

## **Self-Reliant Cooperatives, a legal option for Sharia Compliant Finances: A case study of CCL Anantnag Kashmir**

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### **ABSTRACT**

*It is an established fact that a cross section of population of our society remains away from the conventional system of banking because of the reason that the said system is interest based and interest in all its manifestations is strictly prohibited under their religious commandments. To include this section of the society in the financial system there is a dire need of Interest Free Financial Institutions (IFFI). However, the banking laws in vogue here do not allow such interest free banking to function. Thus other legal and viable options are to be explored for their financial inclusion. This write up gives an overview of the banking laws in vogue here that do not allow the IF banking to operate. It also tries to study the other available options like “Non-Banking” financial companies and Registered Cooperatives. In cooperative sector there are central government laws like MS CS Act of 2002. At state level, certain states have also passed such Acts under which registration of autonomous Cooperatives is possible. One such Act is also in vogue in J&K since 1999. The write up deliberates upon the sections of this act under which the registration of such autonomous Cooperatives is possible which can function as credit institutions on interest free lines. Lastly the write up studies the case of one such credit institution (Crescent cooperative Ltd. Anantnag Kashmir) with reference to its registered A.O.A and its policy of deposits and advances. The Cooperative has been registered under J&K Self-Reliant Cooperatives Act of 1999 in April 2015 and is successfully going to complete its 5<sup>th</sup> year in providing IF Credit facilities to its members. In this way the write up tries to provide a practical road map for implementing the concept of interest free microfinance, legally and viably, till such institutions are allowed to function here under banking laws.*

### **1. Conventional Banks and Muslims in India**

Keeping aside the ethical differences in Islamic and conventional banking systems, we shall here consider the ground realities, that make us concerned about the concept of Islamic Banking. Quranic verse: “And Allah has permitted *Bai* and prohibited *Riba*”<sup>1</sup>, revealed on Prophet Mohammad (pbuh) in 3<sup>rd</sup> year after his

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migration to Madina, is the eternal command of Almighty Allah that prohibits a Muslim from being involved in 'Riba' based transactions. There are other Quranic verses<sup>2</sup> and the traditions<sup>3</sup> of Prophet (pbuh) that augment the prohibition of 'Riba' in Islam. Renowned Scholar Abdulla Yusuf Ali in his famous English translation and commentary of holy Quran translates and explains the Arabic word Riba as 'Usury' and 'interest'<sup>4</sup>. We all know that the modern commercial banks work on the principle of interest, however, there was a debate for some time, that whether the interest paid by banks to its customers will be regarded as 'Riba' or not. But nowadays most of the scholars are of the opinion that the interest with which conventional banks are dealing is included in the connotations of 'Riba' that is prohibited in Islam.<sup>5</sup> This prohibition of interest in Islam is the basic cause that why most of the Muslims hesitate to be involved in current day banking system and prefer to remain away from it and hence are excluded from this financial system.

This fact, that Muslims remain excluded from the financial system, has also been acknowledged by different committees constituted by GOI from time to time. One such committee under the chairmanship of Justice Sachar was constituted in 2005, to assess the overall involvement of Muslims in financial system. The empirical data provided by the committee in its report<sup>6</sup>, clearly shows that Muslims in India are not involved in the banking system to the extent other communities are.

One main reason behind this non-involvement of Muslims in the conventional banking system is the interest based nature of this system. Thus there arises a dire need that such financial institutions should be brought in place which will be based on interest free principles of trade and commerce. Such IFF Institutions will surely attract the Muslim masses and will enhance their inclusion in the financial system.

## **2. Sharia Compliant Banks in India: (Aspirations and problems)**

To achieve this objective of financial inclusion of Muslim masses, we can think of establishing IF banks, just as other conventional banks are established and allowed to operate here. In India, any organization wishing to offer banking facilities to general public and function as banking organization should qualify the requisites laid down under Banking Regulations Act of 1949, meaning commercial banks are incorporated under the provisions of this Act of 1949. When, we go through different sections of Banking Regulations Act of 1949 and other related laws and regulations, to understand the requisites of a bank, we come to know that in India a bank is bound to follow as under:

- i) It should pay interest to its customers<sup>7</sup> on their saving deposits as per rates announced by RBI from time to time.
- ii) It should provide interest based loans to its customers.<sup>8</sup>
- iii) It should not itself enter into any trading activity based on sale and purchase or renting of assets<sup>9</sup>.

