



Co-operative Societies

The *97th Constitutional Amendment Act* of 2011 gave a constitutional status and protection to co-operative societies. In this context, it made the following three changes in the constitution:

1. It made the right to form co-operative societies a fundamental right (Article 19¹).
2. It included a new Directive Principle of State Policy on promotion of co-operative societies (Article 43-B²).
3. It added a new Part IX-B in the Constitution which is entitled “The Co-operative Societies” (Articles 243-ZH to 243-ZT).

CONSTITUTIONAL PROVISIONS

Part IX-B of the constitution contains the following provisions with respect to the co-operative societies:

Incorporation of Co-operative Societies: The state legislature may make provisions for 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.

Number and Term of Members of Board and its Office Bearers: The board shall consist of such number of directors as may be provided by the state legislature.³ But, the maximum number of directors of a co-operative society

shall not exceed twenty-one.

The state legislature shall provide 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 having members from such a category of persons.

The term of office of elected members of the board and its office bearers shall be five years from the date of election.⁴

The state legislature shall make provisions for co-option of persons having experience in the field of banking, management, finance or specialisation in any other related field, as members of the board. But, the number of such co-opted members shall not exceed two (in addition to twenty-one directors). Further, the co-opted members shall not have the right to vote in any election of the co-operative society or be eligible to be elected as office bearers of the board.

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 (that is, twenty-one).

Election of Members of Board: 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 assume office immediately on the expiry of the term of the office of members of the outgoing board.

The superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to a co-operative society shall vest in such body, as may be provided by the state legislature.

Supersession and Suspension of Board and Interim Management: No board shall be superseded or kept under suspension for a period exceeding six months.⁵ The board may be superseded or kept under suspension in case

- (i) Of its persistent default
- (ii) Of negligence in the performance of its duties
- (iii) Of committing any act prejudicial to the interests of the co-operative society or its members
- (iv) Of there being a stalemate in the constitution or functions of the board
- (v) Of the election body having failed to conduct elections in accordance with the provisions of the State Act.

However, 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.

In case of supersession of a board, the administrator appointed to manage the affairs of such a co-operative society shall arrange for conduct of elections within the period of six months and hand-over the management to the elected board.

Audit of Accounts of Co-operative Societies: The state legislature may make provisions for the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year. It shall lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing the accounts of the co-operative societies.

Every co-operative society shall be audited by an auditor or auditing firm, appointed by the general body of the co-operative society. But, such an auditor or auditing firm shall be appointed from a panel approved by the State Government or a body authorised by the State Government on this behalf.

The accounts of every co-operative society shall be audited within six months of the close of the financial year.

The audit report of the accounts of an apex co-operative society shall be laid before the state legislature.

Convening of General Body Meetings: The state legislature may provide that the annual general body meeting of every co-operative society shall be convened within a period of six months of the close of the financial year.

Right of a Member to Get Information: The state legislature may provide for access to every member of a co-operative society to the books, information and accounts of the co-operative society. It may also make provisions to ensure the participation of members in the management of the co-operative society. Further, it may provide for co-operative education and training for its members.

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. These returns shall include the following matters:

- (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 by-laws of the co-operative society
- (e) Declaration regarding date of holding of its general body meeting and conduct of elections when due
- (f) Any other information required by the Registrar in pursuance of any of the provisions of the State Act.⁶

Offences and Penalties: The state legislature may make provisions for the offences relating to the co-operative societies and penalties for such offences. Such a law shall include the commission or omission of the following acts as offences:

- (a) A co-operative society wilfully makes a false return or furnishes false information
- (b) Any person wilfully disobeys any summon, requisition or order issued under the State Act
- (c) Any employer who, without sufficient cause, fails to pay to a co-operative society the amount deducted from its employee within a period of fourteen days
- (d) Any officer who wilfully fails to handover custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society to an authorised person
- (e) Any person who adopts corrupt practices before, during or after the election of members of the board or office bearers.

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 the “State Legislature”, “State Act” or “State Government” shall be construed as a reference to “Parliament”, “Central Act” or “Central Government” respectively.

Application to Union Territories: The provisions of this part shall apply to the Union territories. But, the President may direct that the provisions of this part shall not apply to any Union territory or part thereof as he may specify in the notification.

Continuance of Existing Laws: 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 or until the expiration of one year from such commencement, whichever is less.⁷

REASONS FOR THE 97TH AMENDMENT

The reasons for adding the above provisions in the Constitution by the 97th Constitutional Amendment Act of 2011 are as follows:

1. 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 have remained in-charge of these institutions for a long time. This reduces the accountability in 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 was a need to initiate fundamental reforms to revitalise 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 was 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 was 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. It was 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.

Table 60.1 *Articles Related to Co-operative Societies at a Glance*

<i>Article No.</i>	<i>Subject-matter</i>
243ZH	Definitions
243ZI	Incorporation of Co-operative Societies
243ZJ	Number and Term of Members of Board and its Office Bearers
243ZK	Election of Members of Board
243ZL	Supersession and Suspension of Board and Interim Management
243ZM	Audit of Accounts of Co-operative Societies
243ZN	Convening of General Body Meetings
243ZO	Right of a Member to Get Information

243ZP	Returns
243ZQ	Offences and Penalties
243ZR	Application to Multi-state Co-operative Societies
243ZS	Application to Union Territories
243ZT	Continuance of Existing Laws

NOTES AND REFERENCES

1. In Part III of the Constitution, in Article 19, in clause (1), in sub-clause (c), the words “co-operative societies” were inserted.
2. In Part IV of the Constitution, a new Article 43-B was inserted, which says: “The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies”.
3. The “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.
4. An “office 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.
5. In case of cooperative banks, other than multi-state cooperative banks, this period cannot exceed one year.
6. The “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.
7. February 15, 2012, is the date of commencement of the Constitution (Ninety-seventh Amendment) Act, 2011. The Centre has asked state governments to amend their respective *State Cooperative Society Act* in tune with the Constitution (97th Amendment) Act, 2011 before February 14, 2013.