

Legislative Brief

The Multi-State Co-operative Societies (Amendment) Bill, 2022

The Multi-State Co-operative Societies (Amendment) Bill, 2022 was introduced in Lok Sabha on December 7, 2022.

The Bill was referred to a Joint Committee on December 20, 2022. The Committee submitted its report on March 15, 2023.

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Highlights of the Bill

- ◆ The Bill amends the Multi-State Co-operative Societies Act, 2002. It establishes the Co-operative Election Authority to conduct and supervise elections to the boards of multi-state co-operative societies.
- ◆ A multi-state co-operative society will require prior permission of government authorities before the redemption of their shareholding.
- ◆ A Co-operative Rehabilitation, Reconstruction and Development Fund will be established for the revival of sick multi-state co-operative societies. The Fund will be financed through contributions by profitable multi-state co-operative societies.
- ◆ The Bill allows state co-operative societies to merge into an existing multi-state co-operative society, subject to the respective state laws.

Key Issues and Analysis

- ◆ Sick multi-state co-operative societies will be revived by a Fund that will be financed through contributions by profitable multi-state co-operative societies. This effectively imposes a cost on well-functioning societies.
- ◆ Giving the government the power to restrict redemption of its shareholding in multi-state co-operative societies may go against the co-operative principles of autonomy and independence.

PART A: HIGHLIGHTS OF THE BILL

Context

Co-operatives are voluntary, democratic, and autonomous organisations controlled by their members who actively participate in its policies and decision-making. Even before formal co-operative societies were formed in India, there were instances of village communities collectively creating assets like village tanks and forests.¹ After independence, the first five-year plan (1951-56), emphasised the adoption of co-operatives to cover various aspects of community development.¹ Multi-state co-operative societies operate in more than one state. These operate in various sectors such as agriculture, textile, poultry, and marketing.

As per the Constitution, states regulate the incorporation, regulation, and winding up of state co-operative societies.² Parliament can legislate on matters related to incorporation, regulation, and winding up of multi-state co-operatives.³ The Multi-State Co-operative Societies Act, 2002 provides for the formation and functioning of multi-state co-operatives.⁴ In 2011, the Constitution was amended (adding Part IXB) to specify guidelines for running co-operative societies.⁵ These guidelines provide for: (i) composition of the boards of co-operatives, (ii) election of members of the board, (iii) audit of accounts of co-operative societies, and (iv) supersession of the board. The Supreme Court, in July 2021, held that Part IXB will only be applicable to multi-state co-operative societies, as states have the jurisdiction to legislate over state co-operative societies.⁶

Over the years, various experts have also highlighted several shortcomings with respect to the functioning of co-operatives.^{7,8,9} These include: (i) inadequacies in governance, (ii) politicisation and excessive role of the government, (iii) inability to ensure active membership, (iv) lack of efforts for capital formation, and (v) inability to attract and retain competent professionals.⁹ In addition, there have also been cases where elections to co-operative boards have been postponed indefinitely.¹⁰

The 2022 Bill seeks to amend the Act in order to align its provisions with those provided under Part IXB of the Constitution and address concerns with the functioning and governance of co-operative societies. The Bill was referred to a Joint Committee on December 20, 2022. The Joint Committee on the Multi-State Co-operative Societies (Amendment) Bill, 2022 (Chair: Mr. Chandra Prakash Joshi), which submitted its report on March 15, 2023, agreed with most of the provisions of the Bill.¹¹

Key Features

- **Election of board members:** Under the Act, elections to the board of a multi-state co-operative society are conducted by its existing board. The Bill amends this to specify that the central government will establish the Co-operative Election Authority to: (i) conduct such elections, (ii) supervise, direct, and control the preparation of electoral rolls, and (iii) perform other prescribed functions. The Authority will consist of a chairperson, vice-chairperson, and up to three members appointed by the central government on the recommendations of a selection committee.
- **Amalgamation of co-operative societies:** The Act provides for the amalgamation and division of multi-state co-operative societies. This can be done by passing a resolution at a general meeting with at least two-thirds of the members, present and voting. The Bill allows state co-operative societies to merge into an existing multi-state co-operative society, subject to the respective state laws. At least two-thirds of the members of the co-operative society present and voting at a general meeting must pass a resolution to allow such a merger.
- **Fund for sick co-operative societies:** The Bill establishes the Co-operative Rehabilitation, Reconstruction and Development Fund for revival of sick multi-state co-operative societies. A sick multi-state co-operative society is one that has: (i) accumulated losses equal to or exceeding the total of its paid-up capital, free reserves, and surpluses, and (ii) suffered cash losses in the past two financial years. The central government may prepare a scheme for rehabilitation and reconstruction of the society. Multi-state co-operative societies that are in profit for the preceding three financial years shall finance the Fund. They will deposit either one crore rupees or one percent of their net profit into the Fund, whichever is less.
- **Restriction on redemption of government shareholding:** The Act provides that the shares held in a multi-state co-operative society by certain government authorities can be redeemed based on the bye-laws of the society. These government authorities include: (i) the central government, (ii) state governments, (iii) the National Co-operative Development Corporation, (iv) any corporation owned or controlled by the government, or (v) any government company. The Bill amends this to provide that any shares held by the central and state governments cannot be redeemed without their prior approval.
- **Redressal of complaints:** As per the Bill, the central government will appoint one or more Co-operative Ombudsman with territorial jurisdiction. The Ombudsman shall inquire into complaints made by members of multi-state co-operative societies regarding: (i) their deposits, (ii) equitable benefits of the society's functioning, or (iii) issues affecting the individual rights of the members. The Ombudsman shall complete the process of inquiry and adjudication within three months from the receipt of the complaint. Appeals against the directions of the Ombudsman may be filed with the Central Registrar (who is appointed by the central government) within a month.

