



GOVERNMENT OF INDIA

**SECOND ADMINISTRATIVE REFORMS COMMISSION**

NINTH REPORT

**SOCIAL CAPITAL**  
– A Shared Destiny

AUGUST 2008

## PREFACE

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

– Mahatma Gandhi

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

– Mahatma Gandhi

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

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

– Putnam 2000

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

– ( e World Bank 1999)

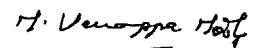
social networks, to help them stand on their own feet. In a sense this strategy seeks to leverage the social capital available in Indian society, particularly among these underprivileged groups, to lift them out of poverty.

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

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

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

New Delhi  
August 08, 2008



(M. Veerappa Moily)  
Chairman

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

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

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

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

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

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

*Sd/-*

**(P.I. Suvrathan)**

**Additional Secretary to Government of India**

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

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

**RESOLUTION**

New Delhi, the 14 February, 2008

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

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

# ORGANISATION

## Second Administrative Reforms Commission

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

## Officers of the Commission

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

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

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## LIST OF ABBREVIATIONS

### Abbreviation Full Form

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

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

## INTRODUCTION

1.1 Collective efforts and cooperative action have been a part of human behaviour right from the early days of civilisation. Gradually such collective action led to formation of small habitations, communities, villages and thereafter large cities and metropolises.

They in turn, created complex social groups and governmental organisations. In course of time, government and society became too big and formalized and somewhat distant from the common man. Thus evolved a need for mutual networking and interaction for solution of issues.

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

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

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<sup>1</sup>Robert D Putnam – "Bowling Alone"

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

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

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

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

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

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

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

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

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

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

1.12 The Commission has examined items (a), (b) and (c) in considerable detail in this Report. All forms of social capital institutions which are currently in existence on the basis of either State enactments or Union laws have been discussed in the context of their institutional design, regulatory environment and their interface with the government. Chapter 3 of this Report deals with issues concerning Societies and Trusts. The Commission has suggested drafting of a model law which could be enacted by the State Governments with minor modifications.

The Report also suggests some changes with regard to registration and exemption of these Bodies under various provisions of the Income Tax Act. The Commission has also examined the Foreign Contribution Regulation Act (FCRA), 1976 and the Foreign Contribution Regulation Bill, 2006 in detail and has suggested amendments in the latter. One of the key recommendations stipulates that organisations receiving foreign contribution equivalent to less than Rs.10.0 lakh in a year (the figure to be reviewed from time to time) should be exempt from registration and other reporting requirements. These organisations, instead, should be asked to file an annual return of foreign contributions received by them and its utilisation at the end of the year. This step will allow the authorities to concentrate more on organisations receiving larger foreign funding. It is also proposed in this Chapter that there is need to set up an independent accreditation agency for the voluntary sector. Chapter 4 of the Report deals with the growth and expansion of SHG (Self-Help Group) movement in India. Here the Commission recommends stepping up efforts to form more and more such groups in the less financially included areas. It has to be accompanied by suitable expansion of the NABARD network. The Commission has also taken note of the sentiments expressed by various civil society/stakeholders groups on the Micro-Financial Sector (Development and Regulation) Bill, 2007 and suggests that there is need to modify some of its provisions. Chapter 5 of the

## EVOLUTION AND GROWTH

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

### 2.2 Social Action Groups and Self-Help Movement

2.2.1 In later years, with the emergence of the Industrial Revolution in Europe, political ideas of equality, human rights and social welfare led to formation of intellectual groups and thereafter of organisations which started taking up issues of social concern. In India, such social action groups began taking shape in the early 19th century. The socio-cultural regeneration in 19th century India was occasioned by the colonial presence, but not created by it<sup>3</sup>. Ideas of social reform combined with national sentiment led to the formation of Societies and Sabhas such as the Brahmo Samaj, Arya Pratinidhi Sabha, Arya Samaj, Prathana Sabha, Indian National Social Conference etc. Important social figures like Raja Ram Mohan Roy, Keshav Sen, Dayanand Saraswati, Jyotiba Phule and Mahadev Govind Ranade provided leadership to this movement to take up issues to combat social bigotry, unequal status of women, the caste system, irrational beliefs and practices based on superstition. The Ahmediya and Aligarh movements, the Singh Sabha and the Rehnumai Mazdeyasana Sabha represented the spirit of reform among the Muslims, the Sikhs and the Parsees respectively. Religion being the dominant ideology of the period, to some extent, it influenced the growth of the reform movement in the country. But, by and large, contemporary social action groups were inherently driven by intellectual and rational intentions. They created organisational structures which were solidly based on social support and participation.

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<sup>3</sup>Book titled "India's Struggle for Independence" by Shri Bipin Chandra

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

## 2.5 Cooperatives

2.5.1 In the early years of the 20th century, government thought of organizing farmers into voluntary groups which could secure cheap farm credit on a collective basis and thus save them from usurious practices of money lenders. Thus, cooperative societies were born. A legislation was enacted in 1904 titled the “Cooperative Credit Societies Act, 1904”. The inspiration for this Act had come from the success of the cooperative movement in Europe.

Though, the first steps in this direction were initiated by the government, the concept received excellent response from rural India and within a few years a number of cooperative societies were in existence in large parts of the country. The Act was further refined in 1912. Provinces like Bombay, Madras, Bihar, Orissa and Bengal made all out efforts to expand cooperatives in their territory and made their own enactments on the pattern of the 1912 Act. The Reserve Bank of India which was established in 1934 had agriculture credit as one of its primary functions and by extending refinance facility to the village cooperative system it played an important role in spreading the cooperative movement to all corners of the country. After Independence, the reports of the All India Rural Credit Cooperative Survey Committee (1951-54) and formation of District and Apex Cooperative Banks in the 1960s provided further fillip to this sector.

2.5.2 In order to provide legal recognition to voluntary organisations, the then Government came up with legislative enactments in the later part of the 19th century. The first in the series was the Societies Registration Act of 1860; a soft law under which institutions, if they liked, could register themselves. This legislation was followed by the Religious Endowments Act of 1863, the Indian Trusts Act of 1882 and the Charitable Endowments Act of 1890.

These enactments too were rather mild, as at that stage the intention of the government was just to register the presence of such institutions; imposing strong regulatory controls was not on their mind. Towards the beginning of the 20th century, the British Government added two more legislations to this list: (i) the Charitable and Religious Trusts Act, 1920; and (ii) the Trade Unions Act, 1926.

## 2.6 Existing Laws

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



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

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

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

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

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

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

## 2.8 Government Policy

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

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

## 2.9 Civil Society as a Major Economic Force

2.9.1 With liberalisation of the economy and globalisation, there has been a phenomenal growth in the number of non-governmental organisations across the world in the last few decades. Experts say that India has more than two million NGOs, Russia four lakhs and in Kenya some 240 NGOs are formed each year. The United States has an estimated two million non-profit organisations which employ more than eleven million workers – about eight per cent of the nation's total workforce<sup>6</sup>. They are further supported by a large number of unpaid volunteers (about six millions) who have strong individual initiative and commitment to social responsibility. The presence of NGOs ensures depth and resilience in civil society. It gives expression to citizens' voices. It enables them to take responsibility for how their society is performing and allows them to talk to their government in organised ways. In India too, this sector is emerging at a fast pace.

2.9.2 Since non-profit sector organisations in India do not have any apex organisation (a Federation or a Union) for collection and dissemination of information, it is quite difficult to assess the scale of their operations in terms of their number or the range of their activities. As already stated, there are more than two million such organisations registered under the Societies / Trusts Acts in the country. This includes a wide diversity of local youth clubs, mahila mandals, private schools, old age homes and hospitals. How many of these are actually functional is hard to estimate. In recent years, even government organisations like DRDA and District Health Society have been registered as Societies. From the data maintained by the Central Social Welfare Board (CSWB), KVIC, CAPART and Ministry of Social Justice and Empowerment, it appears that they have been funding an estimated 10,000 different voluntary organisations in the country. A government survey in 1994 (Economic Census, 1994), estimated that sixty per cent of these organisations were concentrated in the four States of West Bengal, Tamil Nadu, Maharashtra and Uttar Pradesh<sup>7</sup>.

2.9.3 It is equally difficult to estimate the quantum of resources being used by this sector. As on 31.3.2006, 32,144 Associations were registered under the Foreign Contribution (Regulation) Act, 1976, out of which, 18,570 organisations reported receipt of foreign contribution amounting to Rs. 7,877.57 crores during the year 2005-06 (source: Annual Report 2005-06, Ministry of Home Affairs, Government of India). Different Ministries and Departments of the Union and State Governments have floated a vast number of schemes which fund voluntary work (Report of the Steering Committee on Voluntary Sector for the 10th Five Year Plan prepared by the Planning Commission, in January 2002).

