

Before Rajiv Sharma and Harinder Singh Sidhu, JJ.

**THE PUNJAB STATE COOPERATIVE AGRICULTURAL
DEVELOPMENT BANK LTD., CHANDIGARH—Appellant**

versus

**THE REGISTRAR, COOPERATIVE SOCIETIES,
CHANDIGARH AND OTHERS—Respondents**

LPA No. 1988 of 2013

July 29, 2019

Letters Patent Act—Constitution of India, 1950—Punjab State Co-operative Agricultural Land Mortgage Bank Service (Common Cadre) Rules, 1978—Employees Provident Fund And Miscellaneous Provision Act, 1952—The Punjab Co-operative Land Mortgage Banks Act, 1957—Service conditions of employees of the ‘appellant bank are governed by Punjab State Co-operative Agricultural Land Mortgage Bank Service (Common Cadre) Rules, 1978—On 27.06.1989 the bank sought approval for introduction of pension scheme for its employees—Approval granted by Registrar, Co-operative Societies on 07.02.1990—Amendment was carried out in Rules—Bank sought refund of funds deposited by it under (i) The Employees' Provident Fund Scheme, 1952 (EPF Scheme, 1952) (ii) The Employees' Family Pension Scheme, 1971 and (iii) The Employees' Deposit Linked Insurance Scheme, 1976—Regional Provident Fund Commissioner informed the bank that it had no objection to having retirement pension scheme as additional benefit—The Board of Directors on 17.08.2012 decided to discontinue Pension Scheme and revert to scheme of Contributory Provident Fund with a proposal of One Time Package—Bunch of writ petitions filed by employees seeking pension—Writ petition allowed— Bank filed LPA—Dismissed.

Held that, decision to frame the Pension Scheme was taken by the appellant Bank in its own wisdom and corresponding the Rules were amended, which came into force w.e.f. 01.04.1989. These were amended only on 11.03.2014. It is settled law that the vested/accrued rights cannot be taken away retrospectively. The law looks forward. The employees were legitimately expecting that they would get pension on the basis of amendment carried in the Common Cadre Rules with effect from 01.04.1989. They in fact started getting pension. It was also

reduced by the bank. The pension is being denied to the pensioners by giving the amendment made on 11.03.2014 a retrospective effect.

(Para 29)

Further held that, appellant Bank being the Apex Bank should work professionally. The purpose to establish the Punjab State Cooperative Agricultural Development Bank was to save poor farmers from the clutches of middlemen. The very purpose of establishing the bank would be defeated, if it is not run professionally. The court can take judicial notice of the fact that the farming community is in distress. It was the responsibility of the State Government also to bail out the bank to keep it afloat. The appellant bank is discharging important public duties by protecting interest of the farming community.

(Para 31)

Further held that, it is settled law that the rules, instructions and circulars cannot take away the vested/accrued rights acquired by the parties until and unless explicit or by implication the indication is given that the rights could be taken away, that too, retrospectively. The amendment carried on 11.03.2014 has taken away the vested rights of the employees to get pension. It cannot be gathered from the language of the Act that the provisions could be given retrospective effect to destroy the accrued rights by way of implication or inference.

(Para 32)

Further held that, we are not oblivious to the jurisprudence that ordinarily individual matters cannot be converted into Public Interest Litigation but in view of the facts stated here-in-above, we have decided to expand the scope of this lis to ensure that the Objects and Reasons of the Punjab Co-operative Land Mortgage Banks Act, 1957, are achieved by addressing larger interest of farmers. It is settled law that private litigation involving public importance assumes the character of public interest litigation and the court can look into the matter.

(Para 50)

Further held that, the Court is of the considered view that taking into consideration the grim scenario, as far as agricultural sector is concerned, the Minimum Support Price should be three times above the cost of production of major crops including fruits and vegetables to save the farmers from distress and also to procure the food grains for public distribution considering the cost including actual expenses in

cash and kind, the loan on lease land, impeding the cost of labour, own capital assets, interest on valuable capital etc.

(Para 78)

Further held that, though, the Minimum Support Price is being announced since 1965 but the stark reality is that it has not boosted the income of farmers to bring them out of abject property. Time has come when the Minimum Support Price should be given legal force by granting legal rights to the farmers to get fair value for their crops. The farmers must be empowered to get the MSP as a legal right and its enforcement should not be left only with the bureaucratic set up. The middlemen thrives at the cost of poor farmers. The State Government is directed to device methods to reduce the role of middlemen in procuring the food-grains.

(Para 79)

Further held that, since the farmers have taken loan on exorbitant rates of interest, they are forced to sell their crops under distress. There is no regular chain of warehouses to store the produce. In case the State Government builds sufficient number of warehouses, the farmers can store their crops in the warehouse and can sell it subsequently at remunerative price. The Parliament has enacted the Warehousing (Development and Regulation) Act, 2007 but the same has not been implemented in letter and spirit.

(Para 80)

Further held that, we also make the following suggestions/recommendations and directions, to redress the grievances of the farmers:-

- (a) The appellant Bank/Primary Agricultural Development Banks are directed to ensure that crops of their members are insured by them to safeguard the farmers from the vagaries of weather and unforeseen circumstances, including drought/floods and failure of monsoon, by paying them premium and deducting it from the funds of the members.
- (b) The appellant Bank/Primary Agricultural Development Banks are directed that in case the land of the farmers possessing more than five acres of land is purchased in sale, same may not be further disposed of without giving an opportunity to the members of the bank to re-claim it by paying reasonable instalments, in order to avoid intervention of third party rights.

- (c) The appellant Bank/Primary Agricultural Development Banks are directed that as far as possible, no marginal/small farmer, whose land holding is less than five acres, is rendered landless.
- (d) The State Government through its Chief Secretary may consider the implementation of the broader recommendations made by the National Commission on Farmers (NCF), constituted on November 18, 2004 under the chairmanship of Prof. M.S. Swaminathan, to consider providing MSP (minimum support price) for the following agricultural produce grown/harvested by the farmers in the State of Punjab which should be at least three times above the average cost of production by taking into consideration the comprehensive cost including imputed rent and interest on owned land and capital as well as hired labour, cost of seeds and fertilizers, machinery, expenses incurred on irrigation, rent of leased land, labour put by farmers and their families, in consultation with the Commission for Agricultural Costs and Prices.
- (e) The State Government is suggested to consider to formulate the Scheme for payment of reasonable compensation/family pension to the families of farmers who have committed suicide as per its financial capacity.
- (f) The State Government is suggested to formulate a Scheme for providing insurance cover including weather insurance to the farmers for their crops in consultation with the National Insurance Companies along with stakeholders at minimal premium.
- (g) The Reserve Bank of India is advised to evolve a Scheme in consultation with the Banks, State Government and stakeholders about the manner in which the agricultural loans are to be advanced and their recovery and also waiver of loans in the eventuality of suicide committed by the farmers.
- (h) The State Government is also directed to give wide publicity immediately after fixing of Minimum Support Price at the time of sowing to boost the income of agriculturists.
- (i) The State Government is directed to ensure enforcement of the Warehousing (Development and Regulation) Act, 2007 in

letter and spirit to enable the farmers to store their produce and to prevent them from selling their produce under distress.

- (j) The State Government is directed to prepare the App in consultation with the Department of Technology and private players to have the up-to-date Khasra-wise data of the status of crops grown in the State of Punjab within a reasonable period.
- (k) We suggest/recommend the Union of India and the State Government to provide legal status to the Minimum Support Price (MSP) by bringing a suitable legislation.

(Para 96)

Rajiv Atma Ram, Senior Advocate, with
Sube Sharma and Prateek Gupta, Advocate
for the appellant bank.

Divya Sharma, Advocate,
for the appellants in LPA-2006-2013.

Suvir Sheokhand, Addl. A.G. Punjab.

R.K. Malik, Senior Advocate, with
Sunil Hooda, Advocate, *for respondent in LPA-2001-2013.*

Pawan Kumar, Senior Advocate, with
Surya Kumar, and Rajni Gupta, Advocates,
for respondents in LPA-1988-2013 and LPA-2001-2013.

Gaurav Chopra, Advocate,
for the petitioner in CWP-11451-2014 and
For respondents No. 4 to 32 in LPA-2001-2013.

Vikas Chatrath, Advocate,
For private respondents in LPA-1990 & 2054-2013.

Manjit Singh Sarao, Advocate,
For respondent No.4 in LPA-1989-20136,
For respondent No.4 in LPA-109-2014 and
for the petitioners in CWP-16322, 3611 and 3641 of 2014.

RAJIV SHARMA, J.

(1) Since common questions of law and facts are involved in all these Letters Patent Appeals and Civil Writ Petitions, therefore, these are taken up together and being disposed of by a common judgment.

(2) The facts are being taken from Letters Patent Appeal No. 1988 of 2013, instituted against the judgment dated 31.08.2013 rendered by the learned Single Judge, in CWP No. 19915 of 2011 and analogous matters.

(3) The brief facts necessary for disposal of these appeals and writ petitions are that the private respondents in LPAs and petitioners in CWPs were employees of the Punjab State Cooperative Agricultural Development Bank Limited, Chandigarh (hereinafter referred to as 'the appellant Bank' for brevity sake). The service conditions of all the employees of the appellant Bank are governed by the Punjab State Cooperative Agricultural Land Mortgage Banks Service (Common Cadre) Rules, 1978 (hereinafter referred to as 'the Common Cadre Rules' for brevity sake).

(4) According to the averments made in the LPAs, the appellant Bank is a registered Cooperative Society. It was earlier known as "Punjab State Cooperative Land Mortgage Bank Ltd.". The principle object of the appellant Bank is to provide long term loans to the farming community and to save them from the clutches of money lenders. The main funding of the appellant Bank is by way of loans from National Bank for Agriculture and Rural Development ('NABARD') as per the norms laid down. The appellant Bank has two tier structure comprising of "Punjab State Cooperative Agricultural Development Bank Ltd." at Apex level (SADB) and the "Primary Agricultural Development Banks" (PADB) at the grass root level. These two banks ensure timely delivery of credit to approximately eight lac farmers, who are its members. The farmers are directly benefitted with various schemes which provide long term and short term loans to them.

(5) According to the facts enumerated in various appeals and writ petitions, the Department of Finance, Government of Punjab, vide its letter bearing U.O. No. 2368-FD BPE/SA-III-81-Policy-12 dated 22.09.1988, in pursuant to the recommendations of the Punjab Pay Commission to bring the employees serving in various Public Sector Undertakings and State Aided Institutions under the purview of the State Pension Rules, had solicited the views/comments of the concerned organisations to inter-alia communicate the additional financial burden involved in each case and whether the organisation/organisations could bear the additional liability out of their

own resources. On 22.06.1989, resolution No. 24 was passed by the Administrator of the appellant Bank as under :-

Item No.	Agenda	Decision
1(i)	To consider to amend common Cadre Rules for introducing Pension Schema.	1 (i) Resolved that the existing Common Cadre Rule No. 15 be numbered as 15 (i) and a new rule 15 (ii) be incorporated as under: 15 (ii) The Board of Directors may formulate Pension Rule with the approval of RCS Punjab.
(ii)	To consider to introduce Pension Scheme for the employees/officers in the Common Cadre of the Punjab State Cooperative Agricultural Development Bank.	(ii) (a) Resolved that the Pension Scheme for the employees/officers in the Common Cadre of the Punjab State Cooperative Agricultural Development Bank be introduced for the adoption w.e.f. 1.4.89. (b) It is further resolved that the pension rules enclosed are approved. Any matter which is not specifically mentioned in these Rules shall be governed by Chapter XIII of the Punjab Civil Service Rules Vol. II. (c) It is further resolved that the Regional Provident Fund Commissioner, Chandigarh be requested to exempt the bank from the payment of contributory provident fund scheme and refund the entire existing contribution with them along with family pension contribution and deposit linked insurance fund along with up to date interest on these amounts.

Thereafter, the appellant Bank sent a letter dated 27.06.1989 to the Registrar, Cooperative Societies, Punjab, seeking approval for introduction of a pension scheme for its employees covered under the Common Cadre Rules, 1978. The Registrar, Cooperative Societies, Punjab, on 07.02.1990, conveyed its approval for introduction of the

Pension Scheme proposed by the appellant Bank to its employees covered under the Common Cadre Rules. The Registrar, Cooperative Societies, Punjab, in continuation of the above office memo dated 07.02.1990, granted approval to the Pension Rules for the employees of the Bank. Thereafter, the amendment was carried out in the Common Cadre Rules, 1978. The amended Rule 15 (ii) is extracted herein below for ready reference :-

15. (i) PROVIDENT FUND:-

The employee shall be entitled to the benefit of the General Provident Fund as provided in the employees Provident Fund Act, 1952 and scheme framed thereunder.

(ii) THE PENSION SCHEME FOR THE EMPLOYEES/ OFFICERS IN THE COMMON CADRE RULES OF THE PUNJAB STATE COOPERATIVE AGRICULTURAL DEVELOPMENT BANK W.E.F.1.4.89.

1. Short title and commencement:-

- (i) The rules shall be called, the Punjab State Cooperative Agricultural Development Banks Employees Pension. Family Pension and General Provident Fund Rules.
- (ii) These Rules shall come into force with effect from 1.4.89.

2. Application

- (i) These rules shall apply to all the posts in the services specified in the Appendix 'T' of the Common Cadre Rules, provided that in case of the employees appointed by transfer from Government Departments, these rules shall only apply to the extent specified in their terms and conditions of deputation agreed upon with the Government Department concerned.

