

Reforming the Governance of Co-operative Banks | A Study of State & District Central Co-operative Banks in 10 States

Report | November 2019

Shehnaz Ahmed
Debanshu Mukherjee
Ulka Bhattacharyya
Shohini Sengupta

**This report is
an independent,
non-commissioned
piece of work by
the Vidhi Centre
for Legal Policy,
an independent
think-tank doing
legal research to help
make better laws.**

About the Authors

Shehnaz Ahmed is a Senior Resident Fellow at the Corporate Law and Financial Regulation vertical at Vidhi Centre for Legal Policy. She is an alumna of RML National Law University.

Debanshu Mukherjee is one of the founding members of Vidhi Centre for Legal Policy and leads its corporate law and financial regulation work. He is an alumnus of Harvard Law School, the University of Oxford and Hidayatullah National Law University.

Ulka Bhattacharyya is a former Research Fellow at the Corporate Law and Financial Regulation vertical at Vidhi Centre for Legal Policy. She is an alumna of the WB National University of Juridical Sciences.

Shohini Sengupta is a former Senior Resident Fellow at the Corporate Law and Financial Regulation vertical at Vidhi Centre for Legal Policy. She is an alumna of University of Oxford and National Law Institute University.

Acknowledgements

We are grateful to the Institutional Development Department of National Bank for Agriculture and Rural Development (NABARD) for providing us with relevant financial and corporate governance related data pertaining to the co-operative banks evaluated in this report. We are also thankful to the officers of NABARD for sharing their insights about the co-operative banking sector in general, which was very helpful in shaping the design and content of this report.

We have consulted domain experts, on a confidential basis, for the purposes of scoping this report and to understand the key challenges faced in the governance of co-operative banks. We are grateful to each of them for sharing with us their valuable insights.

The authors are also grateful to Alok Kumar Prasanna, Lead, Vidhi Centre for Legal Policy (Vidhi), Karnataka for his inputs on the recommendations of the Report.

Errors, if any, rest with the authors.

List of Figures

- Fig. 1:** Snapshot of the Co-operative Credit Structure in India 7
- Fig. 2:** Structure of STCCS..... 8
- Fig. 3:** Deposits and Loans & Advances of StCBs and DCCBs..... 9
- Fig. 4:** Agency-wise Ground Level Credit Flow 9
- Fig. 5:** Region-wise Classification of the Surveyed States 11
- Fig. 6:** Overview of Legal and Regulatory Framework Applicable to StCBs and DCCBs 17
- Fig. 7:** Snapshot of Key Financial Indicators of StCBs 28
- Fig. 8:** Snapshot of Key Financial Indicators of DCCBs 29
- Fig. 9:** Supervisory Ratings of StCBs and DCCBs by NABARD 30
- Fig. 10:** Key Loan Waiver Schemes between 1987 – 2018..... 34
- Fig. 11:** RBI Fit & Proper Guidelines – Snapshot of its Implementation in StCBs in the Surveyed States 43
- Fig. 12:** RBI Fit & Proper Guidelines – Snapshot of its Implementation in DCCBs in the Surveyed States 43

Table of Contents

Chapter 1: Introduction	7
Chapter 2: Methodology	11
Chapter 3: Tracing the Co-operative Banking Reforms in India	12
Chapter 4: Assessing the Legal Landscape	17
Chapter 5: Preliminary Assessment of Key Issues	24
Chapter 6: Financial Health of StCBs and DCCBs in the Surveyed States	37
Chapter 7: Corporate Governance – Preliminary Assessment of Key Indicators	41
Chapter 8: Mapping of State Laws in Surveyed States – Key Findings	45
Chapter 9: Recommendations	55
Annexure A	60
Annexure B	64

Chapter 1: Introduction

Co-operative credit institutions in India occupy a central role in mobilising deposits and providing credit, particularly to the semi-urban and rural segments of the population and realising the government’s goal of ensuring financial inclusion. Despite the emergence of new types of banks in recent years, including small finance banks, payment banks and the penetration of commercial and other banks into rural areas, co-operative banks still hold a prominent place in the rural credit delivery mechanism. The Report of the Task Force on Revival of Co-operative Credit Institutions (“Vaidyanathan Committee Report”) aptly notes that in a country predominated by small or marginal land holdings, the reach of the co-operative system is much deeper than the other institutional arrangements in the rural areas.¹

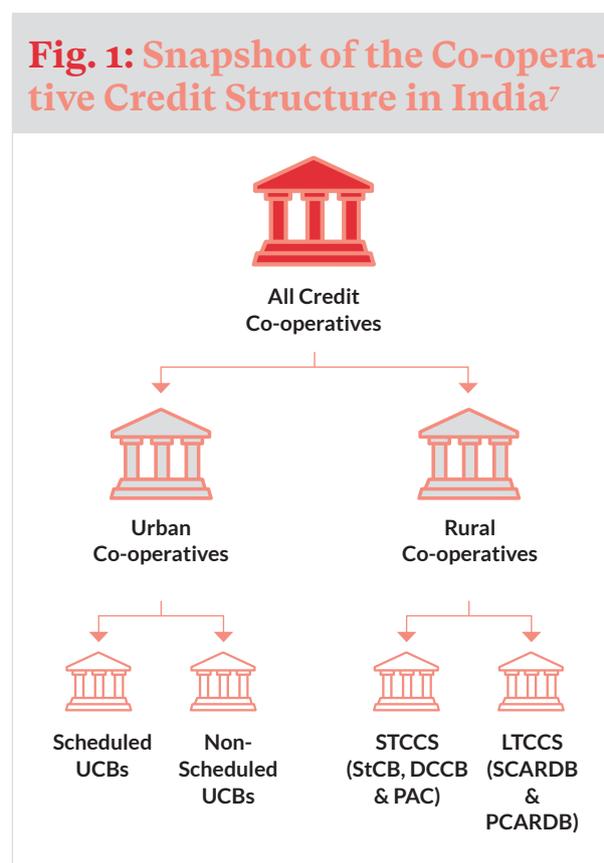
Co-operative Credit Structure in India

The co-operative credit structure (“CCS”) in India consists of several institutions catering to specific financial service needs of different segments of the population. Broadly, the CCS consists of urban co-operatives and rural co-operatives. The urban CCS comprising of the urban co-operative banks (“UCBs”) seek to deliver institutional credit at affordable costs in urban and semi-urban areas. The rural CCS, owing to their geographical and demographic outreach were established to cater to the credit requirements in villages and small towns.²

The rural CCS in India can be further divided into two groups—(a) the short term CCS (“STCCS”); and (b) the long-term CCS (“LTCCS”). Typically, STCCS consists of a three-tier structure, with the state co-operative

bank (“StCB”)³ as the apex institution in each state, the district central co-operative banks (“DCCBs”)⁴ operating at the district level and primary agricultural credit societies (“PACS”) working at the base (or the village) level. The STCCS provides crop and other working capital loans mainly for short-term purposes to farmers.⁵ The LTCCS comprising of state co-operative agriculture and rural development banks (“SCARDB”) and affiliated primary co-operative agriculture and rural development banks (“PCARDB”) mostly provide medium and long-term loans for making investments in agriculture, rural industries, etc.⁶ (Figure 17)

Fig. 1: Snapshot of the Co-operative Credit Structure in India⁷



1 Task Force on Revival of Cooperative Credit Institutions, *Draft Final Report of the Task Force on Revival of Cooperative Credit Institutions* (2005) para 3.18.

2 RBI, ‘Report on Trend and Progress of Banking in India 2017-18’ (2018), chapter V, para V.30

3 StCB has been defined to mean a principal co-operative society in a state, the primary object of which is the financing of other cooperative societies in the state. See NABARD Act, 1981, Section 2(u).

4 DCCB or Central Co-operative Bank means the principal co-operative society in a district in a state, the primary object of which is the financing of other co-operative societies in that district. See NABARD Act, Section 2(d).

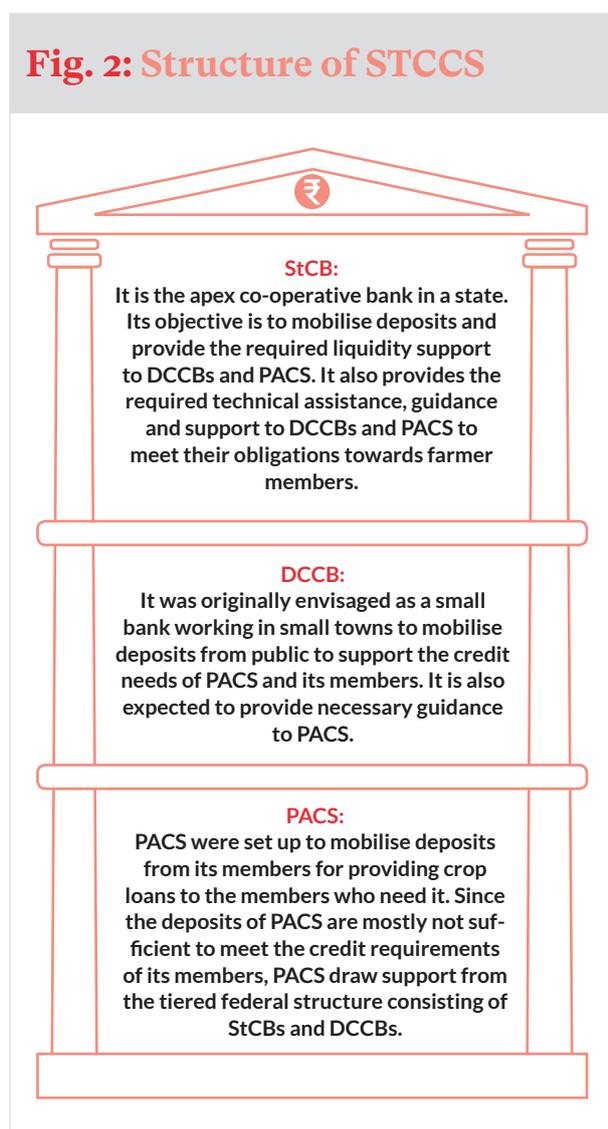
5 Report on Trend and Progress of Banking 2018 (n 2).

6 Ibid.

7 Ibid, chapter V.1.

In case of STCCS, PACS which are at the base of the structure consists of individuals as member shareholders who are mainly farmers. PACS along with other non-credit co-operative societies are federal member shareholders of DCCBs at the district level. The DCCBs along with other state level credit and non-credit societies are federal member shareholders of StCBs.⁸ (Figure 2⁹)

Fig. 2: Structure of STCCS



In some states, PACS are direct members of the StCB to form a two-tier system.¹⁰ As on 31 March 2018, the STCCS in nine states and four union territories operated through a two-tier structure consisting of StCBs at the apex level and PACS at the field level.¹¹

Existing Status of StCBs and DCCBs in India

Rural credit co-operatives were established to address the 'last mile' problem associated with the delivery of affordable credit to farmers.¹² In line with this objective, since its inception, STCCS have made available institutional credit at affordable cost to the agricultural sector. The deposit size of StCBs and DCCBs and the loans and advances extended by them during the period between financial years 2013-2014 to 2016-2017 is shown on Page 7. (Figure 3¹³)

Till mid-nineties, co-operatives were a key provider of agricultural credit, contributing around 50% of agricultural credit provided by the entire banking system to farmers.¹⁴ However, with the rural penetration of commercial banks coupled with an increase in agricultural financing by such banks from 2001 onwards, the contribution of co-operative banks in the agricultural credit dispensation has witnessed a fall, from a contribution of 16% in 2014-15 to 13% in 2017-18. The agency wise share of credit flow to the agricultural sector during the period 2013-2014 to 2017-18 is shown on Page 7. (Figure 4¹⁵)

Despite a decline in the share of co-operative banks, they still assume a pivotal role in rural credit dispensation, particularly due to their geographic and demographic outreach. Due to their reach, they have a potential to further the financial inclusion priorities of policymakers. This view has been echoed by various committees set up by the government and the Reserve

8 NABARD, *Report of the Committee for Assessment of Human Resources of STCCS in the post CBS Environment* (2017)

9 Description of these entities is based on RBI, *Report of the Expert Committee to examine Three Tier Short Term Cooperative Credit Structure* (2013) para 2.3.

10 These are Andaman & Nicobar, Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Chandigarh, Delhi, Puducherry and Goa. See *Report of the Committee for Assessment of Human Resources of STCCS* (n 6) para 10.3.

11 *Report on Trend and Progress of Banking 2018* (n 2) para v.34.

12 *Ibid*, para v.30.

13 *Ibid*, Table V.11; RBI, *Report on Trend and Progress of Banking in India 2016-17* (2017), Table VI.11; RBI, *Report on Trend and Progress of Banking in India 2015-16* (2016), Table 3.1; RBI, *Report on Trend and Progress of Banking in India 2014-15* (2015), Table 3.1.

14 *Report of the Expert Committee to examine Three Tier Short Term Cooperative Credit Structure* (n 9) para 3.1.

15 NABARD, *Annual Report 2018-19* (2019) table 1.6.

Fig. 3: Deposits and Loans & Advances of StCBs and DCCBs (amount in INR billion) ¹³

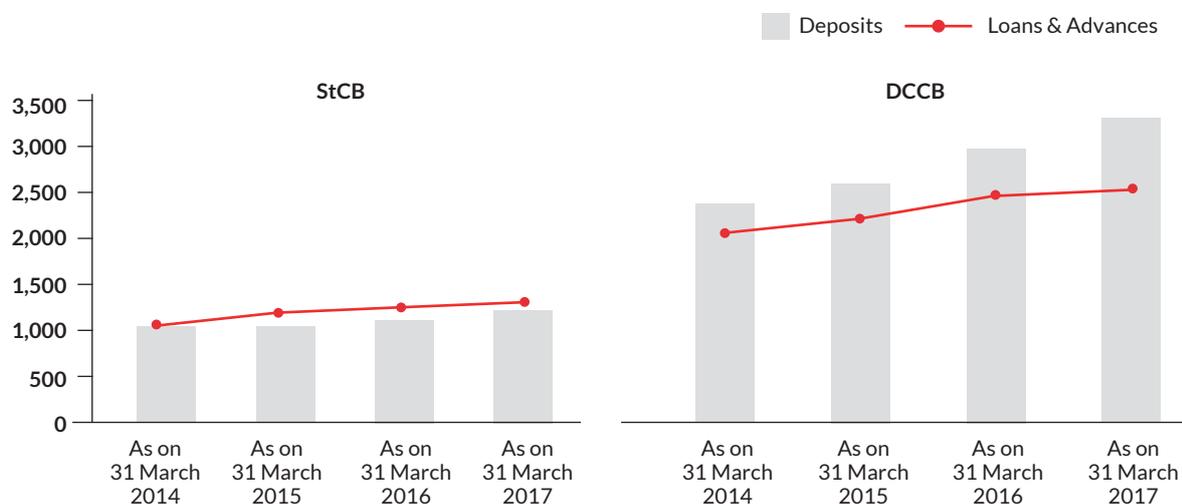
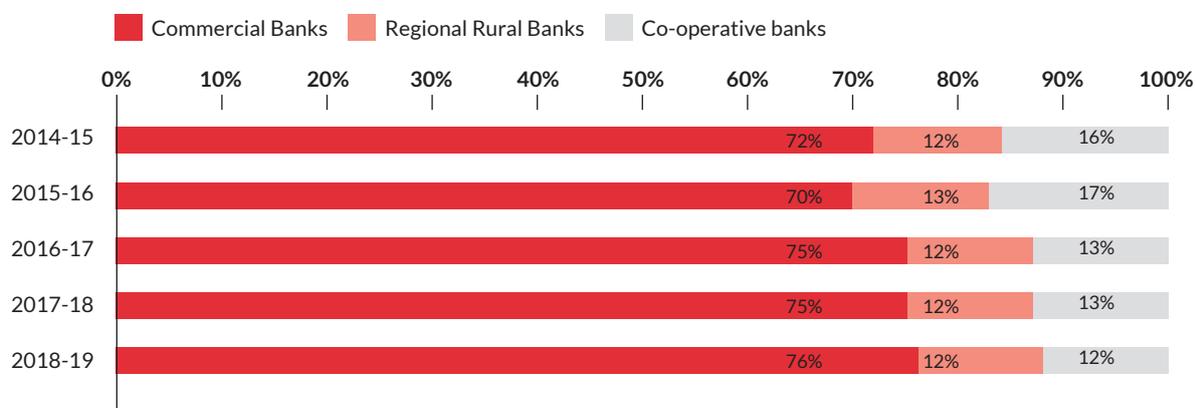


Fig. 4: Agency-wise Ground Level Credit Flow (in INR Crore) ¹⁵



Bank of India (“RBI”).

- As on 31 March 2018, there were 33 StCBs with a network of 1307 branches and 363 DCCBs operating with a network of 14248 branches.¹⁶
- RBI notes that as of March 2016, the short term credit co-operatives had between themselves a branch network of 108,776 branches as against

110,361 branches of public sector banks, local area banks and regional rural banks taken together.¹⁷ These figures are critical in India, where the farm size is fragmented and small.¹⁸

- Further, it has also been argued that despite their decline in the share of total agricultural credit in terms of amount, they still provide a large number of small-ticket loans which commercial banks hesi-

¹⁶ NABARD, *Key Statistics of Cooperative Banks (Short Term Co-operative Credit Structure)* (NABARD, 2019) 5, 7.

¹⁷ *Report on Trend and Progress of Banking in India 2016-17* (n 13) para VI.35.

¹⁸ *Report of the Committee for Assessment of Human Resources of STCCS* (n 8) para 1.1.

tate to take up on account of high cost of servicing small value accounts.¹⁹

The role and relevance of StCBs and DCCBs in the rural credit delivery mechanism was a key point of discussion during stakeholder interviews / discussion conducted for the purposes of this Report. Majority of the stakeholders pointed out that despite the decline in the share of rural co-operatives, they still hold relevance in the rural credit delivery framework due to their deep-rooted connect with the rural populace. The local presence of such StCBs and DCCBs and their interactions with the local community over the years, have enabled them to create a level of trust with the community. Most stakeholders echoed that this connect was a major advantage that co-operatives hold for mobilisation of deposits and for credit delivery.

Purpose of this Study

This Report has already emphasised that rural credit co-operatives are uniquely placed to act as a conduit of financial inclusion and to deal with rural distress. However, it has often been pointed out that there are several issues hindering such institutions from realising its true potential, including issues relating to governance, financial health and political interference. Many of these issues may also be attributed to the constitutional and legal architecture governing co-operative banks in India that has subject them to a fragmented regulatory framework spread across a plethora of laws, guidelines and notifications.

While several committees and commentators have discussed the issues plaguing the co-operative banking sector, regulatory attention and policy discussions tend to have focused more on UCBs. There has been no comprehensive study of the STCCS. The last major reform in the STCCS sector was undertaken pursuant to the implementation of the recommendations of the Vaidyanathan Committee Report. The report recommended a revival package for revitalising the STCCS, which included a one-time capitalisation package with a stringent set of conditionalities for legal and institutional reforms. Such reforms included crucial amendments to state co-operative societies laws for improving the governance and management of StCBs and DCCBs. These recommendations were

based on a comprehensive review of the financial health, governance and management of STCCS across India. More than a decade after the implementation of the recommendations of the Vaidyanathan Committee Report, this sector has undergone several changes, including facing stiff competition from commercial banks and emergence of small finance banks and payment banks.

A review of the existing literature regarding challenges faced by STCCS indicate that governance has been one of the key challenges facing StCBs and DCCBs. This was also echoed by stakeholders during the interviews conducted for the purposes of this Report. Similarly, the role of state governments in the governance and the functioning of these banks was highlighted by several stakeholders during the consultations. The involvement of state government in such banks is also evident from anecdotal evidence which suggests that in certain cases state governments have recapitalised financially weak StCBs and DCCBs banks, thereby preventing such banks from being wound up.

Against this background the focus of the Report is to study the governance of StCBs and DCCBs in 10 states in India. Towards this end, this Report amongst other things:

- identifies and studies the reasons behind governance related concerns in StCBs and DCCBs;
- maps the powers of RBI to regulate governance and resolution related issues in banking companies and StCBs and DCCBs;
- maps laws governing co-operative societies (including StCBs and DCCBs) in 10 states with a view to assess the regulatory position of different states insofar as governance of these banks are concerned; and
- provides recommendations for a more structured regulation of co-operative banks in India.

We believe that this analysis will be relevant to assess the scope and extent of regulatory oversight that these banks are subject to and to identify critical gaps in the existing legal framework.

¹⁹ R Gandhi, 'Future and new thoughts on co-operative banks' (19 June 2015) available at <<https://www.bis.org/review/r150722d.htm>> accessed 18 October 2019.

Chapter 2: Methodology

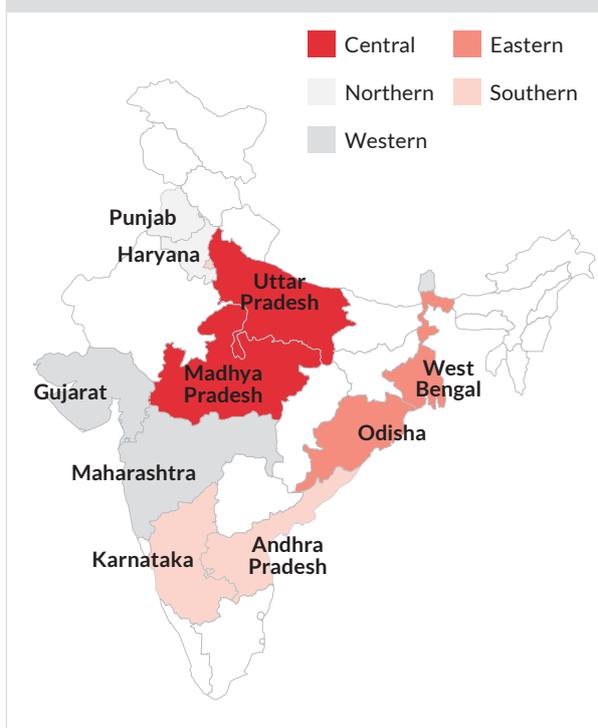
The study has adopted a multi-pronged approach for assessing different issues discussed in the Report. The approach and the rationale for adopting a particular approach is discussed below.

Specifically, for analysing the: (a) financial health parameters in Chapter 6 of this Report; (b) implementation of the RBI guidelines regarding professional directors and the chief executive officer (“CEO”) by StCBs and DCCBs in Chapter 7; and (c) mapping of state laws in Chapter 8, this Report focuses on 10 surveyed states (“**Surveyed States**”). In order to ensure representativeness, we have selected two states from different regions of the country that follows a three-tiered STCCS.²⁰ Given that the North Eastern region follows a two-tiered structure (which as discussed above is structurally different from the three tiered STCCS), this Report does not study the banks in that region.

For the purposes of studying the financial health of StCBs and DCCBs in the Surveyed States in Chapter 6 and the implementation of RBI guidelines by StCBs and DCCBs regarding fit and proper criteria for board members in Chapter 7, the Report relies on the secondary data made available to us by the National Bank for Agriculture and Rural Development (“**NABARD**”). For a general overview of the financial health of StCBs and DCCBs as set out elsewhere in the Report, the Report relies on publicly available data from the annual report of NABARD and the website of the National Federation of State Co-operative Banks Ltd. (“**NAFSCOB**”). The authors have not separately verified the data with the concerned banks.

The authors have undertaken a detailed consultative process for scoping and identifying the issues discussed in the Report. Further, inputs of relevant stakeholders were sought on specific issues discussed in the Report. The consultative process included interviews with officials from the Ministry

Fig. 5: Region-wise Classification of the Surveyed States



of Finance, RBI, NABARD, Deposit Insurance and Credit Guarantee Corporation (“**DICGC**”), senior officials from Department of Co-operation / Registrar of Co-operative Societies (“**RCS**”) in Maharashtra and Gujarat, select StCBs and DCCBs in Maharashtra and Gujarat and NAFSCOB.

For the mapping of state laws on co-operative societies in the Surveyed States, the Report only focuses on the parent statute (as publicly available) and does not study the subordinate legislation or bye-laws of the StCBs and DCCBs in the Surveyed States.

For further details on the rationale for relying on specific parameters, please see the relevant Chapters.

²⁰ The regional classification is based on NABARD’s classification. See *Key Statistics of Cooperative Banks* (n 16) 14-18. Central Region comprises of the states of Chhattisgarh, Madhya Pradesh, Uttarakhand and Uttar Pradesh. Eastern Region comprises of Andaman & Nicobar, Bihar, Jharkhand, Odisha and West Bengal. Northern Region consists of Chandigarh, Haryana, Himachal Pradesh, Jammu and Kashmir, New Delhi and Punjab. Southern Region comprises of Andhra Pradesh, Karnataka, Kerala, Puducherry, Tamil Nadu and Telangana. Western Region comprises of Goa, Gujarat and Maharashtra. North Eastern Region comprises of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

Chapter 3: Tracing the Co-operative Banking Reforms in India

The genesis of Indian co-operatives can be traced to issues relating to indebtedness of Indian agriculturists to money lenders in the later part of the nineteenth century and the consequent unrest stemming from the agrarian discontent. In the absence of an institutional mechanism for financing agriculture in India, experiences gained in other jurisdictions like Europe and Germany were instrumental in the development of credit co-operatives in India.²¹ The Government of India took great interest in promoting such credit co-operatives through legislative and policy measures. However, with the growth of the sector, certain challenges arose, many of which continue even today especially in relation to governance and financial health.

Tracing the reforms in the co-operative banking sector is crucial to provide context and set the background for understanding the regulatory framework governing co-operative banks in India. Given that the canvas of such reforms is too vast to be discussed in this Report, this Chapter provides an overview of some key developments with particular emphasis on the recommendations of the Vaidyanathan Committee Report that has formed the mainstay of the discussion on co-operative banking reforms in India.

For the purposes of this Report, the evolution of the co-operative banking reforms has been bucketed into three distinct phases—the pre-Vaidyanathan Committee era, the Recommendations of the Vaidyanathan Committee Report and the post-Vaidyanathan Committee period.²²

Phase I - Pre-Vaidyanathan Committee Recommendations

First Sub-Phase (1900-1930)

This phase witnessed the origination of co-operatives due to initiatives of the colonial government. With a view to provide legal basis for co-operatives, the Cooperative Credit Societies Act, 1904 was enacted, followed by the Cooperative Societies Act, 1912 which sought to expand the scope of co-operation to include non-credit activities, reforms in the co-operative sector focusing on the passage of Cooperative Credit Societies legislation.²³ This marked the beginning of the government policy of active encouragement and promotion of co-operatives which gained wide acceptance.²⁴ This was adopted as a policy by provincial governments and thereafter, “cooperation” became a provincial subject in 1919 by way of the Reforms Act, 1919.

Second Sub-Phase (1931-1950)

This sub-phase saw RBI's increasing role in the affairs of co-operatives. RBI was given the mandate to closely associate with matters relating to rural credit and banking. The Reserve Bank of India

²¹ Biwa Swarup Misra, *Credit Cooperatives in India* (1st edn, Routledge Studies in Development Economics, 2010) 15.

²² *Vaidyanathan Committee Report* (n 1), chapter 2. This is based on treating the Vaidyanathan Committee Report as the mainstay of regulatory reforms in relation to STCCS in India. This phase wise classification is broadly based on the classification set out in Vaidyanathan Committee Report.

²³ Notable committees in this regard include the Edward Law Committee on Cooperative Legislation, the Maclagan Committee (1915) and the Royal Commission on Agriculture in India (1928). See, Vaidyanathan Committee Report (n 1) chapter 2.

²⁴ *Vaidyanathan Committee Report* (n 1) para 2.03.

Act, 1934 provided for the establishment of an Agricultural Credit Department in RBI and extension of refinance facilities to the co-operative credit system.²⁵ Emphasis was laid on setting up and promoting financially viable provincial co-operative banks. However, during this phase the Government was not as proactive in promoting co-operatives as before. This phase also witnessed some early signs of weakness in the Indian rural co-operative movement with a large number of co-operatives being tied with the problem of frozen assets, because of heavy overdues in repayment.²⁶

Third Sub-Phase (1951-1990)

This sub-phase is particularly important from the perspective of state policy of encouraging economic growth through co-operatives. One significant development in this phase is the setting up of the All India Rural Credit Survey (“AIRCS”), which amongst other things, recommended state partnership in

terms of equity, governance and management of the co-operatives. The implementation of these recommendations led to state partnership at all levels, in the form of share capital contribution, provision of technical, managerial and financial assistance to co-operatives. With such government involvement, co-operatives came to be perceived as state agencies, as opposed to autonomous member-based bodies.²⁷ This phase is crucial since it paved the way for the involvement of the state government in the management and governance of co-operatives.

Fourth Sub-Phase (1991-Vaidyanathan Committee Recommendations)

This phase witnessed the growing realisation of the adverse effects of state patronage and politicisation on credit co-operatives. In the quest for reviving the

Some excerpts from the Vaidyanathan Committee Report that highlight the growing involvement of the state government in the cooperatives during the 1951-1990 phase.

- The State gave primacy to cooperatives as the sole means of delivering institutional credit to rural areas and injected large and increasing amounts of funds directly. Upper tier cooperative banks were encouraged to accept public deposits and borrow from other financial institutions. However, the system was soon found to be burdened by growing overdues
- The consequent interference with the functioning of the co-operative institutions, often compelling them to compromise on the usual norms for credit worthiness, ultimately began to affect the quality of the portfolio of the cooperatives.
- Instead of tackling the root cause of their weaknesses, the State took responsibility for strengthening the institutions, by infusing additional capital and “professional” workforce. Both the State and the workforce then began to behave like “patrons”, rather than as providers of financial services.
- In due course, political expediency also led to laxity in ensuring quality of credit and its repayment. The Government of India’s 1989 scheme for writing off loans of farmers, greatly aggravated the already weak credit discipline in the cooperative system and led to the erosion of its financial health.

²⁵ Dr. Deepali Pant Joshi, ‘Strengthening and Revitalising Rural Cooperative Credit Delivery System’ (25 May 2014) available at <https://www.rbi.org.in/scripts/FS_Speeches.aspx?Id=883&fn=2755> accessed 10 October 2019.

²⁶ Vaidyanathan Committee Report (n 1) para 2.07

²⁷ Biswa Swarup Misra (n 21) 19.

sector, this sub-phase witnessed the constitution of committees which made several recommendations for revitalising the co-operative movement in India.

Set out below is a table setting out the key recommendations of some committees set up by the Government prior to the release of the Vaidyanathan Committee Report to suggest reforms for the co-operative sector.

Hazari Committee (1975)²⁸

- Recommended the integration of short-term and long-term co-operatives, while also looking at issues of loan defaults, attributing the same to defective loan policies, misuse of loans and ineffective supervision.

Sivaraman Committee (1981)²⁹

- Recommended the creation of a national level bank with close links with RBI for agriculture and rural development i.e. NABARD. NABARD was envisaged to be the refinancing agency for the rural credit system.

Khusro Committee (1986)³⁰

- Recommended measures to strengthen co-operatives including strengthening both long-term and short-term co-operative credit structures through actions plans for PACS (including appointment of trained officials, abolition of cadre system, strengthening share capital), scrapping state rebate on interest rates and allowing DCCBs to lend to non-cooperatives.

Chaudhary Brahm Prakash Committee (1990)³¹

- Proposed a model law for co-operatives, envisaging them as self-reliant, autonomous and fully democratic institutions.

Narasimham Committee II (1998)³²

- Highlighted the dual control problem of co-operative institutions by RBI/NABARD and state governments, recommended that all co-operative institutions should fall under the Banking Regulation Act, 1949 ("BR Act").

Capoor Committee (2000)³³

- Recommended a number of important changes to strengthen the co-operative credit system including relaxation of state government control, adoption of the essential features of the model co-operative societies law by all states, enabling the BR Act to override the provisions of state co-operative legislations to the contrary, audit-related reforms and restriction on funding and financial assistance by state government.

28 RBI, *Report of the Committee for Integration of Cooperative Credit Institutions* (1976).

29 RBI, *Report of the Committee to Review Arrangements for Institutional Credit for Agriculture and Rural Development* (1981) pages 377-381.