The non-governmental sector receives a large sum from these government departments and agencies including large development projects funded by bilateral and multilateral agencies – (estimated to be Rs. 7,000 crores in the year 2000-01). In addition, India has

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<sup>6</sup>Voice of America news 25th May, 2007

<sup>7</sup>[http://www.pria.org/showarticles.php?article\\_id=6&allow=1](http://www.pria.org/showarticles.php?article_id=6&allow=1)

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

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

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

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

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

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

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

## **SOCIETIES, TRUSTS / CHARITABLE INSTITUTIONS, WAQFS AND ENDOWMENTS**

### **3.1 Legal and Institutional Framework**

#### **3.1.1 Legal Context**

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

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

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

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

#### **3.1.1.3 Societies**

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

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

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

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

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

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

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

#### *3.1.1.4.2 Trusts*

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

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

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

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

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

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

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

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

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

#### *3.1.1.4.4 Waqfs in India*

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

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

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

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

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

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

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

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

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

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

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



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

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

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

Source : [www.asianphilanthropy.org](http://www.asianphilanthropy.org)

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

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

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

### **3.1.1.8 International Perspective on Charities**

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

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

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

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

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

#### **(A) Charity**

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

#### **(B) Charitable Purpose**

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

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

## **(E) Institutional Arrangements**

### **(a) The Charity Commission**

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

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

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

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

### **3.1.2.4 Key Elements of the New Law**

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

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

#### **(i) Defining Charity and Charitable Purpose**

The new law will need to draft a composite definition based on the contents of the original Societies Registration Act, 1860, various amended State Acts, the Bombay Public Trusts Act, 1950, Section 92 of the Civil Procedure Code and Section 2(15) of the Income Tax Act, 1961. The definition of “Charity” and “Charitable Purpose” provided in the UK Law as indicated in paragraph 3.1.1.8.3.1 covers almost all the objectives listed in the extant Union and State laws and the same can be kept in mind while formulating the new legislation. Experience across the world shows that defining ‘Charity’ and ‘Charitable Purpose’ is a complex issue.

The Commission is of the view that there is need to set up an Inclusive Committee which will examine this issue comprehensively and suggest an appropriate definition which would inter-alia soften charities-government relationship, particularly in tax matters.

#### **(ii) Institutional Mechanism**

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

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

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

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

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

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



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

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

## 3.2 Revenues of the Nid Sector

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

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

### 3.2.6 Corporate Philanthropy

#### 3.2.6.1 Donations

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

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

#### 3.2.6.2 Corporate Social Responsibility (CSR)

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

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

### 3.2.6.2.5 Recommendations:

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

### 3.2.7 Government Funding

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

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

### 3.2.7.2 Accreditation of Voluntary Organisations

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

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

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

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

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

#### **3.2.7.2.8 Recommendations:**

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

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

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

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

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

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

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

The Income Tax Rules have specific provisions with regard to a fourteen-member National Committee and the manner of its functioning under Rules 11-F to 11-O.

The provisions also specify the types of projects which qualify for benefits under this section. Approvals are granted by Government (Ministry of Finance) on the recommendation of the National Committee for a maximum period of three years. It can be further extended subject to the satisfaction of the Committee and the approval thereafter by the Union Government.

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

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

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

This benefit is subject to conditions imposed under sub-section 5 of Section 80G of the Income Tax Act.

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

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

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

### 3.3.5 Extending Time Limit for Accumulation of Surplus Income

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

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

### 3.3.6 Rationalisation of Procedure under Section 35AC

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

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

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

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

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

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



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

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

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

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

## **2. Prohibition to Accept Foreign Contribution**

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

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

## 5. Registration

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

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

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

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

### 3.4.2 Reform of Registration Procedure

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

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

### 3.4.3 Rationalisation of Procedures

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

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

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

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

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

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

4.2.3 Again, in 2007, a Committee was constituted under the chairmanship of Dr. C. Rangarajan to prepare a comprehensive report on 'Financial Inclusion in the Country'.

The Committee went into a large number of issues connected with (a) banking in remote areas, (b) empowerment of Self-Help Groups and their linkages with financial institutions and (c) revitalization of the RRBs.

One of the main findings of this Committee was that the scenario of credit access showed wide inter-region and inter-State variations. The following Tables explain the position<sup>13</sup>:

*Level of Non-indebtedness: Across Regions*

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

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

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

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

<sup>13</sup>Report of Rangarajan Committee on Financial Inclusion, Jan 2008.

### *Level of Indebtedness to Institutional Sources*

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

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

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

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

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

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

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

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

| <i>Rs. in millions</i>        |                   |  |  |  |   |   |                          |  |   |
|-------------------------------|-------------------|--|--|--|---|---|--------------------------|--|---|
| Sl. No.                       | Region/Slate      | Cumulative no. of SHGs provided with bank upto 31 March 2006 | No. of new SHGs provided with bank loan during 2006-07 | No. of existing SHGs provided with repeat bank loan during 2006-07 | Cumulative No. of SHGS provided with bank laon upto 31 March 2007 (3+4) | Cumulative bank loan upto 31 March 2006 | Bank Loan during 2006-07 | Of Col. 8, repeat bank loan to existing SHGs | Cumulative bank loan upto 31 March 2007 (7+8) |
| 1                             | 2                 | 3  | 4  | 5  | 6   | 7                                       | 8                        | 9  | 10  |
| <b>A Northern Region</b>      |                   |  |  |  |   |   |                          |  |   |
| 1                             | Himachal Pradesh  | 22,920   | 4,879  | 2,282  | 27,799  | 863.98                                  | 388.27                   | 153.60                                       | 1,252.25                                      |
| 2                             | Rajasthan         | 98,171   | 39,666   | 3,692  | 137,837   | 2,447.94                                | 1,447.40                 | 191.53                                       | 3,895.34                                      |
| 3                             | Haryana           | 4,867  | 1,966  | 1,821  | 6,833   | 316.01                                  | 183.31                   | 69.86  | 499.32  |
| 4                             | Punjab            | 4,561  | 1,893  | 517  | 6,454   | 238.86                                  | 117.74                   | 29.24  | 356.60  |
| 5                             | Jammu & Kashmir   | 2,354  | 405  | 199  | 2,759   | 100.48                                  | 44.25                    | 15.83  | 144.73  |
| 6                             | New Delhi         | 224  | 112  |  | 336   | 18.58                                   | 8.65                     |  | 27.23   |
|                               | <b>TOTAL (A)</b>  | <b>133,097</b>   | <b>48,921</b>  | <b>8,511</b>   | <b>182,018</b>  | <b>3,985.85</b>                         | <b>2,189.62</b>          | <b>460.05</b>                                | <b>6,175.47</b>                               |
| <b>B North Eastern Region</b> |                   |  |  |  |   |   |                          |  |   |
| 7                             | Assam             | 56,449   | 25,005   | 160  | 81,454  | 1,423.98                                | 794.40                   | 2.91   | 2,218.38                                      |
| 8                             | Meghalaya         | 735  | 476  | 0  | 1,211   | 16.19                                   | 17.40                    | 0.00   | 33.59   |
| 9                             | Tripura           | 1,996  | 910  | 57   | 2,906   | 31.12                                   | 18.40                    | 1.48   | 49.52   |
| 10                            | Sikkim            | 127  | 33   | C  | 160   | 1.86                                    | 1.12                     | 0.00   | 2.98  |
| 11                            | Manipur           | 1,468  | 1,215  | 0  | 2,653   | 71.85                                   | 40.80                    | 0.00   | 112.65  |
| 12                            | Arunachal Pradesh | 346  | 101  | 0  | 447   | 13.49                                   | 5.72                     | 0.00   | 19.21   |
| 13                            | Nagaland          | 422  | 576  | 10   | 998   | 34.38                                   | 33.50                    | 2.97   | 67.88   |
| 14                            | Mizoram           | 974  | 921  | 0  | 1,895   | 64.14                                   | 70.56                    | 0.00   | 134.70  |
|                               | <b>TOTAL (B)</b>  | <b>62,517</b>  | <b>29,237</b>  | <b>227</b>   | <b>91,754</b>   | <b>1,657.01</b>                         | <b>981.89</b>            | <b>7.36</b>                                  | <b>2,638.90</b>                               |



NABARD in 1992. In 1995, acting on the report of a working group, the RBI streamlined the credit delivery procedure by issuing a set of guidelines to Commercial Banks. It enabled SHGs to open Bank Accounts based on a simple inter-se agreement. The scheme was further strengthened by a standing commitment given by NABARD to provide refinance and promotional support to Banks for credit disbursement under the SHG – Bank linkage programme. NABARD's corporate mission was to make available microfinance services to 20 million poor households, or one-third of the poor in the country, by the end of 2008. In the initial years, the progress in the programme was a slow; only 32995 groups could be credit linked during the period 1992-99. But, thereafter, the programme grew rapidly and the number of SHGs financed increased from 81780 in 1999-2000 to more than 6.20 lakhs in 2005-06 and 6.87 lakhs in 2006-07. Cumulatively, 32.98 million poor households in the country have been able to secure access to micro-finance from the formal banking system<sup>14</sup>.

**Table 4.5: Details of SHGs Finance**

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

*Source: NABARD*

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

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

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

<sup>14</sup>NABARD Data 2005-06.

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

### 4.3.3.2 Rashtriya Mahila Kosh (RMK)

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

4.3.3.2.2 It was felt that the credit needs of poor women, specially those in the unorganized sector, were not adequately addressed by the formal financial institutions of the country.

Thus RMK was established to provide loans in a quasi formal credit delivery mechanism, which is client-friendly, has simple and minimal procedure, disburses quickly and repeatedly, has flexible repayment schedules, links thrifts and savings with credit and has relatively low transaction costs both for the borrower and the lender. The maximum amount of loan that can be given to a beneficiary at a time is Rs. 25,000 for income generation, Rs.50,000 for house building and Rs. 10,000 for a family purpose.

