buildings have to make contracts, among themselves for the purpose of their smooth habitation with individual apartments and common areas and facilities. However, under this Act, the matter of “declaration” is the vital thing. Unless a declaration is executed and registered, nothing of the Act shall apply. This is compulsory that every building as defined herein shall be the subject of this Apartment Ownership Act. But there is nothing expressly provided in the Act if owners of such eligible buildings do not want to do whatever is required under the Act. However, the Deed of Apartment is the principal document which is the main pillar binding all apartment owners into one unit. The contents of such a Deed of Apartment have been prescribed in Section 10 of the Namil Nadu Apartment Ownership Act, 1994.
After registration of a Deed of Apartments in respect of a building or buildings within the purview of the Tamil Nadu Apartment Ownership Act, 1994, the Apartment Owners shall have a responsibility to form a society under that State’s Co-operative Societies Act or under that State’s Societies Registration Act or an Association of Apartment Owners. Now minimum numbers to form a Co-operative Society under that State’s Co-operative Societies Act is 10 and to form a society under that State’s Societies Registration Act is 7. But question arises if the apartment owners are less than 10 or 7 because 5 owners may come under the purview of the Apartment Ownership Act. For this purpose, Section 14 of this Act removed the deficiency. By Section 14 of the Act, the minimum number of members required for forming a society shall be five notwithstanding anything contained in the Co-operative Societies Act and Societies Registration Act of the State. Now, Section 12 is the provision compelling the apartment owners to form a society or association.

To make the provisions of the Tamil Nadu Apartment Ownership Act, 1994 effective and applicable, Section 14 has given rise to an overriding effect over the Tamil Nadu Co-operative Societies Act, 1983 and The Tamil Nadu Societies Registration Act, 1975 particularly in respect of minimum number of members required to form a Co-operative Society or a Society.
The owners of apartment after registration of Deed of Apartments shall form any of the three bodies namely a Co-operative Society or a society or an association of apartment owners. The authority in case of Registration of a Co-operative Society or an association of apartment owners is the Deputy Registrar of Co-operative Societies (Housing) of the area. In case of registration of a society or an association of apartment owners, the Registrar of Societies is the authority.\textsuperscript{62}

3.5.4 Administration of the property :

An outline has been prescribed as to what shall be the contents of the bye-laws according to which every property shall be administered. This is described in Section 13 of the Act.

1) The administration of every property shall be governed by the bye-laws, a true copy of which shall be filed with the competent Authority. No amendment of the bye-laws shall be valid, unless a copy thereof is duly filed with the Competent Authority. Amendment of bye-laws shall take effect from the date, if any, specified in the amendment. Where no such date is specified, the amendment shall take effect from the date on which a copy of it is filed with the competent authority.

2) Insurance : Bye-laws as prescribed may provide for insuring the property against natural calamities. If the bye-laws do not
provide any such provisions, the apartment owners may decide to 
insure the property. The Tamil Nadu Apartment Ownership Act. 
1994 gives rise in Section 15 to insure the property.

The society or the Association of Apartment Owners, shall, by the 
bye-laws or by a majority of the apartment owners, ‘insure the property 
against fire, flood, cyclone and such other hazards under such terms and 
for such amounts as shall be required. The policy of Insurance shall be 
written on the property in the name of the society or the Association of 
Apartment Owners as Trustee for each of the Apartment Owner in the 
percentage specified in the Deed of Apartment and the premium payable 
under such policy of Insurance shall be common expenses.

3) Disposition of property on destruction or damage: The property 
of owners after expiry of a considerable period is bound to be 
damaged and unless the whole property or part thereof or any 
apartment of such damaged condition is renovated, the whole 
property shall be left as inhabitable. The Tamil Nadu Apartment 
Ownership Act, 1994 has specified the manner of disposal of 
such property.

In the event of the property, either in its entirety or in part being 
damaged or destroyed and the society or the Association of Apartment 
Owners has not undertaken to repair, reconstruct or rebuild within a period
of 90 days or such further period as may be specified by the Competent Authority from the date of damage or destruction:

a) the property shall be deemed to be owned in common by all the apartment owners in the same percentage as the percentages of the undivided interest specified in the Deed of Apartment;

b) the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;

c) any encumbrance affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of those apartment owners in the property.