30 Summary of the recommendations of the RBI, *Committee on the Review of the Agricultural Credit System in India* (1986) as available at N Srinivasan (ed), M L Tannan, *Banking Law & Practice in India*, vol 2 (25th edn, LexisNexis, 2014) 2681 - 2686.

31 This is based on the summary of recommendation of Expert Committee under the chairmanship of Chaudhary Brahm Prakash Committee Report (1990) as set out in the *Vaidyanathan Committee Report* (n 1) para 2.18.

32 Summary of the recommendations of the RBI, *Committee on Banking Sector Reforms* (1998) as available at M L Tannan (n 30) 2526.

33 RBI, *Report of the Task Force to Study the Cooperative Credit System and Suggest Measures for its Strengthening* (2000) 47-58.

Phase II: Vaidyanathan Committee Report Recommendations

The implementation of the recommendations of the Vaidyanathan Committee Report has been one of the major reforms for the revival of the STCCS. The primary mandate of the committee was to recommend an implementable action plan for reviving rural co-operative banking institutions, taking into consideration previous recommendations, and suggesting an appropriate implementation framework, including appropriate legislative changes. It was also required to assess financial assistance required for reviving the STCCS in India.

The committee suggested both long-term and short-term goals to revitalise the STCCS. It recommended a revival package consisting of a one-time financial assistance to wipe out accumulated losses and strengthen the capital base. The financial assistance could be availed by states who agreed to participate in the revival package and who made a formal commitment to make specified changes to their legal and administrative framework, relating to the

functioning of co-operative credit institutions in the STCCS. The long-term goal envisaged implementation of legal reforms by states by amending the state laws, thereby paving way for credit co-operatives to function as self-reliant and member centric institutions. In the interim, short-term goals recommended by the committee included execution of memorandum of understanding (MoU) by states with RBI to facilitate an effective governance and supervisory framework for STCCS.

Phase III - Post Vaidyanathan Committee Recommendations

This phase has largely seen the re-iteration of the recommendations of the Vaidyanathan Committee Report by various other committees. Recommendations of key committees during this phase are set out below.

- The *Radhakrishna Committee* (2007)³⁴ emphasised on mobilising co-operative institutions for advancing financial inclusion. Similarly, the *Rangarajan Committee* (2008)³⁵ advocated for using co-oper-

Key Governance Reforms proposed by the Vaidyanathan Committee Report

- Boards of management of co-operative banks should be reconstituted to ensure that they are elected.
- StCBs and DCCBs must accept fit and proper criteria (to be prescribed by the RBI) for eligibility to board membership and for co-option of a specified number of professionals as members with voting rights, failing election of board members meeting the fit and proper criteria.
- Professionally qualified CEOs (who meet qualifications to be prescribed by RBI and selected candidates, to be also approved by RBI) are appointed at StCBs and DCCBs.
- State governments must retire their contribution to the share capital of such credit co-operative societies

³⁴ Ministry of Finance, Government of India, 'Expert Committee on Agricultural Indebtedness' available at <<http://www.igidr.ac.in/pdf/publication/PP-059.pdf>> accessed 12 October 2019.

³⁵ 'Report of the Committee on Financial Inclusion' available at <<http://slbckarnataka.com/UserFiles/slbc/Full%20Report.pdf>> accessed 10 October 2019.

atives to enhance financial inclusion and to serve rural India's credit needs.

- The *Report of the Committee on Financial Sector Reforms* (2008)³⁶ suggested re-thinking the entire co-operative bank structure in India, in light of models adopted in other jurisdictions. An important theme highlighted was strengthening the prudential regulation of co-operative banks. Reforms suggested in this regard included implementing a prompt corrective action regime for co-operatives, resolving weak co-operative banks, addressing the dual control problem in relation to supervising and refinancing co-operatives and consolidated supervision of deposit-taking entities.
- The *Patil Committee* (2009)³⁷ *inter-alia* recommended changes to create a 'level playing field' for co-operatives including legal and regulatory reforms such as the enactment of Model Co-Operative Act by all states. The committee stressed on inclusion of specific provisions in relation to member participation, board effectiveness, fiduciary responsibility, disclosure of interests by directors and 'fit and proper' criteria for directors.
- The *Working Group on Banking of the Financial Sector Legislative Reforms Commission* (2013)³⁸ recommended *inter alia* that RBI should supervise deposit-taking co-operatives, treating co-operative banks at par with banking companies. It also recommended creation of a new organisation structure for UCBs consisting of a board of management in addition to the board of directors. Under

this model, the board of directors was proposed to be elected in accordance with the respective state co-operative societies laws or the Multi-State Co-operative Societies Act, 2002 ("MCS Act") (as may be applicable) and would therefore be subject to the regulation of the concerned RCS. Separately, the board of management (to be established by the board of directors) was proposed to be entrusted with the management of the concerned bank. This board of management would be subject to RBI's supervision under the BR Act.

- The *Prakash Bakshi Committee* (2013)³⁹ recommended wide changes to the short-term credit co-operative structure. These included legal and regulatory reforms (such as amending state co-operative laws, providing RBI with direct powers in relation to the supersession of the board or removing directors by amending the BR Act, extending the Banking Ombudsman or similar mechanisms to co-operative banks, amending state laws to allow co-operative banks to take business decisions in consonance with RBI directions etc.), introducing prudential norms in relation to co-operatives (such as mandatory compliance with CRAR requirements etc.) and other reforms (such as mandatory compliance in terms of migrating to the core banking solution (CBS) platform and newer-age payment services by co-operative banks etc.).

Over the years, while some of the recommendations have been implemented, critical recommendations regarding granting more regulatory powers to RBI has not yet been implemented.

36 Planning Commission, Government of India, *A Hundred Small Steps – Report of the Committee on Financial Sector Reforms* (2008).

37 Ministry of Agriculture, Government of India, *Report of the High Powered Committee on Cooperatives* (May 2009).

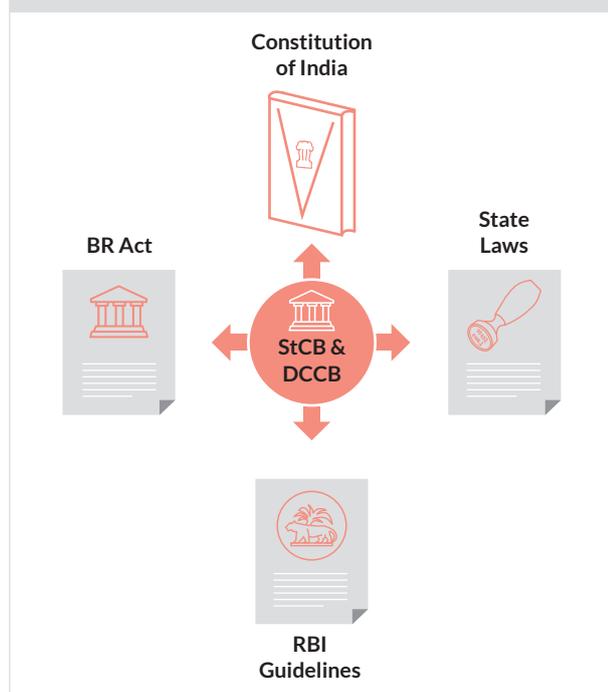
38 Ministry of Finance, Government of India, *Report of the Financial Sector Legislative Reforms Commission (Volume I)* (2013) 183.

39 *Report of the Expert Committee to examine Three Tier Short Term Cooperative Credit Structure* (n 9) pages i to vi.

Chapter 4: Assessing the Legal Landscape

The legal framework applicable to StCBs and DCCBs is scattered across several legal instruments—the Constitution of India (“Constitution”), BR Act, state co-operatives societies laws and guidelines issued by RBI / NABARD.

Fig. 6: Overview of Legal and Regulatory Framework Applicable to StCBs and DCCBs



Given the role of the StCBs and DCCBs in the rural economy, it is necessary that the legal framework governing such banks is conducive to its orderly growth. However, as articulated below, the regulatory framework for StCBs and DCCBs is fragmented which undermines its enforcement and creates arbitrage opportunities.

Constitution of India

Article 246 of the Constitution read with the Seventh Schedule determines the legislative competence of

the Union and the State. Matters falling in List I of the Schedule are within the exclusive competence of the Union (Union List), those in List II are within the exclusive competence of the State (State List) and those in List III fall within the concurrent jurisdiction of the Union and State (Concurrent List). Entries relevant for understanding the legislative competence pertaining to co-operative banks is set out in Table 2 for ease of reference.

Given that StCBs and DCCBs are co-operative societies carrying on banking activities with objects confined to one state, regulation of these entities falls in both List I and List II. Therefore, such co-operative banks are subject to the supervision and regulation of RCS under the respective state laws and RBI under the BR Act, resulting in duality of control.

Further, by way of the Constitution (Ninety Seventh Amendment) Act, 2011 (“97th Constitution Amendment Act”), the Constitution was amended to bring reforms to regulate the working of co-operative societies. Part IX-B containing Articles 243ZH to Article 243ZT was introduced for regulating different aspects of co-operative societies, irrespective of the nature of activity carried out by such societies. The Statement of the Objects and Reasons of the bill encapsulates the rationale for the said amendment:

“The co-operative sector, over the years, has made significant contribution to various sectors of national economy and has achieved voluminous growth. However, it has shown weaknesses in safeguarding the interests of the members and fulfilment of objects for which these institutions were organised. There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators remaining in-charge of these institutions for a long time. This reduces the accountability of the management of co-operative societies to their members. Inadequate professionalism in management in many of the co-operative institutions has led to poor services and low productivity. Co-operatives need to run on well-

Table 1: Legislative Competence Relating to Management and Resolution of Co-operative banks Under the Constitution

Sr. No.	Entry and List	Description	Corresponding Law Enacted
1.	Entry 45, List I (Union List)	Banking	BR Act
2.	Entry 32, List II (State List)	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.	State laws on co-operative societies
3.	Entry 44, List I (Union List)	Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one state	MSCS Act. A co-operative bank operating in multiple States is registered under this Act and regulated by RBI and the Central RCS.
4.	Entry 9, List III (Concurrent List)	Bankruptcy and insolvency	BR Act and State laws on co-operative societies

established democratic principles and elections held on time and in a free and fair manner. Therefore, there is a need to initiate fundamental reforms to revitalize these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.”

Key provisions introduced by the 97th Constitution Amendment Act

Number of directors

- Maximum number of directors is capped at 21. This is not applicable to functional directors. However, the 97th Constitution Amendment Act does not define functional directors⁴⁰.

Reservation of Seats

- State law must provide for reservation of one seat for persons belonging to Scheduled Caste or Scheduled Tribe and two seats for women on the board of every co-operative society consisting of individuals as members and having members from such class or category of persons.

Term of office of elected members

- Five years from the date of election.

Co-opted Professional directors

- State law must provide for co-option of such persons to be members of the board having experience in the field of banking, management, finance or specialisation in any other field relating to objects and activities of the society. Such co-opted members must not exceed two. These co-opted members neither enjoy any voting right in election in their capacity as such members nor are they eligible to be elected as office bearers.

Conduct of elections

- The superintendence, direction and conduct of all elections to a co-operative society will vest in an authority or body, as may be provided by the state legislature.

Supersession and suspension of the board

- Suspension or supersession of the board of directors should not exceed one year in case of co-operative banks. Grounds for suspension or supersession of the board are: (a) persistent default; (b) negligence in the performance of its duties; (iii) commitment of act prejudicial to the interests of the co-operative

⁴⁰ The Maharashtra CS Act (hereinafter defined) defines functional director to mean managing director or a CEO by whatever designation called, and includes any head of the Department, workman or representative of the recognised union of the concerned society, nominated by the committee of management. Similarly, Chhattisgarh Cooperative Societies Act defines “functional director” to mean a director other than elected and co-opted director of the board, having functional responsibilities but representing the board of directors, such as managing director, additional managing director, director, Finance, director Marketing, secretary and other functional officer.

society or its members by the board; (iv) stalemate in the constitution or functions of the board; and (v) failure to conduct elections by the concerned authority under the state law. It has been clarified that the board of a co-operative society will not be superseded or suspended in case there is no government shareholding or loan or financial assistance or any guarantee given by the government. Further, in case of a co-operative society carrying on the business of banking, the provisions of BR Act are applicable.

Audit

- The accounts of every co-operative society must be audited within six months of the close of financial year. Provisions pertaining to maintenance of accounts by co-operative societies and auditing of such accounts, the minimum qualifications of auditors and auditing firms will be subject to state laws. Auditors / auditing firms must be appointed from a panel approved by a state government or an authority authorised by the state government.

Annual General Meeting

- The state law may make provision that the annual general meeting (“AGM”) must be convened within a period of six months from the close of the financial year.

Inactive Member

- There is no mandatory requirement regarding the treatment of inactive members. However, state law may make provisions for requirement of attending minimum number of meetings by the members and utilising the minimum level of services.

Returns

- Every co-operative society must file returns within six months of the close of the financial year to the designated authority. This includes annual report, audited statement of accounts, plan for surplus disposal as approved by the general body and list of amendments to the bye-laws.

Penalties

- The state law must criminalise certain acts or omissions as set out in Article 243-ZQ of the Constitution, including adoption of any corrupt practice by anyone during or after the election of members of the board or office bearers.

Notably, Article 243ZT inserted by the 97th Constitution Amendment Act provides that any provision of state co-operative societies law in force in a state immediately before the commencement of the 97th Constitution Amendment Act (which came into effect on 12 January 2012), which is inconsistent with Part IX-B (dealing with the co-operative societies) of the Constitution will continue to be in force until amended or repealed by a competent Legislature or until the expiration of one year from the date of such commencement, whichever is later. Explaining the implication of this provision, the Hon’ble Supreme Court, while speaking through a Division Bench in *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Ltd. & Ors.*⁴¹ observed:

“Thus, by 12.01.2013, all laws on cooperative societies were bound to be restructured in consonance with the Ninety Seventh Amendment of the Constitution of India and, in any case, any provision in the Act or Rules or Bye-laws otherwise inconsistent with the Constitution will be inoperative thereafter.

Article 243ZT of the Constitution requires the laws relating to cooperative societies in force in States prior to the commencement of the Amendment Act to be in tune with and in terms of the constitutional concept and set up of cooperative societies. In fact, a period of one year has been provided in the Constitution from the commencement of the amendment for the required amendment or repeal by the competent legislature or by the competent authority, of laws which are inconsistent with Part IXB. As a corollary, the Constitution enables the competent legislature or authority to suitably amend the existing provisions in their laws in tune with the constitutional mandate. Thereafter, in case there continues to be silence in the Act or Bye-laws, the court will have to read the constitutional requirements into the existing provisions. It is essentially a process of purposive construction of the available provisions.....”

Therefore, any provision in the state law or rules issued thereunder or in the bye-laws of a co-operative society (including StCBs and DCCBs) which is inconsistent with the constitutional mandate as set out in Part IX-B will be inoperative and is liable to be struck down by a court.

Notably, the Hon'ble Gujarat High Court in *Rajendra N Shah v Union of India & Anr.*⁴² declared the 97th Constitution Amendment Act inserting Part IX-B containing Article 243ZH to Article 243ZT as *ultra vires* the Constitution for not taking recourse to Article 368(2). Article 368 of the Constitution provides for the power of the Parliament to amend the Constitution. As per Article 368(2), any amendment which seeks to make changes to the lists under the VIIth Schedule will require ratification by the state legislatures. Relevant observation of the Gujarat High Court is set out below for ease of reference:

"We also find substance in the contentions of Mr. Shah that by the amendment impugned in this writ-application, one of the basic structures of the Constitution, viz. the principles of federalism has been affected. There is no dispute that federalism is one of the basic structure of our Constitution. Once the subject of Co-Operative Societies is in the List II of the 7th Schedule, by depriving the State Legislatures of their free exercise of right to enact on the said subject and by curtailment of their right over the subject matter to abide by the newly enacted provision of the Constitution without following the requirement of ratification as provided in Article 368(2), the doctrine of federalism which is one of the basic features of the Constitution has been infringed

Thus, the amendment is violating the basic structure of the Constitution so long as the subject of "Co-Operative Societies" is in the List II of the 7th Schedule and at the same time, the provisions of Article 368(2) has not been complied with. The Constitution has not permitted curtailment of the power of the State Legislatures over the subject mentioned in List II without taking recourse to Article 368 (2)."

The Court, however, clarified that this does judgment not affect other provisions of the 97th Constitution Amendment Act. We understand that an appeal against this judgment is currently pending in the Supreme Court.⁴³

BR Act

Prior to 1 March 1966, a co-operative society carrying on banking business was not covered by the BR Act. By way of the Banking Laws (Application to Co-operative Societies) Act, 1965 ("**BR Amendment Act**"), the BR

Act was amended for the purpose of regulating the banking business of certain co-operative societies, including StCBs and DCCBs.⁴⁴

The application of BR Act to co-operative banks emanated due to the following reasons:

- (a) interests of depositors required extension of the BR Act to such banks. In late fifties and early sixties, a number of banks had failed, thus adversely affecting the interests of the depositors.
- (b) RBI's supervision was considered necessary for extending deposit insurance.
- (c) Substantial funds were granted to co-operative credit structure by way of money created by RBI, and hence it had a monetary connotation.
- (d) Public interest required that institutions having substantial public deposits and functioning as banks should operate under the supervision of RBI.

K. Madhava Rao Committee on UCBS (2000) – Chapter on Legislative Reform in Statutes

While the BR Amendment Act empowered RBI to regulate StCBs and DCCBs for the limited purpose of regulating its banking business, such powers are not at par with the powers of RBI to regulate banking companies. A review of the provisions of the BR Act as applicable to banking companies with the provisions applicable to StCBs and DCCBs, it is evident that the following powers enjoyed by RBI with respect to banking companies is not available for StCBs and DCCBs or is applicable with certain modifications (specifically discussed below).⁴⁵ Key findings of the review is set out below.

⁴² Judgment dated 22 April 2013 in W.P. (PIL) No. 166 of 2012.

⁴³ *Union of India v Rajendra N Shah* Civil Appeal 9108 – 9109/2014 and SLP (C) 13215/2018, 13329/2018.

⁴⁴ BR Act, Part V read with Section 3.

⁴⁵ Please note that this only an indicative list of provisions of BR Act that does not apply to StCBs and DCCBs or applies with certain modifications.

Appointment of Professional Directors

- The BR Act requires that 51% or more of the total number of directors of a banking company must be persons who have special knowledge or experience in areas such as accountancy, banking, co-operation, agriculture and rural economy, finance, economics, law, etc⁴⁶. Notably, if the RBI is of the opinion that the composition of the board does not comply with these requirements, RBI may itself appoint such directors⁴⁷.

Appointment or Removal of Chairperson or Managing Director

- If RBI is of the opinion that chairperson or a managing director (“MD”) of a banking company is not a fit or proper person⁴⁸, it may remove such person and appoint another person in her place⁴⁹. Similarly, RBI may appoint the chairperson or the MD in case of vacancy⁵⁰.

Election of new directors

- RBI may require a banking company to call a general meeting of its shareholders to appoint new directors⁵¹.

Appointment or removal of Chairman, Managing Director or Chief Executive Officer

- Prior approval of the RBI is required for any appointment, re-appointment or termination of appointment of a chairperson, MD or CEO of a banking company⁵².

Amendment to certain provision relating to chairperson, MD, CEO or director

- Any amendment of provisions relating to maximum number of directors, appointment, re-appointment, termination or remuneration of a chairperson, MD or any other director, CEO or a manager of a banking company cannot come into effect with-

out approval of RBI⁵³.

Appointment of additional directors

- RBI may appoint one or more persons as additional directors of a banking company if it is of the opinion that it is in the interest of the banking policy or in public interest or in the interest of the banking company or its depositors⁵⁴.

Prior approval for appointment and removal of auditors

- Appointment, re-appointment or removal of any auditor of a banking company requires prior approval of RBI⁵⁵.

Powers of RBI to discuss and oversee the management of a bank in certain cases

- RBI has been conferred with broad powers regarding the management of affairs of a banking company in certain cases⁵⁶. Notably, it may by an order in writing⁵⁷:
 - require a banking company to call a meeting of its directors for considering matters relating to the affairs of the company or require an officer of the company to discuss any such matter with an officer of RBI;
 - depute RBI officers to watch the proceedings of board meetings, require the bank to give such officers opportunity to be heard at the meeting and thereafter require the officer to send a report of the proceedings to RBI;
 - appoint its officers to observe the manner in which the affairs of the banking company or its branches are being conducted and make a report thereon; or
 - require the banking company to make changes in the management, as RBI may consider necessary.

46 BR Act, Section 10A(2).

47 BR Act, Section 10A(5).

48 Minimum qualifications of such persons are set out in BR Act, Section 10B(4).

49 Section 10B sets out the procedure that must be complied to prior to RBI making such appointments.

50 BR Act, Section 10BB.

51 BR Act, Section 12A.

52 BR Act, Section 35B(1)(b).

53 BR Act, Section 35B(1)(a).

54 BR Act, Section 36AB. Additional Directors hold office during the pleasure of RBI.

55 BR Act, Section 30(1A).

56 BR Act, Section 36(1)(d).

57 Such powers may be exercised if RBI is satisfied that it is necessary to do so in public interest, in the interest of the banking policy, preventing the affairs of the banking company being conducted in a manner detrimental to the depositors.

□ Applicability to StCBs and DCCBs:

□ Unlike in case of a banking company, RBI cannot require an StCB or a DCCB to call a meeting of its board or require it to make changes in the management, as considered necessary by RBI. Similarly, RBI cannot require an StCB or DCCB to make changes in the management.

□ While RBI may exercise the other two powers mentioned above (viz. deputation of an RBI officer to watch the proceedings of the meeting, etc. and appointment of officers to observe the manner in which affairs of the bank is being conducted, etc.), the grounds for exercising such powers in respect of an StCB or DCCB is limited to its satisfaction that the expansion or reorganisation of co-operative credit on sound lines is necessary.

Removal of managerial and other persons from office

■ RBI may remove any chairperson, director, CEO or other officer or employee of a banking company if it is satisfied that such removal is necessary in public interest, for preventing the affairs of the banking company from being conducted in a manner detrimental to the interests of the depositors or for securing the management of the banking company⁵⁸.

■ RBI may also appoint a suitable person in place of the person so removed.

Supersession of the board of directors

■ RBI may in consultation with the Central Government supersede the board of directors of a banking company. Such powers may be exercised in the public interest, for preventing the affairs of such company being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of the company.

■ RBI may appoint an administrator for discharging the functions of the board.

Role of RBI in winding up

■ Central Government may direct RBI to apply for winding up of a banking company if upon examination of an inspection report pertaining to such company, the Central Government is of the opinion that the affairs of the banking company are being conducted to the detriment of the interests of the depositors⁵⁹.

■ RBI is empowered to make an application to the relevant High Court for winding up of a banking company against whom an order of moratorium has been passed by the High Court under Section 37(1) of the BR Act⁶⁰.

■ RBI may also make an application for winding up of a banking company if it has failed to comply with certain regulatory requirements, if such company is unable to pay its debts, if its continuance is prejudicial to depositor interests, etc⁶¹.

■ No banking company can be voluntarily wound up unless RBI certifies in writing that the company is unable to pay in full all its debts to its creditors as they accrue⁶².

■ In case of moratorium imposed by the Central Government under Section 45, RBI may prepare a scheme for reconstruction of the banking company or amalgamation of such company with another banking institution⁶³. This specific power is absent in case of StCBs and DCCBs.

It is evident that RBI has more expansive regulatory and resolution powers in respect of a banking company as compared to StCBs and DCCBs. While RBI does enjoy limited and indirect powers of resolution of StCBs and DCCBs (as will be discussed later), the absence of direct resolution powers is a cause for concern.

⁵⁸ BR Act, Section 36AA(1).

⁵⁹ BR Act, Section 35(4). Any such direction is passed by the Central Government after providing an opportunity to make a representation to the banking company.

⁶⁰ BR Act, Section 37(4). Such an application may be made when RBI is satisfied that the affairs of such a banking company are being conducted in a manner detrimental to the interests of the depositors.

⁶¹ BR Act, Section 38(3) and BR Act, Section 39.

⁶² BR Act, Section 44(1).

⁶³ BR Act, Section 45(4).

Assesing the Legal Landscape – Key Takeaways

- StCBs and DCCBs are subject to multiple legal instruments, both at central and state level—provisions under the Constitution, BR Act, state co-operative laws and notifications / circulars / guidelines issued by RBI and NABARD.
- Due to the constitutional allocation of legislative powers, RBI has limited powers to regulate StCBs and DCCBs as compared to its powers to regulate banking companies. For instance, while BR Act empowers RBI to exercise the following powers / functions with respect to a banking company, it does not enjoy such powers in case of StCBs and DCCBs.
- The BR Act requires that 51% of the board of directors of a banking company must be directors with specified qualifications, failing which RBI can appoint such directors for the bank. There is no such requirement for StCBs and DCCBs. While state laws mandate appointment of specific number of professional directors by StCBs and DCCBs, RBI cannot directly appoint such directors in case of failure to appoint such directors.
- RBI cannot remove an MD or CEO of an StCB or DCCB if such person fails to meet the qualifications prescribed by RBI.
- Prior approval of RBI is not required for appointment, re-appointment or termination of appointment of a chairman, MD or director of an StCB and DCCB.
- Prior approval of RBI is not required for appointment and removal for auditors.
- RBI cannot remove a chairman, director or any officer of an StCB or DCCB if it is necessary in public interest, preventing the affairs of the bank being conducted in a detrimental manner, etc.
- RBI cannot directly supersede the board of an StCB and DCCB and appoint an administrator for managing the affairs of the bank. However, state laws empower RBI to require the RCS to supersede the board of and StCB or DCCB.
- RBI cannot directly apply for winding up of an StCB or DCCB. However, it may require the RCS to do so.

Chapter 5: Preliminary Assessment of Key Issues

Based on a review of existing literature, including reports of various committees constituted to review the co-operative banking sector in India, our discussion with key stakeholders and a study of the publicly available data pertaining to StCBs and DCCBs, this Chapter highlights some of the key issues which impact the governance of such banks and require attention of policymakers.

Duality of Control

StCBs and DCCBs are subject to a system of dual regulation—by RCS and the RBI. While the incorporation, management and winding up of StCBs and DCCBs is regulated by the RCS under the respective state co-operative societies laws (for banks operating in a single state), the mandate of RBI is limited to banking activities. As discussed in the previous chapter, the genesis of this duality of control can be traced to the allocation of powers between the Union and the State under the Constitution. It has often been noted that this duality of control is one of the main reasons for the cause of weakness of such banks. As discussed in the previous chapter, under this system of dual regulation, RBI does not enjoy the same powers to regulate StCBs and DCCBs as in case of banking companies, especially in matters relating to governance and resolution. It has been pointed out by several committees constituted by the Government of India and RBI that this has resulted in operational and governance challenges in the regulation of co-operative banks.⁶⁴ While this problem of duality of control was sought to be addressed through execution of MoUs between RBI and the state

governments for effective co-ordination in the interest of better regulation, even this measure has proven to be ineffective in practice.

Resolution

Given that co-operative banks serve the cause of financial inclusion, the presence of a sound regulatory as well as resolution regime for such institutions is of utmost importance. However, as a direct consequence of the dual control problem, the resolution mechanism for such banks has been a cause of concern.⁶⁵

Understanding the Problem

The failure of co-operative banks in India represents a significant economic expense. A review of the claims settled by the DICGC (which is a statutory organisation set up under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (“DICGC Act”) overseeing the process of insuring bank deposits) further substantiates this issue. Subject to the limit of deposit insurance coverage as may be fixed from time to time, in case of winding-up or liquidation of an insured bank, every depositor is entitled to payment of an amount of deposits held by her. During the last five years from 2013 - 2018, DICGC settled the following claims⁶⁶—INR 434.7 million in respect of 18 co-operative banks during 2017-18,⁶⁷ INR 565 million in respect of nine co-operative banks during 2016-17,⁶⁸ INR 471.4 million in respect of 17 co-operative banks during 2015-16,⁶⁹ INR 3,213 million in respect of 30 co-operative banks during 2014-15⁷⁰ and claims for INR 1,031 million in respect of

⁶⁴ Report of the Financial Sector Legislative Reforms Commission (n 38) para 2.5.3; RBI, Report of the Expert Committee on Licensing of New Urban Co-operative Banks (12 September 2011) chapter 4; A Hundred Small Steps (n 36) page 37.

⁶⁵ See, Sucheta Dalal, 'Continuing failures in Cooperative Banks', (Moneylife, 30 March 2016) available at <<https://www.moneylife.in/article/continuing-failures-in-cooperative-banks/46157.html>> accessed 24 September 2019.

⁶⁶ Please note that these figures do not make a distinction between StCBs, DCCBs or UCBs.

⁶⁷ 9 main claims and 31 supplementary claims. DICGC, '56th Annual Report 2017-2018', available at <https://www.dicgc.org.in/pdf/AnnualReports/2017-2018/AR2017_18_English.pdf>, accessed 30 June 2019.

⁶⁸ 4 main claims and 16 supplementary claims. DICGC, '55th Annual Report 2016-2017', available at <https://www.dicgc.org.in/pdf/AnnualReports/2016-2017/AR2016_17_English.pdf> accessed 30 June 2019.

⁶⁹ 4 original claims and 37 supplementary claims, DICGC, '54th Annual Report', available at <https://www.dicgc.org.in/pdf/AnnualReports/2015-2016/AR2015-16_English.pdf> accessed 30 June 2019.

⁷⁰ 5 original claims and 36 supplementary claims, DICGC, '53rd Annual Report', available at <<https://www.dicgc.org.in/pdf/AnnualReports/2014-2015/AR2014-15.pdf>> accessed 30 June 2019.

51 co-operative banks during 2013-14.⁷¹

Considering the rate of failure of co-operative banks and its economic implications for DICGC in terms of the pay-outs that have to be made, it is essential that such banks are resolved in an orderly manner to cause least disruption to consumers and the financial system. In terms of dealing with the issue of resolving financially unsound co-operative banks, it is also important to understand the legal framework governing such co-operative banks, and particularly their resolution. What emerges is that the resolution of financially unsound co-operative banks, is not at par with the current regime applicable for banking companies under the BR Act.

One of the major challenges associated in resolving distressed co-operative banks can be largely traced back to the dual control issue discussed above. To reiterate, states enjoy legislative competence to enact laws for regulating co-operative societies under the Constitution. Further, the subject of bankruptcy and insolvency falls within the Concurrent List of the Seventh Schedule of the Constitution. Pursuant to such mandate, states have enacted the state co-operative societies acts. Under such state specific laws, typically powers to initiate action against errant management of co-operative societies operating in a single state (in the nature of supersession of the board or winding-up) vests with the RCS of the particular state in question. However, for the sole purpose of availing the deposit insurance under the DICGC Act, state governments have made amendments to the state co-operative societies laws with a view to ensure that co-operative banks under the state laws qualify as 'eligible co-operative banks' under the DICGC Act. Through such amendments, RBI has been conferred with indirect resolution powers such as recommending winding-up to the RCS, requiring RCS to supersede / suspend the board of managements and imposition of approval from RBI for winding-up initiated by the RCS.⁷² However, unlike in the case of a banking company where RBI has direct powers of resolution (indicated in the table below), the state laws only provide for indirect involvement of the RBI for resolution of StCBs and DCCBs. Please see detailed discussion at Chapter 8 regarding the role of RBI in winding up and supersession under state laws in the Surveyed States.

Based on anecdotal evidence gathered during the course of interviews with relevant stakeholders, we

understand that in many cases state governments resort to recapitalisation of failing StCBs and DCCBs. This may be one of the reasons why the list of the banks liquidated in the last few years is mostly limited to UCBs.

Table 2: Mapping of Resolution Powers of RBI for a Banking Company, StCB and DCCB

Resolution Power of RBI	Banking Company	StCB and DCCB
Can the RBI pass an order directly to supersede the board of directors of the bank?	√	X
Can RBI appoint an administrator for a bank which has been superseded?	√	X
Can RBI directly apply to the High Court for winding-up of a bank?	√	X
Can RBI be appointed as the official liquidator for winding up of the bank?	√	X
Can RBI apply for moratorium in respect of a bank to the Central Government?	√	X
Can RBI prepare for a scheme of amalgamation or reconstruction of a bank during the period of moratorium?	√	X

The problems associated with resolving distressed co-operative banks have been highlighted by a number of expert committees constituted to study the sector. While such committees have suggested possible legislative solutions to deal with these challenges, they are yet to be implemented. Summary of the possible solutions proposed by these committees is provided below.