Provided further that nothing in these rules shall affect the application of any other law, statutory rules, bye-laws and regulations for time being in force.

Provided further that an employee who joins service on or after coming into force of these rules and such existing employees, who opt for these rules, shall be covered by these rules. All category of employees shall have to exercise this option in Form-A to these rules

within three months from the date of notification of these rules.

(ii) The employees who do not opt for these rules shall be governed by the Employees Provident Fund Act and Rules.

3. Definition:-

xx xx xx xx

(o) Pay:- Pay means the pay as defined in Rule 2.44 of the Punjab Civil Services Rules Volume-I Part-I.

Note:- Unless the contrary appears from the context or subject to term 'pay' defined in Rule 2.44 of the Punjab Civil Services, Volume-I, does not include "Special Pay"

(6) Rule 2 (i) further stipulated that they shall apply to all the posts in the services specified in Appendix 'T' of the Common Cadre Rules.

(7) Rule 3 (o) defines Pay, Pay means the pay as defined in Rule 2.44 of the Punjab Civil Services Rules, Volume-I, Part-I. For the purpose of reference 3(o) is also extracted herein above.

(8) This amended Rule 15 (ii) came into force with effect from 01.04.1989. In sequel to the introduction of implementation of the scheme, the contributions made by the employees and the appellant Bank were transferred to the pension corpus to make it functionally viable. The employees of the appellant Bank started getting benefit of pension scheme as per their options.

(9) The appellant Bank, after introduction of the pension scheme with effect from 01.04.1989, sought exemption under Section 17 of the Employees' Provident Fund & Miscellaneous Provision Act, 1952, vide its communication dated 09.04.1990, addressed to the Regional Provident Fund Commissioner, Chandigarh. The appellant Bank also sought refund of the funds deposited by it under the schemes framed under the aforesaid Act, i.e. (i) The Employees' Provident Fund Scheme, 1952 (EPF Scheme, 1952); (ii) The Employees' Family Pension Scheme, 1971; and (iii) The Employees' Deposit Linked Insurance Scheme, 1976. The Regional Provident Fund Commissioner, Chandigarh, in response to the aforesaid communication, advised the

appellant Bank to seek exemption under Para 27-A of the EPF Scheme, 1952. The appellant Bank submitted an application dated 16.05.1990 to the Regional Provident Fund Commissioner, Chandigarh, seeking exemption under Para 27-A of the EPF Scheme, 1952. The Regional Provident Fund Commissioner, Chandigarh, pending disposal of the application for exemption submitted by the appellant Bank under Section 17 (1) (b) of the Employees' Provident Fund & Miscellaneous Provision Act, 1952, in exercise of the powers conferred under Para 79 of the EPF Scheme, 1952, granted relaxation to the appellant Bank on 10.09.1990. The appellant Bank on 11.09.1990 submitted an application to the Regional Provident Fund Commissioner, Chandigarh, for the purpose of seeking exemption from the provisions of the Family Pension Scheme, 1971 under Section 17 (1) (b) of the Employees' Provident Fund & Miscellaneous Provision Act, 1952.

(10) The fact of the matter is that the Regional Provident Fund Commissioner, Chandigarh, vide communication dated 17.01.1992, informed the appellant Bank that it had no objection to the Bank having a Retirement Pension Scheme as additional benefit till such time there was no reduction in the benefits provided in the schemes under the Employees' Provident Fund & Miscellaneous Provision Act, 1952. On 10.04.1992, the Regional Provident Fund Commissioner, Chandigarh, granted relaxation under Para 28 (7) of the Employees Deposit Linked Insurance Scheme, 1976, while directing that the appellant Bank may not, until a decision was taken on the application for exemption, comply with the provisions of the aforesaid scheme with effect from 01.02.1992. Since the appellant Bank failed to constitute the Board of Trustees, the relaxation granted under Para 79 of the EPF Scheme, 1952, was revoked by the Regional Provident Fund Commissioner, Chandigarh, on 12.04.1993. The operation of this order was stayed by a Division Bench of this Court on 30.04.1993 in Civil Writ Petition No. 4896 of 1993 instituted by the appellant Bank. The writ petition was allowed by the learned Single Judge of this Court on 18.07.2007. While setting aside the order dated 12.04.1993, the matter was remanded back to the Regional Provident Fund Commissioner, Chandigarh, with a direction to pass a speaking order.

(11) There was protracted correspondence between the appellant Bank and the Regional Provident Fund Commissioner, Chandigarh. The Regional Provident Fund Commissioner, Chandigarh, vide communication dated 28.11.2008, directed the appellant Bank to submit revised application for exemption. A revised application for the purpose

of seeking exemption was submitted by the appellant Bank on 27.03.2009. This application was forwarded by the Regional Provident Fund Commissioner, Chandigarh, to the Central Provident Fund Commissioner, New Delhi, with a recommendation that the case may be considered for necessary Notification. On 29.05.2010, in a meeting of the Board of Directors of the appellant Bank, as recorded in the Minutes of Meeting against Agenda Item No. 15 regarding reconsideration of the matter about giving pension to the Bank employees, it was resolved as under :-

1. Pension to the retired employees and those going to retire in future be communicated.
2. Pension Scheme will not be applicable in case of employees employed on or after 1.1.2004.
3. Pensioners be not given the benefit of commutation of pension, medical reimbursement and LTC.
4. As per existing rules, the contribution equal to the 12% GPF deduction of employees to be continued by bank.
5. As per letter No. CA3/64/13717 dated 29.8.2008 of Registrar, Cooperative Societies, 12% of the profits of SADB & PADBs be allocated to employees benefit fund and its 90% share be contributed to the pension fund.
6. Bank to continue pension from its funds/expenses by stopping the commutation of pension, medical reimbursement and LTC facilities to its employees and retired employees, imposing 25% deduction on eligible amount of pension and after adjusting the pension amount against SADB/PADBs profits according to rules be made up on the basis of outstanding loans of SADB and PADBs.
7. As and when there is improvement in financial condition of bank, the payment of full pension may be considered.

(12) The appellant Bank sent a letter No. 3014 dated 09.06.2010 to the Registrar, Cooperative Societies, Punjab, seeking approval of the aforesaid resolution. The Registrar, Cooperative Societies, Punjab, vide its letter dated 03.09.2010, issued direction to the appellant Bank to submit a sound and appropriate proposal. The appellant Bank submitted its proposal to the Registrar, Cooperative Societies, Punjab, on

30.03.2011, to run the Pension Scheme in accordance with Resolution No. 15 dated 29.05.2010. The proposal was turned down by the Registrar, Cooperative Societies, Punjab, Chandigarh. A show cause notice was also issued under Section 7-A of the EPF Act, 1952, to the appellant Bank on 17.08.2012. The appellant Bank instituted Civil Writ Petition No. 18283 of 2012 in this Court, challenging the aforesaid show cause notice. The Board of Directors of the appellant Bank vide its resolution dated 17.08.2012 decided to discontinue the Pension Scheme and revert to the scheme of Contributory Provident Fund with a proposal of One Time Package. On 16.10.2012, the One Time Settlement Scheme was submitted by the Managing Director of the appellant Bank in CWP No. 14088 of 2010. It was made subject to the approval of the Board of Directors, Department of Cooperation and the Regional Provident Fund Commissioner.

(13) The pension of the private respondent in CWP No. 19915 of 2011 was stopped. He made representation, which was rejected by the appellant Bank vide order dated 24.02.2011, which reads as under :-

“A Civil Writ Petition No. 21226 of 2010 was filed by Shri Shamir Singh son of Shri Assa Singh r/o House No. 87, Ward No. 40, Opposite Model Town, Chhaju Majra Colony, Kharar, District Mohali, in the Hon'ble Punjab & Haryana High Court on 26.11.2010. Hon'ble High Court vide its order dated 29.11.2010 directed the undersigned to pass a speaking order within a period of 12 weeks from the date of the receipt of the certified copy of the order. These orders were received in this office on 9.12.2010.

The petitioner in his petition basically has raised the issue that he should be paid full revised pension after taking into prevalent rate of DA as granted by the Government of Punjab. He has also requested that the undersigned be ordered to release entire amount of pension after taking into consideration the prevalent rate of DA at par with the Government employees with interest @ 18% from the date of its accrual till its actual realization.

It is pertinent to mention here that a Trust namely “The Punjab State Cooperative Agricultural Development Bank Limited Trust, Chandigarh” has been constituted for payment of pension and this Trust is working under the chairmanship of Managing Director of the Bank. The other

members of the Trust are elected from amongst the employees of the bank as per the Trust Deed. As per Sr. No.4 of the Pension Scheme, provision for the constitution of the fund as enumerated therein is reproduced as under :-

“4. (i) For the payment of pension, a fund namely “The Punjab State Cooperative Agricultural Development Bank Pension Fund” shall be established. The Bank and PADB in respect of their employees shall make monthly contribution at the rate of 12% payable by Basic Pay, Dearness Pay and Dearness Allowance.

(ii) The Fund shall be kept in the State Bank of India, State Bank of Patiala, Punjab State Cooperative Bank or any other Nationalised Bank whatsoever gives the maximum return on such investment.”

It is made clear that the Trust managed to pay full pension upto 31.3.2010 but thereafter due to inadequate funds, the pension could not be paid at full rates. The Trust has taken measures to continue the payment of pension by stopping the commutation of pension and leave travel facilities to the pensioners. According to the pension rules, the pension fund is to be created only by payment of employer's share of the Provident Fund and the employer is not required to make any other contribution to this fund as per the pension scheme. In fact to make sure that the pensioners are paid full pension, the Bank, taking compassionate view beyond the legal liability, started contributing 90% of the Employees Benefits Funds with the approval of the RCS on 29.9.2008. But still the Trust is in deficit of the funds. The deficit amount of all the pensioners as of today works out to be Rs. 675.00 lakh.

The petitioner is still paid 30-40% of the total pension because the deficit in the pension fund is increasing day to day. The basic reason for this increasing deficit is that there has been no recruitment for the last ten years. The number of pensioners is rising day to day and on the contrary, the number of serving employees who are supposed to contribute to the pension fund is decreasing

day by day. Therefore, it has not been possible to pay full pension to the petitioner through the Trust by the employer despite best efforts and good intentions. Whatever contribution is collected from the employees is taken into the pension fund and accordingly, the pension is paid to be petitioner on pro-rate basis. Therefore, the employer through the Trust is not in a position to pay full revised pension to the petitioner in the light of the reasons already explained in the foregoing paras.

Order has been recorded today. Petitioner be informed.”

(14) It is in these circumstances that the bunch of writ petitions were filed seeking pension by the employees of the appellant Bank. These were allowed by the learned Single judge judgment dated 31.08.2013. The learned Single Judge, while allowing the writ petition, also quashed the show cause notice issued by the Employees' Provident Fund Organisation under Section 7-A of the EPF Act, 1952.

(15) The appellant bank, feeling aggrieved by the judgment dated 31.08.2013, had preferred the Letters Patent Appeals.

(16) The Registrar, Cooperative Societies, Punjab, granted approval to the Comprehensive One Time Package on 20.12.2013. The Pensioners Association of the Cooperative Agricultural Development Bank submitted a representation against the decision, whereby the appellant Bank proceeded to deposit the arrears of the Employer's share of the Contributory Provident Fund dues, after excluding the amount of pension received by the retired employees, in the Saving Bank accounts of the retired employees without even taking the consent of affected retired employees.

(17) It would be necessary to note here that the Registrar, Cooperative Societies, Punjab, pursuant to the receipt of proposal submitted by the appellant Bank for amendment of Rule 15 of the Common Cadre Rules, 1978, in exercise of the powers vested in it under Section 84-A (2) of the Punjab Cooperative Societies Act, 1961, granted approval for amendment of Rule 15 of the Common Cadre Rules, 1978. The gist of the amendment was that the employees would be entitled to the benefit of Contributory Provident Fund as provided in the employees Provident Fund Act, 1952. Rule 15 (ii) was deleted from the Common Cadre Rules, 1978, with effect from 11.03.2014.

(18) The proceedings were initiated against the appellant Bank under Section 7-A of the EPF Act, 1952 for dues for the period from April, 1989 to January, 2015. Recovery of a sum of ` 14,13,48,572/- was made against the appellant Bank by the Regional Provident Fund Commissioner. Thereafter, notice under Section 7-A of the EPF Act, 1952, was issued by the Regional Provident Fund Commissioner to the appellant Bank on 22.06.2017 with regard to dues for the period from 01.04.2015 to 31.05.2017. The order of recovery was made on 31.08.2017 ordering recovery of a sum of ` 3,72,60,000/-. This amount was also recovered from the appellant Bank on 20.09.2017.

(19) The LPAs came up for hearing before a Division Bench of this Court on 29.11.2013. The following order was passed by the Division Bench :-

“Inter-alia cites Marathwada Gramin Bank Karamchari Sanghatana and another vs. Management of Marathwada Gramin Bank and others, 2011 (9) SCC 620.

Heard learned counsel for the parties.
The matter requires consideration.
Admit.

Operation of the impugned judgment dated 31.08.2013 passed by the learned Single Judge shall remain stayed. However, the appellant shall give effect to the One Time Settlement Scheme, if approved, for which it may seek appropriate approval from the Competent Authority.

Keeping in view the peculiar facts and circumstances of the case, the matter be listed for final hearing within six months.

Photocopy of this order be placed on the record of other connected matters.”