3.5.5 Common profits, common expenses etc.:

There are common expenses for smooth management of the society or the Association of Apartment Owners and the meaning of common expenses have been given in Section 3(1) which has been discussed earlier. On the other hand, the common areas and facilities may be leased out for commercial purposes and the society or the Association, as the case may be, may earn money. As a result, there may stand some profit from the earning after meeting up required expenses. There should not be any
instance in which the society or the Association shall sustain loss. So, Tamil Nadu Apartment Ownership Act, 1994 specifies the manner of distribution of profit by Section 19 and the manner of charging common expenses by Section 19 and 20.

A) Common Profits and Expenses:

The common profits shall be distributed among, and the common expenses shall be charged to the Apartment Owners according to the percentage of the undivided interest of the Apartment Owners in the common areas and facilities specified in the Deed of Apartment and every owner shall be liable to be charged to the common expenses.

Where the Apartment Owner is not in occupation of the Apartment by him, the common expenses payable by such Apartment Owner may be recovered from the person in the occupation of the Apartment.

B) Common expenses to be charged on property:

All sums assessed by the society or the Association of Apartment Owners as the share of the common expenses chargeable to any apartment shall, subject to the prior claim, if any –

i) of the Govt. in respect of land revenue or any money recoverable as land revenue;
ii) of any municipality or other Local Authority in respect of Tax or other assessment; and

iii) of the mortgage in respect of all sums unpaid; constitute a charge on such apartment.

3.5.6 Exemption of Stamp Duty and Registration Fee:

This Act has given to the Govt. a power to exempt from Stamp Duty, Registration Fee and Court Fee and power to refund. Section 24 is the empowering section. The Government of Andhra Pradesh has power to exempt Stamp Duty and Registration Fee prospectively or retrospectively on instruments to be registered by or on behalf of or in favour of an Apartment Owner or the society or the Association relating to any of the purposes of this Act. For retrospective effect of such exemption the Govt. may refund the Stamp Duty and Registration Fee which has already been paid in respect of above types of instruments when the Govt. decides to give the exemption with retrospective effect.

3.5.7 Comments on The Tamil Nadu Apartment Ownership Act, 1994:

a) There should be a provision for executing and registering the Deed of Apartment by the Sole Owner before transferring the apartments to individuals.

b) The minimum number of owners required for formation of Co-operative Society or Society has been lowered to 5;
complications may arise in constitution of a Board out of 5. If the total number of committee members is 3 and quorum of a meeting of such committee is $1/3$, then only one member shall constitute a quorum. So, it will be ridiculous and impractical also. For viability there should be a limit of maximum number of apartments also.

c) If it is compulsory for a building to come under the purview of The Tamil Nadu Apartment Ownership Act, 1994, there should be a time limit within which period, a Deed of Apartment shall be executed and registered.

d) Under Section 15, majority owners may decide to insure the property against natural calamities. The decision should be made by all apartment owners. Because complication may arise when some owners disagree to it on the plea that they have already individually insured their own apartment against the same cause i.e. natural calamities.

e) Section 16 specifies disposal of property in the event when the owners do not repair, reconstruct or rebuild the property in damaged condition. But there should be a provision by which the property if duly repaired, reconstructed or rebuilt after wards by the apartment owners in full satisfaction of a competent
Engineer, may again come under the purview of this Act and fresh Deed of Apartment may be executed and registered.

f) The owners have no option to withdraw their property from the provision of the Act except in the manner as laid down in Section 16. This option should exist in the Act.

g) For contravention of any provisions of the Act and bye-laws, there is no scope to impose penalty upon any owner or committee member. That should be inserted in the Act.

3.6 The Orissa Apartment Ownership Act, 1982:

There are several reasons for promulgation of the Act by the State of Orissa. The reasons have been elaborately stated with corresponding objects in the preamble as under:

1) There has been marked increase in number of housing schemes taken up in urban areas of the State. This has created increased demand on the limited land available in urban areas. To minimise the use of limited space, vertical growth of buildings with many apartments have been recommended as the construction pattern in many towns of the State.

2) The housing agencies like Improvement Trust, Orissa State Housing Board have taken up multi-storeyed buildings with a number of apartments on each floor. This will create the problem
regarding ownership, common facilities, maintenance of structures and payment of different taxes and liabilities. To meet these objections the Bill provides for the following:

(X) Regulation of ownership of an individual apartment in a Multi-storeyed building;

(Y) Making Ownership of apartment heritable and transferable.