Financial Sector Legislative Reforms Commission (FSLRC)

- Due to their engagement with small households, co-operative banks must be regulated in a manner commensurate to the nature of the business and risks for the consumers. Consequently, failing co-operative banks should be subject to an orderly resolution process, in the same manner as other financial institu-

⁷¹ 7 main claims and 98 supplementary claims, DICGC, '52nd Annual Report'. Available at <<https://www.dicgc.org.in/pdf/AnnualReports/2013-2014/AR2013-14.pdf>> accessed 30 June 2019.

⁷² See, Maharashtra CS Act, Section 110A.

tions carrying on similar activities. For this, it recommended:

- Invoking Article 252 of the Constitution, which enables state legislatures to pass a resolution accepting the authority of the Parliament to make laws for such states on matters which the Union otherwise did not enjoy powers.
- The powers to legislate on the regulation, supervision and resolution of co-operative societies engaged in the business of providing financial services should be vested in the Parliament.⁷³

Working Group on the Resolution Regime for Financial Institutions

- Failure of co-operative banks raises concerns from the perspective of consumer protection. While recommending a comprehensive financial resolution regime for India, the Working Group re-iterated the suggestions of the FSLRC insofar as invoking Article 252 of the Constitution was concerned.⁷⁴

Committee to Draft the Code on Resolution of Financial Firms

- Unique treatment of co-operative banks poses a challenge to building a comprehensive resolution regime for financial institutions.⁷⁵ Therefore, there is no justification for treating such banks differently only because they are set-up as co-operatives. In this regard, the committee broadly touched upon three possible ways to make the resolution of co-operative banks more effective.
- First, the committee re-iterated the suggestions of the FSLRC on states accepting the authority of the Union to legislate in terms of Article 252 of the Constitution.
- The second option suggested by the committee was to consider a constitutional amendment to carve out co-operative banks from the legislative competence of states, for the limited purpose of a comprehensive resolution regime.

- Alternatively, the committee recommended that individual states could be requested to amend their respective co-operative society legislation to empower the RBI and the proposed resolution corporation to supervise co-operative banks.

Vaidyanathan Committee Report

- Recommended that states must change their existing laws to enable RBI to directly exercise its regulatory powers under the BR Act, and not through the RCS.⁷⁶ It proposed a separate chapter for co-operative banks in the state laws and also a model law for co-operative societies in general.

In addition to the RBI and RCS, StCBs and DCCBs also interact with NABARD as a part of the supervisory framework. While NABARD primarily provides refinance facilities to StCBs and DCCBs, the BR Act empowers NABARD to conduct inspection of co-operative banks.⁷⁷ We understand the supervisory concerns emanating from such inspections is communicated to the concerned banks, RCS and the state governments to initiate corrective action.⁷⁸ However, unlike RBI, NABARD does not have any enforcement power.

Corporate Governance

Weak corporate governance has been one of the major problems plaguing the co-operative banking sector.⁷⁹ One of the primary reasons for the absence of a robust governance framework for StCBs and DCCBs is the dual system of regulation discussed above. Given that the management of co-operative societies is a state subject under the Constitution, RBI has limited powers with respect to the management and governance of StCBs and DCCBs. As discussed earlier, RBI does not have the power to appoint or remove directors or CEO of an StCB or DCCB. The qualification criteria set out for the directors of banking companies under the BR Act is not applicable to co-operative banks.

While the 97th Constitution Amendment Act sought to introduce basic standards for the boards of co-

⁷³ Report of the Financial Sector Legislative Reforms Commission (n 38) page 77. In relation to states whose governments do not accept the authority of the Parliament to legislate on co-operatives, the report recommended that restrictions could be imposed by the regulator on carrying out of financial services by co-operative societies in such states.

⁷⁴ RBI, Report of the Working Group on Resolution Regime for Financial Institutions (January 2014) paras 4.36, 4.38 and 4.39.

⁷⁵ Ministry of Finance, Government of India, Report of the Committee to Draft the Code on Resolution of Financial Firms (21 September 2016) pages 7-8, 22-23.

⁷⁶ Vaidyanathan Committee Report (n 1) para 5.07.

⁷⁷ BR Act, Section 35(6).

⁷⁸ NABARD, Annual Report 2018-19 (June 2019) para 5.5.2.

⁷⁹ RBI, Report of the High Powered Committee on Urban Co-operative Banks (20 August 2015) para 3.2.

operative banks, in practice, these cannot be compared to the regulatory prescriptions applicable to banking companies regulated by the RBI. Concerns regarding governance issues in co-operative banks have been voiced earlier by several committees constituted by the Government for studying the sector. It has been pointed out that co-operatives are unable to attract and retain competent professionals for various reasons such inability to pay market based compensation, limited freedom for operations with the required delegation of authority, etc. Further, the fit & proper criteria stipulated by RBI which specifies qualifications for appointment of CEO is yet to be complied with by many banks.⁸⁰

Please see Chapter 7 for a detailed discussion on governance related concerns and challenges for StCBs and DCCBs.

Financial Health

Given that the StCBs and DCCBs are an important means of rural credit delivery, the financial health of such entities is critical. Poor financial health of such banks has been a major concern. While Chapter 6 of the Report discusses the financial health of the StCBs and DCCBs in the Surveyed States, this part provides a snapshot of the financial health of all StCBs and DCCBs in India. A review of the key indicators of financial health as compiled by NABARD for 33 StCBs and 363 DCCBs (as on 31 March 2018) for the financial year 2017-18 indicates that the StCBs are performing better than DCCBs. Key findings based on a review of these indicators as available for the financial year 2017-18 in the NABARD Annual Report 2018-19⁸¹ is set out below. (Table 3)

Table 3: Snapshot of the Financial Health of StCBs and DCCBs in 2017-18



StCBs

- Out of 33 StCBs, 31 StCBs maintained a capital adequacy ratio (“CRAR”) above the prescribed minimum level of 9%. Only 2 StCBs (Goa and Manipur) had CRAR below requisite 9%.
- During 2017-18, 32 out of 33 StCBs earned profit. Only one StCB (in Assam) incurred loss of INR 7 crore.
- There was a slight increase in the percentage of non-performing assets (“NPAs”) to loans outstanding from 4.1% in 2016-17 to 4.72% in 2017-18. Notably, the total NPAs and percentage of NPAs to loans outstanding showed an increase in all the regions.
- While the recovery% at a pan India level showed a slight improvement, it decreased in the North Eastern (NE), Central and Western Region.
- While the Northern, NE and Western StCBs showed a decline in the profits, the StCBs in the Central, Eastern and Southern region showed an increase in the profit. The Southern region registered the highest increase in the profit and the Northern region registered the highest increase in loss.



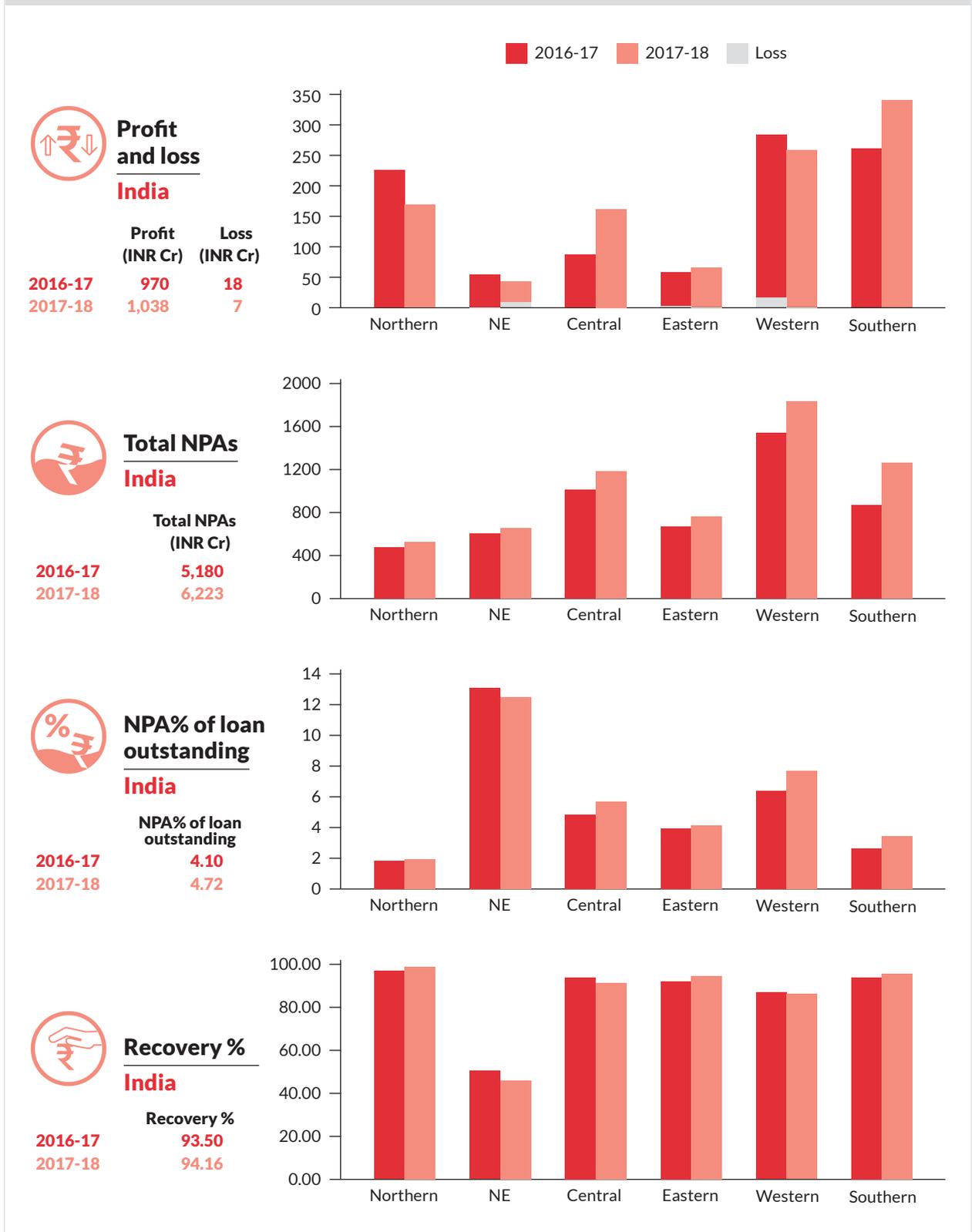
DCCBs

- Out of 363 DCCBs, 334 DCCBs maintained a CRAR above the prescribed minimum level of 9%.
- Out of 363 DCCBs, 311 DCCBs reported a profit and 52 DCCBs reported loss. The accumulated losses increased by 10.78% during 2017-18 from the previous year.
- The number of DCCBs in profit decreased from 315 during 2016-17 to 311 during 2017-18.
- The percentage of NPAs to loans outstanding for DCCBs at the aggregate level increased from 10.5 % as on 31 March 2017 to 11.2% as on 31 March 2018.
- The DCCBs in the Northern, Eastern and Southern region recorded an increase in profit. The Southern region recorded the highest increase in loss.
- Total NPAs increased in all regions.
- Recovery percentage declined in all the regions except the southern region.

⁸⁰ Report of the Committee for Assessment of Human Resources of STCCS (n 8) para 6.2.

⁸¹ NABARD Annual Report 2018-19 (n 78) para 5.1, page 82.

Fig. 7: Snapshot of Key Financial Indicators of StCBs⁸²



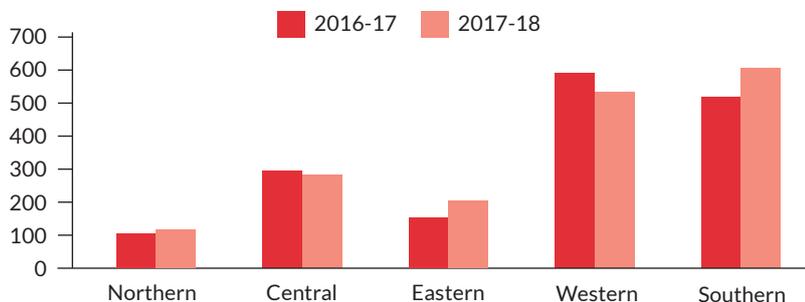
⁸² Total NPAs as on 31 March 2017 and 2018 respectively, NPA% of loans outstanding as on 31 March 2017 and 2018 respectively, Recovery % as on 30 June 2016 and 2017 respectively.

Fig. 8: Snapshot of Key Financial Indicators of DCCBs⁸³



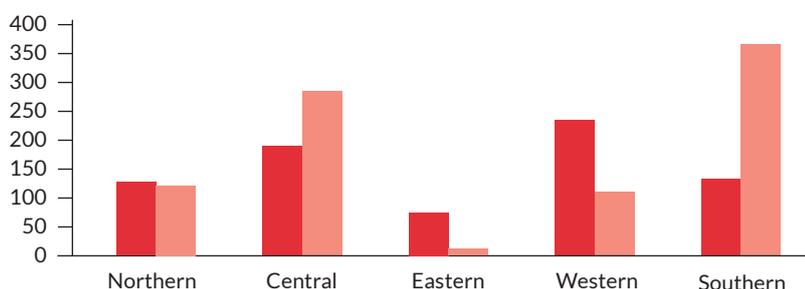
Profit
India

Profit
(INR Cr)
2016-17 **1,667 (315)**
2017-18 **1,744 (311)**



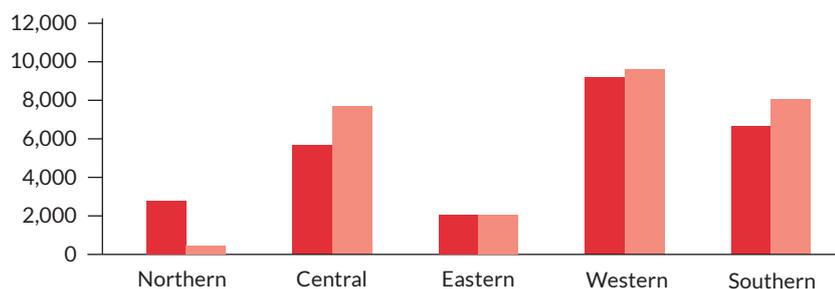
Profit
India

Loss
(INR Cr)
2016-17 **757 (55)**
2017-18 **893 (52)**



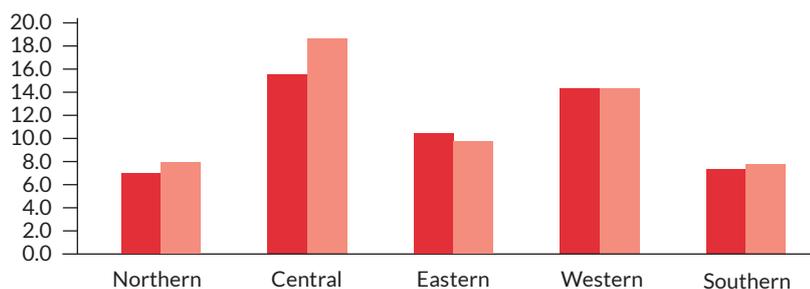
Total NPAs
India

Total NPAs
(INR Cr)
2016-17 **26,414**
2017-18 **30,894**



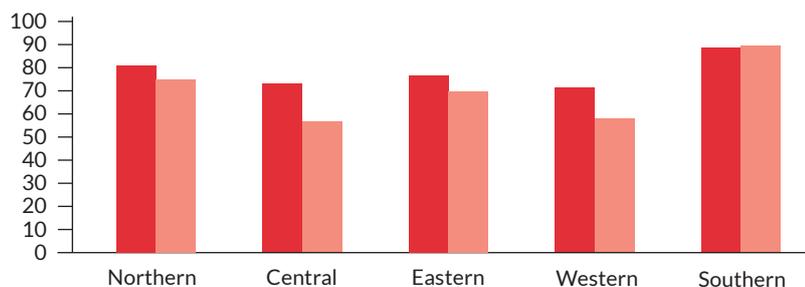
NPA% of loan
outstanding
India

NPA% of loan
outstanding
2016-17 **10.5**
2017-18 **11.2**



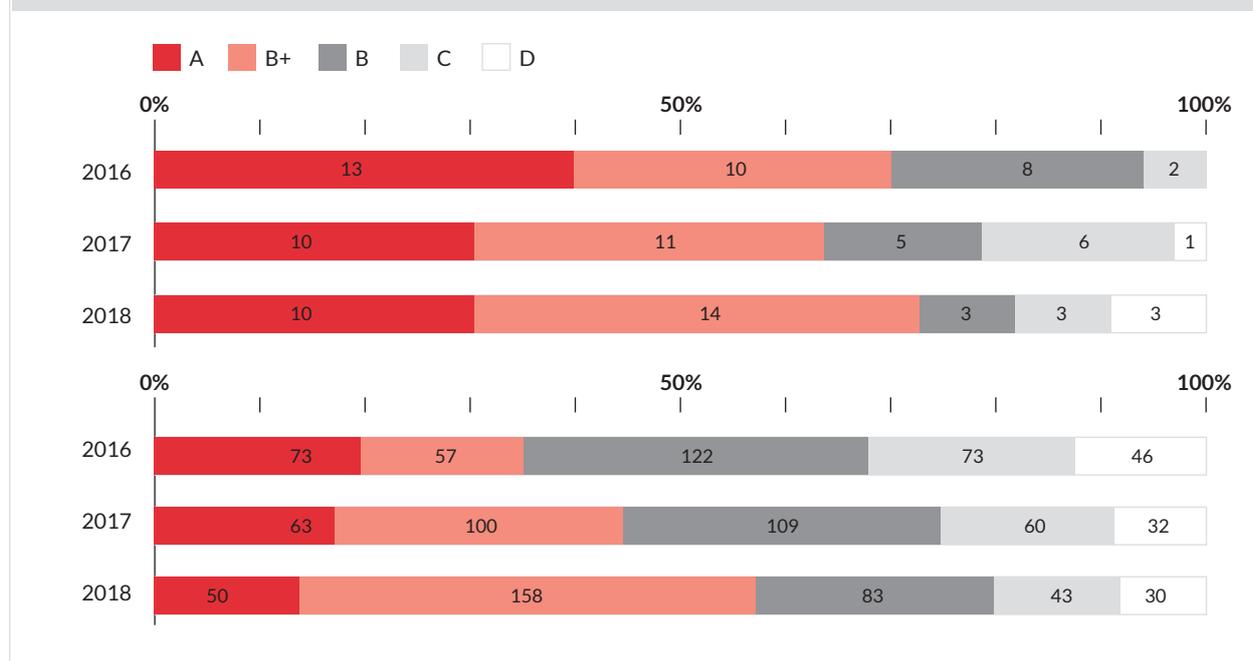
Recovery %
India

Recovery %
2016-17 **78.9**
2017-18 **71.1**



⁸³ NABARD Annual Report 2018-19 (n 78) para 5.1, page 84, Profit: INR crore (no. of DCCBs in brackets), Loss: INR crore (no. of DCCBs in brackets), Total NPAs: INR crore as on 31 March 2017 and 2018 respectively, NPA% of loans outstanding as on 31 March 2017 and 2018 respectively, Recovery% as on 30 June 2016 and 2017 respectively

Fig. 9: Supervisory Ratings of StCBs and DCCBs by NABARD



Supervisory Ratings

The NABARD Annual Report 2018-19 also sets out the supervisory ratings of StCBs and DCCBs for the last three years based on inspection conducted about their financial position as on 31 March 2018. The number of StCBs inspected stood at 33 for the period from 2016 to 2018. While the number of DCCBs inspected in 2016 stood at 371, it decreased to 364 in 2017 and 2018. The banks are graded on a scale of A to D with A being the highest rating and D being the lowest.

Political Economy of Co-operatives

“The impairment of the governance structure is also because of politicisation of these institutions, reflected in the fact that directors on Boards of Cooperative Banks are involved in active politics either at the State, District and Taluka level.”

-Vaidyanathan Committee Report⁸⁴

The institutionalisation of co-operatives was a response to meet the credit needs of the agricultural sector. The

initial phase of the co-operative movement witnessed the emergence of member driven institutions, which was the original thought behind such co-operatives. However, following the recommendations of AIRCS (as discussed in Chapter 3 above), co-operatives witnessed state involvement / partnership. It started with the financial involvement of the government in co-operatives in the form of injection of large amounts of funds and later manifested to interference in all aspects of their functioning. The Vaidyanathan Committee Report notes that instead of dealing with the root cause of weakness of the credit co-operatives, states assumed responsibility of strengthening the institution by infusing further capital and appointing ‘professional workforce.’ The government and the workforce thereafter began interfering in the running of such co-operatives even more. Such interference lead to degeneration of co-operatives from member-driven bodies to state appendages⁸⁵ so much so that in late 1970s democratically elected management committees of co-operatives in nine states were superseded with a change in government in the Centre.⁸⁶ Ever since, the state’s involvement in governance of co-operatives has only increased.

⁸⁴ Vaidyanathan Committee Report (n 1) para 3.22.

⁸⁵ Biswa Swarup Misra (n 21) page 21.

⁸⁶ Biswa Swarup Misra (n 21) page 22.

The interference by the state government in the management and running of the co-operatives not only destroys the democratic nature of the institution, but also impairs their governance. Notably, the issue of political interference in the working of credit co-operatives and its impact on governance have time and again been a subject of discussion in various committees. While several committees and commentators have expressed concerns regarding the politicisation of co-operative banks, it was the Vaidyanathan Committee that delved deeper into the issue on the basis of extensive consultations with relevant stakeholders. With a view to deal with these deficiencies, the committee recommended a slew of policy measures, including legal reforms (discussed above). While many states implemented these legal reforms by making requisite amendments to the state laws, it is worthwhile to note that the issue of politicisation remains a key obstacle to efficient functioning of co-operatives. This is evident from the findings of committees constituted post the Vaidyanathan Committee Report.

Instances of political / State interference in co-operatives - Key Findings of Committees

Vaidyanathan Committee Report (2005) - Key Observations

- As on 2015: (a) no elections to the board were held in 3 states for 10 years or more; and (b) boards of 9 StCBs (out of 30 StCBs) and 134 DCCBs (out of 368 DCCBs) were superseded by the state government
- The RCS influences administrative matters of banks in the form of supersession, appointment of administrators, etc.
- The government also interferes in financial matters in various forms, like by providing direction on interest rates, interference in loan decisions, announcement of waivers, and direct or indirect pressure on matters relating to recovery of loans.
- The impairment of the governance structure is also

attributable to the politicisation of these institutions, reflected in the fact that directors on board of several co-operative banks are also involved in active politics either at the state, district and taluka level.

Report of the High-Powered Committee on Cooperatives (2009)⁸⁷

- Instances of a political party in power assuming control over large sized co-operatives through methods such as appointing an active member of the party to the position of Chairman, nominating persons of its choice on the board, issuing directions to them and the official nominees to vote for a particular candidate as Chairman have become common.

Report of the Committee on Financial Sector Reforms (2008)⁸⁸

- The problem of excessive political interference leading to the underperformance of India's co-operative banking sector, was highlighted by this committee. The committee also noted that although rural co-operative institutions increased access to credit, they were facing serious financial problems due to missing governance and incentive structures.

Observations of the Supreme Court

- Even the Supreme Court⁸⁹ has come down heavily on the orders of supersession passed by RCSs without any reasonable basis and in complete ignorance of procedural safeguards enshrined under the relevant state law. Noting that several orders of supersession have been challenged before the Supreme Court and various High Courts and that many such orders are passed by statutory authorities (i.e. RCS) due to 'external influence' ignoring the legal provisions, the Supreme Court issued several directions to Registrars / Joint Registrars in relation to exercising powers of supersession of boards of management of co-operative banks. Pertinently, the Supreme Court directed that RCS should not act under political pressure or influence, failing which they will be subject to disciplinary proceedings and be personally liable for the cost of legal proceedings.

While assessing the full extent of politicisation in the functioning of StCBs and DCCBs is not within the scope of this Report, a review of existing literature indicates that it does have an adverse impact the governance of such institutions.

⁸⁷ Report of High Powered Committee on Cooperatives (n 37) pages 27-28.

⁸⁸ A Hundred Small Steps (n 36) page 55.

⁸⁹ State of MP v Sanjay Nagayach & Ors. (2013) 7 SCC 25.

The Political Economy of Co-operative Banks and loan waivers

“The State has used co-operatives to channel its development schemes, particularly subsidy-based programmes for the poor. As these institutions have a wide reach in the rural areas and also deal with finances, the choice was natural. The trend, however, also made cooperatives a conduit for distributing political patronage. This and the sheer magnitude of resources and benefits channelled through the societies, makes control of decision-making and management attractive to parties in power, for accommodating their members, to influence decisions through directives, and for individual politicians to be on the management boards of the cooperatives.”

- Vaidyanathan Committee Report

Closely related to concerns of politicisation of co-operative banks is the issue of loan waivers which has been a subject of debate in the recently concluded state elections with several parties in different states promising huge loan waivers, including in Tamil Nadu, Karnataka, Maharashtra, Uttar Pradesh, Jammu & Kashmir, Punjab, Chhattisgarh, Andhra Pradesh, Telangana and Puducherry.⁹⁰ While such waivers are largely broad-based, publicly available information indicate that in Tamil Nadu, Karnataka and Puducherry, farm loans availed through co-operative banks for specific periods were proposed to be waived.⁹¹ A recent report released by RBI (**“Report of the WG to Review Agricultural Credit”**)⁹² notes that instances of loan waivers has seen an unprecedented increase since 2014-15, with 10 state governments announcing loan waivers aggregating to INR 2.4 trillion. This is significantly higher than the two-nationwide loan waiver programmes – the ₹100 billion waiver programme in 1990 and ₹525 billion

programme in 2007-08.

While such loan waivers may be based on the need to alleviate ‘debt overhang’ of beneficiaries with a view to empower them to undertake productive investments, the Report of the WG to Review Agricultural Credit notes that such waivers undermine the credit culture and impacts the state finances adversely. Assessing the possible impact of such waivers on agricultural credit and state finances, the report recommends that farm loan waivers should be avoided. Concerns regarding such loan waivers have also been voiced in the past by several other committees. For instance, the Vaidyanathan Committee Report noted that actions of the central and state government in waiving loans, interest and/or principal *inter-alia* contributed to an atmosphere of encouraging defaults in payments.⁹³ It identified the failure of states to release the funds for loan waivers and interest subsidies as one of the factors contributing to the accumulated losses of co-operative credit structure entities.⁹⁴ Accordingly, it recommended the abolition of such loan and interest waivers.⁹⁵ Similarly, the Report of the Task Force to Study the Cooperative Credit System (Capoor Committee) which studied the inter-linkage between the health of co-operative banks and loan waivers noted that the recovery climate for co-operative banks was being vitiated by loan waivers, which led to a general tendency of delay in repayments of loan (in anticipation of such waiver).⁹⁶ The Task Force went to suggest that there is a need for a consensus at all levels that loan waivers / postponement of recoveries and granting of interest rate subsidies for populist reasons should not be made in the future.⁹⁷ The revival package suggested by the Task Force included a conditionality on committing to no-across the board waiver.⁹⁸

The costs and benefits of such waiver / relief schemes have been extensively debated. While critical analysis of such schemes is beyond the scope of this Report,

⁹⁰ See, Press Information Bureau, Government of India, Ministry of Agriculture & Farmers Welfare, ‘Waiving off Agricultural loan’ (24 July 2018) available at <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=180924>>, accessed 19 October 2019. We have not separately verified if all StCBs and DCCBs qualify for these waivers.

⁹¹ Ibid.

⁹² RBI, *Report of the Internal Working Group to Review Agricultural Credit* (13 September 2019) chapter 3.

⁹³ *Vaidyanathan Committee Report* (n 1) paras 3.25 and 3.28.

⁹⁴ *Vaidyanathan Committee Report* (n 1) para 4.04.

⁹⁵ *Vaidyanathan Committee Report* (n 1) para 4.37.

⁹⁶ Ministry of Finance, *Report of the Task Force to Study the Cooperative Credit System and Suggest Measures for its Strengthening* (2000) para 4.20.

⁹⁷ Ibid.

⁹⁸ Ibid para 6.17.

we briefly discuss the concerns raised by certain committees and commentators.⁹⁹ First, loan waivers impact the balance sheet of lending institutions which may arise due to the inevitable lags, in the timing of impact and the arrival of compensation from the governments.¹⁰⁰ Second, such loan waivers contribute to vitiating the repayment culture¹⁰¹ by perpetuating a moral hazard and encouraging strategic defaults by recalcitrant debtors. The Report of the WG on Agricultural Credit notes that such strategic default arising from loan waivers may be a possible reason for increase in NPA level in certain states. Based on a study of the state-wise agricultural sector NPA trends, the report finds that the NPA level increased for all states that have announced farm loan waiver programme in 2017-18 and 2018-19. On the other hand, almost all other states (with the exception of Bihar, Odisha and Haryana), have shown either no material change in their NPA level or have actually registered a decline between 2016-17 and 2017-18.¹⁰² Third, possibilities of substantial number of borrowers being left out from a waiver scheme due to variety of reasons cannot be ruled out. For instance, certain loans may not meet the time period requirement for the application of the waiver and even if the loan falls within the specified timeline, there is a possibility that the farmer may have already repaid substantial amount of the debt. In fact, many farmers take loans from non-institutional /informal sources at high interest rates and hence, such farmers may not qualify for loan waivers at all, which raises questions for the inclusiveness of the loan-waiver schemes (as typically such waivers are extended to loans from institutional sources only).¹⁰³ Fourth, concerns regarding possible impact of loan waivers on credit allocation by banks has also been expressed since banks may reallocate lending to

lower risk borrower segments.¹⁰⁴

The existing literature studying the impact of farm loan waivers point to the concerns that have emerged from the implementation of large-scale waivers such as the Agricultural Debt Waiver and Debt Relief Scheme (ADWDRS), 2008. This was a Central Government scheme for providing loan waivers to farmers. Under the scheme, direct agricultural loans disbursed by scheduled commercial banks, local area banks, co-operative credit institutions and regional rural banks between 1 April 1997 to 31 March 2007 to farmers, which were overdue as on 31 December 2007 and remained unpaid upto 29 February 2008 were eligible for debt waiver/ debt relief.¹⁰⁵ In relation to co-operative banks and regional rural banks, NABARD (as the implementing agency of the scheme) reportedly disbursed a total of INR 25,485 crores in respect of 192.59 lakh borrower-farmers, of which small and marginal farmers comprised 83.5% of the beneficiaries.¹⁰⁶ As per official statistics, the share of StCBs in such disbursement was reportedly INR 15,681 crores.¹⁰⁷ However, performance audit on the implementation of ADWDRS by the Comptroller and Auditor General found a number of concerns with the manner of implementation of the scheme. For instance, 13.46% (out of 9334 test accounts) of eligible farmer accounts were found excluded, 8.5% (of a total of 80,299 test accounts) of accounts granted relief, were found ineligible for debt waiver/relief and almost 6% of test accounts were cases where eligible farmers were not extended benefits according to their entitlements.¹⁰⁸

Given the political appeal of loan waivers, another area of concern that may be associated with such waivers is the further politicisation of co-operatives due to such

⁹⁹ Report of the WG to Review Agricultural Credit (n 92); Martin Kanz, *What does Debt Relief Do for Development?* (World Bank Policy Research Working Paper 6258, November 2012); Xavier Gine, Martin Kanz, 'The Economic Effects of a Borrower Bailout: Evidence from an Emerging Market' (November 2014) available at <http://ibread.org/bread/system/files/bread_wpapers/433.pdf> accessed 10 October 2019; Ashok Gulati, Prerna Terway, 'From plate to plough: If you want to help farmers' (*The Indian Express*, 24 December 2018) available at <<https://indianexpress.com/article/opinion/columns/farm-loan-waivers-farm-distress-chhattisgarh-mp-5506509/>> accessed 10 October 2019; Vaidyanathan Committee Report (n 1) para 2.14, 4.37; Deepa S Raj, Edwin Prabu A., *Agricultural Loan Waiver: A Case Study of Tamil Nadu's Scheme* (RBI Occasional Papers Vol. 39- No. 1&2: 2018, 31 December 2018);

¹⁰⁰ Biswa Swarup Misra (n 21) page 22.

