Bihar Co-Operative Societies (Amendment) Act, 2008

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An Act to Amend the Bihar Co-operative Societies Act, 1935. WHEREAS, it is a priority of the Government toachieve integrated development of agriculture with the objective of enhancing income generation in rural areas. AND WHEREAS, it isenvisaged that the co-operative societies, specially the primary agriculture credit societies and such other co-operative societies at grass root as well as higher levels, can play a major role in the development of agriculture in terms of supply of inputs as well as marketing of agriculture produce and their processing. AND WHEREAS,it is imperative to improve the financial services rendered by credit co-operative societies and such other societies at all levels and to carry out reforms to make them more democratic, well governed and professionally managed in terms of the recommendations of the Vaidyanathan Committee constituted by Govt. of India for revival of the Short Term Co-operative Credit Structure. AND WHEREAS, it is expedient to organise the primary agriculture credit societies with their area corresponding to that of the Gram Panchayat and to strive further to organise such other co-operative societies of the Gram Panchayat level with the purpose of achieving uniformity and make the services rendered by such societies more accessible. AND WHEREAS, it is necessary to bring out certain amendments to the Bihar Co-operative Societies Act, 1935. Be it enacted by the legislature of the State of Bihar in the fifty ninth year of the Republic of India as follows:- 1. Published in Bihar Gazette (Ex-Ord.) dated 30.4.2008.

1. Short Title, Extent And Commencement :-

(1) This Act, may be called the Bihar Co-operative Societies (Amendment) Act, 2008.
(2) It shall extend to the whole of the State of Bihar.
(3) It shall come into force at once.

2. Insertion After Section-2(C) Of The Act 6 Of 1935 :-

The following clause (cc) shall be inserted after clause (c) of Section-2 of the Bihar Co-operative Societies Act 1935, namely:-
"(cc) "Government" means State Government of Bihar."

3. Addition After Section-2(K) Of The Act 6 Of 1935 :-

The following shall be added after Section-2(k) of the Bihar Co-operative Societies Act 1935, namely:-
"(l) "Short Term Co-operative Credit Structure" includes the State Cooperative Bank, Central Co-operative Banks and the Primary Agricultural Credit Societies.
(m) "National Bank" means the National Bank for Agriculture and Rural Development established under Section-3 of National Bank for Agriculture and Rural Development Act, 1981 (Act 61 of 81).
(n) "Reserve Bank" means Reserve Bank of India established under Section-3 of the Reserve Bank of India Act, 1934 (Act No. 2 of 34).
(o) "Affiliating Society" means a registered society of which another registered society is a member; and "affiliated society" means a registered society, which is a member of an "affiliating society".
(p) "Panchayat" means the Gram Panchayat notified as per Section-11 of the Bihar Panchayati Raj Act, 2006 and amendments made thereto from time to time."

4. Addition Of A New Section-11A After Section-11 Of The Act 6 Of 1935 :-

(1) The following Section 11A shall be inserted after Section-11 of the Bihar Co-operative Societies Act, 1935, namely:-
"11 A. Registration of societies not registered under this Act.--
Where a society registered under Section 5 of the Bihar Self Supporting Co-operative Societies Act, 1996 intends to convert itself into a co-operative society under this Act, it may apply for registration under provisions of this Act in accordance with procedure to be prescribed and notified by the Government."