On the other hand a sharia compliant financial organisation i.e. an Islamic Bank cannot offer or receive any interest to or from its customers; it rather provides finances on the basis of profit and loss sharing and also enters into ‘Bai’ (trade) transactions. Thus it is clear that any financial organisation having ‘sharia compliant modus operandi’ cannot be legally incorporated as a bank in India, unless there is any appropriate amendment in the Banking Regulations Act and other related regulations that govern the banking system here. Prof. Raguram Rajan committee appointed by RBI – the apex regulatory body of the state, for suggesting ways and measures for inclusion of non-included sections of the society in the financial system has also acknowledged this fact, when the committee in its final report recommended the introduction of ‘Islamic Banking Counters’ in the conventional banks and also proposed for the required amendments in the regulations. Thus till such required amendments are made in the laws, Islamic banking cannot function in India. As such we will have to explore other available options which, to some extent can cater to the financial needs of this section of the population in compliance to sharia principles of financial transactions.

In this regard in India ‘Companies Act of 1956’ is one such legal option. A company, if not involved in any economic activity which is prohibited in Islam, is a sharia compliant entity<sup>10</sup> as it defines the value of its shares on the basis of net profit or loss of the organisation. Such companies provide a good option for investment of savings on interest free lines. But these companies do not have any provision of providing finances. Further, we can also have non-banking financial companies with interest free modus operandi. Today, in India, we have a number of companies, of both these categories, which offer good examples in their respective fields. But, in the regulatory laws there are certain limitations for them. For example, these companies are not authorised to receive any kind of deposits and are thus compelled to run their economic activities with the help of their share capitals only. Due to these limitations a company is not able to function as a dynamic financial institution.

### 3. Self-Reliant Cooperatives a viable option

Right from Independence of India, cooperative movement is being encouraged here. Central and state level laws are being framed for running different cooperatives. The first phase or we can say the first generation cooperatives, in India were independent entities, but with a compulsory share from the concerned governments. Due to which there was, one way or the other, government interferences in the management and policy matters of these cooperative societies. Prior to the expansion of banking system in the rural areas, these societies functioned as credit providers to their members, who were mainly the rural peasants and urban artisans. From early 90s of 20<sup>th</sup> century, with the global liberalization of trade and commerce and also the growth of 'corporate world', such cooperative laws were passed by the Indian legislative bodies, both at central and state levels, which facilitated the incorporation of such legal entities which are democratic in framing policies and control mechanism and of corporate nature in execution of their businesses. These cooperatives are named differently by different governments vide their respective laws and regulations, but there are certain common characteristics of all such new generation cooperatives, that there is thrust on their self-sustenance and at the same time there is no binding on them to provide any compulsory share to the respective governments, in their management or framing of policies. As per the law these cooperatives are not bound to have any government share in their capital investments. These cooperatives, owned and managed by their members, can provide credits to them and can also receive their deposits, in addition to their share capitals. In this way these cooperatives are virtually the legal bodies that have a potential to function as financial institutions, with the only limitation that their financial activities are available to their members only. Thus these 'Self-Reliant Cooperatives' provide a viable legal option to run financial businesses solely according to the aspirations of their members. These businesses are regulated by duly registered 'Articles of Association' (AOA) of these cooperatives, which are framed by the promoters and are amendable by its members in accordance to their needs and the determined objectives of the cooperative.

In the category of these 'modern day' cooperative laws, at central level we have Multi State Cooperative Societies Act (MSCSA) of 2002. Under this Act such cooperatives are registered by the competent authority which can function in more than one state. The cooperatives registered under state level Acts can function in those concerned states only. Today we have certain multi state credit cooperative societies which function in almost whole of India with hundreds of successful

branches; these cooperatives are earning revenue in crores<sup>11</sup>. The seven principles listed necessary for a cooperative in the 1995 statement of International Cooperative Alliance (ICA), have been included by the legislative bodies, in these liberal Cooperative Acts. As these Principles include, Democratic member control, Autonomy and Independence and Community Concern their by, in India certain Muslim bodies utilized this legal option for incorporating such credit cooperatives which, in the interest of the community, run their businesses on interest free principle of sharing profit and loss among their members. The pioneer among them is Alkhair Cooperative Credit Society Ltd. It started its business in the state of Bihar in 2007 and is today having 13 branches functioning in 4 states. Then there is Sanghaman Multi State Cooperative Credit Society Ltd. with six branches in three states. Today there are also a lot of other state level cooperatives functioning as IFFIs. Here in J&K ‘Self-Reliant Cooperative Act 1999’ and ‘Self-Reliant Cooperative (Amendment) Act, 2018 govern the incorporation of such self-help mutual aided, autonomous, business enterprises, owned, managed and controlled by the members.