¹⁰¹ Biswa Swarup Misra (n 21) page 22.

¹⁰² Report of the WG to Review Agricultural Credit (n 92) para 3.3.4.

¹⁰³ Ashok Gulati, Prerna Terway (n 99)

¹⁰⁴ Report of the WG to Review Agricultural Credit (n 92) para 3.3.1

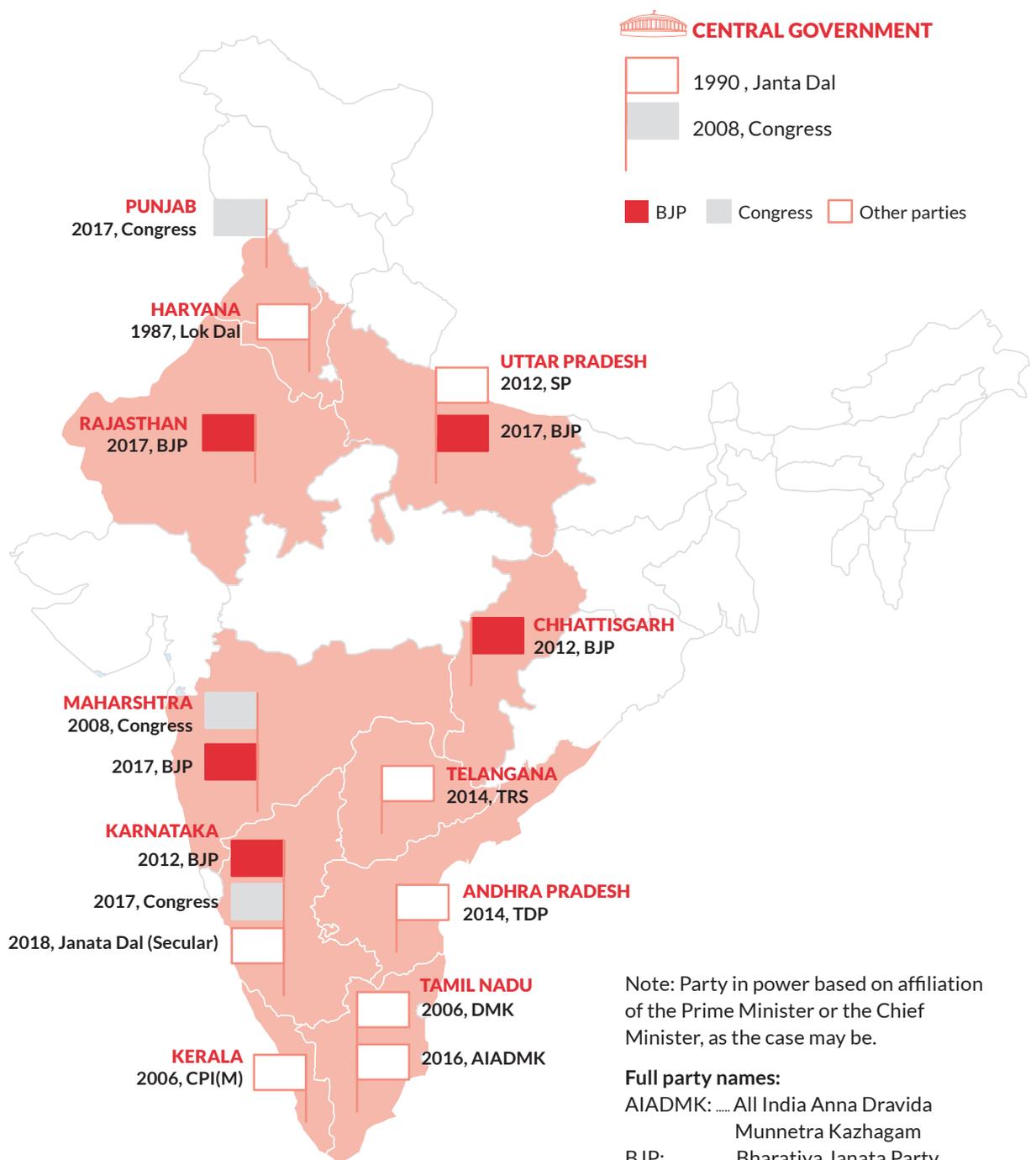
¹⁰⁵ Comptroller and Auditor General of India, *Implementation of the Agricultural Debt Waiver and Debt Relief Scheme (ADWDRS), 2008* (Performance Audit, Report No. 3 of 2013).

¹⁰⁶ NABARD, *Annual Report 2009-10* (July 2010) pages 28-29.

¹⁰⁷ Ibid.

¹⁰⁸ *Implementation of ADWDRS, 2008* (n 105) pages vi-vii.

Fig. 10: Key Loan Waiver Schemes Between 1987-2018



Source: Ajit Phadnis, Aishwarya Gupta (n 109)

schemes.¹⁰⁹ The Report of the WG to Review Agricultural Credit notes that timing of loan waiver announcements during elections points to *more of a political expediency of such waiver programs that does not really address long term issues in agriculture*. To substantiate, the report notes that: (a) the nationwide loan waiver programs of 1990 and 2008 were announced by the Central Government in the run up to the parliamentary elections of 1991 and 2009, respectively; and (b) eight out of ten loan waiver announcements since 2014 were made within 90 days of their respective states' election results.¹¹⁰

Similarly, in 2019, a study¹¹¹ of 18 loan waiver schemes by governments described in Figure 10 also concluded that such waivers are driven more by political exigencies as opposed to an ideological conviction. Notably, out of these, in 7 cases the loan waiver scheme was limited to co-operative institutions only.

Key findings of this study indicate interesting results that may be useful to understand if loan waivers lead to further politicisation of the co-operative sector. Notably, out of the 18 waiver schemes, policy regarding 7 waivers were announced about a year or a year and half prior to the impending elections, 10 waivers were announced by ruling parties within a year of coming to power and in only one case the waiver was announced in the middle of an electoral cycle (i.e. within the third year of the party in power). The study also sought to assess the connection (if any) of loan waivers and the election results based on a study of 7 loan waiver schemes announced by state governments. While the authors caution that the evidence in this regard is weak, it is interesting to note that loan waiver policies that were implemented early in the incumbent's tenure show poorer electoral prospects than policies that are implemented closer to the time of elections. For instance, in three states, where the announcement about the waiver was made around 5 years prior to the election date, the incumbent party lost the elections and showed reduced vote share. In the remaining 4 cases, two out of four states that

implemented waiver just before the election showed slightly enhanced vote share.

While the aforesaid study does not conclusively establish a co-relation between loan waivers and politicisation of cooperatives, existing literature on this issue as discussed above does raise some questions regarding the efficacy of such schemes to address rural distress in the long term. In fact, such waivers may adversely impact state finances, thereby impeding productive investment in agriculture infrastructure. In light of the above discussion, it is arguable that this issue requires an in-depth study to ensure that resources of the state are invested in designing more effective and practical solutions for distressed borrowers in the rural economy.

Conflict of interest

The structure of co-operative banks creates a unique possibility of conflict of interest between members and depositors. Under the BR Act, co-operative banks are permitted to access public deposits that may be used by its members. It has been pointed out that with liabilities of members of such banks being restricted to membership shares, the members of such co-operative banks use resources that is predominantly contributed by non-members i.e. depositors. This creates a conflict of interest. While borrowers are required to become a member who enjoy voting rights, depositors are typically categorised as nominal members without voting rights, or not given any membership status. Consequently, such co-operative banks have a large number of members, who do not have voting rights and are not interested in the functioning of the bank. This creates the possibility of boards being captured by depositors as there is limited mechanism for internal accountability and supervision with vested interests.¹¹² The Vaidyanathan Committee Report notes that this is inconsistent with co-operative principles and democratic functioning since those whose money is intermediated have no say in the management of their own money.¹¹³

109 Ajit Phadnis, Aishwarya Gupta, *The Politics of Farm Loan Waiver*, Economic & Political Weekly, Vol. 54, Issue No. 23, 08 Jun, 2019 < <https://www.epw.in/journal/2019/23/special-articles/politics-farm-loan-waivers.html> > accessed 10 October 2019; Sanjay Kaul, 'It's time we had a sound but politically attractive loan-waiver scheme' (*The Hindu BusinessLine*, 6 March 2019) available at < <https://www.thehindubusinessline.com/economy/agri-business/its-time-we-had-a-sound-but-politically-attractive-loan-waiver-scheme/article26448883.ece> > accessed 12 October 2019; Gautam Chikermane, 'Are loan waivers breeding a defaulting nation' (*Observer Research Foundation*, 11 May 2017) available at < <https://www.orfonline.org/expert-speak/are-loan-waivers-breeding-a-defaulter-nation/> > accessed 12 October 2019; Meghnad Desai, 'Loan Waivers: Rahul is wrong, so is Modi' (*Financial Express*, 24 December 2018) available at <https://www.financialexpress.com/opinion/farm-debt-relief-is-unsound-economics/1423119/> > accessed 12 October 2019; Vikas Dhoot, 'Are farm loan waiver a political gimmick?' (*The Hindu*, 10 May 2019) available at < <https://www.thehindu.com/opinion/op-ed/are-farm-loan-waivers-a-political-gimmick/article27084045.ece> > accessed 12 October 2019.

110 *Report of the WG to Review Agricultural Credit* (n 92) para 3.2.4.

111 Ajit Phadnis, Aishwarya Gupta, *The Politics of Farm Loan Waiver*, Economic & Political Weekly, Vol. 54, Issue No. 23, 08 Jun, 2019 available at < <https://www.epw.in/journal/2019/23/special-articles/politics-farm-loan-waivers.html> > accessed 10 October 2019.

112 *Report of the Expert Committee on Licensing of UCBs* (n 64) para 6.3. *Report of the High Powered Committee on UCBs* (n 79) para 4.14

113 *Vaidyanathan Committee Report* (n 1) para 5.02.

Key Takeaways

- StCBs and DCCBs are subject to a system of dual regulation by RBI and RCS which causes several operational and governance challenges.
- RBI has limited resolution powers over StCBs and DCCBs. Unlike banking companies, RBI cannot directly supersede the board of directors of StCBs and DCCBs, apply for winding-up of such co-operative banks and be appointed as a liquidator in case of winding-up of such banks.
- A recurring issue that has been identified by several committees studying the co-operative banking sector is weak corporate governance. Key governance challenges faced by such banks include absence of professional directors, qualified CEOs, treatment of inactive members, state interference in the management of these banks and limited powers of RBI to remove directors and CEO of such banks.
- Given the role of StCBs and DCCBs in the rural credit delivery system, it is critical that such banks are financially sound. However, failing health of these banks has been a cause of concern for policymakers. A review of the latest key financial data of 33 StCBs (as on 31 March 2019) and 363 DCCBs (as on 31 March 2019) for FY 2017-18 available from the latest NABARD Annual Report indicates that:
 - Out of 33 StCBs, 32 StCBs reported profits of INR 1,037 crore and only one StCB (Assam) reported loss.
 - Out of 363 DCCBs, 311 DCCBs reported profits and 52 DCCBs reported losses. The number of DCCBs in profit decreased from 315 during 2016-17 to 311 during 2017-18.
 - The accumulated losses reported by DCCBs increased by 10.78% during 2017-18 from the previous year.
 - At an aggregate level, the percentage of NPAs to loans outstanding of StCBs and DCCBs increased from 4.1% and 10.5% to 4.72% and 11.12% respectively.¹¹⁴
 - At an aggregate level, the recovery % of StCBs increased from 93.5% in 2016-17 to 94.16% in 2017-18. The recovery % of the StCBs in NE region fell down from 50.88% in 2016-17 to 46.72% in 2017-18.¹¹⁵
 - At an aggregate level, the recovery% of DCCBs fell down from 78.9% in 2016-17 to 71.1% in 2017-18. The DCCBs in Northern region recorded a fall from 73.1% in 2016-17 to 56.7% in 2017-18.¹¹⁶
- Due to the socio-political factors affecting the co-operative sector, this sector has been marred by rampant politicisation of these institutions. Key instances as indicated by several committees and existing studies include exertion of control by the state government through supersession of board, appointment of administrators, appointment of government nominees, political appointments in boards and channeling loan waiver / debt relief schemes through co-operative banks.

114 NPA% of loans outstanding as on 31 March 2017 and 2018.

115 Recovery% is as on 30 June 2016 and 2017.

116 Ibid.

Chapter 6: Financial Health of StCBs and DCCBs in the Surveyed States

As discussed in the previous chapters, StCBs and DCCBs play a key role in banking system and more importantly in the short-term rural credit structure of the economy. Keeping in mind its outreach in the rural areas, it can be argued that they are critical for the development of the rural economy. The effectiveness of these banks in the promotion of financial inclusion objectives of the government or for the development of the rural economy depends largely on the financial health of these banks.

This Chapter evaluates the existing financial health of StCBs and DCCBs (in terms of certain key indicators). We rely on publicly available data released by NABARD for the purpose of this exercise.

Further, Annexure A of this Report provides a snapshot of the financial health of the StCBs and DCCBs (based on specific parameters) in the Surveyed States during the period from FY 2012-13 to FY 2017-18.

Key Financial Data - StCBs

Set out below is a snapshot of the key financial data pertaining to StCBs in the Surveyed States. The data

presented below in the table is based on information published by NABARD for the financial year (FY) 2017-18 ending 31 March 2018 (unless indicated otherwise). For the purpose of this part, we have focused on the key parameters indicated below.

Table 4: Snapshot of the Financial Health of 10 StCBs in the Surveyed States

	Total Deposits (INR Lakh)	Net Profit (INR Lakh)	Gross NPA (%)	Recovery (%)	CRAR (%)
Andhra Pradesh*	2,86,695	8,203	1.58	98.39	10.97
Gujarat	5,70,000	4,554	2.15	97.02	11.82
Haryana	3,39,793	3,565	0.05	99.96	10.81
Karnataka	9,15,142	3,425	4.39	96.78	10.78
Maharashtra	4,66,708	6,352	4.86	89.66	13.40
Madhya Pradesh	14,10,561	20,146	9.91	83.62	16.70
Odisha	8,11,675	1,984	1.72	98.06	10.52
Punjab	2,79,436	2,518	1.00	99.70	11.80
Uttar Pradesh	6,15,455	4,091	8.49	95.69	19.67
West Bengal	7,03,974	124	5.18	86.87	12.59

* This does not include the StCB in Telangana

Deposits

As on 31 March 2018, the total deposits of the 10 StCBs in the Surveyed States stood at INR 63,99,438.02 lakh. Geographical distribution of deposits indicates that the StCB in Maharashtra (INR 14,10,561.07 lakh) recorded the highest deposits, followed by Karnataka (INR 9,15,142.35) and Odisha (INR 8,11,674.79). Out of the Surveyed States, Punjab (INR 2,79,436.32) recorded the lowest deposits. Notably, the Maharashtra StCB alone accounted for around 22% of the aggregate deposits of the 10 StCBs in the Surveyed States.

Net Profit

The total net profit of the 10 StCBs was INR 54,962.16 lakh during the FY 2017-18. The StCB in Maharashtra (INR 20,146.28 lakh) recorded the highest net profit followed by Andhra Pradesh (INR 8,202.50 lakh) and Madhya Pradesh (INR 6,351.67 lakh). The StCB in West Bengal (INR 123.99 lakh) recorded the lowest profit. Notably, the Maharashtra StCB alone accounted for 36% of the aggregate profits of the 10 StCBs in the Surveyed States. No StCB in the Surveyed States made any loss during this year.

GNPA

In the Surveyed States, the StCB in Maharashtra recorded the highest GNPA (9.91%). This was followed by the StCB in Uttar Pradesh (8.49%) and West Bengal (5.18%). The StCB in Haryana (0.05%) recorded the lowest GNPA.

Recovery%

As on 30 June 2017, the average recovery percentage of 10 StCBs in the Surveyed States stood at 94.57%. The State that recorded the highest percentage of recovery was Haryana (99.96%) followed by Punjab (99.70%) and Andhra Pradesh (98.39%). Out of the 10 StCBs, the StCB in Maharashtra (83.62%) recorded the lowest percentage of recovery.

CRAR

RBI requires that StCBs must maintain a minimum CRAR of 9% with effect from 31 March 2017¹¹⁷. As on 31 March 2018, all the 10 StCBs in the Surveyed States have complied with this minimum CRAR requirement. Uttar Pradesh (19.67%) has the highest CRAR and Odisha (10.52%) has lowest CRAR.

117 RBI Notification No. RBI/2013-14/433
RPCD.RCB.BC.73/07.51.012/

2013-14, Application of Minimum Capital Adequacy Norms to State and Central Cooperative Banks (StCBs/CCBs) (7 January 2014)

Key Financial Data – DCCBs

pertaining to DCCBs in the Surveyed States. The data presented below in the table is based on information published by NABARD. For the purpose of this part, we have focused on the key parameters indicated below.

Set out below is a snapshot of the key financial data

Table 5: Snapshot of the Financial Health of 244 DCCBs in the Surveyed States

	Total Deposits (INR Lakh)	Net Profit (INR Lakh)	Net Loss (INR Lakh)	Gross NPA (%)	Recovery (%)	CRAR (%)
Andhra Pradesh (13)	8,45,882	4,620	351	4.89	90.27	11.55
Gujarat (18)	26,65,350	16,405	89	5.55	87.85	12.27
Haryana (19)	8,48,820	3,517	0	6.33	67.68	11.25
Karnataka (21)	22,19,996	13,858	0	6.42	92.38	11.06
Madhya Pradesh (38)	17,34,269	10,512	19,970	21.81	63.14	10.57
Maharashtra (31)	75,08,930	37,181	10,861	17.22	45.03	12.30
Odisha (17)	9,52,483	14,220	0	7.17	69.78	13.17
Punjab (20)	13,83,671	1,402	4,143	8.58	72.34	11.27
Uttar Pradesh (50)	17,02,251	4,490	8,313	16.54	31.86	14.18
West Bengal (17)	14,78,274	4,040	395	9.56	77.93	12.19

Deposits

As on 31 March 2018, the total deposits of the 244 DCCBs in the Surveyed States stood at INR 21,339,927.07 lakh. In terms of deposit size, the DCCBs in Maharashtra (INR 75,08,930.20 lakh) recorded the highest deposits, followed by Gujarat (INR 26,65,350.05 lakh) and Karnataka (INR 22,19,996.49 lakh). Out of the Surveyed States, the DCCBs in Andhra Pradesh (INR 8,45,882.43 lakh) recorded the lowest deposits. Notably, the DCCBs in Maharashtra alone accounted for 35% of the aggregate deposits of the 244 DCCBs in the Surveyed States.

Net Profit

Out of 244 StCBs, 202 DCCBs recorded a net profit of INR 110,245.92 lakh during the FY 2017-18. In Maharashtra, 26 DCCBs (out of 31) recorded the highest net profit followed by Gujarat (INR 16,405.01 lakh) and Odisha (INR 14,219.77 lakh). The DCCBs in Punjab (INR 1,402.17 lakh) recorded the lowest profit. Notably, all the DCCBs in Odisha, Haryana and Karnataka recorded net profit.

Net Loss

Out of 244 DCCBs, 42 DCCBs reported a net loss of INR 44,122.71 lakh during the FY 2017-18. On an aggregate basis, 9 DCCBs (out of 38) in Madhya Pradesh recorded the highest net loss (INR 19,970.40 lakh), followed by losses incurred by 5 DCCBs (out of 31) in Maharashtra (INR 10,860.84 lakh) and 16 DCCBs in Uttar Pradesh (INR 8,313.30 lakh). On a standalone basis, the Osmanabad DCCB in Maharashtra recorded the highest net loss of INR 5,062.07 lakh.

GNPA

The average GNPA of 244 DCCBs is 10.4%. At an aggregate level, the DCCBs in Madhya Pradesh recorded the highest GNPA followed by Maharashtra (17.22%) and Uttar Pradesh (16.44%). At an aggregate level, the DCCBs in Andhra Pradesh (4.89%) recorded the lowest GNPA.

Recovery (%)

As on 30 June 2017, the average recovery percentage of 244 DCCBs was 69.82%. At an aggregate level, the DCCBs at Karnataka (92.38%) recorded the highest recovery (%) followed by the DCCBs at Andhra Pradesh (90.27%) and Gujarat (87.85%). At an aggregate level, the DCCBs in Uttar Pradesh recorded the lowest recovery at 31.86%.

CRAR

RBI requires that DCCBs must maintain a minimum CRAR of 9% with effect from 31 March 2017. As on 31 March 2018, the average CRAR of the 244 DCCBs was 11.98%. The DCCBs at Uttar Pradesh recorded a CRAR of 14.18% and the DCCB at Punjab recorded a CRAR of 11.27%.

Key Takeaways

- As on 31 March 2018, the aggregate deposit size of the 10 StCBs in the Surveyed States was INR 63,99,438.02 lakh. The Maharashtra StCB recorded the highest deposit size (INR 14,10,561.07 lakh) which accounted for 22% of the aggregate deposit size of the StCBs in the Surveyed States. The StCB in Punjab recorded the lowest deposit size (INR 2,79,436.32 lakh).
- As on 31 March 2018, the aggregate deposit size of 244 DCCBs in the Surveyed States was INR 21,339,927.07 lakh. At an aggregate level, the DCCBs in Maharashtra (31) recorded the highest deposit size (INR 75,08,930.20 lakh), which accounted for around 35% of the aggregate deposit size. The DCCBs in Andhra Pradesh (13) recorded the lowest deposit size (INR 8,45,882.43 lakh).
- During the FY 2017-18, all the 10 StCBs in the Surveyed States recorded profits amounting to a total net profit of INR 54,962.16 lakh. The Maharashtra StCB recorded the highest profit (INR 20,146.28 lakh), which accounted for 36% of the total net profit of all the StCBs in the Surveyed States.
- During the FY 2017-18, out of 244 DCCBs in the Surveyed States, 202 DCCBs recorded a net profit of INR 1,10,245.92 lakh, with 26 DCCBs in Maharashtra recording the highest profit at INR 37,180.54 lakh.
- Out of 244 DCCBs, 42 DCCBs reported a net loss of INR 44,122.71 lakh during the FY 2017-18. On a geographical basis, the total net loss reported by 9 DCCBs (out of 38) in Madhya Pradesh was highest at 19,970.40 lakh. On a standalone basis, the Osmanabad DCCB in Maharashtra reported the highest loss of INR 5062.07 lakh.
- The DCCBs in Odisha, Karnataka and Haryana did not report any loss during the FY 2017-18.
- Out of the 10 StCBs, the StCB in Maharashtra recorded the highest GNPA at 9.91% and the Haryana StCB recorded the lowest GNPA at 0.05%.
- The average GNPA of 244 DCCBs in the Surveyed States was 10.4%, out of which the DCCBs in Madhya Pradesh recorded the highest GNPA at 21.81%.
- The average recovery percentage of the 10 StCBs stood at 94.57%, with the Haryana StCB recording the highest percentage of recovery (99.96%) and Maharashtra StCB recording the lowest recovery (83.62%).
- The average recovery percentage of 244 DCCBs was 69.82%, with the DCCBs in Karnataka recording the highest recovery percentage at 92.38% and DCCBs in Uttar Pradesh recording the lowest recovery percentage at 31.86%.
- All StCBs and DCCBs in the Surveyed States complied with CRAR of 9% as prescribed by RBI.

Chapter 7: Corporate Governance - Preliminary Assessment of Key Indicators

As indicated in the previous chapter, proper governance of StCBs and DCCBs is critical to the effective functioning of such banks. It has often been pointed out that weak corporate governance is one of the key problems plaguing the sector. A review of the NABARD annual reports from 2007-08 to 2018-19, indicate that poor corporate governance in StCBs and DCCBs has been consistently pointed out as one of the major concerns.¹¹⁸

Concerns regarding the governance related issues in co-operative banks (StCBs, DCCBs and UCBs) have also been voiced by various committees set up by the Government, RBI and NABARD to study this sector.¹¹⁹ Issues pertaining to duality of control, absence of powers of RBI with respect to appointment and removal of directors, CEOs and state / political interference in such banks have often been cited as reasons adversely impacting governance in co-operative banks. While most of these issues have been discussed in detail in other chapters of this Report, this chapter focuses on the regulatory treatment of governance related issues in StCBs and DCCBs and the compliance of such requirements by these banks.

The first part of the chapter provides a comparative analysis of governance related measures as envisaged under the existing regulatory framework applicable to StCBs and DCCBs. The second part of the Chapter focuses on the compliance with guidelines issued by

RBI on fit and proper criteria for directors and CEOs of StCBs and DCCBs (“RBI Fit & Proper Guidelines”)¹²⁰ in the Surveyed States.

Governance - Mapping of Common themes across Regulatory Framework

The legal framework for regulating the governance and management of StCBs and DCCBs is primarily set out in the state laws. In addition to this, the constitutional provisions pertaining to co-operative societies and directions issued by RBI, including the RBI Fit & Proper Guidelines also set out a broad framework governing the management of StCBs and DCCBs.

This part sets out the key takeaways of a comparative analysis of common governance related provisions in the Constitution, RBI Fit & Proper Guidelines and the laws of the Surveyed States. While there are other parameters which will be relevant to assess the legal and regulatory requirements for governance of StCBs and DCCBs (such as disqualifications of directors, minimum number of meetings, etc.¹²¹), this part of the report is limited to such parameters / themes that are

¹¹⁸ NABARD Annual Report 2018-19 (n 81) para 5.5.2; NABARD, Annual Report 2016-17 (June 2017), para 3.8.2; NABARD, Annual Report 2015-16 (June 2016), para 3.8; NABARD, Annual Report 2014-15 (June 2015) para 2.4.1; NABARD, Annual Report 2013-14 (June 2014) page 32; NABARD, Annual Report 2012-13 (July 2013) page 32; NABARD, Annual Report 2009-10 (July 2010) para 102; NABARD, Annual Report 2008-09 (July 2009) para 4.53. Notably, the NABARD, Annual Report 2017-18 (June 2018) did not specifically mention lack of corporate governance as a specific supervisory concern.

¹¹⁹ Vaidyanathan Committee Report (n 1) para 3.21 to para 3.28; RBI, Report of the High Powered Committee on UCBs (n 79), chapter 8; RBI, Report of the Expert Committee on Licensing of New Urban Co-operative Banks (12 September 2011) para 2.2 and chapter 4.

¹²⁰ RBI, Fit and Proper Criteria for Directors of StCBs and DCCBs dated 5 July 2011.

¹²¹ These parameters are assessed in Chapter 8 of this Report.

common to the legal instruments referred above.

Key Takeaways from the Mapping

Number of Directors

- While the Constitution specifically requires state laws to cap the number of directors at 21, this is not uniformly reflected in all state laws. The RBI Fit & Proper Guidelines does not specify a maximum number of directors.
- Out of the 10 Surveyed States, only 3 states (Maharashtra, Haryana and Punjab) have expressly capped the number of directors at 21. However, the remaining 7 Surveyed States have specified different caps depending on the type and size of the society.

Term of the Board of Directors

- In line with the Constitution, all the Surveyed States provide for a 5-year term for the board.

Professional Directors

- There is no uniformity across the requirements under the Constitution, state laws and RBI Fit & Proper Guidelines mapped insofar as the qualifications and number of professional directors is concerned.
- There is divergence insofar as number of professional directors is concerned. While the Constitution caps the number of co-opted professional directors at 2, the RBI Fit & Proper Guidelines caps the number of professional directors (whether elected or co-opted) at 3. In line with the requirements under the Constitution, majority of the Surveyed States (6) cap the number of professional directors at 2. Two Surveyed States provide for election of 2 professional directors. One Surveyed State (Andhra Pradesh) does not specify any number in the parent statute and the remaining Surveyed State (West Bengal) provides that the number of directors should be such as may be specified by RBI (which is currently 3).
- 6 Surveyed States expressly set out the qualifications for professional directors in the state law. 7 Surveyed States expressly or impliedly recognise and require directors to fulfil the criteria stipulated by RBI. The state laws in the remaining 3 states (Odisha, Punjab and Maharashtra) does not recog-

nise the role of RBI to specify qualifications for directors of StCBs and DCCBs.

- Unlike the BR Act which specifically mentions knowledge or experience in co-operation as a qualification criterion for professional directors,¹²² the Constitution and the RBI Fit & Proper Guidelines does not expressly specify that as a criterion for professional directors.

Voting Rights of Co-opted Directors

- The Constitution of India provides that co-opted directors should not have the right to vote in any election of the co-operative society. However, the RBI Fit & Proper Guidelines specify that co-opted directors should have full voting rights.
- Even in the Surveyed States, there is no consistent approach. Out of the 10 Surveyed States, co-opted directors in 3 Surveyed States (Andhra Pradesh, Gujarat and West Bengal) have recognised that professional directors (whether elected or co-opted) have voting rights for elections, 6 Surveyed States (Odisha, Punjab, Haryana, Karnataka, Maharashtra, Uttar Pradesh) provide that co-opted directors do not have any right to vote and 1 State (Madhya Pradesh) provides that co-opted directors do not have the right to vote in elections.

Qualifications of CEO

- While the constitutional provisions are silent on this, the qualifications of CEO are set out in the RBI Fit & Proper Guidelines only. Except in Punjab, all the other Surveyed States require that the CEO should fulfil the criteria set out by RBI.

Assessing Compliance with the RBI Fit & Proper Guidelines in the Surveyed States

This part assesses the implementation of the governance norms as envisaged in the RBI Fit & Proper Guidelines by StCBs and DCCBs in the 10 Surveyed States. This analysis is based on the information made available to us by NABARD. We understand that this data is based on filings made by the StCBs and DCCBs themselves with NABARD. Unless, otherwise specified,

122 BR Act, Section 10B(2).

Fig. 11: RBI Fit & Proper Guidelines – Snapshot of its Implementation in StCBs in the Surveyed States

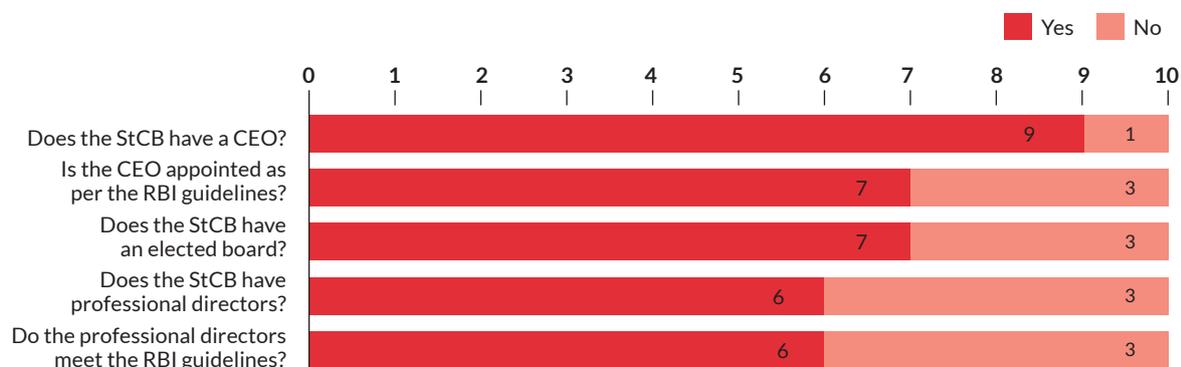
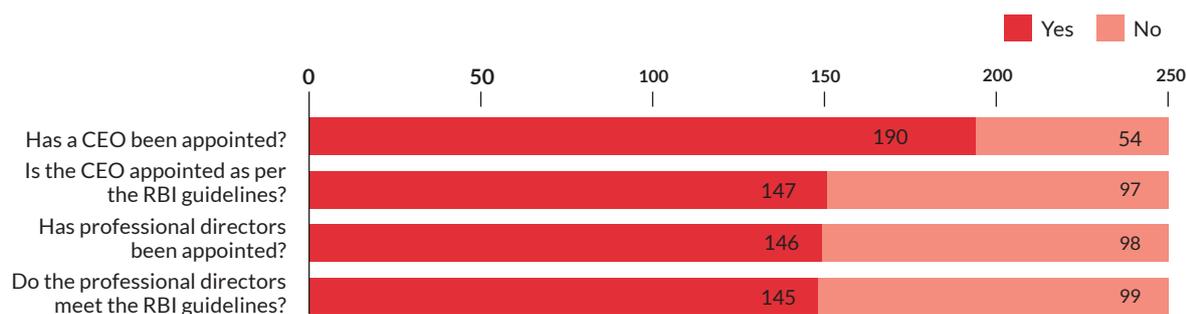


Fig. 12: RBI Fit & Proper Guidelines – Snapshot of its Implementation in DCCBs in the Surveyed States



the data mentioned below reflects the position as on 31 March 2017.