(20) The Division Bench on 21.02.2018 passed the following order during hearing of LPAs :-

“Arguments have been heard for some time. For an effective adjudication of the controversy involved in this case, the following bare information is required to be brought on record by the parties:-

i) The annual balance sheets of the appellant-bank

from the year 2009- 2010 onwards;

- ii) The details of the contribution made/required to be made towards provident fund (employer's share) by the bank along with interest, penalty or any other statutory charges under the Employees Provident Fund & Miscellaneous Provisions Act, 1952;
- iii) What is the strength of the total pensioners/family pensioners as compared to the existing employees? The strength of the employees be further categorized as Class-I, Class- II, Class-III & Class-IV employees;
- iv) Is there any "Pension Scheme" in operation in any other co-operative institution in the State of Punjab, which is registered under the Punjab Co-operative Societies Act, 1961? If so, the details be also furnished;
- v) How much will be the total annual liability in the event of payment of pension to all the pensioners/family pensioners?;
- vi) How much are the net profits yearly earned by the bank since 2009-10? The profits, if any, being earned by the bank be fully explained;
- vii) How much is the expenses being incurred by the bank on the establishment including salaries of employees as well as its contributions towards the provident fund for the retirees/family pensioners and also the existing employees?;
- viii) The Regional Provident Fund Commissioner shall explain as how much amount has been contributed by the appellant-bank. The year-wise detail be furnished; And
- ix) The bank shall also furnish the employee-wise details of the amount paid under the One Time Settlement.

List on 14.032018.

A copy of this order be placed on the files of each connected case."

(21) In sequel to the direction issued by this Court on 21.02.2018, affidavits were filed by (i) the Managing Director of the appellant Bank; (ii) Regional Provident Fund Commissioner; and (iii) Joint Registrar-(1), Cooperative Societies, Punjab. These were taken on record.

(22) Thereafter, detailed order was passed by this Court on 25.03.2019, by making reference to the similar problem which arose with the Maharashtra Land Development Bank with similar grievance regarding dues of retired employees. In sequel to the direction issued by this Court on 25.03.2019, the Chief Secretary, Government of Punjab, Chandigarh, filed affidavit dated 27.05.2019.

(23) In the affidavit dated 12.03.2018 filed by Shri V. Ranganath, Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Chandigarh, in compliance of the order dated 21.02.2018 passed by this Court, it has been averred that as per the records, the amount of ` 14,78,07,668/- in regard to pension fund for the period from 01.04.1989 to 31.03.2015 and a sum of ` 3,72,60,000/- in regard to pension fund for the period from April, 2015 to 30.06.2017, was assessed under Section 7-A of the Employees' Provident Fund & Miscellaneous Provision Act, 1952. Out of total amount of ` 14,78,07,668/-, a sum of ` 64,59,096/- was already deposited by the appellant Bank. The remaining amount of ` 14,13,48,572/- was recovered from the appellant Bank on 30.03.2016 and a sum of ` 3,72,60,000/- was recovered on 26.09.2017. In addition to this, damages to the tune of ` 14,13,48,779/- under Section 14-B and interest of ` 14,79,32,963/- under Section 7-Q of the Employees' Provident Fund & Miscellaneous Provision Act, 1952 are yet to be recovered from the appellant Bank for the period from September, 1990 to March, 2015. The amount of damages and interest under Sections 14-B and 7-Q of the Act for the period from April, 2015 to June, 2017 were yet to be assessed. It was also clarified by the Regional Provident Fund Commissioner that the appellant Bank had not deposited the Employees Pension Scheme contribution from July, 2017 onwards.

(24) The Joint Registrar (1), Cooperative Societies, Punjab, Chandigarh, also filed her affidavit, in sequel to the direction issued by this Court vide order dated 21.12.2018. It was averred in the

affidavit that there was no other Cooperative Institution in the State of Punjab registered under the Punjab Cooperative Societies Act, 1961, which had a Pension Scheme.

(25) According to the grounds taken in the Letters Patent Appeals, the annual liability of full pension is about ` 30 crores against an annual inflow of `3.69 crores. The fund was running into deficit. It is in these circumstances that the Board of Directors of the appellant Bank decided in its Board meeting held on 29.05.2010 to stop commutation of pension, Medical reimbursement, LTC and to impose 25% deduction on eligible amount of pension payable and to restore full pension when the financial position of the Pension Fund would improve.

(26) During the pendency of the writ petition, the learned Single Judge vide order dated 26.07.2012 had directed the appellant Bank to place on record a comprehensive scheme as to how the pension of the retired employees, including arrears, was to be paid. The Board of Directors again met on 17.08.2012 and came to the conclusion that the Pension Scheme was no longer viable. The appellant Bank had framed One Time Settlement scheme, as noticed hereinabove. Though the amounts have been deposited by the appellant Bank, but the employees have not withdrawn the amount. It is also stated, inter-alia, in the grounds of appeal that the appellant Bank was not in a position to shoulder the financial burden. The appellant Bank would be in losses. In the grounds of appeal, the salient features of the financial package were also re-produced. The appellant Bank will have to pay arrears to the tune of `93.19 crores from the date, pro-rata pension was introduced.

(27) In sequel to the directions issued by this Court vide order dated 21.02.2018, the appellant Bank had also filed affidavit of its Managing Director. According to it, the profit for the year 2009-10 was `27.45 crores, for the year 2014-15, a sum of `12.56 crores was required to be paid by the appellant Bank. The total contributions required to be made by the Bank for 2015-16 was `14.33 crores. The contribution to be made by the Bank for the year 2016-17 was `13.64 crores. A sum of `12.35 crores was required to be contributed by the Bank for the year 2017-18. The ratio/strength of the existing employees qua the

pensioners was at 928 : 1130 as on 28.02.2018. Out of the total 928 employees, 445 were recruited before 01.01.2004 and were covered under the Pension scheme of the Bank. 483 employees, who were recruited on or after 01.01.2014, were not covered under the Pension Scheme of the Bank. Out of the total 1130 pensioners, 855 were the regular pensioners and 275 were the family pensioners. 170 employees had retired after the implementation of the One Time Settlement. It was further averred in the affidavit that the appellant Bank at present has 445 employees who are working and are covered under the Pension Scheme. The total liability in the event of payment of pension to all the pensioners/family pensioners as on 28.02.2018 would stand at `3.58 crores being the estimated pension liability per month and `43 crores (approximately) being the total estimated annual pension liability. This liability was in respect of 1078 pensioners who were availing pension till October, 2013 at the time of implementation of the One Time Settlement Scheme. About 170 employees have retired after the implementation of the One Time Settlement Scheme. The yearly net profits earned by the appellant Bank and its Primary Banks since 2009-10 have been explained as under :-

S.No.	Year	State Agricultural Development Bank Level-Apex Bank (Amount in Crores)	Primary Agricultural Development Bank Level (Amount in Crores)
		Profits	Net Profit/loss earned by the PADBs in the State.
1	2009-10	27.45	34.33
2	2010-11	19.32	35.95
3	2011-12	20.71	27.11
4	2012-13	28.78	32.81
5	2013-14	25.67	18.67
6	2014-15	24.93	(-) 30.64
7	2015-16	25.42	(-) 75.17
8	2016-17	10.81	(-) 238.04

The total expenditure at the State Agricultural Development Bank Level was `27.75 crores, whereas at the Primary Agricultural

Development level was `59.04 crores, total being `86.79 crores. This included salaries of the existing employees as well as contribution towards Provident Fund of existing employees. As on 09.11.2012, the retirees who had received pension more than the employers share were 572 in number. The retirees who had had received pension less than their employers share were 233 in number. Family pension was payable to the families of 253 retirees. However, as on 01.01.2014, i.e. at the time of final approval and implementation of the One Time Settlement Scheme, the number of retirees who had received more than the employers share, subsequently increased to 636 and the retirees who had received pension less than the employer share reduced to 219. A sum of `13,68,91,745/- was paid to them as full and final settlement under the One Time Settlement Scheme. A sum of `2,75,00,000/- had been credited in the accounts of 275 family pensioners. The sum and substance of the affidavit is that the financial health of the appellant Bank was precarious and the liability of the Bank were mounting. The implementation of the Pension Scheme would be difficult. The appellant Bank and 89 Primary Agricultural Development Banks are providing loans to about 8 lac farmers in the State of Punjab. The financial position of the bank has deteriorated due to Government announcements of debt waiver and the consequent non-deposit by the farmers. The Bank had to avail loan of `200 crores from National Cooperative Development Corporation, New Delhi and `100 crores from the Rural Development Fund, Government of Punjab.

(28) As per the latest affidavit dated 27.05.2019, filed by the Chief Secretary, Government of Punjab, in sequel to the directions issued by this Court vide order dated 21.02.2019, the total land mortgaged by the farmers with the appellant Bank and with the Primary Agricultural Development Banks, was 107473 acres 3 kanals 15 marlas and value of the land pledged as per the present collector rates was `7,95,635 lacs. The gist of the affidavit of the Chief Secretary, Government of Punjab, is that the State Government has not issued any directions either to waive off the loans nor to sell the mortgaged property. It was also found that the Pension Scheme under dispute in respect of Punjab State Cooperative Agricultural Development Bank vis-a-vis Maharashtra were not comparable.

(29) The appellant Bank had a common cadre of employees. The

provisions of the Employees' Provident Fund & Miscellaneous Provision Act, 1952 were applicable to all its employees. The appellant Bank in its own wisdom decided to frame a Pension Scheme for its employees. Vide resolution No. 24 dated 22.06.1989, the appellant Bank decided to implement Pension Scheme for its employees and pensioners. The Registrar, Cooperative Societies, Punjab, accorded approval to the implementation carried out under Rule 15 (ii) of the Common Cadre Rules, which came into force with effect from 01.04.1989. A Trust was also created vide Trust Deed dated 24.03.1993. In the meantime, the Bank had decided to reduce pension of the employees and to withdraw some other benefits, such as medical reimbursement, LTC and commutation of pension. The matter was taken before the Board of Directors vide Agenda No. 15 in the meeting held on 29.05.2010. The decision has already been re-produced above. There was protracted correspondence with the Regional Provident Fund Commissioner. Rule 15 (ii) of the Common Cadre Rules could be negated merely on the basis of the decision taken by the Board of Directors in its meeting held on 29.05.2010. The Rules were accorded approval by the Registrar, Cooperative Societies, Punjab. The fact of the matter is that these Rules were amended ultimately on 11.03.2014. We have gone through the balance sheet of the appellant Bank. The bank is making profit on year to year basis.

(30) Learned counsel appearing on behalf of the appellant Bank has vehemently argued that the bank is not in a position to recover the loan due to various announcements made by the State Government as well as due to the fact that the bank has been stopped from disposing of the land pledged with it. The Chief Secretary, Government of Punjab, in his affidavit has categorically stated that the State Government has never passed any order of waiver of loans of the banks. In para 4 of the affidavit, it has been stated that the State Government has neither issued any directions to waive off the loans nor imposed any restrictions to dispose of the mortgaged property. The mortgaged land with the appellant bank is 107473 acres 3 kanals 15 marlas, value whereof is `7,95,635 lacs.

(31) The decision to frame the Pension Scheme was taken by the appellant Bank in its own wisdom and corresponding the Rules were amended, which came into force with effect from 01.04.1989. These were amended only on 11.03.2014. It is settled law that the vested/accrued rights cannot be taken away retrospectively. The law looks forward. The employees were legitimately expecting that they

would get pension on the basis of amendment carried in the Common Cadre Rules with effect from 01.04.1989. They in fact started getting pension. It was also reduced by the bank. The pension is being denied to the pensioners by giving the amendment made on 11.03.2014 a retrospective effect.

(32) Learned counsel appearing on behalf of the retiring employees have submitted that most of the retirees have not accepted the amount under the One Time Settlement Scheme, though credited in their accounts. There cannot be any estoppel against the fundamental rights or statutory rights. The employees have right to get pension even if few of them have withdrawn One Time Settlement amount, for the simple reason that the implementation of One Time Settlement Scheme was subject to outcome of the litigation.

(33) The appellant Bank being the Apex Bank should work professionally. The purpose to establish the Punjab State Cooperative Agricultural Development Bank was to save poor farmers from the clutches of middlemen. The very purpose of establishing the bank would be defeated, if it is not run professionally. The court can take judicial notice of the fact that the farming community is in distress. It was the responsibility of the State Government also to bail out the bank to keep it afloat. The appellant bank is discharging important public duties by protecting interest of the farming community.

(34) It is settled law that the rules, instructions and circulars cannot take away the vested/accrued rights acquired by the parties until and unless explicit or by implication the indication is given that the rights could be taken away, that too, retrospectively. The amendment carried on 11.03.2014 has taken away the vested rights of the employees to get pension. It cannot be gathered from the language of the Act that the provisions could be given retrospective effect to destroy the accrued rights by way of implication or inference.