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

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

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

Source : Rashtriya Mahila Kosh.

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

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

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

**Table 4.8: Assistance under Micro-Credit by SIDBI**

*(Rs. crore)*

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

Source : SIDBI

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

#### **Lessons from Andhra Pradesh Experience**

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

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

#### **4.3.4.2 Self-Help Groups for Rural Development: the Tamil Nadu Experiment<sup>15</sup>**

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

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

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

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<sup>15</sup>[www.tn.gov.in/dtp/shg.htm](http://www.tn.gov.in/dtp/shg.htm)

#### **4.3.4.3 Kudumbashree Mission in Kerala<sup>16</sup>**

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

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

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

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

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

##### *4.3.4.3.4 Micro finance Operations in Kudumbashree*

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

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<sup>16</sup>[www.kudumbashree.org](http://www.kudumbashree.org)

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

#### 4.3.4.3.6 Micro Enterprise Development

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

#### 4.3.4.3.7 Kudumbashree as State Urban Development Agency (SUDA)

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

#### 4.3.4.3.8 Special Interventions in Tribal Areas

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

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

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

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

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

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

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

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<sup>17</sup>www.grameen-info.org

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

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

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

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

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



## 4.6 Issues of SHG Movement

4.6.1 Though, during a short span of fifteen years the SHG movement has recorded remarkable progress (29.24 lakhs SHGs in operation on 31.03.2007 with a cumulative loan of 180,407,42 millions), much still remains to be done. Even if we consider only the BPL population of the country (24.2% - 26 crores), the above achievement seems to be minuscule.

The movement shows steep territorial variations. Many areas of the country lack adequate banking structure. Urban and semi-urban areas, to a large extent, stand excluded from this mode of credit delivery. Further growth of this movement faces threat from inadequacy of skills in the rural areas. And finally the pace of the movement needs to be accelerated. The Commission has comprehensively considered the strength and weaknesses of this movement and it feels that the following eight issues of this sector deserve priority attention:

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

### 4.6.2 Maintaining the Participatory Character of SHGs

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

## rural Sector Organisations at the Local Level – Self-Help Groups

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

NE = North-East, KBK= Kalahandi-Bolangir-Koraput \*included in the undivided State

Source : NABARD

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

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

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

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

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

Source: Delhi Government's Annual Report 2006-07

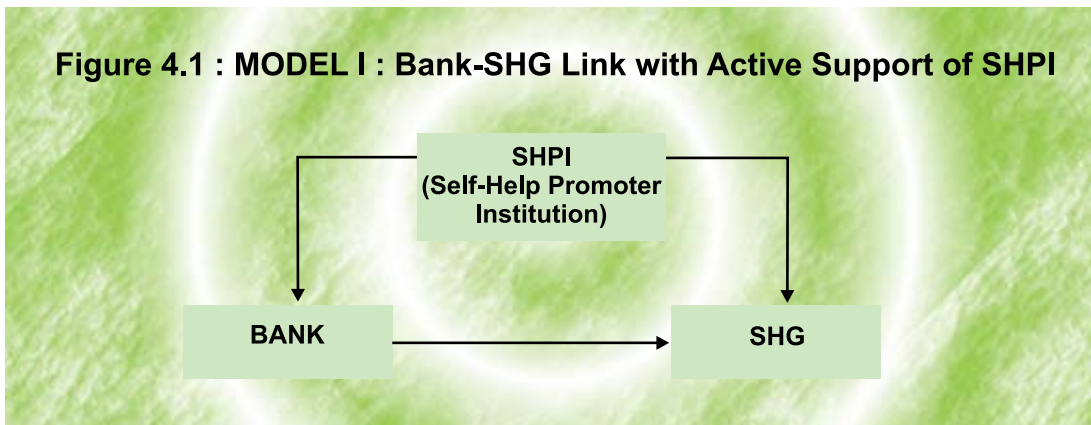
4.6.4.4 The migration data released by the Registrar General of India for the census 2001 indicates that the total population of Delhi is 138.50 lakhs and consists of 82.04 lakhs from within Delhi and 53.18 lakhs as migrant population from various States. The percentage of migration from various States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

### 4.6.5 Mode of SHG Development and Financial Intermediation

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

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

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



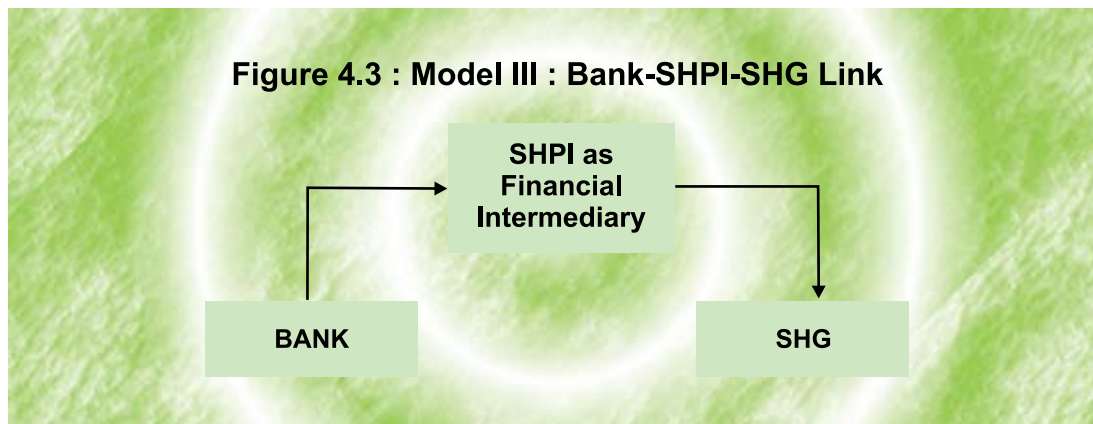
4.6.5.2 Linking SHGs to Banks for credit requirement is the most effective model of financial intermediation which allows an SHG, promoted either by a third sector organisation (NGO) or by a government agency, to obtain loan funds or a cash credit limit, without giving any collateral, from a local rural/commercial Bank – often in multiples of its own savings.

The fund that the SHG secures from the Bank is transferred to its members for a commonly identified and accepted gainful purpose on explicitly settled terms. The bank linkage model is a savings-led mechanism, which insists on a minimum savings of

#### **Box 4.5: Role of SHPI**

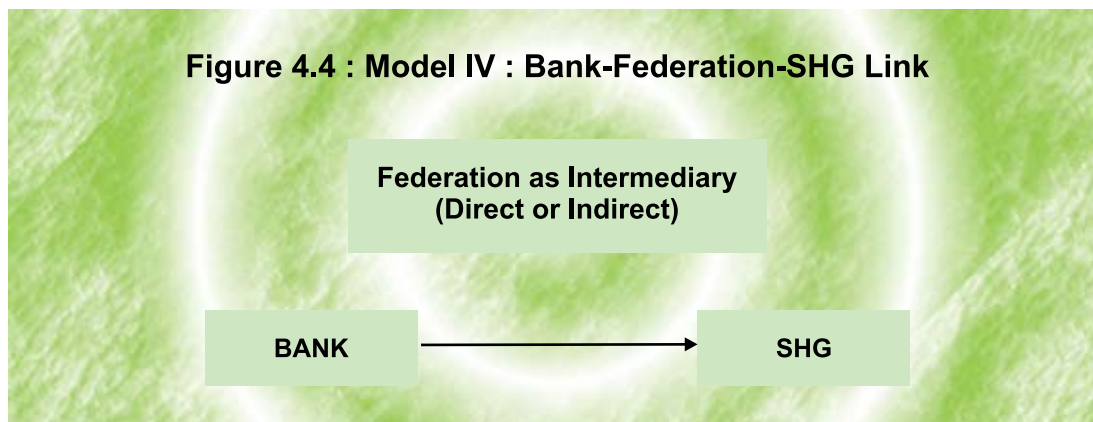
Usually, a SHPI provides initial training and guidance to the participating members before launching them into a formal thrift and credit management group (SHG). In some cases, the members of the group may be economically too weak to contribute even the initial seed money to the group funds to start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

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



4.6.5.5 In the third model, the SHPI takes the role of a financial intermediary between a Banks and the SHG. Usually, a SHPI (Self-Help Promoter Institution) takes up this responsibility only in respect of the groups promoted / nurtured by it and not for others.

The SHPI accepts the contractual responsibility for repayment of the loan to the Bank. In this respect, it is an example of indirect linkage between the SHG and the Bank.



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

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

#### 4.6.7 Issues of Sustainability, Capacity Building and use of Technology

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

The withdrawal of NGOs / government agencies even from areas where SHGs have been federated, has often led to their collapse. The leadership and management of most SHG federations continue to be in the hands of NGOs.

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

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

#### 4.6.8 Financial Assistance to SHPIs and other Support Institutions

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

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

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

4.6.9.5 The Committee recommended<sup>20</sup> “(a) allowing more entry to private well-governed deposit-taking small finance banks offsetting their higher risk from being geographically focused by requiring higher capital adequacy norms, a strict prohibition on related party transactions, and lower allowable concentration norms (loans as a share of capital that can be made to one party), and (b) making significant efforts to create the supervisory capacity to deliver the greater monitoring these banks will need initially, and (c) putting in place a tough prompt corrective action regime that ensures that these banks do not become public charges.”