Key Findings (As on 31 March 2017)

Elected Board

- As on 31 March 2017, out of the 10 StCBs in the Surveyed States, 7 StCBs reported that they had an elected board. The data provided to us indicate that the StCB in one Surveyed State was run by a board of administration till 10 September 2017.

CEO

- As on 31 March 2017, out of the 10 StCBs in the Surveyed States, 9 StCBs reported to have appointed a CEO. We understand the Surveyed State which did not have a CEO, had appointed a managing director
- Out of the 9 StCBs that had a CEO, only 7 CEOs

complied with the criteria set out by RBI Fit & Proper Guidelines.

- Out of the 244 DCCBs in the Surveyed States, 54 DCCBs reported to have not appointed a CEO as on 31 March 2017.
- All DCCBs in 5 Surveyed States (116) reported to have appointed a CEO as on 31 March 2017.
- Out of the 244 DCCBs, CEOs in 147 DCCBs reported to have complied with the Fit & Proper Guidelines of RBI.
- While most of the DCCBs in the Surveyed States had appointed a CEO, all the DCCBs in one Surveyed State reported that the appointment of CEO was in compliance with the RBI Fit & Proper Guidelines.

Professional Directors

- As on 31 March 2017, out of the 10 StCBs in the

- Surveyed States, only 6 StCBs had professional directors as per the RBI Fit & Proper Guidelines.
- Out of 244 DCCBs, 146 DCCBs reported the appointment of professional directors. Out of these, directors in 145 DCCBs were reported to have complied with the RBI Fit & Proper Guidelines.
- None of the DCCBs in 2 Surveyed States had appointed any professional director as on 31 March 2017.
- All DCCBs in two Surveyed States reported the appointment of professional directors in compliance with the RBI Fit & Proper Guidelines.

Key Takeaways

- The legal framework for regulating the governance and management of StCBs and DCCBs is primarily set out in the state laws. In addition to this, the constitutional provisions pertaining to co-operative societies and directions issued by RBI, including the RBI Fit & Proper Guidelines also set out a broad framework governing the management of StCBs and DCCBs.
- There appears to be some divergence in the legal requirements as set out in the respective framework referred above. For instance – (a) while the 97th Constitution Amendment Act caps the number of co-opted professional directors at 2, the RBI guidelines specify that at least 3 professional directors must be co-opted with specified qualifications (in case such directors cannot be elected); and (b) while the 97th Constitution Amendment Act provide that co-opted directors do not have the right to vote in elections, the RBI guidelines specify that such directors have full voting rights.
- In state laws in the Surveyed States, divergence is noted in the number of directors with majority states (6) capping the number of professional directors at 2, 2 Surveyed States requiring election of 2 professional directors, one state providing that the number of professional directors will be such as specified by RBI.
- Divergence is also noted in the state laws of the Surveyed States in the voting rights of professional directors, with 6 Surveyed States restricting the voting rights in general and one Surveyed State restricting the right to vote in elections.
- 7 Surveyed States expressly or impliedly recognise and require directors to fulfil the criteria stipulated by RBI.
- Based on the data provided by NABARD (which we understand has been provided to NABARD by the respective banks), the compliance status of the RBI Fit & Proper Guidelines as on 31 March 2017 is set out below:
 - Out of 10 StCBs in the Surveyed states, only 7 had an elected board.
 - 6 StCBs had professional directors as per the RBI Fit & Proper Guidelines.
 - 9 StCBs had a CEO. 1 Surveyed State had a managing director. Out of the 9 StCBs, CEOs in 7 StCBs complied with the fit and proper criteria set out in the RBI guidelines.
 - All DCCBs in 5 Surveyed States (116) had appointed a CEO.
 - Out of 244 DCCBs in the Surveyed States, 54 DCCBs did not have a CEO.
 - Out of 244 DCCBs, CEOs in 147 DCCBs complied with the RBI Fit & Proper Guidelines.
 - 145 DCCBs had professional directors who met the RBI Fit & Proper Guidelines. All DCCBs in two Surveyed States reported to have appointed professional directors in compliance with RBI Fit & Proper Guidelines.

Chapter 8: Mapping of State laws in Surveyed States - Key Findings

Given that StCBs and DCCBs are incorporated under state specific cooperative societies laws, the governance and management of these banks are primarily regulated by such state laws. With a view to understand the legislative treatment of critical governance and management issues pertaining to StCBs and DCCBs under the state laws, a mapping of key provisions of the state laws in the Surveyed States is set in the Annexure B to this Report.¹²³ The key findings of the mapping exercise are set out below.

The parameters studied across state laws include composition of the board, audit, elections, winding-up and supersession of the board and the extent of state involvement in such banks. Such issues have been chosen primarily because of their relevance to the functioning of the board of management / governing board of such co-operative banks and as indicative of corporate governance in such banks. For the purposes of identifying the key themes / parameters as discussed in this Chapter, this Report relies on existing literature, including best practices identified by various committees constituted to reform the co-operative banking sector, common themes in state laws and the corporate governance index prepared by NABARD.

Please note that the mapping exercise is based on the state co-operative societies acts of the Surveyed

States.¹²⁴ We have neither reviewed the rules, regulations issued under the respective act nor the bye-laws issued by such banks.

Key Findings Board of Directors

Elected Board

- In all Surveyed States members of the board of directors / governing board / board of management (hereinafter referred to as board) are primarily elected.
- In addition to elected members, certain Surveyed States¹²⁵ also envisage nominated and co-opted directors as part of the board.
- Having an elected board was considered as a key reform by the Vaidyanathan Committee Report,¹²⁶ which seems to be reflected in the Surveyed States.

Term

- Across the Surveyed States, the term of the board is five years.
- The 97th Constitution Amendment Act requires that the term of the board (both elected members and office bearers) be five years from the date of elections.¹²⁷

¹²³ Please note that the mapping exercise has only been done in relation to the respective State Co-operative Societies Acts, as available in the public domain, and not in relation to the rules under respective State laws.

¹²⁴ Sathpal Puliani (ed.), *The Karnataka Co-operative Societies Act, 1959* (KLJ Publication, 17th edn, 2018); Sunil Dighe (ed.), *The Maharashtra Co-operative Societies Act, 1960 and Rules, 1961* (Snowwhite, 2018); Ghyansham H Amin, *The Gujarat Co-operative Societies Act, 1961* (SBD Publications, 2018); *The Uttar Pradesh Co-operative Societies Act, 1965 alongwith The Uttar Pradesh Co-operative Societies Rules, 1968 and Short Notes* (Manav Law House, 2019); *The Punjab Co-operative Societies Act, 1961 Alongwith The Punjab Co-operative Societies Rules, 1931* (Singla Law Agency 2019); Malay Kumar (ed.) *The West Bengal Co-operative Societies Act, 2006* (Kamal Law House, 2018); *The Haryana Co-operative Societies Act, 1984 Alongwith The Haryana Cooperative Societies Rules, 1989* (Singla Law Agency, 2018), *Madhya Pradesh Sahkarkari Society Adhiniyam, 1960* (Rajkamal Publication); GR Verma (ed.), *Odisha Co-operative Society Manual* (The Law House, 2018); Padala Ramala Reddi (ed.), *The Andhra Pradesh Co-operative Law Manual* (Asia Law House, 19th edn, 2017).

¹²⁵ These states are Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Madhya Pradesh, West Bengal.

¹²⁶ Vaidyanathan Committee Report, para 5.13.

¹²⁷ 97th Constitution Amendment Act, Section 4.

- A point of divergence is noted in the date of commencement of the 5-year period, with a majority of the Surveyed States (6) computing the term from the date of election. In one state, it is 5 years from the date of the first meeting of the board¹²⁸ and in another State, the 5 year period is computed from the date on which a majority members of the board assume office or the term of the outgoing board expires, whichever is later.¹²⁹

Presence of professional directors and their voting rights

- The Surveyed States require election or co-option of professional directors. For the purposes of this Chapter, professional directors means such directors who are required to meet specified qualification criteria.

Process of Appointment

- While 7 Surveyed States¹³⁰ specify co-option of such professional directors, 3 Surveyed States¹³¹ require election of such professional directors, failing which in 2 Surveyed States such directors are required to be co-opted. Notably, in case of Gujarat, if professional directors are not elected, the RCS can direct co-option of such directors, failing which, the RCS will appoint such directors.
- Out of the 7 Surveyed States that specify co-option of such professional directors, 5 states mandate co-option. The remaining two states (Maharashtra and Karnataka) provide that the board may co-opt such professional directors.
- Notably, the Maharashtra law in its provision dealing with the constitution of the board also provides that the provisions of the BR Act shall be applicable. However, it is not clear if it implies that provisions of the BR Act setting out the composition of the board, power of the RBI to appoint and remove directors, etc. will also be applicable.

Number of Professional Directors

- 6 Surveyed States provide for election / co-option

of upto 2 professional directors (as may be applicable). 2 States provide for election of 2 professional directors. Out of the 2 remaining states (Andhra Pradesh and West Bengal), West Bengal provides that the number of professional directors will be as specified by RBI and the parent statute in Andhra Pradesh is silent on the number of directors.

Qualification of Professional Directors

- In 6 Surveyed States,¹³² professional directors must have experience in the field of banking, management, finance or any field related to the activities of the society. 7 Surveyed States expressly or impliedly recognise the qualification criteria for professional directors stipulated by RBI.¹³³ Notably, in Maharashtra experience in 'co-operation' is also one of the qualification criteria for expert / professional directors. Pertinently, in Gujarat, the state government can prescribe qualifications over and above what is mentioned in the state law.

Voting Rights of Professional Directors

- There is no uniformity insofar as voting rights of professional directors are concerned. In 6 Surveyed States co-opted professional directors do not have the right to vote.¹³⁴ In 1 Surveyed State, co-opted directors do not have the right to vote in elections.¹³⁵ In 3 states, professional directors enjoy voting rights.¹³⁶
- The law in Haryana provides that professional co-opted directors do not have the right to vote in election. Given that in Haryana professional directors are required to be elected, failing which they are co-opted, it is not clear if the restriction on voting rights is extended to elected professional directors. Contrary to this, in West Bengal and Gujarat, the law clarifies that professional directors (whether elected or co-opted) will enjoy voting rights.

General Information

- The 97th Constitution Amendment Act mandates co-option of upto two members on the board who

128 Madhya Pradesh

129 Karnataka

130 Punjab, Odisha, Andhra Pradesh, Maharashtra, Madhya Pradesh, Karnataka and Uttar Pradesh.

131 Haryana, West Bengal and Gujarat.

132 Punjab, Odisha, Madhya Pradesh, Karnataka, Maharashtra and Uttar Pradesh.

133 Andhra Pradesh, Madhya Pradesh, Haryana, West Bengal, Karnataka, Gujarat and Uttar Pradesh.

134 Punjab, Odisha, Maharashtra, Haryana, Karnataka and Uttar Pradesh.

135 Madhya Pradesh

136 Andhra Pradesh, West Bengal and Gujarat.

should have experience in banking, management, finance or other fields related to the objects.¹³⁷ Such co-opted members will *not* enjoy voting rights. Therefore, pursuant to this, state laws must mandate co-option of directors meeting these qualifications. However, the number of such co-opted professional directors is capped at 2. To the extent state laws do not provide for co-option of such professional directors or confer voting rights on such directors, they may be held to be in violation of the constitutional mandate.

- On the contrary, RBI Fit & Proper Person Guidelines require that there must be three professional directors whether elected or co-opted. As per the guidelines, such directors should enjoy all voting rights.
- It should be noted that the Vaidyanathan Committee Report recommended the co-option of professionals with full voting rights on boards.¹³⁸ In this regard, the report recommended that the financial package will be conditional on StCBs and DCCBs accepting the fit and proper criteria (to be prescribed by the RBI) of eligibility for board membership and for co-option of a specified number of professionals as full members with voting rights, if members with such qualifications do not get elected.

Qualification of MD & CEO

- Except in Punjab, the law in the remaining 9 Surveyed States recognise the qualification criteria prescribed by RBI for qualification of the CEO or the MD, as the case may be.
- Out of these 9 Surveyed States, in 7 Surveyed States, the failure to meet the qualifications stipulated by RBI is a ground for disqualification.¹³⁹
- In 5 Surveyed States,¹⁴⁰ RBI/NABARD may spe-

cifically request for removal of a CEO who does not meet the qualifications prescribed by RBI and accordingly, such CEO must be removed. In two states (West Bengal and Karnataka), there is a requirement for a time bound removal of such a CEO upon receipt of advice from RBI.

- The Vaidyanathan Committee Report also recommended that the CEO of co-operative banks should have qualifications as prescribed by the RBI.¹⁴¹

Disqualification for directors

- Grounds for disqualification as a member of the board has also been set out under the state laws. There is no uniformity in the grounds for disqualification.
- Some common grounds include being members of more than a specified number of societies,¹⁴² being a defaulter of a loan,¹⁴³ being an inactive member or abstained from board meetings for a specified period,¹⁴⁴ being part of a superseded board¹⁴⁵ and holding offices of profit.¹⁴⁶ Unique grounds for disqualification present in state legislation includes being a member of Parliament or member of Legislative Assembly¹⁴⁷ or a Minister,¹⁴⁸ as well as non-payment of regulatory dues (electricity dues).¹⁴⁹
- Pertinently, in Punjab, a person is not eligible to be elected to the board for two continuous terms unless a period of not less than one term has expired since she so last served.

Presence of Committees on Board

- The parent statutes of the Surveyed States does not mandate setting up any committees of board, such as audit committee. However, the state law in UP and Odisha provides an enabling power to the board to appoint such committees.

137 97th Constitution Amendment Act, Section 4.

138 *Vaidyanathan Committee Report* (n 1) para 5.13.

139 Odisha, Andhra Pradesh, Haryana, West Bengal, Karnataka, Gujarat and Uttar Pradesh.

140 Karnataka, Andhra Pradesh, West Bengal, Gujarat and Odisha.

141 *Vaidyanathan Committee Report* (n 1) para 5.31.

142 Punjab, Haryana, Gujarat.

143 West Bengal, Odisha, Gujarat, Karnataka, Andhra Pradesh, Madhya Pradesh, Maharashtra.

144 Maharashtra, Andhra Pradesh, Karnataka, Odisha.

145 Maharashtra, Karnataka, Madhya Pradesh.

146 West Bengal, Odisha, Gujarat.

147 Andhra Pradesh.

148 West Bengal.

149 Madhya Pradesh.

Depositor Representation

- In Chapter 5, the Report discusses about the conflict of interest that exist in the existing functioning of co-operative banks in India. None of the Surveyed States indicate the requirement for having depositor representation on the board of a co-operative bank. The Vaidyanathan Committee Report recommended that there must be depositor representation on boards, which is an aspect on which there does not seem to be any progress made across the Surveyed States.¹⁵⁰

Reservation on the Board

- All Surveyed States provide for reservation of representatives belonging to the Scheduled Caste or Scheduled Tribe. In 5 Surveyed States,¹⁵¹ one seat is reserved for representatives of Scheduled Caste or Scheduled Tribe. Out of these 5 states, in Madhya Pradesh the reservation is for the representatives of Scheduled Caste or Scheduled Tribe, whoever has more members. In case of Punjab and Haryana, one seat is reserved for a representative of Scheduled Caste. In Karnataka, one seat is reserved for representative of Scheduled Caste and one seat for a representative of Scheduled Tribe.
- Majority (9) of the Surveyed States provide that two seats are reserved for women representatives on the board.
- In this regard, the 97th Constitution Amendment Act requires that the number of seats reserved should be one for Scheduled Castes/Scheduled Tribes, and two for women.¹⁵²

Elections

- Across the Surveyed States, elections are conducted by varied authorities. In majority of the states i.e. 6 Surveyed States¹⁵³ elections are required to be conducted by dedicated State Co-Operative Election authorities. In Haryana, while the state government has been empowered to appoint an

election authority for the conduct of elections, the RCS may conduct election in the event such authority has not been appointed. In Andhra Pradesh, the RCS conducts the elections. In Gujarat elections are conducted under the control of officers appointed by the collector. In Punjab, the authority responsible for conducting elections has not been indicated.

- In relation to adoption of corrupt practices during elections, with the exception of Andhra Pradesh,¹⁵⁴ all Surveyed States expressly criminalise adoption of corrupt practices during elections. In certain States,¹⁵⁵ such practices are also defined. It should be noted that the 97th Constitution Amendment Act specifically recommends that adoption of corrupt practices during elections should be specifically treated as an offence.¹⁵⁶
- While the 97th Amendment Act requires the State law to specify an authority that will supervise and control elections to a co-operative society, the Vaidyanathan Committee Report considered establishment of Election Commissions for holding elections to co-operative societies as inappropriate since elections are an internal affair of the organisation.¹⁵⁷

Meetings

Annual general meetings and their frequency

- 9 Surveyed States require that co-operative societies hold an annual general meeting ("AGM") within such time as prescribed in the law. Notably, Andhra Pradesh requires that general meeting must be held twice annually with one to be held every half-year.
- The 97th Constitution Amendment Act requires that AGMs are to be prescribed by state laws and must be completed within six months of the close of the financial year, which is an aspect on which compliance is noted.¹⁵⁸

150 Vaidyanathan Committee Report (n 1) para 5.02.

151 Odisha, Maharashtra, Madhya Pradesh, West Bengal, Gujarat and Uttar Pradesh

152 97th Constitution Amendment Act, Section 4.

153 Karnataka, West Bengal, Odisha, Madhya Pradesh, Maharashtra, Uttar Pradesh

154 It does penalise corrupt practices in general.

155 Punjab, Karnataka, Haryana, Odisha, West Bengal, Gujarat.

156 97th Constitution Amendment Act, Section 4.

157 Vaidyanathan Committee Report (n 1) Para 5.30.

158 97th Constitution Amendment Act, Section 4.

- Across the Surveyed States, with the exception of Andhra Pradesh, the law sets out a list of documents that are required to be placed for adoption/consideration at the AGM. Typically, such documents include the balance sheet,¹⁵⁹ profit and loss statement,¹⁶⁰ auditor's report,¹⁶¹ annual report,¹⁶² board report,¹⁶³ inquiry/inspection reports,¹⁶⁴ statement of loans to board members and their family¹⁶⁵ and reports of committees.¹⁶⁶

Board meetings and its frequency

- In relation to frequency of board meetings, only 2 Surveyed States (Haryana and Andhra Pradesh) mention the frequency. While in Haryana such board meetings are to be held from time to time (after the receipt of a requisition in this regard), in Andhra Pradesh such meetings are to be held every three months.

Audit

Frequency of audit

- All Surveyed States require an annual audit to be done. The timing for the audit is not uniform across all states. While majority of the Surveyed States require that such audit must be conducted within six months of the close of year,¹⁶⁷ Karnataka stipulates that such audit must be conducted before first of September every year and Maharashtra stipulates that audit must be completed within four months after the close of financial year.¹⁶⁸
- The requirement for timely audits has also been recommended by Vaidyanathan Committee Report.¹⁶⁹ Additionally, the 97th Constitution Amendment Act requires that annual audits are to be

prescribed by state laws and completed within six months of the close of the financial year, which is an aspect on which compliance is noted in most Surveyed States.¹⁷⁰

Authority responsible for conducting audit

- Across the Surveyed States, there is diversity in terms of the authority responsible for conducting audit of co-operative banks.
- Majority of the Surveyed States (7) require that an auditor is appointed from a panel approved by NABARD.¹⁷¹ In Maharashtra, an auditor is appointed from a panel prepared by the RCS and approved by the state government. In Punjab and Haryana, auditor is appointed from a panel approved by the state government and who fulfills the criteria stipulated by the state government respectively. In case of Maharashtra, it is also provided that audit must be carried out as per the auditing standards notified by the state government.

- The 97th Constitution Amendment Act requires audit to be conducted by auditors or auditing firms appointed from a government-approved panel.¹⁷²

Specific audit items

- 8 Surveyed States (except Gujarat and West Bengal) require audit to be conducted on specified items. These include examination of overdue debts,¹⁷³ verification of cash balances,¹⁷⁴ and valuation of assets and liabilities.¹⁷⁵
- Karnataka also requires audit on compliance with RBI/NABARD instructions and directives, Madhya Pradesh requires audit on compliance with instruc-

159 Gujarat, Maharashtra, West Bengal.

160 Gujarat, Maharashtra.

161 Gujarat, Maharashtra, West Bengal, Odisha, Haryana, Punjab, Madhya Pradesh, Karnataka.

162 Maharashtra, West Bengal, Haryana, Punjab, Karnataka.

163 Gujarat, Karnataka.

164 Odisha, West Bengal, Punjab, Karnataka.

165 Maharashtra, Madhya Pradesh.

166 Odisha.

167 Haryana, West Bengal, Uttar Pradesh, Punjab, Odisha, Madhya Pradesh.

168 Maharashtra.

169 *Vaidyanathan Committee Report* (n 1) para 5.21.

170 97th Constitution Amendment Act, Section 4.

171 Odisha, Andhra Pradesh, West Bengal, Karnataka, Gujarat, Uttar Pradesh.

172 97th Constitution Amendment Act, Section 4.

173 Punjab, Odisha, Andhra Pradesh, Maharashtra, Madhya Pradesh, Karnataka, Uttar Pradesh.

174 Punjab, Odisha, Andhra Pradesh, Maharashtra, Madhya Pradesh, Haryana, Karnataka, Uttar Pradesh.

175 Punjab, Odisha, Andhra Pradesh, Maharashtra, Karnataka, Haryana, Uttar Pradesh.

tions and orders of the RCS and Haryana requires the same in relation to compliance with general laws.

State Involvement

State shareholding

- Across all the Surveyed States, with the exception of Punjab, state government shareholding has been capped at a maximum of 25%.
- In Punjab, the law provides that no member, other than the government or a public sector undertaking or a co-operative society can hold more than one-tenth of the share capital.

Presence of state government nominee on the Board

- All Surveyed States empower the state government to appoint its nominee on the board of a co-operative society.
- In all Surveyed States, the power to appoint a nominee is tied to subscription to the share capital of the society by the state government. In some cases, it is allowed in case where the state government has guaranteed repayment of loan.¹⁷⁶ In case of Uttar Pradesh, a nominee may be appointed where the state government has given loans or advances to the society.
- The number of nominees that may be appointed by the state government varies across states. Out of the 10 Surveyed States, 7 states provide for one nominee of the government.¹⁷⁷ Odisha and Maharashtra empower the government to nominate two nominees. In Punjab, the government may appoint 3 government nominees or 1/3rd of the total number of the members of the board, whichever is less. In cases, where the government's shareholding is equal to or more than INR 20 lac, one of the nominees may be appointed as Chairman and another as managing director.
- In case of 2 Surveyed States, the government nominees must meet some qualifications prescribed in

the law. For instance, in Odisha, the Government will propose 4 nominees who must have experience in banking, management, finance or related fields. Out of the 4 proposed nominees, the bank will appoint two government nominees to the board. In Maharashtra, out of the two nominees, one must be a Government officer not below the rank of Assistant RCS and one person with requisite experience relating to the work of the society and qualifications prescribed by the state government.

- While most state laws are silent on the voting rights of such nominee members, certain Surveyed States specify the position with respect to voting rights. For instance, (a) in Odisha, nominees do not have any right to vote in elections; (b) in Maharashtra, the nominees are not entitled to vote; (c) in Madhya Pradesh, while the nominee has one vote, it cannot vote in elections; (d) in Haryana and Uttar Pradesh, the nominee enjoys a right to vote when the government is also member of the society; and (e) in Karnataka, the nominee can vote in all elections.

Supersession

Supersession by RCS

- Across all Surveyed States, supersession of the board may happen in two ways—(a) supersession by the state government / RCS (“**RCS Supersession**”); and (b) supersession required by RBI (“**RBI Initiated Supersession**”).
- In all Surveyed States, the state government / RCS can supersede the board of an StCB or a DCCB. In 8 Surveyed States, the state law expressly clarifies that such power cannot be exercised by the state government / RCS when there is no government shareholding, loan, financial assistance or any guarantee given by the government.
- Grounds for RCS Supersession which is common in most Surveyed States include persistent default,¹⁷⁸ being negligent in the performance of duties¹⁷⁹ and committing acts prejudicial to the interest of the co-operative society.¹⁸⁰ In some states, failure

176 Punjab, Odisha and Uttar Pradesh.

177 Andhra Pradesh, Madhya Pradesh, Haryana, West Bengal, Karnataka, Gujarat and Uttar Pradesh

178 Punjab, Odisha, Madhya Pradesh, Haryana, West Bengal, Karnataka, Gujarat and Uttar Pradesh.

179 Punjab, Odisha, Madhya Pradesh, Haryana, West Bengal, Karnataka, Gujarat and Uttar Pradesh

180 Punjab, Odisha, Madhya Pradesh, Haryana, West Bengal, Karnataka, Gujarat and Uttar Pradesh.

to conduct election¹⁸¹ and financial irregularities/fraud¹⁸² is also a ground for supersession. Notably, in Madhya Pradesh, in case of DCCBs, the RCS may remove the board if the recovery of the bank continuously in the preceding 3 co-operative years is less than 60% of the demand or if overdues exceed 40%.

- In case of RCS Supersession, only Haryana and West Bengal expressly require prior RBI approval. Haryana also requires that RBI's prescription regarding supersession and appointment of administrator must be implemented by the RCS within one month of RBI issuing such prescription. In case of other 6 Surveyed States,¹⁸³ there is a requirement for consultation with RBI in case of RCS Supersession. It is not clear if the recommendation of RBI post consultation is binding. The consultation procedure between the RCS and the RBI in Madhya Pradesh should be noted particularly, as it empowers the RCS to disagree with RBI. In case of the remaining 2 Surveyed States (i.e. Punjab and Maharashtra), there is no clarity regarding the role of RBI.
- The Vaidyanathan Committee Report recommended that orders for supersession should not be made without the prior written approval of the RBI. Given that certain states require consultation, this may be an area requiring further clarity.
- In 8 Surveyed States, RCS Supersession may be in force for a period of one year.¹⁸⁴ In Andhra Pradesh, the RCS Supersession may be in force for a period of 3 years. In Gujarat, the RCS Supersession may be in force for a period of two years or the remaining term of the board, whichever is less.
- In this regard, the 97th Constitution Amendment Act provides that board of a co-operative bank may be superseded only for a year. Further, supersession is made possible on certain grounds including committing acts prejudicial to the interests of the bank/members and persistent default.¹⁸⁵ It also clarifies that supersession of the board is only be possible

where there is shareholding or other financial assistance provided by the Government.¹⁸⁶ Additionally, the 97th Constitution Amendment Act provides that the BR Act will apply in relation to the supersession of boards of co-operative banks.¹⁸⁷

Role of RBI

Supersession required by RBI

- All the Surveyed States provide for RBI Initiated Supersession for StCBs and DCCBs.
- For RBI Initiated Supersession, the grounds on the basis of which RBI can require the RCS to supersede the board of an StCB or DCCB is primarily based on the grounds set out in Section 2(gg)(iii) of the DICGC Act viz.—public interest, preventing the affairs of the bank being conducted in a matter detrimental to the interests of the depositors or for securing the proper management of the bank.
- In case of Andhra Pradesh, Maharashtra, West Bengal, Karnataka and Uttar Pradesh, the state law specifies that the supersession of the board and the appointment of a special officer shall be made by the RCS within one month of being advised by RBI.
- Out of 10 Surveyed States, in 6 Surveyed States, the RBI initiated Supersession maybe in force for a period not exceeding 5 years.¹⁸⁸ In case of 3 Surveyed States, the period of supersession is specified as one year.¹⁸⁹ In case of West Bengal, the law provides that the supersession may be for such time period as may be specified by RBI.
- Notably, the DICGC Act specifies that the board of a bank may be superseded upon being required by RBI for a period not exceeding 5 years in the aggregate as may from time to time be specified by RBI.

Winding-up

- In all Surveyed States, prior sanction of RBI is re-

181 Maharashtra, Haryana, West Bengal, Karnataka and Uttar Pradesh.

182 Karnataka and Maharashtra

183 Odisha, Andhra Pradesh, Madhya Pradesh, Karnataka, Gujarat and Uttar Pradesh.

184 Haryana, West Bengal, Karnataka, Uttar Pradesh, Punjab, Odisha, Maharashtra and Madhya Pradesh.

185 97th Constitution Amendment Act, Section 4.

186 97th Constitution Amendment Act, Section 4.

187 97th Constitution Amendment Act, Section 4.

188 Haryana, Gujarat, Uttar Pradesh, Punjab, Odisha, Andhra Pradesh.

189 Karnataka, Maharashtra and Madhya Pradesh.

quired for winding up an insured co-operative bank i.e. StCB and DCCB.

- All Surveyed States make provision for winding up of an 'eligible co-operative bank' at the instance of RBI on the grounds as specified in Section 13D of the DICGC Act.
- The law in 5 Surveyed States specifically require the RCS to implement RBI's regulatory prescriptions regarding winding up within one month.¹⁹⁰

Treatment of non-active members

- Though co-operatives are supposed to be member driven institutions, members' participation in the governance and management is ineffective on account of lack of emphasis on continuous participation of members in governance.¹⁹¹ It has been pointed out that in most states, there is tendency to enroll new members at the time of elections, following which there is hardly any active participation of such new members in the affairs of the society. This situation may also be attributed due to the absence of a framework in all states to ensure that members are users of the services of the society in question and provision for removal of inactive members.¹⁹²
- Across the Surveyed States, varied approaches are observed when it comes to the treatment of non-active members. Haryana, West Bengal and Uttar Pradesh does not specifically provide for treatment of non-active members.
- Out of the 7 Surveyed States that provide for treatment of non-active members, majority of the

states¹⁹³ treat a member who has failed to attend a specified number of meetings or utilise minimum level of services as non-active member.

- Insofar as treatment of non-active member is concerned, broadly three approaches have been seen. Such a person can be disqualified as a member (Odisha, Andhra Pradesh, Madhya Pradesh, Gujarat), is ineligible to participate in meetings for elections to the board (Punjab, Madhya Pradesh) and/or loses the right to vote for a specified period (Karnataka). In Maharashtra, any member who does not meet the criteria discussed above is first classified as a non-active member. If upon such classification, the member fails to utilise minimum services within a specified period and does not attend specified number of meetings, she is disqualified to be a member.

Requirement of filing returns with the RCS

- Other than Punjab and Andhra Pradesh, the remaining 8 Surveyed States mandate filing of returns / statements with the RCS.
- Such returns are to be filed within 6 months of the close of the financial year to which it pertains.
- Typically, annual reports,¹⁹⁴ audited account statement,¹⁹⁵ list of amendments to bye-laws¹⁹⁶ and plan for surplus disposal¹⁹⁷ are required to be filed as a part of this annual filing.
- Notably, the 97th Constitution Amendment Act also specifies a list of items that must be filed as returns with the competent authority as prescribed under the state law.

190 Odisha, Maharashtra, Haryana, West Bengal, Uttar Pradesh

191 *Report of the Committee for Assessment of Human Resources of STCCS in the post CBS Environment* (n 8) para 1.5 (iii).

192 *Report of the High Powered Committee on Cooperatives* (n 37) para 2.8. and para 4.

