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## India: Cooperative Conundrum: Unpacking The Controversy Surrounding India's Multi-State Co-operative Societies Amendment Bill, 2022

4 August 2023

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The Multi-State Co-operative Societies ("MSCS") Amendment Bill, 2022 (the "Bill") to amend the Multi-State Co-operative Societies Act 2002 (the "Act") was introduced in the Lok Sabha in December 2022 against the backdrop of protest from opposition leaders.<sup>1</sup> The amendments to the Act were finally referred to the Standing Committee consisting of twenty-one members of the Lok Sabha and ten members of the Rajya Sabha.<sup>2</sup>

### Deconstructing the Dispute: Constitutional Challenges and Repercussions of the Bill

The controversy around the Bill is based on a vast array of changes to the Act, which the opposition claims encroach upon the constitutional scheme under the Seventh Schedule. These changes include the election of board members of MSCS mechanism for redressal of complaints, amalgamation of co-operative societies, introduction of a fund for sick cooperative societies, changes to the composition of the board of directors of MSCS, increases in penalties and giving the Union government powers to give directions and supersede the boards of specified MSCS.<sup>3</sup>

The Bill and its clash with the Seventh Schedule of the Constitution are evident concerning the Co-operative Banking Sector. It is peculiar that Entry 32 of List II mentions "*Co-operative Societies*" as a State subject, while Entry 45 of List I mentions "*Banking*" as a Union subject.<sup>4</sup> This gives rise to a convoluted situation considering that a substantial number of MSCS operate as co-operative banks,<sup>5</sup> governed by central laws such as Banking Regulation Act, 1949, and the Bill vide clause 6 provides for the merger of MSCS with State Co-operatives, which are governed by the laws of the states.

### The Supreme Court's Stance and Pith & Substance Doctrine in the MSCS Debate

The Hon'ble Supreme Court has cleared its position on the subject of "*Banking*" being a List I entry and "*Co-operative societies*" being a List II entry, and the status of Co-operatives in the sector of Banking to an extent in the judgment of *Pandurang Ganpati Chagule*.<sup>6</sup> The apex court, in this case, relied on the 'Doctrine of Pith & Substance',<sup>7</sup> clarifying that legislation with its main objects and scope falling within the powers expressly conferred by the Constitution upon a legislature cannot be held invalid even if it incidentally falls within the domain of another legislature. The Hon'ble Court stated that laws with their main objects and scope dealing with co-operatives in Banking fell within the powers of the Union as the main objects and scope of these legislations pertained to Banking mentioned under List I.

he situation is equally perplexing if one looks at MSCS, which operates in other sectors. The Supreme Court, through its judgment in *Union of India v. Rajendra N. Shah*,<sup>8</sup> while dealing with the 97<sup>th</sup> Amendment to the Constitution, was of the view that the laws on MSCS came under Entry 44 of List I, which deals with incorporation, winding, and regulation of corporations whether trading or not, with objects not confined to one state.<sup>9</sup> The characterisation of Co-operative Societies as Corporations, even if they operate in multiple states, is not in sync with the definition of a 'Corporation' under Sec. 2(11) of the Companies Act.

further raises the question of where MSCS falls under the Seventh Schedule's broader scheme.

ence, it would be fair to say that any analysis of the Bill needs to look at the changes introduced in the law concerning the broader aims and objects they intend to achieve as per the doctrine of pith & substance in light of the contentions raised by the opposition.

### The Implications of the Bill on the Cooperative Sector and Governance

he Bill is being touted as an attempt to cure the ills of the Cooperative sector. The inclusion of Co-operatives as a mechanism to alleviate poverty and raise the standard of living had fallen prey to misuse of these bodies as an avenue for dispensing patronage at the state level.<sup>10</sup> The policy of the States that allowed them to contribute to the share capital of the Co-operatives enabled the State governments to interfere in the functioning of these Co-operatives, obscuring their intended purpose and object of working as legally autonomous entities.<sup>11</sup>

he lack of trust in Co-operative Banking has become clear from the rising number of liquidations of these units in the past five years<sup>12</sup> and poor bad loan ratios.<sup>13</sup> A significant challenge to the robustness of this sector was the dual regulation under which these Banking units operated, including the State Registrar of Societies and the Reserve Bank of India ("RBI"). It is evident that the introduction of clause 6 of the Bill,<sup>14</sup> which allows these State Co-operatives to merge with MSCS, is an attempt to bring them under the umbrella of the sole regulatory oversight of RBI under the Banking Regulation Act, 1949.