5. Addition Of A New Section-14A After Section-14 Of The Act 6 Of 1935 :-

The following Section-14A shall be inserted after Section-14 in the Bihar Co-operative Societies Act 1935, namely:-
"14A. Election to the Managing Committee of certain registered societies.--
(1) The Government may by notification in the Official Gazette prescribe that election to the Managing Committee of a class or classes of registered societies shall be conducted by an authority, by whatever name such an authority may be known, created for the purpose of conduct of election to the Managing Committee of registered societies under this Act and/or for any other body, organization, committee etc. and in the manner prescribed for the conduct of election by such authority.
(2) Notwithstanding any thing contained in any provision of this Act, rules made thereunder and bye laws of a registered society, the election to the Managing Committee of such class or classes of registered societies notified under sub-section (1), shall, after the date of such notification, be held in terms of the provision of this section, even if the process of election has commenced but the result of such election has not been declared prior to that date.
(3) Notwithstanding any thing contained in sub-section (9) of Section-14 of this Act, rules made thereunder and the bye laws of a registered society, the election to the Managing Committee of the class or classes of registered societies notified under sub-section (1) shall be held within six months from the date of such notification which may further be extended for a period of six months.
(4) Notwithstanding any thing contained in sub-section (9) of Section-14 of this Act, rules made thereunder and the bye laws of a registered society, if the term of the Managing Committee of such registered societies notified under sub-section (1) expires after the

notification under that subsection, shall get extended till such time the Managing Committee is constituted after elections in terms of the provision contained in that sub-section.

(5) Any registered society notified under sub-section (1) and after the constitution of its Managing Committee under sub-section (2) is superseded or ceases to exist for whatever reason, before the expiry of its terms under sub-section (9) of Section-14, the election to the Managing Committee for such society shall be conducted by the same authority as prescribed under sub-section (1).The term of such Managing Committee including the term held by earlier Managing Committee along with the period due to supersession or otherwise, if any, shall not exceed the period prescribed under the provision of sub-section (9) of Section-14.

(6) No election to any class or classes of registered societies notified under sub-section (1) shall not be called in question except by way of an election petition filed within ninety days from declaration of the result of such election and the same shall be decided as a dispute under Section-48 of this Act. Such an election petition shall be filed before the Registrar or such other officer appointed to assist the Registrar under Section-6 of this Act."

6. Amendment In Section-44Aq Of The Act 6 Of 1935 :-

The following amendments shall be made to the Section-44AQ of the Bihar Co-operative Societies Act, namely:-

(1) The sub-section (2) of Section-44AQ shall be substituted by the following, namely:-

"(2)(a) In order to achieve the objective of this Act, to bring uniformity in the operation of the societies under this Chapter, to enhance their strength and usefulness and to make them viable for the purpose of development of agriculture, the area of a Primary Agriculture Credit Society shall be co-terminus with that of a panchayat and there will be only one such society in each panchayat.

(b) Notwithstanding anything to the contrary contained in this Act, if the area of a Primary Agriculture Credit Society is found not to be that of a panchayat as provided under sub-clause (a) of this subsection, the Registrar or an officer authorized by Registrar to act on his behalf, who shall not be below the rank of Assistant Registrar, may order for reorganization including amalgamation or division of one or more such societies as the case may be and register the new society/societies after such reorganisation."

(2) The sub-section (3) of Section-44AQ of the said Act shall be substituted by the following namely:-

"(3) Notwithstanding anything contrary in this Act, the society or societies which are reorganised under sub-section (2) along with its Managing Committee shall be deemed to have been dissolved and shall cease to exist from the date of registration of the new society/ societies under sub-section (2) and the membership of such registered society shall stand transferred to the respective primary agriculture credit society created for the panchayat to which such members belong after reorganization under sub-section (2) and all the assets and liabilities thereof shall get divided/distributed amongst the new society/societies in the manner prescribed by the Registrar/Government:

Provided that the State Govt. may from time to time, declare a moratorium on the liabilities of the new society/societies created under sub-section (2) of this Section."

(3) The sub-section (4) of Section-44AQ of the said Act shall be substituted by the following, namely:-

"(4)(a) Notwithstanding anything contrary in this Act, upon the reorganisation of societies under sub-section (2) of this Section and establishment of new society/societies under sub-section (3) of this section, the Registrar/Government shall constitute or provide for constitution of an ad hoc Managing Committee for the purposes of managing the affairs of the new society/societies till such time as a new Managing Committee is constituted after elections under the provisions of this Act and the ad hoc managing committee so constituted shall exercise such powers and perform such functions as may be prescribed.

