

<https://esocieties.in/2020/03/05/97th-constitutional-amendment-cooperative-societies/>

97th Constitutional Amendment: Cooperative Societies

[The Constitution \(97th Amendment\) Act, 2011](#) relates to the cooperative societies working in India. It aims to overcome all the problems faced by these societies and bring about an efficient way to manage them.

The 97th Constitution Amendment Act, 2011 provided for amendment of following things:

1. It amended Article 19(l) c by inserting, after the words 'or unions' the words 'or Co-operative Societies'.
2. It also inserted Article 43B in Part IV of the Constitution as "The State Shall endeavor to promote Voluntary formation, autonomous functioning, democratic Control and professional management of the Co-operative societies" and
3. After Part IX-A of the Constitution, Part IX-B was inserted. Part IX-B extended from Article 243ZH to Article 243ZT.

The Major features of the Act are as follows:

1. Incorporation, regulation and winding up of [cooperative Societies based on the principles](#) of **Voluntary formation, democratic member Control, member economic participation and autonomous functioning**;
2. Maximum number of directors of a Co-operatives Society to be **not exceeding twenty-one members**;
3. **A fixed term of five years from the date of election** in respect of the elected members of the board and its office bearers; and an authority or body for the Conduct of elections to a Cooperative Society;
4. A maximum time limit of Six months during which board of directors of a Co-operative Society Could be kept under Supersession or suspension;
5. **Independent professional audit**;
6. **Right of information to the members** of the Co-operative Societies;
7. Empowering the State Governments to obtain **periodic reports** of activities and accounts of Co-operatives Societies;
8. Reservation of one seat for the Scheduled Castes or the Scheduled Tribes and **two Seats for women on the board of every Cooperative Society**, which have individuals as members from Such Categories ; and
9. Penalties in respect of offences relating to Co-Operatives Societies.

Status of 97th Amendment

The Hon'ble High Court of Gujarat, vide its order dated 22.04.2013 in the matter of W.P (PIL) No.166 of 2012 [Rajendra N Shah vs Union of India & Anr](#), **has struck down Part IX B containing Article 243ZH to 243 ZT of the Constitution of India**. Therefore, a Special Leave Petition Nos. 25266-67 of 2013 has been filed in the Hon'ble Supreme Court of India against the aforesaid order by the Government of India and the same is pending for hearing.

27. We, therefore, allow this Public Interest Litigation by declaring that the Constitution [97th amendment] Act, 2011 inserting part IXB containing Articles 243ZH to 243ZT is ultra vires the Constitution of India for not taking recourse to Article 368(2) of the Constitution providing for ratification by the majority of the State Legislatures. This order, however, will not affect other parts of the Constitution [97th amendment] Act, 2011. In the facts and circumstances, there will be no order as to costs.

Between 13th January 2012 when the act was enacted to 22 April 2013 when it was struck down, some states amended their state acts according to the provisions of 97th constitution Amendment Act.

97th Constitutional Amendment Copy

Part IX: The Cooperative Societies

243ZH. *Definition*

In this Part, unless the context otherwise requires,-

- (a) “authorised person” means a person referred to as in article 243ZQ;
- (b) “board” means the board of directors or the governing body of a co-operative society, by whatever name called, to which the directs 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.

243ZI. *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.

243ZJ. *Number and Terms 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 willfully makes a false return or furnishes false information, or any person willfully 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 willfully 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-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.’.

Reference

1. [Judgement: Rajendra N Shah vs Union Of India on 22 April, 2013](#)
2. [Note on the Constitution \(97th Amendment\) Act 2011](#)
3. [The Constitution \(Ninety Seventh Amendment\) Act, 2011](#)