

# Legislative Brief

## The Constitution (One Hundred and Sixth) Amendment Bill, 2006

The Bill was introduced in the Lok Sabha on May 22, 2006.

The Bill has been referred to the Department Related Standing Committee on Agriculture (Chairperson: Prof. Ram Gopal Yadav) which was scheduled to give its report in three months.

### Recent Briefs:

The Forward Contracts (Regulation) Amendment Bill, 2006  
November 14, 2006

The Warehousing (Development and Regulation) Bill, 2005  
November 14, 2006

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### Highlights of the Bill

- ◆ The Constitution (One Hundred and Sixth) Amendment Bill, 2006 proposes to insert a new part IX B in the Constitution (adding Articles 243ZH through 243ZT), which provides for incorporation, regulation and winding up of co-operative societies.
- ◆ The Bill specifies the maximum number of Board members and the tenure of the members. Elections have to be held before the expiry of the term of the Board.
- ◆ The Board of a co-operative society that has government shareholding or loans can be superseded for the maximum period of six months.
- ◆ State governments can co-opt upto two nominees on the Board of a co-operative society.
- ◆ The Bill specifies certain offences related to co-operative societies. State legislatures can define the penalties related to co-operative societies.

### Key Issues and Analysis

- ◆ The Constitution lays down the framework for governance and the relationship of citizens and various state institutions. It is debatable whether governance mechanisms of voluntary bodies such as co-operatives should be specified in the Constitution.
- ◆ Co-operative societies may be superseded without giving the Board an opportunity to explain the charges.
- ◆ Only co-operatives with government shareholding can be superseded. This contradicts the Banking Regulation Act, 1949, which allows co-operative banks to be superseded by the Reserve Bank of India.
- ◆ The powers of the Registrar of co-operative societies are not specified in the Bill. This leaves scope for interference by the Registrar in the running of co-operative societies.

## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

In India, the co-operative sector is governed by state legislations and a central law related to multi-state co-operatives. A co-operative society is defined as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs through a jointly-owned enterprise. The basic principles of a co-operative society are: voluntary and open membership, democratic member control (each member has one vote), member's economic participation (members contribute equitably and control the capital of their co-operatives), autonomy and independence, training, co-operation among cooperatives, and concern for community.<sup>2</sup>

While the sector has grown in volume<sup>3</sup>, most co-operative societies lack autonomy due to direct intrusion of the state in the governance and management of co-operative societies. The reason is that the co-operative movement in India was initiated by the government. In 1954, the All India Rural Credit Survey Committee Report not only recommended state partnership in terms of equity, but also partnership in terms of governance and management.<sup>4</sup>

Since 1990, the need for co-operative reforms has been articulated by many committees.<sup>5</sup> In 1991, the Brahm Perkash Committee proposed a Model Cooperative Law, in order to make co-operatives self-reliant, autonomous, and democratic.<sup>6</sup> Progress in implementing the suggestions was tardy because of the states' unwillingness to share in costs and their reluctance to dilute their powers.<sup>4</sup> Only nine states have enacted the Mutually Aided Co-operative Societies Act.<sup>7</sup>

The National Common Minimum Programme<sup>8</sup> promised to enact a Constitutional Amendment to ensure the "democratic, autonomous and professional functioning of the co-operatives."

The Constitution (One Hundred and Sixth) Amendment Bill, 2006 proposes to insert a new part IX B in the Constitution (adding Articles 243ZH through 243ZT), which outlines certain guidelines for running co-operative societies.

### Key Features

#### Incorporation of Co-operative Societies

- The Bill makes provisions for incorporation, regulation and winding up of co-operative societies and seeks to ensure the autonomous and democratic functioning of co-operatives.

#### Composition of the Board

- The state legislature shall specify the number of members of the Board of Directors of a co-operative society. The number is limited to 21 except in the case of a state level co-operative society. The term of the Board is for a period of five years.
- The election of members to the Board must be conducted before the expiry of the previous one, or within 60 days after the expiry of the term of the previous Board. The expenses of the election would be borne by the co-operative society. The state legislature would outline the guidelines for conducting such elections.
- The state legislature shall make provisions for co-opting any person having experience in the field of banking, management, finance or specialization in a field related to a particular co-operative society as members of the Board. A maximum of two people can be co-opted to the Board. The co-opted member would not have the right to vote in any election of the co-operative society or be eligible for election as Chairman, President, Vice-Chairman or Vice-President.

#### Supersession of the Board

- The Board of a co-operative society can be superseded in case of (a) persistent default; (b) negligence in the performance of its duties; (c) commission of any act prejudicial to the interest of the co-operative society or its members; (d) there is a stalemate in the constitution or function of the Board; or (e) the general body has failed to conduct the elections as per the required procedure.
- A Board cannot be superseded or suspended for more than six months. In case a Board has been superseded, the administrator appointed to manage the affairs of such a co-operative society shall arrange for conducting elections within the specified time period.
- The Board of a co-operative society which does not have any shareholding or guarantee or loan or financial assistance from the government cannot be superseded.
- The provisions of the Banking Regulations Act, 1949 will be applicable to banking co-operative societies.

## Offences and Penalties

- The state legislature may define the offences and penalties related to co-operative societies. An offence would be committed if (a) a co-operative society files a false return, (b) wilfully disobeys any summon or requisition issued under the state Act, (c) any employer who, without sufficient cause, does not pay to the co-operative society the amount deducted from an employee within a period of 14 days, (d) any officer who wilfully does not hand over custody of books, accounts or cash of a co-operative society to an authorized person, and (e) any person who adopts corrupt practices before, during or after the election of Board members or office bearers.