(Z) Regulation of use of common areas and facilities in Multi-storeyed building also require Apartment ownership law in the State for grant of loan assistance.

3) Institution Financing Housing Schemes for constructions of Multi-storeyed Buildings also require Apartment Ownership law in the State for grant of loan assistance.

4) The Bill seeks to achieve the above objects.  

3.6.1 Definition of some terms in the Act:

Definition of words like apartment, building, common areas and facilities, common expenses, common profits, property are more or less the same as in Section 3 of The Tamil Nadu Apartment Ownership Act, 1994. Here instead of “Deed of Apartment”, “Declaration” has been used. But contents of both the documents are similar. Some definitions which are not
given in The Tamil Nadu Apartment Ownership Act, 1994 are appended below as per Section 3 of the Orissa Apartment Ownership Act, 1982:

- "Competent Authority" means in relation to buildings constructed by a Housing Board, Improvement Trust, Development Authority or a Company, such officer not below the rank of a Deputy Collector as may be appointed by the State Govt. by Notification.65

- "Declaration" means the instrument by which the property is submitted in the provisions of this Act, and such declaration as from time to time may be lawfully amended.66

- "Joint Family" means an undivided Hindu family, and in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence.67

3.6.2 An Apartment to be transferable and heritable:

Section 5 of The Orissa Apartment Ownership Act, 1982 is more illustrative than Section 4 of The Tamil Nadu Apartment Ownership Act, 1994 to the extent of Sub-Section (3) of former Act where sub-section (1) of the former Act has been embodied in Section 5 of the later Act. Sub Section (2) of the former Act is equal to the Section 4 of the later Act.

The following is the provision of Section 5:
a) Each Apartment owner is entitled to the exclusive ownership and possession of the Apartment with an undivided interest in the common areas and facilities in the percentage expressed in the declaration. This apartment with the said undivided interest is a heritable and transferable immovable property. So an apartment owner can transfer his flat and common interest in any way of sale, mortgage, gift, lease and exchange provided the common interest can not be sub-divided.

b) Any person acquiring an apartment by purchase or by lease of 30 years or above shall abide by the provisions of Orissa Apartment Ownership Act, 1982 and thereby execute and register an instrument in conformity with the Declaration given by all owners initially.

3.6.3 Benamdar treated as real owner:

In spite of the fact that a person paid the consideration money of purchase of an apartment in favour of another person the transferee though being Benami person shall be the real owner. Section 6 of The Orissa Apartment Ownership Act, 1982 removed the bar.

Benamdar of an Apartment to be deemed to be the real owner thereof: Where an apartment is transferred to one person for a consideration paid or provided by another person for his own benefit the
transferee shall be deemed to be the real owner of such apartment on the ground that he did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his Benamdar. In this matter, Transfer of property Act, 1882 or Indian Trusts Act, 1882 shall not be applicable.

3.6.4 Declaration of an instrument, its registration and action of the Competent Authority:

The words “Deed of Apartment” used in The Namil Nadu Apartment Ownership Act, 1994 is synonymous to the words “Declaration” used in the Orissa Apartment Ownership Act, 1982. Contents of “Deed of Apartment” are more or less same with the contents of “Declaration”.

A) Declaration of instruments:

Section 13 of The Orissa Apartment Ownership Act, 1982 states a declaration is to be submitted to the Competent Authority and how the Competent Authority shall deal with the declaration. The procedure is the following:

a) all declarations, amendments or instruments for inclusion of a subsequently transferred apartment shall be submitted in duplicate within 15 days from the date of their execution to the
Competent Authority. With it documents like title deeds, site plan and building plans are to be submitted;

b) The competent Authority on an inquiry shall examine the declaration or amendment or instrument whether it complies with the provisions of the Act and is in order. In case of rejection, he shall return the whole documents with reasons. In case of acceptance, he shall return the documents with direction to get it registered within 15 days.

c) Any person aggrieved for rejection may prefer an appeal within 30 days or any extended time allowed by the Appellate Authority (State Government). Decision of the Appellate Authority shall be final and this can not be agitated before any Civil Court.