(b) Notwithstanding anything contrary in the Act, upon the constitution of the new Managing Committee after elections under clause (a), the Managing Committee of all such affiliating societies of which a primary agriculture credit society is a member or federation of such affiliating societies, shall be reconstituted, as per provisions contained in this Act for constitution of the Managing Committee of such societies."

(4) The sub-section (5) of Section-44AQ of the Act shall be deleted.

(5) In sub-section (6) of Section-44AQ of the Act, the words "sub-section (5)" shall be substituted by the words "sub-section (2)" and the words "a membership fee of Re. 1" shall be substituted by the words "the membership fee."

<u>7.</u> Addition Of A New Chapter Vi-D After Chapter Vi-C Of The

Act 6 Of 1935 :-

In the Bihar Co-operative Societies Act, 1935 after chapter VI-C, the following chapter VI-D shall be incorporated, namely:-

CHAPTER VI-D

Special Provisions applicable to societies in Short Term Co-operative Credit Structure

44AT. Over-riding effect of Chapter VI-D.-- Notwithstanding anything contrary or inconsistent contained in any other chapter of this Act or the Bihar Self Supporting Co-operative Societies Act 1996 or rules framed thereunder or bye-laws of any registered society or orders issued thereunder, the provisions of this chapter shall have overriding effect.

44AU. Ensuring membership of Primary Agricultural credit society to depositors and borrowers.-- Every person who is a borrower or depositor of a Primary Agriculture Credit Society or wants to become a borrower or depositor of such society shall be compulsorily made a member or a associate member of such society in terms of sub-section (6) of section-44AQ with full voting rights.

44AV. Autonomy in all financial and internal administrative matters.-- A co-operative society under Short Term Co-operative Credit Structure shall, have autonomy in all financial and internal administrative matters including the following areas:-

(a) Interest rates on deposits and loans in conformity with Reserve Bank guidelines,

(b) Borrowing and investments,

(c) Loan policies and individual loan decisions,

(d) Personnel policy, staffing, recruitment, posting and compensation to staff, and

(e) Appointment of auditors and compensation for the audit and internal control system.

44AW. Limit on State Governments subscription.-- The State Governments subscription in the share capital of any Co-operative Society under the Short Term Co-operative Credit Structure shall not exceed 25% of the total paid up share capital of such society:

Provided that the State Government or such society shall have option to further reduce the subscription of the State Government and that the society shall not be prevented from doing so by the State Government.

44AX. Restriction on number of Government Nominees.--

(1) There shall be only one Government nominee in the Managing Committee of the State Co-operative Bank and Central Co-

operative Banks.
(2)There shall be no Government nominee in the Managing Committee of a Primary Agricultural Credit Society.
44AY. Membership of an affiliating society.--
(a) A co-operative society under the Short Term Co-operative Credit Structure registered under the Bihar Co-operative Societies Act, 1935 shall be eligible to be a member of an affiliating society registered under the provision of the Bihar Self Supporting Co-operative Societies Act, 1996 in accordance with the procedure to be prescribed and notified by the Government,
(b) A co-operative society under the Short Term Co-operative Credit Structure registered under the Bihar Self Supporting Co-operative Societies Act, 1996 may become the member of an affiliating society registered under this Act in accordance with the procedure to be prescribed and notified by the Government.
(2) A Co-operative Society under the Short Term Co-operative Credit Structure may become a member of an affiliating society of its choice or leave the membership of such society.
44AZ. Restriction regarding area of operation.-- There shall be no restriction regarding area of operation for the conduct of business by a society under Short Term Co-operative Credit Structure.
44BA. Freedom of investment and deposit-A Co-operative Society under the Short Term Co-operative Credit Structure will have freedom to invest or deposit its funds in any financial institution subject to guidelines framed by Reserve Bank.
44BB. Freedom of borrowings.-- A co-operative society under Short Term Co-operative Credit Structure may obtain loans from any Reserve Bank regulated financial institution and refinance from National Bank or any other refinancing agency directly or through any Reserve Bank regulated financial institution of its choice and not necessarily from only the affiliating society to which it is affiliated.
44BC. Guidelines for payment of dividend by Primary Agricultural Credit Society.-- The Registrar in consultation with National Bank shall issue general guidelines for payment of dividend by a Primary Agricultural Credit Society.
44BD. Contribution to any fund.-- No society in Co-operative Credit Structure shall be directed to contribute any fund other than those for improving the net worth and own fund of the society.
44BE. Disqualification of members of the Managing Committee to State Co-operative Bank or Central Co-operative Bank.--
(1) A member of the Managing Committee representing a co-

