

## SC ANNULS PARTS OF CO-OP AMENDMENT

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In a major boost for federalism, the Supreme Court on Tuesday struck down parts of a Constitution amendment which shrank the exclusive authority of States over its cooperative societies.

Part IXB, introduced in the Constitution through the 97th Amendment of 2012, dictated the terms for running cooperative societies. The provisions in the amendment, passed by Parliament without getting them ratified by State legislatures as required by the Constitution, went to the extent of determining the number of directors a society should have or their length of tenure and even the necessary expertise.

In a majority judgment authored by Justice Nariman, the court held that cooperative societies come under the “exclusive legislative power” of State legislatures. The judgment may be significant in the background of fears voiced by the States whether the new Central Ministry of Cooperation would dis-empower them. The SC, however, said the Centre had power over multi-State cooperative societies.

Part IX B, which consists of Articles 243ZH to 243ZT, has “significantly and substantially impacted” State legislatures’ “exclusive legislative power” over its cooperative sector under Entry 32 of the State List. In fact, 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 97th Constitution Amendment.

“There can be no doubt that our 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 outlined herein above, yet within their own sphere, the States have exclusive power to legislate on topics reserved exclusively to them,” Justice Nariman wrote in his 89-page majority opinion shared with Justice B.R. Gavai.

“The 97th Amendment which inserts the chapter dealing with cooperative societies has not been so ratified by the States, though an amendment of the Constitution is the exercise of constituent power which differs from ordinary legislative power, such constituent power does not convert Parliament into an original constituent assembly. Parliament being the donee of a limited power may only exercise such power in accordance with both the procedural and substantive limitations contained in the Constitution of India,” Justice Nariman observed.

However, the court did not strike down the portions of Part IXB of the Amendment concerning “Multi State Cooperative Societies” due to the lack of ratification.

“When it comes to Multi State Co-operative Societies (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,” Justice Nariman said.

In his dissent, Justice K.M. Joseph said the doctrine of severability would not operate to distinguish between single-State cooperatives and MSCS. The judge said the entire Part IXB should be struck down on the ground of absence of ratification.

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