B) Suo-moto action of the Competent Authority :

Section 14 empowers the Competent Authority to take action suo-moto in the event of failure of the sole owner to submit declaration.

The Section provides as under :

a) In the event of failure of the sole owner, the Competent Authority shall take actions so that the sole owner or all owners are compelled to submit necessary papers. But before taking such action, he shall give opportunity to the concerned parties of being heard.
b) A person aggrieved by any order passed in (a) may prefer an appeal to the State Govt. whose order shall be final.

1) Where the sole owner of a property fail to submit the declaration or the bye-laws, the Competent Authority shall, in the prescribed manner, take such action as he may deem necessary for submission of the declaration and bye-laws by the sole owner or owners of the property;

Provided that no order shall be passed under this Sub-Section without giving the parties concerned, the reasonable opportunity of being heard.

2) Any person aggrieved by an order of the Competent Authority under Sub-Section (1) within 30 days from the date of communication of the order to him, prefer an appeal before the State Govt. and the decision of the State Govt. made thereon shall be final.

C) Declaration etc. to be Compulsorily registerable:

Section 15 of The Orissa Apartment Ownership Act, 1982 makes the declaration etc. to be compulsorily registrable. According to the provision of this Section, following are the points:

1) all instruments relating to the declaration or any provisions of this Act under Section 14 and instrument referred to in Sub-
Section (3) of Section 5 and the floor plans of the building shall be deemed to be instruments compulsorily registerable.

2) Simultaneously with the registration of the declaration there shall be filed along with it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartment, stating the name of the building, if any, with a verified statement of an Architect certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such Architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of an Architect certifying that the plans therefor filed or being filed simultaneously with such amendment, fully and accurately depict the layout location, apartment number and dimension of the apartment as built.

3.6.5 Formation of Association of Apartment Owners, constitution of bye-laws and functions of Competent Authority:

The property in respect of which a declaration has been executed and registered shall be governed by an Association of Apartment Owners
in terms of bye-laws. Section 16 of The Orissa Apartment Ownership Act, 1982 formulates the contents of the bye-laws according to which the Association and the property shall be guided such as the following:

1) The administration of every property shall be governed by the bye-laws, a true copy of which shall be annexed to the declaration. No modification of or amendment to the byelaws shall be valid, unless set forth in an amendment to the declaration and such amendment is duly recorded and a copy thereof duly filed with the Competent Authority.

2) The bye-laws shall provide for the following amongst other matters, namely:

(a) The manner in which the association of Apartment Owners is to be formed, the selection of a Board of Managers from among the Apartment Owners, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board, method of removal from office of the members of the Board, the powers of the Board to engage the services of a Secretary or Manager and specifying which of the power and duties are granted to the Board by this Act or other wise may be delegated by the Board to such Secretary or Manager.
(b) Manner of calling meetings of the Apartment Owners and the number to constitute a quorum;

(c) Election of a President, Secretary and Treasurer from amongst the members of the Board of Managers;

(d) Creation of an Association Fund, maintenance, repair and replacement of the common areas and facilities and payments therefor and manner of collecting from the Apartment Owners;

(e) The method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities with such restriction not set forth in the declaration as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners;

(f) the percentage of the voters required to amend the bye-laws;

(g) Provisions enabling the Board of Managers to retain certain areas of the building and lease to non residents for commercial purposes and for distribution of resulting proceeds to the Apartment Owners as income or applications thereof in reduction of their common charges for maintaining the building;

(h) Any other matter not inconsistent with the provisions of this Act relating to the Audit and Accounts and administration of the
property and Annual and Special General Meetings; Annual Reports etc.

3.6.6. Penalties for contravention of provisions of the Act:

For any default of contravention of the provisions contained in The Orissa Apartment Ownership Act, 1982, Section 23 prescribes penalties. This also applies for contravention of Section 8, 20 and 21. The provision of Section 23 is as under:

1) If the owner of any apartment which is subject to the provisions of this Act, contravenes any of the provisions of Section 9 or Section 10, bye-laws or any covenant, condition or restriction set forth in the declaration, he shall at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, or an aggrieved apartment owner or in a proper case of the Competent Authority on conviction before a Magistrate, be liable to a fine which may extend to five thousand rupees and in case of continuing contravention, to an additional fine which may extend to rupees fifty for every day during which such contravention continues after the conviction;

2) Any contravention punishable under Sub-Section (1) may, where the prosecution lies or is instituted be compounded by such Association or the Competent Authority, as the case may be.
either before or after institution of the prosecution, on payment of, for credit to the fund of the Association, such sum as it may think fit.

