

Autonomy of Cooperatives

The UPA Government has been very farsighted in recognizing the need to preserve the autonomy of peoples' organizations – particularly the Cooperatives, as a part of the right to form associations guaranteed under Article 19(1)(c) of the Constitution. The NCMP made the following commitments vis-à-vis Cooperatives.

- The rural cooperative credit system will be nursed back to health. The UPA Government will ensure that the flow of rural credit is doubled in the next three years and that the coverage of small and marginal farmers by institutional lending is expanded substantially.
- The delivery system for rural credit will be reviewed.
- The UPA Government will bring forward a Constitutional Amendment to ensure the democratic, autonomous and professional functioning of cooperatives.

The following key issues relating to the nature of cooperatives, and the citizens' rights guaranteed under the democratic Constitution must be borne in mind before any constitutional amendment is taken up:

- A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise.
- The universally recognized cooperative principles are guidelines by which cooperatives practice their values of self-help, self-responsibility, democracy, equality, equity and solidarity.
- Voluntary and open membership, democratic member control, member economic participation, and autonomy and independence of functioning are the core principles of cooperation. These are an extension of citizens' liberties in all free societies.

- The right of citizens to form cooperatives is explicitly recognized in Article 19 (1) (c), and is embedded in the right to form associations.
- When a cooperative is formed primarily to serve the members' common economic needs, it falls under the ambit of Article (19) (1) (g).
- Even the colonial government before Independence broadly recognized and respected the citizens' right to form and run cooperatives independent of government control.
- State domination and control are an aberration after Independence because of misplaced notions of state's role.
- If the state provides support to a cooperative, then such support could be conditional. For instance, if state gives subsidy to a business enterprise, it may impose certain conditions by mutual consent. But in the guise of such real or potential support, the fundamental right to carry on any trade or business cannot be curtailed except for the reasons stated in Article 19 (6).
- Similarly, a society cannot be regulated by the state except in the interests of the sovereignty and integrity of India or public order as stated in Article 19 (4).

A cooperative formed to serve the common non-economic interests of members cannot be regulated by the state except as provided in Article 19 (4).

- In general, the citizens' right to form and run cooperatives is a fundamental right. Any regulation of cooperatives has to be subject to the reasonable restrictions under Article 19. Such restrictions cannot be selectively applied, and must be applicable to all forms of organizations undertaking a similar activity. For instance, the right of people to form a music society cannot be curtailed except to maintain public order, or prevent disturbance to neighbours, or to prevent spread of anti-national songs etc. If a cooperative is formed for the purpose of promoting music, then it can be subjected to the same restrictions which apply to all other organizations devoted to music.

- Similarly, if a cooperative is formed to run a bank, or dairy or a marketing organization, then it can be regulated to the same extent and in the same manner as other organizations (companies, partnership firms, etc.) undertaking the same business are regulated.

A careful examination shows that the draft Constitution (Amendment) Bill, 2004 in respect of cooperatives clearly violates the solemn pledge of the government in the form of the NCMP. Moreover, it violates the letter and spirit of the fundamental rights guaranteed under the Constitution. In the guise of liberating cooperatives from undue state-regulation, it actually paves way for unacceptable and unconstitutional regulation of cooperatives as citizens' organizations to pursue common economic, social and culture needs.

The NAC feels that cooperatives are special forms of societies as well as business enterprises. Therefore, a clear protection of the right to form and run a cooperative as a member-controlled, autonomous, democratic enterprise could be considered. The NCMP commitment to explicitly and unambiguously recognize the citizens' right to form cooperatives and run them on the basis of principles of cooperation could be fulfilled by a slightly more elaborate amendment to Article 19, adding sub-clause (h) to article 19(1) specially for cooperatives.

Recommendations :-

The following amendment could be made by incorporating 19(1)(h) after 19(1)(g).

“(h) to form and run cooperatives based on principles of voluntary and open membership, democratic member control, member economic participation, and autonomous functioning free from state control.”

Correspondingly Article 19(4) needs to be amended, so that enabling laws can be made by the legislatures. Article 19(4) now reads as follows:

“(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

The amended Article 19(4) should read as follows:

“(4) Nothing in **sub-clauses (c) and (h)** of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.”

Constitution is the fundamental law of the land. It is meant to clearly define the role of the state, provide for mechanisms for the proper functioning of the organs and institutions of state, and protect the citizens, who are the ultimate sovereigns, from undue encroachments on their liberty. Therefore detailed provisions in the Constitution are made only in respect of state institutions. The 73rd and 74th Amendments are excessively elaborate, and have generally failed to create genuine, empowered local governments. However, local governments are an integral part of the state, and therefore clear, unambiguous, specific, and even detailed provisions are warranted.

But cooperatives, associations, unions and business enterprises are not part of the State. Detailed provisions in the Constitution in respect of their functioning is inelegant, unwarranted, and counterproductive as it leads to restrictions on citizens' liberties.

Therefore, the NAC recommends that Article 19 (1)(h) should be incorporated in the Fundamental Rights chapter (Part III) of the Constitution as suggested above, in order to recognize the special nature of cooperatives, and ensure their autonomy and democratic, member-centered functioning. Correspondingly, Article 19 (4) may be amended suitably as suggested above.

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