



# Provisions of 97th Amendment Struck Down: SC

## Why in News

Recently, the [Supreme Court \(SC\)](#) upheld a 2013 judgment of the Gujarat High Court and struck down certain provisions of the [Constitution \(97<sup>th</sup> Amendment\) Act, 2011](#).

- It gave a major boost for [federalism](#) as the **97<sup>th</sup> Amendment shrank the exclusive authority of States** over its [co-operative societies](#), a sector considered as a massive contributor to the economy.

## Co-operatives

- According to the [International Labour Organisation \(ILO\)](#), a **cooperative 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.
- There are **many types of cooperatives** such as Consumer Cooperative Society, Producer Cooperative Society, Credit Cooperative Society, Housing Cooperative Society and Marketing Cooperative Society.
- The [United Nations General Assembly](#) had declared the year **2012 as the International Year of Cooperatives**.
- India is an agricultural country and laid the foundation of **World's biggest cooperative movement in the world**.
  - Recently, a separate '**Ministry of Co-operation**' has been created by the Central Government to give a new push to the cooperative movement.

## Key Points

- **Issue:**
  - Part IXB, introduced into the Constitution through the **97<sup>th</sup> Amendment, dictated the terms for running co-operative societies**.
  - The provisions in the Amendment, **passed** by Parliament **without getting them ratified by State legislatures** as required by the Constitution.
  - It went to the extent of **determining the number of directors** a society should have or their **length of tenure** and even the **necessary expertise required** to become a member of the society.

## Other Major Provisions of the 97<sup>th</sup> Amendment

- The word "**cooperatives**" was added after "**unions and associations**" in [Article 19\(1\)\(c\)](#) under **Part III of the Constitution**. This enables all the citizens to form cooperatives by giving it the status of fundamental right of citizens.
- A new [Article 43B](#) was added in the [Directive Principles of State Policy](#) (Part IV) regarding the

“promotion of cooperative societies”.

▪ **Central Government's Argument:**

- It justified that the government was **injecting ‘professionalism’ and autonomy** into the functioning of the societies.
- **Lack of accountability** by the members has **led to poor services and low productivity**.
- Even **elections are not held on time**. Co-operatives **need to run on well-established democratic principles**.

▪ **SC's Ruling:**

◦ **Exclusive Legislation of States:**

- The constitution has been described as **quasi-federal** in that, so far as legislative powers are concerned, though **there is a tilt in favour of the Centre vis-à-vis the States** given the **federal supremacy** principle.

- **Quasi-federalism** means an intermediate form of state between a unitary state and a federation.

- However, within their own sphere, the **States have exclusive power to legislate on topics reserved exclusively to them**.
- **Part IX B**, which consists of **Articles 243ZH to 243ZT**, has “significantly and substantially **impacted**” **State legislatures’ “exclusive legislative power” over its co-operative sector under Entry 32 of the State List**.
- The court pointed out how **Article 243ZI** makes it clear that a **State may only make law on the incorporation, regulation and winding up of a society** subject to the provisions of Part IXB of the 97<sup>th</sup> Amendment.

◦ **Not Ratified by the States:**

- It held that the **97<sup>th</sup> Constitutional Amendment required ratification by at least one-half of the state legislatures as per Article 368(2)** of the Constitution, since it dealt with an entry which was an exclusive state subject (co-operative societies).

- Under **Article 368(2)**, Parliament can amend the Constitution by passing a Bill with a **special majority**.

- Since such ratification was not done in the case of the 97<sup>th</sup> amendment, it was liable to be struck down.

◦ **Upheld the Validity of Provisions related to Multi State Cooperative Societies:**

- It did not strike down the portions of Part IXB of the Amendment concerning **‘Multi State Co-operative Societies (MSCS)’ due to the lack of ratification**.
- When it comes to MSCS with objects not confined to one State, the **legislative power would be that of the Union of India** which is contained in Entry 44 List I (**Union List**).
- It is declared that **Part IXB of the Constitution is operative only insofar as it concerns multi-State cooperative societies** both within the various States and in the Union Territories.

## **Lists to Differentiate Legislative Powers**

▪ There are **three Lists** which provide for distribution of legislative powers (**under 7<sup>th</sup> Schedule to the Constitution**):

- **Union List (List I)** - It contains **98 subjects (originally 97)** and comprises the **subjects which are of national importance** and admit of uniform laws for the whole of the country.

- Only the Union Parliament can legislate with respect to these matters e.g. Defence, Foreign Affairs, Banking, Currency, Union Taxes, etc.
- **State List (List II)** - It contains **59 subjects (originally 66)** and comprises **subjects of local or State interest**.
  - It lies within the legislative competence of the State Legislatures, viz. Public Order and Police, Health, Agriculture, etc.
- **Concurrent List (List III)** - It contains **52 subjects (Originally 47)** with respect to which; both Union Parliament and the State Legislature have concurrent power of legislation. The Concurrent List (not found in any federal Constitution) was to serve as a device to avoid excessive rigidity to a two-fold distribution.
  - It is a '**twilight zone**', as for not so important matters, the States can take initiative, while for the important matters, the Parliament can do so.

[Source: IE](#)

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