3.6.7 Comments on The Orissa Apartment Ownership Act, 1982:

a) Section 2 of the Orissa Apartment Ownership Act, 1982 is the compulsory provision for the sole owner or all the owners to execute and register a declaration. But, it is not mentioned within what period of time they are bound to do so and if they do not what the consequences or penalty shall be;

b) In the Act, it is not expressly mentioned the minimum number of Apartment Owners who may form an Association of Apartment owners and who shall be the Competent Authority to register such Association.

Though in Section 3 (e), definition of "building" has been provided as "a multi-storied building containing two or more apartments" no specific number has been mentioned for such formation of Association. From this conception, it may be guessed that two owners may form an Association. But it is impractical.

c) The terms used in the Act as Manger and Board of Managers are confusing. It is gathered from the Act that Manager may be the sole functionary of the Association or the Board of Manager may
be so. It is not clear how a Manager may substitute a board of Managers.

d) The maximum number of Apartment Owners is not specified for a property in respect of which declaration in necessary. For viability, maximum number of apartment owners should be specifically mentioned.

e) There is no scope for formation of a Co-operative Housing Society except a covert scope as faintly indicated in Section 4 in which it is stated .. where Co-operative Society is the owner in respect of a property or part thereof, a member of such society in lawful occupation of an apartment comprised in such property or such part shall be deemed to be the owner of such apartment within the meaning of the provisions of the Act, excepting those of sub-section (1) of Section 5. The provision of forming a Co-operative Society or Societies may be inserted also.

f) There is no mention of number of ownership in a property if a person owns more than one apartment. Besides if there are such persons who own more than one apartment, formation of a Co-operative Society or society or an association of apartment owners shall face a problem in complying provisions of concerned law.
g) For unlawful activities of an Association of Apartment Owners, the Competent Authority or the State Govt. in the concerned Department should be given power which is absent in the Act to dissolve the association and appoint a Govt. employee either serving or retired to manage the affairs of the association on some remuneration.

h) Any dispute that may be prevailing in respect of the property should be awarded by the Competent Authority or his Authorised Officer.
3.7 The Kerala Apartment Ownership Act, 1983:

The Act only applies to property, of which sole owner or all owners shall submit the same to the provisions of this Act by a declaration duly executed and registered.

But the property which shall not be mainly used or proposed to be used for residential purposes shall not be subjected or submitted to the provisions of the Kerala Apartment Ownership Act, 1983.

3.7.1 Objects:

The Act is to provide for the ownership of individual apartment in a building and to make such apartment heritable and transferable property.

Hence, The Kerala Apartment Ownership Act, 1983 gave the objects of the Act in few words, whereas The Tamil Nadu Apartment Ownership Act, 1994 and The Orissa Act, 1982 gave elaborate statement of objects and reasons which have been discussed supra.

3.7.2 Definitions of some words:

The definitions of words like apartment, apartment owner, apartment number, association of apartment owners, building, bye laws, common areas and facilities, common expenses, common profits, Competent Authority, limited common areas and facilities, property are
prescribed in The Kerala Apartment Ownership Act, 1983; more or less in the same lines as have been provided in other similar Acts of other States.

Some extra definitions of words have been given in this Act in following manner:

**Joint Family:**

Joint family means an undivided Hindu family and in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence.\(^{69}\)

**Majority or Majority of Apartment Owners:**

Majority or majority of Apartment Owners means the apartment owners with 51% more of the votes in accordance with the percentages assigned in the declaration to the apartment for voting purposes.\(^{70}\)

**Person:**

Person includes a joint family.\(^{71}\)

One thing is noted that “declaration” has been defined like other Acts but “Deed of Apartment” has also been defined separately. Actually two definitions when clubbed together shall be equal to “Deed of Apartment”. This shall be the same as floor plan as defined in The Tamil Nadu Apartment Ownership Act, 1994 and equal to “Declaration” as defined in The Orissa Apartment Ownership Act, 1982.
Building:

Building means a building containing two or more apartments and comprising a part of the property.