193 Punjab, Andhra Pradesh, Maharashtra, Karnataka and Gujarat

194 Karnataka, Haryana, Maharashtra, West Bengal, Gujarat, Odisha.

195 Karnataka, Haryana, Maharashtra, West Bengal, Gujarat, Odisha

196 Odisha, Gujarat, Haryana and West Bengal.

197 Haryana, West Bengal, Maharashtra.

Key Takeaways

- **Elected Boards:** The state laws in all Surveyed States envisage an elected board.
- **Term of board:** In line with 97th Constitution Amendment Act, the term of the board is 5 years in all Surveyed States. However, there is divergence in the date of commencement of the 5-year period in a few states.
- **Professional directors (PDs):** 7 Surveyed States require co-option of PDs and 3 Surveyed States require election of such directors. Upon failure to elect such directors in these states, in 2 Surveyed States, such directors must be co-opted. In Gujarat, if such directors are not elected, RCS can direct co-option, failing which RCS will appoint such directors.
- **Number of PDs:** (a) 6 Surveyed States provide for election / co-option of up to 2 PDs (as may be applicable); (b) 2 Surveyed States provide for election of 2 PDs; (c) 1 Surveyed State provide that the number of PDs will be such as specified by RBI; and (d) the parent statute of 1 state is silent on the number.
- **Qualifications of PDs:** (a) 6 states specify the exact qualifications of PDs in the parent law; and (b) 7 Surveyed States expressly or impliedly recognise and require directors to fulfil the criteria stipulated by RBI.
- **Voting rights of PDs:** (a) Co-opted PDs do not have the right to vote in 6 Surveyed States; (b) Co-opted PDs in 1 Surveyed State does not have the right to vote in election; and (c) PDs in 3 states enjoy voting rights.
- **CEO qualification:** Except in Punjab, the remaining 9 states recognise the qualification criteria prescribed by RBI for the CEO or MD. Out of these 9 Surveyed States, in 7 Surveyed States, the failure to meet the qualifications stipulated by RBI is a ground for disqualification. In 5 Surveyed States, RBI / NABARD may specifically request for removal of a CEO who does not meet the qualifications prescribed by RBI. In two states, there is a requirement for a time bound removal of such CEO upon receipt from RBI.
- **Unique disqualification grounds for board members:** (a) being an MP/MLA or a Minister is a ground for disqualification; and (b) ineligible to be appointed for two continuous terms unless a period of not less than one term has expired since she last served.
- **Committee:** None of the Surveyed State laws mandate setting up of specific committees of the board. However, 2 Surveyed States provide an enabling power to the board to appoint such committees.
- **Frequency of board meetings:** Only 2 states specify the frequency of board meetings.
- **Auditor:** (a) auditor must be appointed from a panel approved by NABARD in 7 Surveyed States; and (b) in 3 Surveyed States, auditor is required to be appointed from a panel prepared by RCS / state government. In one Surveyed State, audit is required to be carried out as per the auditing standards notified by the state government.
- **Audit:** 8 Surveyed States mandate audit on specified items.
- **Government shareholding:** Except one Surveyed State, all other states have capped the state government shareholding in a co-operative bank at a maximum of 25%.
- **Government nominee:** State government can appoint a nominee to the board in all states. In all cas-

es, this power to tied to a case where the government has subscribed to the share capital of the society. In some cases, it is allowed where the government has guaranteed repayment of loan and in one state it is permitted where the government has given loans or advances to the society. In case of 2 Surveyed States, the government nominees must meet some qualifications prescribed in the law. For instance, in Odisha, the Government will propose 4 nominees who must have experience in banking, management, finance or related fields. Out of the 4 proposed nominees, the bank will appoint two government nominees to the board

- **Number of government nominee:** (a) 7 Surveyed States provide for one nominee of the government; (b) 2 Surveyed States empower the government to nominate two nominees; and (c) 1 Surveyed State empowers the government to appoint 3 nominees or 1/3rd of the total number of the members of the board, whichever is less. In case of this state, the state law provides that where government's shareholding is equal to or more than INR 20 lakh, one of the nominees may be appointed as chairman and another as MD.
- **Across all Surveyed States, supersession of the board may happen in two ways:** (a) supersession by the state government / RCS (RCS Supersession); and (b) supersession required by RBI (RBI Initiated Supersession)
- **Role of RBI in RCS Supersession:** (a) Only 2 Surveyed States expressly require RBI approval for RCS Supersession; (b) 6 states require RCS to consult with RBI; and (c) in 2 states the law is silent on the role of RBI.
- **RCS Supersession period:** (a) In 8 Surveyed States, the RCS Supersession may be in force for a period of one year; (b) in 1 Surveyed State, board may be superseded for a period of 3 years; and (c) in the remaining 1 Surveyed State, period of supersession is 2 years or the remaining term of the board, whichever is less.
- **RBI Initiated Supersession:** All Surveyed States provide for RBI Initiated Supersession. Only 5 Surveyed States require that in case RBI requires supersession of the board, the supersession of the board and the appointment of special officer will be made by RCS within one month of being advised by RBI.
- **Winding-up:** All Surveyed States require prior sanction of RBI for winding up of an insured co-operative bank. All Surveyed States make provision for winding up of an 'eligible co-operative bank' at the instance of RBI on the grounds specified in Section 13D of the DICGC Act. 5 Surveyed States specifically require the RCS to implement RBI's regulatory prescriptions regarding winding up within one month.
- **Treatment of non-active members:** 7 Surveyed States provide for treatment of non-active members. The definition of non-active member is not uniform across all these states. However, majority of the states treat a member who has failed to attend a specified number of meetings or utilise minimum level of services as non-active member. Different approaches adopted for treatment of a non-active member—(a) such a person can be disqualified as a member, (b) she is ineligible to participate in meetings for elections to the board; and/or (c) loses the right to vote for a specified period. In Maharashtra, any member who does not meet the criteria discussed above is first classified as a non-active member. If upon such classification, the member fails to utilise minimum services within a specified period and does not attend specified number of meetings, she is disqualified to be a member.
- **Filing returns with RCS:** Only 8 Surveyed States mandate filing of returns / statements with RCS.

Chapter 9:

Recommendations

Given the socio-demographic profile of the population in India, there cannot be a one size fits all approach for promoting the financial inclusion objectives of the government. Accordingly, this Report argues that there is merit in leveraging the outreach and connect of StCBs and DCCBs for promoting financial inclusion and empowerment of people. However, as highlighted in the Report, the existing legal framework for StCBs and DCCBs that is spread across state laws, BR Act and guidelines issued by RBI has resulted in a fragmented and uncertain framework for such banks. This leaves substantial scope for under regulation, friction and arbitrage. This in return is likely to impact several critical areas of functioning of such co-operative banks, including governance, financial health and resolution. Further, such a framework is not conducive to realise the true potential of co-operative banks in meeting the credit needs of the rural economy. For co-operative banks to remain relevant and meet the aspirational goals for which they were originally conceived, there is a need for a renewed and focused regulatory approach. This is particularly true in light of the stiff competition faced by such banks from the penetration of commercial banks in rural areas and the emergence of small finance banks and payments banks.

Despite these issues, StCBs and DCCBs have received considerably lesser regulatory attention at the central level. Notably, over the years, RBI has constituted several committees to study UCBs which have suggested several reforms for the sector, including voluntary transition of certain UCBs to small finance banks and setting up a board of management (which will be in addition to the existing board of directors) consisting of members with special knowledge and practical experience in banking to facilitate professional management and focussed attention to banking related activities. Likewise, there is a need for a concerted and more focused regulatory intervention for improving the functioning of the StCBs and DCCBs in India. The last such effort was made with the implementation of

the recommendations of the Vaidyanathan Committee Report that was released more than a decade ago.

Against this background, this Report seeks to initiate a discussion on issues plaguing StCBs and DCCBs that require urgent attention of policy makers, especially from a governance perspective. Although the primary purpose of this report is to underscore the problems of StCBs and DCCBs in India, we make the following preliminary recommendations regarding possible approaches for a more structured regulation of such banks.

Structural Changes Short Term Recommendations

Extending the provisions of the BR Act to multi-state co-operative banks

While multi-state co-operative banks are outside the scope of this Report, in light of the discussion on constitutional allocation of legislative powers, this Report proposes a review of the MSCS Act. As discussed above, the incorporation, regulation and winding up of multi-state co-operative societies is currently dealt with by the MSCS Act which was enacted by the Parliament pursuant to Entry 44 of List I¹⁹⁸. Given that the power to regulate such multi-state co-operative societies is traced to the Union List and thereby within the legislative competence of the Parliament, the government should consider extending all the provisions of the BR Act as applicable to a banking company to multi-state co-operative banks. To the extent, the provisions of the MSCS Act are not inconsistent to the provisions of the BR Act, the same may continue to apply to such multi-state co-operative banks.

Medium Term Recommendations

The medium term recommendations seek to provide

198 Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala & Ors. (2013) 16 SCC 82.

the Central Government acting through the RBI and / or any other central authority with direct supervisory powers for regulation and resolution of StCBs and DCCBs. For this purpose, the Report sets out below following possible regulatory approaches.

Amendment to the Constitution

There are two possible approaches under this option.

Bring co-operative banks in the Concurrent List

As highlighted in the previous chapters, regulation of co-operative societies (operating in a single state), including its incorporation, management and winding-up is within the legislative competence of the state legislature. Due to this constitutional allocation of legislative power, RBI does not have adequate regulatory oversight over such co-operative banks. This has resulted in a fragmented framework creating opportunities for regulatory arbitrage. The registration of such banks as co-operative societies cannot be a ground for subjecting them to a dual and possibly, a lesser effective regulatory framework as compared to other banking companies. The legal framework for such banks should be proportionate to the risk undertaken by them while carrying out banking activities. This is particularly significant since such banks primarily cater to smaller households. Having said that, in light of the role of such banks in the state credit delivery structure, its interconnectedness with the agricultural sector in the state and the regional socio-economic factors impacting its functioning, one may argue that obliterating the role of the state government in regulating such co-operative societies may not be feasible.

In light of this, the government may consider an amendment to the Seventh Schedule of the Constitution to carve out the regulation and resolution of co-operative banks (operating in a single state) from List II and bring it to List III. The report of the Joint Committee on Indian Constitutional Reform to which the genesis of the Concurrent List may be traced succinctly explains the rationale for concurrent legislative powers under the Constitution, which we believe is also relevant in the context of the regulation of co-operative banks and the challenged faced by it due to the existing constitutional allocation of powers. Based on experience in India and other jurisdictions, the committee explains that such concurrent legislative powers are required to secure uniformity in

the principles of law across India, guide and encourage provincial effort, or to remedy mischiefs originating in a province but extending beyond its boundaries¹⁹⁹.

In light of this, Entry 32 of State List should be amended to carve out the regulation and resolution of co-operative banks and the same should be added as a new entry to List III (Concurrent List). Consequent to such an amendment, both central and state governments will have the power to legislate on co-operative banks. Pursuant to this amendment, the Central Government should enact a law for regulating co-operative banks. Such a law should provide for the following:

- It should clearly set out the objective, scope and extent of the law. The Central Government may consider to extend its direct oversight and regulation under this law to specific co-operative banks which may be determined based on attributes such as size, nature and volume of transactions, interconnected with other financial institutions (if any), etc (“**Prescribed Co-operative Banks**”).
- Any other co-operative banks may be regulated by the state government, subject to such banks meeting minimum requirements set out in the central law.
- The central law should be a complete code for the purposes of regulation and resolution of co-operative banks. There should be a complete and coherent scheme of the statutory provisions for attainment of the object and purpose of the law. It should clearly set out the machinery to deal with the issues sought to be addressed by the law, including identification of the regulator, obligations of such banks, delineation of powers of the regulator to enforce the provisions of the law, adjudicatory scheme to deal with grievances of persons affected by the enforcement of the law and a provision for an appellate mechanism.²⁰⁰
- The law should also set out minimum standards / requirements that must be met by cooperative banks, other than the Prescribed Co-operative Banks. The state governments will be competent to legislate on such aspects of these banks which are not regulated under the central law.

In terms of Article 254 of the Constitution in case of

199 Report of the Joint Committee on Indian Constitutional Reform (1934) at pages 30-31. The committee cites the Indian Penal Code, labour reform legislation and legislation for the control and prevention for epidemics respectively as examples for each of these categories.

200 See *Girnar Traders v State of Maharashtra & Ors.* (2011) 1 SCC (Civ) 578, para 80.

any inconsistency between the aforesaid central law and the state law on co-operative bank, the central law will prevail and the state law, to the extent of such inconsistency will be void. However for the central law to prevail, the aforesaid features should be incorporated to evince the legislative intention of the Parliament to cover the whole field by laying down an exhaustive code in respect of the Prescribed Co-operative Banks and the minimum standards for the remaining co-operative banks.

Bring co-operative banks in the Union List

Another possible approach is to amend the Seventh Schedule to carve out the regulation and resolution of co-operative banks from the State List and insert it in the Union List. Pursuant to such an amendment, only the Parliament will have the competence to legislate on co-operative banks. The government may consider restricting its power to regulate specific co-operative banks in public interest.

In implementing any of the options discussed above, the following issues must be considered.

- First, the institutional capacity for implementing such a shift in the regulatory architecture including the ability of the existing institutional capacity in the RBI for supervising the operations of all co-operative banks should be assessed.
- Second, given that an amendment to any of the lists in the Seventh Schedule of the Constitution must be ratified by the legislature of not less than one half of the states by resolution before the constitution amendment bill is presented to the President for her assent, concerns regarding the feasibility of these approaches arise. However, given that an amendment bringing the regulation and resolution of co-operative banks in the Concurrent List does not completely obliterate the power of the state legislature to legislate on such banks, state governments may be more forthcoming with such an amendment.
- Third, StCBs and DCCBs play a crucial role in the rural agricultural credit dispensation mechanism in a state. Such banks meet the short-term credit requirements of the agricultural sector, including that of PACs which do not require a banking license. The functioning of such banks is intrinsically connected with both agricultural and non-agricultural lending in a state. Perhaps, given the impact of such banks on the economy of a state, state governments have at times provided financial assistance to such co-op-

erative banks and have also recapitalised financially weak banks. The impact of any constitutional amendment carving out regulation and resolution of co-operative banks, amongst other things, will have to take into account such issues.

Resolution under Article 252

Under Article 252, legislatures of two or more states may pass resolutions accepting the authority of the Parliament to pass a law on a subject with respect to which Parliament has no power to make laws for the state. Any law so passed by the Parliament will be applicable to the concerned state that passed a resolution under Article 252 and any other state that by which it is adopted afterwards. Pursuant to such a resolution, the Parliament can enact a law for regulation and resolution of co-operative banks that will be applicable to all states that passed and / or adopted such a resolution under Article 252. However, any state which does not accept the authority of the Parliament by passing a resolution under Article 252 will not be bound by the provisions of the law made by Parliament. Accordingly, the efficacy of this approach will be determined by the number of states that agree to pass the resolution empowering the Central Government to legislate on co-operative banks.

Drafting a Model Law

The Central Government may consider drafting a model law on co-operative banks which can be adopted by the state government. The key findings of the mapping of the state laws in Chapter 8 indicate there is divergence in the treatment of specific governance related issues in such laws. This is in contrast to the uniform framework for banking companies under the BR Act and the Companies Act, 2013. Further, the key findings in Chapter 8 also set out some best practices adopted by certain states that will be instrumental for better management of such co-operative banks. In light of this, this report recommends designing a model law harmonising the legal framework for all co-operative banks for better and effective regulation of their banking activities.

A review of the provisions of the state laws on co-operative societies in the Surveyed States indicate that there is lack of clarity regarding applicability of specific provisions to co-operative banks. In certain states, there are special provisions for co-operative banks (such as provisions for the board members, supersession by RCS, disqualification of member, etc.). However, the law does not clarify if such special provisions are in addition to the general provisions. Similarly, in certain states (like Maharashtra), the law in certain cases (like constitution of the board, supersession by RCS) provide that the

provisions of the BR Act are applicable to co-operative banks, without explaining the scope and extent of such application. The absence of a legal framework that clearly sets out the provisions applicable to co-operative banks creates uncertainty for banks, regulators and possibilities of regulatory arbitrage. A model law for co-operative banks will pave the way for focused regulatory attention on such banks. However, past experience indicates that states have typically not been forthcoming in implementing such model laws as there is no obligation on them to adopt such laws.

Creating a new regulator for co-operative banks

Any legislative intervention to confer direct powers to the Central Government (through an amendment to the constitution or a resolution under Article 252 or a model law) to regulate the banking activities of StCBs and DCCBs will require a relook at the institutional capacity of the existing infrastructure to supervise such banks spread across different regions of the country with deep rooted local connections and issues. While co-operative banks carry out banking functions, given their essential characteristic of being member driven institutions, their role in provision of agricultural credit in the concerned state and their inter-connectedness with the rural credit dispensation mechanism, they present unique issues and challenges. Such issues and challenges can be better addressed by creating a new regulator that will focus on the regulation and development of the co-operative banking sector in India. Such a regulator should have representation from both RBI and NABARD with a view to leverage the existing expertise of RBI in regulating banking activities and that of NABARD in supervising co-operative banks and the rural credit delivery mechanism.

Specific Recommendations

Without prejudice to the adoption of any of the medium-term structural changes recommended aforesaid, this section sets out specific provisions which we believe should be harmonised across all states. These recommendations are primarily based on the key findings of the mapping of the state laws as discussed in Chapter 8 above. Please note that this is only an illustrative list of key provisions that we believe should be reflected in a legal framework for regulating co-operative banks. In addition to these, provisions similar to the BR Act which provides for prior approval of the banking regulator for appointment of the

chairman or managing director, change in the terms of their appointment, appointment of auditors, removal of managerial persons in specific circumstances, etc. may also be considered for StCBs and DCCBs.

Professional Directors

Currently, there is no uniformity in the provisions for professional directors across state laws, including provisions for qualifications, number, appointment process and rights of such directors. Given the specific nature of activities carried on by co-operative banks, the presence of professional directors becomes critical with a view to ensure effectiveness of the board. This can also be seen in case of the BR Act which mandates banking companies to have not less than 51% of total number of directors with such knowledge or qualifications as specified under the Act. Therefore, the law should harmonise the qualification requirements of professional directors across states. Further, the law should mandate election of specific number of professional directors, failing which RBI should be empowered to appoint such professional directors to the board of StCBs and DCCBs. This provision will be over and above the co-option requirement as set out in the Constitution. In specifying the qualifications for such directors, knowledge or experience in the field of co-operation, rural economy, etc. should also be considered. The law should also empower RBI to remove a professional director who does not meet the qualifications set out in the law within specified timelines. Alternatively, if conferring direct powers to RBI to appoint or remove professional directors is not feasible, there should be specific provisions empowering RBI to require RCS to appoint such professional directors to an StCB or DCCB or remove directors failing to meet such criteria, as the case may be, and the law must set out strict timelines (preferably one month) for implementation of RBI's direction.

Representation of Interests of Depositors

As discussed above, none of the Surveyed States mandate appointment of a board member representing interests of depositors. The conflict of interest that exist in the co-operative structure has already been elaborated above. Some committees in the past have recommended appointment of representatives of depositors in the board with a view to protect the interests of depositors. However, given that there may be several depositors with such banks, implementation of a framework regarding appointment of such representatives by depositors may be challenging. Accordingly, introduction of the concept

of an independent director meeting specific qualification criteria stipulated by RBI may be considered. While such a director will be appointed by the members of the society, the appointment process should require ratification by a specified majority of the depositors.

Qualifications of CEO

In line with majority of the states, the law should require that qualifications prescribed by RBI should be fulfilled by the CEO, failing which RBI should be empowered to remove such CEO and appoint another person in place of her. Alternatively, if conferring direct powers to RBI is not feasible, there should be specific provisions empowering RBI to require the RCS to remove such CEO and the law must set out strict timelines (preferably one month) for implementation of RBI's recommendation.

Grounds for disqualification

Currently, there is divergence in the state laws on the grounds for disqualifications of directors. There is a need to harmonise the grounds for disqualification applicable to StCBs and DCCBs operating in different states. Specifically, with a view to ensure that the board of management of an StCB or DCCB is not dominated by the same set of persons, there is merit in adopting a cooling off period for directors as in the case of Punjab. Accordingly, a person should not be eligible for being elected to the board for a continuous period of two terms unless a period of minimum one term has expired since she last served. Similarly, other common grounds could be being a defaulter of loan, being an inactive member, etc.

Committees of the Board

The law should consider mandating co-operative banks to set some mandatory committees such as audit committee, risk management committee, loan committee, etc. especially relevant for the purposes of conducting the banking activity of the co-operative bank. The law should empower RBI to prescribe the composition, mandate and procedure to be adopted by such committees.

Board meetings

Currently, the law in most Surveyed States does not mandate minimum number of meetings for the governing board. The law should specify the minimum number of meetings for the board.

Presence of State nominee on the Board

Currently, there is no uniformity regarding the number

and qualifications of government nominees. There is a need to revisit the grounds for appointment of government nominee on board of StCBs and DCCBs, the number of nominees and the voting power of such nominees. In line with the practice in Odisha and Maharashtra, the law should prescribe a minimum qualification for the nominee director.

RCS Supersession

In case of a supersession by RCS, there is a need to expressly clarify the requirement for a prior RBI approval. As discussed above, most states provide for a consultation process and there is no clarity if such consultation is binding. The law must specify that RBI's recommendation regarding supersession will be binding on the RCS. Further, the period of supersession must be harmonised across state laws which should be in line with the time-period specified under the Constitution.

RBI Initiated Supersession

In line with states like Andhra Pradesh, West Bengal and Uttar Pradesh, the law should provide for timeline for implementation of RBI's requirement regarding supersession of the board of the StCB and DCCB and appointment of special officer. The period of supersession should also be harmonised.

Role of RBI in winding-up

In line with the position in 5 Surveyed States, the state law should provide a timeline within which RBI's regulatory prescriptions regarding winding-up and appointment of liquidator should be implemented.

Treatment of non-active members

A review of the Surveyed States indicates that only few states provide for treatment of non-active members. Further, there is divergence in the state laws in the consequences of being a non-active member. Therefore, the law should provide for:

(a) Definition of non-active member. It should be tied to the services availed by the members for a specified period and attendance of a minimum number of meetings.

(b) The consequences of being classified as a non-member should be set out in the law. Such a member should be disqualified from voting in elections, contesting elections and possibly disqualification in certain cases.

Annexure A

Financial Health of StCBs in the Surveyed States from FY 2012-13 to FY 2017-18

Deposit Size (INR Lakh)

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Trend
Andhra Pradesh	4,05,983	4,63,078	5,20,844	3,53,826	3,75,604	2,86,695	
Gujarat	5,27,469	6,94,565	6,36,888	5,17,804	5,55,708	5,80,150	
Haryana	2,37,582	2,05,734	2,17,955	3,10,492	3,74,029	3,39,793	
Karnataka	6,00,389	6,00,389	7,11,915	7,20,148	7,20,148	9,15,142	
Maharashtra	15,42,640	13,47,482	9,99,267	11,26,844	16,37,678	15,29,321	
Madhya Pradesh	4,30,903	4,60,852	5,09,562	5,01,272	5,90,131	4,66,707	
Odisha	5,13,188	5,99,213	6,52,929	6,67,579	7,52,792	8,11,675	
Punjab	2,81,301	2,97,257	2,67,320	2,56,017	2,64,330	2,79,437	
Uttar Pradesh	1,32,010	5,26,706	6,83,078	7,11,057	6,39,686	6,15,455	
West Bengal	5,03,156	5,03,156	5,03,156	5,03,156	5,03,156	5,03,156	

Percentage of Overdues to Demand (%)

	2012-13	2013-14	2014-15	2015-16	2016-17	Trend
Andhra Pradesh	1.08	5.85	2.82	0.46	0.37	
Gujarat	1.92	1.48	1.3	1.41	2.99	
Haryana	0.05	0.05	0.05	0.04	0.04	
Karnataka	2	2	2.13	3.6	3.6	
Maharashtra	10.76	9.08	6.08	0	0	
Madhya Pradesh	2.35	1.76	0	0	10.34	
Odisha	2.89	2.68	2.41	2.07	1.94	
Punjab	1.09	0.95	0.81	0.75	0.74	
Uttar Pradesh	5.17	3.79	3.23	4.02	3.83	
West Bengal	6.74	6.74	6.74	6.74	6.74	

Profit (INR Lakh)

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Trend
Andhra Pradesh	4,05,983	4,63,078	5,20,844	3,53,826	3,75,604	2,86,695	
Gujarat	5,27,469	6,94,565	6,36,888	5,17,804	5,55,708	5,80,150	
Haryana	2,37,582	2,05,734	2,17,955	3,10,492	3,74,029	3,39,793	
Karnataka	6,00,389	6,00,389	7,11,915	7,20,148	7,20,148	9,15,142	
Maharashtra	15,42,640	13,47,482	9,99,267	11,26,844	16,37,678	15,29,321	
Madhya Pradesh	4,30,903	4,60,852	5,09,562	5,01,272	5,90,131	4,66,707	
Odisha	5,13,188	5,99,213	6,52,929	6,67,579	7,52,792	8,11,675	
Punjab	2,81,301	2,97,257	2,67,320	2,56,017	2,64,330	2,79,437	
Uttar Pradesh	1,32,010	5,26,706	6,83,078	7,11,057	6,39,686	6,15,455	
West Bengal	5,03,156	5,03,156	5,03,156	5,03,156	5,03,156	5,03,156	

GNPA (%)

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Trend
Andhra Pradesh	1.94	2.27	2.65	0.43	1.79	1.58	
Gujarat	1.41	2.30	2.20	2.50	2.03	2.15	
Haryana	0.05	0.05	0.05	NA	0.03	0.04	
Karnataka	3.29	3.29	3.77	3.25	3.25	4.39	
Maharashtra	16.38	14.66	11.71	9.27	7.98	9.91	
Madhya Pradesh	1.70	0.80	1.43	4.15	4.81	4.86	
Odisha	4.61	3.76	2.85	2.42	2.11	1.72	
Punjab	0.80	0.77	0.78	0.85	0.89	1.00	
Uttar Pradesh	4.51	5.06	4.83	4.15	5.70	8.49	
West Bengal	3.00	3.00	3.00	3.00	3.00	3.00	

Source: NAFSCOB website.

Notes:

1. NA: Not Available.
2. Surveyed States are arranged in alphabetical order.
3. Deposit Size, Percentage of Overdues to Demand, Profit and GNPA: Data for West Bengal pertains to FY 2012-13 and has not been updated thereafter.
4. Deposit Size, Percentage of Overdues to Demand, Profit and GNPA for FY 2013-14: Data for Karnataka pertains to FY 2012-13 and has not been updated.
5. Deposit Size, Percentage of Overdues to Demand, Profit and GNPA for FY 2016-17: Data for Karnataka pertains to FY 2015-16 and has not been updated.

Financial Health of DCCBs in the Surveyed States from FY 2012-13 to FY 2017-18

Deposit Size (INR Lakh)

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Trend
Andhra Pradesh	4,90,866	5,39,721	6,57,828	6,10,682	7,74,311	8,45,880	
Gujarat	15,75,494	18,29,500	20,48,600	22,26,557	25,04,485	26,65,345	
Haryana	5,49,271	5,72,377	5,93,859	8,67,752	9,32,060	8,36,959	
Karnataka	9,84,285	10,90,969	15,31,615	17,11,481	18,77,103	21,80,846	
Maharashtra	51,95,260	55,56,953	61,50,267	66,12,994	70,39,346	75,00,711	
Madhya Pradesh	9,65,261	9,94,400	10,33,994	11,57,586	13,24,586	14,89,186	
Odisha	5,47,751	6,19,563	6,73,859	7,20,032	8,17,089	8,53,870	
Punjab	9,30,149	9,80,127	10,67,380	11,69,893	12,42,174	12,42,160	
Uttar Pradesh	11,29,675	11,63,014	12,13,761	13,06,987	15,09,768	15,78,670	
West Bengal	5,79,142	6,90,592	9,76,377	10,23,062	11,46,329	12,23,166	

Percentage of Overdues to Demand (%)

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Trend
Andhra Pradesh	24.40	41.07	26.40	27.75	16.25	17.40	
Gujarat	16.67	20.05	26.81	23.15	26.48	29.60	
Haryana	25.51	26.72	25.92	26.64	28.28	29.32	
Karnataka	10.75	9.25	4.98	4.59	6.83	9.82	
Maharashtra	37.09	39.28	43.49	40.51	44.60	40.24	
Madhya Pradesh	33.27	31.53	33.36	32.16	34.38	48.57	
Odisha	22.05	19.73	20.07	18.75	20.28	23.35	
Punjab	7.86	7.81	8.15	9.14	14.14	17.65	
Uttar Pradesh	22.91	21.94	20.22	18.67	32.89	28.34	
West Bengal	19.09	18.87	17.13	17.58	16.13	16.46	

Profit & Loss (INR Lakh)

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Trend
Andhra Pradesh	5,394	3,502	4,446	5,713	2,771	2,184	
Gujarat	624	2,136	4,727	11,232	15,253	2,184	
Haryana	2,928	-2,178	-5,163	-2,058	147	-2,289	
Karnataka	10,623	8,601	4,062	3,308	5,587	8,781	
Maharashtra	73,724	49,535	17,421	75,495	33,354	34,690	
Madhya Pradesh	13,995	12,693	11,484	10,753	12,786	9,269	
Odisha	-6,634	5,762	5,023	6,281	8,412	13,005	
Punjab	3,683	3,592	2,215	1,753	132	50	
Uttar Pradesh	-21,318	-21,570	-10,491	-15,900	-38,150	-40,065	
West Bengal	1,779	3,036	-4,851	-4,910	-4,203	-4,107	

Source: NAFSCOB website

Annexure B

This Annexure sets out a comparative study of the parent statute on co-operative societies in the Surveyed States. As discussed in Chapter 2, for the purposes of this mapping, this Report focuses on the parent statute (as publicly available) applicable to co-operative societies in the Surveyed States. Subordinate legislation (like rules, regulations or notifications) and bye-laws of co-operative banks have not been considered for the purposes of this mapping. The state laws reviewed for this mapping are:

1. The Karnataka Co-operative Societies Act, 1959 (“Karnataka CS Act”)
2. The Maharashtra Co-operative Societies Act, 1960 (“Maharashtra CS Act”)
3. The Gujarat Co-operative Societies Act, 1961 (“Gujarat CS Act”)
4. The Uttar Pradesh Co-operative Societies Act, 1965 (“UP CS Act”)
5. The Punjab Co-operative Societies Act, 1961 (“Punjab CS Act”)
6. The West Bengal Co-operative Societies Act, 2006 (“WB CS Act”)
7. The Haryana Co-operative Societies Act, 1984 (“Haryana CS Act”)
8. Madhya Pradesh Sahkarkari Society Adhinyam, 1960 (“MP CS Act”)
9. The Odisha Co-operative Societies Act, 1962 (“Odisha CS Act”)
10. The Andhra Pradesh Co-operative Societies Act, 1964 (“AP CS Act”)

Elected board:¹ Is the board elected?

Punjab	Yes. ²
Odisha	Yes. ³
Andhra Pradesh	Yes. ⁴
Maharashtra	Yes
Madhya Pradesh	Yes. ⁵
Haryana	Yes. ⁶
West Bengal	Yes. ⁷
Karnataka	Yes. ⁸
Gujarat	Yes. ⁹
Uttar Pradesh	Yes.

1 Board refers to board of directors or the committee of management, as the case may be.

2 Punjab CS Act, Section 26.

3 Odisha CS Act, Section 28-A(1)(i).

4 AP CS Act, Section 31.

5 MP CS Act, See Section 49(1)(b).

6 Haryana CS Act, Section 28(1).

7 WB CS Act, Section 32(1)(a).

8 Karnataka CS Act, Section 28B.

9 Gujarat CS Act, Section 74C.

Term of the board: What is the term of the board?