PART B: KEY ISSUES AND ANALYSIS

Reviving sick co-operative societies may burden profitable societies

The Bill proposes to establish the Co-operative Rehabilitation, Reconstruction and Development Fund for the revival of sick multi-state co-operative societies. A sick multi-state co-operative society is one that has: (i) accumulated losses equal to or exceeding the total of its paid-up capital, free reserves, and surpluses, and (ii) suffered cash losses in the same and preceding financial years. Multi-state co-operative societies which make a profit in the preceding three financial years will contribute to the Fund. They will make an annual deposit of one crore rupees or one percent of their net profit, whichever is less. The proceeds of this fund can then be utilised to revive sick multi-state co-operative societies. These co-operative societies may even be business competitors. The Bill is effectively imposing a cost on well-functioning co-operatives to bail out poorly functioning ones. Mandating such a financial burden on well-managed and profit-making co-operatives may not be appropriate. This provision could result in profit-making and financially viable co-operatives providing towards the revival of sick co-operatives. For comparison, a company constituted under the Companies Act, 2013 is not required to contribute towards the revival of sick companies.¹²

The proposal to setup a revival fund for Urban Co-operative Banks (UCBs) was considered by the Working Group on Umbrella Organisation and Constitution of Revival Fund for Primary (Urban) Co-operative Banks in 2009.¹³ The Working Group had noted that several sick UCBs needed solvency support. It had estimated that

an investment of Rs 2,500 crore may be needed to bring UCBs with negative net worth into positive net worth. The Working Group considered that a fund for reviving these sick UCBs could be created from contributions by profit-making UCBs. However, with the total net profit of the sector in 2009 at around Rs 1,000 crore, such contributions were not seen as sufficient to revive sick UCBs. In 2020-21, the total net profit of all UCBs was Rs 2,749 crore.¹⁴ As on December 15, 2022, 76 multi-state co-operative societies, including co-operative banks, were under liquidation.¹⁵ Moreover, the report noted that UCBs would resist contributing funds into such a revival fund. In the absence of contributions from central and state governments, it had recommended against the creation of a separate fund for the revival of UCBs.¹³ However, note that banking is a special case with depositors' money at stake and the rationale may not be applicable to other co-operatives. For example, banking companies (unlike other companies) are not under the purview of the Insolvency and Bankruptcy Code, 2016.¹⁶ Special provisions such as deposit insurance are applicable to banking companies.

The High Powered Committee on Co-operatives (2009) had recommended that the central government should create a National Co-operative Rehabilitation and Institutional Protection Fund to revive sick units.⁹ It suggested that states should contribute to the fund.⁹

Restricting redemption of government shareholding may be against co-operative principles

Act: Sections 35 and 123

Bill: Clauses 13 and 45

The Act provides that the shares held in a multi-state co-operative society by certain government authorities can be redeemed based on the bye-laws of the society. These authorities include: (i) the central government, (ii) state governments, (iii) the National Co-operative Development Corporation, (iv) any corporation owned or controlled by the government, or (v) any government company. If the bye-laws are silent on the redemption of shares held by these entities, it can be done through a mutually agreed process between the society and the entity. The Bill amends this to provide that any shares held by the central and state governments cannot be redeemed without their prior approval. While this may ensure government control in case of malfunctioning co-operatives, it may go against the co-operative principles of autonomy and independence.

The Act provides that the central government may give directions and supersede the boards of malfunctioning multi-state co-operative societies, where the central government has a shareholding of at least 51%. Restricting the redemption of government shareholding would ensure that malfunctioning multi-state co-operative societies cannot pre-emptively redeem government shares before supersession of the board. However, the Bill proposes to empower the government to supersede the boards of any multi-state co-operative society where the government has any shareholding, or has extended any loan, financial assistance, or guarantee.

On the other hand, giving the central and state governments veto powers over the redemption of their shareholding may violate the principles of democratic member control and autonomy, as provided in the First Schedule of the Act. These principles state that co-operatives are democratic, autonomous, and self-help organisations controlled by their members.⁴ If they enter into an agreement with other organisations/governments or raise capital from external sources, they do so on conditions where their autonomy and democratic member control are not diluted.

The Report of the High-Powered Committee on Co-operatives (2009) had recommended against government participation in the share capital of co-operatives since it leads to government control, which could be detrimental to the autonomy of co-operatives.⁹ The Committee recommended that as far as possible, government aid to co-operatives could be provided as grants or interest free loans.⁹ Even in cases where the government has provided initial share capital, it must be redeemed at the earliest.⁹

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