3.7.3 Declaration, Deed of apartment and copies of floor plans to be registered:

The provision of compulsory registration of declaration of Deeds of Apartment and floor plans is in Section 13 of The Kerala Apartment Ownership Act, 1983. The provision is more or less same as those in other such Acts of other States with some additions as follows.

1) The declaration and all amendments thereto and the Deed of Apartment in respect of each apartment and floor plans of the buildings shall be registered under the Registration Act, 1908.

2) Simultaneously with the registration of the declaration, there shall be filed along with it a set of the floor plans of the building showing the layout, location, apartment numbers and dimension of the apartment, stating the name of the building or it has no name, and bearing the verified statement of an Architect certifying that it is an accurate copy of portions of plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located.
3) If the plans do not include a verified statement of an Architect, there shall be recorded prior to the first conveyance of any apartment, an amendment to the declaration to which shall be attached “verified Statement” of an Architect certifying that the plans thereto so filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built.

4) In all registration offices, a book called “Register of Declaration” and Deeds of Apartment under The Kerala Apartment Ownership Act, 1983 and index relating thereto shall be kept. It shall be the duty of every Secretary or Managing Committee to send to the concerned area’s sub Registrar or to the Registrar of the District a certified copy of the Declaration and the Deed of Apartment made in respect of every apartment contained in the building forming part of the property together with a Memorandum containing prescribed particulars and the Sub-Registrar or the Registrar shall register it. From the date of registration, it will be deemed that all Apartment Owners have notice of such registration.
In India, the law relating to immovable property is generally governed and contained in the Transfer of Property Act, 1882. By Section 2 of each of The Andhra Pradesh Apartment Ownership Act, 1987, similar Delhi Act, 1988, Gujrat Act, 1973, Kerala Act, 1983, Karnataka Act, 1972, Madhya Pradesh Act, 1976, Maharashtra Act, 1970, Orissa Act, 1982, Tamil Nadu Act, 1994, Uttar Pradesh Act, 1975, West Bengal Act, 1972 etc., an Apartment is an integral part of an immovable property or building on a common structure and land, having common areas and facilities with other apartment owners of that building. In such Ownership of Apartment, absolute ownership is an impossibility as other owners are entitled to their respective shares in the common areas and facilities. To remove the complexities of the ownership of the apartment, State Legislatures framed separate “Apartment Ownership Act” with special force that this Act, not withstanding anything contained in the Transfer of Property Act, 1982 or any other law for the time being in force relating to immovable property, shall prevail.

In all Apartment Ownership Acts passed by several States in India, there are prime conditions for the purpose of coming under its purview:

The prime conditions are that

i) The sole owner of the property (the promoter) or
iii) All the owners of the property, shall execute a declaration and register it for submitting the registered declaration to the Competent Authority;

If the property is not governed by either Co-operative Societies Act or Apartment Ownership Act, it shall be deemed to be owned in common by the Apartment Owners or hold as tenants in-common as opposed to joint tenants by them. Application of Apartment Ownership Acts in some States has been restricted to such buildings containing flats which are mainly used for residential purposes (Karnataka, Gujrat, Kerala, Uttar Pradesh and West Bengal). In the State of Orissa, it does not apply to building which is used for holding office or otherwise of a Department of Government or of a Government Undertaking. But in other States (Maharashtra, Andhra Pradesh, Delhi and Madhya Pradesh) there is no such restrictions as such apartments or flats may be used for residence, office, practice of any profession or for show room, shop or godown, for carrying on any industry or business.
Endnotes:

1) Rule 10, The Maharashtra Co-operative Societies Rules, 1961 (M.C.S.)


3) Explanation to Section 6 (2) ibid.

4) Section 6 (2) ibid.


6) Rule 25, ibid.

7) Last part of Clause (b) Section 29 (2) M.C. S. Act, 1960 was substituted for the words “by the Society” by Maharashtra 20 of 1986 – Section 17.

8) Amendment by Maharashtra 33 of 1963 Section 6.

9) Clause (d) of Section 22 (1) was substituted for the original by Mah. 27 of 1969 – Section 7 (a).

10) Sub-Section (1B) of Section 21 was inserted by Mah. 20 of 1986 – Section 12 (b).

