

Co-operatives and the federalism

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The 97th Constitutional Amendment, was a major step towards infusing autonomy, democratic functioning and professional management. The recent Supreme Court verdict holding the 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.

In news: Limits of cooperation: On reforms in cooperative sector

Placing it in syllabus: Governance

Dimensions:

- State Co-operatives and multi-state Co-operatives
- History of legislation on Co-operatives
- 97th CAA
- Centre's control over Co-operatives
- Federal issues in legislating on Co-operatives
- Best way forward

Content:

State Co-operatives and multi-state Co-operatives:

- Most of the cooperatives in India have members from one particular state. These are known as **State Co-operatives**.
- These cooperative societies are governed by laws in their respective states, with a Cooperation Commissioner and the Registrar of Societies as their governing office.

- **A multi-state co-operative** is the one having its members in more than one state.
- An act to regulate such multi-state cooperatives was passed in 2002 by the title of **Multi-State Cooperative Society Act, 2002**. It is regulated by the **Central Registrar of Cooperative Societies office**.
- These are mostly banks, dairies and sugar mills whose area of operation spreads across states. The Central Registrar of Societies is their controlling authority, but on the ground the State Registrar takes actions on his behalf.

What is a Cooperative?

A co-operative is 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

They are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity.

Pre-independence:

- The term cooperative Societies came into existence when the farmers of Poona and Ahmednagar spearheaded an agitation against the money lenders who were charging exorbitant rates of interest.
- Hence, British government came forward and passed three acts- the Deccan Agriculture Relief Act (1879), the Land Improvement Loan Act (1883) and the Agriculturists Loan Act (1884).
- However, The Cooperative Movement in India was formally introduced with the promulgation of Cooperative Societies Act in 1904.
- Even before formal cooperative structures came into being through the passing of a law, the practice of the concept of cooperation and cooperative activities were

prevalent in several parts of India. Some of them were named as Devarai or Vanarai, Chit Funds, Kuries, Bhishies, Phads.

- In 1919, cooperation became a provincial subject and the provinces were authorised to make their own cooperative laws under the Montague-Chelmsford Reforms.
- This categorization carried on to the Government of India Act, 1935.
- In 1942, the Government of British India enacted the Multi-Unit Cooperative Societies Act to cover Cooperative Societies with membership from more than one province.

Post-Independence:

- In post-Independent India, in 1958, the National Development Council (NDC) had recommended a national policy on cooperatives and also for training personnel and setting up cooperative marketing societies.
- National Cooperative Development Corporation (NCDC), a statutory body, was set up under National Cooperative Development Corporation Act, 1962.
- In 1984, Parliament enacted the multi-state cooperative societies Act to remove the plethora of laws governing the same types of societies.
- In 2002, the government announced a National Policy on Cooperatives to support the promotion and development of cooperatives. It is also aimed at reducing regional imbalances and strengthening cooperative education, training and human resource development.

97th CAA:

- The 97th Constitutional Amendment came into effect from February 15 2012, and brought about many changes to the legal regime of cooperative societies.
- The amendment added “cooperative societies” to the protected forms of association under **Article 19(1)(c)**,

elevating it to a **fundamental right**.

- It added **Article 43B** in the **Directive Principles of State Policy (Part IV)** regarding the “promotion of cooperative societies”.
- It also inserted **Part IXB** in the Constitution which laid down the terms by which cooperative societies would be governed, in more granular detail
- **Part IXB delineated the contours of what State legislation on cooperative societies ought to contain**, such as
 - Provisions on the maximum number of directors in each society,
 - Reservation for seats for SCs, or STs, and women,
 - Besides, the duration of the terms of elected members, among others.

Supreme Court strikes down part of 97th CAA

- The Parliament had passed the 97th Amendment without sending it to the states for ratification by at least half the state legislatures.
- Since co-operative societies were part of the State List of the Constitution, the 97th Amendment violated the basic structure of the Constitution.
- The Supreme Court, by a 2:1 majority, upheld the judgment holding the amendment invalid, but only in relation to cooperatives under the States (struck down part IX B of the Constitution related to cooperative societies)
- The elaborate amendment would hold good for multi-State cooperative societies, on which Parliament was competent to enact laws.

Centre's control over Co-operatives:

- Union government has been acquiring incrementally greater control of cooperative societies over the

years.