Punjab	Five years from the date of election. ¹⁰
Odisha	Five years from the date of election of the President ¹¹
Andhra Pradesh	Five years from the date of election. ¹²
Maharashtra	Five years from the date of election. ¹³
Madhya Pradesh	Five years from the date of the first meeting of the board. ¹⁴
Haryana	Five years from the date of election. ¹⁵
West Bengal	Five years. ¹⁶
Karnataka	Five years from the date on which a majority of the elected members of the board assume office or the term of the outgoing board expires, whichever is later. ¹⁷
Gujarat	Five years from the date of election. ¹⁸
Uttar Pradesh	Five years. ¹⁹

Specialised directors on board: Does the state law provide for appointing professional or expert directors?

Punjab	Yes. Mandates co-option of upto two persons having experience in the field of banking, management, finance or any field related to the objects and activities of the society. ²⁰
Odisha	Yes. Mandates co-option of upto two persons having experience in the field of banking, management, finance or specialisation in any field relating to the objects or activities of the society. ²¹
Andhra Pradesh	Yes. Professional directors must be co-opted to the board, if they are not elected. ²²
Maharashtra	Yes. The board may co-opt upto two expert directors relating to the objects and functions of the society. ²³ The law also provides that provisions of the BR Act is applicable. ²⁴ However, the scope and extent of the application of the BR Act in this regard is not clear.
Madhya Pradesh	Yes. Mandates co-option of upto two persons having experience in the field of banking, management, finance or specialisation in any other field relating to the objects and activities of the co-operative society. ²⁵
Haryana	Yes. Two professional directors (called as functional directors) having experience as specified

10 Punjab CS Act, Section 26(1B).

11 Odisha CS Act, Section 28(1-aa).

12 AP CS Act, Section 31(2).

13 Maharashtra CS Act, Section 73AAA (3).

14 MP CS Act, Section 49(7A).

15 Haryana CS Act, Section 28(4).

16 WB CS Act, Section 32(5) (a).

17 Karnataka CS Act, Section 29-A (1).

18 Gujarat CS Act, Section 74(1C).

19 UP CS Act, Section 29(2)(a).

20 Punjab CS Act, Section 26A (4).

21 Odisha CS Act, Section 31(2).

22 AP CS Act, Section 115D (20).

23 Maharashtra CS Act, Section 73AAA (2).

24 Maharashtra CS Act, Second proviso to Section 73AAA(1).

25 MP CS Act, Section 48(9).

by the RBI shall be elected, failing which such directors shall be co-opted.²⁶

West Bengal	Yes. The law requires election of such number of professionals on the board having knowledge in such fields as may be stipulated by RBI. If such professionals cannot be elected, they should be co-opted by the board. ²⁷
Karnataka	Yes. The board may co-opt upto two persons having experience in the fields of banking, management, finance or specialisation in any other field relating to the objects and activities undertaken by the society. ²⁸
Gujarat	Yes. The law mandates election of two professionals on the board having qualifications prescribed by RBI or NABARD. If such members are not elected, RCS shall direct the concerned bank to co-opt such professionals within a stipulated time, failing which the RCS shall appoint such members to the board. ²⁹
Uttar Pradesh	Yes. The board must co-opt a maximum of two professionals with special knowledge or experience in the field of accounting, law, banking, management, agriculture or rural economy as may be stipulated by the state government. ³⁰

Fit and proper criteria for board members: Does the state law recognise RBI/NABARD guidelines for qualifications/appointment of members on the board?

Punjab	The law is silent on such guidelines.
Odisha	The law is silent on such guidelines.
Andhra Pradesh	Yes. The law specifies that directors who do not fulfil the eligibility criteria stipulated by RBI must be removed by the RCS at RBI or NABARD's request. ³¹
Maharashtra	The law is silent on such guidelines.
Madhya Pradesh	Yes. The law specifies that if an officer (which includes a board member) does not fulfil the eligibility criteria stipulated by RBI, the RCS may either by his own or on the request of the RBI, remove such officer. ³²
Haryana	Yes. Professional directors are required to fulfil the criteria specified by the RBI. ³³
West Bengal	Yes. Members of the board should fulfill the criteria laid down by the RBI. Any member, who in the opinion of RBI / NABARD does not fulfill such criteria shall be removed on the advice of RBI or NABARD. ³⁴ Such removal should be implemented within one month from the date of RBI's advice. ³⁵
Karnataka	Yes. Board members must fulfill the criteria stipulated by RBI. ³⁶ Any director who does not fulfill such criteria shall be removed by the appointing authority or RCS (as the case may be)

26 Haryana CS Act, First proviso to Section 29(4).

27 WB CS Act, Section 135C (16).

28 Karnataka CS Act, Section 28-A(4A).

29 Gujarat CS Act, Section 74(2).

30 UP CS Act, Section 29(6).

31 AP CS Act, Section 115D (19).

32 MP CS Act, Section 53C read with Section 2(t-i).

33 Haryana CS Act, First proviso to Section 29(4).

34 WB CS Act, Section 134C (15) (a).

35 WB CS Act, Section 134C (19)(d).

36 Karnataka CS Act, Section 98-5 (1).

within two months of being advised by RBI.³⁷

Gujarat	Yes. The qualifications for appointment of the directors are as determined by RBI from time to time. Additionally, at RBI's request, the RCS or the board must remove a director who does not fulfil the criteria stipulated by the RBI. ³⁸
Uttar Pradesh	Yes. While the Act does not expressly mandate that directors should comply with the criteria stipulated by RBI, it provides that upon request by RBI, a director who does not meet the criteria specified by RBI will be removed by the competent authority. ³⁹

Qualification of MD/ CEO: Does the state law recognise qualifications for the appointment of the MD/CEO prescribed by the RBI/NABARD?

Punjab	The law is silent on such guidelines.
Odisha	Yes. The law specifies that eligibility qualifications of the CEO shall be such as is stipulated by NABARD in consultation with RBI. ⁴⁰ Further, where the CEO does not meet such qualifications, the concerned bank shall at the request of NABARD or RBI remove such CEO. ⁴¹
Andhra Pradesh	Yes. The law specifies that a CEO who does not fulfil the eligibility criteria stipulated by RBI must be removed by the RCS at RBI or NABARD's request. ⁴²
Maharashtra	Yes. The law specifies that the qualification criteria of a CEO shall be such as may be prescribed by the RBI. ⁴³
Madhya Pradesh	Yes. The law specifies that the CEO must have such qualifications as specified by the RCS in accordance with the guidelines issued by the RBI. ⁴⁴
Haryana	Yes. For a co-operative bank, the MD shall be appointed in accordance with RBI guidelines, and MDs not fulfilling such criteria must be removed. ⁴⁵
West Bengal	Yes. The CEO should fulfill the criteria laid down by RBI. Any CEO, who in the opinion of RBI / NABARD does not fulfill such criteria must be removed on the advice of RBI /NABARD. ⁴⁶ Such removal should be implemented within one month from the date of RBI's advice. ⁴⁷
Karnataka	Yes. CEO must fulfill the criteria stipulated by RBI. ⁴⁸ A CEO who does not fulfill such criteria must be removed by the appointing authority / RCS (as the case may be) within two months of being advised by RBI. ⁴⁹ If in the opinion of RBI/NABARD, the CEO of a StCB or DCCB does not fulfill the eligibility criteria specified by RBI, the RCS must direct compliance with the order of RBI or NABARD within two months of being so advised by RBI or NABARD, as the case may be. ⁵⁰
Gujarat	Yes. The law specifies that the qualifications for appointment of the CEO will be as determined by RBI from time to time. Additionally, at RBI's request, the RCS or the board must

37 Karnataka CS Act, Section 98-S(2).

38 Gujarat CS Act, Section 76.

39 UP CS Act, First proviso to Section 38(1).

40 Odisha CS Act, Proviso to Section 33A.

41 Odisha CS Act, Section 28.

42 AP CS Act, Section 115D(19).

43 Maharashtra CS Act, Proviso to Section 74(2).

44 MP CS Act, Section 49E(3).

45 Haryana CS Act, Second proviso to Section 31.

46 WB CS Act, Section 134C(15)(a).

47 WB CS Act, Section 134C(19)(c).

48 Karnataka CS Act, Section 98-S(1).

49 Karnataka CS Act, Section 98-S(2).

50 Karnataka CS Act, Section 98-X(3).

remove a CEO who does not fulfil the criteria stipulated by the RBI.⁵¹

Uttar Pradesh Yes. While the Act does not expressly mandate that directors should comply with the criteria stipulated by RBI, it provides that upon request by RBI, a director who does not meet the criteria specified by RBI will be removed by the competent authority.⁵²

Voting powers of co-opted directors: Do co-opted members of the board enjoy voting rights?

Punjab	No. Co-opted directors do not have voting rights. ⁵³
Odisha	Co-opted professional directors do not have the voting rights in any election. ⁵⁴
Andhra Pradesh	Co-opted professional directors enjoy full rights. ⁵⁵
Maharashtra	Expert directors do not enjoy voting rights at any election. ⁵⁶
Madhya Pradesh	Co-opted directors do not have voting rights in elections. ⁵⁷
Haryana	Professional co-opted directors do not have right to vote in any elections. ⁵⁸
West Bengal	Professional directors, whether elected or co-opted have full voting rights. ⁵⁹
Karnataka	Co-opted members do not have voting rights. ⁶⁰
Gujarat	Professional members on the board, whether elected or co-opted, enjoy voting rights like other members. ⁶¹
Uttar Pradesh	Generally, co-opted professionals do not have right to vote in election or in any no-confidence motion moved. ⁶²

Disqualifications for directors/members of the board: Does the state law prescribe grounds for disqualification for being directors/members of the board?

Punjab	Yes. A person is not eligible to be elected to the board if she has served on the board for two continuous terms, unless a period of not less than one term has expired since she served last. ⁶³
Odisha	Yes. Grounds for disqualifications have been prescribed. This includes: (a) being an undischarged insolvent; (b) being convicted of misappropriation of funds; (c) holding an office of profit under the state or central government; (d) abstaining from board meetings over a continuous period of six months; and (e) default in payments. ⁶⁴

51 Gujarat CS Act, Section 76.

52 UP CS Act, First proviso to Section 38(1).

53 Punjab CS Act, Second proviso to Section 26A(4).

54 Odisha CS Act, Section 31(2).

55 AP CS Act, Section 115D(20).

56 Maharashtra CS Act, Seventh proviso to Section 73AAA(2).

57 MP CS Act, Section 48A(9).

58 Haryana CS Act, Second proviso to Section 29(4).

59 WB CS Act, Section 134C(16).

60 Karnataka CS Act, Second proviso to Section 28-A(4A).

61 Gujarat CS Act, Section 74(2).

62 UP CS Act, Section 29(6).

63 Punjab CS Act, Section 26-B(2).

64 Odisha CS Act, Sections 28(3) and 3(a).

Andhra Pradesh	<p>Yes. Grounds for disqualifications have been prescribed. This includes: (a) being a near relative of its financing bank; (b) being in default of payment to the said bank; (c) acquiring any interest in any subsisting contract/ work being done for the society; (d) carrying out a business declared to be in conflict with that of the society; and (e) being an employee of the state / central government, or any undertaking of the government.⁶⁵</p> <p>Further, an MLA, MP, elected member or Chairman of Zilla Parishad, Sarpanch of a Gram Panchayat or Chairman of Municipal Corporation/ Council, etc. is not eligible to be elected as a member unless she ceases to hold such office.⁶⁶</p> <p>Existing members may be disqualified if they are absent for three consecutive meetings of the board.⁶⁷</p> <p>Members of the board of an StCB or DCCB representing a co-operative credit society that commits default for a period exceeding one year⁶⁸ are also disqualified to continue as members.</p>
Maharashtra	<p>Yes. Grounds for disqualification have been prescribed. This includes:⁶⁹ (a) being a defaulter of any society; (b) representing a society (other than a PAC) that has defaulted towards payment to the concerned bank for a period exceeding ninety days; (c) representing a society whose board has been superseded; and (d) being a non-active member. Board members of insured co-operative banks which have been superseded on RBI's requisition are not eligible to be on the boards of any other bank for a period of two terms from the date of supersession.⁷⁰</p>
Madhya Pradesh	<p>Yes. Grounds for disqualification have been prescribed. This includes: (a) default for loans taken from any society for a period of more than 12 months, or (b) dues pending to the Madhya Pradesh State Electricity Board for a period exceeding six months etc.⁷¹ Members of superseded boards are also ineligible for contesting elections and from being co-opted or nominated to boards for seven years.⁷²</p>
Haryana	<p>This has not been specifically provided. However, individuals cannot be members of the boards of more than two primary co-operative societies, one central society and one apex society.⁷³</p>
West Bengal	<p>Yes, disqualifications have been prescribed for election, nomination or co-option of board members. Grounds include:⁷⁴(a) if a person represents a society (other than a PAC or co-operative agricultural and rural development bank, etc.) that has defaulted in the payments to the bank for a period exceeding 90 days; (b) if a person has defaulted towards payment to a PAC or co-operative agricultural and rural development bank; and (c) a person who represents a society whose board has been superseded.</p> <p>General disqualifications prescribed for all co-operative societies are also applicable. Such grounds include, if the concerned person:⁷⁵ (a) has been convicted of an offence; (b) holds an office of profit in the society; (c) has an interest in the business carried on by the society and any agreement to which the society is a party; and (d) has defaulted</p>

65 AP CS Act, Section 21A.

66 AP CS Act, Section 21A(1B).

67 AP CS Act, Section 21B.

68 AP Act, Section 115D(12)(a).

69 Maharashtra CS Act, Section 73CA(1).

70 Maharashtra CS Act, Section 73CA(3A).

71 MP CS Act, Section 50A. There appears to be some discrepancy in the Act between Section 48AA and Section 50A. Section 48AA provides that individuals are also ineligible for elections as members of the board if they suffer from any of the disqualifications under the Act. However, the Explanation to Section 48AA provides that the provisions of Section 50A does not qualify as a disqualification under Section 48AA. It is not clear if the explanation should apply to entire Section 48AA or is specific to the disqualification procedure set out in proviso to Section 48AA.

72 MP CS Act, Section 53(11).

73 Haryana CS Act, Section 28(6). However, this does not apply to individuals nominated in terms of Section 29, or those nominated to serve on boards of other apex or central societies.

74 WB CS Act, Section 134C(10) (a).

75 WB CS Act, Section 32(7).

in payment of loans from the society on the date of filing nomination.

No board member can be elected as an office bearer (including chairperson, president, secretary or treasury), if such member is a Minister of the state government or the central government.⁷⁶

Karnataka	<p>Yes, disqualifications have been prescribed for being elected members of the board.</p> <p>Specific grounds for co-operative banks include:⁷⁷ (a) being a member of the board of a society that has been superseded; (b) being directly or indirectly interested in any subsisting contract with the society, or (c) being in default to the society or any other society in respect of a loan.</p> <p>General grounds of disqualification to the board of any co-operative society include:⁷⁸ (a) default in payment of dues; (b) carrying on the same business as that co-operative society; and (c) being absent from three consecutive meetings of the board without taking leave.</p> <p>Members of the board can be disqualified for five years if they fail to assist in the conduct of elections or present the audited accounts and annual report in the AGM.⁷⁹</p>
Gujarat	<p>Yes. Grounds for disqualification have been prescribed. This includes: (a) default in payment of dues to the bank for twelve months or more; (b) if the PAC which the member represents has defaulted in payment of dues; (c) member of a non-credit society that has defaulted in payment of dues for a period exceeding ninety days; and (d) if the member is a salaried employee of the society.⁸⁰</p>
Uttar Pradesh	<p>Yes. Grounds for disqualification have been prescribed. This includes: (a) if the member represents a non-credit society which has been in default for a period exceeding ninety days; and (b) a person who is a defaulting member or office-bearer of a defaulting PAC shall not be eligible for being a member on the board or continue as a member for more than one year, unless such default has been cleared.⁸¹</p>

Committees of the board: Is the board mandated to constitute any committee by the state law?

Punjab:	No
Odisha:	No. However, the law empowers the board to appoint sub-committees as deemed necessary, and the manner of constituting such committees is regulated by bye-laws. ⁸²
Andhra Pradesh	No
Maharashtra	No
Madhya Pradesh	No
Haryana	No
West Bengal	No
Karnataka	No

76 WB CS Act, Section 32(6)(b).

77 Karnataka CS Act, Section 98N.

78 Karnataka CS Act, Section 29C(1).

79 Karnataka CS Act, Section 29C(3).

80 Gujarat CS Act, Sections 145F(1) and 145 (1A).

81 UP CS Act, Section 29A(3).

82 Odisha CS Act, Section 28(1)(a)(xi).

Gujarat	No
Uttar Pradesh	The board may appoint sub-committees as maybe considered necessary. ⁸³

Depositor Representation: Does the law mandate for a representative of the depositor on the board?

Punjab:	No
Odisha:	No
Andhra Pradesh	No
Maharashtra	No
Madhya Pradesh	No
Haryana	No
West Bengal	No
Karnataka	No
Gujarat	No
Uttar Pradesh	No

Reservation of seat on board for scheduled caste (“SC”) and scheduled tribe (“ST”) members: Are seats reserved for representatives from SC and / or ST on the board?⁸⁴

Punjab	Yes. One seat is reserved for members who belong to SC. ⁸⁵
Odisha	Yes. One seat is reserved for members belonging to SC or ST. ⁸⁶
Andhra Pradesh	Yes. For DCCBs, up to one half of the total number of seats to be filled up by elected member on the board must be filled up by members belonging to SC, ST and backward classes. ⁸⁷
Maharashtra	Yes. One seat is reserved for members belonging to SC or ST. ⁸⁸ Reservation for specified backward classes is also provided.
Madhya Pradesh	Yes. One seat is reserved for members belonging to SC or ST category, whichever has more members. ⁸⁹
Haryana	Yes. At least one seat is reserved for members belonging to SC. ⁹⁰ Reservation of at least one member belonging to the backward class is also provided if they constitute 10% or more the total membership of the society. ⁹¹
West Bengal	Yes. One seat is reserved for members belonging to SC or ST. ⁹²

83 UP CS Act, Section 29A(1)(xi).

84 Typically, most state laws provide that this reservation is applicable when the society consists of members belonging to such class.

85 Punjab CS Act, Second proviso to Section 26.

86 Odisha CS Act, Second proviso to Section 28(2)(e).

87 AP CS Act, Second proviso to Section 31(b).

88 Maharashtra CS Act, Section 73B (1).

89 MP CS Act, Section 48(3)(a).

90 Haryana CS Act, First proviso to Section 28(1).

91 Haryana CS Act, Third proviso to Section 28(1).

92 WB CS Act, Second proviso to Section 32(1)(a).

Karnataka	Yes. One seat is reserved for members belonging to SC and one seat is reserved for members belonging to ST. ⁹³
Gujarat	Yes. One seat on the board is reserved for members belonging to SC or ST. ⁹⁴
Uttar Pradesh	Yes. One seat is reserved for members belonging to SC or ST. ⁹⁵

Reservation of seat on board for women: Are seats reserved for women on the board?⁹⁶

Punjab	Yes. Two seats are reserved for women. ⁹⁷
Odisha	Yes. Two seats are reserved for women. ⁹⁸
Andhra Pradesh	Yes. For DCCBs, up to one half of the total number of seats to be filled up by elected members on the board must be filled up by women. ⁹⁹
Maharashtra	Yes. Two seats are reserved for women. ¹⁰⁰
Madhya Pradesh	Yes. Two seats are reserved for women. ¹⁰¹
Haryana	Yes. At least two seats are reserved for women. ¹⁰²
West Bengal	Yes. Two seats are reserved for women. ¹⁰³
Karnataka	Yes. Two seats are reserved for women. ¹⁰⁴
Gujarat	Yes. Two seats are reserved for women. ¹⁰⁵ However, based on a reading of another provision, it appears that the reservation for women will depend on the strength of the board. ¹⁰⁶
Uttar Pradesh	Yes. Two seats are reserved for women. ¹⁰⁷

Conduct of elections: Who supervises or is responsible for the conduct of elections to the board?

Punjab:	This has not been mentioned specifically.
Odisha:	The control of elections vests with the State Co-Operative Election Commission. ¹⁰⁸
Andhra Pradesh	RCS conducts elections to DCCBs. ¹⁰⁹
Maharashtra	The conduct of elections vests with the State Co-Operative Election Authority. ¹¹⁰

⁹³ Karnataka CS Act, Section 28-A(3).

⁹⁴ Gujarat CS Act, Section 74(1B).

⁹⁵ UP CS Act, Proviso to Section 29(5).

⁹⁶ Typically, most state laws provide that this reservation is applicable when the society consists of female members.

⁹⁷ Punjab CS Act, Second proviso to Section 26.

⁹⁸ Odisha CS Act, Second proviso to Section 28(2)(e).

⁹⁹ AP CS Act, Second proviso to Section 31(b).

¹⁰⁰ Maharashtra CS Act, Section 73C.

¹⁰¹ MP CS Act, Section 48(3)(b).

¹⁰² Haryana CS Act, First proviso to Section 28(1).

¹⁰³ WB CS Act, Second proviso to Section 32(1)(a).

¹⁰⁴ Karnataka CS Act, Section 28-A(3).

¹⁰⁵ Gujarat CS Act, Section 74(1B).

¹⁰⁶ Gujarat CS Act, Section 74BB.

¹⁰⁷ UP CS Act, Proviso to Section 29(5).

¹⁰⁸ Odisha CS Act, Section 28AA.

¹⁰⁹ AP CS Act, Section 115-C(16) (a).

¹¹⁰ Maharashtra CS Act, Section 73CB.

Madhya Pradesh	The conduct of elections vests with the State Co-operative Election Authority. ¹¹¹
Haryana	The state government is empowered to constitute an election authority for the conduct of all elections of prescribed societies. Unless such authority is constituted, elections will be conducted by the RCS or the existing board, as the case may be. ¹¹²
West Bengal	The Co-Operative Election Commission supervises the conduct of elections to the board. ¹¹³
Karnataka	The Co-operative Election Authority supervises the elections to the board. ¹¹⁴
Gujarat	Returning Officer and other officers appointed by the Collector control the conduct of elections. ¹¹⁵
Uttar Pradesh	The Co-Operative Election Commission is responsible for the conduct of elections. ¹¹⁶

Electoral offences: Are there provisions prohibiting certain practices during elections of the board?

Punjab	Yes. Practices such as offering gifts or promises to offer any gratification to any person to induce her to contest / not contest for elections/ withdraw from elections, fraudulently destroy nomination paper, etc. are considered offences, and attract the punishment of imprisonment. ¹¹⁷
Odisha	Yes. Indulging in corrupt practices is punishable with imprisonment or with fine or with both. A list of activities constituting corrupt practices has been set out in the state law. ¹¹⁸
Andhra Pradesh	No. This has not been mentioned specifically.
Maharashtra	Yes. It is an offence for the board, officer or member of the society to be involved in corrupt practices during elections. ¹¹⁹
Madhya Pradesh	Yes. Adopting corrupt practices in relation to election of members of the board is an offence and punishable with fine. ¹²⁰
Haryana	Yes. Adopting corrupt practices before, during or after the election to the board is punishable with fine or imprisonment or both. ¹²¹
West Bengal	Yes. Adopting corrupt practices before, during or after the election to the board is punishable with fine or imprisonment or both. ¹²²
Karnataka	Yes. Adopting corrupt practices or committing electoral offences before, during or after the election to the board or election of office-bearers is punishable with fine and/or imprisonment. ¹²³ Corrupt practices in elections such as bribery, undue influence have been defined. ¹²⁴
Gujarat	Yes. Adoption of corrupt practices during the election of board or before or after such election

¹¹¹ MP CS Act, Section 57B (2).

¹¹² Haryana CS Act, Section 28(1A).

¹¹³ WB CS Act, Section 96(1).

¹¹⁴ Karnataka CS Act, Section 39-A.

¹¹⁵ Gujarat CS Act, Section 145D.

¹¹⁶ UP CS Act, Section 29(3).

¹¹⁷ Punjab CS Act, Section 71(7).

¹¹⁸ Odisha CS Act, Section 115(12) read with Schedule III.

¹¹⁹ Maharashtra CS Act, Section 146(h-1).

¹²⁰ MP CS Act, Sections 74 and 75.

¹²¹ Haryana CS Act, Section 117(12).

¹²² WB CS Act, Section 149 read with the Fourth Schedule, Item 11.

¹²³ Karnataka CS Act, Section 109(21).

¹²⁴ Karnataka CS Act, Section 39C. Chapter VA

is an offence.¹²⁵ Corrupt practices have been defined to include bribery, a gift, offer or promise of gratification to induce a person to contest / not to contest for election or induce an elector to refrain from voting at an election and use undue influence.¹²⁶

Uttar Pradesh Yes. Specific acts defined as offences in terms of the rules are punishable with imprisonment or fine or both.¹²⁷

Annual general meetings: Does the law mandate to hold an annual general meeting (“AGM”)?

Punjab	Yes. An AGM must be held within a period of six months from the close of the financial year. ¹²⁸
Odisha	Yes. An AGM must be held at least once in every year and not later than six months from the close of the financial year. ¹²⁹
Andhra Pradesh	The state law only provides for general meetings and mandates that such meetings must be held at least twice annually, with one to be held every half-year. ¹³⁰
Maharashtra	Yes. An AGM must be held within six months of the close of the financial year. ¹³¹
Madhya Pradesh	Yes. An AGM must be held within six months of the close of the financial year. ¹³²
Haryana	Yes, within a period of six months of the close of the financial year. ¹³³
West Bengal	Yes, within a period of six months of the close of the co-operative year. ¹³⁴
Karnataka	Yes, annually before 24 September. ¹³⁵
Gujarat	Yes, within a period of six months from the close of the financial year. ¹³⁶
Uttar Pradesh	Yes, annually within the prescribed period. ¹³⁷

Documents to be placed at an AGM: What are the documents to be placed in an AGM?

Punjab	Documents include audit report, annual report, inspection report and inquiry report. ¹³⁸
Odisha	Documents include audit report, inspection report, inquiry report, annual report of the auditor general, reports of committees, sub-committees and the Chief Executive. ¹³⁹
Andhra Pradesh	This has not been mentioned specifically.
Maharashtra	Documents include annual report, list of amendments to the bye-laws, audit report of the

¹²⁵ Gujarat CS Act, Section 147(f-a).

¹²⁶ Gujarat CS Act, Section 145J.

¹²⁷ UP CS Act, First proviso to Section 103(2)(a).

¹²⁸ Punjab CS Act, Section 24.

¹²⁹ Odisha CS Act, Section 29(1)

¹³⁰ AP CS Act, Section 32(1).

¹³¹ Maharashtra CS Act, Section 75(1).

¹³² MP CS Act, Section 49(1).

¹³³ Haryana CS Act, Section 25(3).

¹³⁴ WB CS Act, Section 29(1).

¹³⁵ Karnataka CS Act, Section 27.

¹³⁶ Gujarat CS Act, Section 77(1).

¹³⁷ UP CS Act, Section 32.

¹³⁸ Punjab CS Act, Section 24.

¹³⁹ Odisha CS Act, Section 29(2)

preceding financial year, annual budget for next year, statement of loans given to board members or their family members, audited balance sheet and audited profit and loss account.¹⁴⁰

Madhya Pradesh	Documents include audit report, annual report, statement showing details of loans or advances, if any, outstanding during the preceding years, in the name of the members of the board, their family members and near relations. ¹⁴¹
Haryana	Documents include annual report, audit report and amendment of bye-laws. ¹⁴²
West Bengal	Documents include annual report prepared by the board, latest audit report, annual budget, audited statement of accounts and report of inspection/ inquiry. ¹⁴³
Karnataka	Documents include annual report, annual budget, latest audit report and report of the board, inquiry report and programme of activities prepared by the board for the coming year. ¹⁴⁴
Gujarat	Documents include balance sheet, profit and loss account, board report on the state of affairs, amounts proposed to be carried over to reserves, auditor's report and board report. ¹⁴⁵
Uttar Pradesh	Documents include balance sheet, annual report, audit reports and budget for the ensuing year. ¹⁴⁶

Frequency of board meetings: What is the frequency of board meetings?

Punjab	This has not been mentioned specifically.
Odisha	This has not been mentioned specifically.
Andhra Pradesh	At least once in every three months. ¹⁴⁷
Maharashtra	This has not been mentioned specifically.
Madhya Pradesh	This has not been mentioned specifically.
Haryana	They may be called from time to time, within one month of the receipt of a requisition in writing from the RCS or such number of members as prescribed in the bye-laws. ¹⁴⁸
West Bengal	This has not been mentioned specifically.
Karnataka	This has not been mentioned specifically.
Gujarat	This has not been mentioned specifically.
Uttar Pradesh	This has not been mentioned specifically.

Minimum number of meetings to be attended by members of the co-operative society: Does the state law mandate a minimum number of meetings that members must attend?

Punjab	The consequences of not attending specific number of meetings has been set out. A member who attends less than two general meetings out of the last five general meetings is ineligible
---------------	---

140 Maharashtra CS Act, Section 75(2) and 75(4).

141 MP CS Act, Sections 49(1) and 49(7).

142 Haryana CS Act, Section 25(3).

143 WB CS Act, Section 29(5).

144 Karnataka CS Act, Section 27.

145 Gujarat CS Act, Sections 77(2), 77(3) and 77(4).

146 UP CS Act, Section 32.

147 AP CS Act, Section 32(4).

148 Haryana CS Act, Section 26(1).

	to participate in general meetings for elections to the board. ¹⁴⁹
Odisha	The consequences of not attending specific number of meetings has been set out. A person is ineligible for continuing as a member if such person has not attended three consecutive general meetings and such absence has not been condoned by the general body. ¹⁵⁰
Andhra Pradesh	Yes. Members are disqualified to be admitted as, and to continue being members if they fail to attend two consecutive general body meetings in two years, without leave of absence. ¹⁵¹
Maharashtra	Yes. Every member is required to attend at least one general body meeting within a consecutive period of five years. ¹⁵²
Madhya Pradesh	The requirement for attending meetings is to be prescribed in the bye-laws. ¹⁵³
Haryana	This has not been mentioned specifically
West Bengal	The parent statute does not specify the minimum number of meetings. However, it provides that members must attend such minimum number of meetings as may be prescribed. ¹⁵⁴
Karnataka	Yes. Every member is required to participate in the management of the society by attending three out of the last five annual general meetings. ¹⁵⁵
Gujarat	Yes. Every member must attend two meetings of the general body within a consecutive period of five years. ¹⁵⁶
Uttar Pradesh	This has not been mentioned specifically.

Frequency of audit: What is the frequency of audit?

Punjab:	At least once every year, within a period of six months from the close of the financial year. ¹⁵⁷
Odisha	Annually, within six months from the close of the co-operative year. ¹⁵⁸
Andhra Pradesh	At least once in every year, in case of a society. ¹⁵⁹ In the absence of any specific provision for co-operative banks, we understand that this will also apply to co-operative banks
Maharashtra	Annually, within a period of four months, after the close of financial year. ¹⁶⁰
Madhya Pradesh	Annually, within six months from the close of the financial year. ¹⁶¹
Haryana	At least once a year, within six months from the close of the year. ¹⁶²
West Bengal	Annually, within six months from the close of the co-operative year. ¹⁶³
Karnataka	Annually, before 1 September. ¹⁶⁴

149 Punjab CS Act, First proviso to Section 18.

150 Odisha CS Act, Section 16A

151 AP CS Act, Section 21(1)(g).

152 Maharashtra CS Act, Section 26(2).

153 MP CS Act, Section 48(11).

154 WB CS Act, Section 41A(1).

155 Karnataka CS Act, Section 27A.

156 Gujarat CS Act, Section 28A.

157 Punjab CS Act, Section 48(1).

158 Odisha CS Act, Section 62(1).

159 AP CS Act, Section 50(1).

160 Maharashtra CS Act, Sections 75(1) and Section 81(1)(a).

161 MP CS Act, Section 58(1) (c).

162 Haryana CS Act, Section 95(2).

163 WB CS Act, Section 97(1)(b) & 97(3)(b).

164 Karnataka CS Act, Section 63.

Gujarat	Annually. ¹⁶⁵
Uttar Pradesh	Within six months of the close of the co-operative year. ¹⁶⁶

Conduct of audit: Who conducts the audit of an StCB and a DCCB?