#### **4.6.9.6 Micro-Finance Institutions in the Formal Sector**

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

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<sup>20</sup>Report of the Raghuram Rajan Committee on Financial Sector Reforms (April 2008)

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

#### 4.6.9.8 MFIs and Money-lenders' Act

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

##### Box 4.6: Rate of Interest and Recovery Practices of MFIs

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

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

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



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

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

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

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

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

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

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

## SELF REGULATORY AUTHORITIES

### 5.1 Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **5.2.13 Recommendations:**

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

### 5.3 Professional Updation

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

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

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

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

#### 5.3.5 Recommendation:

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



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

#### 5.5.4 Recommendation:

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

### 5.6 Renewal/Revalidation of Registration

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

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

#### **Box. 5.1: Professional Revalidation in USA and UK**

##### **Certification in USA**

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

*Source: www.nbtanet.org*

##### **Revalidation in Medical Profession in the UK**

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

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

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

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

- They have followed GMP during the revalidation period
  - Evidence of participation in quality assured appraisal
  - Analysed outcomes from questionnaire tools
- “Good Medical Practice” involves the following:
- Good clinical care
  - Maintaining good medical practice
  - Teaching and training
  - Relationships with patients
  - Working with colleagues
  - Probity
  - Health

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

*Source : www.gmc-uk.org*

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

| Sl. No. | Date of Meeting | Place of Meeting | No. of Committees | No. of Cases | Disposed of | Dismissed | Reprimanded | Suspended | Appeal Allowed | Reprimanded | Judgement reserved |
|---------|-----------------|------------------|-------------------|--------------|-------------|-----------|-------------|-----------|----------------|-------------|--------------------|
| 1.      | 29/30.5.2006    | Delhi            | 2                 | 28           | 14          | 12        | —           | 1         | —              | —           | 1                  |
| 2.      | 6/7.5.06        | Ernakulam        | 3                 | 38           | 11          | 5         | —           | —         | —              | —           | 6                  |
| 3.      | 13/14.5.2006    | Delhi            | 2                 | 19           | 5           | 3         | —           | 1         | —              | —           | 1                  |
| 4.      | 20/21.5.2006    | Mumbai           | 3                 | 46           | 12          | 8         | 1           | 2         | —              | 1           | —                  |
| 5.      | 27/28.5.2006    | Chandigarh       | 2                 | 35           | 13          | 8         | —           | 1         | —              | 2           | 2                  |
| 6.      | 3/4.6.06        | Jaipur           | 2                 | 36           | 13          | 6         | 2           | 1         | —              | 2           | 2                  |
| 7.      | 19/20.6.2006    | Delhi            | 2                 | 23           | 6           | 3         | 2           | —         | 1              | —           | —                  |
| 8.      | 8/9.7.06        | Hyderabad        | 3                 | 52           | 34          | 18        | 2           | 2         | 1              | 2           | 9                  |
| 9.      | 15/16/7.2006    | Delhi            | 1                 | 24           | 6           | 3         | —           | 1         | 1              | —           | 1                  |
| 10.     | 24/25.6.2006    | Delhi            | 1                 | 12           | 2           | 1         | —           | —         | —              | —           | 1                  |
| 11.     | 12/13.8.2006    | Delhi            | 1                 | 20           | 4           | 2         | —           | —         | 1              | —           | 1                  |
| 12.     | 18.8.06         | Kolkata          | 2                 | 18           | 6           | 5         | —           | —         | —              | 1           | —                  |
| 13.     | 26/27.8.2006    | Bangalore        | 3                 | 24           | 10          | 3         | 3           | —         | 3              | 1           | —                  |
| 14.     | 23/24.9.2006    | Delhi            | 1                 | 20           | 1           | 1         | —           | —         | —              | —           | 1                  |
| 15.     | 7/8/10.2006     | Delhi            | 1                 | 22           | 2           | 2         | —           | —         | —              | —           | —                  |
| 16.     | 14/15.10.2006   | Ernakulam        | 4                 | 55           | 31          | 13        | 2           | 2         | 4              | 2           | 8                  |
| 17.     | 4/5/11.2006     | Delhi            | 1                 | 19           | 3           | 1         | —           | 1         | 1              | —           | —                  |
| 18.     | 11/12.11.2006   | Hyderabad        | 4                 | 56           | 20          | 8         | —           | —         | —              | —           | 12                 |
| 19.     | 24/25.11.2006   | Delhi            | 2                 | 14           | 3           | 2         | —           | 1         | —              | —           | —                  |
| 20.     | 2/3.12.2006     | Bhopal           | 4                 | 64           | 30          | 9         | 1           | —         | 5              | 5           | 10                 |
| 21.     | 9/10.12.2006    | Delhi            | 1                 | 22           | —           | —         | —           | —         | —              | —           | —                  |
| 22.     | 23/24.12.2006   | Chennai          | 3                 | 59           | 28          | 16        | —           | —         | —              | —           | 12                 |

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

## 5.8 Composition of the Self-Regulatory Authorities

### 5.8.1 Interface between the Government and the Regulatory Bodies

5.8.1.1 Regulatory Authorities have been given considerable autonomy by law. The intent of the law is to reassure the public that these Bodies will function without any constraint and provide quality service to them. But in actual practice, there are variations in the extent of autonomy which such Bodies enjoy. For example, the BCI enjoys more autonomy as compared to the AICTE in terms of setting the agenda for education, training and practice.

There are only two government representatives (both ex-officio members) out of a total strength of 21 in the BCI General Council (Attorney General and Solicitor General), while in the AICTE, 19 out of 21 are government representatives.

### 5.8.2 Governing Structure

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

**Table 5.2: Structure and Composition of the Regulatory Authorities**

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

*Source : Compiled from the websites of these agencies.*

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

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

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

*Accountability* – the need to be accountable to stakeholders.

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

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

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

### 5.8.12 Clients / Users – as Lay Members in Regulatory Authorities

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

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

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

#### 5.8.12.4 Recommendations:

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

### 5.9 Accountability and Parliamentary Oversight

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

## COOPERATIVES

### 6.1 Introduction

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

### 6.2 History of Cooperatives in India

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

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

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

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

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

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

### 6.3 Existing Weaknesses

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

is to be developed around their needs, policies are to be designed according to their views and administration is to be carried out through member participation. But, in practice, cooperatives in India have not adhered to the above norms. In the context of the emerging global integration, it is being felt that the pressures of globalisation in the country will have to be addressed to a large extent through upscaling of self-help / cooperative initiatives.

The issue of social capital as an input for development and self-help / cooperative groups as instruments of economic growth are therefore now being widely discussed.

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

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

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



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

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

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

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

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

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

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

#### **Option-A**

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

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

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

#### **Option-B**

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

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

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

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

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

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

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

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

## 6.5 Legislative Framework

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

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

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

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

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

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

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

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

#### 6.6.4 Important Features of Producer Company Legislation

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

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

### 6.6.5 Examples from other Countries

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

### 6.6.6 Implications of the Irani Committee Recommendations

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

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

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

### 6.6.7 Changes Proposed in the Producer Companies Legislation

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

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

## 6.7 Cooperative Credit and Banking Institutions

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

<sup>26</sup>Report of the Dr. C. Rangarajan Committee on Financial Inclusion, January 2008.



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

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

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

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

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<sup>29</sup>Report of the Dr. C. Rangarajan Committee on Financial Inclusion, January 2008.

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

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

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

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

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

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

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

#### **6.7.15 Recommendations:**

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

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

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

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

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

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

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

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

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

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

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

### **7.7 Recommendations:**

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

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

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

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

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

## **2. (Para 3.2.6.2.5) Corporate Social Responsibility**

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

## **3. (Para 3.2.7.2.8) Accreditation of Voluntary Organisations**

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

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

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

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



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

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

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

#### **8. (Para 5.3.5) Continuing Professional Education**

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

#### **9. (Para 5.4.3) Ethical Education and Training**

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

#### **10. (Para 5.5.4) Enrolment in the Profession**

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

#### **11. (Para 5.6.3) Renewal / Revalidation of Registration**

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

#### **12. (Para 5.7.6) Disciplinary Mechanism**

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

## 16. (Para 6.4.10) Cooperatives; Constitutional Context

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

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

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

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

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

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

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

**Act, 1956 and subsequently under the new law, as and when enacted, as this would be a more viable option in the present environment. The existing inter-State cooperative societies may also explore the possibility of getting themselves converted into Producer Companies.**

#### **19. (Para 6.7.15) Cooperative Credit and Banking Institutions**

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

#### **20. (Para 7.7) Integrated Social Policy**

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

aggregate of behavioural norms. Some view it as social networks and there are those who think of it as a combination of them all. So it would seem that social capital means different things to different people. Those who are enthusiastic about the concept use it as a peg on which they hang all those informal engagements they like, care for and approve of. So, it is quite common to hear the view that if a particular society harbours rent-seeking, bribery and corruption, it is because communities in that society have not invested sufficiently in the accumulation of social capital.

I will go with Robert Putnam, the Harvard Professor who wrote that very influential book, 'Making Democracy Work: Civic Traditions in Modern Italy' in 1993. Putnam looked at different regions of Italy to analyze how they have fared. The northern parts of Italy have been richer than the southern for several centuries, despite having been on a par at the beginning of the millennium. There were great differences between the two regions in the extent of civic community, citizen involvement and governmental efficiency. Putnam's conclusions were that the northern Italian regions were able to establish and maintain higher levels of output by virtue of greater endowments of social capital.