#### 4. Crescent Cooperative Ltd. (CCL) Anantnag, Kashmir

CCL Anantnag, Kashmir is a registered cooperative incorporated under Jammu and Kashmir Self-Reliant Cooperatives Act 1999. The preamble of this Act reads, “An Act to provide for the formation and transformation of Cooperatives as self-reliant, self-help, mutual-aid, autonomous, voluntary, democratic business enterprises owned managed and controlled by members for the economic and social betterment, through the financially gainful provision of core services which fulfill a common need felt by them and for the matters connected therewith or incidental thereto”<sup>12</sup>.

The study of relevant sections of the Act, gives us the following picture of a Self-Reliant Cooperative, incorporated under this Act.

- i) These cooperatives are a body Corporate<sup>13</sup>.
- ii) Can grant membership to the permanent state subjects of J&K only<sup>14</sup>.
- iii) Power of granting membership vests with the BOD of the cooperative in accordance to its registered AOA<sup>15</sup>.
- iv) Should grant services of cooperative normally to its members only<sup>16</sup>.

- v) The ultimate powers of the cooperative (not affecting the powers of BOD and other authority) lie vested with the general body, consisting of all members of the cooperative<sup>17</sup>.
- vi) The Directors - managers – of the cooperative are democratically elected by the general body of members<sup>18</sup>.
- vii) The BOD is entrusted with the power of managing the affairs of the cooperative<sup>19</sup>.
- viii) These cooperatives are authorised to mobilize funds from their members in the form of equity capital, deposits and loans. Loans from nonmembers are also allowed<sup>20</sup>.
- ix) These cooperatives are allowed to deploy the mobilized funds in the furtherance of their objectives<sup>21</sup>.
- x) The members of the cooperative are responsible for settling any deficit of the cooperative<sup>22</sup>.

Further, the schedule “A” of the Act concerned with Sub-Sec. 3(a) of section 3, defines a cooperative as, “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”.

As CCL – the Cooperative under study – has been incorporated under this Act, so it automatically inherits all the special features listed above. Thus, under the provision of this Act CCL Anantnag is an autonomous organisation owned and democratically controlled by the members to achieve its objectives in accordance with its registered AOA.

Article 4 of AOA of CCL specifies the main aim of the cooperative, “to provide its members a hassle free mechanism and a just medium through which they can mutually enter into interest free transactions and avail the moral and material benefits of such transactions here and hereafter”.

Article 5 specifies the core service of the cooperative:

- i) To deal in thrifts and credits.
- ii) To provide facility of safe keeping of funds.
- iii) To provide loan facility to its members.
- iv) Run profit generating projects on the principle of Sharakat/Mazaribat.

These articles of AOA of CCL make it a financial institution that aspires to run its financial business – mobilizing funds and offering loans – purely on interest free principles of sharing profits and losses among its members.

To materialize its aspiration of functioning as an IFFI, the cooperative has designed a sharia compliant policy of borrowing and lending funds.

#### 5. The “Debit Credit policy of CCL Anantnag” (Extract)

Crescent Cooperative Ltd. Ang. in its ‘debit credit’ policy document<sup>23</sup> declares that it will accept funds under following four heads:

- 1) Thrift amounts under the principle of ‘Dian (Karz)’.
- 2) Investment Pool (term) amounts under the principle of ‘Mazaribat’.
- 3) Safekeeping amounts under the principle of ‘Wadia’.
- 4) Investment loans under the principle of ‘Musharika’.

In its ‘Debit Credit’ policy document the cooperative also declares that it will cater to the credit needs of its members under following heads.

- 1) Purchase of household gadgets will be facilitated under the principle of ‘Bai salm’ i.e. credit sale against monthly installments.
- 2) Assets needed by the members can also be provided to them under the principle of ‘Ijara’ i.e., leasing/purchasing on rental basis.
- 3) Income generating projects will be financed under the principle of ‘Mazariba and Musharika’ with mutually agreed upon terms and conditions.
- 4) Any other genuine cash credit needs of members will be catered under the principle of ‘Dian i.e., simple Karz’.