operative society other than Primary Agricultural Credit Society in the Managing Committee of State Co-operative Bank or Central Co-operative Bank shall not be allowed to continue as a member of the managing committee by the Registrar in the event of such cooperative society committing a default for a period exceeding 90 (ninety) days on intimation of such default by the Chief Executive of the bank concerned.

(2) A member of Managing Committee representing a co-operative society under the Short Term Co-operative Credit Structure in the Managing Committee of State Co-operative Bank or Central Co-operative Bank shall not be allowed to continue as member by the Registrar in the event of such society committing a default for a period exceeding one year on intimation of such default by the Chief Executive of the bank concerned.

(3) No person shall be eligible for election to the Managing Committee of a co-operative society under Short Term Co-operative Credit Structure, if-

(a) such person is not a member of the society, or

(b) such person is in default to the society or any other registered society in respect of any loan taken by him or has any dues of the society on the date of filing of nomination, or

(c) he has directly or indirectly, any interest in any subsistent contract made with the society or in any property sold or purchased by the society or in any other transaction of the society, except in any investment made in, or any loan taken from the society,

(d) he has any proceeding for surcharge relating to any registered society pending against him;

(e) he has a criminal proceeding relating to any transaction of a registered society pending against him in which cognizance has been taken.

(4) No person elected as a member or other office bearer in the Management Committee of a co-operative credit structure shall be allowed to act as such if he is in default for a period exceeding twelve months in payment of dues to the society unless the amount in default with due interest is paid to the society.

44BF. Supersession of Short Term Co-operative Credit Structure.--

(1) The supersession of the Managing Committee of State Co-operative Bank or Central Co-operative Bank under Section-41 of this Act, shall be done by Registrar, Co-operative Societies in consultation with Reserve Bank.

(2) The supersession of the Managing Committee under Section-41 of this Act of a Primary Agricultural Credit Society shall be done by

Registrar, only under the following conditions:-

(a) if a society incurs losses for three consecutive years, or

(b) if serious financial irregularities or frauds have been identified, or

(c) if there are judicial directives to this effect, or

(d) if there is lack of quorum for three consecutive meetings.

44BG. Elections.--

(1) The election to the Managing Committee of a cooperative society under the Short Term Co-operative Credit Structure shall be conducted before the expiry of the term of the existing Managing Committee and in case of supersession of the Managing Committee of such co-operative society; the election may invariably be conducted within six months from the date of supersession.

(2) A member of the Managing Committee of a Primary Agriculture Credit Society which has been superseded under the conditions mentioned in sub-clause (a) and (b) of Section-44BG(2) shall not be entitled to contest again for a period of five years after such supersession.

44BH. The Prudential norms.-- The prudential norms including Capital to Risk Weighted Assets Ratio shall be specified by the Registrar for all the Primary Agricultural Credit Society in consultation with National Bank.

44BI. Removal of Directors and Chief Executive Officers.-- (1) The members of the Managing Committee or chief executive officer of the State co-operative Bank or Central co-operative Bank shall fulfill such criteria as may be stipulated by RBI.

(2) A Person who does not fulfill the criteria for the post of Chief Executive officer or a member in the committee of the State co-operative Bank or a Central co-operative Bank as stipulated by the Reserve Bank shall be treated as ineligible for such post and if such person is holding the post, he shall be removed by the Registrar on receipt of advice to this effect from the Reserve Bank or the National Bank.