- Cooperative banks have been brought under the purview of the Reserve Bank of India.
- The political intent of the Union Government for more active involvement in the cooperative sector is also apparent from the recently established Union Ministry for Cooperation.

Need for Centre's Control:

- **Pan-India Spread:** Various studies conducted by institutions like Vaikunt Mehta Institute of Cooperative Management have shown the cooperative structure has managed to flourish and leave its mark only in a handful of states like Maharashtra, Gujarat, Karnataka etc.
- **Access to Funding:** Over the years, the cooperative sector has witnessed drying out of funding. Cooperative institutions get capital from the Centre, either as equity or as working capital, for which the state governments stand guarantee. This formula had seen most of the funds coming to a few states such as Maharashtra, Gujarat, Karnataka
- **Changing Nature of Cooperatives:** Cooperatives have changed as well. Most new registrations for co-operatives are not in the agriculture sector. They are now coming up in sectors like housing and labor. As market conditions are evolving, cooperatives in States such as Kerala have got into complex operations: running IT parks and medical colleges. More avenues for expansion, such as insurance, remain untapped and the regulatory regime must evolve in step

Ramifications:

- **Dual control has led to a lot of irregularities** in the functioning of the cooperative banks.
- While the administrative control of the cooperatives are with the states, its banking functions are regulated by

Reserve Bank of India under the Banking Regulation Act, 1949 (as applicable to Cooperatives).

- In June 2020, the Centre promulgated an ordinance to bring all urban cooperative banks and multi-state cooperative banks under the supervision of the RBI in order to protect the interest of depositors.
- The Ordinance amended the Banking Regulation Act, 1949 as applicable to cooperative banks. However, it did not affect the existing powers of the state registrars of Co-operative Societies under state co-operative laws.
- **Politicization and excessive role of the government** chiefly arising out of the loopholes and restrictive provisions in the Cooperative Acts

Federal issues in legislating on Co-operatives:

- The Parliament had passed the 97th Amendment without sending it to the states for ratification by at least half the state legislatures.
- Since **co-operative societies were part of the State List** of the Constitution, the 97th Amendment **violated the basic structure of the Constitution**.
- The Gujarat High Court struck down the amendment in 2013 on the grounds that it had failed to comply with the requirements under **Article 368(2)** by virtue of **not having been ratified by the States** and had also given an additional finding that the 97th Amendment violated the basic structure of the Constitution.
- The Supreme Court, by a 2:1 majority, upheld the judgment holding the amendment invalid, but only in relation to cooperatives under the States.
- The elaborate amendment would hold good for multi-State cooperative societies, on which Parliament was competent to enact laws.
- The judgment has **reiterated that the Parliament cannot make laws on state subjects without shifting them to the Concurrent List or the Union List. Except in cases of**

national interest, under Article 249.

- The court reasoned that even **well-intentioned efforts towards reforms cannot be at the cost of the quasi-federal principles underlying the Constitution.** Permitting such an action would undermine the entire federal structure of the country.

Best way forward:

- The functioning of the Cooperative sector is hampered by political interference, lack of regular elections, etc. The cooperative movement certainly needs reform and revitalisation.
- There is no denying that the scope for democratising the functioning of cooperative societies and enhancing their autonomy remains unchanged.
- It is vital that the RBI continue to be able to treat cooperative banks as fully regulated participants in the financial sector.
- Otherwise, they have the power to create systemic crises, given that their poor governance builds up many bad loans and that they are chronically under-capitalized. It is also necessary for consumer protection.
- However, the cooperative sector has always been in the domain of the States or provinces. The organising principles and mechanism of these cooperatives differ from area to area and depend on the industry or crop which forms the fulcrum of the cooperative.
- Homogeneity in this area would result in the creation of round holes in which square pegs no longer fit.
- They also would not really serve to break the control some political interests have taken over cooperatives.

Mould your thought: What are the federal issues involved in regulation of cooperatives in India? Should the Union government control them entirely? Give reasons for your answer.

Approach to the answer:

- Introduction
- Discuss the 97th CAA and Supreme Court Judgement
- Discuss the present structure of cooperative regulation
- Discuss the need for Centre's control over cooperatives
- Discuss the ramifications of Centre's control
- Briefly suggest a way forward
- Conclusion