Robert Putnam identifies social capital with "those features of social organization, such as trust, norms and networks that can improve the efficiency of society by facilitating coordinated actions." To him the term also refers to "the collective value of all social networks and the inclinations that arise from such networks to do things for each other". While talking about social capital, most analysts have focused on trust. Some others have studied components of social organizations like Savings and Credit Organisations, Credit Cooperatives and Civic Associations, and Professional Bodies which make social capital a productive asset. Increasingly, Self-Regulatory Professional Bodies like Medical Council of India (MCI), Bar Councils, etc as well as Independent regulatory authorities (TRAI, etc) have become key elements in our socio-economic framework. Others have considered a broader sense of the notion by including extended kinship organisations, lobbying organisations and advocacy groups. Case studies have been made of the management systems of local common property resources in which mutually beneficial courses of action have been taken by recourse to self-management systems. In all these accounts, the engagements that rely on social capital occur somewhere between the individuals and the government; they are conducted within informal institutions. In other words, in respect of horizontal networks, social capital is identified with the working of the civil society. Present interest in the concept of social capital is driven also by the rise of knowledge based organizations as well as the emergence of the networked economy and society which requires the growth of strategic alliances, joint ventures and new organization types.

The most perplexing question that faces developmental practitioners like me is not what, but how. How can social capital be increased to improve the effectiveness of development projects and service delivery mechanisms? How does one create the right institutional mechanisms whereby a society can provide itself with the basic services in a socially and politically sustainable and cost-effective manner? Once upon a time, the answer suggested was a government bureaucracy combined with a massive extension in supply. However, significant failure of this mode of providing basic services has led to widespread disillusionment with such institutional options for reaching the poor. Some recent successful experiments in provision of public services to the poor point to some basic themes such as community development, participation and the importance of local organisational capacity. All these themes, in one way or another, emphasize the role of social capital in creating effective public action. Even the success of micro-credit oriented Self-Help Groups of women, with their strong cooperative behaviour and mutually reinforcing sanctions, with the Grameen Bank of Bangladesh as the most stellar example illustrates the value of social capital in promoting employment and economic development.

One of the most important applications of social capital is the delivery of sustainable basic services to the poor, and local infrastructure and natural resource management. In the last several years, we have seen a resurgence of interest in community-driven development, with community groups in charge and the focus shifting to local initiative, self-help, and local organisational capacity. Community groups have been successful, in these cases, to initiate, organise and take action to further common interests or achieve common goals. Social capital has been the key component of these efforts.

Participatory management has characterised all these efforts. Participatory processes through which community groups are enabled to make informed decisions have led to strengthening of social capital or local organisational capacity and further problem solving beyond the life time of particular projects and programmes.

Local organisational capacity is the ability of people to work together, trust one another and organise to solve problems, mobilise and manage resources, resolve conflicts and network with others. When people cooperate and work together, they can overcome problems related to risk, information, and skills. There are two elements, which are critical to local organisation building. First, groups have to develop rules for self-governance. Second, the groups need to be embedded in the existing social organisation. Since the poor rarely have strong organisations to make their voices heard, projects that aim to reach the poor must invest in strengthening the capacity of local groups to take action. An increase in social

**National Colloquium on Social Capital, Trust and  
Participative public service delivery**

**19th and 20th December, 2006**

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forums for monitoring and evaluation at different levels can help in internalising the evaluation process and increase the effectiveness of the programmes. In creation of such forums it may be useful to map existing civil society organisations and forums, strengthen them and create them where they don't exist. The joint-citizen forums can also contribute to organizational design processes through provision of relevant feedback. However, creation of joint-citizen forums need appropriate institutions to take it forward.

- In order to create an environment of trust between the officials and the citizens, the Reports on actions taken by the departments need to be publicised and published. This could also include explanations for the actions that was, or was not taken. This could provide the social capital for fruitful interactions between the departments and citizens. For instance, the system of night-halt by senior officials in the villages had helped increase the confidence of the villagers in the system.
- One of the issues pertaining to effective programme implementation is the inadequate information availability at various levels owing to problems in sharing of information across levels and across departments. This could be resolved by structured systems for information sharing between different departments in order to make relevant information at each decision-making level. The current independent planning processes in different departments cause duplication of efforts and overlapping of plans. In this context there is a case for strengthening the integrated local planning mechanisms such as the District Planning Committee.
- The current appraisal systems followed in government agencies is that of confidential reports by superior officers. This could potentially create an environment of distrust as well as disregard for lower level employees and the consumers of the services. This situation could be partially resolved by using open appraisal systems and also including appraisal by other stakeholders. Open appraisal system can help to build trust through a combined system of self-assessment and seniors' assessment involving a negotiation process. Including other stakeholders in the appraisal process could help to make the officials more sensitive to the end users.
- Systems to provide better accountability including mechanisms such as stakeholder evaluation and joint-citizen forums as described above, needs to be introduced. This would help to provide proper incentives for the officials to act towards achieving

- In the Indian government system, there is a general domination in each department by officers belonging to certain cadres. This is not necessarily due to expertise in the specific activities undertaken by the departments. In order to improve the efficiency of these organisations, it may be necessary to dilute the monopoly of positions by cadres. It may be necessary to have professionally trained managers working on fixed term contracts. This is especially relevant as the senior level officials get transferred on a frequent basis and these professional managers can help to maintain continuity in these departments. It may also be useful to ensure that IAS officers have specialisations in sectors and departments and their transfers/postings should take place within these sectors. This would also ensure that the social capital within these sectors is enhanced as there would be sustained interaction between the officials within a sector.
- It was also perceived that in a district, the District Collector is generally well informed about the status of activities and the direction of development projects but there is a communication gap with the next level of officers in the district. Hence it may be useful to increase the interactions between the officials across departments working on related aspects in a district.

**(b) Training and Capacity Building for Creation of Social Capital**

- Focused training can be a useful tool for creating a bridge between levels of Authorities. However, training as is undertaken currently – such as cadre based training – may not be useful for this. It may be better to have goal-specific and organisation-specific training programmes such that the different participants (belonging to different levels and even departments) are able to have shared perspectives about their common goals and issues. This would also in a way take care of the crucial problem of bridging the gap between the different levels of government officials in each department and project. However, this common training programme may need to devise mechanisms to get over the hierarchical mind-set which usually gets transferred even to training sessions. The varying skill and capacity across levels that may need to be trained together, also presents a challenge in terms of training tools and methods. Yet, there may not be any alternative to different levels being brought together in an intra-cadre training exercise.
- The training provided ought to be related to the requirements of the knowledge, skills and attitudes required by different functionaries in the workplace. Therefore

**(c) Suggestions to Help Build Successful Partnerships with Local Communities**

**i. Administration**

- System of incentives and dis-incentives needs to be developed keeping in mind the outcomes expected of the development initiatives.
- Mechanisms should be put in place to periodically expose personnel involved in administration to keep them abreast of the ground realities. This can be in the form of regular visits, dialogue and interface with local communities especially in remote areas.
- To facilitate regular dialogue and interaction with local communities, field officers need to be freed from routine administration responsibilities through simplification of procedures.
- *Transformational training at the individual level:* Camps such as Vipassana in Maharashtra and Karmayogi Abhiyan in Gujarat have helped administrators become more reflective and individually responsible. The training must aim at the development of individual than mere systems in which he functions. The training should help in internalisation of the feeling that the service delivery must be done in partnership with local communities.
- Asymmetry in information/ relationship between administrator and local communities is a critical barrier to successful partnerships. The asymmetry arises out of the gaps in knowledge and information between local communities and administrators. Administrators tend to control conduct of programmes and utilisation of resources without bringing local communities on board. It affects the attitude towards grass roots level planning in turn reducing the support of local communities for government initiatives. These critical gaps need to be bridged.
- Internal dispositions of administrators need to be taken care to improve their contribution. This can be done by encouraging individual's capacities to innovate and creating appropriate incentives for innovations.

health, education and micro-finance. For these activities they mobilise funds from various funding agencies, but need a greater degree of self-reliance to fulfil its basic objective. One of the major issues is to enable conditions which need to be developed to make these organizations more independent and self-reliant.

- Government-owned NGOs - “GONGO” could be one option to reduce dependence on external funding. In the flip side, in case of “GONGO”, the notion of voluntary and the degree of independence and autonomy becomes a problem. Further, to maintain autonomy and self-reliance, there is a need to keep the NGOs far from the governments and it is important to educate NGOs about the norms they ought to follow.
- In India, voluntary sector is mainly considered as part of religious activity, but by promoting charity / philanthropy through industry and individuals, the issue of fund mobilisation can be minimized. Reformation in tax laws is important to make current operation more transparent mainly to reduce corruption in the revenue machinery.

## **ii. Regulatory Framework for Trusts and Societies**

- The existing laws regulating voluntary sector are too vague and loose, when compared to the complex cooperative laws. Lack of proper screening mechanism at the initial stage results in the development of pseudo / paper organisations, which in turn compete for donor funds.
- There is a need for public audit for screening and accreditation of the NGOs, based on their activities. Mandatory accreditation of NGOs could be a means for tax exemption. Countries like Pakistan and Philippines have already adopted this practice to screen the NGOs.
- For accreditation of NGOs, “Panchsheel Approach” with the following components can be adopted:
  - (i) *Identity* – What is the identity of the organizations? For what purpose they are existing in the society? Documents should be in proper order.