44BJ.-- Co-option of professionals in Managing Committee of State Co-operative Bank and Central Co-operative Bank.-- (1) The Managing Committee of the State Co-operative Bank or a Central Co-operative Bank shall have such number of professionals as members having the professional qualifications or experience as may be stipulated by Reserve Bank of India.

(2) If members with professional qualifications or experience as stipulated by the Reserve Bank are not elected in number specified by the Reserve Bank of India in the Committee of the State Co-

operative Bank or Central Cooperative Bank, to the extent of shortfall, such vacancies shall be filled by co-option of such persons in the committee and such co-opted members shall have full voting rights.

44BK. Audit of accounts.-- The State Co-operative Bank or Central Cooperative Banks shall cause audit of its accounts by a Chartered Accountant selected from a panel approved by National Bank.

44BL. Special audit of State Co-operative Bank or Central Co-operative Bank.--

(1) The Registrar shall arrange to conduct the special audit of State Co-operative Bank or Central Co-operative Bank, on the request of Reserve Bank on such specific terms of references as agreed to by the Registrar and also arrange to furnish the report to Reserve Bank within the time stipulated by the Reserve Bank of India.

(2) The Registrar may also on its own motion or on the request of the Managing Committee of State Co-operative Bank or Central Co-operative Bank arrange to conduct the special audit of such bank.

44BM. Restriction of using word "Bank by the Primary Agricultural Credit Society.--

(1) No Primary Agricultural Credit Society will use the word "Bank", "Banker" or "Banking" or any other derivative of the word "Bank".

(2) The Registrar shall deregister such Primary Agricultural Credit Society, which violates the provision of sub-section (1) of this Section.

44BN. Abolition of Cadre system.-- There shall not be any Cadre system in Co-operative Credit Structure with effect from such date as notified by the State Government.

44BO. Winding up of State Co-operative Bank or Central Co-operative Bank.-- The Registrar shall make an order for the winding up of State Cooperative Bank or Central Co-operative Bank and appointment of a liquidator within one month if so advised by the Reserve Bank.

44BP Implementation of regulatory prescriptions of Reserve Bank.-- Notwithstanding anything contained in this Act or Rules made thereunder, the Registrar shall ensure the implementation of regulatory prescriptions of the Reserve Bank in case of State Co-operative Bank and Central Cooperative Banks.

44BQ. Exemption by the State Government.-- No society in the short term Co-operative Credit Structure shall be exempted under Section 62(2) of this Act in any manner from the application of the provisions of this chapter without prior consultation with the Reserve Bank or the National Bank."

<u>8.</u> Substitution Of Sub-Section (2) Of Section-47 Of The Act 6 Of 1935 :-

The sub-section (2) of Section-47 of the Bihar Co-operative Societies Act 1935 shall be substituted by the following namely:-
"Every offence under the Act shall, for the purpose of the Code of Criminal Procedure, 1898 (5 of 1898)1 be deemed to be non-cognizable except offence under section-45A (3) of this Act."

<u>9.</u> Amendment Of Sub-Clause (Vii) Of Sub-Section (2) Of Section-66 Of The Act 6 Of 1935 :-

After the words "shall be constituted" in sub-clause (vii) of sub-section (2) of Section-66 of the Bihar Co-operative Societies Act, 1935, the words "through election conducted by the authority constituted under sub-section (1) of Section-14A or otherwise" shall be inserted.

<u>10.</u> Addition Of New Clause (Xxx) After Clause (Xxix) Of Sub-Section (2) Of Section-66 Of The Act 6 Of 1935 :-

The following clause (xxx) shall be added after clause (xxix) of sub-section (2) of Section-66 of the Bihar Co-operative Societies Act, 1935, namely.
"(xxx) prescribe the membership fee and provide for financial assistance for contribution towards such fee as well as minimum share capital to women, Scheduled Caste, Scheduled Tribe and Backward Class member belonging to a class or classes of registered societies which may be limited to maximum one member from a family."