The cooperative has also devised elaborate rules that govern its debit credit schemes<sup>24</sup>.

#### 6. Organizational Structure of CCL Anantnag

- The General Body of Members (GBOM), which consists of all basic members, is the ultimate body with which lies the authority to transect the business of cooperative<sup>25</sup>. It meets annually to decide about the surplus, consider the annual reports and statements of accounts and any other special matter referred to it by BOD. It elects a Board of Directors (BOD) (currently there are five members on BOD of the cooperative).
- BOD is the apex body to manage the cooperative<sup>26</sup>. It meets quarterly to take stock of the functioning of the cooperative and to devise/revise

policies and programmes for better functioning. It elects the office bearers. Chairman, secretary and treasurer are the three office bearers of the cooperative, they are elected out of board members.

Chairman presides over the board meetings and as a decisive vote in case of any tie. Secretary carries out secretarial jobs and is responsible for maintaining records while treasurer deals with the financial matters<sup>27</sup>.

- BOD also appoints Executive Officer and other staff for conducting the business of the cooperative smoothly<sup>28</sup>.

#### 7. Crescent Cooperative Ltd. (CCL) in Practice: (Some Empirical Data)

The cooperative started practising right from its date of incorporation. Following data<sup>29</sup> may help us to get a bird's eye view about its functioning:

• Cooperative incorporated on	:	13-04-2015
• Number of promoting members	:	09
• Number of members as on 31-01-2020	:	197
• Cases Sponsored upto 31-01-2020	:	143
○ Cases under Muzariba	:	04
○ Cases under Musharika	:	12
○ Cases under Dian (cash credit)	:	37
○ Cases under Murabaha	:	90

#### 8. Difficulties faced by CCL

In the practical field, the main problem faced by the cooperative is the non-availability of a standard procedure of operations which would suit the localized needs of its members. Further, the standardization of products and services also hinders its smooth functioning. In this connection I (on behalf of the cooperative) appeal the technical experts, in the fields of sharia laws, modern finances and managements to come forward under the spirit of Holy command of Almighty Allah "help ye one another unto righteousness and pious duty". By this mutual endeavor and the grace of Almighty Allah, the cooperative will In Sha Allah be able to achieve its aspired goals.

#### 9. Conclusions

It is a ground reality that Muslims in India are not fully involved in financial system. One reason of this noninvolvement is that the conventional banks which form the backbone of this system are based on interest. For their inclusion there is a dire need of interest free financial institutions (IFFI). In the current scenario of

laws and regulations, banks here cannot function on interest free principles, until there are required amendments in the concerned laws. However, companies can have an interest free mode but these have certain limitations. The last legal option available is the incorporation of Self-Reliant Cooperatives. Today this option is being practiced by certain organizations in India. CCL Anantnag is one such interest free financial organization under J&K Self-Reliant Cooperatives Act of 1999. It is successfully operating since last five years, but faces the difficulty due to non-availability of standard procedure of operations and products.

Hope the learned faculty will take note of it and lend their helping hand to the cooperative for its further development.