- The huge diversity among the voluntary sector requires a 'layered regulation', based on the size, region, operational form etc. For example, layered regulation include,
  - Peer audit for small NGOs
  - Public audit for large NGOs
- Financial soundness and functional strength of the organisation can be used as a base for accreditation. Other similar benchmarks should be decided by the National Regulator in consultation with various accreditation agencies.

**iv. Regulation for Others**

- A Bill providing regulatory framework for Trusts, Societies and NGOs working in the micro-finance area is under consideration of the Parliament. There is a need for developing similar regulatory framework for organisations working in other areas also like health, education etc. However, the Regulator must be outside the government sector.

**v. Conflict Resolution**

- Ways and means to resolve the intra-and inter-level conflicts in the voluntary sector was discussed.
  - Inter: between NGO and partner(s)  
Example - Government of Gujarat and SEWA, Andhra Pradesh micro-finance conflicts
  - Intra: between one NGO and the other  
Example - Competition between NGOs for funding.
- In this regard, there is a need for an independent regulatory mechanism, which can recognize the conflicts with clarity and equipped with independence to resolve the conflict without any bias.

- What cooperatives are?
- What should cooperative be?
- The proposed Constitutional amendment (106th Constitutional Amendment Bill) on cooperatives and advocacy for better State cooperative law could provide a more enabling legal environment for functioning of cooperatives in India.
- The importance of adopting innovative solutions to tackle the complex cooperative law and its restriction was discussed by the Group and the following suggestions were made:
  - Adopting / exercising the choice of being regulated under more liberal cooperative laws. (Multi-State Cooperative Laws to avoid State intervention)
  - By zealously guarding their autonomy – if they already have it
  - By repatriating government equity - attain operational / organizational autonomy to manage their own affairs.
- Training is an important component of cooperative governance and investment in cooperatives training and education will continue to be a major driver for better performance of the cooperatives.

#### **IV. BETTER SYNERGY BETWEEN THE GOVERNMENT AND CIVIL SOCIETY INSTITUTIONS: INDUSTRY ASSOCIATIONS AND PROFESSIONAL BODIES**

- Industry Associations and Professional Bodies represent two different types of member-based civil society institutions. The issue is as to how social capital and trust within these institutions and in their partnership with the government can help in improving the delivery of public services to the citizens.
- Social capital within a Professional Body could be an important mechanism for dealing with un-professional conduct or dereliction of duty by a professional.

- The Professional Bodies should be made more accountable for the behaviour of their members. Some possible suggestions could be to make it mandatory for these Bodies to publish their records as in case of audits, strengthen provisions for sanctions, and put mechanism of public scrutiny e.g. direct reporting regularly to government in place.

## V. HOW TO ENSURE GREATER INVOLVEMENT OF PEOPLE'S REPRESENTATIVES AND COMMUNITY AT LARGE IN THE CONCEPTUALISATION AND EXECUTION OF PROGRAMMES

- *Barriers to participation:* The most important barrier to people's participation is the colonial psyche which creates lack of respect in State employees for its citizens. The citizens also fear the State employees who, in turn, behave as masters. The result is that, citizens shy away from taking responsibilities which discourages them and their representatives to take active participation in programmes. The administrative reform must consciously make provisions for breaking the colonial psyche and promote institutions which are people-friendly and generate respect for the citizens. Secondly, people also should be informed about their role and the extent of participation in the reform process.
- *Enabling legal and institutional forms:* Presently there is an excess of State monopoly in the development process. The extent of monopoly is such that even genuine people's initiatives are hindered by administration on the pretext that the resource are State-owned and only the State can act upon it. There are also ambiguities in the laws which leave the interpretation to the bureaucrats who entrench the citizens' dependence on the State. This clearly shows the high level of insecurity in the administrative system. The reform should make provisions for encouraging people's initiatives and there should also be clarity in the law and the legal process.
- *Further ways of decentralisation and steps for proactive involvement of local governments:* The recent steps to promote Panchayati Raj Institutions in India is encouraging; however this has come along with a sense of restriction at another end. There has been a deliberate effort to limit the role of civil society to training and community organisation while the Panchayats undertake the executive role. The latter is a necessary condition for decentralised governance but not sufficient. There should be more space for autonomy of local initiatives and strengthening

## **QUESTIONNAIRE ON SOCIAL CAPITAL, TRUST AND PARTICIPATIVE PUBLIC SERVICE DELIVERY**

### **I WAYS OF INVESTING AND PROMOTING SOCIAL CAPITAL AT ALL LEVELS OF GOVERNMENT AS AN INSTRUMENT OF ENHANCING GOVERNMENTAL EFFECTIVENESS**

Judging the effectiveness of any organisation is difficult, more so when the organisation concerned is the government or a part of the governmental system. The difficulty arises on a number of counts. First, there are multiple stakeholders with different, sometimes even divergent, expectations. Second, governmental action is bound by the canons of public law; laws and rules framed under them often are not sufficiently versatile to enable customised responsiveness. Third, democratic governance works through multitudes of checks and balances, thus a democratic government's ability to be effective is limited by the design and operations of such processes.

However, it is widely accepted that 'one recognises effectiveness when one sees it'. Scholarship in the field of public management has established that most effective organisations tend to share common characteristics. Some of these are as follows:

- Anyone in the place can tell you the organisation's mission and values.
- It is always looking into something new.
- Its customers' satisfaction level is high.
- Its employees frequently work in teams.
- The leader is a partner to the staff members.
- A 'failure' is considered a learning experience.
- It can give relevant information on its programme results.

In short, effectiveness stems from certain ways of functioning wherein, there is emphasis on teamwork, hierarchy is used more as a coordinating mechanism and not as a tool for exercising control, leadership positions carry the basic burden of enabling team and individual efficacy, external stakeholders are considered as 'customers' and not simply 'recipients of goods and services (or largesse)', and the entire organisation is aware of the fundamental reason of its existence, remains 'goal focussed' and continually seeks to reinvent and renew itself.



tasks, such recognition leads her / him to search for mutuality and complementarities with others. Upon identification of such 'others' efforts are made to forge partnerships. With the further assumption that sought out 'others' also have the requisite motivation and need, partnerships get forged. The foregoing is also true for organisations.

Steps for improving the capability of the administration to proactively partner with local community, the first requirement would be the recognition of such a need on the part of the administration. If conditions set out earlier under the first TOR were to get created, it would become apparent for the administration to recognise such needs. The primary task would be how to enhance the capability of the administration to forge partnerships.

1. What additional norms and values are necessary for the 'administration' to recognise the need for forging partnership with local communities? How could these be inculcated?
2. Assuming such norms are internalised, what capabilities must exist to enable 'administration' to succeed in forging synergistic relationships with local communities? How could these capabilities be created?
3. Suitable re-orientation in the training of administrative personnel at the induction stage would be one mechanism to achieve the above. What other orientation/ training could be thought of for mid-career and senior administrative personnel?

### **III BETTER SYNERGY BETWEEN THE GOVERNMENT AND CIVIL SOCIETY INSTITUTIONS**

#### **(a) Relating to Trusts/ Societies and Self-Help Groups**

Trusts, Societies and SHGs are forms organising through which a group of people create an organisation (or association) for furthering their purpose. Yet, they are excessively dependent upon external sources of funding which have the potential to cause reduced autonomy for them. It is felt desirable that they be enabled such that they retain their autonomous functioning and there is synergy with the government in furthering the cause of social development and civil society building.

3. What changes in the general framework of registration of cooperatives, and regulation / administration of the sector would enhance the autonomy of cooperatives?
4. What would be the conditions that would meet the external accountability requirements of cooperatives while enabling their autonomous functioning?

**(c) Relating to Industry Associations**

Industry Associations are vehicles through which common concerns and interests of members are furthered. They represent the cause of the members and mediate with the government and other Bodies in obtaining enabling conditions for the furtherance of industry. It has been argued by some that such associations have and could rightfully play a self-regulatory role such that the members emerge as true 'corporate citizens'.

1. What is the current image in terms of the role they play and efficacy, of Industry Associations?
2. What is the nature of relationship of Associations with the government/regulatory institutions on one hand and the members on the other?
3. How efficacious has been the role of Industry Associations in enforcing certain agreed upon standards of functioning? What enabling conditions can the government create for such Associations to play a more efficacious role in ensuring the emergence of good 'corporate citizenry' among their members?

**(d) Relating to Professional Bodies**

Professions are said to have at least four key elements;<sup>32</sup> (a) an accepted Body of knowledge, (b) a system of certifying that individuals have mastered that Body of knowledge before they are allowed to practice, (c) a commitment to the public good, and (d) an enforceable code of ethics. Professional Bodies not only play the role of furthering the knowledge and practice of the profession, they also have the enormously valuable role of 'regulating' the professionals.

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<sup>32</sup>Rakesh Khurana (Harvard University), quoted in Warren G Bennis, James O'Toole, How Business Schools Lost their Way, Harvard Business Review, May 2005, Vol 83, Issue 5.

- Which of the professionals are more trustworthy according to the public?
- Are Self-Regulatory Authorities (SRAs) more trustworthy in comparison to the government and independent Regulatory Authorities?
- How trustworthy and effective are SRAs in India when compared to similar institutions in other countries?
- If the professionals and SRAs fall short of the citizen's expectations, what are the factors responsible?