(35) Their Lordships of the Hon'ble Supreme Court in ***T.R. Kapur and others*** versus ***State of Haryana and others***¹ have held that though rules can be amended retrospectively but the benefits acquired under existing rules cannot be taken away. Their Lordships have held as under : -

“5. Shri Shanti Bhushan, learned counsel for the petitioners has put forward a three fold contention. First of

¹ 1986 (Supp) SCC 584

these submissions is that the impugned notification which purported to amend R. 6 (b) of the Class I Rules with retrospective effect from July 10, 1964 making a degree in Engineering essential for promotion to the post of Executive Engineer in Class I service constitutes a variation in the conditions of service applicable to officers belonging to Class II service who are diploma-holders like the petitioners prior to the appointed day, i.e., November 1, 1966, to their disadvantage as it renders them ineligible for promotion to the post of Executive Engineer in Class I service was ultra vires the State Government having been made without the previous approval of the Central Government as enjoined by the proviso to S. 82 (6), Punjab Reorganisation Act, 1966. It is urged that any rule which affects the promotion of a person relates to his conditions of service, although mere chances of promotion may not be. The contention, in our opinion, must prevail. The second is that it was not permissible for the State Government to amend R. 6 (b) of the Class I Rules with retrospective effect under the proviso to Art. 309 of the Constitution so as to render ineligible for promotion to the post of Executive Engineer in Class I service, the members of Class II service who are diploma-holders although they satisfy the condition of eligibility of eight years' experience in that class of service. It is said that the un-amended R. 6 (b) conferred a vested right on persons like the petitioners which could not be taken away by retrospective amendment of R. 6 (b). The third and the last submission is that the action of the State Government in issuing the impugned notification making retrospective amendment of R. 6 (b) of the Class I Rules was wholly arbitrary, irrational and mala fide and thus violative of Arts. 14 and 16 (1) of the Constitution. It is submitted that the impugned notification was calculated to circumvent the direction given by this Court in its order dated February 24, 1984 on the basis of the undertaking given by the learned Additional Solicitor General that the State Government would consider the cases of all eligible officers belonging to Class II service for promotion to the Class I service.

6. to 15. x x x x x x x x x

16. It is well settled that the power to frame rules to

regulate the conditions of service under the proviso to Art. 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect : B. S. Vadhera v. Union of India, (1968) 3 SCR 575 : (AIR 1969 SC 118), Raj Kumar v. Union of India, (1975) 3 SCR 963: (AIR 1975 SC 1116), K. Nagaraj v. State of A.P., (1985) 1 SCC 523: (AIR 1985 SC 551) and State of J & K v. Triloki Nath Khosla, (1974) 1 SCR 771 : (AIR 1974 SC 1). It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the test of Arts. 14 and 16 (1) of the Constitution : State of Mysore v. M. N. Krishna Murty, (1973) 2 SCR 575 : (AIR 1973 SC 1146), B. S. Yadav v. State of Punjab, (1981) 1 SCR 1024 : (AIR 1981 SC 561), State of Gujarat v. Ramanlal Keshavlal Soni, (1983) 2 SCR 287: (AIR 1984 SC 161) and K. C. Arora v. State of Haryana, (1984) 3 SCR 623: (1984 Lab IC 1015).”

(36) Their Lordships of the Hon’ble Supreme Court in *P. Mahendran and others* versus *State of Karnataka and others*² have held that the rules which are prospective in nature cannot take away or impair the right of candidates holding diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection

² (1990) 1 SCC 411

and appointment. Their Lordships have further held that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Their Lordships have further held that if a rule is expressed in a language which is fairly capable of either interpretation it ought to be construed as prospective only. Their Lordships have held as under : -

“4. There is no dispute that under the Recruitment Rules as well as under the advertisement dated 6-10-1983 issued by the Public Service Commission, holders of Diploma in Mechanical Engineering were eligible for appointment to the post of Motor Vehicle Inspectors along with holders of Diploma in Automobile Engineering. On receipt of the applications from the candidates the Commission commenced the process of selection as it scrutinised the applications and issued letters for interview to the respective candidates. In fact the Commission commenced the interviews on August 1984 and it had almost completed the process of selection but the selection could not be completed on account of interim orders issued by the High Court at the instance of candidates seeking reservation for local candidates. The Commission completed the interviews of all the candidates and it finalised the list of selected candidates by 2nd June 1987 and the result was published in the State Gazette on 23rd July 1987. In addition to that the selected candidates were intimated by the Commission by separate letters. In view of these facts the sole question for consideration is as to whether the amendment made in the Rules on 14th May 1987 rendered the selection illegal. Admittedly the amending Rule does not contain any provision enforcing the amended Rule with retrospective effect. In the absence of any express provision contained in the amending Rule it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment.. In fact the entire selection in the normal course would have been finalised much before the amendment of Rules, but for the interim orders of the High Court. If there had been no interim orders, the selected

candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules.

5. It is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary- intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.”

(37) Hon'ble Supreme Court in *Hitendra Vishnu Thakur and others* versus *State of Maharashtra and others*³ has laid down the principles with regard to the ambit and scope of amending Act and its retrospective operation. Their Lordships have held as under:-

“From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge

³ (1994) 4 SCC 602

with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

- (i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.
- (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.
- (iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.
- (iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.
- (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

(38) Their Lordships of the Hon’ble Supreme Court in *K. Narayanan and others* versus *State of Karnataka and others*⁴, have held that rules operate prospectively. Retrospectivity is exception. The rule making authority should not be permitted normally to act in the past.

(39) Their Lordships of the Hon’ble Supreme in *Chairman Railway Board and others* versus *C.R. Rangadhamaiah and others*⁵ have explained expression “vested rights” or “accrued rights”. Their lordships have held that the expression “vested rights” or “accrued

⁴ 1994 Supp SCC 44

⁵ (1997) 6 SCC 623

rights” are used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. Such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. Their Lordships have held as under:-

“In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon (AIR 1967 SC 1889)* (supra); *B. S. Yadav (AIR 1981 SC 561)*(supra) and *Raman Lal Keshav Lal Soni (AIR 1984 SC 161)* (supra).”

(40) Hon’ble Supreme Court in *Land Acquisition Officer-cum-DSWO, A.P. versus B.V. Reddy and Sons*⁶ has held that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. Their Lordships have held as under:-

“Coming to the second question, it is a well- settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date

on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984. Under the amendment in question, the provisions of Section 23(2) dealing with solatium were amended and Section 30(2) of the amended Act provided that the provisions of subsection (2) of Section 23 of the principal Act as amended by clause (b) of Section 15 shall apply and shall be deemed to have applied, also to and in relation to any award made by the Collector or court or to any order passed by the High Court or the Supreme Court in appeal against any such award under the provisions of the principal Act, after 30-4-1982 and before the commencement of the Act. It is because of the aforesaid provision, the question cropped up as to whether in respect of an award passed by the Collector between the two dates, the amended provision will have an application or not and that question has been answered by this Court in the Constitution Bench decision in **Union of India v. Raghubir Singh**. Sub-section(1) of Section 30 has at all no reference to the provisions of Section 25 of the Act. In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act.”

(41) Hon’ble Supreme Court in *Zile Singh* versus *State of Haryana and Others*⁷ has laid down that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. Their Lordships have opined as under: -

“It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there

are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only – “nova constitution futuris formam imponere debet non praeteritis” – a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p.438) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).”

(42) The question such as the nature of the amendment, i.e. whether it is at all retrospective in operation or not, has been considered by Hon’ble Supreme Court in *S.L. Srinivasa Jute Twine Mills (P) Ltd. versus Union of India and Another*⁸. Their Lordships have opined as under :-

“It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See *Kesharan Madhava Menon versus v. State of Bombay.*) But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only nova constitution futuris formam imponere debet, non praeteritis. In the words of Lord Blanesburgh,

“provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment” (see *Delhi Cloth & General Mills Co. Ltd. versus V. CIT, AIR p.244*).

“Every statute, it has been said”, observed Lopes, L.J.’

“which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions

already past, must be presumed to be intended not to have a retrospective effect.” (See *Amireddi Rajagopala Rao* versus *Amireddi Sitharamamma*.)

As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See *Reid* versus *Reid*.) In other words, close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See *Union of India* versus *v. Raghubir Singh*.) The above position has been highlighted in Principles of Statutory Interpretation by Justice G.P. Singh (10th Edn., 2006 at pp. 474 and 475.)”

(43) Similarly, Hon’ble Supreme Court in *MRF Ltd., Kottayam* versus *Asstt. Commissioner (Assessment) Sales Tax and Others*⁹ has made pertinent observations with regard to applicability of Amendment Act retrospectively as under :-

“In the aforesaid case, the Employees’ Provident Funds Act (as amended in 1988) provided that the Act would not apply “to a newly set-up establishment for a period of three years from the date on which such establishment is set up”. Section 16(1)(d) was deleted by the mending Act w.e.f. 22-9-1997 and the question was whether the initial exemption from application of the Act would continue for the full period of three years from the date of its establishment, even beyond 22-9-1977. Rejecting the contention, as pointed out earlier, it was held that retrospective operation is not taken to be intended unless that intention of the legislature is projected by express words or necessary implication. Setting aside the order of the High Court it was held: (SCC pp.746-47, paras 18 & 20)“18. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See *Keshavan Madhava Menon* versus *State of Bombay*.)

⁹ (2006) 8 SCC 702

But the rule is general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only *nova constitution futuris formam imponere debet, non praeteritis*. In the words of Lord Blanesburgh,

‘provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment’ (see *Delhi Cloth & General Mills Co. Ltd.* versus *CIT*, AIR p. 244).

‘Every statute, it has been said’, observed Lopes, L.J.,

‘which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect’. (See *Amireddi Rajagopala Rao* versus *Amireddi Sitharamamma*.)

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20. Above being the legal position, the judgments of the High Court are indefensible and are set aside. The appellants shall be entitled to the protection as had accrued to them prior to the amendment in 1997 for the period of 3 years starting from the date the establishment was set up irrespective of repeal of the provision for such infancy protection.”

(44) Similarly Hon'ble Supreme Court in *U.P. Raghavendra Acharya and Others* versus *State of Karnataka and Others*¹⁰ has held that reduction of pension with retrospective effect would be violative of Articles 14 and 16 of the Constitution. Their Lordships have opined as under:-

“As the amount calculated on the basis of the revised scales of pay on and from 1-1-1996 to 31-3-1998 has not been paid to the appellants by the State of Karnataka as ex gratia, and in fact was paid by way of emoluments to which the appellants became entitled to in terms of their conditions of service, which in turn are governed by the statutory rules, they acquired a vested right therein. If the appellants became entitled to the benefits of the revised scales of pay, and consequently to the pension calculated on the said basis in terms of the impugned rules, there would be reduction of pension with retrospective effect which would be violative of Articles 14 and 16 of the Constitution of India.

The appellants had retired from service. The State therefore could not have amended the statutory rules adversely affecting their pension with retrospective effect.”

(45) Their Lordships of the Hon'ble Supreme Court in *Nani Sha and others* versus *State of Arunachal Pradesh and others*¹¹ have held that in order to give retrospective effect to subordinate legislation, specific mention has to be made in the provisions itself. Their Lordships have held as under : -

“13. Reverting back to the effect of the proviso, we do not find anywhere any such intention to apply the proviso with retrospective effect. In order to make a provision applicable with retrospective effect, it has to be specifically expressed in the provision. We do not find such an expression in the said proviso. Nothing had stopped the government before amending the Rule to word it specifically, making it retrospective. That was not done and we are not prepared to hold that the Rule is retrospective. Secondly, we cannot countenance the argument that the Rule has a clarificatory nature. The Rule, for the first time, creates a quota and thus

¹⁰ (2006) 9 SCC 630

¹¹ (2007) 15 SCC 406

crystallizes the rights of the direct appointees and the promotees which was not there earlier. It, therefore, cannot be viewed as a clarificatory amendment. Again whether the amendment is clarificatory or not would depend upon the language of the provision as also the other Rules. We have examined the Rules which did not suggest that there was any quota existing as such. On the other hand we see Rule 25 which is a Rule regarding seniority and more particularly Rule 25(c). It is apparent from the language of the Rule that the government thought otherwise. Rule 25(c) is as under :

"The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5".

This language suggests that the only quota that was contemplated was as per Rule 5 which we have already explained in the earlier part of the judgment which suggests the 50% quota only in the "substantive vacancies which occurred from time to time" and not the whole vacancies in the cadre. We are, therefore, unable to accept the argument of the learned counsel for the appellants."

(46) Their Lordships of the Hon'ble Supreme Court in *Kusumam Hotels Private Limited* versus *Kerala State Electricity Board and others*¹² have held that the statute or a direction issued thereunder is presumed to be prospective only unless retrospectivity is indicated expressly or by necessary implication. Their Lordships have held as under:

"36. The law which emerges from the above discussion is that the doctrine of promissory estoppel would not be applicable as no foundational fact therefor has been laid down in a case of this nature. The State, however, would be entitled to alter, amend or rescind its policy decision. Such a policy decision, if taken in public interest, should be given effect to. In certain situations, it may have an impact from a retrospective effect but the same by itself would not be sufficient to be struck down on the ground of

unreasonableness if the source of power is referable to a statute or statutory provisions. In our constitutional scheme, however, the statute and/or any direction issued thereunder must be presumed to be prospective unless the retrospectivity is indicated either expressly or by necessary implication. It is a principle of rule of law. A presumption can be raised that a statute or statutory rules has prospective operation only.”

(47) Their Lordships of the Hon’ble Supreme Court in *Anil Chandra and others* versus *Radha Krishna and others*¹³ have held that the rule/notification/circular claims to be retrospective in nature, it has to be expressly specify the same, as per the rules of interpretation of statutes. Their Lordships have held as under : -

“19. The rules pertaining to the reservation and promotion list is prospective in nature and thereby cannot disturb the promotion list of the appellants by virtue of this rule further, if a rule/notification/circular claims to be retrospective in nature, has to expressly specify, as per the rules of interpretation of statutes in the instant petition, the appellants have failed to establish the nature with regard to retrospective effect of the notification/rules.”

