

THE CONSTITUTION (NINETY-SEVENTH AMENDMENT) ACT, 2011

India

THE CONSTITUTION (NINETY-SEVENTH AMENDMENT) ACT, 2011

Act 97 of 2011

- Published in Gazette of India on 12 January 2012
- Commenced on 13 January 2012
- [This is the version of this document from 12 January 2012.]
- [Note: The original publication document is not available and this content could not be verified.]

An Act further to amend the Constitution of India Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows-

1. Received the assent of the President on January 12, 2012 and published in the Gazette of India, Extra., Part II, Section 1, dated 13th January, 2012, pp. 1-5, No. 12

Prefatory Note-Statement of Objects and Reasons.-The co-operative sector, over the years, has made significant contribution to various sectors of national economy and has achieved voluminous growth. However, it has shown weaknesses in safeguarding the interests of the members and fulfilment of objects for which these institutions were organised. There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators remaining in-charge of these institutions for a long time. This reduces the accountability of the management of co-operative societies to their members. Inadequate professionalism in management in many of the co-operative institutions has led to poor services and low productivity. Co-operatives need to run on well established democratic principles and elections held on time and in a free and fair manner. Therefore, there is a need to initiate fundamental reforms to revitalize these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.

2. The "co-operative societies" is a subject enumerated in Entry 32 of the State List of the Seventh Schedule of the Constitution and the State Legislatures have accordingly enacted legislations on co-operative societies. Within the framework of State Acts, growth of co-operatives on large scale

was envisaged as part of the efforts for securing social and economic justice and equitable distribution of the fruits of development. It has, however, been experienced that in spite of considerable expansion of co-operatives, their performance in qualitative terms has not been up to the desired level. Considering the need for reforms in the Co-operative Societies Acts of the States, consultations with the State Governments have been held at several occasions and in the conferences of State Co-operative Ministers. A strong need has been felt for amending the Constitution so as to keep the co-operatives free from unnecessary outside interferences and also to ensure their autonomous organisational set up and their democratic functioning.

3. The Central Government is committed to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner. With a view to bring the necessary reforms, it is proposed to incorporate a new Part in the Constitution so as to provide for certain provisions covering the vital aspects of working of co-operative societies like democratic, autonomous and professional functioning. A new article is also proposed to be inserted in Part IV of the Constitution (Directive Principles of State Policy) for the States to endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. The proposed new Part in the Constitution, inter alia, seeks to empower the Parliament in respect of multi-State co-operative societies and the State Legislatures in case of other co-operative societies to make appropriate law, laying down the following matters, namely-

(a)provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;(b)specifying the maximum number of directors of a co-operative society to be not exceeding twenty-one members;(c)providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;(d)providing for a maximum time limit of six months during which a board of directors of co-operative society could be superseded or kept under suspension;(e)providing for independent professional audit;(f)providing for right of information to the members of the co-operative societies;(g)empowering the State Governments to obtain periodic reports of activities and accounts of co-operative societies;(h)providing for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board of every co-operative society, which have individuals as members from such categories;(i)providing for offences relating to co-operative societies and

penalties in respect of such offences.

4. It is expected that these provisions will not only ensure the autonomous and democratic functioning of co-operatives, but also ensure the accountability of management to the members and other stakeholders and shall provide for deterrence for violation of the provisions of the law.

5. The Bill seeks to achieve the above objectives.

1. Short title and commencement.-

(1) This Act may be called the Constitution (Ninety-seventh Amendment) Act, 2011. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Article 19.-

In Part III of the Constitution, in Article 19, in clause (1), in sub-clause (c), after the words "or unions", the words "co-operative societies" shall be inserted.

3. Insertion of new Article 43-B.-

In Part IV of the Constitution, after Article 43-A, the following article shall be inserted, namely-"43-B. Promotion of co-operative societies.-The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies."

4. Insertion of new Part IX-B.-

After Part IX-A of the Constitution, the following Part shall be inserted, namely-'Part IX-B THE CO-OPERATIVE SOCIETIES

243.

-ZH. Definitions.-In this Part, unless the context otherwise requires-(a)"authorised person" means a person referred to as such in Article 243-ZQ;(b)"board" means the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction and control of the management of the affairs of a society is entrusted to;(c)"co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;(d)"multi-State co-operative society" means a society with objects not confined to one State and registered or deemed to be registered under any law for the time being in force relating to such co-operatives;(e)"officer bearer" means a President,

Vice-President, Chairperson, Vice-Chairperson, Secretary or Treasurer of a co-operative society and includes any other person to be elected by the board of any co-operative society;(f)"Registrar" means the Central Registrar appointed by the Central Government in relation to the multi-State co-operative societies and the Registrar for co-operative societies appointed by the State Government under the law made by the Legislature of a State in relation to co-operative societies;(g)"State Act" means any law made by the Legislature of a State;(h)"State level co-operative society" means a co-operative society having its area of operation extending to the whole of a State and defined as such in any law made by the Legislature of a State.

243.

-ZI. Incorporation of co-operative societies.-Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.

243.

-ZJ. Number and term of members of board and its office bearers.-(1)The board shall consist of such number of directors as may be provided by the Legislature of a State, by law:Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one:Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on board of every co-operative society consisting of individuals as members and having members from such class or category of persons.(2)The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be conterminous with the term of the board:Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.(3)The Legislature of a State shall, by law, make provisions for co-option of persons to be members of the board having experience in the field of banking, management, finance or specialisation in any other field relating to the objects and activities undertaken by the co-operative society, as members of the board of such society:Provided that the number of such co-opted members shall not exceed two in addition to twenty-one directors specified in the first proviso to clause (1):Provided further that such co-opted members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to be eligible to be elected as office bearers of the board:Provided also that the functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in the first proviso to clause (1).