Punjab	An auditor or auditing firm approved by the general body from a panel approved by the state government. ¹⁶⁷
Odisha	Chartered Accountants, from a panel approved by NABARD. ¹⁶⁸
Andhra Pradesh	A Chartered Accountant selected from a panel approved by NABARD. ¹⁶⁹
Maharashtra	Auditors or auditing firms from a panel prepared by the RCS and approved by the state government and possessing qualifications as may be prescribed. ¹⁷⁰
Madhya Pradesh	An auditor or auditing panel appointed by the RCS from an approved panel. ¹⁷¹
Haryana	Auditors or empaneled auditing firms fulfilling qualifications stipulated by the government. ¹⁷²
West Bengal	Chartered Accountants from a panel approved by NABARD. ¹⁷³
Karnataka	Chartered Accountants from a panel approved by NABARD. ¹⁷⁴
Gujarat	Chartered Accountants from a panel approved by NABARD. ¹⁷⁵
Uttar Pradesh	Chartered Accountants from a panel approved by NABARD. ¹⁷⁶

Items of audit: Are there any specific points on which audit is to be conducted?

Punjab	Yes. Audit should be conducted on specific items including examination of overdue debts, verification of cash balances and securities and valuation of assets and liabilities. ¹⁷⁷
Odisha	Yes. Audit should be conducted on specific items including verification of cash balances and securities, examination of overdue debts and valuation of assets and liabilities. ¹⁷⁸
Andhra Pradesh	Yes. Audit should be conducted on specific items including examination of overdue debts, verification of cash balances and valuation of assets and liabilities. ¹⁷⁹
Maharashtra	Yes. Audit should be conducted as per auditing standards notified by the state government and includes examination and verification of specific items such as overdue debts, cash balances and securities and valuation of assets and liabilities. ¹⁸⁰

¹⁶⁵ Gujarat CS Act, Section 84(1).

¹⁶⁶ UP CS Act, Section 64(1).

¹⁶⁷ Punjab CS Act, Section 48(1A).

¹⁶⁸ Odisha CS Act, Second proviso to Section 62.

¹⁶⁹ AP CS Act, Section 115D(21).

¹⁷⁰ Maharashtra CS Act, Section 81.

¹⁷¹ MP CS Act, Second proviso to Section 58(1)(a).

¹⁷² Haryana CS Act, Section 95(1) and Section 95(2).

¹⁷³ WB CS Act, Section 134C (17).

¹⁷⁴ Karnataka CS Act, Second proviso to Section 63(1).

¹⁷⁵ Gujarat CS Act, Section 84.

¹⁷⁶ UP CS Act, Section 64(1).

¹⁷⁷ Punjab CS Act, Section 48(2).

¹⁷⁸ Odisha CS Act, Section 62(2).

¹⁷⁹ AP CS Act, Section 50(1). In the absence of any specific provision for co-operative banks, we understand that this will also apply to co-operative banks.

¹⁸⁰ Maharashtra CS Act, Section 81(2).

Madhya Pradesh	Yes. Audit should be conducted on specific items including examination of accounts and overdue debts, compliance of instructions and orders of the RCS and verification of cash balances and securities. ¹⁸¹
Haryana	Yes. This includes valuation of assets and liabilities, examination of the balance sheet and profit and loss accounts, verification of cash balances and securities, and observance of the provisions of the Act and rules and bye-laws. ¹⁸²
West Bengal	This has not been mentioned specifically.
Karnataka	Yes. This includes an examination of overdue debts, physical verification and valuation of assets and liabilities, verification of cash balance and securities, certification of profits and losses and compliance with instructions and directives of RBI/ NABARD. ¹⁸³
Gujarat	This has not been mentioned specifically.
Uttar Pradesh	Yes. This includes examination of overdue debts, verification of cash balance and securities and a valuation of assets and liabilities. ¹⁸⁴

Cap on Government shareholding: Is there a cap on Government shareholding?

Punjab	This has not been mentioned specifically. However, no member, other than the government or a public sector undertaking or a co-operative society can hold more than one-tenth of the share capital. ¹⁸⁵
Odisha	Yes. Capped at 25%. ¹⁸⁶
Andhra Pradesh	Yes. Capped at 25%. ¹⁸⁷
Maharashtra	Yes. Capped at 25%. ¹⁸⁸
Madhya Pradesh	Yes. Capped at 25%. ¹⁸⁹
Haryana	Yes. Capped at 25%. ¹⁹⁰
West Bengal	Yes. Capped at 25%. ¹⁹¹
Karnataka	Yes. Capped at 25%. ¹⁹²
Gujarat	Yes. Capped at 25%. ¹⁹³
Uttar Pradesh	Yes. Capped at 25%. ¹⁹⁴

181 MP CS Act, Section 58(2).

182 Haryana CS Act, Section 95(5).

183 Karnataka CS Act, Section 63(4).

184 UP CS Act, Section 64(2).

185 Punjab CS Act, Section 6.

186 Odisha CS Act, Proviso to Section 41.

187 AP CS Act, Section 115-D(3)(a).

188 Maharashtra CS Act, Section 50.

189 MP CS Act, Section 52(5)(a).

190 Haryana CS Act, First proviso to Section 29(1)(b).

191 WB CS Act, Section 134C(3)(a).

192 Karnataka CS Act, Section 98F(1).

193 Gujarat CS Act, Proviso to Section 51.

194 UP CS Act, Proviso to Section 44(2).

Government nominee: Can the state appoint a nominee on the board? What are the powers of such nominee?

Punjab	<p>Yes. The state government can appoint upto three nominees or one-third of the total number of members on the board, whichever is less. Such nominees are to be appointed when the state government has subscribed to the share capital and guaranteed repayment of the principal and payment of interest on debentures issued for loans raised by the society.¹⁹⁵</p> <p>Further, where the government's shareholding is equal to or more than rupees twenty lakhs, one of such nominees may be appointed as chairman, and another nominee may be appointed as managing director.¹⁹⁶</p> <p>Specific provision setting out powers of such nominees is not expressly set out in the state law</p>
Odisha	<p>Yes. Where the central or state government has subscribed to the share capital of a co-operative bank, or has provided any assistance, guaranteed repayment of the principal and payment of interest on loans etc., the government may provide for a panel of names of four persons having experience in banking, management, finance or other related fields. Of these four names, two should be co-opted by the board as members.¹⁹⁷ Such government nominees do not have the right to vote in elections.¹⁹⁸</p>
Andhra Pradesh	<p>Yes. The state government can nominate one person on the board of an StCB and a DCCB, as long as there is government equity.¹⁹⁹</p>
Maharashtra	<p>Yes. The government can nominate two members to the board in case of societies having government contribution towards its share capital. Out of these two members, there will be: (a) one government officer not below the rank of the Assistant Registrar of Co operative Societies, and (b) one person having such requisite experience relating to the work of the society and such qualifications as may be specified by the government.²⁰⁰ Such government nominees are not entitled to vote at any election of officers of such board.²⁰¹</p>
Madhya Pradesh	<p>Yes. The government can nominate one member to the board in case of co-operative banks where the government has subscribed to the share capital.²⁰²</p> <p>Such government nominees have one vote. Such nominees do not have the right to vote in any election or removal of office-bearers.²⁰³</p>
Haryana	<p>Yes. The government can nominate only one member when it has subscribed to the share capital.²⁰⁴</p> <p>A government nominee enjoys one vote, where the government is a member of the co-operative society.²⁰⁵</p>
West Bengal	<p>Yes. The government can nominate one member where it has subscribed to the share capital.²⁰⁶</p>

195 Punjab CS Act, Section 26(2).

196 Punjab CS Act, Second proviso to Section 26(1F)(2).

197 Odisha CS Act, Section 31(1).

198 Odisha CS Act, Proviso to Section 31(2).

199 AP CS Act, Section 115(D)(3)(b). Please note that while Government nominees existing on the date of the amendment by way of which this provision was introduced (2007) did not have any voting rights in any election, it is not clear if new nominees will have voting rights or not. See, AP CS Act, Section 115D (b).

200 Maharashtra CS Act, Fifth proviso to Section 73AAA (2).

201 Maharashtra CS Act, Section 27(9).

202 MP CS Act, Section 52(5).

203 MP CS Act, Section 52(3).

204 Haryana CS Act, Section 29.

205 Haryana CS Act, Proviso to Section 20.

206 WB CS Act, Section 134C(3)(b).

	The powers of such nominee have not been mentioned specifically.
Karnataka	Yes. The government can nominate one member where it has subscribed to the share capital. ²⁰⁷ It has been clarified that a state government nominee can vote in all meetings and elections of the society. ²⁰⁸
Gujarat	Yes. The government can nominate one member where it has subscribed to the share capital. ²⁰⁹ The powers of such nominee have not been explicitly provided.
Uttar Pradesh	Yes. The government can nominate one member where it has <i>inter-alia</i> subscribed to the share-capital, given loans or advances, guaranteed the repayment of the principal and payment of interest on loans or advances to the bank. Such a person must be a government servant. ²¹⁰ The government nominee cannot vote at the election of office-bearers. ²¹¹ Where the state government or the central government is a member of society, then such person nominated by the state government on the board shall have one vote. ²¹²

Supersession of board:

(a) Does the State / Registrar have power to supersede the Board of a cooperative bank (“RCS Supersession”)?

(b) Can RBI require supersession (“RBI Initiated Supersession”)?

Punjab	(a) Yes. Such supersession is not permissible where there is no government shareholding, loan or other financial assistance extended by the government. ²¹³ (b) Yes. ²¹⁴
Odisha	(a) Yes. ²¹⁵ Such supersession is not permissible where there is no government shareholding, loan, financial assistance or any guarantee given by the government. ²¹⁶ (b) Yes. ²¹⁷
Andhra Pradesh	(a) Yes. ²¹⁸ (b) Yes, in case of eligible co-operative banks. ²¹⁹ The supersession of the board and the appointment of a special officer shall be made by the RCS within one month of being so advised by the RBI. ²²⁰
Maharashtra	(a) Yes. ²²¹ Such supersession is not permissible where there is no government shareholding, loan, financial assistance or any guarantee given by the government. ²²² (b) Yes, for an insured co-operative bank. ²²³ The supersession of the board shall be made by the

²⁰⁷ Karnataka CS Act, Section 98G.

²⁰⁸ Karnataka CS Act, Section 28-A(4-B).

²⁰⁹ Gujarat CS Act, Section 80(3).

²¹⁰ UP CS Act, Section 34(1).

²¹¹ UP CS Act, Section 34(1).

²¹² UP CS Act, Section 20(c).

²¹³ Punjab CS Act, Section 27.

²¹⁴ Punjab CS Act, Section 70A (3).

²¹⁵ Odisha CS Act, Provisos to Section 32(1).

²¹⁶ Odisha CS Act, Provisos to Section 32(1).

²¹⁷ Odisha CS Act, Section 133A(iii).

²¹⁸ AP CS Act, Section 34.

²¹⁹ AP CS Act, Section 115B.

²²⁰ AP CS Act, Section 115D (14).

²²¹ Maharashtra CS Act, Section 78A.

²²² Maharashtra CS Act, Section 78A.

²²³ Maharashtra CS Act, Section 110A(1)(iii).

RCS within one month of being so advised by RBI.²²⁴

- Madhya Pradesh** (a) Yes.²²⁵ Such supersession is not permissible where there is no government shareholding, loan, financial assistance or any guarantee by the government.²²⁶
(b) Yes, for any co-operative bank.²²⁷
- Haryana** (a) Yes. Such supersession is not permissible where there is no government shareholding, loan, financial assistance or guarantee by the government.²²⁸
(b) Yes, for an insured co-operative bank.²²⁹
- West Bengal** (a) Yes. Such supersession is not permissible, where there is no government shareholding, financial assistance, or guarantee provided by the government.²³⁰
(b) Yes.²³¹ RBI's prescription regarding supersession or appointment of administrator shall be implemented by RCS within one month.²³²
- Karnataka** (a) Yes. Such supersession is not permissible where there is no government shareholding or loan or financial assistance or guarantee.²³³
(b) Yes.²³⁴ RCS shall ensure that RBI's recommendation for supersession of the board of StCB and DCCB is implemented within one month from the date of receipt of advice from RBI or such time as may be permitted by RBI.²³⁵
- Gujarat** (a) Yes.²³⁶
(b) Yes, for an insured co-operative bank.²³⁷
- Uttar Pradesh** (a) Yes. Such supersession is not permissible where there is no government shareholding, loan, financial assistance or any guarantee by the government.²³⁸
(b) Yes. Any advice by RBI regarding the supersession of the board of a co-operative bank shall be executed by the RCS within one month.²³⁹

Grounds for supersession of board: If yes, what are the grounds for such supersession?

- Punjab** (a) For RCS Supersession: Grounds include persistent default by the board, negligence in the performance of duties, making defaults in the implementation of production or development programmes being undertaken by the society and committing acts prejudicial to the interests of the co-operative society.²⁴⁰
(b) For RBI Initiated Supersession: Public interest, for preventing affairs of the insured co-operative bank being conducted in a manner detrimental to the interest of the

224 Maharashtra CS Act, Section 110A (2).

225 MP CS Act, Section 53(1).

226 MP CS Act, Second proviso to Section 53(1).

227 MP CS Act, Section 53(13)(a).

228 Haryana CS Act, Section 34.

229 Haryana CS Act, Section 94(iii).

230 WB CS Act, Section 35.

231 WB CS Act, Section 155(2)(iii).

232 WB CS Act, Section 134C(19)].

233 Karnataka CS Act, Section 30(2).

234 Karnataka CS Act, Section 30(6).

235 Karnataka CS Act, Section 98-X(1).

236 Gujarat CS Act, Sections 81 and 81A.

237 Gujarat CS Act, Section 115A (3).

238 UP CS Act, Section 35.

239 UP CS Act, Section 90-B(iii) and Section 90C.

240 Punjab CS Act, Section 27.

depositors and securing proper management of the bank.²⁴¹

- Odisha**
- (a) For RCS Supersession: Grounds include persistent defaults by the board, negligence in the performance of its duties, etc.²⁴²
 - (b) For RBI Initiated Supersession: Public interest, preventing affairs of the insured co-operative bank being conducted in a manner detrimental to the interest of the depositors and securing proper management of the bank.²⁴³
- Andhra Pradesh**
- (a) For RCS Supersession: Grounds include board is not functioning properly, willfully disobeys or fails to comply with orders or directions issued by the RCS.²⁴⁴
 - (b) For RBI Initiated Supersession: Public interest, to prevent the affairs of the banks from being carried out in a manner detrimental to depositor interest and securing proper management.²⁴⁵
- Maharashtra**
- (a) For RCS Supersession: Grounds include the board has committed any act that is prejudicial to the interest of the society or its members, the State Co-Operative Election Authority has failed to conduct elections as per the Act, identification of serious financial irregularities or frauds, perpetual lack of quorum, etc.²⁴⁶
 - (b) For RBI Initiated Supersession: Public interest, preventing the affairs of an insured co-operative bank being conducted in a manner detrimental to depositor interest or for securing the proper management of the insured co-operative bank.²⁴⁷
- Madhya Pradesh**
- (a) For RCS Supersession: Grounds include persistent default, negligence in the performance of duties, committing any act prejudicial to interests of member, violation of provisions of the Act, rules, bye-laws, etc.²⁴⁸ For DCCBs, RCS may remove the board if the recovery of the bank continuously in three co-operative years is less than 60% of the demand or if over dues exceed 40%.²⁴⁹
 - (b) For RBI Initiated Supersession: Public interest, for preventing the affairs of the co-operative bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of the bank.²⁵⁰
- Haryana**
- (a) For RCS Supersession: Grounds include persistent default, negligence in the performance of duties, failure to conduct elections in consonance with the law and committing acts prejudicial to the interests of the society or its members.²⁵¹
 - (b) For RBI Initiated Supersession: Grounds are public interest, preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors and for securing the proper management of the bank.²⁵²
- West Bengal**
- (a) For RCS Supersession: Grounds include persistent default, negligent performance of duties, committing acts prejudicial to interest of the society and member and a failure to conduct elections in consonance with the law.²⁵³
 - (b) For RBI Initiated Supersession: Public interest, preventing the affairs of the insured co-operative bank from being conducted in a manner detrimental to depositor interest or for

241 Punjab CS Act, Section 70A (3).

242 Odisha CS Act, Section 32(1).

243 Odisha CS Act, Section 133A(i).

244 AP CS Act, Section 34(1).

245 AP CS Act, Section 115B(iii).

246 Maharashtra CS Act, Section 78A (1).

247 Maharashtra CS Act, Section 110A(1)(iii).

248 MP CS Act, Section 53(1).

249 MP CS Act, Section 53(10).

250 MP CS Act, Section 53(13).

251 Haryana CS Act, Section 34(1).

252 Haryana CS Act, Section 94(iii).

253 WB CS Act, Section 35(1A).

securing the proper management of the bank.²⁵⁴

- Karnataka**
- (a) For RCS supersession: Grounds include persistent default or negligence in the performance of duties by the board, committing acts prejudicial to the interest of members/society, detection of serious financial irregularities or frauds and stalemate in the constitution or functioning.²⁵⁵
 - (b) For RBI Initiated Supersession: Grounds include public interest, preventing the affairs of the co-operative bank being conducted in a manner detrimental to the interest of the depositors, and securing proper management of the co-operative bank.²⁵⁶
- Gujarat**
- (a) For RCS Supersession: Grounds include persistent default, negligence in the performance of its duties under the Act, rules or bye laws or has committed any act prejudicial to the interests of members.²⁵⁷
 - (b) For RBI Initiated Supersession: Public interest, preventing the affairs of the bank from being conducted in a manner detrimental to depositor interest or securing the proper management of the bank.²⁵⁸
- Uttar Pradesh**
- (a) For RCS Supersession: Grounds include persistent default, negligence in the performance of duties imposed by the Act, bye-laws, committing acts prejudicial to interest of members, failure to conduct elections in accordance with the Act, etc.²⁵⁹
 - (b) For RBI Initiated Supersession: Public interest, preventing affairs of the insured co-operative bank from being conducted in a manner detrimental to the interest of the depositors or for securing proper management of the bank.²⁶⁰

RBI approval in relation to supersession: If RBI approval required for RCS Supersession?

- Punjab** This has not been mentioned specifically.
- Odisha** No. However, the supersession of the board shall be done only in consultation with the RBI. It is not clear if RBI's recommendations post-consultation is binding on the RCS.²⁶¹
- Andhra Pradesh** No. However, the supersession of the board shall be done only in consultation with the RBI. It is not clear if RBI's recommendations post-consultation is binding on the RCS.²⁶²
- Maharashtra** No. However, the law specifies that in case of the supersession of the board of a co-operative bank, the provisions of the BR Act apply.²⁶³ There is no clarity regarding the extent and scope of the application of this provision.
- Madhya Pradesh** No. However, the supersession of the board shall be done only with the previous consultation with the RBI.²⁶⁴ RCS can disagree with the views of RBI.²⁶⁵ The advice of RBI is limited to the provisions of the BR Act. If no communication is received from RBI within thirty days of the receipt of the solicitation request, there is a presumed acceptance on part of RBI and the RCS is free to pass appropriate orders.²⁶⁶

254 WB CS Act, Section 155(2)(iii).

255 Karnataka CS Act, Section 30(2).

256 Karnataka CS Act, Section 30(6).

257 Gujarat CS Act, Section 81(1).

258 Gujarat CS Act, Section 115A (3).

259 UP CS Act, Section 35(1).

260 UP CS Act, Section 90-B (iii).

261 Odisha CS Act, Section 32.

262 AP CS Act, Section 115D (15).

263 Maharashtra CS Act, Section 78A.

264 MP CS Act, third proviso to Section 53(1).

265 MP CS Act, sixth proviso to Section 53(1).

266 MP CS Act, Fourth and fifth provisos to Section 53(1).

Haryana	Yes. RCS is required to obtain RBI approval for supersession of the board. ²⁶⁷ RBI's prescriptions regarding supersession must be implemented within one month from the date of issuance of such advice.
West Bengal	Yes, prior approval is required. ²⁶⁸
Karnataka	The supersession of the board shall be done only in consultation with the RBI. It is not clear if RBI's recommendations post-consultation is binding on the RCS. ²⁶⁹
Gujarat	The supersession of the board shall be done only in consultation with the RBI. It is not clear if RBI's recommendations post consultation is binding on the RCS. ²⁷⁰
Uttar Pradesh	RCS should consult the RBI prior to passing an order of supersession. ²⁷¹

Time period for which supersession operates: What is the maximum time period for which supersession may operate, and an administrator may be appointed?

Punjab	(a) One year, for RCS Supersession. ²⁷² (b) Five years, for RBI Initiated Supersession. ²⁷³
Odisha	(a) One year, for RCS Supersession. ²⁷⁴ (b) Five years, for RBI Initiated Supersession. ²⁷⁵
Andhra Pradesh	(a) Three years, for RCS Supersession. ²⁷⁶ (b) Five years, for RBI Initiated Supersession. ²⁷⁷
Maharashtra	(a) One year, for RCS Supersession. ²⁷⁸ (b) One year, for RBI Initiated Supersession. ²⁷⁹
Madhya Pradesh	(a) One year, for RCS Supersession. ²⁸⁰ (b) One year, for RBI Initiated Supersession. ²⁸¹
Haryana	(a) One year, for RCS Supersession. ²⁸² (b) Five years, for RBI Initiated Supersession. ^{283s}
West Bengal	(a) One year, for RCS Supersession ²⁸⁴ (b) As specified by the RBI, for RBI Initiated Supersession. ²⁸⁵

²⁶⁷ Haryana CS Act, Second proviso to Section 34(1).

²⁶⁸ WB CS Act, Section 134C(11)(a).

²⁶⁹ Karnataka CS Act, Second proviso to Section 34(2).

²⁷⁰ Gujarat CS Act, Section 81A(1).

²⁷¹ UP CS Act, Second proviso to Section 35.

²⁷² Punjab CS Act, Section 27.

²⁷³ Punjab CS Act, Section 70A (3).

²⁷⁴ Odisha CS Act, Section 32.

²⁷⁵ Odisha CS Act, Section 133A(iii).

²⁷⁶ AP CS Act, Section 34(1).

²⁷⁷ AP CS Act, Section 115B(iii).

²⁷⁸ Maharashtra CS Act, Section 78A.

²⁷⁹ Maharashtra CS Act, Section 110A(1)(iii).

²⁸⁰ MP CS Act, Section 53(1).

²⁸¹ MP CS Act, Section 53(13A).

²⁸² Haryana CS Act, Section 34.

²⁸³ Haryana CS Act, Section 94(iii).

²⁸⁴ WB CS Act, Section 35(1).

²⁸⁵ WB CS Act, Section 155(2)(iii).

Karnataka	(a) One year, for RCS Supersession. ²⁸⁶ (b) One year, for RBI Initiated Supersession. ²⁸⁷
Gujarat	(a) Two years or the remaining term of the board, whichever is less, for RCS Supersession. ²⁸⁸ (b) Five years, for RBI Initiated Supersession. ²⁸⁹
Uttar Pradesh	(a) One year, for RCS Supersession. ²⁹⁰ (b) Five years, for RBI Initiated Supersession. ²⁹¹

RBI's role in the winding-up process: Is RBI's prior sanction required for winding-up, initiated by RCS?

Punjab	Yes, for an insured co-operative bank. ²⁹²
Odisha	Yes, for an insured co-operative bank. ²⁹³
Andhra Pradesh	Yes, for an eligible co-operative bank. ²⁹⁴
Maharashtra	Yes, for an insured co-operative bank. ²⁹⁵
Madhya Pradesh	Yes. ²⁹⁶
Haryana	Yes, in case of an insured co-operative bank. ²⁹⁷ The RCS shall ensure implementation of the regulatory prescriptions of RBI including winding up of the StCB or DCCBs and appointment of administrator within one month of being so advised by RBI. ²⁹⁸
West Bengal	Yes, in case of an insured co-operative bank. ²⁹⁹ The RCS shall implement RBI's prescriptions regarding winding up or appointment of liquidator, in relation to the StCB and DCCBs, within one month. ³⁰⁰
Karnataka	Yes, in case of a co-operative bank. ³⁰¹
Gujarat	Yes, in case of an insured co-operative bank. ³⁰²
Uttar Pradesh	Yes, in case of insured co-operative banks. ³⁰³ The RCS shall implement any advice of RBI regarding the winding up of a co-operative bank and appointment of liquidator within one month. ³⁰⁴

²⁸⁶ Karnataka CS Act, Proviso to Section 30(1).

²⁸⁷ Karnataka CS Act, Section 30(6).

²⁸⁸ Gujarat CS Act, Section 81(1).

²⁸⁹ Gujarat CS Act, Section 115A(3).

²⁹⁰ UP CS Act, Second proviso to Section 35(2).

²⁹¹ UP CS Act, Section 90-B(iii).

²⁹² Punjab CS Act, Section 70A (2).

²⁹³ Odisha CS Act, Section 133A(i).

²⁹⁴ AP CS Act, Section 115B(i).

²⁹⁵ Maharashtra CS Act, Section 110A(1)(i).

²⁹⁶ MP CS Act, Section 69(5).

²⁹⁷ Haryana CS Act, Section 94(i).

²⁹⁸ Haryana CS Act, First proviso to Section 105.

²⁹⁹ WB CS Act, Section 155(2)(i).

³⁰⁰ WB CS Act, Section 134C (19).

³⁰¹ Karnataka CS Act, Section 72(4).

³⁰² Gujarat CS Act, Section 115A.

³⁰³ UP CS Act, Section 90B(i) read with Section 90C.

³⁰⁴ UP CS Act, Section 90C.

Winding-up at the instance of the RBI: Can winding-up be required by the RBI, on the grounds indicated under Section 13D of the DICGC Act, 1961?

Punjab	Yes, for an insured co-operative bank. ³⁰⁵
Odisha	Yes, for an insured co-operative bank.
Andhra Pradesh	Yes, in case of an eligible co-operative bank. ³⁰⁶
Maharashtra	Yes, in case of an insured co-operative bank. ³⁰⁷
Madhya Pradesh	Yes, in case of a co-operative bank. ³⁰⁸
Haryana	Yes, in case of an insured co-operative bank. ³⁰⁹
West Bengal	Yes, in case of an insured co-operative bank. ³¹⁰
Karnataka	Yes, in case of a co-operative bank. ³¹¹
Gujarat	Yes, in case of an insured co-operative bank. ³¹²
Uttar Pradesh	Yes, in case of an insured co-operative bank. ³¹³

Annual filings with the RCS: Are there provisions mandating filing of annual returns, annual report or audited statements with RCS?

Punjab	This has not been mentioned specifically.
Odisha	Yes. The board is responsible for filing returns with the RCS within six months of the close of the financial year, including an annual report, audited statement of accounts and a list of amendments to bye-laws. ³¹⁴
Andhra Pradesh	This has not been mentioned specifically.
Maharashtra	Yes. Every society must file returns to the RCS within six months of the close of every financial year. Returns shall include annual report of activities, audited statement of accounts, plan for surplus disposal and list of amendments to bye-laws. ³¹⁵
Madhya Pradesh	Yes. Certain documents are to be filed within six months of the close of the financial year with the RCS, including the annual report, audited statement of accounts and plan for surplus disposal as approved by the general body. ³¹⁶
Haryana	Yes. Every co-operative society is required to file certain returns with the RCS within six months of the close of every financial year. Returns on annual report of activities, audited statement of accounts, plan for surplus disposal and list of amendments to bye-laws must be filed. ³¹⁷

305 Punjab CS Act, Section 70A (2).

306 AP CS Act, Section 115B.

307 Maharashtra CS Act, Section 110A(1)(ii).

308 MP CS Act, Section 69A.

309 Haryana CS Act, Section 94(ii).

310 WB CS Act, Section 155(2)(ii).

311 Karnataka CS Act, Section 72A.

312 Gujarat CS Act, Section 115A (2).

313 UP CS Act, Section 90-B(ii) read with Section 90C.

314 Odisha CS Act, Section 28(1)(g) (ii-b).

315 Maharashtra CS Act, Section 79(1A).

316 MP CS Act, Section 56(2).

317 Haryana CS Act, Section 48.

West Bengal	Yes. Every co-operative society is required to file certain returns with the RCS and the Director of Co-operative Audit, within six months of the close of every co-operative year. This includes an annual report of activities, audited statement of accounts, plan for surplus disposal and list of amendments to bye-laws. ³¹⁸
Karnataka	Yes. The board must file returns within six months of the close of the co-operative year. This includes annual report of activities, audited statement of accounts, plan for disposal of surplus as approved by general body and list of amendments to bye-laws. ³¹⁹
Gujarat	Yes. Every society must file returns within six months of the closure of every financial year to such authority as may be designated by the state government, including the annual report, audited statement of accounts, list of amendments to bye-laws etc. ³²⁰
Uttar Pradesh	Yes. A co-operative society is required to file certain returns with the RCS within six months of the close of every financial year. This includes annual report of activities, audited statement of accounts, plan for surplus disposal and list of amendments to bye-laws. ³²¹

Treatment of non-active members: How are non-active members treated?

Punjab	A member who attends less than two (out of the last five) general meetings or who has not used the minimum level of services (as specified in bye-laws) or who has been a member for less than nine months is ineligible to participate in a general meeting of the co-operatives for elections to the board. ³²²
Odisha	A member who has not attended three consecutive general meetings and whose absence has not been condoned by the general body, ceases to be a member from the date such disqualification is incurred. ³²³
Andhra Pradesh	A member who does not transact the minimum specified business or fails to utilise minimum services or facilities in a year or attend two consecutive general body meetings in two years, is disqualified to be admitted as a member or continue being a member, and must be removed. ³²⁴ A member who fails to transact the minimum specified business or utilise the minimum specified services does not have the right to stand as a candidate or vote in any election to the society. ³²⁵
Maharashtra	A member who does not attend at least one general body meeting within a consecutive period of five years or who does not utilise the minimum level of services at least once in five consecutive years, as may be specified in bye-laws, shall be classified as a non-active member. A non-active member who does not attend at least one meeting of the general body and does not utilise such services in the next five years from the date of classification as a non-member is liable for expulsion. However, a non-active member can also be reclassified as an active member in case he again fulfills the eligibility criteria. ³²⁶ Not-active members shall not be entitled to vote. ³²⁷

³¹⁸ WB CS Act, Section 97.

³¹⁹ Karnataka CS Act, Section 27B.

³²⁰ Gujarat CS Act, Section 41A.

³²¹ UP CS Act, Section 113.

³²² Punjab CS Act, Proviso to Section 18.

³²³ Odisha CS Act, Section 16A (2).

³²⁴ AP CS Act, Section 21(1) and Section 21(3).

³²⁵ AP CS Act, Proviso to Section 25 (1).

³²⁶ Maharashtra CS Act, Provisos to Section 26(2).

³²⁷ Maharashtra CS Act, Section 27(1A).

Madhya Pradesh	A non-borrowing member is not qualified for election as a member of the board, in case of DCCBs. Such a person is not entitled to vote in any election of the board. ³²⁸ It is unclear if this provision is applicable to StCBs.
Haryana	This has not been mentioned specifically.
West Bengal	This has not been mentioned specifically.
Karnataka	A member who does not attend at least three out of the last five annual general meetings or who does not utilise the minimum level of services annually (as may be specified in bye-laws), loses his right to vote for a period of three years. ³²⁹
Gujarat	A member who does not attend at least two general body meetings for a consecutive period of five years or who does not utilize minimum levels of services (as prescribed in the bye-laws) for a consecutive period of five years in respect of such societies as may be notified will be liable to be removed as member by the RCS. ³³⁰
Uttar Pradesh	This has not been mentioned specifically.

³²⁸ MP CS Act, Section 48(7).

³²⁹ Karnataka CS Act, Section 27A.

³³⁰ Gujarat CS Act, Section 28A.

For any queries and clarifications regarding this report,
please contact shehnaz.ahmed@vidhilegalpolicy.in

www.vidhilegalpolicy.in

Vidhi Centre for Legal Policy

D-359, Defence Colony

New Delhi - 110024

011-43102767/43831699

vidhi@vidhilegalpolicy.in

Design: How India Lives (howindialives.com)