(48) Their Lordships of the Hon’ble Supreme Court in *State of Madhya Pradesh and others* versus *Yogendra Shrivastava*¹⁴ have held that the rights and benefits already acquired to employees under un-amended rules cannot be affected by amending rules with retrospective effect. Their Lordships have held as under : -

“15. It is no doubt true that Rules under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing rules cannot be taken away by amending the rules with retrospective effect. [See : N.C. Singhal vs. Director General, Armed Forces Medical Services - 1972 (4) SCC 765; K. C. Arora vs. State of Haryana - 1984 (3) SCC 281; and T.R. Kapoor vs. State of Haryana - 1986 Supp. SCC 584]. Therefore, it has to be held that while the amendment, even if it is to be considered as

¹³ (2008) 13 SCC 213

¹⁴ (2010) 12 SCC 538

otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay, having accrued to the respondents under the unamended Rules, it follows that respondents-employees will be entitled to Non-Practising Allowance @ 25% of their pay upto 20.5.2003.”

(49) The general presumption is stated in **Maxwell on The Interpretation of Statutes** in the following terms :-

“It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

One of the most well-known statements of the rule regarding retrospectivity is contained in this passage from the judgment of R.S. Wright J. in *Re Athlumney*: “Perhaps no rule of construction is more firmly established than this- that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.” The rule has, in fact, two aspects, for it “involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. (Maxwell on The Interpretation of Statutes, Twelfth Edition, 1969, page 215).”

(50) I may also refer to **Francis Bennion Statutory Interpretation 1984 Edn. page 443** wherein the learned author commented as follows:-

“Unless the contrary intention appears, an enactment is presumed not to be intended to have a retrospective operation.

The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air.

Clumsy though these images are, they show the inappropriateness of retrospective laws.

If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of *ex post facto* law is enshrined in the United States Constitution and in the constitutions of many American states, which forbid it.

The true principle is that *lex prospicit non respicit* (law looks forward not back). {Jenk Cent 284, See also 2 Co Inst 292.} As Wills J said, retrospective legislation is –

‘... contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.’

{Phillips v Eyre (1870) LR 6 QB 1, at p 23. See also Re Athlumney, ex p Wilson [1898] 2 QB 547.}

(51) Similarly, the principles whether the Act is to be construed to be applicable retrospectively or not, has been elucidated in **Craies on Statute Law 7th Edition** as under:-

“So careful are the courts in endeavouring to protect vested rights that we find that in several cases judges have refused to allow statutes to have a retrospective operation, although their language seemed to imply that such was the intention of the legislature, because, if the statutes had been so construed, vested rights would have been defeated.”

(52) We are not oblivious to the jurisprudence that ordinarily individual matters cannot be converted into Public Interest Litigation but in view of the facts stated here-in-above, we have decided to expand the scope of this *lis* to ensure that the Objects and Reasons of the Punjab Co-operative Land Mortgage Banks Act, 1957, are achieved by addressing larger interest of farmers. It is settled law that private litigation involving public importance assumes the character of public interest litigation and the court can look into the matter.

(53) Their Lordships of the Supreme Court in *Shivajirao*

Nilangekar Patil versus. *Dr. Mahesh Madhav Gosavi and others*¹⁵, have held that even if a person moves a writ petition in his private interest, if he raises questions of public importance, such as in this case regarding the conduct of the examiners of a premier university in one of the highest medical degrees as also misuse of power by men in authority and power, it is the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It is in furtherance of public interest that an inquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an inquiry cannot be avoided if it is necessary and essential for the administration of justice. Their Lordships have held as under :-

“36. The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.”

(54) In this background, we have decided to discuss the various reports, including Swaminathan report to reduce the distress of farmers in the State of Punjab.

(55) Article 38 of the Constitution of India stipulates that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It further provides that the State shall also strive to minimize the inequalities in income. According to Article 39, the State has to direct its policy to secure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 39(e) of the Constitution provides

¹⁵ (1987) 1 SCC 227

that the State Government shall in particular, direct its policy towards securing the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. According to Article 42, the State shall make provisions for securing just and humane conditions of work and for maternity relief. Article 43 provides for living wage for workers. Article 43-B lays that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. Article 48 provides that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.

(56) According to the book **‘Reforming Indian Agriculture towards Employment Generation and Poverty Reduction’** authored by Mr. Sankar Kumar Bhaumik, following are the risks suffered by the agriculturists : -

“Production or Yield Risk

It occurs because many uncontrollable events affect agriculture that are invariably related to weather, including excessive or insufficient rainfall, extreme temperatures, hail, insects and diseases (Since, 2005). Technology plays a key role in production risk in farming. The rapid introduction of new crop varieties and production techniques often offers the potential for improved efficiency, but may at times yield poor results, more so in the short run. In contrast, the threat of obsolescence exists with certain practices (for instance, using machinery for which parts are no longer available). This creates a different kind of risk.

Price or Market Risk

It reflects risks associated with changes in the price of output or of inputs. It may occur after the commitment to production has begun. In agriculture, production generally is a lengthy process. For instance, livestock production typically requires ongoing investments in feed and equipment that may not produce returns for several months or years. Because markets are generally complex and involve both domestic and international considerations,

producer returns may be noticeably affected by events in far removed regions of the world. For instance, bird flu in China affected poultry sector of Asia and prices crashed in most Asian countries.

Institutional Risk

The results from changes in policies and regulations that affect agriculture. This type of risk is generally manifested as unanticipated production constraints, or price changes for inputs or output. For instances, changes in government policy regarding policy regarding pesticides/fertilizers (for crops) may alter the cost of production, or a foreign country's decision to limit imports of a certain crop may reduce that crop's price. The most recent example is of Pakistan refusing the consignment of potatoes from India saying that there is a virus in them. Other institutional risks may arise from changes in policies affecting land use, environment or changes in credit policy.

Human or Personal Risks

Farmers are also subject to the human or personal risks. Disruptive changes may result from such events a death, injury, or the poor health of a head of the household. In addition, the changing objectives or individuals involved in the farming enterprise may have significant effects on the long-run performance of the operation (Harwood et al., 1999). Asset risk also exists and involves theft, fire, or other loss or damage to equipment, buildings and livestock. A poor farmer's bullock may also die, creating problems for him, as he cannot immediately replace it because he lacks funds. A type of risk that appears to be of growing importance is contracting risk, which involves opportunistic behaviour and the reliability of contracting partners (Gill, 2004),

Financial Risk

Financial risk differs from the business risks described earlier. It results from the way the firm's capital is obtained and financed. A farmer may be subject to fluctuations in interest rates on borrowed capital, or face cash flow difficulties if there are insufficient funds to repay creditors.

The use of borrowed funds means that a share of the returns from the business must be allocated to meeting debt payments. Even when a farm is fully self-financed, the farmer's capital is still exposed to the probability of losing net worth."

(57) According to a study '*Farmers' Income in India : Evidence from Secondary Data*' submitted to Ministry of Agriculture by Thiagu Ranganathan, Assistant Professor, Agricultural Economics Research Unit (AERU), the relevant extract of income of farm households qua Punjab is as under:-

STATES	INCOME FROM FARMING	INCOME FROM LIVESTOCK	INCOME FROM NONFARM BUSINESS	INCOME FROM WAGES/SALARY	TOTAL ANNUAL INCOME
A&N Islands	34922 (26)	6693 (5)	26475 (20)	65898 (49)	133988
Andhra Pradesh	---	---	---	---	---
Arunachal Pradesh	---	---	---	---	---
Punjab	130163(60)	21157 (10)	8800 (4)	57330 (26)	217450

(58) According to the data, income from farming in Punjab is `1,20,163/-, income from livestock is `21,157/-, income from non-farm business is `8,800/-, income from wages/salary is `57,330/-. The total income comes to `2,17,450/-. The following is the rate of indebtedness among farm households in the State of Punjab : -

(59) The study conducted by Thiagu Ranganathan has made the following conclusions: -

Conclusions

This study estimates the incomes of farm households in India. For this purpose, the study uses the most recent survey that assesses the situation of farmers in India. The data 70th round of National Sample Survey (NSS) conducted from January 2013 to December 2013 was used for the analysis. The survey includes various aspects of farming and pertains to the period from July 2012 to June 2013. The current report primarily focuses on aspects related to incomes of the farmers and particularly income derived from various

components – incomes from cultivation, incomes from livestock, incomes from nonfarm business and income from wage or salaried employment. The survey was conducted across 35,200 farm households across 36 states and union territories in the first visit and 34,907 of these households were visited for a second round. The estimates pertain to population of households and we use the weights specified in the NSS for our analysis.

We find that the average annual income of farm households is INR 77,794 per year or INR 6,498 per month. Out of this the households earn INR 36,947 from crop cultivation, INR 24,801 from wage/salaried employment, INR 10,017 from livestock and INR 6,209 from nonfarm business. Compared to 2002-03, the share of livestock incomes in total income has increased from 4% to 13% while incomes from wage and salaried employment have reduced from 39% to around 31%. The livestock incomes in the decade from 2002-03 have seen an annual real CAGR of 14.59%. The CAGR in the same decade for cultivation income, wage income and non-farm business incomes are 4.29%, 1.98% and 0.58%. The farm household incomes in total grew at a rate of 3.95% in the decade.

Farm households which have non-farm business enterprises as their principal income source earn the most but they are small in proportion. 4.7% of the farm households have non-farm business as primary income sources and earn INR 1,04,593 per annum. Farm households in the states of Chandigarh, Delhi and Punjab have the highest incomes while farm households in Bihar, West Bengal and Uttaranchal have the lowest total incomes. We find that the farm households in states having high wage incomes also have high total income. Also, the states in which share of wage income in total income are higher have high total incomes. State-wise growth rates of incomes of farm households from 2002-03 to 2012-13 shows that Haryana, Rajasthan and Odisha have shown high growth with Haryana having high growth from crop cultivation while Rajasthan and Odisha have high growth largely from livestock incomes. Growth rates have been low in Assam, Bihar and West Bengal. All these states have shown very low or negative growth in cultivation incomes and despite high livestock income growth in Assam, the farm household income growths in these states have been disappointing. As a general rule, states showing high growth in cultivation incomes and livestock incomes show high growth in total

farm household incomes as well.

An analysis of landholdings shows a growing decline in land sizes and increasing number of marginal farmers. For landless and marginal farmers, income from wage and salary employment has become the highest contributor to their incomes. The growth in real wage income has been quite low in the decade and this low growth will affect large number of farm households if this trend continues. Caste of the household also seems to have a significant influence on the incomes of farm households with SC farm households earning lowest cultivation incomes and livestock incomes. STs earn the lowest nonfarm business income and income from wage and salaried employment. Farm households belonging to Other castes and religion other than Hindu earn the most in all the components of household income.

The analysis of incomes from cultivation shows that the profitability expressed by total value to cost has increased from 2.31 to 2.61 in Kharif and 2.46 in Rabi. The low animal labour costs and high machine hiring costs, electricity costs and irrigation costs indicate a high mechanisation in agriculture. Also, the mechanisation as seen from these costs is higher in Rabi as compared to Kharif. In analysing the incomes across different landholdings we find that profitability does not increase linearly with land sizes and there might be issues when land is not large enough to exercise economies of scale. For instance, the profitability of medium farmers is lower than semi-medium farmers in Kharif and only slightly higher in Rabi. This is a conjecture that has been suggested by others as well (Sen and Bhatia, 2004). Across states, we find that J&K, Chattisgarh and Assam have highest profitability while Tamil Nadu, West Bengal and Andhra Pradesh have low profitability. Among major crops in Kharif, sugarcane and soybean show high profitability while jowar and tur dal exhibit low profitability. Among major crops in Rabi, maize and sugarcane exhibit high profitability while masur dal and paddy exhibit low profitability. Pesticide costs have a negative correlation with profitability in both seasons. This might indicate that suboptimal usage of pesticides and they might be spending more than optimal amounts. Machine hiring costs and land lease costs also have negative correlation with profitability in both seasons which indicates the importance of land ownership and machine ownership on profitability. If households own land and machine,

they might have to spend lesser on machine hiring and land lease rent and have higher profitability. Analysis of profitability and returns show that farm households possessing land between 0.01-0.4 ha and tenant across land classes seem to be doing bad as compared to 2002-03.

The analysis of incomes from livestock shows that profitability expressed as ratio of total value to cost is 1.94 and 2.2 in Kharif and Rabi. The Rabi profitability is higher mainly due to lower costs in feed in rabi. This might be because byproducts from Kharif crop cultivation is used as part of feed in Rabi and thus reduces the feed costs.

The analysis of non-farm business income shows that the profitability expressed as ratio of output to expenses is very low at 1.35. Wholesale and retail trade, manufacturing, transportation & storage, construction and accommodation & food services are the major industries that provide nonfarm business opportunities. The profitability in wholesale and retail trade, the major nonfarm business opportunity provider is very low at 1.19. It is also low for construction at 1.26. The ratio is slightly better for accommodation & food service (1.46), manufacturing (1.50) and transportation & storage (1.60). The very low profitability in most business indicates that farm households just resort to these for sustainability and not because these business provides profitable opportunities. Whatever growth is happening in this sector could then be only due to distress-driven 'push' factors and not due to growthdriven 'pull' factors. There has been a lot of debate that is unsettled in this regard on the nonfarm expansion over the last two decades in India and we hope our finding might give some evidence on recent trends (Abraham, 2009; Bhalla, 2002; Bhaumik, 2002; Binswanger-Mkhize, 2013; Chadha, 2002; Chadha and Sahu, 2002; Choudhury, 2011; Coppard, 2001; Himanshu, Murgai and Stern, 2013; Lanjouw and Sharriff, 2004; Jatav, 2010; Jatav and Sen, 2013; Jha, 2007; Jha, 2011; Kashyap and Mehta, 2007; Sahu, 2003).