243.

-ZK. Election of members of board.-(1)Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the

expiry of the office of members of the outgoing board.(2)The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may be provided by the Legislature of a State, by law:Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such elections.

243.

-ZL.-Supersession and suspension of board and interim management.-(1)Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:Provided that the board may be superseded or kept under suspension in case-(i)of its persistent default; or(ii)of negligence in the performance of its duties; or(iii)the board has committed any act prejudicial to the interests of the co-operative society or its members; or(iv)there is stalemate in the constitution or functions of the board; or(v)the authority or body as provided by the Legislature of a State, by law, under clause (2) of Article 243-ZK, has failed to conduct elections in accordance with the provisions of the State Act:Provided further that the board of any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:Provided also that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (10 of 1949) shall also apply:Provided also that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted.(2)In case of supersession of a board, the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period specified in clause (1) and handover the management to be elected board.(3)The Legislature of a State may, by law, make provisions for the conditions of service of the administrator.

243.

-ZM. Audit of accounts of co-operative societies.-(1)The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year.(2)The Legislature of a State shall, by law, lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing accounts of the co-operative societies.(3)Every co-operative society shall cause to be audited by an auditor or auditing firms referred to in clause (2) appointed by the general body of the co-operative society:Provided that such auditors or auditing firms shall be appointed from a panel approved by the State Government or an authority authorised by the State Government in this behalf.(4)The accounts of every co-operative society shall be audited within six months of the close of the financial year to which such accounts relate.(5)The audit report of the accounts of an apex co-operative society, as may be defined by the State Act, shall be laid before the State Legislature in the manner, as may be provided by the State Legislature, by law.

243.

-ZN. Convening of general body meetings.-The Legislature of a State may, by law, make provisions that the annual general body meeting of every co-operative society shall be convened within a period of six months of close of the financial year to transact the business as may be provided in such law.

243.

-ZO. Right of a member to get information.-(1)The Legislature of a State may, by law, provide for access to every member of a co-operative society to the books, information and accounts of the co-operative society kept in regular transaction of its business with such member.(2)The Legislature of a State may, by law, make provisions to ensure the participation of members in the management of the co-operative society providing minimum requirement of attending meetings by the members and utilising the minimum level of services as may be provided in such law.(3)The Legislature of a State may, by law, provide for co-operative education and training for its members.

243.

-ZP. Returns.-Every co-operative society shall file returns, within six months of the close of every financial year, to the authority designated by the State Government including the following matters, namely-(a)annual report of its activities;(b)its audited statement of accounts;(c)plan for surplus disposal as approved by the general body of the co-operative society;(d)list of amendments to the bye-laws of the co-operative society, if any;(e)declaration regarding date of holding of its general body meeting and conduct of elections when due; and(f)any other information required by the Registrar in pursuance of any of the provisions of the State Act.

243.

-ZQ. Offences and penalties.-(1)The Legislature of a State may, by law, make provisions for the offences relating to the co-operative societies and penalties for such offences.(2)A law made by the Legislature of a State under clause (1) shall include the commission of the following act or omission as offences, namely-(a)a co-operative society or an officer or member thereof wilfully makes a false return or furnishes false information, or any person wilfully not furnishes any information required from him by a person authorised in this behalf under the provisions of the State Act;(b)any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of the State Act;(c)any employer who, without sufficient cause, fails to pay to a co-operative society amount deducted by him from its employee within a period of fourteen days from the date on which such deduction is made;(d)any officer or custodian who wilfully fails to handover custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society of which he is an officer or custodian, to an authorised person; and(e)whoever, before, during or after the election of members of the board or office bearers, adopts any corrupt practice.

243.

-ZR. Application to multi-State co-operative societies.-The provisions of this Part shall apply to the multi-State co-operative societies subject to the modification that any reference to "Legislature of a State", "State Act" or "State Government" shall be construed as a reference to "Parliament", "Central Act" or "the Central Government" respectively.

243.

-ZS. Application to Union territories.-The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, having no Legislative Assembly as if the references to the Legislature of a State were a reference to the administrator thereof appointed under Article 239 and, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly: Provided that the President may, by notification in the Official Gazette, direct that the provisions of this Part shall not apply to any Union territory or Part thereof as he may specify in the notification.

243.

-ZT. Continuance of existing laws.-Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.' [The Constitution (Ninety-seventh Amendment) Act, 2011, was proposed to overcome the difficulties faced by Cooperative societies and improve their performance and status in the country. The extensive establishment of cooperatives was envisioned as one of the attempts to achieve social and economic justice and the equitable distribution of the advantages of progress. According to this Amendment, these societies are given constitutional status and are legally protected while also maintaining their autonomous or democratic functioning. The Constitution was amended to require that the states guarantee the autonomy of cooperatives, and as a result, state governments are now required to support the voluntary formation, autonomous decision-making, democratic control, and operation of cooperatives. The Act witnessed many changes such as modification in Part III of Article 19(1)(c) with the insertion of the words "or co-operative societies", and the addition of Article 43B (working towards enhancing the co-Operative Societies' Voluntary formation, independent operation, and professional management) and Part IX B to the Indian Constitution. However, the 97th Amendment faced challenges in the High Court of Gujarat as the Parliament didn't ask for approval from the state legislatures before passing the bill. The ratification/approval is necessary for matters concerning states and since the cooperative societies are a part of the state legislature, ratification was required. On July 20, 2021, the Supreme Court of India declared the 97th Amendment Act Unconstitutional. According to the Supreme Court ratification from states was necessary to pass the amendment which didn't take place. The Supreme Court also said that the responsibility of Multistate Co-Operative societies is of the Centre while that of the State co-operative societies is of the state. As of the current scenario, parts of the 97th Amendment on

cooperatives are struck down.Also Refer]