**B. Autonomy (Interface between Government and SRAs)**

SRAs exercise independent powers in the public interest and to enjoy their confidence. The public must be assured that the SRAs will speak and act without being constrained by any sectional interest in setting standards for professional education (colleges / courses / teaching and evaluation methods) and practice (granting and withholding of registration) to provide quality services of international standards. At the same time, the government has responsibility to provide easy access of these services to all sections of society without exploitation and human rights violation.

- Do SRAs enjoy sufficient autonomy and independence in developing skills and inculcating values among the professionals to serve the society competently and honestly?
- Do the SRAs have adequate powers to regulate and maintain standards in education (permission for starting new institutions), training (curricula, methods, and faculty), and testing (evaluation) to develop professional skills?
- Do the existing government Laws/Regulations/Acts/Policies/Institutions facilitate independent functioning of SRAs?
- Whether any changes are to be brought in these policies and laws to enhance/reduce the government control to make SRAs inclusive and efficient?
- Do we need Super-Regulatory Authorities with eminent persons from different professions and interest groups in regulating all SRAs?

- 2 What should be the criteria to select competent professionals to head important committees like education and discipline?
- 3 What are the mechanisms for strengthening internal democracy in SRAs to facilitate the voice of the competent professionals and clients/citizens?

### **E. Transparency and Accountability**

As a statutory Body, SRAs have the responsibility to account for what it does. The public, Parliament, government, the profession have right to know how SRAs are discharging their functions. Normally, the SRAs are primary accountable to the Parliament which, on behalf of the public, defines powers and responsibilities (by making Rules, nominating members and considering their decisions in regard to standards to regulate professional education and practice for the good of the society)

- How open and transparent are SRAs in formulating and enforcing standards? How transparent are the procedures for setting standards for starting colleges, institutions, new courses?
- How effective are the existing redressal grievance and complaint procedures? How to make them more transparent and accountable? Does the system have sound mechanisms for considering the complaints from the clients against the professional for wrong act and conduct?
- How effective are the mechanisms to ensure the accountability of professionals in relation to granting and withholding of licences/certificate/registration for professional practice in terms of competence/performance/conduct/physical fitness? How effective are the mechanisms to discipline the professionals, whose performance repeatedly falls below an acceptable standard?
- How to make professionals responsive and accountable to the community? How effective are the ethical codes for ensuring integrity and high ethical values in SRAs? How to ensure the accountability of SRAs to the clients, public, professionals and the government?

synergistic relationships with Associations of citizens and groups/ organisations?

4. Any other general suggestion regarding enhancing the government's ability to tap into 'social capital' such that the task of society building and development is enabled?

#### **IV ENSURING GREATER INVOLVEMENT OF PEOPLE'S REPRESENTATIVES AND COMMUNITY AT LARGE IN THE CONCEPTUALISATION AND EXECUTION OF PROGRAMME**

Most public services that touch the daily lives of the citizens and influence their experience of quality of life are created by the governments (and agencies) at the local level. Consequent to the 73rd and 74th Constitutional amendments, Local Governments have been vested with Constitutional status. This has enabled them to acquire a 'right to life'. The institutional framework mandates representation of weaker sections of society and women; it also stipulates convening of meetings of the 'General Body' (as in Gram Sabha and Ward Sabha) in operationalising the basic functions of the Local Governments. Articles 243 G and 243 W endow the responsibility of planning for economic development and social justice with the Local Governments. Thus, participatory planning, representation in the Local Government, and oversight through General Body processes are now Constitutionally mandated. The status of actual implementation of the provisions presents a mixed picture. There are some success stories yet, the realisation of the Constitutional scheme in this regard is still an evolving project.

1. What are the barriers to generating interest/ enthusiasm among communities, both in rural and urban areas, for participating in the Local Government processes? What steps could help overcome such barriers?
2. What forms of legal and institutional enablement would contribute to transforming the Local Government Bodies into true deliberative forums?
3. In what further ways could decentralisation be done such that people's representatives and community at large could meaningfully participate and own the programme planning and implementation processes?
4. What specific steps would galvanise the communities into more proactive involvement in the affairs of the Local Governments?

| Legislation  | Purpose of the Act  | Organisations Covered   | Coverage   | Measures for Purpose Compliance   | Strength  | Limitations  |
|--|---|---|--|---|---|--|
| years, many of the governments went on adding different degrees of teeth to this Act in form of (a) placing annual audit and other reports before the General Body as well as to the government; (b) Registrar's power of enquiry and investigation; (c) power of supersation; (d) take over of management.    |   |   |  |   |   |  |
| Andhra Pradesh Societies Registration (SR) Act, 1959<br>Karnataka SR Act, 1960<br>-M.P. SR Act, 1973<br>-Meghalaya SR Act, 1983<br>-Rajasthan SR Act, 1958<br>-Tamil Nadu SR Act, 1975<br>-Travancore-Cochin Literary, Scientific & Charitable Societies Act, 1955<br>-U.P. SR Act, 1976<br>-W.B. SR Act, 1963 | Regulation, incorporation, improving the legal condition of Societies within the State. | Societies established for promotion of charity, education, science, literature, fine arts, sports, foundation or maintenance of libraries, reading room, collection of natural history.<br>-Non-profit Bodies | -requirement for registration.<br>-democratic framework of Managing Committee.<br>-Authority vested with General Body.<br>-control over transfer of property or use of funds.<br>-extensive power of Registrar<br>-financial discipline. | -General Bodies control and Committees accountability.<br>-annual audit and other reports to be placed before General Body.<br>-Registrar's power of enquiry, investigation, surcharge and actions like superseding appointment of administrator.<br>-Court's or Registrar's power of dissolution and cancellation of registration. | -systematic democratic organisation.<br>-well conceived financial discipline.<br>-effective scheme for purpose compliance.<br>-laws role both facilitative and regulative | -excessive governmental intervention amounting to regimentation.<br>-freedom to disassociate is difficult to exercise. |

| Legislation  | Purpose of the Act   | Organisations Covered   | Coverage  | Measures for Purpose Compliance   | Strength  | Limitations  |
|--|--|---|---|---|---|--|
| <p>intervention of the government was not at all intended. After Independence, the situation changed drastically. Many of the State Government enacted their own Religious and Charitable Endowments Act in the areas of temple management. State Government officials (State Government-appointed Trustees and functionaries) given widespread administrative and supervisory powers.</p> |  |   |   |   |   |  |
| <p>a) Madras Hindu Religious and Charitable Endowments Act, 1951</p> <p>b) Travancore-Cochin Hindu Religious Institutions Act, 1950</p>  | <p>Administration and governance of all Hindu public religious institutions and endowments in the concerned State.</p> | <p>Hindu public religious institutions and endowments including Matths.</p> | <p>Formation, rights and duties of Trustees, powers of Authorities such as</p> <ul style="list-style-type: none"> <li>-Commissioner,</li> <li>Deputy Commissioner,</li> <li>Assistant Commissioner,</li> <li>Accounts Committee etc.</li> </ul> | <p>-supervising powers of authorities.</p> <ul style="list-style-type: none"> <li>-religious qualifications and duties of Trustee and servants.</li> <li>-financial accountability for proper use.</li> </ul> | <p>-systematization in temple administration.</p> <ul style="list-style-type: none"> <li>-wide-ranging powers of State Authorities to ensure purpose compliance.</li> </ul> | <p>-lack of democratic framework for devotees participation.</p> |

| Legislation  | Purpose of the Act   | Organisations Covered   | Coverage  | Measures for Purpose Compliance   | Strength   | Limitations   |
|--|--|---|---|---|--|---|
| guided by a Will.<br>Little regulatory powers of the government. In case of any dispute, it could be settled only by a Civil Court.  |  |   | <ul style="list-style-type: none"> <li>-strengthening finance of Wakf Board.</li> <li>-restrictions on powers of Muttawalli-Wakf Tribunal.</li> <li>-prevention of misuse of improper transfer of property</li> </ul> |   |  |   |
| 5. Charitable Endowments Act, 1890<br>e government introduced some elements of regulation by instituting a post of treasurer in each State to oversee the functioning of such charitable endowments. It was the first step towards State intervention in the field of charity. | Vesting administration of property held in Trust for charitable purpose          | Public Trusts for charitable purpose.                           | <ul style="list-style-type: none"> <li>-defines charitable purpose.</li> <li>-constitutes treasurer for charitable purpose.</li> <li>-vesting and administration of property.</li> </ul>                              | Treasurer has the responsibility of using Trusts property for the purpose mentioned in the Trust Deed.    | State's involvement in ensuring proper use of Trust property.                              | Skeleton like legislation without elaboration for peoples' participation. |
| 6. Indian Trusts Act, 1882<br>beginning of charity laws in the country. Basically for management of  | Registration/ incorporation.<br>Rights and duties of Trustees and beneficiaries. | Private Trusts- either for charitable or other lawful purposes. | Creation of Trust, duties, liabilities, rights and powers of Trustees.<br>Rights and liabilities of beneficiaries.  | Beneficiaries can compel Trustee through legal proceeding to execute the trust and avoid breach of trust. | facilitates creation of Trusts.<br>-codifies rights and duties of Trusts and beneficiaries | Lack of remedies outside the courts.<br>-lack of State supervision.       |



| Legislation                               | Purpose of the Act                                 | Organisations Covered    | Coverage  | Measures for Purpose Compliance   | Strength  | Limitations   |
|---|--|--------------------------|---|---|---|---|
| 8. Indian Companies Act, 1956, Section 25 | Registration of Non-profit Companies/ Institutions | Not-for profit Companies | <ul style="list-style-type: none"> <li>registration of Trade Unions.</li> <li>-immunity from civil suits and from criminal liability.</li> <li>-funds, amalgamation dissolution.</li> <li>-arrangement and requirement about registration.</li> <li>-corporate entity</li> <li>-privileges of a Limited Company.</li> </ul> | <ul style="list-style-type: none"> <li>-annual returns.</li> <li>-access to Registrar.</li> </ul> | <ul style="list-style-type: none"> <li>and democratic framework.</li> <li>-competence to involve in collective bargaining.</li> <li>-enables a corporate personality.</li> <li>-General Body meetings controls, policies and leadership.</li> </ul> | <ul style="list-style-type: none"> <li>-purpose clause usually vague</li> </ul> |

the payment of any dividend or distribution of any income or profits among their members.