On analysing the income from wage and salaried employment, we find that agriculture and construction are the major industries that provide employment to farm households. Manufacturing, transportation & storage, wholesale & retail trade, education and public administration & defence also provide reasonable employment to farm households. Agriculture provides more opportunities in Kharif while construction provides employment to

more farm households in Rabi compared to Kharif. Construction has thus emerged as a leading industry providing nonfarm casual employment to farm households. The low access provided by manufacturing is a disappointment. Households are involved in nonfarm business related to manufacturing. Either impetus should be given to improving profitability of these enterprises should be done or more casual labour should be generated. This is particularly a concern keeping low agricultural labour incomes in mind.

We also performed an analysis of households earning incomes below poverty line. In this regard, we find that Bihar, Uttaranchal, Uttar Pradesh, Puducherry and Jharkhand have very high proportion of farmers earning below poverty line while Punjab, Kerala, Chandigarh and Delhi have very low proportion of farm households earning incomes below poverty line. We also find that indebtedness has increased across the farm households in the country and states of India. The incidence of indebtedness has increased across southern states. Average loan amount outstanding and average outstanding loan per ha are also high for southern states.

We also calculate income inequality among farm households and decompose this into factor components. We find that the Gini of incomes earned by farm households is 0.56, which is a high number. We also find that incomes from cultivation as a leading source of income inequality as it is highly correlated with total income distribution. Non-farm business incomes also increase inequality while wage income and livestock incomes have inequality decreasing characteristics. Given that livestock incomes have also generated high growth rates in the recent times and provide reasonable profitability compared to agriculture, they must be used as an engine for equitable growth. Changing diet patterns which might lead demand for consumption of food rich in proteins might just provide this impetus.

Few caveats are in place when interpreting the findings of our report. Any estimation of income is a complex issue and since households do not have accounts of receipts and expenses, incomes based on only two visits to a house is always only a raw estimate. The best hope we could have is that the error are not heterogeneous. Also, some income data were collected for 30 day recall period like in case of livestock and nonfarm business while for some incomes 6 month recall period was used. This could also have caused some inconsistencies in income estimation. Also, incomes from

cultivation and livestock are very much sensitive to weather and statistics related to growth could be prone to some weather related issues in base and the recent year data used. For example, some states might have seen a good growth in the years from, 2002-03 to 2011-12 and the year 2012-13 could have been a bad year because of the weather. The growth data will not be able to look into this particular aspect. Though this is applicable to all income data, it should be considered with slightly more seriousness when dealing with farm and farmer income data. Cost estimation for certain items in farming were jointly recorded. Crop wise costs were allotted proportional to land allotted to the crop but this may not always be true. This has to be kept in mind while interpreting crop profitability. Some studies like Agrawal and Kumar (2012), Chandrashekar and Ghosh (2011) and Naik et al. (2012) have also raised some issues related to official statistics collected in India and these might also be kept in mind while interpreting the results.”

(60) The process of market regulation was started in the mid of 1960 by the enactment of Market Regulation Act. The National Commission of Farmers had suggested that the service of market should be made available within a radius of 5 kilometers.

(61) According to the Article ‘**Six Puzzles in Indian Agriculture**’ authored by Shoumitro Chatterjee, historically, India has been seen as a rural society, with farming the dominant occupation and economic mainstay for the vast majority of the population. In the 1950s, agriculture accounted for more than half of India’s gross domestic product (GDP) and cultivators accounted for half of the workforce. Since then, agriculture’s share of GDP had declined by two-thirds (to about 16 percent), while the percentage of cultivators in the workforce has declined from nearly 50 percent in 1951 to 24 percent in 2011. It is further written that the typical farm size in the 20 richest countries is 34 times greater than that in the 20 poorest countries. In hectares, the average farm size in rich countries is 54 hectares and in poor countries only 1.6 hectares.

(62) According to the Article ‘**Awareness about Minimum Support Price and its Impact on Diversification Decision of Farmers in India**’, only 9.14% farmers were aware of the Minimum Support Price (MSP) of Crop.

(63) The agricultural price support system of India has been a Government of India initiative since 1965 to protect the interests of the

farmers/producers against any sharp decline in agricultural prices. The price support system was expected to help the farmers after the harvesting period. The Agriculture Price Commission was established in 1965. The Price Policy was revised in 1980. This recommendation, however, was not incorporated in the National Policy of Farmers in the year 2007.

(64) The earliest form of crop insurance as per **‘Reforming Indian Agriculture’** written by Mr. Sankar Kumar Bhaumik was a Scheme that provided against the loss of crops due to hail, which was introduced in the US by private companies in 1880. In 1938, the Agricultural Adjustment Act created the Federal Crop Insurance Corporation (FCIC). The Act of 1980 provided that the Federation Government through the FCIC would begin subsidizing 30 percent of each producer’s premium for coverage up to 65 percent of the appraised yield.

(65) Spain has vast experience in crop insurance. Private companies insure all types of insurable agricultural risks. State provides subsidy for all products. Nearly one-third of producers participate in the system. The system covers around 30 percent of crops and 10 percent of animal production. The Spanish system involves both private and public sectors intricately.

(66) The MEXICO initiated the crop insurance in 1940. The present Mexican crop insurance system comprises of AGROASEMEX, the state- owned insurance company. It provides insurance directly to farmers.

(67) The Canadian producers use crop insurance as a risk management tool to guard against the unpredictable events.

(68) In India, the first concrete steps were taken at the national level in October, 1965. It was decided to draw up a Crop Insurance Bill. In 1979- 80, the GIC in collaboration with the State Governments introduced a crop insurance scheme in 26 areas of Gujarat, 23 areas in West Bengal and 17 areas in Tamil Nadu. The GIC implemented the Comprehensive Crop Insurance Scheme (CCIS) from 1985 to 1999. The first weather insurance pilot scheme in India was set in July 2003 in Andhra Pradesh State. ICICI Lombard and Basix introduced it.

(69) According to National Crime Report Bureau, the number of suicides by farmers and farm labourers increased to 12360 in 2014, against 11772 in 2013. Of these suicides, 5650 were farmers suicides.

As of 2018, the Indian Government has not published data on farmer suicides since 2015. A total of 12,602 persons involved in farming sector (consisting of 8,007 farmers/cultivators and 4,595 agricultural labourers) had committed suicides during 2015. A total of 8,007 farmers/cultivators had committed suicides during 2015 out of which 7,566 were male and 441 were female. A total of 4,595 agricultural labourers had committed suicides during 2015 in which 4,018 were male and 577 were female. Telangana followed by Maharashtra and Andhra Pradesh have accounted for maximum female farmers/cultivators' suicides. Majority of farmers /cultivators' suicides were reported in Maharashtra, followed by Telangana. The main cause was 'Bankruptcy or Indebtedness' and 'Family Problems'. 79.0% of farmer/cultivator suicides in Karnataka and 42.7% of farmer/cultivator suicides in Maharashtra were due to 'Bankruptcy or Indebtedness'. Farmers/Cultivators belonging to 30 years - below 60 years of age group had accounted for 71.6% of total farmers/cultivators' suicides during 2015. This figure is very large in comparison to population. The main cause is 'bankruptcy or indebtedness'.

(70) In a well-documented Article authored by Mr. Madhusudan Ghosh which appeared in the daily Edition of 'The Statesman' dated 10th April, 2018, learned Author discussed the impact of climate change on agriculture for production threatening the food security of millions of farmers. The relevant portion of the article reads as under :-

“Climate change is a major threat to agriculture, leading to instability in food production and adversely affecting food security and the livelihood of millions of people in many countries. IPCC has noted that increasing temperature and increased frequency of floods and droughts will have direct and adverse effects on crops, fisheries, forestry and aquaculture productivity. The yield loss due to climate change could be up to 35 per cent for rice, 20 per cent for wheat, 50 per cent for sorghum, 13 per cent for barley, and 60 per cent for maize. Climate change and climate variability are critical challenges for global food security, particularly in underdeveloped and developing economies. South Asia, as one of the most densely populated regions in the world, is among the most vulnerable to climate change and climate variability. Both can have major consequences in terms of food security, poverty and other developmental goals in the absence of adaptation and mitigation.

India is particularly vulnerable to climate change due to widespread poverty, dependence of about 50 per cent of its population on agriculture for livelihood, excessive dependence of agriculture on natural resources, and limited strategies to cope with a crisis. Despite the success of Green Revolution technologies in transforming agriculture, for insecurity, malnutrition, poverty and hunger are persisting unchecked. Among 119 countries, India ranked 100 and was classified in the 'serious category' with a score of 31.4 in the 2017 global hunger index. As per FAO estimates, India had the largest number of undernourished people in the world – 190.4 million in 2009-11 and 190.7 million in 2014-16, though the proportion of undernourished persons declined marginally from 15.8 to 14.5 per cent.

Moreover, continued intensive use of the same technologies and the consequent environmental problems such as groundwater depletion with the declining quality of water due to its over exploitation, deteriorating soil health, etc. are considered responsible for the slowing down to growth in crop production. The problem is further aggravated due to global climate change and increasing climate variability. The surface air temperature in the South Asian region was predicted to rise by 0.5-1.2 degrees C by 2020, 0.88-3.16 degrees C by 2050 and 1.56-5.44 degrees C by 2080 depending on the future development scenarios. The Indian Meteorology Department and the Indian Institute of Tropical Meteorology (Pune) have projected a similar trend for temperature, precipitation, heat waves, glaciers, drought, floods and rise in the sea level.

The predicted increase in temperature and precipitation is likely to change land and water regimes that have significant implications for agricultural productivity, and in turn, the food security and livelihood of farming households. There is a probability of 10-40 per cent loss of crop production due to the increase in temperature by 2080-2100. The India Council of Agricultural Research (ICAR) has indicated that food production could decline by 4.5-9.0 per cent in the medium term (2010-2039) under the impact of climate change. The Indian Agricultural Research

Institute (IARI) has indicated the possibility of loss amounting to 4-5 million tones in wheat production with every rise of 1 degree C temperature by 2020-2030.

The most challenging task is to adopt appropriate strategies that enhance climate smart agriculture. The Consultative Group on International Agricultural Research (CGIAR), in its Research Programme on Climate Change, Agriculture and Food Security (CCAFS), has been working with rural communities in collaboration with national programmes to develop climate-smart villages (CSV) as models of local action that ensure food security, promote adaptation and build resilience to climatic problems. CSV is a community approach to sustainable agricultural development where farmers, researchers, local partners and policy makers collaborate to select the most appropriate technological and institutional interventions on the basis of global knowledge and local conditions to increase productivity and incomes, achieved climate resilience, and enable climate mitigation. It integrates village development and adaptation plans along with local knowledge and institutions. The major strength of the CSV approach is its inclusiveness in bringing together farmers, policy makers, researchers and local organizations to work on a set of climate-smart technologies and practices with a view to adapt agriculture to climate change in order to ensure food and livelihood security of farmers in vulnerable regions.

Considering that climate change and increasing climatic variability are most likely to aggravate the problem of food security by exerting environmental pressure on agricultural systems, building the resilience of Indian agriculture to cope with the situation is crucial for the food and livelihood security of farmers in general and small and marginal farmers in particular. CSA assumes special significance in India in view of the World Bank's estimate that total crop production would increase by 60 per cent by 2050 without climate change, but the increase would be only 12 per cent in the event of climate change under a 2 degrees C warming by the 2050s.

Moreover, under climate change, the country will have to import twice the amount of food grain to meet per capita

calorie demand when compared to a situation without climate change. Adapting to such climatic changes is critical for ensuring sustainability and stability in crop production in the country, and food and livelihood security to farming communities.”

(71) Mr. Yogendra Yadav in his article ‘What the Finance Minister can do in Budget 2018 if he wants to raise farmers’ incomes’, had highlighted that in the last three years, there has been the worsening of agrarian crisis. During this period, on an average, agricultural GDP has grown at just 2.5 percent (Economic Survey 2017-18). Two years of consecutive drought followed by a crash in prices has brought the farmers to a brink. The last six months have witnessed a series of farmer protests across Maharashtra, Madhya Pradesh, Rajasthan, Punjab and Chattisgarh.

(72) Mr. Pulapre Balakrishnan, Professor, Ashoka University, in his article ‘Prosperity in the 21st Century’, which was published in the daily edition of ‘The Hindu’ on April 21, 2018, highlighted the role of agriculture in reducing the poverty as under: -

“Two processes are likely to have been at play in this. Rural prosperity could have fuelled demand for urban products and, following the significant decline in rural poverty, migration from the villages, swelling the numbers of the urban poor, may have slowed. The role of agricultural growth in reducing poverty is apparent in the fact that between 2004-05 and 2009-10 the number of rural poor declined by 15% while the number of urban poor declined only by 5%. This points to the possibility that economic reforms without a robust agricultural growth may not have made much of a difference to urban poverty. The faster growth of agriculture itself came due to sector-specific public policy that was not a subset of what has come to be understood as reforms, defined by liberalization of the policy regime. The relevant policies have been identified as increased public investment, faster rate of growth of credit for private investment and the launching of the National Horticulture Mission. Strategies for the elimination of poverty are advisedly based on the historical record rather than the promise of “more reforms”.