another mechanism to ensure more financial robustness is the introduction of a Co-operative Rehabilitation, Reconstruction and Development Fund (the "Fund") under Clause 24 of the Bill<sup>15</sup> for the revival of sick MSCS. This Fund will be financed by existing profitable MSCS depositing either Rs. 1 Crore or 1% of their net profit into the Fund, whichever is less. This can result in extra financial burdens being put on these profitable MSCS.

contentious part of the Bill is Clause 17, which introduces the Central Co-operative Election Authority to supervise the electoral functions of the MSCS. The Authority will have a chairperson, vice-chairperson, and up to three members appointed by the Union Government. In a similar light, clause 45 of the Bill has given extensive powers to the Union Government to supersede MSCS with which they have any size of shareholding from the earlier 51% threshold. This change is also a step in giving more powers to the Union Government to ensure that governance-related issues in light of the opaqueness of functioning of Cooperative banks and Societies at the state level don't harm the financial robustness of these institutions.

### Reforming or Reframing? Analysing the Impact of the Bill

he changes in the law have essentially tried to ensure that Cooperative societies facing tremendous trust deficits in the public eye are monitored more effectively. This brings us back to the doctrine of pith & substance mentioned by the Supreme Court in analysing the Constitutional Scheme of the Seventh Schedule. While monitoring is the need of the hour, the monitoring envisaged under the Bill takes a top-down approach instead of a grassroots one.

he Bill seems to have multiple objectives like curing governance issues in Co-operatives at the state level, ensuring the robustness of the banking system and bringing clarity to how co-operatives operate internally. Each of these objects pertains to a different Entry under the Seventh Schedule; unless the pith and substance of this Bill become clear, the Constitutional obscurity over the law would remain unclear. This obscurity doesn't bode well for either industry or the state as it can give rise to possible litigation and challenge in courts.

### Footnotes

<sup>8</sup> 'Multi-State Co-operative Societies (Amendment) Bill, 2022 introduced in Lok Sabha', Live Law, (December 7, 2022) available at <https://www.livelaw.in/news-updates/multi-state-cooperative-societies-amendment-bill-2022-introduced-in-lok-sabha-216060>

<sup>9</sup> 'Multi-State Co-operative Societies Amendment Bill referred to joint committee for scrutiny', the Hindu, (December 20, 2022) available at <https://www.thehindu.com/news/national/multi-state-co-operative-societies-amendment-bill-referred-to-joint-committee-for-scrutiny/article66285171.ece>

<sup>10</sup> 'Bill Summary: The Multi-State Co-operative Societies (Amendment) Bill, 2022' available at <https://prsindia.org/billtrack/prs-products/prs-bill-summary-4010>

. Seventh Schedule, The Constitution of India, 1950

. 'List of Registered User: Co-operative Bank' Ministry of Cooperation, Government of India available at <https://mscs.dac.gov.in/UserRegistered.aspx>

. Pandurang Ganpati Chagule v. Vishwasrao Patil Murgud Sahakari Bank Limited, Civil Appeal No. 5674 (2009) (Supreme Court)

. The doctrine of pith and substance literally means 'true nature and substance', and this doctrine comes into play when there a conflict between the union and state legislature regarding power

. Rajendra Shah v. Union of India, air 2021 sc 4905

. Seventh Schedule, List I, Constitution of India, 1950.

2. Diksha Munjal, 'On amending the cooperative societies Act, The Hindu, available at <https://www.thehindu.com/news/national/explained-indias-cooperative-sector-and-the-multi-state-cooperative-societies-amendment-bill-2022/article66247417.ece>

1. Nagesh Kini, 'MSC Bank: The rbi finally steps in to clear the mess in Maharashtra's apex co-operative bank', Money Life, available at <https://www.moneylife.in/article/msc-bank-the-rbi-finally-steps-in-to-clear-the-mess-in-maharashtras-apex-co-operative-bank/16256.html>

2. Piyush Shukla, 'Centre says 27 cooperative banks were liquidated in past five years, 42 merged' Money Control, available at <https://www.moneycontrol.com/news/business/banks/centre-says-27-cooperative-banks-were-liquidated-in-past-five-years-42-merged-8907601.html>

3. 'District co-operative banks' bad loan ratio hits 12.6%: FM Nirmala Sitharaman' Financial Express, available at <https://www.financialexpress.com/industry/banking-finance/district-co-operative-banks-bad-loan-ratio-hits-12-6-sitharaman/2294437/>

4. Clause 6, The Multi-State Co-operative Societies (Amendment) Bill, 2022

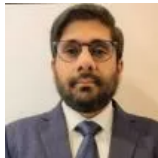
5. Clause 24, The Multi-State Co-operative Societies (Amendment) Bill, 2022

*he content of this article is intended to provide a general guide to the subject matter. Specialist advice should e sought about your specific circumstances.*

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