



## Centre go wrong on cooperatives

[sanskritias.com/current-affairs/centre-go-wrong-on-cooperatives](https://sanskritias.com/current-affairs/centre-go-wrong-on-cooperatives)



**(Mains GS 2 : Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these.)**

### Context:

- The recent Supreme Court verdict holding the 97<sup>th</sup> Constitutional amendment unconstitutional to the extent it applied to cooperative societies under the control of the States is a reminder that even well-intentioned efforts towards reforms cannot be at the cost of the quasi-federal principles underlying the Constitution.
- It has brought the focus on the extent to which the Centre can seek to lay down policy for the functioning of cooperative societies.

### The 97<sup>th</sup> Constitutional Amendment:

- Recognising that 'cooperative societies' came under Entry 32 of the State List in the Seventh Schedule, the Amendment proposed to create a framework for the functioning of cooperative societies.
- State laws on cooperatives should conform to this framework.
- The 97<sup>th</sup> amendment to the constitution introduced Part IXB in the Constitution so that the concept of cooperative societies gains constitutional recognition.
- It was on the lines of Part IX, which deals with panchayats, and Part IXA, which deals with urban local bodies.
- The idea was to empower Parliament to frame laws for cooperative societies that function across States (multi-State cooperative societies) and State legislatures to make laws for all other cooperative societies falling under their jurisdiction.

- The Amendment set out basic rules such as a maximum of 21 directors in a society, a fixed term of five years for elected members, a six-month cap on the time limit for which a society's board of directors can be kept under supersession or suspension.
- It also provided for reservation of one seat for the Scheduled Castes or the Scheduled Tribes, and two seats for women on the board of every cooperative society, that is, every society that has members from these sections.

### **Objective behind the amendment:**

- The Union government, in its Statement of Objects and Reasons for the amendment, referred to the "weaknesses" in safeguarding the interests of members of cooperatives and the fulfilment of the objectives of these institutions.
- It referred to delayed elections, nomination of office-bearers for long durations, reduced accountability in management and inadequate professionalism in many societies.
- It spoke of the need to initiate fundamental reforms to revitalise these institutions and ensure "their autonomy, democratic functioning and professional management".

### **The legal infirmity in the Amendment:**

- On a legal challenge to the validity of the 97<sup>th</sup> Amendment, the Gujarat High Court struck down Part IXB in its entirety on two grounds.
- First, the Amendment required not only a two-thirds majority in Parliament, which was obtained, but also had to be ratified by 50% of the State legislatures.
- This was because the Amendment impinged on a subject over which only the State legislatures had law-making powers.
- In the absence of such ratification, the Part was declared unconstitutional
- It also ruled that the Part violated the basic structure of the Constitution in that it was in breach of federal principles.

### **The Supreme Court's view:**

- The Centre's defence was that the Amendment did not alter the entry in the State List on 'cooperative societies'.
- In fact, it specified that the State legislatures would enact the relevant laws based on a common framework.
- There was no need for ratification by the Assemblies, as no subject was shifted from the State List to the Central or Concurrent List.
- However, the Supreme Court rejected the argument.
- The Amendment had the effect of limiting and circumscribing the scope and extent to which States could frame laws on cooperative societies.
- This impacted on their legislative power and would therefore amount to a change that would require ratification by the Assemblies.

### **Ratification by the state legislature required:**

- All three judges on the Bench that heard the Union government's appeals agreed with the Gujarat High Court that the ratification by the State legislatures was required for Part IXB, and in the absence of such ratification, the Part had to be struck down.
- However, the majority declared the Part inoperative only in respect of cooperative societies that came under the States.
- It would be valid as far as multi-State cooperative societies were concerned as Parliament had the power to regulate their functioning.
- Justice K.M. Joseph, in his dissenting view, ruled that Part IXB could not be severed into two sections, one covering State cooperatives and the other for multi-State cooperatives.
- It set out a framework for the State cooperatives and only added a clause that in respect of multi-State cooperatives, Parliament will enact the relevant law.
- As the latter provision had no independent life if the portion concerning the State cooperatives was struck down, the 'doctrine of severability' cannot be applied, and the entire Part had to be declared unconstitutional.

#### **Status of the 97<sup>th</sup> Amendment now:**

- The Amendment added the words "or cooperative societies" to Article 19(1)(c) of the Constitution to expand the fundamental right to form associations or unions to cover cooperative societies too.
- It also added a 'Directive Principle' through Article 43B, which says: "The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies."
- These clauses remain undisturbed. In line with the Supreme Court's judgment, Part IXB dealing with cooperative societies will survive, but only with reference to multi-State societies.

#### **Ruling's effect on Cooperation Ministry:**

- The Ministry of Cooperation was formed recently, apparently with a view to giving a fillip to the cooperative movement and reforming the functioning of cooperative societies.
- Until now, the subject was dealt with by the Agriculture Ministry. It administered the Multi-State Cooperative Societies Act, 2002.
- The new Ministry will continue this work. For now, it will not be in a position to compel States to bring their cooperative laws in conformity with the Centre's vision.
- Regarding the fate of the constitutional framework for all cooperative societies in the country, the Centre has the option of re-enacting the Amendment with a two-thirds majority in Parliament and obtaining ratification by 50% of the State legislatures.

#### **Conclusion:**

- A key principle from the judgment is that the ratification requirement will apply if there is any attempt to fetter the State legislatures in any way while enacting a law in their own domain, even if there is no attempt to alter the distribution of legislative powers between the Union and States.
- Thus, in the absence of ratification by the States, the amendment that sought to prescribe the outlines of State laws on a State subject did not pass constitutional muster.