(73) In order to obviate the distress suffered by the farmers,

throughout India, the National Commission on Farmers (NCF) was constituted on November 18, 2004 under the chairmanship of Prof. M.S. Swaminathan. The NCF has submitted four reports in December 2004, August 2005, December 2005 and April 2006, respectively. The fifth and final report was submitted on October 4, 2006. The Swaminathan Committee on Farmers provides that measures should be taken by the State to prevent diversion of prime agricultural land and forest to corporate sector for non-agricultural purposes. The Court can take judicial notice of the fact that the land holdings are shrinking since agricultural land is also required by the State and also for corporate sector for non-agricultural purposes. The acquisition of prime agricultural land should be the last resort. The National Commission on Farmers was mandated to make suggestions on issues such as :

- a) a medium-term strategy for food and nutrition security in the country in order to move towards the goal of universal food security over time;
- b) enhancing productivity, profitability, and sustainability of the major farming systems of the country;
- c) policy reforms to substantially increase flow of rural credit to all farmers;
- d) special programs for dry land farming for farmers in the arid and semi-arid regions, as well as for farmers in hilly and coastal areas;
- e) enhancing the quality and cost competitiveness of farm commodities so as to make them globally competitive;
- f) protecting farmers from imports when international prices fall sharply;
- g) empowering elected local bodies to effectively conserve and improve the ecological foundations for sustainable agriculture.

(74) According to the report, the causes for farmers' distress are unfinished agenda in land reform, quantity and quality of water, technology fatigue, access, adequacy and timeliness of institutional credit and opportunities for assured and remunerative marketing. Adverse meteorological factors also add to these problems. The farmers need to have assured access and control over basic resources, which include land, water, bio-resources, credit and insurance, technology and knowledge management, and markets. The main recommendations of

the National Commission on Farmers are to distribute ceiling-surplus and waste lands; prevent diversion of prime agricultural land and forest to cooperate sector for non-agricultural purposes; ensure grazing rights and seasonal access to forests to tribals and pastoralists, and access to common property resources; establish a National Land Use Advisory Service, which would have the capacity to link land use decisions with ecological meteorological and marketing factors on a location and season specific basis; and to set up a mechanism to regulate the sale of agricultural land, based on quantum of land, nature of proposed use and category of buyer.

(75) As per the report, out of the gross sown area of 192 million hectares, rain-fed agriculture contributes to 60 per cent of the gross cropped area and 45 per cent of the total agricultural output. The report recommends comprehensive set of reforms to enable farmers to have sustained and equitable access to water and to increase water supply through rainwater harvesting and recharge of the aquifer should become mandatory. "Million Wells Recharge" programme, specifically targeted at private wells should be launched.

(76) According to the report, per unit area productivity of Indian agriculture is much lower than other major crop producing countries. The comparative yield of select crops in various countries (kg/hect.) is as under :-

Country	Crop				
Country	Paddy	Wheat	Maize	Groundnut	Sugarcane
India	2929	2583	1667	913	68012
China	6321	3969	4880	2799	85294
Japan	6414	-	-	2336	-
SA	6622	2872	8398	3038	80787
Indonesia	4261	-	2646	1523	-
Canada	-	2591	7974	-	-
Vietnam	3845	2711	4313	1336	65689

(77) In order to achieve higher growth in productivity in agriculture, the NCF has made the following recommendations :

“a) Substantial increase in public investment in agriculture related infrastructure particularly in irrigation, drainage, land development, water conservation, research development and road connectivity etc.

- b) A national network of advanced soil testing laboratories with facilities for detection of micronutrient deficiencies.
- c) Promotion of conservation farming, which will help farm families to conserve and improve soil health, water quantity and quality and biodiversity.”

(78) The proportion of households below the poverty line was 28% in 2004-05 (close to 300 million persons). Several studies have shown that the poverty is concentrated and food deprivation is acute in predominantly rural areas with limited resources such as rain-fed agricultural areas. The Commission has recommended following measures for prevention of suicide by farmers :

- “a) Provide affordable health insurance and revitalize primary healthcare centres. The National Rural Health Mission should be extended to suicide hotspot locations on priority basis.
- b) Set up State level Farmers' Commission with representation of farmers for ensuring dynamic government response to farmers' problems.
- c) Restructure microfinance policies to serve as Livelihood Finance, i.e. credit coupled with support services in the areas of technology, management and markets.
- d) Cover all crops by crop insurance with the village and not block as the unit for assessment.
- e) Provide for a Social Security net with provision for old age support and health insurance.
- f) Promote aquifer recharge and rain water conservation. Decentralise water use planning and every village should aim at Jal Swaraj with Gram Sabhas serving as Pani Panchayats.
- g) Ensure availability of quality seed and other inputs at affordable costs and at the right time and place.
- h) Recommend low risk and low cost technologies which can help to provide maximum income to farmers because they cannot cope with the shock of crop failure, particularly those associated with high cost technologies like Bt cotton.
- i) Need for focused Market Intervention Schemes (MIS) in

the case of life-saving crops such as cumin in arid areas. Have a Price Stabilisation Fund in place to protect the farmers from price fluctuations.

j) Need swift action on import duties to protect farmers from international price.

k) Set up Village Knowledge Centres (VKCs) or Gyan Chaupals in the farmers' distress hotspots. These can provide dynamic and demand driven information on all aspects of agricultural and non-farm livelihoods and also serve as guidance centres.

i) Public awareness campaigns to make people identify early signs of suicidal behaviour.

(79) The Commission has also recommended that it is imperative to raise the agricultural competitiveness of farmers with small land holdings. Productivity improvement, to increase the marketable surplus, must be linked to assured and remunerative marketing opportunities. The following measures have been suggested :

- a) Promotion of commodity-based farmers' organisations such as Small Cotton Farmers' Estates to combine decentralised production with centralised services such as post-harvest management, value addition and marketing, for leveraging institutional support and facilitating direct farmer-consumer linkage.
- b) Improvement in implementation of Minimum Support Price (MSP). Arrangements for MSP need to be put in place for crops other than paddy and wheat. Also, millets and other nutritious cereals should be permanently included in the PDS.
- c) MSP should be at least 50% more than the weighted average cost of production.
- d) Availability of data about spot and future prices of commodities through the Multi Commodity Exchange (MCD) and the NCDEX and the APMC electronic networks covering 93 commodities through 6000 terminals and 430 towns and cities.
- e) State Agriculture Produce Marketing Committee Acts [APMC Acts] relating to marketing, storage and

processing of agriculture produce need to shift to one that promotes grading, branding, packaging and development of domestic and international markets for local produce, and move towards a Single Indian Market.

(80) The Court is of the considered view that taking into consideration the grim scenario, as far as agricultural sector is concerned, the Minimum Support Price should be three times above the cost of production of major crops including fruits and vegetables to save the farmers from distress and also to procure the food grains for public distribution considering the cost including actual expenses in cash and kind, the loan on lease land, impeding the cost of labour, own capital assets, interest on valuable capital etc.

(81) Though, the Minimum Support Price is being announced since 1965 but the stark reality is that it has not boosted the income of farmers to bring them out of abject property. Time has come when the Minimum Support Price should be given legal force by granting legal rights to the farmers to get fair value for their crops. The farmers must be empowered to get the MSP as a legal right and its enforcement should not be left only with the bureaucratic set up. The middlemen thrives at the cost of poor farmers. The State Government is directed to device methods to reduce the role of middlemen in procuring the food-grains.

(82) Since the farmers have taken loan on exorbitant rates of interest, they are forced to sell their crops under distress. There is no regular chain of warehouses to store the produce. In case the State Government builds sufficient number of warehouses, the farmers can store their crops in the warehouse and can sell it subsequently at remunerative price. The Parliament has enacted the Warehousing (Development and Regulation) Act, 2007 but the same has not been implemented in letter and spirit.

(83) According to the Economic Survey 2018-19 published by the Government of India, Ministry of Finance, the key highlights with regard to Agriculture and Food Management are as follows :-

* Agriculture sector in India typically goes through cyclical movement in terms of its growth.

Gross Value Added (GVA) in agriculture improved from a negative 0.2 per cent in 2014-15 to 6.3 per cent

in 2016-17 but decelerated to 2.9 per cent in 2018-19.

* Gross Capital Formation (GCF) in agriculture as percentage of GVA marginally declined to 15.2 per cent in 2017-18 as compared to 15.6 per cent in 2016-17.

* The public sector GCF in agriculture as a percentage of GVA increased to 2.7 per cent in 2016-17 from 2.1 per cent in 2013-14.

* Women's participation in agriculture increased to 13.9 per cent in 2015-16 from 11.7 per cent in 2005-06 and their concentration is highest (28 per cent) among small and marginal farmers.

* A shift is seen in the number of operational land holdings and area operated by operational land holdings towards small and marginal farmers.

* 89% of groundwater extracted is used for irrigation. Hence, focus should shift from land productivity to 'irrigation water productivity'. Thrust should be on micro-irrigation to improve water use efficiency.

* Fertilizer response ratio has been declining over time. Organic and natural farming techniques including Zero Budget Natural Farming (ZBNF) can improve both water use efficiency and soil fertility.

* Adopting appropriate technologies through Custom Hiring Centers and implementation of ICT are critical to improve resource-use efficiency among small and marginal farmers.

* Diversification of livelihoods is critical for inclusive and sustainable development in agriculture and allied sectors. Policies should focus on

Dairying as India is the largest producer of milk.

Livestock rearing particularly of small ruminants.

Fisheries sector, as India is the second largest producer.

(84) The State Government should take assistance from the latest state of art technology. The State Government can prepare the Apps (Applications) for each and every field to see the status of crop to determine its growth and also destruction by natural calamities. These

apps can be prepared Khasra-wise by taking the help of Satellite Imagery. To avoid time, the State Officers and Bank officers need not go to the field to verify the status of field.

(85) Though, the Minimum Support Price has, to some extent, redressed the grievance of farmers but it is only a declaration and has no legal force. The farmers must be given legal right to claim the MSP without any hindrance. The Union of India and State Government may, in their own wisdom, legislate to give legal status to the MSP to boost the farmers' income.

(86) The role of banking system is very primary to ameliorate the grievance of farmers. The Reserve Bank of India, being the "Bankers' Bank", can play a leading role. All the banks are governed under the provisions of Reserve Bank of India Act, 1934. The National Banks, Private Banks, Cooperative Banks, Mortgaged Banks, Agricultural Banks are governed under the Banking Regulation Act, 1949, The Banking Companies Rules, 1949, The Banking Regulation (Co-operative Societies) Rules, 1966, The National Bank for Agriculture and Rural Development Act, 1981, The National Bank for Agriculture and Rural Development General Regulations, 1982, The National Bank of Agriculture and Rural Development (Additional) General Regulations, 1984, The Regional Rural Banks Act, 1976 and The Reserve Bank of India Act, 1934. The Reserve Bank of India can evolve a Scheme in consultation with the banks and stakeholders to redress the grievance of farmers by lowering the rates of interest and waiving of loans in case of death of a farmer by suicide.

(87) The Minimum Support Price for eligible crops is determined by the Commission for Agricultural Costs and Prices (CACP) under the aegis of Ministry of Agriculture and Farmers' Welfare.

(88) In a renowned book 'The Wealth of Nations' written by Adam Smith, Classic Edition March, 2003, learned Author has discussed the annual expenses borne by the cultivators/farmers as under: -

"The cultivators or farmers contribute to the annual produce, by what are in this system called the original and annual expenses (depenses primitives, et depenses annuelles), which they lay out upon the cultivation of the land. The original expenses consist in the instruments of husbandry, in the stock of cattle, in the seed, and in the maintenance of the farmer's family, servants, and cattle, during at least a great

part of the first year of his occupancy, or till he can receive some return from the land. The annual expenses consist in the seed, in the wear and tear of instruments of husbandry, and in the annual maintenance of the farmer's servants and cattle, and of his family too, so far as any part of them can be considered as servants employed in cultivation. That part of the produce of the land which remains to him after paying the rent, ought to be sufficient, first, to replace to him, within a reasonable time, at least during the term of his occupancy, the whole of his original expenses, together with the ordinary profits of stock; and, secondly, to replace to him annually the whole of his annual expenses, together likewise with the ordinary profits of stock. Those two sorts of expenses are two capitals which the farmer employs in cultivation; and unless they are regularly restored to him, together with a reasonable profit, he cannot carry on his employment upon a level with other employments; but, from a regard to his own interest, must desert it as soon as possible, and seek some other. That part of the produce of the land which is thus necessary for enabling the farmer to continue his business, ought to be considered as a fund sacred to cultivation, which, if the landlord violates, he necessarily reduces the produce of his own land, and, in a few years, not only disables the farmer from paying this racked rent, but from paying the reasonable rent which he might otherwise have got for his land. The rent which properly belongs to the landlord, is no more than the neat produce which remains after paying, in the completest manner, all the necessary expenses which must be previously laid out, in order to raise the gross or the whole produce. It is because the labour of the cultivators, over and above paying completely all those necessary expenses, affords a neat produce of this kind, that this class of people are in this system peculiarly distinguished by the honourable appellation of the productive class. Their original and annual expenses are for the same reason called, In this system, productive expenses, because, over and above replacing their own value, they occasion the annual reproduction of this neat produce."