11) The words “by a majority of not less than three – fourths” have been substituted for the words “by three fourths majority” by Mah, 33 of 1963 – Section 7.
12) The Further Proviso to Section 75 (1) was amended by Mah 33 of 1963.

13) Clause (1-a) of Section 77A was inserted by Mah. 13 of 1994 – Section 6.

14) Sub-Section (3) of Section 77A was substituted by Mah. 20 of 1986 – Section 39 (b).

15) Proviso to Sub-Section (3) of Section 77A was added by Mah. 7 of 1997 – Section 10.

16) Sub-Section (4) and (5) were added by Mah 20 of 1986 – Section 39 (c).

17) Section 77A was inserted by Mah 36 of 1976 – Section 5.

18) Sub-Section (1) of Section 78 was substituted by Mah 20 of 1986 – Section 40.

19) Proviso to Section 78 (1) (b) was substituted by Mah 7 of 1997 – Section 11.

20) Sub-Section (1A) of Section 78 was inserted by Mah 27 of 1969 – Section 14 (b).

21) Second para of Section 78 (2) was added by Mah 33 of 1963 – Section 17 (b).
22) Sub-Section (2A) of Section 78 was inserted by ibid.

23) Proviso to Section 78 (4) was deemed always to have been added by Mah. 48 of 1972.

24) Amended the Notification under Art. 3.1.9 (B) on 7th time.

25) Notification under Art. 3.1.9 (c) was amended

26) Notification under Art. 3.1.9 (D) was amended by Corrig. A & C.D No. & date nil (M.G. Pt. IV-B. p. 232).

27) Notification under Art. 3.1.9 (E) relating to Section 42 (1), M. C.S. Act, 1960.


29) The quoted case is of 1996 (4) ALD 680.

30) Section 21 (3) of Andhra Pradesh Co-operative Societies Act, 1964 was inserged by A.P.A. Act of 1988 w.e.f. 9.5.1988.

31) Classification of Societies was inserted by G.O. Ms. No. 2834 & A (Ag) dated 24.11.1965.

32) Bye-law No. 5 of the Bye-laws of Co-op. Housing Building Society in Andhra Pradesh.
33) Bye-law No. 6 ibid.
34) Bye-law No. 11 ibid.
35) Bye-law No. 12 ibid.
36) Case. AIR 1979 M. P. 173 (D.B.)
38) Bye-law No. 13 ibid.
39) Nomination Form I was prescribed by G. O. Ms. NO. 804 F & A (Ag) dt. 24.11.1965.
40) Section 28 (5) (b), A. P. Act, 1964 was added by G.O. Ms. No. 2834 F & A (Leg) Dt. 24.11.1965.
41) Co-operative year means the period from 1st July to next 30th June.
42) Sub-Section (3) of Section 32 A. P. Act, 1964 substituted by Act No. 21 of 1985 w.e.f. 22.4.1985.
43) Sub-Section 7 (a) of Section 32 ibid substituted by A. P. Act No. 35 of 1987 w.e.f. 3.4.1987.
44) Sub-Section 7 (d) of Section 32 ibid substituted by A. P. Act No. 14 of 1996.
45) 1984 (2) APLJ 128.

46) 1996 (2) ALD 418.


48) 21A (1) (g) inserted by A. P. Act No. 10 of 1970

49) Section 21A (1) (h) inserted by A. P. Act No. 28 of 1978

50) Section 21A (I) inserted by A. P. Act No. 40 of 1995

51) Section 21A (1A) and (1B) inserted by A.P. Act No. 5 of 1993.

52) Section 21A (2A) inserted by A.P. Act No. 10 of 1970.

53) AIR 1957 Punjab 97.

54) Reported in 1988 (2) A. L.T. 123.


58) Premable of ibid.


60) Section 3 (h) ibid.
61) Section 3 (i) ibid.

62) Section 3 (k) ibid.


64) Statement of objects and reasons, The Orissa Apartment Ownership Act, 1982.

65) Section 3 (I) ibid.

66) Section 3 (j) ibid.

67) Section 3 (k) ibid.

68) Acts 5of 184 in Kerala State.

69) Section 3 (O), Kerala Apartment Ownership Act, 1983.

70) Section 3 (Q) ibid.

71) Section 3 (s) ibid.

72) Section 3 (e) ibid.