- (iii) Madhya Pradesh – Societies may be formed for promotion of science, education, literature or fine arts, diffusion of useful knowledge or political education, foundation or maintenance of libraries, galleries of paintings and arts, public museums, collection of natural history, mechanical and philosophical inventions, instruments or designs, promotion or social welfare, promotion or religious or charitable purpose including establishment of funds for welfare of military orphans, political sufferers and welfare of the like, promotion of gymnastics, promotion and implementation of the different schemes sponsored by the State Government or the Union Government and promotion of commerce, industries and khadi.
- (iv) Rajasthan – For any literary, scientific or charitable purpose, military orphan funds, promotion of literary, science or fine arts, diffusion of knowledge or political education, foundation or maintenance, libraries, reading rooms, museums, galleries, collections of natural history and for mechanical and philosophical inventions, instruments or designs.
- (v) Tamil Nadu – The objects for formation of a Society are interests of consumers in the supply and distribution of essential articles, interests of passengers using buses, taxies and similar public conveyance, welfare of the physical handicap, working women and the unemployed, interests of residents in the matter of provision of civic amenities, interest of pilgrims and tourists, welfare of animals, birds and similar living beings, welfare of displaced persons and downtrodden economically and socially backward classes.
- (vi) West Bengal – Promotion of literature, arts, science or religion; any charitable purpose, including the care or relief of orphans, or of aged, sick, helpless or indigent persons; the alleviation of the sufferings of the animals; the diffusion of knowledge; the dissemination of social, political or economic education; establishment and maintenance of libraries or reading-rooms for the members or for the public; the

- (vi) West Bengal – Registration certificate to be issued on the basis of a copy of MOU and the Rules and Regulation. An appeal shall lie to the State Government against an order of the Registrar refusing to certify the registration and the decision on such appeal shall be final.
- (vii) Uttar Pradesh – The certificate of registration shall remain enforce for a period of two years from the date of issue and will have to be renewed thereafter. If any question arises regarding entitlement of the Society for registration, the matter shall be referred to the State Government and the decision of the State Government shall be final.

## **2. Changes in the Memorandum of Association and Bye-laws**

- (i) Gujarat – The MOU can be altered by special resolution passed by a majority of not less than 3/5th of the total membership of the Society and such alteration is sanctioned by the Registrar.
- (ii) Andhra Pradesh – By a “Special Resolution”, a Society may alter the provisions of the memorandum with respect to –
  - (a) Change of objectives of the Society;
  - (b) To amalgamate itself with any other Society; or
  - (c) To divide itself into two or more Society.

“Special resolution” means a resolution passed by a majority of the total members of the Society and not less than 3/5th of the members present and voting in a meeting.

The Bye-laws can be altered by an ordinary resolution passed by not less than half of the members present and voting.

- (iii) Karnataka – The MOU can be altered by a proposal agreed to by the votes cast in favour of the proposal and such votes are not less than three times the number of the votes, if any, cast against the resolution. The resolution will need to be confirmed by a simple majority of votes at a second special general meeting convened after an interval of thirty days after the former meeting.

audit of the account of a Society either himself or by a person authorized by him.

- (iii) West Bengal – In addition to the list of the Governing Body, every Society shall file an annual report by the Governing Body on the working of the Society for the previous year and a copy of the balance sheet and the auditors report certified by a duly qualified auditor which means a Chartered Accountant or a person approved by the Registrar in this behalf.
- (iv) In almost all the States the Registrar has been empowered to call for any information from the Society, if he so desires.

#### **4. Property of the Society**

- (a) In terms of Section 5 of the Societies Registration Act, 1860, the property belonging to a Society, if not vested in Trustees, shall be deemed to be vested in the Governing Body of such Society.
- (b) State Amendments:
  - (i) Uttar Pradesh – It shall not be lawful for the Governing Body of a Society or any of its members to transfer without the previous approval of the Court, any immovable property belonging to such Society.
  - (ii) Madhya Pradesh – No immovable property shall be acquired or transferred by the Society without the prior permission of the Registrar and such property will not be used for any object other than the object of the Society without prior permission from the Registrar and in case of gift, written consent of the donor.

#### **5. Amalgamation and Dissolution of Society**

- (a) Under the Societies Registration Act, the dissolution of a Society shall be decided by not less than 3/5th of the members and the subsequent settlement of the property would be done according to the rules of the Society applicable thereto. In case no such rules are in existence, it may be done as per the decision of the Governing Body. In case of any dispute between the Governing Body and the members, the matter shall be referred to the Civil Court. Subsequent

- (iii) Madhya Pradesh – The dissolution to be decided by 3/5th of the members and to be confirmed by voting of equal number of members at a general meeting convened for the purpose. The provisions regarding property are the same as applicable in Karnataka, discussed above. However, the Registrar has also been given powers to cancel the registration on being satisfied that no useful purpose is likely to be served by continuing the Society and consequently the Society been deemed to have been dissolved. In such situation, the moveable and immoveable assets of the society shall vest in the State Governments to the extent of assistance/grant that the Society may have received from the Union or State Government or any of the statutory Bodies. It shall be the duty of the Collector of a District where the property is situated to take charge of the same on intimation of cancellation by the Registrar.
- (iv) Tamil Nadu – The amalgamation, division and dissolution of the registered Societies can be done by special dissolution and as per the Bye-laws. However, for amalgamation and division, prior approval of the registrar is required.
- (v) West Bengal – Two or more Societies can be amalgamated if so decided by the Governing Body of each such Society, if the proposal is approved by the votes of 3/4th of the Members of each of the Societies concerned and confirmed by like votes at a subsequent general meeting. However, prior approval of the Registrar would be required who can also order for modifications to be carried out in the proposal. An appeal against such orders of the Registrar lies with the State Government.

A Society may be dissolved by the votes of the 3/4th of the members at a general meeting convened for this purpose. No member to receive any profit upon dissolution and 3/4th of the members or in default thereof, by the Registrar, with the approval of the State Government can decide giving the surplus property to some other Society. The dissolution may also be ordered by the court on application of the Registrar or by not less than 1/10th of the members in case the Society contravenes any of the provisions of the Act, if the number of members is less than seven, if the society has ceased to function for more than three years, if the Society

- (ii) Madhya Pradesh – (a) The Registrar has been given the powers to seize records, documents of the Society in case he is satisfied that these are likely to be tampered with or destroyed.
- (b) The Registrar may on his own motion or on an application made by a majority of the members of the Governing Body of the society or not less than 1/3rd of the total number members of the Society, either by himself or by a person authorized by him hold an enquiry into the constitution, working and financial condition of a Society.
- (c) The State Government may make order for supersession of Governing Body of any State aided society if it is not functioning properly or commits acts which are prejudicial to the interest of Society and appoint a person or persons to manage the affairs of the Society for a specified period not exceeding two years in the first instance. The period however can be extended from time to time at the discretion of the State level.
- (iii) Tamil Nadu – (a) The State Government has the power to order supersession of committee of any Society and appoint a person as the special officer to manage the affairs of the Society for a specified period not exceeding one year. The time period is extendable upto three years at the discretion of the State Government.
- (b) As is the case with the other States, the Registrar has the power to enquire into the constitution, working and financial conditions of a registered Society. Such enquiry can also be ordered on the basis of an application moved by the District Collector. The Registrar has authority to cancel the registration on the basis of outcome of such enquiry.
- (c) The Registrar can also order cancellation of registration if any society is carrying on any unlawful activity or allow unlawful activity within its premises. After cancellation of registration, the society will be dissolved by special resolution and in case of failure to do so, the Registrar can appoint a liquidator to wind up the Society.

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## **List of Reports Submitted by the Second Administrative Reforms Commission upto August 2008**

1. First Report: *Right to Information: Master Key to Good Governance*
2. Second Report: *Unlocking Human Capital: Entitlements and Governance  
– A Case Study*
3. Third Report: *Crisis Management: From Despair to Hope*
4. Fourth Report: *Ethics in Governance*
5. Fifth Report: *Public Order – Justice for All . . . Peace for All*
6. Sixth Report: *Local Governance – An Inspiring Journey into the Future*
7. Seventh Report: *Capacity Building for Conflict Resolution – Friction to Fusion*
8. Eighth Report: *Combatting Terrorism – Protecting by Righteousness*