## References and Endnotes

- 1) Extract from verse No. 275, chapter 2 of Holy Quran
- 2) In Holy Quran there are seven verses regarding the prohibition of ‘Riba’ (interest). These are:
  - Albaqrah (2): 275, “**Those** who deal in interest will not stand except like those whom ‘Satan’ has driven to madness.....And Allah has permitted trade and prohibited interest .....Those who will repeat (such dealings) are companions of fire. They will remain therein forever”.
  - Albaqrah (2): 276, “**Allah** deprives interest of all His blessings.....”
  - Albaqrah (2): 278-279, “**Oh believers!** Give up your remaining interest claims..... and if you do not, take notice of war from Allah and His Messenger”.
  - Aali Imran (3): 130, “**Oh believers!** Do not deal in interest.....”
  - An-Nisa (4): 161, “**And** they took interest, though they were forbidden....And I have prepared severe punishment for (such) disobedient”.
  - Ar-Rum (30): 39, “**That** which you give in usury, for increase through property of (other) people, will have no increase with Allah.....”
- 3) There are scores of traditions of prophet Mohammad (SAW) that prohibit Muslims from dealing in ‘Riba’ (interest). Some are quoted here:
  - **Hazrat** Abdullah bin Masood <sup>(R.A)</sup> narrated: Messenger of Allah (SAW) cursed the one who accepted interest and the one who paid it..... (Sahi Muslim)
  - **Hazrat** Jabbar <sup>(R.A)</sup> narrated: The prophet <sup>(SAW)</sup> cursed the acceptor of interest, its payer, who records it and the two who are witness to it. (Sahi Muslim)
  - **Hazrat** Abdullah ibn Hanzla <sup>(R.A)</sup> narrated: messenger of Allah <sup>(SAW)</sup> said, “A dirham (currency unit) of interest which a person accepts is worse than committing adultery 36 times. (Mishkat)
  - **Hazrat** Abu Hurairah <sup>(R.A)</sup> narrated: The prophet <sup>(SAW)</sup> said: “Interest has 70 segments the least serious being equivalent to a man committing adultery with his mother”. (Ibn Majah)
  - **Hazrat** Abu Hurairah <sup>(R.A)</sup> narrated: During the night of ‘Isra’ prophet <sup>(SAW)</sup> saw some persons whose bellies were bulged out like houses filled with snakes. On enquiring, angel Gabbereal informed him that these are those persons of your ummah, who dealt in interest.” (Ahmad, Ibn Majah)
- 4) Holy Quran, English translation of the meanings and commentary. (Notes 324 and 325 at page no. 126) basically the work is of Ustadh Abdullah Yusuf Ali, revised and edited by the presidency of Islamic Researchers, IFTA, Call and Guidance. Printed at King Fahad Holy Quran printing complex Al-Madinah Al-Munawarah.

- 5) Papers of seminar on 'Bank interest.....', organized by Islamic Fiqah Academy india, at Delhi on Dec. 08-11, 1989. Papers compiled by Mujahid-Ul-Islam Qasmi and published by Qazi Publishers and Distributors Delhi.
- 6) The data (regarding bank credits\*) furnished by Sachar Committee in its report is given in the table below:

	Muslims	Other minorities	Others
Pvt. Sector banks	6.6	7.9	85.5
PSU	4.6	6.5	89.1

*\*Bank Credits (Amount Outstanding) %*

- 7) Section 21 of Banking Regulations Act of 1949.
- 8) Section 5 (b) of Banking Regulations Act of 1949.
- 9) Section 8 & 9 of Banking Regulations Act of 1949.
- 10) Moulana Mufti Nazir Ahmad Qasmi, Shares ki khareed-u-faroukht ke sharei asool, Monthly Al-Noor, Bandipora Kashmir, December 2006.
- 11) Adarash credit cooperative society ltd. Regd. Office Palace Road Sirohi, Rajasthan, (in its balance sheet as on 31-03-2013) declares a net profit of Rs. 137.04 Corers.
- 12) Act available on [www.jkcooperatives.org](http://www.jkcooperatives.org) (official website of Jammu & Kashmir State Cooperative Department).
- 13) Section 5 of J&K Self Reliant Cooperatives Act of 1999.
- 14) Sub-Section a (ii) of section 16 of J&K Self Reliant Cooperatives Act of 1999.
- 15) Section 17 of J&K Self Reliant Cooperatives Act of 1999.
- 16) Section 23 of J&K Self Reliant Cooperatives Act of 1999.
- 17) Sub-Section (3) of section 27 of J&K Self Reliant Cooperatives Act of 1999.
- 18) Section 28 of J&K Self Reliant Cooperatives Act of 1999.
- 19) Section 31 of J&K Self Reliant Cooperatives Act of 1999.
- 20) Sub-Section (i) & Sub-Section (ii) of section 39 of J&K Self Reliant Cooperatives Act of 1999.
- 21) Section 40 of J&K Self Reliant Cooperatives Act of 1999.
- 22) Section 42 of J&K Self Reliant Cooperatives Act of 1999.
- 23) The policy document is published in the booklet that is available with the membership form of the cooperative.
- 24) All such rules are published in the booklet available with the membership form of the cooperative.
- 25) Article 8 of A.O.A of CCL Ang.
- 26) Article 14 of A.O.A of CCL Ang.
- 27) Article 16 of A.O.A of CCL Ang.
- 28) Article 17 of A.O.A of CCL Ang.
- 29) Data compiled by the author from related documents and official website ([www.ccljk.org](http://www.ccljk.org)) of the cooperative.