(89) The Punjab Co-operative Land Mortgage Banks Act, 1957 has been enacted to supplement the provisions of the Punjab Co-

operative Societies Act, 1954 in order to facilitate the working of co-operative land mortgage banks in the State of Punjab with a view to providing for the grant of long-term loans to owners of land or other immovable property, to enable them to discharge their debts, to carry out agricultural improvements, to acquire land for the formation of economic holdings and other like purposes and thereby to promote thrift and self-help among them.

(90) The Statement of Objects and Reasons of the Act read as under :-

“At present, in Punjab, long-term credit is being advanced only by Government in the form of Taccavi loans. There is no co-operative agency for the disbursement of long-term credit. The Government assistance is inadequate to meet the rising needs of the public and it is imperative that the Co-operative institutions should provide long-term credit, in addition to the short-term and the medium credit, which have been attended to by them heretofore. In accordance with the policy of the Central Government a scheme has accordingly been formulated in the Second Five Year Plan for setting up of a State Land Mortgage Bank with a network of District Mortgage Banks.”

(91) According to Statement of Objects and Reasons of the Punjab Co-operative Land Mortgage Banks Act, 1957, the Government assistance was inadequate to meet the rising needs of the public and it was imperative that the Co-operative institutions should provide long-term credit, in addition to the short-term and the medium credit. The principle for enactment was to save marginal farmers from the clutches of middlemen/ Artiyas. This enactment was necessary to achieve the agrarian reforms.

(92) Section 2 (d) defines the “Mortgage Bank”. Section 2 (h) defines “the State Bank”. Section 12 deals with distraint. It reads as under :-

12. Distraint when to be made – (1) If two consecutive instalments payable under a mortgage executed in favour of, or transferred or deemed under section 25 to be transferred to the State Bank or any part of such instalments has remained unpaid for more than three months from the date on which it fell due, the Board may, in addition to any other remedy available to the said Bank, apply to the

Registrar for the recovery of such instalments or part by distraint and sale of the produce of the mortgaged land including the standing crops thereon provided that such crops belong to the mortgagors or mortgagee, as the case may be.

(2) On receipt of such application the Registrar may notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force, take such action as is necessary to distraint and sell such produce :

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(3) The distress shall not be excessive; the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the cost of the sale.

Any mistake, defect or irregularity in this respect shall not invalidate a distraint or sale made under this Act.

(93) Section 15 of the Punjab Co-operative Land Mortgage Banks Act, 1957 empowers the bank to sell the mortgaged property and it reads as under :-

“15. Power of sale when to be exercised – (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force, where a power of sale without the intervention of the Court is expressly conferred on the State Bank by the mortgage deed, the Board or any person authorised by such Board in this behalf shall in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the State Bank, to bring the mortgaged property to sale without the intervention of the Court.

(2) No such power shall be exercised unless and until -

(a) the Board have previously authorised the exercise of the power conferred by sub section (1), after hearing and deciding the objections, if any, of the mortgagor or any other person having any interest in the mortgaged property.

(b) Notice in writing requiring payment of such mortgage money or part has been served upon :-

(i) the mortgagor or each of the mortgagors;

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;

(iii) any surety for the payment of the mortgage debt or any part thereof; and

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property;

(c) Default has been made in payment of such mortgage money or part for six months after such service; and

(d) The Registrar, in case where the amount claimed by the State Bank is disputed, has certified that the amount claimed or lesser amount is due from the mortgagor.

(94) These two Sections should be enforced sparingly as a last resort. The bank can also buy the mortgaged property at sale as per Section 21 of the Act. The bank should give at least one opportunity to the original mortgagor to buy back the property before it is disposed of. Section 39 empowers the State Government to frame rules.

(95) The Punjab Government has also framed the Punjab Co-operative Mortgage Banks Rules, 1959. Chapter II of the Rules provides procedure in the distraint and sale of produce. The procedure for sale of mortgaged property is provided under Chapter III. The Rules were framed from the Statement of Objects and Reasons of the Punjab Co-operative Land Mortgage Banks Act, 1957, since there was no co-operative agency for the disbursement of long-term credit. The Government assistance was inadequate to meet the rising needs of the public and it was imperative that the Co-operative institutions should provide long-term credit, in addition to the short-term and the medium credit. In accordance with the policy of the Central Government, a scheme was accordingly formulated in the Second Five Year Plan for setting up of a State Land Mortgage Bank with a network of District Mortgage Banks. The role of the State Banks and their subsidiaries was also to save the farmers from the clutches of the commission agents.

(96) The Punjab State Co-operative Agricultural Development

Bank Limited has framed its bye-laws. The main objects of the State Bank as per bye-laws No.5 and 6 are :

5. The object of the State Bank shall be to provide facilities of long term credit to its members.
6. In pursuance of the object stated in the proceeding bye-laws, the State Bank may undertake one or more of the following activities-
 - i) to float debentures ;
 - ii) to receive deposits and borrow money;
 - iii) to acquire such immovable property and construct such building as it may consider necessary for the proper functioning of the bank and welfare of employees.
 - iv) to do such things as are incidental to the above activities.

(97) The loans are to be provided to members as per bye-law No. 26. The amendment of bye-laws is provided under bye-law No. 56.

(98) Primarily the lis is between the employees and the management qua payment of compensation. However, the fact of the matter is that the appellants Bank has been constituted to redress the financial problems, the farmers are beset with. The farmers are the members of the bank and they take agriculture loans. The repayment of the loans is dependent on vagaries of weather, natural climate, including Monsoon. The farmers would repay the loans if they get reasonable prices for their crops. The farmers have to pay for the seeds, fertilisers, pesticides, weedicides and buying of agricultural instruments.

(99) Accordingly, in view of the observations made here-in-above, LPAs No. 1988, 1989, 1990, 2000, 2001, 2006, 2053, 2054, 2055, 2056, 2130 of 2013 and LPA No. 109 of 2014 are dismissed and CWPs No. 11451, 16322, 3611 and 3641 of 2014 are disposed of, with a declaration that the amendment carried on 11.03.2014 in the Punjab State Cooperative Agricultural Land Mortgage Banks Service (Common Cadre) Rules, 1978, shall apply prospectively. The appellants Bank is directed to implement the judgment rendered by the learned Single Judge in CWP No. 19915 of 2011 and analogous matters, decided on 31.08.2013. We also make the following suggestions/recommendations and directions, to redress the grievances of the farmers :-

- (a) The appellant Bank/Primary Agricultural Development Banks are directed to ensure that crops of their members are insured by them to safeguard the farmers from the vagaries of weather and unforeseen circumstances, including drought/floods and failure of monsoon, by paying them premium and deducting it from the funds of the members.
- (b) The appellant Bank/Primary Agricultural Development Banks are directed that in case the land of the farmers possessing more than five acres of land is purchased in sale, same may not be further disposed of without giving an opportunity to the members of the bank to re-claim it by paying reasonable instalments, in order to avoid intervention of third party rights.
- (c) The appellant Bank/Primary Agricultural Development Banks are directed that as far as possible, no marginal/small farmer, whose land holding is less than five acres, is rendered landless.
- (d) The State Government through its Chief Secretary may consider the implementation of the broader recommendations made by the National Commission on Farmers (NCF), constituted on November 18, 2004 under the chairmanship of Prof. M.S. Swaminathan, to consider providing MSP (minimum support price) for the following agricultural produce grown/harvested by the farmers in the State of Punjab which should be at least three times above the average cost of production by taking into consideration the comprehensive cost including imputed rent and interest on owned land and capital as well as hired labour, cost of seeds and fertilizers, machinery, expenses incurred on irrigation, rent of leased land, labour put by farmers and their families, in consultation with the Commission for Agricultural Costs and Prices:-

(a) AGRICULTURE

- (1) **Cereals** :- 1. Wheat 2. Barley 3. Paddy 4. Rice 5. Jowar 6. Bajra 7. Maize 8. Bejhar 9. Manduwa 10. Oats 11. Kakun 12. Kodon 13. Kutki 14. Sawan

(2) **Legumes** :- 1. Gram 2. Peas 3. Arhar 4. Urad 5. Moong 6. Masoor 7. Lobia (seed) 8. Soyabean 9. Khesari 10. Sanai (seed) 11. Dhaincha (seed) 12. Guar 13. Moth 14. Kulthi 15. Kidney bean

(3) **Oilseeds** :- 1. Mustard and rape seed (including Rye, Duwan, Taramira and Toria) of all kinds 2. Sehuwan (seed) 3. Linseed 4. Castor seed 5. Groundnut 6. Til seed 7. Mahuwan seed 8. Gullu 9. Cotton seed 10. Saflower seed 11. Coconut

(4) **Fibres** :- 1. Jute 2. sunnhemp fibre 3. Cotton (ginned and unginned) 4. Patson 5. Dhaincha 6. Rambans 7. Mesta

(5) **Spices** :- 1. Coriander 2. Ripe Chillies 3. Methi (seed) 4. Dry Ginger 5. Sonf (aniseed) 6. Turmeric 7. Dry Mango sliced and Amchoor 8. Cumin seed

(6) **Grass and Fodder** :- 1. All types and Fodder (green and dried) 2. Bhusa, sugarcane.

(b) **HORTICULTURE** :-

(1) **VEGETABLES** : - 1. Potato 2. Onion 3. Garlic 4. Sweet Potato 5. Colocasia 6. Ginger (green) 7. Kachalu 8. Chillies 9. Tomato 10. Cabbage, Cauliflower (knol and Khol) 11. Carrot 12. Radish 13. Brinjal 14. Tinda 15. Bottle gourd 16. Green peas 17. Turnip 18. Parwal 19. Beans 20. Saag (of all kinds) 21. Betel leaves 22. Beet root 23. Yam 24. Elephant root 25. Lettuce 26. Dill 27. Jack fruit (green) 28. Cucumber 29. Sanke gourd 30. Bitter gourd 31. Sponge gourd 32. White gourd 33. Lady's finger 34. Pumpkin 35. Cluster Beans 36. Tamaring 37. Banda 38. Singhara 39. Lobia (green) 40. French Bean

(2) **Fruits** :- 1. Lemons 2. Orange 3. Mosambi 4. Sweet Orange (Malta) 5. Grape fruit 6. Banana 7. Pomegranates 8. Strawberries 9. Musk-melon 10. Watermelon 11. Snap Melon 12. Papaya 13. Phalsa 14. Poppy 15. Apple 16. Guava 17. Ber 18. Aonla 19. Litchi 20. Chiku 21. Peaches 22. Laquat 23. Bael 24. Pine apple 25. Mango 26. Pulam 27. Fig 28. Jack fruit (ripe) 29. Kamrakh 30. Karonda 31. Dates 32. Khirni 33. Apricot 34. Jamun 35. Pear 36. Custard apple 37. Mulberry 38. Pumelo 39. Raspberry

(c) **FLORICULTURE**

- (d) **VETICULTURE** 1. Grapes
- (e) **APICULTURE** -1. Honey 2. Wax
- (f) **SERICULTURE** -1. Silk
- (g) **PISCICULTURE** -1. Fish
- (h) **ANIMAL HUSBANDRY PRODUCTS** 1. Poultry 2. Eggs 3. Cattle 4. Sheep 5. Goat 6. Butter 7. Ghee 8. Khoya 9. Cottage cheese 10. Milk 11. Hides and Skins 12. Bones 13. Meat 14. Bristles 15. Wool
- (i) **FOREST PRODUCTS** 1. Gum 2. Wood 3. Tendu leaves 4. Lac 5. Reetha 6. Catechu 7. Resin.”
- (e) The State Government is suggested to consider to formulate the Scheme for payment of reasonable compensation/family pension to the families of farmers who have committed suicide as per its financial capacity.
- (f) The State Government is suggested to formulate a Scheme for providing insurance cover including weather insurance to the farmers for their crops in consultation with the National Insurance Companies along with stakeholders at minimal premium.
- (g) The Reserve Bank of India is advised to evolve a Scheme in consultation with the Banks, State Government and stakeholders about the manner in which the agricultural loans are to be advanced and their recovery and also waiver of loans in the eventuality of suicide committed by the farmers.
- (h) The State Government is also directed to give wide publicity immediately after fixing of Minimum Support Price at the time of sowing to boost the income of agriculturists.
- (i) The State Government is directed to ensure enforcement of the Warehousing (Development and Regulation) Act, 2007 in letter and spirit to enable the farmers to store their produce and to prevent them from selling their produce under distress.
- (j) The State Government is directed to prepare the App

in consultation with the Department of Technology and private players to have the up-to-date Khasra-wise data of the status of crops grown in the State of Punjab within a reasonable period.

(100) William Wordsworth in 'The Prelude' (1805 text) Book IX 164-77 has written as under : -

... 'Twas in truth an hour
Of universal ferment; mildest men
Were agitated; and commotions, strife
Of passion and opinion fill'd the walls
Of peaceful houses with unquiet sounds.
The soil of common life was at that time
Too hot to tread upon; oft said I then,
And not then only, "what a mockery this
Of history; the past and that to come!
Now do I feel how I have been deceived,
Reading of Nations and their works, in faith,
Faith given to vanity and emptiness;
Oh! Laughter for the Page that would reflect
To future times the face of what now is!"

(101) The description of farmer has aptly been described by the American Poet Edwin Markham's poem "The Man with the Hoe". This poem was called "the battle-cry of the next thousand years" and translated into 37 languages. We quote

".....Bowed by the weight of centuries he leans Upon his hoe
and gazes on the ground, The emptiness of ages in his face,
And on his back the burden of the world. "

J.S. Mehndiratta