## PART B: KEY ISSUES AND ANALYSIS

### Necessity of Constitutional Amendment

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There are two schools of thought on the Constitutional Amendment. The first school questions the need for adding a separate Part in the Constitution on co-operative societies. The Constitution is a document that lays down the framework for governance by defining the role of the state, providing for mechanisms for the proper functioning of the institutions of the state, and protecting citizens from undue encroachments on their liberty. Therefore, detailed provisions in the Constitution are made only with regard to state institutions, whereas co-operatives are a form of association and not part of the governing structure of the state. They say that there might be a case for making the right to form co-operatives a fundamental right under Article 19(1)(c) of the Constitution which guarantees the right to form associations. This would explicitly and unambiguously recognize the citizen's right to form a co-operative and operate them on the basis of principles of cooperation.<sup>9</sup>

According to the second school, there is a need for a constitutional amendment in order to have uniform co-operative laws across the country. However, they point out issues regarding certain provisions in the Bill. These are discussed in the remaining part of this Brief.

### Lacunae in the Constitutional Amendment

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#### Supersession of the Board

The Board of a co-operative society may be superseded for a period of six months in case of persistent default, negligence in the performance of its duties etc. This raises two issues. First, there is no provision for giving a show cause notice to the Board or opportunity to explain the charges. The Standing Committee Report on the Multi-State Cooperative Societies Bill, 2000 recommended that such safeguards be included in the Act itself to prevent misuse by the government.<sup>10</sup> Second, it does not restrict the number of times a Board can be superseded. In such a scenario, the central or state government can dissolve a Board of a co-operative every six months.

#### Scope for Conflict with Banking Regulation Act, 1949

The Board of only those cooperative societies may be superseded which have shareholding, guarantee, loan or financial assistance from the government. However, the provisions of the Banking Regulation Act, 1949 would apply to co-operative societies doing the business of banking.

The Banking Regulation Act, 1949 provides the Reserve Bank of India (RBI) with the power to supersede the Board of Directors of multi-state co-operative banks for a maximum period of five years.<sup>11</sup> (For example, the boards of the South Indian Cooperative Bank, the Prudential Bank, and the Madhavapura Mercantile Co-operative Bank are among those that were superseded since 2001).

It is not clear whether, after this amendment, RBI can supersede cooperative banks that do not have government shareholding or financial assistance.

#### Scope for Government Interference

The Bill does not explicitly state the role and functions of the Registrar of co-operative societies (appointed by the central government for multi-state co-operatives and appointed by the state government in case of state co-operatives). Under most state co-operative acts (except the Mutually Aided Co-operative Societies Act which was enacted by nine states), the registering authority has the power to refuse registration of a co-operative on the grounds that it might not be financially viable or that its existence was likely to affect the viability of another co-operative already in existence.<sup>12</sup> Also, there have been instances of Registrars interfering in the administrative matters of co-operative societies in the form of supersession of Boards, appointment of administrators, and assuming powers to approve staffing pattern, recruitment, emoluments etc.<sup>4</sup>

The State Cooperation Department interferes in financial matters of co-operative credit societies in various forms, such as direction on interest rates, interference in loan decisions, announcement of waivers, and direct or indirect

pressure on non-recovery of loans. Such interference has led to the impairment of co-operative credit societies. (Between 2000 and 2003, more than 35% of District Level Central Cooperative Banks and more than half the Primary Agricultural Credit Societies reported losses).<sup>4</sup> However, the Constitutional Amendment does not have any provision to minimize such government interference in the working of co-operative credit societies.

The power given to state governments to co-opt two members to any co-operative society may offer scope for further interference in their functionary.

### Lack of Autonomy

The Bill has provisions specifying the term of a Board and the maximum number of Board of Directors. Given that one of the objectives of the Bill is to promote autonomy of co-operative societies, there could be a case for leaving such decisions to the bye laws of each co-operative society.

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### Notes

1. This Brief has been developed on the basis of the Constitution (One Hundred and Sixth) Amendment Bill, 2006 introduced in Lok Sabha on May 22, 2006. The Bill has been referred to the Parliamentary Standing Committee on Agriculture (Chairperson: Shri Ram Gopal Yadav) which was scheduled to submit its report within three months.
2. The Delhi Co-operative Societies Act, 2003.
3. Presently, there are 549,119 co-operatives in India. "Indian Co-operative Movement: A Profile 2004," National Co-operative Union of India.
4. Report of the Task Force on Revival of Rural Cooperative Credit Institutions, February 4, 2005 (see [http://www.nabard.org/whats/rcci/rcci\\_task\\_force.htm](http://www.nabard.org/whats/rcci/rcci_task_force.htm)).
5. Committees headed by Chaudhry Brahm Perkash, Jagdish Capoor, Vikhe Patil, and V.S. Vyas.
6. Ch. Brahm Perkash Committee, formed by the Planning Commission in 1990 to examine the provisions of existing Cooperative Societies Act, submitted its report in May 1991 (see <http://164.100.24.208/ls/committeeR/Agriculture/24.pdf>).
7. Andhra Pradesh, Bihar, Chhatisgarh, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Orissa and Uttaranchal have adopted the Mutually Aided Cooperative Societies Act.
8. National Common Minimum Programme of the Government of India, May 2004 (see <http://pmindia.nic.in/cmp.pdf>).
9. "Autonomy of Cooperatives," Communication from the National Advisory Council to the Government, April 19, 2005 (see <http://nac.nic.in/communication/autonomy.pdf>).
10. Report of Standing Committee on Agriculture on the Multi State Cooperative Societies Bill, 2000, August 16, 2001 (see <http://164.100.24.208/ls/committeeR/Agriculture/24.pdf>).
11. Clause 36AAA of the Banking Regulation Act, 1949.
12. For example, the Meghalaya Co-operative Societies Act, 1976, the Delhi Co-operative Societies Act, 2003.

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